Joint Strategic Committee
11th July 2023

WORTHING BOROUGH COUNCIL

Key Decision Yes

Ward(s) Affected: Central Ward, Worthing

Union Place - Joint Venture Partnership with Roffey Homes

Report by the Director for Place

Officer Contact Details
Martin Randall
Director for Place
martin.randall@adur-worthing.gov.uk

Executive Summary

1.	**Purpose**
1.1.	The Union Place redevelopment proposal provides a major opportunity to deliver new high quality, energy efficient, modern and affordable homes for the community in Worthing. Working with an experienced local private sector partner, the development will also deliver new commercial space, high quality green spaces, return Union Place to being a tree lined avenue and maximise opportunities for social connections to reduce isolation and promote inclusion. The development will have an architectural approach rooted in local vernacular architecture, and also seeks to design out crime, improve health outcomes, and use an environmentally sustainable approach to development.
1.2.	The purpose of this report is to advise members of the Committee on the progress with negotiations with the Council's preferred Joint Venture Partner on the redevelopment of the Union Place site, and to

seek the Committee's approval to the Joint Venture Agreement and to progress towards development of the site.

1.3. The Exempt Appendices to this Report set out the detailed nature of the proposed Joint Venture Agreement which it is intended will be conducted through the formation of an Limited Liability Partnership (LLP) between the Council and Roffey Homes, and the proposal for the Council to invest land into the LLP company at the outset, with a further parcel of land being invested following grant of planning permission. The report sets out how the value of the Council's investment is then matched by Roffey Homes equity and sets out how the development will be funded. The Council's governance structures and appointment to the LLP are set out in section 5.0.

1.4. The Exempt Appendix updates members on key issues following the most recent report on the project in March 2023 surrounding procurement, state aid/subsidy control, risk, and tax implications of the proposed joint venture.

1.5. The report summarises the work undertaken to date to design the scheme, and agree land valuations.

1.6. The report sets out the various steps that will be undertaken to enter into the Joint Venture Agreement and seeks various delegations to officers to enable the project to proceed.

2. Recommendations

2.1. **That the Joint Strategic Committee delegates authority to Director for Place to:-**

2.2. Progress the negotiations and drafting of the Members Agreement and all contractual documentation required to establish the Joint Venture Limited Liability Partnership (LLP) between the Council and Roffey Homes for the purpose of developing the Union Place site on the terms set out in the Structure Note and the Exempt Appendices 1-5.

2.3 To take further legal, procurement, subsidy and financial due diligence on the final terms of the Members Agreement and contract documents and to produce a detailed business plan supporting the proposal to enter into the LLP.

2.4 To authorise the Director for Place to enter into the LLP by executing the Members Agreement and all necessary contract documents subject to the following procedure for completion-

- That the Director for Place shall consult with the Leader of Worthing Borough Council by delivering a Report detailing the final terms of the Members Agreement and contract documents; and

- The Report shall advise on the on the outcome of the due diligence required at paragraph 2.3, produce the supporting business plan and shall seek authority from the Leader of Worthing Borough Council for the Director for Place to enter into The Members Agreement and all necessary contractual documentation to form the LLP; including authority to continue with the land transfers which are envisaged in the Structure Note at Exempt Appendix 1 and further referred to in Exempt Appendix 5.

2.5 To delegate to the Director for Place in consultation with the Leader , the authority to appoint officer representatives to the LLP Board; and review and approve LLP Business Plans (including costs incurred and forecast) in consultation with the Leader and to require the project board to report back to the JSC (SC) on a regular basis with progression updates and financial reporting.

2.6 Prior to entering into the LLP to authorise the Director for Place to fund half of the planning costs (estimated in total at £600,000 with BC to fund £300,000) payable in the event that satisfactory planning consent for the development is not satisfied or for any reason the development does not proceed;

2.7 Prior to entering into the LLP to delegate to the Director for Place authority to negotiate the final terms of the agreement with LCR to terminate the Landpool and Promotion Agreement with LCR and to consult with the Leader and Cabinet Member for Resources on the terms of the termination agreement and resource implications.

2.8 To approve the release of £300,000 from the capacity issues reserve to fund the revenue consequences of the unwinding of the LCR agreement as set out in confidential Appendix 5A.

