

NAME OF COMMITTEE	Council
DATE	7 October 2014
REPORT TITLE	Creating a Local Authority Trading Company
REPORT OF	Head of Environmental Health and Housing
WARDS AFFECTED	All

Summary of report:

The purpose of this report is to request Council to approve the formation of a Local Authority Trading Company with the sole shareholders being West Devon Borough Council and South Hams District Council. The Company will be a Company Limited by Shares. The trading company will provide opportunities for the Councils to generate new income streams over and above current and proposed income generated through reviewing core service delivery, as well as capital and revenue from changing the way we use land and buildings. The company will be 100% owned by the two authorities and will have no private shareholders. All profits generated by the company will be reinvested back to the Councils.

Financial implications:

The direct financial costs associated with this report relate to the cost of registering a trading company and will be in the region of £100 plus officer time in preparing the necessary documentation and governance arrangements. It is not possible at the present time to ascertain the likely income relating to the establishment of this trading company. This will depend on the success of subsequent trading activities.

There may be financial implications if it is decided at a future date to provide some form of remuneration for Directors. This will, however, be borne by the Company as opposed to the Council.

RECOMMENDATIONS:

It is recommended that:

1. Council agree to create a wholly-owned Local Authority Trading Company with West Devon Borough Council and South Hams District Council having an equal shareholding;
2. delegated authority is given to the Head of Paid Service in consultation with the Leader and Deputy Leader of the two Councils to decide on the final company name and the date and details of incorporation of the trading company including finalising the Articles of Association and the Shareholder's Agreement; and,

3. to pursue those priority areas identified by the Income Generation Working Group for income generation as outlined in Appendix 1 of this report and for officers to work up more detailed business cases where appropriate.

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1. BACKGROUND

- 1.1 The financial landscape for local authorities has changed significantly in recent years with continuing reductions to many of the Council's funding sources. The Council has responded over the years with a range of initiatives, particularly the shared services arrangements, and more recently with the implementation of the T18 programme. It is recognised that the times of austerity have not yet passed. Many local authorities are now looking to significantly increase the current range of income sources as a way of assisting service delivery. This approach is reflected in 'Our Purpose' document which clearly sets out that in order to achieve a secure financial future for the Council, we have to not only reduce our costs, but also secure additional income streams.
- 1.2 There are numerous legislative powers available for local authorities to 'trade'. Until relatively recently, the powers were generally restrictive in nature, only allowing local authorities to trade in certain functions. With the introduction of the Localism Act 2011, however, freedom was given to local authorities to trade in any business area they wished. Where that trading is to be undertaken for a 'commercial purpose' however, then that trading can only be done through a company type that is detailed in the Companies Act. Other types of trading, such as between public bodies, can be achieved without the need to go through a trading company.
- 1.3 Over the past few months the Council has explored ways to generate new income for both Councils. The Income Generation Task and Finish Group in South Hams and the Income Generation Working Group in West Devon has met on a number of occasions to look at ways of generating additional income for the Councils. It should be recognised that the Council already generates significant income from a number of sources and this will continue in the same manner in the future. In order to pursue some additional potential income opportunities, however, it would be necessary to create a 'trading company'. The Council on the 19 February 2014 approved an 'in principle' decision to create a Local Authority Trading Company. This report seeks Council approval to establish such a wholly-owned company with West Devon Borough Council and South Hams District Council as the sole shareholders.
- 1.4 It is important for the Council to progress with the trading element of its income generation work in order to:

- Maintain front line services over the long term through reinvestment of any trading profits;
 - Develop commercial acumen in tandem with transformation programme efficiencies. It will enable staff to develop new skills and abilities and enable them to apply a more commercial approach to their areas of work;
 - Ensure a culture of self-reliance is promoted which sends a positive message around the potential for growth of Council services;
 - Ensure that the Council is best placed to identify and pursue potential market opportunities by being able to bid for and secure contracts.
- 1.5 A number of local authorities are now actively pursuing income generation as a way of protecting front-line services and there are a number of notable success stories.

2. ISSUES FOR CONSIDERATION

Governance arrangements

- 1.1 It is proposed that the Trading Company will be a ‘Company Limited by shares’ and as such meets the requirements of the Localism Act 2011. The share issue will be two £1 ordinary shares with an equal shareholding between the two Councils. The Company will have its own legal identity and also have the benefit of limited liability. Consequently the debts of the Company stay within the company and any creditors would not have recourse to the Council or any of the Company Directors except in exceptional circumstances.
- 1.2 The Company will have a Board of Directors appointed. It is proposed that there will be a board of five Directors; 2 Officers, 1 Member from each authority and an externally appointed Director who will act as chair of the Board. Each Director would have to go through a selection process to ensure their fitness for the role. They would be nominated at Annual Council and then subsequently appointed by the company for a period of two years. This may be extended by Council up to a maximum of 4 terms (8 years in total) and one further term in exceptional circumstances.
- 1.3 The Directors of the company will have responsibility for managing the affairs of the company and ensuring a profitable trading environment. They would be responsible for the day to day management and for making recommendations to the shareholders as to the direction of company travel. They will be bound by the Articles of Association and the Shareholder’s Agreement limiting their freedom to undertake certain actions which are best reserved for shareholders to take.
- 1.4 The proposed draft Articles of Association are attached as Appendix 2 of this report.
- 1.5 All Directors will need to comply with their statutory duties under the Companies Act 2006 including a duty to act in the best interests of the Company and to avoid conflicts of interest. Council members and/or employees appointed as Directors

will need to be aware that potential conflicts of interest may arise when carrying out their roles for the Councils and when acting as Directors for the Company. Member Directors will still also be bound by the Members' Code of Conduct. An outline of these duties, responsibilities and liabilities will be provided to the Directors as part of their letters of appointment.

