

Shareholder and Investment Board

Terms of reference

A graphic element consisting of a white outline of a speech bubble or arrow shape pointing to the right, containing the text 'OUR ORGANISATION'. Below the arrow shape is a colorful graphic of several parallel diagonal lines in shades of blue, green, and purple.

1. Overview
2. Membership
3. Purpose
4. Organisation of Shareholder Board

1. Overview

1.1 The Shareholder and Investment Board is constituted as an advisory steering group to help enable the Council to carry out its role as shareholder in relation to Brick by Brick Croydon Limited ('the Company') and in particular to monitor the Council's investment as shareholder of the Company and to recommend to Cabinet those matters set out at Schedule 1 of these Terms of Reference and to recommend to the Cabinet Member for Homes and Gateway Services the exercising of those matters set out at Schedule 2 to these Terms of Reference any and all other residual rights that the Council has as shareholder under the Articles of Association of the Company or as a matter of law.

1.2 The Shareholder and Investment Board is effective from the 14th of October 2019.

2. Membership

2.1 The Shareholder and Investment Board is constituted of the following Members:-

- Cabinet Member for Homes & Gateway Services (Chair)
- Cabinet Member for Finance & Resources
- Cabinet Member for Environment, Transportation and Regeneration (the Lead Cabinet Member for Planning & Regeneration)
- Executive Director Resources & Monitoring Officer
- Director of Finance and Section 151 Officer
- Director of Law & Governance

2.2 The Board will also be supported by advisors representing the following disciplines within the Council; Finance, Legal, Housing & Assets. The Board will also receive regular update reports from the Council's 'BBB/Croydon Affordable Homes' monitoring group established by the Executive Director Gateway. The Board will also call on external expertise as and when required.

- 2.3 BBB will be invited to report to the Board as and when required but is not a Member of the Board. To enable full and frank discussion and advice between officers of the Council, advisers and elected Members, BBB may be excluded from attendance and taking part in certain discussions. The Agenda will indicate where this is likely to be required.
- 2.4 The Board's business is part of the private business of the Council in its capacity as shareholder and Members, officers and advisers are subject, to any overriding legislative requirements, to treat the business of the Board as confidential and commercially sensitive. Any external advisers to the Board are to be reminded of this prior to attendance at the Board.
- 2.5 Where a Board member or other attendee has a conflict of interest arising in relation to the business to be conducted at the Board, that Board member or attendee will make the conflict known to the group and the Chair, taking advice from the Director of Law and Governance, will decide whether the conflict is trivial (so as not preclude that individual from taking part in the item) or non-trivial (so as to preclude that individual from taking part on the item).
- 2.6 In so far as the Vice Chair of the Council's Planning Committee is a Board Member through being the lead Cabinet Member for Planning & Regeneration) that of itself is not considered to be a conflict of interest and will not require declaration at the meeting. In the unlikely event that specific planning application related issues do arise at the Board for discussion, the lead Cabinet Member for Planning & Regeneration will consider whether it is appropriate to take part in the discussions (bearing in mind the Planning Code of Good Practice). The Director of Law & Governance may be called upon to give advice where necessary.

3 Purpose of the Shareholder and Investment Board

Shareholder Reserved Matters

- 3.1 The Board has been established to provide a formal mechanism and structure to facilitate and enable the Council to make such decisions as are required or appropriate to make in its capacity as shareholder of the Company. In particular, the Board is established so as make recommendations to either Cabinet or the Cabinet Member for Homes and Gateway Services depending on the nature of the proposed decision. Those Shareholder Reserved Matters at Schedule 1 of these Terms of Reference are for recommendation from the Board to Cabinet. Those Shareholder Reserved Matters at Schedule 2 of these Terms of Reference are for recommendation from the Board to the Cabinet Member for Homes and Gateway Services.
- 3.2 Any residual matters not specifically captured by Schedule 1 or Schedule 2 but considered to be a Shareholder decision matters either within the Articles of Association or as a matter of law, will be for recommendation from the Board to the Cabinet Member for Homes and Gateway Services.

Appointment and Removal of Directors

- 3.3 In addition to the above, and not specifically referred to under Shareholder Reserved Matters but covered under Article 19 of the Company's Articles of Association, the Council as shareholder has the power to remove Directors from the Company and appoint Directors to the Company (subject to the proviso that

there can be no fewer than 2 Directors and no more than 4 Directors under the Articles of Association as presently constituted). The Board shall therefore recommend to the Cabinet Member for Homes and Gateway Services the appointment and removal of Directors to the Company.

Monitoring the Council's Investment

3.4 Whilst acknowledging the operational and commercial independence of the Company from the Council, the Council nevertheless has an interest and a duty to monitor the performance and success of its investment as shareholder in the Company and the Board will carry out that function. In particular, the Board will monitor the development and implementation of the Company's Business Plan and will consider any proposed variations to the Business Plan put forward by the Company. The Board will also monitor any risks associated with the operations and performance of the Company. In that regard, the Board will not only review the Company's Annual Report but will also receive reports from the Council itself in the Council's role as lender, purchaser of properties, supplier of services and seller of land.

3.5 Where appropriate, and again whilst acknowledging the operational and commercial independence of the Company, the Council will evaluate the return and the benefits of its investment against the values of the Council and where appropriate highlight issues to the Company where doing so will promote the values of the Council and does not interfere in the legitimate rights of the Directors of the Company to exercise their general authority. The Board will make any recommendations it considers appropriate in that regard.

4. Operation of the Board

4.1 The Board shall meet on a six week rotation or as otherwise required.

Meetings shall be convened and administered by the Director of Law and Governance and shall be chaired by the Cabinet Member for Homes and Gateway Services

4.2 The quorum of the meeting shall be a minimum of three Board members at least two of whom must be Cabinet Members and one of whom must be the Chair or in the Chair's absence a deputy appointed by the Chair.

