

Shareholder Sub Committee
27 November 2018

EEPIC Shareholder Agreement

Head of Service/Contact:	Amardip Healy, Chief Legal Officer
Urgent Decision?(yes/no)	No
If yes, reason urgent decision required:	
Annexes/Appendices (attached):	Annex 1 – Draft Shareholder Agreement
Other available papers (not attached):	Reports to Council 19.9.2017 & Strategy & Resources Committee 19..9.2017

Report summary

Approval of the Shareholder Agreement for Epsom & Ewell Property Investment Company

Recommendation (s)

- (1) Approve the draft Shareholder Agreement with Epsom & Ewell Property Company subject to such minor amendments as may be necessary as agreed by the Chief Legal Officer in consultation with the Chairman of the Shareholder Sub Committee, and**
- (2) To authorise the Chief Legal Officer to complete the Shareholder Agreement.**

1 Implications for the Council's Key Priorities, Service Plans and Sustainable Community Strategy

- 1.1 This will support the delivery of the Council's four year Corporate Plan and the Medium Term Financial Strategy. One of the key priorities is Managing our Resources and will achieve:
 - Maximising returns from properties and other investments
 - Identify new sources of revenue and maximising our existing income

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2 Background

- 2.1 In 2016 the Council agreed to establish a £20m Commercial Property Acquisition Fund with the aim of securing an income producing portfolio. Following its success, in 2017 the Council agreed to establish a wholly owned local authority property company, Epsom & Ewell Property Investment Company (referred to as 'EEPIC'). EEPIC operates as a commercial business which has acquired properties.
- 2.2 Council approved a number of documents, including the Articles of Association, a Property Investment Strategy, the company's annual business plan, and also the shareholder agreement.
- 2.3 Council also approved a number of appointments to the Company Board. The Chief Executive is the Chair of the Board of Directors, with a number of other heads of service appointed as Directors. To avoid any conflict of interest, the Council's Chief Legal Officer is not a Director of EEPIC.
- 2.4 As a part of the oversight arrangements for EEPIC, Council also approved the creation by Strategy & Resources Committee of a Shareholder Sub Committee, to which the Council's functions as sole shareholder of EEPIC were delegated. Strategy & Resources Committee approved the setting up and terms of reference for the Shareholder Sub Committee at a Special Meeting on 19 September 2017.
- 2.5 The delegation and terms of reference for the Sub Committee are:
 - a) Power to remove and appoint company directors.
 - b) Approve the annual company business plan, ensuring that it aligns with the corporate objectives of the Council.
 - c) Periodically evaluate financial performance of a company, and
 - d) Consider any recommendations to cease trading by a company
 - e) Monitor compliance with relevant legislation.
 - f) Approve any Shareholder Agreement with the company, or any variation to such agreement.
 - g) Consider such other matters, as require prior consultation with shareholders or as are reserved to the Shareholders in general meeting, and make such decision on those matters as they think fit.
- 2.6 The Council has three distinct roles in relation to EEPIC: Shareholder, Funder and one of scrutiny.

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- 2.7 The Council's relationship with EEPIC is primarily governed by the Council's rights under EEPIC's Articles; a Shareholder's Agreement and future credit/funding financial agreements.
- 2.8 As a Funder, the Council's primary concerns are that the loans it makes to EEPIC are safe, that there is a high prospect of the Council being repaid; that EEPIC's proposals for project funding (to acquire or develop property) are sound; that the loans are lawful and compliant with state aid regulations; and that EEPIC is monitored to ensure its continuing financial performance does not undermine or reduce the prospect of the Council being repaid debts to agreed schedules. In the Funder Role the Council is not concerned about EEPIC out performing its business plan, making greater profits than any assumptions which a loan was made on or about any other EEPIC matters which do not affect the likelihood of EEPIC repaying its debts.
- 2.9 The Shareholder Role of the Council is wider than its Funder Role. The shareholder agreement is entered into by the shareholders to regulate their relationship with the Company. Although strictly not necessary where a company has one shareholder, the agreement helps to set out what decisions are reserved to shareholders, ie its scope of responsibilities.
- 2.10 The Shareholder Role should have the right to review and approve business plans and prevent EEPIC assuming liabilities or debt beyond pre-agreed thresholds. EEPIC would be free to operate within the terms of its agreed business plan and governance arrangements. The Shareholder Role's approval in this context would only be required to renew EEPIC's business plan or for material (by value or business type) initiatives which were not included in any current agreed business plan.

3 Proposals

- 3.1 Being a wholly owned company of the Council, the Council has ultimate control of the company. Since September 2017, the Council has considered a number of matters relating to the governance of EEPIC. Some of this work has resulted in a new draft shareholder agreement being proposed for approval. The proposed draft shareholder agreement, at **Annex 1**, sets out the duties and responsibilities of both EEPIC and the Council as the sole shareholder.
- 3.2 There are a number of differences between the shareholder agreement submitted to Council in 2017 and the one now being proposed. The proposed agreement is not more or less onerous than the previous agreement, but there are differences in approach and extent of obligations, which are felt would better suit the needs of the Council as Shareholder.

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- 3.3 In accordance with the terms of reference of the Shareholder Sub Committee, the Shareholder agreement needs to be approved by the Sub Committee.

4 Financial and Manpower Implications

- 4.1 The Shareholder agreement along with EEPIC's approved business plan provide clear boundaries in which the company will operate.
- 4.2 **Chief Finance Officer's comments:** No comments for the purposes of this report

5 Legal Implications (including implications for matters relating to equality)

- 5.1 The Company is a controlled company as defined in the Local Government and Housing Act 1989 as it is a subsidiary company of a local authority and as such the shareholder (the Council) has ultimate control over the activities and operational matters of the Company.
- 5.2 Although Directors are not remunerated as they are all Council employees, if at some time the Company needs to employ staff, then the ability to pay those staff has been preserved through the provisions of the Shareholder Agreement.
- 5.3 External advice has been taken on the Shareholder Agreement, and the proposed draft ensures there is certainly and clarity around the decision making processes of the Company and the Council as Shareholder.
- 5.4 **Monitoring Officer's comments:** none arising from the contents of this report.

6 Sustainability Policy and Community Safety Implications; Partnerships

- 6.1 None arising

7 Risk Assessment

- 7.1 Agreeing and entering into a Shareholder Agreement with EEPIC mitigates any risks around governance and decision-making.

8 Conclusion and Recommendations

- 8.1 The proposed Shareholder Agreement is recommended for approval and completion.

Ward(s) affected: (All Wards);