



# Member Report

## Amendments to Shareholder Committee Terms of Reference

<b>Report to:</b>	<b>Governance Committee</b>
<b>Report from:</b>	<b>Governance Director and Monitoring Officer</b>
<b>Portfolio:</b>	<b>Corporate Resources</b>
<b>Report Date:</b>	<b>25 November 2024</b>
<b>Decision Type:</b>	Committee
<b>Council Priority</b>	Investing for the long term

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### HEADLINE POSITION

#### 1.0 Summary of report

- 1.1 This report seeks approval to widen the scope of the terms of reference for the Shareholder Committee to include the company which will be established as part of the overall arrangements to deliver the Tees Valley Energy Recover Facility.

#### 2.0 Recommendation

- 2.1 It is recommended that changes to the scope of the terms of reference for the Shareholder Committee (as set out in Appendix 1) are approved and recommended to Cabinet and Full Council for further approval, in order to include the company to be established as part of the overall arrangements to deliver the Tees Valley Energy Recover Facility.

### DETAILED PROPOSALS

#### 3.0 What are the objectives of the report and how do they link to the Council's priorities

- 3.1 The Council's constitution contains provisions in respect of various Council-owned companies which set out the terms of reference for the Shareholder Committee and outline the remit of that Committee and the relevant shareholder representatives.
- 3.2 As part of the overall arrangements to deliver the Tees Valley Energy Recovery Facility, a new company is to be established. The company has not yet been incorporated so does not currently exist, however, in anticipation of incorporation taking place and in order to have appropriate arrangements in place to cater for this, proposed changes to the terms of reference for the Shareholder have been drafted and are attached to this report at Appendix 1.
- 3.3 As the new company does not yet exist, it is referenced within the appendix as the Tees Valley Energy Recovery Facility Special Purpose Vehicle or "TV ERF

LA SPV”, but this will be updated when incorporation takes place.

3.4 The changes are summarised as follows:

- a) The existing provisions have been retained in their entirety but identified as general arrangements to be applied to any company within the remit of the company;
- b) A separate appendix has been created for each company, which identifies the Shareholder Representative(s) and includes any additional specific provisions which might apply to the company concerned.
- c) Some specific provisions have been included within the appendix to the TV ERF SPV to cater for existing approvals and arrangements, as well as including initial director appointments, with the initial appointment of the Shareholder Representative (and alternative) to be made by the Managing Director upon incorporation of the Company.

3.5 In addition to making the changes identified above, an alternative Shareholder Representative has been identified for each company, to ensure essential decisions can still be progressed should the substantive Shareholder Representative be unavailable for any reason.

#### **4.0 What options have been considered**

There are current arrangements in place regarding council-owned companies which are being expanded to include the new company when it is established. No other options have been considered as this seems to be the obvious and most appropriate course of action in the circumstances.

#### **5.0 Impact Assessment**

**5.1 Climate Emergency** - These amendments to the constitution do not, in themselves, have any climate impact. The ERF project itself included climate considerations as part of the approval process.

**5.2 Health and Safety** - N/A

**5.3 Social Value** - N/A

**5.4 Legal** - The proposed changes to the terms of reference will assist with appropriate governance of the company.

**5.5 Financial** - N/A

**5.6 Human Resources** – N/A

**5.7 Equality and Diversity** – N/A

#### **6.0 Implementation Plan**

**6.1 Timetable for Implementing Decision:** The changes will become effective

immediately but will not apply in term of the new company until such time as it is formally incorporated.

**6.2 Lead Officer** – Governance Director and Monitoring Officer

**6.3 Reporting Progress** – These proposals involve a constitutional amendment so will be considered by Governance Committee, Corporate Resources and Governance and Scrutiny Committee, Cabinet and Full Council.

**6.4 Communications Plan** - The proposals will be the subject of consideration as detailed above and, if approved, will appear in the published version of the constitution.

