

CABINET

19 October 2021

Title: Company Board Arrangements	
Report of the Cabinet Member for Finance, Performance and Core Services	
Open Report	For Decision
Wards Affected: None	Key Decision: No
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Accountable Strategic Leadership Director: Claire Symonds, Managing Director	
<p>In 2017 the Council created a number of new commercial companies, the majority of which are 100% Council-owned and which the Council controls strategically, predominantly through approval of Annual Business Plans. As the sole shareholder, the Council has a key role in approving the appointment of some roles on the independent company Boards.</p> <p>Nearly four years since the creation of the companies there is a need to review some of these arrangements as set out within this report.</p>	
Recommendation(s)	
<p>The Cabinet is recommended to delegate authority to the Chief Executive, in consultation with the Shareholder Panel, to approve on behalf of the Council as shareholder the appointment of individuals to Company Boards, including negotiating any remuneration packages or other contract terms in accordance with the relevant Company Policy.</p>	
Reason(s)	
<p>To facilitate the 'well-run organisation' priority by ensuring appropriate arrangements for the succession of new appointments to Company Boards.</p>	

1. Introduction & Background

- 1.1 Best practice governance for commercial companies recommends boards self-evaluate their effectiveness on a regular basis. Listed companies and many regulated entities in the UK are required to do so annually and the UK was one of the first countries to introduce the requirement for external board evaluations for FTSE 350 companies. Although our commercial companies are not in the FTSE 350 and are not legally required to undertake external board evaluations, the Council commissioned Board reviews for each of its wholly owned companies during 2021 in accordance with that good practice.

- 1.2 An external and independent board evaluation is an opportunity for companies to strengthen the organisations they oversee by reviewing decision-making, refining strategic focus and clarifying goals and priorities. They are also an opportunity for boards to enhance their reputation by demonstrating their commitment to governance excellence. All of the Council wholly-owned companies participated in our externally-run board effectiveness review process and each company Board has had its own independent report with recommendations to consider and implement.
- 1.3 In summary, the board evaluations did not highlight any significant concerns regarding the effectiveness of any of the Council's company boards, although each board received a report with individual recommendations for improvement. Although these differed for each company the reports included recommendations including; formalising an annual board agenda cycle; formalising annual reviews of risk management procedures and internal controls; and annually considering all aspects of board and senior executive appointments. Formalising an approach to succession planning for Board appointments to ensure the Boards retained appropriate skills and experience as well as had a plan to stagger the retirement (where appropriate) of existing and recruitment of new appointees, was also a common theme across all four companies which reflects the maturity and evolving nature of the businesses.
- 1.4 This recommendation has come at a timely point as some original board appointments need to be reviewed as their tenure is almost over and because the current Chair of the Reside Board has indicated she will not stand for a second term when her original three-year tenure ends in October 2021. There are, therefore, a number of activities currently being undertaken with several of the companies that may result in a requirement to recruit new board members.

2. Current Position

Reside

- 2.1 As noted, the current Chair of the Reside Board has announced her intention not to stand for a further three-year tenure when her current contract ends in October 2021. The feedback from our external board reviewer, as well as the Housing Quality Network who supported Reside with their board appraisals, was very positive about the way the board functions as well as being positive about the performance of the current Chair. However, given the recent departure of the Reside Managing Director there is an opportunity for the Council to take the lead on appointing a new Chair of the Board, who can then take the lead in recruiting a new permanent Managing Director.
- 2.2 Although it is unfortunate that there is no handover between appointments, the process outlined where the Chair is appointed first is similar to that adopted when the companies were first created. This structure will enable the Council as well as the Board to input into decisions regarding who will lead the strategic and operational elements of the company forward to ensure these are closely aligned. It is anticipated that the Chair of the Shareholder Panel will be closely involved in the selection of the new Chair of Reside.

