

## Appendix A

### Shareholder Committee 4<sup>th</sup> February 2026 Response to questions and clarifications from Cllr Loudoun

Cllr Loudoun has submitted questions relating to reports being considered at Shareholder Committee on 4<sup>th</sup> February. The responses have been developed by the Latco Project Team and have been reviewed by the Council's Monitoring Officer.

#### Item 8 – Recruitment of Directors.

##### **Section 5.1 – Impact of additional Non-Executive Director and leaving Finance Director post unfilled.**

*Question: Will only have 4 NEDs (including Chair) as losing Finance Director. Lack of achieving majority vote is a concern.*

##### Response

The previous proposal, agreed at Cabinet, was for 2 Execs and 3 NEDs. This proposal leaves the Exec position of Finance Director unfilled and creates an additional NED to take a lead on financial governance. The primary duty on all directors is to act in the best interests of the company, but the balance of power is now more in favour of the NEDs not the exec directors. Although this could be seen as a potential risk, the Board remains constrained by the Shareholder Committee, which retains ultimate control as the owner's representatives. The Directors are also bound by the terms of the Shareholder Agreement, which is comprehensive, monitored and can be amended by SHC at any time.

The additional NED proposed removes issues of majority vote concern.

##### **Sections 5.3 & 5.4 – Recruitment of Chair, NEDs and their employment status.**

*Question: Do we need to make it clear that we are recruiting 4 NEDs of which one would be the Chair? Does Chair and NED in here need to be separated out as its confusing? Surely, they shouldn't be employees but rather have a contract for services? Are both the Chair and other NEDs being treated as employees and taxed as proposed?*

##### Response:

The Committee papers have been published, so they cannot be amended but clarification can be provided in the meeting.

The Chair is also a NED, details of the role of the Chair are set out in section 2 of the report. Further clarification can be provided in the meeting if needed.

The NEDs are Office Holders under company law, not employees; Fitzgerald HR will ensure that the contracting arrangements make their status clear, see 5.4 *Contracts of employment will be drawn up by Fitzgerald HR, ensuring that the NEDs are treated appropriately for both employment law and taxation on income.*

However, HMRC treat personal income from non-exec director roles as taxable under the same regime used for employees, causing some confusion. This is a key reason to ensure that their employment status is clarified through the contracts issued to them.

### **Section 6.1 – Skills and experience of Directors**

*Shouldn't the skills and experience in the table be replicated in the NED Role Profile?*

*Role description NEDs – Needs to cross reference to 6.1 table. Add the need to understand and working within a complex political environment. Needs to identify required Essential Skills.*

*Role Description Chair – Needs to state this is in addition to the role description of a NED.*

*Add the need to understand and working within a complex political environment. Needs to identify required Essential Skills.*

**Response:**

Agreed, the table of Strategic Objectives (6.1) will be included in the selection process along with the requirements in Appendixes A & B. The role profiles will be amended to include the proposed additions.

### **7.3.1/7.3.2/7.3.3/7.3.4 – Criteria for independence of Directors.**

*Question: As these all refer to the “company or group” surely, they don’t apply. If it stated “council” that would make sense.*

**Response:**

Bevan Brittan are being thorough and anticipating a wide range of circumstances which could impede a Director's independence, including future possibility of the Latco operating as a group structure. 7.3.2 and 7.3.6 would also prevent Council employees from being independent directors. If a director did fail any of the tests on 7.3 then this would not necessarily prevent them from being a director, but they would not be an *independent* director. John Symes and Catrin Stark are NEDs, but not independent. This has relevance in some sections of the Articles such as section 4 on quorate meetings. There are no references to 'Council', but this is covered by 7.3.6 which states *represents a significant shareholder*.

### **8.4 – Membership of the recruitment panel**

*Question: Need to agree who the 3 panel members are to be. Needs to be recorded as a decision.*

**Response:**

It is anticipated that SHC will discuss and propose three members. It might be sensible to allow some flexibility so that members can be changed if needed. An option is for members to be proposed within the meeting and for the Chair to liaise with SHC members if changes are needed. It would be useful to have input from the Managing Director and senior officers also.

### **Recommendation 4 – Creation of additional Non-Executive Director**

*Question: It would be better to state that we create an additional NED role thus taking the total to 4. Plus, state separately that when appointing the NEDs at least one should have “experience of strategic financial oversight and corporate legal and financial compliance” as set out in 3.3. Don’t link the additional NED role to specifically be a finance etc role.*

**Response:**

A proposed change to the recommendation is:

(old text) That an additional Non-Executive Director post is created, with specific responsibilities for strategic financial governance and compliance

(new text) That an additional Non-Executive Director post is created, increasing the total available positions to four. When appointing NEDs, at least one should have extensive experience of strategic financial oversight and corporate legal and financial compliance. with specific responsibilities for strategic financial governance and compliance.

### **Recommendation 5 – Delegation to implement proposals**

*Question: After “delegate responsibility to the Director of Place” “in conjunction with the SHC Chair”.*

**Response:**

A proposed change to the recommendation is:

(old) The SHC delegate responsibility to the Director of Place to implement the proposals for recruitment of Non-Executive Directors, as set out in this report. Three members of the Shareholder Committee will form a panel to conduct the selection process and will make recommendations to the Committee for suitable appointments.

(new) The SHC delegate responsibility to the Director of Place, in conjunction with the SHC Chair, to implement the proposals for recruitment of Non-Executive Directors, as set out in this report. Three members of the Shareholder Committee will form a panel to conduct the selection process and will make recommendations to the Committee for suitable appointments.

