

Bath & North East Somerset Council	
MEETING MAKER:	Council
MEETING DATE:	10 October 2019
TITLE:	Protocol on Council Company Governance
WARD:	All
AN OPEN PUBLIC ITEM	
<p>List of attachments to this report:</p> <p>Please list all the appendices here, clearly indicating any which are exempt and the reasons for exemption</p> <p>Appendix A Proposed Shareholder Group terms of reference</p> <p>Appendix B Diagram of current company governance arrangements</p> <p>Appendix C Diagram of company governance arrangements after suspending Holding Company arrangements</p>	

1 THE ISSUE

- 1.1 This report sets out the progress made on implementing the decisions of Council on 8 November 2018

2 RECOMMENDATION

The Council is asked to;

- 2.1 **Amend the Protocol to adopt the proposed new Shareholder Group incorporating enhanced scrutiny arrangements by Group Leaders**
- 2.2 **Suspend the Protocol in respect of a requirement to Incorporate or operate a Holding Company structure until further review.**
- 2.3 **Delegate to the s.151 officer, in consultation with the Leader, the decision on when to re-instate the Protocol requirement to operate a holding company structure.**

3 THE REPORT

- 3.1 On 8 November 2018 the Council resolved to approve the amendments to the Protocol proposed in that report together with the addition of a further recommendation from Resources Policy Development & Scrutiny Panel with regard to the Group Leaders briefing and with a requirement that the proposals for Scrutiny should be reviewed early in the new administration.
- 3.2 The Group Leaders need to be informed at an appropriate stage prior to shareholder decision making to permit any recommendation for consideration by the Shareholder Representative at an appropriate stage. After reviewing the current arrangements it is recognised that to ensure that the Council's companies have the best chance at succeeding, it is prudent to ensure there is a continuity of understanding and decision making especially in the event of a change in administration. Accordingly it is proposed that the Shareholder Group be reconfigured to include the Group Leaders together with a reduced number of executive members. The Shareholder Group terms of reference have been amended to reflect the change in membership and are attached at Appendix A. As previously, the Group Leaders will be privy to the same information as the executive members and therefore an obligation of strict confidentiality arises in respect of information disclosed which is commercially sensitive to Council companies. As a consequence of a reconfigured Shareholders Group, the Group Leaders briefing is no longer required and reference to it has been removed from the Protocol.
- 3.3 In the report to Council in November 2018 officers proposed to operate the shadow hold company arrangements for a period of 18 months while the shareholder agreements, which deal with reserved matters, were embedded. It was proposed to finalise the holding company arrangements in the summer of 2019. The intention was to gain experience of operating hold company arrangements in shadow form to ensure the Council had the appropriate governance control arrangements in place before finalising these.
- 3.4 The Shadow Holding Company board has met on 7 occasions since the last report to Council. During this period the collective view of the members of that board is that the current requirement for a holding Company arrangement is unnecessary. At the time these arrangements were contemplated it was envisaged that the Council might have a number of companies that would benefit from such an arrangement. In particular a group approach to such companies would have ensured consistency in standards; the application of common policies and cost sharing of common functions e.g. Human Resource or Company secretarial functions. In addition a group structure would enable tax advantages through operating group accounts. In practice these benefits have not been achieved principally because the formation of other council companies has not materialised. Currently the Council has only the Aequus group operating under the existing governance arrangements and until other companies are formed, the benefits of operating a holding company structure are not being achieved. Given the bureaucratic burden of operating this structure, it is proposed that this is suspended until such time as its implementation is warranted.

- 3.5 It is proposed that the current role of the Shadow Holding company is overseen by a client group consisting of Council officers closely connected with the subject matter of the type of trading the company intends to conduct. In the first instance this would only apply to the Aequus group of companies but this can be replicated for other companies until such time as it is considered, by the S.151 officer, to be appropriate to reinstate Holding Company arrangements. The diagram in the protocol Appendix B depicting present company arrangements will be replaced with the diagram at Appendix C
- 3.6 Although not specifically assigned, the Shadow Hold Company had incorporated into its terms of reference an assurance role in the oversight of the Council's minority shareholding interests in other companies (e.g. Brunel Pension Partnership, One West, Adoption West, Bath Spa etc.) to ensure the Council's interests are adequately safeguarded. During the suspension of the holding company arrangements it is proposed that this role is undertaken by the lead Director who has delegated budgetary authority for managing the contact with the company and associated financial governance and monitoring arrangements.
- 3.7 It is proposed that the formation of Council companies is kept under review and revisited each time a new company is formed and that an officer decision is made when S.151 officer considers there is merit in implementing the holding Company Structure arrangements.

4 STATUTORY CONSIDERATIONS

- 4.1 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 14th September 2017, together with the adaptation 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 RESOURCE IMPLICATIONS (FINANCE, PROPERTY, PEOPLE)

- 5.1 Under the proposed governance structure for Aequus Group of Companies, the Client Group, chaired by the Director of Economy & Growth, supported by the Head of Housing, replaces the current Shadow Holding Company. This proposal is endorsed by both the Director of Economy & Growth and Head of Housing and Aequus as it closer aligns the operational delivery requirements of the Council with the business plan of ADL and ensures that any discrepancies are identified and resolved at the earliest opportunity by the officers directly involved in the process.

