



## Report to Manydown Overview Committee – 13 February 2019

### Manydown Delivery Vehicle Report – Governance and Procurement

Cllr John Izett, Cabinet Member for Property and Development

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<b>Report to</b>	<b>Manydown Overview Committee</b>
<b>Ward(s):</b>	All
<b>Key Decision:</b>	<b>No</b>
<b>Appendix 1:</b>	(Confidential) Draft Interim Dev Co Business Plan

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**Papers relied on:**

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#### **Foreword - Cllr John Izett, Cabinet Member for Property and Development**

‘Work on finalising the contractual documents with the preferred private sector partner (PSP) has continued since our last report to members of the Manydown Overview Committee. This is complicated and time-consuming given the need to encapsulate provision for formal commitments, funding arrangements, governance including between the two councils as well as with the PSP, lines of responsibility and accountability that will enable the parties to work together successfully in bringing forward an outstanding new community at Manydown.

This time is also being used by officers, advisers and Urban&Civic to make input more up to date and precise using information that has become available since the original Final Tender Stage of the selection process. Inevitably, as the report states, there will remain significant areas affecting outcomes, not least in relation to land price and other financial variables that will need to be acknowledged in the final Development Agreement.

We are reaching a key stage in the realisation of our shared objectives for Manydown and it is therefore important that sound due diligence is maintained while seeking to move to the next phase, working formally with an appointed PSP, and starting to build new homes from 2020. The Project Director will be updating committee members on progress over the contract negotiations at the meeting.’

**It is recommended that the Manydown Overview Committee:**

- Notes the progress made to establish the Delivery Vehicle for the Manydown Garden Communities North (Phase 1) project;
- Notes the progress made on the set-up and operation of the Manydown Garden Communities LLP;
- Notes the proposed wider governance framework review; and
- Reviews and provides comments on the contents of this report which will be considered by the Cabinet Member for Property and Development.

**Background, corporate objectives and priorities**

This report accords with the council’s Budget and Policy Framework and directly supports the Council Plan priority of planning policies that safeguard local distinctiveness to:

*“Promote the use of Manydown land to deliver much needed high quality homes and facilitate wider borough benefit, which protects local communities”*

**Glossary of terms**

<b>Term</b>	<b>Definition</b>
BDBC	Basingstoke and Deane Borough Council
Dev Co	Development Company (BDBC/HCC/PSP)
EMPR	Executive Member for Policy and Resources (Hampshire County Council Executive)
HCC	Hampshire County Council
JMC	Joint Manydown Committee
JV	Joint Venture
LLP	Limited Liability Partnership
LPA	Local Planning Authority
MGC LLP (Top Co)	Manydown Garden Communities LLP BDBC and HCC Special Purpose Vehicle
MEC	Manydown Executive Committee
MOC (since April 2014)	Manydown Overview Committee
PSP	Private Sector Partner

## **Main considerations**

### **1 Executive Summary**

- 1.1 This report provides an update on the procurement process for Basingstoke and Deane Borough and Hampshire County Council appointing a private sector partner (PSP) for the Manydown Development Joint Venture (JV) vehicle; and an update on the governance arrangements for the Manydown Garden Communities LLP (MGC LLP).
- 1.2 Continued progress has been made to procure a PSP to work together with MGC LLP in the Delivery Vehicle Dev Co to deliver Manydown Garden Communities North (Phase 1).
- 1.3 Since the incorporation of MGC LLP on 6 August 2018, the Board has met four times in shadow form. The short form Members' Agreement is now complete subject to final review by Legal Services of both councils.
- 1.4 The MOC is asked to consider and comment on the scope and content of this report. Its comments will be considered by the Cabinet Member for Property and Development.

### **2 The Proposal**

- 2.1 In June 2016, the MOC reviewed and the MEC approved that BDBC in conjunction with HCC should go to the market to procure a PSP, on the basis of Option 4 Strategic Master Developer, to enter into a 50/50 JV vehicle with the councils. The JV model is based on bringing together the councils' land with investment and skills from a PSP, and on the sharing of risk and reward between the councils and the partner.
- 2.2 In addition, the MOC reviewed and the MEC approved the governance approach for the Manydown project at their respective committee meetings in June 2016. The principle elements comprise: the establishment of Top Co (the Manydown Garden Communities LLP) on the basis that the council will hold 50% and HCC will hold 50% as a limited liability partnership; and the establishment of Dev Co on the basis that Top Co and a private developer partner shall each have an equity interest and for it to be operated on a 50/50 voting arrangement as a limited liability partnership. Both vehicles will operate as separate corporate legal entities. In addition to Top Co holding the councils' interest in Dev Co, it will also formalise the process for the councils to provide their investment in the form of land and finance.
- 2.3 The procurement process and governance proposals are initially focused on Phase 1 of the Manydown project (that is the land allocated in the adopted Local Plan to 2029) but also include the option to be applied to later phases of the Manydown project should all parties agree and performance criteria are met.
- 2.4 Since the issue of the Standstill letters and the follow-up Preferred Bidder letter to the successful bidder on 23 February 2018 the councils have been

conducting the Preferred Bidder Stage. The purpose of this stage is for the councils with the Preferred Bidder (Urban&Civic) to finalise the terms of the contract and business plan which the Dev Co JV vehicle will commit to in order to deliver Manydown Garden Communities North.

- 2.5 The aim is for the councils to approve the final contracts and Interim Dev Co Business Plan no later than spring 2019 and subsequently enter into contract with the Preferred Bidder providing for the setting up and operation of Dev Co. This will mark the end of the procurement process.

### **3 Key issues for consideration/ Update on progress**

#### **3.1 Procurement progress**

- 3.1.1 At the last MOC meeting on 17 October 2018, Urban&Civic provided a presentation on their master developer approach to development and their vision for Manydown. This follows engagement with the Local Planning Authority and HCC Highways to discuss the planning strategy post-securing outline planning permission. This is the subject of a separate report on the agenda for this meeting. The Project Director also gave an update on the Preferred Bidder Stage.
- 3.1.2 To facilitate the Preferred Bidder Stage and the setting up of the JV vehicle process, bidders were asked as part of their Final Tender submissions to submit a PSP Business Plan; Overarching Delivery and Financial Plan; Parcel 1 Delivery and Financial Plan and a Bidder Financial Model. In addition each bidder submitted a final mark-up of the draft legal documents that had been initially prepared by the councils and their legal advisors (Pinsent Masons) at the start of the Detailed Solutions Stage, which reflected each bidder's positions reached during dialogue.
- 3.1.3 The councils, along with their technical advisors have been undertaking a complex process with the Preferred Bidder to conclude the drafting of the contract, legal documentation and financial model based on the Final Tender submission, agreeing/clarifying a series of technical points which have subsequently arisen. On 14 January there was an All Parties meeting to conclude the remaining outstanding legal points along with a commitment from all parties to swiftly move to final legal documents. The Project Director will provide a verbal update on the outcome of this meeting.
- 3.1.4 At Final Tenders Stage it was envisaged that at point of Contract the PSP would produce a Dev Co Overarching Business Plan and a Phase 1 Business Plan to be approved by the councils. As the Preferred Bidder Stage has progressed all parties have agreed that there should be an initial Interim Dev Co Business Plan that will cover the programme of work and associated cost plan for the first 12 months of Dev Co. It will then be possible for key factors which warrant further exploration and confirmation to be progressed and there will be a contractual requirement that the Overarching Business Plan and Phase 1 Business Plan will have been finalised and approved within 12 months. The project team has been working closely with Urban&Civic to develop the Interim Business Plan which is attached as Appendix 1 to this report as a confidential item for the information and comment of members.

