	Housing and Growth Committee **23 March 2023**
Title	**Development Pipeline Programme- Delivery Strategy**
Report of	Chair of the Housing & Growth Committee
Wards	East Barnet, East Finchley, Edgwarebury, Colindale North, Underhill and High Barnet.
Status	Public with accompanying Exempt Report (not for publication by virtue of paragraph 3 of Schedule 12a of the Local Government Act 1972 as amended as this relates to information of a financial or business nature)
Urgent	No
Key	Yes
Enclosures	Appendix 1- Delivery Models
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Summary

Since the commencement of the design work on the five sites in the Council's Development Programme in September 2021, market conditions have changed significantly due to several external factors, and they imposed considerable risks to the viability and deliverability of the portfolio under Council's self-delivery model. In the meantime, there is an ever increasing need to meet the Council's affordable housing target within a set timeframe.

This report outlines the viability challenges of delivering the sites to meet the Council's housing target. It recommends the formation of an Investment Partnership with a Private Sector Partner, Kuropatwa Group, to facilitate a more viable housing delivery strategy for the Council's sites by addressing external market factors that would not be possible through traditional procurement routes such as Design & Build contracts. This alternative

model will enable the Council to leverage private sector commercial acumen to address viability issues and continue delivering across the Council's own assets.

Officers Recommendations

1. That Committee approves the developer, Kuropatwa Group, as the Private Sector Partner (PSP) for an Investment Partnership.

2. That Committee grants delegated authority to the Deputy Chief Executive in consultation with the Chair of the Housing and Growth (HAG) committee/ portfolio lead to:-

   (a) in consultation with the S151 Officer, approve and finalise the terms of the proposed Investment Partnership Members' Agreement (as described in Section 4.1.1 of this report) and to establish the Investment Partnership;

   (b) to agree the terms of and enter into a land sale agreement (or option agreement) under which the initial 4 Development Pipeline Programme (DPP) sites identified in this report may be disposed of to the Investment Partnership;

   (c) to review and consider the outputs of due diligence to be undertaken in respect of the 3 car park sites identified in this report and, if they consider it appropriate in light of those outputs, to agree the terms of and enter into a land sale agreement (or option agreement) for the disposal of those sites to the Investment Partnership; and

   (d) to agree the terms of and enter into all further documents that are required in order to give effect to the arrangements described in this report.

3. That the Housing and Growth Committee notes that the proposal to become a member of the proposed Joint Venture, or the appointment of officers and/or Members to the same will be presented for approval at a later date to full Council.

1. Why this report is needed

1.1 Delivering more affordable homes in the borough is one of the Council's objectives as set out in the Housing Strategy and the Growth Strategy. Since May 2022, this has become a Council priority and work has been underway to convert current delivery plans to ensure they contribute to delivering the Council's 1,000 affordable homes target.

1.2 The Development Pipeline Programme (DPP) is one of the Council's housing delivery programmes that comprised of five sites, originally: Former East Barnet Library, Park House, Avion Crescent (Trinity Church), Danegrove Playing Field and Mill Hill Golf Club land assembly. Design work on these sites commenced in September 2021 and Danegrove was withdrawn in July 2022 due to changes in the administration and the Council's priorities. The remaining 4 sites are currently at concept design stage (RIBA2).

1.3 In the last couple of years, due to a number of compounded external factors such as the economic disruption of the global pandemic, Brexit and now the geopolitical risks caused by the Ukrainian war, market conditions have changed considerably. In addition, the building industry is undergoing substantial regulatory changes in relation to sustainability and building fire safety. As a result of these, there is a significant risk to the viability and deliverability of the 4 sites if delivered by the Council through a self-delivery model i.e., procuring a contractor on a traditional basis.

1.4 The design work undertaken across the 4 sites so far has illustrated that based on a traditional procurement route as noted under Paragraph 3.7, the following key factors have contributed to additional cost pressures impacting scheme viability:

- Build cost inflation has been increasing at an unprecedented rate. The unique factors of Brexit and Covid-19 have led to a 'perfect storm' whereby the cost of both materials and labour have risen exponentially against a backdrop of a sharp increase in consumption. These factors have contributed to supply chain issues, congestion at ports and the volume of delays to imported goods has had a detrimental impact on construction costs.

  Development Consultants' benchmarking analysis showed apartment build cost for example has increased from c£2,450/sqm in Q4 2021 to c£3,700/sqm in Q3 2022, presenting an over 50% increase to account for uplifts from a combination of regulatory changes, tender and construction risks, inflation and other market risk factors. This as a result has resulted in an increase in the total development cost of the 4 sites.

- Forward indications point to a slowing market and sales values plateauing. Recent increases in mortgage rates and subsequent impacts on the residential housing market have not yet had an observed impact on statistics. This is likely because transactions data is based upon date of completion, which is later in the property purchase process, and it typically takes between 2 to 4 months for a house sale to complete. Based on sales information received for the 4 sites, there was an indicator of 5-10% downward trajectory in the sales values in Q3 2022 from Q4 2021.

