

CABINET

THURSDAY, 22ND JULY, 2021

At 7.00 pm

in the

GREY ROOM - YORK HOUSE, WINDSOR

SUPPLEMENTARY AGENDA

PART I

<u>ITEM</u>	<u>SUBJECT</u>	<u>PAGE NO</u>
v.	Review of Council Governance of PropCo	3 - 34

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Report Title:	Review of Council Governance of PropCo
Contains Confidential or Exempt Information	No - Part I
Cabinet Member:	Councillor Andrew Johnson, Leader of the Council and Chairman of Cabinet, Business, Economic Development and Property
Meeting and Date:	Cabinet - 22 July 2021
Responsible Officer(s):	Duncan Sharkey, Chief Executive
Wards affected:	All



REPORT SUMMARY

1. In June 2020, CIPFA reported to Cabinet on their governance review including financial management arrangements of the Council and an action plan was developed to respond to issues that they raised. One of the actions identified was to 'Review current partnership arrangements with the property company and to identify common purpose and goals for both partners'. This review supports this action.
2. The Council commissioned 31ten Consulting Limited (31ten) to undertake a review of the current governance arrangements in the Council for managing the RBWM Property Company (PropCo). They were asked to highlight both best practice examples as well as areas where the current arrangements could be improved.
3. Their detailed report has been finalised and Cabinet are asked to consider the issues that they have raised as well as approve some initial actions.
4. The overall impact of the Report should this report be accepted will be to restate the Council's objectives for the PropCo and improve the transparency of the arrangements.

1. DETAILS OF RECOMMENDATION(S)

RECOMMENDATION: That Cabinet notes the report and:

- i) **Asks the Chief Executive to develop an action plan, in consultation with the Leader of the Council and Chairman of Cabinet, Business, Economic Development and Property to respond to the issues raised in the review of governance at the Council in relation to the RBWM Property Company (PropCo)**
- ii) **Requests Corporate Overview and Scrutiny Panel to consider and monitor the action plan that officers develop and to form part of the Annual Governance Statement Action Plan for this year.**
- iii) **Delegates to the Chief Executive to make suitable arrangements in relation to setting up a client-side function within the Council and identify a suitable lead officer to take on this role**

- iv) **Agrees that the overall purpose of the RBWM Property Company (PropCo) should be as originally approved in 2016 and amended to include consultancy support for the Councils contractual property arrangements**
- v) **Agrees that all necessary changes to relevant legal documentation is delegated to the Monitoring Officer to execute on completion of the action plan**

2. REASON(S) FOR RECOMMENDATION(S) AND OPTIONS CONSIDERED

Options

Table 1: Options arising from this report

Option	Comments
To accept the findings of the external review into governance and to ask council officers to take appropriate actions to ensure we are meeting best practice This is the recommended option	The externally commissioned report has provided recommendations based on best practice and this will bring the Council's governance framework in line with that
To not accept the findings of the review and continue as we currently are	This is not the preferred option as this does not reflect best practice and also provides a perceived lack of transparency around the operation of the PropCo

2.1 As part of the response to the CIPFA governance report that was considered by Cabinet in June 2020, a recommendation was made to review the governance arrangements of the PropCo. In March 2021, an external company with expertise in this area were commissioned to consider the following areas:

- Consider the expected governance arrangements as detailed in the source legal documents
- Identify where there is any deviation to processes and identify any potential impacts from these deviations
- Considering latest best practice, suggest improvements identified through other similar reviews
- Learn any lessons from recent Public Interest Reports into governance deficiencies at other council owned companies so that the council can reduce such risks

- Consider potential Key Performance Indicators (KPI's) that could be used to measure the PropCo against typical objectives to ensure that they are relevant, understandable and give a clear indication on risks
- 2.2 The detailed review includes the background to why council companies can be set up and the reasons that they can contribute to council priorities. It also details the specific background around this council's property company.
- 2.3 Overall 31Ten identified no significant risks with the PropCo as the current arrangements do not speculatively fund development unlike other councils. Further the benefits of the PropCo both in terms of value for money, savings/costs avoided and social good are clear to see.
- 2.4 The benefits of the PropCo also include the added value that the company has brought through being able to attract different commercial skills than the Council would otherwise be able to maintain. The PropCo collates a Value for Money log that monitors the additional value brought to the council and since 2017 this indicates savings of over £3.3m. This currently isn't part of the formal monitoring arrangements which should be considered for future performance measures.
- 2.5 In section 3 of the review, governance is considered through 5 different areas:
- Mission, objectives and strategy
 - Responsibility and accountability
 - People and relationships
 - Reporting
 - Risk management

Mission, Objectives and Strategy

- 2.6 In reviewing mission and objectives, it was noted that the original purpose of PropCo when set up in 2016 included the following:
- To provide good quality affordable and private rented housing for keyworkers and others requiring housing
 - To contribute to the general fund surpluses from housing developed and rents received
 - To support demand for housing through the development of council owned sites
- 2.7 In the 2019 business case there was a change of emphasis to include creating a positive income stream and improve capital value and deriving income from property consultancy for and on behalf of the shareholder around regeneration of the borough. The shift was away from building up housing stock for affordable provision and an increasing focus on more commercial business by the way of provision of professional consultancy services.

- 2.8 Officers are, therefore, recommending as part of the decisions for Cabinet to revert back to the original 2016 purposes of the PropCo to recognise that this more closely aligns with the original business case for the setting up of the company. That is, the development and provision of affordable and private rented housing to provide a regular revenue income stream to the Council. This would be amended to include as the fourth objective support for the Council's contractual joint ventures, Property Service and any other Council property arrangements. This rebalances the core offer but maintains benefits from more commercial activity.
- 2.9 The impact of these amendments is to move the focus away from capital value as the primary driver whilst recognising the Council does require some level of property receipts to fund the Medium Term Financial Plan.
- 2.10 There is more detailed work that will need to follow from this report to:
- Approve an updated and revised statement of purpose for the PropCo and make any appropriate changes within relevant company documents
 - Ensure the structure of the PropCo remains optimal for the objectives as they are set
 - Set SMART objectives for the company on an annual basis to ensure they incorporate wider Council objectives and include value for money savings as part of the performance measures

Responsibility and Accountability

- 2.11 31ten identified that the governance arrangements as originally set out in the Shareholder Operating Protocol are appropriate in the whole but have not in practice been adhered to. They also noted that the role of the Shareholder has been carried out by Cabinet to date.
- 2.12 They also identified some positive changes to the way in which the PropCo board operates and has been updated to provide better arms-length arrangements and remove any perception of conflict of interest between officers and the Board's responsibility.
- 2.13 However, it was also highlighted that there is no formal interaction between the PropCo and officers to enable officers to advise Cabinet on the activities of the company and its performance. There has also been some perceived blurring of the lines between activities that the PropCo manages on behalf of the Council, just as other externally commissioned contractors do, but the issues of ownership by the council can cause some confusion. The property services functions performed by PropCo inherently had the potential of conflict between the interests of the Council and PropCo in its current ad hoc structure.
- 2.14 Decision-making protocols included within the overall operating framework also lack clarity over the roles split between the Shareholder, Cabinet and

Council responsibilities.

