

MIDDLESBROUGH COUNCIL

Report of:	Executive Member for Regeneration Director of Regeneration
Submitted to:	Executive
Date:	6 September 2023
Title:	Middlesbrough Development Company Closure
Report for:	Decision
Status:	Public
Strategic priority:	All
Key decision:	Not applicable
Why:	Not applicable
Urgent:	Not applicable
Why:	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 31st. 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 st December 2023

Appendices

1	Action Plan for the Closure of the Middlesbrough Development Company

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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