

CABINET

2 FEBRUARY 2021

MEDWAY DEVELOPMENT COMPANY LTD UPDATE

Portfolio Holders: Councillor Howard Doe, Deputy Leader and Portfolio Holder for Housing and Community Services

Councillor Adrian Gulvin, Portfolio Holder for Resources

Report from/Author: Perry Holmes, Chief Legal Officer

Summary

This report updates Cabinet as shareholder, about the first six residential developments being progressed by the Medway Development Company Ltd (MDC) and the Getting Building Fund project at Britton Farm, Gillingham. It also seeks authority to loan funds to the newly created subsidiary Medway Development Company (Land and Projects) Limited (MDC(L&P)) to enable the company to purchase land from the Council and advises Cabinet about the level of financial risk of the overall venture.

1. Budget and Policy Framework

- 1.1 The responsibility for managing the Council's land is a matter for Cabinet as is the provision and management of housing.
- 1.2 Medway Council is the sole shareholder of MDC and MDC(L&P) with that role being undertaken by Cabinet.

2. Background

- 2.1 This is the fourth update report to the Cabinet as shareholder of MDC, with previous reports received on 10 April 2018, 24 September 2019 and 4 September 2020 Cabinet meetings. A report was also presented about the Getting Building Fund to the 15 December 2020 Cabinet meeting. A recent Audit review of MDC recommended six monthly reporting to the Cabinet and so for 2021 this will be the first of two update reports.
- 2.2 The MDC Board, comprising of two Council appointed Directors and two non-executive Directors, has met regularly to oversee the progress

of projects in line with the company's Business Plan which was approved by Cabinet in April 2018.

- 2.3 Two subsidiaries are also now set up Medway Development Company (PRS) Limited chaired by Councillor Doe and Medway Development Company (Land and Property) Limited chaired by Councillor Gulvin.

3. Update on the first four sites that have achieved planning permission

Waterfront Chatham

- 3.1 Since planning permission was granted on 20 March 2019 for the development of 175 apartments on this site, planning conditions have been discharged including archaeological work. Hoarding has been added to the site and a marketing design chosen. Piling works have now started on site.
- 3.2 The computer-generated image below shows the significant public realm works that will be delivered as part of this scheme, which also includes commercial space to make the most of riverside location



Fig1. A CGI of Chatham Waterfront residential development with the public realm works proposed.

Britton Farm

- 3.3 A legal agreement linked to the Waterfront scheme, will ensure the delivery of 44 affordable residential apartments to be built on the former loading bay area of this previous supermarket site. This prominent development will form part of £9 million investment in Gillingham, at this strategic gateway site, close to the High Street. The Council is in advanced conversations with a housing provider to acquire the units, once constructed, and further details will be provided to Cabinet once a legal agreement has been concluded.

- 3.4 Part of the £9m investment in Gillingham is because of a successful bid to the Getting Building Fund for £1.99 million. This will enable conversion of the first floor of the storage area at the rear of the former store to a Skills and Employment Hub. There will also be a significant intervention in the public realm area of the shopping mall.
- 3.5 The public realm designs are being finalised in advance of instructing a contractor to commence the works. The designs for the Learning and Skills Hub are also at an advanced stage with tenders for that element of the work due to be published on the Kent Business Portal shortly.



Fig2. CGI of Britton Farm residential development

Garrison Point

- 3.6 The scheme to deliver 115 apartments at the former Whiffens Avenue car park with 9 shared ownership units aimed at keyworkers on site and 20 units of affordable rented provided at White Road (see below) is making good progress.
- 3.7 Piling has been completed and a crane is now on site to enable the construction of the reinforced concrete frame, which will form the structure of the building pictured below.



Fig3. CGI of Garrison Point residential development



Fig4. Foundation works at Garrison Point January 2021.



Fig5. Foundation works at Garrison Point January 2021.

