

CABINET

19 March 2019

Title: Commercial Company Business Plans	
Report of the Cabinet Member for Finance, Growth and Investment	
Open Report with Exempt Appendices (relevant legislation: paragraph 3 of Part I of Schedule 12A of the Local Government Act 1972)	For Decision
Wards Affected: All	Key Decision: Yes
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Accountable Strategic Leadership Director: Claire Symonds, Chief Operating Officer	
Summary <p>This report seeks Cabinet approval of the Business Plan for the Barking and Dagenham Trading Partnership (BDTP), in line with the requirements of the Shareholder Agreement, as well as endorsement of the Business Plan for the Barking and Dagenham School Improvement Partnership (BDSIP) in line with the requirements of the Membership Agreement. These Business Plans have been scrutinised by the Shareholder Panel, the advisory body created to monitor and to report to Cabinet on the performance of Companies that the Council has a shareholding interest in.</p> <p>The creation of these companies was an integral part of Barking and Dagenham's New Kind of Council transformation programme. Launched in 2016, this programme has seen a radical re-shaping of services of which commercialisation and income generation via the creation of new independent commercial companies was a key strand. These companies have been designed to facilitate a sustainable financial position for the Council as well as improve service delivery and outcomes for the residents of the Borough.</p> <p>The companies commenced trading during 2017 and 2018 and the Business Plans for BDTP and BDSIP are the first substantive Business Plans that reflect the new commercial expertise created in the Companies following the recruitment of commercial and sector specific independent Boards. These Business Plans highlight that performance during the first year/s of trading has been positive, that relationships both internal and external to the Council have been strengthened and that the Companies are making a positive impact to the Borough.</p> <p>The positive impact can be seen in the improved trading positions as illustrated by;</p> <ul style="list-style-type: none">• An improved financial position for all the Companies in 2018/19 including:<ul style="list-style-type: none">○ BDSIP now projecting to make a small surplus rather than a deficit which, as a non-profit company, will be re-invested in further enhance the school improvement offer to schools;	

- BDTP forecasting to double its financial return to the Council in 2018/19 from £744k to £1.4m.
- An improvement in the delivery of services demonstrated by
 - BDTP continuing to honour the 2019/20 element of the National Pay Award for its mainly local workforce and committing to invest in delivering a minimum of 10 apprenticeships per annum from 2019 rising to 15 per annum from 2020/21;
 - BDSIP developing a schools' led approach to services with a direction of travel towards reducing the cost of school improvement services to B&D schools

Whilst the development of the Companies is in its early stages, these plans indicate that each of the Companies has made a successful start towards a positive and sustainable future.

The substantive Business Plans are contained within Appendices A and B, which are in the exempt section of the agenda as they contain commercially confidential information (relevant legislation: paragraph 3 of Part I of Schedule 12A of the Local Government Act 1972) and the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

Recommendation(s)

The Cabinet is recommended to:

- (i) Approve the Barking and Dagenham Trading Partnership Business Plan for 2019/20 – 2021/22, as set out at Appendix A to the report;
- (ii) Agree to the Barking and Dagenham Trading Partnership entering into any procurement related agreement or commitment required to enable the delivery of the Business Plan subject to:
 - a). compliance with relevant procurement law;
 - b). compliance with its own scheme of delegation;
 - c). compliance with state aid rules; and
 - d). any other relevant approvals by the Council which may be relevant or required for the specific project.
- (iii) Endorse the Barking and Dagenham School Improvement Partnership Business Plan 2019/20, as set out at Appendix B to the report.

Reason(s)

This proposal is in line with Recommendation 8 of the independent Growth Commission's report published in February 2016 and is aligned to the Council's 'Inclusive Growth' and 'A New Kind of Council' objectives.

1. Introduction and Background

- 1.1 In line with the Shareholder Agreement for BDTP and the Membership Agreement for BDSIP, these Business Plans have been produced for Cabinet approval and/or endorsement as outlined in the recommendations.

