

EAST HERTS COUNCIL

NON-KEY DECISION - NKD19/16

REPORT BY THE EXECUTIVE MEMBER FOR FINANCIAL SUSTAINABILITY

AMENDMENT TO SHAREHOLDER AGREEMENT BETWEEN EAST HERTS COUNCIL AND MILLSTREAM PROPERTY INVESTMENTS LTD

WARD(S) AFFECTED: ALL

Purpose/Summary of Report

- This report concerns an amendment to the timetable for producing and approving Millstream Property Investment Ltd's Business Plan to bring this into line with the council's budget-setting timetable. This non-key decision is being made the Executive Member for Financial Sustainability, acting in consultation with the Head of Housing and Health and Head of Legal and Democratic Services, acting under authority delegated by the Executive on 5th September 2017.

RECOMMENDATION FOR DECISION: That:

(A)	that section 4 in the existing approved Shareholder Agreement between East Herts Council and Millstream Property Investments Ltd be replaced with the re-worded version given in Essential Reference Paper 'B', be approved.
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1.0 Background

1.1 As part of the establishment of the council's wholly-owned property company, Millstream Property Investments Ltd (the Company'), a Shareholder Agreement between the council and the Company was drawn up to govern how the two bodies would interact.

- 1.2 Acting under authority delegated by the Executive on 5th September 2017, the Executive Member for Finance and Property (now the Executive Member for Financial Sustainability) approved the final wording of the Shareholder Agreement on 12th June 2018.
- 1.3 Work to produce the Company's 2019/20 Business Plan revealed certain ambiguities in the Shareholder Agreement as to whom the Company should submit its draft Business Plan prior to submission of the final draft to full Council for approval. This report recommends rewording of the Shareholder Agreement to clarify this point.
- 1.4 Also last year, it became apparent that the Shareholder (the council) wished to consider the Business Plan as part of the council's budget-setting process. The Company obliged although this in fact required the Company to bring forward the final draft report. So, the report further recommends amendments to the timetable to which both the Company and its Shareholder work on the Business Plan each year.
- 2.0 Report
- 2.1 The Company's Business Plan for 2019/20 was the first one produced once the Company was incorporated and had started trading. The Company adhered to the date in the Shareholder Agreement for submission of its first draft Business Plan and agreed to the Shareholder's (the council's) request to bring forward submission of the final draft Business Plan so as to align with the council's budget-setting process.
- 2.2 The experience from the 2019/20 business planning process was that the wording of the Shareholder Agreement was ambiguous as to whom exactly the Company should submit its first draft Business Plan. Of note, the Company interpreted 'the Shareholder' to whom it should submit its first draft Business Plan by 31st October as members of the Shareholder Advisory Group and senior officers of the council and acted accordingly. At a later point, others, understandably, read the Shareholder

Agreement as requiring submission of the first draft by 31st October to full Council acting in its role as Shareholder.

- 2.3 It was not the intention at the time of first drafting the Shareholder Agreement that the first draft Business Plan be considered by full Council as well as the final draft version. Of note, if a two stage process of consideration by full Council were to be adopted, the Company would be required to produce a first draft Business Plan sometime before the end of the second quarter of the preceding year. This is arguably acts against the agility of the Company and is too early in the year to determine commercial decisions for the following year. In addition, the Shareholder Advisory Group was formed to provide advice prior to consideration of final documentation by full Council.
- 2.4 Therefore, rewording of the Shareholder Agreement is proposed which makes it clear that the Company is required to provide the Shareholder Representative and the members of the Shareholder Advisory Group with a first draft version of the Business Plan by 31st October each year – see clause 4.1.1 in the proposed revision to section 4 of the Shareholder Agreement presented in **Essential Reference Paper 'B'**.
- 2.5 When preparing the 2019/20 Business Plan last year, it became apparent that the Shareholder (the council) quite reasonably wished to align its production and approval with the council's budget-setting process. The Company obliged with this revised timetable even though it brought forward the deadline for the Company presenting its final draft Business Plan by around four weeks.
- 2.6 So long as the Shareholder is able to provide timely written comments on the first draft Business Plan, the Company has confirmed that it can accommodate an earlier deadline for submission of its final draft Business Plan. Thus, it is proposed to revise the Shareholder Agreement to accommodate this –

see clauses 4.1.2, 4.2 and 4.3 in the proposed version at
Essential Reference Paper 'B'.

2.7 The current wording section 4 of the Shareholder Agreement is presented at **Essential Reference Paper 'C'**. No elements of Shareholder Agreement outside of section 4 which deals exclusively with the production and approval of the Business Plan have been amended.

3.0 Implications/Consultations

3.1 Information on any corporate issues and consultation associated with this report can be found within **Essential Reference Paper 'A'**.

Background Papers

None

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