

# The Royal Borough of Kensington and Chelsea

## KEY DECISION

### Note and acceptance of decisions from Notting Dale Heat (NDH) Board Meeting (9 February 2024)

**Date: 15 July 2024**

<b>Decision Maker</b>	Shareholder Committee
<b>Reporting Officer</b>	Dan Hawthorn, Executive Director of Housing and Social Investment
<b>Key Decision number</b>	KD1009269
<b>Access to information</b>	Public with exempt Confidential Appendix Part B

It contains information relating to the financial or business affairs of a particular person (including the authority holding that information) under paragraph 3 of Schedule 12A of the Local Government Act 1972 and in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

**Wards** Notting Dale Ward

#### EXECUTIVE SUMMARY

- 1.1 The eighth NDH Board meeting took place on the 9 February 2024. The Shareholder Committee is asked to note decisions taken by the Notting Dale Heat (NDH) board in relation to the operating of the company in this meeting.
- 1.2 Decisions approved by the board include the NDH General Financial Procedures, NDH Management Accounts and NDH 2024/25 Draft Budget.

#### RECOMMENDATIONS

- 2.1 The Shareholder Committee is recommended to note the decisions taken by the Notting Dale Heat Board on the 9 February 2024, which are summarised in paragraph 2.3.

#### REASONS FOR DECISION

##### Shareholder Agreement

- 2.2 On a quarterly basis Notting Dale Heat should provide the Council with information on the Management Accounts of the business, a reconciliation

between expenditure and budget. This requirement is set out in section 11 'Monitoring and Provision of Information' of the Shareholders Agreement.

## Notting Dale Heat Board Decisions

- 2.3 The eighth Notting Dale Heat board meeting took place on the 9 February 2024, where the Board resolved to:
- **Note, review and approve the Heat Network Programme Forward Plan.** It summarises the key Commercial Decision for the Council, with decisions to be confirmed and adopted by Notting Dale Heat. Please see **Appendix 1, Heat Network Programme Forward Plan (Part A)**, noting that these Commercialisation decisions have been rescheduled to enable full consideration of both the Kensington Aldridge Academy heat loss and Salix Public Sector Decarbonisation Scheme grant award of up to £4.3 million for Kensington Leisure Centre.
  - **Note and review the draft Service Level Agreement.** It describes the range of services that Notting Dale Heat plans to buy from the Council. Please see **Appendices 2 and 3 (Part B)** for the cover report and draft Service Level Agreement. Please note that the draft Service Level Agreement has since been updated and is almost ready for review and approval by both the company Board and Shareholder Committee.
  - **Note and review the Design, Build, Operations and Maintenance (DBOM) heat network contract overview for information.** This contract has been awarded to Vital Energi to both design and build the primary network and energy centres at Lancaster West Estate, and to operate and maintain the entire heat network once built. Please see **Appendix 4 (Part B)**.
  - **Note and review the Finance Update.** Please see sections 5.1, 5.2 and 5.3 for further information on the accounts and budget. Please see **Appendices 5, 6, 7 and 8 (Part B)** for an explanatory report and the actual Notting Dale Heat General Financial Procedures; 2023/24 Management Accounts; and the 2024/25 Budget.
  - **Note and review the updated Strategic Risk and Opportunities Register,** which forms part of the Notting Dale Heat Business Plan. Please see **Appendix 9, Notting Dale Heat Business Plan (Part B)**, noting that this was from February 2024, so is now six months out of date. The strategic and operational risks are updated monthly.

## 3. BACKGROUND

- 3.1 The two existing heating networks at Lancaster West estate are end-of-life and in urgent need of complete replacement. As landlord and freeholder, the Council is required to replace them to ensure the provision of heating and hot water services to residents.
- 3.2 Leadership Team on 9 June 2021 approved the business case for the Notting Dale Heat Network and permitted the Council to apply to the Heat Network Investment Project (HNIP) for government grant to support the scheme.
- 3.3 In August 2021 an application for £1.16mn to HNIP was successful. A key condition of the grant was that the Council set up a local energy company.

- 3.4 Leadership Team in November 2021 agreed to establish Notting Dale Heat. This 100% Council-owned local energy company will design, build, operate, and maintain the Notting Dale Heat Network.
- 3.5 'Notting Dale Heat Network Ltd' was incorporated at Companies House on 31 January 2022. It trades as 'Notting Dale Heat'.
- 3.6 The company has a Board with six Non-Executive Directors: two Council Directors, two Resident Directors (who are potential heat network customers) and two Independent Directors.
- 3.7 The Notting Dale Heat business case approved in May 2023 confirmed that a new 21<sup>st</sup> century heat network for the entire estate is technically and commercially viable. The zero-carbon Notting Dale Heat Network will put customers first, rely solely on 100% renewable heat sources and help tackle fuel poverty. **See Appendix 10, Notting Dale Heat's Business Plan (Part A).**
- 3.8 Final Investment Decision taken by Leadership Team in July 2023 approved the contract award of two contracts; a design, build, operate and maintain contract to build the primary network, energy centre(s) and associated thermal store and a design and build contract to replace the secondary and tertiary networks in residential homes and blocks on the Lancaster West estate.
- 3.9 Notting Dale Heat has had nine Board meetings. The company produced its first draft budget, management accounts and financial procedures for the eighth meeting held on the 9 February 2024. The ninth Board meeting was held in May 2024. Once the minutes for this meeting are approved by the Board, which will be at its next Board meeting, they will also be shared for information with the Shareholder Committee.

## **4. MAIN REPORT**

### **Notting Dale Heat Network – Design, Construction and Commercialisation**

- 4.1 Following Final Investment Decision in July 2023 the Council proceeded to finalise and sign contracts for the main works to develop the Notting Dale Heat Network.
- 4.2 In December 2023 the Notting Dale Heat Network was featured by government as exemplar case study for its resident co-design and community involvement: [Department for energy & net zero's hnip evaluation report.](#)
- 4.3 In December 2023 the Council signed a design and build (D&B) contract with Cenergist to replace the secondary and tertiary heat networks in residential homes and blocks across the estate.
- 4.4 In January 2024 the Council signed the (DBOM) contract with Vital Energi. The contract commits Vital to works to deliver the primary network and to operate and maintain the network for up to 2 years.

- 4.5 [Planning permission for the Notting Dale Heat Network](#) was granted, with unanimous approval, in February 2024.
- 4.6 Both Vital Energi and Cenergist are working closely with the Council to engage residents in the development of the designs and the programme of works. Meet the contractor events have taken place and both contractors have Resident Liaison Officers onsite.
- 4.7 A successful Section 20 consultation enables the Council to recharge leaseholders relevant project costs. This consultation with leaseholders started in August 2022, when the Council issued a Notice of Intention (NOI), describing the two heat network contracts that were about to be procured. In October 2023 the Council issued a Section 20 Notice of Proposal (NOP), describing the total capital expenditure costs from the Vital and Cenergist contracts.
- 4.8 In August 2022 the Council issued a Notice of Intention (NOI), describing the two heat network contracts that were about to be procured. In October 2023 the Council issued a Section 20 Notice of Proposal (NOP), with details of the estimated costs of the proposed contracts with the Vital and Cenergist. The Council intends to soon issue a Schedule 3 Notices to leaseholders, to consult them on major capital works that are to be carried out by both Vital and by Cenergist.
- 4.9 Physical works to the primary network in streets and the main works in blocks and homes are expected to start towards the end of Summer of 2024.
- 4.10 In April 2024 the Kensington Aldridge Academy's (KAA) Board of Trustees confirmed that they would not be joining the network at this stage, despite signing Heads of Terms in March 2022.
- 4.11 In April 2024, coincidentally, the Council was successful in its application for Public Sector Decarbonisation Scheme (PSDS) funding. This funding (£4.3m) targets decarbonisation measures on publicly owned assets and buildings and is focussed on making decarbonisation improvements to the heating and hot water supply for Kensington Leisure Centre.
- 4.12 This development and opportunities emerging from this Salix Public Sector Decarbonisation (PSDS) grant funding, has fed into the ongoing analysis on the impact of the withdrawal of KAA from the scheme.

### **Notting Dale Heat**

- 4.13 Robust governance arrangements have been established to ensure effective decision making and strategic oversight of Notting Dale Heat. This included establishment of a Shareholder Committee in January 2022 to look after the Council's interests and keep appropriate control and scrutiny of the Council's companies.

- 4.14 Good governance for the local energy company ensures timely and robust decision making, as well as transparency for both taxpayers and heat network customers. Practical governance measures include Memorandum and Articles of Association, Delegations Matrix, a Rolling 3-Year Business Plan, a Performance Guarantee, Financial Accounts and appropriate Local Energy Company Internal Policies and Procedure
- 4.15 At its first meeting in July 2022, the Shareholder Committee approved the Shareholder's Agreement and Delegations Matrix. See **Appendix 11** for the Key Decision Report. The Delegations Matrix is included as **Appendix 12**. It contains the Reserved Matters from the Shareholder's Agreement that are delegated to either the Shareholder Committee, Notting Dale Heat Board or its Managing Director (if and when appointed).
- 4.16 The Shareholder Agreement is a contractual agreement between the Council and Notting Dale Heat. It sets the legal framework for the Council to maintain its interests, setting out Shareholder Rights to protect the Council's investment in the local energy company and establish an appropriate division of responsibilities between the Council as shareholder and the company's Board.
- 4.17 Such rights include for the Council to receive regular performance reports from the local energy company's executive and have access to underlying data. By so doing, this will enable the Council to undertake its own governance processes over and above any monitoring role the Council's appointees to the local energy company Board may perform.
- 4.18 The Delegations Matrix is included within the Shareholder's Agreement. It ensures the Council retains control over any significant decisions that may affect the local energy company, by retaining these for shareholder approval, whilst allowing the company's Board and Executive adequate freedom to be able to efficiently manage its day-to-day operations. It balances shareholder control with the need for operational flexibility, which is a key lesson learned from a review of other UK heat network projects.
- 4.19 Notting Dale Heat's (NDH) Business Plan was approved by the Shareholder Committee in May 2023, confirming that a new 21<sup>st</sup> century heat network for the entire estate is technically and commercially viable. The zero-carbon Notting Dale Heat Network will put customers first, rely solely on 100% renewable heat sources and help tackle fuel poverty. **See Appendix 8, Notting Dale Heat's Business Plan.**
- 4.20 It is planned that the Council will novate the DBOM contract with Vital Energi to NDH in whole or part by the end of 2024.
- 4.21 At the same time as novating the DBOM contract it is anticipated that the Council and NDH will enter into funding and service level agreements to enable NDH to operate and manage the DBOM contract.

- 4.22 Alongside this the Council will enter into heat supply and connection agreements with NDH in respect to the residential homes that will connect to the network as well as Baseline Business Studios and Kensington Leisure Centre

## **5. OPTIONS, ANALYSIS AND PROPOSALS**

- 5.1 NDH General Financial Procedures have been produced with best practice in mind and to align with those of the Council. Council officers from the Finance department have fed into the development of the procedures. Having established financial procedures provides both the NDH Board and Council with assurance that there is a significant degree of financial control over the financial transactions of NDH. The procedures also ensure that there are guidelines to prevent errors, fraud, and misuse of funds.
- 5.2 NDH Management accounts cover the period from up 01/02/2023 to 31/12/2023. They detail expenditure accrued on behalf of the company. Currently NDH does not have any money to cover its expenditure. The Council is currently covering costs incurred by the company. Once a funding agreement has been put in place detailing the funding to be transferred from the Council to the company and the terms of that funding the Council will continue to cover these expenses. Expenditure accrued on behalf of the company will be paid back to the Council in full.
- 5.3 The draft budget for NDH details forecast expenditure for the company over the period 01/04/2024 and 31/03/25. The budget assumes that the company will be managing its own finances from 01/04/2024 with adequate controls, a formal funding agreement in place, and grant funding (£1.16m of government grant from the Heat Network Investment Project currently in Council reserves) and equity are transferred to the Council. It also assumes that the company year-end date will be changed to align with the Council. Currently NDH year-end date is 31 January.
- 5.4 The biggest cost areas within the budget are the Design Build, Operate and Maintain (DBOM) contract with Vital Energi (which is expected to be novated to NDH from the Council in the coming months) and colleagues are working with the supplier on establishing a profile of the best estimate of when expenditure will be incurred.
- 5.5 The budget assumes a first 'heat on' date will not happen until 2025/26 and that all debt charges will be deferred until after that date.
- 5.6 **Option 1** - Note decisions taken by the NDH Board. Noting decisions made by the company would be consistent with the Shareholder Agreement. Recommended.
- 5.7 **Option 2** – Seek clarifications and further information from the NDH Board on decisions taken at the Board meeting on 9 February 2024. This is not

recommended because officers do not consider, in light of the decisions taken by the Board, that there are any issues that require further review.

## **6. CONSULTATION AND COMMUNITY ENGAGEMENT**

- 6.1 No resident consultation or engagement has been needed for the decisions taken at the NDH board meeting. The Chair of the Lancaster West Residents Association is invited to observe the NDH Board meetings but did not attend this meeting.
- 6.2 The Notting Dale Heat Programme has engaged with residents consistently over a number of years; 498 (62%) of all households at Lancaster West have participated in the heat network co-design programme via the refurbishment co-design process and exclusive events at some stage.
- 6.3 A resident poll undertaken 2021-2022 established that 86% of residents were in favour of a new renewable heat network, with residents from 10% of households (80/795) having responded to that specific survey.
- 6.4 The Notting Dale Heat network programme has successfully engaged over 200 residents on the energy centre locations, thermal store, and network designs.
- 6.5 Two resident Board Members have been recruited to the Notting Dale Heat Board.
- 6.6 Residents were fully engaged in the procurement and selection of the two main heat network contracts.

## **7. LEGAL IMPLICATIONS**

- 7.1 The Council set up the Shareholders Committee in January 2022 to govern and take decisions on its behalf for its fully owned companies including Notting Dale Heat Limited. The Shareholders Committee's terms of reference include monitoring the financial and business plans and risks of its wholly owned company including NDH. The Shareholder's Committee is accordingly asked to consider the NDH Board's 9<sup>th</sup> February 2024 meeting decisions including its accounts, financial procedures and budget forecast.
- 7.2 The Shareholders Committee may decide to ask NDH Board to clarify any aspects in the proposed documents, and should it be so minded thereafter to ask NDH Board to reconsider the proposed documents in light of such clarifications. The matter would need to be reviewed bearing in mind the decisions which are in the Board's remit as per the Delegations Matrix in the Shareholders Agreement so as not to transgress the Board's independent functioning in the best interests of the company.
- 7.3 The Shareholder's Committee is asked to take note of the risks mentioned in the report including the risk arising from the reduced heat demand.

## **8. FINANCIAL, PROPERTY AND ANY OTHER RESOURCES IMPLICATIONS**

- 8.1 The Board papers are setting out the financial governance arrangements for the Notting Dale Heat Network Ltd. These have been developed by the Company's Financial controller in consultation with Council colleagues. Although the Board Paper notes that they will be refined as matters progress, it is considered that they are currently fit for purpose.
- 8.2 There are no issues to bring to the Committee's attention arising from the management accounts for the last financial year and the budget for the new financial year.
- 8.3 Future reports will include the funding agreement and the novation of the contract to Notting Dale Heat.

## **9. HUMAN RESOURCES IMPLICATIONS**

- 9.1 None

## **10. RISKS**

- 10.1 NDH and the Council have developed a series of risk registers, both strategic and operational, which are updated regularly and reviewed at NDH Board meetings and at the Lancaster West Programme Board meetings. A summary of the Strategic Risk Register is included in Appendix 3 – NDH Programme Performance Dashboard May 2024.
- 10.2 DeRisk have been appointed as Principal Designer and Health and Safety Consultant for the D&B contract. Work is ongoing to approve appointment of a Principal Designer for the DBOM contract. The role of a Principal Designer is to ensure all required Construction Design Management Regulations (CDM) 2015 and Health and Safety processes are in place.
- 10.3 A key strategic risk of note to the programme is the loss of heat demand from Kensington Aldridge Academy. This risk is being actively managed through analysis of the impact of this loss on the commercial and financial aspects of the Business Plan, and analysis of replacement heat load opportunities. A review of the financial model underpinning the project and optioneering on ways to fill this loss of demand, if required, is ongoing.

## **11. APPENDICES**

- 11.1 Appendix 1, Heat Network Programme, Forward Plan of Decisions
- 11.2 Appendix 2, Covering Report, Service Level Agreement, Feb 2024 (Part B)
- 11.3 Appendix 3, Draft Service Level Agreement, February 2024 (Part B)
- 11.4 Appendix 4, Notting Dale Heat Network, DBOM Contract (Part B)
- 11.5 Appendix 5, Covering Report, NDH General Financial Procedures (Part B)
- 11.6 Appendix 6, NDH General Financial Procedures (Part B)



- 11.7 Appendix 7, 2024-2025 NDH Budget, February 2024 (Part B)
- 11.8 Appendix 8, 2023-24 NDH Management Accounts (Part B)
- 11.9 Appendix 9, Notting Dale Heat's Business Plan, 27 April 2023 (Part A & B)
  
- 11.10 Appendix 10, Notting Dale Heat's Business Plan, 27 April 2023 (Part A)
- 11.11 Appendix 11, KDR, Shareholder Committee, NDHN, 18 July 2022 (Part A)
- 11.12 Appendix 12, Delegations Matrix

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Mandatory clearance process

Cleared by Corporate Finance (*NI*) 19/04/2024.

Cleared by Legal Services (*BM*) 17/04/2024.

Cleared by Communications (*NT*) 05/07/2024