

Southend-on-Sea Borough Council

Agenda
Item No.

8

Report of the Chief Executive

to

Cabinet

on

7 November 2017

Report prepared by: Ian Ambrose
Group Manager, Financial Management

Alternative Delivery Models – Governance Arrangements

Policy and Resources Scrutiny Committee

Executive Councillor: Councillor Andrew Moring

A Part 1 Public Agenda Item

1 Purpose of Report

To explore the current range of alternative delivery vehicles that the Council controls, the current governance arrangements and to propose potential ways forward.

2 Recommendations

- 2.1 That the current group structure of the Council Companies, Joint Ventures and Charitable Trusts and the associated governance arrangements be noted.
- 2.2 That a new advisory forum reporting to Cabinet be established to be called “The Shareholder Board” to provide an effective means of Council governance of the Council Companies and this shall replace the existing Member Advisory Forum (re Trading Companies).
- 2.3 That the terms of reference of the Shareholder Board shall be added as a new section 4.6 in Schedule 2 of Part 3 to the Constitution as set out in **Appendix 3** with a membership that is politically proportional and that includes the following members of Cabinet:
 - The Leader
 - The Deputy Leader
 - Executive Councillor for Corporate & Community Support Services
 - One other Executive Councillor
- 2.4 That Cabinet receive an annual report on the operation of the Council’s Joint Ventures and Charitable Trusts.

3 Background

- 3.1 The Council has organically grown a group structure over recent years. Ignoring the various partnerships and associations with other organisations the Council currently wholly owns 6 companies (“the Council Companies”), participates in 2 joint ventures established as legal entities (“the Joint Ventures”) and is sole trustee to 8 charitable trusts (“the Charitable Trusts”).
- 3.2 A structure chart of the group is shown at **Appendix 1**.
- 3.3 Each entity has its own internal governance arrangements.

The Council Companies have governance arrangements in compliance with the Companies Act 2006.

In terms of the Joint Ventures, “Southend-on-Sea Forum Management Ltd” similarly complies internally with the Companies Act 2006. PSP Southend LLP, being a partnership, follows essentially the same arrangements.

The Charitable Trusts, although subject to the Charities Act 2011, are not managed as separate entities; instead they are managed as part of Culture service area, and working in compliance with the Councils’ own arrangements.

- 3.4 In addition, where there are services provided by the Council Companies to the Council, there are a range of performance and contract monitoring arrangements.
- 3.5 However there is no common unified governance structure between the Council and its group that covers all of the legal entities in which the Council has control or significant influence. Other than the limited information provided through the Council’s Statement of Accounts, there is a lack of transparent provision of shareholder information to the “body corporate”, or recognised place for the exercise of the Council’s shareholder role.
- 3.6 The Council does have the Member Advisory Forum (re Trading Companies). However its purpose was to advise the Southend Income Generation & Trading Board which is now obsolete and so the Forum no longer has a role and it has not met since February 2014.

4 Trading Companies

Current governance

- 4.1 **Appendix 2** sets out details of the 6 Council Companies (and the subsidiary of South Essex Homes). Their financial size is set out below.

	Annual Turnover £	(Deficit) £
South Essex Homes Ltd (group)	10,083,000	(215,000) after pensions
Southend Care Ltd	5,551,000	(441,000) year 1 estimate
Southend Independent Living Ltd	1,600	(1,400)
Southend Housing Ltd	Not trading	
Southend Business Services Ltd	Not trading	
Southend Trading Corporation Ltd	Not trading	

- 4.2 The results and in-year performance of each Council Company (where operating) is reported to the company board. It is not reported to the Council as shareholder and owner. Similarly the operational performance is discussed and monitored at various company – officer meetings, but not received and commented on by the Council.
- 4.3 South Essex Homes produce an Annual Governance Statement (AGS) (as will Southend Care), reported to their own Audit Committee and then onwards to the Council’s Audit Committee. The AGS gives assurance of the internal governance of the company, but offers no performance information.
- 4.4 The Council is not just the shareholder of these Council Companies. As owner, the companies still involve the expenditure of public money and the stewardship of public resources. It is not sufficient to create a company to deliver certain functions and then effectively treat it as a contractor. The Council needs to be more proactive if it wants to fully exploit the potential of the Council Companies to add value and benefit for our residents.
- 4.5 That means understanding in the fullest sense why we have the Council Companies and what we want from them. Questions that the Council can usefully ask, and revisit on a regular basis include:

Council as shareholder

- Holding Directors / Board to account
 - Against objectives set
 - Against performance set
 - Against business plan
 - Against financial performance
 - Annual report and accounts

- What sort of return
 - Dividend
 - Reduced price
 - Other / wider community benefit

Council as Parent Company

- What does the Council want from its companies
 - Teckel compliant access
 - Reduced cost base (non LG terms and conditions)
 - Profit
 - Buyer of Council / other subsidiary services
 - Support services on a commercial basis
 - Arbitrage on borrowing / assets etc
- What does the Council want the company to do
 - Strategic fit
 - Service provider
 - Market maker
 - Provider of last resort
 - Market competitor
 - Market intervention
- How does the Council protect its interests
 - Board representation
 - Agreed policies and procedures (common across the group)
 - Nolan principles
 - Conflicts of interest
 - Code of Practice between the Council and its companies

