

## Report for: **Cabinet**

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<b>Date of Meeting:</b>	15 July 2021
<b>Subject:</b>	Harrow Strategic Development Partnership – Contract Close and Establishment
<b>Key Decision:</b>	Yes  This is a key decision because: <ul style="list-style-type: none"><li>i. It will result in the Council incurring expenditure in excess of £1m capital</li><li>ii. It will be significant in terms of its effects on communities in all wards of the Borough</li></ul>
<b>Responsible Officer:</b>	Sean Harriss – Chief Executive
<b>Portfolio Holder:</b>	Councillor Graham Henson Leader of the Council: Strategy, Partnerships, Devolution, Customer Services and Regeneration Portfolio Holder  Councillor Natasha Proctor Cabinet Member: Finance and Resources
<b>Exempt:</b>	Report is public with exempt appendices 3,4, 5b, 6, 9 and 10 by virtue of paragraphs 3 and 5 of Part 1 of Schedule 12 A of the Local Government Act 1972 as they contain information relating to the financial or business affairs of the Council and other parties
<b>Decision subject to Call-in:</b>	Yes
<b>Wards affected:</b>	All
<b>Enclosures:</b>	<b>Procurement</b> <ul style="list-style-type: none"><li>1. Information Memorandum</li><li>2. Site Plans</li></ul>

## **Legal**

3. Summary of legal documentation for approval - **Exempt**
4. Subsidy Control advice - **Exempt**

## **Business Plan**

Business Plan – **Public version (5a)**  
**& Exempt version (5b)**

6. Financial Profile - **Exempt**

7. Equalities Impact Assessment

8. Equalities Impact assessment  
(Accommodation Strategy)

9. Avison Young – s123 report –  
**Exempt**

10. Draft Members' Agreement -  
**Exempt**

## **Section 1 – Summary and Recommendations**

This report is the third of the suite of reports bringing to a conclusion the procurement process for the Harrow Strategic Development Partnership (HSDP). This report proposes the set -up of the partnership and seeks approval for execution of the suite of legal documents which will facilitate the establishment of the HSDP and to approve the initial Business Plan which will form the early work programme.

Recommendations:

Cabinet is requested to:

1. Note the outcome of the preferred bidder stage of the Competitive Dialogue Procedure under the Public Contracts Regulations 2015 as outlined in this report
2. Confirm Wates Construction Ltd as the successful bidder following the Competitive Dialogue Procedure and as the Council's partner in the HSDP
3. Approve the setting up and commencement of the HSDP with Wates based on the structure set out in this report
4. Delegate authority to the Chief Executive following consultation with the Director of Legal and Governance Services to enter into appropriate legal documents to formally commence the HSDP.
5. Approve the initial Business Plan of the HSDP.
6. Delegate authority to the Director of Finance and Assurance, following consultation with the Director of Legal and Governance Services, to approve and enter into any of the financial agreements and instruments required by the Members agreement.
7. Note the additional cost requirement of £158k for professional fees for legal and financial and commercial support which can be accommodated within existing budgets.

Reason: (for recommendations)

To bring to a conclusion the process for procuring a partner with whom to form the Harrow Strategic Development Partnership, and to approve the necessary steps to establish the partnership.

## **Section 2 – Report**

### **2.1 Introductory paragraph**

- 2.1.1 At its meeting of 30th May 2019 Cabinet resolved that a Strategic Development Partnership, established with a private sector partner was the preferred delivery approach for the development of Poets Corner, Peel Road and Byron Quarter Phase 1 (the Core Sites) in the Regeneration Programme. Cabinet approved the commencement of a procurement process under the Public Contracts Regulations 2015 and agreed a proposition to be put to the market as part of the procurement process, as set out in the Information Memorandum attached at Appendix '1'.
- 2.1.2 The Cabinet decision of 30th May was subject to a Call-In. The decision was taken back to Cabinet in June 2019, where Cabinet resolved to confirm the decision of 30th May.
- 2.1.3 The procurement process then took place with the Council adopting a three -stage approach to determining the way forward.
- 2.1.4 Stage One: The report to Cabinet on 10<sup>th</sup> September 2020 dealt with the procurement process and appointed a Preferred Bidder to allow the Council to engage with its proposed partner and to prepare for the development of its' Core Sites.
- 2.1.5 Stage Two: On 27th May 2021 Cabinet approved the Council's accommodation strategy; which confirmed the Council's future ways of working and finalised the requirements for the new Civic Centre. This is an important component of and informs the HSDP Business Plan which is before members in this report.
- 2.1.6 Stage Three: This report concludes the Business Plan, seeks approval to close contractual documents and establishes the HSDP. Each of these stages has been the subject of member briefings and consideration by the Overview and Scrutiny Committee.

### **2.2 Options considered**

- 2.2.1 At the meeting of 30th May 2019, Cabinet considered a range of options for delivering the Council's key objectives and taking forward the development of the Core Sites.
- 2.2.2 The Council's agreed objectives were:
- To deliver wider regeneration across the Borough via new and improved mixed tenure housing, civic and community facilities, new employment space and the enhanced use of property assets within the Borough.
  - To accelerate the pace of housing delivery across the portfolio of sites.

- To secure wider economic and social benefits for local residents, including skills and training, health improvement and new employment opportunities.
- Use existing and new property assets to optimise value for the Council.
- To contribute to the delivery of well designed, high quality places that make a difference for communities, businesses, residents and families both now and in the long term.

2.2.3 The Council's key priorities in the Core Sites are to:

- I. Re provide the Civic Centre
- II. Provide the Civic Centre at no cost to the Councils General Fund over the period of the partnership
- III. Maximise Affordable Housing across the 3 sites

2.2.4 To deliver these objectives and priorities the Cabinet looked at the following options:

- Straightforward site disposal to a developer or builder
- Direct delivery by the Council
- Entering a development agreement with a developer or builder
- Formation of a strategic development partnership

2.2.5 The Council resolved to establish a Strategic Development Partnership and delegated authority to commence a procurement process to appoint a private sector partner to do this with. This report brings the procurement process to a close. The Council now has a committed potential partner, which has already been assisting the Council in evaluating the various options for the HNC and for development more generally.

2.2.6 The Council's selected route has many advantages and there have been no changes to the Council's objectives, which are entrenched within the procurement and legal documentation. While the Council's Accommodation Strategy and requirements for the Civic Centre in space terms have changed, this has no bearing on the recommended option.

2.2.7 However, alternative available options are:

2.2.8 **Do nothing.**

2.2.9 The Council has reserved its position and is not obliged to appoint any of the bidders.

2.2.10 Pursuing this option would mean that there would be no development on any of the Core Sites, yielding no regeneration benefit and no housing development, either market or affordable, through this procurement process.

2.2.11 A considerable amount of effort and expenditure by both the Council and its' preferred bidder partner would become fruitless, and the Council would lose the benefit of having a partner with whom development solutions, the market, and the best response to market conditions, can be discussed.

2.2.12 A new solution to the Council's Regeneration Objectives would need to be agreed and actioned, including a long- term approach to the HNC.

### 2.2.13 **Review the delivery option**

2.2.14 The consideration and reasons for pursuing a Strategic Development Partnership as outlined in the Cabinet report in May 2019, remain sound. To develop these Core Sites and meet the Council's overall objectives, a Strategic Development Partnership remains the best development option.

2.2.15 These are because:

- The option gave the greatest chance of achieving regeneration and development on a scale consistent with the Council's ambitions and objectives, enabling the wider economic and social benefits the Council requires.
- The flexibility of the partnership approach works best for multi-site and complex developments.
- The partnership will give the Council greater influence and control, as landowner, over the detail of the development including timescales and design quality.
- The opportunities to access skills, finance, supply chain and other benefits through the life of the partnership can support the Council's wider Regeneration Programme and community works.
- Strategic Development Partnership will offer the Council the potential of optimising the return to be invested in order to achieve the Council's objectives as identified above.

2.2.16 The Council has invested considerably in procuring a partnership and to review this at this time for a lesser option would lead to significant sunk costs and lose significant strategic advantages.

