

Local Authority Property Company Shareholder Sub-Committee

16 October 2017

Agenda item: **Merantun Development Ltd Company Set Up**

Lead officer: Chris Lee, Director of Environment and Regeneration

Lead members: Councillor Stephen Alambritis – Leader of the Council

Councillor Martin Whelton, Cabinet Member for Regeneration, Environment and Housing

Councillor Mark Allison Deputy Leader and Cabinet Member for Finance

Contact officer: James McGinlay – Assistant Director for Sustainable Communities
Paul McGarry – Head of Future Merton

1. PURPOSE OF SUB COMMITTEE REPORT

- 1.1 To note the Terms of Reference and Sub-Committee Membership;
- 1.2 To provide the Sub-Committee with an update on Merantun Development Ltd's progress;
- 1.3 To approve the nomination of the Director of Environment and Regeneration as the Shareholder Representative and to delegate authority to the Director to :
 - (i) act as the Shareholders representative in Company meetings for the purposes of passing ordinary and special resolutions and
 - (ii) to grant delegated authority to the Shareholder Representative to make decisions on company matters unless the matter is specifically reserved to the Sub-Committee;
- 1.4 To note the draft Shareholders Agreement and the Reserved Matters contained in Schedule 1 (Appendix 1) and the draft Amended Articles of Association (Appendix 2) and delegate authority to the Shareholder Representative in consultation with the Chair of the Sub-Committee to:
 - (i) agree these documents (save where there is a material change) and
 - (ii) enter into the Shareholders Agreement and approve adoption of the Amended Articles of Association.
- 1.5 On the Shareholder Agreement being entered into, the Sub-Committee reserves to itself the Reserved Matters contained in Schedule 1 of the agreement and

delegates authority to the Shareholder Representative with regards decisions relating to Reserved Matters in consultation with the Chair as and when necessary save for the following:

- (i) Altering in any respect the Articles or the rights attaching to any of the shares in MERANTUN DEVELOPMENT LTD (except as provided in clause 16.3 of the Draft Shareholder Agreement).
- (ii) Permitting the registration of any person as a member of MERANTUN DEVELOPMENT LTD other than the Council.
- (iii) Increasing the amount of MERANTUN DEVELOPMENT LTD's issued share capital, granting any option or other interest (in the form of convertible securities or in any other form) over or in its share capital, redeeming or purchasing any of its own shares or effecting any other reorganisation of its share capital.
- (iv) Incurring expenditure or entering into any arrangement, contract or transaction in excess of:
 - (a) Other than in relation to any land acquisition, £2,000,000 (2 million pounds);
 - (b) In relation to any land acquisition, £2,000,000 (2 million pounds).
- (v) Issuing any loan capital in MERANTUN DEVELOPMENT LTD or entering into any commitment with any person with respect to the issue of any loan capital.
- (vi) Applying for the listing or trading of any shares or debt securities on any stock exchange or market.
- (vii) Passing any resolution for its winding up or presenting any petition for its administration (unless it has become insolvent).
- (viii) Altering the name of MERANTUN DEVELOPMENT LTD or its registered office.
- (ix) Adopting or amending the Business Plan in respect of each Financial Year.
- (x) Changing the nature of MERANTUN DEVELOPMENT LTD's Business or commencing any new business by MERANTUN DEVELOPMENT LTD which is not ancillary or incidental to the Business.

- (xi) Forming any Subsidiary or acquiring shares in any other company or participating in any partnership or joint venture (incorporated or not).
 - (xii) Amalgamating or merging with any other company or business undertaking.
 - (xiii) Creating or granting any Encumbrance over the whole or any part of the Business, undertaking or assets of MERANTUN DEVELOPMENT LTD or over any shares in MERANTUN DEVELOPMENT LTD or agreeing to do so other than liens arising in the ordinary course of business or any charge arising by the operation or purported operation of title retention clauses and in the ordinary course of business.
 - (xiv) Factoring or assigning any of the book debts of MERANTUN DEVELOPMENT LTD.
 - (xv) Changing the auditors of MERANTUN DEVELOPMENT LTD or its Financial Year end.
 - (xvi) Establishing or amending any profit-sharing, share option, bonus or other incentive scheme of any nature for Directors or employees.
 - (xvii) Establishing or amending any pension scheme or granting any pension rights to any Director, officer, employee, former Director, officer or employee, or any member of any such person's family.
 - (xviii) Appointing or dismissing any Director or Chairman.
 - (xix) Making any agreement with any revenue or tax authorities or making any claim, disclaimer, election or consent for tax purposes in relation to MERANTUN DEVELOPMENT LTD or its business.
 - (xx) Purchasing any housing or commercial unit(s) or land which is situated outside of the Council's administrative area.
- 1.6 To require the Shareholder Representative to report any decisions made under the delegated authority contained in 1.5 to be reported to the next Sub-Committee meeting after the decision was taken;
- 1.7 To approve the equity subscription of £160,560.00 to the Company in relation to the working capital as described in paragraph 4.1 below and to grant delegated authority to the Shareholder Representative in consultation with the Chief Financial Officer (the S151 officer) to approve the terms of the equity subscription and to enter into an Equity Subscription Agreement in relation to this sum;

