

Borough Council of
**King's Lynn &
West Norfolk**



Shareholder Committee

Agenda

Monday, 13th February, 2023
at 10.00 am

in the

**Council Chamber
Town Hall
Saturday Market Place
King's Lynn**

Remote Meeting on Zoom and available for the public to view on
[WestNorfolkBC on You Tube](#)



**King's Court, Chapel Street, King's Lynn, Norfolk, PE30 1EX
Telephone: 01553 616200**

3 February 2023

Dear Member

Shareholder Committee

You are invited to attend a meeting of the above-mentioned Task Group which will be held on **Monday, 13th February, 2023 at 10.00 am** in the **Council Chamber, Town Hall, Saturday Market Place, King's Lynn PE30 5DQ** to discuss the business shown below.

Yours sincerely

Chief Executive

AGENDA

1. **Election of Chair for the remainder of the Municipal Year**
2. **Election of Vice-Chair for the Municipal Year**
3. **Apologies for absence**
4. **Declarations of Interest**

Please indicate if there are any interests which should be declared. A declaration of an interest should indicate the nature of the interest (if not already declared on the Register of Interests) and the agenda item to which it relates. If a disclosable pecuniary interest is declared, the member should withdraw from the room whilst the matter is discussed.

These declarations apply to all Members present, whether the Member is part of the meeting, attending to speak as a local Member on an item or simply observing the meeting from the public seating area.

5. **Chair's Correspondence**

6. **Members present under standing order 34**

To note the names of any Councillors who wish to address the meeting under Standing Order 34.

Members wishing to speak pursuant to Standing Order 34 should inform the Chair of their intention to do so and on what items they wish to be heard before a decision on that item is taken.

7. **Urgent Business**

To consider any business, which by reason of special circumstances, the Chair proposes to accept, under Section 100(b)(4)(b) of the Local Government Act 1972.

8. **Terms of Reference** (Pages 4 - 6)

To note the terms of reference

9. **Verbal Update on recruitment of Board Members**

10. **Company Secretary Options** (Pages 7 - 13)

11. **Alive West Norfolk Board Appointment** (Pages 14 - 18)

12. **Committee forward Plan** (Pages 19 - 20)

13. **Frequency of meetings and future dates**

The Committee must meet no less than 4 times per annum.

To:

Shareholder Committee: S Dark, A Dickinson and S Sandell

Officers

Alexa Baker, Monitoring Officer
Honor Howell, Assistant to the Chief Executive
Michelle Drewery, S 151 Officer

**TERMS OF REFERENCE OF THE BCKLWN SHAREHOLDER COMMITTEE
SUB-COMMITTEE OF CABINET**

1. Definitions

Council Companies	means the private limited companies in which BCKLWN is the majority shareholder/owner
Governance Documents	means, as the context requires, the Articles of Association, Business Plan, Shareholder Agreement and/or Intragroup Agreement
Shareholder Function	Means the functions set out in paragraph 4 of these terms of reference (and for ease of reference is intended to equally apply to any company limited by guarantee)

2. Overview

- 2.1 The Shareholder Committee is a sub-committee of Cabinet, the purpose of which is to fulfil the Council’s Shareholder Function in relation to the Council Companies, this being an executive function.
- 2.2 The Shareholder Committee will exercise the Council’s Shareholder Function in any company, limited by shares or guarantee, wholly owned by the Council for the purposes of service provision and/or trading activities.
- 2.3 The Shareholder Committee will exercise the functions delegated to it by Cabinet as set out in paragraph 4 below

3. Composition & Operation

- 3.1 The Shareholder Committee shall comprise of three Cabinet Members, to be appointed by the Leader.
- 3.2 Members of the Shareholder Committee can only be substituted by other Cabinet Members who are not Directors of the Council Companies.
- 3.3 The Shareholder Committee shall appoint its own Chair and Vice-Chair annually at the first meeting of the municipal year.
- 3.4 Quorum is three voting Members.

- 3.5 A Shareholder Committee meeting shall be held no less than 4 times per annum.
- 3.6 The Chief Executive, Section 151 Officer and Monitoring Officer (or their nominees) will support the Shareholder Committee.
- 3.7 Any decisions made by the Shareholder Committee must be notified to the Company Directors as soon as reasonably practicable following such decision being taken.
- 3.8 Advisors may be invited to attend the Shareholder Committee as required.

4 Functions delegated to the Shareholder Committee

The Shareholder Committee will have responsibility for the following:

- 4.1 Any decisions identified as being reserved to the Shareholder within the Governance Documents, subject to paragraph 4.3 below.
- 4.2 Any decisions that the Shareholder is required by legislation to make, subject to paragraph 4.3 below.
- 4.3 In respect of paragraphs 4.1 and 4.2, decisions may be taken provided that where a proposed recommendation is outside the Council's budgetary or policy framework, the Shareholder Committee will consider the recommendation and provide a recommendation to Full Council.
- 4.4 Approval of the Business Plan for each of the Council Companies on an annual basis.
- 4.5 Holding each of the Council Companies to account for their performance against the respective Business Plan.
- 4.6 Approval of Shareholder Agreements with the Council Companies, including any variations thereto.
- 4.7 Responsibility for holding the Council Companies to account for compliance with the respective Shareholder Agreements.
- 4.8 Reviewing the Governance Documents on an annual basis with a view to making any changes to improve governance and/or performance requirements of the Council Companies.

5 Scrutiny of the Shareholder Committee

- 5.1 All decisions of the Shareholder Committee are subject to the call-in arrangements set out in the Council's Standing Orders.
- 5.2 The Review and Development Panels may otherwise scrutinise the performance of the Shareholder Committee and require that it reports to them on the status and progress in relation to any of the Council Companies and how the Shareholder Function is being performed.
- 5.3 Audit Committee are to receive assurance that there is sound system of internal control and risk management process in place for each of the Council's companies.

6 Review

- 6.1 The Shareholder Committee will review the Terms of Reference annually

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: cllr.graham.middleton@west-norfolk.gov.uk			Other Cabinet Members consulted:		
			Other Members consulted:		
Lead Officer: Honor Howell E-mail: honor.howell@west-norfolk.gov.uk 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	

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 Stuart Dark E-mail: cllr.stuart.dark@west-norfolk.gov.uk		Other Cabinet Members consulted:			
		Other Members consulted:			
Lead Officer: Honor Howell E-mail: honor.howell@west-norfolk.gov.uk Direct Dial: 01553 616550		Other Officers consulted: Lorraine Gore – 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**

APPOINTMENTS TO THE BOARD OF DIRECTORS OF COUNCIL COMPANIES

<p>Summary</p> <p>Following a review of governance of the council’s wholly owned trading companies, it was advised that none of the council’s statutory officers should act as directors for the companies. The Chief Executive will resign from the Board of Alive West Norfolk and following the resignation of Cllr Long, this will leave the Board inquorate.</p> <p>Recommendation</p> <p>That the Shareholder Committee recommend to the Alive West Norfolk Board that the Managing Director of Alive West Norfolk is appointed to the Board of Directors.</p> <p>Reason for Decision</p> <p>To implement sound governance of the council’s wholly owned trading companies, ensuring they remain quorate and to minimise potential conflicts of interest.</p>
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1 Background

Following the review of the governance arrangements of the council's trading companies, Cabinet recommended that a Shareholder Committee be established to provide the necessary oversight from the shareholder's perspective that the parameters, policies, and boundaries that the council has established are being adhered to.

The Shareholder Agreements (the document which describes the powers of the board of the company to take decisions without the approval of the shareholder) are currently being drafted. The company's Articles of Association state that the appointment of new directors is a decision of the board members. Within the Shareholder Agreements, this will be the reserved matters of the Shareholder Committee and the Articles will be re-drafted accordingly. Until such a time as the Shareholder Agreements have been adopted, the appointment of directors is the responsibility of the current Board Directors.

- 1.1 Following the resignation of Cllr Long, the Alive West Norfolk Board of Directors has been reduced to four. The Chief Executive will resign her position in accordance with the advice received during the review of companies' governance and Cllr Nockolds has advised that she is unlikely to continue as a director which will reduce the numbers to below that of the quorate requirement. With borough elections due to be held within 3 months, no further appointment of council members will be made until after that time.

2 Options Considered

- 2.1 Discussions are ongoing in respect of the future make-up of the boards of the council companies. Work is being progressed to recruit an independent board member for Alive West Norfolk to fulfil the impending vacancy for financial skills. Work has also commenced on the appointment of council officers to the board and how to manage the potential conflicts of interest (where the officer should not be acting for the council as well as the company).

Whilst this work is being progressed, it is important that the Alive West Norfolk Board remains quorate. It is proposed therefore to appoint Alive West Norfolk's Managing Director, Neil Gromett, to the Board. As an employee of Alive West Norfolk, there is no potential conflict of interest in this appointment. As an employee, Neil would be classed as an 'executive' director as opposed to non-executive.

Although presently, the Alive West Norfolk Board appoint new Directors, in future, this responsibility will be with the Shareholder Committee and will form part of the Shareholder Agreement. To embed the new process, the Shareholder Committee is asked to recommend to the Alive West Norfolk Board of Directors that Neil Gromett is appointed as a director of Alive West Norfolk.

3 Policy Implications

- 3.1 There are no policy implications.

4 Personnel Implications

- 4.1 There are no conflicts of interest with this appointment. Full consultation with the Managing Director will take place prior to any appointment.

5 Environmental Considerations

- 5.1 There are no environmental considerations.

6 Statutory Considerations

- 6.1 Following the resignation of Cllr Long and the impending resignation of the Chief Executive from the Alive West Norfolk Board, to retain a quorate number of Directors, a new appointment needs to be made.

7. Equality Impact Assessment (EIA)

- 7.1 A full EIA is not required. Pre-screening form is attached.

8. Risk Management Implications

- 8.1 Failure to appoint a new Director to Alive West Norfolk will result in the Board of Directors not being quorate and unable to function appropriately.

9. Declarations of Interest / Dispensations Granted

There are none.

10. Background Papers

Cabinet report 15 November 2023, review of the governance of council companies.

Pre-Screening Equality Impact Assessment

Borough Council of
King's Lynn & West Norfolk



Name of policy/service/function	Appointment to the Board of Directors of the wholly owned council 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>	The appointment of new Directors to the Boards of the council's wholly owned companies. This is a statutory function				
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	

FORWARD PLAN

Date of Meeting	Report Title	Decision Maker	Cabinet Member Lead and Lead Officer	List of Background Papers	Public or Private Meeting
13 February 2023	Election of Chair	Shareholder Committee	Leader Monitoring Officer – A Baker	Cabinet Report 15 November 2022	Public
	Shareholder Committee Terms of Reference	Shareholder Committee	Leader Monitoring Officer – A Baker	Cabinet Report 15 November 2022	Public
	Appointment of a Company Secretary	Alive West Norfolk Board	Leader Assistant to the Chief Executive – H Howell		Public
	Appointment of Directors to the Board of the council companies	Alive West Norfolk Board	Leader Assistant to the Chief Executive – H Howell		Public
Date of Meeting	Report Title	Decision Maker	Cabinet Member Lead and Lead Officer	List of Background Papers	Public or Private Meeting
? March 2023	Shareholder Agreement	Shareholder Committee	Leader Assistant to the Chief Executive – H Howell		Public
	Updated Service Level Agreements – Alive West Norfolk and West Norfolk Property	Shareholder Committee & Company Boards	Leader Assistant to the Chief Executive – H Howell		Private – Contains exempt information under para 3 – information relating to the business affairs of any person (including the authority)
