

**DERBYSHIRE COUNTY COUNCIL**

**Shareholder Board of Derbyshire Developments Limited**

28 June 2017

Report of the Strategic Director Corporate Resources

**GOVERNANCE AND MEMBERSHIP OF THE BOARD  
OF DIRECTORS**

**1. Purpose of the Report**

To outline the governance of the Company and seek approval to the appointment of a non-executive director to the Board of Directors.

**2. Information and Analysis**

Derbyshire Developments Limited was established in August 2016 by the County Council to generate a source of revenue, income and capital investment return, make effective use of the Council's land, create employment opportunities within Derbyshire, including for apprentices and Derbyshire care leavers and to maintain ethical and environmental standards in the specification, development and construction of properties.

A Board of Directors was appointed comprising Ian Stephenson, Peter Handford, Sarah Morris and Councillor Andy Botham with Sanjiv Kohli as Interim Director until the appointment of Aidan Kelly as Managing Director of Derbyshire Developments Limited at the beginning of this year.

The governance arrangements of the company are dealt with the Articles of Association and a Management Agreement between the County Council and the company. The Articles of Association provide that a person shall automatically cease to be a director of the company if he or she is an elected member or officer of the shareholder i.e. the County Council and he or she ceases to hold such office. Andy Botham, therefore, ceased to be a director of the company following the County Council elections on 4<sup>th</sup> May this year.

The Shareholder Board is therefore requested to appoint a new non-executive director in place of Mr Botham. Members are referred to Section 6.3 of the Business Case attached to the Cabinet report of 14<sup>th</sup>

June 2016 which addresses the responsibilities of Members or officers who are directors of the company and the issue of conflicts of interests.

As the Cabinet report of 26<sup>th</sup> July 2016 indicated, once the company had been established, the intention was to co-opt other Council officers with relevant skills and expertise on to the Board of Directors to ensure it had capacity and technical knowledge, expertise and experience to take the company further forward.

The Board of Directors discussed proposals for changes to its membership structure at its meeting on 19<sup>th</sup> May to incorporate the necessary balance of skills, knowledge and experience on the Board and facilitate transparency and trust in the working relationship with the County Council. As a result the Board of Directors resolved to recommend to the Shareholder Board that the Board of Directors should consist of 6 Directors, comprising a non-executive Chairman, the Managing Director, a non-executive Director who would be the County Council's Director of Property or nominee and a non-executive Director who would be a County Council Cabinet Member or nominee, together with 2 non-executive Directors to be recruited externally and remunerated. The positions of non-executive Chair and Managing Director are also remunerated. A copy of the report presented to the Board of Directors on 19<sup>th</sup> May is attached as an appendix to this report.

The Shareholder Board is requested to consider the recommendations of the Board of Directors as set out in the appendix to this report and provide a response.

### **3. Financial Considerations**

The cost of any remuneration provided to directors would be met by the company from funds provided by the County Council.

### **4. Legal Considerations**

Both the Board of Directors of Derbyshire Developments Limited and the Shareholder are able to appoint directors to the Board without the other's consent. Once appointed a director has a duty to act in the best interests of the Company.

Remuneration of directors is a matter which is reserved to the Council (Shareholder) under the Management Agreement. The Board therefore requires the Council's approval for any remuneration package for a remunerated director. It is for the Council (Shareholder) to decide

whether to allow remuneration and if so, at what level, for which positions and whether to attach conditions to an appointment.

Clause 8.5 of the Management Agreement allows the Council (as Shareholder) to remove a director it has appointed.

The Shareholder also has the ability under s168 of the Companies Act 2006 to remove any director by giving 28 days' notice to the Board of Directors and the director in question of its intention to pass such a resolution on whether or not to pass the resolution.

Where the Shareholder resolves to remove a director, all rights the director has under his or her letter of appointment are preserved, such as notice periods.

**5. Other Considerations**

In preparing this report the relevance of the following factors has been considered; prevention of crime and disorder, equality and diversity, human resources, environmental, health and transport considerations.

**6. Call-in**

Is it required that call-in be waived in respect of the decision proposed in the report? No.

**7. Key Decision**

No

**8. Officer's Recommendations**

That the Shareholder Board:-

- 8.1 appoints a non-executive director to the Board of Derbyshire Developments Limited.
- 8.2 responds to the recommendation of the Board regarding the membership structure of the Board set out in appendix 3 to the report.

**JUDITH GREENHALGH  
STRATEGIC DIRECTOR CORPORATE RESOURCES**

## **Report to Board of Directors meeting..... 19<sup>th</sup> May 2017**

### **Title: Governance and membership of the Board of Directors**

**Purpose of report: To summarise principles of governance and recommend criteria to be applied in the recruitment of Directors**

#### **Author:**

Aidan Kelly, Managing Director

#### **Fit with Strategic Objectives**

This is an enabling proposal, designed to enhance the effectiveness, of the Board of Directors, in the governance of Derbyshire Developments Limited (DDL).

#### **Social Value**

Each £1 million invested, in new homes, sustains 19.9 jobs for a year (DCLG) and company profits will create dividends, payable to DCC, to support investment in services.

