

Meeting: Cabinet/Council **Date:** 19/20 September 2023

Wards affected: All

Report Title: Future options for the structure and operation of Torbay Economic Development Company Limited

When does the decision need to be implemented? Implementation to follow decision

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1. Purpose of Report

- 1.1 To make recommendations relating to future of the Torbay Economic Development Company Limited (trading as TDA).
- 1.2 TDA is a wholly owned and controlled company of Torbay Council. It was established in 2011 to lead economic development and regeneration in Torbay. Among other activities related to this core purpose TDA's establishment also allowed for the Council to take advantage of the freedoms of a local authority trading company.
- 1.3 This report provides an overview of TDA's current structure and performance, including the assets owned and managed and their external contracts.

2. Reason for Proposal and its benefits

- 2.1 The emerging Corporate and Community Plan makes clear the desire to focus on the economy of Torbay. The current Corporate and Community Plan, along with the Council's Economic Growth Strategy 2022-30, also makes clear that the economic performance of Torbay is not improving. This is despite the projects that have been successfully delivered in recent years. The need for a Thriving Economy to underpin the ambitions that the Council shares with its partners is stark.
- 2.2 Typically a local authority will establish a company to address financial pressures, take advantage of legislative change, for delivery of services or because of the benefits of working through such a model. Those same drivers should apply in considering whether a wholly owned and controlled company structure continues to be the best way for the Council to fulfil its objectives.

- 2.3 The establishment of TDA was shaped by the move towards partnership delivery models. The recruitment of local private sector leaders to the board of TDA was intended to result in a more coherent programme of economic development, faster delivery, increased investment, more job opportunities and assist with better community development and engagement. Against many of these metrics TDA has been successful.
- 2.4 TDA has delivered several key successes for Torbay since its inception. Its staff have been integral to securing tens of millions of government investment. This includes Coastal Communities Fund, EU grants, funding through the local enterprise partnership and from the Towns Funds. TDA has successfully delivered projects for schools, across the breadth of Council services, and secured external local government, health and education clients. Providing services to these clients provided external income which contributed to the overheads of the company and provided a surplus used for reinvestment.
- 2.5 However, Torbay's overall economic performance continues to decline. As measured by Gross Value Added (GVA) per head of population, Torbay is the lowest performing local authority area in England. Skill levels in the workforce, and other indicators emphasising the challenge facing the place, are underlined by Government's selection of Torbay as a Levelling Up Partnership place.
- 2.6 Away from Torbay, the national and regional environment for economic development is now markedly different to that which was in place when TDA was established. Over the past decade the number of Council owned economic development companies has fallen with no similar organisation existing in the region and very few nationally.
- 2.7 The Levelling Up White Paper firmly puts upper tier local authorities directly at the front of economic development leadership. The development of the Devon, Plymouth and Torbay Devolution Partnership also demonstrates the crucially important role of the local authorities in this space. Locally, the establishment of the Place Board has brought together place leaders that bring influence on a range of issues facing Torbay.
- 2.8 The benefits of the proposal are expected to include streamlining the operational delivery of activities currently delivered through TDA and especially ensuring that the resources and expertise of the staff are focused on the work needed to deliver for the communities of Torbay. Bringing these services in house will remove levels of governance that the Council already provides directly through its established processes. In removing these processes, the resource commitment of servicing these Company committees and board will reduce resulting in some minor financial savings and release this capacity to support other work.
- 2.9 Should the recommendation be accepted a review of the sites and assets acquired by TDA will be carried out and disposal may result in a capital receipt.
- 2.10 In summary, this report recognises the role played by the staff and directors of TDA since its establishment but recommends a dissolution of the company to organise Torbay's resources in a more efficient and effective way. The recommendations do not reduce the focus on economic growth rather they are principally driven by the need for delivery for the

residents and communities of Torbay, renewing our focus on the opportunities for regeneration.

3. Recommendation(s) / Proposed Decision

That the Cabinet recommends to Council that;

1. Torbay Economic Development Company be dissolved, with the Chief Executive overseeing the practical arrangements for the same;
2. In further of 1. above, the Chief Executive be given delegated authority to determine, in consultation with the Leader of the Council;
 - a. the transfer of subsidiary companies or component parts of the business that undertake substantial external trading activity into the Torbay Council Strategic Holding Company,
 - b. the most effective arrangements for the holding of assets currently held by Torbay Economic Development Company,
 - c. agreement of appropriate indemnities that may be required for non executive directors and Board appointments should this be necessary during the transitional period.

Appendices

None

Background Documents

- Torbay Council report 198/2009 “Torbay Economic Development Company”
- Torbay Economic Development Company memorandum and articles of association
- Torbay Economic Development Company business plan 2020-25
- CIPFA Local authority owned companies: a good practice guide 2022

1. Introduction

- 1.1 TDA was established as a company in 2011. It was set up as a wholly owned and controlled subsidiary of the local authority so that work could be commissioned to it in line with procurement regulations. The intention was to control the company through its sole membership, through a commissioning process, the appointment of Council directors to its board and through agreed reserved matters which reserve the decision for the Council rather than the company board. The essential activities of TDA were, and continue to be, for the Council. It was agreed the essential activities were complemented by trading activities which have delivered income in support of the Council's objectives since TDA has been operating.
- 1.2 As indicated in the "Reason for Proposal" section above, the challenges which Torbay faces in making a step change in its economic performance mean it is an appropriate time to review TDA's objectives and consider what a future role might be.
- 1.3 There have been previous reviews of TDA's governance and purpose, most recently in 2021. This resulted in some improvements to governance of wholly owned companies which included, among other changes, the introduction of shareholder meetings. However, the need to deliver more for Torbay at a time of significant change in the regional and national economic development environment means that a review of the fundamental purpose of TDA is needed. This is to confirm if TDA continues to be the best way to deliver the objectives that Torbay as a place needs.
- 1.4 The TDA board is intended to provide a public private sector interface, which complements the professional skills from the executive team, and supports the development of appropriate economic development approaches. TDA's board members must also though have regard for the responsibilities they hold as company directors. As TDA has grown and developed as a business, providing services to external customers, the role of the board has evolved. While that private sector contribution to the economic development approaches exists, there is also the constant requirement for review of the business of the company, including the necessary finance, audit and other governance processes.
- 1.5 The requirement for the public private interface has also changed. Following the LGA peer review of Torbay Council in 2017, the strategic partnership for Torbay was renewed. Since that time, the partnership has continued to evolve and is now Torbay's Place Board. There is a close engagement between the business community and the Place Board, with each of the Torbay Business Forum, English Riviera Business Improvement District and the Torbay & South Devon High Tech cluster having representation at the board. Underneath the Place Board, work is underway with the business community to improve connections between the

Chambers of Commerce and Business Forum and other businesses to inform the recommendations and decisions through to the Place Board and Council.

- 1.6 Financially there is a cost to the different processes required due to TDA's legal form. The Council needs to constantly ensure that resources are focussed on its key objectives, and although TDA has achieved some commercial success, it does operate in a challenging market. It also has been constrained by the availability of staff resources and the ongoing requirement to work within TECKAL limits.
- 1.7 TDA has secured contracts from several local authority and education customers. These contracts contribute approximately 23% to the surplus reported by the company in 2021-22. A further 9% of the reported surplus was derived from the subsidiary businesses including CASE Consultants and Seven Dials. In addition to the third-party works, TDA derives an income from assets that were transferred at set up and others which it has either developed or acquired. Whilst the existence of a profit is of benefit, consideration needs to be given as to whether it is at a level which can be seen as a strong justification for supporting maintenance of the status quo.
- 1.8 The status quo maintains a range of costs either committed to by TDA or absorbed by the Council. This includes TDA's IT contract, time commitments to shareholder, board and subcommittee meetings and commissioning agreement as examples.
- 1.9 On a practical basis, the help desk operated by TDA in support of property services and facilities management requirements, has received 1,174 calls in the first quarter of the calendar year. This is broken down below:
 - Property Services = 608 (this includes external clients) – 51.78%
 - Torbay Council = 467 – 39.77%
 - TDA = 43 – 3.66%
 - TorVista Homes (TVH) = 30 – 2.56%
 - Housing Options = 16 - 1.37%
 - Somerset = 10 – 0.85%
- 1.10 While Torbay's real need includes each of TDA, TVH and Housing options, the bulk of the calls are from third party clients.
- 1.11 The review of TDA is though primarily concerned with ensuring the most effective approach to support Torbay and the Council in delivery of its corporate/community plan objectives. While any income potentially reduces these resources it is the Council's view that the recommendations will result in some one-off costs the ongoing revenue costs of the transition back into the authority will see the foregone income will be offset by other savings and benefits.
- 1.12 Furthermore, the Council's capital programme is fundamentally challenged by the very significant cost pressures experienced in the construction sector in the past two years, which are caused by high profile external issues. The cost escalation is causing the programme to be delivered slower than the Council and the community wish. Increasing the

dedicated resource available will provide the capacity to allow for momentum to be recovered. This will in turn support the current Community and Corporate Plan themes of Thriving economy and Council fit for the future, consistent with using resources to best effect.

2. Options under consideration

Option A – Do nothing

- 2.1 A do nothing option of maintaining the status quo would retain the current company and governance structure that exists. TDA would continue to be controlled through commissioning agreement, reserved matters and shareholder meetings and deliver the range of services that it currently does unless they are varied through these mechanisms. This option would avoid any costs associated with the recommendation. This option does not meet the original objective set for TDA of responding to the economic development needs of Torbay, nor does it provide an optimal fit for the likely priorities of the new Community and Corporate Plan. Notwithstanding the 2021 review of the Council's wholly owned companies and the rich contribution made by current and previous members of the board, the changes that are taking place in and outside of Torbay mean that this option would carry increased risk to delivery.

Option B – Revise TDA governance and service provision

- 2.2 In support of the previous review recommendation, the Council could redesign the governance structure of TDA to make it more streamlined and simultaneously review the services delivered by TDA. The core services supporting the Council's immediate and medium-term objectives are considered to include asset management, development surveying, economic development and facilities management which would be brought in house. The remaining services would be delivered through a company structure, but under a board model mirroring SWISCo's board, whereby a smaller board would support the executive team and allow the focus on its core business. This would allow for the Council to continue to benefit from external income in support of its objectives.
- 2.3 This is not a preferable option in terms of TUPE owing to its complexity. However, this option would retain, to some degree, all the issues associated with Option A, and could prove to be a further distraction from focussing on the Council's priorities.

Option C – Bring services in house.

- 2.4 This option takes the activities of TDA and brings them back into the Council in their entirety with potential exceptions for TDA subsidiaries. This would regain total control of both the cost and activity performed by TDA with the company governance structures ceasing to exist. Progress against the activities being delivered would be reported and monitored through the Council's existing democratic structures.

- 2.5 TDA operates a charging model which sees that work it carries out for Torbay outside of the commissioning agreement between it and the Council is chargeable. This option will save the profit that TDA generates against non-contract fee Council work. For 2022 this was at a cost of £262k¹ which also contributed to the surplus delivered by TDA.
- 2.6 From the HR perspective this is a preferred option and the easiest in relation to TUPE. However, questions remain with respect to TDA's subsidiary companies: would they be moving back into the Council and if not, who would the individual's employer be. This option assumes that all personnel will move to the Local Government Pension Scheme and that there will be no redundancies as part of the process.
- 2.7 TDA generates income and profit from external activities. This income from external activities covers overhead costs as well as contributing to the surplus. They would be reviewed and may cease with the integration of TDA back into the Council. Alternatively it may be that services for local authorities continue as services can be traded between Councils or the commercially viable services could be held in the proposed holding company recommended in the future options on TorVista Homes report.
- 2.8 Each of options B and C require the movement of staff under TUPE considerations. This process will need formal consultations, likely to be over a period of several months, as well as transfers within the payroll system. This means that any change is likely to be post-Christmas.
- 2.9 Making any changes through options B and C are likely to require a range of supporting activities which will include legal, HR and tax advice. Should the recommendation be supported, the Council will need to ensure that there continues to be an effective board of directors to oversee the activities of TDA until it is closed.

3. Financial Opportunities and Implications

- 3.1 As the report sets out above, there are several other financial implications to note. TDA has also commissioned advice which highlights potential costs, principally related to possible tax liabilities and provided commentary on what it considers the cost of these recommendations will be for the Council. The advice and commentary have been reviewed and in the opinion of the Director of Finance do not materially change the financial assumptions which have been made in determining the recommendations above.
- 3.2 It is accepted that the Council will forego third party income earned by TDA and its subsidiaries. Based on the 21/22 financial year this will be approximately a third of TDA's surplus. The property income sat in TDA will be retained as the assets will continue to exist.

¹ Mar 22 analysis of TDA turnover.

The surplus TDA's derives from additional non-Torbay Council contract fee costs will be a loss.