Shareholder Governance Proposals

4.6 The implementation board for Southend Care Ltd have recently proposed arrangements for shareholder governance.

“The company will present an Annual Report to the Cabinet of the Council. This will cover, inter alia, the following:

- *Overview of operational performance, including activity and service plans;*
- *Overview of financial performance;*
- *Strategic plans and developments; and*
- *Report on quality and safety”*

4.7 This arrangement reflects the common arrangements seen elsewhere, as evidenced by research undertaken by Grant Thornton. Their report concluded

“A theme emerging from our interviews with LATCs and councils was the balance between council influence and excessive interference. It is important that the

company board is allowed to deliver the strategic and operational plans of the company without excessive interference from the council, audit or procurement. It is equally important that appropriate governance structures are established to safeguard councils from excessive risk taking or poor performance.

The parties need to strike a balance between the LATC's rights and those of the council.

Operational management, corporate reporting, risk management, internal control and audit are the responsibility of the LATC board. The LATC is under no obligation to appoint the same external auditor, to have an internal audit service – or, if it does have one, to share internal audits reports – nor to report to council audit committees. However, councils need oversight of LATC activities and assurance that the LATC is following the strategic direction agreed, is not taking excessive risks and is delivering its service and financial performance.

In our experience, shareholder committees are an effective means of council governance. They provide:

- an effective focus for the contact between the company's management and the council*
- a mechanism to communicate the shareholders' views to the company*
- a means to evaluate the effectiveness of the board and the delivery of the company against strategic objectives.”¹*

- 4.8 It is suggested that this approach be adopted at Southend and extended across all of the Council Companies.
- 4.9 It is the Cabinet, who is responsible for approving the business case to establish a company, of setting the right balance between the economic, social and environmental objects of a company when it is established and of subsequently exercising the Council's powers as shareholder.
- 4.10 Once established, the Council Company must then get on with the business of delivering the objectives with which it has been tasked, within the parameters set for it. It must be otherwise free, however, to operate in its own best interests and to compete on an even basis with its competitors in the marketplace.
- 4.11 It is suggested that a new advisory forum reporting to Cabinet be established to be called “The Shareholder Board” to provide an effective means of Council governance of the Council Companies and this shall replace the existing Member Advisory Forum (re Trading Companies). This Shareholder Board will allow dedicated time and focus, rather than being shoe-horned into existing business.
- 4.12 It is recommended that the terms of reference of the Shareholder Board shall be added as a new section 4.6 in Part 3 of Schedule 2 to the Constitution as set out in

¹ Grant Thornton – *Spreading their wings - Building a successful local authority trading company 2015*

Appendix 3 with a membership that is politically proportional and that includes the following members of Cabinet:

- The Leader
- The Deputy Leader
- Executive Councillor for Corporate & Community Support Services
- One other Executive Councillor (The aim should be for this to be an Executive Councillor whose responsibilities relate to the subject matter of one or more of the Council Companies.)

The Shareholder Board will be advised by the following Officers or their Deputies:

- The Chief Executive
- The Director of Finance and Resources
- The Director of Legal & Democratic

The Shareholder Board will be open to the public, save where Part 2 business is considered.

- 4.13 The Shareholder Board would make recommendations and report to Cabinet. Any decisions made by Cabinet would be available for call-in and scrutiny in the usual way.

The Audit Committee would be able to consider the governance in place between the Council and the Council Companies but not the internal governance of the companies themselves. To that end, the Annual Governance Statement for the Council should be expanded to comment on the governance arrangements between the Council and the Council Companies (and arguably the Joint Ventures and the Charitable Trusts as well). On that basis there would no longer be a need for Audit Committee to separately receive the Annual Governance Statement for individual companies.

- 4.14 It would be appropriate and expected that representatives of the Council Company boards make themselves available to the Shareholder Board to present their annual report and accounts, and to answer questions.

5 The Joint Ventures

Current Governance

- 5.1 **Appendix 4** sets out details of the two Joint Ventures the Council currently has interests in. Their financial size is set out below.

	% control	Share of Turnover £	Share of Assets £
PSP Southend LLP	50%	117,505	1,285,484
Southend-on-Sea Forum Management Ltd	47.2% shares 33.3% voting	267,867	88,163*

* the assets comprise the value of net current assets. The Council owns the freehold of the building, with onward long term leases, via the Forum Company, to the three occupiers.

- 5.2 Given the nature of the activity of PSP Southend LLP, authority to place surplus Council assets into the partnership is sought through a report to Cabinet. Onward redevelopment of the asset and its eventual disposal is overseen and monitored by officers of both parties to the partnership and its joint board. Outcomes are not currently formally reported back to the Council.
- 5.3 With regard to Southend-on-Sea Forum Management Ltd, the activity of the company is more straightforward, being the management and maintenance of the Forum building. Governance arrangements are similarly more straightforward, effectively a meeting of the three occupying bodies with the company, with more formal board meetings as necessary. Once again there is no formal reporting back of the outcomes, activities or future business plans of the company back to the Council.

