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1. Overview

- 1.1 The Brick By Brick Shareholder Mayor's Advisory Board (the Board) is constituted as a Member group to help enable the Council to actively supervise and monitor its investment and relationship with its wholly owned company Brick by Brick Croydon Limited ('BBB'), including all financial and other transactions it has with BBB, particularly lending arrangements.
- 1.2 The Board is not a decision making body and decisions shall continue to be recommended to the Executive Mayor by the Chief Executive or decided under specific delegated authority from the Executive Mayor where relevant. This includes recommendations in relation to those matters set out at Schedule 1 (the Shareholder Reserved Matters) of these Terms of Reference and all other residual rights that the Council has as shareholder under the Articles of Association of BBB or as a matter of law.
- 1.3 These Terms of Reference shall be adopted following the Executive Mayor's approval.

2. Membership

- 2.1 The Board is constituted of the following Members:-

- Executive Mayor (Chair)
- Cabinet Member for Finance
- Deputy Mayor and Cabinet Member for Homes

The following officers, or their deputies where necessary, will attend the Board in an advisory capacity but are not members:

- Chief Executive
- Corporate Director Resources & S151 Officer
- Director of Finance (Deputy S151)
- Director of Commercial Investment & Capital (the BBB Client representative)
- Director of Legal Services & Monitoring Officer

- 2.2 The Board will also be supported by advisors representing the following disciplines within the Council: Finance, Legal, Housing & Assets. The Board will also receive regular update reports from the Council's Brick By Brick Client Supervision & Monitoring Panel alongside monthly reports from BBB. The Board will also call on external expertise as and when required.
- 2.3 BBB will be invited to report to the Board as and when required but is not a member of the Board. To enable full and frank discussion and advice between elected Members, officers of the Council and advisors, BBB may be excluded from attendance and taking part in certain discussions. The Agenda will indicate where this is likely to be required and any exclusion will be reflected in the minutes of that meeting.
- 2.4 The Board's business is part of the private business of the Council and it is envisaged that commercially sensitive information will be discussed. However in the spirit of openness and transparency (but subject to any overriding legislative requirements, confidentiality or commercial sensitivity) the minutes of the Board shall be made available in the public domain as part of the quarterly Cabinet reports by the Chief Executive. Any external advisors to the Board are to be reminded of this prior to attendance at the Board.
- 2.5 Where a Board Member or other attendee has an actual or potential conflict of interest arising in relation to the business to be conducted at the Board, that Board Member or attendee will make nature and extent of the conflict known to the Board in advance of any planned meeting and prior to any business being conducted at a meeting. The Chair, taking advice from the Director of Legal Services & Monitoring Officer, will decide whether the conflict is prejudicial (so as to preclude that individual from taking part in the meeting or discussion of the relevant item). This does not override the obligation on Members to have full regard to the Council's Code of Conduct and exercise their own judgement as to whether they have a disclosable pecuniary interest or other interest that should prevent them from taking part in discussions. Details of conflicts, related advice and considerations shall be recorded within the minutes of the relevant meeting. In the event that the Chair is unable to take part in a discussion or meeting due to a conflict of interest, the meeting will be Chaired by one of the two remaining Cabinet Members.

3. Purpose of the BBB Supervision & Monitoring Board

Shareholder Reserved Matters

- 3.1 The Board has been established to provide a formal mechanism and structure to facilitate discussions concerning BBB, its performance and delivery. The Board assists with recommendations being presented to the Executive Mayor to make such decisions as are required or appropriate to make in its capacity as sole shareholder of BBB. The Board also facilitates consultation requirements of any specific delegated authority from the Executive Mayor to make decisions regarding BBB where relevant. Decisions in respect of the Shareholder Reserved Matters at Schedule 1 of these Terms of Reference are for recommendation from the Chief Executive to the Executive Mayor or under specific delegated authority from the Executive Mayor where relevant.

