

Report of:	Director of Legal and Governance Services (Monitoring Officer)
Submitted to:	Corporate Affairs and Audit Committee, 6 April 2022
Subject:	Boho X – draft findings from internal audit and proposed management response

Summary**Proposed decision(s)**

That the Committee:

- notes the findings of the draft internal audit report on the project management of Boho X and the proposed management responses; and
- considers whether it wishes to make further comment on the issues raised by the audit and the proposed actions.

Report for:	Key decision:	Confidential:	Is the report urgent?
Information	Not applicable	No	Not applicable

Contribution to delivery of the 2021-24 Strategic Plan

People	Place	Business
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The report sets out proposed actions to improve programme and project governance across the Council in the light of the findings of this audit, subject to further comment from the Committee.

Ward(s) affected

There is no direct impact on any ward from the recommendations of this report.

What is the purpose of this report?

1. Following discussions with the Chair and Vice Chair of Corporate Affairs and Audit Committee, and direction from the Committee at its meeting on 15 October 2020, the Director of Finance and Director of Legal and Governance Services commissioned an internal audit review of project management of the Boho X project. Group leaders were also consulted on the scope of the audit.

Why does this report require a Member decision?

2. As the internal audit was requested by members of Corporate Affairs and Audit Committee, it is appropriate for members to consider the summary draft findings and proposed management responses before finalisation of the audit report.

Report Background

Boho X

3. To be delivered by the end of 2022, Boho X will be specialist digital office space over two separate sites (Boho 8 and Boho 10) at St. Hilda's Enterprise Zone in the Middlehaven regeneration area of Middlesbrough, which has been designated by the Council as a focal point for the growth of digital and creative businesses in the town.
4. Boho X is jointly funded by the Tees Valley Combined Authority (TVCA) and this Council and at a revised estimated final cost of £21m, is the biggest single project within the Council's portfolio at the present time.
5. The plan for the building has seen one significant change since the start of the project. It was agreed by the Executive in March 2020 that Boho X would be a 20 storey office development with 100,000 square feet of floor space (plan A). In August 2020 the design of Boho X was reviewed and the downsizing of the building to six storey, 60,000 square feet development was subsequently initiated (plan B).
6. The project is the responsibility of the Regeneration and Culture Directorate. The original sponsor was the then Executive Director of Growth and Place, moving to the Head of Economic Growth on the former's compulsory redundancy.
7. The Council expects to let Boho X in its entirety for ten years in the near future.

Council policies on the planning and delivery of programmes and projects

8. All of the Council's activity must be delivered in line with the law and the rules established by its Constitution, including the member / officer protocol, delegated authorities, decision making procedures and standing orders. Where relevant, it must also comply with the conditions of external funding agreements.
9. In addition, the Council has a specific policy in respect of programme and project management, which is approved by the Executive and supported by a detailed programme and project management framework (PPMF) for officers working on such activities within the Council.

10. The purpose of the policy and the supporting PPMF is to ensure that an effective, consistent and joined-up approach to programme and project management across the organisation. Like all such governance processes, the PPMF runs a ‘three lines’ model to promote compliance, in which the first line is the project structure itself, the second a specialist business partnering function (in this case, the Portfolio Management Office, (PMO)) and the third internal audit.
11. The PPMF was first put in place during 2016 in response to concerns in respect of programmes and projects identified initially by its internal auditor and subsequently reflected in the external auditor’s value for money opinion on its 2014/15 statement of accounts, which were qualified in relation to project management, among other issues.
12. The Council has made significant improvements in programme and project management in the subsequent years, reflected in the following internal periodic audits:

Year	Audit title	Opinion
2018	Project Management Finance, Governance and Support – scope included the school improvement and Believe in Families programmes	Good Control
2019	Project Management Finance, Governance and Support – scope included the Community Bank and the Civic Campus fit out	Good Control

13. While elected members set organisational strategy, it should be noted that only officers develop and deliver programmes and projects in pursuit of that strategy. The role of members is restricted by the Constitution to either scrutinising or approving programme and project activity in line with agreed authorities and delegations, and being briefed accordingly in a timely fashion.
14. Elected members cannot instruct officers other than through the Council’s formal decision-making process – the implementation of decisions is the responsibility of officers and not members. It is not appropriate for any member to sponsor or otherwise lead projects or to fulfil any other project role, as this would represent a clear conflict of interest with their scrutiny or decision-making roles.

Internal audit

15. During 2020/21, in response to concerns from the Chair and Vice Chair of Corporate Affairs and Audit Committee, the committee and other parties, an internal audit of the project management of Boho X was jointly commissioned by the Director of Finance (Section 151 Officer) and the Director of Legal and Governance Services (Monitoring Officer).
16. The purpose of this audit was to provide assurance to management that procedures and controls within the system ensured that:
- the project has used and met the requirements of the established Project Management Framework in operation at the Council;
 - meetings and communications directing the design and development of the project were carried out in line with proper procedures and fully recorded
 - decisions relating to the project have been taken, recorded, published and communicated in line with the Council’s Constitution (including the scheme of delegation)

- key information relating to the project is available and has been retained to support decisions; and
- there are appropriate project governance arrangements in place including processes for managing project risk.

Key findings

17. The audit has now been completed and a draft report prepared for comment by management. The draft report has also been provided to the Committee under confidential terms. The auditor's key findings were that:

- the project was not always managed in line with the Council's Constitution, in that the Mayor of Middlesbrough held meetings with third party contractors on project direction without officers present, and without these being documented – while this arrangement was agreed by the former Executive Director of Growth and Place via email, it was not in their gift to do so and was contrary to the constitution and the PPMF;
- as the above meetings were not documented, there was not clear record of discussions and there appears to have been a perception by the third party contractor that the Mayor was making decisions and formal instructions for the project, while the Mayor does not perceive that he made those formal decisions. This may have led to decisions and design changes being made without appropriate input or transparency or being communicated efficiently;
- change control notices were not submitted, reviewed and authorised in line with the Council's PPMF as a result – key design changes were recorded in the (third party contractor) BCEGI decision log following meetings as being agreed the Mayor. They were not formally referred to the Project Sponsor and Directorate Portfolio Board as they should have been – instead there was an agreement that these would be relayed via the former Executive Director of Growth and Place, although no email evidence is available to support this had occurred;
- changes recorded in the BCEGI decision log included those items that BCEGI perceived as being authorised by the Mayor, and there was no officer involvement in these decisions, which resulted in changes to the project design and cost – as such, notwithstanding the agreement and direction of the former Executive Director of Growth and Place, decisions were not in line with the Council's constitution or PPMF;
- seven design changes outlined in the BCEGI change log between June and August 2020 (in which period there were no internal project board meetings) represent the change from plan A to plan B, and were perceived by BCEGI as authorised by the Mayor and recorded as such in their log – there is no evidence that these changes were attributable to COVID-19 as identified public communications and as such the decision-making on the change was not transparent. The Project Board minutes for September 2020 also records that the Mayor had instructed changes to the project;
- decisions relating to securing funding for Boho X and awarding key contractors have been taken, recorded, published and communicated appropriately, there is a clear record available of the abortive costs as a result of the design changes and an appropriate procurement process was followed for key contractors;
- an appropriate project risk register is in place that is reviewed and managed by the project manager, but not reviewed and managed within the internal project working group board meetings, and as such project risks may not be overseen appropriately and mitigated to an acceptable level; and

- there does not appear to be an effective culture of challenge in place across the project – while the Mayor acted outside of their expected roles and responsibilities, the process was agreed by the Executive Director of Growth and Place at the outset
- There was no evidence that the Mayor was advised that he could be perceived as exceeding his constitutional role in relation to the BOHO X project identified during the investigation. Standard Member training would not have included training on governance arrangements for operational project delivery as there is no role for members. Induction training does include information on the Officer / Member relationship and the split of responsibilities which had been provided to the Mayor.

18. As such, significant gaps, weaknesses or non-compliance were identified by the auditor, leading to an overall opinion of the controls in place at the time of the audit as providing only limited assurance.

19. The audit did not examine the project's adherence to the TVCA's funding conditions for Boho X, but for the purposes of this report it can be confirmed that to date the Council has fully complied with these and the TVCA signed-off the construction contract and specification reflecting 'plan B'.

Action taken to date

20. It is clear from the audit findings that the governance arrangements for BOHO X did not comply with the Council's Constitution or its PPMF and that these non-compliant arrangements were agreed at the outset by the former Executive Director of Growth and Place.

21. Such conscious non-compliance with corporate policy on the proper governance of projects represented a failure of leadership at a very senior management level, regardless of whether this arrangement was requested by the Mayor or an assumption was made that the Mayor wanted such an arrangement – in either instance the arrangements should not have been put in place.

22. The arrangements implemented could have had significant adverse impacts on the project, and equally importantly, could have resulted in an 'opt out' culture – when officers at a junior level see senior officers consciously disregarding policy, it increases the likelihood that they will become less diligent or act in a similar way, undermining good governance across the organisation.

23. As such, it is vital that the management response to this audit addresses the culture that allowed these arrangements to be put in place and persist, as well as necessary procedural changes.

24. The Mayor has now been advised by the Monitoring Officer not to meet with third party contractors or potential tenants on this or any other project without officers being present, and when attending with an officer, to be clear that it is the officers that are leading the discussion and only they have the authority to execute decisions.

25. The Director of Regeneration will now sponsor the Boho X project so that leadership of the Council's biggest project is reestablished at Chief Officer level.

26. The project's controls have been reviewed by the PMO and are now compliant with the Constitution and the PPMF.

Additional planned actions

27. Appendix 1 summarises the additional actions proposed by management to address these. These focus on ensuring that the issues identified in this audit are not present in other projects within the Directorate and strengthening the PPMF to address the issues raised, with associated training for members and officers.
28. In addition to the response to this audit, other actions will be undertaken to strengthen governance across the Council. These will be outlined in the forthcoming Annual Governance Statement to be considered by the Committee as part of the Statement of Accounts in April 2022. Relevant to this audit will be consideration of the robustness and subsequent tracking of the implementation of delegated authorities agreed for major projects.
29. The Committee is asked to consider whether it wishes to make further comment on the issues raised by the audit and the proposed actions.

What decision(s) are being asked for?

30. That the Committee:

- notes the findings of the draft internal audit report on the project management of Boho X and the proposed management response; and
- considers whether it wishes to make further comment on the issues raised by the audit and the proposed actions.

Why is this being recommended?

31. To improve programme and project governance across the Council in the light of the findings of this audit, subject to further comment from the Committee.

Other potential decisions and why these have not been recommended

32. Not applicable.

Impact(s) of recommended decision(s)

Legal

33. There are no legal implications from the internal audit or from the proposed management response.

Financial

34. There are no direct financial implications from the proposed management response.

Policy Framework

35. This report does not seek to amend the Council's policy framework.

Equality and Diversity

36. Not applicable.

Risk

37. The issues set out within this report are relevant to a number of risks within the Council's risk registers, including:

- failure to comply with statutory duties;
- failure to have adequate governance;
- failure of Boho X to deliver anticipated benefits and financial returns; and
- corporate procurement policies are not adhered to.

38. The report identifies a range of prudent actions that will be taken to impact positively on these risks.

Actions to be taken to implement the decision(s)

39. Following consideration by the Committee, the draft audit report will be finalised, including responsible officers and timescales. The final report will be circulated to Committee on a confidential basis and progress on implementation tracked by LMT monthly through scheduled corporate performance reviews.

Appendices

1 Draft internal audit findings and proposed management responses

Background papers

- Project Management – Boho 10, Middlesbrough Council Draft Internal Audit Report 2020/21 (Confidential)
- BOHO X – Governance and Project Management Arrangements, Corporate Affairs and Audit Committee – 15 October 2020.
- BOHO X, Ad Hoc Scrutiny Panel – 23 November 2020.

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Appendix 1: Draft internal audit findings and proposed management responses

Issue / control weakness	Risk	Priority	Proposed management response(s)
The project was not always managed in line with the Council's constitution and the project management framework.	The Mayor exceeds their limitation of power in decision-making on the project.	1	Update PPMF to further clarify roles of elected members within programmes and projects.
			Deliver briefing for the Executive on the revised PPMF.
			Deliver all member training on the revised PPMF.
			Deliver refresher training on the revised PPMF for all officers working on projects.
			Monitoring Officer to write formally to all members and WLMT to reiterate guidance.
			WLMT will be required to formally accept and undertake to comply with the PPMF.
			New ways for officers to raise concerns regarding governance concerns will be developed.
			Commission further risk-based internal audit of governance of Regeneration projects.
			Commission internal audit of MDC and Towns Fund governance arrangements.
Mayoral meeting minutes are not available.	Key decisions and design changes may not have appropriate input and are not communicated efficiently. The lack of transparent decision making may negatively affect the success and timeliness of project delivery.	2	Revised PPMF to require single decision logs for programmes and projects.
			Revised PPMF to include standardised project workbook, including standard log.
			PMO to implement project health check schedule for MBC portfolio.
Change control notices are not submitted, reviewed and authorised in line with the Council's Project Management Framework.	Changes to the project are not authorised appropriately or effectively communicated to officers managing the project. Actions may be taken on incomplete or informal information.	2	Revised PPMF to include standardised project workbook, including change control.
			Standard guidance to be issued to contractors re: decision making / change controls.
There is inconsistency in the decision-making process and communication of design changes resulting in the transition from plan A to plan B of the project.	Decisions are made without appropriate input and challenge from all applicable stakeholders, resulting in ineffective management of the project.	2	Revised PPMF to require all decisions to be taken at the relevant MBC board.
			Revised PPMF to include standardised project workbook, including board agenda.
			Revised PPMF to require all decisions to be communicated to project teams by PM.
			Build challenging skills into corporate staff training programme.
Project risks are not reviewed and managed within the internal project working group board meetings.	Project risks are not overseen appropriately and mitigated to an acceptable level.	3	Revised PPMF to require all risks to be reviewed at the relevant MBC board.