- 1.8 To grant delegated authority to the Shareholder Representative in consultation with the S151 Officer and the Chair to negotiate the terms of Finance Agreements and/or Equity Subscription Agreements subsequently required after the Equity Subscription Agreement (referred to in 1.7 above) and to enter into such agreements;
- 1.9 To recommend the Sub-Committee approve the appointment of James McGinlay as a Director of Merantun Development Ltd;
- 1.10 To agree dates for information sessions on the financial documentation and the forward plan agenda items.

2. **Set up/Governance**

- 2.1 Since full council agreed the set up of the company on the 12th April 2017, significant progress has been made around the set up and legal structure of the company. The company, Merantun Development Ltd (10907028) was incorporated on the 9th August 2017 and currently has the Memorandum and Articles of Association in model form further to the Companies Act 2006.
- 2.2 The draft Shareholder's Agreement attached at Appendix 1 sets out how the council will act as the owner of the company, including the list of decisions reserved to shareholders, board appointment rights, any funding obligations and agreed arrangements around exiting as shareholders. The Council and the Company will need to execute this document in order that the Council can act as the owner of the company as set out in the Shareholder of the Agreement.
- 2.3 The Articles of Association set out the governance arrangements for the company and the procedural framework for meetings at both board and shareholder level. The draft Articles attached at Appendix 2 have been amended for the purposes of the Company and once approved will replace the model articles currently registered at Companies House. Under Schedule 1 of the Shareholders Agreement amendments to the articles are a Reserved matter for shareholder approval. There needs to be a company board meeting after approval of the directors has been given by the sub- committee to authorise entry into the shareholders agreement, the equity subscription agreement etc.
- 2.4 In addition to the documents in paragraphs 2.2 and 2.3 the following documents have been drafted by Trowers & Hamlin and will need to be approved at a future date as they are required for the loan facility being provided by the Council to the Company:
 - Equity Subscription Agreement
 - Facility Agreement
 - Debenture
 - Borrower board minutes
 - Officer's Certificate
- 2.5 Local Authority Property Company Proposed Governance Structure for Agreement

The company has three key structures as part of its set up: (i) The company structure required to deliver the development (ii) The company board to take decisions and to provide support on a monthly basis and (iii) The shareholder sub-committee will be in place to oversee progress on behalf of the council, and take key decisions as set out in the proposed shareholder reserved matters list, and agree future proposals/business plans.

The following set up is the recommendation for each of these key structures.

The Company Structure		
Paul McGarry	James McGinlay	(Interim)
Director of Design	Company Director	Director of Delivery

The Company Board Structure (Proposed)		
Ian McKinnon	James McGinlay	Roger Kershaw
Director	Director	Director

The Shareholder Sub - Committee		
Martin Whelton	Stephen Alambritis	Mark Alison
Cabinet Member	Leader	Deputy Leader

- 2.6 The Shareholder Sub-Committee is asked at recommendation 1.9 to appoint James McGinlay as a Director of the Merantun Development Ltd and will be asked to approve the appointment of the remaining directors at its meeting on 12 December 2017.

3.0 Project Update – Site Preparation

- 3.1 The project has started site preparation works to try and ensure the deadline of April 2019 is met. The legal and governance structure may take some time to establish fully, however this should not affect the financial viability of the project.
- 3.2 The desktop surveys for the sites have been sent out for quotations and subsequently commissioned. The following surveys have been commissioned.
- 3.3 Ecology Survey of The Canons site. The canons site is covered in bramble and will need to be cleared outside of the nesting season window, if this window is missed the site development will be delayed by three to six months.
- 3.4 Rights of light for planning and development risk. These surveys will allow the company to manage and assess the risk upfront of the development heights planned for the two Mitcham sites which are adjacent to other residential properties.

3.5 Geotechnical surveys for all four sites. The geotechnical survey will take samples and drill boreholes to assess the sites ground composition and look for any contamination on site. The geotechnical surveys if they come back clear de-risk the sites for development.

4.0 Finances

4.1 Please see Appendix 3, the phase 1 cash flow. This includes site surveys but excludes site preparation. The phase 1 cash flow will take the project to the commission stage for design and planning consent, followed by an tender issued for the construction and fit out of the developments and provide the construction costs. The total requested is £160,560.00.

4.2 The phase 1 funding required by the company will be undertaken through an equity subscription agreement between Merton Council as the lender and Merantun Developments Ltd.

4.3 A share certificate will be issued by Merantun Development Ltd for the amount transferred through the equity subscription based on the value of each share valued at £1.00.

4.4 The phase 1 cash flow timeline show's that the company set/development is slightly behind schedule, however the undertakings of the site investigations as set out in paras 3.2 – 3.5 will allow for progression to detailed design and submission of planning applications in early 2018.

5.0 Legal

5.1 Merantun Development Ltd has now been incorporated with the Council holding one share and James McGinlay having been registered as a Director of the Company. As stated in the main body of the report the Memorandum and Articles of Association is in model form further to the Companies Act 2006.

5.2 As the Shareholders Agreement and amended Model Articles of Association have not been finalised, this report is recommending that the delegations that have been proposed in paragraphs 1.3 to 1.4 of section 1 of this report be made. This is in order that pending the next meeting of the Sub-Committee in December 2017, the Shareholders Agreement can be entered into and the amended Articles of Association can be adopted.

5.3 It is also proposed in paragraph 1.5, that once the Shareholders Agreement has been entered into by the Council and the Company, that the Sub-Committee reserves the Reserved Matters to itself and save for the ones listed in paragraph 1.5 (i) to (xx), gives delegated authority to the Shareholder Representative to make decisions in consultation with the Chair. This is to enable the Reserved Matters that have been delegated to the Shareholder Representative to be made during the period before the next meeting of the Sub-Committee if so required.

- 5.4 As the Company requires working capital in the coming months, it is being proposed that an Equity Subscription Agreement be entered into. As the Shareholders Agreement and Amended Articles of Association are still in draft form, as a private company with only one class of shares there are no restrictions on the ability of Merantun to offer, allot or grant rights to subscribe for shares. The authority for this is section 551 of the Companies Act 2006 and Article 20.1 of Merantun's Articles of Association filed at Companies House. The delegation proposed in para 1.7 above is to enable the Equity Subscription Agreement to be entered into prior to the next meeting of the Sub-Committee.
- 5.5 Under the current Model Articles of Association registered at Companies House, it is the owner of the Company who appoints Directors of the company and this again requires the approval of the Sub-Committee. As currently James McGinlay is registered at Companies House as a Director, paragraph 1.9 is seeking formal approval under the current model Articles of Association from the Sub-Committee for his appointment.

6. CONSULTATION UNDERTAKEN OR PROPOSED

- 6.1 As part of the preparation of the specification for the design of the housing sites consultation will be undertaken with relevant officers within Merton Council as part of pre-application planning. Subsequent consultation will be undertaken in line with the statutory planning process.

7. TIMETABLE

- 7.1 Please see attached Appendix 4 which gives a high level timetable for the project up to planning and key decisions of the company.
- 7.2 Appendix 4 also shows the key decisions required to be made by the Shareholder Sub Committee relating to its role in approving the funding of the company through equity subscription agreements (for the transfer of land and liquid assets) and loan facilities for the construction phase of the developments.

8. HUMAN RIGHTS, EQUALITIES AND COMMUNITY COHESION IMPLICATIONS

- 8.1 There are no human rights, equalities and community cohesion implications for the purposes of this report.

9. CRIME AND DISORDER IMPLICATIONS

- 9.1 There are no crime and disorder implications for the purposes of this report.

10. RISK MANAGEMENT AND HEALTH AND SAFETY IMPLICATIONS

- 10.1 There are no risk management and health and safety implications for the purposes of this report. The company will be managing the risks set out in the business plan on an ongoing basis.

11. APPENDICES

1. Shareholder Agreement
2. Articles
3. Merantun Short Term Cash Flow
4. Key decisions (August 2017 – March 2018)