

**ECTC AND ECSS MATTERS**

Committee: Council  
Date: 23 May 2024  
Author: Director Legal & Monitoring Officer  
Report No: Z5

Contact Officer: Maggie Camp, Director Legal & Monitoring Officer  
[Maggie.camp@eastcambs.gov.uk](mailto:Maggie.camp@eastcambs.gov.uk) 01353 616277, Room 112 The Grange, Ely

**1.0 ISSUE**

1.1. To consider changes to the East Cambs Trading Company Ltd (“ECTC”) Shareholder Agreement, East Cambs Street Scene Ltd (“ECSS”) Shareholder Agreement and the Memorandum of Agreement (“MoA”) between the Council and ECSS.

**2.0 RECOMMENDATION(S)**

2.1. Council is requested to:

- i. Approve the changes of the ECTC Shareholder Agreement as set out in Appendix 1,
- ii. Approve the changes to the ECSS Shareholder Agreement as set out in Appendix 2,
- iii. Approve the replacement of Schedule 5 of the Memorandum of Agreement between the Council and ECSS with Schedule 5 as set out in Appendix 3,
- iv. Authorise the Director Legal & Monitoring Officer to complete the legal documentation to bring into effect the decision of i) – iii) above.

**3.0 BACKGROUND/OPTIONS**

**Internal Audit**

3.1. The Council’s Internal Auditors have concluded audits relating to ECTC and ECSS. Both reports concluded that there was good compliance and provide recommendations to further enhance compliance.

3.2. The following recommendations were made relating to ECTC:

- The relationship and rights of access for the Council’s Internal Auditors with ECTC should be suitably documented to ensure consistency and clarity going forward,
- The Seven Principles of Public Life (Nolan Principles) should be incorporated into the Shareholder Agreement or Articles of Association (as appropriate).
- ECTC Board to prepare and approve an annual governance statement for submission to the Council, and

- Make changes to the Shareholder Agreement to reflect current practices, i.e. Quarterly Management Accounts to the Shareholder Committee (Finance & Assets Committee) and risk escalation to Council (where necessary).

3.3. The following recommendations were made relating to ECSS:

- The relationship and rights of access for the Council's Internal Auditors with ECSS should be suitably documented to ensure consistency and clarity going forward,
- The Seven Principles of Public Life (Nolan Principles) should be incorporated into the Shareholder Agreement or Articles of Association (as appropriate),
- Include in the Shareholder Agreement a statement which sets out that where staff are formally seconded to ECSS they must not take decisions on behalf of the Council on its statutory functions,
- ECSS Board to prepare and approve an annual governance statement for submission to the Council, and
- The MoA to be updated and formally approved to reflect recent changes in ECSS governance, financial and performance management arrangements.

#### **ECTC Request**

- 3.4. ECTC's Director Commercial has formally requested changes to the ECTC Shareholder Agreement that, if approved, would enable ECTC to form Resident Management Companies without the need to seek consent from the Council.
- 3.5. A Resident Management Company is a company that is owned by the residents who will become responsible for the maintenance and management of the common areas within a development.
- 3.6. This request has arisen from ECTC's consideration of how the management company responsibilities of the development at Eden Square, Ely should be managed in the long-term. Following ECTC's own external legal advice and consideration of the nature of management company responsibility, the ECTC Board resolved to approve a Resident Management Company and request formal consent from the Council to do so.
- 3.7. It was further considered that a Resident Management Company may be appropriate for other sites in the future and therefore it was expedient to request a 'blanket' consent to form Resident Management Companies without the need to require consent from the Council in the first instance.
- 3.8. If approved by Council, ECTC will incorporate the Resident Management Company and be the first directors of the company. As each individual property is sold, the purchaser will be obligated to become a director of the company. ECTC would resign from the company at the point that the last property is sold.

## Other Changes

### 3.9. Proposed ECTC and ECSS Shareholder Agreement amendments:

- 3.9.1. In the preceding year, all Members have received a copy of both ECTC and ECSS Board Papers. These papers have been provided in the strictest of confidence. This enables all Members to receive information on the matters being considered by the respective Boards.
- 3.9.2. Clause 5.8 of the respective Shareholder Agreements permit the Board papers to be sent to the respective Shareholder Committee Members. To formalise the current practice, it is proposed that this clause should be amended to include **all** Members.
- 3.9.3. As all Members receive a copy of the ECTC and ECSS Board Papers, a review has been carried out to assess the information provided to all Members and information provided to the Shareholder Committee.
- 3.9.4. Finance & Assets Committee and Operational Services Committee, acting in their respective Shareholder Committee capacity, have received Board Minutes for information. This is not a requirement of the Shareholder Agreement and is not part of either Committee's Terms of Reference.
- 3.9.5. Both ECTC and ECSS Board Minutes form part of the Board Papers that all Members receive. This is currently a duplication which is not required in either the Shareholder Agreements or the Shareholder Committee's Terms of Reference. The proposed changes to the Shareholder Agreements will formalise all Members receiving a copy of Board Papers. For this reason, it is proposed that there is no longer a need for these to be received by the respective Shareholder Committee.
- 3.9.6. Clause 5.5 of the respective Shareholder Agreements require the Board of Directors to send a biannual report to the Shareholder Committee. This report is for noting. The biannual report includes the strategic risk assessment, progress against the Business Plan, summary management accounts and key financial metrics including financial projections and variations. This is an area where there is a duplication of information received by Members.
- 3.9.7. All Members receive a copy of the ECTC and ECSS Board Papers which include the Strategic Risk Register and the Quarterly Management Accounts (which contains narrative about business progress) are noted by the Shareholder Committee. It is proposed that since this information is already provided to Members that clause 5.5 is deleted. For the avoidance of doubt the respective Shareholder Committees will continue to receive Quarterly Management Accounts, which contain a narrative about business progress.
- 3.9.8. The respective Shareholder Agreements require the attendance of Board Directors at meetings. It is proposed that this requirement should be amended to

reflect the nature of the business being considered by the respective Shareholder Committees.

- 3.9.9. It is proposed that clause 5.9 is amended to reflect the attendance of Board Director(s) where items of decision affecting the company are being considered and the requirement for personnel nominated by the Board of Directors for noting items are being considered by the respective Shareholder Committee.

#### **4.0 ARGUMENTS/CONCLUSION(S)**

- 4.1. The changes identified in this report reflect the recommendations from Internal Audit, the request from ECTC's Director Commercial, and a further review of the Shareholder Agreement. All of these changes have been reflected in Appendices 1-3.
- 4.2. Tracked changes of the ECTC Shareholder Agreement are provided at Appendix 1.
- 4.3. Tracked changes of the ECSS Shareholder Agreement are provided at Appendix 2.
- 4.4. The amended Schedule 5 of the MoA is provided at Appendix 3.

#### **5.0 FINANCIAL IMPLICATIONS / EQUALITY IMPACT STATEMENT / CARBON IMPACT ASSESSMENT**

- 5.1. There are no additional financial implications arising from this report.
- 5.2. Equality Impact Assessment (EIA) not required.
- 5.3. Carbon Impact Assessment (CIA) not required.

#### **6.0 APPENDICES**

Appendix 1- Draft ECTC Shareholder Agreement  
Appendix 2- Draft ECSS Shareholder Agreement  
Appendix 3- Draft Schedule 5 of the Memorandum of Agreement

#### Background Documents

ECDC and ECSS Memorandum of Agreement  
Confidential- Internal Audit Report ECTC  
Confidential- Internal Audit Report ECSS