

REPORT TO SHAREHOLDER COMMITTEE

Open/Exempt		Would any decisions proposed:			
Any especially affected Wards	Mandatory/	Be entirely within Shareholder Committee powers to decide YES/NO			
	Discretionary /	Need to be recommendations to Council		YES/NO	
	Operational	Is it a Key Decision		YES/NO	
Lead Member: Cllr Graham Middleton E-mail: <i>cllr.graham.middleton@west-norfolk.gov.uk</i>		Other Cabinet Members consulted:			
		Other Members consulted:			
Lead Officer: Honor Howell E-mail: <i>honor.howell@west-norfolk.gov.uk</i> Direct Dial: 01553 616550		Other Officers consulted: Chief Executive Alexa Baker – Monitoring Officer			
Financial Implications YES/NO	Policy/ Personnel Implications YES/NO	Statutory Implications YES/NO	Equal Impact Assessment YES/NO If YES: Pre-screening/ Full Assessment	Risk Management Implications YES/NO	Environmental Considerations YES/NO
If not for publication, the paragraph(s) of Schedule 12A of the 1972 Local Government Act considered to justify that is (are) paragraph(s)					

Date of meeting: 13 February 2023

APPOINTMENT OF A COMPANY SECRETARY FOR THE COUNCIL’S WHOLLY OWNED TRADING COMPANIES

Summary

Following a governance review of the councils three trading companies, it was recommended that the council’s Statutory Officers shouldn’t be appointed to the Boards of the companies due to a potential conflict of interest between their statutory roles and their responsibilities as Directors/Company Secretary to the company. The Chief Executive is recorded at Companies House as the company secretary to West Norfolk Housing Company and West Norfolk Property Limited (a legacy appointment). In line with the recommendation, the Chief Executive will resign as company secretary from the housing companies and this role will need to be conducted via an alternative means.

Recommendation

That the Shareholder Committee recommend to the Board of Directors their preferred option of appointing the council’s in-house legal team (excluding the Monitoring Officer) as company secretary for the Board to consider.

Reason for Decision

To ensure the council companies operate within sound corporate governance and compliance with the Companies Act 2006 and the Board of Directors act in accordance with the Articles and Shareholder Agreement of the companies.

1 Background

- 1.1 Following a governance review and subsequent recommendations to improve the corporate governance of the Council's wholly owned trading companies, at the Cabinet meeting of 15 November 2022, Cabinet resolved that a sub-committee to be known as 'the Shareholder Committee' be established as which will exercise the function of Shareholder of the council.
- 1.2 The Shareholder Committee is responsible for approving the companies' governance documents, business plans, holding directors to account against the delivery of the business plans and the Shareholder Agreement and determining the shareholder reserved matters which will be set out in the Shareholder Agreement.
- 1.3 The board of directors for each company is made up of current or former Cabinet Members and senior officers. Legal advice provided as part of the governance review advised against the council's Statutory Officers being appointed as Directors to the companies due to the requirement for Directors to act in the best interest of the company which may conflict with the Statutory Officers role in the borough council.
- 1.4 The Council's Chief Executive is recorded at Companies House as the company secretary to West Norfolk Housing Company and West Norfolk Property Ltd (a legacy appointment). There is, at present, no company secretary for Alive West Norfolk.
- 1.5 In line with the recommendation, the Chief Executive will resign as company secretary from the council's Housing Companies and subsequently this role will need to be conducted via an alternative means.

2 Options Considered

- 2.1 The company secretary function is an important role akin to that of a local authority Monitoring Officer. Duties of the company secretary include:
 - Company and Companies administration
 - Statutory and regulatory compliance
 - Corporate governance
 - Supporting the directors to comply with their duties
 - Liaising with the shareholder
- 2.2 The secretariat function for the council companies and the Shareholder Committee are carried out by the Democratic Services team. The company secretary role will therefore be to provide the regulatory and compliance functions for the companies.

2.3 There are several options for the provision of the company secretary function for the council's three companies. These include:

- Recruit a dedicated company secretary (either a joint appointment by all three companies or separately)
- Outsource the company secretary role to an external provider (usually a law firm)
- The council's Legal Service undertake the role on behalf of the three companies under a Service Legal Agreement (SLA) with the council

2.4 The company secretary provides legal advice and support to the Board of Directors on company law and governance and ensures the Board acts in accordance with the Articles and the Shareholder Agreement. It is common practice for the legal team to fulfil the function.