White Road

- 3.8 The first housing development to be completed by MDC is the scheme for 20 homes, built by Tophat, a modular housing provider, on the area of land behind White Road Community Centre. Practical completion took place the week commencing 18 January 2021.
- 3.9 They have high levels of energy efficiency, low running costs and exceed the National Space standard, delivering high quality affordable rented accommodation. Our partners MHS, who have acquired the completed homes are in the process of housing the scheme's first tenants.
- 3.10 The project has been completed broadly in line with the original budget, subject to the final account being agreed. The impact of the Covid-19 pandemic and the social distancing requirements at the modular housing factory, meant a longer than anticipated completion of the scheme.



Fig 6. Photo of the completed White Road residential scheme January 2021.

4. Update on the fifth scheme - Mountbatten House and Upper Mount
 - 4.1 Good progress has continued to be made on work to obtain planning permission for a residential led scheme of 164 units. Architects Lyalls, appointed after a design competition, have presented to Members initial proposals for the scheme with 108 homes proposed in the current Mountbatten House and 56 in an adjacent new extension. The new extension will include 17 shared ownership units aimed at key workers and 24 new units proposed to be produced offsite at the under-used Council car park site at Upper Mount, Chatham. Resident and public parking will be provided on the Upper Mount site, with consideration being given to providing accommodation for care leavers and some supported living for adults.
 - 4.2 Submission of the planning application for the two schemes took place in December 2020 with an expected Planning Committee date in March 2021. If successful, the compulsory purchase process for Mountbatten House can then be concluded.

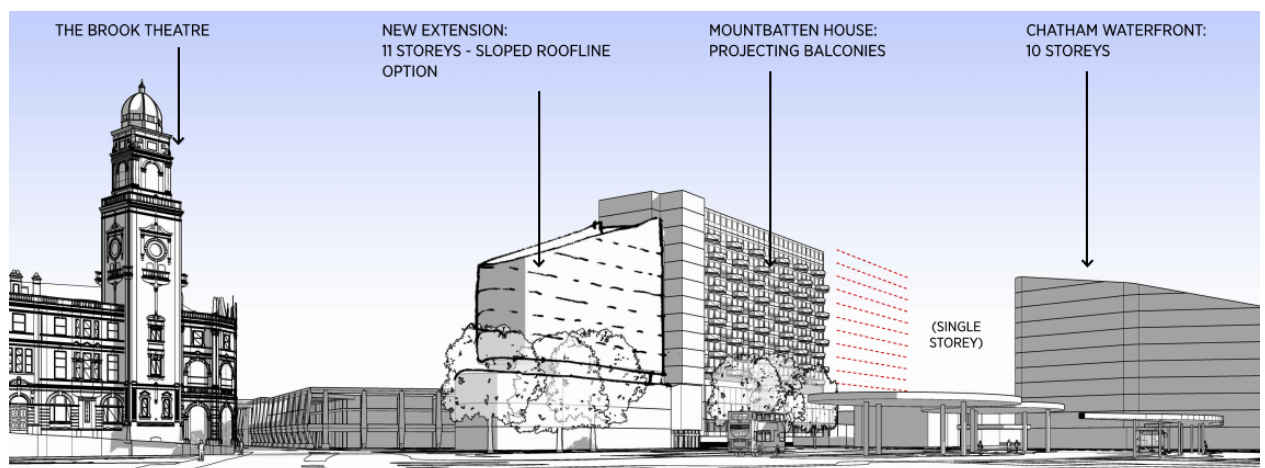


Fig7. Early massing image of the residential led scheme at Mountbatten House.



Fig 8. A CGI of the proposal at Upper Mount Car Park

5 Update on the sixth scheme – Queen Street affordable units

- 5.1 MDC were commissioned to deliver the affordable scheme of 45 homes on Queen Street linked to a larger scheme on the Council's car park site. Architects have been appointed by MDC and the planning application for the affordable scheme is currently being progressed.