- 1.6 As sole shareholders of the company, the Councils will have overall control of the company. It is often necessary in business to make rapid business decisions. Where those business decisions fall outside of the powers available to the Directors of the company, then those decisions will need to be referred to the appropriate decision-making body of the Council in an expedited fashion.
- 1.7 A scheme of delegations will be developed to clarify decisions that can be taken by staff and Directors.
- 1.8 The Company shall be bound by a Shareholder Agreement. This agreement will ensure that the Company cannot do certain things without the approval of the relevant Member body. It details the powers of the Board of the company and how and when the shareholders might influence the company. It will relate to issues such as production of business plans, regular reports to Council, consents or acquisition and disposal of assets, loans and distribution of profits. The shareholders agreement can be amended and developed as necessary to ensure that a proper balance of powers between the company and the Councils remain as the company grows.
- 1.9 Service Level Agreements will be completed with the Council regarding use of Council staff and resources.
- 1.10 It is proposed that the Company will initially use Council accommodation and resources in its operations and will reimburse the Council for doing so. The proposals should not have any direct implications for staff as it is not proposed that any staff will transfer to the Company. Staff may at times be working on Company business, but that time and resource will be charged to the company. In the longer term, the company may employ its own staff subject to the demands and prospects of its trading functions.
- 1.11 In order to protect commercial confidentiality, it is recommended that the final company name and trading styles are determined by the Head of Paid Service in consultation with the Leader and Deputy Leader of the Councils. The Company will be purchased 'off the shelf' in order to facilitate the administrative process. The Company will have to abide by UK Company and taxation legislation including the filing of annual returns and accounts. The general administrative demands of the company can be met within existing expertise within the Councils.

2. TRADING AREAS

- 1.12 Members at both authorities have through their respective Income Generation Groups identified a number of areas where they wish to see an initial push on income generation. These areas are detailed in Appendix 1. It should be noted

that not all of these initiatives may need to be undertaken through a trading company. In some instances it will be advantageous to use the company for trading, in other instances it may not. The exact route of trading will be taken on a case-by-case basis. The trading company will supplement the organisational design principles within the T18 model in that it will allow the Council to directly commission through the company if the business case determines that it is the most appropriate delivery arm. Having the trading company established, will enable the Councils to explore and rapidly exploit any opportunities that may arise.

- 1.13 No detailed business plans have yet been worked up in respect of those initial trading activities highlighted in the Appendix although these will be worked up in the coming months.
- 1.14 Other potential trading areas may well come to light in future months. Where opportunities arise, then subject to a suitable business case being in place the Councils will be in a position to exploit potential opportunities and new trading areas where they arise. It is not proposed at this stage that any Council Services be transferred to the company. It will be essential that any business proposed to be undertaken through the trading company has clarity about the cost of generating the income expected, so that the focus is on profit, including taxation, VAT and procurement costs which will be incurred.
- 1.15 It may be necessary to redistribute profits between the Councils based on relative trading activities. A set of principles have been agreed to determine how profit will be shared:
 - As a starting point, profits will be shared on a 50:50 split;
 - Where investment is required, then profits will be based pro-rata on respective investment percentages;
 - Where trading relates to existing assets, then profits to remain with the respective Council;
 - Any sole trading profits will reside with the respective Council;
 - The above principles can be varied at any time by mutual agreement.
- 1.16 It is likely that trading will be modest at the outset, especially in the first year of trading. Experience from other local authority trading companies reflects the need to allow the company time to expand and establish its presence in the market. There will be sufficient trading within the first trading year to cover any company administration and operating costs. As business plans are developed and business opportunities and trading expands and develops, it may be necessary to establish separate and/or subsidiary trading companies. Again the decision to take such a course of action will be supported by an appropriate Business Case.
- 1.17 Subject to approval by both Councils, the Trading Company will be established at a date agreed by the Head of Paid Service in consultation with the Leaders and Deputy Leaders at both Councils, in accordance with the administrative and governance arrangements as set out in this report.

2. LEGAL IMPLICATIONS

- 2.1 In order to 'trade for a commercial purpose' the Council must establish a trading vehicle such as a limited company. Operating a trading arm through a company vehicle such as a Limited Company will require that the Directors of the company operate in accordance with UK Company law. Although the company has limited liability, the Directors of that company may individually face claims for wrongful operation of the company. It is therefore proposed that the Company indemnify the Directors through appropriate Directors Liability Insurance both whilst acting as a director and for a period of six years following cessation as a company director.
- 2.2 Whilst some elements of commercial trading would require greater input from officers than others, this will be considered in detail as part of each individual business case. This will include the potential impact on day-to-day service provision and also impact on other previously agreed corporate priorities such as T18.

3. FINANCIAL IMPLICATIONS

- 3.1 This report looks to improve the financial position of the council for future budget years. Income generation will be dependent on specific decisions made on individual service and trading elements. It is not possible to determine the likely income and profits that will be generated, and will be dependent on the business cases that are agreed.
- 3.2 To ensure a level playing field with the rest of the private sector and to avoid breaching state aid rules, the Company will not be subsidised by this authority. The full costs of any borrowing, accommodation and services provided will be recovered by the Council. Suitable administrative and governance arrangements will be established to ensure this is the case.
- 3.3 The cost of creating a registered trading company in the first instance is approximately £100 and can be met from existing revenue funds. The ongoing costs will be dependent upon the amount of resources called upon to generate that income.
- 3.4 Officers have had informal preliminary discussions with the Councils external auditors about the principle of setting up a trading company. Grant Thornton was supportive in principle with the proposed approach and welcomed the innovation that the two Councils continue to promote to respond to the financial challenges. However the auditors also emphasised the importance of ensuring that the detailed arrangements are carefully considered to ensure that they are tax efficient. Prior to finalising the incorporation of the trading company there will be further discussion with Grant Thornton to ensure that the detailed arrangements are in the two Councils best interests in terms of both allowing us to exploit early income generation streams which cannot be developed without utilising a trading company, as well as enabling the Councils to maximise longer term opportunities potentially emerging from the T18 Programme.