2.5 Option 1 Recruitment of a Dedicated Company Secretary

The companies could act together to recruit a company secretary to carry out the role for the three companies or each recruit individually. As the secretariat aspect of the position is conducted by the Democratic Services team, a significant part of the role has already been accounted for, although this arrangement impacts the resources available in the Democratic Services team (see point 4.1). This option is not considered cost effective to the companies.

2.6 Option 2 – Outsource the Company Secretary Role to an external provider

The role of company secretary could be outsourced by the companies to an alternative legal provider. There are many private organisations that offer this service due to the cost implications of appointing an employee. However, with three council companies, the cost of outsourcing could be high with the requirement to support three Boards of Directors and attend each of the Board Meetings and Annual General Meetings. The companies would need to be invoiced separately to ensure the correct allocation of cost to each company.

2.7 The council's legal services team (excluding the Monitoring Officer) to fulfil the role on behalf of the three companies under a Service Level Agreement

The council's legal service has been outsourced to Eastlaw since 2013. In 2021, Cabinet recommended that the service was returned to an in-house provision and the recruitment of a legal team is underway. Along with the Assistant Director Legal/Monitoring Officer, a Principal Solicitor and a Property Solicitor have commenced employment and recruitment is now proceeding for a Paralegal and a Corporate Governance Officer. If the Shareholder Committee agrees, members of the legal team will fulfil the company secretary function on behalf of the council companies and an appropriate SLA and associated recharges to each

of the companies. This is the preferred option recommended to the Shareholder Committee.

- 2.8 Ultimately, the appointment of a company secretary will be subject to reserved matters of the Shareholder Committee. In the meantime, the recommendation is that the Shareholder Committee confirm their preferred option to the companies for them to decide at director level on who they use for company secretary.

3 Policy Implications

There are no policy implications.

4 Personnel Implications

- 4.1 The responsibility for providing the secretariat function for the council companies will continue to be provided by Democratic Services. In addition, they will also cover the newly formed Shareholder Committee. These extra meetings, together with the resource requirements of hybrid meetings and live streaming of meetings continues to impact on the wider resourcing of the team and further consideration will need to be given to the resource required to support the Democratic process.
- 4.2 The resource in the legal team is currently being expanded with the recruitment of a Paralegal and an Information Governance Officer. There will therefore be the capacity to provide the legal advice required by the company boards. The Monitoring Officer will not act in this capacity due to potential conflicts of interest.

5 Environmental Considerations

There are no environmental considerations.

6 Statutory Considerations

Whilst there is no legal requirement for limited companies to appoint a company secretary, the ultimate statutory responsibility for compliance of the Companies Act 2006 lies with the directors. The directors for the council companies are drawn from senior management and members and therefore it is in the best interests of the directors to ensure there is a sufficiently trained and competent company secretary support to ensure compliance within the company governance framework.

7 Equality Impact Assessment (EIA)

There are no equality impacts.

8 Risk Management Implications

There is an increasing demand and scrutiny of the practice of sound corporate governance and a strong emphasis on transparency and the Boards responsibilities both to the company and the shareholder. The

company secretary role provides advice to the Board on compliance with laws and regulations. The ultimate responsibility for compliance of the Companies Act 2006 lies with the Directors, therefore it is in the interests of both the companies and the Directors to receive sound advice on governance, compliance, and potential conflicts of interest.

10 Declarations of Interest / Dispensations Granted

There are none.

11 Background Papers



GOVERNANCE OF
COUNCIL COMPANIES

Pre-Screening Equality Impact Assessment

Borough Council of
King's Lynn & West Norfolk



Name of policy/service/function	Appointment of a Company Secretary for the council's trading companies				
Is this a new or existing policy/service/function?	Existing function				
<p>Brief summary/description of the main aims of the policy/service/function being screened.</p> <p>Please state if this policy/service is rigidly constrained by statutory obligations</p>	<p>Provision of a company secretary to support the governance framework of the three council companies.</p> <p>Alive West Norfolk</p> <p>West Norfolk Property</p> <p>West Norfolk Housing</p>				
Question	Answer				
<p>1. Is there any reason to believe that the policy/service/function could have a specific impact on people from one or more of the following groups according to their different protected characteristic, for example, because they have particular needs, experiences, issues or priorities or in terms of ability to access the service?</p> <p>Please tick the relevant box for each group.</p> <p>NB. Equality neutral means no negative impact on any group.</p>		Positive	Negative	Neutral	Unsure
Age				x	
Disability				x	
Gender				x	
Gender Re-assignment				x	
Marriage/civil partnership				x	
Pregnancy & maternity				x	
Race				x	
Religion or belief				x	
Sexual orientation				x	
Other (eg low income)				x	