2.15 The recommendations that the Council will need to include within their action plan cover the following areas:

- Consider the roles of Shareholder function and where this sits. The recommendation is that Cabinet absorbs that role but having the benefit of receiving reports and recommendations from officers of the Council who will provide professional advice in respect to PropCo performance, services or proposals.
- Ensure there is no crossover of membership between the Board and the Shareholder but recognise the importance of attendance of non-voting officers
- Clarify Member and officer roles and subsequent decision-making framework, scrutiny functions and giving clear direction to the PropCo

2.16 One further recommendation was made to establish a client-side function within the Council and Cabinet are recommended to ask the Chief Executive to identify a suitable lead officer to co-ordinate that function with the officer group in the Council.

People and Relationships

2.17 The review highlighted the need to ensure that in all roles across the PropCo, with officers and Members that there is sufficient knowledge of roles and responsibilities and included a recommendation about additional training being provided.

Reporting

2.18 The review recognises that there was a difference between the reporting requirements and expectations for the PropCo, for those in charge of regeneration and for the Council as a Shareholder.

2.19 There are a number of areas where reporting could be improved and the Council are recommended to review:

- The reporting frequency of PropCo activities within the council
- Ensure there are sufficient milestones to hold the PropCo board to account for delivery

Risk Management

2.20 The review differentiated between the operational risks that are monitored at Board level to ensure that the PropCo operates independently and strategic risks that the Council needs to address.

2.21 In terms of being able to consider strategic risk, this aligns with the need to review other key performance information and as part of that, risk management needs to be considered.

3. KEY IMPLICATIONS

3.1 In responding to the external review by 31ten, Cabinet are asked to approve some immediate actions that can be enacted as soon as possible. These include:

- the Chief Executive appoints suitable resource within the Council to act as a client-side function
- reverting to the original 2016 purposes of the PropCo in relation to the provision of housing. This purpose will be refined further to be reviewed by Cabinet in the next business plan cycle.

3.2 A more detailed action plan will be developed by officers to respond to all other recommendations in the report. Once this is developed this will be considered by Corporate Overview and Scrutiny Panel to ensure that all recommendations by the external advisor have been fully considered and will form part of the Annual Governance Statement Action Plan.

3.3 The main areas that the action plan for PropCo will cover are:

- Restate and refine the main objectives
- Ensure that the structure remains optimal according to those objectives
- Ensure that the decision-making framework reflects the objectives
- Ensure that reporting, especially to fulfil the shareholder function of the Council, is improved as well as providing sufficient opportunity for scrutiny by wider members.
- Ensure that any necessary changes are reflected in the legal documents with the Council

4. FINANCIAL DETAILS / VALUE FOR MONEY

4.1 There are no specific financial consequences directly related to this review, however there will be additional costs arising from the redrafting of any legal arrangements between the PropCo and the Council. In addition, there will be a requirement for some additional officer time to be spent as part of the client side. However, it is expected that such duties will be shared by officers who will be co-opted when required by the particular PropCo proposal

4.2 However, through better governance arrangements it is more likely that a broader strategic view can be taken in terms of value for money of the outcomes that can be delivered through the PropCo.

4.3 By developing an action plan in relation to the issues highlighted in the review there is an opportunity to consider the optimum way in which the interactions between the council and the PropCo take place including how to maximise the

value that can be derived from our property related work as well as the potential financial benefit to the Council. It may be appropriate to take specialist legal, financial and tax advice as part of the response to the review. Funding for this will be found through existing resources within corporate budgets.

5. LEGAL IMPLICATIONS

- 5.1 When initially setting up the PropCo, detailed legal advice was taken on the form and function that would have been appropriate at the time and as part of the business case.
- 5.2 The recommendations in this report address improving and clarifying the decision-making framework and that is likely to need an update to the legal agreements between the PropCo and the Council. At the appropriate time, specialist advice will be taken to ensure that all agreements reflect the correct decision-making framework.

6. RISK MANAGEMENT

- 6.1 By identifying appropriate actions in response to the external review by 31ten, the Council will be adhering to current best practice. This therefore reduces the risk that the PropCo does not have clear direction from the Council about the outcomes that it should be achieving, and that the management and overview of the performance of the PropCo is perceived to not be transparent.

7. POTENTIAL IMPACTS

- 7.1 Equalities. Equality Impact Assessments are published on the [council's website](#). An EQIA screening has been undertaken but given this relates to a governance review it has been determined that a full EQIA is not necessary.
- 7.2 Climate change/sustainability - Whilst this report in itself does not have a specific impact on climate change/sustainability, the outcomes that the PropCo deliver will contribute to our corporate objectives around providing accommodation, housing and properties that meet our climate change commitments.
- 7.3 Data Protection/GDPR - There are no issues arising from this report.
- 7.4 Other implications - In developing a detailed action plan in response to this review there may be potential human resources implications around the overall management of property related activity but that will only become clearer at the time of agreeing a formal response. Any required consultation will take place at the appropriate time.

8. CONSULTATION

- 8.1 In conducting their external review 31ten consulted with a broad range of cross party councillors, officers and members of the PropCo board and staff. These are all detailed in Section 1 of the appended report.

9. APPENDICES

- 9.1 This report is supported by 1 appendix:

- Appendix A: External review from 31ten

10. CONSULTATION (MANDATORY)

Name of consultee	Post held	Date sent	Date returned
Duncan Sharkey	Chief Executive	07/07/21	13/07/21
Cllr Johnson	Leader of Council	13/07/21	14/07/21
Andrew Durrant	Executive Director of Place	07/07/21	12/07/21
Kevin McDaniel	Executive Director of Children's Services		
Hilary Hall	Executive Director of Adults, Health and Housing	07/07/21	08/07/21
Andrew Vallance	Head of Finance	07/07/21	13/07/21
Elaine Browne	Head of Law	07/07/21	12/07/21
Emma Duncan	Deputy Director of Law and Strategy / Monitoring Officer	07/07/21	13/07/21
Nikki Craig	Head of HR, Corporate Projects and IT	07/07/21	12/07/21
Louisa Dean	Communications		
Karen Shepherd	Head of Governance		

REPORT HISTORY

Decision type:	Urgency item?	To follow item?
Key decision	No	No
First entered into the Cabinet Forward Plan: 23/06/2021		

Report Author: Adele Taylor, Executive Director of Resources



ROYAL BOROUGH OF WINDSOR & MAIDENHEAD

REVIEW OF COUNCIL GOVERNANCE OF THE PROPERTY COMPANY

FINAL Report
JUNE 2021



CONTENTS

1. Introduction.....	1
2. Background & context	4
3. Governance arrangements.....	7
4. Suggested governance and reporting	19

1. Introduction

INTRODUCTION

- 1.1 The Royal Borough of Windsor & Maidenhead (the Council) has commissioned 31ten Consulting Limited (31ten) to undertake a review of the current governance arrangements in the Council for managing the RBWM Property Company (PropCo) and to highlight any best practice examples or areas where the current arrangements could be improved.
- 1.2 In June 2020, CIPFA undertook a second phase of work on the governance and financial management arrangements of the Council. The first phase in 2019 had identified a lack of transparency around the financial implementation and monitoring of capital schemes and some wider concerns around the effectiveness of financial governance. The second phase involved working with the Council to prepare its budget and Medium-Term Financial Strategy (MTFS) as well as highlighting any further governance or compliance weaknesses. The Council's response to the issues raised in this work was an action to: 'Review current partnership arrangements with the property company and to identify common purpose and goals for both partners. This review supports this action.
- 1.3 This review does not look at the governance or performance of the PropCo itself; rather it looks at the governance within the Council of the PropCo i.e., the exercising of the Shareholder functions. There has been a number of key officer changes in RBWM, and at the PropCo, over the last year or so and this review provides an opportunity for the Council to look back at the evolution of its relationship with the PropCo, reflect on where it is now and identify any learning points or changes that may be needed.