Barking and Dagenham Homes Limited

- 2.3 In January 2019, Cabinet agreed to the creation of a company which was intended to become a Registered Provider with the Regulator of Social Housing (RSH). This was principally in response to changes in the grant regime for affordable housing. These changes, first introduced by the Greater London Authority in late 2018, meant that local authorities were able to receive grant for new affordable homes at higher rates than previous programmes. However, the rules on some grant-funded homes mean that they must be held by an organisation that is a Registered Provider. None of the existing Reside vehicles were suitable to become a Registered Provider, so the decision was made to establish a new vehicle – Barking and Dagenham Homes Ltd (BDHL).
- 2.4 BDHL is now entering the final stages of the process to become a Registered Provider, with registration expected before the end of 2021. As a Registered Provider, BDHL will need to remain compliant with the RSH's regulatory framework around governance and service standards. Currently, the Chair of Reside is also the Chair of BDHL, and this initial arrangement has been effective at overseeing the process of establishing BDHL and taking it through the registration process. Now is the natural time to review BDHL's Chair arrangements in anticipation of it becoming an RP, and the Chair of Reside/BDHL stepping down. Subject to consultation with Shareholder Panel, it is proposed that the next Chair of BDHL is separate to the Chair to Reside, and not a member of the Reside Board. This is in line with best practice for RP governance. The two boards will continue to work closely together to drive service improvements across the new build portfolio.

B&D Energy

- 2.5 The current board of B&D Energy Ltd comprises only three voluntary Non-Executive Directors (NEDs) of which two are independent and one is a current Council Officer. B&D Energy Board is therefore the smallest and the most recently formed of all the company boards. Despite its relatively recent formation, B&D Energy participated in the board evaluation and welcomed the opportunity to have an early assessment of its effectiveness. Despite its relatively new formation the board evaluation noted that it performs well in certain areas, although it was recognised that there were a number of areas of governance best practice that required attention. Some of the recommendations made included undertaking a skills audit and putting in place a development plan for the board as well as reviewing the company strategy on a regular basis due to the evolving market.
- 2.6 In addition to being the smallest of our company boards, B&D Energy currently has no technical expertise on the board, a matter the Shareholder Panel recently raised with the company, and recommended it review. B&D Energy have acknowledged that industry expertise is needed amongst Board members and in addition to actions following the recommendations noted above, it is considering how it might attract an industry professional as an additional Board member. It is likely that in such a niche industry, attracting a suitable candidate may require the company to offer remuneration for the role, which would mean the company would need to consider its approach to remuneration for the rest of the Board, where the appointees are not in the dual role of Council officers. A talent management / organisational development plan will therefore need to be developed in tandem with the refresh of the B&D Energy business plan for 2022.

Barking and Dagenham Trading Partnership

- 2.7 The Barking and Dagenham Trading Partnership Ltd (BDTP) also participated in the board evaluation and generally scored well although, as with the other boards, there are areas where recommendations for improvements have been made such as the development of a clearer policy regarding conflicts of interest and that the format of board papers be improved to ensure clearer understanding of the purpose for papers. The summary indicated that there was a high level of understanding of the issues brought to the board and that the board functioned well.
- 2.8 However, BDTP have advised that three of its four NED Board members are approaching the end of their original three-year tenure and that the contract for the fourth NED, the Chair of the BDTP Board, was extended last year to ensure consistency during the pandemic. Following a change in Executive leadership with the appointment of a new Chief Executive Officer, the Board has recommended the Council approve the extension of the existing NEDs contracts with phased termination dates to allow time for a shareholder led review of the composition of the Board and develop a strategy for the phased introduction of new board members. In due course, this would involve the company undertaking a skills audit in order to make recommendations to the Council on a suitable succession plan.

3. Consultation

- 3.1 The Shareholder Panel have been consulted on all proposals and endorse the proposed approach

4. Financial Implications

Implications completed by: Sandra Pillinger, Group Accountant

- 4.1 There are no direct financial implications to implementing the recommendations of this report.

5. Legal Implications

Implications completed by: Ian Chisnell, Major Projects Solicitor

- 5.1 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. Under s4 of the Localism Act 2011, if the Council is trading services then this must be done through a company.
- 5.2 Most of the Council's companies are Regulated Companies under the Local Government and Housing Act 1989.

- 5.3 A company is governed by its Articles and these deal with the appointment of directors. Usually, the Articles in model form allow the directors to appoint other directors. However, the Council has restricted this power either in the Articles or Shareholder Agreement (an agreement between the Council and the company) to prevent such appointment or dismissal without shareholder consent.
- 5.4 Under the Constitution the shareholder power is exercised by Cabinet and this report seeks a delegation of the power to the Chief Executive in consultation with the Shareholder Panel.
- 5.5 The directors are usually employees of the Company.

Public Background Papers Used in the Preparation of the Report:

Report on the 'Update on the Reinvigoration of Barking and Dagenham Reside' approved by Cabinet on 22nd January 2019:

<https://modgov.lbbd.gov.uk/internet/ieDecisionDetails.aspx?AllId=76312>

List of appendices: None