4. CONCLUSION

- 4.1 It is recommended that the two Councils approve the creation of a wholly owned trading company as a further step to changing the culture of the organisations. The detailed arrangements of the company will be determined by the Head of Paid Service in consultation with the Leaders and Deputy Leaders of the two Councils. Any trading proposed to take place through the company will require an approved business plan. This initiative will not adversely affect income generation which can more appropriately take place through core service activity, or through effective use of assets. Setting up the trading company however adds to the options available to improve the financial position. Establishing and subsequently modifying the trading company arrangement is relatively simple and it therefore enables us to learn from some initial low key, low risk opportunities, amending the approach based on the learning and development which will arise.

5. RISK MANAGEMENT

Corporate priorities engaged:	Community well-being; Access to services; Customer first
Statutory powers:	<i>Localism Act 2011</i>
Considerations of equality and human rights:	There are no equality or human rights issues associated with this report. Any specific issues that arise from future company trading will need to be dealt with on a case-by-case basis. This will include the need to consult on any significant policy changes.
Biodiversity considerations:	N/a
Sustainability considerations:	N/a
Crime and disorder implications:	None
Background papers:	None
Appendices attached:	Appendix 1: Income Generation Ideas arising from South Hams Task and Finish Groups and West Devon Income Generation Working Group Appendix 2: Draft Articles of Association

STRATEGIC RISKS TEMPLATE

No	Risk Title	Risk/Opportunity Description	Inherent risk status				Mitigating & Management actions	Ownership
			Impact of negative outcome	Chance of negative outcome	Risk score and direction of travel			
1	Failure to maximise opportunity by not acting	Budget gap cannot be met in future.	3	2	6	↔	If the Council does not take up opportunities to generate income through trading then the risk to the Council from reduced funding and increasing budgetary pressures is heightened.	All HoS/Members
2	Market failure	Market collapse on areas identified for trading potential.	2	2	4	↔	Individual schemes would need to be separately risk assessed before any trading was to be entered into.	As appropriate to scheme
3	Differential trading opportunities	There is likely to be differential trading opportunities that come to light between the Councils requiring reallocation of dividends between the Councils.	2	1	2	↔	Principles have been agreed on the redistribution of profits .	Directors of company
4	Diverging approach to Income Generation at each Council	A diverging strategy for income generation may mean that a single jointly owned company is not the best way forward.	2	4	8	↔	An appropriate 'exit strategy' will be included in the governance arrangements. Options could include winding up the company or allocation of shares to one shareholder. It is likely in the future that subsidiary trading arms are developed as part of a healthy	Members Income Group and Directors of company

No	Risk Title	Risk/Opportunity Description	Inherent risk status				Mitigating & Management actions	Ownership
			Impact of negative outcome	Chance of negative outcome	Risk score and direction of travel			
							growth and risk mitigation strategy.	
5	Liabilities	Liabilities can exist for both the company and directors.	4	2	8	↔	The liability of the company would be limited. Directors liability can be covered through appropriate insurance	Directors
6	Lack of trading	Company expenses could outweigh income generated.	2	2	4	↔	The expense of running a company would be minimal in the first instance. Expenses would initially be matched directly to trading activity with the company contracting with the Councils for the resources necessary only to complete that particular trading activity.	Members Income Group and Directors of company

Direction of travel symbols ↓ ↑ ↔

Appendix 1: Income Generation Ideas arising from South Hams Task and Finish Groups and West Devon Income Generation Working Group

South Hams

- Food Hygiene*
- Affordable Housing loans*
- Enabling fees for Registered Providers
- Grounds maintenance*
- Driver CPC Training*
- Advertising*
- Print and scan
- Asset development (through an accelerated Strategic Asset review Programme)
- Legal Services*

West Devon

- Food Hygiene*
- Affordable Housing Loans*
- Enabling fees for Registered Providers
- Advertising*
- Print and scan
- Mechanical sweeping
- DFG support
- Legal services*
- Arbori-cultural services
- Asset development (through an accelerated Strategic Asset review Programme)

Key

- * = Income areas to be pursued as a higher priority following member and Officer workshop

APPENDIX 2: DRAFT ARTICLES OF ASSOCIATION
THE COMPANIES ACT 2006
PRIVATE COMPANIES LIMITED BY SHARES

ARTICLES OF ASSOCIATION

OF

[] LIMITED

PART 1 INTERPRETATION AND OBJECTS

1	Defined Terms	1
2	Objects clause	2

PART 2 DIRECTORS

3	Directors' general authority	3
4	Powers of Directors	3
5	Shareholders' reserve power	3
6	Directors to take decisions collectively	4
7	Unanimous decisions	4
8	Calling a Directors' meeting	4
9	Participation in Directors' meetings	5
10	Quorum for Directors' meetings	5
11	Chairing of Directors' meetings	5
12	Conflicts of interest – transactions or other arrangements with the Company.....	5
13	Conflicts of interest requiring Directors' authorisation	6
14	Records of decisions to be kept	8
15	Directors' discretion to make further rules	8

16	Methods of appointing Directors	8
17	Termination of Director's appointment	8

PART 3 SHAREHOLDERS, SHARES & DISTRIBUTIONS

18	Shareholders	9
19	Liability of Shareholders	9
20	All Shares to be Fully Paid up	9
21	Further issues of Shares: Authority	9
22	Further issue of Shares: disapplication of Pre-emption rights	10
23	Power to issue different classes of Share	10
24	Company not bound by less than absolute interests.....	10
25	Share Certificate	10
26	Share Transfers: General	10
27	Pre-emption rights on the Transfer of Shares	11
28	Procedure for Declaring Dividends	11
29	Payment of Dividends	12
30	No interest on distributions	12

PART 4 DECISION MAKING BY SHAREHOLDERS

31	Representatives of Shareholders	12
32	Attendance and speaking at general meetings	12
33	Quorum for general meetings	13
34	Chairing General Meetings	13
35	Attendance and speaking by Directors and non-Shareholders	13
36	Voting: general	13
37	Errors and disputes	13
38	Poll votes	13
39	Amendments to resolution	14

