

REPORT TO: CABINET

DATE: 10 DECEMBER 2015

TITLE: GOVERNANCE AND STRUCTURE OF LOCAL AUTHORITY TRADING COMPANY

PORTFOLIO HOLDER(S): COUNCILLOR JON CLEMPNER

LEAD OFFICER(S): GRAHAM BRANCHETT, CHIEF OPERATING OFFICER (01279) 446200
BRIAN KEANE HEAD OF GOVERNANCE (01279) 446037

CONTRIBUTING OFFICER(S): JULIE GALVIN ASSISTANT SOLICITOR (01279) 446045

This is a Key Decision

It is on the Forward Plan as Decision number I004723

Call-in Procedures may apply

This decision will affect no ward specifically.

RECOMMENDED that:

- A** A politically balanced Cabinet Shareholder Sub-Committee is created as set out in paragraph 6 with its terms of reference as set out in Appendix 1.
- B** A LATC Board is created as set out in paragraph 8.
- C** A politically balanced Parent Group Company Board is created as set out in paragraph 9.
- D** Subject to recommendations A and B Councillor appointments as set out in the report are made to the Shareholder Sub Committee and the LATC Board.
- E** Subject to recommendation C Councillor appointments as set out in paragraph 9 are made to the Parent Group Company Board.
- F** Delegated authority is granted to the Chief Executive, in consultation with the Leader of the Council to take all steps necessary to create the Parent Company and the LATC within a main parent company group structure, and for the delivery of the relevant services.
- G** The main Parent Group Company be named HTS Group Limited with the LATC subsidiary named HTS (Property and Environment) Limited.

REASON FOR DECISION

- A** To enable the establishment of arrangements (to include flexibility in the future for the LATC to form part of a group of trading companies all reporting to a main parent company) for the operation of the LATC and to ensure that the LATC can commence trading operations no later than 1 February 2017.
- B** To implement appropriate governance arrangements of the Parent Company and the LATC.

BACKGROUND

1. On 17 September 2015 Cabinet resolved to create a LATC to deliver the services currently provided by Kier Harlow Ltd upon expiry of its current contract. The resolution noted that a separate report on the governance arrangements would be provided to a future Cabinet meeting.
2. The Council's overriding principle for the governance, stewardship and control mechanisms for the LATC is to ensure commercialism whilst ensuring accountability to stakeholders. The Council remains responsible for ensuring that it properly applies public funds, ensures compliance with the law, and that value for money can be demonstrated.

ISSUES/PROPOSALS

3. The Parent Company and the LATC must be created in one of the forms prescribed by law. Under the Localism Act 2011, where a Council seeks to do something for a "commercial purpose" it must do so through a company. In the case of the Parent Company and the LATC, a company limited by shares (rather than by guarantee) is the most appropriate form, with the Council being the sole shareholder.
4. The creation of a parent company with a group of subsidiaries would further support transparency with governance and facilitate strategic focussed decision making appropriate to the subsidiary trading arms. This approach mitigates risks associated with one company carrying out a broad range of activities which may not fall within the expertise of the directors. Liability arising in one trading company will not impact on the remaining trading arms and, subject to specialist tax advice, any losses may be able to be offset against tax payable on profits elsewhere.
5. In order to safeguard the Council's interests and to ensure that influence is demonstrated over the Parent Company and the LATC it is proposed that the Council establish a Shareholder Sub-Committee which reports directly to

Cabinet and is politically balanced. All of the Council's powers as shareholder will be exercised by the Shareholder Sub-Committee, who will provide strategic oversight and hold the Parent Company and the LATC Boards to account.

6. It is proposed that the Shareholder Sub-Committee will comprise of the Leader of the Council as Chair, together with the Housing Portfolio Holder, the Environment Portfolio Holder and two opposition Councillors.

The proposed terms of reference for the Shareholder Sub-Committee are set out in Appendix 1 to this report.

7. The LATC Board of Directors will be responsible for the strategic direction and success of the company. The LATC Board is required to manage the LATC, mindful of commercial and market forces and at all times acting in the best interests of the LATC for the benefit of the Council as sole shareholder.
8. It is proposed that the LATC Board will comprise of three politically balanced Councillor appointed Directorships, the most senior LATC employee and a Non-Executive Chairman recruited from the private sector. Each of the five board members will have one vote each and the Chairman will not have a casting vote.
9. It is proposed that the Parent Company Board will comprise of three politically balanced Councillor appointed Directorships who cannot also be members of the Shareholder Sub Committee. Each of the three board members will have one vote each and the Chairman will not have a casting vote.
10. Directors have a statutory duty at all times to:
 - Promote the success of the LATC and Parent Company
 - Exercise independent judgement
 - Use reasonable skill, care and diligence
 - Avoid conflicts of interest
 - Not to accept benefits from third parties
 - To declare an interest in any proposed transactions or arrangements
 - Act within the powers that the Directors are given
11. The Council may wish in the future to explore other options to create further trading companies. Therefore, the governance of the Parent Company and the LATC will include flexible arrangements should this occur so that the Parent Company and the LATC will be part of a group of trading companies, all remaining as separate trading entities in their own right but reporting to a single Council owned parent company.

