

HUNTINGDONSHIRE DISTRICT COUNCIL

Title/Subject Matter:	Change to the Constitution - HDC Ventures Limited – Shareholder Representative and Reference Group
Meeting/Date:	Cabinet – 20th September 2018
Executive Portfolio:	Councillor D Tysoe - Executive Councillor for Digital and Customers
Report by:	Managing Director
Ward(s) affected:	All

Executive Summary:

The Council has established a Local Authority Trading Company, HDC Ventures Limited. Its purpose is to enable the Council to participate in commercial trading activities. The Cabinet and Council have previously endorsed the appointment of a Shareholder Representative and Reference Group. Following these decisions, the Corporate Governance Committee considered the necessary amendments to the Constitution and, while the majority of the Arrangements and Terms of Reference were approved, a small number of changes have been recommended. The Corporate Governance Committee requested that the changed document is referred to the Cabinet prior to being submitted to the Council for incorporation into the Constitution.

The amended Arrangements and Terms of Reference are attached. The changes are:

- The Shareholder Representative and the Shareholder Reference Group will report and be accountable to the Council; and
- Rather than state the name of an individual, Point 6 of the section on the Operation of the Shareholder Reference Group should read: *“The Secretary appointed to HDC Ventures Ltd will also act as Secretary to the Shareholder Reference Group.”*

Subject to the change to the Constitution being approved, Group leaders will be asked to nominate representatives to sit on the Reference Group and a programme of meetings will be established.

Recommendation:

The Cabinet is

RECOMMENDED

To recommend the Council to approve the insertion of the

Arrangements for the Shareholder Representative and Shareholder Reference Group as appended into Part 3 Responsibility for Functions of the Constitution.

1. PURPOSE OF THE REPORT

- 1.1 The purpose of this report is to acquaint the Cabinet with the final terms of the **Arrangements for the Shareholder Representative and Shareholder Reference Group** following consideration of them by the Corporate Governance Committee.

2. WHY IS THIS REPORT NECESSARY/BACKGROUND

- 2.1 The Council needs to be able to exercise its role as Shareholder of any company it owns. Inclusion of the necessary arrangements in the Constitution creates a sound legal basis for decisions to be taken.

3. OPTIONS CONSIDERED/ANALYSIS

- 3.1 The Cabinet has previously considered the options analysis. Following some minor amendments, this report formally contains terms of the Arrangements for the Shareholder Representative and Shareholder Reference Group.

4. LINK TO THE CORPORATE PLAN, STRATEGIC PRIORITIES AND / OR CORPORATE OBJECTIVES

Implementing our Transformation Programme.

Commercialisation will be an important part of the way HDC functions in the future. The creation of de facto trading entities is one of the key elements of the transformation plan.

Identifying new opportunities for income generation, where appropriate.

This will be achieved via the development of a 'commercial culture' across the Council, alongside a systematic approach to evaluating and developing commercial projects.

Having a more engaged and motivated workforce.

Commercial activities will introduce new ways of thinking and working into the Council, which will provide opportunities for professional and personal development across the organisation.

5. LEGAL IMPLICATIONS

- 5.1 The proposed action is in response to a recommendation by the Council's legal advisers, Trowers and Hamlin LLP, that the Shareholder role should not fall to any of the Council's existing Member forums. It is common for Councils that have established Local Authority Trading Companies to form a separate Shareholder decision-making mechanism and, indeed, it is considered to be best practice.
- 5.2 Trowers and Hamlin, together with the Council's external advisor, also have advised on the arrangements and Terms of Reference. These are standard terms and are common amongst other councils that have Local Authority Trading Companies.

6. WHAT ACTIONS WILL BE TAKEN/TIMETABLE FOR IMPLEMENTATION

- 6.1 The text contained in the Appendix will be incorporated into the Constitution.

- 6.2 Political Group Leaders will be asked to nominate representatives to sit on the Shareholder Reference Group. A programme of meetings will be established. Ad hoc meetings also may be convened as and when necessary.

7. REASONS FOR THE RECOMMENDED DECISIONS

- 7.1 A mechanism is required for decisions to be taken on behalf of the Council as the Shareholder of its Local Authority Trading Company. Legal advice and nationally recognised best practice indicate that separate arrangements should be established to exercise the Shareholder role and the appointment of a Shareholder Representative together with a Shareholder reference Group will achieve what is required in a way that best serves the circumstances of the Council.

LIST OF APPENDICES INCLUDED

Appendix – Shareholder Representative – Arrangements and Terms of Reference

BACKGROUND PAPERS

None

CONTACT OFFICER

Tony Roberts, Democratic Services

Tel No: 01480 388015

Email: anthony.roberts@huntingdonshire.gov.uk.

