



**Meeting** Cabinet

**Date and Time** Monday, 25th March, 2019 at 1.00 pm.

**Venue** Walton Suite, Winchester Guildhall

**S U P P L E M E N T A R Y   A G E N D A**

The following items were not notified for inclusion on the agenda within the statutory deadline. Therefore, the Chairman will need to decide whether or not to accept these items onto the agenda as matters requiring urgent consideration.

Agenda Item.

11    **a)    Establishing the Winchester Housing Company (less exempt appendices) (Pages 3 - 46)**  
**Key Decision** **(CAB3139(HSG))**

13.    **EXEMPT BUSINESS:**  
To consider whether in all the circumstances of the case the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

(i)    To pass a resolution that the public be excluded from the meeting during the consideration of the following items of business because it is likely that, if members of the public were present, there would be disclosure to them of 'exempt information' as defined by Section 100 (I) and Schedule 12A to the Local Government Act 1972.

19    **a)    Establishing the Winchester Housing Company (exempt appendices) (Pages 47 - 76)**  
**Key Decision** **(CAB3139(HSG) - EXEMPT APPENDICES)**



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18 March 2019

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CAB3139(HSG)  
CABINET (HOUSING) COMMITTEE  
CABINET

REPORT TITLE: ESTABLISHING THE WINCHESTER HOUSING COMPANY

CABINET (HOUSING) COMMITTEE - 20 MARCH 2019

CABINET – 25 MARCH 2019

REPORT OF PORTFOLIO HOLDER: Leader with Portfolio for Housing Services –  
Cllr. Caroline Horrill

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WARD(S): ALL

## PURPOSE

This report proposes the establishment of a wholly owned housing company to deliver units for sub-market rent on non-secure tenancies and provide shared ownership accommodation, initially through the partnered home purchase scheme (PHP).. The company will function as an ethical landlord, providing a more secure offer than the private rented sector currently delivers.

In accordance with CAB2990(HSG) 22 November 2017, the proposal is supported by a detailed five-year business plan.

## RECOMMENDATIONS:

That Cabinet (Housing) Committee support the following recommendations to Cabinet:

1. That the proposal to establish a company limited by shares and wholly owned by the Council to deliver and manage sub market rented and shared ownership accommodation, including the partnered home purchase scheme (PHP) be approved. A further report will be made to Cabinet and Council before a final decision is made to establish the company and start trading.

2. That a combined loan facility & equity shareholding of £10m from the General Fund be approved to support the company's development activity.. This was previously approved in CAB2990 (HSG) 22 November 2017 as a £10m loan facility only.
3. That the five year business plan be approved.
4. That the Corporate Head of Housing in consultation with the Corporate Head of Resources, the Leader with Portfolio for Housing Services and the Portfolio Holder for Finance be authorised to:
  - a) Determine the balance of commercial and other loans to equity with due regard to state aid regulations.
  - b) Determine the terms of all loans.
5. That the proposed governance structure be approved, and:
  - a) Full Council assumes the role of shareholder of the company.
  - b) A Shareholder Advisory Group of three elected members of the Cabinet Housing Committee be established to advise the Council in its capacity as shareholder with senior officers to attend as required.
  - c) That the appointment of one elected member and two senior officers to the board of directors, namely The Chair of the relevant Policy Committee, The Corporate Head of Housing and the Head of New Homes Delivery, be approved.
6. That delegated authority be given to the Chief Executive in consultation with the Leader with Portfolio for Housing Services to appoint additional independent directors at a future date should the need arise.
7. That authority to finalise the articles of association and shareholder agreement be delegated to the Corporate Head of Housing in consultation with the Legal Services Manager, the Leader with Portfolio for Housing Services and external legal advisors.
8. To ensure that the company is able to commence trading from October 2019, that authority to undertake all remaining steps detailed at table 5 be delegated to the Corporate Head of Housing in consultation with the Legal Services Manager and Leader with Portfolio for Housing Services.

9. That delegated authority be given to the Corporate Head of Housing in consultation with the Corporate Head of Resources, the Leader with Portfolio for Housing Services and Portfolio Holder for Finance to:
  - a) Determine allocation of capital funds to be released for Partnered Home Purchase scheme (PHP) subject to the review of the first 10 properties included within the PHP pilot scheme

IMPLICATIONS:1 COUNCIL STRATEGY OUTCOME

- 1.1 The provision of good quality housing with a range of tenures is a strategic priority for the Council. Whilst it can deliver new housing for rent & shared ownership through the Housing Revenue Account (HRA), other options such as sub-market private rent can only be provided through a company structure.
- 1.2 Establishing a housing company to deliver housing tenures not permitted through HRA regulations is also a key priority for the Housing Strategy 2017-18 to 2022-23, and it will support priorities in the emerging Preventing Homelessness and Rough Sleeping Strategy 2019-24.
- 1.3 This report sets out proposals for establishing a housing company to address this issue. It should be noted that the core focus of the Council's development programme will remain on affordable/social rented units through the HRA. There are significant efficiencies achieved by building through the HRA and any housing company development will always make up less than 10% of the overall programme. However, the fact that it allows properties to be let on alternative tenures will help to establish mixed and sustainable communities and to address key aspirations of the Council's Housing Strategy.

2 FINANCIAL IMPLICATIONSFunding

- 2.1 CAB2990(HSG) approved the inclusion of a £10m loan facility from the general fund to support the housing company development in the capital strategy. Legal advice has stated that the intention of providing 100% debt funding to the housing company would be in breach of state aid rules and that any funding should be a mix of debt & equity. This is on the basis that external lenders rarely provide 100% debt funding, allowing for headroom on the value of loans issued.
- 2.2 Legal advice has suggested that the mix of debt to equity could range from 65% to 80%. For the purposes of the business plan I have assumed a level of 75% debt to 25% equity, resulting in a £7.5m loan facility and a £2.5m equity shareholding from the General Fund.
- The housing company will be required to consider annual dividend payments out of retained profits to the General Fund as a return on the equity shareholding. This will be subject to profits being available for distribution.
- 2.3 If the creation of the housing company is approved, the intention is for the equity shareholding from the General Fund to be made available at the point the housing company begins trading. This would provide an injection of working capital to cover any initial up front costs, and fund the first housing development, potentially at Rowlings Road.

### Partnered Home Purchase Scheme (PHP)

- 2.4 The PHP scheme was created by the Council in 2018 to provide the option of open market shared ownership to homebuyers. The scheme was initially launched as a pilot with funding to provide up to 10 homes. To date there have been 3 property completions.
- 2.5 The PHP scheme is currently administered as a General Fund activity and the proposal is to move the scheme into the housing company once the company has commenced trading. The funding has already been made available in the General Fund, so it will require a transfer of the existing properties to the housing company once it commences trading. Further transfers will then follow once the purchase price of future properties has been determined.
- 2.6 Each PHP proposal is individually appraised, with its suitability and financial viability assessed before a purchase is considered.

### Tax

- 2.7 Trowers & Hamblins have provided tax advice on the implications for the housing company (**see exempt Appendix B**) covering corporation tax (including chargeable gains), VAT, SDLT, Construction Industry Scheme (CIS), PAYE and tax on enveloped dwellings (ATED).
- 2.8 Corporation tax will be payable at 17% from April 2020 on any taxable profits arising in the housing company, subject to available reliefs. The intention is for the housing company to return a small taxable profit each year, sufficient to cover all operational expenditure and a dividend payment on the equity shareholding provided by the General Fund. Sub market rents and the letting of shared ownership properties would be treated as trading activities. The staircasing on future shared ownership properties would be also be treated as a trading activity, with any profits arising being chargeable to corporation tax.
- 2.9 Chargeable gains could arise on future property sales within the housing company (selling value less original acquisition price). This would normally result in a taxable receipt for corporation tax purposes. It is however possible to create a chargeable gains group between two or more entities, in this case the Council and the housing company. The effect of having a chargeable gains group is that for tax purposes the selling price of the property is deemed to be the same as the original acquisition price resulting in no gain or loss. The true gain would still be recognised as an accounting profit but there will be no corporation tax arising.
- 2.10 VAT will be an additional cost for the housing company on operational costs including internal recharges and external supplies. Where the Council provides services to the housing company, including management costs & maintenance costs, it will need to charge 20% VAT on all standard rated

supplies. It may be possible to reduce the VAT charge on internal management costs from the Council by having joint contracts for employees who provide the services to the housing company.

