

CABINET

21 February 2022

Title: Shareholder Governance Review	
Report of the Cabinet Member for Finance, Performance and Core Services	
Open Report	For Decision
Wards Affected: None	Key Decision: Yes
Report Author: Idit Chrysostomou, Corporate Investment and Contract Manager	Contact Details: E-mail: idit.chrysostomou@lbbd.gov.uk
Accountable Director: Hilary Morris, Commercial Director	
Accountable Strategic Director: Claire Symonds, Acting Chief Executive	
Summary <p>Following the successful delivery of the Ambition 2020 Strategy, the Council's portfolio of wholly owned companies has been in operation for approximately four years. The rationale for setting up the companies was to enable them to operate independently of the Council, to generate income from external trade whilst maintaining a social dividend ethos.</p> <p>In the past year the Council's Commercial team, in collaboration with the Inclusive Growth Commissioning team, Finance and Legal services has undertaken a review of the Shareholder end-to-end governance arrangements. The purpose of this review was to provide assurance that the governance arrangements remain fit for purpose, as well as provide an opportunity to consider whether any governance good practice recommendations highlighted in recent public interest reports should be considered for implementation here.</p> <p>The conclusion of the review was that there were no significant concerns regarding governance and arrangements are broadly in line with good practice however, there were some recommendations for improvements reflecting the maturing relationship between Shareholder Panel and the Companies.</p>	
Recommendation(s) <p>Cabinet is recommended to:</p> <ul style="list-style-type: none">(i) Endorse the proposal that the Chief Executive, in consultation with the Shareholder Panel, be authorised to agree any non-strategic reserved matters requiring the approval of the Council as Shareholder;(ii) Note that all strategic reserved matters shall continue to be the responsibility of the Cabinet on behalf of the Council; and	

- (iii) Recommend the Assembly to approve the proposed amendment to the Officer Scheme of Delegation (Part 3, Chapter 1 of the Council's Constitution) as shown in paragraph 6.1(q) and (r) in Appendix 1 to the report, in order to implement (i) above.

Reason(s)

Supporting the Council in achieving one of its four priorities - Well Run Organisation

1. Introduction and Background

- 1.1 The Council has ownership/control of 16 corporate vehicles (called 'companies' in this report although they include Limited Liability Partnerships) as at January 2022. The structure of each company and the control exercised through them varies depending on how the Company has been set up and the function it fulfils. The total list of Council owned/controlled corporate vehicles are:
- Be First (Regeneration) LTD (10635656)
 - Be First Developments (Muller) Limited (12432222)
 - Barking and Dagenham Reside Ltd (7706999)
 - TPFL Regeneration Limited (7706993)
 - Barking and Dagenham Reside Regeneration Ltd (09512728)
 - Barking and Dagenham Reside Abbey Roding LLP (OC 399130)
 - B& D Reside Regeneration LLP (OC 400585)
 - B& D Reside Weavers LLP (OC416198)
 - Barking and Dagenham Homes Ltd (12090374)
 - Barking and Dagenham Trading Partnership Ltd (10892844)
 - BD Together Ltd (11124384)
 - BD Corporate Cleaning Ltd (11124452)
 - BD management Services LTD (11268239)
 - BD Service Delivery LTD (11268271)
 - Londoneast-uk Limited (09177951)
 - B& D Energy Limited (10088491)
- 1.2 However, these companies are structured into four 'portfolios' for internal governance purposes. These are: Be First, Reside, Barking and Dagenham Trading Partnership and B&D Energy Ltd.
- 1.3 The strategic objectives of each portfolio are set out within annual rolling Business Plans, which require Cabinet approval, with monitoring of the in-year performance against business plan targets being undertaken by the Shareholder Panel. This proactive governance framework enables constructive challenge on strategic performance matters, as well as ongoing dialogue on the companies' direction of travel, to ensure they remain committed to, and supporting delivery of the Council's aspirations.
- 1.4 The Shareholder Governance Framework was audited in March 2019, with a follow-up report in April 2021. Both audits assessed the controls as reasonable within the areas; expectations of Council owned companies, governance structure, risk management, oversight and decision making.

- 1.5 However, over the last four years the governance framework has undergone a period of maturation with companies' quarterly performance reports undergoing a key officer review process prior to a quarterly Shareholder Panel challenge session. The maturation of the governance function is most evidenced by the increased frequency of shareholder performance monitoring that was implemented in response to increased levels of risk and complexity within trading environments during the first lockdown.
- 1.6 The key to the current governance framework is that the controls are focused on strategic matters of delivery and associated risks, at both company and portfolio level, with operational and commissioning issues being addressed within established officer frameworks.
- 1.7 However, it is good practice to review governance arrangements on a periodic basis, to ensure they remain fit for purpose. The publication of a number of public interest reports that reviewed the adequacy of other Local Authority governance arrangements also provided an opportunity to consider whether any further improvements could be made.