- 3.2 Any residual matters not specifically captured by Schedule 1 (Shareholder Reserved Matters) but considered to be a matter for the Shareholder to decide, either within the Articles of Association of BBB, as a matter of good governance or as a matter of law, will also be for recommendation from the Chief Executive to the Executive Mayor (unless otherwise specifically delegated by the Executive Mayor).

Appointment and Removal of Directors

- 3.3 In addition to the above, and not specifically referred to under Shareholder Reserved Matters but covered under Article 19 of the Company's Articles of Association, the Council as shareholder has the power to remove Directors from BBB and appoint Directors to BBB (subject to the proviso that there can be no fewer than 2 Directors and no more than 4 Directors under the Articles of Association as presently constituted). The Corporate Director of Resources & S151 Officer in consultation with the Executive Mayor of the Council, Cabinet Member for Finance and Chief Executive, has delegated authority (including authority to exercise shareholder functions on behalf of the Council) to appoint or remove Directors of BBB in accordance with the Executive Mayor's approved process, where relevant (decision of 30th November 2022). Any such appointments or removals being notified as part of the next scheduled quarterly report to the Executive Mayor in Cabinet.

Monitoring the Council's Investment

- 3.4 Whilst acknowledging the operational and commercial independence of BBB from the Council, the Council nevertheless has an interest and a duty to monitor the performance and success of its investment as Shareholder of BBB and as lender. The Board will therefore carry out that function, and assist with reporting to the Executive Mayor in Cabinet on a quarterly basis. In particular, the Board will monitor the development and implementation of BBB's Business Plan and will consider any proposed variations to the Business Plan put forward by BBB. The Board will also monitor any risks associated with the operations and performance of BBB. In that regard, the Board will not only review BBB's Annual Report but will also receive reports from the Council itself in the Council's role as lender, purchaser of properties and seller of land.
- 3.5 Where appropriate, and again whilst acknowledging the operational and commercial independence of BBB, the Board shall ensure that any recommendations to the Executive Mayor (or decisions under delegated authority) have evaluated the return and the benefits of its investment against the values of the Council and intended outcomes of their investment and any wider impact on the Council and its residents. Where appropriate, the Board (in the Council's capacity as Shareholder) may highlight issues to BBB where doing so will promote the values of BBB and does not interfere in the legitimate rights of the Directors of BBB to exercise their general authority. The Board may make any recommendations it considers appropriate in that regard, however, the Board recognises BBB shall make its own independent decisions.

Governance

3.6 The Board shall seek to uphold the principles of good governance set out at Schedule 2 (Good Governance Principles) when conducting meetings and assisting with recommendations to the Executive Mayor.

4. Operation of the Board

4.1 The Board shall meet on a six week rotation or as otherwise required (to align with quarterly Cabinet meetings). Meetings shall be convened and administered by the Mayor's office and shall be chaired by the Mayor.

4.2 The quorum of the meeting shall be a minimum of two Board members and one of whom must be the Chair or in the Chair's absence a deputy appointed by the Chair.

4.3 The Board will consider any of the matters under its purview as set out elsewhere in this paper and recommendations shall be made by the Chief Executive to the Executive Mayor (or under specific delegated authority, where relevant). Where the Board is unable to reach consensus on a proposed recommendation to be made, a summary of the differing views shall be presented to the Executive Mayor.

4.4 Any recommendations, if specifically requested by the Board, be reported to a General Meeting of BBB by any person authorised by the Board to attend the General Meeting on behalf of the Board and to represent the Council as Shareholder but such person will normally be the Chair of the Board.

4.5 The Board will invite a report from the Director of Commercial Investment & Capital (the BBB Client representative), prepared in consultation with relevant Council officers as part of the Brick By Brick Client Supervision & Monitoring Panel, which shall typically cover each of the following subjects at each meeting:-

- a. Finance: The status of loans made to BBB including outstanding loan amounts, accrued interest, draw down requests (and their status), breaches of covenants, recycled sales receipts, payments received in the last quarter and any loan agreement modifications
- b. Assets: Progress of sales of land, progress with the Council's purchase of units from BBB and updates on the Option Agreements
- c. Housing: Progress with regards to the delivery of HRA housing
- d. Law & Governance: Highlighting any legal issues with particular regard to any decision making & general compliance issues including completion of any necessary legal documentation arising out of the relationship with BBB.

