

NORTH HERTFORDSHIRE DISTRICT COUNCIL



21 February 2023

Our Ref Cabinet Sub-Committee (Local Authority
Trading Companies' Shareholder)/1
March 2023

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To: Members of the Committee: Councillor Ian Albert (Chair), Councillor Elizabeth Dennis-Harburg and Councillor Keith Hoskins MBE

NOTICE IS HEREBY GIVEN OF A

**MEETING OF THE CABINET SUB-COMMITTEE (LOCAL
AUTHORITY TRADING COMPANIES' SHAREHOLDER)**

to be held in the

**COUNCIL CHAMBER, DISTRICT COUNCIL OFFICES, GERON
ROAD, LETCHWORTH**

On

WEDNESDAY, 1ST MARCH, 2023 AT 10.00 AM

Yours sincerely,

Jeanette Thompson
Service Director – Legal and Community

****MEMBERS PLEASE ENSURE THAT YOU DOWNLOAD ALL AGENDAS AND REPORTS VIA THE MOD.GOV APPLICATION ON YOUR TABLET BEFORE ATTENDING THE MEETING****

Agenda **Part I**

Item		Page
1.	APOLOGIES FOR ABSENCE	
2.	MINUTES - 11 SEPTEMBER 2019, 20 SEPTEMBER 2019, 24 NOVEMBER 2021 AND 21 DECEMBER 2021 To take as read and approve as a true record the minutes of the meeting of the Committee held on the 11 September 2019, 20 September 2019, 24 November 2021 and 21 December 2021.	(Pages 5 - 18)
3.	NOTIFICATION OF OTHER BUSINESS Members should notify the Chair of other business which they wish to be discussed at the end of either Part I or Part II business set out in the agenda. They must state the circumstances which they consider justify the business being considered as a matter of urgency. The Chair will decide whether any item(s) raised will be considered.	
4.	CHAIR'S ANNOUNCEMENTS Members are reminded that any declarations of interest in respect of any business set out in the agenda, should be declared as either a Disclosable Pecuniary Interest or Declarable Interest and are required to notify the Chair of the nature of any interest declared at the commencement of the relevant item on the agenda. Members declaring a Disclosable Pecuniary Interest must withdraw from the meeting for the duration of the item. Members declaring a Declarable Interest, wishing to exercise a 'Councillor Speaking Right', must declare this at the same time as the interest, move to the public area before speaking to the item and then must leave the room before the debate and vote.	
5.	PUBLIC PARTICIPATION To receive petitions, comments and questions from the public.	
6.	HERTFORDSHIRE BUILDING CONTROL - DELEGATION OF FUNCTIONS AND GOVERNANCE ARRANGEMENTS REPORT OF THE SERVICE DIRECTOR – REGULATORY To seek approval and delegation from the Cabinet Sub-Committee acting as the Council's shareholder representative in the Hertfordshire Building Control Consortium of companies for the Service Director: Regulatory to vote in favour of the Governance matters within this report and to undertake such actions as necessary in consultation with the Service Director for Legal Community to complete these matters.	(Pages 19 - 26)

Public Document Pack Agenda Item 2

NORTH HERTFORDSHIRE DISTRICT COUNCIL

CABINET SUB-COMMITTEE (LOCAL AUTHORITY TRADING COMPANIES' SHAREHOLDER)

MEETING HELD IN THE ROOMS 2/3, DISTRICT COUNCIL OFFICES,
LETCWORTH GARDEN CITY
ON WEDNESDAY, 11TH SEPTEMBER, 2019 AT 11.00 AM

MINUTES

Present: *Councillors Ian Albert, Paul Clark and Keith Hoskins*

In Attendance: *Steve Crowley (Service Director - Commercial), Ian Couper (Service Director - Resources) and Hilary Dineen (Committee, Member and Scrutiny Manager)*

1 ELECTION OF A CHAIRMAN

Audio recording – Session 1 – 12 seconds

The Committee, Member and Scrutiny Manager asked for nominations for the position of Chairman of the Cabinet Sub-Committee (Local Authority Trading Companies' Shareholder) for the remainder of the 2019/20 Civic Year.