6. Advice and Analysis

- 6.1 The MDC Board regularly reviews the Business Plan and progress against it. This is then reported to the Cabinet on what will now be a bi-annual basis. The Board has noted good progress being made against the first six development sites and the Getting Building Fund scheme at Britton Farm. The Board has considered the impact of the Covid-19 pandemic on the Company's development programme and Business Plan. It has suggested amendments that could be made to units to enable home working and reflected on property prices in the area.
- 6.2 As the developments have moved to the construction phase it is important for Cabinet, as shareholder, and the Audit Committee as appropriate, to maintain a close eye on risk levels and for Cabinet to review progress against the Business Plan.
- 6.3 In line with delegations agreed by Cabinet, financial viability assessments have been carried out at three stages in the development of the four schemes with planning permission. These have been approved by the MDC Board. They have then been scrutinised and approved by the Chief Finance Officer and the Leader prior to the release of any funding. This staged process is in line with the Cabinet delegation (paragraph 6.25 (second bullet point) of the Employee Delegation Scheme refers). This ensures that investment decisions are being tested rigorously before approval.
- 6.4 The Cabinet relied in establishing Medway Development Company on a Business Case for creating a housing company in September 2017. It has since agreed to create a private rental subsidiary (Medway Development Company (PRS) Limited), to allow the option, in the right circumstances, for units to be rented to customers in the private market.
- 6.5 The most recent subsidiary approved is Medway Development Company (Land and Projects) Limited. This followed advice from Jones Laing Lassel (JLL) and from the Council's Legal team about a simplified ownership and sale of units once complete. This report asks for a specific delegation for loans to be provided to the Land and Property subsidiary to allow the acquisition of assets from the Council for development. This provides a capital receipt to the Council and an income, with a competitive subsidy control (formerly known as state aid) compliant loan.

- 6.6 Projections for capital receipts based on the market sale of built units show that MDC is on course to exceed the projections in the original 2017 Business Case, with capital receipts of £7.1m over the next 3 years and up to £17.1m over the next 5 years. Those projections would differ if private rented schemes were pursued on any of the sites, reducing capital receipts but providing a revenue income. Land sale receipts for the Waterfront and Garrison Point sites will be received by the Council from the Land and Property subsidiary. This will need to be reflected in the Council's Medium Term Financial Strategy.
- 6.7 The Council's Legal Team have sought specialist legal advice to ensure that the Council has an interest in the assets that are being created by the Company or its subsidiaries. This protects the Council's investment and is one of the mitigations for the risks associated with this venture.

7. Corporate Governance

- 7.1 The Cabinet can be assured of the appropriate measures of corporate governance being taken by the company from the following:
- The Chief Legal Officer has observed all MDC Board meetings and liaised regularly with the Head of Operations on the various developments being progressed.
 - MDC has appointed external auditors who have completed the first filing of accounts.
 - All MDC Board meetings have been quorate and all significant company decisions have been approved by the MDC Board.
 - Decisions by the MDC Board not to proceed with projects, such as the Hook Meadow scheme have been referred back to Cabinet for approval.
 - Procurement processes which mirror those used by the Council have been followed by the company with support and advice from the Category Management team at the Council.
 - Legal advice has been provided by the Council's Legal team on contractual matters and where appropriate specialist legal advice has been commissioned by the team.
 - All spend has been reported for scrutiny and approval by the MDC Board and signed off by the Chairman. Details of the spend to date is set out in Exempt Appendix 1.
 - Decisions to amend the way the Company operates have been referred back to the Council as shareholder, with the Cabinet asked to agree such changes, in accordance with the decisions reserved to the shareholder.

8. Financial Risk Environment

- 8.1 On 5 January 2021, the Audit Committee asked for regular updates providing details of the value and risk associated with the developments being undertaken by MDC.

8.2 The detailed financial information on the first four schemes that have passed the planning permission stage is set out in in Exempt Appendix 2 in the form of a cashflow.

