

## OFFICER DECISION

<b>Report title:</b>	Written consent to Millstream Property Investments Ltd's request to issue ordinary shares
<b>Date:</b>	21 <sup>st</sup> March 2023
<b>Decision-maker:</b>	Richard Cassidy, Chief Executive, East Herts Council acting in his capacity as the Shareholder Rep to Millstream Property Investments Ltd

### Decision

- That written consent is provided to Millstream Property Investments Ltd's request to issue ordinary shares in the company.

### Reason for the decision

- 1.1 At a meeting of its directors on 17<sup>th</sup> March 2023, Millstream Property Investments Ltd (herein 'Millstream' or 'the company') agreed that it wished to create ordinary shares in the company which it would sell to East Herts Council to generate funds to pay off all the shareholder loans extended to date by the council. The company has requested the shareholder's consent as required under the Shareholder Agreement – see paragraph 2.2 below.
- 1.2 The company is motivated to do this to avoid any question of the company exhibiting 'thin capitalisation' as raised by the company's external auditors, Ensors. Thin capitalisation has arisen inadvertently but is nonetheless unacceptable to His Majesty's Revenues and Customs (HMRC) and so needs to be remedied.
- 1.3 Of note, this 'back-to-back' transaction (the council buying shares and the company paying off the shareholder loans extended by the council) will have the effect of swapping the 'stake' in the company held by the council in the form of shareholder loans made to Millstream to an equity stake in the form of shares.
- 1.4 The number of shares to be created and the mechanism for and impact of, in essence, converting the council's interest in Millstream as described above are discussed in detail in Appendix A which is **EXEMPT** from publication by virtue of containing commercially sensitive financial information about a third party, that is, Millstream.

### Authority to make the decision

- 2.1 The decision has been made by Richard Cassidy acting in his capacity as the council's Shareholder Rep regarding Millstream.

- 2.2 Section 10.1 of the Shareholder Agreement between the council and Millstream states that *“no action shall be taken... by the Company in respect of any of the following matters except with the prior written consent of the Shareholder”*. The issues subject to the Shareholder’s written consent include, inter alia, *“the issue or allotment of any shares in the capital of the Company or any Subsidiary Undertaking of the Company or the creation of any other security or the grant of any option or rights to subscribe in respect thereof or to convert any instrument into such shares”*.
- 2.3 Paragraph 6.1 of the Shareholder Agreement states that the Shareholder Representative *“will act in the role of Shareholder in general meetings or... in means of communication adopted in place of general meetings”*. Given the company’s size and the nature of the decision described in this report, there is no need to hold a general meeting and so this record of the Shareholder Rep’s decision is sufficient.

### **Financial implications**

- 3.1 As noted in the exempt appendix, the back-to-back transaction to ‘convert’ the shareholder loans to share equity will have no financial impact on the council. The capital expended by the council in granting the shareholder loans has already been accounted for and the reclassification in the council’s accounts of a loan to an equity share holding will have no revenue or capital impact for the council.

### **Legal implications**

- 4.1 As noted above, the Shareholder Rep is acting in line with the authority afforded him in the extant Shareholder Agreement which was approved by the Executive Member for Financial Sustainability, acting under delegated authority, on 16<sup>th</sup> October 2019.