

CABINET

8TH JUNE 2021

3 RIVERS DEVELOPMENTS LIMITED – REVISED COMPANY DOCUMENTS

Cabinet Member(s): Cllr Bob Deed, Leader
Cllr Andrew Moore, Cabinet Member for Finance
Cllr Bob Evans, Cabinet Member for Housing and
Property Services

Responsible Officer: Kathryn Tebbey, Head of Legal (Monitoring Officer)

Reason for the Report and the Recommendation: In June 2020, the Cabinet requested a review of the shareholder agreement and articles of association. A report setting out options would provide the conclusion to that review. This report now provides information about the review, an explanation of certain options and the draft documentation for formal review by the Cabinet prior to signature.

RECOMMENDATIONS: that the Cabinet, subject to any matters or changes identified in the meeting:

- (a) approves the draft shareholder agreement at Appendix 1, subject to such changes necessary to address matters raised by the Cabinet;**
- (b) nominates the Deputy Chief Executive (s.151 Officer) to be the Named Officer for the purposes of the shareholder agreement;**
- (c) subject to recommendation (d)(ii), approves the draft articles of association at Appendix 2 for discussion with, prior to adoption by, the Company; and**
- (d) delegates authority to the Monitoring Officer, in consultation with the Deputy Chief Executive (S.151 Officer) and the Cabinet Member for Finance to –**
 - (i) make such changes to the shareholder agreement as are necessary to address the matters and/or changes identified by the Cabinet and then sign it on behalf of the Cabinet; and**
 - (ii) negotiate a final version of the articles of association for adoption by 3 Rivers Developments Limited.**

Financial Implications: The financial implications arising from the proposed changes are minimal.

Budget and Policy Framework: There is nothing in this report which conflicts with the Budget or the Policy Framework.

Legal Implications: There is no legal requirement for a shareholder agreement, but it is an advisable mechanism to regulate the relationship between the shareholder and the company. The existing agreements and articles of association will be superseded by any new documents agreed between the parties.

Risk Assessment: There is a risk that one or more provisions in the shareholder agreement present challenges or do not quite deliver the outcome sought. This can be mitigated by reviewing the shareholder agreement in future in the light of any applicable evidence as necessary.

Equality Impact Assessment: No impacts directly arising from this report.

Relationship to Corporate Plan: No direct relationship, but overall a clear and sound governance basis for commercial activity is part of a well-managed council.

Impact on Climate Change: No impacts directly arising from this report.

1.0 Introduction/Background

1.1 In June and July 2020, the Cabinet passed resolutions on various governance reforms to the working relationship between the Cabinet (in its capacity as shareholder) and 3 Rivers Developments Limited (the Company), the Council's wholly owned housing development company.

1.2 Most of the reforms were underpinned by the need for new or refreshed documents and procedures, including the security for loans. Some of the tasks naturally flowed following the completion of others. Loan security is in place, as is a detailed loan facilities agreement.

1.3 One of the final tasks has been to obtain advice on the company documents – the shareholder's agreement and the articles of association. These are the subject of this report.

2.0 Shareholder Agreement

2.1 Anthony Collins LLP (ACS) were commissioned to provide advice on a revised shareholder agreement to reflect the resolutions made by the Cabinet in 2020. ACS had previously provided advice to the Cabinet during the course of their 2020 review. Inevitably, any firm will draw on its experience in advising on similar matters and their document library. The task then is to tailor that to the Cabinet's requirements.

2.2 The Company has reviewed the draft agreement, as have Devon Audit Partnership (DAP) during the course of their recent audit work. Where appropriate, some changes have been made over the course of the discussions to arrive at a draft which can now be formally considered by the Cabinet.

2.3 The agreement has been drafted on the basis that the Cabinet as a whole continues to fulfil the shareholder function. That approach probably best suits the current relationship with the Company and the desire for transparency and collective oversight. However, there are alternatives. These are:

- Establish an executive committee i.e. a committee of nominated Cabinet members;
- Delegate to a single Cabinet member; or
- Delegate to an officer.

These options will remain for the future, but the Monitoring Officer's advice is to continue with the current arrangements for the time-being.

- 2.4 One of the key parts of the agreement is the Schedule of Reserved Matters. As the terminology implies, these are matters which the Cabinet considers should be 'reserved' to them for approval, authorisation or decision. In some cases, these are absolute and in others the additional columns indicate the scope of decisions which can still be taken by the Company.
- 2.5 Any suggestions as to thresholds or financial value have been included on the advice of ACS and/or the Deputy Chief Executive (s.151 Officer). The decision nevertheless rests with Cabinet. In some instances, and in discussion with either DAP or the Company, some concerns have been picked up about how either the original resolutions or the draft agreement would work in practice. For example, the Cabinet will recall that it resolved that remuneration should be limited to RPI. This has been included as a reserved matter. However, it is suggested now that 1% above RPI is more proportionate and this has been put forward in the draft (Reserved Matters 7 and 8) for the Cabinet to consider.
- 2.6 The Cabinet will note that the timeframe for production of the Business Plan has been brought forward to 30 November prior to the next financial year (clause 9.5). Initially, it had been proposed as 31 October, but the Company was concerned that early production of the Business Plan would result in more estimates being included. The early production of the Business Plan will assist the budget setting process and allow more time for consideration.
- 2.7 Cabinet's attention is also taken to clause 8 – Council Policies. This indicates that the Cabinet may wish to ask the Company to have due regard to certain policies from time to time. If, in the future, the Cabinet contemplates doing so, it is essential that advice is sought on the implications which might arise – for the Council and for the Company.

3.0 Articles of Association

- 3.1 The articles of association are not for adoption by the Cabinet – although future variations must be approved by the Cabinet under the Reserved Matters in the Shareholder Agreement. Cabinet's comments, however, are sought.
- 3.2 The articles will need to be in line with the final version of the Shareholder Agreement and are not therefore necessarily in final form at Appendix 2. Some further advice will be needed and input sought from the Company. Delegated authority is sought to conclude this drafting and the final version will then be sent to the Company for adoption and filing.

4.0 Conclusion and advice

- 4.1 The shareholder agreement has been subject to extensive review with ACS, the Deputy Chief Executive (s.151), DAP, the Company and the Cabinet Members for Finance and for Housing and Property. Cabinet members have

also had the opportunity to review and comment. The agreement is now brought forward for approval, subject to any further changes or revisions thought necessary.

- 4.2 Cabinet is advised to take the decision now on the shareholder agreement so that the working relationship can move forward. It may well be that, when put into practice, one or more provisions in the shareholder agreement present challenges or do not quite deliver the outcome sought – whether from the Cabinet’s or Company’s perspective or both. However, the best way to find that out is to move forward with the agreement and, if necessary, review it with evidence in a year or so. That is not a recommendation in this report, but is something to reflect on in future.
- 4.3 The articles of association remain in draft and will be further discussed and refined to ensure no conflict with the final version of the shareholder agreement. It is not considered that there is anything particularly unusual or onerous within them. The Cabinet may wish to comment and the views of the Company are needed. Delegated authority will bring this to a conclusion as quickly as possible. In exercising that authority, the decision to send the articles to 3 Rivers for adoption will be recorded.

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Circulation of the Report: Cabinet, Leadership Team

List of Background Papers: None.