

HTS Governance Arrangements



Report to: Shareholder Sub Committee

Date: 27 September 2023

Lead Officer: Andrew Bramidge, Chief Executive (01279) 446004

Contributing Officer: Simon Hill, Director of Governance and Corporate Services (01279) 446099

Recommended:

- A** That approval be given to the required shareholder special resolutions to:
- i) Change the articles of HTS Group Limited, HTS (Property and Environment) Limited, and HTS (Housing and Regeneration) Limited to allow the ability to appoint further non-executive directors and/or senior council officers to the board of the company as set out in Appendix A to the report.
 - ii) Instruct HTS Group Limited and, through its shareholdings, HTS (Property and Environment) Limited, HTS (Housing and Regeneration) Limited, and HTS P&E Services Limited to take instructions from HTS Group Limited and Harlow District Council in relation to the restructuring of the HTS group of companies.
- B** That HTS Group Limited be asked to confirm these changes at their next meeting and undertake the required notifications processes.
- C** That HTS Group Limited be asked to confirm that the shareholder special resolutions in relation to HTS (Property and Environment) Limited, HTS (Housing and Regeneration) Limited, and HTS P&E Services Limited are passed in the correct manner.
- D** To note the advice on the restructuring of the Group and companies as set out in Appendix B to this report.
- E** That, subject to Shareholders view taken earlier in the meeting in relation to the Housing and Regeneration Company, delegated authority be given to the Chief Executive in consultation with the Leader of the Council, to:

- i) Acting as the representative of Harlow District Council as the shareholder of HTS Group Limited instruct the HTS Group Limited board to wind up the group structure and simplify the company structure by retaining HTS (Property and Environment) Limited, as a company owned directly by the Council ; and
- ii) Agree the final preferred route and undertake the necessary activities to achieve the restructuring set out in this report and ancillary to those; and
- iii) Work with HTS and legal and financial advisors to find the most efficient way of achieving this.

Reason for decision

- A** Formal approval of changes to the structure of the company, its articles and board memberships is a matter for the Subcommittee to determine.
- B** Further work on the best method of making these changes will require delegation to officers to determine the most efficient way of achieving them.

Other Options

- A** Retain current structure of the Company – This is the ‘do nothing’ option. HTS is changing its focus to providing better services to the Council and a more efficient company and board structure will help facilitate that change.
- B** Bring forward further revisions to the company structure – At present the Company structure does not reflect the activities of HTS, further changes could be made depending on requirements at the time of contemplation. Officers have considered the alternative of transferring all assets into the Group company but a number of factors including tax and employment of staff make this option unfavourable.
- C** Not to appoint further specialist non-executive directors (NEDs) – The appointment of specialist NEDs has been identified as being a way of strengthening the Board’s expertise, if the Council do not pursue this change will not be achievable.
- D** Seek an alternative Board structure – The changes that will be brought forward in formal legal resolution will not restrict future changes but will give flexibility, increase knowledge and better resilience during post-election period.

Background

1. At the last meeting of the Subcommittee, preliminary consideration was given to how the structure of both the company(s) board and of the company itself could be improved and focussed.
2. This report outlines the steps required to make the resolution to move to alternative articles for the Group and Associated Companies as a first step with further work being undertaken, in line with Legal Advice obtained, to rationalise the structure of the company into one entity.

Issues/Proposals

HTS Group and Company Board Structures

3. A review has been undertaken, at the request of Shareholder, of the Articles of Association (Articles) of the HTS Group and associated companies.
4. The Articles of HTS Group Limited, as adopted on 10 November 2016, are written on the basis that the board of directors will be made up of at least three councillor directors (Article 21) and the quorum for any directors meetings being two (2) councillor directors (Article 13.2). There are currently five directors appointed to the board.
5. The Articles have been updated to reflect the ability of HTS to appoint further Directors from either Members or Senior Officers of the Council but also to allow the appointment of Non-Executive Directors to support the improvement of the Company. Changes are also suggested to clarify the position of Councillors appointed to the Board should they cease to be a Councillor for whatever reason.
6. The Articles of HTS P&E, as adopted on 10 November 2016, are written on the basis that the board of directors will be made up of one Managing Director (MD) at least three councillor directors and one non-executive director. Article 20 means that that the number of directors cannot be less than five, and those five must be composed of one MD and a non-executive director.
7. The following amendments need to be made to HTS P&E's Articles:
 - (i) A definition for non-executive director(s) be added: "means a director that is not a full or part-time employee of the company or holder of an executive office, nor a councillor director, and is appointed in accordance with article 21";
 - (ii) Article 20 be deleted and replaced with the following new article ""Unless otherwise determined by ordinary resolution, the number of directors shall not be less than five (5) including three (3) council directors and may comprise of a managing director (if

