

**Report for:** Leader's Decision, 31<sup>st</sup> August 2017

**Title:** Haringey Council nominations to the Board of the Haringey Development Vehicle

**Report authorised by :** Zina Etheridge, Interim Chief Executive

**Lead Officer:** Dan Hawthorn, Director of Housing and Growth, 020 8489 2247, [Dan.Hawthorn@haringey.gov.uk](mailto:Dan.Hawthorn@haringey.gov.uk)

**Ward(s) affected:** All

**Report for Key/  
Non Key Decision:** Non-key decision

## **1. Describe the issue under consideration**

- 1.1 Cabinet on the 3<sup>rd</sup> July 2017 (a decision subsequently reconfirmed at Cabinet on the 20<sup>th</sup> July 2017 following a call-in of the original decision) agreed to the conclusion of the relevant procurement process and to the subsequent establishment of the Haringey Development Vehicle (HDV).
- 1.2 The HDV is a 50/50 partnership between Haringey Council and Lendlease Europe Holdings Ltd ("Lendlease") that will operate as a Limited Liability Partnership (LLP). The Members' Agreement (Appendix 1b of the Cabinet report of the 3<sup>rd</sup> July 2017, and reproduced as Appendix 1 to this report) is the key document which regulates the relationship between the HDV Parties, the Council and Lendlease, and outlines the governance, strategy and policies that underlie the day to day operation of the HDV. As set out in the Members' Agreement, delivery of the business of the HDV will be governed by a board consisting of up to three (and at least two) nominees from each member organisation. This is referred to as the 'HDV Board'.
- 1.3 This report sets out, for the Leader's agreement, the nominees from Haringey Council to the HDV Board.

## **2. Cabinet Member Introduction**

- 2.1 n/a

## **3. Recommendations**

- 3.1 The Leader agrees to nominate the following individuals as the Haringey Council members of the Haringey Development Vehicle Board:
  - The Cabinet Member for Children and Families: Cllr Elin Weston
  - Strategic Director of Regeneration, Planning and Development: Lyn Garner
  - Assistant Director for Transformation and Resources: Richard Grice

- 3.2 a) The Leader agrees to nominate the following individuals as a panel of potential substitutes to stand in for the officer members of the Haringey Development Vehicle Board (if required for reasons of absence):
- Director of Regeneration: Helen Fisher
  - Assistant Director for Commissioning: Charlotte Pomery
- b) The Leader notes that she is able to substitute the Cabinet Member for Children and Families for another member of Haringey's Cabinet if the Cabinet Member for Children and Families is unavailable to attend (subject to there being a maximum of one Cabinet Member on the Haringey Development Vehicle Board at any one time).

#### **4. Reasons for decision**

- 4.1 As a consequence of the Cabinet decision to establish the HDV, the Council is now required to make nominations to the HDV Board.
- 4.2 In recommending nominations to the Board, the Council has sought to avoid conflicts of interest and to balance the managerial capacity and expertise needed by the Council in both its role as a member of the HDV and to ensure it is fulfilling its statutory and regulatory functions as the local authority. It is for these reasons that the Head of Paid Service, S151 Officer and Monitoring Officer are not proposed to be nominees to the Board.

#### **5. Alternative options considered**

- 5.1 There are no alternative options.

#### **6. Background information**

- 6.1 The HDV is a 50/50 partnership between Haringey Council and Lendlease Europe Holdings Ltd ("Lendlease") that will operate as a Limited Liability Partnership (LLP). The Members' Agreement (at Appendix 1 to this report) is the key document which regulates the relationship between the HDV Parties, the Council and Lendlease, and outlines the governance, strategy and policies that underlie the day to day operation of the HDV. As set out in the Members' Agreement, delivery of the business of the HDV will be governed by board of nominees from each member organisation. This is referred to as the 'HDV Board'.
- 6.2 The role of the HDV Board will be to take decisions required to deliver the agreed corporate objectives of the business. These objectives are enshrined in the Members' Agreement and are:
- to deliver growth through new and improved housing; town centre development; and enhanced use of the Council's property portfolio;
  - to achieve and retain for the Council a long term stake and control in development of the Council's land, maintaining a long term financial return for the Council which can be reinvested, in accordance with the Council's statutory functions, on new housing, on social and economic benefits or on other Council Corporate Plan objectives;