2.9 Delegate to the Cabinet Member for Resources the authority to vire £570,000 from the strategic property investment fund in the event that the new LLP is not in a position to buy back the land associated with the LCR land pooling agreement as set out in confidential appendix 5b.

2.10 To recommend to Worthing Borough Council to amend the Annual Investment Strategy to allow for the acquisition of shares in the new Joint Venture.

2.11 To recommend to Worthing Borough Council that it amends the Capital Programme Investment Strategy to approve the capital investment for the purchase of a 50% share in the ownership of the LLP in the sum of £6m funded through the transfer of land and approves the appointment of Worthing Borough Council as a Member to the LLP (through a Members Agreement) and to note that the strategic and operational decisions will be made by the Executive with the project board reporting back regularly to that Committee on progression with finance reports.

3. Background to Union Place

3.1. The Worthing Local Plan sets out a number of sites that will be brought forward to deliver market and affordable housing in Worthing over the 2020 - 2036 plan period. Of the fifteen sites identified, seven of these are to be delivered by Worthing Borough Council either directly (such as the Worthing Integrated Care Centre on the Civic Centre site), or in conjunction with partners including the Fulbeck Avenue Site, Teville Gate, Union Place and in due course the Grafton site.

3.2. The Council’s key purpose in working with the joint venture partner is to:

- Maximise the number of homes delivered, in particular, genuinely affordable homes;

- Maintain a focused approach to support the viability of the scheme and potentially, attract central government funding to support new homes;
- Bring forward other uses that will enhance the town's centre and promote economic recovery;
- Deliver high quality design, environmentally friendly, architecture; and
- Deliver capital receipts that can be used to support the delivery and maintenance of new infrastructure.

3.3. This previously developed site lies east of the Connaught Theatre and west of the High Street. It comprises a surface car park adjacent to the theatre acquired by the Council in 2017; a cleared site of unmade ground and footings to the former Police Station acquired by the Council in 2018; and an adjoining small area of car park along the High Street. It is close to Chapel Road (secondary shopping area) and links to the central shopping area via the Guildbourne Centre. A plan showing all of the land included is available at Appendix 1.

3.4. To help accelerate the comprehensive redevelopment of the site, and to de-risk the development, Worthing Borough Council undertook the land assembly before entering into a Land-Pooling and Promotion Agreement with government owned regeneration specialist London and Continental Railways (LCR) in 2018.

3.5. LCR brought considerable knowledge and experience to the Union Place exercise to help deliver and attract a delivery partner to build out a successful scheme. The partnership with LCR was framed around a land pooling arrangement and is a model that LCR are now using in other places.

3.6. A Development Strategy was prepared with LCR to deliver a mixed use scheme. Outline planning permission was secured in November 2020. Securing this permission has helped to de-risk the development strategy and brought clarity in terms of land use, density, scale and height.

3.7. At the February 2022 meeting of the Councils' Joint Strategic Committee (JSC) members considered an update on marketing the site following the successful enabling exercise with LCR Property. The report identified Roffey Homes as the preferred bidder for the site, and delegated authority to officers to negotiate a Joint Venture Agreement to support land transactions.

3.8. In March 2023 members of the Worthing Joint Strategic Sub-Committee meeting considered an update on progress with the Joint Venture Agreement and noted the issues that remained to be resolved.

4. Proposed Joint Venture

4.1. The detailed structure of the proposed joint venture is contained in the structure note which is attached as an Exempt Appendix to this report. The paragraphs below outline how the joint venture would work, its governance and decision making arrangements.

4.2. Rationale

4.2.1. The Council is proposing to deliver the regeneration of Union Place through a joint venture structure. A Joint Venture is where two parties come together to undertake a property development. Decision making, risk, and rewards 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.

4.2.2. Following a detailed analysis of the options for working with the preferred partner against the key objectives of the Council, and detailed discussions with the preferred partner, 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 £70m.
- 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 the site are achieved.
- The long-term opportunity jointly incentivises both partners to work closely throughout the pre-development and delivery phase to achieve their objectives.

4.3. Limited Liability Partnership (LLP)

4.3.1. A Limited Liability Partnership (LLP) with the preferred joint venture partner will be established to bring forward the development of Union Place. The LLP Members Agreement is the formal contract setting out the relationship between the Council and Roffey Homes. In that document the objectives of the LLP joint venture will be set out and are likely to contain the following:

- A comprehensive regeneration of the Union Place site that responds to the needs of the local community and town centre.
- A transformed neighbourhood with a public realm led, high-quality living environment and high quality architecture and urban design.
- A guaranteed minimum of 20% of the development to be affordable housing assuming full delivery of the scheme, with an ability to achieve more affordable homes to directly support local people in need should the Council choose to use the return on its initial investments.
- Appropriate returns to the LLP members as set out in the Business Plan once this is finalised and agreed.

