

# OVERVIEW AND SCRUTINY BOARD



Report subject	<b>Council Companies - Shareholder Governance Review</b>
Meeting date	8 January 2024
Status	Public Report
Executive summary	<p>This report sets out the action taken to ensure appropriate and effective governance of Council owned companies including the independent governance review undertaken by DLUHC, a self-assessment review of Council-owned companies undertaken by the Council's internal audit team, and the governance review undertaken by the Interim Chair of BCP FuturePlaces Ltd which considered lessons learnt over the first year of operation.</p> <p>Following the work undertaken above and the subsequent closure of BCP FuturePlaces Ltd, a review of shareholder governance arrangements for all Council-owned companies was undertaken by the Interim Corporate Director of Resources in November 2023.</p> <p>The review recommends changes designed to provide clearer understanding of the respective roles, decision-making arrangements, and improved accountability along with next steps for implementation.</p>
Recommendations	<p><b>It is RECOMMENDED that:</b></p> <p><b>Overview &amp; Scrutiny Committee considers the proposed shareholder governance arrangements, and the proposed plan and methodology for reviewing council companies, and reports its views to Cabinet on 10/1/2024.</b></p>
Reason for recommendations	To ensure that all Council owned companies operate within effective and transparent governance.

Portfolio Holder(s):	Cllr Jeff Hanna, Portfolio Holder for Transformation and Resources
Corporate Director	Ian O'Donnell - Interim Corporate Director of Resources
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Wards	Not applicable
Classification	For Information

## Background

1. In response to concerns voiced by the Minister of State about the financial management of the Council in a letter to the Council leader in September 2022, the Council agreed to commission an independent governance review. The relationship with BCP FuturePlaces Limited was a specified component of this review, and the review was completed in June 2023. It recognised concerns regarding BCP FuturePlaces Limited, including the governance structure, which did not reflect good practice in terms of governance, mission creep, and a lack of clarity around the priority projects.
2. The review found that the Council should review its original purpose for FuturePlaces and agree an annual business plan that sets out clear priority projects and timescales for delivery, and also that the Council would benefit from having a more co-ordinated approach to carrying out its governance role by setting out a clear timetable for agreeing the annual business plans for all the companies and receiving mid-year and end of year reviews.
3. A review was carried out by Internal Audit based on the principles outlined in the 2021 “Local Authority Company Review Guidance” published by Local Partnerships (a joint venture between HM Treasury, the Local Government Association, and the Welsh Government. The aim of which is to provide guidance to Local Authorities in ensuring that their company ‘governance structures and processes for managing risk are sufficiently robust’ and that ‘the entities are meeting Council’ expectations, delivering real benefits and providing value for money”.
4. The Draft Governance Briefing Note produced by the Internal Audit Team is included at Appendix 4. The review produced an action plan based primarily on the degree to which it found the Council was complying with the guidance. It also produced checklists that it recommended should be used by officers to strengthen governance arrangements and by Internal Audit to inform future risk-based audit planning.
5. The review noted that the Local Partnerships guidance was updated in July 2023, placing greater emphasis on the importance to the Council of ensuring that the strategic fit, risks, benefits, structures, financial and governance arrangements for any proposed new entity is subject to rigorous consideration prior to approval, supported by a robust, comprehensive, and credible business case.
6. The update placed a stronger focus on the need for the Council to review these arrangements on a regular ongoing basis and to ensure that the entities continue to deliver in accordance with the initial business case and subsequent annual business plans.
7. Emphasis was also placed on the need to ensure that the entity’s objectives and operations remain consistent with the Council’s corporate strategy and that they are appropriately taken account of within the Council’s oversight, audit, risk management, scrutiny and decision-making arrangements with suitable, sufficient, and timely reporting and escalation of risks and issues.

8. At the same time a review was carried out by the Interim Chair and Non-Executive Directors of FuturePlaces which identified similar issues to those identified above including a lack of shared vision and alignment in terms of aims and objectives, concern over the breadth of work being undertaken, and capacity – from both a resource and funding perspective - to deliver all the projects in the company portfolio.

