

Report – Policy and Resources Committee

Proposed Terms of Reference for a Bridge House Estates Board

To be presented on Thursday, 4th March 2021

*To the Right Honourable The Lord Mayor, Aldermen and Commons
of the City of London in Common Council assembled.*

SUMMARY

In December 2020 your Policy & Resources Committee considered a report, for the City Corporation as Trustee for Bridge House Estates (charity no. 1035628) (“BHE”), relating to the creation of a dedicated committee of the Court of Common Council from April 2021 to be responsible for the administration of BHE under the oversight of the Court.

The recommendations relating to the establishment of a BHE committee of the Court reflected the views of professional officers and legal advisors arising from the BHE Strategic Governance Review (“the BHE Review”). A single committee was recommended to support regulatory best practice and ensure that, by the implementation of a governance and operational framework providing for cohesive oversight of this large and complex charity in this way, the City Corporation as Trustee will better discharge its duties to administer the charity effectively, solely in the charity’s best interests and in furtherance of BHE’s charitable objects, thus helping to deliver maximum impact for beneficiaries.

Policy & Resources Committee agreed in principle the recommendation to create a BHE committee in December 2020 but requested that the proposed arrangements be brought back for consideration in more detail in advance of any recommendations being presented to the Court. At the Committee’s meeting in February, proposed Terms of Reference for the new BHE committee, to be called the “Bridge House Estates Board”, were presented for approval, together with further details of the necessary changes to the City Corporation’s corporate governance framework that would need to be made to support the effective implementation of the new BHE Board from April 2021. Members will be further engaged in implementing the corporate governance arrangements to be adopted in the administration of the charity, including for collaboration across all the City Corporation’s functions (and Funds), particularly in relation to investment matters (refer paragraph 28 of the Report).

RECOMMENDATION

That the Court of Common Council in the discharge of its functions for the City Corporation as Trustee for Bridge House Estates and solely in the charity’s best interests, is recommended to **agree**:

- a) To constitute a committee to be named the “Bridge House Estates Board” to exercise day-to-day management and control of the charity solely in its best interests, on behalf of and under the oversight of, and with certain matters reserved to, the Court of Common Council, for implementation from April 2021;
- b) To approve the draft Terms of Reference for the Bridge House Estates Board set out in **Appendix A**; and to delegate authority to the Town Clerk in consultation with the Chair and Deputy Chair of the Policy & Resources Committee to settle the proposed Terms of Reference following any additional comments from the Court, to be presented to the Court of Common Council in April 2021 for approval in constituting all the Court’s Committees for 2021/22.
- c) Subject to recommendations a) and b) being agreed, to authorise the Town Clerk, in consultation with the Comptroller & City Solicitor, to make any other consequential changes to the City Corporation’s corporate governance documents which are required to support the effective implementation of the new Bridge House Estates Board from April 2021.

MAIN REPORT

Background

1. Bridge House Estates (“BHE”) is an unincorporated charitable trust and a registered charity (charity no. 1035628). It is currently the 7th largest charity in the UK in terms of asset valuation, having significant property holdings and financial investments. The City of London Corporation (“the City Corporation”), acting by its Court of Common Council, is BHE’s sole corporate Trustee. The charity has complex charitable purposes and governing documents, reflecting its ancient origins and close historic connections to the City Corporation. The charity is permanently endowed which imposes particular restrictions and legal duties on the charity’s trustee.
2. BHE is administered by the City Corporation as Trustee in accordance with the law, the charity’s own governing documents, and the City Corporation’s usual procedures and governance framework. As Trustee of the unincorporated charity, the City Corporation enters into all contracts and holds the legal title in all BHE’s property for the benefit of the charity (and its beneficiaries). The City Corporation makes its own resources, including staff, available to the charity in administering it as Trustee, with the reasonable costs and expenses of doing so being reimbursed from the charity’s funds. In acting as Trustee, the City Corporation has a legal obligation to understand the charity’s complex governing instruments and the legal framework which applies, to act in accordance with them, and to take decisions independently, acting solely in the best interests of BHE in furthering its charitable objects.