4.4. LLP Contract Documents

4.4.1. There are a number of key contract documents that are required to govern the working of the LLP:

- LLP Members' Joint Venture Agreement – the main agreement between the Council and the preferred Joint Venture Partner 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 at commercial rates.

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

4.5. Other key project issues will be agreed between the parties as part of the business plan:

- Project Management – 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 developers and a key reason for entering into a partnership. The project management function has already commenced and will run to the end of the project, with continuous monitoring during the development period.

- Construction Management – it is proposed that Roffey Homes 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 project plan. Roffey Homes have already engaged with contractors and designers to review the most cost effective construction processes. If planning permission were gained, the main contractor would be appointed if the LLP Project Board decided all conditions precedent were met.

- Corporate Services – an agreement will be reached on company secretary, business support and accountancy and audit services. This would occur immediately upon setting up of the LLP.

- Sales and Marketing - the preferred partner will provide services to the LLP relating to the marketing and disposal of private for sale properties within the new development. The advice of local agents has already been sought on the project. If planning permission were gained, selling agents would be appointed, forming a strategy on phasing and capturing off plan sales.

4.6. Business Plan

4.6.1. After the production of the initial business plan to Members prior to entering into the LLP. The LLP Board will thereafter prepare a Main Business Plan for each annual accounting period. Prior to adopting the Main Business Plan, the LLP Board will report to the Joint Strategic Committee (Sub-Committee) for authority to approve of the Main Business Plan and thereafter the Plan shall be adopted by the Members of the LLP. This shall continue each year throughout the lifetime of the development.

4.6.2. The development may be developed out using a phased approach in line with a positive approach to managing risk. In these circumstances, 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.

4.6.3. The Main Business Plan and Phase Business Plans, will be subject to Joint Strategic Sub Committee approval at the appropriate time throughout the lifetime of the development.

4.6.4. An outline LLP Business Plan template has been prepared with Roffey Homes 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) Participation & Engagement strategy
8) Sales & marketing strategy
9) Construction procurement

10) Programme
11) Risk register (Project)
12) Risk register (legal, finance and procurement)

5. Governance

5.1. LLP Board

5.1.1. In the event of the proposed Joint Venture being approved, all contractual and contract documents entered into the LLP being established as an entity, the LLP Board / Steering Committee 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 quarterly but with extra meetings as the LLP Board agree are necessary.

5.1.2. In terms of representation on the Board, the proposal is for there to be one Council Officer representative being the Director for Place and one representative from the joint venture partner. Each organisation has one vote. Each party may appoint observers to the Board. The Joint Venture agreement will contain mechanisms for dispute resolution in the event of a deadlock in agreement.

5.1.3. It is proposed that the role of Chairperson will alternate annually between the Council and Roffey Homes representatives.

5.1.4. The LLP Board will routinely receive reports on a range of project matters with a standing agenda to include key performance indicators around aspects such as resident engagement; design progress and social value as well as any statutory matters raised by the Company Secretary.

5.1.5. 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.

5.2. Steering Group

5.2.1. An Executive Group consisting of Council officers and Roffey Homes staff with day to day responsibility for the project, and will report to the LLP Board. The Group will meet regularly (most likely monthly) to coordinate all of the workstreams, monitor progress and agree reporting to the LLP Board.

5.2.2. 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 submission to Members for comment and thereafter decision or review by the LLP Board.

5.3. Assurances

5.3.1. In addition to the the recommendations Officers will report back to the Joint Strategic Committee and/or relevant Cabinet Member (as appropriate) on the following matters:-

- To approve the final design work prior to submission for planning.
- To approve throughout the project the Business Plan and any phase business plans.
- To receive regular reports on the performance of the LLP reported back to the Joint Strategic Sub-Committee at regular and appropriate intervals as required throughout the development.

