

5 July 2021		ITEM: 6
General Services Committee		
Thurrock Regeneration Limited		
Wards and communities affected: All	Key Decision: Key	
Report of: Mark Coxshall, Portfolio Holder for Regeneration, Strategic Planning and External Relationships		
Accountable Assistant Director: Colin Black, Assistant Director of Place Delivery		
Accountable Director: Sean Clark, Corporate Director Resources and Place Delivery		
This report is Public		

Executive Summary

Thurrock Regeneration Ltd (TRL) is a wholly owned company of Thurrock Borough Council (TBC). On the 29 March 2017, TRL set up a subsidiary company under the name of Thurrock Regeneration Homes Ltd (TRHL). Within the Council, the General Services Committee (GSC) acts as the shareholder of TRL.

TRL initially had a Board of Directors which was comprised of 3 Council officers and 1 external party (Homes England). All Directors have now resigned from their posts and there is a need to replace the Board to ensure the effective administrative management and to develop and grow the company, in order to contribute to the delivery of quality housing in the borough and to assist in urban regeneration.

A report was discussed at GSC on 19 January 2021, with the following recommendations agreed:

- That the Committee appoints the Director of Place to attend the Shareholders meeting of TRL as the Council's nominated proxy and vote on their behalf;
- Approve the change to the TRL Articles of Association;
- Appoint Roger Harris as a Director to TRL;
- In appointing a single director that such director shall refrain from taking any action other than action required to comply with the Companies Act 2006 for example, filing accounts, until a new company structure and Board is agreed by members and implemented;
- The Committee authorises the Director of Place to write to TRL on behalf of the Shareholder and request that it uses its shareholder powers to ensure that the subsequent bullet points are undertaken for TRHL; and

- The Committee notes a further report on the future governance structure of TRL will be brought back to this Committee at the earliest opportunity.

Roger Harris was duly appointed as a Director of TRL on 26 January 2021.

The Corporate structure of the Council changed on 1 April 2021 with housing delivery and regeneration being moved to the Resources and Place Delivery Directorate. Therefore it is proposed that the Director of Resources and Place Delivery will in future be the Council's nominated proxy and vote on their behalf.

This report discusses the future governance structure of TRL:

1. Recommendations

1.1 That the Committee appoints the Corporate Director of Resources and Place Delivery to attend the Shareholders meeting of TRL as the Council's nominated proxy;

1.2 That the Committee directs the Corporate Director of Resources and Place Delivery to vote on behalf of the shareholder:

1.2.1 To agree the proposed future TRL governance and Board structure in consultation with the Director of TRL;

1.2.2 To agree that the Director of TRL can implement an agreed structure for the Board and TRL can commence the recruitment process of Directors to its Board;

1.2.3 To ensure Directors of TRL can undertake their statutory responsibilities to make decisions in the best interests of the company; and

1.2.4 To implement a revised Scheme of Delegation to provide certainty of governance and decision making for the company and the shareholders.

2. Introduction and Background

2.1 TRL was incorporated as a Limited Company on 23 October 2013, and formally agreed by Cabinet on 13 November 2013. It is 100% owned by the Council.

2.2 The company had a Board of Directors which was comprised of 3 Council officers and 1 external party (from Homes England). All Directors have resigned from the Board, principally due a conflict of interests with their own Council roles. Officers have a duty to act in accordance with the Constitution and the employee Code of Conduct. As Directors, they also have a legal duty under the Companies Act 2006 to act in the best interests of the Company. There is a significant risk of a conflict between the two which often cannot be reconciled. This report discusses a business operating model for Company governance and taking the Company forward.

2.3 TRL Board, Other Housing Company Boards, Aligning Interests

- 2.3.1 The current articles of association for the company provide a structure of a maximum of five directors, a company secretary and various consultants (e.g. legal and finance). The deciding vote rests with the Chairperson of the Board.
- 2.3.2 A study of different local authority housing delivery vehicles and their governance has been researched. The study revealed that the delivery vehicles varied in form, structure and composition. However, what was noted was the need for these companies to be independent and agile in their ability to respond to market forces and make decisions. In addition, the study noted the need to ensure the respective Boards were resourced with the necessary skills and experience to scrutinise recommendations and make qualified decisions.
- 2.3.3 The Board should regularly undertake a skills audit to ensure that it has an appropriate balance of skills and experience appropriate for the type of company they are running. This is likely to include people that collectively have commercial, financial, business development, legal and HR experience. Those skills may either be demonstrated by people nominated by the local authority or by the company employing non-executive directors.
- 2.3.4 It is evident that the TRL Board would need to evolve as its development programme and profile grows e.g. the employment (full/part time) of a Managing Director.
- 2.3.5. At present, TRL is a wholly owned company with a subsidiary (TRHL) – TRL's optimal position would be to develop and sell the assets, however it is flexible in bringing new development and a diversity of tenure to the market as long as it is financially viable and supports the company's business plan.

