

**QUERCUS 7 LIMITED - THE APPOINTMENT OF OBSERVERS TO BOARD MEETINGS**

**Legal and Democratic Services - 17 October 2017**

Report of                      Head of Legal and Democratic Services

Status                         For information

Key Decision                No

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**Portfolio Holder**        Cllr. Firth

**Contact Officers**        Martin Goodman Ext. 7245

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**Recommendation to the Legal and Democratic Services Advisory Committee:**

That the report be noted.

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**Reason for recommendation:** This report considers the power of the Trading Board of Quercus 7 to seek to appoint non-voting observers to Quercus 7 Board meetings.

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**Introduction and Background**

- 1        As reported to a previous Legal and Democratic Services Committee, the relationship between the executive Board of Quercus 7 and the Council (as shareholder) is regulated by a Shareholder Agreement. The Shareholder is represented by a Trading Board comprised of the Council’s Cabinet.
- 2        The Shareholder Agreement allows non-voting observers to be appointed to attend Board meetings.
- 3        The appointment of observers is exercised by the Trading Board.

**The Relevant Power**

- 4        Paragraph 10.7 of the Shareholder Agreement provides as follows:  
*Non-voting observers or attendees as The Trading Board shall agree (with Board Approval from time to time) shall be entitled to attend meetings of the Board in a non-voting observer role (“Observers”). For the avoidance of doubt, Observers shall not be Directors of the Company.*
- 5        Thus, non-voting observers are entitled to attend meetings of the Board if the Trading Board agrees that they may and if Quercus 7’s Board so approves.
- 6        There is no prescribed test for approving an application to attend the Board as an observer.

- 7 It is desirable to avoid any observer being placed in a position where they may be deemed to exercise de facto control. This may place the observer in the position of becoming a ‘shadow director’ with potential uninsured liability arising as a consequence.
- 8 External legal advice has confirmed that Members may most safely and effectively scrutinise the Company as a shareholder and through attendance at the AGM. To that end it is inadvisable for Members to take the risk of becoming a ‘shadow director’ by seeking to become an observer.

### **Advantages and Disadvantages**

- 9 The issue of ‘shadow directors’ set out above may be considered a disadvantage to appointing observers. It is also important for Quercus 7 to preserve any confidentiality attaching to Sevenoaks District Council’s information and investment strategy. Naturally those seeking to scrutinise the operations of Quercus 7 may consider the appointment of observers an advantage.

### **Key Implications**

#### Financial

None.

#### Legal Implications and Risk Assessment Statement

Contained within main report.

#### Equality Assessment

The decisions recommended through this paper have a remote or low relevance to the substance of the Equality Act. There is no perceived impact on end users.

### **Conclusions**

The Trading Board may agree to allow observers to Board meetings subject to Board approval from time-to-time. This is a matter for the Trading Board to consider and Members are requested to note this report.

**Appendices** None

**Background Papers** None

**Martin Goodman**

**Head of Legal and Democratic Services**