5.4. LLP Funding

5.4.1. The project will be funded and approved phase by phase on a 50:50 basis between the Council and Roffey Homes. At the establishment of the LLP:

- The Council will transfer Sites as set out in Exempt Appendix 1 and Exempt Appendix 5. The value of the land will be matched by Roffey Homes with an equivalent cash facility which will be drawn down by the LLP as required.
- The Council’s land and Roffey’s matched funding is termed the ‘equity’ investment into the LLP.
- 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 and Report back to Member on

- The ‘equity’ investment will not cover the total cost of developing the site. The LLP will then need to secure debt financing to fund the balance. This debt financing or borrowing can come from either the Council, Roffey or a third party e.g. a bank, to be decided subject to financial and legal advice.

5.4.2. 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 Roffey Homes will be paid back.
- Payment to Council for land value and payment to Roffey Homes for matched cash investment.
- Profit paid to both parties.
- If WBC elects to retain residential or commercial properties or the car park, the agreed value of these units will be ‘off-set’ against WBC share of distributions.

5.5. Should any profit be likely, the Council will have the option to use this profit to reinvest into delivery of service or purchase additional homes for affordable housing in lieu of profit.

6. Proposed Scheme

6.1. The proposed development is a housing led mixed use development including parking, and commercial space. The proposal incorporates a ground floor car park with residential housing blocks which face inwards to create residential courtyards, and outwards to form an attractive street frontage facing Union Place and the High Street. Taller elements would lie towards the centre of the site. The proposals currently include:

- A further 5,000 sq ft of commercial space is to be integrated at ground floor level. The LLP team will actively seek occupiers for this space who will benefit from proximity to the town centre and a number of enquiries have already been received;

- The current proposal will generate a proposed 217 housing units with an undercroft car park to provide parking for residents. 48 units will be a mix of social, affordable and intermediate housing, 10 units will be live work units.
- The proposal is for the scheme to be policy compliant in terms of affordable housing delivering 48 affordable homes (22%). Nominations would be reserved to those on the Worthing Borough Council housing register.
- The development has been designed to connect to the Worthing Heat Network.

7. Procurement and Subsidy Advice

7.1. The Director for Place instructed specialist advice on Procurement and Subsidy issues which is set out by Bevan Brittan Solicitors' summary of advice on public procurement is set out in Exempt Appendix 2. Members are referred to this Appendix.

8. Unwinding the LCR Property Landpool and Promotion Agreement Arrangements

8.1. In 2018 at the November meeting of the Joint Strategic Sub-Committee the Council agreed to enter into a Landpool and Promotion Agreement with LCR Property. The agreement set out how the Council and LCR would work together to promote land at Union Place. LCR Property would fund the costs of planning and design costs for the site with the aim of adding to the value of the land by achieving a planning consent. The intention being that they would share in the uplift in value of the land following the disposal of the site. Following the marketing of the site, it was identified that a joint venture between Worthing Borough Council and Roffey Homes and was the preferred way forward rather than a straight disposal. LCR Property felt it was inappropriate for them to continue to participate in promoting the site, and as such the Landpool and Promotion Agreement needs to be dissolved. There are two key items that need to be addressed to resolve this.

8.2. Firstly, as part of the agreement the Council sold the freehold of the surface car park fronting high street to LCR Property. Independent valuations have been procured to ensure requirements to meet

S123(2)(A) are met, and a purchase cost of £542,500 agreed and supported by an independent RICS Red Book Valuation. As part of the joint venture the new LLP company would purchase this land directly using equity injected by the LLP partners as it is more efficient, and to minimise transaction costs. This will take place as soon as possible following the formation of the company.

8.3. Secondly, the agreement formed a mechanism for the Council and LCR to share the costs of enabling and promoting the site. Essentially it allowed for the Council to pay either the costs of promoting the site, or for LCR to capture a percentage of the increase in land value as a result of the grant of planning permission. Officers have negotiated with LCR over these costs, and following a joint review have concluded that a figure in the region of £842,000 is required to settle the promotion costs. Following the confirmation of this meeting, the Council will meet these costs as soon as possible to allow the joint venture to proceed.

