

BIRMINGHAM CITY COUNCIL

PUBLIC REPORT

Report to:	CABINET
Report of:	Strategic Director - Finance and Legal
Date of Decision:	26 July 2016
SUBJECT:	GROUP COMPANY GOVERNANCE
Key Decision: No	Relevant Forward Plan Ref: N/A
If not in the Forward Plan: (please "X" box)	Chief Executive approved <input type="checkbox"/> O&S Chairman approved <input type="checkbox"/>
Relevant Cabinet Member(s) or Executive Member(s):	Councillor Ian Ward, Deputy Leader
Relevant O&S Chairman:	Councillor Mohammed Aikhlaq, Corporate Resources and Governance.
Wards affected:	All

1. Purpose of report:
<p>1.1 The Council has numerous company relationships and this report proposes a formal reporting structure for the oversight and influence of them.</p>

2. Decision(s) recommended:
<p>That Cabinet:-</p> <p>2.1 Approves the establishment a Group Executive Committee.</p> <p>2.2 Approves the draft Terms of Reference at Appendix 1.</p> <p>2.3 Notes the Grant Thornton report at Appendix 3. The report contains a number of recommendations which will inform the remit and scope of the Group Executive Committee.</p>

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3. Consultation

3.1 Internal

The Grant Thornton report (Appendix 3) has been shared with Strategic Directors and client liaison officers to the Group companies and their feedback was incorporated into the final draft. The Leader and Deputy Leader were consulted about the creation of the Group Executive Committee.

3.2 External

The companies examined in depth by Grant Thornton were given the opportunity to comment on the draft report and influence its contents.

4. Compliance Issues:

4.1 Are the recommended decisions consistent with the Council's policies, plans and strategies?

The purpose of the Group Executive Committee encompasses a role in ensuring that the business plans of individual companies align to the council's policy objectives.

4.2 Financial Implications

(Will decisions be carried out within existing finance and Resources?)

There are no direct financial consequences arising from the establishment of a Group Executive Committee.

The Committee will have a role in reviewing the financial position of the Council's subsidiaries and associates and evaluating the financial risks and opportunities of their business plans.

4.3 Legal Implications

Section V of the Local Part V, Local Government and Housing Act 1989 enables the Council to trade or deliver certain of its functions through a company. Sections 93 & 95 of the Local Government Act 2003 empowers the Council to trade function-related activities through a wholly owned company.

The Council is required to comply with all legal and regulatory requirements of the Companies Act 2006 as it relates to shareholder/member owners of registered companies.

Establishing a Group Executive Committee will improve the level of compliance in enabling the Council to have oversight of the activities of those companies that it either wholly owns or in which it has an interest. Risk of non-compliance will be reduced and decision-making more transparent and better aligned with the legislator requirements.

The Group Executive Committee is a Cabinet Committee pursuant to the provisions of the Local Government Act 2000; as such it will need to be formally set up by Cabinet. The Constitution of the City Council will also need to be amended to note the formation of this Committee and the inclusion of the terms of reference set out at appendix 1 of this report.

4.4 Public Sector Equality Duty (see separate guidance note)

There are no equality issues resulting from this report.

5. Relevant background/chronology of key events:

- 5.1 The Council has been, and continues to be, advanced in its use of alternative delivery models (ADMs). The Council operates through a variety of undertakings, either exercising full control of an organisation (subsidiary undertakings) or non-controlling interests (associate undertakings). Whether this involved the creation of a charitable trust or a wholly owned subsidiary, there is a resultant foregoing of direct control and a change to the Council's risk profile. Formal arrangements are recommended to ensure the Council is in a position to exert due influence where appropriate over the companies' strategic direction and that accountability arrangements are enhanced and regularised.
- 5.2 The Council consolidates the accounts of certain companies with the BCC accounts to produce Group Accounts. The inclusion of a company is based on materiality (of turnover or assets) of the Council's ownership.
- 5.3 Given the increased importance of companies as service delivery vehicles, a dialogue was commenced with the Council's External Auditor about what best practice would represent, and the value of this was reflected in the Grant Thornton report "Birmingham City Council Group Governance Review" dated 25 May 2016.
- 5.4 Grant Thornton was commissioned to review the governance arrangements in place for the group companies and make recommendations to strengthen them on a more formal basis. Five companies were selected for an in-depth review – Birmingham Museum's Trust (an independent charity), Service Birmingham and Marketing Birmingham (associate companies), Acivico, and Innovation Birmingham (subsidiary companies). The report identified that current arrangements for reporting back into the Council are ad-hoc and recommended a formal reporting structure be put in place. The recommended forum is a Group Executive Committee (GEC) which would be a sub-committee of Cabinet, chaired by the Deputy Leader and having proportionality.
- 5.5 The composition of the GEC is recommended by Grant Thornton to include non-executive directors (NEDs) from the wider business community to promote commerciality and bring relevant experience. They would be non-voting roles and subject to rigorous conflicts vetting .
- 5.6 Appendix 2 contains lists of companies in which the Council has a financial interest. Subsidiary companies are those where the Council has a controlling influence. Associate companies are where the Council has a minority shareholding or influence. In addition to these, there are in excess of 25 companies where the City Council has nominated a Board member but has no shareholding. While these are important relationships for the Council, they are more properly categorized as Related Parties and are considered as out of scope for the purpose of these governance arrangements.
- 5.7 The major subsidiaries pose the greatest risk and offer the greatest opportunities for alignment of objectives and long term plans. It is intended that the proposed committee would require regular attendance from material subsidiary company representatives (working assumption is twice per annum). Minor subsidiaries can still be substantial entities and attendance at least annually is recommended. Associate companies will not normally be expected to attend but each has a City Council link officer and through this link the reasons for continuing to have a financial stake in the company can be reassessed. The exception to this is those associates where the Council has shares as a result of investment of its equity funds currently managed by its fund managers Finance Birmingham.