- Higher inflation and borrowing costs. Between 2021 and February 2023, interest rates on 50+ year loans from the Public Works Loan Board (PWLB) have fluctuated significantly, from a low of 1.45% to a peak of 5.70%, with an average rate of 2.66% over the period. Rates have been volatile over this period, however they began to trend upwards consistently from 2% at the beginning of December 2021, going above 4% at the beginning of September 2022 and remaining above 4% for all but 24 days since. The Council's treasury advisors, Link, forecast that rates will remain above 4% until early 2024. For the 4 sites, average borrowing cost increased from 4% (2% PWLB interest rate + 2% MRP) in Q4 2021 to 7% (5% PWLB + 2% MRP) in Q3 2022, incurring additional pressure to the viability challenge.

1.5 By Q3 2022, following 4 months of scenario testing, the development return remained sub-optimal on the 4 sites. In order to ensure that the scheme is sufficiently viable to deliver an appropriate return, i.e., circa 15%, without compromising the affordable housing quantum, a review of the delivery strategy was required for these sites. Further work on the design was suspended pending a review of the delivery strategy.

1.6 In reviewing the delivery strategy, the development team have identified several important Council objectives to inform the recommended delivery model:

- Deliver a range of housing tenures that reflect local need, including affordable housing.
- To mitigate viability challenges in a volatile economic climate and create a revenue return or capital receipt for the Council, with the flexibility for the Council to make a decision on this on a scheme-by-scheme basis.
- Create a long-term programme for the delivery of housing in the Borough to give flexibility to both partners on their investment return.
- Timely delivery of new housing in the Borough to meet demand.
- Create new communities with a focus on quality of place.
- Reduce overall carbon emissions within the Borough by developing sustainable and environmentally conscious housing.
- Council has the flexibility to retain freehold of sites where required.

1.7 With the above in mind, the team have explored various options in consultation with legal and identified the need for the Council to work in partnership with a private sector partner to help support the delivery of these targets in a particularly challenging market.

1.8 Strategic corporate partnerships with registered providers and the private sector have been seen across the UK to support Local Authorities in their housing development ambitions. Such partnerships enable risk-sharing, the benefit of commercial skills and expertise to help unlock sites, adding social value through training and apprenticeships, and safeguarding quality in trusted track records in the development of new homes. Strategic partnerships are also welcomed by Homes England as they support the timely delivery of development programmes.

1.9 Within the borough, partnership approaches have been adopted across a number of regeneration projects such as the Inglis Consortium (Mill Hill) and Brent Cross. These routes essentially create a platform that provides a level of flexibility to enable the Council to deliver and meet its corporate priorities.

1.10 The needs and objectives set out under Paragraph 1.6 require a strategic partnership that could directly respond to the viability challenges whilst retaining the flexibility to suit sites of varying scales.

1.11 The recommended delivery option that fulfils these objectives is an Investment Partnership (IP). It is a joint venture partnership with a Private Sector Partner (PSP) formed as a Limited Liability Partnership (LLP), which is the standard legal structure for this type of partnership. The LLP is 50:50 controlled by the Council and the PSP it selects to work with, therefore, it is not a public sector body.

1.12 In an IP setup, the Council invests its land with the IP and the partner brings investment skills and funding as well as market relationships, and branding knowledge and experience to the partnership. The IP can buy, sell and develop its own land. Once the development is complete, the Council and the PSP will share the outputs (financial and/or social).

1.13 Officers have so far identified 21 sites that could be suitable for development via the IP. Of these sites, officers recommend that the 4 DPP sites noted in paragraph 1.2 should be included in a land sale agreement or option agreement between the Council and the IP as Phase 1. This agreement could be put in place immediately upon formation of the IP, or the Council could alternatively grant to the IP an exclusivity agreement in relation to these sites while the IP carries out due diligence and works up business plans for each of these sites, with a sale (or option) agreement to be entered into if and when the Council and the IP agree to proceed with the disposal.