- 2.11 Provided that land has not been opted to tax for VAT purposes, the transfer of land would be an exempt supply with no VAT being charged on the transfer. If land has been opted to tax it means that 20% VAT will be added to the land price on purchase which could impact on the financial viability of a scheme. There are mitigations available to recover any VAT incurred on options to tax (see tax advice section 4.7)
- 2.12 If the housing company enters into a design and build contract either with the HRA or an external contractor, the supply of completed dwellings can be zero rated for VAT purposes. This means that the resulting price to the housing company will not include any VAT cost.
- 2.13 Tax advice has suggested that it would be preferable for the housing company to have a separate VAT registration from the Council. The Council is generally able to recover VAT in full on expenditure incurred provided that it meets the de-minimus test on exempt supplies as outlined in section 4.5 of the tax advice. If the housing company was included within the existing Council VAT registration it could have an adverse impact on the recovery of VAT as the de-minimus limit could be exceeded. This will require more specialist advice before the housing company commences trading to ensure that the correct VAT structure is in place.
- 2.14 Stamp Duty Land Tax (SDLT) will be applicable on purchases of land from external developers, although there are some reliefs available to mitigate this cost. (See section 5.5 of the tax advice). Similar to the rules on chargeable gains, it is possible to create an SDLT group between two or more entities. On this basis any transfers of land between the Council and the housing company will be free of any SDLT. There is however a clawback of the relief claimed if the land leaves the SDLT group within three years of the original transfer.
- 2.15 The housing company needs to register for the Construction Industry Scheme (CIS), as outlined in section 6 of the tax advice. If the housing company contracts directly with the Council for construction services no CIS payments will be payable, but if it contracts externally it may need to account for CIS deductions.
- 2.16 PAYE will not be applicable to the housing company whilst it has no employees or paid directors.
- 2.17 Tax on enveloped dwellings (ATED), as outlined in section 7 of the tax advice is not applicable to local authorities or companies that are wholly owned by the local authority.



## Business Plan

- 2.18 A summary of the business plan is shown at **exempt Appendix A1**. The business case demonstrates that the housing company can generate a small annual profit over the first 5 years of trading with the acquisition of 48 units for sub market rent and 10 properties for partnered home purchase.. In year 1 the housing company generates a profit after corporation tax & dividends of £13k, this increases to £58k by year 5.
- 2.19 The plan assumes acquiring land at market value, although the intention will be to acquire land at less than market value from the HRA whenever possible.
- 2.20 The plan also assumes the housing company contracts with the HRA to carry out the build phase of new developments.
- 2.21 The intention is for the Council to provide the management and maintenance support at an agreed price plus VAT at the standard 20%.
- 2.22 The plan proposes a £7.5m loan and £2.5m equity shareholding from the General Fund. The assumed cost of borrowing on a fixed rate loan is 5.19%. The actual cost of borrowing in the General Fund is lower, but as the loan needs to be an “arms length” commercial transaction the rate needs to be at market rate.
- 2.23 Dividend payments to the General Fund in relation to the £2.5m equity shareholding will be considered by the Board of Directors each year. The annual dividend payment of £28k per annum is assumed to be 1.10% of the £2.5m equity shareholding.
- 2.24 The graph at **Exempt Appendix A2** demonstrates that the equity investment of £2.5m is more than matched by the accumulated surplus of £2.7m over the same period. The intention will be to repay the equity shareholding by year 20 either from retained profits or the surplus arising from the sale of partnered home purchase properties.
- 2.25 Properties are assumed to increase in value by 3.00% per annum but this could fluctuate dependent on market conditions.
- 2.26 Key assumptions are listed below:

	<b>Assumptions</b>	<b>Comments</b>
Land	Market Value (MV)	Acquire HRA land at less than MV when possible.
Build Costs	Development Cost	Build contract with HRA
Rental Income	90% of Market Rent	
Management Costs	£300 per unit	Including VAT
Maintenance Costs	£563 per unit	Including VAT (Response & Voids)

Voids & Bad Debts	2.10%	For the plan duration
RPI	3.00%	For the plan duration
CPI	3.00% (CPI plus 1.00%)	For the plan duration
Market Value appreciation	3.00%	For the plan duration
Interest Costs	5.19%	Including debt management costs
Depreciation	Nil	Properties held for investment purposes
Dividends	1.10% of the £2.5m equity shareholding annually until repaid	Board of Directors to consider approval each year from retained profits.

- 2.27 The plan assumes acquiring 58 units over the first 5 years of trading, commencing with a 7 unit scheme at Rowlings Road.
- 2.28 The balance sheet demonstrates a gradual increase in the revaluation reserve to £1,555k by year 5. Net current assets include an operational cash balance at the end of each year.

### 3 LEGAL AND PROCUREMENT IMPLICATIONS

#### Legal

- 3.1 The Council has commissioned specific legal advice from Trowers & Hamlins to ensure any vehicle it establishes is in accordance with its legal powers; and that any future operation is compliant with those powers. The advice is included within **exempt Appendix C**.
- 3.2 The Council's power to set up and use a company or similar structure to support housing delivery depends on whether it is reasonable to use section 1 of the Localism Act 2011 and not section 9 of the Housing Act 1985.
- 3.3 Legal advice has confirmed that since flexibility of tenure cannot be provided within the HRA, the establishment of a company is justifiable and that the Council is entitled to rely on section 1 of the Localism Act.
- 3.4 Section 1 of the Localism Act provides local authorities with the power to do anything an individual may do, subject to a number of limitations. This is referred to as the general power of competence. A local authority may exercise the "general power of competence" for its own purpose, for a commercial purpose and/or for the benefit of others. In exercising this power, it is still subject to its general duties (such as the fiduciary duties it owes to its rate and local tax payers) and to the public law requirements to exercise its powers for a proper purpose.

- 3.5 Legal advice has been obtained on the powers to transfer land to the company, powers to fund the company and state aid compliance.
- 3.6 Further legal guidance will be required to finalise the memorandum and articles of association, shareholder agreement, loan facility agreement and service level agreement. These requirements are addressed further at section 13 of this paper under "Governance arrangements", and also at table 5.

#### Land acquisition

- 3.7 The housing company can acquire land from the HRA, General Fund or externally from a land owner or property developer. Legal advice has been obtained on the statutory implications on the transfer of land, particularly general consents and the impact of state aid.
- 3.8 The legal advice also outlines whether it is possible to transfer land from the HRA or General Fund at less than market value, identified as being at an "undervalue".
- 3.9 Land acquired externally will be at market rate and subject to stamp duty land tax (SDLT), although some reliefs are available to negate the tax impact.
- 3.10 Land acquired from the General Fund will generally be at market value, as under Section 123 of the Local Government Act 1972, land transfers must be at "best consideration". There is however a general consent available where the value of any "discount" is £2 million or less and the disposal is likely to contribute to the achievement of well-being.
- 3.11 Land acquired from the HRA at market value is not deemed to provide financial assistance and will not therefore contravene state aid rules.
- 3.12 It is however possible, under Section 32 of the Housing Act 1985 to transfer vacant HRA land at any price and to any body, permitting transfers at an undervalue. However, for a transfer to be at an undervalue it must meet the conditions outlined in Section 25 of the 1988 Housing Act or have specific Secretary of State approval.