APPROACH TO THE REVIEW

- 1.4 Our approach to the review has two strands:
- 1.5 **Desk-top research.** We have reviewed all relevant documentation provided by the Council. This includes:
 - CIPFA Review of Governance and the Council's Action Plan
 - PropCo initial Business Plan 2016
 - PropCo Business Plan 2019 and accompanying Cabinet Report.
 - The Shareholder Agreement 2019
 - The Memorandum of Understanding
 - Recruitment pack for PropCo Managing Director 2016
 - PropCo Annual Report and Audited Accounts 2019/20.
- 1.6 **Interviews.** We have undertaken a series of meetings with both officers and Members of the Council as well as the Managing Director and Chair of the PropCo as follows:

Interviewee	Role	Title
Duncan Sharkey	Council Officer	Chief Executive
Adele Taylor	Council Officer	Executive Director of Resources and Section 151 Officer
Andrew Durrant	Council Officer	Executive Director – Place
Emma Duncan	Council Officer	Deputy Director of Law & Strategy and Monitoring Officer
Councillor Andrew Johnson	Council Member	Leader and Chairman of Cabinet, Business, Economic Development & Property
Councillor Samantha Raynor	Council Member	Deputy Leader, Corporate & Resident Services, Culture & Heritage and Windsor. Armed Forces Champion.
Councillor Lynne Jones	Council Member	Leader Local Independents
Councillor Simon Werner	Council Member	Leader of Liberal Democrat Group
Barbara Richardson	PropCo	Managing Director
Griff Marshalsay	PropCo	Chair

1.7 As set out in the 31ten commissioning document, this deliverable sets out the expected governance arrangements as detailed in the source legal documents and other written material; identifies any deviations to these processes and any potential impact; and suggests improvements to the current processes based on discussions with interviewees and through an understanding of best practice at similar bodies. The report takes into account the lessons learnt from recent Public Interest reports into the governance deficiencies at other council owned companies to ensure that the Council can design its governance to reduce such risks. Finally, the report looks at potential KPIs that could be used to measure the PropCo against typical objectives to ensure that they are relevant, understandable and give a clear indication on risks.

1.8 The structure of the report to deliver the paragraph above is as follows:

- **Chapter 2: Background and context** – outlines the background to why local authorities might set up a property company and the background to RBWM PropCo specifically as well as provides some context to why there have been governance failures elsewhere.
- **Chapter 3: Governance arrangements** – outlines the governance arrangements for the PropCo as set out in the legal documentation and as they are operating as articulated to us in interviews. It highlights where these are not working as intended or where they could be improved and makes recommendations for changes when compared to best practice.

- **Chapter 4: Suggested governance & KPIs** – outlines the suggested governance arrangements and some examples of KPIs that could be used to monitor the performance of the PropCo.

2. Background & context

BACKGROUND TO LOCAL AUTHORITY PROPERTY COMPANIES

2.1 There are a variety of corporate aims that lead local authorities to look to set up a property or housing company to acquire, develop or manage homes, these include but are not limited to the following reasons:

- To develop or acquire housing outside of the HRA, thereby allowing Council's to build housing where the HRA borrowing cap may have inhibited it, to address specific gaps or need in local private rental market and to deliver homes to a wider range of potential tenants who may not be on the housing waiting lists;
- Where control issues are met, LA can set up companies to utilise Right to Buy receipts to support viability;
- To operate more commercially in terms of assessing opportunities, sourcing funding and securing private sector skills (for example through joint ventures) whilst retaining complete control by the council
- To allow the delivery of developments and regeneration with only specific political interaction;
- To give the council flexibility in rent setting to address gaps or need in the local housing need and cross-subsidise between tenure types;
- To create viable affordable social housing;
- To support economic growth by investing in new homes and other property developments to create a multiplier effect in the local economy;
- To generate long term income streams into the General Fund; and
- To be able to act as a registered provider of affordable housing.

2.2 Generally, these property companies are successful when:

- Form follows function and the structure represents the optimum way to achieve the Council's objectives; and
- It operates on an arms-length basis but with sufficient oversight to be held to account.

CURRENT ENVIRONMENT

2.3 Local authorities have been using property companies to deliver their housing or regeneration objectives for a number of years. But there have been some recent perceived failures in the sector that have been subject to Public Interest reports; highlighting governance deficiencies between the Council and the Property Company.

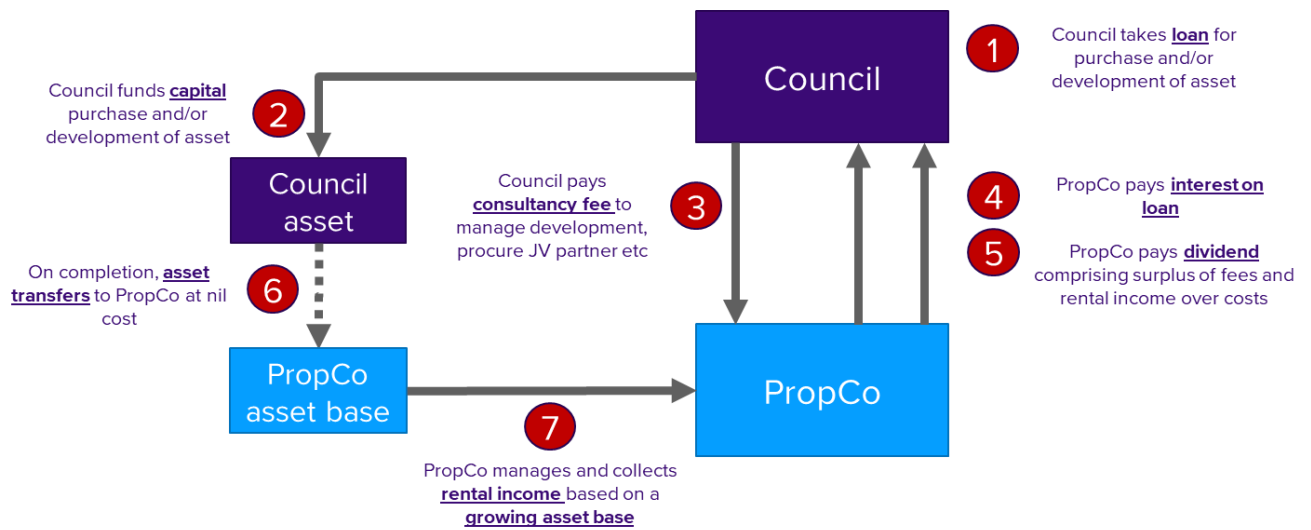
2.4 These deficiencies were broadly around a lack of scrutiny and challenge of the property company and a lack of recognition that in entering into such arrangements, council move up the risk curve. In particular,

inadequate understanding of the business plan of the property company and the implications for the council in terms of borrowing and dividends feeding into the MTFS.

- 2.5 This exposed the councils to unacceptable levels of risk and, in some instances, a funding gap when anticipated dividends didn't materialise. The scrutiny and challenge were insufficient to identify and prevent the risks materialising and in some cases this has been exposed by the impact of COVID-19.
- 2.6 The purpose of this review is to ensure that these areas of weakness in the governance do not exist, or the risk to the Council is minimised in respect of these risks. However, it is worth noting that in recent cases the host councils have supported the activities of their companies through significant and material debt instruments. This is distinctly different to the way the Council currently funds its PropCo, where only a small loan balance is seen within the PropCo's books.

BACKGROUND TO RBWM PROPCO

- 2.7 The PropCo was established in 2016 as a company wholly owned by the Council. The rationale articulated in the original Business Plan was that by using an arms-length property development and management company it would be possible to provide a more flexible and commercial response to increasing or accelerating the delivery of housing supply. It would enable the Council to enter into Joint Venture arrangements with the private sector which would deliver developments much quicker than if it were done directly by the Council.
- 2.8 The PropCo would also allow the Council (through the PropCo) to determine tenures and rents, build homes and borrow money to finance schemes on council owned land. By setting up a company limited by shares, with the Council as the sole shareholder, it gives the Council ultimate control of the PropCo's business activities whilst delegating the day-to-day management to operate within the agreed framework to a professional, highly experienced and commercial team.
- 2.9 The PropCo acts as a property company for and on behalf of the Council in relation to regeneration, development and property including managing the Council's land and property assets. The PropCo also manages a small property portfolio with a focus on affordable housing for keyworkers and this has a positive income stream. In addition, the PropCo now provides line management to the Council's inhouse property team.
- 2.10 The funding flows and asset ownership articulated in the Business Plan are as set out below:

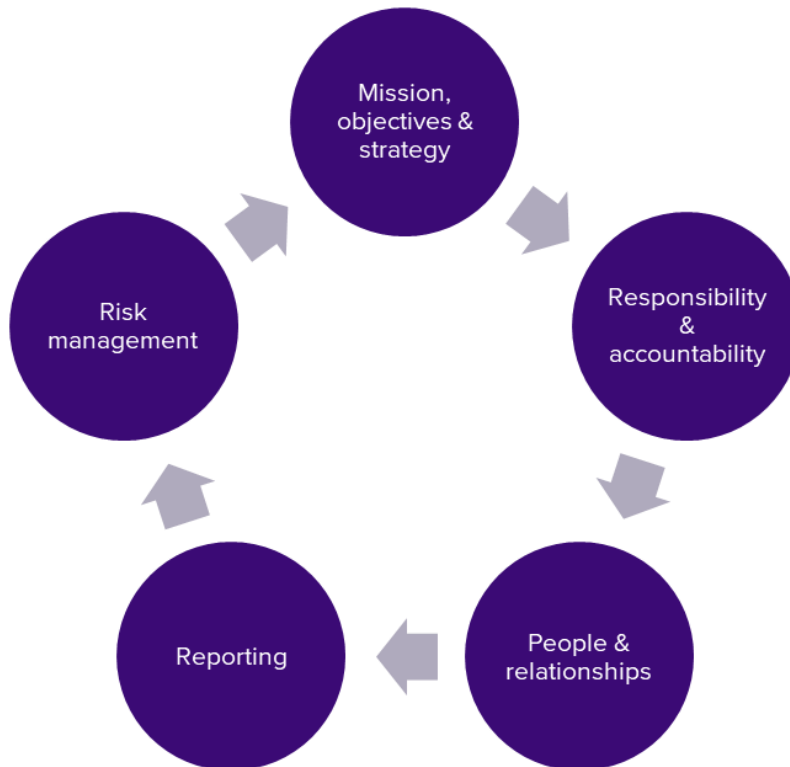


2.11 Any surplus of funds or profit is paid to the Council through dividends, and this should be 70% of post-tax profits as a minimum. In 2019/20, the dividend paid to the Council was £210,000 equating to 74% of profit after tax. The Company agreed a Shareholders Operating Protocol that defines the relationship with the Council, including governance and decision making. This, along with the Business Plan was most recently updated in August 2019.

3. Governance arrangements

FRAMEWORK FOR THE REVIEW

3.1 We have used the following framework to assess the governance within the Council of the PropCo:



3.2 The good practice against each of these headings that we were looking for are:

Area	Good practice
Mission, objectives & strategy	<ul style="list-style-type: none"> • Clear rationale for PropCo • Clearly articulated mission and objectives from the Council • SMART targets • Agreed and up-to-date implementation strategy/business plan
Responsibility & accountability	<ul style="list-style-type: none"> • Clarity of roles, responsibilities & accountabilities • Appropriate delegations • Representative forums • Individual & collective responsibility • Transparency of decision-making • Open to scrutiny

Area	Good practice
People & relationships	<ul style="list-style-type: none"> • Sufficient skills and resources • Continuity of staff • Positive Member engagement & effective oversight • Constructive working relationships
Reporting	<ul style="list-style-type: none"> • Regular reporting of performance against targets • Appropriate challenge & oversight functions
Risk management	<ul style="list-style-type: none"> • Robust risk identification and management processes • Clear ownership • Active management • Regular reporting

3.3 We consider each of these areas below. We set out how the governance should be working as set out on the key written documents and how they are working in practice as articulated to us in interviews. We identify below where the governance is not working as intended or where it could be improved.

MISSION, OBJECTIVES & STRATEGY

3.4 The original mission and objectives for PropCo were set out in the 2016 business case as follows:

November 2016

Mission

“To support, through development, the Members ambitions to create a Borough for everyone by providing affordable and private rented accommodation for key workers and others requiring housing in the Borough whilst providing an income stream back to the Council that can be reinvested in other services for residents”

Objectives & targets

- To provide good **quality affordable and private rented housing** for **key workers** and others requiring housing
- To contribute to the **general fund surpluses** from housing developed and rents received
- To support **demand for housing through the development** of Council owned sites
- To remain **financially viable** and ensure that **rental income** meets all costs including financing, housing management, property maintenance and administration
- Develop **138 properties** within 5 years and thereafter increase portfolio to 1,000 in 10 years
- Generate **profits of c£318k** by year 3 (2018/19) building to c£674k by year 5 (2021/22) and £5m per annum in the future

3.5 In the 2019 business case these were articulated as:

August 2019

Mission

“To deliver economic, environmental and sustainable regeneration across the borough”

