

<b>Constitution Working Party</b>			
<b>Report Title</b>	<b>Catford Regeneration Partnership Limited</b>		
<b>Key Decision</b>	No	<b>Item No.</b>	
<b>Ward</b>			
<b>Contributors</b>	<b>Head of Law</b>		
<b>Class</b>	<b>Open</b>	<b>Date 20<sup>th</sup> March 2019</b>	

**1. Summary:**

- 1.1 The Catford Regeneration Partnership Limited (CRPL) is a wholly owned company of Lewisham Council. The company was originally created in January 2010 to purchase leasehold interests in and around the Catford Centre in order to manage and regenerate the properties to improve the economic, social and environmental wellbeing of the people of the London Borough of Lewisham (LBL).
- 1.2 In January 2018, CRPL was the subject of an internal audit for the 2017/2018 financial year. The report highlighted areas for further action and improvement relating to its structure and governance. It was noted that there were only two directors of that company and recommended that officers should assist the Constitution Working Party, if required, to review the governance arrangements of CRPL. It also recommended that the quorum for Board meetings should be defined and that the frequency of meetings should accord with the requirement in the Articles of Association for them to be held monthly, or the requirement for monthly meetings should be amended in the Articles.

**2. Purpose:**

- 2.1 The purpose of this report is consider the structure and governance of the CRPL and to make recommendations to the Mayor and Cabinet for any changes to ensure best practice.

**3. Recommendation:**

It is recommended that the Constitution Working Party note the contents of this report and recommend whether any additional directors should be appointed to CRPL and, if so, to recommend a number and refer the matter for decision to Mayor and Cabinet.

**4. Background:**

- 4.1 CRPL is a wholly owned company of Lewisham Council. The company was originally created in January 2010 to purchase leasehold interests in and around the Catford Centre in order to manage and regenerate the properties to improve the economic, social and environmental wellbeing of the people of the London Borough of Lewisham.
- 4.2 The Company's Articles of Association appear at Appendix 1. Article 11 states that, unless otherwise determined by ordinary resolution, the number of directors is not subject to any maximum and the minimum number is one. The appointment of directors is the responsibility of the London Borough of Lewisham as the sole shareholder. The company's articles were

drafted in this way to allow Lewisham the maximum flexibility in the appointment to directorships.

- 4.3 At its inception, 2 directors were appointed, both of them Council officers. Initially one was a senior finance officer and one a senior regeneration officer. However, to avoid any perception of conflict of interest for the regeneration officer, it has become the Council's practice not to appoint a senior regeneration officer. Currently, the directors are the Head of Public Services and Head of Financial Services. The Council is the sole shareholder of CRPL.
- 4.4 Many key decisions in relation to the company are classified as reserved matters, and must be approved by the Council as sole shareholder. The complete list of shareholder reserved matters are listed in the Articles of Association at paragraph 25 and now appear at Appendix 1. These reserved matters ensure that the Council retains control over the direction of the Company and that the company operates strictly within the approved business plans.
- 4.5 In January 2018, the Company was subject to an internal audit for the 2017/2018 financial year. It suggested a number of areas of improvement. The first of these suggested that the current number of directors be increased to include a non-executive member. It highlighted that full Council had referred this matter to the Council's Constitution Working Party for consideration. Although this recommendation does not relate to a council constitutional change, the matter is being referred in accordance with the Council's wishes.

## **5. Options**

### *Reduce the number of directors*

- 5.1 It is not proposed that the number of directors be reduced. It is not unusual for companies to have a single director, but such an action is more usual in small enterprises, and would leave the company without directors in the event of the single director resigning and would require a Council shareholder meeting to appoint a replacement.

### *Keep 2 directors as now*

When, with external legal advice, CRPL was established, the Council decided that 2 directors would be sufficient. This is compliant with the Articles of Association which provide for there to be at least one director with no maximum number specified. It is not unusual for companies to have only two directors. There is a restraint on the activities of directors in the Articles of Association as set out in Appendix 1 at Article 25, so the discretion available to the directors is significantly curtailed. Currently the company effectively acts as managing agent for the properties in the Catford Centre in accordance with the business plan agreed by the Council.

- 5.2 An advantage of having a smaller number of directors is that it is simple and makes co-ordination of meetings and decision making straight forward. Legal advice has been, and remains, that in the event of the company functions changing in the light of development of the Town Centre Masterplan, an enlargement of the Board by the Council would be required to more closely reflect the activities of the company.
- 5.3 One concern which has been expressed is that if a director leaves the Council, then one director remains serving in that capacity unless and until another is appointed. Though that is legally possible, and not uncommon, concerns have been expressed that in such circumstances there would be a concentration of decision making powers in the hands of a single director until the vacancy was filled.

