

CABINET SUB-COMMITTEE
(Local Authority Trading Companies' Shareholder)
21 July 2023

PART 1 – PUBLIC DOCUMENT

TITLE OF REPORT: HERTFORDSHIRE BUILDING CONTROL – Amendments to Shareholder Agreement

REPORT OF: SERVICE DIRECTOR: REGULATORY

EXECUTIVE MEMBER: PLANNING & TRANSPORT

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

1. EXECUTIVE SUMMARY

To seek approval from the Cabinet Sub-Committee acting as the Council's shareholder representative in the Hertfordshire Building Control Consortium of companies, for the amendments to the Shareholder Agreement and authority to the Service Director for Legal & Community to execute the amended Agreement.

2. RECOMMENDATIONS

- 2.1. That the Cabinet Sub-Committee considers the contents of this report and having done so agrees to the proposed amendments to the Shareholder Agreement.
- 2.2. Delegates any action required to complete the proposed amendments to the Shareholder Agreement, to the Service Directors for Regulatory and Legal and Community on behalf of the Council as shareholder.
- 2.3. Authorises the Service Director: Legal & Community to execute the final amended Shareholder Agreement.

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. The Shareholder's Agreement was executed in 2016, the only change since then has been the addition of Dacorum Borough Council as an equal shareholder, in 2019. The proposed amendments are supported by the other 7 shareholders following discussion and external expert legal advice and are considered reasonable; therefore, no other alternative options are proposed within 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 does not contain a recommendation on a key Executive decision and has therefore not been referred to in the Forward Plan.

7. BACKGROUND

- 7.1 Cabinet Sub-Committee members are aware 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 deliver 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 delivers 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. Agreements were initially executed on or around August 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 In March 2023 the Cabinet Sub-Committee approved the '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. Also, a new rolling contract term with Hertfordshire Building Control Ltd to provide Building Control functions on behalf of the Council.
- 7.5 The Council is represented by the Service Director: Regulatory as the Shareholder representative and the Service Director: Enterprise as a Director of the companies.

8. RELEVANT CONSIDERATIONS

- 8.1. Prior to the March 2023 Sub Committee meeting, the Board and Shareholder representatives had over the previous months been considering the required amendments to the Inter Authority Agreement and the Service Agreement. These discussions had been supported by expert external legal advisors, Trowers & Hamblins LLP, who supported and advised on the original business plan and legal documentation for the consortium in 2014.
- 8.2. At that time the remaining key legal document, the Shareholder Agreement, was also reviewed by the Shareholders/Representatives. As a result of that review recommendations were made which were subsequently supported by the Board and all the Shareholders/Representatives, this decision was made with the support of the

external legal advisors. The Heads of Finance and Legal for each authority have also considered the proposals.

- 8.3. The key amendments relate to the **existing** Reserved Matters decision making are as follows (key amendments in **bold and underlined**, key deletions are also indicated with a double strike through):

8.3.1 Unanimous Shareholder Decisions:

The following matters require the prior written consent of all Shareholders:

- i. altering in any respect its articles of association or the rights attaching to any of its shares;
- ii. permitting the registration of any person **(including a legal or natural person, partnership, trust, company, government or focal authority department or other body (whether corporate or unincorporate),** as a member of the Company other than **an existing** Shareholder and/or any permitted transferees;
- iii. issuing or allotting any shares;
- iv. borrowing any monies (other than normal trade credit);
- v. changing the nature of the Business or commencing any new business by any Group Member which is not ancillary or incidental to the Business;
- vi. forming any Subsidiary Undertaking or acquiring shares in any other company or participating in any partnership or joint venture (incorporated or not);
- vii. amalgamating or merging with any other company or business undertaking;
- viii. creating or granting any Security Interest over the whole or any part of its business, undertaking or assets or agreeing to do so;
- ix. making any loan (otherwise than by way of deposit with a bank or other institution the normal business of which includes the acceptance of deposits) or granting any credit (other than in the normal course of trading) or giving any guarantee or indemnity, **save for staff incentive schemes (which does not include loans to individuals to help them with their living expenses) approved by the Company's Board (and limits on the aggregate liability of these staff incentive schemes to be also set by the Board); and**
~~x. declaring or paying any dividend~~

- x. making any bonus payment to any Director ~~or~~
- xi. ~~entering into any agreement to do any of the foregoing.~~

8.3.2 75% Shareholder Decisions:

~~Each Shareholder shall take all such steps and do all such acts and things as may be necessary or desirable, including, without limitation, exercising all voting and other rights and powers of control available to it in relation to the Company, so as to procure (insofar as it is able to do so by the exercise of those rights and powers) that at all times during the term of this Agreement no action shall be taken or resolution passed by the Company or any Subsidiary Undertaking of the Company in respect of any of the following matters except with the prior written consent of Shareholder(s) who together control not less than 75% of the votes that could be cast in a general meeting of the Company:~~

The following matter require the prior written consent of at least 75% (rounded up) of all Shareholders:

- xii. changing the name of the Company or its registered office **unless the registered office address is to another in Hertfordshire (when this will be a Board responsibility to agree);**
- xiii. making any acquisition or disposal of any asset(s) by way of a transaction or series of transactions with a value in excess of £50,000.
- ~~xiv. **dismissing any director;**~~
- xiv. establishing or amending any profit-sharing, share option, bonus or other incentive scheme of any nature for directors; **and**
- xv. agreeing to remunerate (by payment of fees, the provision of benefits-in-kind or otherwise) any director of ~~or consultant to~~ of the Company at a rate in excess of £50,000 per annum or increasing the remuneration of any such person to a rate in excess of £50,000 per annum, ~~or~~
- ~~xvi. **entering into an agreement to do any of the foregoing.**~~

8.4 Two new forms of simple / Board decision making were proposed to be included/ moved within those areas of the Shareholder Agreement. These are considered matters where a simple majority is appropriate or where the Board should be the decision maker to ensure business continuity such as with the employment of specialist or temporary staff:

8.4.1 **Simple Majority Shareholder Decision**

The following matters require prior written consent of a simple majority of Shareholders:

- xvii. **declaring or paying any dividend; and**

- xviii. dismissing any Director for any reason, save that each Shareholder is entitled to remove its appointed Director in accordance with the Company's articles of association. In dismissing a Director the Shareholders agree to follow the protocol set out in Schedule 2 or as that protocol may be amended by the Shareholders in writing from time to time.

8.4.2 Board Decision

The following matter shall no longer require the consent of Shareholders and shall instead be a matter for the Board to determine:

- xix. agreeing to remunerate (by payment of fees, the provision of benefits-in-kind or otherwise) any consultant to the Company at a rate in excess of £50,000 per annum or increasing the remuneration of any such person to a rate in excess of £50,000 per annum.

- 8.5 There is also a Reserve Matters protocol included within a Schedule to the effect:

In circumstances where a Board decision requires shareholder approval pursuant to the Reserved Matters, each Shareholder undertakes to use all reasonable endeavours to respond to the Company within 14 days of a notification of a decision being required of them. In circumstances where 14 days have elapsed, the Managing Director of the Company shall meet with a senior officer the shareholder in order to resolve any outstanding matter that is preventing a decision being made.

- 8.6 In addition to the above, there are a number of other associated amendments require:
- Termination of the original Shareholder Agreement albeit restatement of the form of the Agreement (so that does not affect any pre-existing rights or obligations);
 - Protocols for the removal of directors (with the Chair of the Board meeting with the director concerned and the local authority representative proposing removal) and reserved matters (with regard response times to these matters);
 - Acknowledgement of the Procurement Bill;
 - Dispute resolution provisions; and
 - Typographical and formatting.

- 8.7 The Sub-Committee is recommended to approve the amendments, noting, as indicated that they have been agreed in principle by the Board and redrafted with the assistance of the relevant internal legal staff, by external lawyers. It is proposed that any consequential actions required (minimal anticipated at this stage), be in any event delegated to the relevant Service Directors.

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:

(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 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.

9.3 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.

10. FINANCIAL IMPLICATIONS

10.1 There are no direct financial implications (either revenue or capital, nor any relevant subsidy) arising from this report. The costs of the external legal advice were covered by the company.

11. RISK IMPLICATIONS

11.1. There are no specific risks identified and expert legal advice has been provided on the proposed amendments.

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. There are no direct equality implications from the decision in this report.

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 Each authority provides an officer as a shareholder/representative, director and commissioning panel member, for North Herts the shareholder representative and commissioning panel member are the same officer.

16. APPENDICES

16.1 None.

17. CONTACT OFFICERS

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18. BACKGROUND PAPERS

18.1 Confidential legal advice from Trowers as the shareholder agreement (subject to Part 2 regulation 5 exemption if requested).