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AUDIT COMMITTEE

12 JUNE 2018

PRESENT: Councillors C Adams, M Collins, A Harrison, P Irwin, S Jenkins (in place of D Town), R Newcombe, S Raven, R Stuchbury, A Waite and H Mordue (ex-Officio). Councillors A Bond, C Branston, S Cole, A Christensen, P Cooper, P Fealey, N Glover, A Macpherson, L Monger, C Poll, M Rand, Sir Beville Stanier, P Strachan, J Ward and M Winn attended also.

APOLOGY: Councillor D Town.

1. ELECTION OF CHAIRMAN

RESOLVED –

That Councillor Irwin be elected Chairman of the Committee for the ensuing year.

2. APPOINTMENT OF VICE CHAIRMAN

RESOLVED –

That Councillor Newcombe be elected Vice-Chairman of the Committee for the ensuing year.

3. MINUTES

RESOLVED –

That the minutes of the meeting held on 26 March, 2018, be approved as a correct record.

4. AYLESBURY VALE BROADBAND (AVB) REVIEW

This Committee had previously received reports into the governance arrangements of Aylesbury Vale Broadband (AVB) - in March 2017 and September 2017. A number of weaknesses had been highlighted and the Committee had approved a series of recommendations to address them.

On 6 December 2017 a Motion was agreed at full Council which tasked the Audit Committee with a further detailed audit of the governance arrangements over AVB culminating in the decision to sell AVB assets. The wording of the Council Motion was as follows:-

- “(1) That this Council will honour the commitment given by the Leader of the Council at the General Purposes Committee to review the position culminating in the decision to sell AVB and introduce a suitable mechanism for keeping all Members of the Council informed of the Council’s commercial activities.
- (2) That the Audit Committee be tasked with a detailed audit of the operation of AVB, as far as practicable within the timescales set out in the original Motion and to keep as much information as is possible in the public domain.

- (3) That the audit of AVB be undertaken by the Council's externalised internal audit team (BDO) as they have experience of the governance of company structures.
- (4) That a brief for carrying out the review of AVB be agreed by Group Leaders, the Council's Head of Internal Audit (Corporate Governance Manager), a representative from BDO and the Chairman of the Audit Committee, with Group Leaders receiving a draft of the report prior to its submission to the Audit Committee, any such meetings involving Group Leaders to be chaired by the Deputy Leader of the Council.
- (5) That any meeting of the Audit Committee convened to consider the report findings be open to all Members of the Council to attend and at the discretion of the Audit Committee Chairman, to participate in the discussions (although they would not be able to vote).
- (6) That insofar as the other commercial undertakings of the Council are concerned, reports on their activities be brought forward at regular intervals to the relevant Scrutiny Committee."

The scope of work for the review of AVB had been discussed with the Leaders of all political parties on 8 January and subsequently the Terms of Reference had been agreed at a meeting of the Audit Committee on 22 January 2018. (The Terms of Reference had been included as an appendix to the BDO report).

In accordance with the Motion, the review had commenced on 31 January. The Motion required that the report be issued by 30 April 2018. However, there had been some late requests for interview and additional submissions made during May which, in order to consider fully this information, had resulted in a delay to the timing for completion of the report.

The review had been conducted by Mr Adam Leeder, a Senior Consultant from BDO. Mr Leeder had been given free access to all AVB and Council documentation and information throughout the course of the review.

When the Terms of Reference had been agreed, a number of stakeholders had been identified for interview as part of the review. All of these had been interviewed in addition to other Members and stakeholders who had come forward during the course of work. All of those who had asked to provide input to the review had been given the opportunity to do so.

The purpose of the review, as set out in the terms of reference, was to:

- 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; and
- draw lessons from the Council's governance arrangements for AVB which could be applied to other commercial undertakings.

The report (attached to the Audit Committee agenda and available to view on the Council's web site) highlighted some good practice and made a series of 22 separate recommendations, drawing upon lessons which could be learned from the

Council's experience with AVB, and which could be applied to commercial investments in the future.

Mr Adam Leeder, author of the report, and Mr Gupreet Dulay from BDO attended the meeting. Also present was Adrian Balmer from the Council's external auditors, Ernst and Young. The Chairman opened the meeting with a brief introduction outlining the background to the commissioning of the report and explained the process for speaking at the meeting.

Mr Leeder then proceeded to give a high level summary of his findings explaining that the three principal issues the report sought to determine were:-

- Assessing the extent to which the initiative had delivered value for money to the Council.
- Was the governance of AVB sufficient to make the delivery of Value for money likely.
- What lessons could be learnt from the experience with AVB in relation to current and future commercial ventures entered into by the Council.

As already mentioned, the review had involved a significant number of meetings with interested stakeholders, including Board Members, Group Leaders, individual Members, senior management, the Lead Legal and Monitoring Officer, the former Managing Director of the company, representatives from two other broadband providers, namely, Gigaclear and Village Networks, the Council's Corporate Governance Manager and the Chairman of two Parish Councils, namely Oving and Granborough. The Board had been given an opportunity to challenge any of the findings of fact.

In relation to Value for Money, the report suggested that the initiative had delivered this, although this needed to be caveated by the fact that the purchasers of the company, Gigaclear, had commissioned a third party review of AVB assets (i.e. that a network of fibre cable was in the ground as described in the sale documents). Gigaclear had made all payments due to date in relation to the sale and these were currently being held within an escrow account.

The Council could not make a final calculation of its return on investment from AVB until all the conditions of the sale, including the third party review, had been met.

With regard to governance, the company had complied with Company law, but the report had concluded that the delivery and extent of business management information, which would more accurately inform future business plans could have been better.

The report had concluded that the investment in the pilot scheme had been totally justifiable, but that the level of due diligence in relation to further investment could have been better. The report had identified that there were issues of capacity in relation to the day to day management of the company, with a high workload being placed upon the former Managing Director.

The report had found that there was evidence that confidential information shared with Councillors had been passed to a competitor of AVB. One example was the State Aid complaint submitted to the European Union by Village Networks. (A network provider operating in Aylesbury Vale). A review of AVB papers and interviews with stakeholders undertaken as part of the independent auditor's review

suggested that information shared with the Council would not be treated with appropriate security. This had given rise to political tensions and had created a hostile environment. The recommendations of this Committee (set out below) took account of the position around the release of “yellow page” information.

The report had outlined issues around the provision of timely and sufficiently detailed information to elected Members about AVB’s performance against the business plans and in relation to the arrangements for the drawdown of investment funds. However, (again as previously mentioned in this Minute) the report had highlighted a number of good practices, which together with the implementation of the recommendations contained in the report could be applied to new commercial ventures.

For example, from a compliance perspective, the Council had filed appropriate documentation with Companies House when setting up AVB and subsequently changing Directors. Furthermore, the Council/AVB had taken steps to respond to issues faced as they emerged during the lifespan of AVB, e. g. :-

- (1) Providing greater security to Business Plan 3 (although this was never formally presented to Council).
- (2) Safeguarding against conflicts of interest by removing the Leader of the Council from the Board of AVB and creating the role of Shareholder Representative to be in line with the Council’s formally adopted guidance on company Governance.
- (3) Developing a standard formula for reporting to the Board, requesting that the (former) Managing Director used this, and providing challenge when the data was not forthcoming.

The report contained the following recommendations:-

When establishing new commercial ventures and overseeing the on-going business planning cycles (inception)

Recommendation 1: Robustly evaluate pilots of new commercial ventures before making further investment

Recommendation 2: Sign a Shareholder Agreement requiring permission for wholly or partly owned companies to deviate significantly from agreed business plans.

Recommendation 3: Improve the scrutiny of business plans to ensure that they are realistic.

Recommendation 4: Undertake more thorough market research before entering new markets. Future business plans for commercial ventures should include scenario planning and risk assessments.

Recommendation 5: The business planning cycle should be structured to set a clear vision for the future and assess performance against previous plans.

Recommendation 6: Ensure commercial activities have a clear and consistent strategic direction.

Recommendation 7: Avoid placing Cabinet members on the Boards of commercial ventures unless this can be justified on exceptional grounds such as specific sector knowledge.

Recommendation 8: Institute a conflicts of interests policy for all commercial ventures.

Recommendation 9: Place a Shareholder representative on the Board of commercial ventures from the outset to avoid potential conflicts of interest.

Recommendation 10: Select Board members with sufficient sector knowledge and independent oversight and commission training on Director responsibilities and being an effective Director either shortly before or soon after Directors are appointed.

Recommendation 11: Undertake a capacity, capability and conflicts assessment of potential Directors to avoid high turnover of Board Members.

Recommendation 12: Check Board Members, and key management have sufficient capacity to discharge their full range of functions, supported by appropriate resilience arrangements.

Recommendation 13: keep a clear record of meetings to provide a robust audit trail.

When developing reporting arrangements at Board level, Council level and to customers of future commercial ventures (reporting)

Recommendation 14: Clarify from the outset what company information will be reported to the Board and invest in capacity to provide this.

Recommendation 15: Agree the format and data sources of information which will be reviewed at Board meetings.

Recommendation 16: Reporting to Members needs to be more proactive and reflective of the venture's current rather than potential future position whilst still respecting the bounds of commercial confidentiality. The Council's Democratic Services team must support this by ensuring that formal Minutes of meetings reflect accurately the content of remarks made by Members in Council meetings.

Recommendation 17: If the Council's wider Members are to have greater oversight of the Council's commercial ventures, then the confidentiality requirements of "yellow papers" must be respected.

Recommendation 18: Invest sufficiently in communications and engagement with current and potential customers.

In terms of arrangements for agreement of, and release of funds to new commercial ventures (investment)

Recommendation 19: Sign loan agreements prior to loans being issued.

Recommendation 20: Sign Service Level Agreements to cover Council staff delivering services for a Council-owned commercial venture and charge this time accordingly.

Recommendation 21: Clarify arrangements from the outset for release of funds from the Council to commercial ventures.

Recommendation 22: Require Section 151 Officer sign off for the release of funds from the Council to companies owned by the Council.

The report noted that the capital receipts the Council would receive from AVB following the sale of company assets meant that the Council would have made only a small loss from its investment in the company. However, Mr Leeder acknowledged that perhaps the use of the word “receipts” was inaccurate and could be more accurately reworded as “potential receipts”, given that the money to be paid to the Council was currently held in an escrow account and payment over to the Council was dependent on all the sales conditions being met.

Notwithstanding this, the report noted that AVB had been able to provide fibre to the premises broadband to 234 properties in rural areas which were not priority areas for connections – either from (other) commercial companies or Government backed schemes. In addition, AVB had laid a fibre network passing c.2000 properties, which would now be developed by Gigaclear, who had purchased AVB’s assets. Based on this, the report had concluded that there was a reasonable case that AVB had delivered value for money, subject to the caveats referred to earlier in this Minute.

The Chairman referred to a letter sent to him by the former Managing Director questioning the accuracy and findings of the independent report. The Chairman had been asked to circulate the letter to all Members of the Committee and copies were made available at the meeting to Committee Members and those in the public gallery. Members were given time to read these representations.

Non Members of the Committee present at the meeting and members of the public, who wished to do so, were given an opportunity to put factual and/or technical questions to Mr Leeder, who responded accordingly. In some instances the Director responsible for finance (S151 Officer) responded to particular points. The questions covered a number of issues raised in the report, including:-

- The value and quality of scrutiny within the Council, which it was asserted might benefit through giving some chairmanships to opposition Members.
- The level of due diligence carried out after the initial pilot in relation to the change of direction of the company to move from a mixed mode to providing fibre to all premises (which was more capital intensive), and on the expertise and knowledge of company staff.
- Whether the reference to (capital) receipts was premature, given that payment to the Council was still dependent upon all the sale conditions being met.
- Whether there was a discrepancy in the actual costs borne by the Council in relation to the establishment and sale of the company, e.g. interest forgone through investing in AVB. Members were informed that the £100,000 to cover costs relating to AVB’s windup had been paid by Gigaclear into AVB’s account.
- Whether it would have been prudent for the AVB Board to appoint a Non Executive Director with industry based knowledge/expertise.
- The manner in which additional funding had been requested and the sparsity of the information provided to justify the additional loans.
- The apparent lack of information obtained by the company before moving to the provision of fibre to the property.
- It was suggested that the reference to value for money was perhaps misleading, given the warranties that had been attached to the sale to Gigaclear.

