

Cabinet Meeting		Agenda Item: 9
Meeting Date	7 September 2016	
Report Title	Establishment of a limited liability partnership (LLP)	
Cabinet Member	Cllr Duncan Dewar-Whalley, Cabinet Member for Finance and Performance	
SMT Lead	Mark Radford, Director of Corporate Services	
Lead Officer	Mark Radford, Director of Corporate Services	
Key Decision	Yes with restricted appendices containing exempt information under Paragraph(s) 3, Part 1 Schedule 12A, Local Government Act 1972 (as amended)	
Classification	Open with restricted appendices containing exempt information under Paragraph(s) 3, Part 1 Schedule 12A, Local Government Act 1972 (as amended)	
Forward Plan	Reference number:	
Recommendations	<p>It is recommended that:</p> <ol style="list-style-type: none"> 1. the creation of a limited liability partnership (LLP) between the Council and PSP Facilitating Limited (PSPF) be approved; 2. the final terms of the necessary agreements be agreed by the Director of Corporate Services, the Head of Finance, and the Head of Legal, in consultation with the Cabinet Member for Finance and Performance, provided that all the due diligence checks have been carried out successfully; 3. it be noted the LLP arrangement requires the establishment of an LLP Members Board with equal Council and PSPF representation, supported by an Operations Board for officers; 4. the Council representation on these Boards be agreed by the Director of Corporate Services following consultation with the Leader, once the format of these boards is established as part of the final terms of the agreement; and that the Council representation on the LLP Board will be from members of the Cabinet; 5. insurance and indemnity be provided for Member and Officer representatives of the LLP; 6. it be noted that the LLP will be an additional option for the Council to use to deal with its property portfolio; and 7. it be noted that further reports will be submitted to Cabinet in respect of relevant proposals to pursue property related projects through the LLP. 	

1 Purpose of Report and Executive Summary

- 1.1 The purpose of this report is to recommend to Cabinet that the Council enters into a joint venture limited liability partnership (LLP) with a private sector partner, PSP Facilitating Ltd (PSPF). An LLP between Swale BC and PSPF would provide the Council with an additional option over and above those currently available to it with regard to the disposal, sale, or development or other use of its assets in order to maximise income and opportunity.
- 1.2 The local government financing environment is evolving and the expectation is that the authority will no longer be reliant on central government funding from 2020. With this change the authority has been pursuing a number of income generation initiatives to achieve the corporate objective of becoming self-financing. The establishment of an LLP will provide another 'string to our bow'.
- 1.3 As part of our medium term financial planning the Council has been reviewing the approach to property and asset management and the LLP will give us access to additional expertise and a robust process designed to maximise the return from our portfolio.
- 1.4 Public Sector Plc (PSP) is a company formed in 2007 between the Winston Group, the William Pears Groups, and Best Value Strategies Ltd. PSP approaches local authorities with whom it seeks to partner. It works in partnership using a 'relationship first' approach, and requires no prior commitment or guarantee of work by the Council. PSP is already operating in 13 local authority areas and is negotiating additional localities in its current phase of development.
- 1.5 The relationship brings funding opportunities for the Council which are not traditionally available, and the LLP once formed will be required to demonstrate its value to the Council before projects are agreed for delivery. Under the partnership the Council has the assurance that it will receive the current market value of the property assets, whether this is in terms of revenue income from investment portfolios or capital receipts from the disposal of surplus property. Any additional revenue income or capital value generated by the LLP over and above this is shared between the partners.
- 1.6 Property initiatives through the LLP must be able to demonstrate added value over and above the Council's traditional approaches and any up-front investment is uniquely supported by private sector funding, removing any risk to taxpayers' money. Furthermore the LLP does not involve the commitment up front before the partnership can be established as would be the case with other public private partnership approaches such as Private Finance Initiative (PFI) projects and Local Asset Backed Vehicles (LABV).
- 1.7 The report reflects considerable detailed discussions held with a number of authorities who have entered into partnerships of this type and the details are set out in sections 2 and 5 of the report.