2.2.17 The recommended way forward is that set out in this report.

## 2.3 **Background**

### 2.3.1 **The Council's ambitions for regeneration and the chosen approach**

2.3.2 Some years ago, the Council set its ambitions to progress Harrow's regeneration, growth and development under the brand of 'Building a Better Harrow'.

2.3.3 This Regeneration Strategy covers the period from 2015 to 2026 and it outlines three core themes:

- 2.3.4 **Place** - Providing the homes, schools and infrastructure needed to meet the demands of our growing population and business base, with high quality town and district centres that attract business investment and foster community engagement.
- 2.3.5 **Communities** - Creating new jobs, breaking down barriers to employment, tackling overcrowding and fuel poverty in our homes and working alongside other services to address health and welfare issues.
- 2.3.6 **Business** - Reinforcing our commercial centres, promoting Harrow as an investment location, addressing skills shortages, and supporting new business start-ups and developing local supply chains through procurement.
- 2.3.7 The Councils' aim is to continue to promote sustainable communities by encouraging the right type of Development and Growth throughout Harrow. This is key to the success of the Regeneration Programme, building in sufficient infrastructure across the borough that will invigorate our local economy, attract new businesses and employers to the borough improving employment, education, and work opportunities for our residents. This is intended to provide a sense of place, well-being and welcome community for all. Harrow already has a wide ranging and diverse set of communities and the regeneration programme will build on this success by encouraging new families and people who want to come to live, work and relax in Harrow.
- 2.3.8 At the heart of this was a determination to build good quality homes for Harrow's people, partly through the use of the Council's own assets. At the same time, the Council set out its' need to develop a new Civic Centre to replace the aging and no longer fit for purpose building located on the site known as Poets Corner.
- 2.3.9 The Council then reviewed its options, in May 2019, for delivering these ambitions, considering the following:
- Straightforward Site disposal
  - Direct Delivery
  - Development Agreement
  - Strategic Development Partnership
- 2.3.10 It concluded that the Council should seek to establish a Strategic Development Partnership, because:
- The option gave the greatest chance of achieving regeneration and development on a scale consistent with the Council's ambitions and objectives, enabling the wider economic and social benefits the Council requires.
  - The flexibility of the partnership approach works best for multi-site and complex developments.
  - The partnership will give the Council greater influence and control, as landowner, over the detail of the development including timescales and design quality.

- The opportunities to access skills, finance, supply chain and other benefits through the life of the partnership can support the Council's wider Regeneration Programme and community works.
- The Strategic Development Partnership will offer the Council the potential of optimising the return to be invested in order to achieve the Council's objectives as identified above.

2.3.11 In summary this option was the best route to delivering the ambitions of the Regeneration Strategy, 'Building a Better Harrow.'

2.3.12 The Council reviewed which of its sites should initially be placed into the partnership and concluded that the three sites should be those at Poets Corner, Peel Road and Phase 1 of Byron Quarter.

2.3.13 Poets Corner is situated to the south of Harrow and Wealdstone Station, bounded by Marlborough Hill, Railway Approach and Milton Road. The site currently comprises the existing Civic Centre complex and is approximately 11.4 acres.

2.3.14 Peel Road is situated to the north of Harrow and Wealdstone station and is bounded by Canning Road, George Gange Way and Gladstone Way. It extends to approximately 1.4 acres and currently comprises Peel House Car Park and the existing Ashram Temple, which is being relocated to an adjacent site.

2.3.15 Phase 1 of Byron Quarter is a 3.7acre site in the south eastern corner of the Byron Quarter Masterplan area, bounded by Stuart Road, The Byron Recreation Ground, the Belmont Trail and Christchurch Avenue.

2.3.16 Plans of all the sites are appended at Appendix '2'.

2.3.17 There is potential to add further sites to the partnership at a later date where they accord with the objectives of the HSDP. The Council's strategic partner is likely to be keen to explore such options should this be the case. The clear benefit is that the Council will have a ready-made development partner with relevant expertise and without a need for further procurement (subject to obtaining procurement advice at that time to confirm this).

2.3.18 Following the review, Cabinet resolved to commence a procurement process under the Public Contracts Regulations 2015 to procure a development partner whom it would work alongside to deliver regeneration, new homes, social and economic benefits and a sense of place, across the Core Sites, in accordance with the objectives outlined above.

## **2.4 The need for a new Civic Centre**

2.4.1 The Council's existing Civic Centre, which was built in the 1970s, is no longer fit for purpose both in terms of the accommodation being unsuitable for modern working by type, and the prohibitive cost of refurbishment required to bring it to a modern effective office standard, estimated to cost a minimum of £42m. This figure has been estimated



by the Council's preferred partner Wates, based on benchmark costs of current and previous work.

- 2.4.2 The Council has considered options for a new Civic Centre over some years and has resolved that its' aim is for a new Civic Centre in Wealdstone, providing a focus for, and helping provide economic benefit to, the town centre. Over some years extensive consultation was carried out on the establishment of a new Civic Centre and the development of the existing site, and the principle of developing the new Civic Centre in Wealdstone is well – established.
- 2.4.3 In its' procurement for the HSDP the Council expressed a preference for the Peel Road site, but did not direct that this was essential, leaving bidders to suggest the most appropriate site.
- 2.4.4 The brief set out that as part of the work of the HSDP the Partnership would construct for the Council a new Civic Centre comprising civic, community and public space with office space. The building was to comprise 94,000 sq. feet gross internal area, 73,000sq ft net (floorspace) of which 16,000 sq. ft was public civic and community space including café and visitor space. The Council sought 60 car parking spaces.
- 2.4.5 In their bid Wates residential proposed a 6-storey civic centre meeting these requirements, although they stated that 40 car parking spaces was the maximum achievable on site through basement provision. The proposed building was estimated at early 2020 prices to cost £42 million including the car parking.
- 2.4.6 Taking into account the Council's ambitions for changing its methods of working, together with the march of time, the Council now finds itself in a different situation to that which applied at the beginning of the procurement. As a result, the Accommodation Strategy report to Cabinet in May 2021, considered a number of factors that led to a conclusion that there is now a much-reduced requirement for space. Cabinet agreed Wates proposal for a Civic Centre with circa 20,000 sq. ft floorspace including collaborative office space for 100 staff.
- 2.4.7 This building will still be the Council's main public focus with Civic space including Mayors Parlour, Council meeting room, and a suite of rooms to host Council, group and community activities. 16,000 sq. ft floorspace will still be devoted to these uses. Collaborative space allows member meetings and interaction between members, staff and the public to continue unchanged. There will also be a café and public space on the ground floor.
- 2.4.8 Under this proposal there will be 40 car parking spaces in the basement which will be available for members, staff and the public during the day.
- 2.4.9 The cost of this proposal is estimated at £21.899m (£17.073m new HNC and £4.826m for 40 units basement car parking). It should, however, be remembered that this is at an early stage of design and the final figure will be arrived at as the design is refined and incorporated in the HSDP

Business Plan. However, the Business Plan attached to this report takes these figures into account.

## **2.5 The procurement process**

2.5.1 The procurement process followed the Competitive Dialogue process under the Public Contracts Regulations 2015. The stages of the Competitive Dialogue process in this procurement are:

- Publication of an OJEU Notice
- Selection Questionnaire (SQ)
- Invitation to Submit Outline Solutions (ISOS)
- Invitation to Submit Detailed Solution (ISDS)
- Invitation to Submit Final Tender (ISFT)
- Preferred Bidder (PB)
- Contract Award

2.5.2 The report to Cabinet in September 2020 covered the stages up to the award of Preferred Bidder status to Wates Construction Ltd. Since that time the preferred bidder and your officers and advisers have been carrying out the Preferred Bidder stage during which the legal documentation is finalised in preparation for contract close.

2.5.3 The principal activities within this stage have included the finalisation of the contract documents, and the completion of the HSDP Business Plan.

2.5.4 The Business Plan is based on Wates bid submissions, updated to reflect the changes that have occurred since the submission in February 2020, and particularly to take into account the Council's current requirements for the HNC as agreed at the Cabinet on 27<sup>th</sup> May 2021. Much work has taken place in this stage with the partner and your officers on this point.

## **2.6 The Preferred Bidder**

2.6.1 Members will recall that Wates Construction Ltd, branded as Wates Residential, were appointed as preferred bidder on the basis that they received the highest overall score across all the criteria from the evaluation panel and passed the requirement for cost neutrality.

2.6.2 The critical elements of the preferred bidders' proposal remain:

- Strong track record in the delivery of homes and of civic buildings and offices
- Commitment to a positive response to the climate emergency and bold targets for eliminating harm to the environment
- Commitment to partnership ethos and shared and aligned vision
- Skilled and experienced team with clear resources and roles
- Proposal to deliver over 1,500 homes of mixed tenures in accordance with Council planning policy
- Flexible Civic Centre with efficient and sustainable design

- Commitment to social value with innovative ideas and a record of achievement
- Clear and effective strategy for delivery of projects
- Good financial and commercial proposition with balanced risk profile for the Council and good projected land values
- Competitive margins and market facing fees
- Clear funding strategy

2.6.3 These key elements are now incorporated in the attached Business Plan. During the preferred bidder stage Wates have operated as an efficient and effective partner, particularly in terms of assisting the Council in specifying and optimising its requirements.

## **2.7 The legal documentation**

2.7.1 Appendix '3' comprises a report from Pinsent Masons LLP ('the Pinsent Masons report') the Council's external legal advisers on the legal documents to which the Council is to be a party, or those which are relevant to the Council as a member of the HSDP. The report summarises the purpose and main terms of each document.

2.7.2 The Community Works Agreement will be refined during the design and development stage of the HNC as this agreement governs the development of the HNC and any associated development. Construction contracts will also be produced at the relevant time.

2.7.3 There are also additional legal documents and financial instruments and agreements which are ancillary to the key legal documents, some of which are described in the Pinsent Masons report and which are listed in full in Schedule 7 the Members Agreement. This part of the report draws out some of the particularly key elements of the suite of key legal documents which define the governance and operation of the HSDP.

## **2.8 Members Agreement**

2.8.1 The overarching legal agreement is the Members Agreement which sets out the constitutional arrangements for the partnership and describes the principal governance and financial rights and obligations for the two partners or 'members'. The purpose and main terms of the Members Agreement are set out in the Pinsent Masons report

## **2.9 Objectives of the HSDP**

2.9.1 As noted above, the Councils' objectives remain those set out at the initiation of the procurement. These are now enshrined in the Members agreement and are the objectives to which the Board must give consideration in setting out and implementing the strategy and programme of the HSDP.

## **2.10 The Legal structure**

- 2.10.1 A structure chart is contained in Appendix 1 of the Pinsent Masons report. The main HSDP entity is proposed as a 50:50 partnership between its two members, the Council and Wates. Its work will be conducted through development subsidiaries for each of the Core Sites. If further sites are added to the HSDP over time, it is envisaged that further subsidiaries would be set up.
- 2.10.2 The main HSDP and its development subsidiaries are proposed as Limited Liability Partnerships. This approach gives operational flexibilities, and also allows the partnership flexibility in when and how it delivers returns and profits. In addition, LLPs are 'tax transparent' which means that members are taxed on the proceeds of the LLP's business in accordance with their own tax status. As the Council is not liable for corporation tax, it will not be taxed on its share of the profits from the LLPs.
- 2.10.3 As set out in the Pinsent Masons report, the subsidiary LLPs need a nominee company to be set up in accordance with the law, as they require at least two members. The nominee company is therefore part of the structure and holds a nominal interest in the subsidiary.
- 2.10.4 As set out in the members agreement, each member of the HSDP LLP will nominate three nominees to the HSDP who will form the 'board' of the LLP with responsibilities analogous to the board of a Limited company (though the term 'board' does not have the legally defined meaning in the way it does for a limited company). The Council nominated its proposed board members at Cabinet in November 2020 and endorsed this at the subsequent Council.
- 2.10.5 Schedule 3 of the Members Agreement – the Delegation Policy - sets out the levels at which different decisions are made. The most important decisions (including changing HSDP objectives, agreeing and materially amending Business Plans; major asset disposals, admitting new members) can only be made by the two members of the HSDP based on a recommendation from the HSDP Board. Where the Council is making decisions under this provision, those decisions will be subject to the Council Constitution as with any Council decision.
- 2.10.6 Other decisions can be made by the HSDP Board and others still by Wates in its capacity as provider of Development Management Services to the HSDP. However, it is important to stress that where a decision (financial or otherwise) is taken by the HSDP Board or by the Development Manager, this can only occur if it is consistent with a Business Plan, or within the limit of a financial approval, given at the appropriate more senior level in the cascade of delegations. Decisions made under the Delegation Policy, therefore are ultimately constrained by decisions made by the Council and Wates as members of the HSDP. Further, all of these decisions must be made in accordance with the HSDP objectives.
- 2.10.7 Where decisions are to be taken by the Board, and where votes are cast in the talking of a board decision, nominees from each member will vote as a block. The chair of the Board will rotate between Board

members, but there will be no casting vote. Agreement between nominees of the two Members is therefore required for decisions to be approved by the Board.

- 2.10.8 Given the clear framework provided for the HSDP's work by the Business Plan, and subsequent iterations of it, together with the development of site or phase plans, deadlock at the Board is likely to be very rare. However, the potential for deadlock is built into the composition of the HSDP Board and the Members Agreement also sets out an agreed process for resolving board level deadlock. This comprises:
- 2.10.9 Escalation to senior officers and if unsuccessful to the Chief Executives of the two Member organisations.
- 2.10.10 Failing that and if the two Member organisations agree, the matter can be referred to a relevant expert for determination.
- 2.10.11 Failing that, or if it is agreed to be appropriate then the matter is referred for mediation.
- 2.10.12 If none of these is successful, the next stage is to consider winding up either the HSDP subsidiary to which the matter relates, or if it is such a fundamental matter that the whole partnership is affected winding up the HSDP itself.
- 2.10.13 In the event of an unresolved deadlock, or in any other scenario where the two members of the HSDP agree to wind up the partnership (including a default by one of the partners on the terms of the agreement, a mutual agreement to terminate early, or simply the end of the HSDPs agreed life), the Members' Agreement defines the process for winding up the HSDP. This includes in the context of default termination (and termination due to deadlock relating to adverse reputational events) provisions for the Council to buy out the interest of Wates in the HSDP; this takes place at a discount if Wates has caused the winding up through a default on the agreement, or at a premium if the default is by the Council. Where the Council does not elect to buy out Wates' interest, if the winding up occurs while one or more development projects or phases are under way but incomplete, the Agreement states that such projects or phases shall be completed before winding up is completed if that is possible to realise development proceeds.

## **2.11 The financial structure**

- 2.11.1 The essential principle is that the Council and Wates operate on a 50:50 ownership of the HSDP and its subsidiaries.
- 2.11.2 The Council contributes its land which is valued at drawdown and this is matched by a financial contribution from Wates. Development is financed by borrowing and in this case the market is expected to require a 35% equity to debt ratio. This means that before borrowing can take place the contribution required from Wates will exceed the Council's

land value. To match this the Council will also invest additional cash which, along with the land value, will match the contribution from Wates.

- 2.11.3 In the legal agreements this is expressed in the form of loan notes. Either partners equity contributions are matched with an A loan note. For Wates this covers the cash resources provided, while for the Council it covers the land and cash.

## **2.12 The Development agreement and land draw down**

- 2.12.1 The Development Agreement deals with the three Core Sites and is a conditional option agreement for lease which allows the HSDP to draw down from the Council a 250 year lease of the various sites once the conditions have been satisfied.

- 2.12.2 The process to bring forward a site for development is as follows:

- The overall Business Plan is approved.
- Detailed design development takes place and in parallel a phase Business Plan is approved.
- Once this is approved by the Council it constitutes the Council's commitment to transfer the site to the HSDP for development subject to certain 'conditions precedent' being met. These include; appropriate planning permission being obtained; vacant possession being achieved and a viable funded scheme being in place.
- Once the conditions are met, the Council's land value is fixed and the land transfers to the partnership on the 250- year lease for work to start.

## **2.13 Community Works agreements and the HNC**

- 2.13.1 The Community Works Agreement is essentially the Development Agreement for those works or facilities specifically commissioned by the Council, of which the HNC is the most obvious and critical example. If the Council does, following due diligence, commission affordable housing at Peel Road this would be included in the same agreement as the HNC, but for any later community facilities a separate agreement would be produced.