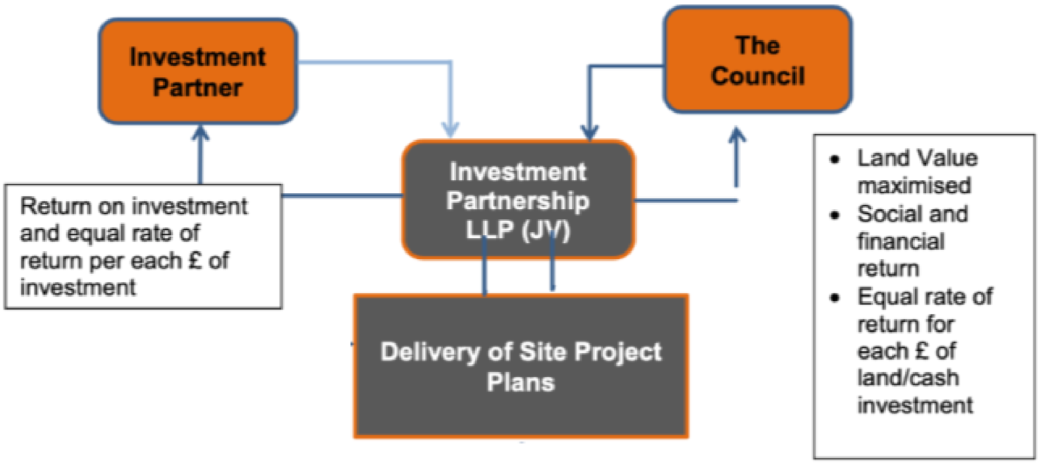
1.14 For the remaining 17 sites, 3 carpark sites (Fitzjohn Avenue, Moxon Street and Church Hill Road) could potentially be disposed to the IP. However, due diligence work is required to be carried out on these 3 sites to ascertain whether the consequent reduction in car parking provision would be acceptable and proportionate. If following this due diligence, it is considered appropriate to dispose of these 3 further sites to the IP, then these will constitute the next tranche of sites (Phase 2). Again, it is possible to enter into exclusivity agreements in respect of these sites pending full sale or option agreements. The remaining 14 sites have been appraised and could potentially be added to future phases.

1.15 Further sites can be selected and (if agreed) disposed of into the IP at a later date.

1.16 It is worth reiterating that the disposal of any site to the IP, is to a vehicle in which the Council has a 50% stake, and thus the Council can influence the business plan and strategy for each site and share in risk and reward in relation to development activities that are carried out.

1.17 This approach allows for considerable flexibility and control by the Council in that it can choose which sites it wishes to take forward through the IP and which sites may lend themselves to different approaches such as disposal or alternative use. Once set up, it can be seen as an available platform that allows the Council and its partner to agree the individual sites that are appropriate to be brought forward through the partnership. This does not prevent the Council from choosing alternative approaches for the development of its sites rather than putting them all into the IP.

1.18 The diagram below summarises the structure of an IP with a partner.



1.19 The establishment of an IP is not subject to public sector procurement rules as set out in paragraph 5.3. However, the Council has a fiduciary duty to ensure best consideration.

1.20 From the outset, officers defined criteria to select the partner as set out below:

A. They can or will align to the Council's vision and commitments for the Borough and the Council's objectives set out at paragraph 1.6 above.

B. They have the ability to optimise the future investment in Council land opportunities.

C. They have an understanding of the local housing market to optimise sales values and manage rates of sale.

D. They have an understanding of local land supply to facilitate land assembly and direct experience of the construction supply side to balance cost, quality and timely delivery of new homes.

E. They have the skills and experience to work with the Council to deliver all component parts of the development process i.e. the flexibility to work with the Council to secure the construction of schemes as well masterplan, design, secure planning and market and sell homes.

F. They have the skills, experience and flexibility to work with the Council to deliver housing schemes of all sizes including sites with under 10 homes to sites with over 100 homes.

G. They have the flexibility to realise both the Council's financial and social outcomes from investment.

H. They will commit to the Borough in forming a medium to long term partnership.

I. They will ensure value for money for the Council and its residents and maximise social values.

J. They have proven track record of delivering housing within the borough.

1.21 Soft market engagement was undertaken with several prospective partners to understand their priorities, track records in the delivery of housing. As viability is high on the agenda, the prospective partners were asked to undertake some high-level capacity studies across the 4 sites to demonstrate their innovation to design and problem solving addressing the viability hurdle.

1.22 Three potential partners were chosen against the criteria above with an opportunity to present initial ideas and proposals for working with the Council. In parallel, a case study site visit with Cambridge Council was also undertaken to better understand the approach of working in a true partnership of this nature. Over the last several months, Council officers met with the prospective development partners on a number of occasions to review their capacity studies and financial models.

1.23 Following consideration, a recommendation of Kuropatwa Group is proposed based upon the criteria listed at paragraph 1.20 and the following:

- Commitment to form a medium to long term partnership with the Council. Kuropatwa have already undertaken a number of viability/capacity studies of the Council land/ assets at no costs to the Council.
- Approach to problem solving and unlocking development value through design.
- Proven track record with the successful delivery of a complex site within the borough.
- Synergy of delivering a Build to Rent site within the borough.

1.24 Due diligence checks have previously been undertaken on Kuropatwa Group for the Northway/ Fairway site redevelopment. This included due diligence of the partner's financial standing, capacity, and exposure. For the purpose of this recommendation, updated reports have been commissioned and will be completed ahead of agreeing the Members' Agreement.