2 Background

- 2.1 Whilst Swale Borough Council has an established and effective Property Services Team, it is acknowledged that the Team does not contain the necessary level of capacity and expertise to fully maximise the potential value that could be gained from Council assets, and contribute to the delivery of Council priorities. To do this would often require the buying in of expensive consultancy support. In addition, the Council's current Property Asset Strategy is currently being updated and will reference the establishment of the LLP as a further option to support the objectives of the Plan.
- 2.2 Councils have long held land and property to achieve regeneration objectives or to facilitate development of their area. Like many councils, Swale owns a diverse portfolio of operational and non-operational assets e.g. shops and investment properties. However, changes in funding for local government has resulted in many Councils reviewing their approach to property and asset management, seeing their assets not simply as a means to deliver operational or development requirements, but also as an opportunity for income generation.
- 2.3 Through an introduction, officers initially met with PSP representatives in February 2016 to discuss their organisation, how it works, and how it could work in partnership with the Council to achieve joint objectives. This has since been followed up with further discussions with PSP and informally with Cabinet in June 2016, which have resulted in an invitation to utilise their LLP model to achieve property objectives. Over 40 councils have expressed an interest in the establishment of their own PSP Limited Liability Partnerships to access the £500m Relational Partnering Fund launched at the Municipal Journal Future Forum in March 2015.
- 2.4 PSP was established to offer Local Authorities funding in connection with their property portfolios. It is funded through a joint venture (JV) between the Winston and William Pears Groups established in 2007. Funding is made available through a unique partnership model jointly owned by the Council and PSP. The PSP model encompasses a step-by-step facilitation process, coupled with robust and flexible governance arrangements. This enables local authorities to ensure they have met all their statutory legal and financial obligations.
- 2.5 An LLP model of working is a jointly 'owned' partnership approach to the managing of properties across an area. The PSP LLP model has been in place since 2006/07, and currently has 13 Local Authorities involved in individual partnerships across England: Bolton MBC, Cheshire West and Chester, Daventry, Dorset CC, Dudley MBC, Isle of Wight DC, Scarborough BC, Southend-on Sea MBC, Southampton CC, South Staffordshire DC and Warwick DC). Two additional councils, Warrington and Lichfield, have also agreed in principle to pursue LLPs, though these are not yet up and running. Cannock Chase DC is the latest authority to enter into a LLP.

2.6 The purpose and benefits of a Limited Liability Partnership approach for Swale Borough Council are set out below.

<p>Outcomes:</p>	<ul style="list-style-type: none"> ▪ Generate new additional income through working on property-related projects to support the Council becoming financially self-reliant ▪ Access to significant levels of capital investment ▪ Resilience – complementing our existing resources by tapping into expertise and resources with a commercial edge ▪ Community Benefits i.e. realising improvement in the local economy ▪ Revenue savings and generating capital receipts ▪ Utilising and strengthening the skills of the Council’s staff
<p>Potential Benefits:</p>	<ul style="list-style-type: none"> ▪ Highly flexible and creative in operation ▪ Additional option open to the Council - this does not remove or compromise ability to consider other options ▪ Allows projects to evolve and be assessed before any commitment ▪ Baseline value remains with the Council - it is the added value that is shared ▪ Investment of private sector funds into projects of mutual benefit ▪ Support the Council in the development of its strategic review of the property portfolio, and facilitate the preparation of a new Council Asset Management Strategy and related action plan ▪ Realise revenue savings ▪ Establish new or enhanced revenue income streams ▪ Generate improved levels of capital receipts from projects ▪ Make more efficient use of their property assets ▪ De-risk property transactions ▪ Benefit from value created by the private sector

2.7 In essence, the LLP will extend the range of projects that the Council can be involved in which currently we are not able to progress due to the lack of appropriate expertise, finance, and officer capacity. Projects which fall into this category could include:

- future uses for the Beachfields site and other sites in and around Sheerness and other parts of the Borough;
- feasibility study for progressing Queenborough and Rushenden;

- potential delivery of retail, housing and leisure uses on identified sites; and
 - developing a portfolio of assets to generate an income stream (subject to consideration by Cabinet).
- 2.8 The implementation of a partnership approach will assist the Council to meet its future requirements from a financial, operational and strategic perspective. This will be achieved through maximising the commercial potential of current (and future) assets, and allowing a different management approach to be taken in regards to our land and property assets.
- 2.9 It is noted that any assets developed as part of this approach will be retained under the Council's ownership unless otherwise decided upon by the Council.