Project activities

- 1.8 The approach to the project was to enable a proactive dialogue between LBBD stakeholders and the companies – acknowledging that the companies are separate legal entities with independent boards that manage business of the companies. In line with its Terms of Reference, the role of the Shareholder Panel is to monitor the companies' performance against business plan targets on a quarterly basis and their revised business plans annually. It considers these and other reserved matters which require Shareholder approval (or LLP Member approval in the case of LLPs) and makes recommendations to Cabinet accordingly.
- 1.9 Each of the companies' performance is directly overseen by an independent company board. The board's role is to provide assurance over the company's ability to deliver shareholder objectives. A key component of the governance framework is to ensure the right balance between Council oversight as the shareholder over matters of strategic importance, versus enabling the companies and their boards to operate and make decisions independently of the Council over non-strategic day-to-day administration of business operations.
- 1.10 The review of governance and reporting documents and of Companies' boards was intended to assure that the Companies and Shareholder Panel are delivering on their commitments; governance provisions are aligned to the Council's single performance framework, that business plans and company performance reporting clearly demonstrate that Shareholder Terms of Reference and Shareholder Agreement controls are being met.
- 1.11 The scope of the project was to assess internal governance and reporting documents and processes. In light of external events in local government the scope of documents to be reviewed was expanded to recent public interest reports - to consider LBBD's own arrangements against the issues that were brought to light as well as against best practice. One of the key objectives of the review was to ensure

that any suggested changes are considered holistically across the portfolio of companies.

- 1.12 The project was delivered by an officer-led steering group consisting of commercial services, key commissioners, finance and legal services and involved ongoing engagement with key internal stakeholders, the companies' boards and formal Council governance bodies. All parties were invited to provide their views as to how governance controls and processes were working for them and to make suggestions for improvement.
- 1.13 Project activities were made up of two main components;
 - a. a companies' boards effectiveness review - to assess the boards' performance as a unit.
 - b. an "as is" review – to review governance arrangements reporting processes.

1.14 **Companies' boards effectiveness review**

- 1.14.1 In order to ensure appropriate governance of the companies and regular oversight of performance against objectives, the Cabinet created a Shareholder Panel to monitor the companies' performance quarterly (or more regularly if required), performance reports and challenge sessions and provides oversight to the Business Plans prior to recommending these for approval to Cabinet. Each of the companies has a managing director or chief executive, tasked with delivering the performance required, to achieve the objectives as set out within the approved Business Plans.
- 1.14.2 The Companies performance is directly overseen by a Company Board which is made up of a number of Executive and Non-Executive Directors. Their role is to provide assurance over the integrity of the information, the ability of the Company to deliver the shareholder objectives as well as provide assurance that the controls and systems of risk management are robust and defensible, and that performance is delivered.
- 1.14.3 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 Financial Times Stock Exchange (FTSE) 350 companies.
- 1.14.4 Our corporate vehicles are private limited companies and limited liability partnerships not Publicly Listed and certainly not in the FTSE 350 and are therefore not legally required to undertake external board evaluations. However, a Board Effectiveness review was commissioned by the Council for Be First, Reside, Barking and Dagenham Trading Partnership and B&D Energy in accordance with that recommended good practice. This part of the project was delivered by an external Commercial Law Barrister who assessed the boards performance using a combination of questionnaires, interviews and observations of board meetings. This approach ensured consistency in the way the review was undertaken, as well as buy-in for recommendations made, as these were more likely to be accepted as independent and objective. All of the Council wholly owned companies participated in this process and each Company Board received its own independent report with

recommendations to consider and implement. It is anticipated that each Company will report progress against any recommendations within their next annual business plan.

1.14.5 In summary, the board evaluations did not highlight any significant concerns regarding the effectiveness of any of the Council's Company boards. Although the recommendations differed for each Company, they included:

- 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.

1.14.6 Formalising an approach to succession planning for Board appointments, to ensure the Boards retained appropriate skills and experience as well as a plan to stagger the retirement (where appropriate) of existing directors and recruitment of new appointees, was also a common theme across the four portfolios which reflects the maturity and evolving nature of the businesses.

1.15 "As is review"

1.15.1 This exercise was undertaken by reviewing internal governance documents (such as Shareholder Panel Terms of Reference, Shareholder Agreements (Member Agreements in the case of LLPs) and performance reports) as well as recent public interest reports, following external events in relation to other councils owned companies and associated governance arrangements. These included Croydon's Grant Thornton and PwC reports, Nottingham's Robin Hood Energy Agreement, Review of Governance Arrangements for Bristol City Council and a Review of Brick-by-Brick Croydon Limited.

1.15.2 Discussions with other Councils and Officers who work in similar environments revealed that LBBB's governance arrangements are considered mature and demonstrate good practice enabling effective end-to-end governance controls and processes. For example, one of the key differences noted with our portfolio was in the make-up of companies' boards which were not always managed by independent Non-Executive Directors which often created conflicted priorities in the decision-making process.