PART 5 ADMINISTRATIVE ARRANGEMENTS

40	Means of communication to be used	15
41	Company Secretary	15
42	Indemnity	15
43	Insurance	16

PART 1

INTERPRETATION AND OBJECTS

1 Defined terms

1.1 In the Articles, unless the context requires otherwise—

“**Articles**” means the Company’s Articles of Association;

“**Bankruptcy**” includes individual insolvency proceedings in a jurisdiction other than England and Wales or Northern Ireland which have an effect similar to that of Bankruptcy;

“**Business Days**” means a day (other than a Saturday or Sunday) on which banks are open for business in London;

“**Companies Acts**” means the Companies Acts (as defined in section 2 of the Companies Act 2006), in so far as they apply to the Company;

“**Company**” means the Company governed by these Articles;

“**Councils**” means South Hams District Council and West Devon Borough Council and their statutory successors;

“**Conflict**” has the meaning given in Article 12;

“**Director**” means a Director of the Company, and includes any person occupying the position of Director, by whatever name called;

“**Document**” includes, unless otherwise specified, any Document in Hard Copy Form and any Document sent or supplied in Electronic Form;

“**Electronic Form**” has the meaning given in section 1168 of the Companies Act 2006;

“**Eligible Director**” means a Director who would be entitled to vote on the matter at a meeting of Directors (but excluding any Director whose vote is not to be counted in respect of the particular matter).

“**Fully Paid**” in relation to a Share, means that the nominal value and any premium to be Paid to the Company in respect of that Share have been Paid to the Company;

“**Group Company**” means, in relation to a Company, a Subsidiary undertaking or parent undertaking of the Company or a Subsidiary undertaking of any parent undertaking of the Company, provided that the definition of "undertaking" in

section 1161 of the Companies Act 2006 shall for these purposes also include any person (incorporated or unincorporated) created by statute;

"Hard Copy form" has the meaning given in section 1168 of the Companies Act 2006;

"Holder" in relation to Shares means the person whose name is entered in the register of members as the holder of the Shares;

"Ordinary Resolution" has the meaning given in section 282 of the Companies Act 2006;

"Paid" means Paid or credited as Paid;

"Participate" in relation to a Directors' meeting, has the meaning given in Article 9;

"Representative" has the meaning given to it in Article 31;

"Shareholder" means a person who is the Holder of a Share;

"Shares" means Shares in the Company;

"Special Resolution" has the meaning given in section 283 of the Companies Act 2006;

"Subsidiary" has the meaning given in section 1159 of the Companies Act 2006;

"Transfer Notice" means an irrevocable notice in writing given by any Shareholder to the other Shareholder or Shareholders where the first Shareholder desires to transfer or offer for transfer (or enter into an agreement to transfer) and Shares;

"Valuers" means the auditors for the time being of the Company or, if they decline the instruction, an independent firm of accountants appointed by the Shareholders; and

"Writing" means the representation or reproduction of words, symbols or other information in a visible form by any method or combination of methods, whether sent or supplied in Electronic Form or otherwise.

1.2 No regulations or model Articles contained in any statute or subordinate legislation, including those contained in the model Articles for private companies limited by shares contained in Schedule 1 of the Companies Act (Model Articles) Regulations 2008, shall apply to the Company.

1.3 Unless the context otherwise requires, other words or expressions contained in these Articles bear the same meaning as in the Companies Act 2006 as in force on the date when these Articles become binding on the Company.

2 Objects clause

- 2.1 The Company's objects are unrestricted save for the restrictions set out in Article 2.2.
- 2.2 The objects of the Company should not involve:
 - 2.2.1 the production and the sale of weaponry including firearms;
 - 2.2.2 the manufacture of tobacco, alcohol or pornography; or
 - 2.2.3 the support of the exploitation of vulnerable people.

PART 2

DIRECTORS

DIRECTORS' POWERS AND RESPONSIBILITIES

3 Directors' general authority

- 3.1 Subject to the Articles, the Directors are responsible for the management of the Company's business, for which purpose they may exercise all the powers of the Company.

4 Powers of Directors

- 4.1 The Directors shall have no power or authority to approve any of the matters listed below unless the relevant matter has first been approved by the Shareholders in the Company's annual business plan or by way of Special Resolution:
 - 4.1.1 varying in any respect the Articles or the rights attaching to any Shares in the Company;
 - 4.1.2 passing any resolution for the Company's winding up or presenting any petition for its administration (unless it has become insolvent);
 - 4.1.3 adopting or amending the Company's annual business plan;
 - 4.1.4 amalgamating or merging with any other company or business undertaking;
 - 4.1.5 passing any resolution to admit new Shareholders or allot further Shares;

- 4.1.6 purchasing, leasing or otherwise acquiring assets, or any interest in assets, which exceed the value of £TBA
- 4.1.7 entering into any contract, transaction or other arrangement of a value exceeding £TBA
- 4.1.8 Borrowing any money in excess of £TBA, or creating any mortgage, debenture, pledge, lien or other encumbrances over the undertaking or assets of the Company;
- 4.1.9 Giving any guarantee, making any payment or incurring any obligation or acting as surety otherwise than in connection with the ordinary business of the Company for the time being;
- 4.1.10 Removing any Director appointed by a Shareholder;
- 4.1.11 Changing the Company's name.

5 Shareholders' reserve power

- 5.1 The Shareholders may, by Special Resolution, direct the Directors to take, or refrain from taking, specified action.
- 5.2 No such Special Resolution invalidates anything which the Directors have done before the passing of the resolution.

DECISION-MAKING BY DIRECTORS

6 Directors to take decisions collectively

- 6.1 Each Director shall have one (1) vote.
- 6.2 The general rule about decision-making by Directors is that any decision of the Directors must be either a majority decision at a meeting or a decision taken in accordance with Article 7.

7 Unanimous decisions

- 7.1 A decision of the Directors is taken in accordance with this Article when all Eligible Directors indicate to each other by any means that they share a common view on a matter.

- 7.2 Such a decision may take the form of a resolution in Writing where each Eligible Director has signed one or more copies of it, or to which each Eligible Director has otherwise indicated agreement in Writing.
- 7.3 A decision may not be taken in accordance with this Article if the Eligible Directors would not have formed a quorum at such a meeting.

8 Calling a Directors' meeting

- 8.1 Directors meetings shall be held a minimum of four times a year.
- 8.2 Any Director may call a Directors' meeting by giving not less than seven (7) Business Days' notice of the meeting (or such lesser notice as all the Directors may agree) to the Directors or by authorising the Company secretary to give such notice.
- 8.3 Notice of any Directors' meeting must indicate:
- 8.3.1 an agenda specifying in reasonable detail the matters to be raised at the meeting or the committee meeting;
 - 8.3.2 copies of any papers to be discussed at the meeting or the committee meeting;
 - 8.3.3 its proposed date and time;
 - 8.3.4 where it is to take place; and
 - 8.3.5 if it is anticipated that Directors participating in the meeting will not be in the same place, how it is proposed that they should communicate with each other during the meeting.
- 8.4 Matters not on the agenda, or business conducted in relation to those matters, may not be raised at a meeting of Directors unless all the Directors present agree.
- 8.5 Notice of a Directors' meeting need not be given to Directors who waive their entitlement to notice of that meeting, by giving notice to that effect to the Company not more than seven (7) days after the date on which the meeting is held. Where such notice is given after the meeting has been held, that does not affect the validity of the meeting, or of any business conducted at it.

9 Participation in Directors' meetings

- 9.1 Subject to the Articles, Directors Participate in a Directors' meeting, or part of a Directors' meeting, when:
- 9.1.1 the meeting has been called and takes place in accordance with the Articles; and

9.1.2 they can each communicate to the others any information or opinions they have on any particular item of the business of the meeting.

9.2 In determining whether Directors are participating in a Directors' meeting, it is irrelevant where any Director is or how they communicate with each other.

9.3 If all the Directors participating in a meeting are not in the same place, they may decide that the meeting is to be treated as taking place wherever any of them are.

10 Quorum for Directors' meetings

10.1 Subject to Article 10.2, the minimum quorum for Directors' meetings will be any three (3) Eligible Directors.

10.2 For the purposes of any meeting held pursuant to Article 12 to authorise a Director's conflict, if there is only one Eligible Director in office other than the conflicted Director(s), the quorum for such a meeting shall be one Eligible Director.

10.3 If the total number of Directors in office for the time being is less than the quorum required, the Directors must not take any decision other than a decision to call a general meeting so as to enable the Shareholders to appoint further Directors in accordance with Article 16 below.

11 Chairing of Director's meetings

11.1 The externally appointed Director shall chair Director's meetings and shall be known as the chairman.

11.2 If the chairman is not participating in a Director's meeting within ten minutes of the time at which it was to start, the participating Directors must appoint one of themselves to chair it.

11.3 The chairman shall not have a casting vote.

12 Conflicts of interest – transactions or other arrangements with the Company

12.1 Subject to sections 177(5) and 177(6) and sections 182(5) and 182(6) of the Companies

Act and provided he has declared the nature and extent of his interest in accordance with

the requirements of the Companies Acts, a Director who is in any way, whether directly or indirectly, interested in an existing or proposed transaction or arrangement with the Company:

- 12.1.1 may be a party to, or otherwise interested in, any transaction or arrangement with the Company or in which the Company is otherwise (directly or indirectly) interested;
- 12.1.2 shall be an Eligible Director for the purposes of any proposed decision of the Directors in respect of such existing or proposed transaction or arrangement in which he is interested;
- 12.1.3 shall be entitled to vote at a meeting of Directors or participate in any unanimous decision, in respect of such existing or proposed transaction or arrangement in which he is interested;
- 12.1.4 may act by himself or his firm in a professional capacity for the Company (otherwise than as auditor) and he or his firm shall be entitled to remuneration for professional services as if he were not a director;
- 12.1.5 may be a Director or other officer of, or employed by, or a party to a transaction or arrangement with, or otherwise interested in, any body corporate in which the Company is otherwise (directly or indirectly) interested; and
- 12.1.6 shall not, save as he may otherwise agree, be accountable to the Company for any benefit which he (or a person connected with him (as defined in section 252 of the Act)) derives from any such transaction or arrangement or from any such office or employment or from any interest in any such body corporate and no such transaction or arrangement shall be liable to be avoided on the grounds of any such interest or benefit nor shall the receipt of any such remuneration or other benefit constitute a breach of his duty under section 176 of the Companies Act.

12.2 For the purposes of this Article 12, a Director shall be deemed to have disclosed the nature and extent of an interest which consists of him being an officer, member or employee of any Shareholder of the Company.

13 Conflicts of interest requiring Directors' authorisation

13.1 The Directors may, in accordance with the requirements set out in this Article, authorise any matter or situation proposed to them by any Director which would, if not authorised, involve a Director (an **Interested Director**) breaching his duty under section 175 of the Companies Act to avoid conflicts of interest (**Conflict**).

