

19th November 2019

Shareholder Committee

Report of the Deputy Chief Executive / Director of Customer & Corporate Services

SJB Recycling Proposed Disposal of Subsidiary Reserved Matters

Summary

1. This report seeks to provide the SJB Recycling Limited Board of Directors approval in principal for the disposal a subsidiary company.

Recommendations

2. The Shareholder Committee is recommended to
 - Agree in principal to the disposal of the subsidiary company
 - Delegate the Council's representative on the Board of Directors to work with his fellow Directors to negotiate and agree the final terms and conditions of the sale.

Reason – in accordance with the Articles and Shareholder agreement

Background

3. CYC is a minority shareholder (22.27%) of Yorwaste Limited and SJB Recycling Limited. North Yorkshire County Council is the majority shareholder of both companies.
4. The City Council operates a Shareholder Committee to make certain decisions on behalf of the shareholder.

Proposal

5. The confidential annex provides detail surrounding the proposed disposal. The annex is confidential as it discloses details of the company and potential sale value that are commercially confident as negotiations are ongoing.

6. It is necessary to obtain shareholder consent as the disposal of a subsidiary is classified as a Reserved Matter under Yorwaste and SJB Limited's Articles of Association.
7. The Board are seeking an in principal decision that would allow an early sale however that is subject to commercially in confidence negotiations.
8. The Shareholder Committee are therefore asked to give due consideration to the request from the Managing Director to provide flexibility to the Managing Director in negotiating any disposal.

Consultation

9. Consultation has been undertaken with the board of Yorwaste Limited and officers of North Yorkshire County Council

Options

10. Option 1 – to provide approval as shareholder as per the recommendations
11. Option 2 - to not provide approval as shareholder as per the recommendations

Analysis

12. This is provided in the confidential annex.
13. Officers can see no reason to reject the request from the SJB Board.

Council Plan

14. The service contracts and Teckal arrangements with Yorwaste ensures resources are available to maintain the key frontline Waste services.

Implications

15. Financial. The proposed sale will have no material impact to the council's shareholding in the company

16. Human Resources (HR) There a no HR implications

17. Equalities - There are no Equalities implications.

18. Legal

- a. Under Yorwaste Limited and SJB's Articles of Association (amending the Model Articles) and the Yorwaste Shareholders Agreement both dated 28th Aug 2015 the sale of subsidiary company is considered to be a Reserved (Shareholder) Matter pursuant to Sch. 1 Para. 11(a) of both documents (i.e. "...the disposal of any material asset of the company of more than £100k...") or arguably Sch. 1 Para. 22 of both documents (i.e. "...any other matter (while an Authority (i.e. either NYCC or CYC) is a Shareholder) of which the Authorities (acting together or, where only one Authority is a Shareholder, acting alone) give notice in writing to the directors of the Company, such matter to take effect as a Reserved Matter from the day which is five (5) Business Days after the receipt by the Company of notice by the Authorities...").
- b. Clause 4 of the Yorwaste and SJB Shareholders Agreement requires that:-
 - i. The Company shall not without the prior written approval of all Shareholders carry out any of the Reserved Matters.
 - ii. Each Shareholder is to appoint a representative who shall be authorised for the purposes of giving consent for and on behalf of the Shareholder.
 - iii. The written consent of this representative shall be deemed to be consent of the respective Shareholder and shall be binding upon that Shareholder in respect of the Reserved Matter.
 - iv. All forms of consent requested from a Shareholder must be in a form which provides the Shareholder with the ability to give or refuse consent (e.g. form of consent or

written resolution to be signed by the Representative on behalf of the Shareholder).

- v. All decisions on Reserved Matters must be given within 5 Business Days by each Shareholder. Failure to respond within this timeframe shall not be deemed to be either consent or a refusal.

The procedure for Reserved Matters set out in Arts. 14.5 – 14.8 (inclusive) of the Articles of Association mirrors the provisions of Clause 4 of the Shareholders Agreement summarised above.

- c. The sale of the subsidiary is classed as a Reserved Shareholder Matter further to the Paras. 18(a) and 18(b) above and requires a formal instruction from the Shareholder Committee rather than being left to the Directors on the Yorwaste Board (see Para. 19 of the Committee Terms of Reference Document entitled, “*Distribution of decision making powers for companies*”).
- d. Approval of the proposed disposal therefore requires Shareholder Committee approval.

19. Crime and Disorder There are no crime and disorder implications

20. Information Technology (IT) There are no IT implications

21. Property There are no Property implication

22. Other There are no other implications

Contact Details

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Report Approved

Date 06th November 2019

Specialist Implications Officer(s) List information for all

Legal
Dan Moynihan – Senior Solicitor
Tel No. 554143

Wards Affected: *List wards or tick box to indicate all*

All

For further information please contact the author of the report