- Whether the AVB Board should have challenged in more depth management and performance information, and Business Plans (reference was made to the historic monthly turnover information - Table 7 on pages 45-46 of the report that had been reported to the AVB Board in 2016 and 2017).
- That the AVB Board should have done more to verify monies that had gone in/out of AVB against bank statements and Business Plans.
- The number of properties “passed” was questioned and Members were informed that this was a standard industry metric.
- An explanation was provided that it was difficult to compare the overall cost benefits of different broadband rollout schemes. For example, the cost per property passed for some Connected Counties schemes included blended schemes (i.e. urban / rural mix) which was likely to pass a greater number of properties. Schemes that provided fibre to the house were also likely to have a higher cost per property passed.
- Concern was expressed about the apparent lack of accounts and management information reported back to the Council, despite this information having been requested many times in different forums.
- An explanation was sought around the capability and capacity of AVB staffing and in particular that dedicated to book keeping/accountancy. Members were informed that AVB had employed a book keeper. In addition, the accounts had been audited and provided to Companies House, as required by law.
- That report recommendations 5, 13, 14, 16 and 17 had all been informed by the impact caused by the leaking of confidential information to AVB’s competitors.
- Members were informed that AVB had a separate bank account, for which the Council provided some administrative support. That while the review seemed to assign a lot of the blame on the Managing Director, the other Directors represented 95% of the equity in the company and should share some of that blame.

Members of the Committee were then invited to question Mr Leeder on various aspects of his report. A number of the questions were similar to those posed by those in the public gallery. Additional questions included:-

- Clarification around the standard industry metric (“cost per property passed”) used to calculate potential profits.
- The extent of market research undertaken by the company before its change of direction to fibre to the home.
- There should perhaps have been clear criteria for the allocation of funds to commercial ventures. While there were other issues that might also be taken into consideration when measuring the value for money of a venture, e.g. community gain, improving conditions to enable economic activity in rural areas, there needed to be clear criteria in the future before spending Council money, so that outcomes could be measured.
- Questions around the Shareholder Agreement and why this had not been signed.
- Clarification on the processes and consultation that had been undertaken by the Section 151 Officer before releasing funds to AVB. The Section 151

Officer indicated in relation to the comments attributed to him, that he had spoken to the Leader and he had supported his actions.

- Concerns around the lack of information in Board Minutes, which would normally be expected to include information on some of the individual questions asked by the Board.
- An assertion that there were no other suppliers, when it was believed that there were 4 other possible providers.
- That it would be important for the AVB Board to keep a close eye on the sale arrangements with Gigaclear and respond to any aspects of it that might be disputed following the third party review.
- That following the resolution of full Council in December 2014 to allocate up to £1.536m earmarked for the next stage of the rollout of superfast broadband across the Vale, it was likely that the Council would then be receptive to proposals that would assist in achieving this outcome.

Members of the Committee then asked Mr Leeder to respond to the assertions made by the former Managing Director contained in his representations circulated at the meeting. Mr Leeder responded to each of the issues raised in the former Managing Director's representations and Members of the Committee were satisfied with his response. Some of these issues had included:-

- That the Managing Director had been interviewed regarding governance issues and this had then been raised with the current Board.
- That following his interview with Mr Leeder, the Managing Director had been invited to provide any other evidence and had not done so. However, some of the reasons given by the MD during his interview had been hearsay and, as such, not able to be included in the report.
- That while AVB had been involved in ongoing discussions with Connected Counties, it was not clear in what detail the expansion plans had been discussed at Board level as this was not mentioned in Board minutes.
- That Gigaclear had done some due diligence before agreeing to purchase AVB.
- That the rate of growth had been relatively small and fell short of the numbers in the Business Plans.
- That wireless broadband had not been flagged up by the Board during discussions.
- Mr Leeder stated that AVB had not been a normal start up situation and while the Board Members had a wide range of experience, it would have been helpful to have also had some sector experience.
- That external consultants with interests had not provided evidence to the review.
- That the Council could have provided more support to AVB. This would not necessarily have amounted to State Aid if the Council had been recompensed for the support.
- That the source of all figures in the report had been tested with the current AVB Board.

The Committee believed that the independent report had delivered against all the objectives encapsulated by the terms of reference and thanked Mr Leeder for his work.

RESOLVED –

- (1) That it be accepted that the review had been performed in accordance with the Council Motion and had delivered against all the objectives set out in the agreed terms of reference.
- (2) That, having noted the caveats around warranties, the report be approved and its recommendations accepted and that their implementation be monitored through the Committee's action tracking process.
- (3) That the recommendations identified in the report be reflected in the Council's "Guide to the Creation and Working with Companies in which AVDC has an interest".
- (4) That the Council's Code of Conduct be affirmed in relation to the divulgence of confidential papers and the Democratic Manager be instructed to take account of the AVB review recommendations in his review of the Councillors Code of Conduct, in particular the section relating to the divulgence of confidential papers."
- (5) That Cabinet be invited to endorse the recommendations of the Audit Committee.

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