It was proposed by Councillor Keith Hoskins, seconded by Councillor Paul Clark and:

RESOLVED: That Councillor Ian Albert be elected as Chairman of the Cabinet Sub-Committee (Local Authority Trading Companies' Shareholder) for the remainder of the 2019/20 Civic Year.

2 APOLOGIES FOR ABSENCE

Audio recording – Session 1 - 41 seconds

There were no apologies for absence

3 MINUTES - 15 MARCH 2018

Audio Recording – Session 1 - 46 seconds

RESOLVED: That, it be noted that none of the Members present today were at the meeting held on 15 March 2019 however, the Minutes of the Meeting of the Committee held on 15 March 2018 be approved as a true record of the proceedings and be signed by the Chairman.

4 NOTIFICATION OF OTHER BUSINESS

Audio recording – Session 1 – 1 minute 15 seconds

There was no other business notified.

5 CHAIRMAN'S ANNOUNCEMENTS

Audio recording – Session 1 – 1 minute 18 seconds

- (1) The Chairman advised that, in accordance with Council Policy, the meeting would be audio recorded;
- (2) The Chairman drew attention to the item on the agenda front pages regarding Declarations of Interest and reminded Members that, in line with the Code of Conduct, any Declarations of Interest needed to be declared immediately prior to the item in question.

6 PUBLIC PARTICIPATION

Audio recording – Session 1 – 1 minute 27 seconds

There were no presentations by the public.

7 TRADING COMPANY UPDATE

Audio recording – Session 1 – 2 minutes 33 seconds

Councillor Paul Clark queried whether declarations of interest were needed as the Members of the Sub-Committee were also residents in the District.

The Committee, Member and Scrutiny Manager advised that all Councillors were residents and that the business of the Council had to continue.

The Service Director – Commercial presented the report entitled Trading Company Update and drew attention to the following:

- Paragraph 7.1 set out the background;
- The business case was included in the Part 2 papers;
- Paragraph 8.4 explained that there was not sufficient financial tolerance to make a company viable;
- Paragraph 8.5 gave the reasons that the financial modelling did not offer financial security;
- The Directors agreed that it did not make sense to register the company at this time;
- Officers were investigating other opportunities to see if the financial viability could be improved;
- If financial viability can be improved a report would be brought to this Committee to seek approval to set up the company;
- The aim was to register the company in time to be ready to trade when the Harkness Court renovations were complete;
- The company name had been selected following staff and Councillor suggestions and the Internet domain name had been purchased, although the name would not be announced until the company had been registered;
- The Council could still generate income even without a company.

The following Member asked questions:

- Councillor Paul Clark:

The Service Director - Commercial responded to questions as follows:

- The Council could consider becoming an Registered Social Landlord and take on any social housing allocated as part of planning applications, but this option had not been looked at or costed;
- They were currently looking to find opportunities relating to what the Council already owned or could buy.

The Service Director – Resources advised that:

- If the financial modelling demonstrated that it would be difficult to make a profit when charging market rates for rented properties, it would be all the more difficult if charging social rent rates unless the number of properties was increased.

The Part 1 discussion was suspended whilst the Part 2 report was considered (Minute 9 refers)

Audio recording – Session 2 – 5 seconds

Following consideration of the Part 2 report the Sub-Committee returned to Part 1 to make the decision.

The Service Director Commercial advised that he would be making a presentation on this subject to the Overview and Scrutiny Committee on 17 September 2019.

RESOLVED:

- (1) That the content of the report entitled Trading Company Update be noted:
- (2) That the Service Director – Commercial be requested to start investigations into the option of taking on and operating social housing offered through Planning obligations;
- (3) That the Service Director Commercial be requested to keep Member of the Sub-Committee apprised of progress regarding further work in this area.
- (4) That the Service Director – Commercial be requested to convene another meeting of this Sub-Committee to discuss progress regarding further work in this area.

REASON FOR DECISIONS: To keep Members informed on the progress in setting up a trading company.

8 EXCLUSION OF PRESS AND PUBLIC

Audio recording – Session 1 – 16 minutes 47 seconds

RESOLVED: That under Section 100A(4) of the Local Government Act 1972, the public and press be excluded from the meeting for the following item of business on the grounds that it involves the likely disclosure of exempt information as defined in Paragraph 3 of Part 1 of Schedule 12A of the said Act (as amended).

