

Major Contracts Governance Group

17 September 2019

Name of Report: Live Borders

Purpose and summary

The purpose of the report is, following Internal Audit, report on Live Borders agreement.

The Performance Management Framework, agreed in March 2016 set the performance governance arrangements and overall outcomes to be delivered. Key indicators were identified in this framework and these, updated to reflect the 2018-2023 Live Borders strategy, are reported to the SBC Executive Committee twice a year.

The governance structure, set out in the Services Provision Agreement is being adhered to with regular meetings scheduled.

Scottish Borders Council's risk management team supports the risk management process in Live Borders. The risk register is reviewed quarterly and reported to the Live Borders' Audit and Governance Committee.

1.0 Background

- 1.1 On 15 January 2018 SBC Audit and Scrutiny Committee considered a report on the Internal Audit work to December 2017. This included an audit of contract management, with one of the recommendations "Contract Monitoring arrangements for Live Borders should be enhanced to comply with best practice guidance including the provision of assurance on managing risks." On 26 June 2018 it was confirmed to the SBC Audit and Scrutiny Committee that "The Scheme of Administration allows for an overview, under the Major Contracts Group, of any significant contracts and agreements with Trusts". In November 2018 the SBC Major Contracts Governance Group requested a report on Live Borders for this purpose.
- 1.2 The Service Provision Agreement sets out the governance arrangements. This includes the meeting arrangements between Scottish Borders Council (SBC) and Live Borders, shown in appendix 1.
- 1.3 The Performance management framework, approved by SBC Executive Committee on 8 March 2016, set outcomes and key indicators. These were to be reviewed after one year and this happened as part of the development of the 2018-2023 Live Borders strategy.
- 1.4 Live Borders is a company limited by guarantee with charitable status. A Board of members/Trustees is in place; this is made up of 15 Trustees, 3 of whom are nominated by the Local Authority.

2.0 **Governance and monitoring**

- 2.1 The Services Provision Agreement sets out the meeting structure between SBC and Live Borders. Two groups meet, the Joint Officer Group and the Executive/Board Liaison Group, as set out in appendix 1. These meetings have been held as per the schedule set out, with additional meetings as required. Performance monitoring is a standing agenda item.
- 2.2 In addition, SBC and Live Borders have now held two annual joint officer workshops. The purpose of which is to share aims and vision, identify joint areas of work, agree value add to both visions. Following these workshops, an action plan has been prepared and we continue to work jointly to deliver our shared outcomes.
- 2.3 Live Borders, a company Limited by Guarantee with Charitable status. Live Borders Board formally considers and approves their statutory accounts in August each year, with the Audit and Governance Committee reviewing these in July. The accounts are shared with SBC in July each year.
- 2.4 Live Borders hold a corporate risk register and one for each of the three Directorates. The corporate risk register is reviewed quarterly and reported to the Audit and Governance Committee on a bi-annual basis and reviewed by external auditors as part of the statutory account process. SBC's risk management team fully support Live Borders with this work.

3.0 **The Performance Management Framework**

- 3.1 The Performance Management Framework sets out six outcomes, for Live Borders to deliver against. This was approved by SBC Executive Committee in March 2016.
<https://scottishborders.moderngov.co.uk/documents/s8144/Item%20No%2010%20Appendix%201%20-%20Draft%20Performance%20Management%20Framework%20March%202016.pdf>

Improved mental and physical health and wellbeing for people of all ages with a focus on inclusion	Enhanced learning opportunities, training and experiences with a particular focus on reducing inequalities	Increased economic benefits to the Scottish Borders through high quality sport and cultural services and events, and support to creative micro-businesses and organisations	Enhanced partnerships, pathways and access to a wide range of services and activities within facilities and communities (including structures for talent development)	Stronger communities through involvement in service planning, delivery and participation	Increasingly effective operations and creative approaches to income maximisation across the Trust whilst maintaining appropriate quality and standards
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- 3.2 A number of key indicators support and evidence delivery against the outcomes. Performance against these indicators are reported to Live Borders Board on a quarterly basis. Subsequently they are presented for scrutiny to SBC Executive Committee, twice per year. The latest report is available:
https://www.scotborders.gov.uk/downloads/file/6754/q4_201819_live_borders_performance_report

4.0 Service Provision Agreement

- 4.1 The Service Provision Agreement sets out that the Management Fee will be adjusted from time to time to reflect changes in the Services Specifications. These matters will be discussed as they arise by the Joint Officer Group.
- 4.2 Variations to date include the management of Kelso High School. This is in line with existing management arrangements, where Live Borders operate the community use of school sports facilities, the management of the School was put in place summer 2018.
- 4.3 Discussions are ongoing regarding the management of the community use at the new Jedburgh Campus. In addition, we are nearing completion of arrangements for Live Borders to manage the new 3G pitch in Melrose.

