

Committee: Overview and Scrutiny Commission

Wards: Wards: Cricket Green, Figges Marsh, St Helier

Date: 20th January 2021

Subject: Call in 'Closure of Merantun Development Ltd'

Lead officer: Chris Lee, Director of Environment and Regeneration

Lead member: Councillor Mark Allison, Leader of the Council; Councillor Tobin Byers, Cabinet Member for Finance; Councillor Martin Whelton, Cabinet Member for Housing, Regeneration and Climate Emergency

Contact officer: Chris Lee, Director of Environment and Regeneration

Recommendations:

- A. That the Overview and Scrutiny Commission consider the information provided in response to the call-in request and decide whether to:
- Refer the decision back to Cabinet for reconsideration; or
 - Determine that the matter is contrary to the policy and/or budget framework and refer the matter to Full Council; or
 - Decide not to refer the matter back to Cabinet, in which case the decision shall take effect immediately.
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1. PURPOSE OF REPORT AND EXECUTIVE SUMMARY

- 1.1 This report provides a response to the points raised in the call-in request relating to the decision taken by Merantun Development Limited (MDL) Sub-Committee on the 21st December 2020.

2. DETAILS

- 2.1 The call-in requests and documents provided in response to this are appended to this report.

3. ALTERNATIVE OPTIONS

- 3.1 The Council's constitution requires the Commission to select one of the options listed in recommendation A.

4. CONSULTATION UNDERTAKEN OR PROPOSED

4.1 None for the purposes of this covering report.

5. TIMETABLE

5.1 None for the purposes of this covering report.

6. FINANCIAL, RESOURCE AND PROPERTY IMPLICATIONS

6.1 The Financial year end for MDL is the 31st March. The accounts for 2019/20 are currently being audited by our external Auditors (EY). The Board and the sub Committee, having taken the decision that the company was no longer viable, were required to inform the Auditor as part of a 'going concern' statement. This is a key requirement of any audit and passes responsibility to the Directors of the Company to disclose any matters arising that would materially impact on the Company's ability to trade.

6.2 The decision, having been made during the conduct of the audit therefore required immediate notification to the Auditors in accordance with the Companies Act.

6.3 The urgency was also due to the critical stage the Council was at in determining is Medium Term Financial Strategy given the significant amount of borrowing to lend to MDL included in the Capital Programme and the ability to build in the financial consequences into the update of the Capital Strategy for presentation to Cabinet and Council for approval as part of the budget setting process.

6.4 It was recognised in the original report to Cabinet on 20 March 2017 to establish MDL that MDL's financial performance may deteriorate compared to its business plan and a number of measures could be considered to counter this and 'jump off points' where financial deterioration could be mitigated.

6.5 Prior to planning permission –

- Disposal of the site without planning permission if, for example, sites with greater potential become available, or land values increase substantially in a certain part of the Borough

Between planning permission and construction -

- Delaying start on site if, for example, the relationship between sales values and build costs worsens
- Disposal of the site with planning permission if, for example, tender returns for the construction works are too high
- Revision to planning permissions to further optimise financial performance if, for example, another use becomes more viable
- Investigating alternative delivery structures, to reduce construction risk and lower construction costs
- Applying for affordable housing grant if, for example, the scheme can no longer support the level of affordable housing committed in a Section 106 agreement

Throughout construction:

- Early marketing / forward sales of units earmarked for disposal, to reduce sales risk in a declining market
- Ongoing value engineering and contract variations, including the phasing of site development so that the programme can be paused or terminated

Post-construction

- Disposal of completed units if, for example, rental values decrease or sales values increase relative to rental values
- Negotiating rental guarantees / other risk-sharing management arrangements
- Negotiating a leasehold 'income strip' agreement with an institutional investor, to reduce holding risks
- Further investment to reduce management and maintenance liabilities
- Temporary or permanent change in tenure mix to manage letting

6.6 Officers and the Board of MDL regularly reviewed the costs of construction and methods of construction to ensure the most economical solution for the delivery of the four sites; reviewed the state of the letting and sales market to determine changes that may result in a decline in income that would adversely impact on the financial performance of the business plan.

- 6.7 A key jump off point was following the receipt of planning approval that was granted in summer 2020. At this point the Board of MDL determined that the costs had increased and the letting and sales market was declining in the short to medium term impacted by the impact of Covid 19 and post Brexit market conditions. This was forecast to have a long term impact on the cost and value inputs in to MDL's business plan and that this presented too much of a risk.
- 6.8 In a series of workshops between MDL and the Council as shareholder and lender it was determined that the deterioration from the original business plan was significant and the returns to the council did not represent a robust and ongoing return and for this reason it was determined that the 'jump off point' following planning approval should be exercised and that the post planning mitigation measures outlined above did not provide opportunities for the business plan to be improved sufficiently.

7. LEGAL AND STATUTORY IMPLICATIONS

- 7.1 The Call-In request suggests that the decision of the Merantun Development Sub Committee to agree to pursue a voluntary strike off of Merantun Developments Ltd ("the Company") should have been scrutinised by Full Council and also that it amounts to a change in policy and therefore should have been formally taken by full Council. Both these points are addressed below.
- 7.2 From a constitutional and statutory perspective, the decision as to whether to continue to support Merantun Development Limited ("the Company") is an executive function and therefore vested in the Cabinet. The Cabinet has delegated that function, which in practice is to act as shareholder in the Company, to the Merantun Developments Ltd Sub-Committee. There is no requirement in the constitution for such a decision to be scrutinised by the full Council.
- 7.3 Where a matter is an executive function, there is no power for the full Council to take a decision instead of that decision being made by the Cabinet unless the decision is contrary to the policy framework. Matters relating to the operation of the Company do not form part of the policy framework set out in the Constitution and therefore it is not possible for the decision effectively to wind up the Company to be taken by Full Council.
- 7.4 It would have been constitutionally possible for the decision to have been subject to pre decision scrutiny. However, it was considered that the decision was required to be taken reasonably quickly for the reasons set

out in Paragraphs 6.1, 6.2 and 6.3. The statutory requirements for giving notice of the decision were complied with.

- 7.5 Should the Commission consider that the matter should be further considered, for the reasons set out in paragraph 7.3 above, the correct course of action would be to refer the matter back to the Cabinet (or the Merantun Development Ltd Subcommittee), not to refer the matter to Full Council for decision.

8. HUMAN RIGHTS, EQUALITIES AND COMMUNITY COHESION IMPLICATIONS

- 8.1 None for the purposes of this covering report.

9. CRIME AND DISORDER IMPLICATIONS

- 9.1 None for the purposes of this covering report.

10. RISK MANAGEMENT AND HEALTH AND SAFETY IMPLICATIONS

- 10.1 None for the purposes of this covering report.

11. APPENDICES – the following documents are to be published with this report and form part of the report.

Appendix A Copy of Original Report to MDL Sub Committee 21 December 2020

Appendix B Call in Request

Appendix C Documents requested in Call in Paper.

12. BACKGROUND PAPERS

- 12.1 None for the purposes of this covering report.

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