

## **REPORT TO SCRUTINY RESOURCES COMMITTEE, EXECUTIVE, COUNCIL**

**Date of Meeting: 2 October, 7 October, 15 October 2014**

**Report of: Corporate Manager - Legal Services**

**Title: Arrangements for the Provision for the Joint Management of Strata**

**Is this a Key Decision?**

YES

**Is this an Executive or Council Function?**

Both - please see the recommendations set out in paragraph 2 below.

### **1. What is the report about?**

- 1.1 Members will know that Teignbridge District Council, Exeter City Council and East Devon Council have formally resolved to implement a shared ICT service through a wholly owned company to be known as "Strata".
- 1.2 The purpose of this report is to set up a structure for the governance and scrutiny of Strata as follows:
  - (a) A Joint Executive Committee (JEC) to govern Strata and
  - (b) A Joint Scrutiny Committee (JSC) to scrutinise Strata.
- 1.3 In order to achieve this, each authority is asked to amend its Constitution to establish the joint committees with terms of reference set out below in this report.
- 1.4 The proposed 'go-live' date for Strata is 1 November 2014.
- 1.5 The Executive of each Council has power to delegate powers to the JEC but the amendments to the Constitution to create and delegate powers to the JSC is a Full Council Function.

### **2. Recommendations:**

#### **2.1 That Teignbridge District Council, Exeter City Council and East Devon District Council jointly agree following:**

- 2.1.1 That the Executive/Cabinet of each authority resolves to:
  - (a) Appoint a Joint Executive Committee (JEC) together to govern Strata with effect from the go live date on the 1 November 2014.
  - (b) Appoint its Leader to the JEC.
  - (c) Agree the JEC's terms of reference set out in the Appendix and summarised in paragraph 9 of this report.
  - (d) Adopt the Rules of Procedure for the JEC set out in the Appendix to this report.

- (e) To agree the composition and delegation to the Strata Management Board as set out in paragraph 13 to this report.

2.1.2 That Council for each authority resolves to amend its Constitution to:

- (a) Appoint a Joint Scrutiny Committee (JSC).
- (b) Agree the JSC Terms of Reference as set out in paragraph 10-12 of this report.
- (c) To nominate a total of 3 members from each authority to sit on the JSC in compliance with the rules on political balance.
- (d) To adopt the Rules of Procedure for the JSC set out in the Appendix to this report.

2.1.3 Each hosting authority will convene and support the meeting.

### **3 Reasons for the recommendation:**

To enable the joint management of Strata by Teignbridge, Exeter and East Devon District Council.

This structure is designed to allow decisions to be taken once by the Joint Committee and will be binding on all Councils. This will speed up the decision-making process and eliminates the possibility that a Council may take conflicting decisions.

### **4. What are the resource implications including non financial resources.**

In July 2014, the Council agreed a joint ICT shared service business plan and implementation plan. The implementation plan included the need to bring back to the Executive and Council this report on the proposed structure and scrutiny arrangement of Strata.

Proposals and implementation to date are on track and within the approved budget.

The Council will be responsible for agreeing an annual budget to be passed to Strata and the JEC will receive financial monitoring reports to ensure the company is operating within the approved overall budget allocated to it from the three councils.

### **5. Section 151 Officer Comments:**

There are no financial implications contained within the report, however it does contribute towards the successful set up of the Joint IT Company, which is forecast to generate savings for the Council.

### **6. What are the legal aspects - basic principles of Joint Committees?**

- 6.1 Section 101 of the Local Government Act 1972 enables a local authority to enter into arrangements for the discharge of its functions jointly with, or by one or more other authority.

- 6.2 Section 102 of the Local Government Act 1972 contains a power to appoint Joint Committees.
- 6.3 Teignbridge, Exeter and East Devon all operate an Executive / Cabinet and Leader model and each has a slightly different mechanism for amending its Constitution.
- 6.4 A JEC and JSC will comprise members from each of the Councils and, within the powers delegated to it by each Council, the Joint Committees can take a decision, or make recommendations in the case of scrutiny, on behalf of each of the Councils.
- 6.5 A decision is taken once by the Joint Committee and will be binding on all Councils. This speeds up the decision-making process and eliminates the possibility that a Council may take conflicting decisions.
- 6.6 Decision making at the JEC level will require unanimity of vote.
- 6.7 The appointment of members to the JEC is not subject to the usual requirement of political balance but a JSC would be.
- 6.8 A JEC can only do what its participating Councils authorise it to do. It can only act within the powers delegated to it and, within each of the Council's area, within the budget and strategic policy framework approved by that participating Council.
- 6.9 Executive functions can only be exercised within the budget and strategic policy framework set by each of the Councils. Any proposed decision which is contrary to the Council's approved budget or strategic policy framework must be referred to each Full Council for decision.
- 6.10 Where, Executive functions will be delegated to the JEC, it operates as a Committee of the Executive of the participating Councils, which means that it operates under the Executive Decision Procedure Rules.

