

**Decision Session – Executive Leader (incorporating Finance and Performance) 14 January 2019**

Report of the Deputy Chief Executive & Corporate Director of Customer & Corporate Services

**YPO Procurement Holdings Ltd Shareholder Agreement**

**Summary**

1. This report seeks approval to proposed changes to the Shareholder Agreement with YPO Procurement Holdings Ltd, specifically to reduce the number of decisions reserved for unanimous agreement and add a new schedule of items reserved for agreement by requisite majority.

**Recommendations**

2. The Executive Leader is asked to approve the proposed amendments to the Shareholders Agreement as set out in Annex A.

Reason: To allow the company to be able to respond quickly to market conditions.

**Background and analysis**

3. YPO (formerly known as the Yorkshire Purchasing Organisation) was established as a joint committee of Local Authorities in 1974 and the Council is one of 13 founder member authorities.
4. YPO Procurement Holdings Ltd was incorporated in 2014 as a subsidiary of YPO and was formed so that YPO would be able to transact with the private sector for the first time and to open up new markets, but also to enable it to act in a more commercial fashion, with a governance structure more aligned to a commercial business than a local authority.
5. The Shareholder Agreement currently in place was proposed by legal advisors as part of setting up the company and the governance arrangements. It includes a schedule of decisions reserved for unanimous agreement of the shareholders.
6. The first time a decision was required which fell under the Reserved Items schedule took place in August 2018. Feedback from some members following this decision making process has initiated a review of the Reserved Items

schedule to establish whether it is still fit for purpose, having now gained practical experience of the type of commercial challenges and opportunities facing the business.

7. The review has revealed that a number of items which, at face value, offer tighter governance protections, may potentially restrict a majority of members who hold either governance concerns, or who support a commercial initiative from being able to properly exercise their will through majority voting.
8. All decisions in the YPO Joint Committee require a 2/3 majority for approval. The requisite majority in YPO Procurement Holdings Ltd for all decisions not reserved for unanimous agreement is also 2/3.

### **Consultation**

9. This proposal has been agreed by all member authorities at the YPO Procurement Holdings board meeting.

### **Options**

10. The review has generated a number of proposed changes and these are listed at annex A, along with the rationale for their amendment.
11. It is proposed that removal of any decision from Schedule 1 – Items Reserved for Unanimous Agreement of the Shareholders, automatically reverts such decision to a new Schedule 2 – Items Reserved for Agreement by Requisite Majority of the Shareholders. The Requisite Majority is defined as 2/3 of shareholders. All other decisions not listed on either schedule require a simple 2/3 majority of Directors present at a meeting (assuming quoracy is achieved).
12. Approval of these changes would require unanimous agreement of the shareholders, in line with the existing agreement and this decision should be implemented through a Deed of Variation.

### **Risk Management**

13. There are risks associated with both approval and non-approval of the recommendation. Approval poses the risk that individual shareholders may find themselves outvoted on decisions where previously the requirement for unanimity would have prevented this. Non-approval poses the risk that a majority of shareholders are unable to implement their wishes, or express their governance concerns due to dissent from a single shareholder. This is a judgement which shareholders are required to make in deciding whether to approve the recommendation

## Implications

14. **Financial** - There are no specific financial implications resulting from the recommendation. However, future financial investment decisions may be taken in a different manner if the recommendations are approved.
15. **Legal** - Approval of the recommendation requires unanimous agreement of all shareholders and must be implemented through a Deed of Variation.
16. There are no HR, One Planet, crime and disorder, information technology, property or other implications.

## Contact Details

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### Chief Officer responsible for the report:

Ian Floyd  
Deputy Chief Executive & Corporate  
Director of Customer & Corporate  
Services

Report  
Approved



Date 03/01/19

**Wards Affected:** *All*

**For further information please contact the author of the report**

## Annexes

Annex A – Shareholders Agreement – Proposed Changes