

Torbay Council – Governance Review

Torbay Council's control and influence of the Torbay Economic Development Company Ltd (TDA)

External Peer Advisors on behalf of the Local Government Association

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1. Terms of Reference (TOR) and Background

- 1.1 The new Cabinet of Torbay Council sought a review of how the council exercises its control and influence of the Torbay Economic Development Company Ltd, (known as TDA). This led to them commissioning the Local Government Association (LGA) to undertake an external review, leading to a written report and a number of recommendations in response to their TOR which was:
'how the council exercises its control and influence of the TDA going forwards'.
- 1.2 The TDA was established by Torbay Council in 2010, and incorporated with Companies House on the 11th April 2011, to deliver economic growth and support for Torbay's economy. The TDA is a wholly owned company of the council. As a wholly owned single/sole shareholder, the council exercises its control through two main avenues: -
- i) member appointments on the Board of Directors and
 - ii) through the exercising of consent on a range of 'reserved matters', including approval of the business plan.
- 1.3 The TDA was set up to deliver a coherent programme of economic development and increase the pace of delivery of regeneration. It was established to increase both public and private sector investment; provide more job opportunities and facilitate better business development and engagement. This social purpose is supported by delivery of a variety of services on a commercial basis with clients coming from across the public sector alongside the operation and development of property.
- 1.4 The council is also the commissioner of services from TDA, but at a level where 'teckal' compliance is currently maintained. The TDA is a separate legal entity where some of their subsidiaries do not currently have 'teckal' status. There are currently a range of commercial services which support and fund delivery of their social purpose. These services include provision of a wide range of asset management, economic development, housing delivery and regeneration services to clients across a wider geography. As a social enterprise they also aspire to be a leading provider of property and businesses services valuing people and places in all that they do and everywhere they operate. At the request of the Council they have created TorVista which is a housing company now operating as a subsidiary of TDA, for such purposes.
- 1.5 A council report approved in September 2009 stated that the establishment of TDA was a response to the continuing economic challenges facing Torbay. It was to help support the need to improve their competitive position as a location for all types of business. It also reflected the changing Government policy context around economic development including the Sub National Review of Economic Development and Regeneration which proposes a statutory or strengthened role for local authorities on economic development.
- 1.6 The anticipated benefits of TDA when it was formally incorporated with Companies House in 2011, included:
- * the freedom to respond rapidly
 - * unlocking additional resources
 - * legitimising economic development actions
 - * encouraging a more entrepreneurial approach
 - * becoming less risk adverse and
 - * the development of stronger relationships with the private sector.

- 1.7 The September 2009 council report which recommended the creation of TDA also stated, that stronger performance on economic issues was likely to have a positive impact on the perception of the council and its role in economic development.
- 1.8 This was in line with a number of councils at that time (circa 2010), who believed that having separate 'private sector influenced' Boards, would be more attractive to prospective developers and entrepreneurs who may be attracted to invest and help develop and deliver the economic ambitions of the council.
- 1.9 It was further anticipated that any future financial savings would come as a result of TDA being able to develop sites and deliver schemes to generate income for itself. It was understood that this would be a gradual process, whilst at the same time looking to generate income perhaps through project management or professional services, but with the ultimate objective of becoming self-financing in the long-term.

2. Review Methodology and Approach Taken

- 2.1 Phase one of this work included a combination of desktop analysis of a range of background documentation concerning the establishment of the TDA and its Business Plan ambitions. Phase two, followed this up through a series of interviews which included a number of private sector board directors, including the Chairman and key TDA officers including the Chief Executive. Interviews included key politicians, council officers and several members of the TDA Board, (a full list is included at *appendix 1*).
- 2.2 This review was focused upon governance of the current delivery model. Although the review had a specific focus upon governance issues, we also looked at where it was understood that accountability for policy and 'risk and reward' was held. We briefly looked at some of the financial arrangements, but this was not part of the remit, so we didn't look at this issue in any great depth.
- 2.3 Importantly, during the mid-point of the review, the Chief Executive of the council left the employment of the council to become the full-time Chief Executive of TDA. The review did not attempt to look at the various issues that may be associated with this change, but this new situation will hopefully provide some clarity of 'role' going forwards.
- 2.4 A critical area not covered by this remit but that does need to be considered in time is the overall effectiveness of TDA. This may be worth considering at the same time that Torbay Council takes a more in depth look at the general operation of its' wholly owned companies and whether best value is being achieved at the moment, or whether some form of integration or economies of scale would be beneficial, both in terms of governance, general operation and financial efficiencies.
- 2.5 This would be a particularly important piece of work to do at this point in time when considering the huge challenges regarding Covid pressures, future Brexit implementation and impending local government re-organisation. The council will need to re-assure itself that they completely understand these challenges and position themselves accordingly.
- 2.6 In order to undertake an assessment of TDA, we asked several key strategic questions in order to best answer the requirements of the review set out on page 2.

The following list is not exhaustive, but our questioning covered the following areas: -

1. Policy accountability and responsibility.
2. Understanding of individuals own personal role in relation of the operation of the TDA Board.
3. Governance – Council and TDA Objectives; commissioning; communication and general oversight.
4. General understanding of the financial operation/performance measures.
5. TDA Board – operational practices.

2.7 In order to assess and analyse the answers to the above questions, we deployed a style and methodology similar to a combination of a peer review and an inspection. This involved both individual and group interviews with those individuals as set out in *appendix 1*.

Disclaimer.

The observations we have put forward have been made with the restrictions of the short time scale of this review but have been informed by the combination of desktop analysis of reports and the interviews that have been conducted. It was also requested that the scope of the remit was to be kept primarily focused around the issues of governance, hence only light references have been made concerning the efficiency and deliverability of the TDA, including any financial, commercial or any legal considerations.

3. Executive Summary and Recommendations

3.1 Policy accountability and responsibility

- In the interviews that were held throughout this review, it was stated several times that the relationship between the council and TDA board has been much improved over the last few years. That said, it is still felt that the relationship between the council and the TDA board could be further improved and would benefit from increasing opportunities to work together. Evidence from councils who have successfully improved corporate and service performance, discover that it is most successful when done on a whole Council basis. In simple terms, we advise to ‘re-set’ the way of working together going forwards.
- In order to help establish a ‘new way of working’ between the council and TDA, there is a need to introduce a range of both formal and informal opportunities to enable this. This will help nurture and build ongoing relationships which will be an extremely important aspect to get right looking forwards.
- To introduce a high-level strategic board which includes as a minimum, the Leader, Deputy Leader and Chief Executive of the Council and the Chairman, Chief Executive and another member of the TDA Board. This board would therefore ensure that the council as the single shareholder, has an ongoing strategic role to work with and hold to account the TDA and this could therefore be classified as a ‘Shareholder Board’. It would be the vehicle where issues are raised regarding the high-level aspirations and direction of the council; those aspects that may need reserved matters to be considered and strategic requests that TDA would like the council to be aware of/seek guidance from.

- This board should be the place where consideration and agreement are reached on how the TDA projects itself in the community and the council's role in achieving this. An understanding of any communication and/or publicity for forthcoming projects could also be agreed here. The ambition is that there should be 'no surprises' for both the council and TDA regarding future strategic issues and potentially, any significant sensitive/operational issues that may arise going forwards.

3.2 Understanding of individual's own role in relation of the operation of the TDA Board

- The council should ensure that it reviews the training and support that is given to those councillors who sit on the TDA board. These councillors also need support back within the council, so they better understand what can or can't be shared with the council. TDA board members would also benefit from greater understanding of how the council operates and the challenging role of a councillor. This would ensure a more mutual recognition of each other's contributions going forwards.
- There needs to be a clear understanding of the importance of boards such as this and a clear understanding of how wholly owned companies operate. The council must be confident that it receives the correct information in the right way at the right time and that the councillors involved are rightly supported to be on this board.
- Consideration of developing a 'buddy system', where a private sector TDA board member 'buddies up' with a council member representative on the TDA board to help support/inform one another in the way the board operates, as well as how the private sector operates. This will add value to the quality and general understanding of the board going forwards.