Vision

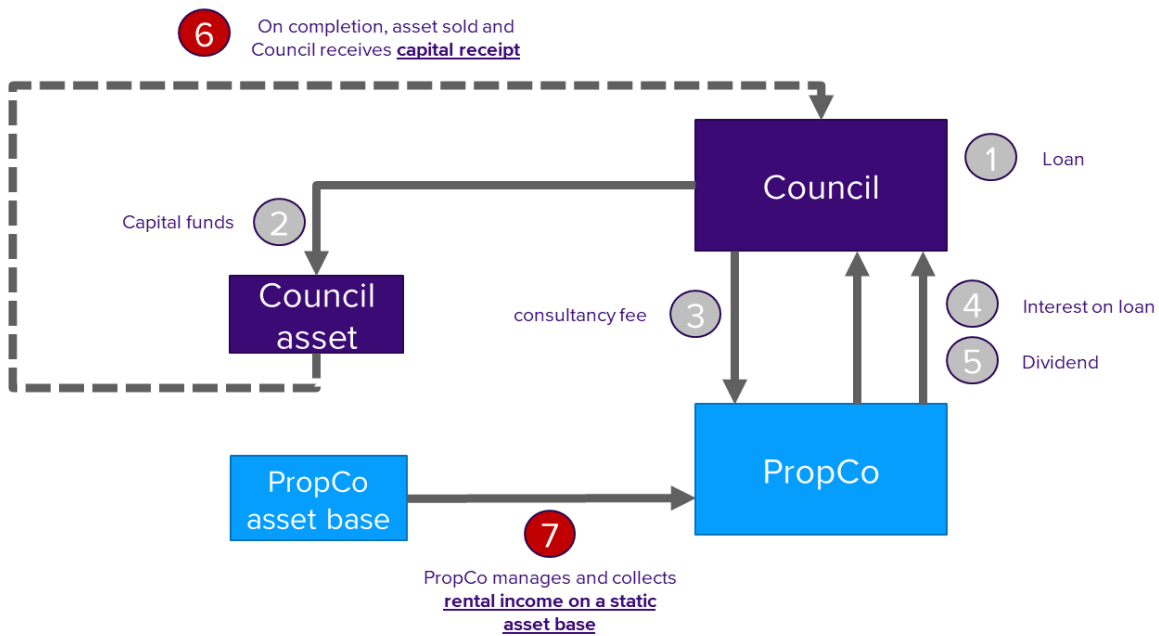
“To deliver a regeneration programme of residential and commercial assets for the borough with a focus on affordable housing”

Objectives & targets

- Enable the delivery of up to **4,000 homes, 30% of which will be affordable** by 2034
- Explore creative solutions for housing that meets housing need in the borough, including housing for adults & children with special needs
- Communicate and engage with local stakeholders; and act as principle advisor for an on behalf of the Council on all matters associated with **property & regeneration** of the borough
- Create a **positive income stream and improve capital value**
- The Company has 2 main functions from which it derives income:
 - **Property consultancy** company for an on behalf of the shareholder for all matters associated with the property & regeneration of the borough
 - **Manage and develop a small property portfolio** on surplus council land with a positive income stream
- Profit increase from £295k in 2019/20 **to £774k over 5 years** (2024)

3.6 These objectives show a shift away from building up housing stock for affordable provision and an increased focus on the property consultancy as a commercial business and the introduction of commercial assets in the vision. This shift is reflected in the growth in income for the PropCo: by 2019/20 consultancy income comprised 89% of income and at £1.2m had grown 67% on the previous year. In contrast, the rent received income had grown by 13% to £152k.

3.7 As we understand it, part of the reason for this shift was the desire of the Council to maximise capital receipts from the sale of developed land to support an increasingly precarious financial position. In effect, the funding flows shifted from how it was articulated in the 2016 Business Plan to the following:



- 3.8 Rather than building up the PropCo asset base and focusing on long term revenue generation, the Council increasingly sold the assets for development to bring much needed capital receipts into the Council. The implication of this being that the PropCo has not built up the asset base (and hence rental income) to the level originally intended in the 2016 Business Plan.
- 3.9 Questions were raised by interviewees about why the Council buys the asset and transfers it to the PropCo rather than the PropCo buying the asset itself or the Council retaining the asset and the PropCo managing without owning it. The rationale for these decisions isn't set out in the original documentation.
- 3.10 Given the shift in priorities, it raises the question of whether the Council objectives are best met by this revised structure and whether the goal of the company is to generate a long term revenue or capital? As articulated in the business case, the PropCo have 2 types of business from which they generate revenue:
- Property consultancy; and
 - Manage and develop a small property portfolio.
- 3.11 Arguably these types of work have different risk and tax profiles that might be better separated and structured differently. The focus on the PropCo generating a profit to pay a dividend may not be advantageous as it created a tax liability for the Council that could be offset but creating more value or outcomes for the Council.
- 3.12 However, some interviewees expressed the desire for the PropCo to move back to building up an affordable housing portfolio and reducing the consultancy work. It would therefore seem a good opportunity to revisit the purpose of the PropCo and ensure that the structure of the company represents the optimal vehicle to meet the Council's future objectives.

3.13 Almost universally, the interviewees expressed the view that the Council has not always been clear about what it wants from the PropCo. It is difficult for the PropCo to deliver what the Council wants, and for the Council to monitor the delivery by the PropCo when this hasn't been properly defined. Annual objectives or targets should be set in the Business Plan; but to date this has only been updated in 2016 and 2019. Interviewees also suggested that the objectives for the PropCo need to better reflect the wider interest of the Council beyond housing for example Childrens and Adults as well as taking into account other Council's priorities such as the sustainability agenda. Whilst Children's and Adults services are included in the 2019 objectives of the PropCo, the Council has not set SMART objectives on an annual basis to be able to measure performance against in these areas.

3.14 The financial relationship between the Council and PropCo is an area that could be reviewed in future. We understand that the PropCo also maintains a Value for Money log to monitor the additional value brought to the council and reports that since 2017 has saved over £3.3m for the Council. The Council may wish to consider how this can be monitored as part of any performance measures going forward.

We recommend that the Council:

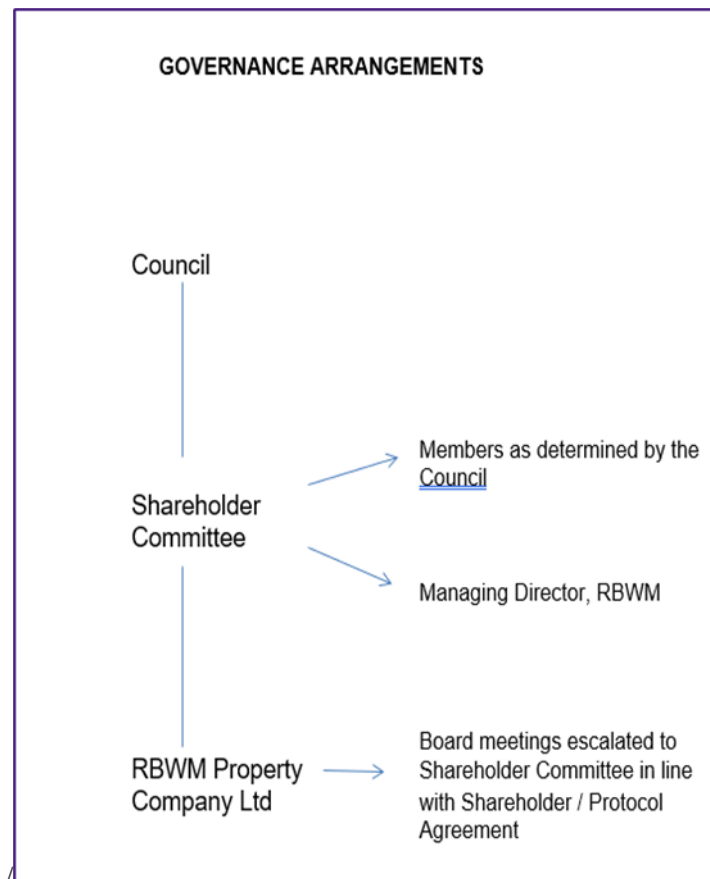
- Review, agree and approve a revised statement of the purpose of the PropCo (vision/mission) and incorporate changes into the Articles of Association or Shareholder Protocol as appropriate
- Review the structure of the PropCo to ensure it remains the optimal method of delivering the objectives.
- Set SMART objectives for the PropCo on an annual basis incorporating the wider interests and agenda of the Council.
- Consider the use of Value for Money savings in the performance measures or objectives.

