

## EXECUTIVE

<b>Date:</b> Wednesday 6th September, 2023
<b>Time:</b> 12.30 pm
<b>Venue:</b> Mandela Room

## AGENDA

1. Apologies for Absence
2. Declarations of Interest
3. Minutes - Executive - 23 August 2023 3 - 10

### EXECUTIVE MEMBER FOR REGENERATION

4. Middlesbrough Development Company Closure 11 - 22
5. Any other urgent items which in the opinion of the Chair, may be considered.

Charlotte Benjamin  
Director of Legal and Governance Services

Town Hall  
Middlesbrough  
Friday 25 August 2023

### MEMBERSHIP

Mayor C Cooke (Chair) Councillors P Gavigan, T Furness, P Storey, J Thompson, Z Uddin and N Walker

### Assistance in accessing information

Should you have any queries on accessing the Agenda and associated information please contact Chris Lunn / Scott Bonner, 01642 729742 / 01642 729708, [chris\\_lunn@middlesbrough.gov.uk](mailto:chris_lunn@middlesbrough.gov.uk) / [scott\\_bonner@middlesbrough.gov.uk](mailto:scott_bonner@middlesbrough.gov.uk)

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**EXECUTIVE**

A meeting of the Executive was held on Wednesday 23 August 2023.

**PRESENT:** Mayor C Cooke (Chair), Councillors P Gavigan, T Furness, P Storey, J Thompson, Z Uddin and N Walker.

**PRESENT BY INVITATION:** Councillor M Storey (Chair of the Overview and Scrutiny Board).

**ALSO IN ATTENDANCE:** Councillor B Hubbard, Councillor J McTigue, Councillor I Morrish, Councillor S Platt, Councillor G Wilson and K Whitmore.

**OFFICERS:** S Bonner, G Field, S Fletcher, A Humble, D Middleton, A Perriman and E Scollay.

**APOLOGIES FOR ABSENCE:** None.

23/8 **DECLARATIONS OF INTEREST**

There were no declarations of interest received at this point in the meeting.

23/9 **MINUTES - EXECUTIVE - 19 JULY 2023**

The minutes of the Executive meeting held on 19 July 2023 were submitted and approved as a correct record.

23/10 **CORPORATE PERFORMANCE UPDATE: QUARTER ONE 2023/24**

The Executive Member for Finance and Governance submitted a report for Executive's consideration.

The report advised Executive of corporate performance at the end of Quarter One 2023/2024, providing the necessary information to enable it to discharge its performance management responsibilities and where appropriate, sought approval of any changes (where those were within the authority of the Executive).

The Council's Scheme of Delegation gave the Executive collective responsibility for corporate strategic performance, together with associated action.

The report provided the necessary information to set out progress against Executive actions, the Strategic Plan and other key associated items, together with actions to be taken to address any issues identified.

The projected financial outturn at the end of Quarter One 2023/2024 was presented separately at this meeting of Executive and was not repeated here. Where performance had a significant impact on finances this was highlighted within the body of the report.

As part of continuous improvement in performance and risk management, the Council's Leadership Management Team (LMT) had implemented monthly reviews of corporate performance utilising a Directorate Performance dashboard, drawing data from a range of performance systems.

The output from these sessions was reflected through quarterly updates to Executive and Overview and Scrutiny Board on progress in delivering actions agreed by the Executive, key Directorate performance issues and other performance-related matters.

A non-Executive Member queried when the new Council Plan would be available. It was confirmed the Plan would be introduced in the financial year 2024/25.

**ORDERED that Executive:**

1. **Note progress of delivery of the Strategic Plan 2022-24 at Quarter One 2023/24, detailed in Appendix 1, and**
2. **Approve the proposed changes to the Strategic Plan workplan initiatives, detailed in Appendix 2.**

## **OPTIONS**

**No other options were submitted as part of the report.**

## **REASONS**

**To enable the effective management of performance and risk in line with the Council's Local Code of Corporate Governance.**

23/11

## **REVENUE AND CAPITAL BUDGET - FORECAST OUTTURN POSITION AS AT QUARTER ONE 2023/24**

The Executive Member for Finance and Governance submitted a report for Executive's consideration.

The report advised Executive of the Council's financial position as at Quarter One 2023/24. It also advised of the management actions taken and underway to establish a firmer grip upon the Council's financial position. Endorsement was also sought from Executive of the management actions that were planned in the form of Financial Recovery Plans to control expenditure within the General Fund Revenue Budget approved by Council in February 2023. The report also sought Executive approval in relation to the revisions to the Capital Programme.

The Council's Scheme of Delegation gave Executive collective responsibility for corporate strategic performance and financial management / monitoring, together with associated actions. Standing Orders and Financial Procedures required Executive's approval for major virements between revenue budgets, and in-year changes to the Council's Capital Programme.