5.8	The Grant Thornton report also recommends that the structure is used to provide a support network to encourage growth and innovation and in particular that companies at an early stage in their lifecycle benefit from peer support.
5.9	In-year changes to the Constitution will be necessary to note the formation of this Committee and the inclusion of the terms of reference set out at appendix 1 of this report and a report to this effect will be considered at Council Business Management Committee in the near future.

6. Evaluation of alternative option(s):	
6.1.	A Regulatory Committee was considered as an alternative because there are monitoring and audit roles. The advice of the Interim City Solicitor is that a reporting line to the Executive is more appropriate for a wider remit.
6.2.	Doing nothing would carry an increased risk over time as the level of business that is delivered through subsidiaries and associate companies increases and matures.

7. Reasons for Decision(s):	
7.1	To formalise arrangements for the oversight of companies within BCC's Group.

Signatures		<u>Date</u>
Deputy Leader
Chief Officer

List of Background Documents used to compile this Report:

List of Appendices accompanying this Report (if any):
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1. Terms of Reference
2. List of Companies in which Birmingham City Council has a financial interest.
3. Grant Thornton's "Birmingham City Council – Group Governance Review"

Report Version	<u>1.3</u>	Dated	<u>12 July 2016</u>
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Terms of Reference

Role

To ensure that the Council's strategic objectives are met across the group and to support the development of the Group in line with the Council's regulations and ambitions.

Responsibilities

Committee responsibilities include:

- Holding entity boards to account for their performance with the necessary powers to make and drive immediate change through the Boards
- Supporting the development of entities and making decisions on the disposal / dissolution of companies (below Cabinet limit on value) and matters such as varying Articles of Association, varying ownership and structure and varying share rights.
- Identification of entities' business support requirements
- Provides subsidiaries with clear direction and support in its role as sole shareholder
- Evaluation of effectiveness of entity board governance structure, processes and recommend changes as required
- Reviewing business plans and strategies of the entities to ensure compliance with the Council's strategic direction
- Ensuring compliance of the entities with the Council's interests including the Birmingham Business Charter for Social Responsibility
- Oversight of compliance to ensure that taxation, legal and financial interests of the Council are considered and protected
- Oversight of compliance to EU procurement regulations and Council Standing Orders to avoid any conflict of interest where any organisation listed in appendix 2 is involved in the process
- Ensuring that risk relating to the entities is at a suitable level for the Council to bear
- Receiving and reviewing entity performance reports
- Advising Cabinet of issues

Companies in which Birmingham City Council has a Financial Interest

Subsidiaries - Consolidated into the Group

Company Name	Type of Entity
Acivico Ltd	Company - Limited by shares
Acivico (Building Consultancy) Ltd	
Acivico (Design, Construction & Facilities Management) Ltd	
Birmingham Museums Trust	Company - Limited by guarantee (Charity)
Birmingham Museums Trading Ltd	
Thinktank Trust	
Innovation Birmingham Ltd	Company - Limited by guarantee
Birmingham Science Park Aston Ltd	
Birmingham Technology (Property) Ltd	
Birmingham Technology (Property One) Ltd	
Birmingham Technology Venture Capital Ltd	
National Exhibition Centre Pension Trustee Company	Company - Limited by shares
PETPS (Birmingham) Ltd	
NEC Developments Plc	Company - Limited by shares
Performances (Birmingham) Ltd	Company - Limited by guarantee
Performances Birmingham (Enterprises) Ltd	

