

STROUD DISTRICT COUNCIL

AGENDA
ITEM NO

COUNCIL

7

19 DECEMBER 2019

Report Title	UBICO BOARD ARRANGEMENTS AND DELEGATIONS
Purpose of Report	To inform Council of a change to the makeup of the Board and to regularise delegations to officers.
Decision(s)	<p>Council RESOLVES to:</p> <ol style="list-style-type: none"> 1) Note the changes to the composition of the Ubico Board. 2) Delegate authority to the Chief Executive to be the Shareholder Representative, to take all decisions as such and to sign the Shareholder Agreement in consultation with the Leader. 3) That the relevant Strategic Director or Head of Service be the Council's Local Authority Director on the Ubico Board.
Consultation	Chair of Environment Committee
Financial Implications and Risk Assessment	<p>There are no financial implications arising from this report.</p> <p>Andrew Cummings, Strategic Director of Resources Tel: 01453 75 Email: Andrew.cummings@stroud.gov.uk</p> <p>No risk assessment has been carried out at this stage due to the nature of the report which is principally informative</p>
Legal Implications	<p>There are no legal implications arising specifically from this report.</p> <p>Patrick Arran, Interim Head of Legal Services and Monitoring Officer Tel: 01453 754369 Email: patrick.arran@stroud.gov.uk</p>
Report Author	As above
Options	The option is that Council can note the report and the arrangements and grant the delegated authority requested. Alternatively, Council can refuse to grant the delegated authority, but this would lead to delays in decision making and may deprive the Council of a voice in matters which can be decided by majority at Board meetings.
Performance Management Follow Up	None
Appendices/ Background Papers	Appendix 1 – Background to the changes to the composition of the Board

1. INTRODUCTION

- 1.1 This report is to inform members of a recent change to the Shareholder Agreement and Articles of Association of Ubico in order to alter the composition of the Board of Directors. It provides members with a brief background to the Councils shareholding in Ubico by way of general information and sets out the changes to the composition of the Board.
- 1.2 It is important to stress at the outset that the Board has been informed that the Council wishes to have its own Non Executive Director on the Board and the report author has ensured that this has been reflected in the amended Shareholder Agreement and Articles. Therefore, the changes to the composition of the Board will have no impact on the Council having its own representative appointed as a Director.

2. BACKGROUND AND CURRENT POSITION

- 2.1 Members will recall that on the 6th of November 2014, Council considered a report concerning a Multi Service Contract Review with the recommendation that it joined Ubico from the 1st of July 2016.
- 2.2 There was also a recommendation in relation to governance issues. Council resolved to join Ubico and other matters as follows (Item 7b, Minute CL.027):

RESOLVED

(1) Subject to (2) below to recommend to the Council that it becomes a shareholder in UBICO Limited on the terms set out in paragraph 2 of this report.

(2) To approve the governance principles set out in paragraphs 4, 5 and 6, (See Below Paragraph 2.4) subject to the amendments in (3) of this report and to delegate to the Strategic Head (Customer services) in consultation with Legal Services Manager and the Chairman of the Committee authority to agree the new Shareholders Agreement and Articles of Association of UBICO Limited provided that those documents do not deviate in any material respect from those approved principles.

(3) The Council expresses its view to the Company that provision should be made in the new articles of association and shareholders agreement for a nominated member of each Local Authority Shareholder to be entitled to attend meetings of the Board of Directors for the purpose of observation only.

- 2.3 For the sake of accuracy, the minutes at "(1)" should have recorded that Council resolved to accept the recommendations, but that does not impact the decision in any way.
- 2.4 The governance principles referred to in paragraphs 4, 5 & 6 in minute (2) are summarised as follows:

- Membership of the company is governed by a Shareholder Agreement.
- Each member of the company is issued with a single share which entitles that member to equal participation with all other members in company matters.
- Each shareholder is entitled to appoint one shareholder representative to attend, speak and vote at general meetings of the company.
- The company's articles provide that this may be any authorised councillor or officer of the shareholder (Due to the fact that Stroud operates a committee system, section 101 of the Local Government Act 1972 prevents a single member from making decisions on behalf of the Council.) Accordingly Stroud's shareholder representative would have to be an officer appointment in consultation with members of the Council.
- General management of the company is undertaken by the board of directors. Certain matters are however reserved for the decision of the shareholders. (Reserved Matters)
- Decision making at shareholder level is on a simple majority and excludes the use of casting votes. (There are exceptions to this general rule e.g. where company law requires a special resolution (75% majority) and where issues are considered to be so fundamental as to merit more than a simple majority decision.)

2.5 Council had approved the governance principles set out in the report and, read in conjunction with the Scheme of Delegation, officers were given authority to perform the functions of Shareholder Representative and Director. However, the delegations should be formalised in line with section 101 Local Government Act 1972 to provide delegations to specific officers in respect of Ubico. This will be set out below and reflected in the recommendations.