The report enabled Executive to discharge its financial management responsibilities by setting out the:

- Forecast outturn on the General Fund Revenue Budget and Capital Programme at Quarter One of 2023/24;
- Statement of the Council's borrowing and prudential indicators, and its reserves and provisions; and
- Actions that the management has taken and plans to address the issues identified.

Financial Procedure Rule 10.5 required Executive's approval of the proposed revenue budget virements set out in Appendix four. A revised Capital Programme for the period 2023/24 to 2025/26 was also attached at Appendix six for Executive's consideration and approval.

The Executive Member for Finance and Governance advised Executive that an all-Member briefing on this subject had taken place the evening before.

A non-Executive Member suggested that Councillors not take their Basic and Special Responsibility Allowances so they could contribute to any budget savings. The Member also recommended the Council address any peppercorn rents that existed in the town. It was proposed that any suggested budget savings be directed to the email address circulated to all Members.

It was agreed that in Appendix two of the report several items be withdrawn from the information submitted to be considered further. Those items were: Review provision of charging for junk job services; Review charges for replacement bins; Review schedule of green waste collection and savings associated with the Warden Service.

**ORDERED that Executive (in respect of the General Fund Revenue Budget):**

1. **Note the forecast 2023/24 net revenue budget outturn as at Quarter One of £137.917m against an approved budget of £126.354m, a forecast overspend of £11.563m (9.2%);**

2. Note that the Council's usable revenue reserves position is critically low at £14.8m comprising the General Fund Reserve of £12.041m and the Council's unrestricted usable earmarked reserves of £2.788m at 31 March 2023;
3. Note that if the current forecast overspend of £11.563m was actually incurred, it would exhaust the Council's unrestricted usable earmarked reserves and also significantly draw upon the Council's General Fund Reserve as shown in Table two. Therefore, urgent management action was required to reduce expenditure and the forecast outturn within budget;
4. Note that if it appeared to the Director of Finance (s.151) Officer that total expenditure could not be managed within the approved budget of £126.354m by 31 March 2024, there was a statutory requirement for the Director of Finance to issue a s.114 Notice to the Council under the provisions of the Local Government Finance Act 1988. In practice, prior to this occurring, the Director of Finance would seek Exceptional Financial Support from DLUHC in order to meet unmanageable financial pressures in the short term whilst the Council's financial position was recovered;
5. Note the implications of an application for Exceptional Financial Support and the issuing of a s.114 notice (paragraphs 17 to 22) upon the Council;
6. Note the management actions that had already been implemented from the start of the 2023/24 financial year in order to exercise enhanced budget management and control (paragraph 10), and the further actions outlined in paragraph 28 which had been implemented by the Director of Finance and the Leadership and Management Team (LMT) in response to the emerging overspend position that was identified during June in relation to accounting period two (month end 31 May);
7. Note that rigorous spending restrictions had been implemented with effect from 1 July 2023 and would remain in effect until further notice;
8. Note that Chief Officers within LMT were working in consultation with their relevant Executive Member to develop and deliver robust Financial Recovery Plans (paragraph 28) in order to contain expenditure within the Council approved budget;
9. Note and support the actions taken by the Director of Finance and wider LMT including the initial Financial Recovery Plans totalling £2.557m that had been identified and quantified to date (as shown in Table one and Appendix two);
10. Note that further work was continuing with a view to fully mitigate the forecast overspend and that further reports would be submitted to Executive for noting and approval of management actions as appropriate; and
11. Approve the proposed revenue budget virements over £150,000 as detailed in Appendix four.

**That Executive (in respect of the Capital Programme and Treasury Management):**

1. Note the 2023/24 Capital Programme forecast outturn of £63.004m at Quarter One against a revised capital Programme Budget of £80.474m, an underspend of £17.470m (22%);
2. Approve the revised Capital Programme to 2025/26 summarised at table eight and detailed at Appendix six, including £183.570m for financial years 2023/24 to 2025/26;
3. Note that £19.839m of funds that were assumed to be spent in 2023/24 had now been slipped to 2024/25 and later years (Appendix five);
4. Note that a full review of the Capital Programme would be undertaken and reported at Quarter Two with a view to ensure realistic profiling of expenditure and alignment of funding. This would incorporate a challenge to reduce and reprioritise the utilisation of Council resources to mitigate or reduce any revenue budget impact within the context of controlling the Council's revenue financial position; and
5. Note the Treasury Management forecast outturn position with respect to the Council's prudential indicators as set out in paragraphs 64 to 72.