5.0 Live Borders Strategy and Annual Plan

- 5.1 In February 2018 Live Borders Board approved a 5-year strategy. This was to be delivered against 6 strategic goals and supported by an annual action plan and performance framework. The six strategic goals are:
- Expand levels of participation and access for all
 - Grow our earned income
 - Develop plural funding streams
 - Building on our reputation for great customer service
 - Create a sustainable charity
 - Nurture our people to be proud of what they do
- 5.2 In February 2019 Live Borders Board approved the 2019/20 Annual Action Plan, shown in appendix 2.
- 5.3 One of the key actions in 2019 will be transferring the “trading activity” currently undertaken by Live Borders to their wholly owned subsidiary, Borders Sport and Leisure Enterprises Limited. This subsidiary has been dormant since 2003.
- 5.4 Where the trading turnover is above a certain level (£80,000) and it is not a primary purpose of the charity or ancillary to a primary purpose of the charity then that activity cannot go through the Charity. For example, the cafés at Heart of Hawick and Harestanes, are often used by the general public therefore should be classed as trading as café provision is not the primary purpose of the charity.
- 5.5 Professional legal and financial guidance is being provided to activate the subsidiary.

6.0 Service Level Agreements

- 6.1 One area of regular discussion at both the Joint Officers Group and the Executive/Board Liaison meeting has been Service Level Agreements. At time of transfer it was not possible to identify and transfer a number of support services provided to Cultural Service, therefore a number of Service Level Agreements were put in place covering:
- Property maintenance
 - Cleaning
 - Grounds maintenance
 - Fleet
 - Graphic Design & printing
 - ICT

- 6.2 These SLAs were put in place for the duration of the Service Provision Agreement, subject to break clause.
- 6.3 All were provided at nil cost. While perhaps practical at the time of transfer, Live Borders requested that these be costed and a transaction, even if paper only, was made between both parties. The SLAs include a clause that:
“The Provider will take steps during year 1 to identify the cost of providing the service and will provide the Client with such information as is available in connection with these costs.”
This would allow the true cost of providing Live Borders to be known. It would also, subject to discussion and due process, allow the market to be tested to ensure value for money. This has been a regular topic at the Joint Officer Group and the Executive/Board Liaison Group meetings and in late 2018 SBC confirmed they could not provide such an indicative cost.
- 6.4 During recent discussions with Live Borders legal advisers, the issue of state aid was raised. This will be explored further with both parties during the next round of Joint Officer Group and Executive/Board Liaison Group meetings.
- 6.5 The majority of these SLA’s have worked well. Quarterly monitoring meetings are in place and recorded. However, there have been a few challenges in ICT and Graphic Design, and on occasion speed of service for property maintenance.

Appendix 1: Extract from Service Provision Agreement

- 15 MEETINGS BETWEEN THE COUNCIL AND THE CONTRACTOR
- 15.1 The Council and the Contractor agree and acknowledge that regular and effective liaison between the Parties is essential to the proper delivery of the Full Services in accordance with the obligations contained within this Agreement. Both parties therefore agree that they will be committed to acting collaboratively with each other to achieve this goal.
- 15.2 The Council and the Contractor shall establish and maintain a Joint Officer Group with effect from the Commencement Date and which shall continue in place until the Termination Date. The Joint Officer Group shall consist of three representatives of the Council and three representatives of the Contractor. The representatives of the Council shall be the Chief Financial Officer, the Service Director Children and Young People and the Corporate Transformation and Services Director. The representatives of the Contractor shall include its Chief Executive its Head of Business Services. The Chair of the Joint Officer Group shall be one of the Council's representatives.
- 15.3 Any member of the Joint Officer Group shall be entitled to be represented by another person at any meeting of that Joint Officer Group. In addition, where either party considers it would be helpful to enable proper discussion of an item appearing on the agenda to invite additional members of the Parties' organisation to the Joint Officer Group they may do so but they should make reasonable endeavours to intimate that invitation to the other Party in advance of the meeting.
- 15.4 In the event that either Party considers that those Officers identified in 15.2 above are no longer the appropriate persons to represent that Party at the Joint Officer Group meetings, they will intimate this to the other Party. The Parties will thereafter agree the on-going make-up of the Joint Officer Group, always to ensure that the Joint Officer Group is comprised of officers with sufficient understanding of this Agreement, its obligations, and the issues pertinent to the provision of the Full Services, to ensure the Liaison can effectively achieve its remit.
- 15.4A The Joint Officer Group shall meet at least quarterly, in accordance with the timetable identified in the Performance Monitoring Framework. It shall in addition meet on such ad hoc occasions as are necessary to resolve matters within its remit which have arisen
- 15.5 The remit of the Joint Officer Group is to manage the relationship between the Council and the Contractor and to effectively monitor the provision of the Full Services. It shall:
- 15.5.1 Keep under review the Business Plan and key strategies for providing the Services
- 15.5.2 (During the first Contract Year) agree the KPIs

- 15.5.3 Keep under review the Services Specifications, the Performance Management Framework, the KPIs and Outcomes and monitor quarterly the Contractors performance in accordance with those tools.
 - 15.5.4 Keep under review the document required and requested in terms of Clauses 13.4 and 13.5 above
 - 15.5.5 Agree any changes to the Performance Management Processes
 - 15.5.6 Keep under review the Contractor’s financial position relative to this Agreement and performance of the Services s including, but not limited to, any unexpected costs or loss of income and any new income streams available together with the general status of the Contractors financial health.
 - 15.5.7 Monitor the provision of the Full Services to ensure that there is equity of provision and access thereto for all communities in the Council’s administrative area
 - 15.5.8 Be a forum for discussing disputes
- 15.5 The Joint Officer Group shall in addition act as a forum to discuss proposed changes to this Agreement including, but not limited to, changes to the Service s, changes to the Facilities schedule or such other changes as both parties agree are necessary or desirable in connection with the provision of the Full Services.
- 15.6 The Parties shall use reasonable endeavours to resolve any disputes by means of prompt bona fide discussion through the Joint Officer Group.
- 15.7 *Executive/Board Liaison Group*
 In addition to the Joint Officer Group the Parties shall establish and maintain an Executive/ Board Liaison Group. This group shall meet at least three times per year and its remit shall be to consider and discuss the strategic direction for the provision of the Full Service and the future priorities, and commissioning of those Full Services It shall in addition consider and discuss any concerns about the service delivery and /or working relationship amongst the Parties The Council will be represented at this Group by its Executive Members for Culture, Sport, Youth and Communities and for HR and Corporate Performance (or such Members as may hold such equivalent offices from time to time) and the Contractor shall be represented by the Chair of the Contractor, and, a Trustee of the Contractor nominated by the Chair thereof.

Appendix 2: 2019/20 Annual action plan

LIVE BORDERS 2019/20 ACTION PLAN					
MISSION STATEMENT:	We help everyone living, working and visiting the Borders to be healthier, happier and stronger				
VISION STATEMENT:	We use our energy, enthusiasm and knowledge to help everyone to experience more, learn more and move				
STRATEGIC GOAL 1	STRATEGIC GOAL 2	STRATEGIC GOAL 3	STRATEGIC GOAL 4	STRATEGIC GOAL 5	STRATEGIC GOAL 6
To expand levels of participation	To grow our earned income	To develop plural funding streams	To build on our reputation for great customer service	To create a sustainable charity	To nurture our people to be proud of what we do
To be a strong, dynamic and quality focussed Charity with the people and financial resources to underpin the delivery of Strategic Goals 1-6					
Key Initiatives	Key Initiatives	Key Initiatives	Key Initiatives	Key Initiatives	Key Initiatives
<ul style="list-style-type: none"> • Complete the scoping work for a “universal community card” aimed to increase participation through its distribution and use • Launch two targeted longitudinal case studies to evidence our impact • Further develop our health provision, in partnership where appropriate, embedding core provision across all sites • Implement an audience development plan 	<ul style="list-style-type: none"> • Draft a Business Plan for BSL Enterprises (Trading subsidiary) • Agree a prioritised programme of new business development opportunities and deliver against at least 2 opportunities • Deliver revised operational arrangements reflecting the new play park investment at Harestanes 	<ul style="list-style-type: none"> • Develop one additional cultural service proposition for Health and Social Care/ NHS investment • Identify and deliver two targeting fundraising activities (one community and 1 corporate) 	<ul style="list-style-type: none"> • Implement our customer charter, with all services having a customer improvement plan • Maintain our World Host status • Improve digital engagement, through launch of our new website, online booking capability and digital marketing 	<ul style="list-style-type: none"> • Deliver on the reimagined library service action plan and introduce new income generating activities • Support operational efficiency through developing a Live Borders Facilities Plan • Implement the environmental and sustainability action plan • Develop evidence based questionnaire to demonstrate “healthier, happier, stronger” 	<ul style="list-style-type: none"> • Implement staff engagement strategy, initially supporting recruitment, induction and training • Implement “people planning” methodology to all services