- 3.1.5 The MOC will be briefed on the draft Interim Dev Co Business Plan and other outstanding key points in confidential session where comments can be provided to the Cabinet Member for Property and Development and Project Director Manydown which will be included in a subsequent report to Cabinet.
- 3.1.6 The project timeline has been adjusted to reflect an update in concluding the contracts due to resolving the outstanding key points. A revised timetable and activities for the procurement process are summarised in the table below with the changes highlighted in red text.

Phase	Activity	Timescales
Phase 1	Pre-procurement (e.g. PIN and soft market testing)	May to June 2016
Phase 2	Pre-Qualification Questionnaire - assess the suitability of a potential partner to deliver the councils contract requirements	July to September 2016
Phase 3	Outline solutions - tests what the potential partner's vision for delivering Manydown and how they intend to work with the councils	October 2016 to February 2017
Phase 4	Detailed solutions - explores proposals at a more granular and tangible level, focussing on how shortlisted bidders will deliver their vision for Manydown working in conjunction with the councils	March to October 2017
Phase 5	Final Tenders – bidders submit final tenders to be evaluated by the councils. Respective governance and decision making processes will approve the selection of the preferred bidder.	October 2017 to March 2018
Phase 6	Preferred Bidder appointment (including finalising contracts)	March to spring 2019

## 3.2 Governance arrangements

### MGC LLP and Dev Co LLP

- 3.2.1 The governance framework, as informed by the councils' legal advisors Pinsent Masons was approved by the MEC on 28 June 2016. In July 2018 Cabinet and HCC EMPR approved the setting up of the Manydown Garden Communities LLP. The LLP was incorporated at Companies House on 6 August 2018.
- 3.2.2 Following the inaugural meeting of the MGC LLP on 7 September 2018 the Board have met again in October and December 2018 and January 2019. The Board remains in shadow form until the Members' Agreement has been signed by the Members (the two councils). Work continues to ensure the LLP is operationally ready. This includes but not limited to appointing technical advisors to provide legal, financial, accounting, tax and insurance services; developing protocols and policies including on procurement and producing the

MGC LLP Business Plan. During this time the councils have also registered MGC for VAT, engaged with NatWest in order to open a bank account for the LLP and have successfully recruited an Interim Business and Governance Manager who will provide dedicated support.

- 3.2.3 The Members' Agreement between BDBC and HCC, which has previously been shared with the MOC, will govern the operation of the MGC LLP and sets out the range of delegation under which it can perform in order to deliver its approved Business Plan and those decisions which will need to be referred to the respective Members. The draft Delegation Policy was approved by Cabinet and EMPR in July 2018. The councils' legal consultants have advised the authorities that in the interim, prior to the establishment of Dev Co, to enter into a short form version of the Members' Agreement. This will enable Dev Co to input on the relevant delegations within the Delegation Policy which impact on Dev Co but not to prevent MGC to progress with work that is not dependent on Dev Co. The councils are seeking to sign the short form Members' Agreement shortly and the full Members' Agreement will be entered into when contract documentation is entered into with the Preferred Bidder.
- 3.2.4 The MGC LLP Business Plan will be informed by the Interim Dev Co Business Plan which will be an approved document under the Contract with the Preferred Bidder. It will set out MGC LLP's roles and responsibilities for the delivery of Manydown Garden Communities North and the work programme for the next 12 months.
- 3.2.5 The first annual Business Plan is currently being developed and will be presented at a future meeting in order for the MOC to review and provide comments on prior to Cabinet approval later in 2019. This will be reviewed in line with the development of the Dev Co Overarching Business Plan which is to be produced over the 12 months from the point of contract with the Preferred Bidder.