9. Proposed Milestones

9.1. Should the recommendations be proposed the following actions will be undertaken:

Stage (*)	Commence in	Complete by
Publish VEAT Notice (6 month period)	July 2023	July 2023
Finalise draft terms of the LLP Contract Documents and Due Diligence	July 2023	October/November 2023
Referral to Full Council	18 July 2023	18 July 2023
Prepare Commercial Market Operator Assessment/ Best Consideration Assessment /carry out legal financial and	October 2023	October/November 2023

subsidy due diligence		
Report back to Leader of Worthing Borough Council on Final terms and outcome of due diligence checks	October/ November 2023	November 2023
LLP Set up	December 2023	December 2023
Preparation of planning application	July 2023	September 2023
LLP Board Commencement	December 2023	On-going

9.2. Initial public consultation to identify issues and options for the proposed designs took place between November 16th and December 7th 2022 and a public display took place in the Guildbourne Centre. A further round of consultation is planned to take place in Summer 2023.

9.3. Following final approval of the agreement, and dependent on the feedback from consultation and local community participation, it is anticipated that a planning application would be submitted in September 2023, with an aim for it to be approved by end December 2023 / January 2024.

9.4. Subject to the recommendations outlined in this report, a start on site would follow in Spring 2024, with the first completions and keys handed over to new homeowners in Summer 2025.

10. Financial Implications (Please also see Exempt Appendix 4 & 5)

10.1. The proposed agreement will require the Council to transfer two substantial assets into the Joint Venture with a combined balance sheet value of £6.0m as at 31st March 2023. These values are based on the current use of the car park site and, in the case of the land at Union Place, on the potential use for affordable housing. These values will need to be reviewed and updated as part of the process of setting up the joint venture to ensure that they reflect any updated information regarding use. The Council has outstanding debt of £5.4m associated with the purchase of the car park.

10.2. The proposed development is split into two phases. As part of phase 1, the High Street Surface Car Park will be purchased by the Joint Venture Company from LCR. Consequently, the Council will lose this site as a surface car park. Currently the Council achieves net income of £52,000 from this site. The Council will need to adjust the budget to reflect this loss of income as part of the 2024/25 budget development and as part of this, consider how additional commercial income might be realised to compensate.

10.3. **Implications of acquiring shares within the joint venture**

10.3.1. The investment into a share of the proposed Joint Venture will require amendment of the Council's Annual Investment Strategy to allow the agreement to proceed. The council will need to approve the addition of the Joint Venture to the list of non-specified investments.

10.3.2. In addition, any acquisition of shares is classed as capital expenditure under 25(1)(d) of the Local Authorities (Capital Finance and Accounting) (England) Regulations 2003. Consequently the Council will need to amend the Council's capital programme to allow for the acquisition. The acquisition of the share will be financed by the value of the land transfer..

10.4. **Union Place Car Park Considerations: Please see Exempt Appendix 1 & 5(a)**

10.5. **Financial benefit of the proposed Joint Venture:**

10.5.1. The overall financial benefit of this proposal will depend on the final costs of development. Preliminary viability modelling indicates that the Council should receive a receipt to the value of £6m which will enable the Council to repay any debt associated with the purchase of the Union Place car park with a small surplus. Although the option remains to take assets to the value of the receipt in the form of the car park (retaining the rental income) or commercial property. Nevertheless the Council will be faced with an overall loss associated with the proposal

10.5.2. In addition to the capital receipt, the Council will also benefit from any Council Tax and 20% of any potential business rate income. As the site should generate 217 new flats when fully built out, this will generate additional Council Tax for the Council of approximately £58,000. In addition, the Council will benefit from 20% of any additional business rate income generated from the development.

10.5.3. Nevertheless the Council will need to fund a small overall annual loss associated with the proposal

	£
Repayment of debt associated with Union Place car park	216,610
Additional council tax income from new developments	58,000
Benefit of surplus capital receipt (£0.6m)	84,000
Overall identified savings	358,610
Less: Loss of car parking income	-52,000
Less: Rental income from Union Place	-334,780
Net potential loss to the Council arising from the redevelopment	-28,170

However these losses will be offset by any share of the business rate income that the Council is entitled to and are marginal in the context of improving housing provision in the town.

10.6. **Financial risks associated with the proposed Joint Venture (Please also see Exempt Appendix 4)**

10.6.1. Under the terms of the proposed LLP, the Council will be liable for 50% of the costs associated with the planning process if the planning approval is not granted or the development does not proceed. Consequently if the development cannot be progressed, the Council would be responsible for funding these costs which may well exceed £300k and would need to be funded from reserves if they occur..

