

This report will be made public
on 4 July 2023

Report Number **C/23/18**

To: Cabinet
Date: 12 July 2023
Status: Non - Key Decision
Chief Executive: Dr Susan Priest, Chief Executive.
Cabinet Member: Jim Martin - Leader of the Council

**SUBJECT: OTTERPOOL PARK LLP – AMENDMENT OF MEMBERS’
AGREEMENT REGARDING APPOINTMENTS TO THE
OTTERPOOL PARK LLP BOARD**

SUMMARY: This report makes recommendations regarding the board of Otterpool Park LLP and sets out proposed changes to increase the size of the board and to review the skills mix to reflect good governance principles and to support the delivery of this significant long-term place-shaping project.

REASONS FOR RECOMMENDATIONS:

Cabinet is asked to agree the recommendations set out below on the basis that:

1. OP LLP will continue to deliver the Council’s objectives for the Otterpool Park garden town.
2. Three years following set up, the proposed changes to the composition of the board reflect good governance principles.
3. OP LLP’s activities need to be progressed and it is important that the board is robust and reflects the current demands and ambitions of the council.

RECOMMENDATIONS:

1. To receive and note report C/23/18.
2. To agree that the Members’ Agreement of Otterpool Park LLP be amended to enable the Council to appoint up to nine (9) nominees / directors to the Otterpool Park LLP board at any one time.
3. To note that the Members’ Agreement already allows for the nominee company to appoint one director, and this remains unchanged.
4. To agree that the Members’ Agreement be amended so that the Leader is able to appoint and remove the chairman of the board.
5. To agree that the Leader, in consultation with the two councillors appointed to the board, be authorised to make appointments to the vacant positions of the board.
6. To note that the Council’s representative at the Members’ Meeting remains as the Leader of the Council and the Nominee Company’s representative remains the Director of Place.

1. BACKGROUND

- 1.1 The Council's aspirations for the Otterpool Park garden town are familiar to members.
- 1.2 The Council's attention is now focussed on the next delivery phase of the project which will involve financing, further planning work, numerous legal agreements, procurement, infrastructure delivery, negotiations with housebuilders, and the management of a wide range of stakeholders etc., etc.
- 1.3 As a result of this significant project reaching a major milestone - the award of outlining planning permission, it is appropriate in good governance terms to undertake a review of the skills, capacity and expertise at the most senior level to ensure that the board is fit for purpose for the coming phase and the council is well served and satisfied that it has access to the most appropriate senior resource base.
- 1.4 This report therefore recommends that modest changes are made to increase the overall size of the board of Otterpool Park LLP to bring it in line with best practice of up to 10 Director in total, and to consider all appointments in a refresh of the skills mix to ensure that the council's LLP is well placed to deliver the next phase of this significant project. It also recommends that the chairman of the board should be appointed by the Leader rather than the board itself.
- 1.5 The increase in the number of directors and the change to the appointment of chairman of the directors will necessitate a change to the Members' Agreement (the equivalent of a memorandum and articles of association).

2. MEMBERS' AGREEMENT

- 2.1 Agreement, at present, at paragraph 8.2.1 of the Members' Agreement provides:

"The Council shall be entitled to elect and appoint six (6) Council Nominees to the Board. The Nominee Company shall be entitled to appoint one Nominee Company Nominee to the Board."

- 2.2 For the reasons set out below it is suggested that the Members' Agreement be amended so as to enable the Council to appoint up to nine (9) Nominees (or directors) to the board. The Nominee Company (that is to say Otterpool Park Development Company Ltd, the other owner of the LLP and which is itself wholly owned by the Council) would continue to appoint one director / nominee.

- 2.3 Paragraph 8.2.6 of the agreement concerns the appointment of the chairman of the board:-

"Unless otherwise determined by the Board, the Board shall have a Chairman and such position shall be occupied either by a Council Nominee or an independent chairman appointed pursuant to this Clause 0. The first Chairman shall be appointed at the first meeting of the Board. The Chairman

shall not have a second or casting vote. The Parties hereby agree that an independent Chairman may be appointed by way of a unanimous decision of the Board and, in the event that an independent Chairman is appointed, the provisions of this Clause 0 shall cease to apply for such time as an independent Chairman is so appointed save that it is acknowledged that the independent Chairman shall not be entitled to vote.”