13.2 Any authorisation under this Article 13 will be effective only if:

- 13.2.1 to the extent permitted by the Companies Act, the matter in question shall have been proposed by any Director for consideration in the same way that any other matter may be proposed to the Directors under the provisions of these Articles or in such other manner as the Directors may determine;

- 13.2.2 any requirement as to the quorum for consideration of the relevant matter is met without counting the Interested Director or any other interested director; and,
 - 13.2.3 the matter was agreed to without the Interested Director voting or would have been agreed to if the Interested Director's and any other interested director's vote had not been counted.
- 13.3 A Conflict in relation to a Director arising solely as a result of him being a officer, member or employee of any Shareholder of the Company shall be deemed to have been authorised for the purposes of this Article 13 and section 175 of the Companies Act.
- 13.4 Any authorisation or deemed authorisation of a Conflict under this Article 13 may (whether at the time of giving the authorisation or subsequently):
- 13.4.1 extend to any actual or potential conflict of interest which may reasonably be expected to arise out of the matter or situation so authorised;
 - 13.4.2 provide that the Interested Director be excluded from the receipt of documents and information and the participation in discussions (whether at meetings of the Directors or otherwise) related to the Conflict;
 - 13.4.3 provide that the Interested Director shall or shall not be an Eligible Director in respect of any future decision of the Directors in relation to any resolution related to the Conflict;
 - 13.4.4 impose upon the Interested Director such other terms for the purposes of dealing with the Conflict as the Directors think fit;
 - 13.4.5 provide that, where the Interested Director obtains, or has obtained (through his involvement in the Conflict and otherwise than through his position as a director of the company) information that is confidential to a third party, he will not be obliged to disclose that information to the Company, or to use it in relation to the Company's affairs where to do so would amount to a breach of that confidence; and
 - 13.4.6 permit the Interested Director to absent himself from the discussion of matters relating to the Conflict at any meeting of the Directors and be excused from reviewing papers prepared by, or for, the Directors to the extent they relate to such matters.
- 13.5 Where the Directors authorise a Conflict, the Interested Director will be obliged to conduct himself in accordance with any terms and conditions imposed by the Directors in relation to the Conflict.

- 13.6 The Directors may revoke or vary such authorisation at any time, but this will not affect anything done by the Interested Director, prior to such revocation or variation, in accordance with the terms of such authorisation.
- 13.7 A Director is not required, by reason of being a Director (or because of the fiduciary relationship established by reason of being a director), to account to the Company for any remuneration, profit or other benefit which he derives from or in connection with a relationship involving a Conflict which has been authorised by the Directors or by the Company in general meeting (subject in each case to any terms, limits or conditions attaching to that authorisation) and no contract shall be liable to be avoided on such grounds.

14 Records of decisions to be kept

- 14.1 The Directors must ensure that the Company keeps a record, in Writing, for at least ten (10) years from the date of the decision recorded, of every unanimous or majority decision taken by the Directors.

15 Directors' discretion to make further rules

- 15.1 Subject to the Articles, the Directors may make any rule which they think fit about how they take decisions, and about how such rules are to be recorded or communicated to Directors.

APPOINTMENT OF DIRECTORS

16 Methods of appointing Directors

- 16.1 Any person who is willing to act as a Director and is permitted by law to do so, may be appointed to be a Director.
- 16.2 There shall be five (5) Directors or such other number as may otherwise be determined from time to time by Ordinary Resolution of the Company.
- 16.3 The Directors shall be appointed by the Shareholders at their Annual Council Meeting for an initial term of two (2) years and shall be eligible for reappointment for up to three (3) further terms of two (2) years up to a maximum term of eight (8) years except in exceptional circumstances (to be determined by the appointing Shareholder) when the Director may be appointed for a fifth term of two (2) years.
- 16.4 The two (2) Shareholders shall each have the right to appoint two (2) Directors consisting of one (1) elected member of the Shareholder and one (1) officer of the Shareholder.
- 16.5 The Shareholders shall also jointly appoint a fifth externally appointed Director.

17 Termination of Director's appointment

- 17.1 A person ceases to be a Director automatically at the end of their two year term of appointment unless reappointed in accordance with Articles 16.3 or as soon as:
- 17.1.1 in the case of an employee of the Shareholder, that person ceases to be employed by the Shareholder;
 - 17.1.2 in the case of an elected member, that person ceases to be an elected member for the Shareholder or becomes disqualified for membership of a local authority;
 - 17.1.3 the Shareholders decide by majority vote to remove the Director;
 - 17.1.4 the Shareholder who appointed the Director ceases to be a Shareholder in the Company;
 - 17.1.5 that person resigns by written notice to the Directors and to the Shareholder who appointed the Director and such resignation has taken effect in accordance with its terms;
 - 17.1.6 that person ceases to be a Director by virtue of any provision of the Companies Act 2006 or is prohibited from being a Director by law;
 - 17.1.7 a Bankruptcy order is made against that person;
 - 17.1.8 a composition is made with that person's creditors generally in satisfaction of that person's debts;
 - 17.1.9 a registered medical practitioner who is treating that person gives a written opinion to the Company stating that that person has become physically or mentally incapable of acting as a Director and may remain so for more than three months.

PART 3

SHAREHOLDERS, SHARES & DISTRIBUTIONS

SHARES

18 Shareholders

- 18.1 The first Shareholders of the Company are the Councils.
- 18.2 No person shall be admitted as a Shareholder of the Company unless they are approved by ordinary resolution of the Shareholders.
- 18.3 The Directors must keep a register of names and addresses of the Shareholders

19 Liability of Shareholders

19.1 The liability of the Shareholders is limited to the amount, if any, unpaid on the Shares held by them.

20 All Shares to be Fully Paid up

20.1 No Share is to be issued for less than the aggregate of its nominal value and any premium Paid to the Company in consideration for its issue.

20.2 This does not apply to Shares taken on the formation of the Company by the subscribers to the Company's memorandum.

21 Further issues of Shares: Authority

21.1 Save to the extent authorised by these Articles, or authorised from time to time by an Ordinary Resolution of the Shareholders, the Directors shall not exercise any power to allot Shares or to grant rights to subscribe for, or to convert any security into, any Shares in the Company.

22 Further issue of Shares: disapplication of pre-emption rights

22.1 In accordance with sections 567(1) of the Companies Act, sections 561 and 562 of the Act shall not apply to an allotment of equity securities (as defined in section 560(1) of the Companies Act) made by the Company.

23 Power to issue different classes of Share

23.1 Subject to the Articles, but without prejudice to the rights attached to any existing Share, the Company may issue Shares with such rights or restrictions as may be determined by Ordinary Resolution.

23.2 The Company may issue Shares which are to be redeemed, or are liable to be redeemed at the option of the Company or the Holder, and the Directors may determine the terms, conditions and manner of redemption of any such Shares.

