

# Southend-on-Sea Borough Council

Agenda  
Item No.

Report of Director of Finance & Resources  
to  
**Shareholder Board**  
on  
**25 September 2018**

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**Governance Arrangements**  
**Policy & Resources Committee**  
**Cabinet Member: Councillor John Lamb**  
***A Part 1 Public Agenda Item***

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## **1 Purpose of Report**

To explore the terms of reference for the Shareholder Board as agreed by Council.

## **2 Recommendation**

That the Shareholder Board:

- 2.1 Note the terms of reference agreed by Council; and
- 2.2 Agree the forward work plan.

## **3 Background**

- 3.1 Following a commerciality review considered by Cabinet in November 2017, Council agreed the formation of a Shareholder Board to look after the Council's interests in its growing portfolio of subsidiary companies.
- 3.2 The Council agreed a set of terms of reference for the Shareholder Board, delimiting the actions of the Board in its shareholder role, as against other roles such as contract management, investor and service provider.
- 3.3 The Council's interests in joint ventures and trusts are managed directly by Cabinet.

## **4 Terms of Reference**

- 4.1 The Council's currently owns six companies, although only two are actually trading. The companies are:
  - South Essex Homes
  - Southend Care
  - Southend Housing (yet to trade)
  - Southend Independent Living (ceased trading)
  - Southend Trading Corporation (ceased trading)
  - Southend Business Services (yet to trade)

South Essex Homes has its own wholly owned commercial subsidiary South Essex Property Services.

4.2 Details of the companies can be found at Appendix 1.

4.3 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

4.4 It is important to distinguish between the various relationships that the Council has when engaging with its subsidiary companies, i.e.

- Shareholder / Owner
- Client side
- Investor / Funder
- Service provider

This is demonstrated diagrammatically below.

<b>Shareholder</b>		<b>Client Side</b>	
To ensure the company is well run and well managed	Hold Directors to account	Contract management	Assurance of value for money in line with priorities and budgets
Monitoring performance of the company in line with its vision / objectives	Elect / remove Directors	Services commissioned – ensuring they are being delivered	Ongoing Governance arrangements and monitoring working relationships at all levels between client and company
Monitoring investment	Approve business plan	Assurance of service delivery in line with strategy and contract	
Activities of the company in line with shareholders agreement	No direct involvement in company management		
<b>Investor / Funder</b>		<b>Service Provider</b>	
Investment decision – terms of loan including amounts / duration / repayment basis etc.	Monitoring repayments	Provision of back office and other support functions – ensuring the Council’s systems are set up for commercial activity	Develop SLA or other service contract
Monitoring against expenditure	Covenant review	Secondment / Charging of staff to company	Monitor performance against agreed standards
	Financial Guarantees		Required to establish an appropriate and auditable charging regime

- 4.5 The Shareholder Board has been set up to manage the first relationship.
- 4.6 Where the company provides services to the Council, there is an officer client side who manage the relationship to ensure delivery against the agreed service contract. The reverse also happens in that the Council is a back-office service provider to the active companies and as such the companies will monitor service delivery to them. It is also possible that the Council will take the role of investor or funder to the companies. This is essentially a S151 matter, reported and agreed through Cabinet. To date the Council has not provided equity finance to the companies, but has provided cash flow loans and financial guarantees relating to underwrite the company LGPS pension deficits to enable on-going trading.
- 4.7 The shareholder / owner role, and the questions that the Shareholder Board can usefully ask, and revisit on a regular basis were set out in the November 2017 Cabinet report as follows:

#### **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 is wanted

- Dividend
- Reduced price
- Other / wider community benefit

#### **Council as Owner**

What does the Council want from its companies

- Teckel compliant access
- Reduced cost base
- 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

4.8 The terms of reference of the Shareholder Board agreed by Council is shown at Appendix 2.

## **5 Work Plan**

5.1 A distinct role for the Shareholder Board will be to receive each company's annual accounts, and to review their forward business plans. Both of these functions are elsewhere on this agenda.

5.2 Other potential future work areas are likely to be

- Shareholder agreement for South Essex Homes Limited – an exercise is underway to refresh the management agreement between the Council and its arm's length housing management organisation. The existing agreement was written when the ALMO was first set up in 2006 at a time when it was a single purpose organisation. As such the management agreement both codified its shareholder / owner arrangements and the HRA housing management service specification. Since then South Essex Homes has diversified its work with the Council and other organisations beyond managing the Council's housing stock. It is appropriate therefore that the refreshed management agreement concentrates on expectations for HRA housing management, effectively setting out the service provider and client side arrangements for management of the Council's housing stock, and a separate shareholder agreement being created that sets out the relationship between the Council as shareholder and owner and South Essex Homes Limited as a whole.
- Shareholder agreement for Southend Care Ltd – on a similar basis it would be appropriate to formalise a shareholder agreement for Southend Care Ltd. That company has articles of association that govern the operation of the company and a separate service contract, but no statement covering the relationship between the Council as shareholder and owner and Southend Care Ltd as a whole.
- Shareholder agreement for Southend Housing Ltd – Cabinet have approved the formation of a housing and investment company, together with high level objectives. That company has legally been formed, although it has yet to commence trading. There is now a report due to Cabinet setting out the housing investment approach and indicative investment funding requirement. Following that a shareholder agreement can usefully be drawn up. The Shareholder Board should also review the forward business case once the company is properly trading.

5.2.1 Members are asked to consider whether there are any other areas of shareholder interest they would like to see coming to future meetings of the Shareholder Board.

## 6 Other Options

This report merely sets out the agreed governance arrangements for the Shareholder Board. No other options were therefore considered.

## 7 Reasons for Recommendations

To properly explore and understand the terms of reference of the Shareholder Board as it starts its work, in order to properly address the Council's shareholder role, heighten awareness and aid transparency to the governance arrangements of the Council's companies.

## 8 Corporate Implications

### 8.1 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.

### 8.2 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, and how this interacts with the Council's own finances. It will also bring greater awareness of the financial opportunities and risks associated with its companies.

### 8.3 Legal Implications

None arising directly from this report, although the proposed approach will bring sharper focus on the Council's legal obligations associated with its companies

### 8.4 People Implications

None arising from this report

### 8.5 Property Implications

None arising from this report

### 8.6 Consultation

None arising from this report

### 8.7 Equalities Impact Assessment

None arising from this report

## 8.8 Risk Assessment

The formation of the Shareholder Board enables detailed Member focus on the opportunities and risks that arise out of the Council's approach to local authority trading companies.

## 8.9 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.

## 8.10 Community Safety Implications

None arising from this report

## 8.11 Environmental Impact

None arising from this report

## 9 Background Papers

None

## 10 Appendices

Appendix 1 Southend on Sea Borough Council Tarding Companies

Appendix 2 Terms of Reference for the Shareholder Board as included in section 4.6 in Schedule 2 of Part 3 to the Constitution