#### Wider governance

- 3.2.6 As the project moves into delivery of Manydown Garden Communities North and developing proposals for southern Manydown, the wider supporting governance structure will need to evolve in order to meet the needs of the project. The project team has been reviewing the current arrangements. To summarise they are as follows:
- Joint Manydown Committee – to date the role of the JMC has been to deal with all routine issues of land management normally exercised by a land owner. This does not include powers, functions, rights and duties relating to the development of the land. Following the setting up of MGC LLP the project team considers the JMC may no longer be required and therefore disbanded with all its estate management duties being transferred to the LLP
  - Manydown Garden Communities LLP – the purpose of the LLP is to formalise BDBC and HCC's joint partnership approach through a special purpose vehicle, in which the councils each have an equity interest and is operated on a 50/50 voting arrangement basis. MGC

LLP will represent the councils in Dev Co; work together with the Preferred Bidder in Dev Co to deliver Manydown Garden Communities North in accordance with the Manydown Objectives and implement the estate management strategy

- Manydown Overview Committee – to date the role of the MOC has been to consider all strategic landowner matters, to look after the council's interests and to review and scrutinise policy and financial issues of the Manydown development project. It also provide comments to the Manydown Executive Committee and/or Cabinet on proposals and recommendations
- Manydown Executive Committee – to date the role of the MEC, on behalf of Cabinet, has been to deal with matters, acting as land owner, in relation to the Manydown development project, namely the preparation and approval of planning and delivery strategies.

3.2.7 It is proposed to bring back a paper at a future meeting which sets out the options for the future of the JMC along with re-alignment of the MOC and the MEC enabling the committee to consider the wider governance. Any proposed update to the terms of reference of any committee will require changes to the Council's Constitution and subsequently Council approval.

### 3.3 Lease update

The Manydown Company Ltd

3.3.1 The councils continue to have a dialogue with the Manydown Company.

Sale of land from the councils to MGC LLP

3.3.2 The 999 year Lease between the councils and the Manydown Company sets out how the Option can be exercised. The Option Agreement is subject to conditions for drawdown the main one is achieving an outline planning consent. Once achieved the Option can be triggered and transfer of the land to the councils can be exercised. As part of the programme of due diligence the councils have sought advice on the process to trigger the Option and drawdown the land having also taken into consideration the approach of the Preferred Bidder.

3.3.3 The objective is, once an outline planning consent has been achieved, to be able to draw down the development land in order to be able to commence development. The Lease provides an option for the tenants (the two councils) to require the development land to be transferred to the tenants or to another party that the tenants may direct. The Option can only be exercised where there is an intention to develop the land. The Lease allows for several situations in which the Option may be exercised and the one the councils have been advised to use by their legal and tax advisors is for the authorities to enter into a contract or option for the sale of the freehold or leasehold interest in the land conditional upon and prior to the grant of planning permission. The intention is that the councils will enter into a Put and Call Option arrangement in relation to the transfer of the councils' land interest into

MGC LLP. If the councils enter into such an arrangement they can then trigger the Option within the Lease when an outline planning consent is granted. The Put and Call Option is currently being finalised for signing in February 2019. In July 2018 Cabinet and EMPR approved the councils entering into such an arrangement with MGC LLP and delegated authority to officers to conclude all negotiations and effect execution of the contract and disposal.

- 3.3.4 The councils, when they entered in to the 999 year Lease with the Manydown Company, subsequently entered into a leaseback arrangement to enable the Manydown Company to continue to farm the land. The councils will need to terminate the leaseback arrangement to achieve vacant possession of the development site. In July 2018 Cabinet and EMPR approved the serving of a vacant possession notice when deemed appropriate. Work is ongoing between the councils in consultation with the Preferred Bidder to develop a Vacant Possession Strategy.

#### **4 Options Analysis**

- 4.1 The options for delivering the Manydown project formed part of the Strategic and Full Business Cases previously considered by the MOC.

#### **Corporate implications**

#### **5 Legal Implications**

- 5.1 The councils have worked closely with their consultant advisors Pinsent Masons to ensure that the procurement process has been conducted in a fair and transparent way in accordance with the Public Contracts Regulations 2015. A risk remains that the councils and the Preferred Bidder do not successfully proceed from Preferred Bidder Stage to Contract Award, because the due diligence process may result in agreement not being reached on the detailed documentation or because the PSP withdraws for its own commercial reasons.
- 5.2 Pinsent Masons have also provided advice regarding the proposed governance arrangements to ensure that they are appropriate and legal.