24 Company not bound by less than absolute interests

24.1 Except as required by law, no person is to be recognised by the Company as holding any Share upon any trust, and except as otherwise required by law or the Articles, the Company is not in any way to be bound by or recognise any interest in a Share other than the Shareholder's absolute ownership of it and all the rights attached to it.

25 Share Certificate

25.1 The Company must issue each Shareholder, free of charge, with one or more certificates in respect of the Shares which that Shareholder holds.

25.2 Every certificate must specify:

25.2.1 in respect of how many Shares, of what class, it is issued;

25.2.2 the nominal value of those Shares;

25.2.3 that the Shares are Fully Paid; and

25.2.4 any distinguishing numbers assigned to them.

25.3 No certificate may be issued in respect of Shares of more than one class.

25.4 If more than one person holds a Share, only one certificate may be issued in respect of it.

25.5 Certificates must be executed in accordance with the Companies Acts.

26 Share Transfers: General

26.1 No Shareholder shall transfer any Share except:

26.1.1 with the prior written consent of all Shareholders for the time being, or

26.1.2 in accordance with the procedure set out in Article 27.

26.2 Subject to the above, Shares may be transferred by means of an instrument of transfer in any usual form or any other form approved by the Directors, which is executed by or on behalf of the transferor.

26.3 No fee may be charged for registering any instrument of transfer or other document relating to or affecting title to any Share.

26.4 The Company may retain any instrument of transfer which is registered.

26.5 The transferor remains the Shareholder of the Share until the transferee's name is entered in the register of Shareholders as Holder of it.

27 Pre-emption rights on the Transfer of Shares

27.1 A Shareholder (**Seller**) wishing to transfer its shares (**Sale Shares**) must give a Transfer Notice to the other Shareholder (**Continuing Shareholder**) giving details of the proposed transfer.

- 27.2 Following service of a Transfer Notice under Article 27.1, the Seller and Continuing Shareholder shall endeavour to agree a price for the Sale Shares. If they cannot agree a price within twenty (20) Business Days of the Continuing Shareholder's receipt of the Transfer Notice, either the Seller or the Continuing Shareholder shall instruct the Valuers to determine the fair value of each Sale Share.
- 27.3 Within 20 Business Days of receipt of the Valuer's determination of fair value, the Continuing Shareholder shall give notice in writing to the Seller stating whether the Continuing Shareholder wishes to purchase the Sale Shares at their fair value as determined by the Valuers.
- 27.4 If the Continuing Shareholder gives notice that it does not want to buy the Sale Shares or, fails to provide any written notice within the 20 Business Days or, the Sale Shares are not transferred within two (2) months of expiry of the written notice specified in Article 27.2, the Shareholders agree that proceedings will be commenced to wind the Company up.

DIVIDENDS

28 Procedure for declaring dividends

- 28.1 The Company may by Special Resolution declare dividends and the Directors may decide to pay interim dividends.
- 28.2 A dividend must not be declared unless the Directors have made a recommendation as to its amount. Such a dividend must not exceed the amount recommended by the Directors.
- 28.3 Unless the Shareholders' resolution to declare, specifies otherwise, it must be Paid by reference to each Shareholder's holding of Shares on the date of the resolution or decision to declare or pay it.
- 28.4 If the Company's Share capital is divided into different classes, no interim dividend may be paid on Shares carrying deferred or non-preferred rights if, at the time of payment, any preferred dividend is in arrears.
- 28.5 The Directors may pay at intervals any dividend payable at a fixed rate if it appears to them that the profits available for distribution justify the payment.
- 28.6 If the Directors act in good faith, they do not incur any liability to the Shareholder conferring preferred rights for any loss they may suffer by the lawful payment of an interim dividend on Shares with deferred or non-preferred rights.

29 Payment of Dividends

- 29.1 Where a dividend or other sum which is a distribution is payable in respect of a Share, it must be paid by such means as is agreed by the respective Shareholder.

30 No interest on distributions

- 30.1 The Company may not pay interest on any dividend or other sum payable in respect of a Share

PART 4 DECISION MAKING BY SHAREHOLDERS ORGANISATION OF GENERAL MEETINGS

31 Representatives of Shareholders

- 31.1 A Shareholder may be represented at any general meeting of the Company by any authorised Representative for the time being of the Shareholder as notified by the Shareholder in question to the Company (a "Representative").
- 31.2 A Representative shall be deemed to have full authority to act on behalf of a Shareholder in relation to any discussion or vote at a general meeting.

32 Attendance and speaking at general meetings

- 32.1 A person is able to exercise the right to speak at a general meeting when that person is in a position to communicate to all those attending the meeting, during the meeting, any information or opinions which that person has on the business of the meeting.
- 32.2 A person is able to exercise the right to vote at a general meeting when:
- 32.2.1 that person is able to vote, during the meeting, on resolutions put to the vote at the meeting; and
- 32.2.2 that person's vote can be taken into account in determining whether or not such;
- resolutions are passed at the same time as the votes of all the other persons attending the meeting.
- 32.3 The Directors may make whatever arrangements they consider appropriate to enable those attending a general meeting to exercise their rights to speak or vote at it.
- 32.4 In determining attendance at a general meeting, it is immaterial whether any two (2) or more Shareholders attending it are in the same place as each other.

32.5 Two (2) or more persons who are not in the same place as each other attend a general meeting if their circumstances are such that if they have (or were to have) rights to speak and vote at that meeting, they are (or would be) able to exercise them.

33 Quorum for general meetings

33.1 No business is to be transacted at a general meeting if the persons attending it do not constitute a quorum.

33.2 There is a quorum at a general meeting if all of the Shareholders entitled to attend and vote at that meeting are present in person or through their Representatives.

33.3 If within 15 minutes from the time appointed for the holding of a general meeting a quorum is not present, the meeting will be adjourned to such other day and at such time as the Board may determine.

