

## MUNICIPAL YEAR 2017/2018 REPORT NO. 149

### MEETING TITLE AND DATE:

Cabinet 14 February 2018

### REPORT OF:

Executive Director of  
Finance, Resources and  
Customer Services

Agenda – Part: 1

Item: 10

### Subject:

**Governance of Enfield's Trading  
Companies  
Non Key**

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## 1. EXECUTIVE SUMMARY

- 1.1 Enfield currently has several wholly owned companies and one joint venture company, either currently trading, recently incorporated or in design. Given the recent growth and activity with the Council's companies, it is now opportune that the current structures and governance arrangements are reviewed.
- 1.2 This report updates on the findings of a review of the Council's companies at both an entity and group level, and makes recommendations on setting up an Oversight Board (referred to as the Shareholder Board) to ensure best use of resources from the Council as shareholder, and exercise the appropriate control and influence over the companies in order that the Council is satisfied the companies are contributing to its wider objectives and managing risk. At the same time, the Council needs to allow the companies to operate commercially with the appropriate freedoms and flexibilities intended.

## 2. RECOMMENDATIONS

- 2.1 To set up a sub committee of Cabinet to be referred to as the Shareholder Board which will take on oversight and directional responsibilities for all of the Council's companies
- 2.2 For consistency to agree that only one Councillor (Cabinet Member) will sit on each Company board.
- 2.3 An early action of the sub-committee (Shareholder Board) will be to review the other governance arrangements of each company and report back on recommendations to improve consistency and approach.
- 2.4 To agree the Terms of Reference (ToR) set out in appendix 1
- 2.5 To note that an annual report from each company will be submitted to Cabinet in the September cycle of meetings.

### **3. BACKGROUND**

3.1 Enfield currently has several wholly owned companies and one joint venture company, either currently trading, recently incorporated or in design.

3.2 The wholly owned companies are:

- Housing Gateway Limited (HGL)
- Enfield Innovations Limited (EIL)
- Lea Valley Heat Network Limited (LVHN) trading as energetik
- Independence and Wellbeing Enfield Limited (IWE)
- Enfotec Limited

3.2.1 Enfield Council is also a partner in Enfield Norse Limited (ENL) a joint venture company with the Norse Group, which is wholly owned by Norfolk County Council, and in Red Lion Homes Ltd.

3.3 Given the recent growth and activity with the Council's companies, it is opportune now that the current structures and governance arrangements are reviewed. The current governance arrangements (set out at Appendix 2) were put in place to enable each company to be mobilised and begin trading. Now that each company is in a different stage of its lifecycle (in some cases approaching maturity), new governance arrangements may be needed that are better suited to the Council's and companies' current and future needs. The review of governance arrangements will also ensure the best use of resources from the Council as shareholder, exercise the appropriate control and influence over the companies in order that the Council is satisfied the companies are contributing to its wider objectives and managing risk. Whilst at the same time allowing the companies to operate commercially with the appropriate freedoms and flexibilities intended.

3.4 To progress this, the Executive Director of Finance, Resources and Customer Services commissioned Grant Thornton to review the current mechanisms that the Council has in place to have oversight and control of the entities and to make recommendations on the way forward to meet the requirements in 3.3 above.

3.5 The review findings at a Group level were:

- The Council did not have an overarching specific 'Corporate Board' or governance structure to provide strategic direction to its entities. Currently this is only in place at an individual entity board level.
- Cabinet Members are appointed to the company boards as directors and, in this capacity, have a fiduciary interest to act in the interests of the company.
- Currently there is no formal mechanism for the operational aspects of the companies to be considered in the strategic context of the shareholder / Cabinet.

- Operationally the companies are managed and monitored locally by the department they relate to, and in future this would benefit from a more formalised, structured and strategic approach.
- There is a disconnect between the individual entities (the Council and the companies) and lack of shared objectives and oversight.

### 3.6 At an entity level the review found:

- As entities grow there should be the consideration of the appointment of external MDs to drive the company performance and growth
- As the entities mature they should consider reducing the frequency of board meetings to six weekly or bi monthly to focus on delivery
- A gateways review process should be considered at key stages for each entity, to ensure that it aligns with the aspirations, and the ongoing purpose and strategic fit of the Council
- Quarterly reports for all entities should be reported to Cabinet and then to Full Council annually to allow for scrutiny and transparency
- Each entity board should have performance and finance reports as standard
- KPIs should be regularly reported and reviewed
- Financial reports should be agreed for each entity.
- A more collective approach to risk and risk management would benefit all entities

