

Title of meeting: Cabinet Meeting

Date of meeting: 14th February 2022

Subject: North Harbour Estate Management Limited (company no. 7833141)

Report by: Tristan Samuels Director Regeneration

1. Purpose of report

- 1.1 To update the Cabinet on the City Councils ownership and Directorship of North Harbour Estate Management Limited (NHEML).

2. Recommendations

That the Cabinet

- 2.1 Notes the appointment of the Assistant Director Property and Investment to the board of NHEML;
- 2.2 Delegates authority to the City Solicitor to liaise with the company secretary of NHEML to obtain a copy of the terms of appointment of the Assistant Director Property and Investment;
- 2.3 Delegates authority to the Director of Regeneration, in consultation with the City Solicitor and s151 Officer, to take decisions as shareholder in matters related to the operation of NHEML;
- 2.4 To report no less than annually to the Cabinet on the performance of the company and any other relevant matters relating to it.

3. Background

- 3.1 Portsmouth City Council owns all 10 class A shares and 156944 of 166422 B shares in North Harbour Estate Management Limited with PCC also being named as a "person with significant control" (due to owning 75% or more of the shares and having 75% or more of the voting rights).
- 3.2 Tom Southall is the nominated and sole Director of the company on behalf of Portsmouth City Council. Clyde Secretaries Limited are appointed to provide company secretarial services to the company.
- 3.3 The ownership of the company shares is necessitated by the ownership of Lakeside North Harbour. Lakeside was acquired in July 2019 and returns in excess of £9M per annum to the City Council.

- 3.4 NHEML is registered as a dormant company which means that it is not 'trading' and doesn't have any other income for example investments.
- 3.5 Each freeholder owner on the Lakeside site owns shares in NHEML. The extent of the Lakeside site is shown in Appendix A.
- 3.6 The company was established by IBM as part of their original sale and leaseback of the lakeside campus. Deeds of covenant registered on the titles and deeds of adherence are present to ensure that the structure of the company is maintained in perpetuity. The existence of this structure means that any freehold disposals of the site are bound into the control of the management of the entire site.
- 3.7 In practice as the company is dormant the activities that the company would be expected to undertake are performed by the Lakeside management team (Portsmouth City Council). The costs of these activities are recovered as service charge from the Council tenants and the freehold owners within the boundaries of the site.
- 3.8 Whilst it would in theory be possible to wind up and do away with the NHEML company this would require the consent of all the shareholders and the beneficiaries of the deeds of covenant and adherence. It is not clear whether all parties would be willing to remove this structure of compliance for estate management.
- 3.9 Given the dormant nature of the company minimal costs are currently incurred by the Council, these costs are limited to the annual filing return.

4. Legal comments

- 4.1 NHEML is a private limited company and as such the Council's liability to the company is limited to the value of its shareholder in the company. The company has two class of share; "A" Ordinary share worth £0.01 per share and "B" Ordinary Share worth £0.01 per share. As such the Council's liability is limited to £1,569.54 (10p in relation to ownership of 10 x A shares and £1,569.44 in relation to ownership of 156944 x B shares).
- 4.2 As the Council owns 100% of the A shares and 94% of the B shares, it is able to exert significant unilateral influence on the strategy and functions of the company such as being able to appoint directors and to pass ordinary and special resolutions of the company (such that it could for example re-write the articles of association of the company).
- 4.3 Under the Companies Act 2006, a company is dormant if it had no 'significant' transactions in the financial year. Where a dormant company is also considered 'small' (i.e. if it has any of the 2 of the following (a) a turnover of £10.2 million or less; (b) £5.1 million or less on its balance sheet; (c) 50 employees or less) then the company can simply file with Companies House dormant accounts and there is no need to include an auditor's report with the accounts. A dormant company must still hold an Annual General Meeting if required to do so by its articles of association (although this requirement could be removed by special resolution).
- 4.4 It is understood from external advice provided to the Council, that the existence of the company is required as a result of a 2005 transfer of the Lakeside site (which did not involve the Council) which obliged the transferee (i.e. the purchaser at that

time) to set up a Management Company (NHEML). It is understood that certain additional rights were reserved to the Management Company under a subsequent transfer of land in 2011 (which also did not involve the Council). At the time of purchase of Lakeside by the Council in 2019, the Management Company services were provided by a third party and since purchase have been provided in-house by the Council.

- 4.5 It is not clear at the present time therefore whether the Council could simply wind up NHEML and further Legal advice would be needed to understand further the legal necessity for the existence of the company.
- 4.6 The recommendations in this report pose no significant risk to the Council.

5. Chief Finance Officers Comments

- 5.1 There are no direct financial implications associated with the approval of the recommendations within the report.
- 5.2 As stated in the legal comments the liability in the event of default by the company is limited to £1,569.44. The company is currently dormant so the risk of the Council losing this money is extremely unlikely.
- 5.3 The company has no current function and again as the legal comments state the Council should consider whether it should wind the company up.

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Signed by: Tristan Samuels, Director of Regeneration

Appendices:

Appendix A - Boundary extent of Lakeside

Background list of documents: Section 100D of the Local Government Act 1972

The following documents disclose facts or matters, which have been relied upon to a material extent by the author in preparing this report:

| Title of document | Location |
|-------------------|----------|
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The recommendation(s) set out above were approved/ approved as amended/ deferred/
rejected by on

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Signed by: