

<b>DECISION-MAKER:</b>	<b>Governance Committee Council</b>		
<b>SUBJECT:</b>	<b>Local Authority Trading Company (LATCO) – Amendments to Key Decision Thresholds At Company Board Meetings</b>		
<b>DATE OF DECISION:</b>	<b>23<sup>rd</sup> April 2018 16<sup>th</sup> May 2018</b>		
<b>REPORT OF:</b>	<b>Service Director: Legal &amp; Governance</b>		
<b><u>CONTACT DETAILS</u></b>			
<b>AUTHOR:</b>	<b>Name:</b>	<b>Sarita Riley, Service Lead: Legal Services Partnership</b>	<b>Tel: 023 8083 3218</b>
	<b>E-mail:</b>	<b>sarita.riley@southampton.gov.uk</b>	
<b>Director</b>	<b>Name:</b>	<b>Richard Ivory, Service Director: Legal &amp; Governance</b>	<b>Tel: 023 8083 2794</b>
	<b>E-mail:</b>	<b>richard.ivory@southampton.gov.uk</b>	
<b>STATEMENT OF CONFIDENTIALITY</b>			
<b>N/A</b>			
<b>BRIEF SUMMARY</b>			
<p>This report sets out the revisions proposed to the Council’s Articles of the Constitution (article 12.03 – definition of ‘Key Decision’) and the subsequent implications this has for the interpretation and implementation of the Access to Information Procedure Rules / Finance Procedure Rules as set out in the Constitution. Should Council agree to proceed with the LATCO these changes are required to enable the LATCO Board to operate on the same decision making basis as any other private company (subject to operational and strategic safeguard approved by Council in establishing the governance arrangements for the Company) while maintaining a Council overview of Governance arrangements.</p>			
<p>The proposal is to remove the decisions of SCC appointed representatives exercising their decision making at the LATCO Board from the definition of a Key Decision in order to enable those Board Members / shareholder representatives (Officers and elected Members) to take decisions at Board / shareholder meetings without the need to register those decisions in advance on the Forward Plan / prepare reports which would fetter the Board and Shareholder’s meetings from being able to operate in accordance with the regulation of company meetings under normal companies law principles.</p>			
<p>This will enable the LATCO Board and Shareholder to respond quickly and effectively to operational demand and market opportunity as it presents in common with its private sector competitors.</p>			
<b>RECOMMENDATIONS:</b>			
	<b>(i)</b>	That Governance Committee endorses the changes to the ‘Key Decision’ threshold as it applies to Council appointed representatives (Officers and Members) exercising decisions as Directors and	

		shareholders of the LATCO at Board and Shareholder meetings and in relation to LATCO company decision making in accordance with the Articles of the Company as set out in appendix 1.
	(ii)	That Council resolves to revise the Council's Constitution accordingly.

### **REASONS FOR REPORT RECOMMENDATIONS**

1.	To enable the LATCO to comply with decision making arrangements for companies as set out in its Articles of Association and Governance documents (subject to approval of Council) and to ensure decision making at Board level is efficient and effective to enable the company to operate in the same manner as a private sector commercial company in terms of speed and efficiency of decision making and adapting to market opportunity.
2.	Safeguards relating to Council oversight of decision making at Board and Shareholder level are built into the governance arrangements for the company. The proposals enable the Council to take decisions at the LATCO Board in a manner that matches private company and companies law decision making principles, without which Officers and Members representing the Council on the Board / at the shareholder meetings would be fettered in making timely operational and commercial decisions.

### **ALTERNATIVE OPTIONS CONSIDERED AND REJECTED**

3.	Retaining and applying current Key Decision thresholds to all officer and Member representative decisions at LATCO Board / Shareholder Meetings.
4.	This option has been rejected as it would significantly hamper the company being able to take decisions quickly to meet the demands to operate commercially and react swiftly to market opportunity as it presents which is one of the strategic aims of establishing a LATCO to deliver services with a commercial focus.

### **DETAIL (Including consultation carried out)**

5.	Article 12.03 of the Constitution sets out the current Key Decision threshold which applies to all Executive decision making by the Council. Key Decisions are those which result in the Council incurring significant expenditure or savings or have a significant strategic effect on specified wards or communities.
6.	The law allows the Council to set its own definition of what constitutes 'significant' for the purposes of setting a 'Key Decision' threshold. The current threshold is set having regard to prudent financial decision making levels, public accountability and transparency principles and benchmarked against other local authority good practice. The current level is set at decisions over £500,000.
7.	The 'Key Decision' threshold does not limit the ability to take decisions over this sum but rather implements a requirement to give 28 days advance notice of such decisions taking place and requires decision makers to take a decision based on a published report which is then subject to the potential for call-in and scrutiny of decisions post any decision meeting.
8.	While good law and practice in local authority public meetings, this lengthy and complicated decision making process is incompatible with the decision making requirements for companies set out in the Companies Act 2006.

