Finance & Contracts Committee

18 March 2019

Cambridge Road Estate Redevelopment Joint Venture Contract Award

Joint report by the Director, Growth and the Director, Corporate and Commercial

Relevant Portfolio Holder - Councillor Emily Davey

Purpose

To agree the mechanisms through which the Council enters into a Joint Venture to deliver the redevelopment of the Cambridge Road Estate.

To set out the arrangements that are being put in place to facilitate the period between approval of this report and the ballot in the Autumn 2019 through a Completion Agreement.

Recommendations

Full Council is **RECOMMENDED** to agree:

1. to award the contract to Countryside Properties (UK) Ltd;
2. the establishment of the Limited Liability Partnership (LLP);
3. to delegate to the Finance and Contracts Committee the authority to:

   (a) appoint RBK councillors and officer representatives to the LLP Board and any other related body; and

   (b) review and approve LLP Business Plans; and
4. to delegate to the Director of Growth, in consultation with the Director of Corporate and Commercial, Leaders, relevant Administration Portfolio Holders, and Opposition Spokespeople, the authority to agree the name of the Joint Venture LLP, negotiate the final detailed terms of the agreements being entered into, and authority to agree that the Council enter into the following agreements:
   - LLP Members' Agreement
   - Development Agreement
   - Completion Agreement
   - Phase Lease and Works Agreement
   - CPO Indemnity Agreement
   - Project Management Agreement
   - Construction Management Agreement
   - Corporate Services Agreement
   - Any ancillary agreements or documents necessary to give effect to the setting up of the Joint Venture LLP in accordance with this report and its appendices

Benefits to the Community:

The CRE redevelopment proposal provides a once in a generation opportunity to deliver new modern homes for our current residents as well as deliver much needed additional homes. The development will also deliver new community facilities, improved public spaces, parks and accessibility, and maximise opportunities for social connections to reduce isolation and promote inclusion. The redevelopment also seeks to design out crime, improve health outcomes, and use an environmentally sustainable approach to development.

Key Points

A. Cambridge Road Estate (CRE) is a council estate of over 830 homes in Norbiton Ward, built in the late 1960s and early 1970s and now in need of major investment. Over the last two years the council has been preparing the ground for a comprehensive phased regeneration of the area. This included undertaking a procurement process to secure a suitably qualified and experienced developer partner to enter into a 50:50 joint venture with the council to deliver a comprehensive redevelopment including new homes and community facilities that meet modern standards.

B. It is a key priority of the council to ensure that residents are at the heart of the regeneration plans.Once proposals for the new homes including detailed designs and the new landlord offer have been developed and consulted upon with residents, the council intends to undertake a voluntary ballot. Details of the arrangements for the ballot are the subject of a separate report to Strategic Housing and Planning Committee on 19 March 2019.

C. The Corporate Plan identifies the regeneration of CRE as a key priority and provision has been made within the Housing Revenue Account Budget 2019/20 to cover the costs associated with the early stages of the project.

- Corporate Plan Priority: Work with local residents to bring forward the redevelopment of the Cambridge Road Estate, increasing the number of social rented homes and providing new replacement homes, open spaces and new community facilities for existing residents.

D. Countryside Properties (UK) Ltd have been appointed as the preferred partner. The proposal is to establish a Limited Liability Partnership (LLP) with Countryside Properties to bring forward the development of the Cambridge Road Estate. This partnership is governed through a series of legal and commercial agreements which set out the relationship and duties of both the parties and how they will deliver the scheme.

E. A primary driver for the project is to improve the quality of housing for current residents. The estate suffers from significant condition issues but also fundamental design flaws that would make it impossible to deliver modern day ‘secure by design’ including designing out crime and improving accessibility standards through refurbishment due, to layout and changes of levels across the site. New build accommodation would also allow tenants and leaseholders to benefit from higher standards in terms of better insulated homes, increased accessibility and connectivity.

F. Due to the relatively low density of the estate and its proximity to transport routes and amenities, redevelopment of the estate is also an opportunity to build a significant number of additional homes including additional social rented homes. This is an important factor as the council is committed to providing much needed new housing and is required by central government and the GLA to significantly increase housing of all tenures within the borough.

G. The brief for the project stipulated that redevelopment proposals should provide, as a minimum, 767 social rented homes and 100 shared equity or shared ownership homes aimed at existing owner occupiers on the estate. However, the council also has an aspiration to ensure that 50% of the homes built should be an affordable tenure.

H. The redevelopment will also allow the council to deliver a step change in the quality of the public spaces, parks, play spaces and community spaces available to CRE residents. In addition, the council’s brief for the project includes the requirement that it delivers new opportunities for employment, training, health and well-being for residents and economic opportunities for local businesses.

I. The project is supported by the GLA who have provided funding to the council as part of its Housing Zone programme and its Building Council Homes for Londoners programme in the form of grant and loans to bring forward the purchase of leasehold property. This funding is linked to the council achieving key milestones in terms of the procurement of a JV partner, submissions of planning application and commencement of delivery on site in early 2021.

J. CRE is owned within the Council’s Housing Revenue Account (HRA). The HRA will contribute CRE land to enable the regeneration. In return the HRA will receive new homes and community facilities. Additionally any profit generated will be distributed back to the HRA ensuring future sustainability.

Decision History

1. In March 2017 the Growth Committee approved a recommendation to progress the regeneration of CRE by way of a 50:50 joint venture with a development partner. This was the recommended route as it had the advantages of allowing the council equal control over the development going forward and an appropriate balance of risk and reward. It also enabled the council to access skills and experience in regeneration that it did not have in-house. The committee resolved to procure a JV partner and gave delegated authority to the Director of Growth (then Place) to undertake the required JV partner procurement process, select a preferred bidder and award the contract, in consultation with the Deputy Leader, Portfolio and Shadow Portfolio holders and ward councillors. The committee also resolved that in doing so the Director should continue to engage residents fully in the process.

2. In July 2017 the Growth Committee approved the Acquisitions Strategy authorising officers to start a process of buying back leasehold property early, funded by a GLA loan, to ensure that the council would be able to offer up vacant blocks in line with a future phasing strategy. It also approved in principle the use of compulsory purchase powers to facilitate vacant possession if necessary.

3. In March 2018 the Housing Sub-Committee approved decant policies for both council tenants and Leaseholders and Freeholders affected by re-development. This was done to formalise the council’s commitment to a right to return for current council secure tenants and to provide opportunities for owner occupiers to move into a new home on the estate.

4. In October 2018 the Director of Growth in consultation with the Deputy Leader, Portfolio and Shadow Portfolio holders and ward councillors used her delegated authority to select a preferred bidder. In November 2018 the Strategic Housing & Planning Committee noted the decision to select Countryside Properties (UK) Ltd as the preferred bidder as part of the Joint Venture partner procurement exercise for Cambridge Road Estate.

Council commitments to residents

5. In support of this estate regeneration project the council has set out the processes it will put in place to protect the position of existing residents in two 'decant' policies - one for secure council tenants and one applicable to leaseholders and freeholders. These policies were adopted by the council's Housing Sub Committee in March 2018. Some of the key aspects are listed below:

- Secure council tenants will have a 'right to return" to a new home in the redevelopment. Alternatively if tenants prefer to leave CRE they will have the option to move to a council home off the estate if one is available that meets the needs of their household.
- Secure tenants will also be entitled to compensation in acknowledgement of the inconvenience and disruption in having to move. The statutory Home Loss payment for council tenants is currently £6,300 (this is set by the government) and tenants will also be reimbursed for the costs of moving. In addition they will be provided with assistance with the move itself, with additional support offered to vulnerable residents or those with a disability.
- In order to minimise disruption the council is aiming to ensure that a majority of residents only have to move once within the Borough
- Leaseholders and freeholders affected by the redevelopment, and living on the estate, will be offered the full market value for their homes plus 10% home loss in line with the compensation code.
- In acknowledgement that the new flats will be more expensive than the current flats and houses, the council is offering shared equity and shared ownership options to owner occupiers to make staying more affordable if they wish

6. In addition, residents have access to independent advice and information to help make informed decisions and will be able to get involved in the design of the new homes and the estate as a whole and all residents who stay on the estate will benefit from good quality, energy efficient homes, which are well-designed, adaptable and tenure blind.

7. Secure tenants who currently live on CRE and who choose to remain on the estate following the regeneration, will pay an equivalent rent for an equivalent property.

Procurement Outcomes

8. The Council is required by UK Law to procure projects of this value and complexity in line with the Public Contracts Regulations 2015 (PCR) and advertise the opportunity in the Official Journal of the European Union (OJEU). The Council's advisors (Shoosmith for legal advice and Savills for development advice) and in house Commissioning Team advised that the Competitive Dialogue process was the most appropriate form of procurement process under these regulations.

9. Competitive Dialogue is a multi-staged procurement process and within two of the stages bidders meet with the evaluation panel to dialogue proposals such that bidders can better understand the council's requirements and refine their proposals. It also provides the council the opportunity to develop its requirements after gaining feedback from the available market.

10. The dialogue and evaluation process involved officers from all of the relevant departments of the council including urban design, finance, development control, housing, economic development and commissioning and the panel also included external advisors.

11. Importantly, and in accordance with good practice for the procurement of such regeneration projects, it also directly involved residents. Three members of the Resident Steering Group (RSG) sat on the dialogue and evaluation panel, scoring the Design, Delivery, Stakeholder Engagement and Social Value aspects of the proposals alongside officers and consultants. Participants and officers found residents' insight invaluable and their participation demonstrated the Council's commitment to fully engage residents in the procurement process.

12. In addition, during the ISFT (Invitation to submit final tender) stage participants were required to exhibit their initial proposals at a "Bidders Day" on the estate where all residents were able to come and view the three proposed schemes and give feedback. During the same period participants were given the opportunity to present their draft proposals to elected Members at an all Members briefing event at the Guildhall.

13. Further commercially sensitive elements of the procurement outcomes are set out in **EXEMPT Annexes 2 and 3** of the report (**circulated separately to Members**).

14. Key features of the Countryside offer are summarised as follows:

- experienced proposed JV Board Directors, and confidence / experience around Joint Ventures and the practicalities of organising Board business.
- meaningful involvement of residents in the JV through a Community Board.
- an approach to the legal documentation that meets the Council's required risk position and flexibility around potential abortive costs in case of ballot.
- detailed consideration of residents' interests.
- a detailed, practical and reasoned masterplan, with detailed approach to phasing the development that considered key drivers including; re-housing, minimising disruption and funding deadlines.
- a considered sales strategy with a clear focus and commitment to prioritise the local market.
- a strong offer around local labour, local suppliers, and apprenticeships.
- a commitment to reduce the impact on the environment through the management of pollution risk and reduction of energy, water, waste and associated greenhouse gas emissions
- a strong financial offer.

15. Following an extensive process, Countryside Properties (UK) were identified as the highest scoring participant. As identified through and supported by the evaluation and scoring of Countryside's final tender, the panel felt that they demonstrated that they were a credible partner. Their proposals were deemed to meet, and in some instances, exceed, the Council's requirements to be able to deliver at pace whilst still engaging residents, mitigating the impact of construction and producing deliverable apprenticeship and employment.

16. The Council's development advisor Savills assessed the bids from prospective Joint Venture partners and recommended that, as the participant with the highest score in the Final Tender evaluation, Countryside Properties (UK) Ltd should be selected as the Preferred Bidder with whom the Council should enter into final negotiations on the JV contract documentation.

17. Following the Preferred Bidder stage Savills now recommend that Countryside Properties (UK) Ltd are awarded the Contract.

Joint Venture Proposal

Rationale

18. The Council is proposing to deliver the regeneration of Cambridge Road Estate through a joint venture structure. A Joint Venture is where two parties come together to undertake a property development. Decision making, risk, and reward are shared. Local authority property joint ventures with private sector partners might typically entail the council investing land and capital as equity, with a partner bringing matched investment. Both parties are responsible for delivering the development, which would be managed through a Board structure, and profits are distributed in proportion to investment stake. Joint Ventures are a common way for a public landowner to bring finance and expertise to a development, and are popular with developers as it provides access to land and a way of sharing risk.

19. Following a detailed analysis of the options against the key objectives of the council, including the commissioning of an independent review and detailed discussions with the GLA, the joint venture approach was considered the most beneficial. For the Council it provides the following key benefits:

- An experienced Joint Venture partner will bring skills, expertise, capacity and funding to deliver what is a major regeneration project with a gross development value of £800m.
- Risk and reward will be shared on a 50:50 basis.
- The right level of control will be exercised by the Council to ensure that its objectives for CRE are achieved.
- The long term opportunity, jointly incentivises both partners to work closely throughout the pre-development and delivery phase to achieve their objectives.

Limited Liability Partnership (LLP)

20. A Limited Liability Partnership (LLP) with Countryside Properties will be established to bring forward the development of the CRE. The LLP Members Agreement is the formal contract setting out the relationship between the Council and Countryside Properties. In that document the objectives of the LLP joint venture are set out as follows:

- a comprehensive regeneration of the Cambridge Road Estate that prioritises the needs of the local community
- a transformed neighbourhood with a public realm led, high quality living environment and high quality architecture and urban design
- new homes for all Cambridge Road secure tenants and resident leaseholders who wish to remain living at Cambridge Road
- a guaranteed minimum of 767 Social Rented homes assuming full delivery of the Scheme with an aspiration to achieve 900 social homes
- appropriate returns to the LLP members as set out in the LLP Business Plan

LLP Project Documents

21. There are a number of key project documents that will govern the working of the LLP:

- **LLP Members' Agreement** – the main agreement between the Council and Countryside Properties (UK) Ltd setting out the objectives of the LLP, how the business of the joint venture will be managed and arrangements for profit distribution,settling disputes, default events and termination of the joint venture.

- **Loan Notes** – these are the financial instruments that set out the arrangements for equity and debt investment into the joint venture to be made by both parties. Subject to the terms of the LLP Members Agreement they also provide for the timing of the repayment of the investment.

- **Development Agreement** – this agreement will set out how and when land will be transferred (as leasehold) from the Council to the joint venture; this agreement is between the Council as landowner and the LLP and places obligations on the LLP to undertake the development in accordance with the Council's requirements.

- **Lease and Works agreement**– the Phase Lease is the lease that the LLP will be granted by the council for the purposes of executing the development and out of which leases will be granted to occupiers following completion of the works. Note the freehold remains with the Council. A Works Agreement will also be entered into for each phase setting out the works obligations to be complied with by the LLP in delivering the development of a phase.

- **Business Plan** – the suite of documents that contain the financial model, funding strategy and key delivery strategies

- **CPO Indemnity Agreement** - this agreement sets out the strategy for land acquisitions and confirms that the LLP indemnifies the Council for acquisition and any CPO costs once the relevant GLA funding has been expended.

22. Appendix 1 (part 1) (attached at **Annex 1** to the report) sets out Shoosmiths' detailed summaries of each of the project documents and risk mitigation measures. In addition to these documents, it is proposed that a series of services will be supplied by Countryside Properties (UK) Ltd. These will be provided, for agreed fee rates, via the following service agreements:

- **Project Management Agreement** – the delivery of the development requires close and careful management of each stage of the process from design and planning through to construction and handover of the completed homes; this is a core function of commercial developer and a key reason for entering into a partnership

- **Construction Management Agreement** – it is proposed that Countryside will procure all of the individual works packages required to deliver the construction of the new development; the management of this process and the fees are captured in this agreement

- **Corporate Services Agreement** – it is proposed that Countryside provide company secretary, business support and accountancy and audit services through this agreement.
- **Sales and Marketing Agreement** - Countryside will provide services to the LLP relating to the marketing and disposal of private for sale properties within the new development.

Completion Agreement

23. The Council has resolved to undertake a voluntary ballot of residents, the establishment of the joint venture can only go ahead in the event of a successful outcome of the ballot. Rather than entering into the main LLP agreements (set out above) on a conditional basis, it is proposed that the Council and Countryside Properties (UK) Ltd enter into a Completion Agreement, the purpose of which is to govern the relationship between the parties in the run up to the ballot.

24. The Completion Agreement was not contemplated at the start of the procurement process. The requirement to have this agreement was introduced in the latter stages of the dialogue process with the three final bidders when it was determined that a residential ballot would be carried out.

25. Before the ballot is held in Autumn 2019, the Council and Countryside will be required to commit funds and undertake significant preparatory work, particularly on master planning and creating the landlord offer to put to residents as part of the ballot process.

26. It is proposed that both parties enter into the Completion Agreement to regulate their responsibilities, set out the various work streams and treatment of pre-ballot costs in the period before the ballot is concluded. Without it, neither party has any control or certainty over the progress of the project.

27. The key condition in the Completion Agreement is the ballot condition. A positive ballot would satisfy this condition after which both parties would be contractually obliged to establish the LLP and move forward the project.

28. The costs associated with the Completion Agreement are to be borne by Countryside Properties Ltd and in the event of a positive ballot and incorporation of the LLP, these will form part of the project costs. In the event of the ballot condition not being satisfied and the project not proceeding, the Council and Countryside will share the costs associated with the Completion Agreement on a 50: 50 basis. Costs are currently estimated at up to £3m, depending on the date the ballot condition is satisfied. Costs incurred will be primarily related to architectural and engagement fees associated with the development of a masterplan and planning submission.

Business Plan

29. The LLP Board will prepare a Main Business Plan for each annual accounting period. This will be agreed and adopted in line with the provisions of the LLP Members Agreement. The approval of the business plan will be a ‘reserved matter’ for the relevant Council Committee at the appropriate time throughout the lifetime of the development. The business plan will be recommended for adoption by the LLP Board but approval will be reserved for the Council and Countryside.

30. For each phase of the development the LLP Board will also procure the preparation of a Phase Business Plan. The approval of these phase business plans follows the same format as for the main business plan. Following approval, a planning application will be prepared for that phase, and if necessary amendments to the phase business plan will be made following the grant of planning permission and approval sought.

31. The Main Business Plan and Phase Business Plans, will be subject to Finance and Contracts Committee approval at the appropriate time throughout the lifetime of the development.

32. An outline LLP Business Plan template has been prepared with Countryside as part of the preferred bidder stage. The template business plan covers the following:

1) Financial model
2) Funding strategy
3) Governance & management
4) Outline development proposals
5) Site assembly strategy
6) Planning strategy
7) Engagement strategy
8) Sales & marketing strategy
9) Construction procurement
10) Programme
11) Risk register

Governance

(a) LLP Board

33. In the event of a positive ballot (see pre-ballot arrangements below) the LLP Board would start to operate formally as set out in the LLP Members Agreement. The Board is constituted for the purpose of delivering the agreed business plan. Board members are responsible for monitoring the project, agreeing strategy and making decisions within the parameters of the LLP Members Agreement. It is assumed that the LLP Board will meet bi-monthly.

34. In terms of representation on the board, the proposal is for there to be four Council representatives and four Countryside representatives. Each organisation have one vote.

35. The working assumption is that the Countryside nominees are: Graham Cherry, CEO of their Partnerships South Division; Andrew Cornelius, Finance Director; Mike Woolliscroft, Managing Director of their Partnerships South Division and Malcolm Wood their Project Director.

36. There is a requirement that Council's representatives have "appropriate levels of experience" and that at least one has a financial background. At this stage the working assumption is that the Council representatives are, the Portfolio Holder for Housing including CRE Regeneration and one other elected member, the Council's Director of Growth and Director of Corporate & Commercial.

37. To ensure full transparency and accountability, the LLP will appoint a Joint Venture Supervisor, who would have a duty of care to the LLP. The role would be to provide independent advice on the business plan assumptions particularly the construction cost elements. It provides the LLP with the ability to seek the latest market intelligence and also provide assurances to both parties through independent advice.

38. It is proposed that the role of Chairperson will alternate annually between the Council and Countryside representatives.

39. The LLP Board will routinely receive reports on a range of project matters with a standing agenda likely to be as follows:

- approval of minutes of the previous meeting
- review of actions from the previous meeting
- urgent matters
- Masterplan update
- individual phase updates
- land acquisition
- housing and estate management issues
- resident engagement
- social value
- Business plan
- statutory matters raised by the Company Secretary

40. The LLP Board will approve the initial business plan and periodic updates, the overall masterplan, and proposals for each phase of development including the scope, design and viability of each phase.

(b) Executive Group

41. An Executive Group consisting of council officers and senior Countryside staff with day to day responsibility for the project, will report to the LLP Board. The Group will meet monthly to coordinate all of the workstreams, monitor progress and agree reporting to the LLP Board.

42. The Executive Group will consist of representatives from the development project management team, regeneration, housing and sales and marketing teams. The group will prepare reports for decision or review by the LLP Board. It will also prepare reports for the Community Board, attend that Board and gather feedback. It will be required to report back to the LLP Board on feedback received from the Community Board.

(c) Community Board

43. As part of the procurement process the Council asked bidders to put forward their proposal for “meaningful resident involvement”. The proposal is that a Community Board is formed. The purpose of the board is to be the representative body for the community, ensuring that their views are taken into account at every opportunity. It is proposed that there will be a direct link between the LLP Board and the Community Board with formal reporting between the two groups.

44. The Community Board will be made up of the Chairs of the three existing community groups, CRERA, CREST and One Norbiton and at least 4 other resident members and other stakeholders if required. It is also proposed that the three Norbiton Ward Councillors sit on the Community Board. It is recognised that the current Residents Steering Group will to some extent evolve into the Community Board as it consists of the same groups presently. The Resident Steering Group has been consulted on the proposal.

(d) Assurances back to the Council

45. In addition to the governance arrangements set out above, the Council retains approvals rights for the following matters:

- as landowner, to approve the outline masterplan and phase by phase master plans prior to submission for planning
- Finance and Contracts Committee to approve the LLP Main Business Plan and phase business plans
- The Council will retain independent advisors outside the LLP governance to provide additional assurance and due diligence in approving matters such the Business Plan
- Regular reports on the performance of the LLP will be reported back to the Council at appropriate points throughout the development
- The LLP will appoint an independent joint venture supervisor who would have a duty of care to the LLP. The primary role would be to provide independent advice on the business plan assumptions particularly the construction cost elements. The role provides assurances to both parties through independent advice.

Financial Implications

LLP Funding

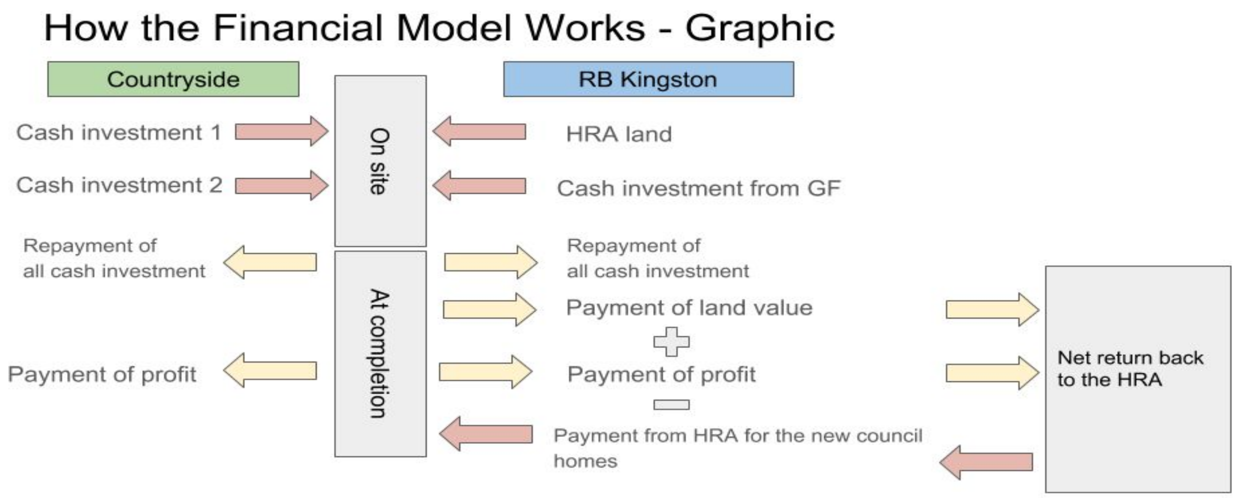
46. The project will be funded and approved phase by phase on a 50:50 basis. At the beginning of each development phase:

- The Council will transfer the relevant land into the LLP. The value of the land will be matched by Countryside with an equivalent cash facility which will be drawn down by the LLP as required.
- The Council's land and Countryside's matched funding is termed the 'equity' investment into the LLP
- GLA loan and grant funding will be drawn down as outlined in paragraphs 53 & 54 below
- The LLP will then establish how much funding is needed to build out the development phase in total, which includes planning and architects fees, construction, interest on loans during the development period, sales and marketing costs and project management and development profit.
- The 'equity' investment will not cover the total cost of developing each phase. The LLP will need to secure debt financing to fund the balance. This debt financing or borrowing can come from either the Council, Countryside or a third party e.g. a bank.
- The LLP will be expected (by its lenders) to keep the ratio of debt to equity at 50:50
- If the value of the council's land and Countryside's cash (equity) does not equal 50% of the cost of developing the phase out, the LLP will have to inject additional money (top up equity) this is likely to come from general fund borrowing under the council's prudential borrowing powers
- The Council will buy back the social rented homes from the LLP, funded by the HRA.

47. Upon the successful delivery of a phase of the development the LLP Agreement sets out the following distribution of receipts held by the LLP. Receipts will be paid out in the following priority order:

- Debt financing will be repaid to the provider
- Any additional equity investment required from the Council and Countryside will be paid back
- Payment to Council for land value and payment to Countryside for matched cash investment
- Profit paid to both parties

- GLA loan funding will be repaid to the council within 20 business days of the council's obligation to repay such amount to the GLA.



Loan Notes Structure

48. The land and cash investments being made by the Council and Countryside into the LLP are termed 'loan note' funding within the legal agreements. The following loan notes are expected to be required to complete the development of a phase:

A – the value of the Council's land holding being transferred into the LLP

B – Countryside's match of Loan Note A

C – the Council's share (50%) of the amount required above the value of loan notes A and B in order to secure appropriate debt

D – Countryside's share (50%) of the amount required above the value of loan notes A and B in order to secure appropriate debt

E – Where the amount attributable to the value of the land (Loan Note A) is in excess of 50% of the required equity for that phase of the development

GLA Loan Note - GLA housing zone loan for the buyback of leasehold property

49. A more detailed description of the loan note structure and funding requirements can be found at Appendix 2 in the **exempt Annex 2** of the report (circulated separately).

Fixed assumptions, viability and stress testing

50. A project of this scale and complexity requires an adequate ‘margin’ or ‘buffer’ to allow for potential adverse changes to scheme assumptions. The Council has been working with Savills and Countryside to ‘stress test’ the assumptions within the financial model to ensure that the current ‘margin’ of residual land value and profit after paying for the social homes is sufficiently robust to withstand potential changes. These could include changes in build costs, sales value, scheme density and interest rates. Further information on viability and stress tests on the margins are contained in Appendix 3 in the **exempt Annex 2** of this report (circulated separately to Members).

51. A financial model has been prepared that sets out the key financial assumptions and projections for funding, costs and returns associated with each proposed phase of the development. The model is based on the assumptions set out by the council as part of the procurement exercise and the Countryside bid. It should be noted that the ballot, masterplanning and formal planning process are yet to be undertaken so the financial model and the financial performance of the each phase of development is subject to on-going change; this will be managed through the LLP Board business planning process.

52. At this stage of the project it is not possible to fix many of the costs and incomes associated with the scheme. For example, the eventual sales values are not known, and the costs of constructing new homes cannot easily be fixed so far in advance without the LLP paying a very high premium for such long-term certainty. In these circumstances it is common to fix fees and margins by reference to percentages. As part of the competition process Countryside proposed such margins and fees in their bid. These have been assessed as part of the overall financial assessment that was undertaken to select a preferred bidder.

GLA

53. As part of its Housing Zone programme the GLA has provided a £26.6m loan to the Council to facilitate the buy back of leasehold property on the estate and a further allocation of grant of c £20m towards the construction of new council homes.

54. Subsequently the GLA have confirmed that it has allocated £67.8m of Building Council Homes for Londoners (BCHfL) grant funding to Kingston to use to deliver social rented homes across the borough, including CRE. Part of this fund can therefore be used to facilitate more council social rented homes as part of the proposals.

55. These significant funds facilitate the development but come with obligations to hit GLA targets in terms of planning submission, start on site and practical completions. For further details see Appendix 2 in **exempt Annex 2** of the report.

Housing Revenue Account

56. Local Council’s are statutorily required to maintain a ring - fenced Housing Revenue Account. The ring-fence is controlled by Schedule 4 of the Local Government Housing Act 1989 and is still in place. Its purpose is to ensure that council taxpayers do not subsidise services specifically for the benefit of tenants and that rent is not used to subsidise functions which are for the benefit of the wider local community.

57. The Council maintains a 30 year HRA Business Plan, which contains details of all income and expenditure relating the delivery of HRA services.

58. The HRA Business Plan confirms whether the HRA can afford to deliver proposed new programmes and plans, whilst continuing to manage, maintain and invest in its existing homes, and meet its financial commitments e.g. loan repayments.

59. CRE is accounted for within the HRA. The HRA will provide the land to enable the regeneration and in return, will receive a land value payment and 50% of any profit generated by the LLP, minus purchase costs of the new homes.

60. The financial case for the CRE regeneration proposal (767 new social rented homes) has been modelled against the most recent HRA 30 year Business Plan, dated January 2019. This demonstrates that the regeneration proposal is affordable. The detailed Business Plan extract is set out in Appendix 4 in **exempt Annex 2** of the report (circulated separately).

General Fund Account

61. It is currently assumed that the general fund will provide any additional equity investment above land value which is required by the LLP as outlined in para 46 above. This is likely to be funded by borrowing under the Council's prudential borrowing powers. To ensure that the impact on the general fund of any such investment is minimised and that the risk associated with this investment is matched by a commensurate reward, the Council has required an annual interest payment on that investment at a margin above the cost of borrowing.

Resource Implications

62. Financial implications are set out above and further commercially confidential material is set out in the exempt papers.

Legal Implications

63. The suite of legal documentation on this project will comprise the following:

1. **Escrow/Completion Agreement**
    - As set out above, this agreement will set out the roles and responsibilities of the council and the preferred bidder in preparing for and administering the ballot and also the treatment of costs for the pre- resident ballot activities.

2. **LLP Agreement**
    - This agreement governs the relationship between the council and its JV partner during the course of the project.
    - It will set out the objectives of the LLP, the processes for decision making and governance and mechanisms to deal with profit distribution, default, deadlock and termination of the LLP.

3. Development Agreement

- This agreement sets out obligations of the LLP in carrying out the development and the conditions precedent which need to be satisfied for each phase of the development before a Works Agreement is entered into and a Lease granted by the council to the LLP
- The conditions precedent to be satisfied are:

  (1) **Planning Condition** - the LLP obtaining satisfactory planning consent. Note the council in its capacity as landowner has the right to approved the planning application in advance of it being submitted, in addition to the control it has as a member of the LLP and as planning authority

  (2) **Site Assembly Condition** – the acquisition of all third party land interests to enable the works to be delivered

  (3) **Business Plan Condition** – finalising the programme of works and the business plan for that phase which will include the split of tenure on a phase and set out the investment of both the council and the JV partner

  (4) **Funding Condition** – the LLP securing sufficient funding to enable the relevant phase and any associated infrastructure to be delivered

- The Council has the ability to terminate the Development Agreement and therefore prevent the LLP from drawing down any further phases where LLP in breach of its obligations.

4. Works Agreement

- This agreement sets out the detailed works obligations for the delivery of a phase.
- There will be a separate Works Agreement and Lease for each phase and it is proposed that a separate entity (“ DevCo ”) will be incorporated by the LLP for each phase to enter into the Work Agreement and Lease with the Council.
- The Council has the ability to terminate the Works Agreement in the event of material breach of the works obligations or insolvency of DevCo

5. Lease

- The Lease granted to the DevCo will be for a period of c260 years.
- The tenant will be prohibited from dealing with the land other than disposing of residential units using a standard plot lease or disposing of council rent or shared equity/ownership units back to the Council

6. CPO Indemnity Agreement

- This agreement sets out the strategy for acquiring third party land interests required to deliver the project, either by private treaty negotiations or using the council’s compulsory purchase powers.
- Once the £26.6m GLA loan funding has been expended, the costs of acquiring the third party land interests will be borne by the LLP.

7. Ancillary Documents

- There will be a number of ancillary documents such as a Project Management Agreement, Construction Management Agreement, Sales and Marketing Agreement and Corporate Administration Services Agreement, intra-group loan agreement and loan notes which will need to be entered into during the course of the course of the project.

64. The creation of the LLP as the joint venture vehicle between the council and the successful bidder requires council approval. This follows the changes made to the Constitution in the decision of Council on the 17 October 2017 which requires Council approval of the establishment of trading companies.

65. With regards to potential Compulsory Purchase Orders (CPOs) the Council approved, on the 18 July 2017, the recommendation of the Growth Committee dated the 27 July 2017. The Committee had recommended that the council proceed "in principle" with making CPOs on property interests identified within the proposed regeneration site that have not been acquired through negotiation. However, notwithstanding this individual CPOs will still need to go to Full Council for a decision.

66. The decision to enter into the Completion Agreement will constitute a decision to formally award the contract to Countryside Properties (UK) as the Completion Agreement contains a contractual obligation on the council and the JV partner to enter into the legal documentation summarised above, subject only to a positive ballot result being achieved.

67. Prior to entering into the Completion Agreement, the council is obliged to send out notice of its intention to award the contract to the unsuccessful participants in the procurement process and thereafter observe a mandatory 10 day standstill period

68. The process for selection of the development partner has been undertaken in accordance with advice from the council's external professional advisors and in house Commissioning Team and in compliance with the requirements of the Public Contracts Regulations 2015 (PCR).

Risk Assessment

69. The key risks of the proposals are set out below.

RISK	MITIGATING ACTIONS
COMMUNITY	
Lack of resident support for scheme proposals. Failure to win mandate for the proposed regeneration scheme through a ballot leading to project delay/failure and abortive costs	New Shadow Community Board representing a wider group of Cambridge Road Estate (CRE) residents to be established prior to ballot to a provide meaningful resident input and ownership in the evolving regeneration proposals. The council continue to work positively and cooperatively with all residents and resident representative groups across the estate and evolve a high quality resident offer New Strategic Communications Manager and team being recruited that will be dedicated to the programme to build capacity and confidence with CRE residents. External matched resource from the council partner in place to assist with the comprehensive engagement strategy.

	Ensure Ballot resources in place. An independent body appointed which is the Electoral Reform Services to independently oversee and administer the ballot An Independent Tenants & Leaseholders Body appointed to provide a service for all residents on the estate who are seeking independent professional legal and financial advice. Working with the police, local schools, health, community, voluntary and faith sectors in ensuring we reach all part of the community
Adverse publicity leading to project delays	New Strategic Communications Manager being recruited will be dedicated to the programme to ensure factual information is explained clearly to all residents, stakeholders and wider media channels.
GOVERNANCE	
Ineffective governance structure with inability to function successfully leading to lack of control and involvement in the running of the Limited Liability Partnership (LLP).	Governance structure in place with appropriate decisions made through Project Board and Project Team. Governance, short and long-term, has been reviewed and built into the draft LLP Business Plan with a Joint Venture (JV) Shadow Board structure to help mobilise and prepare for the LLP being formed. Main Business Plan and phase by phase business plans are reserved matter back to the Council through Finance and Contracts Committee Shadow Community Board (pre-LLP) to be established as part of the project and Community Board (post JV)
RESOURCES	
Insufficient RBK staffing resources leading to lack of control and involvement in the running of the CRE Limited Liability Partnership (LLP).	Regular review at Project Board and by the CRE project team. Ongoing dialogue and input from key representatives of each workstream from the services. Housing Revenue Account (HRA) resources staff/budgets being flexed to meet needs of the regeneration programme. Three year staffing resource budget agreed and key appointments being made.

FUNDING & FINANCIAL	
Council equity contribution needs to be affordable to the Council and to the LLP. The interest rate is variable up to the point of providing this loan on a phase by phase basis.	Modelling based on outline business model projects that the the current interest rate is sustainable. On-going review as part of the JV Business Planning process.
Council unable to afford purchase of affordable housing from the LLP or fund a phase	HRA modelling against current HRA Business Plan. Baseline cost for buying social housing numbers projects that purchase is affordable, based on current assumptions. On-going review as part of the Business Planning process..
HRA Land value and profits do not materialise in line with current assumptions	Viability of each phase to be reviewed, land value and returns confirmed phase by phase. Full review of HRA Business Plan at each viability stage.
Change to Government Policy - HRA	Council committed to purchase 767 social rent homes. Review of HRA Business Plan if change to Government Policy
Review of current HRA services may increase investment required in current HRA homes/services	Ensure sufficient reserve balances to mitigate against unknowns.
Council's equity investment into the LLP is made at risk	The JV business plan will demonstrate viability for the phase prior to the request for additional equity investment. As such, the Council, where possible will be able to understand risks across each phase and minimise the level of risk. The return of equity 'top ups' to both the Council and Countryside are prioritised behind the repayment of senior debt.
The Council's additional equity exposure becomes disproportionally high as a result of delay to phase or slow sales	The Council will manage its peak equity position, and through the JV business plan and reduce its exposure by delaying or redesigning phases to reduce equity requirements.
Council obligations to fund CRE impact on ability to fund other HRA priorities.	Affordability subject to on-going review as part of the HRA business planning process.
Cost and availability of third party debt renders project unviable.	Modelling based on outline business model projects that the the current interest rate is sustainable. On-going review as part of the Business Planning process.

ECONOMIC	
Market down turn in conditions leading to depressed property prices and land value	The viability of the JV project business plan has financial buffers in place to anticipate market down or ‘shocks’. JV legal documentation allows to account for market downturns and options for improving viability in adverse market conditions that may include constructions cost, revenue and phasing assumptions to be reviewed regularly and reported to Project Board and the JV Board on regular basis. HRA business plan reviewed regularly to ensure robustness to deliver scheme outcomes where possible.
Shortfall in labour supply or increased cost due to departure for the European Union	Council will work closely with its development partner to ensure labour supply and supply chains are protected as much as possible for each phase of delivery
LEGAL	
Judicial Challenge to decisions made by the council	Council has appointed expert legal advice to ensure statutory compliance with decision is complied with.
Litigation against the council to leading delay and additional scheme costs	Council has appointed expert legal advice to ensure it minimises
Litigation against the development partner leading to reputational damage to the council	Legal documents protect the council's interest and has the ability vary the conditions of the agreement
LAND & PLANNING	
Decant programme not deliverable or delayed leading to project delay and increased cost	Resident decant policy offer has been agreed and approved. RBK Housing team establishing a strategy to prioritise rehousing, freeing up homes on the estate and bringing forward other sites to create new homes for early moves for affected residents . Land Acquisition & Rehousing Strategy will form part of the LLP Business Plan.
Leaseholder/freeholder acquisition programme not deliverable leading to project delay and increased cost	Early negotiations for acquisition by private treaty. Council to make a CPO as method of last resort to acquire all necessary interests.

	Proactive monitoring and possible acquisition of potential relocation opportunities e.g. for commercial tenants. CPO strategy and specialist legal/property resources in place. Land Acquisition & Rehousing Strategy will form part of the LLP Business Plan.
Planning consent not secured	A programme of comprehensive and extensive community engagement through the masterplanning, pre-application and planning process over a period of time. Commission highly reputable scheme architects to help condesign the new estate with an excellent track record in building sustainable communities Extensive stakeholder engagement to address concerns throughout scheme to ensure redesign where achievable across the new proposed development to inform preparation of planning application. To ensure a planning policy compliant scheme and continue to work in close partnership with the Mayor of London and officers at the GLA.
CPO not secured	Clear Statement of Reasons will be developed. Specialist legal and property consultancy services have been procured. Early engagement with all owners of land and interests has started and the Resident Offer agreed and approved. Land Acquisition & Rehousing Strategy will form part of the LLP Business Plan.
Unknown site conditions (utilities, ground conditions, fire) leading to project delay and increased cost	Initial services information obtained. Preliminary surveys undertaken prior to start of procurement have not indicated any issue. Full survey work to be commissioned as part of masterplanning. All survey information to be factored into on-going cost planning and the Business Planning process. The viability of the JV project business plan has financial buffers in place to anticipate anomalies and unforeseen costs as much as possible Fire Risk Assessment and expert advisor through the masterplanning of the proposals.

70. Risks associated with the various agreements are set out in Shoosmiths' report on Risks and Mitigation in Appendix 1 (part 1) attached at **Annex 1** of this report.

Consultations

71. There was a significant programme of consultation up to the point of selecting a preferred bidder as reported to the Strategic Housing and Planning committee in November 2018. Residents were informed of the selection of the preferred bidder by letter in November 2018 and the council has continued to support and report to the Resident Steering Group (RSG). RSG were consulted on the proposals for the Community Board as part of the governance arrangements set out above and also engagement activities planned between now and the ballot.

72. In addition, a series of workshops aimed at building residents' skills and confidence in dealing with architects and understanding plans has commenced, a visit, open to all residents, to a precedent redevelopment scheme is taking place and more are planned.

73. Once the LLP members agreement is approved and subject only to ballot, a substantial masterplanning consultation programme with Countryside can start on site as set out under "timescales" below.

Timescale

74. The GLA funding requires the Council to achieve key milestones in accordance to the funding they are providing to facilitate the development. The indicative timescales for the next steps are set out below in line with this:

- Finance & Contracts Committee – Mon 18th March 2019
- Full Council - 24th April 2019
- Masterplanning and consultation, Spring 2019 onwards
- Ballot period – Autumn 2019
- LLP incorporated (subject to ballot) – Feb 2020
- Planning application submitted (subject to ballot) – Feb 2020
- Start on site Phase One Feb 2021

Equalities Analysis

75. Equality consideration has been taken account of in this process and will continue to be embedded within this project to comply with the public sector equality duty and appropriate impact assessment will be undertaken.

Health Implications

76. In assessing the health implications of this proposal public health officers have used several indicators starting with the central government national standard measure known as the "Indices of Multiple Deprivation" (IMD).

77. Indicators of the current health picture can be found in the statistics for the geographical area, known as Lower Super Output Area (LSOA) which covers the Cambridge Road Estate.

78. This shows that currently CRE is within the most disadvantaged LSOA in the RB Kingston with an Index of Multiple Deprivation (IMD) rank of 4,711 which is in the 20% most deprived in England.

79. Within this, of the seven key deprivation indicators used as part of the IMD, residents on CRE suffer most in term of “barriers to housing and services”, the prevalence of “low income” households and high levels of “child poverty”.

80. Therefore proposals to increase the amount of housing here, in particular social rented, should have a positive impact on the access to housing and be affordable to those on low income.

81. A second measure of the current health status of the estate in comparison to the rest of the borough is the life expectancy statistics. These show that residents in Norbiton ward have the lowest life expectancy in the borough. For instance male life expectancy is 77.9 years for men in Norbiton ward but 84.2 for those in Coombe Vale and for women life expectancy is 80.9 years in Norbiton ward and 88.1 in Alexandra ward.

82. There is a link between housing and health and well being and therefore the quality of new housing is welcomed as it should play a part in tackling this inequality - for example, better quality housing decreases the risk of illness from damp, mould, and cold, exacerbated by outdated design.

83. Overcrowding in housing is another factor that can lead to negative health outcomes. Our data indicates that 18.3% of total households in the CRE are overcrowded due to the lack of available property to transfer to. Once new properties become available for tenants they will be allocated to housing that fits their household need when they move, in accordance with the council’s decant policy, and so overcrowding will reduce.

84. Officers are conscious that the stress involved in moving or the contemplation of a future move may exacerbate mental health issues suffered by some residents on the estate. As a consequence all agencies will be alerted to the proposals in advance in order to be able to support residents in this situation.

85. Overall in the long term the proposals are expected to be positive for health in terms of the improved accessibility for those with mobility issues, warm and secure homes and renewed open spaces to encourage a more active lifestyle and increased social connections. In addition the new employment opportunities and improved community facilities should help to counter the mental health issues suffered by some residents.

86. A Health Impact Assessment (HIA) will be considered as part of the planning process. The aim is to identify the main impacts and prompt discussion and inform plans about the best ways of dealing with them to maximise the benefits and avoid any potential adverse impacts.

Road Network Implications

87. These will be examined as part of the planning application process.

Environmental & Air Quality Implications

88. These will be examined as part of the planning application process

89. The detailed proposals will be developed as part of the masterplanning process but as a indication, as part of their submission Countryside have set out the measures that they assume will be integral to the scheme. For instance as part of their phasing and logistics proposals they set out a range of measures to mitigate air quality threats including careful phasing to reduce delivery journeys and enforcement of protocols to ensure engines are turned off while waiting. All site plant will be compliant with

Emission London Guidance and use of on site generators with CO_2 emissions will be minimised. A detailed construction management plan will be submitted as part of the planning application.

90. Countryside propose to champion an exemplary sustainable development which prioritises affordable energy for residents. Homes will be designed to benefit from natural light and useful solar gains but avoid overheating. The proposals include a site wide heat network (CHP) to be delivered in the first phase, supplying heating and hot water and Countryside have been mindful of ensuring that this is has capacity and flexibility to future proof it as technology and standards evolve.

91. Sustainable urban drainage systems will be implemented throughout the landscape for the effective management of surface water and permeable paving, green roofs and soft landscaping will form a central part of the design.

Background papers - none

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Annex 1

Part 1 - Appendix 1

Summary of Project Documents and Risk Mitigation Measures

Cambridge Road Estate

LEGAL REPORT

1. EXECUTIVE SUMMARY AND RECOMMENDATION

1.1 This Report sets out a summary of the key terms in each of the main Project Documents (being the Completion Agreement, the LLP Agreement, the Development Agreement, the Works Agreement, the Phase Lease and the CPO Indemnity Agreement) to be entered into to deliver the regeneration of Cambridge Road Estate (the "**CRE Project**"). It also includes a summary of the potential risks to Royal Borough of Kingston (the "**council**") in entering into the joint venture with Countryside Properties (UK) Limited ("**CPUK**" also referred to as the "**SIP**" in this report) and the measures included in the legal documents to mitigate such risks.

1.2 The risk profile in the negotiated Project Agreements reflects the 50:50 risk and reward nature of the joint venture. The legal documents contain a number of controls and mitigation measures aimed at ensuring the council remains an equal partner in the delivery of the CRE Project and protections for the council against default by the joint venture partner.

1.3 Whilst this Report summarised the key provisions in each of the documents, this is a very complex long term regeneration project and it is important that the Council and their internal legal and project delivery teams familiarise themselves with the terms of the documents and the Council's role and obligations as a 50:50 partner in the joint venture.

1.4 We can confirm that the procurement process has been carried out in compliance with the Public Contracts Regulations 2015 and that since appointment of the CPUK no substantive amendments have been made to the suite of legal documents issued to bidders at the start of the dialogue process.

1.5 The Project Documents are now in substantially agreed form and subject to finalising the documents, we recommend that the council enters into the legal documents on the terms negotiated and agreed with CPUK as part of the procurement process.

2. COMPLETION AGREEMENT

2.1 Overview

The Completion Agreement governs the relationship between the council and CPUK in the run up to the voluntary resident ballot which is to be held in Autumn 2019 (the "**Ballot**"). Each party is required to commit funds and undertake significant preparatory work, particularly on master planning and creating the offer to put to residents as part of the Ballot process.

The Completion Agreement creates a contractual joint venture between both parties, which regulates their responsibilities and set out the various work streams in the period before the Ballot is concluded. It additionally sets out how the parties will deal with a situation where the Ballot is unsuccessful or where it is subject to a judicial review challenge.

2.2 Summary of key terms

2.2.1 General

a) The Completion Agreement is drafted in such a way that it does not pre-empt the ballot decision, or treat it as a “done deal”. Consequently, following a successful ballot both parties are contractually obliged (but cannot be compelled) to form the limited liability partnership (being the agreed joint venture vehicle) and enter into the main project documents (being the LLP Agreement and Development Agreement).

b) CPUK is incentivised not to renege on its commitment to enter the project agreements as a failure will result in it paying the council’s pre-ballot costs.

2.2.2 Obligations and decision making

a) Between the date of entry of the Completion Agreement and the date of a ballot both the council and CPUK are obliged to progress the work streams set out in Schedule 1 of the Completion Agreement and to be responsible for their share of an agreed Budget, set out in Schedule 2.

b) The relationship between the parties, and oversight of their obligations prior to the ballot, is managed by two bodies, referred to as a “Shadow Board” and an “Executive Team”. These titles have no legal significance, and simply differentiate between the two groups of council and CPUK representatives responsible for oversight of the CRE Project. The Completion Agreement provides the structure for meetings and outlines responsibilities of the bodies.

2.2.3 The Shadow Board

a) The Shadow Board contains the senior representatives of the council and CPUK. Each party may appoint and remove up to four representatives. It is proposed that the Shadow Board will meet monthly, and the role of Chair will alternate between Council and CPUK representatives.

b) Decisions require unanimity, so where, for example, the body of council representatives cannot agree on a resolution, it shall be deemed to have voted against the resolution.

c) The Shadow Board will make recommendations in respect of strategy, major expenditure and matters relating to the ballot (although at all times it remains subject to the final approval of the council) and whether to seek a re-ballot. Recommendations of the Shadow Board will not bind the council.

d) The Shadow Board will additionally supervise the preparation of the development masterplan and the Business Plan.

e) In the event of an unsuccessful ballot a party cannot be compelled to follow a particular course of action with which it disagrees. This ensures that the Council does not lose control of the ballot process.

2.2.4 The Executive Team

a) Each party may appoint and remove up to five Representatives to the Executive Team. The governance of the Executive Team is otherwise very similar to that of the Shadow Board.

b) The principal responsibility of the Executive Team shall be for overseeing and directing the work streams. The Executive Team will manage delivery of the CRE Project so that both parties can enter into the principal project agreements following a successful ballot.

2.3 Risk mitigation

We have highlighted below potential risks to the council in entering into the Completion Agreement and the measures that have been included to mitigate such risks.

<table>
<tr><th colspan="2">Risk</th><th>Mitigation Measures in Legal Documents</th></tr>
<tr><td colspan="3">Finance</td></tr>
<tr><td>1</td><td>The council cannot provide funds to progress the work streams</td><td>● All costs are pre-agreed in the budget set out in the Completion Agreement.
● Council is only solely responsible for the Ballot administration costs
● All Joint Costs (primarily master planning costs) are initially paid by CPUK (cl 17.3) with the council only having to contribute its 50% share in the event that the Ballot Condition is not satisfied (cl 17.5).</td></tr>
<tr><td colspan="3">Ballot</td></tr>
<tr><td>2</td><td>Council loses control of the Ballot process</td><td>The council is the final arbiter of the ballot question that is put to residents, the residents who are to be balloted and the majority required for there to be a successful Ballot.</td></tr>
<tr><td>3</td><td>Unsuccessful resident Ballot means there is no mandate for the CRE Project to proceed</td><td>● An unsuccessful Ballot means that the CRE Project will not proceed.
● It is open to both the council and CPUK, acting in good faith, to agree on appropriate next steps in the event of an unsuccessful Ballot (cl 5.1). Neither party can be compelled to take any course of action.</td></tr>
<tr><td colspan="3">Governance</td></tr>
<tr><td>4</td><td>The Council is giving up control to a new legal entity</td><td>● In the period prior to the Ballot the council is not a member of a joint venture LLP. The Completion Agreement simply governs the relationship between the council and CPUK and provides for the actions that both parties must take (Sch 1) to proceed with the Ballot and to progress the CRE Project (to ensure that it does not fall behind its timetable) in the period prior to the Ballot.
● Decisions that need to be taken by the council and CPUK (in relation to matters connected to the CRE Project) are not delegated by them. However, both parties appoint representatives to a Shadow Board and an Executive Team (these titles have no legal significance), and these bodies make recommendations to the council and CPUK about decisions they must take, and work to progress the CRE Project.</td></tr>
</table>

5	Not all council representatives vote the same way on a decision requiring Shadow Board or Executive Team approval.	● The resolution will not be passed. There must be unanimous approval of all council representatives present. ● For a board meeting to be quorate there shall be present at least 2 council representatives and at least 2 CPUK representatives. At any quorate meeting, the council representatives present shall have one collective vote and the CPUK representatives present shall have one collective vote. Where either the council representatives or the CPUK representatives (as applicable) cannot decide how to exercise their collective vote, they shall be deemed to have voted against the resolution. (Para 2.3.2, part 1 of Sch 3). The same provisions apply for the Executive Team.
Completion		
6	The Ballot Condition is satisfied but CPUK does not enter into the LLP Agreement	● To ensure that the Ballot is not treated as a foregone conclusion, the Completion Agreement cannot automatically require both parties to enter into the LLP Agreement. ● The Completion Agreement contractually obliges CPUK to enter into various agreed forms of CRE Project documents (LLP Agreement, Development Agreement, Works Agreement, Phase Lease and CPO Indemnity Agreement) which are appended to the Completion Agreement, following successful Ballot. ● If CPUK does not form the LLP and enter into the LLP Agreement, the council is not required to pay its share of any Joint Costs (cl 17.6), and the council can additionally bring a claim for damages against CPUK if it fails to fulfil a contractual obligation (cl 17.7).

3. LLP/MEMBERS' AGREEMENT

3.1 Overview

The relationship between the council and CPUK and the management and financing of the joint venture vehicle responsible for developing the Cambridge Road Estate is governed by the LLP Agreement.

The LLP Agreement outlines the council's funding obligations (which are matched by CPUK) and the council's involvement in decision making. No decision can be taken by the LLP joint venture vehicle if it is not supported by the council or (in the case of LLP Board decisions) by each council appointed representative. The LLP Agreement additionally sets out the council's right to acquire social rent housing and governs what happens on the termination of the LLP, including the apportionment of costs and distributions to members.

The management and decision making provisions that apply to the LLP apply equally to any subsidiaries of the LLP. These may include development companies (or limited liability partnerships) ("**Devcos**") which the council and CPUK may decide that the LLP should incorporate to develop individual phases of the CRE Project.

3.2 Summary of Key Terms

3.2.1 Management

a) Decisions relating to the LLP are reserved for either the members (the Council and the SIP (a subsidiary of CPUK)) or the LLP Board, pursuant to the Delegation Policy.

b) The council and the SIP appoint and remove an equal number of Representatives on the LLP Board.

c) The Council Representatives on the LLP Board have one collective vote (as do the SIP Representatives). All decisions require unanimity, so where, for example, the bloc of Council Representatives cannot agree on a resolution, it is deemed to have voted against the resolution. This mechanism prevents the council having to do anything with which any of its Representatives is not in favour.

d) The method of dealing with conflicts of interest between either of the members and the LLP are addressed in the LLP Agreement.

e) The members must review the Business Plans quarterly, and update the LLP Business Plan for each accounting period. A failure to re-approve the LLP Business Plan is a Deadlock Event and could lead to termination of the joint venture.

3.2.2 Finance

a) The council and the CPUK will each provide loan note funding. With minimal exceptions, loan funding provided by the council (which may take the form of land contributions or cash) is matched by an equal cash contribution from the SIP.

b) The LLP may take senior debt from any of the council, CPUK or a third party. The council alone has the right to match the senior debt terms offered by any other person, provided that the council participated in the original fund raising process.

3.2.3 Social rent housing

The council will have an obligation to acquire all replacement social rent housing (minimum 767) and shared equity units (minimum 100) being delivered as part of the CRE project. The council will have an option to acquire additional social rent and shared equity/ownership dwellings at a price calculated in accordance with an agreed valuation methodology.

3.2.4 Transfer of Member Interest

a) For 15 years from the date of the LLP Agreement, the SIP may only transfer its Member Interest to another member of the CPUK Group. After that date the council has a pre-emptive right to acquire the SIP Member Interest should the SIP decide to sell.

b) The same transfer restrictions apply to the council in respect of its Member Interest. A transfer to another Public Sector Body is its only option in the 15 years from the date of the LLP Agreement.

3.2.5 Default and termination

a) Termination of the joint venture may occur:

(i) if a Default Event is incapable of remedy or not be waived by the non-defaulting party. It is most likely that a Default Event will arise if a member is in Material Breach of a Project Agreement. The SIP may also be in default if it suffers from solvency issues. If disagreements or disputes between members are unresolved, they are classed as Deadlock Events;

(ii) on the insolvency of the LLP; or

(iii) on agreement to that effect between the members.

b) On a "Termination Event" the council alone can decide whether to acquire the SIP's Member Interest or to wind-up the LLP.

a) If neither party is responsible for the Termination Event, the SIP will receive 100% of either:

i its Member Interest Value (should the council decide to acquire the SIP Member Interest); or

ii the amount that it would otherwise receive on a winding-up. The council would receive 100% of its winding-up entitlement.

b) If the council is responsible for a Default Event leading to termination, the SIP will receive 110% of either:

i its Member Interest Value (should the council decide to acquire the SIP Member Interest); or

ii the amount that it would otherwise receive on a winding-up. The council would receive 90% of its winding-up entitlement.

c) In the event of termination due to a SIP Default Event:

i the Council would pay 90% of the SIP's Member Interest Value (should the council decide to acquire the SIP Member Interest); or

ii the Council would receive 110% of the amount otherwise due to it on a winding-up. The SIP would receive 90% of its entitlement on a winding-up.

3.3 Risk Mitigation

We have highlighted below potential risks to the council by entering into the LLP Agreement and the measures that have been included to mitigate such risks.

	Risk	Mitigation Measures in Legal Documents
Financial Risk		
1	The council cannot provide senior debt on terms acceptable to the LLP.	Third Party senior debt will be obtained (cl 6.6)
2	Diminution in covenant strength of Guarantor of SIP with Net Asset Value of SIP/SIP Guarantor falling below an agreed threshold	SIP has chance to remedy/find replacement Guarantor (cl 24), failing which it becomes a Termination Event and winding up of the LLP (cl 27)
3	Matching Loan Notes drawn down at different times (i.e. SIP's equity investment in the LLP not taking place at same time as leasehold interest is granted to LLP)	● SIP to make a "quasi-interest" payment to council if full amount of a matching B Loan is not made paid within 18 months of Council's A Loan land contribution. ● Interest payable on C and D Loan Notes should protect against risk of earlier payment by one party. ● Failure to provide equity will lead to Termination Event (cl 27)
4	Parties cannot agree on a cap on non-property funding. Council could be required to pay more than it can afford	Funding requirements are agreed by the council and the SIP as part of the Business Planning. The council therefore has a right of veto over funding requirements/requests.
5	Repayment of GLA Funding and breach of council obligations in Borough Intervention Agreement dated 9 October 2017 and the Affordable Housing Grant Agreement dated 22 November 2017	● Although the GLA Funding Agreements cannot be novated to the LLP, the documents require the LLP to observe and perform the delivery obligations in the funding agreements ● Specific loan notes will be issued in respect of the GLA Funding drawn down by the council and invested in the CRE Project with such loan notes to be repaid in accordance with the GLA loan repayment dates.
Voting and decision taking		
6	Council does not have sufficient personnel to staff boards/board committees of all LLP Parties.	● Decisions of Devcos (which are LLPs) are taken by its Members (i.e. LLP and Nominee) – this reduces the resourcing requirement. ● Board quorum set at two council and two SIP Representatives (cl 9.3.1) and at quorate meeting all Council Reps and all SIP Reps have a single collective vote.
7	Not all Council Representatives vote the same way on a decision requiring LLP board approval.	● The resolution will not be passed. There must be unanimous approval of all Council Representatives present. ● For a board meeting to be quorate there shall be present at least two Council Representatives and at least two SIP Representatives. At any quorate

		meeting, the Council Representatives present shall have one collective vote and the SIP Representatives present shall have one collective vote. Where either the Council Representatives or the SIP Representatives (as applicable) cannot decide how to exercise their collective vote, they shall be deemed to have voted against the resolution. (Clause 9.3)
8	The SIP can control the decisions and operation of the LLP.	● The LLP Agreement sets out the Objectives of the LLP ● Decisions of the LLP Board must be passed unanimously (see point 6 above) as should decisions of the LLP Members (as there are only two Members). Neither party has control ● Please refer to the appendix to this Report below for a summary of the proposed Delegation Policy, which sets out the level of authority required for particular decisions.
9	Inability of LLP to take decisions whilst one or other of SIP and council are disenfranchised pursuant to a Default Event (cl 24.3).	Whilst SIP or council are disenfranchised, the business of the LLP continues (cl 10 and cl 14). The Representatives of the disenfranchised Member, or the Member itself, is entitled to attend and speak at relevant meetings, but does not count in the quorum or have the right to vote
Social Rent Housing		
10	Council cannot afford to purchase the Replacement Social Rent Housing.	Council will be able to use profits distributed to it by the LLP to part fund the purchase (cl 21). However, LLP Agreement precludes the sale of Replacement Social Rent Housing to anyone other than the council.
11	Council cannot afford to purchase the additional social rent housing.	Council to have an option it can exercise to acquire additional social rent housing. If it cannot exercise in agreed time period, additional social rent housing could be sold to a third party.
Transfer of Member Interest		
12	SIP wants to exit the LLP and transfer its Member Interest in LLP.	● Unless an intra-group transfer, SIP can only transfer its Member Interest in limited circumstances without council having a right of pre-emption (cl 22 and 23). ● Any transferee must continue to provide a SIP Guarantor (on terms acceptable to the council), unless the council agrees otherwise (cl 22.2/3).
Default, deadlock and rights of termination		
13	SIP is in material breach of its obligations under the LLP Agreement.	This is a SIP Default Event and whilst outstanding the SIP is disenfranchised (cl 24). A failure to remedy can lead to termination of the LLP (cl 27).
14	SIP/SIP Guarantor is/are in financial difficulties and/or subject to potential insolvency.	This is a SIP Default Event and whilst outstanding the SIP is disenfranchised (cl 24). A failure to remedy can lead to termination of the LLP (cl 27).

15	The Members or Representatives are unable to unanimously agree on matters relating to the LLP.	• This is a Deadlock Matter, and if not resolved in accordance with the prescribed procedure (resolution by senior officers of the Members; expert determination; mediation) will become a Deadlock Event. A Deadlock Event leads to termination of the LLP (cl 25). • Certain matters shall not constitute Deadlock Matters and remain to be resolved between the Members.
16	Council is the Defaulting Member in relation to an unremedied Default Event.	Council can acquire the SIP's Member Interest or allow the LLP to be wound-up. However, in the case of an acquisition of the SIP's Member Interest the council must pay 110% of the SIP's Member Interest Value, and in the case of a winding-up, the council only receives 90% of the value that it would otherwise receive on a winding-up (including repayment of its Loan Notes). (Cl 27 and Sch 6).
17	LLP (or other LLP Party) is wound up before a Project Agreement (to which it is a party and) relating to Developed Land has been completed.	All obligations of the contractor to be satisfied (cl 27.2.4)
18	The LLP (or other LLP Party) is wound up whilst still holding Land Interests.	The council has the right to purchase the legal and/or equitable title to any such Land Interest at market value, and the right to extinguish any leasehold interest granted to such party (where the council owns the freehold interest).

4. DEVELOPMENT AGREEMENT AND WORKS AGREEMENT

4.1 Overview

The Development Agreement sets out the conditions precedent (planning, site assembly, business plan/viability and funding) which need to be satisfied in respect of each phase prior to the council allowing drawdown of the leasehold interest (Phase Lease). The Development Agreement sets out in the process for satisfying the conditions precedent and provides that once satisfied a Phase Lease and Works Agreement is to be entered into for each phase.

The Works Agreement sets out the delivery/works obligations for the LLP or Devco for delivering a phase. These include delivering the scheme in accordance with the usual development obligations (compliance with planning and all other relevant regulations, insurance etc.) and there are additional development obligations in relation to the Affordable Dwellings (the social rent dwellings, Shared Ownership and Shared Equity). There is provision for the council to provide to the LLP a specification in respect of these units.

4.2 **Summary of Key Terms**

4.3.1 Conditions Precedent (clauses 2 to 6)

a) The Development Agreement sets out the mechanisms and timescales for satisfying the conditions precedent referred to above in accordance. There will be draft Development and Phasing Programme attached to the Development Agreement which sets out the proposed timetable for satisfying the conditions precedent on each of the phase and this timetable will be updated as the project progresses.

b) The majority of the conditions precedent are to be satisfied by the LLP, however the onus is on the council to satisfy the site assembly condition as the owner of the site. The Development Agreement requires the council to consider the use of its powers of appropriation under s122 of the Local Government Act 1972 and also its powers of compulsory purchase in order to acquire the outstanding third party land interest on the site. The council's statutory discretion is not fettered however and the council is not compelled to use any powers.

c) The planning condition requires the LLP to seek the approval of the council (in its capacity as landowner) to the planning application prior to it being submitted to the planning authority for approval.

4.3.2 Viability (clause 3.1)

a) A financial appraisal is to be appended to the Development Agreement and this financial appraisal will be updated continuously throughout the course of the CRE Project as part of the business planning process.

b) At the start of each phase the parties will carry out a calculation of the residual land value to determine whether delivery of that phase is viable and produces a positive land value. In the event that there is a negative land value the parties will explore various mitigation measures (including reducing the level of profit margin, increasing the size of a phase, apportioning site wide infrastructure costs across all of the phases) to try to improve the position, however the parties are not obliged to take forward a phase which is not commercially viable.

4.3.3 Phase Value (clause 11)

a) Following satisfaction of the conditions precedent a further residual land valuation will be carried out to set the value of the council's land interest and therefore the equity match contribution which the joint venture partner has to make.

b) In the event that there is a negative residual land value the parties will work together to improve the position by considering the various mitigation measures described at paragraph 4.3.2(b) above. Neither party is obliged to proceed with a phase where there is a negative land value and the development is not therefore commercially viable. If the LLP decides to proceed with an unviable phase, any negative balance on the land value will be rolled forward to the next phase of development.

4.3.4 Completion (clause 12)

a) Once the conditions precedent have all been satisfied and the phase value determined the council will grant the Phase Lease and enter into a Works Agreement for the phase being delivered.

b) The ancillary agreements setting out the services to be performed by CPUK will be entered into at the same time as the Works Agreement and the Phase Lease. These agreements comprise the Construction Management Agreement, Project Management Agreement and Sales and Marketing Agreement.

4.3.5 Pre-Commencement Obligations (clause 13)

a) Prior to commencement of works the LLP must satisfy various Development Conditions including all necessary consents required to undertake the works and providing warranties from the professional team engaged to carry out the works in favour of the council.

b) Clause 13 also permits the LLP to access the site under licence to carry out site investigations prior to commencement of works

4.3.6 Social rent dwellings (Schedule 6)

a) The Development Agreement confirms that the council will acquire all of the 767 social rent dwellings and 100 shares equity units which the LLP is compelled to deliver in enable the council to accommodate existing residents on the estate and to comply with the decant policy.

b) The council also has an option to acquire any additional social rent or shared ownership or shared equity units which are delivered on a particular phase.

4.3.7 Dispute Resolution and mitigation (clause 21)

a) The Development Agreement contains dispute resolution mechanisms which require the parties to work together to produce mitigation plans where for example there has been a failure to satisfy one of the conditions precedent.

b) All disputes are to be referred to the senior officers of both parties in an attempt to resolve them prior to an independent 3rd party expert being appointed.

4.3.8 Termination (clause 26)

a) The council will be permitted to terminate the Development Agreement where an Event of Default (insolvency, material breach, failure to comply with milestones, breach of Phase Lease or Works Agreement or a Termination Event occurring under the LLP Agreement) occurs, subject to allowing any funder to step in and remedy the default.

b) Where a Phase Lease and Works Agreement have already been granted on a particular phase and works are proceeding with no breaches of the obligations in those documents, the LLP shall continue to deliver that phase and perform its obligations.

c) On termination of the Development Agreement the LLP is obliged to assign any appointments, copyright and plans to the council and to assist the council with exercising any step in rights in the construction documents.

4.3.9 Works Agreement

a) Schedule 1 of the Works Agreement contains a number of standard works obligations to be performed by the LLP in delivering the works on a phase. These includes carrying out the works in accordance with all statutory consents and requirements, ensuring the site is properly secured and putting in place all necessary insurances during the carrying out of the works.

b) Schedule 2 of the Works Agreement contains additional obligations to be performed by the LLP in delivery the "Affordable Dwellings" (social rent, shared equity and shared ownership units being acquired by the council). The council is afforded more oversight and control over the units being delivered than it is with the private for sale dwellings and the units must be delivered in accordance with a specification (Affordable Finishes Schedule) to be provided by the Council and agreed with the LLP.

4.3 **Risk Mitigation**

We have highlighted below potential risks to the council by entering into the Development Agreement and the Works Agreement and the measures that have been included to mitigate such risks.

Risk		**Mitigation Measures in Legal Documents**
Planning/Delivery Risk		
1	LLP does not diligently proceed with satisfying the Conditions Precedent (Planning, Site Assembly, Business Plan and Funding Condition) to drawdown of a Works Agreement/Lease for each Phase	• No land interest is granted until all of the Conditions Precedent are satisfied for a Phase • There are longstop dates for satisfaction of each of the Conditions Precedent
2	Planning application does not accord with the agreed scheme / council's objectives	The council has the right to approve the planning application in its capacity as landowner, in addition to the control it has as a member of the LLP and as planning authority
3	Material breach of obligations by LLP or Insolvency	Council has the ability to terminate the Development Agreement and therefore the ability of the LLP to draw down any further Phases. If a Phase has already been drawdown and is being delivered pursuant to a Works Agreement, that Phase will continue.
4	Following completion of a Works Agreement for a particular Phase the LLP fails to deliver the works within the timetable prescribed	Council has the right to terminate the Works Agreement (subject to funder step in) in the event of material breach of the detailed works obligations or insolvency of the LLP.
5	Standard of social rent dwellings is inferior to the remainder of the scheme	In addition to the detailed works obligations in the Works Agreement, there are additional requirements in relation to the social rent dwellings which prevent the LLP from making any variations to the unit specification and requiring the units to be signed off by a jointly appointed Supervising Officer, with further representatives from the council being entitled to attend any inspections.

5. CPO Indemnity Agreement

5.1 Overview

This agreement sets out the strategy for acquiring third party land interests required to deliver the project, either by private treaty negotiations or using the council's compulsory purchase powers.

Once the £26.6m GLA loan funding has been expended, the costs of acquiring the third party land interests will be borne by the LLP.

5.2 Summary of Key Terms

5.2.1 Vacant Possession (clause 3)

The council is to work with the LLP to procure the acquisition of outstanding 3rd party land interests on the site in accordance with an acquisition strategy to be agreed between the parties.

5.2.2 Costs and indemnity

a) The CPO Indemnity Agreement provides that once the £26.6m of GLA loan has been expended in acquiring 3rd party land interests, the LLP will indemnify the council in respect of all costs relating to acquisition of land by private treaty or CPO.

b) The council is to keep the LLP regularly updated on the forecasted costs (costs demand to be submitted on a monthly basis) and not to acquire by private treaty or CPO any land interests without first obtaining the approval of the LLP.

5.3 Risk Mitigation

We have highlighted below potential risks to the council by entering into the CPO Indemnity Agreement and the measures that have been included to mitigate such risks.

Risk		Mitigation Measures in Legal Documents
Planning/Delivery Risk		
1	LLP does not diligently proceed with satisfying the Conditions Precedent (Planning, Site Assembly, Business Plan and Funding Condition) to drawdown of a Works Agreement/Lease for each Phase	• No land interest is granted until all of the Conditions Precedent are satisfied for a Phase • There are longstop dates for satisfaction of each of the Conditions Precedent

6. LEASE

6.1 Overview

Following satisfaction of the conditions precedent in accordance with the terms of the Development Agreement in respect of a phase, the council will grant the LLP a 260 year lease of the land comprised in that phase.

6.2 Summary of Key Terms

6.2.1 Term (clause 2)

260 years

6.2.2 Premium (clause 2)

The premium payable by the LLP for the land demised by a lease is the land value calculated in accordance with the terms of the Development Agreement.

6.2.3 Permitted Use (clause 3)

The LLP is not permitted to use the land for anything other than carrying out the works until the development has been completed.

After completion of the works, the use of the land is limited to residential with associated amenity land and other uses permitted by a planning permission granted to the LLP for the phase.

6.2.4 Disposals (clause 3)

Save for disposals of social rent and shared equity or shared ownership units to the council the LLP must dispose of all dwellings by way of a standard form plot lease.

6.2.5 Forfeiture (clause 5)

If the LLP becomes insolvent or is in breach of its covenants under the lease the council is entitled to terminate the lease subject to first giving any funder notice and the opportunity to step in and remedy the breach.

5.3 Risk Mitigation

We have highlighted below potential risks to the council by entering into the Lease and the measures that have been included to mitigate such risks:

Risk		Mitigation Measures in Legal Documents
	Estate Management	
1	Lack of proper maintenance and control of the estate	It has been agreed with CPUK that the parties will work together to agree the most appropriate long term estate management strategy for the estate however the intention is that the Council will manage the whole of the estate and the collection of service charges from the occupiers.
2	Lack of controls on anti-social behaviour	CPUK have provided a standard form lease to be used on all of the private sale units which contain a standard list of estate covenants restricting anti-social behaviour.

Shoosmiths LLP
March 2019

APPENDIX 1

Summary of draft Delegation Policy

Type of Decision	Exceptions
Corporate decisions (i.e. re Business Plans, incorporation of subsidiaries, addition of new Members, corporate transactions, etc.) are delegated back up to each of the **Members** (i.e. the Council and the SIP).	Corporate Decisions taken by the **Board** • Variation to budget costs in Business Plan, within agreed parameters • Acquiring/disposing of an asset if sanctioned by a Business Plan • Declaration/paying of distributions • Engaging a consultant • Making a loan or giving credit
Operational decisions are taken by the **Board**.	Operational Decisions taken by the **Members**: • Land identification within Development Site and transfer of land to relevant LLP Party • Appointment of CEO and variation of terms of/termination of CEO • Entering into transactions out of ordinary course, not on arm's length terms or with a connected person • Procurement outside of procurement policy and variation of procurement policy • Termination of agreements material to business of LLP • Disposal of part of the business (more than 5% of balance sheet surplus credit figure) if not in a Business Plan • Announcements about the business of an LLP Party • Adopting and varying any LLP Policies
Finance decisions (i.e. requests to Council to contribute Land, requests for loan note drawdown, entering borrowing arrangement and giving security re same) are taken by the **Board**	
Other decisions not covered by the Delegations Policy are made by the **Board**	