

REPORT TO:	CABINET 26 July 2021
SUBJECT:	Governance of Croydon Council Companies
LEAD OFFICER:	Asmat Hussain, Interim Executive Director, Resources Chris Buss, Interim Head of Finance Investment and Risk, s151 Officer
CABINET MEMBER:	Councillor Callton Young, Resources and Financial Governance
WARDS:	ALL
Report Summary	
This report is produced in the context of the Report in the Public Interest and the Croydon Renewal Plan and addresses the requirement for improved governance	
FINANCIAL IMPACT	
There is no financial impact arising from the recommendations of this report	
FORWARD PLAN KEY DECISION REFERENCE NO.: This is not a Key Decision	

The Leader of the Council has delegated to the Cabinet the power to make the decisions set out in the recommendations below

1. RECOMMENDATIONS

The Cabinet is recommended to

- 1.1 Approve the establishment of a Croydon Companies' Supervision and Monitoring Panel (CCSMP) for the purposes and with the responsibilities described in this report.
- 1.2 Approve the appointment of the S151 Officer as chair of the CCSMP, with other permanent membership and invited attendees as described in this report.
- 1.3 Approve the Terms of Reference for the CCSMP set out at Appendix 2 to this report.
- 1.4 Delegate to the s151 Officer in consultation with the Council's Chief Executive the authority to approve the appointment and removal of Council nominated directors from the boards of Group entities in accordance with paragraph 3.5.2 of this report. Group is defined at paragraph 2.2 in this report.
- 1.5 Delegate to the s151 Officer the authority to make arrangements for company secretarial, accounting and administration in relation to the Group entities in accordance with paragraph 3.5.3 of this report.

2. EXECUTIVE SUMMARY

- 2.1 The purpose of this report is to make recommendations for strategic oversight, supervision and monitoring to ensure good governance practice in relation to legal entities in which Croydon has, or may in future have, an ownership interest.
- 2.2 The Council has an ownership interest in a number of legal entities. The entities (together with any future entities in which the Council may acquire an interest) are collectively referred to as the 'Group' in this paper. The existing Group entities are listed at Appendix 1 to this report.
- 2.3 Good governance of the Group is an integral part of the governance arrangements of the Council, as these ventures may involve the expenditure of public money and the stewardship of public resources.
- 2.4 Recommendation 20 of the Report in the Public Interest suggests that: 'The Cabinet and Council should review its arrangements to govern its interest in subsidiaries, how the subsidiaries are linked, the long-term impact of the subsidiaries on the Council's financial position and how the Council's and taxpayers interest is safeguarded
- 2.5 Brick by Brick, although owned by the Council, will be the subject of a separate report in relation to its governance and is not included within the remit of this report's recommendations until otherwise determined. This is because of the special attention required to supervise and monitor the Council's interest in Brick By Brick, which is currently being monitored by the Shareholder & Investment Board along with regular reporting to Cabinet.

3. DETAIL

- 3.1 In response to recommendations made by the Report in the Public Interest as referred to above, a task and finish group (TAFG) was established to review the legal entities in which the Council has an ownership interest, including review of day to day reporting and administrative governance arrangements. The TAFG operates with the aim of ensuring that the Council implements appropriately open and transparent accountability on Group performance and that the Council's role as shareholder or member gives visibility to Cabinet and/or Council. The recommendations in this report are made as a consequence of work undertaken by the TAFG to date, however it should be noted that the TAFG is still undertaking due diligence. This due diligence includes reviewing companies that the Council does not have a subsidiary interest in but where Council officers participate as Directors, and there will be further reporting to Cabinet via the Chair of CCSMP in respect of any associated risks.
- 3.2 The entities currently comprising the Group fall within the following types:
 - Private company limited by guarantee. The liability of the owners (members) on winding up the company is limited to the (usually nominal) amount stated in the company's articles. It is commonly used for not-for-profit companies;
 - Private company limited by shares. The liability of owners (the

shareholders) is limited to the amount, if any, unpaid on the shares which cannot be publicly traded.

- Limited Liability Partnership. Can only be used by profit-making businesses. Members (partners) are only liable for the amount of money they invest, plus any personal guarantees. (Croydon's interest in LLPs relates to Croydon Affordable Homes and is held via a holding company).

3.3 The Group can be broadly characterised, in terms of purpose, as follows:

- Entities established to trade. Under the Local Government Act 2003 and Localism Act 2011, the Council's power to trade must be exercised through a company. Octavo Partnership Ltd and Yourcare (Croydon) Limited were established for these purposes, however decisions have enabled the process to commence for dissolution of these companies (last year in respect of Octavo and, more recently, following a Cabinet decision for Yourcare).
- Entities either established by the Council or in which the Council participates as a member, where the primary purpose is to carry out non-trading functions eg affordable homes provision, access to homelessness provision.

3.4 Until now Croydon's establishment of, or participation in, Group entities has been service led and involved an initial report to Cabinet followed by reporting on an individual company basis. There is a lack of co-ordination and consistency in terms of the strategic oversight, governance, monitoring, reporting and company administration arrangements across the Group. There are no clear corporate guidelines on the steps to be taken and considerations relating to the Council establishing or taking an ownership interest in new legal entities. The result of this is an absence of oversight on behalf of the Council and failure to ensure that the basics of Company management are undertaken.

3.5 In order to address this it is recommended that:

3.5.1 a Croydon Companies Supervision and Monitoring Panel (CCSMP) be established. Meetings of the CCSMP would:

- Be held at least quarterly (with the first such meeting to be held within two months of Cabinet approval of this report's recommendations)
- Be chaired by the S151 Officer with permanent support from the Director of Law and Governance, Monitoring Officer and Director of Commercial Investment and Capital
- Be attended by Council nominated directors and member representatives for each Group entity and other officers as may be invited from time to time
- Formally report and, if appropriate, make recommendations (via the Chair) to Cabinet on a biannual (at minimum) basis and brief relevant Cabinet Members frequently between formal reporting to Cabinet
- Operate according to the terms of reference (ToR) as set out at Appendix 2 which include principles of good governance practice

3.5.2 the Chair of the CCSMP in consultation with the Council's Chief Executive be delegated the authority to appoint and to remove Council nominated directors from the boards of Group entities subject to different arrangements being in

place. Any such appointments or removals will be notified as part of the next scheduled report to Cabinet of the CCSMP.

3.5.3 the Chair of the CCSMP be delegated the authority to make company secretarial, administration and accounting arrangements for a Group entity (including through procurement) where there is no existing provision for such services to be carried out. Any such arrangements implemented will be notified as part of the next scheduled report to Cabinet of the CCSMP

3.6 The principles of good governance forming part of the ToR will help to ensure:

- Stewardship of assets
- Upholding legal duties
- Understanding Group entity performance
- Understanding of the external environment
- Effective governance of the Group entity
- Effective governance of the Group

3.7 Although Brick By Brick will have separate reporting and governance arrangements, when CCSMP reports to Cabinet, Cabinet will also be asked to note the reports presented separately on Brick By Brick to ensure holistic consideration of the Council's Group entities.

4. CONSULTATION

4.1 The TAFG set up to review and make recommendations in respect of governance in relation to the Council's Group is chaired by the Interim Executive Director, Resources and Deputy DMO, supported by the interim s151 officer and representatives from Legal Services, Finance and the PMO. There has been engagement with the Improvement and Assurance Panel, Resources DLT and ELT. As part of undertaking due diligence, the TAFG has been meeting with Council directors of the Group entities

5 PRE-DECISION SCRUTINY

5.1 This report has not been referred to Overview and Scrutiny Committee prior to being presented to Cabinet but is subject to referral by the requisite number of Councillors.

6 FINANCIAL AND RISK ASSESSMENT CONSIDERATIONS

6.1 There are no immediate financial consequences arising directly from the report, however future recommendations of the CCSMP may give rise to financial implications, such as a recommendation to procure company secretarial and/or company accounting functions for the Group entities. Any such implications will be addressed in relevant reports to Cabinet of the CCSMP

6.2 The Current arrangements have led to the fact that in some cases statutory returns have not been made to Companies House and HMRC leading to additional costs through penalties and potential prosecutions and the striking off

of entities.