2. Reasons for recommendations

2.1 Under the current climate, an Investment Partnership (IP) approach is a more flexible and viable way for the Council to carry out its future aspirations for development in the Borough. It will enable the Council to more efficiently and strategically plan its mixed tenure housing development pipeline and assist with business planning and allocating future funding and resources as appropriate.

2.2 The 50:50 nature of the partnership model enables the Council to leverage private sector expertise to generate profit from the delivery. It also gives the partner a commercial imperative to maximise profits, which are split equally. For the Council, any profit generated through the partnership could be used to fund future housing development or retrofitting of energy efficiency measures within the existing stock.

2.3 A partnership will enable the Council to utilise the resources offered by the partner to bring the sites forward quickly and accelerate mixed tenure housing programme. By utilising a partner's commercial knowledge of development, investment, and the construction supply chain, this will result in a more cost-effective solution.

2.4 An investment Partnership is an equitable and fair way of working with the commercial sector and leads to greater transparency, helping to build lasting relationships and helping the Council to gain knowledge of the commercial development market.

2.5 By sharing resources and knowledge in the development fields and working with a partner in this way, the Council will benefit from skills transfer so that it can become a more efficient housing developer and be in a better position to bring forward and advance its own housing building programme.

2.6 **Case Study of an Investment Partnership – Cambridge City Council**

2.6.1 The 'Investment Partnership' model has been used by a number of local authorities, Cambridge City Council stood out as a good example in terms of its Investment Partnership, Cambridge Investment Partnership (CIP).

2.6.2 Following a devolution deal with Government, Cambridge City Council recognised the challenge they had ahead of them in trying to deliver the housing numbers required and as agreed as part of their deal. It understood that to achieve its ambitions, it would need a partner to work alongside and that would complement the internal resources it already had. It decided that an Investment Partnership would be an appropriate way to build capacity, and leverage private sector finance and resource, over time, to accelerate and maximise affordable housing delivery in the city.

2.6.3 CIP was formed in 2017 between Cambridge City Council and a housebuilder, Hill Group. The Council selected Hill as its partner because of the alignment between ethos and ambitions between the two and Hill's willingness to invest in site to drive affordable housing delivery. The lifespan of the partnership was intended to be 10-15 years.

2.6.4 Since then, CIP has developed out a number of sites in Cambridge on a sequential basis, with 8 sites fully completed and 1120 homes in the overall programme.

3. Alternative options considered and not recommended

3.1 The section below summarise the options investigated. Refer to Appendix 1 for more details.

3.2 **Do nothing**

3.2.1 The Council can choose to simply keep the land and not progress development or disposal. This option does not deliver towards the Council's housing objectives, and it could also incur ongoing liabilities along with anti-social behaviours and fly tipping.

3.3 **Straight land sale**

3.3.1 The Council can parcel sites up together or sell them individually on the open market. Land will be sold to the highest bidder and a capital receipt can be received on day one, or deferred, possibly with additional overage at a later date.

3.3.2 This option is not recommended as it does not help the Council achieve its corporate objectives. Once disposed, the Council would have limited influence on the pace, type and quality of the development.

3.4 Land sale with ‘Negative obligations’

3.4.1 This option has key features as straight disposal, but in addition, the sale agreement contains some degree of control for the Council to take the land back if, by a long stop date, the buyer has not delivered the requisite development in compliance with its planning permission.

3.4.2 As with the straight disposal, this option is not recommended because it does not help the Council achieve its corporate objectives on housing: whilst the Council has a degree of influence on the delivery timeframe, there is still limited scope to influence on the type and quality of the development.

3.5 Development agreement

3.5.1 This model is a standard route which has been adopted by the public and private sector over many years. It is a contractual joint venture (JV) rather than a corporate JV. This means that no separate legal entity is created: rather, the public sector partner enters into a contract with its private sector developer partner under which the private sector developer will commit to develop land upon satisfaction of conditions, on a sequential basis.

3.5.2 This option is not recommended as it requires the Council to run a fully regulated procurement exercise to identify its partner, which will incur cost and programme implications. Once a developer has been procured, there is some flexibility and control in terms of how much exclusivity the Council wishes to give and the specifications of the end products, but once a brief has been set from the outset, the contractual structure is less flexible to incorporate changes without incurring additional costs. There is also a lack of financial transparency within the contractual boundary- without an equal and transparent structure to share development returns, it provides little impetus for the developer to help the Council resolve the viability challenge.

3.6 Corporate Partnership

3.6.1 This model has been widely adopted by a significant number of local authorities in the form of an Investment Partnership (IP), or a Master Developer Partnership, or a Fully Integrated Partnership, depending on how flexible or prescribed the parties wish it to be.