Governance and due diligence

- 2.10 A Limited Liability Partnership is a corporate entity in which two or more partners agree to go into partnership with a view to making a profit. LLPs are regulated by legislation in the same way as for a company, e.g. an LLP must file annual accounts and details of membership with Companies House. In an LLP the members have the benefit of limited liability: that is, protection from personal liability for any debts or claims made against the LLP, provided they act within the powers of the constitution of the LLP.
- 2.11 To enter into this proposed LLP it will be necessary to enter into binding legal agreements with PSPF which set out the terms of the partnership. The Members Agreement, and the more detailed Procedure Agreement which sits beneath it, commit both parties to a number of obligations in terms of establishing management and decision-making structures, but it does not commit the Council to make any financial commitment to the LLP. The details of the proposed agreements are set out in the **exempt Appendices I and II** which contain the latest example agreements.
- 2.12 The proposed term of the partnership is **ten years**, but the agreement enables either partner to terminate the partnership at any time with 12 months' notice. The length of the term reflects the medium term nature of any involvement with property matters, the nature of the relationship partnership, the rigorous process followed to establish viable propositions for consideration by the authority and that the LLP may lay dormant for a period depending on projects identified.
- 2.13 Entering into the LLP does not give rise to any EU procurement implications since there is no obligation to undertake development works to the Council's assets, and therefore no works or services contracts are being awarded through establishing the LLP. In relation to specific projects that the LLP may take forward, every potential asset disposal or development will need to be assessed individually to ensure legal compliance.

Infrastructure

- 2.14 The inception of the LLP model will include the creation of an LLP Partnership Board, which will consist of equal representation of Councillors and PSPF nominees. One implication of this is that there will need to be equal voting by both parties for a proposal to proceed, and without this any given project would not proceed.
- 2.15 For the first six months, the Chairperson would be appointed from the Council representation, and the Vice Chairman from the PSPF nominees. Thereafter, the right to appoint the Chairperson will rotate between the parties on a six monthly basis, There is no casting vote for the Chairperson. Representatives on the LLP Board will collectively make decisions in respect of asset related projects. The Board is anticipated to meet quarterly although the latest example of the members agreement provides for “ not less than twice per calendar year”.
- 2.16 Alongside the Partnership Board, an Operational Board of officers will be created. This will have an equal split of representation from the Council and PSP. The total number will need to be set as part of the final contractual arrangements, but is typically between three and five representatives from each party. It is proposed that this Operational Board meets initially monthly, then will move to a bi-monthly meeting.
- 2.17 Prior to any projects being presented to the LLP Partnership Board, a report will be presented to Cabinet on proposed projects. This report will be written by the Operational Board of officers. It will follow the standard four stage LLP process, which involves:
- a high level review of the opportunity;
 - if approved, then a detailed business plan is developed for the project;
 - the plan is validated; and
 - the Operational Board then makes recommendations to the Members Board (in parallel with Cabinet approval) for agreement to move to project delivery.
- (NB. Any project coming forward will have to demonstrate ‘added value’ over and above that which the traditional approaches followed by the Council could achieve.)**
- 2.18 Once the proposal/project has been approved by Cabinet and signed-off by the LLP Partnership Board, a project sponsor will be nominated to take the project forward, and an agreement on the reporting of progress back to Members will be established.

3 Proposals

- 3.1 Following initial introductions (see para 2.3) the Council has investigated the feasibility and value of establishing an LLP joint venture with PSPF, and they have in turn carried out a review of property opportunities with the Council. On this basis both parties believe there to be benefit in forming an LLP.
- 3.2 The purpose of the LLP would be to facilitate property related projects for the Council, making use of private sector funding, resources and skills paid for by the LLP, in addition to those available through the Council. The Council can use the strategic partnership created to achieve a wide-range of property opportunities for the Council, including regeneration, redevelopment, property portfolio rationalisation, and property related investment.
- 3.3 Having each contributed initial capital of £1, the Council and PSPF will have an equal stake in the LLP, together with equal voting rights. The LLP's main purpose would be to:
- invest private sector funds in projects of mutual benefit;
 - facilitate regeneration projects;
 - provide potential capital receipts and/or revenue income streams to the Council from the development of surplus land and buildings; and
 - support the Council in the development of its strategic review of the property portfolio, including:
 - the delivery of a property portfolio strategy for the Council involving, where appropriate, a partnership approach to the management of the Council's property assets; and
 - the acquisition of private property or land by LLP to facilitate development, and potentially to develop income streams.
- 3.4 Projects are developed by the LLP using PSPF resources, but the final decision as to whether to proceed with a project sits with the Council. The profit share on each project will vary depending on the resources committed to the project, and PSPF guarantee at least the income currently derived from an asset, with the profit share element relating only to the amount above this level. The option might also be available to the Council to put additional resources into a project in order to achieve a larger percentage of the profit share.
- 3.5 In order to ensure that the land and property portfolio of the Council is maximised into the future, there needs to be a review of these assets. The utilisation of an LLP model and approach would facilitate this, and allow the Council a large amount of flexibility to be able to manage the portfolio differently into the future.
- 3.6 The LLP between PSPF and the Council is an additional option for maximising the value from property assets, and does not remove the Council's ability to consider alternative approaches and partnerships.