- 2.13.2 This agreement will not be signed until a satisfactory planning permission has been obtained, and therefore is currently attached to the Development Agreement. It will be refined during the course of the development and design process. However, those terms included in the attached draft are agreed.

## **2.14 Development Management Agreement**

- 2.14.1 The Development Management agreement is a contract through which Wates will act as Development Manager, providing various development services to the HSDP and its subsidiaries. The purpose

and some of the main terms of this agreement are set out in the Pinsent Masons report.

## **2.15 Construction Exclusivity**

- 2.15.1 In common with many bids to local authority partnership opportunities by developers with integrated construction arms, the Wates bid was based on securing access to the construction contracts for the company's construction business. The members agreement sets out the principles of construction exclusivity, and the purpose and main terms are discussed in the Pinsent Masons report.
- 2.15.2 There are benefits to the HSDP and to the Council in this arrangement:
- 2.15.3 The supply chain security provided by having access to the services of a major, proven construction firm without the cost, time and uncertainty of procurement will at times be positive, especially when the construction market is buoyant.
- 2.15.4 The relationship with Wates and the stated HSDP social and economic objectives gives the HSDP and the Council, a greater deal of confidence and certainty about sub – letting of contract packages to local firms, and the employment of local people than might be the case through other procurement routes.
- 2.15.5 The procurement policy which is attached as Schedule to the Members Agreement, requires each and every contract package to demonstrate value for money. For exclusive contract packages this is done on an open book basis by comparison with market prices – essentially a process of benchmarking against the market.
- 2.15.6 This process will be monitored and assured by the 'HSDP Supervisor', independent cost consultants (bringing in any other required expertise), who will provide reports and recommendations to the HDV on the procurement and awarding of contracts to Wates and via them to sub - contractors where applicable. Where the HSDP on the recommendation of the HSDP Supervisor, believes that a particular works package does not represent value for money, there is a process by which this work can ultimately be submitted to tender.
- 2.15.7 Sub-contract packages go through a tender process as set out in the procurement policy and thus demonstrate value for money through a competitive procedure.
- 2.15.8 To maintain the position of construction exclusivity Wates must perform and be monitored against a series of key performance indicators relating to budget, programme, quality, health and safety and other compliance metrics. The accumulation of a specified number of points above a threshold triggers a requirement for a performance remediation plan. If performance does not improve, or a significant termination event occurs (such as a fatality, or false reporting by the contractor) the HSDP can bring the exclusivity to an end and all new works will then be tendered in accordance with the procurement policy.

## **2.16 Key performance indicators**

2.16.1 Key performance indicators for construction exclusivity have been discussed above.

The Council will monitor performance based on the key strategic objectives it has established for the HSDP, which as discussed above, are now part of the HSDP Members Agreement.

2.16.2 Reflecting those key strategic objectives, the key indicators will cover:

- Housing delivery including affordable housing
- Progress and delivery of the HNC and other community facilities
- Delivery of wider economic and social benefits contributing to the economic betterment of Wealdstone and the Borough more generally
- Achievement of the promised social value benefits which as well as contributing economically will also assist in achieving health improvement and social well-being.
- Medium and long- term customer and resident satisfaction

2.16.3 The Council, as well as the HSDP itself will continue to monitor strategic risk registers.

2.16.4 In addition, the HSDP will set, and the Council will have the opportunity to add to or influence specific key performance indicators in each site-specific Business Plan.

2.16.5 Clearly financial and works progress indicators will be key components of these, but the nature of each development will suggest key indicators that will measure performance.

2.16.6 The HSDP Board, currently operating in a shadow form is establishing its own data set, and dashboard of indicators for monitoring.

2.16.7 The Council is currently reviewing its 'client side' structure to ensure that it has the necessary skills and abilities to monitor the HSDP performance and control risks from the outset. A particularly key area will be monitoring financial performance to mitigate and control financial risk.

## **2.17 Business Plan**

2.17.1 The Business Plan attached to this document sets out the present plans for:

- Proposals for the redevelopment of the three core sites.
- The opportunity for the development of 1,575 units of accommodation including 116 private rented units, 404 homes at London Affordable rent and 243 Shared Ownership or discounted market rent



- Proposals for the delivery of a 20,000 sq.ft Civic Centre based on the Council's Accommodation Strategy as discussed at Cabinet on 27<sup>th</sup> May 2021
- Approaches to ways of working including a partnership charter, board arrangements and HSDP resourcing
- Social value approach and targets
- Financial models demonstrating viability, funding strategy and projected returns
- Planning strategy and design principles
- Programme
- Community Engagement
- Approach to equalities and Inclusion

2.17.2 As some of this information is commercial in confidence, part of the Business Plan is in the exempt portion of the report.

## **2.18 Business Plans in future**

2.18.1 The Business Plan attached to this report for approval is the Business Plan relating to the overall HSDP. Site specific Business Plans are or will be under development commencing with Byron Quarter Phase 1 and including the other sites. These will be particularly influenced by the development of the design and planning of each site and any variations to the Council's requirements. Each of these Business Plans will be brought back to Cabinet for approval under the terms of the Members Agreement.

2.18.2 Any new Business Plan, should new sites be introduced to the partnership, must be agreed by the Council and Wates as partners in the HSDP based on a recommendation from the HSDP Board.

2.18.3 Any amendment to an already agreed Business Plan that has already been agreed between the partners will have to be agreed by the HSDP. If that amendment is considered a 'significant variation', the members agreement requires that the partners will have to agree that amendment.

2.18.4 Business Plans will as a matter of course be reviewed on an annual basis, and the update brought to Cabinet, with the opportunity for consideration by Scrutiny.

## **2.19 Sustainability**

2.19.1 During the procurement all bidders were made aware of the Council's commitment to sustainability, of the Climate Change strategy and of the Declaration of Climate Emergency. Since that time Wates have embodied the following approach into the HSDP Business Plan.

2.19.2 The HSDP's approach will be to:

- Consider the embodied and life cycle carbon impacts and investigate ways to reduce embodied impacts from both materials and the construction process.
- Reduce operational energy demand, maximise energy efficiency, use on-site renewable energy systems.
- Addressing Construction Related Impacts (Both Product and Process)

2.19.3 In terms of embodied carbon, a Whole Life Carbon Assessment will be undertaken in accordance with the GLA's policy and guidance and the design will aim to reduce embodied carbon as far as possible. This will include:

- avoiding basements wherever possible to reduce the embodied carbon impacts associated with forming basement walls and substructure;
- optimising the structural grid to reduce resources required in construction;
- using lightweight façade options, wherever possible;
- selecting materials and products with high recycled content (e.g. blockwork, metals, hardtops etc.);
- using materials with inherent finishes to reduce materials use; and
- using cement substitutes such as GGBS that significantly reduce the embodied impacts of concrete.

2.19.4 During the construction process, environmental impacts will be monitored including recording and reporting energy use, water consumption and transport data (where measured) resulting from all on-site construction processes throughout the build programme in line with the BREAM credit Man 03 'Responsible construction practices'.

## **2.20 Addressing Operational Energy Requirements**

- Reducing the building energy demand as far as possible by applying passive design principles.
- Meeting the energy demand as efficiently as possible.
- Generating as much energy on site as possible.
- Using off-site renewable energy sources.
- Offsetting any residual carbon emissions.

## **2.21 Adopt Passive Measures to Reduce the Buildings Energy Demand**

2.21.1 The buildings will be designed with a compact built form to reduce heat loss, the façades will respond to the orientation, with the south-facing façades having limited glazing to protect against solar gain and the

north-facing façades to have more glazing. The façade will be optimised to reduce heat loss whilst providing daylight. The homes will be dual aspect, wherever possible, and the potential for natural ventilation will be explored along with mechanical ventilation with heat recovery, if required.

## **2.22 Maximising the Use of Renewable Energy**

2.22.1 The partnership is proposing an all-electric solution to take advantage of the decarbonisation of the electricity grid. The high proportion of low-carbon energy generation in the UK (e.g. wind turbines) has roughly halved the carbon emissions associated with electricity use over the last ten years and is set to continue reducing.

