

Cheltenham Borough Council
Cabinet 16 September 2014

**Ubico Ltd – revised governance arrangements for extended
partnership and terms for new joiners**

Accountable member	Cllr Steve Jordan
Accountable officer	Mark Sheldon, Director of Resources
Ward(s) affected	all
Key Decision	Yes
Executive summary	<p>Ubico was initially created as a result of work undertaken between Cotswold and Cheltenham Borough councils in 2011.</p> <p>A considerable amount of effort and some 'one off' set up costs were expended in the establishment of the company.</p> <p>In creating Ubico, the aspiration was for more councils to join the company in order to deliver a more joined up approach to waste and recycling across the county and to deliver further economies of scale that generate further savings to support the council's Medium Term Financial Strategy.</p> <p>In view of the potential expansion of the company, this report sets out the proposals for Governance of the company including decision making at Board meetings and the financial terms for new joiners to the company.</p>
Recommendations	<ol style="list-style-type: none">1. Authorise the Leader to take a decision, by way of a written resolution, to amend the Ubico Articles of Association and the Shareholder Agreement, based on the terms outlined in section 2 of the report and detailed at Appendix 2.2. Delegate authority to the Director of Resources, in consultation with the Leader, to finalise and complete the Ubico Articles of Association and Shareholder Agreement on terms approved by the Borough Solicitor.3. Approve the founder compensation payment of £45,333 to the founder councils for each new joiner to Ubico, as set out in section 4 of the report.

Financial implications	As set out in the report. Contact officer: Mark Sheldon, mark.sheldon@cheltenham.gov.uk, 01242 264123
Legal implications	The current governance arrangements require the agreement of both this Authority and Cotswold District Council to any changes to Ubico's Articles of Association and to the Shareholder Agreement. Discussions have taken place between the legal advisors of potential new shareholders and a common understanding has been reached on the implications of the proposed new governance arrangements set out in Appendix 2. Contact officer: shirin.wotherspoon@tewkesbury.gov.uk, 01684 272017
HR implications (including learning and organisational development)	None arising from this report Contact officer: Julie McCarthy, Julie.mccarthy@cheltenham.gov.uk, 01242 264355
Key risks	Appendix 1
Corporate and community plan Implications	The expansion of Ubico will support the delivery of key objectives in respect of waste and recycling targets and increase the potential to make further savings which contribute toward the councils MTFs funding gap.
Environmental and climate change implications	None arising from this report.
Property/Asset Implications	None arising from this report. Contact officer: David Roberts@cheltenham.gov.uk

1. Background

- 1.1** Ubico Ltd was created in 2011 as a two authority partnership. The company is owned equally and jointly by Cotswold District Council (CDC) and Cheltenham Borough Council (CBC) and the existing governance arrangements reflect the circumstances at that time.
- 1.2** A considerable amount of effort and some 'one off' set up costs were expended in the establishment of the company.
- 1.3** In creating Ubico, the aspiration was that more councils would join the company in order to deliver a more joined up approach to waste and recycling across the county and to deliver further economies of scale which, in turn, deliver further savings to support the council's Medium Term Financial Strategy savings.
- 1.4** This report sets out the proposals for revisions to the Governance arrangements of the company which are required to ensure that it remains effective following expansion. The report also covers the financial terms for new joiners to the company.

2. Revised Governance arrangements

- 2.1** To achieve growth via the inclusion of additional shareholders it is necessary to review company governance arrangements. Ubico's Managing Director has entered into discussions with potential new shareholders and Ubico's legal business partner has consulted with the legal officers of these potential new shareholders to discuss revisions to the current governance arrangements. The purpose of these discussions has been to seek a consensus between existing shareholders and potential new shareholders.
- 2.2** To achieve the company's strategic objectives, to continue to deliver efficiency savings and value for money, it is essential that the company grows via the inclusion of additional shareholders in the partnership.
- 2.3** As such, the original governance arrangements have been reviewed and the following key issues considered and recommendations made by Ubico's Board of Directors to shareholder councils.
- 2.4** Shareholder appointed Directors should continue to be officers of the shareholding council. Board membership should continue to be at officer level for the following reasons:
 - Key strategic decisions about the future of the company are retained by each council and exercised by the nominated shareholder.
 - Key strategic decisions about the contract and service delivery are retained by each shareholder council (or delegated to the Joint Waste Committee).
 - The role of a board member is prescribed in company law and their responsibility is to the company. Given that strategic decisions rest with the shareholder councils, it is clear that board business is predominantly operational and this sits better with officers.
- 2.5** Those matters reserved for approval by shareholders have been thoroughly reviewed. Some matters have been deleted as they were considered unnecessary given the breadth and depth of company law. Of those that remain, all are to be decided on a majority vote with some requiring a majority of not less than 75%.
- 2.6** The revisions to the governance arrangements are attached at Appendix 2. These revisions have

been formally considered by Ubico Board of Directors at a meeting on 11th August 2014 and are now recommended to the shareholders for approval. It is recommended that cabinet approve the revisions and to delegate authority to the Director of Resources, in consultation with the Leader, to finalise and complete the Ubico Articles of Association and Shareholder Agreement on terms approved by the Borough Solicitor.