- 2.2 It is considered that the Council, via the Leader, should be able to appoint (and be able to remove from that office) the chairman of the board.
- 2.3 It is recommended therefore that the Members’ Agreement be amended to enable the Council to appoint up to 9 Nominees / directors and to appoint and remove the chairman of the board. The nominee company (Otterpool Park Development Company) will continue to appoint one Nominee/director to the board.
- 2.4 It should be noted that the director Otterpool Park Development Company Ltd will also need to pass a resolution approving the proposals.

3. DIRECTOR APPOINTMENTS

- 3.1 The original appointments to the board of the Delivery Vehicle (as set out in report C/20/02 – see appendix 2) were as follows:
- Two officer appointments*;
 - Two Council members i.e. Councillor representatives; and
 - Three independent non – executive directors.

*It should be noted that at the time of the original resolution two of the appointees were employees of the Council. Neither are employed by the Council now, but two employees of the OP LLP are currently acting as directors.

- 3.2 By increasing the size of the Board from a maximum of 7 up to a maximum of 10 positions, a wider scope of expertise and senior-level capacity could be made available.
- 3.3 All appointments will be considered on their relative merits for what the individuals specifically bring to the board in their role as a director and the personal contribution they can make in furthering the objectives of the project. The precise configuration should be determined through the process and considering what the project needs at any particular time.
- 3.4 Consideration should also be given to the overall skills mix that exists and any gaps that might be apparent across the cohort of directors. Expertise such as finance and corporate governance, large-scale planning, commercial considerations, development, infrastructure procurement and delivery, construction, education and community engagement would all be appropriate. Moreover, the depth, scale and relevance of the expertise is also important to consider ensuring a high level of credibility exists within the development industry to support the council in delivering their aspirations.

- 3.5 As this project is fundamental to the district it is recommended that the Leader appoints the positions on the board, including the chairman. As stated above, previously the chairman was selected by the board from the cohort of appointed Directors.
- 3.6 While employing an independent recruiter could ensure that the market is fully tested, it carries a cost burden estimated to be in the order of £20K. There is no certainty that the best candidates would be found via this route and as the council has an appropriately qualified and experienced Chief HR Officer, the use of professional networks via industry and member contacts is an appropriate way to progress while being mindful of value for money considerations; the council was well served using this approach in 2020.
- 3.7 The overall specification for the Directors remains unchanged and is attached as appendix 1. The existing payment levels remain unchanged with: (a) the equivalent to a SRA for a cabinet member made available for the councillors appointed; and (b) £10,000 pa for each independent director. Councillors on the board must elect whether to receive their SRA from the Council or the remuneration from the LLP. However, with an overall increase in the number of Board Directors that may be appointed under these proposals, a modest increase in overall cost may be incurred but this will be offset by the increased depth and breadth of skills and expertise available at board level.

4. MEMBERS' MEETINGS

- 4.1 The Members' Agreement provides for a meeting of the members (or Owners) of the LLP.
- 4.2 The Council's representative at these meetings is the Leader of the Council and the Nominee Company's representative be the Director of Place. This is to continue though consideration will be given to widening the participation in meetings to other councillors as deemed necessary and as appropriate.

5. NEXT STEPS

- 5.1 Subject to cabinet agreement, the recruitment process will commence as soon as practicable. The Leader will appoint in consultation with the two council members appointed to the Board. The Chief Executive, MD of the LLP and HR colleagues will support all necessary actions. Updates will be given by the Leader via his regular reports to full council so that all members are aware of the progress being made.

6. LEGAL/FINANCIAL AND OTHER CONTROLS/POLICY MATTERS

6.1. Legal Officer's Comments (NE)

Browne Jacobson originally provided legal advice to the Council on the corporate structure and governance arrangements for the Delivery Vehicle

and will continue to be involved / advise the Council accordingly as and when required. Local Partnerships have not yet concluded their governance review but early reflections have been made and their recommendations captured in this report.

6.2 Finance Officer's Comments (LM S151)

The financial impact of appointing the additional Directors as detailed within the report at paragraph 3.7 is minimal and can be met from the approved project budgets. The additional appointment will ensure that the Otterpool Board has the necessary skills and strategic resources to successfully deliver the next stages of the project.

6.3 Diversities and Equalities Implications (AS)

There are no direct diversities and equalities implications arising out of this report but as the recruitment process gets underway and appointments are made, the Chief HR Officer will ensure that all diversity and equality implications are considered.

7. CONTACT OFFICERS AND BACKGROUND DOCUMENTS

Councillors with any questions arising out of this report should contact the following officers prior to the meeting:

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The following background documents have been relied upon in the preparation of this report:

Appendices to this report

Appendices:

Appendix 1: Specification

Appendix 2: Report C/20/02