

Bath & North East Somerset Council		
MEETING:	Council	
MEETING DATE:	14 September 2017	
TITLE:	COUNCIL COMPANY GOVERNANCE ARRANGEMENTS AND ANNUAL REPORTS	
WARD:	All	
AN OPEN PUBLIC ITEM		
<p>List of attachments to this report:</p> <p>Appendix A - EY Corporate Structure Review</p> <p>Appendix B - Proposed Protocol for governance arrangements of companies</p> <p>Appendix C – ADL annual report and accounts</p> <p>Appendix D – BTP annual report and accounts</p>		

1 THE ISSUE

- 1.1 To agree the appropriate corporate governance arrangements for Council interests in Local Authority Companies and approve the annual accounts of Aequus Development Limited (ADL) and Bath Tourism Plus (BTP).
- 1.2 To consider the request by Bath Tourism Plus for working capital finance in the form of a loan at commercial rates to enable the company to relocate and refurbish a new site for the Visitor Information Centre and a new back office. This will lead to the reduction of operational overheads.

2 RECOMMENDATION

The Council is recommended to:

- 2.1 note the recommendations of the EY corporate structure review report (Appendix A)

- 2.2 agree the principles and structures for governance arrangements of Council companies as set out in the proposed Protocol (Appendix B)
- 2.3 delegate the implementation of the group structure and required streamlining to the Chief Executive, in consultation with the Leader and Portfolio Holder for Finance; section 151 Officer and Monitoring Officer.
- 2.4 note the ADL 2016/17 year end draft audited accounts (Appendix C)
- 2.5 note the BTP 2016/17 year end draft audited accounts (Appendix D)
- 2.6 approve the addition of a new scheme of £300k loan into the Capital Programme entitled BTP transitional funding.
- 2.7 delegate authority to authorise the loan to BTP to the Strategic Director of Resources (s151 Officer), in consultation with the Cabinet Member for Finance and Efficiency, once satisfied that due diligence has been completed and subject to the relevant terms and conditions.
- 2.8 note that as a loan condition, a detailed review of the BTP business plan is required with the future years plan from 2018/19 to be presented to the Council Shareholder for approval

3 RESOURCE IMPLICATIONS (FINANCE, PROPERTY, PEOPLE)

- 3.1 Creating and administering corporate structures will have associated costs, e.g. the need to file statutory accounts and returns with Companies House. There are methods of minimising and streamlining the Council's structures and reporting requirements which can minimise these. Specialist tax and finance advice has been obtained to ensure this and the proposed structure reflects this advice.

FINANCE IMPLICATIONS – COMPANY ACCOUNTS

- 3.2 The BTP 2016/17 accounts show that there was a small reduction in turnover (2.5%) along with an increase in operating costs and as a result an operating deficit of £165,874 was reported. BTP's long term financial stability is being addressed through their business plan. This contains a number of measures to increase income and reduce costs. Additional income is planned to be derived from new commercial ventures which are soon to be launched and efficiencies will be generated by moving the Visitor Information Centre from its current location and continuing to merge back office functions with Bath Festivals.
- 3.3 The ADL 2016/17 accounts cover the first trading period for the company. As anticipated a small operating loss of £126K has been made whilst the company takes on new rental properties and meets associated company set up costs. This is fully in line with the anticipated early trading projections for the company. During this period ADL has provided of £1.3M of capital receipts to the Council and also exceeded it's first year revenue target of £75k.

FINANCE IMPLICATIONS – REQUEST FOR LOAN BY BTP

- 3.4 In order to create long term financial stability and manage some short term one-off costs, the Company are requesting loan funding from the Council at an appropriate market rate of interest (in order to comply with State Aid rules). These costs relate to the payment of redundancy costs from historic pension's liabilities, the capital costs of relocating the Visitor Information Centre and back offices to cheaper and better located premises to be shared with Bath Festivals and the costs of supporting the up-front costs in delivering a successful festivals programme for Bath in 2017. Any associated costs will be charged to BTP.
- 3.5 The office move will reduce BTP's operating costs by c£100k per annum from 2018/19 onwards and provide greater income generation opportunities to the Company from the new location of the Visitor Information Centre.
- 3.6 Following an initial review of the BTP business plan by Ernst Young, financial projections and potential loan repayment profile, there is a good indication that this should be low risk with repayments being made as planned, with the Company back in surplus by the end of 2018/19. Further due diligence will be carried out following delegation to enter into the loan agreement.
- 3.7 To provide further rigour to the company's finances a new Non-Exec Director with relevant financial experience, has been appointed to the Board of BTP. In addition the Board and Senior Management Team have put in place a series of reviews to ensure the delivery of a robust business plan. These include the development of new commercial activities that generate income for the Company, a review of the costs of delivering their activities to ensure they are efficient and continuing to explore with Bath Festivals and others the opportunities from joint working and shared back office services.

4 STATUTORY CONSIDERATIONS AND BASIS FOR PROPOSAL

- 4.1 The Council, like many other Councils, is actively looking at all appropriate opportunities for generating additional revenue streams given the year on year reductions in central government grant. As part of this income generation drive, the Council is looking at opportunities to commercialise services through trading, e.g. the creation of ADL, a property investment company.
- 4.2 Trading by Councils, for commercial gain, must be undertaken through the creation of a company. This report seeks to regularise the process for creation of companies and their governance arrangements to ensure a consistent approach. This will be achieved by adopting the principles set out in the EY report, which are embodied in the proposed Protocol at Appendix B. The Council will only create companies where they achieve these principles and add value. The Council will consider the best model for each subsidiary company on an individual basis.
- 4.3 ADL and BTP are governed in accordance with the powers set out under S1 of the Localism Act 2011 (the General Power of Competence). and in

accordance with any Company governance arrangements the Council implements in due course.