9. Risk management

Risk	Description	Action to avoid or mitigate risk
Sales risk or market failure due to the Covid-19 pandemic	There is another recession in the UK which causes a drop in residential values, affecting the returns expected to the Council. A no deal Brexit impacts on the supply of construction goods or materials.	The Business Case which Cabinet considered included increased costs and decreased sales values. The Business Plan enables a phased approach to delivery. There remains latent demand for new properties in Medway. The private rental subsidiary allows flexibility of offer. JLL have considered the Covid-19 impacts and advised the company.
Delays to construction due to Covid-19 social distancing measures	Delay in recovering the investment made by the shareholder	The initial construction phases (which is the stage the first three projects are at) are less impacted by the Covid-19 restrictions. Contractors are required to ensure that Covid-19 measures are taken on site but that progress is made.
Tenants exercise their right to buy of MDC rental properties	Financial risk to the Council as a potential lender, lack of investment return and increased borrowing costs.	The company structure will include a subsidiary being a fully commercial entity preventing the possibility of right to buy.

Overall loss of tax efficiencies and cost savings by operating a private rental subsidiary	Corporation tax is payable by commercial entities on their activity	Tax advice has been taken by the Company and the Council. A revenue return to the Council is possible from the commercial loans made to the subsidiaries.
No legal interest in the assets on site if there was a loan default and enforcement action was needed.	The Council needs to have a legal interest in the assets on each development as they are built.	Take specialist legal advice to create a floating charge in the assets to protect the Council's investment both in MDC and the Land and Property subsidiary.
Impact on capital receipts anticipated	A diversified model would mean some units generating a revenue income rather than a one off capital receipt	Financial viability assessments will be carried out for each project offering a comparison of the financial return to the Council.

10. Financial Implications

- 10.1 The borrowing incurred to date from the £120 million agreed by Cabinet and Council, required to fund the company's initial five-year programme, is set out in Exempt Appendix 1.
- 10.2 The level of financial risk and reward is set out in the cashflow at Exempt Appendix 2.
- 10.2 Cabinet delegated authority to the Chief Finance Officer, in consultation with the Leader, to agree the business case for each site and to release funding for the development of each site subject to financial due diligence and the availability of capital funding in three distinct stages.
- 10.3 The sale of land to the Company will be at best market consideration. Loans to the Land and Projects subsidiary will be at commercial rates.

11. Legal Implications

- 11.1 The legal implications for the Council are set out in the body of the report. Any loans to MDC must be at commercial borrowing rates to avoid subsidy control (formerly known as state aid).

11.2 The Cabinet as Shareholder needs to be satisfied that its investment is being appropriately used and that the projections suggested in the original Business Case it approved, are now reflected in the updated Business Plan and are on course for delivery.

12. Recommendations

12.1 That the Cabinet notes the updates to progress on the six residential schemes, and the Getting Building Fund project, in particular the successful completion of the White Road scheme of 20 new homes.

12.2 That the Cabinet notes the investment made by Medway Development Company Ltd to date as set out in Exempt Appendix 1 to the report.

12.3 That the Cabinet notes the level of financial risk and reward environment in the cashflow at Exempt Appendix 2.

12.4 That the Cabinet agrees to provide loans at commercial rates to Medway Development Company (Land and Projects) Limited for the Waterfront Chatham and Garrison Point developments.

12.5 That the Cabinet agrees to delegate authority to the Chief Legal Officer in consultation with the Leader of the Council to agree and complete the necessary property transfers, loan agreements and any other legal documentation to provide the sites and funding for the Waterfront Chatham and Garrison Point developments to Medway Development Company (Land and Projects) Limited.

13. Suggested Reasons for Decision

13.1 To continue the regeneration of Chatham as Medway's "city centre" with the provision of high quality riverside housing, public realm and an improved retail offer.

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Appendices

Exempt Appendix 1 – Details of funding to date for the first five MDC projects

Exempt Appendix 2 – A cashflow for Medway Development Company.

Background Papers

None.