

City of Edinburgh Council

10.00am, Thursday, 19 September 2019

Amendments to Shareholder Agreement and Articles of Association: Transport for Edinburgh Ltd and Edinburgh Trams Ltd

Executive/routine
Wards
Council Commitments

1. Recommendations

- 1.1 To authorise amendments to the Shareholder Agreement and the Articles of Association of Transport for Edinburgh Ltd (TfE) allowing the company to issue non-voting ordinary B shares.
- 1.2 To authorise amendments to the Shareholder Agreement and the Articles of Association of Edinburgh Trams Ltd (ET) allowing the company to issue non-voting ordinary B shares.

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Report

Amendments to Shareholder Agreement and Articles of Association: Transport for Edinburgh Ltd and Edinburgh Trams Ltd

2. Executive Summary

- 2.1 This report recommends changes to the Shareholder Agreement between the Council and TfE and the Articles of Association of each of ET and TfE, which would allow each of the companies to issue ordinary B shares. This is required following to changes to the Operating Agreement between the Council and ET approved by the Transport and Environment Committee on [6 December 2018](#).

3. Background

- 3.1 TfE and ET were created in 2013 to operate the tram line from Edinburgh Airport to York Place and to integrate public transport in Edinburgh. The Council is the 100% shareholder of TfE, which in turn holds the Council's 100% shareholding in ET.
- 3.2 On 6 December 2018, the Transport and Environment Committee approved changes to the Operating Agreement between and Council and ET, reflecting the fact that the company had matured into a successful and award-winning organisation. The amendments included alterations to the charging arrangements, which resulted in the company becoming loss-making in the short term. It was recognised that Edinburgh Trams' cash flow would not be sufficient in the early years to meet the financial implications of the changes and that the Council would purchase share capital in the form of ordinary B shares to supplement cash generated by the company.
- 3.3 Ordinary B shares are a different class of share and are subject to the Articles of Association of the company concerned. Holders of ordinary B shares have no or fewer voting rights than ordinary shareholders.
- 3.4 As TfE holds the Council's existing shareholding in ET, this new share capital would also be held by that company.

- 3.5 This report seeks approval for appropriate legal changes to enable ordinary B shares to be issued.

4. Main report

- 4.1 On 27 March 2019, the Council made a payment of £8.8m to TfE, which in turn made an £8.8m payment to ET to purchase share capital. This was the first cash injection following the changes to the Operating Agreement, which became effective in December 2018.
- 4.2 The Council has sought legal advice on behalf of itself and its subsidiaries on what was required to issue and register ordinary B shares. The advice obtained stated that the Shareholder Agreement and Articles of Association of the companies currently only allow for the issuing of ordinary share capital and that amendments would be necessary to permit the companies to issue non-voting ordinary B shares.
- 4.3 Following discussions between the management of TfE, ET and Council officers, the Boards of both companies agreed to issue ordinary shares on the understanding that they would be converted into ordinary B shares at a later date. On 21 August 2019, ET allotted £8.8m of ordinary shares to TfE and TfE allotted £8.8m of ordinary shares to the Council.
- 4.4 In order to convert these shares to ordinary B shares and that future ordinary B share issues can be made, it is recommended that the Council approves changes to the Shareholder Agreement and Articles of Association.

5. Next Steps

- 5.1 Following the approval of this report legal advisors will be engaged to amend the Shareholder Agreement and Articles of Association of both companies and lodge them with Companies House.
- 5.2 Ordinary shares issued in 2019 will be converted to non-voting ordinary B shares and future share issues under the mechanism approved in December 2018 will be in the form of ordinary B shares.

6. Financial impact

- 6.1 The legal costs associated with these amendments are anticipated to be less than £20,000. This cost can be met from group tax relief generated from offsetting tax losses incurred by ET against the profits of other group companies.

7. Stakeholder/Community Impact

- 7.1 The Boards of both TfE and ET have approved the issuing of ordinary B shares and changes to the Shareholder Agreement and Articles of Association required to achieve this.

8. Background reading/external references

- 8.1 [Edinburgh Trams Ltd - Changes to Operating Agreement - T&E Committee 6 December 2018](#)

9. Appendices

- 9.1 None.