



Housing Supervisory Board

30th November 2023

Item

7

Public



Cornovii Developments Limited: Establishment of a Subsidiary Company

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Cabinet Member (Portfolio Holder):	Dean Carroll		

1. Synopsis

The purpose of this report is to seek approval under the terms of the Shareholder Agreement for Cornovii Development Limited (CDL) to establish a new company limited by guarantee as a subsidiary of CDL.

2. Executive Summary

- 2.1. In accordance with the Shareholder Agreement, CDL are requesting approval from the Housing Supervisory Board to form a Subsidiary company into which land transactions from the Council can be made with onward sale of the land into CDL.
- 2.2. CDL has been considering its tax structure since certain advice was obtained from KPMG regarding a potential tax liability for the London Road development. Subsequent advice from KPMG to CDL has recommended to CDL that a new company is established as a company limited by guarantee, which would not be in the same tax group as the Council and CDL.
- 2.3. The newly proposed structure will support CDL to operate its tax arrangements in line with a typical developer enabling the company to operate competitively and to enhance the value derived from the company for the Council, and households and individuals residing in the Council administrative area.

- 2.4. Anthony Collins Solicitors have provided legal advice to the Council on the proposal which sets out the legitimacy and lawfulness of the proposal with recommendation for governance arrangements. Indeed, the advice suggests that the establishment of the subsidiary company can reasonably be regarded as part of the Council's fiduciary duty to safeguard public money as well as being a legitimate arrangement under the Local Government Act 1999 to secure best value through continuous improvement in the discharge of its functions with regard to economy, efficiency and effectiveness. This advice is attached to this report as Appendix A.
- 2.5. The proposed subsidiary would take the form of a Company Limited by Guarantee, the members of which would be directors from CDL.

3. Recommendations

- 3.1. Approve, in accordance with the provisions contained within the Shareholder Agreement, the request from Cornovii Developments Limited to establish a subsidiary company limited by guarantee.
- 3.2. Approve that any and all actions to facilitate and implement recommendation 3.1 are delegated to the Assistant Director Homes and Communities and the Assistant Director Legal and Governance in consultation with the Chair of the Housing Supervisory Board.
- 3.3. Authorise the Assistant Director Legal and Governance to sign, on the Council's behalf, any document and resolutions to implement recommendations 3.1 and 3.2.

Report

4. Risk Assessment and Opportunities Appraisal

- 4.1. The proposal by CDL to set up a subsidiary provides the opportunity for the company and the Council, as Shareholder to ensure that the company and its financial arrangements are optimised to ensure best value for residents living within Shropshire Council's administrative area.
- 4.2. Should the recommendation not be approved CDL is likely to experience a tax liability which is over that which could be achieved through the proposed new structure, limiting the ability of the company to operate commercially and competitively.
- 4.3. By continuing with tax management arrangements which do not produce best value for the company or the shareholder the risk of the company being unable to meet its objectives are increased.

5. Financial Implications

- 5.1. The proposal by CDL to establish a subsidiary will allow the company to operate under an optimised tax efficient structure, ensuring that return to the Council is maximised to deliver best value for the residents of Shropshire Council's administrative area. The structure proposed will see CDL pay tax inline with that which a typical developer would be liable for, therefore ensuring it is able to operate commercially and competitively and in accordance with accepted market principles.
- 5.2. CDL have advised that the cost of setting up the proposed subsidiary will be in the region of £20k. Furthermore, CDL advise that the establishment of the subsidiary has the potential to make CDL more tax efficient by ensuring that it pays the appropriate tax based on the type of land purchase arrangement.

6. Climate Change Appraisal

- 6.1. There are no direct climate change implications from this decision.
- 6.2. CDL's performance in delivering against the Council's Climate Change objectives will continue to be reported to and monitored by the Housing Supervisory Board.