- in partnership with the private sector to catalyse delivery of financially challenging schemes;
  - to achieve estate renewal by intensification of land use and establishment of a range of mixed tenures, together with tenure change across the Borough where appropriate;
  - to secure wider social and economic benefits in areas affected, including community facilities, skills and training, health improvement and crime reduction for the benefit of existing residents;
  - to incorporate land belonging to other stakeholders, both public and private sector, into development; and
  - to achieve a commercially acceptable return.
- 6.3 In accordance with the Members' Agreement, the HDV Board will consist of up to three (and at least two) nominees from both the Council and Lendlease. The nominees may be officers or members, and the individuals proposed for nomination have been carefully considered.
- 6.4 Given the scope and scale of the HDV's activities and the role it will play in delivering positive outcomes for Haringey's residents, it is necessary for Haringey's nominees to be appropriately senior decision makers within the organisation as well as having sufficiently wide ranging, and complementary, technical knowledge and experience to ensure optimum decisions are taken by the HDV. The appointment of the Cabinet Member for Children and Families, Strategic Director for Regeneration, Planning and Development and the Assistant Director for Transformation and Resources provides the necessary knowledge, expertise and capacity in political, commercial, financial, development, economic growth, housing, regeneration, community development, health and well-being matters, among others, to ensure the objectives of the HDV (as set out in para 6.2 above) are met.
- 6.5 The HDV represents a new way of working for the Council. Whilst the HDV provides the opportunity to deliver the Council's strategic priorities and the outcomes that Haringey's residents have said are important to them, it is also vital that the Council is able to deal with the HDV in an appropriately independent and arms length way. It is for these reasons that the Council officers with the key statutory responsibilities of being Head of Paid Service (the Chief Executive), S151 Officer (the Chief Finance Officer) and the Monitoring Officer (Assistant Director for Corporate Governance) have not been considered as nominees to the Board. Similarly, to ensure transparency and probity, appropriate arrangements will be put in place to safeguard the position of the officers who are nominees to the HDV Board and to prevent any potential conflict of interests in relation to their substantive Council roles.
- 6.6 The officer nominations to the HDV Board (and their proposed substitutes) are recommended on the basis of the named post and its portfolio of responsibilities, which necessitate a certain prerequisite level of experience and expertise of an individual in holding that post. In the event of any of the named officers taking up alternative posts it is proposed that their successors would replace them on the HDV Board. Following a restructure, in the event of a named post being varied to such an extent that a new post is created, it is envisaged that the post holder

whose portfolio and responsibilities most closely correspond to that of the named post will succeed on to the HDV Board. Notwithstanding these scenarios, it is noted that there is panel of substitutes to draw from, and further, flexibility for the Leader to make alternative nominations at any time as set out at paragraph 6.9 below.

- 6.7 In recommending a Cabinet Member to the HDV Board, careful consideration has been given as to the need for that individual to be able to provide the necessary knowledge, expertise and personal skills, alongside capacity within the portfolio, whilst at the same time avoiding possible conflicts of interest. The current portfolio of Cabinet Member for Children and Families does not present any issues of conflict with the work of the HDV, and provides sufficient capacity to participate effectively in the work of the HDV Board. Moreover, the current incumbent's professional law background is deemed to be highly complementary to the requirements of a HDV Board member.
- 6.8 It is recognised that Cabinet portfolios can be subject to regular change and, therefore, it is not proposed that in the event of a Cabinet reorganisation and change in the incumbent's portfolio there should be automatic succession of the Cabinet Member for Children and Families to the HDV Board. Rather, it will be necessary at that time to carefully consider which member of the Cabinet is most appropriate for nomination, taking into account the need for necessary knowledge, expertise and personal skills, capacity within the portfolio and avoiding possible conflicts of interest. It is for this reason that it is proposed that any substitutes are to be drawn from the Cabinet as a whole, and the Leader's flexibility in general to make alternative nominations at any time, as set out at paragraph 6.9 below, is noted.
- 6.9 In determining these nominations to the HDV Board, the following matters as contained in the Members' Agreement should be noted:
- (i) the Council is able to remove and replace the Nominees appointed by it and appoint further Nominees at any time; and appoint persons as alternate nominees to the HDV Board to act as a substitute for any absent Nominee appointed by it to do all such things as the absent Nominee would be entitled to do in their capacity as Nominee.  
(It is for these reasons that the arrangements set out in Recommendation 3.2 ('a' and 'b') are proposed.)
  - (ii) No appointment of a Nominee shall be valid unless that person has accepted and signed a Letter of Appointment or such other terms as the HDV Board may agree from time to time.
  - (iii) Any appointment, replacement or removal by the Leader of a Nominee appointed or intended to be appointed by the Leader shall be effected by notice in writing to the HDV signed by or on behalf of the Leader and, subject to any contrary intention expressed in the notice, shall take effect with effect from that date and time that the notice is delivered to the HDV.
  - (iv) No Nominee shall receive any remuneration or expenses reimbursement from the HDV for its services as a Nominee.