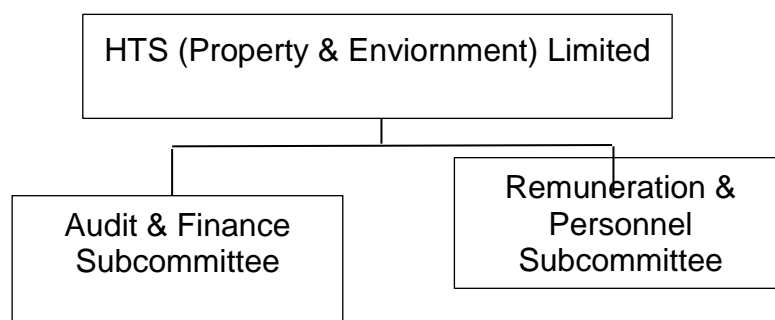
appointed), and non-executive director(s). No shareholding qualification for directors shall be required”; and

(iii) Article 22.1.9 be deleted and replaced with “that person is a council director who is an elected member of the council and they cease to be an elected member of the council for whatever reason, including being disqualified from elected membership of a local authority, or as an officer or employee of the council, their employment with the council has ceased or subject to suspension.

8. The Articles of HTS H&R were updated in 2020. The latest Articles for HTS H&R are written on the basis that the board of directors will be made up of at least three council directors, one MD and one independent director. Article 20 means that without at least five directors being appointed, including one MD and one independent director, the board of directors will fall short of these requirements. Given that earlier in the meeting, the Shareholder would have given guidance on the future of this company, light touch changes to the articles for this company have been prepared and are recommended for approval, similar in nature to those suggested for P&E.
9. Regardless of the position taken by the Shareholder on the future structure of the company, which may take a number of months to complete, advice is that these alterations should be made now to allow the appointment of further directors as necessary. As such, formal resolution of shareholder is required to pass the special resolutions contained within Appendix A, for the Shareholder to instruct the HTS Group accordingly and to confirm this has been actioned correctly.

Structure of the Company

10. At the last meeting of the Shareholder Sub Committee, it was agreed in principle that the structure of the Group and P&E companies should merge to provide the simplified structure below:



11. Further advice has been obtained on the most effective route to achieve this position. The full advice is reproduced at Appendix B (restricted) to this report. In summary the other subsidiary companies can be dissolved using a voluntary strike out procedure. This requires the assets and liabilities to be settled and paid to HTS Group then following a

period of 3 months, applying to Companies House to cease. This procedure is set out more fully in Appendix B (restricted).

12. The position of Group and P&E is more complicated. For the HTS Group company to cease to exist, the shares held by Group in HTS (Property and Environment) would first need to be acquired by the Council so that it is owned directly by the Council. This can be achieved in three ways. Advice is that further work is required with tax advisors to ensure that the best and most efficient option is pursued. The options are set out, together with considerations, in Appendix B.
13. It is therefore recommended that delegation be given to the Chief Executive to complete the winding up procedures with HTS, taking further advice as necessary and to take any decision on ancillary matters to achieve the agreed structure.

Implications:

Equalities and Diversity

There will be no direct Equalities impacts to this proposal as standard equal opportunity recruitment will be used.

Climate Change

There are no Climate Change implications directly related to this proposal.

Finance

The group structural changes and rationalisation of the company structures will require a number of financial transactions and assurances to be determined prior to the conclusion of the final changes. External advice will be sought for both the Company(s) and the Shareholder to ensure that those transactions are compliant with company law.

Author: Simon Freeman, Deputy Chief Executive and Director of Finance

Governance and Corporate Services

Legal advice has been sought on the best process to achieve the changes desired by Shareholder. The options presented in the report will meet the proper legal requirements for achieving the improvement of company, its boards and structure. Proper and up to date filings with Companies House is a legal requirement. Delegation of the detailed process is appropriate in this case.

Author: Simon Hill, Director of Governance and Corporate Services

Housing

The simplification of the Governance Structure will allow a more streamlined operating model and decision-making process, which reflects the changes in the operating environment over the last five years. It is vital that HTS has a Board of independent NED's and Directors that have the experience and business acumen to take the organisation forward. These revisions will allow these improvements to take place and are supported.

Author: Neil Euesden, Interim Director of Housing

Strategic Growth and Regeneration

The focussing of HTS business on the core work of housing and landscape maintenance is consistent with the decision taken by Cabinet to pursue a joint venture arrangement for regeneration programme delivery, rather than attempting to do this through HTS.

Author: Andrew Bramidge, Chief Executive

Appendices

Appendix A – required special resolutions and amended articles

Appendix B – Legal advice obtained – Private and Confidential.

Background Papers

None

Glossary of terms/abbreviations used

None