34 Chairing general meetings

34.1 The Directors present or (if no Directors are present), the meeting must appoint a Director (if present) or Shareholder to chair the meeting, and the appointment of the chairman of that meeting must be the first business of the meeting.

34.2 The person chairing a meeting in accordance with this Article is referred to as “the chairman of the meeting”

35 Attendance and speaking by Directors and non-Shareholders

35.1 Directors may attend and speak at general meetings.

35.2 The chairman of the meeting may permit other persons who are not Shareholders of the Company to attend and speak at general meetings.

VOTING AT GENERAL MEETINGS

36 Voting: general

36.1 A resolution put to the vote of a general meeting must be decided on a show of hands unless a poll is duly demanded in accordance with the Articles.

37 Errors and disputes

37.1 No objection may be raised to the qualification of any person voting at a general meeting except at the meeting or adjourned meeting at which the vote objected to is tendered, and every vote not disallowed at the meeting is valid.

37.2 Any such objection must be referred to the chairman of the meeting whose decision is final.

38 Poll votes

38.1 A poll on a resolution may be demanded:

38.1.1 in advance of the general meeting where it is to be put to the vote; or

38.1.2 at a general meeting, either before a show of hands on that resolution or immediately after the result of a show of hands on that resolution is declared.

38.2 A poll may be demanded by:

38.2.1 the chairman of the meeting;

38.2.2 the Directors;

38.2.3 two (2) or more persons having the right to vote on the resolution; or

38.2.4 a person or persons representing not less than one tenth (1/10th) of the total voting rights of all the Shareholders having the right to vote on the resolution.

38.3 A demand for a poll may be withdrawn if:

38.3.1 the poll has not yet been taken, and

38.3.2 the chairman of the meeting consents to the withdrawal.

38.4 Polls must be taken immediately and in such manner as the chairman of the meeting directs.

39 Amendments to resolutions

39.1 An Ordinary Resolution to be proposed at a general meeting may be amended by Ordinary Resolution if:

39.1.1 notice of the proposed amendment is given to the Company in Writing by a person entitled to vote at the general meeting at which it is to be proposed not less than forty eight (48) hours before the meeting is to take place (or such later time as the chairman of the meeting may determine), and

39.1.2 the proposed amendment does not, in the reasonable opinion of the chairman of the meeting, materially alter the scope of the resolution.

39.2 A Special Resolution to be proposed at a general meeting may be amended by Ordinary Resolution, if:

- 39.2.1 the chairman of the meeting proposes the amendment at the general meeting at which the resolution is to be proposed, and
- 39.2.2 the amendment does not go beyond what is necessary to correct a grammatical or other non-substantive error in the resolution.
- 39.3 If the chairman of the meeting, acting in good faith, wrongly decides that an amendment to a resolution is out of order, the chairman's error does not invalidate the vote on that resolution.

PART 5

ADMINISTRATIVE ARRANGEMENTS

40 Means of communication to be used

- 40.1 Subject to the Articles, anything sent or supplied by or to the Company under the Articles may be sent or supplied in any way in which the Companies Act 2006 provides for Documents or information which are authorised or required by any provision of that Act to be sent or supplied by or to the Company.
- 40.2 Subject to the Articles, any notice or Document to be sent or supplied to a Director in connection with the taking of decisions by Directors may also be sent or supplied by the means by which that Director has asked to be sent or supplied with such notices or Documents for the time being.
- 40.3 A Director may agree with the Company that notices or Documents sent to that Director in a particular way are to be deemed to have been received within a specified time of their being sent, and for the specified time to be less than forty eight (48) hours.

41 Company Secretary

- 41.1 The Directors may appoint any person who is willing to act as the secretary for such term and upon such conditions as they may think it and from time to time remove such person and, if the Directors so decide, appoint a replacement.

DIRECTORS' INDEMNITY AND INSURANCE

42 Indemnity

- 42.1 Subject to Article 42.2, but without prejudice to any indemnity to which a relevant officer is otherwise entitled:
- 42.1.1 Each relevant officer shall be indemnified out of the Company's assets against all costs, charges, losses, expenses and liabilities incurred by him as a relevant officer:

- (i) in the actual or purported execution and/or discharge of his duties, or in relation to them; and
- (ii) in relation to the Company's (or any associated company's) activities as trustee of an occupational pension scheme (as defined in section 235(6) of the Act),

including (in each case) any liability incurred by him in defending any civil or criminal proceedings, in which judgment is given in his favour or in which he is acquitted or the proceedings are otherwise disposed of without any finding or admission of any material breach of duty on his part or in connection with any application in which the court grants him, in his capacity as a relevant officer, relief from liability for negligence, default, breach of duty or breach of trust in relation to the Company's (or any associated company's) affairs; and

42.1.2 the Company may provide any relevant officer with funds to meet expenditure incurred or to be incurred by him in connection with any proceedings or application referred to in Article 42.1.1 and otherwise may take any action to enable any such relevant officer to avoid incurring such expenditure.

42.2 This Article does not authorise any indemnity which would be prohibited or rendered void by any provision of the Companies Acts or by any other provision of law.

42.3 In this Article:

42.3.1 companies are associated if one is a subsidiary of the other or both are subsidiaries of the same body corporate; and

42.3.2 a "relevant officer" means any director or secretary or former director or secretary of the Company or an associated company (including any company which is a trustee of an occupational pension scheme (as defined by section 235(6) of the Act).

43 Insurance

43.1 The Directors may decide to purchase and maintain insurance, at the expense of the Company, for the benefit of any relevant officer in respect of any relevant loss.

43.2 In this Article:-

43.2.1 a "relevant officer" means any Director or secretary or former director or former secretary of the Company or an associated company.

43.2.2 a "relevant loss" means any loss or liability which has been or may be incurred by a relevant officer in connection with that officer's duties or powers in relation to the Company, any associated company or any pension fund or employees' share scheme of the Company or associated company, and

43.2.3 companies are associated if one is a subsidiary of the other or both are subsidiaries of the same body corporate,