3. The primary object of BHE is to maintain and support five bridges crossing the River Thames: London Bridge, Blackfriars Bridge, Southwark Bridge, Tower Bridge and Millennium Bridge. A cy-près charity scheme of 1995 permits income surplus to that required for the bridges to be used for broad charitable purposes including for the general benefit of inhabitants of Greater London (“the ancillary object”). The income surplus is applied in accordance with a policy agreed by the Court of Common Council as Trustee and notified to the Charity Commission following consultation with external and internal stakeholders. The current such policy is ‘*Bridging Divides 2018-23*’ delivered in the name of City Bridge Trust (“CBT”), the charity’s “funding arm”.
4. In 2018, a BHE Strategic Governance Review (“BHE Review”) was initiated to assess how the governance of BHE could be enhanced, ultimately to increase the reach and impact of the charity’s activities, and to model good practice in the charity’s governance and operations. Having regard to this, and the underlying legal obligations of charity trustees to ensure that their charity is well run and operating effectively the BHE Review also sought to make changes to the charity’s governing documents and to review the arrangements for the administration of the charity under the City Corporation’s own corporate governance framework.
5. This was intended to ensure that the City Corporation retains cohesive and effective oversight of the charity’s diverse operations, and acts in accordance with the charity’s complex governing documents and the particular legal framework which applies to BHE as a charity. Further, it was intended to ensure that effective and efficient decisions are taken by the City Corporation as Trustee, and can be clearly demonstrated to have been taken, independently and only in the best interests of BHE.
6. With the initiation of a separate Corporate Governance Review for the City Corporation itself in 2020, led by Lord Lisvane (“the Governance Review”), it was deemed appropriate to progress any potential changes to BHE’s governance and administration by the City Corporation as Trustee in line with the Governance Review. In December 2020, your Policy and Resources Committee received a report recommending the creation of a BHE committee to exercise the day-to-day management and control of the charity, for implementation from April 2021.
7. The report outlined the rationale for creating a BHE committee including reference to the legal advice received as part of the BHE Review from Bates Wells LLP, a leading charity law firm (as reflected in paragraphs 4, 5 and 8 of this Report). It also identified the need to consider changes to the City Corporation’s own current internal governance arrangements for the better governance and administration of the charity as Trustee of BHE.
8. Specifically, the advice clearly stated that a dedicated committee of the Court of Common Council would consolidate oversight of BHE’s strategic and operational activities (with Court oversight), and help ensure that decisions can clearly be demonstrated to be in the best interests of the charity and that conflicts of interest

between the City Corporation acting as Trustee of BHE, and in its separate legal capacities, are clearly managed. This is best achieved by having a clear division in functions through the establishment of one committee for BHE which has the cohesive oversight and management of the charity. Establishing a BHE committee will help to ensure the City Corporation meets its specific and strict legal obligations under charity law relating to managing conflicts of interest and avoiding unauthorised self-benefit.

9. The draft Supplemental Royal Charter for BHE is currently with the Privy Council's Office ("PCO") for comment prior to approval, and implementation by the Court later this year. The draft Charter reflects the legal advice, including that there should be provision for independent decision-making for the charity by way of a separate committee of the Court, thereby clearly demonstrating that decisions are being taken only in the best interests of BHE and conflicts of interest properly managed.
10. Your Committee approved this recommendation in principle, acknowledging the legal and operational imperatives for the creation of a BHE committee of the Court, including the Trustee duties of the City Corporation including to act only in the best interests of the charity, but requested that the draft Terms of Reference be presented to the Policy & Resources Committee for consideration before being recommended to the Court.

Terms of Reference

11. The proposed remit of the new committee, to be called the Bridge House Estates Board ("the BHE Board") is set out in the draft Terms of Reference at **Appendix A**, which this Honourable Court is asked to consider and agree. The draft Terms of Reference reflect the flexibility under the City Corporation's own governance arrangements which will allow the new committee to draw on the skills, knowledge, and experience from across the whole Court.
12. The Terms of Reference have drawn together the various functions of the charity which are currently split between several Committees and have also sought to describe these in a manner consistent with expectations of good governance within the charity sector. Specifically, it is proposed that a newly constituted BHE Board would have responsibility for dealing with the day-to-day management and administration of the charity's business and financial affairs, management of risk, and exercising the powers of the City Corporation as Trustee of BHE on behalf of the Court (except where expressly provided – refer to paragraph 21), and including but not limited to:
 - (a) Considering matters of policy and strategic importance to BHE, and making recommendations to the Court of Common Council in settling the charity's overarching policies;
 - (b) The review and co-ordination of the governance of BHE for the City Corporation as Trustee, reporting as necessary to the Court of Common Council;

