

19 January 2021		ITEM: 6
General Services Committee		
Thurrock Regeneration Limited		
Wards and communities affected: All	Key Decision: Key	
Report of: Mark Coxshall, Portfolio Holder for Regeneration and Strategic Planning		
Accountable Assistant Director: Anna Eastgate, Assistant Director Lower Thames Crossing & Project Delivery		
Accountable Director: Andrew Millard Director of Place		
This report is Public		

Executive Summary

Thurrock Regeneration Ltd (TRL) was originally set up as a wholly owned company under the name of Gloriana Thurrock Ltd. on 23rd October 2013. The company's name was changed to Thurrock Regeneration Ltd (TRL) on 23rd November 2017. On the 29th March 2017, TRL set up a subsidiary company under the name of Thurrock Regeneration Homes Ltd (TRHL).

TRL is wholly owned by Thurrock Borough Council (TBC) whereas TRHL is wholly owned by TRL. Within the Council, the General Services Committee is the shareholder of TRL.

TRL had a Board of Directors which was comprised of 3 Council officers and 1 external party (Homes England). Over the last few months, all the Directors have resigned from their posts and there is now a need to replace the board to ensure the effective administrative management of the company and to breathe new life into the company, in order to contribute to the delivery of quality housing in the borough and to assist in urban regeneration.

In the absence of any Directors, the decision making reverts to the Shareholder to appoint a new Director(s).

This report nominates the Director of Place to vote on behalf of the shareholder as its nominated proxy at the appropriate TRL Shareholder meeting to appoint a new Director.

A similar report was considered at GSC on 17th December 2020. This report addresses the concerns raised during that meeting in relation to limiting the scope of decision making of a single director to purely administrative tasks required in the

usual function of such a company until the future structure of the Board and operating model is agreed and implemented.

1. Recommendation(s)

- 1.1 That the Committee appoints the Director of Place to attend the Shareholders meeting of TRL as the Council's nominated proxy;**
- 1.2 That the Committee directs the Director of Place to vote on behalf of the shareholder to:
 - 1.2.1 approve the change to the TRL Articles of Association; and**
 - 1.2.2 appoint Roger Harris as a Director to TRL;and**
 - 1.2.3 in appointing a single director that such director shall refrain from taking any action other than action required to comply with the Companies Act 2006 for example, filing accounts, until a new company structure and Board is agreed by members and implemented.****
- 1.3 That the Committee authorises the Director of Place to write to TRL on behalf of the Shareholder and request that it uses its shareholder powers to ensure that:
 - 1.3.1 a change is made to the TRHL Articles of Association; and**
 - 1.3.2 Roger Harris be appointed as a Director of TRHL; and**
 - 1.3.3 in appointing a single director that such director shall refrain from taking any action other than action required to comply with the Companies Act 2006 for example, filing accounts, until a new company structure and Board is agreed by members and implemented.****
- 1.4 That the Committee notes a further report on the future governance structure of TRL will be brought back to this Committee at the earliest opportunity.**

2. Introduction and Background

- 2.1 TRL was incorporated as a Limited Company on 23rd October 2013, and formally agreed by Cabinet on 13 November 2012, with the aim of complementing the Housing Revenue Account (HRA), providing rental housing under assured short-hold tenancies, targeting sites that had lain dormant for many years and that the private sector was reluctant to develop, as well as providing housing for sale and low cost home ownership which is affordable by local people.**
- 2.2 TRL is 100% owned by the Council, with land injected into the company as Council equity into the vehicle. Funding is made available to the Company by the Council through the use of the Council's prudential borrowing under a lending agreement between the Council and the Company.**

- 2.3 TRL gives the Council a vehicle to increase the delivery rate of housing development, particularly on brownfield sites, and to ensure the delivery of affordable housing, especially in a tight housing sector market where private sector developers see less profit in delivering affordable housing.
- 2.4 The company had a Board of Directors which was comprised of 3 Council officers and 1 external party (from Homes England). All Directors have recently resigned from the Board, principally due a conflict of interest with their own Council roles, one being a change of role within the Council which led to a specific and direct conflict. Officers have a duty to act in accordance with the Constitution and the employee Code of Conduct. As Directors, they also have a legal duty under the Companies Act 2006 to act in the best interests of the Company. In making decisions other than administrative decisions relevant to the Companies Act 2006, there is a significant risk of a conflict between the two which often cannot be reconciled.
- 2.5 Recently the Country has been gripped by the Covid 19 pandemic and all of the associated impacts on residents, businesses and the local and national economy. However as is often the case when faced with considerable adversity, there can be a benefit to be identified. In this vain, lots of positive work has been continuing in the background to support the Council's ambitions for economic recovery and growth. The Council has a number of initiatives which are well progressed and poised to drive this ambition forward:
- The emerging economic development strategy is aimed at supporting the Council through the current economic climate back to economic growth and prosperity;
 - The emerging local plan is progressing with the aim of developing all of the evidence base to support the next statutory phases of the local plan process;
 - The Government has announced reforms to planning aimed at improving the planning process to be more efficient and delivery focussed;
 - The Council is continuing with its programme of regeneration schemes including the Stanford le Hope Transport Interchange, the A13 widening, the Grays South regeneration and the bid under the New Towns Fund;
 - The Development Consent Order for the Lower Thames Crossing is progressing along with Government Announcements of £29b of roads investment, an acceleration unit to deliver strategic transport initiatives as well as support for the development of the Tilbury Link Road.
- 2.6 All of this activity needs to be supported by an equally ambitious housebuilding programme and the reasons why TRL is considered to be an important part of this ambitious programme are as relevant now as they were when it was set up. The company purpose set out in the Articles of Association and states:

'To carry on business as a provider of social housing (including affordable and low cost housing) and other accommodation meeting the social needs as regards health and long-term care in the Borough of Thurrock.....' .

- 2.7 There is now an imperative to move matters forward by appointing a new Director(s) and refreshing the approach to housing options and delivery in the borough. In this regard a report was presented to Housing Overview and Scrutiny Committee on 17 November 2020 and a paper was considered at Cabinet on 9 December 2020.
- 2.8 Work is underway to look at the future composition of a board of directors with a range of skills to ensure effective and proper governance in the future. Skills such as finance, development and construction industry, legal and housing would all be appropriate to support the future delivery of housing. This will form part of the options for the future Board structure and operating model of the company.

3. Issues, Options and Analysis of Options

- 3.1 In the absence of company directors, decision making in a company reverts to its Shareholder which in this instance is the Council, with the General Service Committee undertaking decisions on behalf of the Council.
- 3.2 The Articles of Association define the regulations for the operation of the company and define the purpose of the company. In the case of both companies, the Articles of Association currently stipulate a requirement for two directors.
- 3.3 In order to appoint a single director (even on a temporary basis) there is a need to make a change to the Articles of Association. This would be undertaken at a shareholders meeting at which the Committee is asked to nominate the Director of Place to attend and vote on its behalf to change the Articles of Association to permit a change to a single director.
- 3.4 In response to concerns raised around the appointment of a single Director on an interim basis with a wide scope of authority, the recommendations at 1.2.3 and 1.3.3 above set out the narrow remit of operation for the single director until such time as a new Board structure and operating model is agreed and implemented. Controlling the authority given to the single Director in this way ensures compliance with the Companies Act 2006, does not give rise to any conflicts of interest given the purely administrative nature of the role and further should a Director appointed act outwith the authority given, there is personal liability for the decisions made.
- 3.5 Once the resolution is passed to change the Articles of Association, a single director can then be appointed to the TRL board. The Committee is therefore also asked to nominate the Director of Place to vote in this regard.

- 3.6 TRL is the sole shareholder of TRHL, therefore the Council does not have direct powers to control the appointment of its directors, although as the sole shareholder of TRL it is in a position to give directions to TRL to enable the implementation of change at TRHL.
- 3.7 Changing the Articles of Association does not preclude them from being changed back at a point in the future once the new Board structure and operating model is agreed and implemented.
- 3.8 It is proposed that Roger Harris becomes the director of both TRL and THRL until such time as the Board and the Shareholder can agree a new board structure and revised operating model for the company, which will be progressed expeditiously after a revised strategic approach to housing delivery has been agreed by Cabinet. This was considered on 9 December 2020.
- 3.9 Once the resolutions have been passed at a shareholder meeting, there will be a need to file information at Companies House to comply with the requirements of the Companies Act 2006. The Company Secretary will therefore file the appropriate paperwork after the meeting.

4. Reasons for Recommendation

- 4.1 There is a need for a director to be appointed for the effective and proper decision making required to operate TRL and TRHL in accordance with the Companies Act 2006.
- 4.2 The Company accounts and audit will need to be signed by a Director in the coming months.
- 4.3 This is an interim arrangement in order for time to be taken to consider a new Board structure and operating model for TRL to deliver and support the priorities set out in this report and as considered by Cabinet.

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

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

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

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

7. Implications

7.1 Financial

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

There are no specific financial implications arising from this report.

7.2 Legal

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

The report sets out the process to make an amendment to the Articles of Association to permit the appointment of a single Director as an interim measure. Whilst it is lawful for the Company to operate with a single Director (once the articles are changed) it is advisable that the future operating model of the company is looked at as soon as possible to increase the number of directors on the board to provide more resilience and improved accountability in decision making.

7.3 Diversity and Equality

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

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

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

Not applicable

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

- Articles of Association filed at Companies House

Report Author:

Anna Eastgate

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