
Appointment of Elected Members to the Board of Rathmines Square Management Company Limited by Guarantee (RSMCLG)

In April 2019, the Council approved a Section 183 disposal report transferring the Council's freehold interest in the development at Rathmines Square to the RSMCLG, in accordance with the Multi-Units Developments Act, 2011.

The City Council has the right to nominate two directors to the RSMCLG by virtue of its 54% shareholding in the development. (The Council owns the Crèche, the Swan Leisure Centre, 6 apartments, certain car parking spaces, the Public Park and the plaza). Ms Evelyn Hanlon, a recently retired SEO with the Council, was appointed by the Property Development Department to fill one of the City Council director positions, with effect from 1 March 2020.

In March 2020, Councillor Freehill sought to have two Councillors nominated from the South East Area Committee to the Board of the RSMCLG. Motion No. 14 from Councillor Freehill to the South East Area Committee in March 2020 sought agreement that 2 Councillors from the Committee be selected and recommended to the April meeting of the City Council for appointment to the RSMCLG. The executive response to the motion cited the legal opinion it had obtained and its view that the public interest role of the Elected Members in the Rathmines Square development was already well served by the current membership of three Elected Members of the Board of the Dublin City Sports & Leisure Services CLG (which trades as Swan Leisure Centre.) The Swan Leisure Centre is a major part of the Rathmines Square development. In addition, a former Councillor, Ruairí McGinley is chair of the Board of Dublin City Sports & Leisure Services CLG.

Motion No. 2 from Councillor Freehill to the April South East Area Committee again sought agreement that two Cllrs from the committee be selected and recommended to the City Council for appointment to the RSMCLG. The matter was raised at the June City Council meeting, where I gave an undertaking that I would consider the request and give a detailed response at the July City Council meeting.

The key issues and my response to these issues are set out below:

1. A commitment was given to Councillor Freehill that two Elected Members would be appointed to the Board of RSMCLG.

This is not correct. The Property Development Department invited members of the South East Area Committee to a meeting in the Civic Offices on 5 March 2019 to clarify for the Members the process required to comply with the Multi Unit Developments Act, 2011. The meeting was attended by Councillors Freehill, Lacey and Freeney. Cllr Lacey queried the function and structure of the Management Company. The Council's legal

representative clarified this stating that the City Council could appoint two directors to the company and that the Council would have the controlling vote at 54% due to its percentage occupation of the overall development. Cllr. Lacey further queried who would be nominated as directors and Paul Clegg advised that it would normally be retired City Council officials. There was no commitment or agreement to appoint a Councillor/Councillors as directors at this meeting. This is supported by the minute of the meeting.

2. Is the appointment of directors to Management Companies for developments in which the City Council has an interest a reserved function of the Elected Members or an executive function?

I am satisfied, on the basis of advice from the Law Agent, that the appointment of directors to the boards of Management Companies is an executive function, on the basis that it is not specified as a reserved function of the Elected Members.

3. Is there any reason why an Elected Member could not represent the City Council as a director of a Management Company for a development in which the City Council has an interest?

The objects of the RSMCLG are reproduced in Appendix 1. These objects are focussed on the proper day to day operational management of the complex and on securing its longer term future. Unlike most Company Boards whose primary role is to set corporate policy and to supervise the company's executive, the role of the RSMCLG is more operational in nature. While it appoints agents/contractors to maintain the common areas and to carry out other repair and maintenance work etc. it does not have an executive. The burden of this work generally falls on Board members. The Board members are in turn answerable to the company shareholders who are the owners of the different elements of the development (apartments, Leisure Centre and crèche).

The reluctance to have Elected Members on the Board of RSMCLG reflects a genuine concern that under the local government system in Ireland the role of Elected Members is to represent their constituents, to exercise statutory reserved functions, to set City Council policy and to oversee the implementation of policy by the Council's executive. Apart from representing their constituents Elected Members are not involved in day to day operational matters. It was felt that having an Elected Member on the Board of RSMCLG was not appropriate given the operational responsibilities that fall on members of the Board of the RSMCLG.

Having said this, I am satisfied that there is no legal impediment to the appointment of an Elected Member to the Board of the RSMCLG by the Chief Executive and there is also absolutely no reason why an Elected Member could not adequately discharge the functions of director of the RSMCLG subject to the Elected Member concerned having the time, commitment and the appropriate skills to discharge his/her responsibilities as a director of the RSMCLG.

It should be noted that while there are onerous responsibilities on company directors under the Company's Act, the City Council is precluded from making any payment to Elected Members who serve on Boards. In addition, the Constitution of the RSMCLG provides that it will not pay directors.

4. Will the Chief Executive Appoint an Elected Member to the Board of the RSMCLG?

On balance, I am of the view that it is not appropriate to appoint an Elected Member to the Board of the RSMCLG. I would however be happy to arrange for SEAC Councillors to be briefed on a regular basis on the work of the RSMCLG, in as far as it relates to the areas of the development within the City Council's remit.

However, if having considered my report, the Council considers it would be appropriate that an Elected Member be appointed to the Board of RSMCLG, then I will agree to appoint an Elected Member nominated by the Council subject to the person nominated, meeting the Company's Act criteria for appointment as a director. To avoid any conflict of interest the person nominated should not be a current member of the Board of Dublin City Sports & Leisure Services CLG.

The second Council directorship will continue to be held by Ms Evelyn Hanlon.

Owen P. Keegan
Chief Executive

30th June 2020

Appendix 1: Objects of the Rathmines Square Management Company Limited by Guarantee

The constitution of the Rathmines Square Management Company Limited by Guarantee set out the objects of the objects for which the Company is established are as follows:

- (a) To carry on the business of an owners' management company established for the purposes of ownership of the common areas of, and the management of the multi-unit development known as **Rathmines Square, Rathmines Road, Dublin 6 (hereinafter referred to as the Estate)** and in doing so to exercise such powers and functions conferred or imposed on such an owners' management company by the MUDs Act;
- (b) To acquire (to include the acquisition of the freehold or other reversionary interest therein), manage and maintain the common areas and to hold the same for the benefit of the Unit Owners;
- (c) To provide services in connection with the common areas and to collect the service charges payable in respect thereof by the Unit Owners;
- (d) To establish a building investment, or sinking fund, a reserve fund and other funds and to charge and collect contributions to any such funds;
- (e) To engage agents, employees, contractors, porters, stewards, caretakers, cleaners, gardeners and other persons for the purposes of carrying out the objects or exercising the powers herein;
- (f) To repair, maintain, decorate, preserve, improve, cultivate and insure the common areas;
- (g) To exercise the functions of a management company including (but without limitation): to enter into transfers, leases and management agreements with Unit Owners and the doing of all such other things as are incidental or conducive to the attainment of this object in connection with the common areas; the granting of easements over the common areas and entering into covenants in respect thereof; and to charge and collect service charges in respect of maintenance, repairs, improvements, insurance, taxation, litigation and such other matters as the Directors may deem appropriate;
- (h) To make rules, house rules, regulations, restrictions and bye-laws for Unit Owners, occupiers of the Units and other users of the common areas and to alter, vary, amend or add to same;
- (i) To purchase, acquire, hold, sell, exchange, partition, mortgage, charge, lease, dispose of, hire and rent property, of any nature, and to acquire easements over such property on such terms as the Company may from time to time determine and to exercise all powers of a lessor in any lease which the Company may make or acquire;
- (j) To carry out repairs and maintenance on any part of the multi-unit development which is not in the Company's ownership or control where such repairs are deemed to be reasonably necessary to ensure the safe and effective occupation or the peaceful enjoyment or occupation of the Units.
- (k) To appoint agents to manage the common areas and to employ, delegate to and hire such persons and firms for such purposes and on such terms as to remuneration and otherwise as the Directors may deem appropriate;

- (l) To process personal data and sensitive personal data relating to any Unit Owner and/or any tenants and/or licensees of the Unit Owners including but not limited to (i) disclosing information relating to the payment or non-payment of service charges and sinking fund contributions to some or all of the Unit Owners; and (ii) disclosing information relating to any breach of any rules, house rules, regulations, restrictions and byelaws relating to the multi-unit development to some or all of the Unit Owners;
- (m) To do such other things as are incidental or conducive to the attainment of the above objects or as are calculated to enhance the value and beneficial advantage of the multi-unit development and the Units;
- (n) To borrow or raise money in such manner as the Company shall think fit and to secure the repayment of any money borrowed, raised or owing by mortgage, charge or lien upon the whole or any part of the property or assets of the Company, whether present or future, and also by a similar mortgage, charge or lien to secure and guarantee the performance by the Company of any obligation or liability it may undertake provided that no mortgagee or other person or company advancing money to the Company shall be concerned to enquire into the necessity or propriety of raising money or as to the amount required or the application thereof; and
- (o) To invest any monies requiring investment in any manner which may be thought fit and whether trustee investments or otherwise or in the purchase of property of any nature with power from time to time to vary such investments.

The objects set forth in any sub-clause of this clause shall not, except when the context expressly so requires, be in any way limited or restricted by reference to or inference from the terms of any other sub-clause, or by the name of the Company. None of such sub clauses or the object therein specified or the powers thereby conferred shall be deemed subsidiary or auxiliary merely to the objects mentioned in the first sub-clause of this clause, but the Company shall have full power to exercise all or any of the powers conferred by any part of this clause, and notwithstanding that the business, undertaking, property, or acts proposed to be transacted, acquired, dealt with, or performed do not fall within the objects of the first sub-clause of this clause.

Provided that the provisions of this clause shall be subject to the Company obtaining where necessary for the purpose of carrying any of its objects into effect such licence, permit or authority as may be required by law.