

LVHN Governance Summary: 6.5.15

This note is addressed to the London Borough of Enfield (the Council) and summarises earlier advice given in reports and discussions with the Council in respect of the structuring of the business of the Lea Valley Heat Network as a limited company, wholly owned by the Council. This note should only be relied on by the Council, in accordance with the retainer in place with Temple Bright LLP.

Structure

The 23rd July 2014 Cabinet Decision approved two alternative company structures: (A) a single-tier structure, with LVHN Limited (LVHN), a 100% Council owned, limited company, as integrated heat producer, distributor and supplier; and (B) a two-tier structure in which (i) the heat network running from the energy centre to be constructed on the NLWA site (the Strategic Heat Network) is owned and operated by LVHN and (ii) LVHN subsidiaries own and operate district heating schemes not initially connected to the Strategic Heat Network (Satellite Schemes). The rationale for this was to ring-fence liability and facilitate separate accounting. We have advised against pursuing structure (B) because: (i) guarantees would likely be sought by contract counterparties, undermining the objective of ring-fencing liabilities and (ii) separate accounting can be achieved without this structure.

We have also considered and can recommend another structuring option (C), illustrated at a high-level overleaf. This involves an alternative, two-tier structure. Under this approach, the Council owns 100% of the shares in a holding company (HoldCo), which in turn owns 100% of the shares in an operating company (OpCo). This structure adds negligible additional cost but recognizes, amongst other things, that setting the strategy for the Lee Valley Heat Network requires striking a balance between Council policy objectives and OpCo's commercial and operational requirements, which will require much faster decision-making for day-to-day matters. Consequently, this structure allows a separation between the strategic decision-making at HoldCo level and the operational decision-making at OpCo level. We recommend this approach over option (A) but supplementing the structure with a delegations matrix which sets clear parameters for decision-making discretion at each level (shareholder, board and officer) within the structure.

When previously considered and approved, a single tier company structure was proposed. In light of the further detailed work undertaken, and for the reasons given in our report, a two-tier structure is now recommended for decision by Cabinet.

No legal impediments

Structure (C) is well recognised and we confirm that we have not identified any legal impediment inherent in the structure to delivering a heat business that is wholly owned by the Council. This approach is within the powers of the Council.

Illustration of structure (A)*

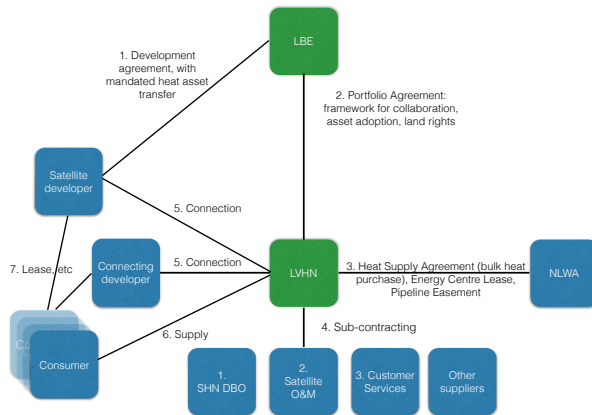


Illustration of structure (B)*

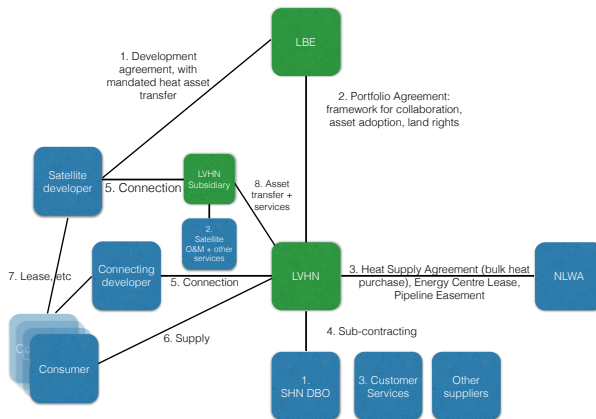
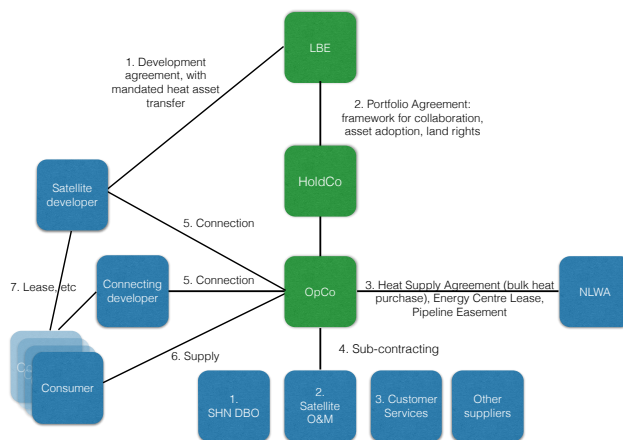


Illustration of preferred structure (C)*



(*Not all contracts or relationships are shown)