

Rother District Council

Report to: Cabinet

Date: 27 July 2020

Title: Incorporation of a Local Housing Company

Report of: Ben Hook – Head of Service, Acquisitions, Transformation and Regeneration

Cabinet Member: Councillor Byrne

Ward(s): All

Purpose of Report: To approve the Articles of Association and the Shareholders Agreement and appoint Directors enabling the incorporation of Rother District Council's Local Housing Company.

Decision Type: Key

Officer

Recommendation(s): **Recommendation to COUNCIL:** That:

- 1) up to 4 Elected Members of the Council and up to 4 other independent persons be appointed as Executive Directors of the company; and
- 2) the Executive Director be granted delegated authority to act as the 'Shareholder's Representative' allowing the use of reserved powers, in consultation with the Cabinet Portfolio Holder for Finance and Performance Management.

AND

It be RESOLVED: That:

- 1) Rother District Council's Local Housing Company's name be agreed;
- 2) the Articles of Association, attached at Appendix A, be agreed;
- 3) the issuance of a single share for the value of £1 to Rother District Council be approved;
- 4) the Shareholder's Agreement be agreed;
- 5) The Head of Service, Acquisitions Transformation and Regeneration be appointed to act as the Chief Operating Officer, until such a time as the Board of Directors are able to convene; and
- 6) Wealden District Council will act as company secretary (named individual to be confirmed).

Introduction

1. In December 2019, Council approved the establishment of a Local Housing Company (the Company) with the initial aim to complete 1,000 new homes by 2035 (Minute C19/59 refers).
2. The first stage of this process is to incorporate the Company and appoint the Board of Directors.

Incorporation of the Company

3. It is proposed that the Company be established as a 'company limited by shares' with the Council as the sole shareholder. This will enable the Company to issue shares to the Council, as necessary to provide working capital for the company in the early years, before sales receipts are realised. To establish the Company a single share will be issued with the value of £1.
4. Articles of Association (the Articles) have been drafted and are attached at Appendix A. Once registered with Companies House the articles, along with the nomination of Directors, will formally incorporate the Company.
5. The Rother District Council legal service, based at Wealden District Council, will act as the Company Secretary to ensure compliance with the Articles, and the appropriate conduct of meetings.

Governance and Decision Making

6. As sole shareholder the Council has full decision-making power in relation to the company. However, to allow the day to day operations of the company to run smoothly a shareholder's agreement (the Agreement) has been drafted and is attached at Appendix B.
7. This document defines the relationship between the Board of the Company and the shareholder and outlines the expectations of the shareholder in relation to the governance and management of the Company.
8. It is recommended that the structure for the Board of Directors (the Board) seeks to ensure that the Council's interests are protected whilst also allowing room for relevant expertise in a range of fields. The draft shareholder's agreement allows up to 8 directors, a maximum of 4 Elected Members of Council and a maximum of 4 others who are not Elected Members of the Council.
9. It is recommended that the non-Council Members, appointed by the Shareholder, should be sought from a range of backgrounds including finance, legal, commercial housing, and affordable housing.
10. To ensure, where possible, no conflicts of interest exist or arise between the Housing Company and the Council as the sole shareholder, it is necessary that certain officers and Members are excluded from appointment to the Board. These are listed in section 4.1.4 of the Agreement:

4.1.4 for the avoidance of doubt, shall not be:

- i) an elected member of the Council who is the Council Leader, the Chairman of the Audit and Standards Committee, has responsibility for planning or is appointed to the Council's Cabinet; or*
- ii) an officer of the Council who has responsibility for undertaking a statutory monitoring officer role or an executive director.*

11. Schedule 1 of the Agreement outlines the powers that the Council chooses not to delegate to the Board. It will be necessary however, to seek approval to exercise these powers from time to time. To ensure that effective decision making can be undertaken it is recommended that Council delegate the authority to exercise these powers to a 'Shareholder's Representative'. It is recommended that the Executive Director act as the Shareholder's Representative, exercising powers in consultation with the Cabinet Portfolio Holder for Finance and Performance Management.
12. Section 3.2 of the Shareholder's Agreement allows for the Board, with the permission of the Shareholder, to appoint a 'Chief Operating Officer' to oversee the day to day running of the Company. In the absence of a Board at this stage it is necessary to appoint someone to progress the development of the Business Plan. The Head of Service – Acquisitions, Transformation, and Regeneration has responsibility for housing development and therefore is the appropriate officer to take on this role, until such a time as the Board can convene.
13. Elected Members of the Council appointed as directors will be provided training on the duties and responsibilities of such a role.

Other Matters of Business

14. All other matters related to the business including (but not limited to):
 - a. The Business Model;
 - b. The Financial Model;
 - c. Appointments of Officers/Service Level Agreements;
 - d. Development Strategy;
 - e. Marketing Strategy; and
 - f. Appointment of advisors

will be considered as part of the business plan to be presented to Members at a later meeting, following the incorporation of the company.

Conclusion

15. The Council has made it clear it wishes to see the establishment of a Local Housing Company to drive forward the development of housing throughout the District. The Articles of Association and Shareholder's Agreement in this report will allow for the incorporation of the company, following the nomination of Directors at the next Full Council meeting in September.

Implications

Financial Implications

16. At this stage the Council are only being asked to commit £1 for share purchase as well as meeting the cost of incorporation. It must be noted though that as part of the

business plan to be considered at a future meeting, further share issuances will be required to give the Company sufficient cash flow to progress projects and cover operating costs.

Legal Implications

17. The Council will become sole shareholder of a new legal entity. Those Members appointed as Directors will be required to undertake and accept all those duties, responsibilities and liabilities associated with the role.

Environmental Implications

18. Incorporation of its own Local Housing Company will enable to the Council to ensure that any housing developments brought forward contribute towards the climate ambitions within the Environment Strategy.

Sustainability Implications

19. The Company will require support in the early years until such a time as the sales of homes can generate an income stream.

Risk Management

20. The establishment of a Local Housing Company will limit the extent to which the Council can intervene in those projects being undertaken in relation to housing.

Other Implications	Applies?	Other Implications	Applies?
Human Rights	No	Equalities and Diversity	No
Crime and Disorder	No	Consultation	No
Environmental	Yes	Access to Information	No
Sustainability	Yes	Exempt from publication	No
Risk Management	Yes		

Executive Director:	Dr Anthony Leonard
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Appendices:	A – Articles of Association B – Shareholder’s Agreement
Relevant Previous Minutes:	C19/59