**7.0 Consultation and Engagement**

Consultation has taken place with the Legal Team and these changes will be the subject of consideration by Elected Members in a number of venues as outlined in paragraph 6.3 above.

**8.0 Appendices and Background Papers**

Appendix 1 – Proposed Amendments

**9.0 Contact Officer**

<b>9.1 Name:</b>	Steve Newton
<b>9.2 Position:</b>	Governance Director and Monitoring Officer
<b>9.3 Email address:</b>	steven.newton@redcar-cleveland.gov.uk
<b>9.4 Telephone Number:</b>	01642 444648

## **Appendix 1 – Proposed Amendments**

### **Schedule 1 – Shareholder Terms of Reference and Delegations.**

#### **Shareholder Committee Terms of Reference**

For the purposes of this Schedule, the companies referred to herein are:

- a) Veritau Tees Valley Ltd;
- b) Redcar and Cleveland Legal Services Ltd; and
- c) TV ERF LA SPV (or such name as shall be allocated to the company upon its formal incorporation)

#### **General Matters**

1. Monitor the performance of the companies in relation to their Business Plans and, in particular, the companies' performance:
  - (a) in financial matters
  - (b) against the social goals of the company as set out in the company's Objects, Business Case or Business Plans; and
  - (c) against the values of the Council.
2. Evaluate and monitor via periodic reports and/or annual reports:
  - (a) performance and progress against business plans;
  - (b) financial and social returns on investment (be that shareholding, loans or direct investment); and
  - (c) risks and opportunities including those arising from joint ventures or new opportunities.
3. Consider matters reserved to the Council for shareholder approval, such as those listed below but more particularly set out in a company's Articles of Association or Shareholder Agreement:
  - (a) The change of the Company's name.
  - (b) The making of any variation to the Memorandum of Association of the Company or the Articles.
  - (c) The amalgamation or merger of the Company with any other company, business or undertaking or the acquisition of any shares in any company or any business or undertaking of any person, the establishment of any Subsidiaries or the participation by the Company in any legal partnership or joint venture (whether incorporated or not).
  - (d) The making of any petition or resolution to wind-up the Company or any application for administration or giving any notice of intention to an administrator unless in any case the Company is at the relevant time insolvent and the Directors reasonably consider (taking into

account their fiduciary duties) that the Company ought to be wound-up.

- (e) The admission of persons as shareholders of the Company.
- (f) The appointment and terms of appointment of directors other than Directors appointed by other parties.
- (g) Approving amending or terminating any agreement in respect of a transaction or commitment with a value of more than £200,000 relating to the performance or functions of the Company, or such other value as maybe specified in the attached Appendices where applicable.
- (h) Increasing or decreasing or cancelling the authorised or issued share capital of the Company or agreeing to allot any of the share capital of the Company or otherwise reorganise the share capital of the Company
- (i) The percentage of Profit to be distributed as dividends.

(NB The Shareholder Committee will not have operational control over the company. All decisions regarding the day to day operation of the Company its business developments and commercial opportunities and the development and implementation of its internal procedures, rest with the Directors)

4. Consider proposals that might be outside of the agreed operational parameters and business plans.
5. Exercise oversight on decision making and assurance that the statutory functions of the companies are being properly discharged.
6. Any specific matters as set out in the attached Appendices as applicable to each individual company.

#### **Decision making by the Shareholder Representatives:**

7. The Shareholder Representatives for each company are identified in the relevant Appendices to this Schedule. If, for any reason, the Shareholder Representative is unavailable and a matter cannot wait until their return, the Alternative Shareholder Representative is authorised to undertake their role in full, as set out within these Terms of Reference.
8. Where a reserved matter is considered by the Council's Shareholder Representative to necessitate a shareholder decision before a meeting of the Shareholder Committee is due to take place, the Council's Shareholder Representative, or their appointed nominee, is authorised to perform all functions within the duties and powers of the Shareholder Committee in accordance with provisions set out below and as shareholder representative.
9. The Council's Shareholder Representative is authorised, subject to the concurrence of the Chair of the Shareholder Committee or, in his/her absence, the Vice-Chair, and the consultation of the other members