10.6.2. In addition, the Council will need to consolidate the value of its share of the LLP into its own accounts. Consequently, if in any year, the LLP makes a loss, then 50% of these losses would need to be accommodated within the Council's own accounts and funded from its resources. Whilst the development progresses, the company will need to incur annual costs in management and administration. These are expected to be around £30,000 per year for a period of 4 years with 50% of these costs being funded by the Council. The major projects budget would be available to fund these losses (£225,750).

10.6.3. Whilst overall it is expected that the development will make a profit, the Council will need to manage any potential losses during the lifecycle of the project which could be challenging given the current financial situation. To mitigate this risk, a full business plan for the duration of the project is proposed as a requirement to understand the potential liability that might fall on the Council. The development risk is also mitigated by the additional certainty at each key development stage through to completion.

10.6.4. In addition, Members are referred to Bevan Brittan’s procurement and subsidy advice set out in Exempt Appendix 2 as well as the summary of procurement and subsidy risks set out in Exempt Appendix 4.

10.7. ***Taxation risk***

10.7.1. There are two potential taxation risks:

i) VAT

It may be possible to transfer the former police station site without charging VAT on the transfer. Thereby minimising the cost to the new LLP. This should be possible provided that:

a) The land is transferred at nil consideration by the council to the LLP;
b) No input VAT has been recovered in relation to the site whilst owned by the council; and

c) The land is not an asset for the delivery of any business.

The Council can demonstrate the first two points. However, as the site was used during the Covid pandemic as a vaccination site, this might compromise the argument that it is not an asset for the delivery of business. In the event that VAT is payable on the land value, this would need to be paid by the Joint Venture. Consequently an indemnity would need to be provided by the proposed Joint Venture that they will fund any VAT due.

The LLP will be responsible for paying VAT on the value of the other sites transferred to it as all of these sites have been opted into the VAT regime. This point will need to be made clear within the legal documentation.

In the event that this point is not agreed, the Council would become liable for the taxation if and when the land is transferred. The VAT could be substantial depending on the final valuation of the land to be transferred.

ii) Stamp Duty Land Tax (SDLT):

SDLT would be payable on the acquisition of any land from the Council by the LLP.

Schedule 15 Finance Act 2003 provides for the application of SDLT to partnerships such as the LLP. The acquisition of a chargeable interest by a partnership is charged under paragraph 10 of the legislation. This provides that, in the proposed situation, and assuming Roffey and the Council are not connected within the meaning of section 1122 of the Corporation Tax Act 2010, SDLT will be chargeable on 50% of the market value of the property that is transferred to the partnership (as this is the percentage of the partnership which is not part of the Council's group). The Venture will be responsible for paying the tax. Effectively the partners, Roffey and the Council, will be jointly and severally liable for the payment of the tax.

The amount of tax due may change with time. There is a clawback provision that can charge more SDLT if the partnership shares change within three years, or if the partners withdraw capital from the LLP . This could be relevant if the timeline for the LLP involves winding it up or extracting profits in a shorter period, or on termination if Roffey were to buy out the Council. The maximum SDLT that could be charged under this provision is based on the remaining 50% of the market value that is not taxed on the initial transfer.

SDLT will be charged at the commercial rates, as the property is not used nor suitable for use as a dwelling at the time of the transfer.

10.7.2. Paragraph 12.9 below, highlights the need for the proposed transaction to be classed as a land transaction. Further consideration (and information for Members) is given on this point in the Exempt Appendices.

10.8. ***Cost of setting up the joint venture:***

10.8.1. Members were originally informed that the cost of setting up the Joint Venture was likely to be £100,000 which was to be funded from within the existing Major Projects budget.

10.8.2. The Council has sought legal advice on the proposed arrangements. It is likely that during the development of this phase of the project the Council will incur approximately £62,000 in legal advice and other specialist surveying and valuation advice. It is intended to fund these costs from within the Major Projects consultancy budget of £225,750. Any costs incurred to date (circa £45,000) have also been funded by this budget.

10.9. **Accounting requirement for Joint Ventures:**

10.9.1. The Council will have a 50% interest in the new Joint Venture. Consequently the Council will need to recognise the value of its share of the Joint Venture within its own statement of accounts. As the parties have equal shares in the Joint Venture, the Council will need to recognise the asset within its accounts as an investment in accordance with the accounting treatment set out in the CIPFA Local Authority Code of Practice.