3.6.2 The key features of this model and the three variants are detailed in Appendix 1. Master Developer Partnership and Fully Integrated Partnership are both more suited to large scale development- they have a higher risk profile and are more complex to set up, both also require a fully regulated procurement process, which can be lengthy and costly. Based on the objectives as set out under paragraph 1.6, the cost and process would not be justified by these two options, therefore they are not recommended.

3.7 Self Delivery

3.7.1 As set out under paragraph 1 above, the previous delivery approach taken was a self-delivery model. Typically, this involves the Council appointing the design and development consultants directly for the pre-construction work up to the planning stage. Once planning permission has been granted, the works would then be procured by the Council through a Design and Build contract, so the Contractor would take over and be the single point of responsibility to complete the detailed design and construction. This is widely used in the industry to safeguard the quality as well as managing the cost and risks.

3.7.2 Under the current economic climate, viability challenges have imposed constraints across the Council sites. Commercial benefits such economy of scale at the supply chain level are unlikely to be shared as sites are developed on a one-by-one basis.

3.7.3 In this model, each project would need to be tendered, which comes at a cost to the Council and would also incur delays to the programme. Currently, because this approach does not help the Council build professional relationships with a trusted and reliable partner, it is a missed opportunity for utilising the resource and knowledge that a partnership approach brings to help to unlock some of the more difficult sites in the Borough. It is therefore not recommended for delivering the development portfolio.

4. Post decision implementation

4.1 Subject to the approval of the Recommendations, officers will:

4.1.1 Prepare a Members' Agreement and other required ancillary documents for approval. The Members' Agreement will cover the following:

- Governance and decision making process;
- Process of how and what sites are brought forward;
- How finance works (including tax arrangements) - to ensure both partners have an equal share of risks and profits;
- Governance outside decision making (i.e. meetings and appointment of project team);
- Disputes and deadlock;
- Procurement of works (to ensure value for money).

4.1.2 Prepare and negotiate a land sale agreement (or option agreement) in respect of the initial 4 DPP sites (with or without initial exclusivity agreements while the IP carries out due diligence and works up its business plans). This will regulate how and at what value the Council transfers each site to the IP once the IP has an agreed business plan in place. This land sale agreement (or option agreement) may also form the template for the disposal of any further sites that the Council may identify for disposal to the IP (including the 3 car park sites referred to at paragraph 1.14);

4.1.3 Proceed with establishing an Investment Partnership with the recommended PSP and the Council will enter into the Members' Agreement;

4.1.4 Carry out due diligence as described in paragraph 1.14 in relation to the three car park sites identified in that paragraph in order to identify whether they are potentially appropriate for disposal to the IP.

5. Implications of decision

5.1 **Corporate Priorities and Performance**

5.1.1 The Council's Corporate Plan sets out the aim to ensure Barnet is a destination borough and a brilliant place to live, and it is invested in by:

- Championing and developing our town centres and neighbourhoods, creating places that are clean, safe and welcoming; where it is attractive for people to visit and spend time and where businesses have the best chance of success.

- Providing good quality homes in the right places that meet residents' diverse needs and are affordable. Creating better places that connect and support communities, with services our residents need and a local economy that is fit for all.

5.1.2 The Corporate Plan states the need in 'delivering the right homes to meet diverse needs now and for future generations, that people can afford and are in the right places.'

5.1.3 Lack of affordable housing is highlighted in Barnet's Joint Strategic Needs Assessment (JSNA) as one of the top three concerns identified by local residents in the Residents' Perception Survey. The Corporate Plan pledges to 'build more homes that people can afford, including 1,000 homes for rent at half market rates.'

5.1.4 The London Plan and Local Plan recognise the need to deliver more housing in the Borough. The council's Housing Strategy 2019-2024 continues to emphasise that delivering more homes that people can afford is a key priority and sets out how the council will deal with a number of challenges including high prices, a shortage of affordable housing and the potential threats to the qualities that make the Borough attractive.

5.1.5 Barnet's Health and Wellbeing Strategy recognises the importance of access to good quality housing in maintaining Well-Being in the Community.

5.2 **Resources (Finance & Value for Money, Procurement, Staffing, IT, Property, Sustainability)**

5.2.1 The initial cost estimate for establishing an Investment Partnership is approximately £30,000- £50,000. The cost can be met from existing budget.

5.2.2 There are several financial considerations that the Council should be aware of in establishing an Investment Partnership as set out below, each of which will be considered and managed in conjunction with legal colleagues in establishing the Investment Partnership;

5.2.2.1 **Land Value** - The Council would put land into the Investment Partnership (IP). The land would be independently valued at the point of input and the Council will be issued a 'loan note' (which is an IOU from the IP to the Council) to the value of the land. This would therefore satisfy the statutory requirement for the Council to 'dispose' of the land at the best consideration. The investment partner will match the value of the land with cash (or a promise to pay cash as needed), thus creating the 50:50 investment proposition. Once the land has been developed, the IP will redeem the loan note from the development proceeds, i.e. pay the assessed market value. Any other development value above the value of the Council's land at the input will be shared between the Council and the partner in proportion to the value of other inputs, after paying all development costs (including any required repayments to lenders funding the development).