This means that the hosting authority will need to publish a Forward Plan of anticipated "Key Decisions" and meetings will need to be held in public. Paragraph 29 of the Rules of Procedure set out as in the Appendix to this report deal with this requirement.

- 6.11 As for all local authority meetings, every member of the Joint Committees (except co-opted non-voting members) will have an equal vote.
- 6.12 **Who can be appointed to a joint committee?**
- 6.13 Only Executive members of each authority may be appointed to the JEC.
- 6.14 The JSC may not have an Executive member from any of the three authorities appointed to it. The members to be appointed to the JSC will be chosen by the Party Leaders of each of the Councils.

## **7. Monitoring Officer's comments:**

- 7.1 The Head of Law from each authority met to agree these joint provisions and are happy to put these joint arrangements forward as the most prudent way to jointly manage and scrutinise Strata.

- 7.2 Advice has been taken from Bevan Brittan solicitors who strongly recommend that each of the Councils each make identical delegations.
- 7.3 A delegation can be revoked or amended at any time by the person or body which made the initial delegation of powers to the joint committee.
- 7.4 The JEC will not be able to enter the contract with Strata in its own name but can recommend that each of the participating Councils will enter the contract. In practice, each participating Council can enter the contract, accepting joint and several liability for the whole of the contract, but the Shareholder Agreement will share out the contractual liabilities between the participating Councils and indemnify each other for any losses which they cause each other.

## **8. BACKGROUND**

- 8.1 In order to be able to commence on 1 November 2014, it is essential that the governance and scrutiny arrangements are agreed by each of the three authorities through their full Council and Executive meetings scheduled to take place shortly.

The completion of the following three key documents is dependent on agreeing the governance and scrutiny arrangements:

- Articles of Association - these are Strata's constitution and the rules about running the company and cover, for example, how decisions are made and the roles of the directors and the shareholders.
- Shareholder Agreement - the agreement governing the relationship between the Councils including how budget surpluses may be dealt with, dispute resolution and exit arrangement.
- Service Contracts - the agreements between Strata and the Councils governing the provision of the services.

## **9. Suggested Structure of the Joint Executive Committee.**

### **9.1 Composition**

- The Leaders of each of the Councils, each with an equal vote and
- The three Chief Executives (as co-opted non-voting members)

### **9.2 Nominees**

Leaders or Chief Executives may send nominees in their absence provided not less than 24 hours notice is given to the Proper Officer of the hosting authority.

In the case of Leaders, any nominee must also be an Executive member.

### **9.3 Meetings**

The JEC should meet bi-monthly for the first year of operation of Strata and quarterly thereafter. This frequency can be adjusted to suit the nature, amount and urgency of business.

Meetings must be held in public and therefore they should be conducted at publicly accessible buildings, which also enable disabled access. It is therefore proposed that the venues for meetings of the JEC are the three Councils' offices, hosted on a rotational basis.

Although meetings are to be held in public, it is still possible to discuss exempt and confidential matters in Part II. This is subject to the usual resolution procedure and the same criteria set out in sections 100A and 100I and schedule 12A of the Local Government Act 1972. These provisions enable the public and press to be excluded from meetings and from access to reports and are equally applicable to the JEC.

#### **9.4 Chair**

As with the venue, the Leaders will rotate chairmanship of each meeting to be appointed for not more than 12 months unless otherwise agreed by the JEC.

The Chair shall not have a casting vote.

#### **9.5 Quorum**

Decisions must be taken on a unanimous basis and so a meeting of the JEC is quorate with three voting members present.

The presence of non-voting co-opted Chief Executives will not affect whether a meeting of the JEC is quorate.