4.6 In addition the Board will receive for information and consider at each of its meetings the monthly reports providing updates on BBB's financial position, progress with development of sites, sales, any key contractual issues and any other relevant matter (as needed), which shall further be presented to the Executive Mayor in Cabinet on a quarterly basis. Such reports may include any relevant BBB board papers, minutes and reports as well as any other reports required by the Board to enable it to carry out its function of considering shareholder related matters.

4.7 A flowchart setting out the overall reporting lines and various meetings is included at Schedule 3 (BBB Meetings & Reporting Flowchart).

- 4.8 The Board will also invite BBB to present regular updates on the implementation of its Business Plan and to submit to the Board for review and comment the proposed final Annual Report, the draft Annual Business Plan and any proposed amendments to the existing Business Plan. BBB will also report on any other matters directly relevant to the Shareholder Reserved Matters in respect of which the Council needs to make a decision.
- 4.9 The Chair will approve the agenda for each meeting. The agenda and papers for each meeting will be circulated at least 5 working days prior to the meeting. The meeting will be minuted by an Executive Officer or Executive Support Officer and the Executive Mayor will oversee the convening of the meeting.
- 4.10 In the event of urgency, a meeting may be convened at short notice on the recommendation of the Executive Mayor or, if an urgent recommendation is required to be made by the Chief Executive, this can be done by means of email communication. Where these urgency provisions are required to be used, the Executive Mayor's office shall seek to make any arrangements necessary to either convene the meeting or obtain email approvals to a proposed recommendation.
- 4.11 The Terms of Reference of this Board shall be reviewed annually or when required. It is envisaged that when BBB begins the process of winding up, these Terms of Reference for this Board shall be reviewed. Any changes to these Terms of Reference shall be unanimously approved by the Members of the Board and notified as part of the next scheduled report to the Executive Mayor in Cabinet.

SCHEDULE 1 - SHAREHOLDER RESERVED MATTERS

- 1 Approval and adoption of each Business Plan (and any amendments/variatio ns).
- 2 Alteration in the nature/scope of the Business, closing down/commencing any new business which is not ancillary or otherwise incidental to the business of the Company.
- 3 Declaring or paying any distribution in respect of profits, assets or reserves of the Company or in any other way reducing the reserves of the Company.
- 4 Forming any Company subsidiary or associated undertaking, acquiring shares in any other company or entity (subscription or transfer) such that the Company becomes a Subsidiary, entering into joint ventures or partnerships.
- 5 Alteration of authorised or issued partnership capital, or classification thereof, allotment of partnership capital or securities, granting options or rights to subscribe to the Company; issuing loan capital of the Company.
- 6 Waiving or delaying the rights of the Company and/or those of the Company to be exercised by the Company under any agreement to which the Company is a party.
- 7 Making any petition or passing any resolution to wind up the Company or making any application for an administration or winding up order or any order having similar effect in relation to the Company or giving notice of intention to appoint an administrator or file a notice of appointment of an administrator.
- 8 Changing the name of the Company.
- 9 Change in status of the Company.
- 10 The admission of a new Shareholder to the Company or the expulsion of any then existing Shareholder.
- 11 Entering into (or agreeing to enter into) any borrowing arrangement on behalf of the Company and giving any security in respect of any such borrowing (including creating any encumbrance over the whole or any part of the undertaking or assets of the Company or over any capital of the Company.¹
- 12 Taking any action outside the parameters of the Business Plans including but not limited to contract expenditure or increasing any indebtedness of the Company outside the parameters of the Business Plan.

¹ No Shareholder Board approval is needed in respect of such arrangements where they have already been the subject of a Council governance process and been formally approved by the Executive Mayor.