Shareholder Governance Proposals

- 5.4 Given that the Council does not have a controlling interest in these Joint Ventures, it is not possible to fully dictate the governance arrangements; rather they need to be negotiated. However there is no reason why the essence of the suggested arrangements cannot be applied, particularly in terms of the reporting of activities, performance and plans into the suggested Shareholder Board.
- 5.5 However the boards of each Joint Venture comprise, amongst others, some or all of the proposed Shareholder Board members. It is therefore suggested that rather than have a series of substitutions to the Shareholder Board, oversight of the Council's interests in the Joint Ventures be undertaken by Cabinet itself, with suitable declarations of interest as appropriate. This would entail an annual report being presented to Cabinet explaining the activity, plans and outcomes of the Joint Ventures.

6 Trusts

Current governance

- 6.1 **Appendix 5** sets out details of the 8 Charitable Trusts for which the Council is the sole trustee. Their financial size is set out below.

	Annual Turnover £	Cost to the Council £
Beecroft Art Trust	219,755	180,516
Jones Memorial Recreation Ground Trust	49,191	45,562
Palace Theatre Charity	155,233	155,233
Prittlewell Priory Museum Trust	134,448	110,320
Priory Park Trust	152,398	122,390
The Shrubbery Trust	39,697	2,747
Victory Sports Ground Trust	40,154	29,614
Youth Commemoration Ground Trust	214,786	146,731
	1,005,662	793,113

- 6.2 As previously stated the Charitable Trusts are essentially managed as part of the Council's own services; exploiting their status when useful for fund raising, but otherwise following the Council's own governance arrangements.

Trustee Governance Proposals

- 6.3 The issue with the Charitable Trusts lies more in that their separate legal status get lost. As part of year end procedures, Finance produce and submit charity accounts, but the results are never transparently surfaced with the Council. In addition given that the Charitable Trusts are treated as Council services during the year, there is a blurring of the trustee role with that of the wider Council interests. Fundamentally when dealing with activities and services that use charity assets, decisions need to be made in the interests of the Charitable Trust and in accordance with its purpose.
- 6.4 It is suggested that the trustee role be highlighted through the Cabinet receiving an annual report into the operation of the Charitable Trusts each year. It would not be appropriate for this to be merged with any shareholder board as the Council does not own the Charitable Trusts; it is the Trustee. The Trustee report would cover not only the annual financial performance of each Charitable Trust, but also the activities and future business plans, so that Cabinet, as Trustee, can determine that it is being run in accordance with its purpose.

7 Other Options

There is no statutory requirement that the Council has a shareholder board. Council itself is the legal owner and shareholder of its companies. However currently the Council deals with its shareholder role in an ad-hoc manner, addressing issues as and when they arise. It could continue to do so, but would miss the opportunity to properly address the Council's shareholder role, heighten awareness and aid transparency to the governance arrangements.

8 Reasons for Recommendations

To provide a common unified governance structure between the Council and Council Companies, Joint Ventures, and to ensure proper exercise of its role as trustee of its Charitable Trusts.

9 Corporate Implications

9.1 Contribution to Council's Vision & Critical Priorities

The objectives of the Council Companies align with the Council's vision and priorities around housing and vulnerable adults, and the aim to create alternative income streams and effective solutions to enable on-going service provision

9.2 Financial Implications

None arising directly from this report, although the proposed approach will bring additional transparency and awareness of the finances of the Council Companies, Joint Ventures and Charitable Trusts, and how this interacts with the Council's own finances. It will also bring greater awareness of the financial opportunities and risks associated with these alternative delivery vehicles

9.3 Legal Implications

None arising directly from this report, although the proposed approach will bring sharper focus on the Council's legal obligations associated with these alternative delivery vehicles

9.4 People Implications

None arising from this report

9.5 Property Implications

None arising from this report

9.6 Consultation

None arising from this report

9.7 Equalities Impact Assessment

None arising from this report

9.8 Risk Assessment

The formation of the proposed Shareholder Board will enable detailed Member focus on the opportunities and risks that arise out of the Council’s approach to local authority trading companies. The proposed annual reporting to Cabinet similarly will enable this focus on the opportunities and risks associated with its other alternative delivery vehicles.

9.9 Value for Money

On-going focus on why we have the alternative delivery vehicles and what we want from them will enable the Council to more fully exploit their potential to add value and benefit for our residents

9.10 Community Safety Implications

None arising from this report

9.11 Environmental Impact

None arising from this report

10 Background Papers

None

11 Appendices

Appendix 1 Southend-on-Sea Borough Council – Group Structure

Appendix 2 Council Company details

Appendix 3 Proposed terms of reference for the new Shareholder Board to be added as a new section 4.6 in Schedule 2 of Part 3 to the Constitution

Appendix 4 Details of the Joint Ventures

Appendix 5 Details of the Charitable Trusts