

Report to:	Cabinet	Date of Meeting:	1 November 2018
Subject:	Housing DevCo – Updates to Company Articles		
Report of:	Head of Commercial Development – Christian Rogers	Wards Affected:	All
Cabinet Portfolio:	Communities and Housing		
Is this a Key Decision?	Yes	Included in Forward Plan:	Yes
Exempt / Confidential:	No		

Summary:

The Final Business Case (FBC) for Sefton Council’s Housing Development Company (the DevCo), which was approved by Cabinet in October 2017, required the production of draft Articles of Association for the incorporation of the company at Companies House. These draft Articles were produced and approved by Cabinet in January 2018.

The incorporation of the Holding Company and the Sales Company at Companies House have both been progressed using these approved Articles.

The Articles state that any significant changes to the Articles require approval by the Shareholder, which is Cabinet.

Following consultation with the Cabinet Portfolio Holder two changes and a clarification of the Articles are proposed for approval by Cabinet as follows:

1. A change - to allow remuneration for Non-Executive Directors of the Company.
2. A change – of the trading name of the company, following a brand development exercise, to “Sandway Homes”.
3. A clarification - to provide a clearer definition of the responsibilities and authority of the Shareholder Representative, a role created to allow an individual Cabinet Member to represent the collective Cabinet in relation to the DevCo.

If approved by Cabinet, the Articles will be updated with these changes and registered with Companies House, becoming part of the Company’s constitution.

Recommendation(s):

1. Approve the change to the Articles of Association to allow for the remuneration of Non-Executive Directors as set out in the report.
2. Approve the proposed change to the Articles to allow trading as ‘Sandway Homes’.

3. Approve the detailed definition of the role of the Shareholder Representative as set out in the report.
4. Authorise the Executive Director (Sarah Kemp), in consultation with the Cabinet Member for Communities and Housing to implement these changes to the Articles and register updated Articles with Companies House.

Reasons for the Recommendation(s):

1. Allowing remuneration of Non-Executive Directors (NEDs) will make it possible to attract industry leading individuals to the DevCo Board, ensuring that the Company benefits from the extensive skills and experience that these kinds of individuals possess helping to maximise the success of the Company and the return to the Shareholder (the Council). The recommended proposals are as follows:
 - a. NEDs will be external (i.e. not Officers or Members of the Council).
 - b. NEDs will have the same voting rights as the Executive Members of the Council (which Executive Directors include an Executive Director of the Council (initially acting as Chair of the Board), a Head of Service (acting as Managing Director) and the Deputy S.151 Officer (acting as Finance Director) along with a front-line (non-Cabinet member) councillor).
 - c. Any members of the Board who are officers of the Council will not be paid any additional amount above their Council salaries for fulfilling their roles on the Board of the Companies, in line with their contracts of employment.
 - d. The front-line member of the Council would be paid a Special Allowance (at the same level as a member of Overview and Scrutiny Committee), so long as they are not already in receipt of any other Special Allowance, in-line with the Council's constitution.
 - e. NEDs would be paid a day rate of £500 per day for their work on the Company Board as follows:
 - 0.5 days preparation for Board meetings.
 - 0.5 days follow-up from Board meetings.
 - 1.0 days for attendance at Board meetings.
 - 6 Board meetings planned per year, £6k (max. £12k).
2. Adopting the trading name and brand identity developed through a market focused brand development exercise conducted recently will help position the company to compete effectively in the market place.
3. Clarifying the role of the Shareholder Representative will provide more robust governance of the Companies in line with the Council's constitution whilst avoiding any unnecessary administration or delays to decision making. The recommended detailed definition of the role, which has been consulted on with the Cabinet Portfolio Holder and the Executive Leadership Team, is as follows.

- a. The objective of the role of Shareholder Representative is to empower a single person to act for the whole Cabinet as the sole shareholder of the DevCo companies:
 - The holding company (HoldCo): Sefton (ACS) Holding Company Limited, wholly owned by the Council.
 - The sales company (SaleCo), Sefton (ACS) Sales Company Limited, wholly owned by the Council through the HoldCo.
 - Any future DevCo companies set up under the HoldCo.
- b. The Shareholder remains the Cabinet, which retains the legal rights and obligations of the Shareholder under Company Law.
- c. The Shareholder Representative would have full delegated authority from the Cabinet to act as the Shareholder in respect of all Shareholder decisions relating to the DevCo companies, including in particular:
 - Appointing and dismissing directors of the Boards.
 - Assessing and making recommendations in respect of the performance of the Boards and individual directors.
 - Approving the Annual Business Plans.
 - Approving any in-year changes to the approved Annual Business Plans, including new investments to be made by the Companies.
 - Making decisions in respect of Reserved Matters.
 - Chairing the Annual General Meetings (AGMs).
 - Voting on behalf of the Shareholder at the AGMs.
- d. The Shareholder Representative, whilst not a voting Director on any of the Boards, may at their discretion attend Board meetings as an Observer to monitor proceedings.
- e. The Shareholder Representative will be supported by the Council's Chief Executive and S.151 Officer in ensuring the performance of the Companies and the continued alignment of the business of the Companies with the objectives of the Council.
- f. The Shareholder Representative may seek further consultation or approval from Cabinet on any matters for which they feel this would be appropriate, at their discretion, or for which this is required under the Council's constitution. This may simply be to gain support in assessing information and making decisions.
- g. The role of Shareholder Representative will be in addition to the internal oversight role of the Cabinet Portfolio Holder in relation to the DevCo as a Council commercial project. The existing oversight arrangements, including monthly reviews with the responsible Council officers (Executive Director sponsor, and Head of Service project lead) are expected to continue alongside the role of the Shareholder Representative.

- h. Therefore, the Shareholder Representative would be empowered to appoint the Boards of Directors for the HoldCo and the DevCo (so long as this is consistent with the requirements documented in the approved Articles), and to approve the updated Articles, without further referral to Cabinet.

Alternative Options Considered and Rejected: (including any Risk Implications)

1. Remuneration of Non-Executive Directors (NED)

- a. Alternative Option A - do not offer any remuneration. Consultation with professional NED recruitment consultants confirmed that offering no remuneration at all would be a major disincentive for good quality candidates as it would indicate that the company was not a substantive or serious enterprise. As a result, any recruitment process would be very unlikely to attract suitable candidates, fail to appoint appropriate NEDs and be a waste of Council time and money (recruitment consultant fees)
- b. Alternative Option B – offer a fixed fee of £8,000 per annum (in-line with the Special Allowance for front-line councillors undertaking a comparable role, such as being members of the Overview and Scrutiny committee). Consultation with professional NED recruitment consultants confirmed that good quality candidates would expect to have clarity of the fees in day rate terms at rates that are competitive in the market for NEDs of SME organisations. That consultation did confirm that it would not necessarily be a disincentive if the potential minimum annual fee was lower than £8,000 if fewer than 12 Board meetings a year was required.

2. Trading name and brand.

- a. Alternative names/brands were considered through a market analysis and stakeholder workshop (attended by industry experts and leadership personnel from key organisations in the community). Details of the options are included in the documents in Appendix 2. The consensus from the stakeholder workshop was to adopt the name “Sandway Homes”.

3. Definition of the Role of Shareholder Representative.

- a. Alternative Option A – do not clarify the definition of the role any more than is already included in the approved FBC and Articles. It is believed that this will result in an imperative for the Shareholder Representative to refer most decisions back to Cabinet undermining the role’s purpose and objectives.

What will it cost and how will it be financed?

(A) Revenue Costs

There are no additional revenue implications for the Council:-

1. Remuneration of NEDs - the fees for the recruitment consultants and for the work of the NEDs will be paid by the DevCo from within the financial resources already budgeted for within the Business Plan in the approved FBC. (Any Special

Allowance payable to the frontline councillor acting as an Executive Member of the Board has already been approved as part of the FBC approved by Cabinet in October 2017).

2. Change of company name – the costs for developing the brand were provided for under the FBC approved in October 2017 and have already been incurred. The implementation and roll-out of the new brand will be an operating cost of the Company within the approved Business Plan provisions (no additional funding required from the Council).
3. The role of the Shareholder Representative – there is no Special Allowance or other remuneration for the Councillor undertaking this role (the Cabinet Member Portfolio Holder for Communities and Housing).

