

Report to: **Council**

Date: **27 July 2017**

Title: **Establishment of the Sherford Community Trust**

Portfolio Area: **Strategy and Commissioning**

Wards Affected: **All**

Relevant Scrutiny Committee: **Overview and Scrutiny Panel**

Urgent Decision: **N** Approval and clearance obtained: **Y**

Date next steps can be taken: **N/A**

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Recommendations:

That the Council APPROVES the:

- 1. constitution of the Sherford Community Trust and the Schedule of Payments.**
- 2. appointment of the Commissioning Manger, as a Director of the Community Trust.**
- 3. appointment of Executive Director and Head of Paid Service and give delegated authority to the Executive Director and Head of Paid Service to act on its behalf at Member meetings of the Community Trust.**

1. Executive summary.

1.1 This report recommends that the Council approves the Constitution of the Sherford Community Trust and the Schedule of Payments, as detailed in Appendix 1 and the Scope of Appointment as detailed in Appendix 2. These recommendations will enable compliance with schedule 7 of 106 Agreement (2013) and is further aimed at enabling the Sherford Community Trust to be established.

1.2 Approval of the Articles of Association (the Constitution) and the Schedule of Payments ensures compliance with Schedule 7 of 106 Agreement.

1.3 The Authorities of South Hams District Council, Devon County Council and Plymouth City Council shall each provide one Director.

1.4 Brixton Parish Council shall also nominate one Director.

1.5 The Developers are Taylor Wimpey, Linden and Bovis. They shall collectively, nominate one Director.

2. Background.

2.1 The Sherford Section 106 Agreement (2013) requires that a Community Trust is set up and is in place prior to the first residents taking up occupation.

2.2 The Community Trust is solely for the benefit of the Sherford New Community as set out and agreed by South Hams District Council, Devon County Council and Plymouth City Council in the Scoping Agreement of February 2015.

2.3 There are a number of pre-requisites that must be approved by the Local Authorities before the Trust can be legally established.

2.4 The following requirements from the Section 106 Agreement are included in the documentation at Appendix 1.

- *The detailed proposals and form of the Community Trust Constitution*
- *Proposals for the initial management structure for the Community Trust*
- *Proposals for the mechanisms that will be put in place by the Owners to ensure that the Community Trust is able to levy Community trust Fees from Property Owners*
- *Proposals for the manner in which the Community trust will be involved in the decisions relating to the design and running of Facilities as described in Paragraph 5 of this Schedule 7 to this deed*
- *A schedule of payments of the Community Trust Contribution*

2.5 All the items above are covered by the Articles of Association and the Schedule of Payments which are referenced at Appendix 1.

2.6 The Section 106 requires that SHDC nominate a director to be appointed. That director's role will be to act in the best interest of the Company in accordance with the Articles of Association. Devon County Council, Brixton Parish Council and Plymouth City Council shall also each provide a director.

2.7 These together with the Developer's nominee shall comprise the Shadow Board. There shall therefore be a total five directors on incorporation.

2.8 The Council has an option to withdraw from the director's appointment once 300 Community Trust memberships have been achieved and the Full Board is in place.

2.9 The legal form of the Community Trust has been agreed within the scoping document and it shall therefore be incorporated as a company limited by guarantee.

2.10 The Community Trust shall therefore be called, Sherford Community Land Trust Limited ("the Company").

2.11 Each of the four Councils namely, Plymouth City Council, Devon County Council, South Hams District Council and Brixton Parish Council are named in the 106 Agreement as the Founder Members of the Community Trust ("the Member").

2.12 Member in this context therefore means each of the Council and collectively they shall be called Members. The Developers are also named as Founder Member and will therefore become a Member of the Company. However, the Developer will only nominate one person to represent them at the board of directors.

2.13 As the Development progresses, the Developers, on the Community Trust behalf, will allocate 1 Community Trust Membership to each person purchasing the freehold. All property owners will be required to pay a Community Trust fee. They will therefore have an opportunity to become directors of the Company but only after a minimum of 300 Community Trust membership have been allocated. Those living and working in the community may also have an opportunity to apply and become member of the Community Trust.

2.14 The liability of each Council as a Member of the Company shall be limited to £1. However, the officer nominated to represent the Council as a director will not only act in the best interest of the Company, but also act as a trustee of the charity. This is because the Company will not only be governed by Companies Act 2006 but also, Charities Act 2011. The decision to apply for charity status shall be taken by the directors.

2.15 The purpose of nominating two separate officers to act as director and also represent the Council at Member meetings is to address the issue of potential conflict which may arise. For example, as a director, the officer is required to act in the best interest of the Company. It follows therefore that, Member interest can only be best addressed by an officer who is independent and has no loyalty to the Company. That officer will therefore be free to advance the interest of the Council without any limitations or constrains.

3. Outcomes/outputs. The formal establishment of the Sherford Community Trust as a legal entity.

4. Options available. The creation of the Community Trust is a requirement of the Section 106 Agreement.

5. Proposed Way Forward. An instruction to formally establish the Sherford Community Trust at Companies House.

6. Implications

Implications	Relevant to proposals	Details and proposed measures to address
Legal/Governance	Y	<p>Section 106 Agreement dated 2013 makes provision for there to be established a Community Trust for the Development (the 106 Agreement).</p> <p>Schedule 7 of the 106 Agreement obliges the Developers to prepare and submit to the Council for approval, the scope of the Community Trust Constitution and the scope of the initial management of the Community Trust.</p> <p>The Developers are further obliged to produce for approval by the Council, the detailed proposal and form of the Community Trust Constitution before first occupation and a schedule of payments.</p> <p>The Developers have so far complied and have now produced the Articles of Association and a Schedule of Payments.</p> <p>Approving these Articles of Association and Schedule of Payments is in line with the 106 Agreement.</p> <p>The Community Trust shall be incorporated as a company limited by guarantee with charitable objectives.</p> <p>It will therefore be governed by both Companies Act 2006 and Charities Act 2011.</p> <p>Member’s liability shall be limited to £1.</p> <p>In order to avoid conflicts of interest, it is recommended that separate officers are appointed to act as a director of the Company and also, a separate officer with delegated authority to represent the Council at member meetings.</p> <p>There are a list of reserved matters set out in the</p>

		<p>Articles of Association which will require approval and further authorisation by members. The notice of appointment of officer, should set out those matters which the officer will have to refer back to either the Hub or Executive or the Council.</p> <p>An officer attending the board and member meeting will be taken to have authority to bind the Councils.</p> <p>Appointment of officers to external bodies is regulated by the Councils Constitution.</p>
Financial	N	<p>The Company is limited by guarantee and the liability is £1. There are no direct costs to the Council. There will be officer time for the Director to carry out responsibilities – the amount of time will be known once a Business Plan has been produced.</p> <p>The Consortium shall pay £74,650 to the Community Trust within 10 days of its establishment, with further payments subject to the Schedule of Payments.</p>
Risk	N	
Comprehensive Impact Assessment Implications		
Equality and Diversity	N	
Safeguarding	N	
Community Safety, Crime and Disorder	N	
Health, Safety and Wellbeing	N	
Other		

Supporting Information

Appendix 1

- A) Articles of Association (the Constitution)
- B) Schedule of Payments.

Appendix 2

Scope of Appointment

Background Papers:

None