3. Issues, Options and Analysis of Options

3.1 TRL Governance Principles

- 3.1.1 Corporate governance is one of the most important aspects of running a successful business. An effective corporate governance structure can lead to:
- Better access to favourable strategic transactions, such as finance;
 - Improved performance of the business;
 - Reduced risk of corporate crisis or scandal;
 - Better shareholder relationships and investor confidence; and
 - A favourable professional reputation in the industry, which often leads to a higher valuation of the business.
- 3.1.2 It is proposed that TRL base its governance principles on the UK Corporate Governance Code (July 2018 edition). A summary of principles and provisions is detailed in Appendix 1.

4. Board of Directors and its Structure

- 4.1 The responsibilities of the Board include setting the company's strategic aims, providing the leadership to put them into effect, supervising the management of the business and reporting to shareholders on their stewardship.
- 4.2 The current articles of association for the company provide a structure of a maximum of five directors, a company secretary and various consultants (e.g. legal and finance).
- 4.3 If further changes are required e.g. increasing the number of directors or as discussed above, a scheme of delegation, this will require a further change to the articles of association. This would be undertaken at a shareholders meeting at which the Committee is asked to nominate the Corporate Director of Resources and Place Delivery to attend and vote on its behalf to change the Articles of Association.
- 4.4 The following options give an overview of types of Board compositions detailing key advantages, disadvantages and perceived areas of risk, along with ways of overcoming these risks. A more detailed table can be found in Appendix 2:
- 4.5 Option 1: Fully Independent Board
 - 4.5.1 Under this option, all directors would be recruited independently for the skills and expertise they would bring to the company, helping to bring a commercial culture to the organisation.
 - 4.5.2 This would provide 'distance' between key council decision-makers and the company's decision-makers to ensure there is no conflict of interest.
 - 4.5.3 Directors could be recruited from commercial businesses, local communities and from relevant national organisations such as Homes England.
 - 4.5.4 To ensure that the objectives of the company are aligned with the council's Corporate Plan, the council as shareholder would have a significant role to play.
 - 4.5.5 The shareholder function would also ensure that the company is held to account and challenged appropriately.
 - 4.5.6 This option is recommended.
- 4.6 Option 2 – Officer Led Board
 - 4.6.1 This option is the model that was previously in place with TRL Ltd.

4.6.2 Aligning TRL strategy with the council's corporate objectives would be easier as council officers will have a strong understanding of council priorities.

4.6.3 However, as set out above, this model caused conflict of interest as Council Officers were required to make decisions in the best interest of the company which may conflict with council decisions.

4.6.4 Liability could also arise through (among other things) the parent authority being treated as a "shadow director" of the company.

4.6.5 For the reasons set out at the start of this report, this option is not recommended.

4.7 Option 3 - Councillor Led Board

4.7.1 Aligning TRL strategy with the council's corporate objectives would be easier as councillors will have a strong understanding of council priorities.

4.7.2 Councillors are also the voice of the local community and will fully understand local need.

4.7.3 However, this model could cause conflict of interest as Councillors would be required to make decisions in the best interest of the company which may conflict with council decisions.

4.7.4 Councillors involved with the company as a director, may have to step aside from decision making regarding TRL within the council to avoid conflict of interest, meaning expertise may be lost in council debate.

4.7.5 Liability could also arise through (among other things) the parent authority being treated as a "shadow director" of the company.

4.7.6 For the reasons set out above, this option is not recommended.

4.8 Option 4 - Partnership Board

4.8.1 This option would have a mixture of independent directors and councillors on the board.

4.8.2 This would mean that there was an understanding of both company and Council objectives, issues and potential solutions.

- 4.8.3 However there would still be a possible conflict of interest as Councillors would be required to make decisions in the best interest of the company which may conflict with council decisions.
- 4.8.4 As for option 3, Councillors involved with the company as a director, may have to step aside from decision making regarding TRL within the council to avoid conflict of interest, meaning expertise may be lost in council debate.
- 4.8.5 To avoid possible conflict of interest, this option is not recommended.
- 4.9 It is recommended the shareholders agree to an Independent Board (Option 1) to ensure there is minimal conflict of interests. The recruitment of additional Directors can be undertaken by the current Director of TRL in consultation with the shareholders.
- 4.10 The company's profile would be enhanced by appointing external individuals with specific skills in housing, legal and finance fields, as Board directors. The Board should regularly undertake a skills audit to ensure that it has an appropriate balance of skills and experience appropriate for a housing development company.
- 4.11 The shareholder function would ensure that the company supported the wider corporate vision and priorities and would be able to hold the company to account via the General Services Committee. This is set out in more detail under section 6.

5. Recruitment Process

- 5.1 The recruitment of Directors to the TRL Board should be undertaken by the current TRL Director, in consultation with the shareholders.
- 5.2 Any director of TRL appointed will also be a director of TRHL (unless TRL decides otherwise)
- 5.3 It is recommended any external directors are remunerated. TRL is currently looking at its business plan to see if such costs can be absorbed.
- 5.4 The Board will continue to be assisted by advisors consisting of Council officers under Service Level Agreements to provide Finance, Housing development and Property advice/support. Additional legal support may be required at specific times.
- 5.5 The Company Development Manager, the only permanent full time appointed officer of the company also acts as the Company's Secretary for both TRL and TRHL.

6. Governance Relationship with Shareholder – Scheme of Delegation

- 6.1 It is important TRL is given the freedom, flexibility and responsibility to deliver against the agreed outcomes with appropriate and effective governance from the Council.
- 6.2 The Council will retain its position as the company's shareholder and through the General Services Committee, will agree TRL's strategic objectives.
- 6.3 It has been agreed by Council that individual decisions on project lending are taken by the S151 officer in line with all other investment decisions. Those decisions would be guided and informed by periodic updates to relevant council committees. This approach is in line with the principles within the Treasury and Investment paper agreed by Council on 25 October 2017.
- 6.4 The Board would be responsible to the shareholder, which in this case is solely the Council. The Board would therefore be reporting back to the shareholder through annual reporting statements to the Council's Cabinet.
- 6.5 It is recommended TRL provide a revised Scheme of Delegation to ensure certainty of governance and decision making for the company and the shareholders.
- 6.6 The Scheme of Delegation sets out the scope and powers of the Company. The Scheme of Delegation would list activities, typically split into corporate, financial and operational matters, together with the level of authority required for each activity (i.e. Council consent, Board consent, Individual Director Consent etc.). This Scheme of Delegation could be incorporated/enforced in a number of ways:
 - Reference in the Articles of Association and any management agreement between the Council, the Director and the Company;
 - The Articles of Association of the Company could be updated to reference the Scheme of Delegation;
 - The GSC (as sole shareholder), will need to approve the resolution to amend the Articles;
 - The Articles are effectively a contract between the Company and the Council (as the sole shareholder. The Director(s) will have duties to act in the best interests of the Company, and as sole shareholder, the Council will have power to remove a Director at any point; and
 - A scheme of delegation would also be referenced in any the Director's Employment Contract (if relevant).

7. Internal Governance Process

- 7.1 TRL has established a series of controls to govern the management, development and delivery of projects. This includes a set of parameters within which TRL would gain approvals from Thurrock Council in respect of scheme selection, property transfers and finance. As TRL takes on more sites

and increases activity it is critical that it can make decisions effectively and efficiently.

- 7.2 Given the company's scale, all decisions are made by the Board and in accordance with other adopted company policies (such as its procurement policy).

8. Reasons for Recommendation

- 8.1 There is a need for a Board of Directors to be appointed for the effective and proper decision making required to operate TRL effectively.

9. Consultation (including Overview and Scrutiny, if applicable)

- 9.1 A report relating to Housing Delivery options was considered at Housing Overview and Scrutiny Committee on 17 November 2020

10. Impact on corporate policies, priorities, performance and community impact

- 10.1 The proposed approach to the development of new housing aligns closely with the Council's Vision and Priorities adopted in 2018. In particular it resonates with the "Place" theme which focuses on houses, places and environments in which residents can take pride.

11. Implications

11.1 Financial

Implications verified by: **Jonathan Wilson**
Assistant Director, Finance

There are no specific financial implications arising from this report.

11.2 Legal

Implications verified by: **Ian Hunt**
Assistant Director of Law and Governance and Monitoring Officer

The report sets out the process to make an amendment to the Articles of Association e.g. if more than 5 directors are required, or incorporating a scheme of delegation. As, currently, there is only one Director of the company it is advisable that the future operating model of the company is looked at as soon as possible to increase the number of directors on the Board to provide more resilience and improved accountability in decision making.

11.3 Diversity and Equality

Implications verified by: **Roxanne Scanlon**
**Community Engagement and Project
Monitoring Officer, Community Development
and Equalities**

There are no Diversity and Equality implications arising from this report.