*Increase the number of directors*

- 5.4 It would be possible to increase the number of directors without changing the Articles of Association. This would avoid the perceived difficulties arising from having only 2 directors and would accord with the expressed wishes of full Council. Care would need to be taken to avoid the size of the board of directors becoming unwieldy though the appointment of additional directors can broaden the skills available at board level. However as the directors' powers are restrained in accordance with Article 25 in Appendix 1, the discretion available to them would still be restricted.
- 5.5 If the Council is of the view that the company should have a larger number of directors as a minimum, it will still from time to time need to decide whether to appoint a replacement if an existing director ceases to act in that capacity, and will need to review the composition of the board as and when the development activities of the company expand.

**6 Director's mandate**

Directors owe a fiduciary duty to act in the best interest of the company. A Director's Mandate has also been given to each director including reference to their indemnity, setting out their duties as a director. The Mandate includes a requirement to respect their position as Council appointee and not to act in contravention of a properly given Council instruction. Whether or not the Council decides to increase the number of directors, they will all be subject to the Mandate.

**7. Implementing the Audit recommendations**

- 7.1 If the Council seeks to appoint additional directors, it does not need to change the Articles of Association to do so. It would simply need a decision of Mayor and Cabinet to appoint another director. Appointments to CRPL are a function delegated to the Mayor and Cabinet. If there were a decision to change the Articles in any way, this would be a decision for the London Borough of Lewisham as the sole shareholder of CRPL, so would be effected by a special meeting of the company, but by regulation, this too is a function for Mayor and Cabinet.
- 7.2 It is noted that the 2018 Internal Audit suggested that the Articles should be explicit about the quorum for a meeting of the directors. In fact this is already explicit at Article 6 and so no action is necessary, though there is no impediment to changing this, subject to the appropriate process as set out in 7.1.
- 7.3 It is understood that the frequency of meetings now accords with the requirements in the Articles of Association and so no further action is required.

**8. Financial Implications**

- 8.1 There are no financial arising from this report implications.

**9. Legal Implications**

- 9.1 Any decision to change the number of directors must go to the Mayor and Cabinet. There is no constitutional change required. The matter has only been referred to CWP as the internal Audit Report and the full Council asked that it should be referred there for recommendation. The establishment of the CRPL was initially considered at full Council in 2010 as it entailed a

decision to use significant prudential borrowing that was not previously envisaged in the Council's budget. Appointments to CRPL are an executive function, under Part III of the Council's Constitution.

- 9.2 Under the Local Authorities (Indemnities for Members and Officers) Order 2004 (Statutory Instrument 3082) local authorities are empowered to indemnify Members and officers in a wide range of circumstances and any additional appointment would be subject to the existing Director's Mandate and Indemnity.
- 9.3 The Equality Act 2010 (the Act) introduced a public sector equality duty (the equality duty or the duty). It covers the following protected characteristics: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

In summary, the Council must, in the exercise of its functions, have due regard to the need to:

- eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
- advance equality of opportunity between people who share a protected characteristic and those who do not.
- foster good relations between people who share a protected characteristic and those who do not.

It is not an absolute requirement to eliminate unlawful discrimination, harassment, victimisation or other prohibited conduct, or to promote equality of opportunity or foster good relations between persons who share a protected characteristic and those who do not. It is a duty to have due regard to the need to achieve the goals listed in the paragraph above.

The weight to be attached to the duty will be dependent on the nature of the decision and the circumstances in which it is made. This is a matter for the Mayor, bearing in mind the issues of relevance and proportionality. The Mayor must understand the impact or likely impact of the decision on those with protected characteristics who are potentially affected by the decision. The extent of the duty will necessarily vary from case to case and due regard is such regard as is appropriate in all the circumstances.

The Equality and Human Rights Commission has issued Technical Guidance on the Public Sector Equality Duty and statutory guidance entitled "Equality Act 2010 Services, Public Functions & Associations Statutory Code of Practice". The Council must have regard to the statutory code in so far as it relates to the duty and attention is drawn to Chapter 11 which deals particularly with the equality duty. The Technical Guidance also covers what public authorities should do to meet the duty. This includes steps that are legally required, as well as recommended actions. The guidance does not have statutory force but nonetheless regard should be had to it, as failure to do so without compelling reason would be of evidential value. The statutory code and the technical guidance can be found at:

<https://www.equalityhumanrights.com/en/advice-and-guidance/equality-act-codes-practice>

<https://www.equalityhumanrights.com/en/advice-and-guidance/equality-act-technical-guidance>

The Equality and Human Rights Commission (EHRC) has previously issued five guides for public authorities in England giving advice on the equality duty:

- The essential guide to the public sector equality duty
- Meeting the equality duty in policy and decision-making
- Engagement and the equality duty: A guide for public authorities
- Objectives and the equality duty. A guide for public authorities
- Equality Information and the Equality Duty: A Guide for Public Authorities

The essential guide provides an overview of the equality duty requirements including the general equality duty, the specific duties and who they apply to. It covers what public authorities should do to meet the duty including steps that are legally required, as well as recommended actions. The other four documents provide more detailed guidance on key areas and advice on good practice. Further information and resources are available at:

<https://www.equalityhumanrights.com/en/advice-and-guidance/public-sector-equality-duty-guidance#h1>