**That Executive (in respect of the Dedicated Schools Grant (DSG)):**

1. Note the current forecast in-year deficit of £1.780m for 2023/24 relating to the High Needs Block;

2. **Note the forecast total cumulative deficit of £8.344m at 31 March 2024, including £8.801m relating to the High Needs Block, as set out in Table five and paragraphs 45 to 51;**
3. **Note that under existing government regulations this deficit could not be funded from the General Fund, and the Council was required to deliver a recovery plan to the Department for Education (DfE); and**
4. **Note that the Council was part of the DfE Delivering Better Value (DBV) scheme which aimed to support financial recovery of the DSG position.**

## **OPTIONS**

**No other options were put forward as part of the report.**

## **REASONS**

**To enable the effective management of finances, in line with the Council's Local Code of Corporate Governance, the Scheme of Delegation and agreed corporate financial regulations.**

23/12

## **MEDIUM TERM FINANCIAL PLAN (MTFP) REFRESH 2024/25 TO 2026/27**

The Executive Member for Finance and Governance submitted a report for Executive's consideration.

The purpose of the report was to set out the financial framework and timetable within which officers would work with the Mayor and Executive to develop the 2024/25 budget and MTFP to 2026/27.

The report also included the proposed Reserves Policy which for consideration by Executive which would also be referred to Council for approval (Appendix one).

In common with all local authorities, the Council continued to operate within a difficult and uncertain economic environment. Inflationary drivers continued to place significant pressure upon service budgets and there was uncertainty in relation to future financial support from Central Government over the medium term.

The long-term impact of COVID-19 and the Cost of Living Crisis continued to impact adversely upon the demand for Council services and upon the cost of goods, works and services that were required to provide the wide range of services to the people of Middlesbrough.

The report was the first stage of the budget development strategy for the three year period 2024/25 to 2026/27 and built upon the MTFP approved by Council on 27 February 2023. It set out the financial framework and timetable within which Officers would work with the Mayor and Executive to develop budget proposals to deliver the new Council Plan. The report incorporated the proposed Reserves Policy for referral to Council for approval.

A non-Executive Member commented that any prospective increase to Council Tax levels should be viewed with caution given the current Cost of Living Crisis.

## **ORDERED that Executive:**

1. **Note the increase in the forecast budget gap for 2024/25 to £14.204m rising to £24.522m over the term of the MTFP to 2026/27 (Table two and paragraphs 23 to 49 of the report);**
2. **Agree that the Leadership Management Team (LMT) in consultation with the relevant Executive Member prepare detailed plans and budget proposals in accordance with the Council's priorities and proposed budget strategy (paragraphs 21 and 22) taking account of periodic updates in MTFP assumptions;**
3. **Agree the proposed Reserves Policy as contained in Appendix one and recommend this to Council for approval; and**
4. **Note the budget preparation timetable (Table 11 and paragraph 54) and that**
5. **proposals would be presented to Executive for approval in November 2023 as part of the draft MTFP and Budget Consultation.**

**OPTIONS**

The Council was required by law to set a balanced budget and this report set out the development process and timeline for achieving that objective. Therefore, no other options were feasible.

**REASONS**

The Council was required to set a legally balanced budget for 2024/25 and achieve a financially sustainable position through a balanced MTFP to 2026/27. The budget development process required significant measures to be taken to develop transformed and redesigned services that delivered improved outcomes that were affordable within available resources over the medium term.

The Council continued to face significant budget pressures and uncertainty, including the continuing level of support from Central Government over the medium term.

Additionally due to increased demand for services, the long-term impact of COVID-19 and the current backdrop of economic uncertainty and inflation, council services continued to operate in a challenging environment.

The report was part of the Council's continuing budget setting and business planning processes and built on the previous MTFP position recommended by Executive on 14 February 2023 and approved by Council on 27 February 2023.

The report set out the updated MTFP projections and proposed budget strategy for 2024/25 to 2026/27 so that officers could prepare detailed proposals for Member consideration as part of the annual budget-setting cycle in line with the timetable in paragraph 54.

The overarching objective of the budget strategy was to set a priority-led budget over the medium term that was balanced and realistic; and supported by achievable saving plans.

However, it must be recognised that meeting the significant budget gaps as that set out in the report would mean transforming the way we deliver services, doing some things differently and possibly stopping some services.

LMT would work closely with the Elected Mayor and Executive Members to develop plans that met the Mayor's priorities within available resources over the period of the MTFP.

23/13

**FINAL REPORT OF THE CULTURE AND COMMUNITIES SCRUTINY PANEL - OFF ROAD BIKES**

The Culture and Communities Scrutiny Panel had undertaken a review of Off-Road Bikes in Middlesbrough. A copy of the full report was attached. The Scrutiny Panel had made three recommendations upon which a response was sought from the relevant service area.