RESPONSIBILITY AND ACCOUNTABILITY

3.15 The arrangements for responsibility and accountability are set out, across the original Business Plan 2016 and updated in the Shareholder Operating Protocol of 2019.

Governance

3.16 The original Business Plan of 2016, set out the governance as follows:



3.17 The Shareholder Operating Protocol provides more detail. It defines the **membership of the Shareholder Committee** (referred to as the Shareholder Board in the Protocol) as follows:

- Shareholder - this is defined as ‘the Council’s representative with delegated authority to make decisions on behalf of the Council in its capacity as owner and shareholder of the Companies. The current Shareholder representative is the Leader of the Council and Lead Member for Regeneration with authority in a resolution of Cabinet [undated]’.
- Lead Member for Finance
- Strategic Directors
- Head of Finance for the Council
- Managing Director, Finance and Chair of Propco.

3.18 **Role of the Shareholder Committee** (or Board) is defined as to:

- Monitor operational performance
- Progress against business plan
- Monitor financial position
- Forum for strategic partnership and decision making
- Agree method for bringing issues
- Share and resolve sensitivities of political or financial nature
- Issues of wider strategic objectives of the council
- Oversight and consider any proposed changes

- Consider risks and agree mitigating actions
- Raise any issues of support required from the Council
- Consider proposals for investment aimed at growth or development
- Enable council to provide clarify and strategic direction.

3.19 These governance arrangements appear to provide a framework for governing the PropCo. However, we have been informed that, in practice, the Shareholder Committee (or Board) does not meet. The consensus from the interviewees is that the role of the Shareholder is carried out by Cabinet, which is inconsistent with the Protocol.

3.20 The composition of the **PropCo Board** as set out in the initial Business Case in 2016 was for 3 non-Executive Directors and a paid Chief Executive (or Managing Director). The non-Executive Directors were all Council officers: Executive Strategic Director of Corporate and Community Services; Head of Finance; and Director of Regeneration, Development and Property. This membership crosses over with the membership of the Shareholder Committee so didn't provide a good arms-length arrangement for the PropCo. However, this is no longer the case, with the Board comprising 5 independent Non-Executive Directors plus 2 independent Co-optees along with the paid Managing Director.

3.21 This change provides a better arms-length arrangement and removes any perception of conflict of interest between officers and the Board's responsibility to the management of the Company and the Shareholder. However, it removes any informal role for officers in supporting the PropCo to interpret and implement the strategic direction of Members. There is no formal interaction between the PropCo and officers to enable the latter to advise Cabinet on PropCo activities and performance and the absence of this has led to:

- Key Members being more involved in the operational side of the PropCo than we might expect. As political control has shifted in the Council this is created a perception of lack of transparency about activities amongst those who are not close to the PropCo
- The MD of the PropCo performing this advisory role within the Council, for example taking the Business Plan to Council and individual schemes to Capital Review Board. This creates a conflict of interest for the MD and means the PropCo can't operate at arms-length as intended
- A feeling amongst officers that the PropCo is not sufficiently held to account on delivery (whilst recognising that the objectives have not been clear enough in the first place).

3.22 Separately, but related to this, all interviewees felt there has been some blurring of the PropCo and Council responsibilities. In particular:

- The PropCo line managing Property Services – whilst there are obvious synergies of expertise, there are potentially conflicting interests. For example, the Property Services team do the Strategic Asset Management Plan on behalf of the Council, which may identify surplus land or assets that could be used for development opportunities by the PropCo. There is no suggestion here that the PropCo has not worked professionally and properly in this

conflicting situation, but it contributes to the sense of ‘muddiness’ of roles and responsibilities. The Council could consider moving Property Services formally into the PropCo without a budget transfer to create more value whilst reducing the dividend paid to the Council.

- The PropCo is a flexible team with experienced staff. As a result, interviewees told us that on an ad-hoc basis, it has been tasked to take on extra activities outside its scope. This leads to further blurring of the PropCo role and would suggest the Council has a greater involvement in the day-to-day operation of the PropCo than we would expect.
- A lack of clarity about whether the PropCo is bringing a development scheme or advising on a Council service that is bringing a development scheme.

3.23 It is important that going forward, arrangements are put in place to create a proper officer ‘client side’ to advise Cabinet and to re-establish the arms-length relationship with the PropCo and informal links are created between the PropCo Board and the Directors of the Council.

Decision making

3.24 The Protocol also sets out the decision-making framework as follows:

	Shareholder / Cabinet / Council	PropCo
1) SPECIFIED DECISIONS	Approval of: <ul style="list-style-type: none"> • Annual business plan • Scheme development • Funding request/draw down • Development of Council land or assets • Changes to company Directors, Secretary or Chair • Changes to company structure • Company staffing changes 	N/A
2) GENERAL DECISIONS	<ul style="list-style-type: none"> • Day to day decisions to run the company (not reserved for the company) £100k - £500k (Full Council for >£500k) 	<ul style="list-style-type: none"> • Decisions to deliver the Business plan • Decisions required to deliver resolutions of the Shareholder • Day to day decisions to run the company <£100k per year
3) URGENT DECISIONS	<ul style="list-style-type: none"> • Requires unanimous agreement of Leader, Shareholder and Chair of PropCo • Written record to be brought to next Shareholder meeting 	<ul style="list-style-type: none"> • Requires unanimous agreement of Leader, Shareholder and Chair of PropCo • Written record to be brought to next Shareholder meeting
4) SHAREHOLDER RESERVED DECISIONS	PropCo cannot: <ul style="list-style-type: none"> • Vary Articles of Association or rights of shareholder • Change shareholding of the Company, name, registered address or auditors • Enter into a loan, credit, guarantee, borrowing or commitment >£25k • Enter into or cease business other than authorised in the Business plan • Enter into a contract with a director or connected person • Start or settle legal proceedings or debt recovery >£10k 	N/A

3.25 In essence the Protocol specified that the ‘Shareholder/Cabinet/Council’ agree the annual plan, all scheme developments and anything of substance related to the construct or management of PropCo. The PropCo can then make decisions on the day-to-day running of the company in line with these. The Protocol uses Shareholder, Cabinet and Council inter-changeably for a number of decisions, thus it is unclear who should be making decisions.

