

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

**20 SEPTEMBER 2019**

**PART 1 – PUBLIC DOCUMENT**

**TITLE OF REPORT: BUILDING CONTROL COMPANY – DACORUM BOROUGH COUNCIL JOINING AS A SHAREHOLDER.**

REPORT OF THE SERVICE DIRECTOR - REGULATORY

EXECUTIVE MEMBER: PLANNING & TRANSPORT

COUNCIL PRIORITY: RESPONSIVE AND EFFICIENT

**1. EXECUTIVE SUMMARY**

1.1 The Council delivers its statutory building control service through a collaborative arrangement with 6 other Hertfordshire authorities. This arrangement is through a limited company called Hertfordshire Building Control Limited (HBC). The business case upon which the Council made its decision to join the collaborative arrangement established the principle of the three other Hertfordshire authorities (Dacorum, Watford and St.Albans) joining at a later date. This report provides an update with regard Dacorum Borough Council's current position.

**2. RECOMMENDATIONS**

That the Cabinet Sub-Committee:

- 2.1. considers the information in the Part 2 report; and having done so
- 2.2. confirms the shareholder consent to Dacorum Borough Council to join HBC; and
- 2.3. delegates the agreeing of any amendments to the relevant documentation, on behalf of the Council as shareholder to the Service Directors for Regulatory and Legal & Community.

**3. REASONS FOR RECOMMENDATIONS**

3.1. To enable HBC to proceed with Dacorum Borough Council becoming part of HBC.

**4. ALTERNATIVE OPTIONS CONSIDERED**

4.1. Shareholder consent could not be given; however it is considered that this goes against the principle of the original business case and the original concept of a single Hertfordshire building control delivery vehicle.

## **5. CONSULTATION WITH RELEVANT MEMBERS AND EXTERNAL ORGANISATIONS**

- 5.1. The Executive Member and Deputy for Planning and Transport have been briefed with regard the proposal. The Shadow Executive Member has also been made aware.

## **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 may be aware of much of the background to the collaboration of 7 Hertfordshire local authority building control services (Stevenage, Hertsmere, Three Rivers, North Herts, East Herts, Welwyn Hatfield and Broxbourne). The 7 authorities currently deliver their statutory building control services through a single trading company known as Hertfordshire Building Control Limited. The company is a wholly owned local authority company with each authority holding an equal share, as they also do in the holding company Broste Rivers Limited and The Building Control Company (Hertfordshire) Limited (TBCC) which delivers the commercial aspect of the building control service. All three companies being incorporated on 4 February 2016.
- 7.2 Reports were presented to Cabinet in August 2014, March and December 2015 with a final report in November 2017. Finance, Audit and Risk also received a report in December 2015. The business case was first presented to Cabinet in March 2015, with material changes to the business case being reported in November 2017. Delegated authority being given to continue with the project in accordance with the principles of the business case.
- 7.3 Whilst the collaboration was initially open to all 10 Hertfordshire local authorities, three chose not at the time to participate. However, the principle of their possible future participation was included within the business case:

*The three remaining authorities (St. Albans, Watford and Dacorum) are aware of the project but do not wish to participate at this time. Should that position change it is expected that there could be options for them to participate at a later stage, although at a less advantages rate.*

Both the Project Board at the time and the Board of Directors have at various times discussed approaches from other local authorities expressing an interest in joining the collaboration. There are provisions within the Agreements for additional Local Authorities to join the company/ become shareholders. Most recently Dacorum Borough Council has requested to join as an equal shareholder.

## **8. RELEVANT CONSIDERATIONS**

- 8.1 Dacorum Borough Council's building control service is experiencing a number of resilience issues that initially led in 2013 to the Chief Executive of Three Rivers District Council approaching other Hertfordshire Chief Executives to seek to explore a wider collaboration in service delivery.