5.2.2.2 Likewise, it is true that in such a partnership arrangement, any losses would also be shared equally. However, this shared risk, should the market work against the development plan, is still reduced when compared to what it would be if developing independently. It is in both parties' interest to mitigate such risks as the liability is a shared one.

5.2.2.3 **Revenue Return** - The Council will be able to require a revenue return on the development value. For example, it can specify some of the housing be let at intermediate rents and forego any capital receipt should these properties have been sold.

5.2.2.4 **Funding** - The Council may choose to provide funding either through Public Works Loan Board (PWLB) or a commercial lender as part of its investment. The benefit of this would be analysed on a scheme by scheme basis at the appraisal stage.

5.2.2.5 **Reinvesting returns in the IP** - The model would allow for the Council to instruct that the IP retain some of the return should it be helpful for subsequent schemes.

5.2.2.6 **Tax implications** – The LLP is not subject to corporation tax. Any other tax liabilities will be considered as part of the due diligence process in setting up the IP and on all individual projects to be taken forward.

5.2.3 Any Council-owned assets put forward for the Investment Partnership would need to be reviewed in terms of any Treasury Management implications constitutional procedures for land disposal and appropriation (if the land is not held for housing purposes).

5.2.4 The LLP will ensure it has its own finance function. It will be responsible for forecasting, reporting and the preparation of statutory financial returns and statements.

5.2.5 **Governance, Structure, and Procurement**

5.2.5.1 The governance structure will be set out in more detail in the Members' Agreement.

5.2.5.2 The setting up of an Investment Partnership per se does not involve the Council in any procurement of goods works or services. None are being sought by the Council in the partnership setup process. The Council is simply engaging with its potential investment partner who will contribute cash to the value of each site and will work with the Council to develop appropriate investment and development strategies for each site.

5.2.5.3 As a site is identified, the IP team will work up a draft business plan for that site and will present it to the Board, and then the partners, for approval. If approved, the Council will ultimately transfer or lease (by way of long lease) the site to the IP and the partner will match the value of the site in equity.

5.3 Legal and Constitutional References

5.3.1 The financials are included in the exempt section as it contains commercially confidential information (relevant legislation -paragraph 3 of part 1 of schedule 12 A of the Local Government Act 1972 (as amended) and the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

5.3.2 The Council's Constitution, Article 7 – Committees, Forums, Working Groups and Partnerships sets out the responsibilities of all council committees. The H&G Committee remit includes responsibility for:

- housing matters including housing strategy, homelessness, social housing and housing grants;

- regeneration strategy and overseeing major regeneration schemes, asset management, economic development including employment strategy, business support and engagement.

- Council, Constitution, Article 10 Table A states that the Housing & Growth Committee is responsible for authorising all disposals of land for over £500,000 and any disposal which is not for best consideration. Disposals of Council property pursuant to the proposed partnership would require approval by Committee or by an authorised officer as set out in Table A.

- Article 4 of the Council's constitution sets out the matters reserved to full Council. These include approval of Member and officer appointments to outside bodies and external organisations on the recommendation of the Group Secretaries or Chief Executive.

5.3.3 Section 1(1) of the Localism Act 2011 bestows a general power of competence on local authorities which permits them to do anything that private individuals generally may do, but this is subject to the general principles of public law. The Council will need to have regard to the account in which any housing stock is ultimately to be held and the provisions of s 74 of the Local Government and Housing Act 1989 including any financial adjustments between the Councils General Fund and Housing Revenue Accounts which may be required to be made if stock were to be held by the Council direct (as opposed to through the proposed LLP).

5.3.4 Section 4 of the Localism Act 2011 enables the Council to do for a commercial purpose anything that it is empowered to do under section 1 of the 2011 Act, provided that they do so through a company.

5.3.5 Section 95 of the Local Government Act 2003 allows a local authority to do, through a company, for a commercial purpose anything which they are authorised to do for carrying on any of their ordinary functions.

5.3.6 The Council has a range of powers including the general power of competence under Section 1 of Chapter 1 of the Localism Act 2011 to do anything that individuals can do subject to any specific restrictions contained in legislation and Section 111 of the Local Government Act 1972 which provides that a local authority has power to do anything which is calculated to facilitate, or is conducive or is incidental to, the discharge of its functions.