3.26 The decision-making framework specifies that the Annual Business Plan should be agreed by the Shareholder/Cabinet/Council as well as scheme developments, funding requests and development of Council land and assets. As noted above, in practice, full Council has been agreeing the Business Plan

on a 3-year basis (2016 and 2019) and has agreed all schemes in between this point. It might be more appropriate for the Business Plan to contain all the proposed schemes and funding requirements for the year and for this to be approved on an annual rolling basis. Only schemes that fall outside the Business Plan, or require additional funding, would then need to go to Council during the year. This gives PropCo more autonomy to deliver within the envelopes agreed by the Council at the start of the year without reference back to the Council for approval.

- 3.27 In addition, some of the 'specified decisions' in section 1 might be more appropriately delegated to the PropCo for example company staffing changes. Going forward, the Council should review the levels of delegation in the governing documents to ensure that decisions are made at the right level to ensure adequate control of PropCo direction whilst allowing sufficient delegation to deliver. Similarly, it would be normal for the Council to appoint the chair of the company board and then the company board be responsible for the appointment and related matters for the other directors (executive and non-executive).
- 3.28 It is also unclear whether the Protocol has been followed with all decisions. In particular, questions were raised by interviewees about the change in direction of the PropCo in 2019: to focus more on property consultancy, dilute the focus on affordable housing and maximise capital receipts from land sales. The first two points were approved by Cabinet as the Shareholder (and we understand would have gone to Council too). But the shift in focus to maximising land receipts was not in that business case and we have not seen any documentation of when or how that decision was taken.
- 3.29 Whilst the Business Plans have been approved, the view has been expressed by some interviewees that there is little room for discussion and challenge or referral to Scrutiny as it has all been 'agreed' in advance. The decision feels like a *fait accompli*.
- 3.30 There was a general theme of 'lack of transparency' in decision making through-out our interviews. We believe this was fuelled by the close operational relationship between Members and the PropCo. This has created a perception that some key decisions have been made by a small group of individuals outside of the formal arrangements. Whilst some of these issues have been fixed by changes in key individuals, the perception remains.

3.31

We recommend that the Council:

Reviews and agrees a new Shareholder Protocol, particularly focussing on the following areas:

- Identify where the Shareholder function is performed (e.g., sub-set of Cabinet, individual 'client' member or other mechanism)
- Ensure there is no cross over of membership between the PropCo Board and the Shareholder function (though invited attendance of officers at PropCo Board meetings would be beneficial)
- Clarify where key decisions should be made

- Clarify Member and officer roles with respect to the PropCo i.e., Members setting strategic direction/objectives and monitoring the performance against these; officers as their advisers
- Establish an officer 'client-side' function with a clear remit to advise the Shareholder and Council on PropCo activities.
- Task and direct the PropCo on an annual cycle through the Business Plan. Any changes should come through the Cabinet as agreed in the decision making framework
- Use the annual Business Plan cycle to approve all scheme development and funding requirements within year only for changes or additional schemes seeking approval in year
- Allow sufficient time for scrutiny at full Council of all PropCo activities including the development of the annual objectives and the approval of the Business Plan. This may require separate approval points for example agree annual objectives and then separately agree how they will be achieved (Business Plan)
- Review the relationship of the PropCo with Property Services to ensure that the arrangement allows for a proper arms-length relationship between the Council and the PropCo whilst providing for the optimal tax position.

PEOPLE & RELATIONSHIPS

- 3.32 A key benefit of a property company is the ability to attract and retain the right commercial and property development skills that aren't generally found in local authorities. However, there needs to be sufficient skills in the Council to manage the relationship effectively: to act as a 'client side' and hold the PropCo to account to deliver what has been asked of them.
- 3.33 Our interviews across the Council and PropCo would indicate that there has been good continuity of staff and skills in the PropCo. There have been number of changes in key members of staff in the Council over recent years, including the Chief Executive , the Executive Director of Resources, the Executive Director of Place and the Monitoring Officer. The view of all interviewees is that these changes strengthen the skills within the Council to better manage the relationship with the PropCo.
- 3.34 There were mixed opinions about whether there is sufficient experience across the Member body to operate as a client of shareholder but a fairly universal view that with some training and a skilled set of advisers (Officers) this role could be performed effectively.
- 3.35 It was reported that, generally, there are good working relationships across Members, Officers and the PropCo. It was acknowledged that there is some tension amongst some of the wider membership, but it was felt that this was caused by the perceived lack of transparency, the lack of clarity on roles and responsibilities and the potential conflict of interests outlined in the sections above.

We recommend that the Council:

- Run training for Members on role of the Shareholder function and any new governance arrangements going forward.

REPORTING

3.36 The Shareholder Protocol sets out the quarterly reporting requirements of the PropCo as follows:

Shareholder Operating Protocol																					
2.0 Timetable and Notable Dates		<table border="1"> <thead> <tr> <th colspan="2">Key</th> </tr> </thead> <tbody> <tr> <td></td> <td>RBWM Prop Co</td> </tr> <tr> <td></td> <td>Shareholder</td> </tr> <tr> <td></td> <td>Audit</td> </tr> </tbody> </table>												Key			RBWM Prop Co		Shareholder		Audit
Key																					
	RBWM Prop Co																				
	Shareholder																				
	Audit																				
Task Category	Task	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec								
Accounts	Accounts - drafting																				
	Accounts - approval																				
	Audit of Accounts																				
	Companies House Accounts Submission																				
	HMRC Accounts Submission																				
Reporting	Quarterly Accounts & Operational Reports to Board																				
	Annual Accounts and Operational Updates to Cabinet																				
	Companies House Annual Return																				
Business Planning	Business Plan (1yr) & (5yr)- drafting																				
	Business Plan (1yr) & (5yr) - approval																				
	Remit Document - drafting																				
	Remit Document - approval																				
Transparency	Council Website - accounts/directors																				

3.37 This annual cycle of reporting the financial accounts, operational update and Business Plan documents is supplemented elsewhere in the Protocol with quarterly reporting to the Shareholder (defined here as the Leader of the Council, Maidenhead Regeneration and Maidenhead which differs to elsewhere in the Protocol). This reporting covered financial and operational reports, including reporting of risks and delivery against the Business Plan.

3.38 It is our understanding from interviews that Members who have a direct remit for regeneration and development have regular update meetings and plenty of information on the progress and activities of the PropCo. However, for others there is no formal reporting beyond the Annual Report and Accounts. This includes to the Shareholder (i.e., Cabinet), Council and officers.

3.39 For most interviewees, there was agreement that the reporting within the PropCo was extensive and sufficient to manage the business. However, the needs of the Council as Shareholder are different, and interviewees felt that the Council has insufficient reporting to know whether the PropCo are on target to

deliver what has been set out in the Business Plan either financially or non-financially and this fuels the lack of transparency perception referred to earlier.

We recommend that the Council:

Review and specify the reporting frequency and requirements of PropCo activities within the Council to ensure that the Shareholder function can be effectively performed and that sufficient milestones exist to hold the PropCo Board to account for delivery.

RISK MANAGEMENT

3.40 Operational risks are monitoring by PropCo Board. It is the responsibility of the Council to monitor the delivery, financial and reputational risk to the Council of the PropCo operating independently.

3.41 We understand that the Council does consider risks associated with the PropCo as part of their Council risk register and as part of the Business Plan approval, the PropCo risk register was shared with Cabinet. However, a number of interviewees have commented that there is insufficient information provided on the activities of the PropCo for any proper assessment of risk to be undertaken on an ongoing basis.

We recommend that the Council:

- Review the risks to the Council of the PropCo on a quarterly basis as a key part of the Shareholder function, and this should be reflected in the Shareholder Protocol.

4. Suggested governance and reporting

INTRODUCTION

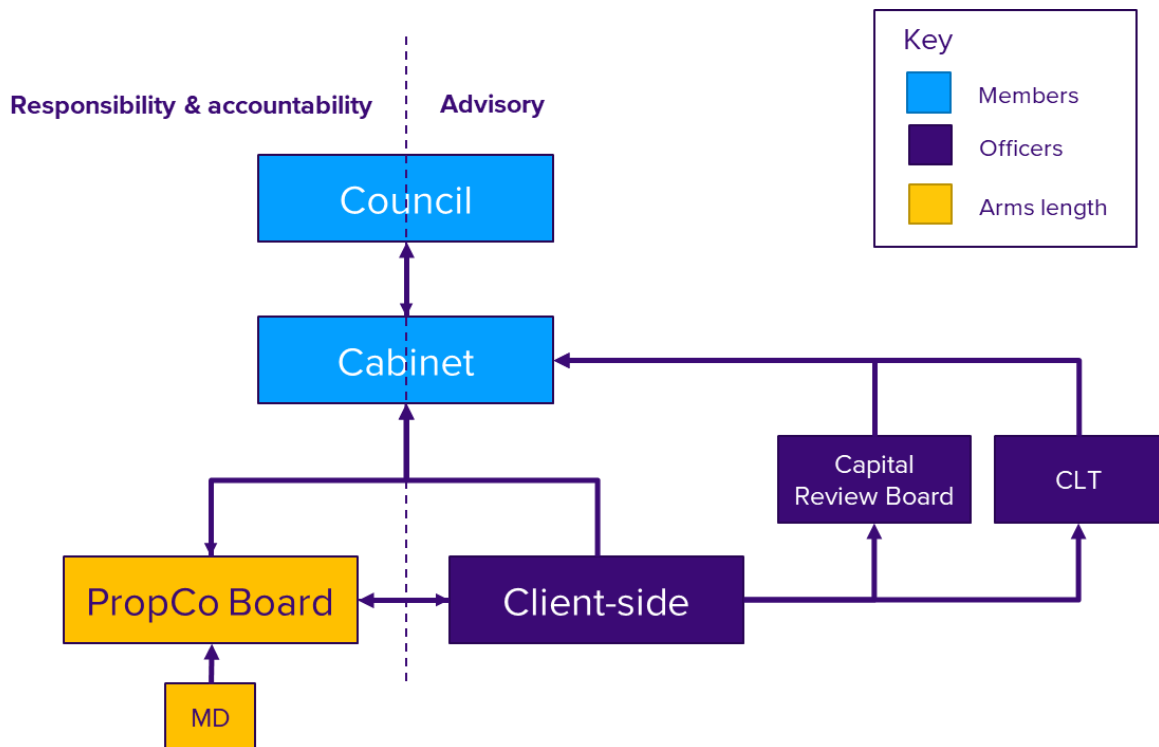
4.1 The previous sections set out our recommendations. This section takes some of these further to suggest how the Council might wish to implement them.

OBJECTIVES

4.2 Our recommendation is that the Council review the purpose of the PropCo, perhaps as a mission or vision, and that SMART objectives should be set on an annual basis. These objectives should take into account the wider priorities of the Council including sustainability, climate emergency, affordable housing, provision for people with specialist housing needs, the Corporate Strategy and value for money.

GOVERNANCE

4.3 Our suggested governance arrangements would include the removal of the Shareholder Committee, with this function being performed by Cabinet and the introduction of a clear role for officers (through a client-side function) to advise Cabinet on PropCo decisions. This is shown below:



4.4 This would reinforce that the PropCo MD is accountable to the PropCo Board, who is in turn accountable to Cabinet. It would ensure that tasking comes from Cabinet to the PropCo Board (and ensure that Council officers are advising internally (other officers and Members) about PropCo activities).

This should provide a better arms-length arrangement for the PropCo and allow them to focus on implementing the Business Plan. That said, it may be appropriate for the MD to be invited to attend Council meetings to provide expert advice at times to supplement the client side advice and this would be beneficial as long as there is clarity about the capacity in which the PropCo MD attends.

4.5 Broadly, the roles and responsibilities would be as follows:

- Members to set the strategic direction, agree the annual plan, hold the PropCo to account for achieving what was set out in the plan (including delivery of developments, revenue, and dividend to the Council) and manage the risk to the Council of the PropCo activities
- Officers to advise Members and other officer groups on activities, performance, and risks of the PropCo.
- PropCo Board and MD to manage the day-to-day operational activities to deliver the objectives.

4.6 The PropCo Board should be independent of the Council with no cross-over of Members or officers. That said, attendance by officers as invitees is advantageous to help interpret the strategic direction of Members but they should not have voting rights.

4.7 The client-side officer function could be performed by a single officer; we understand that this might be the Executive Director of Resources and we would consider this appropriate given her skills and experience.

DECISION MAKING

4.8 As stated earlier, the decision-making framework needs updating to clarify what decisions need Cabinet or full Council approval. We would also suggest it is updated to reinforce the arms-length nature of the arrangement with an annual approval cycle.

4.9 We recommend an annual cycle as follows:



1

Council sets and/or confirms objectives



2

PropCo prepares Business Plan

Outlines how it will achieve the objectives, development schemes, finance required, draw down profile, revenue implications, dividends and other payments to the Council



3

Council scrutinise and approve

Sufficient time at Council to scrutinise and approve the Business Plan



4

PropCo implement the plan

Securing Joint Venture partners to deliver developments, managing the asset portfolio, collecting rent etc



5

Quarterly reporting

Of performance against targets, funding requirements. Any changes to the Business Plan to go back to full Council

KPIS AND REPORTING

4.10 Our recommendation is that reporting of PropCo activities within the Council be increased with a regular reporting cycle to allow for adequate scrutiny and challenge of the PropCo. Based on the original objectives of the PropCo , we set out below the key KPIs that the Council might wish to review at each stage. The exact KPIs will depend on the purpose and objectives set, but we would expect them to include the following types of KPIs.

Area	Frequency	Example KPIs
Business Plan approval	Annual	<ul style="list-style-type: none"> • SMART objectives – tbd by the Council • Acquisitions • Funding requirement • Loans and drawdown • Estimated rental income • Estimated dividend • Assumptions underpinning the financial model

Area	Frequency	Example KPIs
Scheme development	Annual as part of Business Plan approval	<ul style="list-style-type: none"> • Homes enabled – 1 year and 3 year target • Total funding requirement and proposed drawdown timing • NPV • Cost to value • Rate of return • Loan repayment • Key delivery milestones
PropCo monitoring	Quarterly to the client officer and twice yearly to Cabinet	<ul style="list-style-type: none"> • Progress against objectives/targets • Progress against milestones • Progress against budget – schemes and rental income, draw down • Risks
Financial performance	Annual in Financial Statements	<ul style="list-style-type: none"> • Profit before tax • Dividend paid