

**Report to CABINET**

## **Unity Partnership Shareholder Committee: Cabinet Sub-Committee - Appointment of Members**

**Portfolio Holder:** Councillor Sean Fielding, Leader of the Council

**Officer Contact:** Elizabeth Drogan, Head of Democratic Services

**Report Author:** Lori Hughes, Constitutional Services Officer

**22<sup>nd</sup> June 2020**

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### **Reason for Decision**

To appoint Cabinet Members onto the Shareholder sub-committee.

### **Recommendations**

That the Cabinet appoints Members of Cabinet to sit on the Shareholder Committee, with full delegated powers in relation to any matter to consider the interests of the Council following the acquisition of the Unity Partnership Ltd.

**Unity Partnership Shareholder Committee Appointment of Members:  
Cabinet Sub-Committee**

**1 Background**

- 1.1 At its meeting on 22<sup>nd</sup> October 2018, the Cabinet approved the terms of reference for the Unity Partnership Shareholder Committee and appointed and appointed four Members to sit on the Sub-Committee.
- 1.5 The Sub-Committee is supported by officers of the Council, including the Section 151 Officer (Director of Finance) and the Monitoring Officer (Director of Legal Services), or their designated officers
- 1.6 The Shareholder Committee meets at least quarterly and receives detailed and comprehensive information and briefings to support their decision-making. The extent of the role of the Shareholder Committee in decision-making depends upon the Council's shareholding, and upon terms included in the company's articles of association, or in the other contractual documents
- 1.7 The Council's Performance and Value for Money Select Committee has a scrutiny function in the relation to the decision-making of the Shareholder Committee and in respect of the performance of the Company, for which the Council is the sole shareholder.
- 1.8 The Shareholder Committee is a sub-committee of Cabinet and has the following high level remit and responsibilities:
- Represents the Shareholder (the Council) and will meet quarterly.
  - Sets the tone and direction of the company to ensure that it fully supports the Council's co-operative agenda.
  - Considers significant company resource issues.
  - Sanctions/approves decisions taken by the Unity Partnership Ltd Board of Directors and is able to call on the company Managing Director and members of the Unity Partnership Board to discuss specific items.
  - Determines "reserved matters".
  - Approves a waiver of any conflicts of interest relating to the Unity Partnership Ltd Board of Directors.
  - Grant an indemnity to all Members and Officers acting as Directors on the company Board.

**3 Options/Alternatives**

- 3.1 Two options are presented in relation to this matter. The two options are:
- Option 1 – Appoint Members to sit on the Sub-Committee.
  - Option 2 – Do not appoint Members to sit on the Sub-Committee. The Council would need to consider an alternative method by which the Council would exercise its controlling interest in the Unity Partnership Ltd.

**4 Preferred Option**

- 4.1 The preferred option is that the Cabinet appoints Cabinet Members to the Shareholder Committee.

**5 Consultation**

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5.1 N/A

## 6 **Financial Implications**

6.1 There are no additional financial implications arising from the matters contained in this report. (Mark Stenson)

## 7 **Legal Services Comments**

7.1 In establishing a local authority controlled company, the Council has to ensure that it exercises control over the company so that the company can take advantage of the "Teckal" exemption granted by case law. The key requirements which need to be met include:

- The contracting local authority must exercise sufficient control over the separate entity (with the test applied being that the control should be similar to that which the contracting authority exercises over its own departments); and
- The separate legal entity must carry out the essential part of its activities for its owner authority/ies ("the essential activity test").

7.2 The Teckal exemption has now been codified into law under Regulation 12 Public Contracts Regulations 2015. The Regulation has clarified the requirement that the company carries out the essential part of its activities for the local authority owner and confirmed that at least 80% of its activity must be for that authority.

7.3 Case law has further clarified some key points around Teckal compliance based upon court judgments:

- The Council has the power to issue directions to the LATC on "strategic matters or important issues of policy".
- If the articles of the LATC say that non-authority board members could be appointed, the Council must retain the express right to remove any such directors at any time.
- The constitution of the company must consider the level of autonomy of the board and the authority must have the power to exert control over the LATC.
- That the local authority holds all of the share capital in the company will usually (but not always) be indicative of control.

7.4 The establishment of and appointment of Members to a Shareholder Committee for the purposes set out in the body of the report, (Elizabeth Cunningham Doyle)

## 8 **Cooperative Agenda**

8.1 N/A.

## 9 **Human Resources Comments**

9.1 N/A.

## 10 **Risk Assessments**

10.1 The Council needs to manage its interest of being the Company Owner. It has decided to do this by creating a Shareholder Committee with different representatives to the Company Directors for this Council owned company. (Mark Stenson).

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- 11 **IT Implications**
  - 11.1 N/A.
  - 12 **Property Implications**
  - 12.1 N/A.
  - 13 **Procurement Implications**
  - 13.1 N/A.
  - 14 **Environmental and Health & Safety Implications**
  - 14.1 N/A.
  - 15 **Equality, community cohesion and crime implications**
  - 15.1 N/A.
  - 16 **Equality Impact Assessment Completed?**
  - 16.1 N/A.
  - 17 **Key Decision**
  - 17.1 N/A.
  - 18 **Forward Plan Reference**
  - 18.1 N/A.
  - 19 **Background Papers**
  - 19.1 None
  - 20 **Appendices**
  - 20.1 None
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