

Maidstone Property Holdings Ltd - Governance

Final Decision-Maker	Council
Lead Head of Service	Mark Green, Director of Finance and Business Improvement
Lead Officer and Report Author	Mark Green, Director of Finance and Business Improvement
Classification	Public
Wards affected	All

Executive Summary

This report updates the Committee on the outcomes of a review of the governance arrangements at Maidstone Property Holdings Limited. This review has resulted in confirmation of the Company's future aims and objectives, an amended draft Business Plan and various other company documents, clarity on the Service Agreement required and clarity on the different roles of the Company and the Council. Policy and Resources Committee has agreed to recommend to Council a number of measures to implement the findings of the governance review.

This report makes the following recommendations to this Committee:

1. That the report is noted.

Timetable

Meeting	Date
Audit, Governance and Standards Committee	18 November 2019

Maidstone Property Holdings Ltd - Governance

1. CROSS-CUTTING ISSUES AND IMPLICATIONS

Issue	Implications	Sign-off
Impact on Corporate Priorities	<p>The four Strategic Plan objectives are:</p> <ul style="list-style-type: none"> • Embracing Growth and Enabling Infrastructure • Safe, Clean and Green • Homes and Communities • A Thriving Place <p>Maidstone Property Holdings Limited supports priorities 2, 3 and 4 as it improves and increases the provision of homes for rent in the borough and provides a quality letting management service.</p>	Director of Finance and Business Improvement
Cross Cutting Objectives	<p>The four cross-cutting objectives are:</p> <ul style="list-style-type: none"> • Heritage is Respected • Health Inequalities are Addressed and Reduced • Deprivation is Reduced and Social Mobility is Improved • Biodiversity and Environmental Sustainability is respected <p>Through the provision of high quality rented accommodation, which is well managed, the recommendations support the achievement of all of the objectives.</p>	Director of Finance and Business Improvement
Risk Management	Refer to section 7 of the report.	Director of Finance and Business Improvement
Financial	<p>The property acquired by the Council under its housing development and regeneration investment plan is leased to Maidstone Property Holdings Limited on market terms and then operated by the company. The income and expenditure associated with the Company is therefore factored into investment appraisals for housing development and regeneration. Regular reports on the company are presented to Policy and Resources Committee as part of the quarterly financial monitoring report.</p>	Director of Finance and Business Improvement
Staffing	Maidstone Property Holdings Limited is managed	Director of

	through a combination of our current staffing and external support through Sibley Pares, who have been procured to provide property management support.	Finance and Business Improvement
Legal	It is accepted law through various legislation, including s1 of the Localism Act that councils can form and operate local authority wholly owned trading and commercial companies. Many councils now have at least one commercial company, usually for housing and property.	Principal Solicitor, Corporate Governance
Privacy and Data Protection	As a wholly Council owned Maidstone Property Holdings Limited is subject to the requirements of FOI and data protection and account has been taken of these requirements in the drafting of the company documents	Director of Finance and Business Improvement
Equalities	The recommendations do not propose a change in service therefore will not require an equalities impact assessment	Director of Finance and Business Improvement
Public Health	In providing high quality rental housing through the operation of the company, which is well managed, the Council intends to have a positive impact on the health, security and well-being of the population of the borough.	Director of Finance and Business Improvement
Crime and Disorder	There is unlikely to be any impact in this area and, if anything, the impact will be positive.	Director of Finance and Business Improvement
Procurement	As a non-Teckal company, the company will have to compete in the open market in future to provide additional services – if any – to the council. The company is a commercial outward facing company and is not intended to be subject to the public procurement rules when it is acting as a purchaser.	Director of Finance and Business Improvement

2. INTRODUCTION AND BACKGROUND

- 2.1 In September 2016, the Council incorporated a wholly owned company limited by shares called Maidstone Property Holdings Limited (“the Company”). The Company was established to hold property leased to it by the Council and to undertake other property development/management activities.
- 2.2 In December 2017, the Company’s structure was subject to a report by Internal Audit. The report identified a number of areas for improvement within the Company’s governance structure and assurance mechanisms which would need to be addressed as the scope of the Company’s activities expanded. A report to this Committee on 19th November 2018 described the Internal Audit findings and referred to a forthcoming review of the Company’s aims, objectives and governance structure. It was agreed that the outcomes of this review would be reported back to the Committee.

- 2.3 The review, which has been undertaken with the assistance of external solicitors, Anthony Collins Solicitors LLP, has resulted in confirmation of the Company's future aims and objectives, an amended draft Business Plan and various other company documents, clarity on the Service Agreement required, clarity on the different roles of the Company and the Council. Details are set out in sections 3 to 6 below.
- 2.4 In the meantime, the outcomes of the review have been reported to Policy and Resources Committee at their meeting on 23rd July 2019. Policy and Resources Committee agreed to recommend to Council a number of measures, intended to implement the findings of the governance review. These are as follows:
- to delegate to the Company Board, Policy and Resources Committee, and the Director of Finance and Business Improvement the various reserved matters set out in the schedule to the Operational Agreement
 - to approve the updated business plan of Maidstone Property Holdings Limited
 - to approve the amended Operational Agreement (including reserved matters)
 - to approve the amended Articles of Association
 - to approve the Service Agreement
 - to approve the relevant addition to the Terms of Reference of Policy and Resources Committee and to authorise the Head of Legal Partnership to make any necessary changes to the Constitution
 - to authorise the Director of Finance and Business Improvement to take all decisions he considers necessary (following consultation with the Head of Legal Partnership) to implement the changes outlined above and the documents referred to, to include making all shareholder decisions.
- 2.5 It is intended to table these recommendations at the meeting of Council on 18th December 2019.