11.4 Other implications (where significant) – i.e. Staff, Health, Sustainability, Crime and Disorder)

Not applicable

12. Background papers used in preparing the report (including their location on the Council's website or identification whether any are exempt or protected by copyright):

- Articles of Association filed at Companies House

13. Appendices to the Report

- Appendix 1 - UK Corporate Governance Code (July 2018 edition). A summary of principles and provision
- Appendix 2 - Options the TRL Board

Report Author:

Helen McCabe
TRL Development Manager and TRL Company Secretary.

UK Corporate Governance Code (July 2018 edition). A summary of principles and provision

Board leadership and Company Purpose: Provisions

- An effective and entrepreneurial Board, whose role is to promote the long-term sustainable success
- Align purpose, values and strategy and culture. All directors must act with integrity
- Necessary resources are in place for the company to meet its objectives through a controls and performance framework
- Ensure effective engagement with, and encourage participation with shareholders and stakeholders.
- Ensure that workforce policies and practices are consistent with the company's values and support its long-term sustainable success.

Division of Board Responsibilities: Provisions

- The chair leads the Board and is responsible for its overall effectiveness in directing the company
- The Board should include an appropriate combination of executive and independent (non-executive) directors. There should be a clear division of responsibilities between the leadership of the Board and the executive leadership of the company's business
- Non-executive directors should provide constructive challenge, strategic guidance, offer specialist advice and hold management to account
- The Board, supported by the company secretary, should ensure that it has the policies, processes, information, time and resources it needs in order to function effectively and efficiently

Composition, Succession and Evaluation: Provisions

- Appointments to the Board should be subject to a formal, rigorous and transparent procedure, with an effective succession plan
- The Board should have a combination of skills, experience and knowledge. Consideration should be given to the length of service of the Board as a whole and membership regularly refreshed
- Annual evaluation of the Board should consider its composition, diversity and how effectively members work together to achieve objectives

Audit, Risk and Internal Control: Provisions

- The Board should establish formal and transparent policies and procedures to ensure the independence and effectiveness of internal and external audit functions
- The Board should present a fair, balanced and understandable assessment of the company's position and prospects.
- The Board should establish procedures to manage risk, in order to achieve its long-term strategic objectives.

Remuneration

- Remuneration policies, procedures and practices should be designed to support strategy and promote long-term sustainable success.

Appendix 2

Options the TRL Board

Option 1: Independent Board		
Advantages	Disadvantages	Risk / Perceived Conflict
<p>'Distance' between key council decision-makers and the company decision-makers to ensure actions are in the best interests of the company</p> <p>Help to develop the all-important commercial culture needed to make such ventures a success</p> <p>Use their independent judgement</p> <p>Being business friendly – to promote local economic growth and prosperity</p>	<p>Lack of understanding of Council objectives and Council decision making processes</p>	<p>Objectives of the company are not aligned with those of the Council</p>
Option 2: Officer Lead Board		
Advantages	Disadvantages	Risk / Perceived Conflict
<p>Understanding of Council objectives, policies and processes</p>	<p>It is therefore very important that directors have a clear understanding of 'which hat they are wearing' at any time.</p> <p>Liability could arise through (among other things) the parent authority being treated as a "shadow director" of the company. In effect, such interference could cost the parent authority the protection it would otherwise have had through using a limited liability trading company</p> <p>Potential lack of leadership</p>	<p>Conflict of interests between Council and Company objectives</p> <p>Unable to make 'in the best interest' decisions for the company.</p> <p>Pressures in terms of public duties and employment requirements – particularly if there are issues or decisions e.g. funding and/or support</p> <p>Both the directors of the company, and the parent authority, could expose themselves to liability if they simply cause the company to do the parent authority's bidding</p>

Option 3: Cllr Led Board		
Advantages	Disadvantages	Risk / Perceived Conflict
Understanding of the community issues and expectations	<p>Liability could arise through (among other things) the parent authority being treated as a “shadow director” of the company. In effect, such interference could cost the parent authority the protection it would otherwise have had through using a limited liability trading company</p> <p>Potential lack of leadership</p> <p>Potential lack of required skill set</p>	Conflict of interests between Council and Company objectives
Option 4: Partnership Board		
Advantages	Disadvantages	Risk / Perceived Conflict
<p>Understanding of both company and Council objectives, issues and potential solutions.</p> <p>The ability to co-opt specific housing, especially private sector housing.</p> <p>Potential local community buy-in (if Board members are from the community), specific expertise grounded in Thurrock</p>	Lack of leadership and the resolution to make timely decisions	Conflict of interests between Council and Company objectives

Whatever form a Board takes, as a whole, the directors should provide for a complementary blend of strategic, practical and operational experience.

It is also recommended to adopt a formal conflicts policy (e.g. Management Agreement) to address conflicts between the local authority and the company and between the different roles of the local authority.