2.22.2 Therefore, an energy-efficient servicing strategy is proposed that uses electric heat pumps to provide heating (and cooling, if necessary, in high heat-gain areas such as server rooms, etc.) along with high-efficiency fans, pumps, and lighting.

2.22.3 The roofs are designed to accommodate as much south-facing photovoltaic panels as possible, in combination with living roofs in some areas.

2.22.4 Specific and granular plans covering these areas will be developed during the design process which will be attached to each Business Plan.

## **2.23 Social Value**

2.23.1 The Business Plan contains an approach to the creation of social value based on the Wates bid submission which was strong, and in line with the Council's existing policy.

2.23.2 The plans are based on three themes aligned with Harrow's social value action template:

- Employment and training
- Supporting the Community
- Supporting local business

2.23.3 And two further themes relating to:

- Community Cohesion and Health and well-being
- The environment

2.23.4 Wates are deploying a dedicated Community Investment Manager responsible for the delivery of the programme, monitoring and reporting on it. The Business Plan sets out a range of planned activities with targets and the assurance that this will be delivered with and through residents, partners, direct employees, sub-contractors, and the supply chain.

## **2.24 The overall commercial deal**

- 2.24.1 The overall commercial deal is set out in the attached Business Plan and highlighted in Avison Young's letter confirming s123 Best Consideration has been obtained. Key points of the deal are set out below.
- 2.24.2 The overall Gross Development Value of this proposal is £690m.
- 2.24.3 The Council invests its land and Wates matches that with cash, having also funded the pre- development costs. In this instance to achieve sufficient equity in the developments before which the lending market will be prepared to lend, there is insufficient value in the Council's land so both parties will invest cash to a matching equity of 35% of the funding requirement. The Business Plan and financial model are calculated based on a 65% debt to equity ratio which is within the accepted range and typical of such developments.
- 2.24.4 Each partner invests £38.4m equity, in the Council's case land and cash, although this does not all go in at once and the maximum exposure at any one time for the Council is £6.4m land and £15.3m cash.
- 2.24.5 After the income from prefunded work such as PRS and affordable housing is taken into account the HSDP has a long term funding requirement of £219m which when the equity described above is taken into account amounts to a borrowing requirement of £143m over the life of the HSDP. This borrowing, as with all developers and developments is necessary to fund the development. Again, this does not all go into the development at once; is not all borrowed at once. Peak borrowing is £44m.
- 2.24.6 After development net profits are split 50:50 between the partners. Currently returns are projected at £60.39m including land value and interest.
- 2.24.7 Although the Council's land value crystallises at drawdown it is currently calculated to be £11.640m and this is the figure that is applied for the purposes of the financial model and Business Plan. For Poets Corner later phases will be valued twice. Initially at land draw down when work will commence on phase 1. When later phases are drawn down, they will be valued again. The distribution of the uplift is dealt with in the private portion of the Business Plan.
- 2.24.8 This does not apply to Peel Road or to Byron Quarter as these are single phase sites.
- 2.24.9 The cost of the Civic Centre based on the Council's Accommodation Strategy is £21.89 m and Avison Young confirm that both at bid, and in this Business Plan that meets the Council's cost neutrality parameters.

## **2.25 Best consideration and subsidy control (state aid)**

Section 123 of the Local Government Act 1972 provides that local authorities may dispose of land as they see fit and, subject to certain exceptions, that they must seek the best consideration reasonably obtainable ('best consideration'). The letter from the Council's commercial advisors Avison Young (AY), included at Appendix '9' sets out AY's assessment of the Council's commercial position in the commercial deal. This is to confirm that the Council is receiving best consideration for its assets as it is obliged to achieve pursuant to s123 Local Government Act 1972.

- 2.25.1 The full letter is included as an appendix in the exempt part of this report, but the central conclusions are:
- 2.25.2 The decision to appoint Wates was made following a thorough and robust procurement exercise which enabled the Council to arrive at the optimum deal for itself.
- 2.25.3 The HSDP offer represents best consideration for the Council's land interests and will allow the Council to satisfy its statutory obligations under s123 of Local Government Act 1972, particularly given the opportunity to benefit from development profits as well as land value, and taking into account the wider benefits including social value obtainable from the deal.
- 2.25.4 **Subsidy Control**
- 2.25.5 The Implementation Period following the withdrawal of the United Kingdom from the European Union came to an end on 31 December 2020.
- 2.25.6 Until the end of the Implementation Period, EU State Aid law applied in the UK. The current applicable law is 'subsidy control' as further detailed in Pinsent Mason's advice at Appendix 4.
- 2.25.7 The crux of the subsidy control analysis in this project will be whether any of HSDP, the PSP or any contractor engaged to construct the developments obtain a selective economic advantage funded directly or indirectly by the Council.
- 2.25.8 There will be no selective economic advantage, and hence no subsidy, to any of HSDP, the PSP or any contractor if the relevant transactions are on market terms, in accordance with the "Market Economy Investor Principle" or "MEOP".
- 2.25.9 For HSDP and the PSP compliance with the MEOP will be presumed if the Council's investment and that of the PSP are pari passu, i.e. made on identical terms.
- 2.25.10 There will be no aid to any Contractor if that Contractor is paid the market rate for the job. This can be demonstrated if: (i) the contractor

is selected via an open, non-discriminatory tender process, e.g. under the Public Procurement Regulations; or (ii) the contractor's costs are bench-marked against those of a suitable comparator; or (iii) the contractor's costs and price are assessed by a suitable expert.

2.25.11 Having analysed the bid and the proposed developments Pinsent Masons are satisfied that there are no subsidy control issues at this stage.

2.25.12 As the Council's commercial advisers, Avison Young have reported that: The tender process has been conducted in lines with the requirements of the Public Procurement Regulations and the terms of the commercial deal have been market tested. Having analysed the bids and the terms of the contract agreements, Avison Young are satisfied that there are no subsidy control issues in relation to the Council's investment in the HSDP as set out in the initial Business Plan.

## **2.26 Housing ownership and management**

2.26.1 In the report to Cabinet on 27<sup>th</sup> May 2021 on the Council's Accommodation Strategy it was indicated that the Council may commission 46 units of affordable housing at Peel Road, subject to affordability by the Housing Revenue Account (HRA) and further due diligence on value for money. In this event, these properties will be owned and managed within the Housing Revenue Account.

2.26.2 Outside of housing directly commissioned and paid for by the Council the HSDP is of course developing affordable housing as part of its three core projects. The Council has an aspiration to own these, although of course at this stage it is not possible to confirm it will be able to competitively afford to do so.

2.26.3 Accordingly, the Development Agreement contains a mechanism that essentially gives the Council the right of first refusal as to ownership of the properties. The HSDP will obtain a price from the registered provider market for the affordable housing and the Council will have the opportunity to match that. If it cannot, or for policy reasons chooses not to, it is under no obligation to do so. If it can and chooses to do so will enter into a separate sale and purchase contract to acquire the properties at the matched price.

2.26.4 The management of the housing is likely to follow the ownership and the arrangements in hand for housing management in those bodies.

2.26.5 The estate management strategy for the wider developments, including market sale properties, public realm and civic or community buildings will be determined in the site- specific Business Plans over time. A number of options will be possible, including the establishment of a management company or companies.

## **2.27 Governance and Assurance – Transparency and Accountability**

- 2.27.1 All formal decisions made by the Council in respect of the HSDP are subject to the Council's normal decision -making process as set out in the Council constitution. This decision making is of course supported by the Council's Corporate Strategy Board, and the supporting Boards which advise CSB on relevant matters.
- 2.27.2 The decision making with regard to the HSDP is set out in the Delegations Policy which is also attached to the Pinsent Masons report. The Delegations Policy will be annexed as a schedule to the Member's Agreement.
- 2.27.3 The Council is currently reviewing its 'client side structure' to provide monitoring and support to the HSDP from the outset. This will result in a function that will manage the relationship with the HSDP, facilitate and monitor its work, support internal governance and to work with officers across the Council to ensure that relevant tasks are undertaken and the necessary collaboration with the HSDP takes place. Management of risk, including financial risk will be a key component of this.
- 2.27.4 The work of the HSDP will be considered by Overview and Scrutiny on a regular basis, and training has already commenced with members of the Overview and Scrutiny Committee to ensure understanding of the operation, mechanics and funding of the HSDP. The role of the HSDP in the Council's finances and its accounts will be scrutinised by GARMS. A review of the HSDP governance arrangements is included in the Council's Internal Audit Plan 2021/2022 and will be subject to further Audits during the life of the Partnership.