- 8.2 In a part 1 report to their Cabinet on 25 June 2019 Dacorum officers identify that *the commercial environment within which DBC has to operate its in-house Building Control service is one of increasing competition from the private sector and high professional staff costs. This has caused service resilience problems and makes the cost of running the service unsustainable to the Council.* These comments reflect those of NHDC officers in their own Cabinet reports.
- 8.3 At their June 2019 meeting Dacorum's Cabinet resolved:
1. *That Cabinet agrees, in principle, the proposals set out in this report for the transfer of the Council's Building Control Services to Hertfordshire Building Control Ltd.*
  2. *That further work is carried out by Officers to complete the technical, contractual and administrative arrangements for the transfer of the Council's Building Control Services to Hertfordshire Building Control Ltd.*
  3. *That, once the due diligence and work outlined in recommendation 2 above is completed, the final proposals are referred to Cabinet and Council with the recommendation to transfer of the Council's Building Control Services to Hertfordshire Building Control Ltd.*
- 8.4 It is understood that Dacorum will at their Cabinet on 10 September and their Full Council on 18 September 2019 debate the matter further and come to a final resolution. Officers will brief the Executive Member and Deputy prior to the Cabinet Sub-Committee meeting and provide a verbal update at the meeting.

## **9. LEGAL IMPLICATIONS**

- 9.1. 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:
- 7.1.3 Issuing or allotting any shares;
  - 7.1.7 Amalgamating or merging with any other company or business undertaking;
  - 7.1.8 Creating or granting any Security Interest over the whole or any part of its business, undertaking or assets or agreeing to do so.
- Potentially the inclusion of a new Local Authority would fall under these provisions, as the associated Agreements (Services, Shareholder and Loan) would have to be amended as a result. Dacorum will become an equal shareholder of Broste Rivers Ltd as the holding company and therefore an equal shareholder of the HBC and TBCC.
- 9.2 Under 14.6.11 (b) (i) of the Council's Constitution the Service Director – Regulatory has delegated powers with regard Building Control including all activities relating to discharge of the Council's function as the Local Building Regulation Authority.
- 9.3 Under 5.11 of the Council's Constitution the roles and functions of the Cabinet Sub-Committee (Local Authority Trading Companies' Shareholder) are:
- (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.

## **10. FINANCIAL IMPLICATIONS**

- 10.1 The set up costs for the project initiation were met by the East of England Local Government Association with NHDC and the other 6 authorities contributing a further £39k towards the project costs. Further set up costs were provided as a loan to company. The proposal is that Dacorum will pay £154k to purchase a 1/8th share, this payment will be shared between the current 7 shareholders so each will receive £22k. The exact nature of the transaction needs to be determined, and may be subject to tax. However in principle this will reduce the set-up costs for the original 7 partners down to £17k. This means that Dacorum will be paying a significant premium as they will be gaining from joining an established company.
- 10.2 The part 2 report details the expected impact on the profitability of the company, as this contains commercially confidential information.

## **11. RISK IMPLICATIONS**

- 11.1 Incorporating Dacorum as a shareholder gives the potential for business growth and further spreading of costs, which should support resilience and profitability. However, even with the due diligence that has been carried out by the Directors, there is some risk with any business growth.

## **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 move to provide building control services in a more commercial/cost effective manner could positively impact the cost/service delivered to customers in the longer term; the proposals also create greater opportunity for development of staff within our existing building control service than would otherwise exist.

## **13. SOCIAL VALUE IMPLICATIONS**

- 13.1. The Social Value Act and “go local” requirements do not apply to this report.

## **14. HUMAN RESOURCE IMPLICATIONS**

- 14.1. There are no direct human resource implications arising from this report for NHDC.

## **15. APPENDICES**

- 15.1. None.

## **16. CONTACT OFFICERS**

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**17. BACKGROUND PAPERS**

17.1 <https://democracy.dacorum.gov.uk/ieListDocuments.aspx?CId=157&MId=2125>  
Minutes of Dacorum Borough Council Cabinet meeting 25 June 2019

17.2 <https://democracy.dacorum.gov.uk/ieListDocuments.aspx?CId=157&MId=2127>  
Papers of Dacorum Borough Council Cabinet meeting 10 September 2019