

SCOPE FOR SHAREHOLDER GOVERNANCE REVIEW 2020/2021

PURPOSE OF REVIEW

The purpose of the review is to:

1. provide assurance to the Shareholder that the governance arrangements in place are adequate for the discharge of the Shareholder function, by reviewing the roles and responsibilities across the group of Council-owned companies, with a particular focus on the role of the strategic client and the role of Bristol Holding Limited; and
2. make recommendations for improvements, where the existing arrangements are not found to be adequate.

BACKGROUND

BCC owns four active companies: Bristol Holding Limited (the **Holding Company**); Bristol Waste Company Limited (**BWC**); Goram Homes Limited (**Goram**); Bristol Heat Networks Limited (**BHN**) (collectively, the **Companies**, or the **Group**). BWC, Goram and BHN are direct subsidiaries of the Holding Company, which in turn is a direct subsidiary of BCC.

Cllr Cheney performs the role of Shareholder in respect of the Companies, and he is supported in exercising this role by the Shareholder Liaison function, which ensures that the Shareholder is provided with adequate information when making decisions, that such decisions are adequately documented and that there is effective stakeholder management across the Council in respect of its companies.

In April 2019, Cabinet approved the re-launch of the Holding Company to more actively support the Shareholder in managing its current and future interests in its companies more effectively.

The Shareholder wants to ensure and improve the adequacy of these roles, following an Internal Audit Report published in April 2020 which identified some weaknesses in the Council's governance arrangements in respect of the Companies, and following the Value for Money report published in January 2021 by Grant Thornton. The Shareholder is commissioning this review to assist it in addressing the issues identified.

It is essential that this review takes into account the local authority context in which the Companies operate. This includes considering the importance of democratic involvement in, and accountability for, the oversight of the Companies, clearly defined roles and responsibilities, and effective and well-documented decision making processes.

Following conclusion of this review, the Shareholder intends to implement the recommendations made, including by reviewing and revising the existing documents which set out the governance arrangements across the Group (namely, articles of association, Shareholders' Agreement, and supporting guidance notes).

QUESTIONS THE REVIEW SHOULD RESPOND TO

BCC would like the review to respond to the following questions, in the context of the Council's overarching aim of reviewing and improving the adequacy of its existing governance structure,

having first consulted with (in respect of each question) the interviewees identified below, representing the Shareholder and the Companies.

1. Is the role of the 'strategic client' adequate and what changes could be made to improve how it functions?

The Shareholder is aware that the Companies need to understand who their strategic client within the Council is, how the role of that strategic client is defined (and how it differs from the role of contract manager) and how they interact with the Shareholder. This clarity is needed in order to provide the Companies with clear strategic direction, to ensure appropriate and effective strategic oversight, and to provide clear lines of communication between the Council, the Holding Company and the Companies. The Shareholder is also aware that the scope of involvement of the strategic client is likely to be different for each company, depending on their procurement status.

Recent discussions have focussed on the strategic client being a subset of the Shareholder, providing advice and support to the Shareholder when it considers strategic matters (including Reserved Matters).

The Shareholder would welcome comments on the adequacy of the strategic client function and recommendations for how the role of the strategic client could be clarified and strengthened in respect of current and future Council Companies.

2. Is the Shareholder Liaison function adequate and what changes could be made to improve how it functions?

The role of the Shareholder Liaison function is to ensure that the Shareholder is provided with adequate information from BCC officers when making decisions (including Reserved Matter decisions) and that such decisions are adequately documented, taking into account the local authority context in which the Companies operate.

The Shareholder Liaison function also acts on behalf of the Council in responding to public-facing queries in respect of the Council's shareholding (for example, Member questions, FOI queries) and in mobilising different services within the Council on Company-related matters (for example, in response to queries from the Companies, or when BCC is considering establishing a new company). Increasingly, the Shareholder Liaison function is also intending to support the strategic client in its role, as a subset of the Shareholder.

The role therefore focusses on ensuring good governance and clear stakeholder management across the Council in respect of its companies.

The Shareholder is keen to ensure that this role is adequate for the purposes of supporting the Shareholder in discharging its function and to understand how it could be improved.

3. Is the Holding Company's role adequate and what changes could be made to improve how it functions?

The purpose of the Holding Company is to ensure strategic alignment is maintained across the group in respect of the Council's core values. The Shareholder welcomes the role that the Holding Company has played over the last year and is keen to ensure that the ongoing governance

arrangements in respect of the Holding Company are adequate for achieving its purpose and to ensure that its role in supporting the Shareholder in managing its current and future interests in its companies is adequately defined.

In addition, the Shareholder is keen to understand whether there is appetite, at the levels of Shareholder, the Holding Company, and subsidiary Companies, for the Holding Company to take an increased role in decision making across the Group and, if there is, how this could be effectively achieved as a change to the existing governance arrangements. In particular, the Holding Company does not have any existing authority to approve the matters identified as 'Reserved Matters' in the subsidiary Companies' articles (as set out in Appendix A), as such authority is held by the Shareholder. The Holding Company does, however, as a matter of practice, make recommendations to the Shareholder in respect of such Reserved Matters. The current process for Reserved Matter decisions is set out in Appendix B. The Shareholder would welcome recommendations as to whether this existing arrangement is working effectively, and how it could be improved.

The Shareholder would, in response to this question, also appreciate proposals for how to ensure that it has appropriate mechanisms in place for the effective assurance of the Holding Company's role and views on the appropriateness of having an Executive Chair of the Holding Company, rather than a separate Chair and Chief Executive.

4. Has the review highlighted material barriers to the effectiveness of the existing governance arrangements?

This scope deliberately focusses on the adequacy of the existing governance arrangements rather than their effectiveness. It is acknowledged that an adequate governance framework alone does not ensure effective control and good management of the Companies, but its robust and successful application should. The Shareholder is aware that, during the course of this review, issues of effectiveness may be identified. The Shareholder would welcome an overview of any such issues, and any related recommendations, so that it can consider how to address these in the future.

OUTPUTS and TIMETABLE

The outputs of the review should be in the form of responses to each of the above questions, in the context of the Council's overarching aim of reviewing the adequacy of its existing governance arrangements, and related recommendations.

TIMETABLE

Initial findings should be summarised in an outline document to the Shareholder Liaison Manager by the end of March 2021.

A written report setting out the review findings should be provided to the Shareholder Liaison Manager by mid-April 2021, before onward submission to the Shareholder Group.

OUTSIDE OF SCOPE

This review is intended to address the specific questions identified above, which flow from issues that have been identified by the Shareholder, the Holding Company, the Companies, the BCC

Internal Audit Report and the Grant Thornton Value for Money Report. The review is not intended to be a complete review of the whole Shareholder function, or the whole Group.

BCC owns a number of other entities which are outside the scope of this review, namely: (a) BristollsOpen Limited (**BIO**), which is in the process of being wound down; and (b) a number of dormant companies.

INTERVIEWEES

The following representatives must be consulted, at a minimum, as part of the review.

1. Cllr Cheney – Shareholder Representative
2. Cllr Gollop – Shareholder Group Observer, Chair of Overview and Scrutiny Management Board
3. Cllr Godwin - Cabinet representative on Shareholder Group
4. Mike Jackson – Chief Executive
5. Denise Murray – Director of Finance (s 151 officer)
6. Stephen Peacock – Executive Director: Growth & Regeneration
7. Patsy Mellor – Director: Management of Place (Bristol Waste client)
8. Elaine Olphert – Head of Housing Delivery (managing pipeline relationship with Goram)
9. Tim O’Gara – Director of Legal & Dem Services (Monitoring Officer)
10. Claire Jeffwitz – Shareholder Liaison Manager (interim)
11. Helen Davis – Shareholder Liaison Manager (maternity leave)
12. Peter Beange – Executive Chair, Bristol Holding Limited and Chair of Bristol Heat Networks Limited
13. Chris Holme – Finance Director, Bristol Holding Limited
14. Cllr Bradshaw – Council-appointed non-executive director, Bristol Holding Limited
15. Aman Dalvi – Chair, Goram Homes Limited
16. Stephen Baker – Managing Director, Goram Homes Limited
17. Cllr Alexander - Council-appointed non-executive director, Goram Homes Limited
18. Tom Spaul - Chair, Bristol Waste Company Limited
19. Tony Lawless - Managing Director, Bristol Waste Company Limited
20. Cllr Brook - Council-appointed non-executive director, Bristol Waste Company Limited
21. Jeremy Bungey - Executive Director, Bristol Heat Networks Limited
22. Stephen Robertson, Chair, BE 2020 Limited
23. Cllr Pearce – Council-appointed non-executive director, BE 2020 Limited

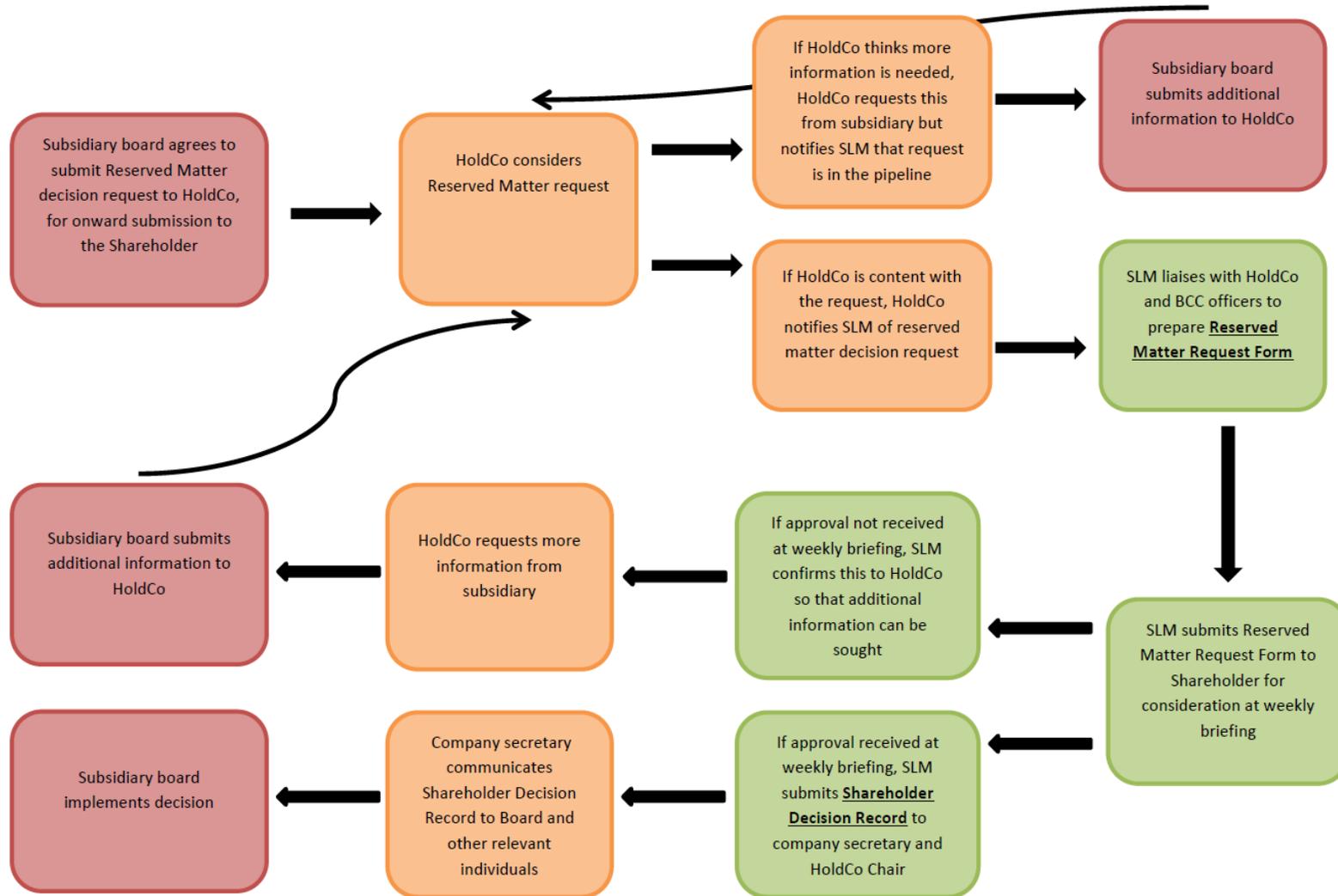
All interviews should be conducted remotely, via Zoom. To maximise the time available to consider the output of these discussions, interviewees may be grouped, or asked to provide written submissions.

Appendix A – Reserved Matters

1. Varying in any respect the Articles (including these Reserved Matters).
2. Varying in any way the share structure or issued share capital, including without limitation the allotment of new shares, and varying the number of and rights attached to any shares.
3. Participating in any scheme of arrangement or petition or passing any resolution for the winding up or presenting any petition for the administration (unless it has become insolvent).
4. Appointing and removing any Directors (including non-executive Directors) to or from the Board.
5. Approving the appointment of the managing director and finance director (or equivalent positions if different titles are adopted) as employees of the Company.
6. Appointing the Chair of the Board and any Company Secretary.
7. Agreeing the Remuneration Policy.
8. Approving the Business Plan (including material or significant revisions thereof).
9. Any expenditure that is reasonably likely to result in the Company or a subsidiary of the Company requesting finance or debt funding from the Council that is additional to that set out in the relevant Business Plan.
10. Forming any subsidiary or acquiring shares or any interest in any other company or participating in any partnership or joint venture (incorporated or not) and approving the terms of the articles of association and shareholders' agreement, limited liability partnership agreement or any other equivalent document.
11. Amalgamating or merging with any other company or business undertaking.
12. Instituting, defending or settling of material legal proceedings (or a similar process) outside of ordinary business.
13. Approving the dividend policy (and any changes thereto).
14. Entering into any arrangement, contract or transaction which may impact on the Council's statutory functions, commercial interests or reputation.
15. Approving the appointment of Auditors.
16. Giving any guarantee, letter of credit, letter of comfort or any security whatsoever or creating any encumbrance over any of the assets of the Company. For the avoidance of doubt, this provision is not intended to apply to routine contractual indemnities.
17. Approving the terms of any letter of credit, guarantee or letter of comfort received, other than in the ordinary course of business.

18. Selling, leasing, transferring, charging, or otherwise disposing of any asset comprising intellectual property, real estate, vehicles, plant and machinery or similar equipment otherwise than in accordance with the Business Plan.
19. Lending or advancing any monies to any person, firm, company or employees of the Company.
20. Entering into or varying the terms of any credit arrangements.
21. Settling any insurance claims which exceed £100,000 or of any value where there are suspicious circumstances or where the advice of the insurer of the Company or its subsidiary (as relevant) is not proposed to be followed.
22. Approving any asset write down or write off of more than £250,000 (in respect of a single asset or aggregate of multiple assets in any single Financial Year).
23. Granting any rights (by license or otherwise) in or over any intellectual property owned or used by the Company, other than where necessary in the ordinary course of business.

Appendix B – Existing Reserved Matter Decision Making Process



Appendix E

Summary of respondents' views

A. Is the role of the Strategic Client adequate and what changes could be made to improve how it functions?

Strategic Client

1. There was consensus that the role of the Strategic Client needed further development. This may be due in part to the newness of the role and participants were generally encouraged by the appointment of Executive Director: Growth and Regeneration to the role. Council officers and company representatives generally understood the concept of the 'council client' as the person within the council who was responsible for the contracting or running of a service, or for overseeing interdependencies between the council and its companies. However, the idea of a 'Strategic Client' as different and separate to the council client (or Operational Client, or Sponsor, using the terminology proposed in this report) needs to be better understood, to avoid blurred lines both of communication but also of responsibility. For example, it needs to be clear within the council and the companies that the Operational Client for BWC in respect of waste services is Director: Management of Place (and an officer reporting into them) whilst the Strategic Client is, as for all of the companies, the Executive Director: Growth & Regeneration.
2. This is particularly true in the case of BWC where there is frequent contact between the company and the Shareholder representative and councillors on performance-related issues, rather than directing this contact to the Operational Client and, only as a last resort, to the Strategic Client and Shareholder Representative. Similarly, several participants asked who would be responsible for managing the cleaning and security contract within the council. The fact that cleaning and security is part of BCC Facilities Management is the responsibility of the Resources Directorate and is not part of the Growth and Regeneration Directorate where BWC is currently 'housed' raised questions.
3. Several respondents did not fully understand the reporting lines of the Strategic Client and were unsure if the Strategic Client was a stand-alone role organised by sectors such as waste or energy or if there is a single person within BCC who has responsibility for all commercial activities within BCC.
4. However, respondents noted the positive appointment of the Executive Director: Growth and Regeneration as there is now one person with an overall vision of and responsibility for commercial activities. The importance of ensuring that the Strategic Client had sufficient capacity and skills to discharge this role was emphasised, as was the importance of the Strategic Client to have team members with adequate operational and delivery expertise.
5. One respondent suggested the need for greater alignment between the Shareholder Representative and Strategic Client. Respondents also commented on the lack of clarity regarding where decisions are taken, for example: does the Strategic Client have the decision-making power or is it the Shareholder Representative or the Cabinet or another body such as the weekly Cabinet Member Briefings with the Shareholder Representative?

6. Several respondents said they did not know how the companies came to be and how a council owned company is set up. There is a sense there should be a clear plan and a guiding ideology.

Operational Client

7. Some participants noted the importance of Operational Clients having adequate sector specific knowledge and expertise as well as the financial and commercial expertise needed to be able to manage a commercial contract with a commercial company. It was also noted that the Operational Client ought to be a relatively senior officer in the council. The importance of having a strong Operational Client was emphasised, particularly in the context of BE 2020, in the past, and City Leap, in the future.
8. One respondent noted that better and closer working relationships should be developed between BCC officers and company representatives.
9. Participants suggested that the Sponsor's relationship with Goram Homes was effective and well understood. There is a straight line from BCC's commitment to building new homes, the selection of several delivery methods including the Goram Homes model, and the professional team within BCC that is in a position to work directly with Goram Homes.

B. Is the Shareholder Liaison function adequate and what changes could be made to improve how it functions?

10. Whilst the precise role of the Shareholder Liaison Service was not always understood by participants, most had a good sense of the role and were, on balance, very content with how the Shareholder Liaison Service discharges its duties.
11. There was a clear sense of the role of Shareholder Liaison Service before the Holding Company was expanded. However, there were some respondents who felt that, following the expansion of the Holding Company, there were blurred lines and an element of duplication of activity. This seemed to relate to the development of business plans, the development and submission of papers for the SHG, work on budgets and other financial issues. Some respondents have noted that since the 'expansion' of Holding Company they have less visibility of the Shareholder Liaison Service so did not have an up-to-date view.
12. In its previous set up the Shareholder Liaison Service had 'its fingers in a lot of pies', including their operational and financial performance. However, this seemed to have worked well as many complimented the 'old' Shareholder Liaison Service on its ability to manage many complex relationships, especially those between the companies, and the Shareholder Representative.
13. Under the previous Shareholder Liaison Director the Shareholder Liaison Service did more of the work that the Holding Company does now but it was done in what respondents described as a light touch manner.
14. As with the Strategic Client, the sense of the Shareholder Liaison Service depends on who you are. The Shareholder representative and Shareholder Group are very aware of the Shareholder Liaison Service and indeed very dependent on it. The Cabinet and Councillors also know and respect the Shareholder Liaison Service but have a less well-developed sense of the precise role. It is at the company level that knowledge and

understanding of the role of the Shareholder Liaison Service weakens with some seeing it as the secretariat for the SHG rather than having a direct role in their governance.

15. Respondents were very complimentary as to the scale of the work undertaken by the Shareholder Liaison Service and their ability to manage multiple stakeholders in very tight timeframes. Several noted that they were also impressed with the increased 'technical' output from the Shareholder Liaison Service.
16. It was suggested that the Shareholder Liaison Service has two orientations; one to the companies and one to the Shareholder Representative and council. It was felt the internal focus was underdeveloped compared to the relationship with the companies. This may be due to the respondents not being aware of the full extent of the Shareholder Liaison Service role and having limited visibility to the work Shareholder Liaison Service do to support the Shareholder Representative and more specifically Cabinet. As with other findings, better articulation of roles and communication of specific activities should resolve this issue.
17. One respondent asked if Shareholder Liaison Service reports into the right place, for example whether it should be reporting to Executive Director: Growth and Regeneration or to BCC Finance.
18. It is seen by the respondents that the Shareholder Liaison Service lead on 'explaining' and 'policing' the Reserved Matters but it is understood that they do so on behalf of the Shareholder Representative.

C. Is the Holding Company's role adequate and what changes could be made to improve how it functions?

19. There has been universal support and praise from the respondents for the role of Holding Company since it was set up. This is especially true in the context of BE 2020 where Holding Company is credited with making a very significant contribution to the successful sale of the company.
20. Respondents noted that the Holding Company has made a significant change to how the council exercises its governance and oversight of the companies despite not having the powers normally associated with a Holding Company. There is a view that Holding Company and its Board have brought independence, expertise, and professionalism.
21. However, with just three companies under Holding Company (BWC, Goram Homes and BHN) many respondents (not just the companies themselves) questioned the financial viability of a Holding Company at this time. This has been reflected in concerns raised by council officers as to the cost of the Holding Company and options have already been presented to address its cost base in the immediate timeframe (for example, the Holding Company Efficiency & Effectiveness Paper).
22. Respondents recognised that if the Holding Company is disbanded then a 'governance gap' would arise and it is not obvious if there is a cost-effective way to bridge this gap. This gap includes both the commercial and financial expertise but also the sense of some 'independent' challenge on behalf of the Shareholder representative.

23. Respondents noted the fact that the three companies left within the Holding Company Group are very different so it may be hard for the Holding Company to generate many synergies between them. All of these companies now have an established Strategic Client and Operational Clients and/or Sponsors, and it is this client function that should run and monitor the operational and service delivery aspects of these three companies.
24. Respondents had a mixed view concerning the Holding Company expanding its role with a shared services platform. It was felt this was not an option given the unique nature of the three companies that exist today.
25. Respondents commented on the inherent tension between the Holding Company and the Companies with an inevitable sense that the Holding Company is getting involved in company business and delaying things. They also note that the Holding Company has general skills, not sector-specific skills and so, therefore, are not as well placed to comment on operational issues.
26. Most respondents felt quite strongly that BCC needs to decide what it wants. There is universal support for the type of work the Holding Company does but less support for the cost of the work.
27. One respondent expressed concerns about the ability of the Holding Company to be independent as it reports to the council's chief executive. There has been a concern that the Holding Company officers are acting as shadow directors (this has been subject to legal advice). This is in contrast with the view as expressed already that the Holding Company does bring a very significant and valuable layer of scrutiny and oversight to the companies.
28. Several respondents noted that the Holding Company risk register has been a very good addition to the governance framework. However, it is not clear where this fits with the company-specific risk register or shareholder representative/council risk registers.
29. It is clear from interviews that there are mixed views in relation to the role and 'authority' of the Holding Company and with most Reserved Matters resting with the Shareholder representative and other powers resting with the Strategic Client and the companies themselves it is hard to see the precise authority of the Holding Company under the current model.

D. Has the review highlighted material barriers to the effectiveness of the existing governance arrangements?

30. Most of the issues were addressed in the three previous questions. Some additional findings are included below.
31. Many respondents felt that the experience with BE 2020 has been exceptionally negative for all involved and it will be hard to get traction around the commercial companies in the future.
32. Several respondents commented that there is a lack of trust amongst key stakeholders.
33. It was noted that BCC Finance could be involved earlier and more frequently as it has a very critical contribution to make. It was felt that there may be scope for more of the finance team to lead out with the companies to relieve the burden on the s 151 Officer.

34. Various respondents asked questions about the governance arrangements for City Leap. For example, participants noted the importance of the council having the knowledge and experience to participate in a very complex joint venture, and how the entity would be governed, from the council's perspective, if it is not a subsidiary of the Holding Company. Detailed questions about Board compositions were also raised.
35. Respondents noted the importance of effective stakeholder engagement across the Group and emphasised the importance of discussions with the Shareholder representative, the Strategic Client and the council's chief executive.
36. Some respondents noted they would welcome increased visibility of what the Holding Company presents on their behalf to the Shareholder Representative and/or the Strategic Client.
37. The respondents welcomed this review as an opportunity to establish clear roles and responsibilities across the Group to promote good governance.

Appendix F References

Branch Guide to Local Authority Trading Companies, Unison (2013), available here: <https://www.unison.org.uk/content/uploads/2013/06/On-line-Catalogue212753.pdf>

Commercial Councils: The rise of entrepreneurialism in local government, Localis (2015), available here: [localis - commercial councils final.pdf](#) Enterprising Councils – Supporting Council’s Income Generation Activity, Local Government Association (2017), available here: [enterprising-councils-dc3.pdf \(local.gov.uk\)](#)

In good company - Latest trends in Local Authority Trading Companies, Grant Thornton (2018), available here: [In good company: Latest trends in local authority trading companies \(grantthornton.co.uk\)](#)