#### **6 Financial implications**

- 6.1 There have been no major changes to the finance update since the information presented at the MOC on 17 October 2018.
- 6.2 It should be noted that Urban&Civic's original proposal included a detailed financial model which forecast land values, infrastructure and build costs, incomes and returns. These projections represented best estimates at the point in time based on a range of assumptions (some provided by the councils to ensure comparable bids) and are not fixed contractual payments. This information remains subject to ongoing due diligence and will change in due course as changes to the outline planning application are approved and changes to the Section 106 agreement and infrastructure obligations/requirements are agreed and contracted with the LPA. Urban&Civic are currently preparing a revised model which is based on the

original Final Tender model but enables actual costs to be input to replace estimates in a controlled manner.

- 6.3 The actual returns and their timing for the councils and Urban&Civic will continue to be dependent on a range of variables such as final scheme design, planning, land prices, house prices, sales rates, infrastructure costs and construction costs and these will fluctuate over the course of the development.
- 6.4 The working capital, cashflow and funding requirements of delivering the scheme via the Dev Co agreed business plans will remain the contractual responsibility of the private sector partner and their proposed funding and delivery strategy. These are still in the process of being confirmed as part of the final commercial and contractual review and BDBC Cabinet and HCC EMPR will be asked to approve when these are in the final form and agreed with Urban&Civic.
- 6.5 The councils will be required to fund the operation of MGC LLP. The representatives sitting on the MGC LLP Board have reviewed a first year proposed budget and agreed this at its meeting on the 13 December 2018. The revised estimate of funding for the current year at £48,000 will be required from both councils to cover the period to December 2018, increasing to approximately £433,000 each for 2019.

#### Financial Risks

- 6.6 The key financial risks to the council continue to relate to the MGC LLP operational costs and the timing and amount of dividends and capital receipts. These will depend on many factors such as the land price, cost of infrastructure, grant funding, the housing market and economic conditions. In terms of land price, once the legal mechanism to acquire land from the Manydown Company is formally triggered, the price agreed or determined by a third party expert will be payable with no right for the two councils to withdraw. In addition will be the costs required to promote southern Manydown once the freehold of the North site is acquired and being developed.
- 6.7 In order to mitigate these risks, the council must have contingency plans for funding expenditure in the event that MGC LLP receipts are not received as planned and this can be achieved through the council's Strategic Capital Reserve and the capital funds allocated for Manydown investment. Additional funding may become available from central government in the form of capacity and capital grants. These will be applied for as they become available and utilised in funding the ongoing development.
- 6.8 This council's requirement to provide funding with HCC for the operation of MGC LLP is controlled by the two councils approving an annual budget for MGC LLP as part of the annual Business Plan. MGC LLP must then operate in line with this budget and there are clear delegations in the Members' Agreement setting out key decisions over which the two councils have control including financing.

## **7 Risk management**

7.1 The Manydown project team actively manages issues and risk. The risks are regularly reviewed and updated to reflect the status of the project and be able to escalate issues in a timely fashion. The transition of the project from design/planning to delivery will increase the range of risks and the team will be working closely with Urban&Civic to manage, review and report on these risks. The current key risks in relation to this workstream include:

- Delay to appointment or inability to appoint a JV development partner; and
- Delay to incorporation and operation of MGC LLP and Dev Co.

