

**HUNTINGDONSHIRE DISTRICT COUNCIL**

**Title/Subject Matter:** HDC Ventures Ltd – Shareholder Representative and Reference Group

**Meeting/Date:** Cabinet – 21st June 2018

**Executive Portfolio:** Executive Member for Resources

**Report by:** Managing Director

**Ward(s) affected:** All

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**Executive Summary:**

The Council has established a Local Authority Trading Company, HDC Ventures. Its purpose is to enable the Council to participate in commercial trading activities. This is increasingly common amongst local authorities.

The day-to-day operation of the company is the responsibility of the Directors. The Council is the sole Shareholder and it is necessary to establish a mechanism for decisions to be taken on behalf of the Council as the Shareholder. It is, therefore, proposed to delegate this responsibility to a Shareholder Representative. It is also proposed to create a Shareholder Reference Group, who the Shareholder Representative will consult with on matters within his/her Terms of Reference. The Shareholder Reference Group will comprise four Members and be politically balanced.

The Shareholder Representative will be advised by the Managing Director, Section 151 Officer, Monitoring Officer, Corporate Director – Services, acting in their capacity as Officers of the Council, and any other advisers as required.

The Shareholder Representative will take decisions on behalf of the Council that are of a routine nature on such matters as changes to the Articles of Association and borrowing. Strategic issues relating to the overall company direction will still be a matter for full Council. Details of the Representative's role appear in the Terms of Reference attached in an Appendix hereto.

Any changes required to the Constitution will be submitted to the next meeting of the Council following consideration of this matter by the Corporate Governance Committee.

**Recommendations:**

The Council is

**RECOMMENDED**

- 1. To appoint a Shareholder Representative to act on behalf of the Council as Shareholder of the Council's Local Authority Trading Company;**
- 2. To approve the Shareholder Representative's Terms of Reference appended to the report now submitted, and**
- 3. To approve the establishment of a Shareholder Reference Group comprising four Councillors to be politically balanced.**

## **1. PURPOSE OF THE REPORT**

- 1.1 The purpose of this report is to establish a mechanism for decisions to be taken by the Council as Shareholder of its Local Authority Trading Company, HDC Ventures Ltd.

## **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 in a timely and expedient manner, reflecting the needs of the trading company to be responsive to its commercial environment.

## **3. OPTIONS CONSIDERED/ANALYSIS**

- 3.1 The Council has received legal advice from its advisers, Trowers and Hamlins LLP, that this is a recommended way of fulfilling the shareholder role. In addition, it is regarded as national best practice.
- 3.2 It had been intended to establish a Shareholder Board, as per the report deferred from the full Council meeting on 26th March 2018. However, it is considered that the Shareholder Reference Group model is preferable because it will mean other political groups will have input into the exercise of the Shareholder role.
- 3.3 The Shareholder Reference Group will have direct input into the decision-making process. Specifically, it will:
- understand and advise on the significant issues relating to the operation and development of the Company;
  - make recommendations to the Shareholder Representative on his/her responsibilities, which are contained in the Terms of Reference, and
  - support effective communication about the Company

## **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 Hamlins 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 Hamlins, 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 If changes are required to the Constitution following a decision on this matter, these will be submitted to the next meeting of the Council following a recommendation by the Corporate Governance Committee.
- 6.2 Political Group Leaders will be asked to nominate representatives to set on the Shareholder Reference Group. A programme of meetings will be established. Ad hoc meetings also may be convened as and when necessary.
- 6.3 A review will be undertaken of the necessity to amend the Constitution. Any changes will be referred to the Corporate Governance Committee and submitted to the Council for approval.

## **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**

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## 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 Cabinet and acts with delegated authority ensure the performance of any such company is satisfactory.

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 Cabinet 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 meet with the Shareholder Representative quarterly, or as required.
3. No substitutes will be permitted.
4. All information received by Members arising from participation in the Shareholder Reference Group shall be deemed confidential.
5. Anthony Roberts will act as Secretary to the Shareholder Reference Group.