The Executive Member for Community Safety and the Head of Stronger Communities submitted a service response to the recommendations of the Scrutiny Panel. A copy of the action plan was attached.

The Chair of the Overview and Scrutiny Board presented the final report to the Executive. The Executive Member for Community Safety presented the service response.

**ORDERED that Executive:**

1. Note the content of the Culture and Communities Scrutiny Panel final report on the issue of Off-Road Bikes in Middlesbrough (Appendix one); and
2. Approve the action plan (Appendix two), developed in response to the Scrutiny Panel's recommendations.

**REASON**

**It was a requirement that Executive formally considered the scrutiny panel's report and confirmed the service area's response to the accompanying plan.**

23/14

## **HEMLINGTON NORTH - DISPOSAL**

The Executive Member for Regeneration submitted a report for Executive's consideration.

The report sought Executive approval to dispose of the Council's freehold interest in Hemlington North for affordable housing development in accordance with the Council's Asset Disposal Process.

There was strong continued demand for new homes in Middlesbrough and as such the town required a significant supply of new housing development over the next decade.

Middlesbrough's population had grown in recent years, as the number of new developments had increased, and the wider housing offer had started to improve. Despite Middlesbrough's modest growth the housing offer in the town lacked key types of products that would allow the area to keep pace with national demographic trends.

There was significant demand for additional affordable housing products within Middlesbrough's housing offer and this site offered an important opportunity for more affordable housing provision.

The development of new housing was a key component of the Council being able to set a sustainable budget, as the capital receipts from housing sites, along with the subsequent Council Tax were the key components of the Medium-Term Financial Plan.

Hemlington North measured approximately 1.77 Acres [0.71 Hectares] and was close to current developments by several commercial housebuilders forming part of the Hemlington Grange urban extension.

The site was marketed using appropriate property development websites, an article in a local newspaper and the Council's own website/social media channels for two months. Two bids were received by the closing date of 5th May 2023.

Two bids were received at the same value, although based on significantly different assumptions. One bid was based on delivering just 20 units of housing, and included conditions that could potentially reduce the Council's return, whilst the bid from North Star Housing Group was based on 35 units of affordable housing (subject to planning permission) and provided greater financial certainty.

In assessing the bids further, the 20-unit scheme was ultimately deemed non-compliant due to the format of the bid, leaving the bid from North Star Housing Group as the preferred choice. As a result, the bid from North Star Housing Group was recommended for approval.

The site was located in Stainton and Thornton Ward and the relevant Ward Councillor had been consulted.

**ORDERED that Executive accept the bid of £300,000 from North Star Housing Group for the Council's freehold interest in Hemlington North so that the site can be developed for affordable housing.**

### **OPTIONS**

#### ***Re-use for operational purposes***

**No Council operational service requirement had been identified.**

#### ***Other uses***

**The land was allocated for affordable housing and therefore an alternative use was not proposed.**

#### ***Do nothing***

**Whilst the land would be retained for potential Council use in the future, the liability and responsibility for maintaining the land would remain with the Council in the interim.**

## **REASONS**

**Disposal as proposed would generate a significant capital receipt, increase annually recurring revenue streams, and increase the supply of affordable housing.**

**Disposal of the site supported delivery of the Council's Medium Term Financial Plan.**

23/15

## **NUNTHORPE GRANGE FARM - DISPOSAL PART - A**

The Executive Member for Regeneration submitted a report for Executive's consideration.

The report sought Executive approval to dispose of the Council's freehold interest in land at Nunthorpe Grange Farm in accordance with the Council's Asset Disposal Process.

The subject parcel of land identified for disposal formed part of a much larger, now defunct, agricultural landholding situated at Nunthorpe Grange Farm situated close to both Poole Roundabout on the junction of Guisborough Road [A1043] with Stokesley Road, and the site of the newly constructed Nunthorpe Medical Centre building.

Shown edged on the plan attached as Appendix one of the report, the subject parcel of land measures 4.218 Acres [1.7069 Hectares].

Rectangular in shape, the property comprised a vacant open area of farmland with hedgerow lining the boundaries with Guisborough Road [A1043] to the south, and Stokesley Road to the west.

Access to the subject parcel of land would be taken from publicly adopted highway, via the newly constructed carriageway that served Nunthorpe Medical Centre.

The property was situated in the Nunthorpe Ward and the respective Ward Members had been consulted. Members would be further consulted on any subsequent proposal made as part of the normal planning process.

An Asset Disposal Business Case confirming the status of the property as surplus to operational Council requirements and the interest of The Trustees of Thornfield Gospel Hall Trust in purchasing the asset was attached as Appendix three of Part B of the report.