2.6 On the basis that this report is to make Council aware of changes to the composition of the Board, the previous arrangement was as follows, the changes proposed to the Articles of Association and the new Shareholder Agreement as a result of the recent Special Resolution are reflected in italics:

- The Articles of the company provide that the general management of the company will be undertaken by a board of directors. The board comprised both Executive Directors (ED) and Shareholder Appointed Directors (SAD). *There is the addition of one further Executive Director of Operations and three Non Executive Directors*
- Each shareholder is entitled to appoint one SAD. It has been the arrangement that all SAD's have been officers of the respective shareholders. *Whilst the preference of the Board is to have no more than 3 jointly nominated Local Authority Directors, SDC will maintain its own Director on the Board.*
- Appointments of SAD's can be terminated by the relevant shareholder by notice from the relevant shareholder to the company. *No change*
- Board meetings require a quorum consisting of two thirds of the SAD's and one half of the ED's and will be chaired by an SAD. *The new*

quorum will be two thirds of all directors with at least one Director from each category (Executive, Non Executive Independent, Non Executive LA Director)

- All directors are entitled to vote but the chairman does not have a casting vote. Unless otherwise required by law, board decisions will be by simple majority. *No change*
 - The Board will be able to delegate any of their powers to such person or committee as they decide, subject always to any restriction imposed by law or expressly provided for in the articles. This means that decision making can be delegated to one or more directors or an employee of the company. *No change*
- 2.6 The 6th of November 2014 resolution delegated authority to the (then) Strategic Head (Customer services) to agree the Shareholder Agreement and Articles of Association in consultation with the Legal Services Manager and the Chairman of the Environment Committee. This was on the proviso that the documents did not deviate in any material respect from those approved principles – which was in fact the case.
- 2.7 After a period of discussion and negotiation, the formalities were ready for completion. On the 21st December 2015, the then Strategic Head (Customer Services) in consultation with the Chair of Environment Committee and the then Leader (Cllr Wheeler) agreed the terms of the Shareholder Agreement and Articles of Association and authorised Legal Services to conclude the agreements.
- 2.8 At the same time, the following arrangement was suggested by the Interim Multi Service Contract Review Manager and agreed by the Chair of Environment Committee, the Leader and the Strategic Head (Customer Services):
- That David Hagg should be the Shareholder Representative
 - That Jo Jordon would be the nominated LA Director
 - That a member observer would attend Board meetings for a period of six months
- 2.9 Whilst the position is that there was ostensible delegation, it is preferable that specific delegations are made so that officers can take action in consultation with the Leader and Chair of Environment Committee.
- 2.10 In this instance delegations should be made to the following posts:
- Shareholder Representative** – Chief Executive
Local Authority Non Executive Director – the relevant Strategic Director or Head of Service

BACKGROUND TO THE CHANGES TO THE COMPOSITION OF THE BOARD

During 2018, Ubico undertook a Board Effectiveness Review to address skills gaps on the Board. As a result, it was recommended that the existing Board should be re-shaped to address indentified skills gaps on the current Board. This was discussed in principle at an informal meeting of shareholders which took place on the 26th of July 2018 which was attended by the previous Chief Executive.

On the 15th of August 2018, the Ubico Board of Directors considered a report which proposed a new Board composition based on the following principles:

- The appointment of an Operations Director to make a total of three Executive Directors (instead of two).
- Three Non-Executive Directors (NEDs) who are linked to the local authority shareholders (LA) and;
- The appointment of three new independent NEDs through a competitive recruitment process.
- Overall, the Board would have a maximum total membership of nine.
- The selection of three LA NEDs should be determined at a meeting of shareholding Chief Executives (or their representatives).
- To agree three nominations for LA NEDs matched against the completed skills audit. If the Chief Executives are unable to agree three clear candidates then Ubico will undertake a process to narrow the nominations to three.

The Board agreed to the recommendations and the following resolutions were sent to the Shareholders for approval:

- To replace the current Board composition with the Board composition model as contained in the report.
- To approve the outline recruitment process.
- To agree the remuneration of independent NEDs to be set at a maximum of £6k with flexibility to offer differentiation for the role of Chair.

The view of the Board and Shareholder Representatives was that the appointment of Independent NEDs would complement the skills demonstrated by the LA NEDs and would provide a strong Board that will meet the current and future needs of Ubico. The logic behind this approach was that it would mitigate the need for any individual shareholder to appoint its own LANED's to the Board. It was envisaged that the right to appoint its own LANED would only be exercised by a shareholder as a last resort if they judged the recruitment and selection of LA NEDs was flawed to the extent they needed to exercise this right. This proposal had broad support from all of the shareholder representatives at the meeting, which included the previous Chief Executive.

On the 24th November 2018, the Shareholder Representatives were sent a written resolution, together with a report, to approve the replacement of the current Board composition. This was signed by the Shareholder Representative of SDC on the 4th December 2018.

It is important to note that, notwithstanding the desire of the Board to restrict the LA NED's to three, any Board decision to make changes to the Articles of Association to reflect the new Board composition will require a special resolution with 75% in favour. On the basis that the Board can make these changes with a majority vote, this report is not seeking authority to agree to the proposed changes as this has already been approved by majority resolution.