

**ELMER SANDS LTD
MINUTES OF THE 84TH ANNUAL
GENERAL MEETING**

**HELD AT 2.30PM ON SATURDAY 13th May 2023
THE JUBILEE HALL, MIDDLETON-ON-SEA**

Registered Attendance = 59 people

Signed in = 49 people

Votes issued (one per member property) = 47

Proxy votes issued (one per member property) = 36

Total available member votes at AGM = 83

In attendance: The Directors – Peter Trebble, Alan Newton, John Kirby, Michelle Bernhardt, Ruth Rogers, Pamela Godfrey, Myra Miller, Colin Bernhardt, April Moffat, Andy Cooper, John Kirby, Jan Young, the Secretary and the Treasurer.

Peter Trebble in the Chair.

Item 1: Welcome and Apologies

The Chairman opened the meeting. Apologies were received from: Janice Challen, Marie-Anne Culnane, Jilly Kaufman, Paula Puleston, Maz Calver Smith, Jo Wright, Tim Wright, Mr & Mrs Gorrige, Ron, Ursula and Karl White.

The Chairman then welcomed everyone present and thanked them for turning out on such a sunny afternoon. He said the agenda was set for a two-hour meeting, and that he intended to stick as tightly as possible to this timing.

Member Mr Bob Harvey expressed concerns about the small size of print used for important documents circulated to members eg the Agenda and Article Amendments and how this might prevent some members from being able to fully digest the contents. The Secretary apologised and said that the intention had been to save on paper and costs but in future a larger font size would be used. Mr Harvey was then directed to the versions displayed on the PowerPoint presentation.

The following business was conducted:

The Chairman noted that the draft Minutes of the combined General and Annual General Meeting held on the 23rd April 2022 had been displayed on the website for one year.

Member Mr David Fletcher had submitted a set of proposed amendments to the Minutes which members were given the opportunity to view. The Chairman stated that the Council was in support of the amendments which included some subsequent minor additions proposed by the Council. There were no queries and the Chairman moved to a vote.

Item 2: To Accept the Minutes of the General Meeting called by 5% members held on 23rd April 2022

Proposed by Gerry Easter, Seconded by Saz Trebble

Approved.

Item 3: To Accept the Minutes of the Annual General Meeting held on 23rd April 2022

Proposed by Saz Trebble, Seconded by April Moffat.

Approved.

Item 4: To Receive the Accounts of the Company for the year to 31st December 2022

There were no queries.

Proposed by Colin Bernhardt, Seconded by John Kirby

Approved.

Item 5: To Appoint PKR Accounting Techniques as Accountants to the Company

The Chairman explained that Keith Rutter of PKR Accounting Techniques had been providing a valued service to ESL for many years, offering continuity and knowledge of the Company. PKR had proposed a charge of £550.00 fixed for three years.

Proposed by Adam Latus, Seconded by Colin Bernhardt

Approved.

Item 6: To Elect a Maximum of six Council Members from those nominated prior to 15th April 2023 in accordance with Articles 37-40

The Chairman thanked all the Council Members for their voluntary services to the Council during the year. He then set out the retirement and election position, noting that Michelle Weston and Julius Allcard had retired prior to the AGM.

Members were advised that the Council could operate with a minimum of five, and maximum of fifteen Directors, and that a third of the Council retired by rotation annually.

Retiring Council Members: Peter Trebble, April Moffat, Alan Newton and Paula Puleston. The Chairman expressed special thanks to the retiring directors, noting that Paula Puleston had served for a total of 13 years and himself for 10 years.

The Chairman set out the process for the election, confirming that there were twelve candidates for six places and those eligible to vote including by proxy could mark up to six candidates on their ballot papers. He stressed that any ballot papers with more than six candidates selected would be voided. Completed papers would be collected and votes counted, and the results announced later in the proceedings.

New candidates for election: Maz Calver-Smith, Marie-Anne Culnane, Gerry Easter, Bob Harvey, Steven Hayward, Jilly Kaufman, Adam Latus, Shelley Newton, Alison Page, Robert Taylor, Saz Trebble, Jo Wright.

Member Claire Godwin asked for it to be noted that in her view people should stand to serve on the ESL Council for the benefit of all the residents and not due to any grievance or vested interest. She asked that the elected candidates try to work collaboratively with the rest of the directors. Members in attendance echoed her statement. The Chairman added that the Council should work together to deliver maintenance of the Estate and although there would be differing opinions, the majority view of the Council stood.

All the candidates were given the opportunity to introduce themselves and speak for up to two minutes. Absent candidates' statements were read out and their photographs displayed. Members then completed their ballot papers as instructed and these were collected for counting in a separate room.

Item 7: Proposals for Amendments to the Articles of Association by Special Resolution

Details of the proposals had been circulated to members with the AGM mailing in March and slides were displayed on the screen for reference. The Chairman read out each proposal for further clarity.

Special Resolution 1 – Amended Article 10

The Chairman explained that this proposal was to clarify the option for Elmer Sands Ltd to hold an AGM by electronic means if a face-to-face meeting was impossible or unfeasible.

Existing:-

“An Annual General Meeting shall be held once in every calendar year at such a time and place as may be determined by the Council, provided that every Annual General Meeting must be held not more than fifteen months after the last Annual General Meeting.”

Proposed:-

“An Annual General Meeting shall be held once every calendar year at such time and a place as may be determined by the Council. If this is impossible or impracticable, this meeting could take place by electronic means.”

Member David Fletcher asked the members to consider two points. His view was that the most likely reason for calling an electronic AGM would be another pandemic, therefore holding a face-to-face AGM may not only be “impossible or impracticable” it would also be both “unlawful and unsafe” and he proposed that the latter would be the correct term to use for the amended Article.

Mr Fletcher went on to suggest that the word “impracticable” was vague and imprecise and that since the purpose of an AGM was to hold directors to account, he felt there was no substitute for a face-to-face meeting. In conclusion he offered an alternative version of an Amended Article 10 which he considered to be more focussed.

“An Annual General shall be held once in every calendar year at such a time and a place as may be determined by the Council. If it is unlawful or unsafe to hold a face-to-face Annual General Meeting because of an epidemic, pandemic or other emergency such meeting may take place by electronic means.”

There was a show of hands with more than 75% in support of Mr Fletcher’s rewording of the amended Article 10. Since the difference in wording was inconsequential, the meeting agreed to accept Mr Fletcher’s version.

Special Resolution passed by show of hands 75%.

Special Resolution 2 – New Article 26D

The Chairman explained that this proposal was to resolve an issue with postal voting which requires 75% of members to return a vote for a Special Resolution to be passed. He went on to say that previous postal votes had yielded only 30% return from members.

Proposed:-

“In the event that any General Meeting is held via electronic means a postal poll will be called for any matters requiring a vote of members. The outcome of this and any other postal poll called of members will be decided upon vote ballot papers returned rather than membership as a whole. The acceptance of an Ordinary Resolution being when 50% of the votes returned are in favour of the resolution and for a Special Resolution when 75% of the votes returned are in favour of the resolution.”

Mr Fletcher quoted from the Companies Act S281: “A resolution of members must be passed at a meeting of members” and he declared that in his view, the proposed new Article 26D was invalid. The detail of the relevant section of the Companies Act was not available for examination therefore Mr Fletcher’s statement was not challenged.

Special Resolution not passed.

Special Resolution 3 – New Article 12A

The Chairman explained that following the General Meeting called by 5% of the Membership in 2022, this proposal was the Council's response to a recommendation from the Information Commissioners Office (ICO) that ESL should clarify its procedure when a General Meeting is called by members.

Proposed:-

"In the event that a General Meeting is called by Members under the provision of S303 of the 2006 Companies Act, in addition to compliance with the Act the following process will also be followed:-

- a) *On receipt of a submission from members calling for a General Meeting the Secretary will copy the statement calling for the General Meeting to all signatories attached to the document, to confirm that they are happy being associated with the contents of the document that will be circulated to all members and remind that if asked at General Meeting, who called the meeting, that names of those calling it will be read out. This policy has been adopted by ESL in the interests of operating in an open manner.*
- b) *If a member is not happy to be associated with the request or having their name read out at General Meeting the Secretary will offer the alternative of removing their association and signature from the request for a General Meeting prior to proceeding further.*
- c) *If a member remains associated with the request to call a General Meeting the member is to expect that their name will be read out, if asked who called the meeting.*
- d) *If a member/members withdrawal from the submission the remainder will be assessed for validation of the request calling for a General Meeting."*

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- b) *If a member is not happy to be associated with the request or having their name read out at General Meeting the Secretary will offer the alternative of removing their association and signature from the request for a General Meeting prior to proceeding further.*
- c) *If a member remains associated with the request to call a General Meeting the member is to expect that their name will be read out, if asked who called the meeting.*
- d) *If a member/members withdrawal from the submission the remainder will be assessed for validation of the request calling for a General Meeting."*

A member raised references that were made in the 2022 General Meeting Minutes and the Chairman responded that these minutes had already been passed and signed off earlier in the meeting and discussion had now moved on to Agenda item 7.

The meeting moved to a robust debate for and against the proposal for Article 12A with a summary of the main contributors as follows -

Member Mr Bob Harvey spoke about his involvement with the General Meeting in 2022 and confirmed that he was one of the signatories that called the meeting. In his view anonymity was not the issue but he felt the way in which the names were read out had been underhanded.

Mr Harvey went on to quote Section 3 of the Company Articles "To protect and further the rights and interests of the members of Elmer Sands" and he argued that the ICO had made a declaration of intent by ESL a condition of its legal basis for processing. Mr Harvey considered the drafting of the proposed amendment to be a clear violation of Article 3 and he urged the members to vote against what he considered to be an undemocratic motion and preserve their freedom of choice.

Mr Fletcher stated that he believed the proposal to be invalid because in his view it was contrary to company law. He suggested there were many failings in the proposed procedure and that since calling a General Meeting of the Company was probably the most important remedy members had to put forward their serious concerns about their company, the proposed Article 12A would in his view, create serious obstacles deterring members from coming forward. He therefore strongly urged members to reject the proposal.

Member Sue Slade offered some insight into the Data Protection Act and the rights of the "data subject" not to have their name released.

Director Colin Bernhardt put his opinion to the members that the fundamental point was, members with concerns serious enough to call a General Meeting of the Company, to which the membership was expected to attend, should not hide behind GDPR and should take responsibility and "own it". He went on to ask the members to fully consider whether they wanted to be in a position where they were unable to know who had called them to attend a meeting.

Several members and The Chairman reminded everyone that the ICO had recommend that ESL clarify its process for members calling a General Meeting. The majority view from the floor was that ESL should ensure it followed the recommendations of the governing body.

Director Pamela Godfrey suggested that members were entitled to ask for the identity of those members who had called a general meeting and she said that according to GDPR when requesting Consent for data, the Controller (ESL) would need to add why they were asking for consent and how they would use the data

(names.) Mrs Godfrey recommended that the Council re-write the proposal accordingly.

Member Colin Rogers summarised that in his view the imperative issue was for ESL to put in place a procedure in “plain English”.

Following some further debate, The Chairman moved the proposal to a vote. A show of hands indicated there was no clear vote to adopt Article 12A in its current form.

Special Resolution not passed.

Going forward The Council would take on board the contributions made and consider a reconstructed Article 12A to propose to the Members in advance of the 2024 AGM, with legal advice obtained if required.

Special Resolution - Amended Article 26C

The Chairman explained that the proposal was designed to try and engage more members to take an interest in voting.

Member Robert Taylor expressed the view that engaging members in the voting process should ideally be in person at the meeting. The Secretary added that proxy voting was particularly useful for the less able bodied who would otherwise be prevented from participating.

Proposed:-

“Any instrument appointing a proxy will be provided by ESL in the format prescribed by the ESL Council. The purpose of the proxy form being to give Members every choice in making their opinions known on any topic which will be voted upon at a General Meeting. An example proxy form follows:-

ELMER SANDS LIMITED

[date] GENERAL MEETING and ANNUAL GENERAL MEETING PROXY FORM

I, (name):.....

of, (address).....

Select Option by Ticking Box Below

being a member of Elmer Sands Ltd hereby appoint:

A. (name):.....

(address)

OR

B. The ESL Chairman to vote on my behalf in accordance with ESL Council opinion.

OR

C. The ESL Chairman to vote on my behalf as follows:-

	For	Against
ESL Council Special Resolution Proposal		
ESL Council Ordinary Resolution Proposal		
Member's Ordinary Resolution Proposal		

Only proxy forms issued by ESL and returned by a member direct to the ESL Secretary will be accepted as a valid proxy declaration.”

A debate took place with numerous contributions from the floor. The main points made were as follows –

The Chairman confirmed that a proxy vote handed to the ‘Chairman’ would represent the majority view of the ESL Council. Some members felt that this was not satisfactory since the Council view on an issue could be closely divided.

Mr Fletcher quoted the Company’s Articles, confirming that the role of a chairman was to chair meetings and there was no mention of block votes.

Mr Harvey expressed the view that making an informed choice should be the preferred voting option and members should be encouraged to participate in debates. He went on to recommend that proxy votes should be obtained at the trusted request of a member and not delivered to everyone’s door with the option to appoint the Chairman. He strongly urged the members to vote against what he felt was an unnecessary and undemocratic amendment likely to undermine the constitution.

Member Les Maddams noted that matters discussed at last year’s GM/AGM were very exhaustive and he urged the meeting to move on to a vote on the Amended Article 26C.

The Chairman conducted a poll vote.

Votes in Favour including by proxy = 47

Votes Against including by proxy = 26

Special Resolution not passed.

Mr Taylor put to the ESL Council that it should consider removing Option B from the proposal and re-present a revised form in advance of the 2024 AGM. He then asked for a straw poll to determine the consensus. The vast majority agreed with his suggestion which would be carried forward to the June Council Meeting.

Special Resolution Amended Article 51

“Proper minutes must be taken of the proceedings of all meetings of Elmer Sands Ltd. and of the Council and of sub-committees of the Council, and of all business transacted at such meetings and on email must be recorded in the minutes. The procedure for the approval of minutes to be as follows:-

General Meetings – The Secretary must post draft minutes on the Elmer Sands Ltd website. Those draft minutes must be approved, or amended and approved, at the next General Meeting.

Council Meetings – The Secretary must send the draft minutes to all Council members. Those minutes must be approved, or amended and approved, at the next Council Meeting.”

Mr Fletcher recommended that Minutes of meetings should show the exact number of votes and abstentions on decisions taken whether at Council meetings or by e-mail. This was acknowledged by the Secretary.

Special Resolution passed by show of hands 75%.

Special Resolution New Article 51A

“Any advice given by the Company Secretary at a Council Meeting must be recorded in the Minutes.”

Special Resolution passed by show of hands 75%.

Special Resolution New Article 51B

“As stated in Article 51, minutes of Council meetings must record all business transacted. Only information which by its nature is obviously personal and confidential to an individual or individuals must be kept confidential and not recorded in the minutes.”

Special Resolution passed by show of hands 75%

Item 8: Announcement of Election Results

The Chairman thanked everyone for participating and announced the six candidates with the highest votes who were then formally elected on to the ESL Council.

Candidates Elected to the ESL Council:

1. Maz Calver Smith	votes 58
2. Marie-Anne Culnane	votes 52
3. Gerry Easter	votes 54
4. Shelley Newton	votes 50
5. Alison Page	votes 54
6. Saz Trebble	votes 52

Unsuccessful Candidates:

1. Bob Harvey	votes 19
2. Steven Hayward	votes 24
3. Jilly Kaufman	votes 28
4. Adam Latus	votes 35
5. Robert Taylor	votes 34
6. Jo Wright	votes 24

Item 9: Management of the Estate

Maintenance of the Estate Roads

The Chairman noted that the cost of tarmac and labour had significantly increased over recent years and that the Estate roads continued to need repair with the Council continuing an annual exercise to repair critical damage, currently headed by Directors Pamela Godfrey and Myra Miller.

On behalf of one of his proxy voters, Mr Fletcher made a request for the speed humps by the children's play area on the corner of Sea Way to be renewed for the safety of children. Pamela Godfrey and Myra Miller confirmed that they had already included this proposal in their road repair schedule for tender.

Maintenance of the Estate Surface Drainage System

The Chairman ran through a brief explanation of the Estate's surface water drainage system, illustrating the different systems on a map. Members were advised that approximately 50% of the Estate had drains removing surface water from the roads and the remainder, mainly the western end, had gullies linked to soakaways. The Chairman went on to confirm that the gullies were cleared, and pipe work jetted annually to ensure sufficient water flow.

The Secretary noted that on his retirement, The Chairman would be producing briefing sheets for the new Council to carry forward the essential surface water drain maintenance and management for the Estate.

Maintenance of the Estate Grounds

The Secretary reminded everyone that The Annual Report, circulated to members prior to the AGM, contained a summary list of the key maintenance tasks and specific projects undertaken throughout the year.

The Chairman referred to the main areas of grounds maintenance, noting that contractor Andrew Griffith concentrated primarily on grass cutting at this time of year and garden contractor Linda Smith continued to take care of the Kiosk (Jubilee) garden. He further added that Myra Miller was managing flower beds on the Estate.

The Chairman then noted with special thanks, that John and Vicky Kirby faithfully carried out repairs to the damaged fence panels at the rear of the large Playing Field and member Les Maddams had been especially helpful with maintenance tasks throughout the year, including fitting the new children's play equipment.

The Chairman concluded that all the voluntary help and members mowing verges, helped keep the management costs down considerably and he thanked everyone for their contributions.

Maintenance of the Estate Sea Defences

Members were advised that whilst the Environment Agency (EA) had completed the extended rock revetment fronting the boat yard and beyond in 2020, the eastern end had not been performing as expected. On behalf of ESL, Directors Pamela Godfrey and Tim Wright were now leading the liaison with the EA and they had recently attended a meeting to try and obtain a more permanent solution to the erosion. It was considered that continuing to replenish shingle would not be a viable solution in the long-term.