- 1.2 The Business Plans have been approved by the respective independent Boards of each Company and have scrutinised and revised following Shareholder Panel review.
- 1.3 Taking each Company in turn, this report highlights the key objectives to be delivered and the period by which the returns, either financial or social are expected with the detail behind the assumptions being shown in the exempt Appendices.
2. **Barking and Dagenham Trading Partnership Business Plan (2019-2022)**
 - 2.1 In line with the Shareholder Agreement the Company is required to produce a 3-year Business Plan for Shareholder approval. The Business Plan set out at Appendix A presents the first substantive Business Plan for BDTP and therefore reflects the commercial expertise that has been created in the Company as well as the aspirations of the new Board for the Company's development.
 - 2.2 The Business Plan describes the key activities and proposed strategy for development of the Company and its subsidiaries over the next three years and outlines a commitment to continue to be a socially responsible and valued employer in the Borough, demonstrated for instance in its commitment to honour the 19/20 element of the 2018 National Pay Award in full. This paper requests approval for the activities described in the plan but recognises that some activities, such as proposals to withdrawal from support services earlier than allowed in the Support Services SLA will require subsequent approval from officers, subject to approving a detailed business case in line with the requirements outlined in those contracts.
 - 2.3 A like for like comparison of the anticipated return in this Business Plan against the forecasted return agreed at the Company launch indicates the company expects to increase the return to the Council by just under £2m to £5.748m over the years 2018-2022. This financial success comes on the back of a good first year of trading. Quarterly reports suggest that the Company has exceeded expectations and has delivered qualitative improvements to the core business performance demonstrated in the number of appointments kept on time at 99%, the number of repairs completed right first time at 97% and overall satisfaction with repairs sitting at 97.5%. This improvement has been pivotal in the Company securing a greater quantity of work such as the improvement works delivered to London Road car park which along with the more commercial management practises has resulted in improved financial performance.
 - 2.4 Another major change for BDTP is the acquisition of LondonEast UK which completed in January 19. BDTP are now working with the Council and Be First on developing a long-term strategy for the site and which will be further articulated in the next rolling Business Plan due in March 2020.
 - 2.5 Moving into 20/21 BDTP are forecasting to increase their revenue by nearly a third through securing additional work from external parties. This is a highly ambitious strategy in only the second full year of the Company's trading, but business plan illustrates that the Company has included investment in the current fleet, its own labour, management resource, sub-contractors and payroll to cover within its forecast for delivering this additional work and employees.

2.6 BDTP set out an intention to invest in delivering a social dividend to the borough including the provision of a set number of apprentices including 10 in 2019/20 increasing to 15 in 20/21. BDTP are also looking to develop a 'leaving schools' programme and a skills development programme in collaboration with schools to deliver on this objective although the actual detailed delivery plan has not yet been developed.

3. **Barking and Dagenham School Improvement Partnership (BDSIP) Business Plan 2019-2022)**

3.1 BDSIP is a schools' led Company - the Council is a minority (19%) shareholder with the remaining 81% of the shares being held within the Barking and Dagenham family of Schools. BDSIP is a not-for profit Company with no financial targets to meet for the Council however, as a shareholder the Council has an interest in the company's financial sustainability and its long-term strategy. On an annual basis the Council will need to consider how to exercise its voting rights at the Company's Annual General Meeting including whether to endorse the Company Business Plan.

3.2 The Business Plan (Appendix B) demonstrates that the Company has had a positive first year and highlights successes in business development initiatives that have culminated in 93% of schools in the borough choosing to be members of the company. BDSIP provides services to every school in the borough and, in a recent 'temperature check survey' of headteachers views, 50% felt services had improved since BDSIP launched, 39% felt they had remained consistent and 11% felt quality had dropped. BDSIP forecasts that overall income for 2018/19 is c £40k higher than the original plan forecast.

3.3 The Business Plan outlines that BDSIP has already launched a new GDPR support service which 24 schools have accessed as well as issuing a revised service offer for its range of school improvement services. This new service offer has been tailored to address feedback raised by Headteachers so that it better meets their needs.

3.4 The business plan addresses how BDSIP is responding to the evolving education landscape including supporting the shift in focus for school improvement from helping schools achieve an Ofsted rating of 'good' to supporting the development of outstanding schools

3.5 BDSIP services are still purchased from schools on an annual basis so even though the forecasts are positive the actual range of services purchased is yet to be determined which will continue to be an area of risk to BDSIP in terms of resourcing planning and forecasting revenue.

4. **Consultation**

4.1 The Business Plans have undergone the following consultations

- Approved by the BDTP Board on 12 December 2018;
- Approval by the BDSIP Board expected March 2019;
- Endorsed (subject to agreed revisions) by Corporate Strategy Group on 17 January 2019;
- Endorsed (subject to agreed revisions) by the Shareholder Panel on 4 February

2019;

- Final endorsement by Corporate Strategy Group on 21 February 2019.

5. **Financial Implications**

Implications completed by: David Dickinson, Investment Fund Manager

- 5.1 The Council approved Budget 2019/20 includes assumptions of net cash returns from BDTP of £1.4m in 2019/20 and £2.2m (indicative position) in 2020/21. Encouragingly, this Business Plan offers the council greater returns and using the base case, these are planned to be £1.6m and 2.9m for 2019/20 and 2020/21 respectively. The current trading performance indicates the strength of the council's commissioning strategy with a focus on the flexibility of private sector delivery coupled with public sector ethos, helping to ensure financial support for key council services.
- 5.2 There are no income generation targets for BDSIP in the Council's MTFs. Whilst the Council has an interest in overall viability for services to schools it does not obtain a financial gain from its operation and any profits will be reinvested to improve Education outcomes. The main challenge for the Partnership will be ensuring continuing sustainability over the next few years as Education Funding changes are likely to mean reduced direct funding from DSG and a greater emphasis on trading with schools.
- 5.3 The Cabinet should be advised that there are always financial risks for new companies especially in relation to cash flow and liquidity. For this reason, a working capital loan facility on commercial terms has been provided for both companies (as approved in the February cabinet last year.)