6 RISK MANAGEMENT

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

7 CLIMATE CHANGE

- 7.1 There are no climate change implications directly arising from this report although all partner organisations are aware of the Council's commitment to

provide leadership to achieve carbon neutral BANES by 2030 and have been asked to reflect this in their business plans going forward.

8 OTHER OPTIONS CONSIDERED

8.1 None

9 CONSULTATION

9.1 The Chief Executive, S.151, Monitoring officer, Group Leaders and Policy Development & Scrutiny Panel have been consulted on the contents of this report.

Contact person	Michael Hewitt tel: 01225 395125
Background papers	Council Reports dated 08 November 2018 & 14 September 2017.
Please contact the report author if you need to access this report in an alternative format	

BATH & NORTH EAST SOMERSET COUNCIL
SHAREHOLDER GROUP - TERMS OF REFERENCE

Overview

The purpose of the Shareholder Group is to advise the Shareholder in the exercise of their responsibility for the Council's functions as corporate shareholder of a company or group of companies and in their role to represent the interests of the Council as Shareholder Representative at meetings of a company.

Decision making

The Cabinet will make decisions concerning companies in which the Council is or is proposed to become a shareholder. Information provided is commercially confidential to the Council companies and must be held in Strict Confidence and must not be divulged by the members in receipt of it save for the purpose for which it is disclosed.

Membership and Arrangements

The Shareholder Group shall consist of the Leader in the presence of:

- (a) three members of the Cabinet being the portfolio holder for (or their nominated representatives):-
 - Resources
 - Housing Planning & Economic Development
 - Community Services
- (b) Group Leaders of the other parties and
- (c) any co-opted advisors, who will be independent persons providing relevant expertise and appointed on merit
- (d) Client Group Chair or deputy

The Chief Executive, Service Director for Finance (s151 Officer) and the Head of Legal and Democratic Services (Monitoring Officer), or their deputies, will be advisors to the Group to provide open and strong advice.

Restrictions on Membership

As the Shareholder Group and the Shareholder discharges executive functions in relation to company matters, only Cabinet members can be members of the Shareholder Group with voting rights, although non-Cabinet members and co-opted advisors can be invited to attend, without voting rights.

Meetings

The Shareholder Group shall meet on a basis agreed by itself and normally in private.

The quorum shall be the Leader (or other Cabinet member appointed by the Leader for this purpose) in the presence of a minimum of two other Cabinet Members.

An invitation to attend must also have been provided to the Chief Executive, section 151 officer and the monitoring officer (or their nominated deputies), which will normally be at least three clear days in advance of the meeting taking place.

The Leader will chair the Shareholder Group.

Sub Groups

To assist it in its functions the Shareholder Group:

1. may establish and consult standing sub-groups, such as might be required in respect of:
 - (a) Audit and Risk;
 - (b) Ethical practices; or
 - (c) Nominations and Remuneration
2. may establish and consult ad-hoc or task and finish sub-groups in respect of any matter; and
3. may establish and consult stakeholder groups on any particular aspect or the generality of the objects of the trading companies

A sub-group or stakeholder group may contain such co-opted members, advisors or observers as the Shareholder Group sees fit.

Functions

1. Monitor the performance of a company in relation to its Business Plan and, in particular, the company's performance:
 - (a) in financial matters
 - (b) against the objectives of the company as set out in the company's Objects, Business Case or Business Plan
2. Evaluate and monitor:
 - (a) the financial and other returns on investment (be that shareholding, loans or direct investment); and
 - (b) risks and opportunities including those arising from joint ventures or new opportunities.
3. Consider matters reserved to the Council for shareholder approval, such as:
 - (a) Varying Articles of Association
 - (b) Varying ownership and structure
 - (c) Variations to shares (number of; rights; etc.)
 - (d) Entering contracts that:
 - (i) have a material effect on BaNES Council business (including other companies within the group)
 - (ii) are outside of the business plan or do not relate to the business

- (iii) are significant in relation to the size of the business, the business plan, etc.
 - (e) Material legal proceedings outside of ordinary business
 - (f) Adopting and amending business plans each year and strategic plans (3 years)
 - (g) Appointment, removal and the remuneration of directors (members of the company board)
 - (h) Selection of the chair of the board
 - (i) Appointment of auditors
 - (j) Issue of dividends and
- as more particularly set out in a company's Articles of Association or Shareholder Agreement.

Relationship

The Shareholder Group as it considers appropriate in accordance with its functions described above, may:

1. report and make formal recommendations to the Cabinet;
2. make reports to and consult PDSP (including full Council) subject to the opportunity for Cabinet to first comment on reports or
3. make reports to and consult the Audit Committee, in relation to that Committee's particular functions.

Existing Governance Structure – for reference:



