

To: Scrutiny Committee
Date: 14 July 2021
Report of: Head of Law and Governance
Title of Report: Review of company governance

| Summary and recommendations | |
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| Purpose of report: | To update the Scrutiny Committee on proposed changes to the democratic governance arrangements for the Council owned companies. |
| Key decision: | No |
| Cabinet Member: | Councillor Susan Brown, Leader and Cabinet Member for Inclusive Growth, Economic Recovery and Partnerships |
| Corporate Priority: | All |
| Policy Framework: | Council Strategy 2020-24 |
| Recommendation(s): That the Scrutiny Committee resolves to: | |
| <ol style="list-style-type: none"> 1. Note the revised executive arrangements for the governance of the Council's companies and joint ventures. 2. Note that proposed changes to the Constitution will be presented to the 26 July Council meeting following consultation with political groups. 3. Agree how Scrutiny will engage with the shareholder function under these revised arrangements, with reference to paragraphs 16-19. 4. Agree to amend the Scrutiny Operating Principles to remove the rule that Standing Panel and Review Group Chairs must be members of the Scrutiny Committee and instead state that Standing Panel and Review Group Chairs will be accountable to the Scrutiny Committee. | |

| Appendices |
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| None |

Introduction and background

1. The Council has established the following companies and joint ventures to undertake specific functions:
 - Oxford Direct Services: Oxford Direct Services Limited (ODSL) and Oxford Direct Services Trading Limited (ODSTL)

- Oxford City Housing Limited (OCHL) and its subsidiary investment and development companies OCH(I)L and OCH(D)L
 - Oxford West End Development Limited (OxWED) (owned jointly with Nuffield College)
 - Barton Oxford LLP (BOLLP) (a partnership vehicle in which the Council has joint responsibility but no shareholding)
2. The responsibility to represent the Council as shareholder of its wholly and partly owned companies is an executive function under the Council's Constitution (Part 3.7). As such the Leader may determine how this function is discharged.
 3. To date this function has been undertaken by the Shareholder and Joint Venture Group (SJVG) (previously "Shareholder Group"), with membership comprising all members of Cabinet.
 4. The Scrutiny Committee established the Companies Scrutiny Panel to scrutinise the work and decisions of the SJVG. The Companies Scrutiny Panel has met prior to SJVG meetings to review SJVG agendas, take advice from officers and company representatives and make comments and recommendations to the SJVG.
 5. The Scrutiny Committee on 8 June 2021 agreed to re-establish the Companies Scrutiny Panel with an increased membership of 6 members (previously 4) and requested a report from officers on the proposed changes to company governance arrangements.

Review of company governance

6. The Council's arrangements for the governance of its companies have recently been subject to an audit by the internal auditors, BDO. The audit report recommended, among other things, a review of the role of the Companies Scrutiny Panel and the timing of its meetings. The auditor's recommendations and the management response to those recommendations will be reported to the Audit and Governance Committee on 29 July 2021.

Changes to shareholding arrangements

7. Having considered the audit report and consulted with officers and members, including the Chair of the Companies Scrutiny Panel for 2020/21, the Leader has confirmed the following changes to the functioning of the SJVG for 2021/22:
 - Membership of the SJVG to be a sub-set of Cabinet membership (previously all members of Cabinet).
 - All members of the Companies Scrutiny Panel to be invited to attend and contribute at SJVG meetings as attendees with speaking rights (Scrutiny members would attend in an advisory capacity with no voting rights).
 - Frequency of meeting cycles to reduce from 4 to 3 cycles per year (e.g. July, November & March).
 - Separate SJVG meetings to be held for ODS and the other three companies and joint ventures in each meetings cycle.
 - Increase in the number of scheduled meetings from 4 to 6 per year (i.e. 3 cycles with 2 meetings per cycle).

8. The terms of reference for the SJVG will be amended to reflect the changes notified by the Leader.
9. The SJVG meeting originally scheduled for 23 June has been cancelled and two replacement meetings have been scheduled for 27 July (ODS) and 28 July (OCHL, OxWED and BOLLP). Meeting dates for subsequent cycles (November 2021 and March 2022) are to be confirmed.

Proposed amendments to the Constitution

10. It will be necessary for Council to consider amending the Constitution to reflect the changes described in paragraph 7 where these are in conflict with the Constitution as currently worded. It is proposed that, following consultation with political groups, a report will be presented to Council on 26 July ahead of the SJVG meetings on 27 July (ODS) and 28 July (OCHL, OxWED and BOLLP). Members will be asked to consider the changes described in the following paragraphs.
11. Part 3.7(c) of the Council's Constitution sets out the shareholding arrangements for the Council's companies. It currently states that the SJVG will meet on a quarterly basis with membership comprising all members of Cabinet. This section will need to be amended in view of the changes described paragraph 7.
12. To future-proof Part 3.7 of the Constitution and to provide for visibility of the shareholding arrangements it is proposed to include the revised terms of reference for the SJVG as an annex to Part 3 of the Constitution. Part 3.7(c) would be amended to state that the SJVG will meet at least twice per year. This would be a minimum frequency to provide for good governance and oversight of the companies without being too prescriptive given that the frequency of meetings is a matter for the Leader.
13. Under the previous shareholding model the individual companies were accountable to the SJVG and the SJVG was accountable to Scrutiny. Parts 3.7(c) and 8.3(b) of the Constitution state that the individual companies will not be directly accountable to the Scrutiny Committee. Under the revised model it is envisaged that members of the Companies Scrutiny Panel would be in attendance at SJVG meetings to hold the companies to account directly. It is also considered that the role of Companies Scrutiny Panel should not be limited to scrutinising the decisions of the SJVG, rather that Scrutiny should be able to scrutinise the companies themselves. It is proposed to amend the Constitution accordingly.
14. The Scrutiny Committee has a rule that chairs of standing panels (such as the Companies Scrutiny Panel) and review groups must be members of the Scrutiny Committee. This rule originated from the Committee's operating principles and was included within Part 8.2 of the Constitution by Council on 17 February 2021. Members have subsequently made representations to the Head of Law and Governance that this rule is overly restrictive and would rule out members with particular expertise from chairing these bodies if they were not on the Scrutiny Committee. Removing this rule would also increase the number of members able to participate in the Scrutiny function. The Committee is asked to agree to remove this rule from its Operating Principles 2021/22 and, if agreed, it is proposed to remove the rule from the Constitution and instead state that the chairs of standing panels and review groups will be accountable to the Scrutiny Committee.

15. It is also proposed to include the Scrutiny Committee’s Operating Principles within the Constitution as an annex to Part 8: Role of the Scrutiny Committee. This would improve the standing and visibility of the operating principles, which are presented for agreement at the first meeting of the Scrutiny Committee in each Council year.

Scrutiny function

16. The Scrutiny Committee has re-established the Companies Scrutiny Panel and it is for Scrutiny to determine how the Panel will engage with the revised shareholding arrangements.
17. Previously the Companies Scrutiny Panel received SJVG papers when these were published for SJVG meetings and would meet a few days before the SJVG to discuss those papers and agree any recommendations. Under the revised arrangements papers will be made available to Scrutiny earlier and there would be a longer gap between Companies Scrutiny Panel and SJVG meetings for any Scrutiny report to be produced and for the SJVG to consider and respond to any recommendations.
18. 20 July has been earmarked as a date for a Companies Scrutiny Panel meeting in advance of the SJVG meetings on 27 (ODS) and 28 July (OCHL, OxWED and BOLLP). It is for Scrutiny to determine whether the Panel will scrutinise all papers for both SJVG meetings or to be more selective about the focus of these meetings. The Committee may wish to agree a focus or leave this to the Chair of the Companies Scrutiny Panel.
19. Scrutiny may wish to hold back to back Companies Scrutiny Panel meetings on 20 July to consider the business for the two SJVG meetings separately. However, it is not recommended that the Panel meets twice on different dates in July because the Council calendar is very busy and doing so would place additional demands on the members of the Companies Scrutiny Panel, who will also be invited to attend the two SJVG meetings.

Legal issues

20. Shareholding is an executive function under the Council’s Constitution and must be discharged in accordance with the requirements Section 9E of the Local Government Act 2000. Executive functions are open to scrutiny and it is for Scrutiny to determine how it wishes to engage in the shareholder function. Effective scrutiny is an important component of good governance and Scrutiny has an important role to ensure, on behalf of the Council and the public, that Council Companies are able to be successful and deliver their intended commercial and social objectives.

Financial issues

21. An overall increase in the number of meetings does have resource implications, particularly in the form of officer time which has an opportunity cost. The direct financial costs of holding additional meetings can be met from existing budgets for 2021/22 and would need to be reviewed for future years.

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| Background Papers: None |
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