4.3 The Board will make recommendations on any of the matters under its purview as set out elsewhere in this paper and shall make those recommendations to the Cabinet Member for Homes and Gateway Services (the Chair). Where the Board is unable to reach consensus on a recommendation to be made, a summary of the differing views shall be presented to the Leader and political Cabinet

4.4 Any recommendations made by the Board can, if specifically requested by the Board, be reported to a General Meeting of the Company by any person authorised by the Board to attend the General Meeting on behalf of the Board and to represent the Council as Shareholder but such person will normally be the Chair of the Board.

4.5 The Board will invite papers from relevant Council officers but will typically receive a report on each of the following subjects at each meeting:-

- a. Finance: The status of loans made to the Company including outstanding loan amounts, accrued interest and payments received in the last quarter
 - b. Assets: Proposed sales of land to the Company including updates on exercise of Option Agreements and any matters/relevant discussion arising out of the Asset Acquisition Group activities
 - c. Housing: Progress with regards to the delivery of Affordable rented housing being held through the Croydon Affordable Homes vehicle (including associated vehicles) and progress with regards to the delivery of HRA housing. Any matters/relevant discussions arising out of the BBB/Croydon Affordable Homes Clienting Group
 - d. Law & Governance: Highlight report with particular regards to any decision making & general compliance issues including completion of any necessary legal documentation arising out of the relationship with the Company.
- 4.6 In addition the Board will receive for information and consider at each of its meetings any relevant BBB board papers and reports as well as any other reports required by the Board to enable it to carry out its function of considering shareholder related matters.
- 4.6 The Board will also invite the Company to present regular updates on the implementation of its Business Plan and to submit to the Board for review and comment the proposed final Annual Report, the draft Annual Business Plan and any proposed amendments to the existing Business Plan. The Company will also report on any other matters directly relevant to the Shareholder Reserved Matters in respect of which the Council needs to make a decision.
- 4.7 The Chair will approve the agenda for each meeting. The agenda and papers for each meeting will be circulated at least 5 working days prior to the meeting. The meeting will be minuted by an Executive Officer or Executive Support Officer and the Director of Law & Governance will oversee the convening of the meeting.
- 4.7 In the event of urgency, a meeting may be convened at short notice on the recommendation of the Cabinet Member for Homes and Gateway Services or, if an urgent recommendation is required to be made by the Board, this can be done by means of email communication. Where these urgency provisions are required to be used, the Cabinet Member for Homes and Gateway Services will request the Director of Law and Governance to make any arrangements necessary to either convene the meeting or obtain email approvals to a proposed recommendation.
- 4.8 The Terms of Reference of this Board will be reviewed at least annually and future consideration will be given to expanding the remit of the Board to include oversight of other Council owned companies and/or Limited Liability Partnerships of which the Council is a member.

(Approved by Shareholder and Investment Board on 25 November 2019)

SCHEDULE 1

SHAREHOLDER RESERVED MATTERS

- 1 Approval and adoption of each Business Plan (and any amendments/variations).
- 2 Alteration in the nature/scope of the Business, closing down/commencing any new business which is not ancillary or otherwise incidental to the business of the Company.
- 3 Declaring or paying any distribution in respect of profits, assets or reserves of the Company or in any other way reducing the reserves of the Company.
- 4 Forming any Company subsidiary or associated undertaking, acquiring shares in any other company or entity (subscription or transfer) such that the Company becomes a Subsidiary, entering into joint ventures or partnerships.
- 5 Alteration of authorised or issued partnership capital, or classification thereof, allotment of partnership capital or securities, granting options or rights to subscribe to the Company; issuing loan capital of the Company.
- 6 Waiving or delaying the rights of the Company and/or those of the Company to be exercised by the Company under any agreement to which the Company is a party.
- 7 Making any petition or passing any resolution to wind up the Company or making any application for an administration or winding up order or any order having similar effect in relation to the Company or giving notice of intention to appoint an administrator or file a notice of appointment of an administrator.
- 8 Changing the name of the Company.
- 9 Change in status of the Company.
- 10 The admission of a new Shareholder to the Company or the expulsion of any then existing Shareholder.
- 11 Entering into (or agreeing to enter into) any borrowing arrangement on behalf of the Company and giving any security in respect of any such borrowing (including creating any encumbrance over the whole or any part of the undertaking or assets of the Company or over any capital of the Company).¹

¹ No Shareholder Board approval is needed in respect of such arrangements where they have already been the subject of a Council governance process and been formally approved by Cabinet.

SCHEDULE 2

SHAREHOLDER RESERVED MATTERS

- 12 Taking any action outside the parameters of the Business Plans including but not limited to contract expenditure or increasing any indebtedness of the Company outside the parameters of the Business Plan.
- 13 Taking any action which constitutes a variation to the costs set out in the budget section of the Business Plan.
- 14 Acquiring, disposing or agreeing to acquire or dispose of any Company asset, any interest in any Company asset (including the exercise of an option) or any other land or buildings outside of the Business Plan.
- 15 Granting or entering into any license agreement or arrangement concerning the trading names of the Company and goodwill attached thereto.
- 16 Entry by the Company into any partnership or other profit share arrangement outside of the Business Plan
- 17 Contracting and/or entering into a commitment to contract expenditure outside the parameters of activity (as set out in the budget) contemplated by the Business Plans.
- 18 Giving a guarantee, suretyship or indemnity to secure the liabilities of any person or assume the obligations of any person.
- 19 Any other matters not covered within the Company's usual day-to-day business and within the scope of the Business Plans.