9 TRADING COMPANY UPDATE

Audio Recording - The report being considered was a Part 2 report, therefore no audio recording was made.

The Service Director – Resources presented the report entitled Trading Company Update together with the following appendices:

- Appendix A - Draft Business Case;
- Appendix B - Draft Articles of Association.

A detailed discussion took place with the following Members asking questions and taking part in the debate:

- Councillor Paul Clark;
- Councillor Ian Albert;
- Councillor Keith Hoskins.

RESOLVED:

- (1) That the content of the report entitled Trading Company Update be noted;
- (2) That the Service Director – Commercial be requested to investigate the status of those acting as “Directors” when the company is not yet registered.

REASON FOR DECISIONS: To keep Members informed on the progress in setting up a trading company.

NB: At the conclusion of consideration of the Part 2 report, the Sub-Committee returned to Part 1 to consider any recommendations (Minute 7 refers).

The meeting closed at 11.55 am

Chairman

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NORTH HERTFORDSHIRE DISTRICT COUNCIL

CABINET SUB-COMMITTEE (LOCAL AUTHORITY TRADING COMPANIES' SHAREHOLDER)

MEETING HELD IN THE ROOM 2/3, DISTRICT COUNCIL OFFICES,
GERNON ROAD, LETCHWORTH GARDEN CITY
ON FRIDAY, 20TH SEPTEMBER, 2019 AT 3.00 PM

MINUTES

Present: *Councillors Ian Albert (Chairman), Paul Clark and Keith Hoskins*

In Attendance: *Ian Fullstone (Service Director - Regulatory), Ian Couper (Service Director - Resources), Jeanette Thompson (Service Director - Legal and Community), Hilary Dineen (Committee, Member and Scrutiny Manager) and Obianuju Nganwuchu (Democratic Services Apprentice)*

10 APOLOGIES FOR ABSENCE

Audio recording – Session 1 - 24 seconds

There were no apologies for absence.

11 NOTIFICATION OF OTHER BUSINESS

Audio recording – Session 1 - 28 seconds

There was no other business notified.

12 CHAIRMAN'S ANNOUNCEMENTS

Audio recording – Session 1 - 32 seconds

- (1) The Chairman advised that, in accordance with Council Policy, the meeting would be audio recorded;
- (2) The Chairman drew attention to the item on the agenda front pages regarding Declarations of Interest and reminded Members that, in line with the Code of Conduct, any Declarations of Interest needed to be declared immediately prior to the item in question.

13 PUBLIC PARTICIPATION

Audio recording – Session 1 – 1 minute 29 seconds

There were no presentations by members of the public.

14 BUILDING CONTROL COMPANY - DACORUM BOROUGH COUNCIL JOINING AS A SHAREHOLDER.

Audio recording – Session 1 – 1 minute 35 seconds

The Service Director – Regulatory presented the report entitled Building Control Company – Dacorum Borough Council Joining as a Shareholder.

He advised that in respect of Paragraph 10.1 of the report the following amendments were required:

- The 6 authorities paid £69,000 in project costs;
- That payment of £22,000 to each authority would reduce the set up costs to £47,000.

The Part 1 discussion was suspended whilst the Part 2 report was considered (Minute 16 refers).

Audio Recording – Session 2 – 10 seconds

Following consideration of the Part 2 report the Sub-Committee returned to Part 1 to make the decision.

RESOLVED:

- (1) That the shareholder consent to Dacorum Borough Council to join HBC be confirmed;
- (2) That the agreeing of any amendments to the relevant documentation, on behalf of the Council as shareholder be delegated to the Service Directors for Regulatory and Legal & Community.

REASON FOR DECISION: To enable HBC to proceed with Dacorum Borough Council becoming part of HBC.

15 EXCLUSION OF PRESS AND PUBLIC

Audio Recording – Session 1 – 3 minutes 15 seconds

RESOLVED: That under Section 100A(4) of the Local Government Act 1972, the public and press be excluded from the meeting for the following item of business on the grounds that it involves the likely disclosure of exempt information as defined in Paragraph 3 of Part 1 of Schedule 12A of the said Act (as amended).

16 BUILDING CONTROL COMPANY - DACORUM BOROUGH COUNCIL JOINING AS A SHAREHOLDER.

As this is a Part 2 report there is no audio recording

This part 2 report was considered prior to the decision being made regarding the part 1 report.

The Service Director Regulatory presented the report entitled Building Control Company - Dacorum Borough Council Joining as a Shareholder together with an appendix and background paper.

The following Members asked questions and took part in the debate:

- Councillor Paul Clark;
- Councillor Ian Albert;
- Councillor Keith Hoskins.

Questions were answered by the Service Director Regulatory and the Service Director – Resources.

RESOLVED: That the content of the report entitled Building Control Company - Dacorum Borough Council Joining as a Shareholder be noted.

Friday, 20th September, 2019

REASON FOR DECISION: To enable HBC to proceed with Dacorum Borough Council becoming part of HBC.

The meeting closed at 3.12 pm

Chairman

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NORTH HERTFORDSHIRE DISTRICT COUNCIL

CABINET SUB-COMMITTEE (LOCAL AUTHORITY TRADING COMPANIES' SHAREHOLDER)

MEETING HELD IN THE COUNCIL CHAMBER, DISTRICT COUNCIL OFFICES,
LETCHWORTH GARDEN CITY
ON WEDNESDAY, 24TH NOVEMBER, 2021 AT 9.00 AM

MINUTES

Present: *Councillors: Councillor Ian Albert (Chair), Paul Clark and Sam Collins*

In Attendance: *Isabelle Alajooz (Legal Commercial Team Manager and Deputy Monitoring Officer), Jeanette Thompson (Service Director - Legal and Community), Steve Crowley (Service Director - Commercial), Ian Couper (Service Director - Resources) and William Edwards (Committee, Member and Scrutiny Manager)*

Also Present: *Councillors: Morgan Derbyshire and Claire Strong*

17 APOLOGIES FOR ABSENCE

Audio Recording – 0:00

There were no apologies for absence.

18 NOTIFICATION OF OTHER BUSINESS

Audio recording – 1:30

There was no other business notified.

19 CHAIR'S ANNOUNCEMENTS

Audio recording – 1:35

- (1) The Chair welcomed those present at the meeting;
- (2) The Chair advised that much of the meeting would be conducted in Part 2 private session and that if/when the meeting moved in to Part 2 the live stream would be ended. When the meeting returned to public session the live stream would not resume. Public notice of any decisions taken would be made in the usual way.
- (3) The Chair drew attention to the item on the agenda front pages regarding Declarations of Interest and reminded Members that, in line with the Code of Conduct, any Declarations of Interest needed to be declared immediately prior to the item in question.

20 PUBLIC PARTICIPATION

Audio recording – 2:03

There was none.

21 TRADING COMPANY UPDATE

N.B This item was considered after the Part 2 item of the same title.

The Service Director – Commercial presented the report entitled Trading Company Update along with the appendices and advised that this report provided a general overview to complement the more detailed business case presented in the Part 2 report.

Councillor Sam Collins noted that he was keen to support the recommendations as they would provide the necessary vehicle for the Commercial team to begin projects that would be of benefit to the community.

Councillor Ian Albert proposed an amendment to the recommendations as follows: to add “in consultation with the Executive Member for Enterprise, the Arts and Transport” before “to nominate..”. The amendment was accepted.

On the vote it was:

RESOLVED:

- (1) To approve the business case and agree to commence trading of the holding company (Broadwater Hundred Limited) and the incorporation and trading of a subsidiary company for the purpose of letting out Harkness Court
- (2) To provide delegated authority to the Service Director – Commercial and Service Director – Legal and Community to agree the final company documents (prior to any necessary company approval) and in consultation with the Executive Member for Enterprise, the Arts and Transport to nominate the Directors for the companies.

REASON FOR DECISIONS: To enable the Council companies to trade and provide more commercial opportunities to benefit the Council.

22 EXCLUSION OF PRESS AND PUBLIC

Audio recording – 9:14

Councillor Ian Albert proposed and on the vote it was:

RESOLVED: That under Section 100A(4) of the Local Government Act 1972, the public and press be excluded from the meeting for the following item of business on the grounds that it involves the likely disclosure of exempt information as defined in Paragraphs 3 Part 1 of Schedule 12A of the said Act (as amended).

23 TRADING COMPANY UPDATE - PART 2

N. B As this item was considered in private session there is no audio recording.

The Service Director – Commercial presented the report entitled Trading Company Update along with Appendix A – Business Case and Appendix B – Financial Modelling.

