Medway Council
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Cabinet

23 September 2025

Rochester Riverside Deed of Variation

Portfolio Holder:	Councillor Simon Curry, Portfolio Holder for Climate Change and Strategic Regeneration
	Councillor Harinder Mahil Portfolio Holder for Economic & Social Regeneration & Inward Investment
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Summary

Medway Council delivers Rochester Riverside as a Joint Venture Partnership with Homes England (HE), Countryside/Vistry and Hyde. Rochester Riverside which is a mixed tenure regeneration scheme has been a successful scheme so far, however unanticipated costs were incurred against the school build when the original firm went into insolvency. Whilst construction risk is held by Vistry, it is not clear who is liable for these specific cost over runs and therefore the Joint Venture (JV) has identified a solution to mitigate the impact to all parties and not reduce the gross land payments to Medway Council and HE. The scale of these changes will require a deed of variation to the Development Agreement if agreed by Cabinet.

1. Recommendations

1.1. Cabinet is requested to agree to the vary the land payments to the new payment principles of 20% - 1 year after drawdown; 50% - at mid point of sales programme; 30% - Final month of sales programme

1.2. That Cabinet agree the Heads of Terms within Exempt Appendix 1 and finalisation of them and amendments to the Development Agreement are delegated to the Director of Place in consultation with the Portfolio Holder for Climate Change and Strategic Regeneration and the Portfolio Holder for Economic and Social Regeneration and Inward Investment.

2. Suggested reasons for decision(s)

2.1. This matter has been ongoing for some time and a resolution is now required in order for the development of Rochester Riverside to continue. The proposed reprofiling of payments means no risk of capital cost to the council or costs associated with litigation. The gross amount remains the same and enables Vistry and Hyde to absorb the school costs that were incurred by matters outside of all parties' control.

3. Budget and policy framework

3.1. The overarching plan for Rochester Riverside is contained within the Rochester Riverside masterplan and development brief - September 2014 which is a Supplementary Planning Document. Reserved matters for each phase are submitted to the Local Planning Authority.

3.2. This proposals within this report sit within the council's policy and budget framework and relate to changes of timings for the land receipts rather than any changes to the Joint Venture or the outputs from Rochester Riverside.

4. Background

4.1. Medway Council delivers Rochester Riverside as a Joint Venture Partnership with Homes England, Countryside/Vistry and Hyde. Rochester Riverside which is a mixed tenure regeneration scheme has outline permission to deliver 1,400 properties across the 50-acre site as well as a primary school, new 2.5 km public riverside walkway and nursery, as well as a hotel, commercial units, green open space and landscaping. The site has won multiple awards such as 2020 Housing Design Awards. The land to each of the 7 phases is transferred to the developer once a Reserved Matters planning application is approved for each phase - the land transfer value is based on the agreed value but is subject to build costs assumed and S106 contributions required. The land receipt is shared between both landowners to reflect the extend of ownership and historic investment in remediation of the former brownfield site.

4.2. Phase 7 is currently approaching completion. 502 homes have already been delivered across the earlier phases. In March 2025 phases 4 & 5 received reserved matters planning permission.

4.3. The delivery of the primary school was undertaken as part of phase 3. The school was originally intended to be a 1Form Entry (FE) but was increased to 2FE with the cost uplift being funded by Department for Education (DfE). However, the original appointed contractor (Mid Group) went into insolvency in June 2022 during the build leaving a partially built school. The joint venture stepped in to ensure the school was completed as close to the deadline as possible. Vistry have raised the issue of the detrimental impact to the profitability of phase 3 and the wider project which due to the school overspends made nil profit.

4.4. Discussions have been held through 2024 and 2025 regarding the responsibility and liability for these costs. The matter is not clear cut due to the following points:

- The Development Agreement and Section 106 Agreement contained a cap on the school construction costs.

- It is not stated in the Development Agreement or Section 106 Agreement what steps should be taken if the cap level is reached or who is responsible for payment of costs above the cap.

- In the 2018 Deed of Variation (DOV) the Benchmark Financial Model is modified with the effect that the minimum land value is reduced by any increase in the Section 106 costs above the base figure

- A further agreement was entered into between the Council, DfE and Countryside for the extension of the school to two form entry and an additional cost of £1,754,127 agreed.