Recommendations

3.7 It is therefore recommended that:

- (i) the creation of a limited liability partnership (LLP) between the Council and Public Sector Plc Facilitating Limited (PSPF) be approved;
- (ii) the final terms of the necessary agreements be agreed by the Director of Corporate Services, the Head of Finance, and the Head of Legal, in consultation with the Cabinet Member for Finance and Performance, provided that all the due diligence checks have been carried out successfully;
- (iii) it be noted the LLP arrangement requires the establishment of an LLP Members Board with equal Council and PSPF representation, supported by an Operations Board for officers;
- (iv) the Council representation on these Boards be agreed by the Director of Corporate Services following consultation with the Leader, once the format of these boards is established as part of the final terms of the agreement; and that the Council representation on the LLP Board will be from members of the Cabinet;
- (v) insurance and indemnity be provided for Member and Officer representatives of the LLP;
- (vi) it be noted that the LLP will be an additional option for the Council to use to deal with its property portfolio; and
- (vii) it be noted that further reports will be submitted to Cabinet in respect of relevant proposals to pursue property related projects through the LLP.

4 Alternative Options

4.1 There are a number of options that could be utilised to manage the Council's current assets.

4.2 One option would be to continue to manage and develop the assets ourselves. However, it is acknowledged that the Council's Property Team does not contain the necessary level of capacity and expertise to fully maximise the potential value that could be gained from Council assets, and contribute to the delivery of Council priorities. Recruiting additional staff to add capacity and capability to the Team is not recommended, as such staff are generally not available within the Council's current pay structures. Similarly, buying in consultancy support would be expensive.

4.3 An alternative would be a joint venture with a private sector partner. Although there are many different models for such a partnership, these are predominantly 'asset backed' vehicles, which involve the Council placing one or more assets into the partnership for joint development. As such, these assets are immediately put at risk, and beyond the control of the Council.

- 4.4 In contrast, by entering into the LLP with PSPF, the Council will not be under any obligation to put any specific property related projects into the LLP. The key safeguard is that if better value can be delivered by a normal market disposal, or by any other means, then the project would not go through the LLP and would progress as appropriate through an alternative route.
- 4.5 Therefore, the approach and utilisation of the PSP LLP model offers Swale BC the most appropriate method to allow the Council to proactively manage its current land and property portfolio with maximum flexibility, as the assets remain within the ownership of the Council.

5 Consultation Undertaken or Proposed

5.1 In order to understand the model more and undertake initial research, contact has been made with the following authorities who have entered into a LLP: South Staffordshire, Southend, Warwick, Dudley and Daventry.

5.2 The key messages were:

- critical first stage is the setting up the LLP as it establishes the principle of the relationship partnership. It is this which is critical to the success of the LLP, and it is necessary to invest significant time and effort to establish the LLP relationships and continue to reinforce them;
- the LLP is on a no commitment basis, and as such it is another tool in the box. Any intention to use it is then based on projects identified through a well-developed project management methodology. It does not remove the ability to consider approaches;
- the supporting agreements are well developed and provide a robust governance framework;
- the governance arrangements are very clear over respective roles of the Partnership Board (strategic and political emphasis) and the Operations Board (undertaking the iterative process of identifying proposals);
- the model is flexible to meet any requirements for 'double locking' of decisions through the council's formal decision making processes;
- the LLP model aligns closely with the desire to generate income through working on property related projects to support a strategic response to becoming more self-financing;
- PSP bring to the table the commercial perspective and mind set of the private sector, together with their market intelligence and a track record of delivering projects through this approach;
- being able to tap into expertise/resources with a commercial edge results in a more holistic approach to assets than the more 'traditional' local authority approach;
- working together has the potential to upskill staff to act more commercially;