5.3.7 The general power off competence referred to above, is caveated in section 4 of the Localism Act 2011, which states that if a local authority intends to do something "for a commercial purpose" then it must do so through a company. The reference to a "company" is to a company limited by shares only, and not any other form of corporate entity (and therefore not an LLP, which is the proposed form of legal entity for the recommended IP structure). It is therefore important to establish the Council's purpose for entering into an IP. This was examined in the case of *Peters v London Borough of*

Haringey (2018), which examined the proposed establishment by LB Haringey and its partner Lend Lease of an LLP to deliver housing and regeneration across the borough. That case established that it is necessary to examine the "dominant purpose" of the local authority in seeking to set up an LLP. The commentary in this report recites the purpose of setting up an IP which is to accelerate and de-risk the delivery of high quality, affordable housing in the borough, overcoming the limitations that the Council would encounter if it were to pursue the self-delivery model. The Council's dominant purpose can therefore be seen to centre on housing delivery, improving the quality and affordability of accommodation for its residents, and not primarily commercially driven. As such, the advice received from the Council's external legal advisers Pinsent Masons is that an LLP is an appropriate legal structure for the proposals set out in this report.

5.3.8 As the Council is a contracting authority, it is obliged to comply with the Public Contracts Regulations 2015. Where it intends to create a contract for works, services or goods above the relevant financial thresholds as published by the UK Government from time to time, it must run a fully regulated procurement competition. As mentioned in the Governance, Structure and Procurement section above, the creation of an Investment Partnership does not involve the procurement by the Council of goods, works or services. As such no public contract is created and there is no obligation on the Council to run a formal procurement process. It is critical to the procurement analysis that the constitution of the IP does not offer exclusivity of services or works to the investment partner: ie the IP must be free to select the professionals, consultants and contractors that it wishes to work with in order to deliver sites according to its agreed business plans.

5.3.9 The IP itself is not a contracting authority and thus is not bound by the Public Contracts Regulations. As such it need not run formal competitions to identify suppliers of works and/or services; obviously however the Council will wish the IP to demonstrate value for money over time following its formation.

5.3.10 In due course the Council is likely to dispose of individual sites to the IP (although this is not guaranteed). Depending on the value of the land, future report will be brought back to the HAG Committee in due course as required.

5.4 **Insight**

5.4.1 The Council's Housing Strategy and Local Plan respond to evidence such as the Strategic Housing Market Assessment and other needs assessments that have identified a need for increased housing delivery.

5.5 **Social Value**

5.5.1 Increasing the utility of existing assets through mixed use redevelopment will enable the Council's portfolio of assets to go further towards supporting local needs by helping to provide new opportunities for housing, (in particular, affordable housing) and new, improved community facilities.

5.5.2 Any contractors or parties involved in the development will be encouraged to provide opportunities for employment, training and apprenticeships for local people and use local suppliers where appropriate.

5.6 **Risk Management**

5.6.1 Whilst establishing an IP is deemed to be a positive step forward for the Council, it must be noted that it does not mitigate any of the risks associated with the development of housing such as contaminated land, increasing build costs, etc. However, whilst certain factors will always remain a risk, the IP model allows for those risks to be shared, which in itself, is a benefit.

5.6.2 In establishing an IP, some potential direct risks are summarised below:

5.6.3 The Council and its partner do not agree to progress a scheme – The impact of this risk is that the cost of progressing the scheme to date would be lost and there would be a delay in delivering the scheme. This risk can be mitigated by the partnership itself as is not in the interest of either partner without good reason to prevent a scheme from progressing, as any abortive costs would be shared. The Council can of course decide not to make further sites available to the IP if it chooses to.

5.6.4 That the return generated through the IP does not represent the best value – Land invested by the Council into the IP will be valued by an independent valuer. At any time, the Council can require the IP to test the best value of any of its activities. As the partner is set to share in the up-lift in development value and therefore it is not in their interest to not work with the Council to jointly manage the efficient delivery of projects.

5.6.5 A legal challenge about the choice of the partner and transparency – expert advice will consider this in establishing the partnership, but all case studies and secondary legal commentary indicate that a local authority can choose its partner in an IP without running a formal procurement process. However, as outlined in paragraphs 1.21 to 1.24 of this report, a selection process has been undertaken to select a partner, and it will be followed by an update to the existing due diligence check before agreeing the Members' Agreement, thereby, mitigating this risk.

5.6.6 In the event of a provider failure by either deadlock where the two partners cannot agree on a strategic matter, or default where the partner does not behave as anticipated, the IP can terminate. If the termination arises from a deadlock, it is usual for one partner to be able to buy out the other either in respect of the whole of the IP or where the deadlock relates to a single site, by buying that site out of the IP at fair market value. If the termination arises from a default, then the non-defaulting partner typically could have the option to buy out the defaulting partner's interest. The price, whilst subject to commercial negotiation, is typically discounted to reflect the occurrence of the default. With the exception of an insolvency situation, it is also theoretically possible for the non-defaulting partner to be able to oblige the defaulting partner to acquire its interest.