- 13 Taking any action which constitutes a variation to the costs set out in the budget section of the Business Plan.
- 14 Acquiring, disposing or agreeing to acquire or dispose of any Company asset, any interest in any Company asset (including the exercise of an option) or any other land or buildings outside of the Business Plan.
- 15 Granting or entering into any license agreement or arrangement concerning the trading names of the Company and goodwill attached thereto.
- 16 Entry by the Company into any partnership or other profit share arrangement outside of the Business Plan
- 17 Contracting and/or entering into a commitment to contract expenditure outside the parameters of activity (as set out in the budget) contemplated by the Business Plans.
- 18 Giving a guarantee, suretyship or indemnity to secure the liabilities of any person or assume the obligations of any person.
- 19 Any other matters not covered within the Company's usual day-to-day business and within the scope of the Business Plans.

SCHEDULE 2 - Principles of Good Governance

- ❖ BBB will be provided with the freedoms to achieve its commercial and operational objectives.
- ❖ The Council will retain controls which enable it to protect its investment and ensure that its objectives are met.
- ❖ Appropriate business ethics will be enforced so that decisions are taken for the benefit of BBB and the Council, taking into account the Council's group of company entities, with directors acting for BBB, and the Board acting for the Council. Any interests (including competing interests between the Council and BBB, or between other Council companies) will be formally recognised and controlled
- ❖ Information will flow between the Council and BBB to ensure that mutual understanding and shareholder / company objectives are maintained. In particular the Council should:
 - set out its objectives and priorities at the outset and keep these under review – any changes will be timely, proportionate, commercially realistic and part of the annual review;
 - define and communicate clear roles for its representatives who meet with BBB and these meetings will have an agenda and be minuted;
 - engage with BBB to understand, record and analyse the unit costs of the entity's deliverables as key performance indicators (KPIs) and its effect on Council and other Council companies' KPIs (incorporating factors such as interest payments, tax savings, business rates, savings/contributions on connected council activities and effect on the economy), companies will be reviewed annually – these reviews together with triennial reviews will be a mechanism for considering change in investment and funding;
 - engage with the other Council company entities to understand and support it in relation to resourcing, including staffing, working capital, the investment cycle, cashflow, and retained profits;
 - maintain a joint risk register to ensure risks are managed across the Council companies, and engage with the entity to plan assurance requirements.
 - set out clear and consistent processes with commercial timescales for key decisions such as loans;
 - ensure that commercial confidentiality of sensitive information is maintained and agree a non-disclosure agreement where appropriate.

BBB shall be required to:

- engage with the Council in a timely fashion, keeping it well informed, where it requires funding or other support from the Council
 - communicate any commercial timescales and sensitivities
 - provide the information required in its agreements with the Council as part of its normal reporting cycle
 - engage effectively with the Council's assurance providers
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- ❖ Directors of BBB must act for the entity, declaring and avoiding any actual or apparent conflict of interest. BBB should have skills appropriate to the sector and roles. To ensure this is achieved the Board of Directors should have mandatory training including induction, an annual training programme and guidance notes. An

annual skills audit and triennial independent review should be used to support the BBB Board of Directors and identify appropriate external expertise

- ❖ Council nominated directors and member representatives to receive mandatory training on an annual basis and appropriate indemnity arrangements to be ensured

When Financing a Company

The Council, when financing a company, will set in place controls to enable it to protect its investment and achieve its objectives.

Initially:

- The Council is required to consider a business case and risk analysis in deciding whether the entity should proceed to trade.
- The Council has the right to appoint board members.
- Participation in any legal entity will require approval by the Executive Mayor
- A shareholder's or member's agreement can be used to set out decisions which the company directors can only make with approval or oversight of the Council. These might include:
 - the right to approve substantial changes in the company's business plan;
 - monitoring and evaluation of company reporting (there is a need to ensure that that 'advice' does not extend to any form of management of the company);
 - Access to information, financial reporting and monitoring provision is required eg to ensure that commercial agreements such as loans and service contracts are adhered to.

SCHEDULE 3 – BBB MEETINGS & REPORTING FLOWCHART