## **2.28 Next steps**

- 2.28.1 Following Cabinet agreement of the recommendations contained in this report the Council and Wates can proceed to sign the contract documents and establish the HSDP. This is currently timetabled for the end of July 2021.
- 2.28.2 During August the partners will be involved in mobilising the necessary advisors and staff to operate the partnership and the design and development process will move forward in earnest from September.
- 2.28.3 A formal board meeting of the HSDP will be required to adopt a number of policies and procedures, agree the initial programme and budget; and agree any minor delegations additional to those set out in the legal documentation considered necessary for the HSDP to operate.

## **2.29 Environmental Implications**

- 2.29.1 The activities of the HSDP are intended to provide significant environmental benefits as the developments will be to high environmental and sustainability standards. Appropriate environmental

assessment will take place on each scheme through the planning process.

2.29.2 The developments will remediate inefficient and poor environmental quality buildings and brown field sites.

### **2.30 Risk Management Implications**

Risks included on corporate or directorate risk register? **Yes – The HSDP risk is included in the Corporate Risk Register and will be updated to reflect the risks highlighted in this report.**

Separate risk register in place? **Yes – Procurement Risk Register now coming to an end. HSDP risk register will be determined and monitored by the board. Risks below relate to this decision to establish the HSDP**

The relevant risks contained in the register are attached/summarised below.  
**n/a**

The following key risks should be taken into account when agreeing the recommendations in this report.



Risk Description	Mitigations	RAG Status
<p>The Council does not receive best consideration for its assets in accordance with s123 LG Act 1972</p>	<ul style="list-style-type: none"> <li>▪ The letter from the Council's commercial advisors Avison Young, included at Appendix 9 sets out AY's assessment of the Council's commercial position in the commercial deal. This is to confirm that the Council is receiving best consideration for its assets under s123.</li> </ul>	<p>Green</p>
<p>Inadequate Governance &amp; Assurance</p>	<ul style="list-style-type: none"> <li>▪ All formal decisions made by the Council in respect of the HSDP are subject to the Council's normal decision -making process</li> <li>▪ Decision making supported by the Council's Corporate Strategy Board, and the Building a Better Harrow Board</li> <li>▪ Delegations Policy</li> <li>▪ Financial structure</li> <li>▪ Legal structure</li> <li>▪ Business Plan</li> <li>▪ Cabinet and Overview and Scrutiny oversight</li> <li>▪ GARMS involvement as appropriate</li> </ul>	<p>Amber (as still in planning stage)</p>
<p>Business Plan does not meet Council's requirements/ is unachievable/ unaffordable</p>	<ul style="list-style-type: none"> <li>▪ Developed from the Council's ambitions for regeneration</li> <li>▪ Covers the agreed three sites</li> <li>▪ The Council's financial and commercial advisors have judged the model to be financially viable and meet cost neutrality criteria</li> <li>▪ Achievable mitigation</li> <li>▪ Continued viability review</li> <li>▪ Business plan review</li> <li>▪ Option to consider changes to: <ul style="list-style-type: none"> <li>▪ design – massing and density</li> <li>▪ Tenure</li> <li>▪ Value engineering</li> </ul> </li> </ul>	<p>Amber</p>

	<ul style="list-style-type: none"> <li>▪ Alternative funding</li> <li>▪ Changes to programme via phasing or delay</li> <li>▪ Cost management pre and post construction using all available mitigations</li> </ul>	
Decisions made by the HSDP are inappropriate/ do not represent VfM/ lead to financial loss	<ul style="list-style-type: none"> <li>▪ Decisions must be in-line with Business Plan</li> <li>▪ Delegations policy containing limits on decisions to be made by the HSDP</li> <li>▪ Involvement of Cabinet in particular decisions e.g. changes to the Business Plan</li> <li>▪ Client -side monitoring</li> </ul>	Amber
Inadequate skills on the Client Side to monitor HSP performance and control risks	<ul style="list-style-type: none"> <li>▪ The Council is currently reviewing its 'client side' structure to ensure that it has the necessary skills and abilities to monitor the HSDP performance and control risks, including financial risk from the outset</li> </ul>	Amber
Change of scope to developments, particularly HNC	<ul style="list-style-type: none"> <li>▪ Engagement with political groups and stakeholders</li> <li>▪ Business Plan and design review with Wates</li> </ul>	Amber
Political change of administration or approach within Administration	<ul style="list-style-type: none"> <li>▪ Regular briefings</li> <li>▪ Contingency planning</li> <li>▪ Appropriate legal mechanisms</li> </ul>	Amber
<p>Planning risk</p> <ul style="list-style-type: none"> <li>• political risk</li> <li>• regulatory change</li> </ul>	<ul style="list-style-type: none"> <li>▪ Regular briefing with political groups to continue</li> <li>▪ Risk allowance for climate change and energy strategy changes</li> <li>▪ Developer and contractor contingency included in financial model</li> </ul>	Amber
<p>Programme change or delay leading to increased costs.</p> <ul style="list-style-type: none"> <li>• Professional team</li> </ul>	<ul style="list-style-type: none"> <li>▪ Prompt decision making in accordance with the delegation policy</li> <li>▪ Avoid scope change</li> </ul>	Amber

<ul style="list-style-type: none"> <li>• Market changes</li> <li>• Interest/ funding</li> </ul>	<ul style="list-style-type: none"> <li>▪ Market and economy monitoring</li> </ul>	
<p>Financial viability</p> <ul style="list-style-type: none"> <li>• Cost increase</li> <li>• Revenue risk – market</li> <li>• Land value</li> <li>• Cost overruns</li> </ul>	<ul style="list-style-type: none"> <li>▪ Continued viability review</li> <li>▪ Business Plan review</li> <li>▪ Option to consider changes to: <ul style="list-style-type: none"> <li>▪ design – massing and density</li> <li>▪ Tenure</li> <li>▪ Value engineering</li> <li>▪ Alternative funding</li> </ul> </li> <li>▪ Changes to programme via phasing or delay</li> <li>▪ Cost management pre and post construction using all available mitigations</li> <li>▪ Client side review to ensure effective monitoring of financial risk</li> </ul>	Amber
<p>Failure to achieve financial profiling</p>	<ul style="list-style-type: none"> <li>▪ Establishment of effective Council client side for monitoring and reporting</li> <li>▪ Regular partner meetings</li> </ul>	Amber
<p>Commercial partner</p> <ul style="list-style-type: none"> <li>▪ Change in direction</li> <li>▪ Stability</li> </ul>	<ul style="list-style-type: none"> <li>▪ Engagement with commercial partner</li> <li>▪ Monitor market and media</li> <li>▪ Use professional networks and advisers</li> </ul>	Green
<p>Failure to conclude contracts and appoint strategic partner leading to absence of development, cost and potential new process</p>	<ul style="list-style-type: none"> <li>▪ Extensive pre briefing and scrutiny</li> <li>▪ Establishment of Shadow Board</li> <li>▪ Clear statement of risks and opportunities</li> <li>▪ Principles established and agreed throughout procurement</li> <li>▪ Legal flexibility for direction change built in</li> </ul>	Green
<p>Risk of being a development partner in the HSDP</p> <ul style="list-style-type: none"> <li>• Performance will impact on cash</li> </ul>	<ul style="list-style-type: none"> <li>▪ Engagement with commercial partner</li> <li>▪ Monitor market and media</li> </ul>	Amber

profiling of the Council <ul style="list-style-type: none"> <li>• Should LLP face major difficulties secured assets may be required to meet debt liability</li> <li>• Loss of Capital Receipts or dividends</li> </ul>	<ul style="list-style-type: none"> <li>▪ Use professional networks and advisers</li> <li>▪ Establishment of effective Council client side for monitoring and reporting</li> <li>▪ Regular partner meetings</li> </ul>	
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## 2.31 Procurement Implications

2.31.1 The recommendation set out in this report to appoint Wates Construction Limited, as detailed in the body of the report, has been arrived at following a comprehensive procurement process using the method of competitive dialogue available to us through the Public Contract Regulations 2015.

2.31.2 The process was detailed and thorough and compliantly undertaken by senior set of experts from the Council supported by financial and legal experts bought in to support the process.

## 2.32 Legal Implications

2.32.1 Both prior to, and continuously throughout this procurement exercise, the Council has taken detailed advice from Pinsent Masons regarding all legal aspects of this project.

2.32.2 Judicial review proceedings have been brought against local authorities in the past, questioning the legality of partnerships structured via separate corporate vehicles. However, in 2018 the High Court ruled the use of an LLP is lawful where the local authority's primary or dominant purpose is not a commercial purpose. Therefore, local authorities must identify the statutory powers and the purpose of incorporating the commercial vehicle before progressing such an approach.

2.32.3 This report has reiterated the Council's objectives, as originally stated in the report of May 2019 and therefore, the clear purpose of entering into a separate vehicle.

2.32.4 The Council has a range of statutory powers to incorporate corporate vehicles: Section 1 of the Localism Act 2011 (known as the general power of competence) permits local authorities to do anything that individuals can do subject to any specific restrictions contained in legislation. Section 4 of the Localism Act still permits an authority to act for a commercial purpose, however, this must be done via a company rather than an LLP.

2.32.5 The Council is able to establish and participate in an LLP pursuant to the general power of competence above and where it is established to

facilitate or is conducive or incidental to the discharge of any of its functions, the power set out in section 111(1) of the Local Government Act 1972.

- 2.32.6 The Council has statutory authority to hold property for a variety of purposes including those mentioned in section 120(1) of the Local Government Act 1972 which include for the benefit, improvement and development of their area. The Council also has the power to invest for any purpose relevant to its functions under any enactment; or for the purposes of the prudent management of its financial affairs (s.12 Local Government Act 2003).
- 2.32.7 The Council may dispose of land by agreement in accordance with Sections 123 of the Local Government Act 1972 and consequently, transfer land into the chosen corporate vehicle, provided that disposal is made having received the best consideration reasonable obtainable.
- 2.32.8 As stated in this report, the Council will nominate directors onto the board of the corporate vehicle; however major decisions will be referred back to Cabinet. The title to each of the Core Sites has been reviewed. Whilst all are burdened by various covenants and legal impediments, it is envisaged that the Council will use its statutory powers of appropriation pursuant to the Housing and Planning Act 2016. Such powers extinguish title encumbrances insofar as they could impede development and instead allow any party whose rights have been infringed to claim compensation.
- 2.32.9 All procurement activity of works and services must be carried out in compliance with the Public Contracts Regulations 2015 and Council Contract Procedure Rules.

### **2.33 Financial Implications**

- 2.33.1 The financial implications for the Council can be summarised into two key areas:
- 1) The implications of being an equal partner in the HSDP LLP
  - 2) The implications from the HSDP Financial Viability Model – Council Investment and returns.
  - 3) Financial Risk
- 2.33.2 **The Implications of being an Equal Partner in the HSDP LLP**
- 2.33.3 The LLP is a separate legal entity and as such the Council will not be directly liable for any debts incurred by the LLP. However if the LLP did default on any of its loan repayments, the LLP would be liable and it could lead to repossession of the assets of the LLP which would have an adverse impact on the interest payments and capital receipts due to the Council per the Financial Viability Model. Mitigations to reduce the risk of this are listed in the risk section above. Consequences will be limited by completion of developments where possible, by the opportunity to dispose of assets and by the Council's continuing option to acquire HSDP and Wates interests.

2.33.4 There is a scheme of delegation in place for decision making to ensure robust governance and, where financial decision making is concerned, the scheme of delegation has been aligned with the Council's Financial Regulations as far as feasibly possible.

**2.33.5 The Implications from the HSDP Financial Viability Model – Council Investment and Returns**

2.33.6 The implications in this section are consistent with the information as presented to Cabinet in May 2021 as part of the Accommodation Strategy report.

2.33.7 The Financial Viability Model encompasses the financial implications of the Harrow Strategic Development Partnership for the three core sites (Peel Road, Bryon Quarter and Poets Corner) and the new Harrow Civic Centre (HNC) including basement parking. The model is based on the planned activity within the Business Plan which is recommended as part of this report. The Business Plan will be subject to review which will lead to changes in the model and this will be managed and reported through the governance arrangements supporting the development partnership.

2.33.8 The model covers the 12-year period of the partnership arrangement, from 2021 to 2032. The values quoted for the Councils capital requirements and investment returns are in line with the model at the point of agreeing the Business Plan. The detailed financial profile is detailed in Appendix '6' with the details summarised below:

2.33.9 The Councils total capital investment over the 12-year period will be £48.690m:

£26.790m – Capital investment into the HSDP. This is in addition to the required transfer of land into the partnership, the land being valued at £11.640m for the purposes of the model. This cost includes a 5% developer contingency.

£17.073m – Capital investment to fund the building of the new Harrow Civic Centre along with the provision of 40 basement care parking spaces. This cost includes a 10% build contingency and will deliver a building to Category B fit out. It is accepted that the Council will incur an additional fit out cost for those items not included as part of the Category B fit out, including:

- Loose furniture (i.e desks and chairs and branded materials and décor)
- Loose IT and hardware
- Decant and removal costs
- Audio visual equipment and building entry solutions

- 2.33.10 This will be required nearer the completion of the project in 2025/26.
- 2.33.11 The capital investment requirement will be funded by a total of £38.430m capital receipts received from the partnership as properties are completed and sold, as detailed:
- £26.790m – capital receipts in repayment for the £26.790m capital investment in the HSDP
- £11.640m – capital receipts in repayment for the £11.640m land value. This value will be subject to change subject to land valuations at the point of draw down. This in turn will impact on the level of capital investment required (currently per the model £26.790m) to ensure the Council's overall investment matches the partners equity.
- 2.33.12 After accounting for capital receipts, the Council is left with a net borrowing requirement of £10.260m over the 12-year period. The Council's peak debt requirement is reached in 2029 at £30.7m.
- 2.33.13 In terms of revenue implications, the model calculates interest payments due to the Council at £9.384m:
- £1.884m interest on the land draw value of £11.640m  
£7.5m interest on the £26.790m investment in the HSDP.
- 2.33.14 The Council will hold these interest payments to fund the capital financing implications of the net borrowing requirement of £10.260m. In addition, the model calculates that JV dividends of £39.213m will be received over the 12-year period. The first call upon these dividends will be the repayment of borrowing to ensure there is no remaining debt at the end of the partnership.
- 2.33.15 This report is not recommending any amendment to the Revenue Budget or additions to the Capital Programme for 2021/22. Per the model, capital of £0.350m is required in 2021/22 for the commencement of the new HNC and basement parking. Within the Capital Programme there is budget of £8.954m for 'Investment in 3 Core Sites' which will prove sufficient to fund the year 1 capital implications. Per the model no interest payments are due to the Council until 2023/24 hence no adjustment required to the 2021/22 Revenue Budget. Budget provision for the revenue Regeneration expenditure of £2.5m (£1.250m in each 2021/22 and 2022/23) is already provided for and the refresh of the Medium-Term Financial Strategy (MTFS) will need to reflect budget requirements from 2023/24 onwards. The Revenue Budget / MTFS and Capital Programme will be updated to reflect the model as part of the normal refresh process in preparation for draft updated documents being presented to Cabinet in December.
- 2.33.16 As the new HNC is smaller than originally planned this releases space on the Peel Road site for 46 affordable housing units. The council's

aspiration is for the affordable housing to be owned by the council within the HRA subject to financial assessment once detailed design is completed, costs confirmed and confirmation that they are within the assumed estimates within the current Building Council Homes for Londoners (BCHfL) approved model. The BCHfL model assumes an average £325k total development cost /unit inclusive of fees and contingency, which is affordable to the HRA. Please note that this is at an early stage of design and that the final figure will be confirmed as the design is completed and subject to planning. All BCHfL projects will be reviewed at the overall programme level to ensure costs are contained within the overall funding envelope. The revenue related costs associated with financing any related borrowing of the BCHfL programme has been included within the HRA business plan and incorporated within the annual HRA budgets approved by cabinet. The current estimated cost from the HSDP is £345k per affordable unit which will be worked through as part of the financial assessment to ensure the final agreed scheme is affordable within the HRA.

