

Meeting of:	<b>Council</b>
Date of Meeting:	<b>Monday, 09 December 2019</b>
Relevant Scrutiny Committee:	Corporate Performance and Resources
Report Title:	Review of the Council's Constitution
Purpose of Report:	To seek Council approval for an addition to the Council's Constitution to include the Catering LATC Shareholder Committee terms of reference
Report Owner:	Report of the Leader
Responsible Officer:	Trevor Baker
Elected Member and Officer Consultation:	This report does not require Consultation
Policy Framework:	This is a matter for decision by Full Council
<p>Executive Summary:</p> <p>A request for Council approval to make an addition to the Council's Constitution to include reference to the establishment of a Shareholder Committee (Catering LATC – “The Big Fresh Catering Company”) and its terms of reference.</p>	

## **Recommendation**

1. THAT an addition be made to the Council's Constitution under Section 13 to include reference to the establishment of a Shareholder Committee in respect of the Local Authority Trading Company ("LATC") 'The Big Fresh Catering Company' and applicable Terms of Reference as detailed in the report at paragraph 2.6.

## **Reason for Recommendation**

1. Following on from Cabinet's decision that a Shareholder Committee be established to update Section 13 of the Council's Constitution to include reference to the establishment of the Shareholder Committee of the Local Authority Trading Company ("LATC") 'The Big Fresh Catering Company and applicable Terms of Reference.

## **1. Background**

- 1.1 The Constitution remains under review on an ongoing basis. An addition is required to the Council's Constitution to reflect the establishment of a Shareholder Committee of the Council's first Local Authority Trading Company ("LATC") 'The Big Fresh Catering Company which has been established to specifically discharge the shareholder functions on behalf of the Council as sole shareholder of the LATC. This addition is being reported to Council so that Council can provide approval for this addition to be made to Constitution.

## **2. Key Issues for Consideration**

- 2.1 The establishment of a Shareholder Committee in respect of the Council's first LATC 'The Big Fresh Catering Company' requires an addition to be made to the Council's Constitution to ensure that the existence of the Shareholder Committee and its Terms of Reference is referenced within the Constitution.
- 2.2 For Members' information the purpose of and a 'shareholders' key role is to ensure that directors of the LATC do not exceed their powers with clear parameters set between the Shareholder Committee and the directors of the LATC, how they will interact in exercising their respective powers and responsibilities in accordance with legislation and the documents which govern the LATC. Decisions made by the Shareholder Committee on behalf of the Council will be distinct from those decisions made by the directors of the LATC. A scheme of delegation will set out those matters provided for in the LATC'S Articles of Association.
- 2.3 The Shareholder Committee will be empowered to consider the options available to the LATC for improving its performance or mitigating adverse consequences in

light of actual or reasonably anticipated circumstances and offer non-binding proposals, recommendations, and opinions which will be without liability on the part of the Council proposals, recommendations and opinions, without liability on the part of the Council or any individual member on any matter affecting the Council as a shareholder in the LATC.

- 2.4 The Shareholder Committee may take into consideration solely the interests of the Council in giving any proposals, recommendations or opinion. All decision-making regarding business development and any consideration of commercial investment opportunities which may arise, would be a matter for the Board of Directors of the LATC.
- 2.5 The Council as the sole shareholder of the LATC is required to approve any decisions that have an impact on the shareholder's rights. The day to day operation of the LATC, development and new business opportunities, staff terms and conditions, and the development of internal procedures, will be the responsibility of the LATC's Board of Directors and are detailed in the proposed Articles of Association.
- 2.6 The Shareholder Committee will meet at least once a year and receive an annual report and business plan and annual accounts from the LATC, but otherwise meetings will be called on an "as and when required" basis to deal with company business. The Director of Resources and the Deputy Leader of the Council/ Cabinet Member for Regeneration and Education shall be the Chairman and Vice-Chairman respectively of the Committee and will be advised by a Shareholder Advisory Panel, consisting of Council Officers.
- 2.7 The Council's Constitution will be amended to include reference to the fact of the establishment of a Shareholder Committee in respect of the Council's LATC 'The Big Fresh Catering Company' and the applicable Terms of Reference as set out below:

'Shareholder Committee - Council's LATC - 'The Big Fresh Catering Company'

To exercise the function of the Council as shareholder as stipulated by relevant legislation including the Companies Act 2006 and associated statutory guidance.