3. Shareholders nominated observer

- 3.1** Cheltenham Borough Council requested that an informal Member Observer role was created to oversee the Ubico Board. This arrangement was not taken up by Cotswold District council.
- 3.2** Whilst a Member Observer from Cheltenham was agreed at the time of the establishment of Ubico it is now considered by Ubico Board of Directors that Member Observers are inappropriate given;
- a) the shareholder control over the appointment and removal of directors.
 - b) the contract monitoring arrangements in place via the Members Quarterly Performance Monitoring meetings.
 - c) the proven track record of the company.
- 3.3** In addition, their input would not be operationally feasible given the number of potential new shareholders. The Shareholder Board Directors have agreed to liaise with and brief Members as requested prior to or following Board meetings. Commissioners/client officers also receive the Board papers and may ask questions of any Director at any time.
- 3.4** This arrangement has been formally considered by Ubico Board of Directors at a meeting on 11th August 2014 and, in view of the potential for the company to grow, the recommendation of the Board is that the Member Observers role should be discontinued.
- 3.5** This issue will be discussed with Overview & Scrutiny Committee on 8th September, as board membership formed part of their previous review of Ubico operations, and I will report back verbally to Cabiinet.

4. Set up costs

- 4.1** After taking the strategic decision to deliver environmental services under a different delivery model, Cheltenham and Cotswold councils incurred initial set up costs of £272,000 and invested significant officer time in managing the set up process whilst creating Ubico. As such, a lot of the 'hard work' in creating the company has previously been undertaken and new joiners will benefit from this work.
- 4.2** It is widely accepted that additional shareholders should compensate the founder councils for part of the original set up costs and the associated risk and time in undertaking such a transformational change. A figure of £45,333 for each additional shareholder has been calculated and considered to be a fair and reasonable contribution.

5. Client side review

- 5.1** Discussions are on-going on the client side to review performance management of Ubico given the number of potential shareholders.

6. Reasons for recommendations

6.1 The expansion of Ubico requires the governance arrangement of the company to be revisited to ensure that the company is able to operate efficiently and effectively with an increased number of councils.

7. Alternative options considered

7.1 Options for varying voting rights were considered by the Board of Directors.

8. Consultation and feedback

8.1 Potential partner councils have been consulted on the revised governance arrangements. Overview and Scrutiny committee will be consulted on 8th September 2014.

9. Performance management–monitoring and review

9.1 The Ubico board of Directors receive regular monitoring and performance reports and the overall performance of the company is monitored through the council's client function and performance management framework. This includes reports to the overview and scrutiny committee and key performance indicators are included in the annual reports to council on the delivery of the council's corporate plan.

Report author	Contact officer: Mark sheldon, mark.sheldon@cheltenham.gov.uk, 01242 264123
Appendices	<ol style="list-style-type: none">1. Risk Assessment2. Revised governance arrangements
Background information	<ol style="list-style-type: none">1. Articles of Association for Ubico

The risk				Original risk score (impact x likelihood)			Managing risk				
Risk ref.	Risk description	Risk Owner	Date raised	Impact 1-5	Likelihood 1-6	Score	Control	Action	Deadline	Responsible officer	Transferred to risk register
	If the governance arrangements for Ubico are not amended to accommodate new joiners, then the effectiveness of the company decision making and governance may be impacted.	MS	1/9/14	2	2	4	Reduce	Cabinet to approve the revised governance arrangements	30/9/14	Mark Sheldon	
	If the governance arrangements for Ubico are not amended to accommodate new joiners, then there is a risk that councils may be deterred from joining Ubico.	MS	1/9/14	2	2	4	Reduce	Cabinet to approve the revised governance arrangements	30/9/14	Mark Sheldon	
	If the member observer role arrangement is not discontinued, then the board of Directors meetings may become unworkable reducing the effectiveness of the Board of Directors and governance of the company.	MS	1/9/14	2	2	4	Reduce	Cabinet to approve the revised governance arrangements	30/9/14	Mark Sheldon	

Explanatory notes

Impact – an assessment of the impact if the risk occurs on a scale of 1-5 (1 being least impact and 5 being major or critical)

Likelihood – how likely is it that the risk will occur on a scale of 1-6

(1 being almost impossible, 2 is very low, 3 is low, 4 significant, 5 high and 6 a very high probability)

Control - Either: Reduce / Accept / Transfer to 3rd party / Close

Guidance

Types of risks could include the following:

- Potential reputation risks from the decision in terms of bad publicity, impact on the community or on partners;
- Financial risks associated with the decision;
- Political risks that the decision might not have cross-party support;
- Environmental risks associated with the decision;
- Potential adverse equality impacts from the decision;
- Capacity risks in terms of the ability of the organisation to ensure the effective delivery of the decision
- Legal risks arising from the decision

Remember to highlight risks which may impact on the strategy and actions which are being followed to deliver the objectives, so that members can identify the need to review objectives, options and decisions on a timely basis should these risks arise.

Risk ref

If the risk is already recorded, note either the corporate risk register or TEN reference

Risk Description

Please use “If xx happens then xx will be the consequence” (cause and effect). For example “If the council’s business continuity planning does not deliver effective responses to the predicted flu pandemic then council services will be significantly impacted.”

Risk owner

Please identify the lead officer who has identified the risk and will be responsible for it.

Risk score

Impact on a scale from 1 to 5 multiplied by likelihood on a scale from 1 to 6. Please see risk [scorecard](#) for more information on how to score a risk

Control

Either: Reduce / Accept / Transfer to 3rd party / Close

Action

There are usually things the council can do to reduce either the likelihood or impact of the risk. Controls may already be in place, such as budget monitoring or new controls or actions may also be needed.

Responsible officer

Please identify the lead officer who will be responsible for the action to control the risk.

For further guidance, please refer to the [risk management policy](#)

Transferred to risk register

Please ensure that the risk is transferred to a live risk register. This could be a team, divisional or corporate risk register depending on the nature of the risk and what level of objective it is impacting on