3.3 Governance – Council and TDA objectives; commissioning; communication and general oversight

- In addition to the governance by the Cabinet through the proposed Shareholder Board, that the council enhances the role and importance of the overview and scrutiny committee regarding the functions of TDA in order to ensure that the council holds TDA to account in a way that satisfies the outcomes and ambitions the council has set out in its Policy Framework. This was an issue which was mentioned several times during our interviews and this should be the more 'formal route' where the council can hold TDA to account. It was interesting to note that several members of the TDA Board commented that the most appropriate place to hold TDA to account was through the overview and scrutiny committee, but they felt that this wasn't being achieved as well as it could be. It is therefore recommended that members on the overview and scrutiny committee are trained and supported to be better equipped to correctly challenge/support and hold to account TDA going forwards.
- That the council and TDA undertake an annual 'state of the nation type of presentation' to the community which showcases the projects delivered by TDA and ambitions of the council in a shared endeavour of partnership. This would clearly demonstrate that TDA is the delivery

vehicle of the council and that they are truly working together. It would provide an excellent opportunity for the council to set out its future economic ambitions for the area.

- That TDA in conjunction with the council, circulates a regular briefing/update for all council members. This would help remind councillors that TDA is an important delivery vehicle for them, as well as allowing them the opportunity to ask them any specific/ward-based issues that they may need more detail upon. This will help to dispel concerns around lack of information and/or transparency concerns.
- To consider reviewing and re-shaping the existing 'client/commissioner panel' which would need to sit under the Shareholder Board. This would connect the outcomes of the Shareholder Board through the client/commissioner panel ensuring that the direction of travel is activated and delivered. This 'intelligent client' function, would be best placed to then manage ongoing relationships going forwards.
- It is recommended that this officer-based 'client', would then be well placed to help shape and monitor targets and outcomes, future agenda content, meeting frequency, ongoing relationship opportunities and outcomes that need to be delivered as agreed via the Stakeholder Board and ultimately the Full Council, through the Policy Framework.
- It is recommended that the council's Director of Place is included on the TDA Board as a non-voting board member, to help add another layer of connectivity and transparency between the council's ambitions and TDA.

3.4 General understanding of the financial operation/performance measures

- To re-examine the use of intelligence and data-sets which are critical to the delivery of the ambitions and outcomes approved by council. This 'suite' of performance data needs to be shaped in a way that can satisfy a range of audiences including Cabinet, Shareholder Board, Overview and Scrutiny Committee and the client/commissioner panel for example. It also needs to help TDA function and several members commented that issues such as return on investment would be a helpful performance measure to include as well.
- The presence of a 'refreshed' council dashboard would ensure that financial information on the council's position as a whole would also be linked to performance. This would help both politicians and senior managers to think and operate more strategically. This would also be an excellent tool to support the revamped Overview and Scrutiny Committee as part of their challenge and holding the TDA Board to account going forwards.
- It is further recommended that greater financial oversight could be achieved through more regular and formal meetings taking place between the TDA's company secretary and the council's 151 officer.

3.5 TDA Board – operational practices

- The quality of TDA Board membership seems very good and represented most sectors. It is recognised that TDA representatives attend various community-based meetings such as Torbay Together, Community Conference, and attend various community/partnership-based meetings when a local initiative is being proposed. It is felt that there is a missing opportunity in having a strong advocate actually on their Board for linking/representing the third sector/community. It is recommended that TDA should include somebody such as a board member from the Community Development Trust going forwards in order to facilitate this linkage.
- The TDA needs to consider adopting report writing processes/timescales as undertaken within the council. It would be helpful if TDA adopted a 'Forward Plan' type of arrangement where board members felt able to contribute to the agenda looking forwards. Whilst recognising commercial confidentiality, it would still provide a good strategic discussion foundation with the council in the proposed Shareholder Board for example.
- A number of board members commented about 6-hour meetings taking place, containing very lengthy reports and agendas which arrived very late, giving little time for members to read and consider the implications of approval. It would be 'good discipline' to aim for circa 2-hour meetings, which could also be complimented by a timescale of how long each agenda item should be taking, providing clarity and focus going forwards. This would also assist TDA in setting out within the agenda those aspects that are truly strategic as opposed to operational. The operational impact of Covid-19 has meant that virtual meetings that are now being held, are now averaging around the 2-hour timescale, which is now helpfully becoming the new 'norm'.
- That the TDA Board consider the various reports that 'repeatedly' go through the committee system and then ultimately the Board. Board members are committing a lot of their personal time and more careful management of agenda items which reduce duplication would be beneficial for everybody going forwards.

3.6 Preparing for Future Challenges

- Comments were made by several private sector interviewees regarding the increasing size and scale of the corporate back office located in TDA. Bearing in mind TDA is required to be a financially efficient trading arm, it needs to be competitive in terms of contract bidding and having such a large internal corporate resource doesn't help in this regard. Nor does it support the Council with its scarce resources, which could be strengthened if existing Council and TDA resources were joined and provided back to TDA under an SLA. Alternatively, a decision could be taken to achieve efficiencies if the resources were so joined. If TDA continues to grow its internal resource, then this could eventually lead to confusion of policy and function by residents, in that TDA could be developing into a council in all but name. Furthermore, the majority of the economic and regeneration resource and intelligence sits within the TDA which in effect is its' delivery vehicle.

- A number of interviewees further commented that they were aware that due to the diversification of TDA into other areas potentially risky/strategic areas eg. housing, health etc, then ultimately the 'risk exposure' on TDA and ultimately the council would be significantly increasing.
- To this extent, it may be sensible for the council to 'take stock' of the role of TDA and of its' other wholly owned companies. To ask itself....

'what does Torbay Council really want going forwards'?

- That the council considers expediting a more detailed look at the operation of its' wholly owned companies looking forwards. This would be a particularly important piece of work to do at this point in time when considering the huge challenges regarding Covid pressures, future Brexit implementation and impending local government re-organisation. The council will need to re-assure itself that they completely understand these challenges and shape themselves accordingly.

Although not an exhaustive list, it could consider issues such as: -

- whether economies of scale are currently being achieved and/or could be improved via a more integrated *'company governance structure'*?
- Is the efficiency and delivery outcomes of the companies in line with original expectations, including the HR, legal, commercial and financial arrangements
- is the strategic operation and delivery of the various companies too large and/or remote from the council and hence increasing the council's risk profile too much?
- Clarity of purpose and function of these companies as distinct with the council
- Any others as agreed by the council

4. Summary of overview of responses

4.1 Policy accountability and responsibility

- i) Several responses indicated that there was some confusion regarding the fact that the council had overall responsibility for setting the economic policy which TDA is charged to deliver. Several interviewees questioned whether it was always acting as a 'Teckal' company operating on behalf of the council or as an independent company.
- ii) A number of responses were related to some board members not being completely aligned with what TDA was proposing and hence being 'surprised' when some items appeared on the agenda. However, TDA officers cited many examples of how information is being relayed to the council, but it seems that this isn't working as efficiently as it could be.
- iii) At the time of completing this review, the Chief Executive of the council left their employment and became the full-time Chief Executive of the TDA. It was clear throughout the vast majority of the discussions we held, that the previously held split role did create

some confusion and questions regarding competing interests. It is hoped that the new situation will clarify any potential misunderstanding going forwards.

- iv) An issue the council does need to be comfortable with moving forwards is the fact that the majority of the economic and regeneration resource and intelligence sits within TDA which in effect is its' delivery vehicle. It needs to be stated that having this balance in this way could blur policy accountability. The council could be quite exposed in the future in terms of policy direction if the Director of Place left or was not available for a period of time for example. The TDA board also has a large number of HR and finance staff resource which further adds potential 'on-costs' when bidding for future work in its trading arm role.
- v) The Director of Place is the council's key client/commissioning senior manager, yet he has only been to one TDA board meeting since its inception. In order to improve the ongoing relationship from both a commissioning and transparency point of view, this could be further enhanced if he were to be invited onto the TDA board as an observer/non-voting member.

4.2 Understanding of individuals own personal role in relation of the operation of the TDA Board

- i) There was a lack of training/awareness support given to councillor board member representatives prior to involvement with the board. It takes time to understand the nuances and general operation of a predominantly private sector-based organisation. Some of the council board members commented that at times they felt that they were not equipped to give challenge or support at meetings. This in turn meant that they were not able to bring back 'intelligence' to the council in order to help future informed decision making.
- ii) A number of interviewees commented that they were not aware of how costs were charged back to the council or were allocated or indeed initially estimated. This was clarified when speaking to some TDA officers but is further evidence that this information is not widely understood by a number of Board members and a number of senior council staff involved with the TDA, which creates a perception of a lack of transparency.
- iii) The council need to be very clear what information can or cannot be shared back within the council through their councillor representatives on the board. Although the TDA board and its members must adhere to company law and there will be commercial sensitivity considerations, it is not correct to interpret that 'no information' can be shared back or discussed within the council.

4.3 Governance – Council and TDA Objectives; commissioning; communication and general oversight

- i) It was fed back through our discussions that increasing council member representation onto the board would not necessarily improve the influence or control of the board. Private sector members in particular felt that the 'benefit' of TDA at the moment was that there was a strong private sector membership on the board and to weaken this could be detrimental to the overall ambition that the council seeks.

- ii) It was strongly felt that the best 'influence' that the council could develop would be through good quality, well trained and supported council representative members, who would then be better equipped and confident to do this work.
- iii) Although it was mentioned that there was informal contact with the leader, it felt that these were 'as and when' requested, rather than a more scheduled set of strategic discussions/meetings. The establishment of something akin to a Shareholder Board would be a helpful vehicle to continue to develop ongoing relationships, as well as allow both parties to set out their future ambitions, opportunities and concerns going forwards.
- iv) Many comments were received concerning the desire for both the council and TDA Board to meet more often and to get to know one another better. A number of TDA Board members have never met a number of the senior councillors of the council, so opportunities to facilitate this should be sought. This could for example, include a single item annual TDA update at Cabinet, followed by a more interactive/discussion session with all councillors.
- v) It was also mentioned that staging an annual 'state of the nation' type of update to residents which showcases the performance and ambitions of the council as delivered through TDA. This could for example be a part of the Annual Community Conference, but will need to demonstrate the critical position of the council in this endeavour.
- vi) Several interviewees commented on the increasing size and scale of TDA. If you include aspects such as subsidiary cleaning and café staff, then this encompasses up to some circa 150 staff. Comments were made that there needs to be clarity concerning what the focus of TDA should be, (see 3.6).
- vii) It is not part of the remit of this review, but the council may need to reassure itself that the growing ambitions of TDA is in line with their intention as sole shareholder going forwards. This could be particularly useful when considering the forthcoming challenges as set out earlier in 3.6 bullet point 4. This could include an examination of its wholly owned companies, ensuring that efficiencies, economies of scale, legal, financial and company structure commercial arrangements are being maximised reducing overlap and duplication.

4.4 General understanding of the financial operation/performance measures

- i) There was quite a diverse range of responses regarding this issue, ranging from a detailed set of measurements being cited, to several interviewees not being sure how they are measured.
- ii) Although there are already a set of indicators and a dashboard of measurements, this could be an excellent opportunity to now 're-set' the way of working going forwards, supported by a range of *jointly agreed* data-sets feeding into an overall dashboard. Some board members commented that this could include a number of key drivers such as return on investment. It would also act as a 'suite' of information that is shared at the strategic level at the Shareholder Board and TDA Board and then more granular information shared in other board settings such as the Overview and Scrutiny Committee and client/commissioning panel meetings.
- iii) There was some confusion regarding 'risk and reward'. Some responses received believed that if TDA was unsuccessful then this wouldn't have any impact whatsoever upon the risk and/or reputation of the council. This gave further evidence that there is still

a level of misunderstanding of the role, profile and association of TDA with the council and perhaps reflected within the wider community. This is particularly concerning if TDA continues to widen its' breadth of service area involvement eg. housing, health etc which will increase the 'risk profile' of the council.

- iv) The 'reserved matters' content was raised by several interviewees, but this ranged from being too many, to there being no need to amend them at all. The review's remit was not required to look at these in any specific detail, although this may be an issue to consider at a future date to ensure appropriateness. However, by improving the communication channels and building relationships as set out earlier, would mitigate the need for amending the reserved matters list going forwards.

4.5 TDA Board – operational practices

- i) It is felt that the quality of TDA board membership is well represented in terms of different service areas specialisms, with representation from various aspects of the private sector well covered. They have undertaken a skills audit which identifies areas that need strengthening, the addition of a board member with a strong health background being a recent example of this. It was also evident that there is a huge time commitment that the board members give to try to make TDA successful.
- ii) There is a missing link regarding the third sector/community interests, hence a representative from an organisation such as the TCDT would be beneficial going forwards.
- iii) A number of board members talked about the length of the agenda and at times late arrival of papers which didn't allow for appropriate scrutiny or contribution to be made. Several comments received was that it felt like a 'fait accompli' that some items had already been decided and just needed the board to rubber stamp it. Some also commented that they simply didn't understand some of the reports and were confused at times, in particular the financially related reports.
- iv) It would be helpful if TDA adopted report completion timescales and a report writing 'Forward Plan' type of arrangement where board members felt able to contribute to the agenda looking forwards. This could also help to be a strategic discussion point with the council in the proposed Shareholder Board.
- v) A number of interviewees mentioned that a number of issues are continually repeated eg. finance, both through the sub-committees and then at the board. It would seem sensible in order to try to keep the discussions at a more strategic level, that this could be facilitated by the production of an agreed 'refreshed' dashboard and/or data set.
- vi) A number of members mentioned that it could be helpful if digital updates happened in-between meetings, so everything didn't have to wait until the actual meeting to disseminate updates/information.

Footnote: further to the publication of the report discussions were held with one of the Members of the Peer Review Team in connection with Torbay Council's performance management arrangements. The Audit Committee is responsible for performance management across the Council and in turn will refer any detailed issues of concern to the Overview and Scrutiny for detailed review. Whereas, it had been thought that, in line with other Councils, Torbay would have

an overview and scrutiny body responsible for economic regeneration and/or performance management, which led to the recommendations for this role to be carried out by the Overview and Scrutiny Board. It was therefore acknowledged that the recommendations relating to overview and scrutiny would be amended to the Audit Committee in the resulting action plan.

Appendix 1

Individuals Interviewed

Councillors

Councillor Steve Darling – Leader of Council
Councillor Darren Cowell – Deputy Leader of Council
Councillor Rob Loxton – Leader of Independent Group
Councillor David Thomas – Leader of Conservative Group
Councillor Chris Lewis - Deputy Leader of Conservative Group
Councillor James O'Dwyer – Council appointed Director onto TDA Board
Councillor Swithin Long – Council appointed Director onto TDA Board
Councillor Cordelia Law – Council appointed Director onto TDA Board

Officers

Ms Anne-Marie Bond – Interim CEO (although interviewed in her substantive role as Director of Corporate Services/Monitoring Officer)
Mr Martin Phillips – Director of Finance/Section 151 Officer
Mr Kevin Mowat – Director of Place
Mr Steve Parrock – CEO of Council/CEO of TDA Board

TDA Board Members

Mr Vince Flower – Chairman of TDA Board
Ms Hazel Tucker – TDA non-Executive Director
Ms Sara Bond – TDA non-Executive Director
Mr Chris Hart – TDA non-Executive Director

TDA Officers

Mr Alan Denby – TDA Senior Manager
Mr Liam Montgomery – TDA Senior Manager