The following Members asked questions and took part in debate:

- Councillor Sam Collins
- Councillor Paul Clark
- Councillor Ian Albert

Wednesday, 24th November, 2021

The Service Director – Commercial, Service Director – Resources, Service Director – Legal & Community and Legal Commercial Team Manager gave advice and answered questions.

On the vote it was:

RESOLVED: That the Sub-Committee note the content of the Part 2 report before coming to a decision in public session.

The meeting closed at 10.15 am

Chair

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NORTH HERTFORDSHIRE DISTRICT COUNCIL

CABINET SUB-COMMITTEE (LOCAL AUTHORITY TRADING COMPANIES' SHAREHOLDER)

MEETING HELD IN THE COUNCIL CHAMBER, DISTRICT COUNCIL OFFICES,
LETCHWORTH GARDEN CITY
ON TUESDAY, 21ST DECEMBER, 2021 AT 9.00 AM

MINUTES

Present: *Councillors: Councillor Ian Albert (Chair), Elizabeth Dennis-Harburg and Sam Collins*

In Attendance: *Ian Fullstone (Service Director – Regulatory), Jeanette Thompson (Service Director – Legal & Community), Ian Couper (Service Director – Resources), James Lovegrove (CMSO), Louis Mutter (CMSO)*

Also Present: *At the commencement of the meeting there were no members of the public present.*

24 NOTIFICATION OF OTHER BUSINESS

There was no other business notified.

25 CHAIR'S ANNOUNCEMENTS

- (1) The Chair welcomed those present at the meeting;
- (2) The Chair advised that much of the meeting would be conducted in Part 2 private session and that if/when the meeting moved in to Part 2 the live stream would be ended. When the meeting returned to public session the live stream would not resume. Public notice of any decisions taken would be made in the usual way.
- (3) The Chair drew attention to the item on the agenda front pages regarding Declarations of Interest and reminded Members that, in line with the Code of Conduct, any Declarations of Interest needed to be declared immediately prior to the item in question.

26 PUBLIC PARTICIPATION

There was none.

27 EXCLUSION OF PRESS AND PUBLIC

Councillor Ian Albert proposed and on the vote it was:

RESOLVED: That under Section 100A(4) of the Local Government Act 1972, the public and press be excluded from the meeting for the following item of business on the grounds that it involves the likely disclosure of exempt information as defined in Paragraphs 3 Part 1 of Schedule 12A of the said Act (as amended).

28 HERTFORDSHIRE BUILDING CONTROL CONSORTIUM - PART 2

N. B As this item was considered in private session there is no audio recording.

The Service Director – Commercial presented the report entitled Hertfordshire Building Control Consortium along with Appendix 1 – Directors Report for 8 Hertfordshire Authorities, Appendix 2 – Business Case and Appendix 3 – Auditors due diligence report.

The following Members asked questions and took part in debate:

- Councillor Steve Jarvis
- Councillor Sam Collins
- Councillor Ian Albert

The Service Director – Commercial, Service Director – Resources, Service Director – Legal & Community gave advice and answered questions.

On the vote it was:

RESOLVED: That the Sub-Committee note the content of the Part 2 report and appendices before coming to a decision in public session.

29 HERTFORDSHIRE BUILDING CONTROL CONSORTIUM - PART 1

N. B This item was considered after the Part 2 item of the same title

The Service Director – Commercial presented the report entitled Hertfordshire Building Control Consortium.

On the vote it was:

RESOLVED:

- (1) To consider the information in the Part 2 report;
- (2) To approve the acquisition of the group of companies and delegate the Service Director: Regulatory to vote accordingly on behalf of the Council;
- (3) To delegate any action required to complete the acquisition to the Service Directors for Regulatory and Legal and Community on behalf of the Council as shareholder.

REASON FOR DECISIONS: To seek to enable the acquisition of the group of companies to proceed subject to the support of the other 7 shareholders.