	Separate requirements relating to the role and duties of Company Directors, Shareholder Representatives, agendas and minutes for Board and Shareholder meetings exist for such entities which give greater freedom for speed of decision making that in a public body decision making setting.
9.	In order to ensure that Local Authority representatives on the trading company (both Officers and Members) are able to operate effectively and quickly at Board and Shareholder meetings and in accordance with the Company Articles and governance structure due to be considered by Council in May 2018, it will be necessary to amend the Key Decision definition in the Constitution to remove LATCO Board and Shareholder representative decisions from the Key Decision definition to enable those individuals to act at Board and shareholder meeting under Companies Act 2006 principles.
10.	Precedent has already been set for removing the restriction in certain limited circumstances and these are set out in Appendix 1 (certain social care, transformation and property acquisition strategy related decisions). All of which reflect the need for speedier and more flexible decision making in certain limited circumstances and where market or operational demand would be unreasonable fettered if normal decision making thresholds were maintained.
11.	The LATCO governance structures place clear limits and restrictions on the decision making ability of Board Members and Shareholder Representatives (which include reference to Cabinet / Council / Service Director, Finance and Commercialisation where decisions have a significant impact on Council funding and services) and provide appropriate safeguards that allow the relaxation of the Key Decision threshold to speed operational decision making to allow the company to compete with its private sector rivals.
<b>RESOURCE IMPLICATIONS</b>	
<b><u>Capital/Revenue</u></b>	
12.	N/A
<b><u>Property/Other</u></b>	
13.	N/A
<b>LEGAL IMPLICATIONS</b>	
<b><u>Statutory power to undertake proposals in the report:</u></b>	
14.	The Local Government Act 2000 and the <b>Local Authorities (Executive Arrangements) (Access to Information) (Amendment) (England) Regulations 2006</b> require Councils to set a Key Decision threshold as set out above. Councils have a discretion as to the level at which they determine decisions to be 'significant' in terms of financial savings / spend / impact on wards etc. and this may differ depending on the type of decision being undertaken. The Council has adopted a single definition for the majority of decisions applying across the Council but has previously set a precedent for the relaxation of these thresholds where justified such as those relating to strategic transformation projects, care services and property acquisition decisions where the market requires quick responses to market opportunity and safeguarding matters etc. The proposals in this report are consistent with the legal discretions afforded the Council in this regard.

<b><u>Other Legal Implications:</u></b>	
15.	N/A
<b>RISK MANAGEMENT IMPLICATIONS</b>	
16.	The proposals in the report are consistent with the approved governance arrangements for the LATCO operation to date and sufficient safeguards and risk mitigation is included within the governance proposals for the operation of the LATCO (which are subject to the oversight and approval of the Council) to determine that this proposal is risk neutral in the circumstances. Failure to approve the change would render the company unable to operate on the same commercial and market basis as the private companies with which it is required to compete and would be inconsistent with the requirements of Companies law which regulate the decision making processes of companies, including Local Authority Trading Companies.
<b>POLICY FRAMEWORK IMPLICATIONS</b>	
17.	The proposals in the report are wholly consistent with the Council's approved policy framework.
<b>KEY DECISION?</b>	<b>No</b>
<b>WARDS/COMMUNITIES AFFECTED:</b>	<b>None</b>
<u>SUPPORTING DOCUMENTATION</u>	
<b>Appendices</b>	
1.	Proposed Amendment to Article 12.03 of the Constitution.
<b>Documents In Members' Rooms</b>	
1.	<b>None</b>
<b>Equality Impact Assessment</b>	
<b>Do the implications/subject of the report require an Equality and Safety Impact Assessment (ESIA) to be carried out.</b>	<b>No</b>
<b>Privacy Impact Assessment</b>	
<b>Do the implications/subject of the report require a Privacy Impact Assessment (PIA) to be carried out.</b>	<b>No</b>
<b>Other Background Documents</b>	
<b>Other Background documents available for inspection at: N/A</b>	
<b>Title of Background Paper(s)</b>	<b>Relevant Paragraph of the Access to Information Procedure Rules / Schedule 12A allowing document to be Exempt/Confidential (if applicable)</b>
1.	<b>None</b>