- (c) Appointing such sub-committees as are considered necessary for the most effective discharge of BHE functions;
- (d) The corporate control, management, maintenance, and repair of the five Thames bridges;
- (e) The management of the visitor and events elements relating to Tower Bridge; and
- (f) The application of funds for the ancillary object in accordance with the policy set.

13. Following debate by your Committee, it was recommended that the committee be named the “Bridge House Estates Board” instead of the “Bridge House Estates Committee” as had been first proposed. This recommendation aligns with the design principles of the City Corporation’s Target Operating Model where institutions (including BHE) will report to their own Boards¹, to bring consistency to how institutions are governed and their relationship to the City Corporation as a whole. **It is therefore recommended that the committee be called the “Bridge House Estates Board”.**

14. As noted above, the draft Supplemental Royal Charter provides for the constitution of committees with responsibility for BHE under the City Corporation’s own internal governance procedures. The appointment of the proposed Board remains a matter for the Court, subject to the overriding legal duty to ensure that the Board is made up of those who have the appropriate skills, knowledge, and experience to discharge the functions of the City Corporation as Trustee for BHE which are delegated to that Board.

15. **It is recommended that the Committee be constituted during its first year to have a maximum membership of 12 persons to include up to 8 Commoners, 2 Aldermen, and 2 co-opted external members with voting rights, with a quorum of 5**, thereby ensuring a majority of elected City Corporation Members in attendance for a quorum. The size of the Board is consistent with best practice in the charity sector as outlined in the [Charity Governance Code](#) and, as is common across a number of City Corporation committees, supports the appointment of two external members to enhance the skills, knowledge and experience of the Board. *Ex-officio* appointments from other City Corporation committees might also be considered, noting the requirement for independent decision-making by the Board for BHE and the need to appropriately manage conflicts. A skills audit will be undertaken to assess what expertise is required on the Board and its sub-committees.

16. Consistent with best practice and the City Corporation’s usual procedures, and to support continuity in the discharge of the Trustee’s functions, **it is also recommended that the terms of appointment normally be for four years**, with reappointment on a staggered basis, the initial appointments being made accordingly, as follows:

¹ Under the proposed Target Operating Model all the Boards referenced for the various “institutions” are committees of the Court of Common Council, other than the City of London Academies Trust (CoLAT) Board of Directors/Trustees as CoLAT is a separate legal entity - albeit that we have a close relationship with that body and are directly vested in its success.

- (a) 8 Commoners – 4 to be appointed by the Court of Common Council for an initial term of two years, and 4 to be appointed for an initial term of four years;
- (b) 2 Aldermen – 2 to be nominated by the Court of Aldermen and appointed by the Court of Common Council in the usual way, for initial terms of two and four years, respectively;
- (c) 2 Co-opted (voting) Members to be appointed by the Court of Common Council upon the recommendation of the BHE Board which will be responsible for conducting the recruitment in accordance with a transparent process of appointment approved by the Court at the recommendation of the Board – 1 to be appointed for an initial term of two years; and 1 to be appointed for an initial term of four years.

17. Additionally, to support continuity in the administration of the charity, it is proposed that anyone appointed to the Board may serve for eight consecutive years, which is consistent with charity best practice. Further, going forward, in accordance with usual City Corporation practice where a vacancy arises during a term that vacancy will be filled to the end of the relevant term, and the appointee will then only be eligible to serve a reduced consecutive term. Charity practice would support the Court also allowing for a break of one year before permitting someone who had already served for eight consecutive years to then be eligible to serve a further eight consecutive years.

18. In line with the City Corporation's current governance framework, it has been proposed that two seats are reserved for Alderman on the Board in the first year. Although Lord Lisvane recommended that Aldermanic seats should not be reserved, he did highlight this "may well vary from Committee to Committee"² and would need to be considered further. Pending a formal decision on this recommendation, it is proposed that the new BHE Board be constituted in line with current standard practice and reviewed following any changes agreed through the Governance Review.