## **Item 7: Governance**

### **Recommendation 2a – Terms of Reference for Shareholder Committee**

*Proposal: Add “in order that they may be adopted at the 2026 Annual Council meeting”.*

**Response:**

This proposed change can be considered by SHC

2. The Shareholder Committee to review the proposed Terms of Reference and

a. Endorse them and propose their consideration by the Constitutional Working Group as changes to the Council's Constitution in order that they may be adopted at the 2026 Annual Council meeting.

### **Clarification of terminology in relation to types of Director**

*Proposal: Regularise terminology – NEDs are described variously in both Governance and Recruitment reports. Sometimes referred to as NEDs and also Independent Directors.*

**Response:**

Independent Directors are a sub-set of NEDs, they have different definitions in the Articles so it is recommended that no change is made, ensuring that the distinction between types of director is retained across the documents.

### **Shareholder Agreement section 1.1**

*Question and proposal:– Add NEDs. Need to determine that Observers don't have voting rights. But do they have speaking rights? Need to ensure that any changes in definitions in the Shareholder Agreement are reflected in the same in the articles of Association, and visa versa.*

**Response:**

It is proposed to amend the definition of Observer to include the text in italics

Observer means such person as nominated in writing by the Owner to the Company from time to time to act as an Observer on the board. *Observers have speaking rights at Board meetings but cannot vote on proposals.*

Executive and Non-Executive Directors are defined in UK Companies Law so do not need to be included in the definitions section

### **Shareholder Agreement section 2.1 – Objectives and Business Plan**

*Question: It refers to doing things for the “Owner” which is the council. What if it enters contracts with a third party; there’s no reference to these being part of the Objectives?*

**Response:**

It is implicit in the current drafting that the Company can enter into commercial contracts, but only where these support delivery of the Objectives in 2.2, eg *To support local economic development and contribute local value*. Therefore no change is recommended by Officers.

### **Shareholder Agreement section 2.5 – Adoption of Business Plan**

*Question: Can we realistically expect a Business Plan to be adopted by 1 July if we only are planning (Recruitment timetable at 8.5) to offer NEDs “formal appointment and contract” on 8 May?*

**Response:**

Officers recommend no change.

The Managing Director will have four months to develop a draft business plan, this is a reasonable timescale as it is a critical document for governance and contract control. The BP for first year may be lighter touch and can be developed into a more substantial document in future years. SHC has control over the Shareholder Agreement and can permit a delay if it is requested by the MD, but this is undesirable.

### **Shareholder Agreement section 4.2.2 – Quorum of Company Board meetings**

*Question: Should the MD be described as an Executive Director here? Add to definitions too?*

Response:

Officers recommend no change.

The Managing Director and Finance Director are shown as executive directors in the definitions. Section 4.2.2. does not need to specify MD/FD as this is already covered.

### **Shareholder Agreement section 5 – suspending and terminating directors**

*Comment: There is no reference to the suspension or termination of NEDs. There is no reference to NEDs being employees or whatever is determined.*

Response:

Officers recommend no change.

Appointment and termination of all directors are an Owner Consent Matter (5.1). There is no need to set out the circumstances which would justify a termination as this is an absolute power and should not be qualified in any way.

The Shareholder Agreement does not need to specify the employment status of NEDs

### **Shareholder Agreement section 5.2.3 – appointment of Observers**

*Question: Who appoints the Observers; is it the SHC?*

Response:

5.4 gives this power to the Owner, the SHC is the Owner's primary tool for instructing the company, however there will be circumstances where the Monitoring Officer or others will serve written resolutions of the Owner and decision could plausibly be made by Cabinet or Council. Officers recommend no change.

### **Shareholder Agreement section 5.3 – Limitations to terms of NEDs**

*Question: After 2 terms, then a gap year, can NEDs then be reappointed for up to 2 terms plus a gap year and repeat? Should we not limit their total maximum length of tenure? How long should the Chair be in office?*

Response:

All NEDs including the Chair are bound by this rule. If SHC chose to reappoint a former Director after a one year break then they may do so. This approach is

advised by Bevan Brittan, however SHC can agree an alternative time period by passing a proposal from one of its members if desired.

### **Articles of Association section 5 - Powers of delegation**

*Question: The Directors' powers of delegation seem extremely wide ranging. Is this standard?*

Response:

The wording reflects best practice and ensures that the management team are given enough scope to make decisions under guidance and supervision of the directors. In all cases, the company is bound by the annual business plan which is approved by the owner, along with the Shareholder Agreement, Articles and statutory duties on the company directors.

### **Articles of Association section 7.2 – Decision making where there is only one director**

*Observation: This doesn't seem to be in line with Shareholder Agreement 4.3 and Articles of Association 11.*

Response:

If there is only one Director then 7.2 empowers them to make decisions without the need for a Directors meeting, which would in effect serve no purpose, so section 11 wouldn't apply.

It is plausible, but very undesirable for there to be only one director in post. In this circumstance, the sole director can make decisions for the company without the need for Board meetings, but is still bound by all the other terms of the Articles and Shareholder Agreement.

### **Articles of Association section 9.3 – Clarification on definition of days**

*Question: this section refers to "days". Elsewhere there's a definition for "Business Days2 and even clear days (23.2) What is a day – Business, calendar or working?*

Response:

This is inconsistent drafting, but the effect of 9.3 is seven calendar days. The benefit of changing this to five business days or anything else is minimal, but can be done if SHC directs. Officers recommend no change.

### **SHC Terms of Reference**

*Question: Committees of the Exec – Unclear about who determines. Is it Leader or Cabinet or either? More generally this is not a clearly worded section.*

*Terms of reference – Refers to "the Council's companies". Is this in case the council creates another company?*

The wording is intended to allow scope for both the Leader or Cabinet to exercise power, depending on circumstances. Bevan Brittan have proposed changes to the Constitution which will apply for any future companies that the Council may operate.