### **ORDERED that Executive:**

- 1. Note the information contained within Part A of the report; and**
- 2. Agree to dispose of the subject property to The Trustees of Thornfield Gospel Hall Trust once all the financial or exempt information contained within Part B of the report has been considered.**

## **OPTIONS**

### ***Re-use for operational purposes***

**No Council operational service requirement has been identified.**

### ***Other uses***

**Although the property is capable of being used for other purposes, future use of the site for the purposes of religious worship as proposed by the Buyer, is preferred.**

### ***Do nothing***

**The property would remain in its present state, unutilised. Whilst the subject land would be retained for potential Council use in the future, the liability and responsibility for maintaining and holding the property would remain with the Council in the interim.**

## **REASONS**

**Disposal as proposed would generate a significant capital receipt and also secure the third party investment needed to bring the property into a far more beneficial future use.**

**Disposal of the site supported delivery of the Council's Medium Term Financial Plan.**

23/16 **ANY OTHER URGENT ITEMS WHICH IN THE OPINION OF THE CHAIR, MAY BE CONSIDERED.**

None.

23/17 **EXCLUSION OF PRESS AND PUBLIC**

**ORDERED** that the press and public be excluded from the meeting for the following items on the grounds that, if present, there would be disclosure to them of exempt information as defined in Paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972 and that the public interest in maintaining the exemption outweighed the public interest in disclosing the information.

23/18 **EXEMPT - NUNTHORPE GRANGE FARM - DISPOSAL PART - B**

The Executive Member for Regeneration submitted a report for Executive's consideration.

**ORDERED**

**That the recommendations of the report be approved.**

**REASONS**

**The decision was supported by the following reason:**

**For reasons outlined in the report.**

All decisions will come into force after five working days following the day the decision(s) was published unless the decision becomes subject to the call in procedures.

**MIDDLESBROUGH COUNCIL**

<b>Report of:</b>	Executive Member for Regeneration Director of Regeneration
<b>Submitted to:</b>	Executive
<b>Date:</b>	6 September 2023
<b>Title:</b>	Middlesbrough Development Company Closure
<b>Report for:</b>	Decision
<b>Status:</b>	Public
<b>Strategic priority:</b>	All
<b>Key decision:</b>	Not applicable
<b>Why:</b>	Not applicable
<b>Urgent:</b>	Not applicable
<b>Why:</b>	Not applicable

### Executive summary

This report sets out the final process by which the Middlesbrough Development Company will be formally closed down. The report sets out the steps taken to date to minimise the risk to the Council, and the final steps required to close down the wholly owned company. Following adoption of the Partly and Wholly Owned Council Companies Policy, the report also sets out:

- the steps taken to date to ensure alignment with the relevant Minimum Standards in that new policy,
- where alignment is not proposed in line with the expectation that any decision to vary from a required standard will be set out formally and evidenced; and
- sets out the actions that will be taken going forward to ensure continued alignment with the requirements of the relevant Minimum Standards.

These steps ensure that the financial and reputational risks to the Council are minimised, and that the governance arrangements identified in previous reports as being non-compliant with good practice have been replaced appropriately to assess the value that has been realised by the Council of operating the company.

It should be noted that all assets and liabilities associated with the Company on winding up will revert back to the Council and will be determined through the winding up process.

**Purpose**

1. The purpose of this report is to set out the process followed to close down the Middlesbrough Development Company, including the final steps yet to take place with a particular focus on how that process will ensure Value for Money is achieved during this period and how arrangements align with the Minimum Standards set out in the recently adopted Partly and Wholly Owned Council Companies Policy.

**Background and relevant information**

2. As previously reported to Executive in January 2023, the Council’s wholly owned company, the Middlesbrough Development Company was identified as posing a potential risk to the Council through non-compliance with newly published guidance for such companies.
3. The guidance developed by the Chartered Institute of Public Finance and Accountancy (CIPFA) following a number of high-profile failures of Council owned companies nationally, sets out the standards of management and governance that should be expected of any wholly or partly owned company.
4. Following an initial review of the company against this guidance it was evident that the company either needed to be revised significantly or be closed down. As it was coming to the end of its current range of projects, and the changes needed to meet the new standards would require significant investment, the decision was taken to cease trading and close down the company completely, which is anticipated to be complete by December 2023 (although the audit/accounting actions that follow will extend into 2024).
5. The Council’s Internal Auditors Veritau were also tasked with reviewing the company arrangements to ensure that the identified risks to the Council were being minimised. This review has also now concluded, reflecting that closure of the company would be an appropriate step to take.
6. Alongside this audit, the Council has developed a new policy for partly and wholly owned companies that builds on the CIPFA guidance and would reflect the standards that any new company would be required to achieve. This was agreed by the Executive Member for Finance and Governance on 25 July 2023. Again, the Middlesbrough Development Company would not be able to meet these standards without significant investment.
7. Since the decision was taken to close the company, officers, the Council’s Internal Auditor’s finalised report and the Council’s external auditors EY have identified a number of steps that would be required to ensure the risks to the Council were minimised during the closure process. The key areas of concerns are identified below alongside a gap analysis against the minimum standards of the Partly and Wholly Owned Council Companies Policy. The approach being taken will be to align with those standards where feasible, set out the evidenced rationale for not fully aligning where that is more to mitigate them during the closure process.

Area of Concern	Approach
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Composition and training of the board	<p>The focus of the partly and wholly owned Council Company is on the governance elements that should be in place to support effective company management by a Board of Executive and/or non-Executive Directors and how that body should manage and report decisions / progress / issues back to the Council to provide assurance that it is operating in line with expectations set within the policy its supporting Minimum Standards. Since the decision has been taken to cease the company and wind it up, the most effective way of addressing the governance concerns around the composition of the Board, in particular the complex conflict of interest issues is to suspend the use of the Board during the wind up period. Board meetings have been suspended and replaced by Shareholder meetings to direct closure activities. These meetings are held between MBC staff representing the required disciplines (Regeneration/Finance/Governance), and the MDC Managing Director to ensure oversight and clear management of the closure process. Meetings receive formal progress reports from the company, and are minuted accordingly. Any actions taken will be reported to Executive as part of a final closure/reconciliation report.</p>
Lack of clarity of roles	<p>All instructions to the company to be issued directly through the Shareholder meetings by MBC staff (as above). Due to the status of the company and the projects these instructions exclusively relate to the closure of the company, as no new operational activity is taking place. Meetings are led by the Director of Regeneration, supported by officer representatives rather than members or company directors.</p>
Performance management	<p>Closure process includes monthly reporting on progress to the Shareholder meetings, which will feed into a formal closure/reconciliation report for the Council's Executive.</p>
Risk management	<p>The Council's minimum standards require that the Company has a performance management framework that includes a risk management policy to ensure it articulates its risk management appetite and manages with in accordance with that. As the company is being wound up, it is proposed that a proportionate approach is to adopt the Council's risk management policy and ensure the company's processes align to that.</p> <p>A risk register has been established and will be considered by both the Shareholder meetings and the final board meeting held to formally close down the company. A narrative on risks and their management will also be included in any further reports to Executive.</p>
Procurement	<p>The minimum standard for a company requires that the Company sets out its financial management arrangements. The proposal is that rather than develop separate processes, given the company is being wound up, that the Council's procurement policy will be adopted and activity will align with that. No further procurement is however expected to be undertaken.</p>
Project management	<p>The minimum standard for a company requires that the Company sets out its project management arrangements. The proposal is that rather than develop separate processes, given the company is being wound up, that the Council's project management policy be adopted. As no further project activity is to be undertaken, this will largely relate to the production of project closure reports.</p>

Documentation of board meetings	Documentation of Shareholder meetings (and the recording of decisions) has been improved
Oversight arrangements	Action plan developed, Shareholder meetings implemented and internal stakeholders group established to oversee action plan delivery
Realising value for money during closure	Assessment against the Council's new PWOC policy to ensure tasks undertaken during closure are compliant, and appointment of external expertise to ensure appropriate closedown.
Financing the company	The Minimum Standard requires that appropriate financing is agreed by the Council. It is not anticipated that further financing would be required, although this would be confirmed through the final reconciliation as part of the closure process. The assets and liabilities of the company will revert back to the Council as a result of the winding up process.

## Closure Process

8. To ensure that the closure of the company was managed safely, and in accordance with good financial practice, external expertise was sought from the outset through Endeavour Law and FRP – experts in the field of company closures. A roadmap was identified that would need to be followed for the requirements of Companies House, good governance expectations set out in the Partly and Wholly Owned Council Companies Policy, while also ensuring value for money was achieved during the closure process.
9. In addition to this, it was important that the conflicts and governance concerns identified in the initial review and the wider audit findings were addressed quickly and not perpetuated in the remaining months of the company's operation. As a result, an action plan was agreed that managed the cessation of trading activity, the interim arrangements required to avoid perpetuating conflicts etc. and the management of the final process through a Members Voluntary Liquidation – identified as the most appropriate route to closure. Arrangements to achieve this are set out in the table above. A Members Voluntary Liquidation is a process that enables shareholders of a company to appoint a liquidator in order to formally close down a solvent company.
10. The action plan is set out in Appendix 1, and covers the period from the initial Executive decision through to closedown, which is scheduled to be complete by the end of December 2023. The company will have ceased operations long before this point, but the proposed route of a Members Voluntary Liquidation may require some legal and accounting actions that may extend into December to achieve full removal of the company.
11. The action plan balances the need to ensure an orderly close down, with minimising the governance and financial risks to the Council. Whilst this means that the company will exist beyond its initial cessation of trading, it reduces the number of liabilities that would need transferring to the Council.