6. **Legal Implications**

Implications completed by: Suzan Yildiz, Deputy Head of Legal Services (Commercial)

- 6.1 Cabinet is requested to approve Business Plans for two companies in which the Council has a shareholding or other interest, namely the Barking and Dagenham Trading Partnership (BDTP) and the Barking and Dagenham School Improvement Partnership (BDSIP). BDTP is a trading business in which the Council is a 100% shareholder and the relationships between the Council and the BDTP is regulated through the shareholder agreement. Shareholder agreements provide provisions regarding accountability to the Shareholder and form part of both the governance of the companies and contractual documents setting out the course of business, accounting for dividends, course of business of the company and activities over which only the shareholder has control. The Council can via its shareholder controls fully set the direction of these companies and monitor the performance of the companies. BDSIP is a not-for-profit company limited by guarantee in which the Council along with the group of Barking schools has a membership. The Council is a minority member with 19% of control. Therefore, the Cabinet does not have final approval over the BDSIP Business Plan and is asked to indicate its endorsement of the plan and agree for the Council's Non-Exec Directors to vote for its approval at the BDSIP Annual General Meeting.

Relevant Statutory Powers

- 6.2 The Council has a number of relevant powers regarding its establishment of trading companies, borrowing and investment activities. Section 1 of the Localism Act 2011, the general power of competence (“GPC”) empowers local authorities to do anything that an individual can lawfully do provided that the activity is not expressly prohibited by other legislation. Activities authorised by the GPC can include investment, trading or charging decisions which may be undertaken through commercial (corporate) vehicles with the primary aim of benefiting the authority, its financial management, its area or its local communities. The power is wide and provided that the specific activity is not expressly restricted or proscribed by other legislative provisions, it will be within the parameters of the GPC power.
- 6.3 Section 4 of the Localism Act 2011 adds a proviso that if the GPC power is exercised for an activity which may be deemed ‘for a commercial purpose’ that is more than incidental to other functions or purposes of the Council, such activity must do so through a company. Therefore, there may be circumstances where commercial activity carried out by the Council’s companies may necessitate that a company limited by shares is utilised and may require further approvals by Cabinet whether the projects have been identified in the proposed Business Plans or not.
- 6.4 Section 12 of the Local Government Act 2003 (“Power to Invest”) enables a local authority to invest for any purpose relevant to its functions under any enactment, or for the purposes of the prudent management of its financial affairs. Consequently, borrowing to invest primarily for profit only would not be deemed directly relevant to fulfilling the authority’s functions and will not, therefore, be authorised under this power. However, investment in development, land or property with a view to promoting regeneration will fall within the power to invest.
- 6.5 Section 1 of the Local Government Act 2003 (“Power to Borrow”) provides local authorities with the power to borrow for any purpose relevant to their functions under any enactment or for the purpose of the prudent management of its financial affairs. The Power to Borrow has similar constraints to the investment power under the 2003 Act. Borrowing primarily to achieve a return is unlikely to be deemed connected to the functions of the Council or to be prudent financial management. Caution should be exercised in making decisions to ensure that any investments or loans financed with borrowing further the functions of the Council and are consistent with the prudent management of the Council’s financial affairs and associated prudential guidance. In instances, where there may be commercial reasons for borrowing or investment further scrutiny and approval by Cabinet will be necessary as to whether the proposed activity is within the powers to invest and borrow, the CIPFA Prudential Code and relevant statutory guidance will be necessary (among other matters).

Other Legal and Commercial Considerations

- 6.6 The Council’s fiduciary duties can be summarised as the Council acting as a trustee in respect of taxes collected and public sector income on behalf of its rate and tax payers. The Council in effect holds money but does not own it; it spends money on behalf of its business rates and council tax payers.
- 6.7 In making the decision concerning the business plans, Cabinet should give due

consideration to the risks and benefits of approving the recommendations. In practice Cabinet will wish to consider whether a prudent investor, shareholder or borrower would undertake the activity or risks; whether the Council will achieve an appropriate return for the risk it is taking, and that the risks and potential costs involved in approving the planned business activity have been appropriately mitigated in the event of any of the companies (or their subsidiaries) becoming insolvent and/or defaulting on any outstanding loan(s). It should be borne in mind that in instances where loan book activity references in the report and business plans is funded by PWLB borrowing, a default by the borrower/s (whether the Council's entities or other third parties) could leave the Council exposed to repaying loans and interest notwithstanding default by its borrowers. The Chief Operating Officer should also consider these risks in approving the terms of any relevant legal agreements.