### **Lessons Learnt from BCP FuturePlaces Limited**

9. The Council took the decision to close BCP FuturePlaces Limited in September 2023 and bring its development and investment activities in-house by the end of March 2024. The lessons learnt are set out below:
10. **Clarity Concerning Roles and Responsibilities:** it is the Council's responsibility to perform the role of shareholder. There should be clear dividing lines between the role of the company and the role of the shareholder. It is now broadly accepted that there is no place for elected members on the board of Council companies since companies are delivery vehicles and not an appropriately transparent and accountable forum for making Council policy. Any Council officers appointed to the board of a Council company must have regard to their responsibilities to the Council and to the company, which may point to a conflict of interests that must be recognised and resolved. Where possible company boards should be populated with directors with appropriate knowledge and experience of running a company, with industry-related expertise.
11. **Capacity of the Shareholder Function:** the Council's shareholder team was reduced due to budgetary pressures from the initially envisaged team of 6 to 2. Also, the Council effectively removed any regeneration expertise from the shareholder side when the company was established. This created difficulties for the Council in performing the shareholder role, both in terms of capacity and in terms of commissioning expertise and support for members.
12. **Shareholder Decision Making:** the process for shareholder decision-making requires operational, strategic, and political input, and the governance should reflect this and allow space for the necessary conversations and analysis at each level. Officers report that there was blurring of the respective roles of members and officers, with unclear and informal routes for operational decision-making and policy-making in the run up to formal decisions being made.
13. **Commissioning:** the Council, as shareholder, should ensure its commissioning is clear and reflects the corporate strategy and the priorities of the administration. In turn, the company should be clear about the work that has been commissioned and focus upon delivery. In practice, it has been reported that the company sometimes initiated work without a clear commission. This is in part due to mixed messages from the shareholder about the scope to do so, exacerbated by a mixture of formal and informal methods of communication. The agreed process also allowed projects to develop within the company with only a very high-level view of the projects being provided to the shareholder until the Outline Business Case stage, at which point the company had in some cases made significant financial and resource commitments.
14. **Prioritisation:** The company business plan should respond to the shareholder's commissioned priorities, setting out its proposals for delivery and resourcing. The approach in practice was to progress all schemes simultaneously. This put pressure

on company resources, requiring additional capacity to be procured from consultants, and also put pressure on Council resources.

15. **Flows of information:** the shareholder requires timely information from the company in order to plan its own activities in support of the company as well as hold the company to account for delivery. Shareholder capacity to request, manage, process, and respond to information, or the absence of it, is essential. Officers have observed that information was not shared, or not shared in a timely way. For example, detailed information about programming was not provided through the annual business plan, nor subsequently.
16. **KPIs:** the shareholder is responsible for holding the company to account for performance, and this means there should be objective measures that can be applied. Typically, this will be financial targets or project milestones. In relation to FuturePlaces officers reported an absence of KPIs and there being no clear definition of what success will look like. This is related to concerns about information flows.
17. **Financial Management:** the shareholder's commissioning role also includes making arrangements to fund the activities of the company. Where the activities are funded directly by the Council through working capital loans, there is also a 'lender' role to consider. The interaction between commissioning and lending roles should be managed in a clear way. It is the responsibility of the company directors to ensure that the company remains a going concern and thus cash flow planning should be a focus for both the company and the shareholder. The business plan should be regularly reviewed to respond to changes in the economic circumstances.
18. **Legal Documentation:** there should be a complete set of documents setting out the relationship between the parties, and these should be in line with company law and best practice. Whilst the overarching documents were completed, due to disagreement between the parties the Commissioning Agreement and the Resourcing Agreement which covered the detail of the working arrangements were not finalised. These documents should be reviewed over time to ensure that they remain fit for purpose and reflect current Council requirements and priorities.
19. **Resolution of Disagreements / Disputes:** there is evidence of difficulty being experienced by the parties in resolving disagreements and disputes. For example, officers have noted differences in understanding between the Council and the company in relation to how the financial model works. Another example is the company's focus on the 'Stewardship Approach' to investment, based on the Building Better, Building Beautiful philosophy, which appears to have caused the business plan to diverge from the shareholder's intentions.

### **Future Governance Arrangements and Next Steps**

20. The Council will manage its companies in line with the lessons learnt and best practice guidance. The proposed arrangements for shareholder governance are set out in Appendix 1.
21. Key points to note are:
  - The role of Cabinet is to set the strategic direction in line with the Administration's priorities and approve the annual business plan for each company, and this is achieved through formal decision making at Cabinet meetings. Officers are

responsible for working with the company to develop the business plan and for presenting it to Cabinet.

- The role of Scrutiny is to contribute constructive views and advice to Cabinet on matters related to the delivery of policy objectives through Council companies, and to hold the Administration to account for its performance as a shareholder and for the performance of the companies. Officers are responsible for supporting Scrutiny to perform its role, and reports to Scrutiny concerning companies will be presented to Scrutiny meetings by officers or by Cabinet members / the portfolio lead. It is not expected that representatives of Council companies would attend Scrutiny meetings or respond directly to questions from Scrutiny members.
  - Officer arrangements for supporting Cabinet and for operational discharge of the shareholder role are also set out in Appendix 1. This includes a Shareholder Briefing, at which Cabinet members and the Portfolio Lead are briefed by officers on company matters. This is where any discussions of policy/strategy or other changes to the business plan for a company will take place. The draft terms of reference for this meeting are attached at Appendix 2. The Shareholder Operations Board is an officer board at which the strategic management of companies is undertaken. The draft terms of reference for this meeting are attached at Appendix 3. It oversees the work of the individual 'commissioning' teams operating within the field of operational activity of the company (e.g. seafront operations, regeneration) that take responsibility for the day-to-day management of the individual companies.
22. The Council will implement the new governance arrangements with immediate effect.
23. The Council will conduct a review of each Council company, building on the draft work carried out by the Council's Internal Audit team, as set out in Appendix 4. This appendix is included to provide examples of the methodology and how it will be applied. This work will be completed by the end of March 2024.
24. Where needed, an action plan will be developed in relation to each company to bring arrangements in line with the best practice standard. For some time, the council has been working towards company boards that contain either members or officers but not both. It will now move towards officer only representation on company boards, and this will be dealt with through the company reviews. It is noted that in some cases members are already appointed to company boards and such arrangements will continue until such time as the review is completed and a new arrangement can be phased in.
25. The results of these reviews will be reported to Cabinet in July 2024 together with the associated action plans.

### **Scope**

26. This review is concerned with the council's shareholder activity. The council's interests in charitable trusts are considered to be out of scope for this review as a different approach to governance may be required as a result of each specific charitable scheme.
27. All companies where the council is a shareholder are in scope, and these entities are listed below:
- BCP FuturePlaces Limited

- Bournemouth Development Company LLP (a 50:50 partnership between BCP Council and Community Solutions for Regeneration (Bournemouth) Limited – a subsidiary of Muse Places Ltd, a Morgan Sindall Group company)
- Bournemouth Building & Maintenance Limited
- Seascope Group Limited (including its subsidiaries Seascope South Limited and Seascope Homes and Property Limited)
- Aspire Adoption Limited
- Tricuro Ltd and Tricuro Support Limited (currently jointly owned with Dorset Council).

### **Options Appraisal**

28. An options appraisal is not applicable for this report, as it recommends the council following best practice guidance.

### **Summary of financial implications**

29. Adopting effective and transparent governance structures and processes for Council-owned companies will ensure that risk management is sufficiently robust, that companies remain strategically aligned to Council priorities, focus is aimed at delivering real benefits whilst providing value for money, and annual business plans are subject to rigorous consideration prior to approval, with projects supported by robust, comprehensive, and credible business cases.

### **Summary of legal implications**

30. An effective and transparent governance process for Council-owned companies will ensure appropriate Council oversight, audit, risk management, scrutiny and decision-making arrangements are in place.
31. The Council must provide specific training to officers who are to be appointed as company directors to ensure they are equipped with the necessary skills and knowledge to undertake their roles and comply with the duties of the Companies Act 2006.

### **Summary of human resources implications**

32. The Council will provide specific training to officers who are to be appointed as Company Directors to ensure they are equipped with the necessary skills and knowledge.

### **Summary of sustainability impact**

There are no direct sustainability impact implications from this report.

### **Summary of public health implications**

There are no direct public health implications from this report.

### **Summary of equality implications**

There are no direct equality implications from this report.

### **Summary of risk assessment**

Failure to have appropriate and effective governance for Council owned companies which ensures accountable and transparent processes are in place puts the Council at risk of challenge.

**Background papers**

None

**Appendices**

Appendix 1 - Shareholder Governance

Appendix 2 - Shareholder Advisory Board – Draft Terms of Reference

Appendix 3 - Shareholder Operations Board

Appendix 4 - Internal Audit – DRAFT Briefing Note