Chair

CABINET SUB-COMMITTEE
(Local Authority Trading Companies' Shareholder)
01 March 2023

PART 1 – PUBLIC DOCUMENT

TITLE OF REPORT: HERTFORDSHIRE BUILDING CONTROL – DELEGATION OF FUNCTIONS & GOVERNANCE ARRANGEMENTS

REPORT OF: SERVICE DIRECTOR: REGULATORY

EXECUTIVE MEMBER: PLANNING & TRANSPORT

COUNCIL PRIORITY: PEOPLE FIRST / SUSTAINABILITY / A BRIGHTER FUTURE TOGETHER

1. EXECUTIVE SUMMARY

To seek approval and delegation from the Cabinet Sub-Committee acting as the Council's shareholder representative in the Hertfordshire Building Control Consortium of companies for the Service Director: Regulatory to vote in favour of the Governance matters within this report and to undertake such actions as necessary in consultation with the Service Director for Legal Community to complete these matters.

2. RECOMMENDATIONS

2.1. That the Cabinet Sub-Committee considers the contents of this report and having done so:

2.1.1 Agrees the option of 'Proper Officer' function via the 'secondment' model, including cancelation of the delegation of the building control approval function to LA1 and the appointment of a 'Proper Officer' via a secondment.

2.1.2 Agrees that the Service Director for Regulatory enters into a new rolling contract term with Hertfordshire Building Control Ltd to provide Building Control functions on behalf of the Council.

2.2. Delegates any action required to complete the above actions and as a result of the review of the client-side Commissioning Panel, to the Service Directors for Regulatory and Legal and Community on behalf of the Council as shareholder.

3. REASONS FOR RECOMMENDATIONS

3.1. To enable the Council to deliver its building control service in an effective and efficient manner.

4. ALTERNATIVE OPTIONS CONSIDERED

4.1. Alternative options are discussed within Section 8 of this report.

5. CONSULTATION WITH RELEVANT MEMBERS AND EXTERNAL ORGANISATIONS

- 5.1. The Executive Member for Planning and Transport and Deputy have been briefed with regard the matters within this report.

6. FORWARD PLAN

- 6.1 This report contains a recommendation on a key Executive decision that was first notified to the public in the Forward Plan on the 23 January 2023.

7. BACKGROUND

- 7.1 Cabinet Sub-Committee members will likely be aware of much of the background to the initial collaboration of 7 Hertfordshire local authority building control services which began in 2013 (Stevenage, Hertsmere, Three Rivers, North Herts, East Herts, Welwyn Hatfield and Broxbourne). The 7 authorities delivered their statutory building control services through a single trading company known as Hertfordshire Building Control Limited (HBC). The company is a subsidiary of Broste Rivers Limited, as is The Building Control Company (Hertfordshire) Limited (TBCC) which delivered the commercial aspect of the building control service. Broste Rivers Limited is a wholly owned local authority company with each authority holding an equal share. All three companies were incorporated on 4 February 2016.
- 7.2 In September 2019 the Cabinet Sub-Committee approved Dacorum joining the collaboration as an eighth equal shareholder.
- 7.3 In December 2021 the Cabinet Sub-Committee approved the acquisition of a further group of companies to enhance the commercial opportunities available.
- 7.4 The Council is represented by the Service Director: Regulatory as the Shareholder representative and the Service Director: Enterprise as a Director of the companies.
- 7.5 Local Authorities have a statutory duty to provide a Building Control service. This means that if an application is submitted to the authority, it has a duty to ensure that the works comply with building regulations. For North Herts Council those functions that can be delegated such as plan assessment, site inspections, are undertaken by HBC. Functions that cannot be delegated, such as statutory decisions are delegated, effectively to a single local authority within the consortium known as LA1, who issue Certificates and Notices through a Contracts Manager (although this was delegated to two authorities in 2022)¹. LA1 also audits HBC and monitors service levels. An annual support sum is paid to LA1 by all the building control authorities.
- 7.6 Since the start of the consortium until August 2022 LA1 was designated as Three Rivers District Council (TRDC). Following notice to cease the arrangement, East Herts and Three Rivers District Councils agreed to temporarily host the LA1 function whilst an alternative permanent solution was agreed for a proposed implementation date of 01 April 2023.