Item 10: Discussion of Issues Raised in Advance by Members and Any Other Business

There were no items raised in advance by members. The Chairman asked if there were any additional items that Members wished to discuss.

Open Council Meetings - Mr Fletcher proposed that ESL Members should have the right, subject to limitations of space, to sit in on Council meetings except during discussions of a personal or confidential nature to an individual or individuals.

Mr Harvey spoke in support of this proposal, noting that UK committee and council meetings were typically open to members of the public who could ask questions or express concerns. He gave an example of his own experiences to illustrate the benefits of open debate.

Members were reminded that in response to a proposal from Mr Harvey at the 2021 AGM, the ESL Council had been running regular open sessions at 'The Cabin' offering members the opportunity for informal face-to-face discussion with directors.

Matters discussed were brought back to the Council at its next formal meeting. It was noted that members' attendance at the sessions was extremely low, typically nobody, but Directors continued to give up their time to make the sessions available.

Member Mervyn Weston pointed out that the fifteen directors had been elected by the members to represent the members and, in his opinion, they should be trusted to manage business at meetings on behalf of the members.

Mr Fletcher reported that a new member had recently turned up at a Council meeting and was not permitted to sit in. The Secretary advised that it had not been possible to allow the gentleman to attend the meeting because no arrangements had been made in advance and she was unable to verify his identify. The Secretary added that space would be limited at the current meeting venue and if members were to attend meetings, they would need to sign a 'Code of Conduct' agreement on entry and leave the room during discussions of a confidential or sensitive nature.

The matter of the ESL Directors' 'Code of Conduct' was then discussed, and Mr Fletcher said that when serving as a director himself, he had refused to sign the confidentiality clause, because he said he believed that everything discussed at Council meetings should be open and transparent unless it was obviously private to an individual. Some members expressed their surprise at this declaration from Mr Fletcher.

The Chairman brought the 'Open Session' debate to a close, suggesting that the Council take away Mr Fletcher's proposal for discussion at the June Council Meeting.

Confidentiality - Member Claire Godwin noted that much had been said about confidentiality during the meeting and she expressed her disappointment at the breach of confidentiality by a director (recorded in the May Council meeting minutes). When asked, the Council confirmed that the information shared with a third party had contained people's personal data with no permission given by the individuals to share their data. Some opinions were expressed that the director and the third party had both breached GDPR. It was noted that there was a unanimous vote of no confidence in the director at the May meeting and that she had been asked to consider her position on the Council.

The Chairman stated that the director concerned had accepted the breach of confidentiality and apologised to the Council, with an undertaking not to breach confidentiality in the future. In response to concerns that the director's position was now tenuous, members were advised that she had a right to continue and that a proposal to remove her would require a general meeting of the Company.

Members were then advised that the director had asked a retired solicitor, confirmed to be Mr Fletcher, to act on her behalf regarding the confidentiality issues and to offer pro-bono legal advice which he had presented to the Council as a "Legal Opinion" for consideration (as recorded in the May Council meeting minutes).

There was an exchange between the Council and Mr Fletcher regarding his position to issue pro-bono legal advice to the director and Mr Fletcher referred to the Legal Services Act 2007 and his right to offer non-reserved services.

Member Alison Page offered her summary view that an AGM should be more engaging to encourage members to attend and she suggested that more positive actions should be achieved rather than always going over old ground. This sentiment was met with general approval from the floor.

There briefly followed some further exchanges of opinion regarding the breach of confidentiality by an ESL director, with Director Ruth Rogers articulating her view that, since the director concerned had signed a confidentiality agreement, and there had been a subsequent vote of no confidence in that director, she felt strongly that the director concerned should now take responsibility and resign her position.

The Chairman said that he felt it was time to draw a line under this matter and bring the meeting to a close.

Retirement of ESL Chairman Peter Trebble -

Member Bob Harvey said that although he and the Chairman had often had differing opinions over the years, he would like to offer his thanks to Mr Trebble for his services to the Estate.

On Behalf of the Council and the Members, The Secretary formally thanked Mr Trebble for his significant voluntary contribution to the Estate over the past ten years referring to his commitment and dedication to what were often very challenging and laborious projects, such as sea defences and drainage. She went on to acknowledge that Mr Trebble's tireless work had helped to secure major Government funding to protect the Estate from flooding.

Mr Trebble was then presented with a gift to mark his retirement and all those present showed their appreciation with a round of applause.

There being no further business The Chairman thanked everyone for their attendance and contributions, and he closed the Meeting at 4.45pm.