#### **9.6 Powers**

JEC will have delegated to it all those powers which, in the absence of the JEC, would be held by the respective Executives to enable the operation of Strata, with the exception of the following decisions which are reserved to the Councils as shareholders:

- Permitting the registration of any additional shareholders into Strata;
- Passing any resolution for its winding up or presenting any petition for its administration;
- Changing the company's name;
- Issuing shares;
- Amalgamating or merging with any other company or business undertaking;
- Forming any subsidiary or acquiring shares in any other company or participating in any joint venture;
- Decisions to extend the scope and nature of services to be provided by Strata, for example to provide HR, Accountancy or Legal services;
- Decisions over a capital or revenue expenditure outside the approved budget.

- Decisions to provide ICT services (or any other services) commercially for external clients or decisions that have an impact on the ability to use the Teckal procurement exemption;
- Declaring or making dividends or distributions of assets of any kind; and
- Ceasing involvement in Strata as a participating shareholder.

## **10. Suggested Structure of the Joint Scrutiny Committee Composition**

- 10.1 The JSC will be made up of 9 members, (3 from each Council).
- 10.2 The JSC will be politically balanced to reflect the political balance of each of the three authorities.
- 10.3 A determination of the allocation of the seats of the JSC must give effect to the following principles which are set out in Section 15 of the Local Government and Housing Act 1989:
- (a) that not all the seats are allocated to the same political group;
  - (b) that the majority of seats are allocated to a particular political group if the number of persons belonging to that group is a majority of the Council's membership;
  - (c) subject to (a) and (b), that the total number of all seats allocated to a particular political group reflects the group's proportion to the membership of the Council;
  - (d) subject to (a) – (c), that the number of seats allocated to a particular political group reflects that group's proportion of the membership of the Council.
- 10.4 Executive members may not be appointed to the JSC.

## **11. Quorum**

- 11.1 The JSC will be quorate if at least three members are present, provided that there is one member from each of the Councils present.

## **12. The JSC's Terms of Reference shall be to:**

- review and/or scrutinise decisions made or actions taken in connection with the discharge of any of the JEC's functions;
- make reports and/or recommendations to the Full Council of each Council and/or the JEC in connection with the discharge of any functions;
- exercise the right to call-in, for reconsideration, decisions made but not yet implemented by the JEC;

- consider the decisions of the JEC that have been called-in and make recommendations to the JEC;
- appoint sub-committees, working parties and review groups for particular matters; and
- report annually to each Full Council on its workings and make recommendations for amended working methods if appropriate.

### **13. Delegation to the Board**

The Articles of Association will set out the power of the directors acting as a Board. The model Articles provide that the directors may exercise all the powers of the company. Strata's Articles will need to be amended from the model articles so that directors' powers are restricted. Ordinarily Directors would have more powers than are being proposed here.

The Strata Board comprises three directors, one from each Council, together with the Chief Operating Officer as a non-voting director.

It is suggest that the JEC delegates to the directors all the powers that are delegated to the JEC, except for decisions relating to:

- Appointing Strata management or materially altering the staffing structure;
- Any capital or revenue expenditure not contained within the approved budget and business plans.
- Agreeing the Business Plans;
- Changes to the location(s) from which Strata will operate; and
- Amendments to the terms of the Service Contracts.

### **14. How does the decision contribute to the Council's Corporate Plan?**

This joint arrangement supports the Corporate Plan's objectives of having a well run Council.

### **15. What risks are there and how can they be reduced?**

There are risks associated with this proposal namely:

- The fact that 3 authorities are coming together to share and manage a shared service, particularly a service that is so fundamental to the delivery of services in each authority.
- The implementation of a combined ICT service using one data centre.

However, no risks are identified in the recommendation to manage Strata in the joint way suggested.

Risks will be mitigated through the careful setting up of the company and associated agreements and through effective project management.

It is considered there is greater risk to each council in “doing nothing”. This proposal reduces overall risk by having a larger ICT team with less reliance on key individuals and more time to manage more complex technologies.

**16. What is the impact of the decision on equality and diversity; health and wellbeing; safeguarding children, young people and vulnerable adults, community safety and the environment?**

No impact is identified in supporting the recommendations in this report.

**17. Are there any other options?**

Whilst each of the three authorities could in theory try to manage and scrutinise Strata separately through each of its Executive and Scrutiny meetings, this option is not recommended for the reasons set out in the Monitoring officer section to this report.

**Baan AL-Khafaji**  
**Corporate Manager - Legal Services & Monitoring Officer**

**Local Government (Access to Information) Act 1972 (as amended)**  
**Background papers used in compiling this report:-**

Contact for enquires:  
Democratic Services (Committees)  
Room 2.3  
01392 265275