represented on the sub-committee, to perform all functions within the powers and duties of that Shareholdings Committee in any case in which the prompt performance of any of the Council's shareholding functions is desirable and necessary, subject to the action taken being reported through delegated decision notices. In the event that no member of the Shareholder Committee is available to consult and the matter is of such urgency that a decision cannot be postponed, the Shareholder Representative shall instead consult with the Managing Director or, in their absence, the person at the time acting in that role.

10. The Council's Shareholder Representative, or his/her nominee, is further authorised to exercise the Council's vote as shareholder at general meetings of a company and to undertake the following:

- (a) Monitoring the strategic and business plans and approving emergency amendments.
- (b) Approving the appointment or dismissal of company Directors including the Chair.
- (c) Matters relating to the terms and conditions of company Directors.
- (d) Matters relating to the entering of any contracts with company Directors.
- (e) Matters relating to the employment of senior management team of the company.
- (f) Changes to share capital and admission of shareholders.
- (g) Making changes to the nature of the company's business.
- (h) Approving changes to the area in which the company works.
- (i) Altering the company's name or registered office.
- (j) Where required giving any further specific approval to a Shareholder Reserved Matter provided for within the Shareholders' Agreement and in accordance with the timescales required to ensure compliance with the Project Agreement.
- (k) Where required giving any further specific approval to a matter provided for within the approved business plan.
- (l) To act on behalf of the Shareholder Committee to monitor Performance of the Company.
- (m) To take appropriate action and decisions as the Shareholder as directed by the Shareholder Committee.
- (n) To take all other decisions as the Shareholder as provided for by legislation or the Company's governance documents.

(o) To report back to the Shareholder Committee annually or from time to time on formal decisions made.

11. It is agreed that if there is a conflict or inconsistency between the provisions set out in this Terms of Reference document and the Shareholders' Agreement, the provisions of the Shareholders' Agreement shall prevail. In the event of inconsistency between the Terms of the Reference and an Appendix, the Appendix shall prevail.

## Appendix A – Veritau Tees Valley Ltd

<b>Company</b>	<b>Shareholder Representative</b>
Veritau – Tees Valley Ltd	<p data-bbox="769 241 1114 300"><u>Shareholder Representative:</u> Section 151 Officer</p> <p data-bbox="769 331 1254 546"><u>Alternative Shareholder Representative.</u> In the absence of the Section 151 officer the Managing Director and/or any Executive Director are authorised to act as Alternative Shareholder Representative in the event of an urgent decision being required.</p>

### Company Specific Provisions

None



## Appendix B – Redcar and Cleveland Legal Services Ltd

Company	Shareholder Representative
Redcar and Cleveland Legal Services Ltd	<p data-bbox="767 338 1155 398"><u>Shareholder Representative:</u> Commercial and Legal Manager</p> <p data-bbox="767 432 1270 674"><u>Alternative Shareholder Representative.</u> In the absence of the Commercial and Legal Manager, the Monitoring Officer, Managing Director and/or any Executive Director are authorised to act as Alternative Shareholder Representative in the event of an urgent decision being required.</p>

### Company Specific Provisions

None

## Appendix C - TV ERF LA SPV

Company	<b>Shareholder Representative &amp; Alternative Shareholder Representative</b>
TV ERF LA SPV	<p><u>Shareholder Representative:</u> <i>Initial appointment to be made by the Managing Director upon incorporation of the Company.</i></p> <p><u>Alternative Shareholder Representative:</u> In the absence of the Shareholder Representative, the Managing Director and/or any Executive Director are authorised to act as Alternative Shareholder Representative in the event of an urgent decision being required.</p>
	<b>Initial Director Appointments</b>
	<p><u>Director:</u> Assistant Director – Neighbourhood Services.</p> <p><u>Alternate Director:</u> Executive Director for Growth, Enterprise and Environment</p>

### Company Specific Provisions

#### 1) Shareholder Representative

The 'Shareholder Representative' must:

- a) Be a non-elected officer;
- b) Have vested in them the ability to vote on all Shareholder Reserved Matters, subject to these Matters being within the approved thresholds of their delegations; and
- c) Be committed to attend Shareholder meetings, or otherwise participating in any Shareholder' decision-making process, in person.