1.15.3 Another example from one of the public interest reports was in relation to the process for approving investment decisions into companies, which in some was a fast-track process and with instances where it was also secured retrospectively. This approach to borrowing and investments exposed that Council to significant financial risk. The governance framework within LBBB requires that investment decisions are considered and approved in advance and on the basis of a detailed report, considering reserves and borrowing levels at Group level (i.e. to include the companies). These are monitored by the Investment Panel, including performance against company loans, and are reported to the Cabinet and Assembly during the year as part of company business plans, Treasury Management reports and other budget monitoring arrangements.

1.15.4 Delivery of the project has provided an opportunity to consider and reflect on challenges and complexities external events have created for the companies, for

example changes to fire regulations as a result of Grenfell, Brexit and COVID-19. We recognise that no amount of changes will legislate for every eventuality but these changes are designed to create a clear process of authority to act quickly in the decision-making process, in relation to items which do not alter the companies' underlying strategies and/or business plans.

1.15.5 Project recommendations for improvement were formally endorsed by Corporate Strategy Group and Shareholder Panel in October 2021. These suggested improvements are a positive testament to the maturing relationship between Shareholder Panel and the Companies and will provide for a simplified process. Implementation of these will provide the right balance between allowing the Council, as the Shareholder, the ability to exercise strategic oversight of the companies' objectives, whilst balancing the day-to-day administration matters to be reserved for the Shareholder Panel to make recommendations to the Chief Executive.

2. Proposal and Issues

- 2.1 The Council Constitution states that the role of Cabinet in relation to the Council-owned companies is to consider their business plans as well as other strategic matters and strategies. It is currently silent in relation to oversight of other reserved matters, which are key to enable an effective running of the companies but ultimately do not alter their underlying strategies. This results in certain items being submitted for Cabinet approval which are seen as a disproportionate measure for the relatively minor tasks at hand.
- 2.2 In acknowledgement of Shareholder Panel and the Companies' Boards being better established while ensuring continued transparency and compliance with Council protocols, it is recommended that similarly to Investment Panel, the Shareholder Panel should have the ability to make recommendations to the Council's Chief Executive (in line with existing delegated powers parameters) rather than for all reserved matters to require Cabinet approval. This approach would, for example, enable approval of minor changes to business plans, changes of companies' auditors, changes to Shareholder Agreements and extension of Companies Chairs/NEDs appointments to be approved by the Chief Executive in consultation with the Shareholder Panel. All strategic matters will continue to be submitted for Cabinet approval.
- 2.3 Enabling the Chief Executive, in consultation with Shareholder Panel to approve certain reserved matters will provide for a simplified process for approving non-strategic company matters and support good functioning of the companies' boards. enabling them to effectively manage their business while not reducing the balance of Shareholder control.
- 2.4 Approval of this change requires amendment to the Officer Scheme of Delegation (Part 3, Chapter 1 of the Council's Constitution) in respect of the Chief Executive's responsibilities and the proposed wording is highlighted in Appendix 1 at paragraph 6.1(q) and (r).

3. Consultation

- 3.1 The proposals in this report were considered and endorsed by the Shareholder Panel on 4 October 2021 and the Corporate Strategy Group at its meeting on 21 October 2021.

4. Financial Implications

Implications completed by: Thomas Mulloy, Chief Accountant

- 4.1 The proposed arrangement enhances the overall governance from an operational perspective. This will assist the operations with no impact on financials.
- 4.2 Another outcome of the project is a streamlined and consistent financial data format across the companies, which will ensure the Council can maintain a strong oversight of the individual subsidiaries' financial performance throughout the year. Additionally, it will help enhance forecast outturn position as well as the overall financial governance.

5. Legal Implications

Implications completed by: Ian Chisnell, Locum Major Projects Lawyer

- 5.1 The Council has various powers to set up Companies, Limited Liability Partnerships and other commercial vehicles. The main one is s1 of the Localism Act 2011.
- 5.2 If the Council intends to use the vehicle for a commercial purpose, s2 of the Localism Act 2011 requires it to be a company as defined in s1(1) of the Companies Act 2006. Those companies referred to in this report are companies limited by shares.
- 5.3 There are other statutory provisions relating to the setting up and governance of companies in other legislation such as Part V of the Local Government and Housing Act 1989 and the Local Authorities (Companies) Order 1995, which define controlled and influenced companies and their regulation. Most of the Council's companies are wholly-owned and would be described as being 'controlled'.
- 5.4 A Company is run by its Board of Directors under its Articles. The Directors have various statutory duties and their responsibility is to the Company, not the owner. Accordingly, the Council has a shareholder agreement in place with its Companies to deal with governance matters that restricts certain of its powers (such as to borrow money) and requires it to report to it on a regular basis on certain matters identified in this report.
- 5.5 The position is similar with the LLPs except that such governance matters would be included in the partnership deed that underpins the LLP.
- 5.6 The Council funds the Companies via loans or equity (shares) and in so doing must have regard to the principles of Public Subsidy, the UK post-Brexit replacement for State Aid.

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

List of appendices:

- **Appendix 1** – Proposed revisions to Officer Scheme of Delegation (Part 3, Chapter 1, Council Constitution)