6.3 The effect of the decision

The decision will enable the Council to implement strategic oversight along with consistent and good governance practice across the Council's Group.

6.4 Risks

There are no risks associated with the recommendations

6.5 Options

Please see paragraph 13

6.6 Future savings/efficiencies

The proposals should enable the Council to act more dynamically and strategically in response to issues or concerns affecting Group entities, preventing or mitigating against procedural or financial failures.

Approved by: Chris Buss, Interim Director of Finance, Investment & Risk and s151 Officer

7. LEGAL CONSIDERATIONS

7.1 The Head of Commercial and Property Law comments on behalf of the Director of Law and Governance that there are no additional legal considerations arising from this report.

Approved by Nigel Channer, Interim Head of Commercial and Property Law on behalf of the Interim Director of Law and Governance & Deputy Monitoring Officer

8. HUMAN RESOURCES IMPACT

8.1 There are no immediate HR considerations arising from this report for Croydon Council employees or staff. If any should arise, these will be managed under the Council's policies and procedures.

Approved by: Gillian Bevan, Head of HR (Resources) on behalf of the Director of Human Resources

9. EQUALITIES IMPACT

9.1 The proposed changes reflected in the recommendations are designed to improve the Council's internal processes for governance of legal entities in which it has an ownership interest. The nature of such proposals will be neutral in terms of impact on groups that share protected characteristics

Approved by: Yvonne Okiyo, Equalities Manager

10. ENVIRONMENTAL IMPACT

10.1 There are no environmental impacts arising from this report

11. CRIME AND DISORDER REDUCTION IMPACT

11.1 There are no crime and disorder impacts arising from this report

12. REASONS FOR RECOMMENDATIONS/PROPOSED DECISION

12.1 The report makes recommendations for good Council governance practice in relation to legal entities in which Croydon has, or may in future have, an ownership interest.

13. OPTIONS CONSIDERED AND REJECTED

13.1 Alternative options are:

Do Nothing – this will not address the findings and recommendations of the Report in the Public Interest and fails to implement improved governance practice.

Not recommended

13.2 **Establish a Cabinet sub-committee in place of the proposed CCSMP**

Advantages

- Ensures full Member oversight and involvement from an early stage
- Helps ensure Member accountability for decisions made
- Enables Members to take account of wider Policy and corporate priorities in formulating recommendations for Cabinet

Disadvantages

- Members risk becoming too involved in operational matters
- Risks becoming a de-facto decision making body and subject to rigorous governance in that regard (e.g. Access to information regulations) and may give rise to a risk or perception of predetermination.
- Senior Officers will still require / need a separate forum to meet to discuss matters before presenting to the sub-committee thus doubling up on resources.
- Risks blurring of Officer / Member roles
- Can be more difficult to convene at short notice where urgency is required

Not recommended

13.3 **Establish Individual Supervising and Monitoring Groups (or equivalent) for Individual Group Entities**

Advantage: Closer oversight of individual Group entities

Disadvantages:

- Resource intensive and does not provide the oversight function across the Group
- CCSMP does not prevent closer oversight being established on a case by case basis. This is currently the case with BBB which is therefore currently outside of the remit of the CCSMP and this report. However, depending on decisions to be made concerning BBB, a decision may be made to transfer oversight of that company to the CCSMP in future.

Not recommended

14. DATA PROTECTION IMPLICATIONS

14.1 WILL THE SUBJECT OF THE REPORT INVOLVE THE PROCESSING OF 'PERSONAL DATA'?

NO

14.2 HAS A DATA PROTECTION IMPACT ASSESSMENT (DPIA) BEEN COMPLETED?

NO

The Interim Director, Resources comments that the implementation of proposals to establish a CCSMP does not involve the processing of personal data.

Approved by: Asmat Hussain, Executive Director, Resources

CONTACT OFFICER:	Asmat Hussain, Executive Director Resources (Interim)
APPENDICES TO THIS REPORT:	Appendix 1 Group entities Appendix 2 Terms of reference
BACKGROUND PAPERS:	None