### **Proposal - Shareholder Board**

- 3.7 Given the recent growth and activity with the Council's companies, it is opportune now that the current structures and governance arrangements are reviewed to provide the council with assurance, and the companies the appropriate freedoms and conditions for success. It is therefore proposed that the Council puts in place a Shareholder Board to have oversight of the Companies and to ensure the Companies are contributing to the Council's wider objectives
- 3.7.1 A Shareholder Board structure chart showing the proposed governance is at Appendix 3. This will provide a more sustainable approach to governance which replicates best practice in the public and corporate sector.
- 3.8 As a formal Sub-Committee of Cabinet, the Board would be formed of up to 5 Cabinet Members, complemented by 2 co-opted non-local authority members (without voting rights) with commercial acumen and experience, and officers in attendance to advise the Board.
- 3.9 The Board would meet quarterly with the option to meet more frequently. The meetings would be open to the public, unless there were commercially sensitive matters which would be discussed in part 2. The board would then report directly into Cabinet. Any decisions would be subject to call in. Cabinet

will remain the ultimate decision-making body on strategic issues that materially affect the Companies.

3.10 The Board will report to Cabinet on the group activity and Cabinet would delegate key responsibilities to the Board through the Terms of Reference (ToR).

3.11 The Board's key responsibilities would include:

1. Act on behalf of the Council's Cabinet by requiring the directors of each company to exercise their voting rights as directors in line with the scheme of delegation, shareholder consent matters, or equivalent.
2. Provide companies with clear strategic direction and support in its role as sole shareholder.
3. Receive reports from each company in an agreed format setting out company information including strategic direction, financial performance, activity and performance indicators, achievements, risks and issues. A proposed template is set out at Appendix 4.
4. Hold each company board to account for their performance, by setting targets and reviewing performance, exercising shareholder rights to make and drive immediate change through those company boards.
5. Support the development of each company and give direction to each company board in relation to matters such as the disposal / dissolution of companies (below Cabinet limit on value) and e.g. the varying of Articles of Association, change of ownership, structure and share rights (all as may be further set out in a scheme of delegation/consent matters).
6. Co-ordinating business and professional support requirements for each company.
7. Evaluating effectiveness of board governance structure, processes and recommend changes as required.
8. Reviewing business plans and strategies of the entities to ensure alignment with the Council's strategic direction.
9. Overseeing compliance to ensure that taxation, legal and financial interests of the Council are considered and protected, such as overseeing alteration of authorised or issued share capital, or classification thereof, allotment of share capital or securities, granting options or rights to subscribe to the issuing of share capital.
10. Ensuring that the risks taken on by each company are managed appropriately and are at a suitable level for the Council to bear as shareholder (or, where the case, as guarantor, or the like).
11. Deliver reports to Cabinet, making recommendations to Cabinet (where decisions are not delegated to the Shareholder Board) and advise Cabinet of any issues relating to the companies.

- 3.12 The functions that would remain with Cabinet would be in broad terms:
1. Approval of company's business plans, and any material alteration to a company's business plan, for example acquiring a new business or closing one down, where it is not ancillary to the core business
  2. Acquiring shares in any company or interest, including limiting liability partnership or limited partnership, entering into a joint venture or profit sharing
  3. Approving significant investment outside of any agreed business plan
- 3.13 The draft Board terms of reference are set out in appendix 1.
- 3.14 The Board would be responsible for appointing the Chair for each of the company entities.
- 3.15 The Chair and Managing Director of each entity would report to the Board at a strategic level on an agreed template, attached to this report at appendix 2.
- 3.16 The Board's work programme for the first year is set out at Appendix 5. The key workstream will be to review the current governance arrangements, and to make recommendations where necessary, to ensure the companies have the right conditions for growth and in turn the Council also has assurance. The review will include ensuring conflicts of interest are managed, roles defined, including that of the opposition, and processes are in place to protect the Council and companies. A list of actions needed to implement any changes following the review is attached at Appendix 6.
- 3.17 In terms of Legal advice, the Shareholder Board will be advised by the Director of Law and Governance, who will not be represent the Council on any of the Companies.

#### **4. ALTERNATIVE OPTIONS CONSIDERED**

- 4.1 Continue with the current oversight at entity level only and no formal Group view of the Council's companies. This option does not fit well with the current stage of development of each of the companies, and lacks oversight and strategic alignment with the Council at a group level and between the entities. Continuing with this approach presents 3 key risks which are:
- The lack of a corporate structure to oversee all entities and alignment to the Council across the Group.
  - A potential conflict of interest for Directors and Members with responsibilities on both sides.
  - Existing arrangements are not scalable in light of the two points above
- 4.2 Shareholder oversight could be exercised through a standing item at Cabinet meetings on a quarterly basis. This would provide group governance and is scalable as the companies grow in size and nature. However, the meeting is much wider than just the shareholder matters and would not allow the level of detailed review and time (estimated 3 hours) required for this item. Further it

would not allow the involvement of NED's who provide invaluable insight and expertise.