- 3.3 If all TDA staff are brought into the Local Government Pension Scheme, this will increase the Council's employer contribution rate. The immediate impact of this is subject to confirmed contribution rate and actuarial assessment however an internal assessment suggests that absorption of TDA's staff will cost £468,000 on a 20% rate with a higher or lower rate varying this figure.
- 3.4 The Council has stated that there will be no redundancies arising from the recommendations within this report. All staff, including support staff, will be integrated into the Council and it is anticipated that natural turnover over time will result in savings in these areas. There may be a requirement in the medium term for service redesign, once services have been integrated, however the Council will seek to avoid and manage changes in other ways through redeployment, for instance the Council has been holding several vacant posts pending the decisions from this report.
- 3.5 In respect of the subsidiaries of TDA which include Kings Ash Holdings, CASE Consultants and TorVista Homes, TorVista is subject to a separate review by the Council and CASE Consultants will be appraised post consideration of this report with options having been presented to the Council by TDA. TDA's cleaning company is expected to close on the selection of a new Council supplier.
- 3.6 There will be some transitional requirements for instance on IT. TDA currently have a contract with a third party to provide IT support and bringing this back in house will increase the draw on internal resources and may incur a charge from the provider to support transition. However, it will save on the external costs currently expended on this area.
- 3.7 There will be a requirement to review in detail TDA's contract register to novate, where appropriate, contracts to the Council or to end them. There may also be a need for tax advice in respect of the assets that TDA has in its name. Borrowing taken out for activities delivered by TDA are asset backed and therefore the liabilities will continue to be met without additional pressure.

4. Legal Implications

- 4.1 Both the Council and the TDA will have regard to the law governing the implementation of change, to ensure legal and due process is correctly followed.

5. Engagement and Consultation

- 5.1 The board of TDA along with the Managing Director and management team have been engaged with directly by the Leader & Chief Executive since the review was instigated. The

Chief Executive has also attended a TDA management team meeting to answer questions from that group. The Council has regularly responded to questions raised by TDA staff.

- 5.2 Cabinet members and Directors have been fully engaged throughout the development of the options and recommendations within the report.

6. Purchasing or Hiring of Goods and/or Services

- 6.1 The Council will need to consider how any contracts TDA has entered into can be effectively moved across to the Council or properly ended.

7. Tackling Climate Change

- 7.1 No direct implications from the recommendations.

8. Associated Risks

- 8.1 There is a risk if the recommendations are not implemented that the Council will continue to experience slower delivery than it seeks. Inevitably the establishment of a company structure and then the engagement of the company on third party work results in a dilution of the overall resource. If the recommendation is not taken forward there will continue to be greater pressure on resources.
- 8.2 There is a risk to staff morale and commitment in TDA and a loss of skills if the recommendations are approved. As noted above it is inevitable that reviews such as this create uncertainty for staff, the chair and the board and partners. It is reiterated that this review has been motivated not by underperformance by TDA but from a need for a better mechanism to deliver more for Torbay.
- 8.3 Ensuring that the appropriate process is followed under TUPE will be important as failure to do so may result in employment claims.
- 8.4 The loss of third-party income has been addressed above. While this income is welcome it is not material to the decision.
- 8.5 In the short term there is a risk that resource requirements for implementation of the decision may require other work to be paused to allow this work to be completed.
- 8.6 There may be financial and reputational risks relating to the termination of contracts with TDA's public sector clients.

9. Equality Impacts - Identify the potential positive and negative impacts on specific groups

	Positive Impact	Negative Impact & Mitigating Actions	Neutral Impact
Older or younger people			No discernible impact anticipated.
People with caring Responsibilities			No discernible impact anticipated.
People with a disability			No discernible impact anticipated.
Women or men			No discernible impact anticipated.
People who are black or from a minority ethnic background (BME) (Please note Gypsies / Roma are within this community)			No discernible impact anticipated.
Religion or belief (including lack of belief)			No discernible impact anticipated.
People who are lesbian, gay or bisexual			No discernible impact anticipated.
People who are transgendered			No discernible impact anticipated.
People who are in a marriage or civil partnership			No discernible impact anticipated.
Women who are pregnant / on maternity leave			No discernible impact anticipated.
Socio-economic impacts (Including impact on child poverty issues and deprivation)			No discernible impact anticipated.
Public Health impacts (How will your proposal impact on the general health of the population of Torbay)			No discernible impact anticipated.

10. Cumulative Council Impact

10.1 None

11. Cumulative Community Impacts

11.1 None