

**CABINET SUB-COMMITTEE (LOCAL AUTHORITY TRADING COMPANIES'
SHAREHOLDER) - 15 MARCH 2018**

***PART 1 – PUBLIC DOCUMENT**

AGENDA ITEM No.

5

TITLE OF REPORT: PURPOSE OF THE SUB-COMMITTEE

REPORT OF THE DEPUTY CHIEF EXECUTIVE

EXECUTIVE MEMBER : *n/a*

COUNCIL PRIORITY : ATTRACTIVE AND THRIVING / PROSPER AND PROTECT /
RESPONSIVE AND EFFICIENT

1. EXECUTIVE SUMMARY

This report is to inform Members of the purpose of the sub-committee, specifically its role and function in the operation of the Council's commercial activities operated via trading companies.

2. RECOMMENDATIONS

2.1 That the content of this report be noted and taken into account when considering future reports to the Sub-Committee.

3. REASONS FOR RECOMMENDATIONS

3.1 It is important that the sub-committee understands its role in taking forward commercial activities through trading companies.

4. ALTERNATIVE OPTIONS CONSIDERED

4.1 None.

5. CONSULTATION WITH RELEVANT MEMBERS AND EXTERNAL ORGANISATIONS

5.1 None undertaken as not required for a report of this nature.

6. FORWARD PLAN

6.1 This report does not contain a recommendation on a key decision and has not been referred to in the Forward Plan.

7. BACKGROUND

7.1 The Sub-Committee was established by Full Council when it considered the Constitution Review report at its meeting on 11 April 2017. Below is the relevant extract from that report, which explains the rationale for the Sub-Committee:-

**Cabinet Sub-Committee (Local Authority Trading Companies' Shareholder)
Section 5, new Sub-Committee & Terms of Reference:**

As part of the Council's approach to commercialisation, it is now considered appropriate to establish a specific Cabinet Sub-Committee, with remit to act as the corporate "Shareholder" in any Local Authority Trading company (LATC) that the Council has an interest (including existing ones, such as Building Control and CCTV). This will provide specific political oversight of existing arrangements or proposed future arrangements as outlined in the Schedule. The Terms of Reference are based on national examples and incorporate key aspect of the shareholder function, whilst overall decision making on investment, financing and asset or resource transfer remains with the Cabinet. An additional Cabinet Term of Reference has been included as a new 5.6.34 to cover the agreement to establish, or wind up a LATC and decisions on investment, financing, asset and resource transfer as outlined.

Members will be aware that the emphasis on the shareholder role, stems, in simple terms, from the distinction (and indeed potential conflict) that can arise in a company in terms of 'management' and 'ownership' decisions. Management decisions shall, in the main, be taken by Directors (either as approved by the Board or through the company's management) and ownership decisions taken by shareholder at general meetings. Many of those distinctions are established in company legislation, or in any event through associated governance documents such as the Memorandum, Articles, Shareholder Agreement, Loan Agreements for each LATC. Members should note, therefore: that some of the decisions taken by the Sub-Committee as Shareholder are likely to require formal company approval at general meetings; and, where the LATC is owned by a number of authorities, that such decisions will not be at the sole (pre-decision) discretion of the Sub-Committee.

8. RELEVANT CONSIDERATIONS

8.1 The terms of reference for the Sub-Committee are set out in section 5.11 of the Council's Constitution and are reproduced in Appendix A for ease of reference. These are considered self explanatory, but will be easier to understand in the context of specific trading company proposals and draft memorandum and articles of association. The overall spirit of the Terms of Reference is that the Sub-Committee shall consider all those matters that relate to the Council's ownership or potential ownership in wholly or partly owned local authority companies. Given that the Terms of Reference were based on examples found in other authorities, it will of course be necessary to keep these under review as the Council's involvement in such companies develops. In this regard proposals will be put to Full Council in the April 2018 Constitution Review report to amend the Terms of Reference so as to clarify the proactive approach of the Sub-Committee in considering matters relevant to local authority companies prior to the establishment of the relevant company.

8.2 As stated in section 7 above and the explanation that was provided to Full Council on 11 April 2017 there are elements of the decision making around trading companies which are not the responsibility of the Sub-Committee. Cabinet's terms of reference include the following which was added in the 2017 constitution review:-

5.6.34 To agree to the establishment or wind up of a Council wholly or partly owned Local Authority Company, and to approve investment, loans, resource arrangements and asset transfers, act as corporate shareholder, save as otherwise delegated to the Cabinet Sub-Committee (Local Authority Trading Companies' Shareholder), Executive Members or Officers under the Sub-Committee terms of reference.

8.3 As stated in section 7 above there will be many decisions that are the responsibility of the directors who are appointed to manage the company. The role of the Sub-Committee is to maintain an oversight on the company and to take ownership decisions, as defined within the memorandum and articles of association establishing the company. Those areas of responsibility could in theory be different from company to company but in practice are likely to be broadly similar. Members will be fully aware of the need for a trading company to be 'light on its feet' and be able to make commercial decisions quickly (ie 'act commercially'), without local authority processes unnecessarily slowing down those decisions. Therefore it is anticipated that the emphasis will be on delegating decisions to the directors wherever it is sensible to do so.

8.4 As part of the Executive, the Sub-Committee is of course subject to the normal scrutiny rules, including call in.

9. LEGAL IMPLICATIONS

9.1 None, other than those set out in the report. Specific legal implications of each trading company will vary depending upon the nature of the commercial activity and will therefore need to be considered on a case by case basis.

10. FINANCIAL IMPLICATIONS

10.1 None directly relevant to this report. Specific financial implications of each trading company will vary depending upon the nature of the commercial activity and will therefore need to be considered on a case by case basis.

11. RISK IMPLICATIONS

11.1 None directly relevant to this report. Specific risk implications of each trading company will vary depending upon the nature of the commercial activity and will therefore need to be considered on a case by case basis.

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. There are no equalities implications in this report.

13. SOCIAL VALUE IMPLICATIONS

13.1 The Social Value Act and "go local" policy do not apply to this report.

14. HUMAN RESOURCE IMPLICATIONS

14.1 The staff resource required to support commercial trading activity will need to be incorporated into department work plans and the business plans of the commercial activities being investigated. The senior management restructure proposals currently being consulted on include a proposal for a Service Director – Commercial role, an entirely new role created as a focus for the Council's increased appetite in commercially orientated opportunities and a lead for project governance and delivery. The role will be focussed on delivering and developing a range of commercial opportunities, although it is not intended that all of the Council's commercial activities

are the responsibility of this area, as the other service directors will also have the requirement to identify and increase income within their areas of responsibility. In all cases we will need to review the capacity and skills of staff to deliver commercial opportunity projects.

15. APPENDICES

- 15.1 Appendix A – extract from Council Constitution setting out Sub-Committee terms of reference.

16. CONTACT OFFICERS

- 16.1 Anthony Roche, Deputy Chief Executive
anthony.roche@north-herts.gov.uk; ext 4588
- 16.2 Ian Couper, Head of Finance, Performance and Asset Management
ian.couper@north-herts.gov.uk; ext 4243
- 16.3 Reuben Avayoo, Senior Corporate Policy Officer
reuben.avayoo@north-herts.gov.uk; ext 4212
- 16.4 Marie Searle, Property Lawyer
marie.searle@north-herts.gov.uk; ext 4315
- 16.5 Kerry Shorrocks, Corporate Human Resources Manager
kerry.shorrocks@north-herts.gov.uk; ext 4224

17. BACKGROUND PAPERS

- 17.1 None.