## **5. REASONS FOR RECOMMENDATIONS**

- 5.1 LBE has a number of wholly owned companies either in design, recently incorporated or currently trading which provides the ideal opportunity to review the current governance arrangements. Given the speed at which the existing companies are scaling their operations and the new ones in development, it is important that a revised governance framework is put in place and that this is reflected at the group level, to support future growth.
- 5.2 The review concluded that that governance arrangements that are in place at an entity level are effective, however group level governance arrangements need to be put in place now.
  - 5.2.1 The report proposes a new group governance structure that will provide the council with the appropriate control and influence over its entities in order for them to contribute to the Council's objectives and manage the risks, whilst at the same time affording the companies the appropriate freedoms and flexibilities to operate as intended. The shareholder group will be able to identify shared resource needs for the companies and effect economies of scale.
- 5.3 This new structure will provide an overarching single reporting structure for the Council to manage its entities' commercial performance and opportunities (and look across the entities), through formal reporting between the companies (subsidiaries) and the Council (parent company).
- 5.4 This proposed structure will be more sustainable in the long term and reflect best practice, with the company reporting in the public domain and open to call in.

## **6. COMMENTS OF THE EXECUTIVE DIRECTOR OF FINANCE, RESOURCES AND CUSTOMER SERVICES AND OTHER DEPARTMENTS**

### **6.1 Financial Implications**

- 6.1.1 The Council's companies either already are or are becoming businesses of a significant size, offering alternative ways to support the Council's aspirations and continue to provide services in a climate where there are severe financial constraints.
- 6.1.2 The proposed governance arrangements have been designed to reflect the significance of these companies and allow appropriate discussion and decision-making to ensure that the objectives of all parties are met.

6.1.13 The costs of the new structure will be minimal and will be managed within existing resources, with any decision-making adhering to financial regulations.

## **6.2 Legal Implications**

6.2.1 The Council has general competence powers in s1 Localism Act 2011 which empowers the Council to undertake the actions recommended in this report. In order to give effect to the recommendations, each of the companies concerned will have to pass decisions of their own Boards agreeing to receive reports from the Shareholder Board and to comply with decisions of the Shareholder Board. The current schemes of delegations for each of the companies that may exist should be reviewed in order to ensure consistency with the Stakeholder Board's terms of reference. For example, energetik has a detailed scheme of delegation for which decisions are Council decisions and which are energetik Board decisions.

6.2.2 There is a risk that the Shareholder Board could be deemed a 'shadow director', and thereby subject to directors' duties under company law. However, the terms of reference make clear that the Shareholder Board has an oversight role only and the adviser to the Shareholder Board will ensure that the Board members do not stray into making operational decisions for the companies.

6.2.3 3.3. of Part 3 of the Council's constitution states that "other than those matters reserved to Council or delegated to a non-executive Committee /Panel or to a Director (or Statutory Officer), all other remaining functions are allocated as executive functions. These will be carried out by the Leader or as the Leader shall direct. In accordance with this section, the report sets out the Leader's (through Cabinet's) delegation to the Shareholder Board as a sub-committee of Cabinet to oversee the Companies in accordance with the attached terms of reference.

6.2.4 3.5 of Part 3 of the Council's constitution states that the Leader will maintain a list in Part 4 of the Constitution setting out which individual members of the Cabinet, committees of the Cabinet, officers or joint arrangements are responsible for the exercise of particular functions.

6.2.5 As a Cabinet Sub Committee meetings of the Shareholder Board will be subject to the usual requirements of the Local Authorities (Executive Arrangements) (Access to Information and Meetings) (England) Regulations 2012. Should any formal decisions be made these will also be subject to the usual key decision and call-in requirements, as relevant.

## **7. KEY RISKS**

Setting up the oversight board will ensure that the risks taken on by each company are managed appropriately and are at a suitable level for the Council to bear as shareholder. Currently there is no formal oversight of this combined risk.

## **8. IMPACT ON COUNCIL PRIORITIES**

### **8.1 Fairness for All**

The Council's companies support the long term future of the Council and delivery of core services to all residents and businesses in the borough

### **8.2 Growth and Sustainability**

The Companies support the long term sustainability of the Council through investment, service provision and income generation.

### **8.3 Strong Communities**

The Companies provide core services, and income to Enfield's communities now and in the future.

## **9 PERFORMANCE MANAGEMENT IMPLICATIONS**

The recommendation in this report will put in place a formal and robust reporting process between the Companies and the Council to ensure they are supporting the Council's aims and objectives.

## **10 PUBLIC HEALTH IMPLICATIONS**

The Council's companies contribute to the health and wellbeing of Enfield's residents through improved quality and supply of rented accommodation, low carbon heat and improved air quality, and services to the vulnerable and elderly.

### **Background Papers**

None.