The conditions outlined in Section 25 of the Act are as follows:

- a) Any accommodation on the land must be vacant and to be demolished.
  - b) The disposal must be by way of freehold or a lease of at least 99 years.
  - c) The terms of the disposal must require the development to complete within 3 years of the disposal.
  - d) The Council may not be entitled under an arrangement made on or before the disposal to manage or maintain the completed units.
- 3.13 Under Section 32 of the 1985 Act, a transfer of habitable dwellings from the HRA to the housing company must be at market value and is limited to five dwellings in any financial year.

- 3.14 For any HRA land transfer where Secretary of State approval is sought, the application can take a minimum of 2-3 weeks but there is little evidence of councils seeking this approval.

#### Construction of properties

- 3.15 Given that each land transfer needs to be considered individually from a legal and tax perspective and that the transfer of completed properties from the HRA is limited to five units in every financial year, the construction element of each property needs to be separated from the land element.
- 3.16 As it would be considered to be a “connected company” under EU procurement rules, the housing company is able to contract directly with the Council without the need for a tender process. The housing company would be able to contract directly with an external contractor, but this would require a tender process subject to the public contract regulations 2015. Given that the housing company will have no trading history for at least the first year, it may need to seek a parent guarantee from the Council (see Section 6.3 of the legal advice). As the intended accommodation is sub-market rent and shared ownership a full parent guarantee is possible.
- 3.17 Contracting directly with the HRA would allow mixed or single tenure developments to be procured through the HRA with the price paid by the housing company being at “development cost”. Build contracts could be structured to allow for an initial deposit and stage payments, or a final payment on completion.

#### Procurement

- 3.18 Legal advice has confirmed that since the purpose of establishing the company is to deliver sub-market accommodation with some shared ownership rather than generate a financial return, it will be a contracting authority and will therefore fall outside the scope of EU procurement rules.
- 3.19 This being so, it will also be a “Teckal” subsidiary, allowing land to be transferred from the Council without breaching EU procurement regulations.
- 3.20 A “Teckal” subsidiary is a wholly owned company that benefits from contracts for works and services as a contracting authority with a public sector organisation, in this case the Council. As the housing company is being created to provide sub-market & shared ownership accommodation to meet the needs of the community, it is not deemed to have a commercial character and therefore qualifies as a “Teckal” subsidiary.

#### 4 WORKFORCE IMPLICATIONS

- 4.1 Once established, it is proposed that the marginal capacity of existing teams is utilised to support company activity, charged on a cost recovery contractual basis at “arms length”, thus generating additional income for the Council.
- 4.2 As development activity will initially be marginal to the Council’s overall development programme, no additional resource requirements are anticipated at this stage.
- 4.3 Additional resources may be required as the housing company development activity increases over time. This may include employing direct staff to support the delivery of new properties and housing company administration
- 4.4 It is proposed that one member and two senior officers be appointed to the Board of Directors of the company, although these positions will not be subject to any additional remuneration. It is also proposed that there be flexibility to appoint additional independent (and possibly remunerated) directors to the Board should the need arise at a future date. These proposals are outlined in further detail at table 4.

#### 5 PROPERTY AND ASSET IMPLICATIONS

- 5.1 The preferred option would be for the housing company to acquire land from the HRA or General Fund and have a separate build contract with the HRA to construct the properties. The housing company could acquire land from external developers, but there could be SDLT and VAT issues associated with the final cost. When appropriate, the housing company could lease properties from both the General Fund and the HRA for short to medium term use, and potentially purchase properties on the open market.

#### 6 CONSULTATION AND COMMUNICATION

- 6.1 Officers have liaised with other local authorities who have established housing companies for a range of purposes.
- 6.2 A draft of this report was presented to TACT on 13 March 2019. A verbal summary of the feedback received will be provided for Cabinet (HSG) on 20 March 2019.

#### 7 ENVIRONMENTAL CONSIDERATIONS

- 7.1 As with all new build developments, properties will be built to a high standard and take into consideration the impact of the carbon footprint.

#### 8 EQUALITY IMPACT ASSESSMENT

- 8.1 All policies & procedures (for example lettings policies and rental agreements) will be subject to a full equality impact assessment.

9 DATA PROTECTION IMPACT ASSESSMENT

9.1 None required.

10 RISK MANAGEMENT

10.1 Key risks and opportunities are outlined below.

<b>Risk</b>	<b>Mitigation</b>	<b>Opportunities</b>
<p><i>Property</i></p> <p>High and increasing development costs</p> <p>Property values fall</p> <p>Insufficient demand</p>	<p>Detailed financial modelling based on current building costs and stress-testing for price increases</p> <p>The business plan recognises that short-term fluctuations in the market are inevitable but the outturn is positive over the length of the plan</p> <p>Evidence shows that there is a consistent demand for both sub and market rented housing</p>	<p>Property values increase</p> <p>Flexibility and control of the portfolio</p>
<p><i>Community Support</i></p>		<p>Capacity to meet housing need that cannot be met by the HRA.</p> <p>Raising standards in the private rented sector.</p> <p>Create different private rented sector opportunities.</p>
<p><i>Timescales</i></p> <p>Company not established in time to support specific initiatives</p>	<p>Resources are in place to ensure that the company is established in time to commence trading from October 2019. This reflects the expected availability of new units</p>	

Risk	Mitigation	Opportunities
	and maintains consistency between Council and company accounting periods.	
<i>Project capacity N/A</i>		
<i>Financial / VfM</i>		
<p>Investment doesn't achieve projected return</p> <p>Tax rules/HMRC requirements impacting on viability</p> <p>Future Government restrictions on prudential borrowing rules to limit allowable public sector debt</p> <p>Brexit - worst case scenario: shortage of labour and materials; house price downturn; rising demand for affordable housing as a result of rising unemployment; rising cost of loan finance</p>	<p>Detailed financial modelling Careful selection of investment option Sensitivity analysis completed</p> <p>Additional tax advice is detailed <b>at exempt Appendix B</b></p> <p>All developments will be viable individually and not dependent upon profits from future developments</p> <p>Potential development is continually appraised before contracts are agreed and any loan finance is based on fixed rates</p>	<p>Generation of profit on disposal</p> <p>Maximise available tax relief where possible</p>
<i>Legal</i>		
<p>Council acting outside of relevant powers</p>	<p>External specialist legal advice on company governance is detailed <b>at exempt Appendix C</b></p>	
<i>Innovation N/A</i>		
<i>Reputation</i>		
<p>Reputational impact of the company on the council</p>	<p>A marketing and communications plan will be developed to ensure</p>	

Risk	Mitigation	Opportunities
Reputational damage in the event of the company's failure	that the branding and image of the company contribute to a positive view of the Council's services. Risks reviewed and evaluated on a regular basis as part of corporate risk management process	
Other N/A		

## 11 SUPPORTING INFORMATION:

### Background

- 11.1 There are currently circa 150 housing companies in England, with numbers expected to reach 200 by 2020. The majority are wholly Council owned and provide affordable housing as well as market housing for rent and sale.
- 11.2 The development of new affordable housing is a key priority in the Council strategy and the new build programme has been extended following the removal of the HRA debt cap in October 2018. In addition, the Council continues to work closely with its housing association partners to maximise their development activity within the district.
- 11.3 However, the Council Strategy 2018-2020 also recognises the need for a range of affordable housing products such as sub-market rent, which can only be delivered through a company structure.
- 11.4 In March 2017 CAB2911 (HSG) set out an initial proposal to establish a dual structure with a development company for commercial activity, a subsidiary charitable arm to deliver some affordable housing with affordable rented units being purchased by the Council through the HRA. However, financial modelling demonstrated that this would be significantly more expensive (as a result of commercial borrowing costs, land transfer costs and tax implications) than the current approach where the HRA directly funds development on Council land.
- 11.5 In November 2017 CAB2990 (HSG) proposed the creation of a single company limited by shares to focus specifically on the delivery of sub-market rent. Since these proposals were approved, costs have changed and it has been necessary to revisit the original financial modelling.
- 11.6 This exercise has shown that the single company model remains the most appropriate way to deliver what will always be a marginal element of the Council's development programme.,



## 12 LOCAL CONTEXT

- 12.1 Demand for affordable housing in the Winchester district is considerable. As at 31 January 2019, 1,352 households were registered for affordable housing in the district. The numbers of bedrooms required is illustrated below, at table 1.