4.5. Rather than enter into a long litigation and the potential capital cost of c.£6.6m, the JV have worked proactively together to find an alternative solution. It is proposed to rephase the final 3 stages of repayments, allowing the scheme to come forward in line with the original contract dates but with later capital receipts for both the council and Homes England (HE). If agreed then an updated deed of variation to the Development Agreement will make clear that both the council and HE have no liability regarding the school overspend costs.

4.6. For phases 4 (excluding the already delivered 101 units already delivered in the retirement village), 5 and 6 the proposed rephasing on payments follows the below principles:

20% - 1 year after drawdown
50% - at mid point of sales programme
30% - Final month of sales programme
These principles also apply to the payments due to HE.

5. Options

5.1. Option 1 - Do nothing. This is not a viable option as if a solution is not identified then it is likely that legal action will be taken by Vistry. It will also mean a significant delay to the delivery of the remaining 3 phases as development cannot progress until this matter is resolved as it forms part of the price test for land transfer. The complications with resolving this dispute are outlined in the background section of this report.

5.2. Option 2 – HE and Medway pay the disputed capital sum. This is not recommended as it would have a significant impact on the council’s finances and HE would not support this option so there is a risk the council would need to cover the full c£6.6M.

5.3. Option 3 - Agree to the rephasing of the land payments to enable the final 3 phases to be delivered and to reduce the risk to the council of incurring the school cost overrun or an expensive legal dispute. Whilst there could be an impact to treasury expenses due to later capital receipts these are far smaller than the capital sum. The Head of Terms (HoTs) for the Deed of Variation to enable implementation of these changes are agreed and finalisation of them delegated to the Director of Place in consultation with the Portfolio Holder for Climate Change and Strategic Regeneration and the Portfolio Holder for Economic and Social Regeneration and Inward Investment. This is the recommended option.

6. Advice and analysis

6.1. Option 3 is the recommended option as this resolves the situation which occurred due to no fault of any of the JV partnership and enables the development to continue to be delivered. The financial impact is minimised to the Cabinet with the only impact being delayed funding for the borrowing repayments.

7. Risk management

Risk	Description	Action to avoid or mitigate risk	Risk rating
Phase 6 payments are further deferred	The new payment profile is linked to Vistry's sales programme and so market changes could result in it being pushed back	Long stop date to be included to prevent the payments being pushed too far back. Payment profile is based on up to date sales programme	CII
All parties do not agree to the reprofiling	To implement the change all JV parties need to agree and put the changes through their respective governance processes	The proposed changes have been developed by all parties and have been through multiple iterations to identify the one that works best for everyone	DII

For risk rating, please refer to the following table (please **retain** table in final report):

Likelihood	**Impact:**
A Very likely B Likely C Unlikely D Rare	I Catastrophic II Major III Moderate IV Minor

8. Consultation

8.1. No specific consultation has been undertaken on the above proposals, however both the outline and reserved matters have been consulted upon in accordance with planning regulations.

9. Climate change implications

9.1. The Council declared a climate change emergency in April 2019 - item 1038D refers, and has set a target for Medway to become carbon neutral by 2050.

9.2. These changes are financial only and do not have climate change implications on their own, however the Rochester Riverside designs include many features that have a positive impact. By continuing with the redevelopment these can be realised.

10. Financial implications

10.1. The gross receipt is unaffected by this variation, the impact is on the date by which the council will receive the funds. There could be a potential impact to Treasury expenses in terms of borrowing, however this is considered to be minimal compared to incurring costs now. Please see exempt Appendix 2 for the calculations.

11. Legal implications

11.1. A deed of variation will need to be agreed to incorporate these changes into the development agreement. The proposed heads of terms are contained within exempt Appendix 1.

Lead officer contact

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Appendices

Appendix 1 – Heads of Terms for deed of variation to the development agreement (exempt)

Appendix 2 – New payment profile and calculations of impact to treasury (exempt)

Background papers

Rochester Riverside masterplan and development brief - September 2014