

MAIDSTONE BOROUGH COUNCIL

COUNCIL

18 DECEMBER 2019

**REPORT OF THE POLICY AND RESOURCES COMMITTEE HELD ON
23 JULY 2019**

MAIDSTONE PROPERTY HOLDINGS LIMITED – GOVERNANCE

Issues for Decision

- To approve proposed changes to the governance arrangements of Maidstone Property Holdings Limited, the Council's wholly owned property company, to enable it to fulfil the objectives of the Housing Development and Regeneration Plan; and
- To amend the terms of reference of the Policy and Resources Committee and the delegations in the Constitution.

Relevant amendments requested at the meeting of the Policy and Resources Committee have been made to the Appendices.

Recommendation Made

1. That it be agreed that the Policy and Resources Committee is the appropriate body to exercise the shareholder function in relation to Maidstone Property Holdings Limited.
2. That the various reserved matters set out in the schedule to the Operational Agreement attached at Appendix 1 be delegated to the Company Board, Policy and Resources Committee and the Director of Finance and Business Improvement.
3. That the updated business plan of Maidstone Property Holdings Limited attached at Appendix 2 be approved.
4. That the amended Operational Agreement (including reserved matters) attached at Appendix 1 be approved.
5. That the amended Articles of Association attached at Appendix 3 be approved.
6. That the Services Agreement attached at Appendix 4 be approved.
7. That the addition to the Terms of Reference of the Policy and Resources Committee attached at Appendix 5 be approved and that the Head of Legal Partnership be authorised to make any necessary changes to the Constitution.

8. That the Director of Finance and Business Improvement be authorised to take all decisions he considers necessary (following consultation with the Head of Legal Partnership) to implement the changes outlined in this report and the documents referred to at recommendations 3-6 above, to include making all shareholder decisions.

Reasons for Recommendation

In September 2016, the Council incorporated a wholly owned company limited by shares called Maidstone Property Holdings Limited ("the Company"). Its directors are currently William Cornall, Director of Regeneration and Place, and John Littlemore, Head of Housing and Community Services.

The Company was established to hold property leased to it by the Council and to undertake other property development/management activities. The Company is governed by Articles of Association ("the Articles") which have not been changed since 2016. There is also an Operational Agreement between the Council and the Company which covers how the Company interacts with the Council and lists matters which are reserved to the Council, as shareholder, for decision.

The Council has two properties currently leased to the Company: Granada House, a mixed use building with 20 residential units and Lenworth House, which comprises 14 rental residential units. In the future the Council intends to transfer two further buildings upon completion: Union Street and Brunswick Street, which both comprise private market rental flats and flats for sale. The Company will seek to offer rents set at a level which is affordable for residents. The Council will provide working capital to the Company on commercial terms as set out in section 5 of the Business Plan.

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. This led to a review of the Company's aims, objectives and governance structure, which has been undertaken with the assistance of external solicitors, Anthony Collins Solicitors LLP. The 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.

THE PURPOSE OF THE COMPANY

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.

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

Maidstone Property Holdings Limited 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 arm's length commercial terms.

These aims and objectives are set out in the draft Business Plan set out at Appendix 2.

THE ROLE OF THE COUNCIL

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.

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 at Appendix 1. 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 set 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. The proposed addition to the terms of reference is set out at Appendix 5.

Although the 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 the additional wording to the terms of reference of the Policy and Resources Committee at Appendix 5.

THE OPERATION OF THE COMPANY

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:

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.

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 the Policy and Resources Committee. In general, the operation of the Company is set out more clearly in the Operational Agreement and Articles of Association, which are at Appendices 1 and 3.

SERVICES AGREEMENT

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 in the form set out at Appendix 4. 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.

Alternatives Considered and Why Not Recommended

The only available alternative option is not to proceed with the Company and wind it up. This is not recommended, as the Company provides market rental properties to the market and will develop this area of work, to the benefit of the borough. In order for the Company to continue to operate properly, it is necessary to revise and update the governance arrangements.

Background Documents

None

Appendices

- Appendix 1: Draft Operational Agreement and Schedule of Reserved Matters
- Appendix 2: Draft Business Plan
- Appendix 3: Draft Articles of Association
- Appendix 4: Draft Services Agreement
- Appendix 5: Proposed Addition to the Terms of Reference of Policy and Resources Committee