**Table 1: Housing register by bedroom**

1 bedroom	2 bedroom	3 bedroom	4 bedroom
845	338	132	37

- 12.2 With the demand for affordable housing continuing to rise, for many households accommodation in the private rented sector is the only option. Whilst the Council's duty to homeless applicants can be discharged by identifying suitable private rented housing, there is little available accommodation within Local Housing Allowance rates. Consequently, very few homeless households and those facing homelessness have secured private rented accommodation (see table 2, below). Deposits and letting fees add to the cost of this option, making it unaffordable for many.

**Table 2: Homelessness and the private rented sector**

	2016-17	2017-18
<b>Advice &amp; prevention – total households</b>	841	743
Households securing private rented accommodation (with and without landlord incentives)	41	55
<b>Homelessness duties discharged – total households</b>	43	39
Households securing private rented accommodation	4	6

- 12.3 The Council's "City Lets" initiative works with private landlords by offering a lettings and management service. It has been successful, with 33 participating landlords currently providing 42 tenancies. However, many landlords are unwilling to let properties at or near local housing allowance levels and so it will be challenging to expand the scheme much further.
- 12.4 Not only does Winchester's private rented sector present significant challenges for both low income and vulnerable households, landlords are struggling too. A 2018 study by Gatehouse Bank<sup>1</sup> concluded that the city's buy-to-let landlords are the most vulnerable in Britain comparing affordability with available property lettings.
- 12.5 The study considered 122 cities and towns, taking into account how long available rentals had been on the market and the affordability ratio between average salaries and rents. Table 3 illustrates the top five locations where landlords were found to be most at risk to these issues..

<sup>1</sup> <https://gatehousebank.com/news/467-62404-winchester-is-home-to-the-most-vulnerable-landlord>

**Table 3: L Ratio of lettings to affordability**

Rank	City/town	Average property price	Average time on market (days)	Annual yield (%)	Rent as a % of earnings
1	Winchester	£549,706	248	3.1	56.2
2	Cambridge	£446,938	251	2.9	45.6
3	Chichester	£413,343	269	3.3	45.8
4	Warwick	£353,197	254	3.0	40
5	Reading	£415,192	230	3.4	46.7

- 12.6 The company will function as a flexible and ethical landlord offering accommodation to households who are or threatened with homelessness, and those who may be unknown to the Housing service thus far but nonetheless struggle to access suitable private sector accommodation.
- 12.7 There are also those households who would be owner occupiers but lack the capital required for a deposit. They too are confined to the private rented sector for the foreseeable future, and depend upon longer-term sub and market rented properties. A 2017 study by Savills<sup>2</sup> found that to ensure 40% of households could afford a home in the south-east, the property must cost no more than £250,000. However, according to property web site Rightmove, in 2018 the average detached property in Winchester sold for £808,015, with attached properties and flats selling for £498,643 and £319,751 respectively.
- 12.8 As a landlord, the company will also have flexibility to waive letting fees and deposits, potentially letting longer assured shorthold tenancies than the six months that are routinely offered by letting agents.

### 13 GOVERNANCE ARRANGEMENTS

- 13.1 A proposal for the company name will be included within the final report seeking approval to set the company up.
- 13.2 A number of governance structures have been considered and the structure outline below in table 4 is considered to be the most appropriate. This view is underpinned by legal advice.

**Table 4: Proposed governance structure**

<b>Function:</b>	
Sole Shareholder	Full Council taking decisions reserved for the shareholder in the company's articles of association and shareholder agreement. This would include approval of the annual company budget and business plan.
Shareholder advisory group	Three elected members, appointed to oversee company activity, provide strategic guidance and

<sup>2</sup> <https://www.theguardian.com/business/2017/oct/04/affordable-homes-south-east-england-savills-report>

	advise full council in its capacity as shareholder. Senior officers to attend the group meetings as required. A draft Terms of Reference for this group is attached at <b>Appendix D</b> .
Board of directors	For the management of the day to day affairs of the company. One elected member and two senior officers appointed by the Chief Executive in consultation with the Leader with flexibility to appoint additional independent directors at a future date should the need arise. The elected member and senior officers will not receive any additional remuneration for this responsibility.
Operational management team	For the discharge of any duties and responsibilities delegated by the Board of Directors.

- 13.3 In addition to the Council's role as shareholder, it will oversee company activity as both a funder (decisions around loans to the company and the terms thereof); and as a land and property owner (decisions around making land and/or properties available to the company).
- 13.4 All limited companies must have articles of association. "Model" articles of association are the standard default article a company can use, and are prescribed by the Companies (Model Articles) Regulations 2008. It is proposed that the example attached at **Appendix E**, which is the current model articles for companies incorporated on or after 28 April 2013, be used as a base template for further discussion with legal advisors.
- 13.5 Although not required by company law, a shareholder agreement will be put in place to identify how the Council and the company will interact. It will establish the balance between the company's ethical commercial flexibility and the council's strategic oversight as sole owner. Unlike the articles of association the shareholder agreement is a private contract between the Council and the company and it will not be registered at Companies House.
- 14 NEXT STEPS
- 14.1 A summary of next steps is set out below, at table 5. It is envisaged that the company will commence trading from October 2019.

**Table 5: Next steps**

<b>Action</b>
Finalise governance agreements: <ul style="list-style-type: none"> <li>▪ Memorandum and articles of association</li> <li>▪ Shareholder agreement</li> <li>▪ Shareholder advisory group Terms of Reference</li> <li>▪ Service level agreement for services provided by the General Fund and HRA</li> <li>▪ Funding agreements (loan facility and equity)</li> </ul>

Additional legal work: <ul style="list-style-type: none"> <li>▪ Development agreement with HRA – Likely to be a standard JCT contract (so only if required)</li> <li>▪ Application for Secretary of State consent (if required)</li> </ul>
Appointment of: <ul style="list-style-type: none"> <li>▪ Shareholder Advisory Group</li> <li>▪ Board of directors/operational management team</li> <li>▪ Company secretary</li> <li>▪ External auditor</li> </ul>
Agree company name, branding and logo
HMRC registration for all relevant taxes
Directors' insurance
Company bank account
Revisit business plan prior to commencement of trading
Develop operational policies: <ul style="list-style-type: none"> <li>▪ Allocations and lettings</li> <li>▪ Housing management</li> <li>▪ Property services</li> <li>▪ Procurement procedures</li> <li>▪ Accounting</li> </ul>
Accounting, systems and schemes of delegation

## 15 OTHER OPTIONS CONSIDERED AND REJECTED

15.1 CAB2911 (HSG) considered the more complex option of dual company structures, one a company limited by guarantee and one in the form of a community benefit society. Whilst the business case for the dual structure was marginally more positive than the single company structure, set up, management and governance would be more complex and with little or no immediate benefits to the Council.

15.2 As a result, CAB2990 (HSG) recommended that initially the Council establish a single company structure. This would not preclude the establishment of a subsidiary charitable company at a later date to exploit potential tax advantages.

### BACKGROUND DOCUMENTS:-

#### Previous Committee Reports:-

CAB2990 (HSG) 22 November 2017 – Establishing Local Housing Companies to Support New Homes Development

CAB 2911 (HSG) 22 March 2017 – Establishing Local Housing Companies to Support New Homes Development

CAB 2626 (HSG) 1 October 2014 – Options for Increasing the Supply of Affordable Housing

Other Background Documents:-

None.

APPENDICES:

Exempt Appendix A1 – Housing Company Business Plan Report March 2019

Exempt Appendix A2 – Housing Company Business Plan - Graphs

Exempt Appendix B – Tax Advice Note (22 February 2019)

Exempt Appendix C –Legal Advice Note (22 February 2019)

Appendix D – Draft Terms of Reference for Shareholder Advisory Group

Appendix E – Template for model Articles of Association

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## **Shareholder Advisory Group - Terms of Reference**

### Purpose of the Shareholder Advisory Group

The purpose of the Shareholder Advisory Group (herein referred to as 'the Group') is to provide strategic guidance to the directors of *the housing company* (herein referred to as 'the Company'), including informing the Company of priorities of the shareholder (the council) that are pertinent to the operation and future development of the company.

The Group will review the Company's business plan at least annually

The meetings of the Group will provide an opportunity for the Company to bring to the shareholder's attention emerging issues or opportunities for new business ventures.

### Membership and meetings of the Shareholder Advisory Group

The Shareholder Advisory Group is an integral part of the governance arrangements for *the housing company*.

The Shareholder Advisory Group will consist of three elected members of Winchester City Council identified by the Leader of the Council.

Ad hoc meetings of the Shareholder Advisory Group can be called at other times by notice in writing from at least two members of the Shareholder Advisory Group.

Meetings of the Group shall be held at the guildhall or any other venue as agreed by the majority of members of the Group.

Members of the Group may invite officers of the council to attend meetings to provide performance updates.

The Shareholder Advisory Group is not a constituted committee of Winchester City Council. There is no requirement to meet in public or publish any notes or minutes.

Members of the Shareholder Advisory Group will treat information shared by the Company as being commercially sensitive and therefore it will not be shared beyond the Group without the permission of the Company's directors.

A Shareholder Advisory Group Meeting shall be held no less than every quarter. The Board of Directors will report to the Shareholder Advisory Group at each Shareholder Advisory Group Meeting on the following items:

- financial performance in the previous quarter and year-to-date against the annual budget and latest business plan
- performance against agreed key performance indicators
- any matters previously agreed between the Company and the Shareholder
- other matters that arise from time-to-time.

A meeting of the Shareholder Advisory Group shall only be quorate if at least two of the Group's members are present.

Unless otherwise agreed by a majority of members, not less than five business days notice shall be given to each of the members of the Shareholder Advisory Group, and to the Directors of the Company, for a meeting to be held. An agenda will be issued in advance of any meeting indicating the matters to be discussed, together with any relevant papers for discussion and approval.

In addition, the Company will supply the members of the Shareholder Advisory Group with all information and data reasonably requested by the Shareholder Advisory Group to enable it to reach an informed judgment on any matter put before the Group.

The Company will ensure that at least one director shall attend each meeting of the Shareholder Advisory Group who is qualified to address the issues included on the agenda.

The Shareholder Advisory Group shall hold an advisory role to the Shareholder, that is full Council, when it is making decisions on matters reserved for the Shareholder (or the Shareholder Representative if and when deemed appropriate by the Shareholder).

Chairing of each meeting of the Shareholder Advisory Group Meetings shall be determined by the members of the Shareholder Advisory Group present at that meeting.

If a Shareholder Advisory Group member works for, is commissioned by or has any interest in the Company, the member shall declare this fact to the Shareholder Advisory Group immediately.

#### Review of these Terms of Reference

The Terms of Reference will be reviewed by the Shareholder Advisory Group and the Company's representatives on an annual basis.

Amendments may be agreed by the Shareholder Advisory Group and the Company Representatives, so long as no amendment contradicts the Shareholder



agreement. Amendments to the Shareholder Agreement may be determined by the shareholder, that is, through a meeting of the Council.

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**SCHEDULE 1**

Regulation 2

**MODEL ARTICLES FOR PRIVATE COMPANIES LIMITED  
BY SHARES**

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PART 1  
INTERPRETATION AND LIMITATION OF LIABILITY

**Defined terms**

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;
  - “chairman” has the meaning given in article 12;
  - “chairman of the meeting” has the meaning given in article 39;
  - “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;
  - “director” means a director of the company, and includes any person occupying the position of director, by whatever name called;
  - “distribution recipient” has the meaning given in article 31;
  - “document” includes, unless otherwise specified, any document sent or supplied in electronic form;
  - “electronic form” has the meaning given in section 1168 of the Companies Act 2006;
  - “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;
  - “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;
  - “instrument” means a document in hard copy form;
  - “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 10;

“proxy notice” has the meaning given in article 45;  
“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;  
“transmittee” means a person entitled to a share by reason of the death or bankruptcy of a shareholder or otherwise by operation of law; 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.

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.

### **Liability of members**

2. The liability of the members is limited to the amount, if any, unpaid on the shares held by them.

## **PART 2**

### **DIRECTORS**

#### **DIRECTORS’ POWERS AND RESPONSIBILITIES**

#### **Directors’ general authority**

3. 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.

#### **Shareholders’ reserve power**

- 4.—(1) The shareholders may, by special resolution, direct the directors to take, or refrain from taking, specified action.  
(2) No such special resolution invalidates anything which the directors have done before the passing of the resolution.

#### **Directors may delegate**

- 5.—(1) Subject to the articles, the directors may delegate any of the powers which are conferred on them under the articles—

- (a) to such person or committee;
  - (b) by such means (including by power of attorney);
  - (c) to such an extent;
  - (d) in relation to such matters or territories; and
  - (e) on such terms and conditions;
- as they think fit.
- (2) If the directors so specify, any such delegation may authorise further delegation of the directors' powers by any person to whom they are delegated.
- (3) The directors may revoke any delegation in whole or part, or alter its terms and conditions.

### **Committees**

- 6.—(1) Committees to which the directors delegate any of their powers must follow procedures which are based as far as they are applicable on those provisions of the articles which govern the taking of decisions by directors.
- (2) The directors may make rules of procedure for all or any committees, which prevail over rules derived from the articles if they are not consistent with them.

## **DECISION-MAKING BY DIRECTORS**

### **Directors to take decisions collectively**

- 7.—(1) 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 8.
- (2) If—
- (a) the company only has one director, and
  - (b) no provision of the articles requires it to have more than one director,
- the general rule does not apply, and the director may take decisions without regard to any of the provisions of the articles relating to directors' decision-making.

### **Unanimous decisions**

- 8.—(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.
- (2) Such a decision may take the form of a resolution in writing, copies of which have been signed by each eligible director or to which each eligible director has otherwise indicated agreement in writing.
- (3) References in this article to eligible directors are to directors who would have been entitled to vote on the matter had it been proposed as a resolution at a directors' meeting.
- (4) 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.

### **Calling a directors' meeting**

- 9.—(1) Any director may call a directors' meeting by giving notice of the meeting to the directors or by authorising the company secretary (if any) to give such notice.
- (2) Notice of any directors' meeting must indicate—
- (a) its proposed date and time;
  - (b) where it is to take place; and
  - (c) 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.
- (3) Notice of a directors' meeting must be given to each director, but need not be in writing.
- (4) 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 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.

### **Participation in directors' meetings**

- 10.—(1) Subject to the articles, directors participate in a directors' meeting, or part of a directors' meeting, when—
- (a) the meeting has been called and takes place in accordance with the articles, and
  - (b) they can each communicate to the others any information or opinions they have on any particular item of the business of the meeting.
- (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.
- (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 is.

### **Quorum for directors' meetings**

- 11.—(1) At a directors' meeting, unless a quorum is participating, no proposal is to be voted on, except a proposal to call another meeting.
- (2) The quorum for directors' meetings may be fixed from time to time by a decision of the directors, but it must never be less than two, and unless otherwise fixed it is two.
- (3) If the total number of directors for the time being is less than the quorum required, the directors must not take any decision other than a decision—
- (a) to appoint further directors, or
  - (b) to call a general meeting so as to enable the shareholders to appoint further directors.

### **Chairing of directors' meetings**

- 12.—(1) The directors may appoint a director to chair their meetings.
- (2) The person so appointed for the time being is known as the chairman.
- (3) The directors may terminate the chairman's appointment at any time.



(4) If the chairman is not participating in a directors' meeting within ten minutes of the time at which it was to start, the participating directors must appoint one of themselves to chair it.

### **Casting vote**

**13.**—(1) If the numbers of votes for and against a proposal are equal, the chairman or other director chairing the meeting has a casting vote.

(2) But this does not apply if, in accordance with the articles, the chairman or other director is not to be counted as participating in the decision-making process for quorum or voting purposes.

### **Conflicts of interest**

**14.**—(1) If a proposed decision of the directors is concerned with an actual or proposed

transaction or arrangement with the company in which a director is interested, that director is not to be counted as participating in the decision-making process for quorum or voting purposes.

(2) But if paragraph (3) applies, a director who is interested in an actual or proposed transaction or arrangement with the company is to be counted as participating in the decision-making process for quorum and voting purposes.

(3) This paragraph applies when—

(a) the company by ordinary resolution disapplies the provision of the articles which would otherwise prevent a director from being counted as participating in the decision-making process;

(b) the director's interest cannot reasonably be regarded as likely to give rise to a conflict of interest; or

(c) the director's conflict of interest arises from a permitted cause.

(4) For the purposes of this article, the following are permitted causes—

(a) a guarantee given, or to be given, by or to a director in respect of an obligation incurred by or on behalf of the company or any of its subsidiaries;

(b) subscription, or an agreement to subscribe, for shares or other securities of the company or any of its subsidiaries, or to underwrite, sub-underwrite, or guarantee subscription for any such shares or securities; and

(c) arrangements pursuant to which benefits are made available to employees and directors or former employees and directors of the company or any of its subsidiaries which do not provide special benefits for directors or former directors.

(5) For the purposes of this article, references to proposed decisions and decision-making

processes include any directors' meeting or part of a directors' meeting.

(6) Subject to paragraph (7), if a question arises at a meeting of directors or of a committee of directors as to the right of a director to participate in the meeting (or part of the meeting) for voting or quorum purposes, the question may, before the conclusion of the meeting, be referred to the chairman whose ruling in relation to any director other than the chairman is to be final and conclusive.

(7) If any question as to the right to participate in the meeting (or part of the meeting) should arise in respect of the chairman, the question is to be decided by a decision of the directors at that meeting, for which purpose the chairman is not to be counted as

participating in the meeting (or that part of the meeting) for voting or quorum purposes.

### **Records of decisions to be kept**

15. The directors must ensure that the company keeps a record, in writing, for at least 10 years from the date of the decision recorded, of every unanimous or majority decision taken by the directors.

### **Directors' discretion to make further rules**

16. 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

### **Methods of appointing directors**

17.—(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—

- (a) by ordinary resolution, or
- (b) by a decision of the directors.

(2) In any case where, as a result of death, the company has no shareholders and no directors, the personal representatives of the last shareholder to have died have the right, by notice in writing, to appoint a person to be a director.

(3) For the purposes of paragraph (2), where 2 or more shareholders die in circumstances

rendering it uncertain who was the last to die, a younger shareholder is deemed to have survived an older shareholder.

### **Termination of director's appointment**

18. A person ceases to be a director as soon as—

- (a) 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;
- (b) a bankruptcy order is made against that person;
- (c) a composition is made with that person's creditors generally in satisfaction of that person's debts;

(d) 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;

(e) *[paragraph omitted pursuant to The Mental Health (Discrimination) Act 2013]*

(f) notification is received by the company from the director that the director is resigning from office, and such resignation has taken effect in accordance with its terms.

### **Directors' remuneration**

- 19.**—(1) Directors may undertake any services for the company that the directors decide.
- (2) Directors are entitled to such remuneration as the directors determine—
- (a) for their services to the company as directors, and
  - (b) for any other service which they undertake for the company.
- (3) Subject to the articles, a director's remuneration may—
- (a) take any form, and
  - (b) include any arrangements in connection with the payment of a pension, allowance or gratuity, or any death, sickness or disability benefits, to or in respect of that director.
- (4) Unless the directors decide otherwise, directors' remuneration accrues from day to day.
- (5) Unless the directors decide otherwise, directors are not accountable to the company for any remuneration which they receive as directors or other officers or employees of the company's subsidiaries or of any other body corporate in which the company is interested.

### **Directors' expenses**

- 20.** The company may pay any reasonable expenses which the directors properly incur in connection with their attendance at—
- (a) meetings of directors or committees of directors,
  - (b) general meetings, or
  - (c) separate meetings of the holders of any class of shares or of debentures of the company, or otherwise in connection with the exercise of their powers and the discharge of their responsibilities in relation to the company.

## **PART 3**

### **SHARES AND DISTRIBUTIONS**

#### **SHARES**

#### **All shares to be fully paid up**

- 21.**—(1) No share is to be issued for less than the aggregate of its nominal value and any premium to be paid to the company in consideration for its issue.
- (2) This does not apply to shares taken on the formation of the company by the subscribers to the company's memorandum.

#### **Powers to issue different classes of share**

**22.**—(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.

(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.

### **Company not bound by less than absolute interests**

**23.** 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 holder's absolute ownership of it and all the rights attaching to it.

### **Share certificates**

**24.**—(1) The company must issue each shareholder, free of charge, with one or more certificates in respect of the shares which that shareholder holds.

(2) Every certificate must specify—

- (a) in respect of how many shares, of what class, it is issued;
- (b) the nominal value of those shares;
- (c) that the shares are fully paid; and
- (d) any distinguishing numbers assigned to them.

(3) No certificate may be issued in respect of shares of more than one class.

(4) If more than one person holds a share, only one certificate may be issued in respect of it.

(5) Certificates must—

- (a) have affixed to them the company's common seal, or
- (b) be otherwise executed in accordance with the Companies Acts.

### **Replacement share certificates**

**25.**—(1) If a certificate issued in respect of a shareholder's shares is—

- (a) damaged or defaced, or
- (b) said to be lost, stolen or destroyed, that shareholder is entitled to be issued with a replacement certificate in respect of the same shares.

(2) A shareholder exercising the right to be issued with such a replacement certificate—

- (a) may at the same time exercise the right to be issued with a single certificate or separate certificates;
- (b) must return the certificate which is to be replaced to the company if it is damaged or defaced; and
- (c) must comply with such conditions as to evidence, indemnity and the payment of a reasonable fee as the directors decide.

### **Share transfers**

**26.**—(1) 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.

(2) No fee may be charged for registering any instrument of transfer or other document relating to or affecting the title to any share.

(3) The company may retain any instrument of transfer which is registered.

(4) The transferor remains the holder of a share until the transferee's name is entered in the register of members as holder of it.

(5) The directors may refuse to register the transfer of a share, and if they do so, the instrument of transfer must be returned to the transferee with the notice of refusal unless they suspect that the proposed transfer may be fraudulent.

### **Transmission of shares**

**27.**—(1) If title to a share passes to a transmittee, the company may only recognise the transmittee as having any title to that share.

(2) A transmittee who produces such evidence of entitlement to shares as the directors may properly require—

(a) may, subject to the articles, choose either to become the holder of those shares or to have them transferred to another person, and

(b) subject to the articles, and pending any transfer of the shares to another person, has the same rights as the holder had.

(3) But transmittees do not have the right to attend or vote at a general meeting, or agree to a proposed written resolution, in respect of shares to which they are entitled, by reason of the holder's death or bankruptcy or otherwise, unless they become the holders of those shares.

### **Exercise of transmittees' rights**

**28.**—(1) Transmittees who wish to become the holders of shares to which they have become entitled must notify the company in writing of that wish.

(2) If the transmittee wishes to have a share transferred to another person, the transmittee must execute an instrument of transfer in respect of it.

(3) Any transfer made or executed under this article is to be treated as if it were made or

executed by the person from whom the transmittee has derived rights in respect of the share, and as if the event which gave rise to the transmission had not occurred.

### **Transmittees bound by prior notices**

**29.** If a notice is given to a shareholder in respect of shares and a transmittee is entitled to those shares, the transmittee is bound by the notice if it was given to the shareholder before the transmittee's name has been entered in the register of members.

## **DIVIDENDS AND OTHER DISTRIBUTIONS**

### **Procedure for declaring dividends**

- 30.**—(1) The company may by ordinary resolution declare dividends, and the directors may decide to pay interim dividends.
- (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.
- (3) No dividend may be declared or paid unless it is in accordance with shareholders' respective rights.
- (4) Unless the shareholders' resolution to declare or directors' decision to pay a dividend, or the terms on which shares are issued, specify 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.
- (5) 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 preferential dividend is in arrear.
- (6) 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.
- (7) If the directors act in good faith, they do not incur any liability to the holders of shares 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.

#### **Payment of dividends and other distributions**

- 31.**—(1) Where a dividend or other sum which is a distribution is payable in respect of a share, it must be paid by one or more of the following means—
- (a) transfer to a bank or building society account specified by the distribution recipient either in writing or as the directors may otherwise decide;
  - (b) sending a cheque made payable to the distribution recipient by post to the distribution recipient at the distribution recipient's registered address (if the distribution recipient is a holder of the share), or (in any other case) to an address specified by the distribution recipient either in writing or as the directors may otherwise decide;
  - (c) sending a cheque made payable to such person by post to such person at such address as the distribution recipient has specified either in writing or as the directors may otherwise decide; or
  - (d) any other means of payment as the directors agree with the distribution recipient either in writing or by such other means as the directors decide.
- (2) In the articles, "the distribution recipient" means, in respect of a share in respect of which a dividend or other sum is payable—
- (a) the holder of the share; or
  - (b) if the share has two or more joint holders, whichever of them is named first in the register of members; or
  - (c) if the holder is no longer entitled to the share by reason of death or bankruptcy, or otherwise by operation of law, the transmittee.

#### **No interest on distributions**

- 32.** The company may not pay interest on any dividend or other sum payable in respect of a share unless otherwise provided by—

- (a) the terms on which the share was issued, or
- (b) the provisions of another agreement between the holder of that share and the company.

### **Unclaimed distributions**

- 33.**—(1) All dividends or other sums which are—
- (a) payable in respect of shares, and
  - (b) unclaimed after having been declared or become payable, may be invested or otherwise made use of by the directors for the benefit of the company until claimed.
- (2) The payment of any such dividend or other sum into a separate account does not make the company a trustee in respect of it.
- (3) If—
- (a) twelve years have passed from the date on which a dividend or other sum became due for payment, and
  - (b) the distribution recipient has not claimed it,
- the distribution recipient is no longer entitled to that dividend or other sum and it ceases to remain owing by the company.

### **Non-cash distributions**

- 34.**—(1) Subject to the terms of issue of the share in question, the company may, by ordinary resolution on the recommendation of the directors, decide to pay all or part of a dividend or other distribution payable in respect of a share by transferring non-cash assets of equivalent value (including, without limitation, shares or other securities in any company).
- (2) For the purposes of paying a non-cash distribution, the directors may make whatever arrangements they think fit, including, where any difficulty arises regarding the distribution—
- (a) fixing the value of any assets;
  - (b) paying cash to any distribution recipient on the basis of that value in order to adjust the rights of recipients; and
  - (c) vesting any assets in trustees.

### **Waiver of distributions**

- 35.** Distribution recipients may waive their entitlement to a dividend or other distribution payable in respect of a share by giving the company notice in writing to that effect, but if—
- (a) the share has more than one holder, or
  - (b) more than one person is entitled to the share, whether by reason of the death or bankruptcy of one or more joint holders, or otherwise,
- the notice is not effective unless it is expressed to be given, and signed, by all the holders or persons otherwise entitled to the share.

## CAPITALISATION OF PROFITS

### **Authority to capitalise and appropriation of capitalised sums**

**36.**—(1) Subject to the articles, the directors may, if they are so authorised by an ordinary resolution—

(a) decide to capitalise any profits of the company (whether or not they are available for distribution) which are not required for paying a preferential dividend, or any sum standing to the credit of the company's share premium account or capital redemption reserve; and

(b) appropriate any sum which they so decide to capitalise (a "capitalised sum") to the persons who would have been entitled to it if it were distributed by way of dividend (the "persons entitled") and in the same proportions.

(2) Capitalised sums must be applied—

(a) on behalf of the persons entitled, and

(b) in the same proportions as a dividend would have been distributed to them.

(3) Any capitalised sum may be applied in paying up new shares of a nominal amount equal to the capitalised sum which are then allotted credited as fully paid to the persons entitled or as they may direct.

(4) A capitalised sum which was appropriated from profits available for distribution may be applied in paying up new debentures of the company which are then allotted credited as fully paid to the persons entitled or as they may direct.

(5) Subject to the articles the directors may—

(a) apply capitalised sums in accordance with paragraphs (3) and (4) partly in one way and partly in another;

(b) make such arrangements as they think fit to deal with shares or debentures becoming distributable in fractions under this article (including the issuing of fractional certificates or the making of cash payments); and

(c) authorise any person to enter into an agreement with the company on behalf of all the persons entitled which is binding on them in respect of the allotment of shares and debentures to them under this article.

## PART 4

### DECISION-MAKING BY SHAREHOLDERS

#### ORGANISATION OF GENERAL MEETINGS

### **Attendance and speaking at general meetings**

**37.**—(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.

(2) A person is able to exercise the right to vote at a general meeting when—

(a) that person is able to vote, during the meeting, on resolutions put to the vote at the meeting, and



(b) 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.

(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.

(4) In determining attendance at a general meeting, it is immaterial whether any two or more members attending it are in the same place as each other.

(5) Two 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.

### **Quorum for general meetings**

**38.** No business other than the appointment of the chairman of the meeting is to be transacted at a general meeting if the persons attending it do not constitute a quorum.

### **Chairing general meetings**

**39.**—(1) If the directors have appointed a chairman, the chairman shall chair general meetings if present and willing to do so.

(2) If the directors have not appointed a chairman, or if the chairman is unwilling to chair the meeting or is not present within ten minutes of the time at which a meeting was due to start—

(a) the directors present, or

(b) (if no directors are present), the meeting,

must appoint a director or shareholder to chair the meeting, and the appointment of the chairman of the meeting must be the first business of the meeting.

(3) The person chairing a meeting in accordance with this article is referred to as “the chairman of the meeting”.

### **Attendance and speaking by directors and non-shareholders**

**40.**—(1) Directors may attend and speak at general meetings, whether or not they are shareholders.

(2) The chairman of the meeting may permit other persons who are not—

(a) shareholders of the company, or

(b) otherwise entitled to exercise the rights of shareholders in relation to general meetings,

to attend and speak at a general meeting.

### **Adjournment**

**41.**—(1) If the persons attending a general meeting within half an hour of the time at which the meeting was due to start do not constitute a quorum, or if during a meeting a quorum ceases to be present, the chairman of the meeting must adjourn it.

(2) The chairman of the meeting may adjourn a general meeting at which a quorum is present if—

(a) the meeting consents to an adjournment, or

- (b) it appears to the chairman of the meeting that an adjournment is necessary to protect the safety of any person attending the meeting or ensure that the business of the meeting is conducted in an orderly manner.
- (3) The chairman of the meeting must adjourn a general meeting if directed to do so by the meeting.
- (4) When adjourning a general meeting, the chairman of the meeting must—
  - (a) either specify the time and place to which it is adjourned or state that it is to continue at a time and place to be fixed by the directors, and
  - (b) have regard to any directions as to the time and place of any adjournment which have been given by the meeting.
- (5) If the continuation of an adjourned meeting is to take place more than 14 days after it was adjourned, the company must give at least 7 clear days' notice of it (that is, excluding the day of the adjourned meeting and the day on which the notice is given)—
  - (a) to the same persons to whom notice of the company's general meetings is required to be given, and
  - (b) containing the same information which such notice is required to contain.
- (6) No business may be transacted at an adjourned general meeting which could not properly have been transacted at the meeting if the adjournment had not taken place.

## VOTING AT GENERAL MEETINGS

### **Voting: general**

**42.** 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.

### **Errors and disputes**

**43.**—(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.

(2) Any such objection must be referred to the chairman of the meeting, whose decision is final.

### **Poll votes**

**44.**—(1) A poll on a resolution may be demanded—

- (a) in advance of the general meeting where it is to be put to the vote, or
- (b) 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.

(2) A poll may be demanded by—

- (a) the chairman of the meeting;
- (b) the directors;
- (c) two or more persons having the right to vote on the resolution; or

- (d) a person or persons representing not less than one tenth of the total voting rights of all the shareholders having the right to vote on the resolution.
- (3) A demand for a poll may be withdrawn if—
  - (a) the poll has not yet been taken, and
  - (b) the chairman of the meeting consents to the withdrawal.
- (4) Polls must be taken immediately and in such manner as the chairman of the meeting directs.

### **Content of proxy notices**

- 45.**—(1) Proxies may only validly be appointed by a notice in writing (a “proxy notice”)  
which—
- (a) states the name and address of the shareholder appointing the proxy;
  - (b) identifies the person appointed to be that shareholder’s proxy and the general meeting in relation to which that person is appointed;
  - (c) is signed by or on behalf of the shareholder appointing the proxy, or is authenticated in such manner as the directors may determine; and
  - (d) is delivered to the company in accordance with the articles and any instructions contained in the notice of the general meeting to which they relate.
- (2) The company may require proxy notices to be delivered in a particular form, and may specify different forms for different purposes.
- (3) Proxy notices may specify how the proxy appointed under them is to vote (or that the proxy is to abstain from voting) on one or more resolutions.
- (4) Unless a proxy notice indicates otherwise, it must be treated as—
- (a) allowing the person appointed under it as a proxy discretion as to how to vote on any ancillary or procedural resolutions put to the meeting, and
  - (b) appointing that person as a proxy in relation to any adjournment of the general meeting to which it relates as well as the meeting itself.

### **Delivery of proxy notices**

- 46.**—(1) A person who is entitled to attend, speak or vote (either on a show of hands or on a poll) at a general meeting remains so entitled in respect of that meeting or any adjournment of it, even though a valid proxy notice has been delivered to the company by or on behalf of that person.
- (2) An appointment under a proxy notice may be revoked by delivering to the company a notice in writing given by or on behalf of the person by whom or on whose behalf the proxy notice was given.
- (3) A notice revoking a proxy appointment only takes effect if it is delivered before the start of the meeting or adjourned meeting to which it relates.
- (4) If a proxy notice is not executed by the person appointing the proxy, it must be accompanied by written evidence of the authority of the person who executed it to execute it on the appointor’s behalf.

### **Amendments to resolutions**

- 47.**—(1) An ordinary resolution to be proposed at a general meeting may be amended by ordinary resolution if—

- (a) 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 48 hours before the meeting is to take place (or such later time as the chairman of the meeting may determine), and
  - (b) the proposed amendment does not, in the reasonable opinion of the chairman of the meeting, materially alter the scope of the resolution.
- (2) A special resolution to be proposed at a general meeting may be amended by ordinary resolution, if—
- (a) the chairman of the meeting proposes the amendment at the general meeting at which the resolution is to be proposed, and
  - (b) the amendment does not go beyond what is necessary to correct a grammatical or other non-substantive error in the resolution.
- (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

#### **Means of communication to be used**

- 48.**—(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.
- (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.
- (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 48 hours.

#### **Company seals**

- 49.**—(1) Any common seal may only be used by the authority of the directors.
- (2) The directors may decide by what means and in what form any common seal is to be used.
- (3) Unless otherwise decided by the directors, if the company has a common seal and it is affixed to a document, the document must also be signed by at least one authorised person in the presence of a witness who attests the signature.
- (4) For the purposes of this article, an authorised person is—
- (a) any director of the company;
  - (b) the company secretary (if any); or
  - (c) any person authorised by the directors for the purpose of signing documents to which the common seal is applied.

### **No right to inspect accounts and other records**

**50.** Except as provided by law or authorised by the directors or an ordinary resolution of the company, no person is entitled to inspect any of the company's accounting or other records or documents merely by virtue of being a shareholder.

### **Provision for employees on cessation of business**

**51.** The directors may decide to make provision for the benefit of persons employed or formerly employed by the company or any of its subsidiaries (other than a director or former director or shadow director) in connection with the cessation or transfer to any person of the whole or part of the undertaking of the company or that subsidiary.

## **DIRECTORS' INDEMNITY AND INSURANCE**

### **Indemnity**

**52.—**(1) Subject to paragraph (2), a relevant director of the company or an associated company may be indemnified out of the company's assets against—

- (a) any liability incurred by that director in connection with any negligence, default, breach of duty or breach of trust in relation to the company or an associated company,
- (b) any liability incurred by that director in connection with the activities of the company or an associated company in its capacity as a trustee of an occupational pension scheme (as defined in section 235(6) of the Companies Act 2006),
- (c) any other liability incurred by that director as an officer of the company or an associated company.

(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.

(3) In this article—

- (a) companies are associated if one is a subsidiary of the other or both are subsidiaries of the same body corporate, and
- (b) a "relevant director" means any director or former director of the company or an associated company.

### **Insurance**

**53.—**(1) The directors may decide to purchase and maintain insurance, at the expense of the company, for the benefit of any relevant director in respect of any relevant loss.

(2) In this article—

- (a) a "relevant director" means any director or former director of the company or an associated company,
- (b) a "relevant loss" means any loss or liability which has been or may be incurred by a relevant director in connection with that director'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
- (c) companies are associated if one is a subsidiary of the other or both are subsidiaries of the same body corporate.

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