

## ITEM 16 – APPENDIX 1

### REPORT TO CHIEF EXECUTIVE OF AN URGENT NON- EXECUTIVE MATTER REQUIRING A DECISION OF THE COUNCIL

**SUBJECT:** Approval for Derby City Council to apply for membership of Infinity Park Derby Management Ltd following the purchase of the site at Infinity Park Derby to accommodate NAMRC Midlands.

#### DESCRIPTION OF PROPOSAL:

As is a common feature of many commercial properties whether a building or a business park / industrial estate, responsibility for the management, maintenance and improvement of common areas is placed in the hands of a property management company. Infinity Park Derby is no different in this regard with Infinity Park Derby Management Ltd having been set up by the developer for this purpose. These management vehicles can come in a number of forms but invariably require occupiers to share in the costs of managing and maintaining the common areas. The Council's purchase of part of Infinity Park Derby for its NAMRC Midlands scheme is triggering such a requirement.

The Management Company (ManCo) which has been established to own and manage the common parts of Infinity Park Derby is to be a Unitholder owned management company such that each Unitholder will become a member in the ManCo. The purchase of the land and building by Derby City Council for the NAMRC Midlands project establishes it as a Unitholder on Infinity Park Derby thereby requiring it to apply to become a member of the ManCo.

Infinity Park Derby Management Limited (company number: 10517004), a company limited by guarantee has been established as the Management Company (ManCo) for Infinity Park Derby. The ManCo is to be the vehicle which will own (for the benefit of the Unitholders) and manage the common parts of land known as Infinity Park Derby (Estate).

Records at Companies House show that the ManCo was incorporated on 8 December 2016 and Infinity Park Derby LLP is the current sole member of the ManCo. Infinity Park Derby LLP is to develop the Estate (Developer) and is a joint venture company between Wilson Bowden Developments Limited and Cedar House (Infinity Park) Limited. The current directors of the ManCo are Henry Robert Henson and Nicholas Hadden Richardson.

Whilst the ManCo is to be a Unitholder owned management company, the Developer will retain control of the ManCo until the earlier of a) the date the final Unit becomes developed, or b) 15 years from 5 November 2021 (Trigger Event). Derby City Council (DCC) is due to acquire a Unit on the Estate and will therefore ultimately become a Unitholder and therefore member in the ManCo.

#### Articles of Association

Browne Jacobson on behalf of DCC has undertaken a review of the Articles of Association to the ManCo and provided a summary of key terms that would be of material importance to DCC in light of it becoming a Member of the ManCo and which are set out in the following Paragraphs.

### The Objects of the ManCo

The ManCo's objects are restricted to carry on business as a property management company and to manage and maintain the land and any buildings situated on the Common Parts of the Estate. Common Parts being such parts of the Estate which serve or are used in connection with the Estate being for the benefit of one or more Unitholders, their tenants or any occupiers of the Estate. To include for example unadopted roads, cycleways, footpaths, hard and soft landscaped areas, watercourses, street furniture, bridges, shelters etc. The Objects as detailed in the Articles of Association provide the Council a sufficient understanding of what the management company will do.

### Liability of Membership

The ManCo is set up as a company limited by guarantee. The Liability of each member of the ManCo is limited to £1.00, being the amount that each member undertakes to contribute to the assets of the Company in the event of it being wound up.

### Membership

As is typical for these types of arrangements, only Unitholders can become members of the ManCo, subject to an application for membership and approval by the Directors of the ManCo. A member cannot withdraw from membership of the Company whilst they are a Unitholder and membership is not transferable.

### Votes of Members

Prior to the Trigger Event (being the earlier of a) the date upon which the last remaining undeveloped Unit becomes developed; or b) 15 years from 5 November 2021), only the Developer is entitled to convene, attend and vote and pass any resolution of the ManCo. In the following situations: removing a director or auditor from office in accordance with the Companies Act 2006; varying any right of a General Member; or amending the articles of association, the quorum for such resolution to be passed is two eligible members, one of which must be a Developer and one a General Member but (other than in relation to amending the articles of association), the Developer will have a veto right on these issues. The General Member therefore has a right to attend and speak at these meetings but ultimately may be outvoted. An important element contained within the Articles, is that the Developer is not able to unilaterally amend the Articles.

Following the Trigger Event, the quorum is two members. At a general meeting of the ManCo, members shall have one vote each, unless a poll vote is demanded. On a poll vote or if voting is by way of a written member resolution, the number of votes reflects the net developable acreage of the relevant Unit as a percentage of the Estate. DCC named representative will be determined by senior officers.

### Directors

Prior to the Trigger Event, the maximum number of directors of the ManCo is 3, being 2 directors appointed by the Developer and one director appointed by a majority of the General Members (General Directors). After the Trigger Event, the number of directors shall not be less than 2 General Directors. DCC does not have a specific right to appoint itself as a General Director (instead this is decided by the Member Majority).

The Chairman of the directors' meeting shall have a casting vote and for so long as the Developer is entitled to vote, the Developer shall be appointed as Chairman. The Developer Directors shall cease to be directors of the ManCo on the Trigger Event.

#### Income of the ManCo

The income of the ManCo is to be applied solely towards the promotion of the ManCo's objectives and no part of the income shall be paid to the members of the ManCo, by way of dividend, bonus or otherwise.

#### Collection of Monies

The ManCo has responsibility for collecting from Members of the Company, contributions payable by each of them towards the management, maintenance and improvement of the Common Parts in accordance with the estate rent charge scheme established for the Estate. This apportions the costs between occupiers based on the apportioned amount of the estate's net developable area that they occupy.

The charges that apply in relation to DCC as Unitholder will only apply following practical completion of the development, which represents the trigger for the completion of a lease between DCC and the University of Sheffield that will allow the occupation of the building by the Nuclear AMRC. Through the terms of its lease with the University of Sheffield, DCC as freeholder of the property will pass these costs onto its tenant.

#### **REASON FOR URGENCY:**

Under the constitution, approval of membership of outside bodies is a matter reserved to Council:

#### *A Matters Reserved to Council*

*g. Approving membership of, and appointing representatives to, outside bodies unless the function has been delegated by Council;*

However, time is of the essence as the project aims to complete on all the transactional documents associated with NAMRC Midlands on the 17<sup>th</sup> Jan 2022 which is in advance of the next Council meeting scheduled for the 19<sup>th</sup> Jan 2022. The transactional documents that will be entered into on the 17<sup>th</sup> Jan 2022 will allow the transfer of land and entry into the funding agreement with the developer and their instruction of a main contractor all of which is required to progress the scheme and to secure external grant monies allocated to end of March 2022. Given these timescales, it is necessary to seek an Urgent Chief Executive decision on this matter.

**TITLE OF COMMITTEE AND DATE OF NEXT MEETING:** Council, 19 January 2022

**DATE GROUP LEADERS CONSULTED:** 12 January to 14 January 2022 –  
Councillors Poulter, Shanker, Skelton and Graves made no objection.



**SIGNED** **12 January 2022**  
**(Rachel North, Strategic Director of Communities and Place)**



**SIGNED**  
**Emily Feenan (Monitoring Officer)**

**DATE**

**12 January 2022**

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I hereby approve the proposed action on the grounds of urgency and in exercise of the powers delegated to me by the Council.



**SIGNED**  
**Paul Simpson (Chief Executive)**

**DATE**

**14 January 2022**