## What decision(s) are being recommended?

12. That the Executive:
  - a. notes the process undertaken to close down the Middlesbrough Development Company;

- b. notes the steps taken to align interim governance arrangements with the Minimum Standards of the Partly and Wholly Owned Council Companies policy and notes where there is a clear, evidenced rationale for non-compliance with elements of that policy because the company is being wound-up and,
- c. approves the final steps of the Members Voluntary Liquidation.

### **Rationale for the recommended decision(s)**

13. The action plan will see the orderly closure of the Middlesbrough Development Company, as previously approved by the Executive.

### **Other potential decision(s) and why these have not been recommended**

14. Other options for the final closure of the company have been examined, including the option to simply deregister the company. Although this option could be delivered more cheaply (£15) it does not provide the appropriate assurance that all matters have been concluded satisfactorily and all risks have been managed.

### **Impact(s) of the recommended decision(s)**

#### ***Legal***

15. The process for closing down the company has been overseen in part by representatives of the Council's Legal Services, and in consultation with Endeavour Law to ensure that the appropriate steps have been taken to minimise risk to the organisation.
16. The legal entity of the Middlesbrough Development Company will cease to exist post December 31<sup>st</sup>. All ongoing liabilities, retentions, assets and interests will be held by Middlesbrough Council directly.
17. The main liability inherited by the Council is the payment of retention funds relating to the developments completed in the previous 12 months. These funds are currently held by the company and would transfer to the Council along with the liability for payment in 2024. All other legal and contractual matters should be concluded prior to the closure of the company.
18. The ownership of the final property developed by the Middlesbrough Development Company (an apartment building at Newbridge Court) will transfer to the Council and its future operation/ownership will be considered as part of the Council's ongoing Asset Review process.

#### ***Strategic priorities and risks***

19. Closure of the company would potentially impact a number of priorities set out in the Strategic Plan. Key priorities affected would include:
  - a. establish the requirement for potential CPO of derelict buildings and problem sites;
  - b. St Hilda's housing starts around Old Town Hall; and,
  - c. commercial and residential development of west and south side Middlehaven sites.

20. As the company is only one of the routes by which the Council addresses these priorities, work towards them would still continue in the event of the recommendation being approved. The establishment of the Mayoral Development Corporation should also significantly mitigate some of the risk.

21. The steps set out in this report will have a positive impact on a number of risks set out within the Strategic Risk Register, including:

Risk	Impact
Corporate Governance arrangements are not fit for purpose	The closure of the company removes the risk that any revisions to the governance arrangements still fall short of the recently established guidance or are misaligned with the recently adopted policy on partial or wholly owned companies.
An unlawful decision is taken by the Council.	The closure of the company removes any residual risk that the Council could potentially take future decisions with respect to the company that could be viewed as unlawful.

***Human Rights, Equality and Data Protection***

22. An assessment will be undertaken to ensure that any data transfer between the company and the Council is managed appropriately upon closure.

***Financial***

23. The actual costs associated with closing the company down are limited to:

- a. £4,000 for FRP to action the Members Voluntary Liquidation
- b. £3,000 est. for the appointment of two independent directors to undertake the final board decision regarding closure (and mitigate the identified conflict of interest)

24. The closure of the company will however require the final closure of the company’s trading accounts and a reconciliation of development costs against sales income. An audit of the year 2023/24 will be conducted as part of the closure process.

25. The company was initially funded through a £10.6m loan from the Council and £4.7m from Section 106 funds for affordable housing, with repayments due to be made through the sale of completed developments. Further funding has also been accessed through Homes England and the Town’s Fund to support specific projects. As the company will still own one completed development upon closure (Newbridge Court – which will transfer to the Council), this will need to be reflected in the reconciliation and close down of accounts.

26. All assets and liabilities of the company will revert to the Council upon winding up. A full financial breakdown will be included in the final reconciliation of accounts that will be reported to Executive following closure.

