

## **Aylesbury Vale Broadband – Internal Audit Draft Terms of Reference**

### **Background**

Aylesbury Vale District Council (AVDC) approved the establishment of Aylesbury Vale Broadband (AVB) at Full Council in April 2015. AVB is a limited liability company which is 95% owned by the Council and 5% owned by Ironic Thought. The original purpose of AVB, as set out in the business case, was to *“create a sustainable business charged with supplying, installing and operating a superfast broadband network using mixed technologies.....its primary objective is not for profit but provision of affordable superfast broadband to all”*.

In December 2014, Full Council agreed to commit £1.536 million of New Homes Bonus funding to support the roll-out of superfast broadband across the District. To date AVB is reported to have drawn down £1.250m of this funding through loan agreements. These were approved by Council in April 2015 (£200k for a pilot project in Hogshaw, North Marston and Granborough parishes), £550k (October 2015) and £500k (April 2016). Funding was by a commercial loan, with interest chargeable at 7.5% pa, the first loan repayable by 2022 and the second and third in 2023.

Good corporate governance is key to maintain the reputation of both the company and AVDC, and overall ensure that the company delivers against the reasons it was created and to its business plan. Guidance on the principles to be applied in the governance arrangements of the Council's owned (part or whole) companies is set out in the document “Guidance to creation and working with companies in which AVDC has a financial interest”. This guide was approved by Cabinet in March 2016.

Council scrutinised the investment and progress of AVB through a number of forums:

- Cabinet's sign-off of the original AVB Business Case (March 2015) and revised business plan (September 2016)
- Economy and Business Development Committee (September 2015, March 2016 and September 2016)
- Finance and Services Committee reviewed appointment and remuneration terms of AVB's Managing Director (July 2016)

An internal audit review of the Council's governance arrangements over the investment in AVB was presented to Audit Committee in March 2017 and is publically available. This report noted areas where governance arrangements should be improved and made a series of recommendations. These included but are not limited to:

- Standardisation, consistency and regularity of financial and performance reporting against the approved business plan to enable the Council to more fully assess the risk of its investment in AVB and report to Members
- Clarity on the roles and responsibilities of the Council's existing scrutiny committees in oversight of the Council's commercial ventures
- AVB's concern around the treatment of confidential information
- Greater clarity around recharging costs between the Council and AVB
- Potential for conflicts of interest amongst directors
- Formalisation of arrangements for the draw-down of funds against the Council approved loan facility

The findings were also communicated to the Directors of AVB in a letter (May 2017), along with a proposed set of actions for the consideration of AVB Directors that would support the achievement of the recommendations. A follow up internal audit review was conducted in September 2017. This noted little progress on implementation of the recommendations raised.

The revised AVB business plan was due to be presented to Cabinet for approval in September 2017, but at that time it was reported that the competitive landscape in which AVB was operating had changed. The revised business plan was deferred for the AVB Board to review future direction in light of competition in the market place.

In November 2017, the General Purpose Committee agreed to move forward with an offer for the acquisition of AVDCs interests in AVB. Additional funds were also approved to provide operational finance up to the conclusion of sale and to cover the residual liabilities of AVB in the event of a shortfall between sale price and net liabilities.

The sale of the assets of Aylesbury Vale Broadband to Gigaclear plc completed on 30 December 2017. Gigaclear is the leading provider of full fibre broadband in rural locations and the acquisition will enable Gigaclear to serve the seven villages connected through AVB, as well as expand the ultrafast fibre-to-the-premises network further across Aylesbury Vale.

## **Purpose**

This review is being performed in accordance with the Motion passed at Full Council on 6 December 2017 and will:

- assess the governance arrangements over AVB from the development of the original proposal through to the position culminating in the decision to sell AVB and the conclusion of the sale
- comment on whether these helped the Council secure value for money and deliver the objectives approved by Full Council resulting from its investment in the company
- draw lessons from the Council's governance arrangements for AVB which could be applied to other commercial undertakings

## **Objectives**

This review will assess the adequacy and effectiveness of the following governance arrangements over AVB from the development of the original proposal through to the position culminating in the decision to sell AVB and the conclusion of the sale.

### **Inception: The Council took appropriate steps to ensure AVB was a sound investment in the run-up to establishing the company**

- the original, and subsequent, business cases demonstrate that the Council's investment will deliver value for money and or align with its Strategy
- risks relating to the establishment of the company and the potential for non-delivery against its business plan were fully understood, managed and reported to stakeholders
- the skills and competency of the individuals appointed as directors, initially and subsequently, representatives and business partners were appropriate and directors were aware of their responsibilities

- potential conflicts of interest were identified and managed
- appropriate external advice on the structure of the company or tax legislation was obtained

**Governance: As the majority shareholder, the Council had an appropriate level of oversight over the scope and scale of AVB's activities in a way which gave the Council assurance over its investment in AVB but avoided conflicts of interest in the operations of AVB**

- a Shareholder Agreement is in place setting out AVB's scope to act independently of the Council and where the Council, as majority shareholder, has a veto over AVB's actions
- the Council's Shareholder Representative was presented with sufficient information at AVB Board Meetings in order to act as a conduit between the Council and the company
- arrangements for accessing and sharing Company information with Directors, Shareholder Representative, Officers, Members and the public were clear, understood and adhered to
- roles and responsibilities were clearly set out, understood and fulfilled for:
  - o AVDC officers
  - o Council Members
  - o Company Directors
- the effectiveness of Council's scrutiny of performance of AVB, including the role of Scrutiny Committees and Cabinet
- the role of the Audit Committee in monitoring the governance and risk management of the investment in AVB
- potential conflicts of interests for all Members, whether Directors of the Company or not, were identified and managed
- procedures were in place to prevent, and if alleged investigate, instances of undue influence being exerted by officers, members, the public or any third party
- the company is operating legally, ethically, in line with the Council's responsibilities and to maintain the reputation of both the company and AVDC

**Reporting: The Council received sufficient and regular reporting from AVB to allow it to take a clear view on whether AVB (and therefore the Council's investment) was being well managed, delivering on performance objectives and financial targets according to the business plan, and to ensure transparency to members and the public**

- adequate information was provided to members to enable them to effectively scrutinise performance and to support robust consideration of any opportunities or risks, including financial and reputational
- the reporting arrangements for AVB were programmed into the forward plan of relevant committees

**Investment: The Council's financial and non-financial input to support AVB were clearly understood and costed**

- the terms and purposes of loans made to the company were agreed
- a procedure is in place and adhered to for the drawdown of funds against the loan facility in line with formal agreements

- there was a clear strategy for whether and how the Council will make a return on investment through dividends or repay loans and advances
- there was a process for pricing, monitoring and invoicing for how the company uses Council staff time and Council assets such as IT, property, and equipment

## **Approach**

The review will be undertaken by the Council's internal audit service provider, BDO LLP. BDO have completed similar reviews on behalf of other councils and, as an external organisation, will provide an independent opinion on the Council's governance arrangements over AVB. BDO will adopt the following approach to completing this review:

- Semi-structured interviews with representatives, including but not limited to:
  - o Directors who served throughout the duration of AVB's existence
  - o the Shareholder Representative(s)
  - o the Leader of each political group
  - o Chairs of Scrutiny and Audit Committees
  - o Officers of the Council who provided key support functions to AVB, such as finance, HR, IT, estates and committee services
- Review of documentation, including but not limited to:
  - o Business cases and subsequent business plans
  - o Service level agreements between the Council and AVB (if produced)
  - o Committee terms of reference and relevant council minutes (e.g. where business case was approved or loan facilities were approved, or reports presented to committees providing an update on company progress)
  - o Loan agreements
  - o Evidence of external advice received by the Council on taxation, legal or other matters
  - o Articles of Association and Shareholder Agreement
  - o Risk registers
  - o Declarations of interest
  - o Committee terms of reference
  - o Company procedures and policies (particularly those pertaining to managing conflicts of interest)
  - o Skills audits of Directors; training and support materials provided to Directors
  - o AVB Board minutes and other relevant company performance and financial information, subject to the exclusions below.

## **Timescales and budget**

This review will commence no later than one calendar month from the sale of AVB. The review will report no more than three months after commencement.

It is anticipated the review will take between 15-18 days to complete at an agreed rate of £1,000 per day. This is in addition to the annual Internal Audit budget.

## **Reporting**

The output of this review will be a report to the Council's Audit Committee. The report will be published in full and be publicly available.

## **Exclusions**

This review will be limited to the Council's relationship with AVB. It will not consider the Council's relationship with other companies the Council owns or part-owns. However, it will identify lessons learned that can be applied to other companies.

In order to maintain the boundaries between the Council (as a shareholder) and AVB, this review will not cover the day-to-day operations, decision making and internal processes of AVB. This review will focus on AVDC's governance arrangements over its investment in AVB.

As AVB is a majority council owned company it is clear that prima facie all members of the Council have a "need to know" the financial position of AVB on the basis that public money is being used. However, any information considered confidential and commercially sensitive to AVB (either by its Directors or its Board) is not disclosable. The list of confidential and commercially sensitive information, whilst not exhaustive, will include any Non-Disclosure Agreements; Asset Purchase Agreement and documents still deemed to be confidential to AVB by the Company's directors.

In addition, where this review pertains to the Council's legal obligations, including, but not limited to State Aid compliance and data protection regulations, this review does not constitute legal advice but checks whether the Council has followed an appropriate process before taking a decision.