SHAREHOLDER REPRESENTATIVE - ARRANGEMENTS AND TERMS OF REFERENCE

Overview

The Shareholder Representative will exercise the Council's role as shareholder in any company, limited by shares wholly or partly owned by the Council for the purposes of service provision and/or trading activities. The Representative will be appointed by the Council and acts with delegated authority ensure the performance of any such company is satisfactory. The Representative will report and be accountable to the Council.

Any reference in these terms of reference to "Company" is defined as a company in which the Council holds shares.

Purpose

The Shareholder Representative will have the power to approve:

1. Any minor change in the nature of the Business or the jurisdiction in which it is managed and controlled.
2. The issue or allotment of any shares in the capital of the Company or any Subsidiary Undertaking of the Company or the creation of any security or the grant of any option or rights to subscribe in respect thereof or to convert any instrument into such shares.
3. The reduction of the share capital or variation of the rights attaching to any class of shares in the capital of the Company or any Subsidiary Undertaking of the Company or any redemption, purchase or other acquisition by the Company of any shares or other securities of the Company or any Subsidiary Undertaking of the Company; the sale, transfer or disposal of the whole or a substantial part of the Business, or any dilution of the Company's interest in any Subsidiary Undertaking.
4. The formation of any Subsidiary Undertaking or the acquisition of or investment in any other company or business.
5. The approval and/or adoption of any Business Plan or annual budget or any variation of the Business Plan; or annual budget from time to time.
6. The entering into any purchase, sale, lease or licence of any freehold or leasehold property (other than in accordance with the Business Plan).
7. The disposal of any assets of the Company or any Subsidiary Undertaking.
8. Any changes to the Articles of the Company or any Subsidiary Undertaking of the Company.
9. Entering into any arrangement, contract or transaction between the Company or any Subsidiary Undertaking of the Company and any third party which has an annual contract value in excess of £150,000 (or the equivalent amount in any other currency).
10. Any change of the Company's name, auditors, bankers, accounting reference date; entering into an agreement to do any of the foregoing.
11. The appointment and removal of Company Directors.
12. The exercise of any reserved powers in the Articles of a Company.
13. The distribution of any surplus or the issue of any dividends from a Company.
14. Any recommendation from Company Directors to cease trading.
15. Reports to the Council annually on trading activity.
16. Reviews of the risks associated with trading activities.

The Shareholder Representative will not have operational control over Companies. All decisions regarding the day to day operation of each Company, its business development and commercial opportunities, staff terms and conditions and the development and implementation of its internal procedures, rest with the Directors of each Company.

Operation

The Council has delegated to the Shareholder Representative the authority to take decisions in respect of the Council's shareholding in any Company. The Shareholder Representative will exercise the powers defined in the previous section.

The Shareholder Representative, in fulfilling the role, will have regard to the views of the Shareholder Reference Group.

The Managing Director, Section 151 Officer, Monitoring Officer and Corporate Director - Services, acting in their capacity as Officers of the Council, will be advisors to the Shareholder Representative to provide open and strong technical advice. Additional advisors may be invited to attend the Board as required.

Any decisions made by the Shareholder Representative must be notified to the Company's directors and the Shareholder Reference Group as soon as reasonably practicable following such decision being taken.

In cases of urgency, a decision may be made by the Shareholder Representative after consultation with the Managing Director. Any urgent decisions made by the Shareholder Representative must also be notified to the Shareholder Reference Group as soon as reasonably practicable following such decision being taken.

The Shareholder Representative will review the Terms of Reference annually.

Relationship to Overview and Scrutiny Committee

The Council's relevant Overview and Scrutiny Committee will retain its scrutiny function in relation to the Shareholder Representative. Overview and Scrutiny will be able to call the Representative to account for progress in relation to any Company for which the Council is a shareholder and any returns it is making.

Scope

In respect of Teckal-compliant companies The Shareholder Representative will:

1. Monitor Teckal compliance at least annually.
2. Ensure the Business Plan of a Teckal compliant Company is aligned to the corporate objectives of the Council.

In respect of non Teckal-compliant wholly Council-owned companies The Shareholder Representative will also:

1. Seek to optimise returns on investment from trading activities.
2. Ensure trading activities are conducted in accordance with the values of the Council.

In respect of any shareholding and/or joint ventures The Shareholder Representative will:

1. Evaluate the return and benefits of the shareholding against the values of the Council.
2. Where appropriate, exercise influence over the company and /or joint ventures in accordance with the values of the Council.

Operation of the Shareholder Reference Group

1. The Shareholder Reference Group will comprise four Members and will be politically balanced.
2. The Shareholder Reference Group will report and be accountable to the Council.
3. The Shareholder Reference Group will meet with the Shareholder Representative quarterly, or as required.
4. No substitutes will be permitted.
5. All information received by Members arising from participation in the Shareholder Reference Group shall be deemed confidential.
6. The Secretary appointed to HDC Ventures Ltd will also act as Secretary to the Shareholder Reference Group.