Subsidiaries - non consolidated on ground of materiality

Company Name	Type of Entity	
Birmingham Business Support Centre Ltd	Company - Limited by guarantee	
Birmingham Venture Capital Ltd		
Birmingham Curzon Regeneration Company Ltd	Company - Limited by shares	
Birmingham Endeavour Ltd	Company - Limited by shares	
Birmingham Wheels Ltd	Company - Limited by guarantee	Charity
Creative Advantage West Midlands Ltd	Company - Limited by shares	
Finance Birmingham Limited	Company - Limited by shares	
Gallery 37 Foundation	Company - Limited by guarantee	Charity
Greater Bham & West Midlands Brussels Office	Other	Subsidiary
INReach (Birmingham) Limited	Company - Limited by shares	
Birmingham Brand Care Limited	Company - Limited by shares	Dormant

Associates - Consolidated into Group

Company Name	Type of Entity
Birmingham Airport Holdings Ltd	Company - Limited by shares
BHX (Scotland) Ltd - subsidiary	
BHX Fire and Rescue Limited - subsidiary	
BHX Limited Partnership - subsidiary	
Birmingham Airport Air Traffic Limited - subsidiary	
Birmingham Airport Developments Ltd -subsidiary	
Birmingham Airport Finance Plc - subsidiary	
Birmingham Airport Operations Ltd - subsidiary	
Birmingham Airport Pension Trustees Ltd - subsidiary	
Birmingham Airport Services Ltd - subsidiary	
Euro-hub (Birmingham) Ltd - subsidiary	
First Castle Developments Ltd - subsidiary	
Paradise Circus General Partner Limited	Partnership - Limited Partnership
Paradise Circus Nominee One Ltd	
Paradise Circus Nominee Two Ltd	
Paradise Circus Management Limited	
Paradise Circus Limited Partnership	
Service Birmingham Ltd	Company - Limited by shares

Associates, Investments and Minor Interests

(* denotes Finance Birmingham investments)

Company Name	Type of Entity
Ascension Ventures (Holdings) Ltd*	Company - Limited by shares
Ascension Ventures Limited*	
Aston Eyetech Limited*	Company - Limited by shares
Auctus Management Group Ltd*	Company - Limited by shares
Birmingham Research Park Ltd	Company - Limited by shares
Big Button Media Ltd*	Company - Limited by shares
Birmingham LEP Company	Company - Limited by shares
Birmingham Schools SPC Holdings Phase 1A Limited	
Birmingham Schools SPC Phase 1A Limited	
Birmingham Schools SPC Holdings Phase 1B Limited	
Birmingham Schools SPC Phase 1B Limited	
Bridge Street Management Ltd	Company - Limited by shares
Central Technology Belt	Company - Limited by guarantee
Concierge Events Limited*	Company - Limited by shares
Concurrent Thinking*	Company - Limited by shares
Crowd Technologies*	Company - Limited by shares
Droplet Online*	Company - Limited by shares
Finds You*	Company - Limited by shares
Formatzone	Company - Limited by shares
Foodient/Whisk*	Company - Limited by shares
GBS Finance Limited	Company - Limited by guarantee
Greater Bham & Solihull Local Enterprise Partnership Ltd	Dormant
Icknield Port Loop	Company - Limited by guarantee
Inceptum Developments Ltd*	Company - Limited by shares
Info-Ctrl Limited*	Company - Limited by shares
Learning Labs*	Company - Limited by shares

Library of Birmingham Development Trust	Wound up Feb 2016
UK Municipal Bonds Agency	Company - Limited by shares
Marketing Birmingham	Company - Limited by guarantee
Matchbox Enterprises Ltd	Dissolved May 2016
Midlands Industrial Association Ltd	Industrial & Provident Society
Millenium Point Trust	Company - Limited by guarantee
Millenium Point Property Ltd	
Mutt Motorcycles Ltd*	Company - Limited by shares
Natural HR Ltd*	Company - Limited by shares
Obillex Limited*	Company - Limited by shares
Owned It*	Company - Limited by shares
Pure Mobile*	Company - Limited by shares
Rover Community Action Trust	Dormant
Skips Crosswords (Holdings) Ltd*	Company - Limited by shares
Skips Educational Ltd*	
Socially Accepted Games T/A Soshi*	Company - Limited by shares
Stockfield Community Association	Company - Limited by guarantee
Stockfield Community Association (Subsidiary) Ltd	
Veolia Environmental Services Birmingham Ltd	Company - Limited by shares
Opinsta Ltd (Closed Questions)*	Company - Limited by shares
Wetakestock Ltd*	Company - Limited by shares
West Midlands Rail	Company - Limited by guarantee