Funding and Borrowing

6.8. Section 15 of the Local Government Act 2003 requires that the Council have regard to statutory guidance in relation to exercising its borrowing and investment powers. The relevant Statutory Guidance on Local Government Investments (3rd Edition, issued on 1 April 2018). In accordance with the Guidance (paragraphs 33 and 34), A local authority may choose to make loans to local enterprises, local charities, wholly owned companies and joint ventures as part of a wider strategy for local economic growth even though those loans may not all be seen as prudent if adopting a narrow definition of prioritising security and liquidity provided that the overall Investment Strategy demonstrates that:

- (i). The total financial exposure to such loans is proportionate;
- (ii). An expected 'credit loss model' has been adopted to measure the credit risk of the overall loan portfolio;
- (iii). Appropriate credit controls are in place to recover overdue re-payments; and
- (iv). The Council has formally agreed the total level of loans by type and the total loan book is within self-assessed limits.

It is noted that matters associated with credit / risk management and borrowing / lending activity are expected to be addressed in the next iteration of the Council's Investment Strategy.

6.9 Appraisal and consideration will need to be given as to the mechanisms and entities through which specific developments (whether referenced in the Business Plans or not) are to be delivered in future, whether directly by the Council, BDTP or through joint ventures. Individual schemes and projects will have potential implications under the Public Contracts Regulations 2015 and state aid rules, which will need to be complied with by the Council or the company undertaking such activity for the Council. The Council should put in place appropriate assurance protocols for checks and balances to ensure that its companies are compliant.

State Aid Implications

6.10 As a public body, the Council cannot provide state resources or other forms of support on a selective basis to any organisations or body in a manner that could potentially distort competition and trade in the European Union. This principle is binding in law on the Council and is applicable for all three companies featured in

this report. This means that the Business Plans must be compliant in design and execution. The Council is aware of its duty not to breach state aid law and in this regard, will continue to monitor and seek reassurance from the companies that their activities and support from the Council (including its terms, finance rate and security offered) satisfies the Market Economy Investor Principle and any loans and facilities are state aid compliant. Legal due diligence will be carried out to confirm this to the Chief Operating Officer before entering into any agreements or permitting draw-downs.

Governance Implications

- 6.11 The approval of the BDTP business plan is reserved to the Council as shareholder under a shareholder agreement. This is an executive function exercised by the Cabinet on behalf of the Council as shareholder.
- 6.12 Under Part 3, Chapter 1, paragraph 1.2 of the Council's Constitution, the Cabinet can in turn delegate its functions to an officer or authorise the officer to take investment decisions subject to established parameters, such as the need to consult other officers or Cabinet Members prior to making a final decision. It is noted that the Chief Operating Officer already has such delegations under the Constitution or expressly given by Cabinet on specific plans or schemes.

7. Other Implications

- 7.1 **Support Services** - the Business Plans outline that the Companies are considering their options in relation to buying Council support services at the end of the two-year exclusivity period in April 2020 as well in some cases a clear intention to withdraw from these. The companies are required to give six months' notice of this intention prior to the end of the exclusivity period but discussions will be ongoing throughout the interim period to consider and mitigate any impact this might have including any TUPE or financial implications.
- 7.2 **Contractual Issues** - Development Business Plan's is a contractual commitment for all of the Companies and is designed to set the framework by which the strategic direction of each Company is considered and approved or endorsed by the Council as either a major or minor Shareholder
- 7.3 **Staffing Issues** – Some elements of the plans may require the Companies to employ a greater number of staff and in some areas TUPE obligations may arise such as with regard to the withdrawal of support services. These activities will need to be planned accordingly.
- 7.4 **Corporate Policy and Customer Impact** – The outcomes noted within each of the Business Plans are expected to have a positive impact on residents, either by supporting the Council's aim to become self-sustainable as well as improving service outcomes and educational attainment for residents and children.
- 7.5 **Health Issues** - The proposed Business Plans will have a positive impact on the local community, particularly in relation to the provision of more local accommodation and more local employment,
- 7.6 **Property / Asset Issues** – The intention of the BDTP to re-located from their

current base at Pondfield House to the LEUK site in Dagenham East will need to be planned in collaboration with MyPlace as the asset manager of the Pondfield Site. There may be financial or staffing issues that will need to be considered and which will be discussed during the planning process.

Public Background Papers Used in the Preparation of the Report: None

List of appendices:

- Appendix A: Barking and Dagenham Trading Partnership Business Plan 2019-2022 (exempt document)
- Appendix B: Barking and Dagenham School Improvement Partnership Business Plan 2019/20 (exempt document)