## **8 Equalities implications**

8.1 An Equality Impact Assessment has been carried out to consider the impact of the Planning and Delivery strategy for Manydown Garden Communities North (Phase 1) on the protected characteristics and other groups, in line with the Public Sector Equality Duty (Equality Act 2010). This concluded that at this stage of Manydown Garden Communities North, there are no anticipated adverse effects to the community. The housing mix assessment will ensure the diverse needs of the community are reflected in the development. Specific consideration is being given to the needs of Gypsy and Travellers, faith groups and those with specific disability or health requirements. The project continues to engage with a wide group of community stakeholders and has actively encouraged participation by younger people through the schools' engagement programme and youth workshops. The importance of continued engagement, employment and training opportunities and meeting all relevant equalities requirements has been recognised as part of the procurement process to appoint a PSP. Monitoring will take place as necessary as the project progresses to identify any unforeseen equalities implications starting with a further review of the Equalities impacts following the appointment of the Preferred Bidder.

8.2 To date the councils' strategy for the project has been strongly influenced by the councils' desire to achieve the principles and objectives and deliver meaningful and complementary social and economic benefit for the new Manydown community, adjacent communities and the wider Basingstoke area. These will be further developed through the Manydown Standard as proposed as part of Urban&Civic's Final Tender submission and encapsulated through a commitment in the MGC LLP and Dev Co business plans.

## **9 Consultation and communication**

### **9.1 Member engagement**

9.1.1 Members of the MOC and the MEC have been provided with updates on the Delivery strategy for the Manydown project at committee meetings during 2016, 2017 and 2018. All member briefings have also taken place to provide councillors with an overview of the proposed delivery strategy and the progress of the process to appoint a PSP. As outlined in 3.2.6 as the project

moves into delivery of Manydown Garden Communities North and developing proposals for southern Manydown, the wider governance structure will evolve in order to meet the needs of the project. The project team will continue to engage regularly with members.

## 9.2 Communications

9.2.1 A communications plan was developed for the outline planning application phase of the project outlining how local communities and residents would be kept informed and engaged. Communications will be planned around the execution of contracts with the Preferred Bidder and the establishment of Dev Co including with residents, the local media and property and other specialist press.

9.2.2 To date the proposals for Manydown have been shaped through active engagement with people and organisations across the town and borough. Following the appointment of the Preferred Bidder, a joint communications and engagement strategy will be agreed as part of the Overarching Business Plan. The strategy will outline Dev Co's commitment to maintain and build on the high level of community engagement already achieved by the councils. The Interim Dev Co Business Plan will address communications during the initial 12 month period.

9.2.3 A communications protocol for the Manydown project as a whole to outline the roles and responsibilities of the councils, MGC LLP and Dev Co is currently being developed.

## 10 **HR implications**

10.1 The Manydown project team is jointly funded with HCC. A review of the team has been undertaken to reflect the new governance arrangements and ensure the right mix of skills and experience required to support the project as well as continuing to develop proposals for southern Manydown and the wider western Basingstoke. Additional resources are required to support MGC LLP which are currently being defined.

## 11 **Conclusion and next steps**

11.1 Further progress has been made with the process to procure a private sector partner for the Manydown Development JV vehicle in accordance with the approved Delivery strategy. Concluding the Preferred Bidder Stage - marking the end of the procurement process - and the setting up of Dev Co will require approval from the councils' respective governance panels in spring 2019.

11.2 Since the incorporation of the MGC LLP on 6 August 2018, the Board has met four times in shadow form. Work will continue to ensure that the LLP is able to operate robustly. This will include the signing of the short form Members' Agreement and finalising the MGC LLP Business Plan for approval by the councils later in 2019.

**Date:** 13 February 2019  
**Decision taken by:** Manydown Overview Committee

<b>Lead officer</b>	Andrew Reynolds, Project Director (Manydown)
<b>Report author</b>	Faye Arnatt, Programme Officer (2362)
<b>Version</b>	Final
<b>Dated</b>	4 February 2019
<b>Status</b>	(Open)
<b>Confidentiality</b>	It is considered that information contained within Appendix 1 contain exempt information under the meaning of Schedule 12A of the Local Government Act 1972, as amended, and therefore cannot be made public.