27. The final MDC accounts will be incorporated into the Council’s 2023/24 Group Accounts.

**Actions to be taken to implement the recommended decision(s)**

Action	Responsible Officer	Deadline
Deliver the remaining actions in the Action Plan set out in Appendix 1	Director of Regeneration	31 <sup>st</sup> December 2023

**Appendices**

1	<b>Action Plan for the Closure of the Middlesbrough Development Company</b>

**Background papers**

Body	Report title	Date
Executive	Middlesbrough Development Company	24 January 2023
Executive Member for Finance and Governance	Wholly and Partly Owned Council Companies Policy and supporting Minimum Standard	25 July 2023
Corporate Affairs and Audit Committee	Internal Audit Report - Middlesbrough Development Company	15 August 2023

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**Middlesbrough Development Company Closure - Action Plan**

Action	Timescale	Lead	Completed?	Notes
Secure external legal and financial advice on formal company close down	By 9 <sup>th</sup> June 2023	Head of Legal Services	Yes	Meeting held with FRP and Endeavour Law regarding process for close down, and acceptable proposal received.
Financial arrangements reviewed to ensure risk minimisation and appropriate closure forecasting	By 16 <sup>th</sup> June	Finance Business Partner - Regeneration	Yes	Arrangements reviewed to ensure no spend incurred outside of planned, agreed activities
De-register deceased director from the board	By 16 <sup>th</sup> June 2023	Head of Legal Services	Yes	RA removed through Companies House
Write to directors affected by the local election results to confirm acceptance of de-registration from the board	By 16 <sup>th</sup> June 2023	Director of Regeneration	Yes	Acknowledgement received from EP, no response received from AP
Board meetings suspended due to lack of independent board members	By 20 <sup>th</sup> June 2023	Development Services Manager	Yes	Alternative decision making process put in place through Shareholder meetings, JW to remain registered as director (in name only) until replaced to ensure compliance
Shareholder meetings established on monthly basis	By 23 <sup>rd</sup> June 2023	Development Services Manager	Yes	Shareholder meetings established, with clear guidance on the purpose of the meeting
De-register AP and EP from the board	By 30 <sup>th</sup> June 2023	Head of Legal Services	Yes	EP and AP removed through Companies House
Provide notice to terminate contract of Managing Director	By 30 <sup>th</sup> June 2023	Director of Regeneration	Yes	Notice provided to Managing Director with effect from end October, including two months as 50% time to cover off arbitration requirements.
Review against emerging Wholly or Partly Owned Council Companies Policy	By 31 <sup>st</sup> July 2023	Director of Regeneration	Yes	Review undertaken to identify areas where on-going non-compliance requires management of risk

APPENDIX 1 - Middlesbrough Development Company Closure - Action Plan

Adopt Council policies around risk management, procurement and project management	By 31 <sup>st</sup> July	Director of Regeneration	Yes	Policies adopted, but no further procurement or project management expected
Financial review to ensure solvency at closure	By 31 <sup>st</sup> August 2023	Finance Business Partner - Regeneration	Yes	Review undertaken to identify likely requirements and availability of funding.
Alternative independent board members sought	By 31 <sup>st</sup> August 2023	Director of Regeneration	Yes	Discussed with FRP who will propose independent members, to be approached by the Council to fulfil specific role in seeing the board through closure
Appoint FRP	By 31 <sup>st</sup> August 2023	Director of Regeneration	Yes	Proposal and terms agreed, FRP appointed but not required until September/October
Independent board members appointed	By 31 <sup>st</sup> August 2023	Director of Regeneration		Underway
Conclude all company activities	By 31 <sup>st</sup> August 2023	MDC Managing Director		All activities concluded except final elements of Newbridge Court which will continue into early August
FRP commence MVL process	By 30 <sup>th</sup> September 2023	FRP		Timing to be directed by FRP in line with arbitration outcomes
Data transfer / data protection assessment completed	By 30 <sup>th</sup> September 2023	Development Services Manager		To ensure compliance at point of closure
Conclude all arbitration activities	By 30 <sup>th</sup> September 2023	MDC Managing Director		Timescale dependent upon arbitrator
Special Board Meeting to confirm closure	By 31 <sup>st</sup> December 2023	Development Services Manager		Timing to be directed by FRP in line with arbitration outcomes
Company formally closed through MVL	By 31 <sup>st</sup> December 2023	FRP – overseen by Director of Regeneration and Director of Finance		Estimate is 3 to 12 months, although FRP have indicated that 3 months is a reasonable timescale to expect from the start of the process.
Company audit requirements for 2023/24 concluded	By 31 <sup>st</sup> December 2023	Finance Business Partner - Regeneration		Company audit is undertaken as part of the liquidation process. All financial documentation to be retained by Regeneration as client for audit purposes.

APPENDIX 1 - Middlesbrough Development Company Closure - Action Plan

Final report to Executive	By 31 <sup>th</sup> January 2024	Director of Regeneration		
Deregistration at Companies House	Within 3 months of closure of the liquidation			
Final accounts reflected in the Council's 2023/24 Group Accounts	By 30 June 2024	Finance Business Partner - Regeneration		

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