5 THE REPORT

COMPANY GOVERNANCE

- 5.1 The Council has already established a property investment company – ADL – to develop and/or hold rental properties and its wholly owned subsidiary - Aequus Construction Limited (ACL) – to construct properties for market sale and rental. Both ADL and ACL are companies limited by shares which are wholly owned by the Council. The Council also has other corporate entities. It acquired sole ownership of BTP which is a company limited by guarantee, with the Council as sole member of the company. The Council provides audit services to other public bodies under the Local Government (Goods & Services) Act 1970 as a separate trading account within the General Fund. The Council is considering as part of the commercialisation agenda whether this Internal Audit service should be carried out in a separate commercial entity. The commercialisation agenda will inevitably see the Council consider the potential for other services to be provided on a commercial basis and given legislative constraints, it is likely that such commercial opportunities will need to be carried out through separate corporate vehicles (companies or community benefit societies).
- 5.2 Given the potential for a range of different corporate entities to be established by the Council within the near future, the Council needs to consider governance arrangements to ensure the Council's various roles are properly documented and understood. This will minimise conflicts of interest and maximise the opportunities for the corporate vehicles to achieve the outcomes set for them. The risks of unplanned ad-hoc governance arrangements for different companies are highlighted in the EY report (Appendix A) as are the best practice principles.
- 5.3 The Protocol and proposed structure (Appendix B) establishes a Holding Company between the Council and the corporate entities. The extent the Holding Company could exercise the shareholder/member rights in respect of each of the corporate entities would be set out in the Shareholders' Agreement between the Council and the Holding Company regularising the relationship between the Council and the Holding Company.
- 5.4 The Council is a representative body and its Members are accountable to the electorate for the Council's performance. Part of the Council's rationale for establishing the commercial entities is in part to create these businesses as tools to increase income for the Council. Members, who must also decide on potentially competing priorities for resources, are best positioned to lead on holding the financial and general performances of the businesses to account. Part of this role, if the businesses do not perform well, may be a decision to limit future Council support, sell them or even wind them up. It is proposed that these types of difficult strategic decisions rest with the Members.
- 5.5 The EY report recommends that in order for members to be able to exercise their strategic decision making function, the duality of roles between

shareholder representative and Company Director should be avoided to ensure a robust corporate governance structure. It is proposed that the Leader as Shareholder, with advice from the Cabinet as Shareholder Group and s.151 and Monitoring Officers, exercise the Council's shareholder rights (as sole shareholder of the Holding Company and thus sole owner of each of the commercial entities). It is recommended in the EY report that the terms of reference for the Shareholder Group should clearly define the roles and responsibilities of Council Members in acting as Shareholder Representatives. The Protocol at Appendix B addresses these issues via reserved matters and a Shareholders Agreement.

- 5.6 By utilising existing Council decision making and governance arrangements, it is possible to ensure appropriate corporate governance arrangements without creating additional administrative cost. The governance structure provides for the Cabinet (in its Shareholder group role) to provide the strategic oversight role it presently holds for council business while providing the Council directors (in their Holding Company director roles) with the delegated power to run the day to day transactional business of the holding Company and its subsidiaries. This is similar to the delegations to directors to run their directorates within the Council's scheme of delegation. The proposals are explained further in the Protocol at Appendix B.
- 5.7 It should be noted that there will be a period of transition to bring about these new arrangements. Recommendation 2.3 refers to this and delegates responsibility to the Chief Executive in consultation with the Leader, Portfolio Holder for Finance, plus the Section 151 Officer and Monitoring Officer.

BTP LOAN REQUEST

- 5.8 Bath Tourism Plus (BTP) was established by the Council and Bath Chamber of Commerce in 2003 to deliver the Council's tourism and conferencing services. It is classed as a separate Local Authority influenced company and was established as a non-charitable company limited by guarantee. Since its incorporation, BTP's scope of operation has grown significantly to include many successful commercial trading activities (such as the Christmas Market), alongside the contract for core services from the Council.
- 5.9 On 1 April 2017 following independent legal and financial advice, the Council acquired 100% ownership of the Company to ensure the ongoing viability of BTP and the successful delivery of destination management services. BTP remained a company limited by guarantee with the articles being altered to enable the company to distribute surplus to its members. The request for a loan for working capital financing is to the Council as 100% shareholder and outside of the contract terms and conditions.

6. RATIONALE

- 6.1 The proposed structure will ensure the Council complies with the best practice for the governance of local authority companies.

6.2 The request for the working capital loan to enable BTP Ltd to relocate will put BTP in a more financially secure position.

7. OTHER OPTIONS CONSIDERED

7.1 Other models were considered for the Council companies. The proposed model best fits the current recommended advice.

7.2 Officers have considered other options for assisting BTP however these raised state aid issues and so have not been pursued.

8. CONSULTATION

8.1 All proposals have been drawn up with support from Officers in relevant departments and external experts. The Monitoring and s151 Officers have been involved throughout and have had opportunity to review and input into this report.

8.2 Consultation has taken place with the Board of BTP and Bath Chamber of Commerce. Consultation has taken place with the Board of ADL

8.3 Consultation has been undertaken with relevant Cabinet Portfolio Holders and Group Members. All future proposals will be subject to the normal processes and consultation.

9. RISK MANAGEMENT

9.1 A risk assessment related to the issue and recommendations has been undertaken and a full risk register has been maintained in accordance with the Council's decision making management guidance.

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Background papers	None
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