(B) Capital Costs

There are no Capital Costs.

Implications of the Proposals:

Resource Implications (Financial, IT, Staffing and Assets):

1. NEDs – there are no additional resource implications for introducing the remuneration for NEDs over and above the already accounted for officer and member time spent defining the NED role and recruitment requirements, commissioning a recruitment consultant and interviewing candidates. In terms of the on-going costs of remuneration of NEDs, the FBC approved by Cabinet in October 2017 included provision of an operating expenditure budget from which funding for the NED's will be derived.
2. New name and brand – there are no additional resource implications for rolling out and maintaining the brand, which functions are part of the operating plan for the Company and will be resourced by the Company. The operating expenditure budget provided for by the FBC approved by Cabinet in October 2017 also made provision for other operating expenditure including sales and marketing.
3. Shareholder Representative – there are no additional resource implications arising from the clarification of the role over and above the already estimated officer and member time for supporting and fulfilling this role.

Legal Implications:

1. NEDs – there are no additional legal implications beyond those already considered and approved within the FBC (approved by Cabinet October 2017) and the draft Articles (approved by Cabinet January 2018).
2. Name and brand – the new name and brand will need to be registered as the intellectual property of the Company.
3. Shareholder Representative – there are no additional legal implications beyond those considered and approved within the FBC (approved October 2017).

Equality Implications:

There are no equality implications.

Contribution to the Council's Core Purpose:

Protect the most vulnerable: Not applicable

Facilitate confident and resilient communities:

In creating more good quality housing in viable locations, the Council can enable more Sefton residents or people moving to Sefton to enter into the housing market and thus help diversify it. The ability of a diverse mix of buyers to obtain housing in the borough will not only inspire confidence through being able to set down roots here, but also create a more resilient community of people at different stages in their life and on the property ladder. The proposed land assembly allows for the creation of larger and viable sites, which in turn support the Council in achieving these goals.

Commission, broker and provide core services:

The recent review into the Local Authority role in housing supply has suggested that Councils should take a more central role in providing new homes by setting out a clear vision for housing development in their borough. During the Local Plan process and the subsequent Housing DevCo Business Case, the Council has been proactive about identifying housing needs and planning how our assets can be used to meet these needs through delivering more homes.

Place – leadership and influencer:

Through strategic land assembly and the creation of new housing sites, the Council will be leading the way forward on providing new housing for residents and those looking to move to the borough. We will continue forging ahead in shaping Sefton as a desirable place to live.

Drivers of change and reform:

Through the formation and operation of the DevCo the Council will be playing a key role in leading change and reform to improve outcomes for Sefton residents by providing good quality, affordable housing and contributing additional revenue to the Council's budget resources.

Greater income for social investment:

A key benefit of the Housing Development Company is that it will generate additional income which can be reinvested into delivering social purpose.

Cleaner Greener: Not applicable

What consultations have taken place on the proposals and when?

(A) Internal Consultations

The Head of Corporate Resources (FD 5336/18) and the Chief Legal and Democratic Officer (LD 4561/18) have been consulted and any comments have been incorporated into the report. In addition, the report author has worked closely with a range of officers in the Council including the Executive Director. The proposals have been discussed, informed and agreed with the Cabinet Portfolio Holder for Communities and Housing.

(B) External Consultations

Transition Plus Ltd., a market leading recruitment consulting have been consulted on the recruitment and remuneration of NEDs.

DE Emotions Ltd., a market leading brand consulting firm have led the development of the new brand, including the new name.

Anthony Collins Solicitors have been consulted in relation to the proposed amendments to the Articles.

Implementation Date for the Decision

Following the expiry of the “call-in” period for the Minutes of the Cabinet Meeting.

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Appendices:

Appendix 1 – Agreed definition of the role of Non-Executive Directors.

Appendix 2a – Details of Brand Development Exercise (“Brand Book”)

Appendix 2b – Details of Brand Options (“Identity Proposal”)

Appendix 2c – Details of Brand Recommendation (“Tone of Voice and Guidelines”)

Appendix 3a – Existing Articles for the HoldCo

Appendix 3b – Existing Articles for the SaleCo