12. The Shareholder Sub-Committee, once established, will receive detailed reports for approval of the governance documents which will include detailed Articles of Association and key commercial terms which determine the contractual and legal obligations and relationships between the Council and the Parent Company and the LATC.

IMPLICATIONS

Place (includes Sustainability)

Contained within the report.

Author: **Graeme Bloomer, Head of Place**

Finance (Includes ICT)

There are no direct Financial implications as a result of the recommendations set out in this report. However, effective stewardship and governance will be extremely important to safeguard the Company and the Council in the future especially in respect of any financial matters that may arise.

Author: **Simon Freeman, Head of Finance**

Housing

As outlined in the body of the report.

Author: **Andrew Murray, Head of Housing**

Community Wellbeing (includes Equalities and Social Inclusion)

An Equalities Impact Assessment will be part of the Business Case and in future will form a standard part of all business trading and decision making processes.

Author: **Jane Greer, Acting Head of Community Wellbeing**

Governance (includes HR)

The governance structure proposed can satisfy the control and function test required by law. The Articles will need to reflect shareholder consent matters to show the Council's influence over strategy and significant decisions. In addition "control" may be exercised by another legal person, for example, the parent company (being under Council control).

At any time, 80% of the activities of the LATC or the Parent Company (based on turnover) must be derived from works carried out for the Council.

Where a tiered structure under a Parent Company is created, the 80% rule can be applied company by company.

A formal business case for the LATC and the Parent Company must be approved by the Shareholder Sub Committee before they may formally commence trading.

All Directors appointed to the LATC or the Parent Company must be free to exercise their own judgement, owing a statutory duty to act in the best interest of the LATC or the Parent Company rather than the Council. Training and guidance on the director duties and the management of conflict of interests will be provided.

Officers and Directors liability insurance will be required. Councillor Directors of the LATC and the Parent Company will be given indemnity under the Local Authorities (Indemnities for Members and Officers) Order 2004.

The LATC and the Parent Company will be subject to independent audit processes.

In order to ensure no unlawful State Aid, the Council will recover the costs of any accommodation, goods, services, staff and any other supplies made to the LATC or the Parent Company, under a service level agreement; the Council cannot provide the LATC or the Parent Company with any subsidy.

Author: **Brian Keane, Head of Governance**

Glossary of terms/abbreviations used

LATC	Local Authority Trading Company
Conflict of Interest	Arises when an individual has a duty to two or more parties. Whilst carrying out duties, information or other matters may arise that mean that the individual cannot continue to carry out duties for one party without harming another.
Parent company	A company that controls other companies.
State Aid	Where public funds are applied to private venture resulting in an unfair advantage to the private venture

Appendix 1

Shareholder Sub-Committee

Terms of Reference

1.	To receive reports on the creation of the LATC and Parent Company and approve key decisions, including, but not exclusively, the Articles of Association, the scheme of delegation and determining shareholder controls.
2.	To be consulted on the appointment and dismissal of the LATC and Parent Company Directors and external auditors.
3.	To hold the LATC and Parent Company Boards to account.
4.	To receive and agree the LATC and Parent Company Business Plans.
5.	To receive financial and performance monitoring reports and accounts.
6.	To approve the cessation of existing business areas and approve new areas of business that fall outside of the thresholds contained within the Articles of Association and any scheme of delegation that flows from that.
7.	To approve any proposals to change the LATC's and Parent Company's capital or corporate structure.

Relationship with the LATC

- a. The Shareholder Sub-Committee ("SSC") is not empowered to act as a director of the LATC or the Parent Company and the board of directors of neither the LATC nor the Parent Company shall not seek or accept instruction from the SSC as a director or quasi-director.
- b. The SSC is empowered to consider the options available to the LATC for improving its performance or mitigating adverse consequences in the light of actual or reasonably anticipated circumstances and offer non-binding

proposals, recommendations and opinions (all of which the LATC accepts shall be without liability on the part of the Council or any individual member) as a representative of Harlow District Council on any matter affecting the Council as a shareholder in the LATC. The LATC acknowledges that the SSC may take into consideration solely the interests of the Council in giving any proposals, recommendations or opinion.

- c. The Parent Company and the LATC shall provide to the SSC upon request the agendas and support papers provided to the Parent Company and the LATC and shall do so at the same time, as far as possible, as the Parent Company and LATC boards receive those agendas and papers (except for minutes, which need only be supplied after signature). The LATC shall in addition supply the SSC with all information and data reasonably requested by the SSC to enable it to reach an informed judgement on any matter within its purview under these Terms of Reference.
- d. The LATC shall provide for each meeting of the SSC at least one Director of the LATC qualified to address issues indicated by the SSC for discussion.