5.6.7 If a buyout does not occur, then the IP would typically be wound up. In this case, there will be no new sites taken into the IP, and there is a short pause for the partners to agree whether they are able to work together to finish developing any partially built sites. Once partially developed sites are built out or, if the partners agree just to move forward with termination immediately, a winding up practitioner will be appointed to sort out the process and to wind up the IP. Any assets left over once debts are paid will then be distributed to the two partners in line with their capital contributions.

5.6.8 Although there will be certain risks associated with an IP, there are also several benefits to working in this way that far outweighs any risk:

5.6.9 **Versatility** - The Model can support a wide range of development from affordable housing, private sale, market rent, estate regeneration, and commercial development. It can also provide income or capital returns to the Council and the Council can choose which schemes it inputs into the partnership. The Council can also choose to veto a scheme before it proceeds. Work collaboratively and transparently with all decisions made equally, ensuring the Council retains influence.

5.6.10 **Resources** - The partnership will complement in-house teams. It is possible to assign project managers to individual projects and these costs can be recovered as project costs. Joint expertise ensures projects meet specific Council needs. Set up costs are low and there are no ongoing procurement costs for the council. The Council will need to provide resources at the board level.

5.6.11 **Delivering at Pace** - The IP can be set up quickly and through speedy procurement, confidence in build costs and simple decision making means new affordable housing development can be delivered at pace. The transparent approach enables planning applications to optimise the delivery of affordable homes and the challenges of viability in the current market.

5.6.12 **Maximising Return & Sharing Risk and Reward** - On residential mixed tenure projects, expertise can help develop an Investment Partnership market product, with half the profit going to the Council. Planning and pre-development costs can be funded at risk by the developer.

5.6.13 **Incentivisation** - There is no exclusivity provided to the partnership and therefore the partner is truly incentivised to deliver the Councils requirements, and as joint funders, there is a commitment to enhancing their investment.

5.6.14 **Flexibility** - There is flexibility in the type of structure and the preferred scheme of governance.

5.7 Equalities and Diversity

5.7.1 The 2010 Equality Act outlines the provisions of the Public-Sector Equalities Duty which requires Public Bodies to have due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Equality Act 2010.

- Advance equality of opportunity between people from different groups and foster good relations between people from different groups.

5.7.2 Any Equalities Impact Assessments will be undertaken on individual schemes as they are brought forward, and the proposals outlined will give appropriate consideration and where required consider any matters raised in these assessments. However, the proposals in this report are not considered at this stage to raise any negative impacts for equalities and demonstrate that the Council has paid due regard to equalities as required by section 149 of the Equality Act 2010

5.8 Corporate Parenting

5.8.1 Not applicable.

5.9 Consultation and Engagement

5.9.1 Not applicable.

5.10 Environmental Impact

5.10.1 As was highlighted by the Prime Minister at the opening of COP26, the evidence for human made climate change is now overwhelming, with the need to take action becoming ever more urgent. This sentiment was echoed in the Leader of Barnet Council's statement on sustainability, which made clear the Council's ambition of being at the forefront of London's programme to tackle climate change.

5.10.2 The Sustainability Strategy Framework sets out how the Council intends to respond to climate change and the agreements reached at COP26. It sets out ambitious targets for the Council to be net zero by 2030, and Barnet as a place to be net zero as soon as possible following this, and by 2050 at the latest. In particular, the Council is seeking to lead the way in making the new homes more energy efficient and fit for the future. The sustainability strategy stipulates its intention to ensure that all projects delivering the housing target are to achieve net-zero standards and include provision for electric vehicle charging. This principle will be adopted by any Investment Partnership established by the Council.

5.10.3 In parallel, the building industry is also undergoing significant regulatory changes in response to the climate emergency. Statutory requirements are in the process of transitioning into a set of higher energy performance requirements to meet the country wide net zero target. The cost impact of the environmental imperatives has been reflected in the viability challenges, which require a different delivery strategy to meet the onerous demands. The financial advantages of the IP model can help the Council achieve these ambitious environmental targets.

6. Background papers

6.1 Assets Regeneration and Growth Committee 25 March 2019- Establishing new sites for consideration Future Sites Pipeline.pdf (moderngov.co.uk)

6.2 Housing and Growth Committee 6 July 2020 - Development Portfolio Programme (Public with accompanying Exempt Report (not for publication by virtue of paragraph 3 of Schedule 12a of the Local Government Act 1972 as amended as this relates to information of a financial or business nature) (Public Pack)Agenda Document for Housing and Growth Committee, 06/07/2020 19:00 (moderngov.co.uk)

6.3 Chief Officer in Consultation with Committee Chairman- Delegated Powers Report, Contract Award for Development Consultancy Services (Lot A) and Design Consultancy Services (Lot B) to Progress the Development Portfolio Programme, 5 May 2021. Development Design and Development Consultancy appointment DPR.pdf (moderngov.co.uk)