10.9.2. To meet these requirements, the Council will need to seek technical advice on setting up the new arrangements and then on the valuation on an annual basis. It is intended that the Council externalise the valuation of the LLP at a potential cost of £5k per year.

10.9.3. To minimise any accounting complexity, it would be useful if the new vehicle has a financial year that was the same as the Councils. This point should be discussed with our partner.

10.9.4. It is assumed that the Council will have no direct responsibility for the accounting arrangements associated with the Joint Venture which will be the responsibility of our partner. Given the public money involved, the Council will have the ability to scrutinise the finances of the joint venture using its own auditors if necessary.

11. Legal Considerations

11.1. s1 of the Localism Act 2011 empowers the Council to do anything an individual can do apart from that which is specifically prohibited by pre-existing legislation

11.2. Section 3(1) of the Local Government Act 1999 (LGA 1999) contains a general duty on a best value authority to make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness.

11.3. Section 1 of the Local Government (Contracts) Act 1997 confers power on the local authority to enter into a contract for the provision of making available of assets or services for the purposes of, or in connection with, the discharge of a function by the local authority.

11.4. Section 123 Local Government Act 1972 provides the Council with the power to dispose of land with the caveat that the Council must not do so for a consideration less than the best that can be reasonably obtained.

11.5. Circular 06/03 Local Government Act 1972 General Disposal Consent (England) 2003 provides criteria and guidance for circumstances when a local authority considers it appropriate to dispose of land at an undervalue.

11.6. The Local Authorities (Executive Arrangements)(Meetings and Access to Information)(England) Regulations 2012 governs the decision making processes relating to Cabinet decisions and these are encompassed in the Council’s Cabinet Procedure Rules within the Constitution.

11.7. The LLP arrangement with Roffey Homes is to be treated as a series of land transactions that do not create any direct or contingent liability on the parties capable of creating a public works or service contract as defined by the Public Contract Regulations 2015. Further advice taken from Bevan Brittan Solicitors is set out in Exempt Appendix 2 together with a summary of any associated risks in Exempt Appendix 4.

11.8. The Council will need to be compliant with the Subsidy Control Act 2022 and advice has been provided by external solicitors Bevan Brittan which is at Exempt Appendix 2, together with a summary of the associated risks at Exempt Appendix 4.

11.9. The Council has the power to amend its Capital Investment Strategy pursuant to the Local Authorities (Capital Finance and Accounting) (England) Regulations 2003, and the CIPFA Prudential Code.

11.10. At Appendices 1, 2, 3, 4 & 5 there are Exempt Appendices which contain further detail. This information must be given due consideration by Members to ensure they read and understood the matters raised prior to reaching a decision on this Report.

Background Papers

- Report to Joint Strategic Committee 06/11/2018 - Union Place Update
- Report to Joint Strategic Committee 10/04/2018 - Union Place Redevelopment
- Report to Joint Strategic Committee 08/02/2022 - Union Place - selection of preferred developer
- Report to Joint Strategic Committee 16/03/2022 - Union Place Joint Venture with Roffey Homes Update

Sustainability & Risk Assessment

1. Economic

The development delivers new homes and space for businesses to expand. The scheme is strategically important for the town centre and will benefit local shops and services.

2. Social

2.1 Social Value: the development provides an important opportunity to secure the delivery of genuinely affordable homes; to demonstrate local employment and offer opportunities for young people to secure training and develop skills.

2.2 Equality Issues: the project offers an important opportunity to address diversity and inclusion matters through the recruitment and selection of those people working on the project and in the provision of training and skills.

2.3 Community Safety Issues: the development will take a positive approach to designing out crime and addressing matters such as safe pedestrian routes and areas for play. Design aspects such as lighting will take into account the importance of people feeling safe at night.

2.4 Human Rights Issues: the project will ensure that aspects such as people trafficking are considered through the construction process and in the selection of contractors and sub-contractors.

3. Environmental

Sensitive redevelopment of the site offers a significant opportunity to enhance biodiversity and to improve the local environment through planting and the provision of open spaces.

4. Governance

An internal officer board consisting of representatives from key departments essential to successful delivery has met and reviewed the programme at key stages of the marketing exercise. The governance associated with the delivery of the project is set out in the body of the report and formal updates will be provided to members of the Worthing Joint Strategic Committee Sub-Committee.

Appendix 1 Land to be Included invested in the LLP