#### **Background:**

DDL is governed by a Board of Directors which is answerable to a Shareholders Board, acting as a DCC Cabinet sub-committee. The arrangements are governed by Articles of Association and a Management Agreement, which is the subject of the preceding agenda item.

Directors have received a briefing outlining the legal obligations of a Board Director. This briefing is narrowly legalistic and is therefore supplemented with Appendix 1 below summarising roles and responsibilities in plain English.

The Board of Directors is in a transitional phase, with the intention of reducing the representation by County Council senior officers and moving towards more independent, non-executive membership. Ian Stephenson, CEO of DCC, has stated an intent to resign at the earliest, appropriate opportunity, in order to avoid the appearance of a conflict of interest with his role in advising the Shareholders Board. Peter Handford, Director of Finance of DCC, has also indicated that he is likely to resign in due course.

Whilst accepting that appointments, to the Board of Directors, are at the absolute discretion of DCC, this paper seeks to propose the balance of an effective Board of Directors and criteria, which the Shareholders Board will be recommended to apply.

#### **Recommended membership**

In proposing the membership structure below, this paper seeks to:

- Incorporate the necessary balance of skills, knowledge and experience
- Facilitate transparency and trust in the working relationship with DCC
- Provide a formal representative role for DCC's Property Department

It is therefore recommended that the Board of Directors should consist of

- Non-executive Chair – currently Jon McLeod - remunerated
- Managing Director – currently Aidan Kelly - remunerated
- DCC’s Director of Property or nominee – currently Sarah Morris - unremunerated
- Non-executive Director – unremunerated
  - Potentially a Cabinet member bringing knowledge and understanding of the economic, political and social situation and trends in Derbyshire
- Non-executive Director – remunerated
  - Potentially a private sector practitioner bringing knowledge and understanding of the residential development sector, from a customer perspective.
- Non-executive Director – currently Peter Handford – unremunerated
  - Potentially a private sector practitioner bringing knowledge and understanding of finance, business planning and risk management.
  - Will serve as Chair of the proposed Risk and Audit sub-committee
  - Will need to be remunerated if/when recruited externally

### Options

The Board of Directors could be increased in size and recruit from a wide range of backgrounds. The proposal above reflects recognised good practice in non-executive governance and provides an appropriate and effective balance of expertise, roles and responsibilities.

It will be both necessary and appropriate to implement an appraisal process to ensure that there is a periodic review of whether the Board is functioning properly. This will be the subject of a future paper.

### Risk

Without an overview, the Board may not include the required balance, of expertise, knowledge and experience, to be able to effectively govern the business and/or to hold the executive to account.

### Recommendation

That the Board:

- Notes the contents of Appendix 1 below
- Resolves to recommend, to the Shareholders Board, that the Board of Directors should consist of 6 Directors as follows
  - Non-executive Chair – currently Jon McLeod
  - Managing Director – currently Aidan Kelly
  - Non-executive Director – unremunerated – DCC Director of Property or nominee
  - Non-executive Director – unremunerated – DCC Cabinet member or nominee
  - 2 Non-executive Directors – remunerated – recruited externally

## Appendix 1

### Role of the Board of Directors

The Board of Directors is collectively responsible for ensuring the success, of the company, in meeting corporate objectives and its compliance with all legal and regulatory obligations. The Board of Directors, subject to the authority of the Shareholders Board:

- Determines the company's vision, values and standards
- Provides leadership within a framework of controls enabling risk to be assessed and managed
- Sets realistic but challenging corporate objectives and Business Plan
- Supports the Managing Director and holds him/her to account for performance
- Fulfils the functions outlined in the Articles of Association and Management Agreement

### Board Director

The role of a Board Director is to:

- Comply with the statutory and regulatory requirements of a Board Director
- Represent the company in an appropriate manner
- Act on behalf of the Board and in the interests of the company
- Utilise his/her skills, knowledge and experience to contribute to an effective Board

The responsibilities of a Board Director include:

- To contribute positively to the leadership and motivation of the company
- To act as an accountable Director
- To build and sustain constructive relationships with other Directors and the senior management team
- To act without delay to defuse and resolve disagreements, with other Directors
- To contribute to the formulation of policies, strategies, objectives and Business Plan
- To contribute to debate, including challenging the views of others, but accept "cabinet responsibility" for decisions reached
- To apply personal skills, knowledge and experience to analyse issues and contribute to decision making
- To act as ambassador for and to represent the company as appropriate
- To work, with the Non-executive Chair to identify personal development needs and appraise the effectiveness of the Board of Directors
- To uphold the values and objectives of the company
- To act within and ensure compliance with the company's policies, Financial Regulations, Schedule of Delegation, Code of Conduct and any statutory or regulatory requirements
- To attend and contribute positively to induction, training, performance review and other events as are reasonably required
- To attend all meetings, of the Board of Directors, including sub-committee, working party or "Task & Finish" group meetings of which the Director is a member.
- To read and understand Board papers before meetings and to advise the Managing Director of any queries or concerns in advance of the meeting.

