



## CABINET

Tuesday, 06 September 2022

<b>Subject</b>	Shareholder Agreement and Governance Arrangements for the Council's Group Companies
<b>Report by</b>	Councillor Steve Gallant Leader of the Council
<b>Supporting Officer</b>	Andy Jarvis Strategic Director <a href="mailto:Andrew.jarvis@eastsuffolk.gov.uk">Andrew.jarvis@eastsuffolk.gov.uk</a> 01394 444323

Is the report Open or Exempt?	OPEN
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Category of Exempt Information and reason why it is <b>NOT</b> in the public interest to disclose the exempt information.	Not applicable
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<b>Wards Affected:</b>	None
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## Purpose and high-level overview

### Purpose of Report:

To approve:

- (a) the shareholder agreement between the Council and its group companies and authorise its entering into by the Council;
- (b) the creation of a Shareholder Reference Group (SRG) as a Committee of Cabinet to undertake functions of the Council as shareholder and/or the ultimate owner of the companies in the group that the Council has established/proposes to establish in the future;
- (c) the appointment of four Cabinet Members to the Shareholder Reference Group.

### Options:

The Council could:

decide not to have a shareholder agreement with its group companies; and/or

undertake its role and exercise its rights as shareholder/ultimate owner of its group companies solely in accordance with existing decision-making arrangements (primarily, via Cabinet) without the establishment of a shareholder reference group; or

decide to have a Shareholder Reference Group which has an advisory role only.

### Recommendation/s:

1. That Cabinet approve the entering into of the Shareholder Agreement and any associated “deeds of adherence” which commit group companies to the obligations set out in the shareholder agreement.
2. That Cabinet approve the establishment of a committee of Cabinet, to be known as the Shareholder Reference Group, to undertake the functions of the Council as shareholder/ultimate owner of its group of companies and exercise the Council’s rights under the Articles of each company and under the Shareholder Agreement, with the exception of any rights which the Cabinet or Leader reserves to itself/himself from time to time or which can only be exercised by Full Council.
3. That Cabinet reserves to itself the approval of the Consolidated Business Case which is to be produced by the Council’s Holding Company on an annual basis (this will accordingly be a matter which is not within the delegated authority of the SRG).
4. That Cabinet approve the appointment of the Leader along with the Members with responsibility for Economic Development, Resources, The Environment and Customer Experience, ICT and Commercial Partnerships, to act as members of the Shareholder Reference Group, each for a term of 4 years (provided that where an individual Member ceases to hold the relevant role during the allotted term, their replacement in that role or such role as the Leader may identify as its replacement shall also take over the role of Member of the Shareholder Reference Group for the remainder of the term or such other term as the Leader may specify).



5. That on the appointment of the Members whose roles are identified above, the Shareholder Reference Group be hereby established on 6 September 2022 and the terms of office for the Members referred to in recommendation 2 above shall also commence on the same date.

## Corporate Impact Assessment

### **Governance:**

The reason for the establishment of the Shareholder Reference Group is to enable streamlined decision-making by the Council in relation to its role as ultimate owner of its group companies, thereby assisting with good governance.

### **ESC policies and strategies that directly apply to the proposal:**

East Suffolk Strategic Plan

East Suffolk Medium Term Financial Strategy

### **Environmental:**

The rights reserved to the Council via the Shareholder Agreement may be used to assist the Council in achieving its Environmental Policy by giving the Council greater control over decision-making by its group companies on significant decisions.

### **Equalities and Diversity:**

The decisions being taken in relation to the shareholder agreement and the creation of the SRG are not considered to have equalities and diversity impacts.

### **Financial:**

The Shareholder Agreement contains rights for the Council in relation to “Reserved Matters”. The Reserved Matters are proposed actions of a group company that are considered sufficiently important (for example because of their value), that the Council should have the right to decide whether the action is taken.

The Shareholder Reference Group will, amongst other things, make decisions on “Reserved Matters”.

The Shareholder Reference Group will be a Committee of the Cabinet. Its costs of administration will be absorbed by the Democratic Services/Members budget, in the same way as any other Committee of the Council is accounted for.

### **Human Resources:**

There are considered to be no HR implications for the organisation from these decisions.

### **ICT:**

There are considered to be no ICT implications for the Council from these decisions

### **Legal:**

#### **Shareholder Agreement**

The draft Shareholder Agreement has been prepared by external legal advisers, Bevan Brittan, who have advised on appropriate terms, based on their experience of dealing with similar arrangements for other authorities.



**SRG**

In relation to the proposals to establish the SRG, the Council's constitution (Paragraph 5.10) permits Cabinet to arrange for any decision that it is collectively responsible for to be taken by a committee of the Cabinet.

**Risk:**

There are no particular risks identified with these proposals.

<b>External Consultees:</b>	None
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## Strategic Plan Priorities

Select the priorities of the <a href="#">Strategic Plan</a> which are supported by this proposal: (Select only one primary and as many secondary as appropriate)		Primary priority	Secondary priorities
<b>T01</b>	<b>Growing our Economy</b>		
P01	Build the right environment for East Suffolk	<input type="checkbox"/>	<input type="checkbox"/>
P02	Attract and stimulate inward investment	<input type="checkbox"/>	<input type="checkbox"/>
P03	Maximise and grow the unique selling points of East Suffolk	<input type="checkbox"/>	<input type="checkbox"/>
P04	Business partnerships	<input type="checkbox"/>	<input checked="" type="checkbox"/>
P05	Support and deliver infrastructure	<input type="checkbox"/>	<input type="checkbox"/>
<b>T02</b>	<b>Enabling our Communities</b>		
P06	Community Partnerships	<input type="checkbox"/>	<input type="checkbox"/>
P07	Taking positive action on what matters most	<input type="checkbox"/>	<input type="checkbox"/>
P08	Maximising health, well-being and safety in our District	<input type="checkbox"/>	<input type="checkbox"/>
P09	Community Pride	<input type="checkbox"/>	<input type="checkbox"/>
<b>T03</b>	<b>Maintaining Financial Sustainability</b>		
P10	Organisational design and streamlining services	<input type="checkbox"/>	<input checked="" type="checkbox"/>
P11	Making best use of and investing in our assets	<input type="checkbox"/>	<input checked="" type="checkbox"/>
P12	Being commercially astute	<input type="checkbox"/>	<input checked="" type="checkbox"/>
P13	Optimising our financial investments and grant opportunities	<input type="checkbox"/>	<input checked="" type="checkbox"/>
P14	Review service delivery with partners	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>T04</b>	<b>Delivering Digital Transformation</b>		
P15	Digital by default	<input type="checkbox"/>	<input type="checkbox"/>
P16	Lean and efficient streamlined services	<input type="checkbox"/>	<input type="checkbox"/>
P17	Effective use of data	<input type="checkbox"/>	<input type="checkbox"/>
P18	Skills and training	<input type="checkbox"/>	<input type="checkbox"/>
P19	District-wide digital infrastructure	<input type="checkbox"/>	<input type="checkbox"/>
<b>T05</b>	<b>Caring for our Environment</b>		
P20	Lead by example	<input type="checkbox"/>	<input type="checkbox"/>
P21	Minimise waste, reuse materials, increase recycling	<input type="checkbox"/>	<input type="checkbox"/>
P22	Renewable energy	<input type="checkbox"/>	<input type="checkbox"/>
P23	Protection, education and influence	<input type="checkbox"/>	<input type="checkbox"/>
<b>XXX</b>	<b>Governance</b>		



XXX	How ESC governs itself as an authority	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<b>How does this proposal support the priorities selected?</b> <b>Commercially Astute/Business Partnerships</b> <p>The Shareholder Agreement provides the Council with greater control over the actions of its group companies. This control enables the Council to have greater influence over the strategic direction and priorities of those companies.</p> <p>The Shareholder Reference Group will receive regular updates on the progress and plans of the Council's group companies. The SRG will therefore provide an oversight function for the Council.</p> <p>The SRG will also facilitate decision-making on Reserved Matters.</p> <p>These functions will also support the Council's priorities around service delivery, commercial activities and financial investments.</p>			

## Background and Justification for Recommendation

1 Background facts	
1.1	The Council has established a number of companies within a group structure, included East Suffolk Services Limited (ESSL) which will take over services from the current Norse joint ventures in July 2023.
1.2	The Council needs to have appropriate controls in place for the good governance of ESSL and its other companies. In addition, this also assists with compliance with certain legal requirements that must be satisfied so that the Council can make a direct contract award to ESSL and any other Teckal Companies.
1.3	In order to provide the appropriate control and governance role that the Council needs in relation to its group companies, it is proposed to: (a) enter into a shareholder agreement with each of the companies in the Group (as each company becomes "live"); and (b) establish a committee of Cabinet, to be known as the Shareholder Reference Group (SRG). The SRG will exercise certain rights and controls of the Council in relation to its companies.
2 Current position	
2.1	The Council already has some rights over the decisions of its companies through the Articles of those companies. However, it is advisable for the Council to enter into a "shareholder agreement" with its group companies in order to strengthen the degree of control that the Council has in this regard.
2.2	This is particularly important for any Council company that will operate as a so-called "Teckal" company, as such a company has to satisfy certain "tests" so that the Council can make a direct award of a contract to it without going through a public tendering process. ESSL will operate as a Teckal company.



2.3	<p>In broad terms, in order to meet the “Teckal” tests, the Council must exercise the necessary level of control over the relevant company – that is, it must have a decisive influence over both strategic objectives and significant decisions of the company.</p> <p>In addition, the company must undertake at least 80% of its activities for the Council.</p> <p>Then the Council will be able to make a direct award of a service contract to the company without the need to undertake a public procurement exercise in accordance with the Public Contracts Regulations 2015. This will be of particular relevance to ESSL, where it is proposed to enter into a service agreement with ESSL for the provision of services from 1 July 2023.</p>
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3 How to address current situation	
3.1	The existence of a shareholder agreement between the Council and its companies will provide the Council with additional rights over and above those provided in the companies’ Articles and via being the ultimate owner of the group.
3.2	The shareholder agreement describes how the Council is permitted to monitor and control the business and operations of each Company through the Reserved Matters, through receiving periodic reports, through its Directors on each Board and through information received following ad hoc information requests made of the relevant Company.
3.3	<p>In particular the shareholder agreement:</p> <p>provides a broad description of the business to be conducted by the holding company of the Council’s group of companies and each company in the group (referred to as “SPV”) (<b>clause 2</b>);</p> <p>requires the production of a Business Plan for each group company, to be produced for a three-year period and updated annually (<b>clause 3</b>);</p> <p>requires the Council’s Holding Company to produce a Consolidated Business Case, which will include the full Business Case for each Teckal Company and a summary Business Case for other group companies (<b>clause 3.3</b>);</p> <p>gives the Council and those acting under its delegated authority (which will include the SRG) unlimited, unrestricted and prompt access to company information and documents (<b>clause 4.3 and 5.8</b>);</p> <p>gives the Council or its Holding Company (as applicable) approval rights in respect of “Reserved Matters” (<b>clause 5 and Schedule 1</b>).</p>
3.4	The Council’s group companies will sign up to the shareholder agreement. If they are not signatories at the outset, they will do this by means of a “deed of



	adherence” which commits them to comply with the terms of the shareholder agreement.
3.5	In order to streamline the exercise of the rights and controls that the Council has as a shareholder, via the Articles of the companies or that it is reserving to itself via the Shareholder Agreement, it is proposed to establish a Shareholder Reference Group.
3.6	It is proposed that the Shareholder Reference Group will carry out the functions of the Council as shareholder/ultimate owner of its group of companies and exercise the Council’s rights under the Articles of each company and under the Shareholder Agreement, with the exception of any rights which the Cabinet reserves to itself from time to time or which can only be exercised by Full Council.
3.7	It is further proposed that Cabinet reserves to itself the approval of the Consolidated Business Case which is to be produced by the Council’s Holding Company on an annual basis. This is a pivotal decision for the Group and, as such, it is considered appropriate to retain this as a Cabinet decision on an annual basis.

4 Reason/s for recommendation	
4.1	It is considered that entering into a shareholder agreement will provide greater control for the Council over the activities of its companies and thereby assist the Council in delivering its strategic objectives and, where applicable, establishing the necessary control over its Teckal companies.
4.2	The creation of the SRG will streamline the exercise of the Council’s rights and governance of its group companies.

## Appendices

Appendices:	
<b>Appendix A</b>	Shareholder Agreement

Background reference papers:		
Date	Type	Available From
		<a href="#">CMIS</a>