19. In drafting the Terms of Reference, officers have taken legal advice from Bates Wells LLP to ensure the document reflects industry good practice as well as the City Corporation's own particular corporate governance framework and the charity's own governing documents and the legal duties which apply. Also, officers have reflected the ambition of Members, which has been previously expressed, to increase the diversity of the proposed Board better to represent the diversity of London, noting that the charity serves Greater London and Londoners.

20. Reflecting that the City Corporation acting by the Court of Common Council is Trustee and remains ultimately responsible for the discharge of these functions and compliance with the relevant duties of a charity trustee, the Court must retain sufficient oversight of the BHE Board's activities and finances. **It is therefore recommended that**, in addition to the matters which are reserved to the Court, as set out at paragraph 21 below, **the Board should be required to report at least biannually to the Court on its activities and expenditure**. It will of course be able to refer matters to the Court as it considers necessary or appropriate, whether

² Lord Lisvane's Governance Review Report, 2020. Paragraph 285, page 62.

for information or decision and the Court will be able to request information or details of decisions at any time.

21. The matters to be reserved to the Court of Common Council, are:

- (a) Appointment and removal of members of the BHE Board and ensuring that the Board retains appropriate skills, knowledge and experience;
- (b) Amendment of the governing documents of the Charity;
- (c) Approval of the Trustee's Annual Report and Financial Statements for the Charity;
- (d) Approval of the budget for the Charity;
- (e) Approval of the amount of income considered surplus to the requirements of the Charity's primary object to be allocated for application to the ancillary object each year ("surplus income");
- (f) Annual approval of the Charity's Risk Register;
- (g) Appointment of auditors;
- (h) Approval of the Charity's strategy, including its overarching strategy, investment strategy, bridge replacement strategy, charitable funding strategy and communications strategy;
- (i) Approval of the Charity's conflict of interest policy, reserves policy, investment policy, and policy for the application of surplus income;
- (j) Approval of the process to be adopted for the appointment of co-opted independent members to the BHE Board and its sub-committees, ensuring that those appointed have regard to diversity and inclusion on the Board.

22. Given the substantial content of work for the newly constituted BHE Board, **it is recommended that the Board is required to meet at least six times in the first year and to hold at least one strategic away-day each year.** This will be kept under review to inform the arrangements after the first year of the Board's operation.

23. To allow the new BHE Board the freedom to determine how best to administer the charity, **it is recommended that the Board have the discretion to appoint its own sub-committees where necessary.** This will allow the new Board to assess the charity's operation and activities as a whole, determine the best Member structure for the expedient and effective discharge of the charity's business by the Board, and ensure compliance with the Trustee's legal obligations. This provides flexibility to the Board and allows those arrangements to be adapted expediently as required for the charity's good administration, including to reflect existing arrangements where appropriate. This reflects the advice of Bates Wells LLP.

24. The City Corporation's current Standing Orders will continue to apply to the new Board, and thus the quorum for any sub-committees will be three. However, having regard to the proposal to allow for appointment of co-opted members to sub-committees, it is proposed that additionally (unconflicted) members of the Court (Commoners or Aldermen) must form the majority of those in attendance to form a quorum.

25. As noted above, it is proposed, as set out in the draft Terms of Reference, that within the first year of operation the BHE Board considers whether any sub-

committees it establishes should draw upon the expertise in other Committees for example by appointing members of other Court Committees whose insights and experience may be helpful, noting the need to manage conflicts of interest which might prevent the individual from participating or voting on an item of business. It would also be open to the BHE Board to appoint further external co-opted Members to its sub-committees, in accordance with the proposed Terms of Reference.