- the baseline value of the asset remains with the Council - it is the added value that is shared;
- take time to identify the projects to be put through the partnership. There is a well-established group of authorities to help with learning and support;
- PSP have a highly flexible/creative approach, which allows projects to evolve and to be assessed before any commitment is made;
- the model provides another potential source of significant levels of capital investment;
- the model's project management approach has recently been refreshed to reflect the reporting requirements of the authorities and the need for information and excellent communications; and
- there is nothing to lose by this approach, and it helps ensure a mixed economy of options to supplement other approaches.

6 Implications

Issue	Implications
Corporate Plan	This proposal directly supports the 'Council to be proud of' priority, and in particular the need to be self-financing and to secure best value from the Council's resources.
Financial, Resource and Property	<p>The aim of the LLP is to generate value using Council assets which is above and beyond that which the Council would be able to generate itself. The PSP model is unique as it seeks to share these net development returns 50:50 between the public and private sector partners - the basic premise of sharing the net value created is central to the proposition. This could be achieved by, for example, the LLP acquiring assets and improving them for the best use. It should be noted that the Council's existing asset value will be protected, and it is only the value that is achieved above this figure that will be shared, after the deduction of the associated costs.</p> <p>The full financial implications from the proposed partnership with PSPF is difficult to fully calculate at this time, as any future profits are linked to individual projects and the potential development opportunities for each asset under consideration. Other authorities indicate that through a partnership approach they have received best consideration, though the percentage increase will vary per project. It is noted at this time that the costs of establishing the LLP are met entirely by PSPF, and so other than the initial £1 capital contribution and officer time with regards to the inception of the Partnership and Operational Boards, there is no other financial commitment from the Council.</p> <p>Once the partnership is in place, it is proposed that a rolling reporting process is undertaken to report back to Cabinet the progress of the partnership, which will include all financial details and performance.</p>

<p>Legal and Statutory</p>	<p>The statutory powers to undertake the proposals set out in the report are provided by section 1 of the Localism Act 2011 (the general power of competence) and section 111 of the Local Government Act, 1972 .</p> <p>The establishment of the LLP is not a transaction which is caught by the Public Contract Regulations 2015 as being either a contract for goods, services, works or, under the Concessions Directive 2014 as a concession. for the reasons explained in paragraph 2.13 of the report.</p> <p>The Council’s insurance and indemnity arrangements will need to be extended to cover any actions or inaction of Member and Officer representatives of the LLP pursuant to section 39 of the Local Government (Miscellaneous Provisions) Act 1976, section 265 of the Public Health Act 1875, section 101 of the Local Government Act 2000 and the Local Authorities (Indemnities for Members and Officers) Order 2004.</p> <p>The Head of Legal has reviewed the example agreements and has confirmed he is satisfied with their content following due diligence with authorities which have established a PSP LLP.</p> <p>The legal authority for any specific proposals to pursue property related projects through the LLP will be dealt with in the appropriate Cabinet report.</p>
<p>Crime and Disorder</p>	<p>None specific to this report.</p>
<p>Sustainability</p>	<p>None specific to this report.</p>
<p>Health and Wellbeing</p>	<p>None specific to this report.</p>
<p>Risk Management and Health and Safety</p>	<p>There is no financial risk attached to the establishment of the LLP for the Council, other than officer time being lost should it not come to fruition. Individual projects will be risk assessed on their own merits.</p> <p>The LLP model has been risk assessed through exploration of the experience of the existing LLPs, with the following factors considered:</p> <ul style="list-style-type: none"> ▪ the costs of establishing the partnership and the facilitation of property projects will be met by the private sector partner; ▪ the establishment of the LLP will provide additional capacity, resources and skills to the Council, which will be used to support the delivery of our Asset Management Plan; ▪ the LLP can manage projects on behalf of the Council without the risk of up-front investment by the Council; and ▪ there is no requirement on the Council to use the LLP once established.

Equality and Diversity	None specific to this report.
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7 Appendices

7.1 The following **exempt** documents are to be published with this report and form part of the report:

- Appendix I: Members Agreement
- Appendix II: Procedure Agreement

8 Background Papers

8.1 PSP Public Sector Plc website: <http://www.publicsectorplc.com>