¹ [Delegated Decision Building control 21 July 2022](#)

8. RELEVANT CONSIDERATIONS

- 8.1. The Board and Shareholder representatives have over the past months been considering alternative options for the issuing of non-delegable functions under the Building Act 1984 such as the issuing of statutory decisions, as well as contract management and audit functions. These discussions have been supported by expert external legal advisors, Trowers and Hamlins, who supported and advised on the original business plan for the consortium in 2014.
- 8.2. The options considered are outlined in Table 1 below. In the table, the 'Proper Officer' means an officer discharging the non-delegable functions under the Building Act 1984 (the 1984 Act) which must either be made by each local authority or discharged by an officer of each local authority. Currently these functions have been delegated to Three Rivers and East Herts Council's.

Table 1:

Option	Legal position	Issues
Each Local Authority employing its own "Proper Officer".	Clear legal position	Cost. Inefficient, as all 8 authorities would be seeking to recruit a similar officer in a hard to recruit and retain service area. Difficult interface between work undertaken by HBC and eight individual officers.
Single "Proper Officer" jointly employed by each Local Authority.	Clear legal position except for potential complications of joint employment	Not attractive for an employee to have eight employers. Lack of resilience for 8 authorities as relying on a single officer. Risk of aggrieved employee taking advantage of joint contract of employment (e.g., cherry picking T&Cs). Real practical difficulty in day-to-day management.
"LA1" Model	Clear legal position Track record of delivery in Hertfordshire	Need for a single Local Authority to "volunteer" to be LA1, of which there are none.
Secondment model-formal "secondment" of named HBC employees to each local authority	Legal position established - In 2010, the High Court considered whether an "officer" must be an employee of the local authority in the case of <i>Pinfold North Ltd v Humberside</i>	Need to revise legal agreements between the shareholders to record the basis of secondment – in particular there would need to be a secondment agreement to cover each local authority

through secondment agreements. The secondment arrangements would be limited to the discharge of the non-delegable functions which they would do in the name of each relevant local authority	<i>Fire Authority [2010 EWHC 2944 (QB)] (Pinfold)</i> . The court decided that a local authority could appoint a person as an officer even if that individual was not an employee of that authority.	separately (so each employee acting as a "proper officer" would need to enter into 8 separate agreements with HBC and each relevant local authority).
Hybrid model of LA1 and secondment- i.e., authorities delegate to LA1 and LA1 function then discharged by a seconded	Legal position more vulnerable to challenge (because both the delegation and secondment arrangements offer scope for argument)	No material advantage to either secondment or LA1 model

- 8.3 As none of the partner authorities wish to be considered for the established role of LA1 and following significant scrutiny and evaluation of the options the Board and Shareholders / Representatives recommend the Secondment Model. As this offers an existing pool of qualified and experienced officers, negating the need for each local authority to recruit their own 'proper officer' in a hard to recruit profession, provides resilience that recruitment of a single proper officer does not and has an established legal position.
- 8.4 The Secondment Model would entail a formal "secondment" of named Hertfordshire Building Control Ltd (HBC) employee(s) (likely a minimum of two to cover absences) to each local authority through secondment agreements. This will require each authority to enter into a secondment agreement (limited to the discharge of non-delegable functions) with each named person and HBC. The secondment agreement will record the appointment of those persons as "proper officers" and provide them with the type of indemnity which an employed officer of the local authority would expect to benefit from in the discharge of their public duties. Furthermore, there will be a nominal payment to ensure the arrangement is enforceable.
- 8.5 To facilitate this approach the Inter Authority Agreement (IAA) will need to be amended, the IAA includes delegation of functions to LA1 which will need to be cancelled and the appointment of 'Proper Officers' in respect of non-delegable functions.
- 8.6 The IAA also regulates The Commissioning Panel (CP) on which each local authority has a representative. The role of the CP includes providing guidance and supervision to and receiving reports from the Contracts Manager through who LA1 issues Notices and Certificates. With the proposed change to a Secondment Model the role of the CP will need to be reviewed within the IAA, as such it would be appropriate to consider all the functions of the CP to see if they are better placed elsewhere, such as, with the Board or the Shareholders/Representatives.
- 8.7 In addition to a review of the IAA, the Service Agreement (SA) through which building control services are contracted from the building control authorities to HBC is also due for renewal. The original SA had a term of 5 years from 17th August 2016, with an

extended term agreed through to 31st of March 2023. Given the success of the building control consortium it is proposed to move from a fixed term services contract to a rolling contract for the provision of Building Control services and that this is in place prior to the expiration of the current arrangements.