26. Further, it is expected that the new Board and its sub-committees will take advantage of the immense flexibilities that exist under the City Corporation's corporate governance framework to allow for joined up and informed decision-making across the breadth of the City Corporation's operation and functions. This framework provides a means for formal consultation between City Corporation committees by reference of business from one committee to another for consideration and comment, with reference back to the responsible decision-making committee.
27. Moreover, it provides that Joint Committees or sub-committees may be constituted (whether to meet on a regular/specified basis or for a specific purpose/project) to allow for joined-up discussion and consideration of issues which affect more than one committee or which involve the City Corporation acting in its different legal capacities, whilst importantly providing for independent decision-making in the exercise of the separate functions (and have been adopted previously). With the constitution of the proposed BHE Board these joint meetings of decision-making committees/sub-committees of the Court could easily be instituted to allow matters of common interest to BHE and the other City Corporation Funds to be considered together in a joint forum and independent decisions taken (thus complying with the City Corporation's obligations as charity Trustee of BHE). (Refer Standing Order 28.)
28. Members will be further engaged in implementing the corporate governance arrangements to be adopted upon the creation of the BHE Board (per paragraphs 25-27 above). Further to discussion at the Policy & Resources Committee, provided it is considered to be in the best interests of the charity, it would be possible for the BHE Board to seek the advice of another committee of the Court to inform the Board's decision-making, not least the Investment Committee on investment matters and the Policy & Resources Committee on the Corporation's wider strategic objectives which are relevant to the charity (e.g. the climate action strategy). Equally, it would also be possible for the BHE Board to establish an investment sub-committee which substantially draws from the membership of the Investment Committee (or its sub-committees), or for joint meetings of the BHE Board and the Investment Committee to take place biannually to consider common matters of strategic and operational importance to the charity in the oversight and management of the investments under the City Corporation's control. Any governance arrangements which are adopted for the forthcoming year will, of course, be reviewed following the grant of the Supplemental Royal Charter and in light of any future changes to the City Corporation's governance following the Governance Review.
29. The creation of a BHE Board with the Terms of Reference proposed would result in changes to existing Terms of Reference of committees which currently discharge

BHE functions. As noted above, further consideration will be given to the governance arrangements to be adopted to support collaboration and co-operation across the City Corporation's Funds/functions having regard to existing governance structures. It is also specifically recommended that any new BHE Board consider constituting a sub-committee to focus on the charity's grant funding programme, including to make provision for the appointment of persons serving on the existing City Bridge Trust Committee for the first year to help ensure continuity in this part of the charity's business.

Next Steps

30. As outlined above, if Members approve the draft Terms of Reference for a BHE Board, the next step will be to present the Terms of Reference to the Court of Common Council in April 2021 for approval in constituting all the Court's Committees in 2021/22 in the usual way. It is expected that this timing will fit with the grant of the new Supplemental Royal Charter which would provide new powers and flexibilities to the charity.
31. As a consequence of constituting the BHE Board, other changes will be required to the City Corporation's own corporate governance documents, such as Standing Orders, Scheme of Delegations, Financial Regulations, Procurement Code and the Project Procedure. It is therefore recommended that reference in these documents to the new BHE Board be substituted for any other Committee reference as it relates to the discharge of BHE functions which are delegated to that Board.

Conclusion

32. Members, acting collectively for the City Corporation as Trustee and solely in the best interests of the charity, are recommended to support the constitution of a BHE Board and the proposed draft Terms of Reference set out at **Appendix A**. The creation of a BHE Board is considered to be a key outcome of the BHE Review as it will help ensure the City Corporation's compliance with its charity law duties and specific responsibilities as Trustee of BHE. Lord Lisvane endorsed the BHE Review recommendations, and the proposals also demonstrate significant progress in implementing relevant Governance Review recommendations. If approved, the BHE Board will be constituted from April 2021.

Background papers

- Report to Policy and Resources Committee, entitled Proposal to Establish a Bridge House Estates Committee, dated 10 December 2020 (Item 6)
- Corporate Governance of the City of London Corporation, Report of a Review by the Lord Lisvane KCB DL, September 2020.
- Bridge House Estates Internal Member Governance Proposal, Submission to the Corporate Governance Review, March 2020.

Appendices

- Appendix A – Draft Terms of Reference for a BHE Board
- Appendix B – Trustee Duties

All of which we submit to the judgement of this Honourable Court.

DATED this 18th day of February 2021.

SIGNED on behalf of the Committee.

Deputy Catherine McGuinness
Chair, Policy and Resources Committee