2.33.17 The cost estimates are based on the current Business Plan which it is appreciated is at an early stage of design and the final cost estimates will be arrived at as the design is refined. The HSDP Business Plan will be updated and reported back to Cabinet, including the revised financial implications, in accordance with the governance arrangements. The Council will be employing a dedicated Accountant to support the HSDP. The role will be an integral part of the client side function and will sit within the Councils Finance and Assurance Team. The funding for this post is contained within the £1.250m regeneration revenue budget for 2021/22.

#### 2.33.18 **Financial Risk**

2.33.19 This is the first occasion the Council has entered into a development partnership of this nature with a third party and the three core sites are strategically important to the regeneration of the borough. The capital and revenue investments required are significant to a Borough which is faced with a Medium-Term Financial Strategy under considerable strain. The financial returns to the Council in the form of capital receipts, interest payments and dividends are dependent upon the performance of the LLP and the delivery of the Business Plan. The identification and management of financial risk is crucial in safeguarding the fiscal interests of the Council:

- The Council are in the process of forming its Client Side Function which will be a multi-disciplinary team of Council Officers including, but not limited to, Finance, Legal and Planning
- The financial performance of the HSDP against the Business Plan will be reported to Cabinet quarterly either as part of the Revenue Monitoring update or as a separate report. Monitoring is currently planned to start from Quarter 2 which is reported to Cabinet in December



- The HSDP is included on the Corporate Risk Register as 'Failure to deliver the Council led Regeneration Programme through the Harrow Strategic Development Partnership.' The risk is currently rated as D2 which means the likelihood of the risk materialising is low but if it did materialise the impact would be critical. The Corporate Risk Register is updated quarterly, the review is led by the Councils Head of Internal Audit and reported to the Corporate Strategic Board and the GARMS Committee
- The Councils Internal Audit Annual Plan for 2021/22 includes an allocation of days for Regeneration, including governance, and the HSDP will be a standing item on the annual plan
- The Director of Finance and Assurance and the Head of Internal Auditor are in the process of reviewing how the performance of trading companies the Council has a financial interest in, which will include the HSDP, will be reported to Cabinet. Currently summary performance is reported to Cabinet quarterly as part of the Councils Trading Company Update
- The Overview and Scrutiny Committee will maintain an active role in the HSDP
- The Council will be employing a dedicated Accountant to support the HSDP. The role will be an integral part of the Client Side function and will sit within the Councils Finance and Assurance Team. The funding for this post is contained within the £1.250m regeneration revenue budget for 2021/22.

#### **2.33.20 Additional Professional Fees**

In the establishment of the HSDP, the Council is being supported by Pinsent Masons (legal advice) and Avison Young (financial and commercial advice). Cabinet approval is in place to support professional fees up to a value of £974k over the three-year period 2018/19 to 2020/21. Allowing for an additional year of fees covering 2021/22, Cabinet are asked to note the additional budget requirement of £158k which includes a £30k contingency. This additional budget requirement can be funded from the £1.250m regeneration revenue budget for 2021/22.

#### **2.33.21 Financial Delegations**

This is also a risk mitigation factor with key decisions reserved for the Council based on the Delegation Policy in the Members Agreement.

### **2.34 Equalities implications / Public Sector Equality Duty**

- 2.34.1 When taking decisions, local authorities must have due regard to the Public Sector Equality duty contained in section 149 of the Equality Act 2010.

- 2.34.2 The Harrow Strategic Development Partnership is being formed to deliver the Council's regeneration ambitions on the three core sites. These objectives, particularly in terms of the acceleration of the pace of housing delivery are specifically targeted at creating benefit for all of Harrow's diverse communities. Therefore, in order to ensure that the impacts on communities, and particular groups are understood, and how the Harrow Strategic Development Partnership can maximise benefits to Harrow residents, Equalities Impact Assessments (EQIAs) will be carried out accordingly on a project by project basis on all scheme Business Plans and proposals.
- 2.34.3 In terms of this decision, the closing of contracts and the establishment of the HSDP an EQIA was carried out as part of the Cabinet report recommending the setting up of a Development Partnership in May 2019. A further EQIA is attached to the report but as can be noted, the implications at the high- level establishment of the partnership are limited. The Business Plans for the three initial sites will now be developed following contract close, and accordingly full detailed EQIAs for these sites will be carried out as part of the evidence base for the Cabinet decision to approve the relevant Business Plan.
- 2.34.4 The LLP documentation requires the Harrow Strategic Development Partnership to comply in all respects with legislation and good practice.
- 2.34.5 At this stage the Business Plan outlines high level plans for engagement and specific approaches for groups with protected characteristics, and an approach to inclusive design which will give high standards in compliance with relevant legislation.
- 2.34.6 The Equalities Implications for the Accommodation Strategy which includes the development of the new HNC as proposed in this Business Plan, and the move from the existing Civic Centre are attached as Appendix 8.

## **2.35 Council Priorities**

- 2.35.1 The activities of the HSDP will have a major impact on the Borough Plan and help address all the Council's priorities in one way or another. In particular it will significantly impact on the following:
- 2.35.2 Priority 1 - Improving the environment and addressing climate change: Through the quality of build, designing in more sustainable forms of transport and building real local communities this priority will be supported through the HSDP as it builds new homes on the three key sites.
- 2.35.3 Priority 3 - Building Homes and Infrastructure: There is a growing need to build new homes, and in particular new affordable homes in Harrow. The HSDP is central to this. The three sites where building will take place are all strategically linked to the transport hub of Wealdstone so will enable investment in infrastructure already being made in

Wealdstone to connect and support residents now and in the future. The drive for a greater level of quality affordable housing will also support Harrow residents who are struggling with a higher proportion of their incomes being taken up with rent, so that they can live in a quality home, near to shops and local transport hubs and have disposable income to spend in Harrow's economy.

2.35.4 Tackling poverty and inequality: through good jobs being created through construction work, including apprenticeships for local people, to building genuinely affordable quality housing, the HSDP will support Harrow residents by offering opportunities for work, whilst enabling a greater part of the income from those living in affordable homes to be spent in the local Harrow economy, thus generating more jobs and supporting the circular economy. Coupled with the excellent schools in Harrow, the opportunity for families to stay in Harrow with better local job prospects, better income equality and better facilities will be a key benefit of the regeneration enabled by the HSDP.

2.35.5 Thriving Economy: As set out above, the creation of good jobs, and the increase in disposable income enabled by better pay and lower costs of living that affordable homes will support, will mean that local spend in Harrow, and in particularly Wealdstone, is a once in a generation opportunity that the HSDP can enable. The Council's Economic Development Strategy (also on the agenda for Cabinet this evening) recognises this opportunity, and through greater investment already being placed into the Wealdstone area there is real opportunity to create a thriving high street and make a sustainable impact on business growth in the area.

## **Section 3 - Statutory Officer Clearance**

**Statutory Officer:**

Signed by the Chief Financial Officer – Dawn Calvert

**Date: 05.07.2021**

**Statutory Officer:**

Signed on behalf of the Monitoring Officer – Matthew Dineen

**Date: 05.07.2021**

**Chief Officer:**

Signed off by the Corporate Director – Sean Harriss

**Date: 05.07.2021**

**Head of Procurement:**

Signed by the Head of Procurement – Nimesh Mehta

**Date: 05.07.2021**

**Head of Internal Audit:**

Signed by the Head of Internal Audit – Susan Dixon

**Date: 05.07.2021**

### **Mandatory Checks**

Ward Councillors notified: YES

EqlA carried out: YES

EqlA cleared by: Shumaila Dar

## **Section 4 - Contact Details and Background Papers**

### **Contact:**

Julian Wain, Interim Commercial Director,  
julian.wain@harrow.gov.uk

**Background Papers: NA**

**Call-in waived by the Chair of Overview and Scrutiny  
Committee**

**NO**