- (v) Unless otherwise determined by the HDV Board, the HDV Board shall have a Chairperson and such position shall be occupied either by a Lendlease Nominee or by a Council Nominee. The first Chairperson shall be appointed at the first meeting of the HDV Board and a new Chairperson shall be appointed each year and alternate between the Lendlease Nominees and the Council Nominees. The Chairperson shall not have a second or casting vote. An independent Chairperson may be appointed by way of a unanimous decision of the HDV Board but any independent Chairperson shall not be entitled to vote.
- (vi) The Nominees shall have a duty of care to act in good faith towards the HDV and to act in the best interests of the HDV when acting in their capacity as a Nominee.
- (vii) The Nominees in acting on behalf of HDV and relevant subsidiaries shall act in the best interests of the relevant HDV Party on whose behalf they are acting and without prejudice to the provisions of Clause 9 of the Members' Agreement shall avoid conflicts of interest.

6.10 Notwithstanding the key role the HDV Board will play in delivering the objectives of the HDV, it is important to note that the Members' Agreement includes a Delegation Policy which sets out at what level decisions will be made in relation to the HDV, including that decisions of fundamental importance will always be reserved to the individual member organisations rather than the HDV Board. It is also important to note that any subsidiary vehicle of the HDV will be governed through Boards comprising the same six nominees as the top-level HDV Board.

## **7. Contribution to strategic outcomes**

7.1 The recommendation contained in this report supports the delivery of the Council's strategic outcomes as set out in the Cabinet report of July 3<sup>rd</sup> 2017 (Haringey Development Vehicle – Financial Close and Establishment).

## **8. Statutory Officers comments (Chief Finance Officer (including procurement), Assistant Director of Corporate Governance, Equalities)**

### Finance comments

8.1 There are no financial implications arising from this report.

### Legal comments

8.2 Whilst the duties of the type owed by directors of a limited company are not owed by the members of an LLP (Limited Liability Partnership), Council officers and Members nominated to the HDV Board will owe general fiduciary duties to the LLP, such as a duty to avoid conflict and duty not to profit personally from being a member of the LLP. It is normal for such obligations to be imposed on the members, via the Members' Agreement, to act in the best interests of the LLP and not to act in conflict with its interests. While these duties will legally be owed directly by the members of the LLP, the persons administering the LLP on behalf

of the Council will need to act in accordance with these duties. Therefore, careful consideration should be given to the appropriate skills required for these roles.

- 8.3 It should be noted that the Members' Agreement provides flexibility for nominees to be removed and replaced at any time by the Council if this is required.
- 8.4 In light of their position on the HDV Board, all individuals should, when engaged in Council business, make appropriate declarations as to their interest in the Haringey Development Vehicle LLP and refrain from decision-making on matters relating to the affairs of the HDV LLP.
- 8.3 In accordance with Part 3 Section C Para 1.1 and Part 3 Section D of the Constitution, it is for the Leader to determine the appointment of representatives on the HDV Board.

## **9. Equality**

- 9.1 The Council has a public sector equality duty under the Equality Act 2010 to have due regard to the need to:
- Eliminate discrimination, harassment and victimisation and any other conduct prohibited under the Act
  - Advance equality of opportunity for those with protected characteristics and those without them
  - Foster good relations between those with protected characteristics and those without them.
- 9.2 The protected characteristics are: age, disability, gender reassignment pregnancy/maternity, race, religion/faith, sex and sexual orientation. Marriage and civil partnership status applies to the first part of the duty.
- 9.3 As Haringey Council nominations and local authority representatives, the individuals identified in 3.1 and 3.2 will be required to pay due regard to the Public Sector Equality Duty in regards to public functions. In particular, they will monitor and review the equality impact assessments that were published as part of the Cabinet report of the 3<sup>rd</sup> of July and any future business plan.
- 9.4 It is not considered that the recommendations within this report have any further specific equalities implications.

## **10. Use of Appendices**

- 10.1 Appendix 1. Members' Agreement (HDV)

## **11. Local Government (Access to Information) Act 1985**

### **Relevant documents**

- July 2017: Haringey Development Vehicle – Financial Close and Establishment (item 10)  
<http://www.minutes.haringey.gov.uk/ieListDocuments.aspx?CId=118&MId=8288&Ver=4>

- July 2017: Matters Referred to Cabinet by the Overview and Scrutiny Committee  
– Decision of the Overview and Scrutiny Committee held on the 17 July 2017  
regarding Minute 35 Haringey Development Vehicle – Financial Close and  
Establishment (item 10)  
<http://www.minutes.haringey.gov.uk/ieListDocuments.aspx?CId=118&MId=8436&Ver=4>