3 THE PURPOSE OF THE COMPANY

- 3.1 The Company will be a vehicle through which market rented accommodation will be provided to a high standard and which will be affordable to its target market. It will aim to provide a more balanced housing market in the borough. It will assist with the regeneration of brownfield sites and stimulate local economy growth through creation of additional jobs.
- 3.2 As the Company's aims are commercial, it will not be a "Teckal" Company. A "Teckal" Company is one which is set up by a local authority primarily to provide its own services in a more commercial way, back to the Council itself. Such a company has severe limits on its ability to trade externally.

The intention for MPH Ltd is that it will have freedom to operate commercially in the market. In exchange for this freedom, the Council's relationship with the Company must be on arms length commercial terms.

3.3 These aims and objectives are set out in the draft Business Plan.

4 THE ROLE OF THE COUNCIL

4.1 The Council is the sole shareholder of the Company and the Company is wholly owned by the Council. This means that the Company will be included in the consolidated accounts of the Council, once it achieves a material level of activity. The Council will therefore have financial auditing requirements in respect of the Company and the Company's finances will appear in the Council's accounts and will be subject to external financial auditing.

4.2 As shareholder, the Council is responsible for certain functions in respect of the Company. These are called the "reserved matters" and are set out in a schedule at the back of the Operational Agreement. The schedule sets out those matters which the Council will delegate to the Board and which will be reserved to the Council to decide. It is proposed that the Council delegates the function to make shareholder decisions to the Policy and Resources Committee. This Committee already makes various decisions on behalf of the Council in respect of the Company and receives reports on the Company's business. However, there is nothing formal setting out in the Committee's terms of reference. It is therefore proposed to amend the wording of the terms of reference to include specific reference to its responsibility for shareholder decisions.

4.3 Although Policy and Resources Committee will receive regular reports on the Company's business and operations, it is not feasible for the committee to constantly meet to make the decisions required as shareholder. Therefore, it is proposed that the Committee delegates certain shareholder reserved matters to a nominated officer, who, it is suggested, should be the Director of Finance and Business Improvement. The extent of the delegation is shown in additional wording to the terms of reference of Policy and Resources Committee.

5 THE OPERATION OF THE COMPANY

5.1 The 2017 Audit report highlighted a number of areas where it was appropriate to formalise the operation of the Company. The amended arrangements include the following:

5.2 There will be four directors. They will be: the Director of Regeneration and Place, the Head of Housing and Community Services, the Head of Commissioning and Business Improvement and a senior member of the legal team (the precise person yet to be confirmed). There is provision for alternate directors. This means that if a director is not available at a board meeting, another director may vote on his/her behalf, as proxy. There is also provision for representatives of the Council to attend and observe Board meetings. It is agreed that this will generally be the Director of

Finance and Business Improvement. He will also represent the Council at the Annual General Meeting.

- 5.3 There will be regular Board meetings at least once a quarter. At the first meeting, the directors will formally adopt the new company documents and the Business Plan. They will also make any declarations of interests as Directors, which will formally be recorded. Democratic Services will provide a company secretarial function. There will be no extra remuneration for the directors, members of democratic services or any officer who undertakes work for the Company but the work will be recharged to the Company through agreement under the Services Agreement. Any travel expenses claimed on behalf of company business will be claimed at the usual rates through the Council's iTrent system and will be recharged to the Company. Reporting lines for the Company to the shareholder will be via regular reports to Policy and Resources Committee. In general, the operation of the Company is set out more clearly in the Operational Agreement and Articles of Association.

6 SERVICES AGREEMENT

- 6.1 The Internal Audit report recommended that there be a mechanism to record and re-charge the work that officers do for the Company. It is proposed therefore to adopt a Services Agreement. The Services Agreement contains a schedule detailing the work and the costs to be charged to the Company. For the time being, the following areas are listed: Finance, Legal, Housing Management, Democratic Services and Directors' time.

7 RISK

- 7.1 Maidstone Property Holdings is subject to a range of business risks arising from its property management activities. These are outside the scope of this report, being addressed generally as part of the Housing Development and Regeneration Investment Plan, and then in relation to individual properties as and when they are acquired.
- 7.2 The risks specifically addressed by this report concern compliance with legislation and the Council's own constitution. The purpose of the measures set out in this report is to minimise the risk of non-compliance and fully establish the Company as a commercial undertaking separate from the Council in its dealings. Any support from the Council to the Company will be on commercial terms. The proposed measures are based on professional advice from Mid Kent Legal Services and external solicitors Anthony Collins Solicitors LLP, which ensures that the risk is mitigated as much as possible. Going forward, adopting these measures and operating them on a regular basis will likewise minimise the risk of non-compliance.

8 CONSULTATION RESULTS AND PREVIOUS COMMITTEE FEEDBACK

- 8.1 The report follows on from several meetings between the current Company directors, the Council's external legal advisor and MKLS, and a meeting of Policy and Resources Committee on 23 July 2019.
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9 NEXT STEPS: COMMUNICATION AND IMPLEMENTATION OF THE DECISION

- 9.1 A report will be presented to Council on 18 December 2019 to formally approve the new company documents, amend the terms of reference of Policy and Resources Committee and amend the delegations in the Constitution.

10 REPORT APPENDICES

None

11 BACKGROUND PAPERS

None