#### 2) Alternative Shareholder Representative

For any decisions where the Shareholder Representative is unavailable, an 'Alternate Shareholder Representative' shall have been appointed in parallel with the Shareholder Representative. The Alternate Shareholder Representative must:

- a) Be a non-elected officer;
- b) Have vested in them the ability to vote on all Shareholder Reserved Matters, subject to these Matters being within the approved thresholds of their delegations; and
- c) Be committed to attend Shareholder meetings, or otherwise participating in any Shareholder' decision-making process, in person.

### **3) Transaction Value within Schedule 1, para 3(g) above**

To be set at the level of £ 200,000 or such other value as may be determined by the Shareholder Committee

### **4) Appointment of Directors and Alternate Directors other than directors appointed by the parties:**

- i. Each Shareholder shall be entitled to nominate, and shall nominate, one Director being an individual (natural) person who satisfies the criteria set out in clause ii below.
- ii. Each Director must, on appointment and for so long as they are holding office:
  - (a) be a non-elected officer of the appointing Shareholder;
  - (b) have vested in them by their appointing Shareholder the ability to vote on all Board Reserved Matters; and
  - (c) be committed to attending board meetings, or otherwise participating in any other Directors' decision-making process, in person.
- iii. An Alternative Director shall be nominated who:
  - (a) satisfies the criteria set out in clause f)ii. above;
  - (b) shall be entitled to receive notice of all Board meetings and of all proposed Directors' written resolutions which their appointing Director is entitled to receive;
  - (c) shall attend in the absence of the Director, and is present at a Board meeting and shall be entitled to vote as the Director would have been entitled to vote had the Director been present at the meeting; and be counted in the quorum at any Board meeting at which the Director is not present;
  - (d) exercise and discharge at that meeting all the functions, rights, responsibilities, powers and duties of the Director in their capacity as a Director; and
  - (e) sign proposed Directors' written resolutions on behalf of the Director.

### **5) General Management of the Company**

The Company's Board:

- a) shall be responsible for the overall direction, supervision and management of the Company and the Business;
- b) shall have full and complete, authority, power and discretion to manage and control the business and affairs of the Company (to the extent contemplated by the Board Reserved Matters) and to make all decisions regarding those

matters and to perform any and all other acts or activities customary or incidental to the management of the Company and the Business; and

- c) must ensure that the Business is managed in accordance with the Shareholders' Agreement, the Business Plan, the Budget and the Policies.

The Executive Management (of the Company) shall be responsible for the day-to-day management of the Company and will be responsible for taking decisions in relation to Executive Management Reserved Matters (as defined within the Shareholders' Agreement).

## **6) Shareholder Authorisations**

The Shareholder Representative (and / or the Alternate Shareholder Representative) shall be authorised to issue Shareholder Resolutions, on behalf of the Shareholder (the Council) in respect of the decision for the company to enter into the following agreements:

- i. Waste Supply and Support Agreement;
- ii. Service Level Agreement;
- iii. Secondment Agreement;
- iv. Project Agreement;
- v. Councils' Guarantee of the Project Agreement;
- vi. Novation of the Option Agreement from Hartlepool Borough Council;
- vii. Lease;
- viii. Side-Deed;
- ix. Environmental Deed;
- x. Councils' Guarantee of the Lease;
- xi. Underlease; and
- xii. Such other agreements incidental to the establishment and operation of the company which do not otherwise require approval by the Cabinet or Full Council.