

<b>Bath &amp; North East Somerset Council</b>		
MEETING:	<b>Council</b>	
MEETING DATE:	<b>November 2018</b>	
TITLE:	<b>Protocol on Council Company Governance</b>	
WARD:	All	
<b>AN OPEN PUBLIC ITEM</b>		
<b>List of attachments to this report:</b> Appendix A – Proposed changes to the Protocol Appendix B – Precedent Shareholder Agreement Appendix C – Ethical Walls Policy Appendix D – Protocol for Scrutiny arrangements Appendix E – Group Leaders Briefing Meeting - Terms of Reference Appendix F – Constitutional amendments		

## **1 THE ISSUE**

This report sets out the progress made on implementing the decisions of Council on 14<sup>th</sup> September 2017 relating to the governance arrangements for local authority trading companies.

## **2 RECOMMENDATION**

The Council is asked to approve the proposed amendments to the Protocol for governance arrangements of local authority trading companies and the consequent Constitution changes, as set out in this report, , in detail and in summary in 5.2.

## **3 RESOURCE IMPLICATIONS (FINANCE, PROPERTY, PEOPLE)**

There are no direct resource implications.

## **4 STATUTORY CONSIDERATIONS AND BASIS FOR PROPOSAL**

The Localism Act 2011 requires that all trading by Councils must be undertaken through the creation of a company. The Protocol adopted by Council on 14<sup>th</sup> September 2017, together with the adoption of the processes recommended in this report ensures a consistent approach to the creation, subsequent governance and effective scrutiny of all Council trading companies.

## **5 THE REPORT**

### **Background**

5.1 On 14<sup>th</sup> September 2017 Council resolved to agree the principles, structure and required streamlining set out in the proposed protocol for the governance of local authority companies. Council also requested Cabinet to incorporate recommendations by the Resources PDS Panel to the proposed governance structure as follows:

- that regular performance reports be brought to the relevant scrutiny panel or committee on a 6 monthly basis on all commercial activity;
- that the principle of a clear distinction between the role of Cabinet and the role of the board/company be established within a reasonable period of time; and
- that legal advice as to how and when a greater scrutiny mechanism can be achieved for decisions made by, or in consultation with, the Leader in his or her role as shareholder is obtained.

5.2 This report sets out the approach and actions necessary to comply with the Council resolution. Amendments are suggested to the Protocol to incorporate these changes and these are highlighted in Appendix C. The proposed amendments of significance are:

- Specific Reserved Matters that are considered to be significant decisions of the shareholder will be made at meetings of the Cabinet.
- The Specific Reserved Matters are set out in schedule 4 of Appendix B to this report
- All other shareholders decisions which are not Specific Reserved Matters are made by the Leader on advice following recommendations by the Shareholder Group
- Companies will report their performance on a 6 monthly basis to resources PDS
- Group Leaders will have access to the same confidential information that the Cabinet have access to, in their briefing meetings.
- The Group Leader Briefing Meeting will have terms of reference which are set out at Appendix F to this report.
- Any conflict of interest between the Council and the companies will be managed by the Monitoring Officer applying the Ethical Walls Policy Appendix C to this report.

- Constitutional changes to ensure the companies can operate with commercial freedom once shareholder decisions are made, are set out at Appendix F to this report.

### **Performance reports to be brought to Scrutiny Panel**

- 5.3 The Protocol for the governance of local authority companies has been amended to ensure that all local authority companies report to the relevant scrutiny panel on a six monthly basis. The precedent shareholder agreement will legally require the local authority companies to provide these reports to the relevant scrutiny panel. The Resources PDS received performance reports from ADL / ACL and Bath Tourism Plus in September 2018.

### **Clear distinction between the role of Cabinet and the role of the board/company**

- 5.4 The shareholder group has been formed and advised the Shareholder on a decision. Given the rapid change in council structures the proposal is to operate the shadow hold company arrangements for a period of 18 months while the shareholder agreements, which deal with reserved matters, are embedded prior to finalising the hold company arrangements in the summer of 2019. The intention is to gain experience of operating hold company arrangements in shadow form to ensure the Council has the appropriate governance control arrangements in place before finalising these. Cabinet members currently sitting on the boards of local authority companies will be required to resign their board roles from May 2019. These arrangements will be reviewed and Council updated on progress in November 2019.

### **Legal advice on scrutiny of decisions made by the Leader as shareholder**

- 5.5 External legal advice on the role of Council and the shareholder is that:

- Council decisions made on matter such as the transfer of assets and making of loans to the companies or the provision of guarantees on behalf of the companies, will require a Single Member Decision. Those decisions will be placed on the forward plan and are subject to scrutiny in the usual way.
- Shareholder decisions which are reserved matters are detailed in the Shareholder Agreement - Appendix B. These decisions are taken by the Cabinet, Leader or by the holding company (in either shadow or actual holding company form) and are also subject to scrutiny in the usual way. However, given the commercially sensitive nature of these decisions, which may need to be taken quickly, it is proposed that decisions taken in relation to these matters will be subject to a separate procedure incorporated into the Protocol.
- External legal advice recommended that a protocol for scrutiny be incorporated into the Council's corporate governance protocol. The scrutiny protocol is attached as Appendix D.

- 5.6 Councillors will be able to access information in relation to local authority companies in a number of ways. The methods by which members are able to access information is depicted and described in the flowchart which is appended to the protocol in Appendix D. The terms of reference of the Group Leaders Briefing Meeting are set out in Appendix E.

- 5.7 Scrutiny arrangements will be implemented immediately with the required Constitutional changes set out in Appendix F. The Commercial Director will report on companies by providing annual accounts in September to Audit and Council with a six month update to Resources PDS in March each year.

### **Ethical walls**

- 5.8 To ensure conflicts of interest between Council as shareholder and officers acting for the local authority companies are properly addressed, the protocol for governance of local authority companies will be updated to include the ethical walls procedures attached at Appendix C.

## **6 RATIONALE**

The separation of roles and scrutiny arrangements proposed in this report will provide the necessary transparency and democratic oversight of arrangements for the Council's local authority trading companies, whilst ensuring that the Council's decision making as Local Authority and shareholder is efficient and effective.

## **7 OTHER OPTIONS CONSIDERED**

None

## **8 CONSULTATION**

The Council's S.151 Officer, Commercial Director and Monitoring Officer have each been consulted upon the arrangements proposed

## **9 RISK MANAGEMENT**

A risk assessment related to the issue and recommendations has been undertaken, in compliance with the Council's decision making risk management guidance.

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<b>Background papers</b>	
<b>Please contact the report author if you need to access this report in an alternative format</b>	