**TERMS OF REFERENCE LATC 'THE BIG FRESH CATERING COMPANY':**

The Shareholder Committee has authority to undertake all the functions of the Council as shareholder under the Companies Act 2006, and all relevant legislation and associated guidance in respect of its shareholder duties including but not limited to the following matters:

- To determine any shareholder agreement between the Council and the company;
- To agree any reserved matter required by the Articles of Association or Shareholder Agreements. Shareholder reserve powers are any or all powers of the directors (or any of them) as restricted in such respects, to such an extent and for such a duration

as the Controlling Shareholder may from time to time, by notice in writing to the LATC prescribe.

- To exercise control as owners of the company for the development of the company's strategic direction; business plan and other matters;
- To meet at least once a year and receive an annual report and business plan from the company and to consider the annual audited accounts for consideration and approval including any financial plan for the coming year with cash flow and forecast;
- To agree the operational and financial parameters of the company as required by the Articles of Association including any services to be traded by the company during the coming financial year;
- To determine any guidance, note for duties of directors (including conflicts of interests)
- To approve and adopt any conflict of interest policy for the Committee;
- To make decisions that only the Council as shareholder can make by law e.g. altering a company's Articles of Association and using, where applicable the written resolution procedure to do so, as prescribed by the Companies Act 2006. Unless it has been set out in, or is ancillary or conducive towards doing anything in, the LATC's then current business plan, the directors and/or the LATC may not do anything other than in the ordinary course of business, without the prior written consent of the Controlling Shareholder as required by the LATC's Articles of Association.
- To appoint and dismiss directors of the Company (where power to do so is reserved to the shareholder). As required by the Articles of Association the Controlling Shareholder is required to appoint the Managing Director of the LATC, and appoint and remove as appropriate, the Council Officer, the Council Councillor, and Expert Director in accordance with the LATC's Articles of Association.
- To appoint and remove any Company Secretary appointed and Auditor;
- To ensure that the company does not lose its status as a "Teckal" compliant company within the meaning of the legislation and regulations in force or as amended from time to time;
- To agree any loan agreements or draw-down of Council financing (subject to funds being made available by the Council and any previous authorised delegations);
- To provide annual updates to the Learning and Culture Scrutiny Committee. Part of the role of the Shareholder Committee will require it to ensure that the financial and propriety controls that apply to local authority-controlled companies as set out in the Local Government and Housing Act 1989 will need to be complied with. This and other matters will be monitored by the Shareholder Committee and reported on for scrutiny to the relevant Scrutiny Committee.

### **3. How do proposals evidence the Five Ways of Working and contribute to our Well-being Objectives?**

- 3.1** The addition of the fact of the establishment of a Shareholder Committee to be referenced in the Council's Constitution directly contributes to the long-term future by ensuring that the Council's Constitution continues to operate with full effect.
- 3.2** The addition of the fact of the establishment of a Shareholder Committee also contributes to the prevention of the Constitution becoming obsolete or non-effective in achieving its aims and principles.
- 3.3** The Shareholder Committee's Terms of Reference directly contributes to the long-term future by ensuring that the Council's Constitution continues to operate with full effect.
- 3.4** The Shareholder Committee Terms of Reference also contributes to the prevention of the Constitution becoming obsolete or non-effective in achieving its aims and principles.

### **4. Resources and Legal Considerations**

#### **Financial**

- 4.1** There are no financial implications as a direct result of this report.

#### **Employment**

- 4.2** There are no employment implications as a direct result of this report.

#### **Legal (Including Equalities)**

- 4.3** The Council is required to comply with the Local Government Act 2000 and subordinate legislation in the drawing up and subsequent operation of the Constitution. Section 15 of the Local Government and Housing Act 1989 does not apply to the Shareholder Committee and therefore it is not necessary for the membership of the Committee to be proportionate to the political makeup of the Council.

### **5. Background Papers**

The Council's Constitution.