

<b>Report to:</b>	Strategy and Resources Committee	<b>Date:</b>	29 October 2018
<b>Report title:</b>	Constitutional Updates Report		
<b>Report from:</b>	Jessica Crowe, Monitoring Officer		
<b>Ward/Areas affected:</b>	Borough-wide		
<b>Chair of Committee/Lead Member:</b>	Councillor Ruth Dombey, Chair		
<b>Author(s)/Contact Number(s):</b>	Fiona Bywaters, Committee Services Team Leader, 0208 770 5122		
<b>Corporate Plan Priorities:</b>	<ul style="list-style-type: none"> <li>• Making Informed Choices</li> <li>• Smarter Ways of Working</li> </ul>		
<b>Open/Exempt:</b>	Open		
<b>Signed:</b>	 Jessica Crowe Assistant Director - Customers, Commissioning and Governance	<b>Date:</b>	12 October 2018

## 1. Summary

- 1.1 This report reviews the terms of reference of the Sutton Shareholdings Board for the efficient and effective oversight of council interests in companies and decision-making in relation to matters reserved to the Council as shareholder.
- 1.2 Additionally, the report also recommends that the number of substitutes across the committees is increased to two for the Sutton Independent Residents, a matter reserved to Full Council.

## 2. Recommendations

The Strategy and Resources Committee is recommended to:

### Governance Arrangements

- 2.1 Recommend the Sutton Shareholdings Board's amended terms of reference to Council as a constitutional amendment detailed in Appendix A.
- 2.2 Recommend to Council that authority be delegated to the Monitoring Officer to make any consequential amendments to the Council's Constitution arising from these recommendations.

### Committee Substitutes: Sutton Independent Residents



- 2.3 Recommend to Council that the number of substitutes for committees for the Sutton Independent Residents is increased to two.

### 3. Background

- 3.1 The Sutton Shareholdings Board (formerly '*Opportunity Sutton Ltd Sub Committee*') is a sub-committee of the Strategy and Resources Committee and comprises five elected members. In February 2018, the Sutton Shareholdings Board established a Task and Finish Group to examine governance issues and options for council interests in companies. The group met on two occasions, with council officers and company directors invited to contribute, and the discussions at those meetings informed a report to the Sutton Shareholdings Board on 12 September 2018. The Board recommended to the Strategy and Resources committee that its amended terms of reference be recommended to full council and delegated authority given to the Monitoring Officer for any consequential amendments resulting from these constitutional changes.

### 4. Issues

#### Sutton Shareholdings Board - Amended Terms of Reference

- 4.1 Considering the need for companies to have freedom to operate effectively in a commercial environment against the requirement to exercise control in the decision-making process, the Task and Finish Group recognised that flexibility, and a means of determining reserved matters outside of the committee cycle, was required. Following discussion and feedback, the following mechanism is proposed for inclusion in the Sutton Shareholdings Board's terms of reference:
- Where decisions reserved to the sub-committee cannot wait until the next biannual meeting, a nominated Chief Officer would be authorised, subject to the concurrence of the Chair or, in his/her absence, the Vice-Chair of the Shareholdings Board, to perform all functions within the powers and duties of that sub-committee in any case in which the prompt exercise of the Council's functions as shareholder is desirable and necessary.
  - Authority would be exercised following consultation of at least one member of each group proportionally represented in the membership of the sub-committee.
  - Decisions would be reported through records of decision, as per the current constitutional scheme of delegation, and published online in the interests of openness and transparency.
- 4.2 Some reserved matters however, will remain only for decision by the shareholder board meaning they cannot be determined by the shareholder representative under the mechanism outlined above. These are key matters requiring member oversight and scrutiny and are outlined in the terms of reference (Appendix A) as any reserved matter pertaining to the:
- Annual business plan (adopt or amend);
  - Annual report and accounts;



- Change of auditor;
- Dismissal of director;
- Engaging in any business other than as contemplated by the business plan;
- Formation of a subsidiary;
- Listing or trading of shares;
- Variation of the rights attached to shares;
- Winding up or administration.

#### Sutton Independent Residents substitute places

- 4.3 The Sutton Independent Residents group have requested that the number of substitutes they are allocated for committees is increased from one to two. This request has been made to ensure the group have adequate cover to attend meetings in the event the named committee member is unable to attend.

### **5. Options Considered**

#### Sutton Shareholdings Board - Amended Terms of Reference

- 5.1 The Sutton Shareholdings Board considered two alternative models:

- An officer shareholder representative and working party shareholder board where the shareholder board would be established as a working party by the Strategy and Resources committee in lieu of the current sub-committee arrangements. Authority to act as the shareholder representative would sit with a Chief Officer alone rather than the Shareholder Board (of which the officer would be a member). The shareholder board instead plays a consultative or advisory role in the making of decisions and meetings are held in private (though *can* be held in public if desired).

This was not proposed as a preferred option due to preference for a formal sub-committee model where members retain the principal decision-making power, rather than a senior officer, as well as practicalities in calling effective working party meetings at short notice. Advantages of the proposed consultative mechanism involve remote communication in determining reserved matters.

- A hybrid model: sub-committee and consultative working party mechanism where aspects of the working party and formal sub-committee models are combined. Decision-making authority remains with the formal sub-committee with delegation to a chief officer to take decisions outside of the meeting cycle at a private meeting of a consultative working party. This would permit discussions in person, aiding openness and transparency, with a reduced summons length than that required for a committee.

This was not selected as the preferred option: decisions made between meetings *could* involve face-to-face consultation in a meeting without the need to establish a working party.

### **6. Impacts and Implications**



Financial

- 6.1 There are no direct financial implications arising from the report, though the proposed changes to the Sutton Shareholdings Board Terms of Reference will enable the Council to operate more effectively in its Shareholder role. The oversight of business plans, annual accounts and regular financial reporting will enable the Council to manage its investments in Council owned companies and have greater visibility of risk.

Legal

- 6.2 The reserved matters contained in the Shareholders Agreements for each of the companies that have been set up by the Council, still remain reserved to the sub-committees. As has been stated above, the delegation to a nominated Chief Officer to make decisions on identified reserved matters enables those decisions to be made as and when they are required rather than waiting for the next meeting of the sub-committee. However, this does not preclude the identified Chief Officer from passing up decisions delegated to them to the sub-committee where they think it is appropriate.
- 6.3 The reserved power of the Council as an owner of the company which exists in the Articles of Association of a company would be exercised by the sub-committee.

**7. Appendices and Background Documents**

Appendix letter	Title
A	Shareholder board terms of reference

Background documents
None

Audit Trail		
Version	Final	Date: 12 October 2018
Consultation with other officers		
Finance	Yes	Victoria Goddard
Legal	Yes	Fabiola Hickson
Equality Impact Assessment required?	No	N/A