7. Background

- 7.1. In December 2018 Council approved an outline business case to establish a wholly owned local authority housing company. This report set out that the primary purpose of such a company would be to use Council owned land, and acquire land and property, to develop housing and wider redevelopment in areas where we see unmet need or to address local pressures.
- 7.2. Furthermore, a report to Council on 28 February 2019 set out that objectives of the housing company will be to address the County's unmet housing needs and to support the Council to become more financially self-sufficient, by acquiring, developing and providing houses for sales and rent.
- 7.3. CDL continues to develop on council owned land, with sites within its approved Business Plan being predominately formed of council owned assets. The Company operates within a commercial environment which allows it to generate profit which it is expected will deliver financial benefit to the Council as lender and shareholder.
- 7.4. It is in meeting these objectives that the newly proposed structure has been considered.
- 7.5. CDL has been considering its tax structure since certain advice was obtained from KPMG concerning a potential tax liability for the London Road development.
- 7.6. A report from KPMG has recommended to CDL that a new company is established as a company limited by guarantee, either as a subsidiary of CDL or in parallel

with CDL, to purchase land from the Council and then to onward sell the land to CDL.

- 7.7. Being in the form of a company limited by guarantee will mean that the proposed subsidiary will not be in the same tax group as the Council and CDL. This enables the base value of the land transferred from the subsidiary to be that determined at the point of appropriation and not the value of at the time the land was acquired by the Council, thereby reducing corporation tax payable in respect of capital gains on the disposal of the land.
- 7.8. The Shareholder Agreement provides at schedule 1 for various corporate and operational 'shareholder consent matters. These are matters which cannot be affected by the CDL directors without the Council (as shareholder) having first resolved to grant consent.
- 7.9. Schedule 1, Part A -Corporate Matters 9 sets out that the Company (CDL) shall not unless it has Shareholder Consent, *form any Subsidiary, or acquire shares in any other company or participate in any partnership or joint venture.*
- 7.10. The Council has delegated certain Shareholder functions to the Housing Supervisory Board. The Housing Supervisory Board is requested to make this decision within its delegated powers, as set out in the shareholder consent matters contained within the Shareholder Agreement.
- 7.11. Legal advice from Anthony Collins Solicitors (ACS) obtained by the Council in respect of CDL' proposal is shown at Appendix A. The advice confirms that the arrangement put forward by CDL is legitimate within the consideration of a local authority owned company.
- 7.12. ACS recommend that the governance arrangements should align with CDL and that there should be bespoke articles of association and member/governance agreement. CDL has confirmed that this complements legal advice they have obtained and that, should the HSB give approval they will proceed to draft these documents.

8. **Subsidiary Structure and Resources**

- 8.1. The proposed subsidiary would be a company limited by guarantee, which is a company without shareholders or shares. This type of company is controlled by guarantors (members), who guarantee a nominal sum of money to the company in the event of it becoming insolvent or winding up.
- 8.2. CDL anticipate that all staff resources required to manage and deliver the projects undertaken by subsidiary will be done by the existing CDL Team.
- 8.3. The Housing Supervisory Board will continue to exercise its function within the terms of the Shareholder Agreement and in accordance with its articles of association. In accordance with the advice received from Anthony Collins, Shropshire Council expects that new articles of association are prepared for the new subsidiary. These will be supplemented by a bespoke governance agreement between the new company and CDL and the Council which will provide for the exercise of the Council's member function in relation to the subsidiary, and the

company's reporting and provision of information to CDL and to the Council and its Housing Supervisory Board.

List of Background Papers (This MUST be completed for all reports, but does not include items containing exempt or confidential information)

Local Member: All

Consultation with Local Member – *Please consider the Local Member Protocol (see page E60 onwards of part 5 of the Constitution) and determine whether it is necessary to consult with the local member over the proposal set out in this report. This may not always be applicable (eg where the proposal affects all of Shropshire) but it should always be a consideration and in some cases a necessity so as to comply with the spirit of the Protocol.*

Appendices [Appendix A Anthony Collins - Legal Advice CDL NewCo]