

Oversight of Council Subsidiaries and Partner Bodies

Audit Committee

Date: 4th April 2017

Author:	Director of Law and Democratic Services
Wards:	None
Locality Affected:	None
Parishes Affected:	None

1. Purpose and Reasons

- 1.1 There are a number of companies in which the Borough Council has an interest and the purpose of this report is to summarise the current position and recommend that a Cabinet Member Advisory Group be established in order to consider how the Council's role as shareholder can best be exercised.

2. Recommendations

- 2.1 It is recommended that
- 2.1.1 the report be noted,
 - 2.1.2 the Leader of the Council or his nominee establish a Shareholder Panel to provide oversight of council owned companies,
 - 2.1.3 the Panel initially operates as a Cabinet Member Advisory Group to the Leader of the Council, or his nominee, and
 - 2.1.4 the Director of Law and Democratic Services reviews the position and reports back to a future Audit Committee on how the Panel is operating and providing the necessary challenge, and whether a more formal governance structure is required to be put in place.

3. Detail

Background

- 3.1 Current arrangements vary in relation to Council-owned companies. So far as 2016/17 is concerned, Councillors were appointed as non-executive directors to the main subsidiary companies, Thamesdown Transport Limited and Public Power Solutions. There are also shareholder panels. These arrangements provide oversight in specific areas. Overall, however, the Council has taken the view that one size does not fit all.
- 3.2 Although there is specific oversight in relation to each Council-owned company, there is no overall oversight to ensure that risks are minimised and services are delivered as intended, and there has been no overall summary record of how individual partner arrangements are managed.

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- 3.3 Nevertheless, the Council's external auditors have concluded overall that the risk has been sufficiently mitigated and the Council has proper arrangements for working effectively with third parties to deliver strategic priorities, managing risks effectively and maintaining a sound system of internal control and the criteria of informed decision-making.
- 3.4 They do comment, however, that there is scope to further improve arrangements and have recommended specifically that an annual report should be issued to either the Audit Committee or the Standards Committee and that such a report should identify all significant partnerships covering:
- the risks associated with the arrangements eg both in terms of governance, financial risks and reputational risks,
 - the mitigations to address the risks including the governance arrangements, methods of challenging partners, and
 - the outcome of the work done in the previous 12 months.

Council Owned Companies – 2016/17

- 3.5 There are an increasing number of council-owned companies. During 2016/17, the following such companies have been in operation:
- Thamesdown Transport Limited
 - Forward Swindon Limited
 - Public Power Solutions Limited
 - Swindon Common Farm Solar Community Interest PLC
 - Chapel Farm Solar Limited
- 3.6 The governance arrangements in place for those companies have varied according to the specific circumstances of each company, which has allowed a certain degree of flexibility.

Thamesdown Transport

- 3.7 Thamesdown Transport Limited was a private limited company (the Company) formed in 1986 under the Transport Act 1985 to take over the bus operations of the former Thamesdown Borough Council (now Swindon Borough Council). The Company was 100% owned by the Council.
- 3.8 So far as the board membership was concerned, there were 7 non-executive directors, 4 of which were councillors although in February 2016, Mr Mike Bawden was appointed to one of the positions previously allocated to councillors (Special Committee Minute 20, 2015/16 refers) and subsequently chaired the Board. Two

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of the other non-executive Director places on the Board were for Unite and Unison Employee Directors. In addition, there were 3 Executive Directors.

- 3.9 There was a formal Shareholder Agreement, which set out the relationship between the Council and the Company. The Council had a shareholder panel, which operated as a Cabinet Member Advisory Group chaired by the Leader. It met one or two times a year with the Chair and Executive Directors of the Company in order to discuss the matters set out in the Shareholder Agreement (budget and business plan). The Cabinet Member whose portfolio included Transport was not on the Board or the Shareholder Panel to avoid any perception of conflict of interest due to that portfolio including the commissioning role.
- 3.10 The Company was sold in February 2017 following consideration by the Shareholder Panel as to future options for the company (Cabinet Minute 81, 2016/17 refers). Following the disposal, five subsidiary companies (Swindon Transport Limited, Thamesdown Coaches Limited, Swindon Citybus Limited, Swindon Coaches Limited and PIA (Swindon) Limited) which were wholly owned by Thamesdown Transport Limited were identified as remaining in existence and these are not trading and have been transferred to the Council's ownership.

Forward Swindon Limited

- 3.11 The Company is wholly owned by the Council. It was formed on 17th March 2010 (Cabinet Minute 110, 2009/2010 refers) in order to improve the economic, social and environmental well-being of the area and residents of Swindon; assist in job creation, facilitate tourism and related cultural activities and to deliver physical regeneration; forward fund and deliver masterplans, and viability studies in order to bring forward major projects and development sites; and attract funds and investments to Swindon. The company is 100% owned by the Council.
- 3.12 So far as the current board membership is concerned, there is an independent chair and there are 6 non-executive directors including one council officer.
- 3.13 So far as shareholder accountability is concerned, a Shareholder Commissioning Board was established to agree FSL's annual budget and business plan. It is a cross-party panel of 5 councillors. At its meeting in June 2013, Cabinet agreed to authorise the Cabinet Member for Economy and Regeneration, in consultation with the Shareholder Commissioning Board, to approve on behalf of the Council matters requiring shareholder consent and that such decisions would be done via the Cabinet Member Decision Note process in order to provide accountability and transparency (Cabinet Minute 15, 2013/14 refers).

Public Power Solutions Limited

- 3.14 The company is wholly owned by the Council and was formed following the in-sourcing of SCS when it was decided to retain an arms-length company, wholly owned by the Council, to pursue solar projects on behalf of the public sector.

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- 3.15 There is an independent chair together with 3 non-executive directors who are all councillors and cross party. In addition, there is one Executive Managing Director who is also a council officer. There is no shareholder panel and any issues referred by the company to the council as shareholder are dealt with by Cabinet. The s151 Officer and the Monitoring Officer attend board meetings in an observer capacity in order to ensure proper liaison between the company and the Council as shareholder.

Swindon Common Farm Solar Community Interest PLC

- 3.16 Special Committee on 15th February 2016 agreed to establish a Community Interest Company (CIC) as an investment vehicle for community ownership of solar power production facilities and to facilitate future community investment opportunities involving Swindon's assets. The Council is the sole shareholder. Initially, 3 council officers were appointed as directors. Subsequently, 3 councillors were appointed as directors at the Annual Council meeting in May 2016 (Council Minute 12, 2016/17 refers).
- 3.17 The company has sold debentures to the public to fund solar power production in return for a return on their investment over 25 years. The profits of the company will be apportioned by way of 65% distribution for community benefit and 35% to the Council as sole shareholder.
- 3.18 In addition, a Grid sharing company, EP Swindon Solar Limited, has been formed which is partly owned by Common Farm Solar PLC. The Common Farm Company will appoint one of the two directors on the board and it is anticipated that a councillor will be appointed to that post.

Chapel Farm Solar Limited

- 3.19 This company was bought by the Council from Public Power Solutions Limited in November 2016. The Council is sole shareholder. Three council officers have been appointed as directors of the company. A shareholder panel made up of councillors is in the process of being formed.

Future companies

- 3.20 A number of other companies are authorised to be formed to progress specific issues such as a Wichelstowe Joint Venture Company, and a housing development company and their operation will be closely monitored and reviewed.

Shareholder Oversight

- 3.21 As stated earlier, each company has had its own shareholder accountability arrangements. These allow the Council as shareholder to challenge those companies and address governance, financial risks and reputational risks, together with mitigations necessary to address the risks. As an example, the

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shareholder panel for Thamesdown Transport Limited addressed precisely those risks which resulted in a sale of the company, and the Public Power Solutions Board have made various recommendations to the Council which Cabinet then addressed.

- 3.22 In order to ensure there is a corporate overview, however, it is suggested that the Leader of the Council, or his nominee, establishes a Shareholder Panel to provide oversight of council owned companies and that the Panel initially operates as a Cabinet Member Advisory Group to the Leader of the Council, or his nominee, so there can be proper accountability to the Council.
- 3.23 The Director of Law and Democratic Services should be requested to review the operation of the Panel and report back to a future Audit Committee on whether the Panel is providing the necessary challenge, and whether a more formal governance structure is required to be put in place.
- 3.24 It may be that, ultimately, depending on the number of companies that are established, there may need to be a formal cabinet sub-committee to fulfil that function but this may be introducing unnecessary bureaucracy if this is done at this stage.

4. Alternative Options

- 4.1 An alternative option to the suggested way forward has been outlined in the report.

5. Implications, Diversity Impact Assessment and Risk Management

Financial and Procurement Implications

- 5.1 There are no direct financial implications arising from this report other than as referred to in the report.

Legal and Human Rights Implications

- 5.2 There are no specific legal or human rights implications arising from this report. It is considered that the recommendations are compatible with Convention Rights.

All Other Implications (including Staff, Sustainability, Health, Rural, Crime and Disorder)

- 5.3 None have been identified.

Diversity Impact Assessment

- 5.4 A Diversity Impact Assessment has not been done on the grounds that this report does not make any recommendations that might affect service delivery.

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Risk Management

5.5 Risk management issues are as referred to in the report.

6. Consultees

6.1 The Head of Finance (s151 Officer) and Director of Law and Democratic Services (Monitoring Officer) are consulted in respect of all reports.

7. Background Papers

7.1 None

8. Appendices

8.1 None