9. LEGAL IMPLICATIONS

- 9.1. Under 5.11 of the Council's Constitution the roles and functions of the Cabinet Sub-Committee (Local Authority Trading Companies' Shareholder) include:
- (a) To represent the Council's interests as shareholder in wholly owned and other companies.
 - (b) To undertake all functions of the Council as shareholder under the Company Act, unless delegated otherwise.
 - (c) To ensure that actions taken by the companies accord with the interests of the Council as shareholder and contribute to the Council's objectives.
 - (d) To consider (and approve in principle where appropriate) any proposed or amended company documentation (save minor administrative documentation) including Memorandum and Articles of association and shareholder agreements.
- 9.2. Under the Shareholder Agreement the day-to-day conduct of the company's affairs are vested in the Directors, save any Reserved matters. Reserved matters include the following and the company cannot undertake the following without the prior written consent of all the Shareholders:
- 7.1.5 Changing the nature of the business.....
- This means that the relevant authorities, as shareholders, are required to authorise the change proposed in respect of delegations and secondment principle.
- 9.3 Under 14.6.10 (b) (i) of the Council's Constitution the Service Director – Regulatory has delegated powers with regard Building Control including client-side Building Control company operational matters as required under any agreements, in addition to all activities relating to discharge of the Council's function as the Local Building Regulation Authority.
- 9.4 Section 14.6.4 (a) (General Authorisations) delegates Service Directors at (ii) to enter into contracts to carry out works and/or for the supply of goods and services within approved budgets. Entering into the rolling contract would be such a supply of goods and services.
- 9.5 Expert external legal advice has been sought from Trowers and Hamlin on the matters within this report. The Duty of Care from Trowers and Hamlin has been extended to all eight local authority partners, currently provisionally – although at the point of finalising the report this is to be co-ordinated by the Chair of the Board and the final letter from Trowers is yet to be received. This would need to be signed by all effective Heads of Legal of the relevant authorities to enable them to rely on the advice. It should be received and executed before this decision is therefore taken by this authority.

10. FINANCIAL IMPLICATIONS

- 10.1 There are no direct financial implications (either revenue or capital) arising from this report. Paragraph 8.4 refers to a nominal payment being made to the secondees. The Council already pays for this role to be provided through the existing model, and the overall cost is expected to be the same.

11. RISK IMPLICATIONS

- 11.1. The options appraisal has been considered by all eight local authorities by their Board and Shareholder representatives. Expert legal advice has been provided on the options.
- 11.2 Without an alternative the host functions for statutory building control sign off will no longer be provided at the end of the month. The Council and other partner authorities do not have the in-house provision for this. Without alternative arrangements there is a direct risk to the Council and HBC in being unable to meet its statutory duty. For the reasons set out in section 8, this is the most practical way of delivering the required role and therefore minimises risk.

12. EQUALITIES IMPLICATIONS

- 12.1. In line with the Public Sector Equality Duty, public bodies must, in the exercise of their functions, give due regard to the need to eliminate discrimination, harassment, victimisation, to advance equality of opportunity and foster good relations between those who share a protected characteristic and those who do not.
- 12.2. The recommendations within this report seek to provide building control services in a more commercial/cost effective manner that could positively impact the cost/service delivered to customers in the longer term.

13. SOCIAL VALUE IMPLICATIONS

- 13.1. The Social Value Act and “go local” requirements do not apply to this report. The services are supplied to the relevant authorities by a wholly owned company, HBC. Any benefits rest with the authorities in any event.

14. ENVIRONMENTAL IMPLICATIONS

- 14.1. There are no known Environmental impacts or requirements that apply to the actions or recommendations within this report.

15. HUMAN RESOURCE IMPLICATIONS

- 15.1 There is an existing member of staff to whom TUPE is likely to apply. This is currently being worked through by the host council.
- 15.2 Each authority provides an officer as a shareholder/representative, director and commissioning panel member. The review of the Commissioning Panel may allow the reduction in officers and/or workload required to service the consortium.

16. APPENDICES

- 16.1 None

17. CONTACT OFFICERS

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18. BACKGROUND PAPERS

- 18.1 Confidential legal advice from Trowers as to proper officer functions and other relevant matters (subject to Part 2 regulation 5 exemption if requested).

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