



Derby City Council

**URGENT LEADER OF THE COUNCIL  
CABINET MEMBER MEETING  
14 September 2016**

# ITEM 4

Report of the Strategic Director of Communities  
and Place

## Building Consultancy Project

### SUMMARY

- 1.1 At its meeting on 16 March 2016, Council Cabinet gave delegated authority for agreements to be concluded enabling the proposed transfer of the Council's Building Control function, and the staff who undertake those functions, to a company being formed as an amalgam of the building control services of six Derbyshire authorities. The authorities involved are Derby, Amber Valley, Bolsover, Chesterfield, Derbyshire Dales and North East Derbyshire councils.
- 1.2 The original reports detailing the proposal is listed as a background paper to this document and available to view on CMIS.
- 1.3 The partner authorities have met and are ready to proceed with the arrangements, having achieved the necessary approvals.
- 1.4 The delegated authority made specific reference to the signing of three agreements; namely the service agreement, the shareholder agreement and the transfer agreement, as well as granting approval for officers to negotiate the terms of each of the agreements and other legal documents required to give effect to the proposal. In the course of those negotiations, it has since become apparent that a fourth document, a Guarantee Bond, will need to be produced and signed by each authority.
- 1.5 This report seeks specific approval for the signing of this fourth document in addition to the three which have been previously agreed.

### RECOMMENDATION

- 2.1 To note the detailed report 'Transforming Building Control Across Derbyshire' published as Item 10 of the Council Cabinet agenda for the meeting of 16 March 2016, available to view on CMIS via the link detailed in the background papers within the footer of this report.
- 2.2 To delegate to the Strategic Director for Communities and Place, following consultation with the Cabinet Member for Regulatory Services and the Director of Finance, to approve the terms of Guarantee Bond as part of the suite of agreements necessary to give effect to the transfer of the council's building control functions and staff to the new company.

- 2.3 To note that the remaining outstanding matter requiring member approval, namely the principle that the Building Control function can be discharged by the newly formed company, is due to go before Council as a late report on the same day as this matter.

#### **REASONS FOR RECOMMENDATION**

- 3.1 To ensure that the delegation previously granted expressly for the three documents cited in paragraph 1.4 is extended to include the terms of the Guarantee Bond.

#### **SUPPORTING INFORMATION**

- 4.1 Under the proposed arrangements, employees from the six member authorities will transfer to the new company. In order to maintain those employees' pension arrangements, the company is to become an 'Admitted Body' for the purposes of the Derbyshire Local Government Pension Scheme ("Derbyshire LGPS" as administered by Derbyshire County Council).
- 4.2 The six member authorities are required to enter into a Guarantee Bond with Derbyshire County Council under which the member authorities agree to guarantee the obligations of the company under the Admission Agreement, namely to make employee pension contributions into the Derbyshire LGPS.
- 4.3 It should be noted that the Guarantee Bond imposes joint and several liability on the six member authorities, i.e. the authorities jointly promise to guarantee the company's obligations but also separately promise to do the same thing. For example, the six member authorities promise jointly and severally to pay the LGPS contributions to Derbyshire County Council if the company fails to do so. They are therefore together under an obligation to pay the LGPS contributions to Derbyshire County Council, but also individually they are under an obligation to pay the money to Derbyshire County Council. Performance by one of the member authorities on their own discharges the obligation. Derbyshire County Council is entitled to payment of the contributions and it can enforce the obligation in full against one or another member authority or all. If Derbyshire County Council chooses to sue one member authority and not the others, it is open to that member authority to claim a contribution from the others.
- 4.4 The previous cabinet authority did not expressly delegate authority to sign a Guarantee Agreement. The absence of an express delegation therefore requires authority from Council Cabinet – or equivalent.
- 4.5 In view of the target completion date of 15 September 2016, the Urgent Leader mechanism is being proposed to grant this consent.

- 4.6 It is worthy of note that although this will bring the matters requiring an Executive member decision to a conclusion, the remaining non-executive matter is due to be considered by Council on the same date as this meeting. That concerns the overall principle of transferring the council's regulatory duties in respect of building control to be discharged by the company, in accordance with Article 4(4.2) of the Council Constitution, paragraph K of Part A of the Scheme of Delegations and Section 101(1)(b) of the Local Government Act 1972.

#### **OTHER OPTIONS CONSIDERED**

- 5.1 None. It is arguable that the decision made by Council Cabinet on 16 March 2016 is sufficient for the matter to proceed as consent was given for officers to negotiate the terms of each of the agreements and other legal documents required to give effect to the proposal – and the Guarantee Bond could arguably be included in the "other legal documents" referred to in that resolution. However, it is felt that presenting the matter for express member approval is preferable to ensure consistency with the other three documents referred to in paragraph 1.4.

**This report has been approved by the following officers:**

<b>Legal officer</b> <b>Financial officer</b> <b>Human Resources officer</b> <b>Estates/Property officer</b> <b>Service Director(s)</b>	Olu Idowu, Head of Legal Amanda Fletcher, Head of Finance N/A N/A John Tomlinson, Director of Communities, Environment and Regulatory
-----------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------

<b>Other(s)</b>	Services David Walsh, Head of Democracy
<b>For more information contact:</b> <b>Background papers:</b>  <b>List of appendices:</b>	Mick Henman 01332 642096 mick.henman@derby.gov.uk Report: 'Transforming Building Control Across Derbyshire', considered by Council Cabinet on 16 March 2016 and available on CMIS here: <a href="https://cmis.derby.gov.uk/cm5/MeetingsCalendar/tabid/73/ctl/ViewMeetingPublic/mid/410/Meeting/8190/Committee/1882/Default.aspx">https://cmis.derby.gov.uk/cm5/MeetingsCalendar/tabid/73/ctl/ViewMeetingPublic/mid/410/Meeting/8190/Committee/1882/Default.aspx</a> Appendix 1 – Implications

<b>IMPLICATIONS</b>
---------------------

**Financial and Value for Money**

- 1.1 The agreement will create a joint and several liability which increases our risk as we may need to make payments in respect of other local authorities' former employees, not just our own. However, the risk is considered small as if this situation arose we would look to recover any costs from the individuals' former employer.

**Legal**

- 2.1 As detailed in paragraph 4.1-4.6

**Personnel**

- 3.1 None directly arising from this report, save affirmation of the transfer of employees as previously approved.

**IT**

- 4.1 None directly arising.

**Equalities Impact**

- 5.1 None directly arising.

**Health and Safety**

- 6.1 None directly arising.

**Environmental Sustainability**

- 7.1 None directly arising.

**Property and Asset Management**

- 8.1 None directly arising.

**Risk Management and Safeguarding**

- 9.1 None directly arising.

**Corporate objectives and priorities for change**

- 10.1 None directly arising.

