

CABINET

5 SEPTEMBER 2017

HOUSING COMPANY

Portfolio Holder: Councillor Alan Jarrett, Leader of the Council
Councillor Howard Doe, Deputy Leader and Housing and Community Services
Councillor Adrian Gulvin, Resources

Report from: Perry Holmes, Chief Legal Officer

Author: Perry Holmes, Chief Legal Officer

Summary

This report sets out proposals to establish a housing company to maximise the opportunities to invest in or develop property within and outside Medway and in the first instance to enable the development of a number of Council owned sites. The report includes a Business Case which addresses key financial issues for consideration and proposes appropriate next steps.

1. Budget and Policy Framework

- 1.1 The responsibility for managing the Council's land is a matter for Cabinet as is the provision and management of housing.
- 1.2 The responsibility for agreeing budgetary provision and additions to the Capital Programme is for Council.

2. Background

- 2.1 Cabinet considered a report at its July meeting setting out proposals for the establishment of a housing company, with the Council as sole shareholder, to invest in or develop property within and outside Medway and in the first instance to enable the development of a number of Council owned sites.
- 2.2 The report set out the research that the Council had carried out and the advice that it had taken. It referred to a draft build programme over a five to ten year period that could deliver 1500+ homes including the use of modular off-site constructed housing with low or no energy costs.

- 2.3 The report addressed the proposed company structure, associated governance issues, risks and measures to mitigate risk.
- 2.4 Cabinet approved the creation of a company limited by shares to undertake development activity and property investment principally within but also outside Medway. It recommended the commissioning of a Business Case to assist Cabinet in deciding whether to pursue the proposal and also for relevant company documentation to be drafted for approval.
- 2.3 Cabinet requested a further report to give final approval for the creation of a housing company after consideration of the Business Case.

3. Analysis

- 3.1 Cabinet is asked to consider the Business Case which is attached at exempt appendix 1 to this report. That sets out the financial implications for the Council were a company to be set up to trade in Medway.
- 3.2 As a commercial entity, the company's primary purpose will be to generate a profit. However, as it carries out its development activities, the following benefits will also arise as a by-product:
- Supporting the delivery of housing growth as required within the emerging Local Plan
 - Generate an income for the Council
 - A commercial approach to meeting housing need and regenerating areas of Medway
 - Further supporting and stimulating local economic growth.
- 3.3 A company limited by shares, wholly-owned by Medway Council, would have the following principal characteristics:
- Risk would be ring fenced to the company;
 - A more commercial governance framework for decision making and delivery;
 - It could be structured to sit outside the Public Contract Regulations 2015 allowing more flexibility in commissioning and contracting;
 - Quicker decision making on developments, acquisitions and disposals and the ability to be agile in a competitive and fluctuating commercial environment;
 - A structure that could see the creation of joint-venture vehicles into which the private sector could invest;
 - It will be able to distribute profits to the Council as dividends, generating income to the General Fund;
 - Shares can be transferred, providing a potential exit strategy.

3.4 pod were commissioned by the Council to develop and produce a Business Case for the creation of a housing company. The elements expected to be covered in the Business Case were set out in Appendix 1 to the 11 July Cabinet Report. The Business Case is attached at exempt appendix 1 but the key elements are summarised below.

3.4.1 Justification for the formation of the company

- Housing supply has not kept up with population growth in the south east
- Home ownership has declined and rental increased
- Medway is one of the nation's property hotspots, due to high demand for homes to buy
- Medway has good transport links
- Medway Council is a significant landowner

3.4.2 Market research

- The price of a Medway home is on average 26% lower than the south east average
- There is a lack of first-time buyer housing in the area
- Medway has a low proportion of purpose built flatted stock
- A potential market for new units exists

3.4.3 Funding

- The Council can borrow at historically low rates and on lend to the company at competitive rates
- This represents a source of funding for an otherwise fledgling company and an income return to the Council.

3.4.4 Business projections, financial modelling and sensitivity

- Modelling of 12 sites shows a positive profit is possible creating nearly 700 homes with a number of assumptions made that would need to be further tested such as build costs
- This is based on market sales and sales to a Registered Provider of affordable units
- Rental is less profitable as an option
- Borrowing of nearly £120 million would be needed to fund the programme over a 5 year period
- Some of the sites identified as not viable will require further work.
- Modelling of certain sensitivities such as sales decreasing or costs increasing shows the impact on the overall programme is still a positive return

3.4.5 Company structure

A summary of the company structure is:

- The company will be limited by shares with the Council as sole shareholder
- The company is a separate legal entity
- There should be an appropriate balance for day to day company operation between control and independence
- Initial start up costs should be kept as low as possible to aid commercial sustainability
- There are means to make the company tax efficient
- An appropriate code of corporate governance should be adopted

3.4.6 Programme management

- In the first instance a small team could deliver projects
- Appointing an Operations Director early could see sites delivered quickly and build capacity where there is currently none
- Rates of pay and other employment incentives should be in line with a commercial environment that will attract the right calibre of candidate
- There are “tools” that will enable efficient delivery such as financial modelling packages, design guides
- There will be a need to consider appropriate branding, financial, legal and procurement resource
- This can be dealt with through the secondment of council staff or by service level agreements back to relevant council teams, which must be at commercial rates to the company.
- An initial operating budget will be needed.

3.4.7 Risks

- There will be planning risks on specific sites
- There are market risks that will need to be considered
- There may be risks about commissioning appropriate contractors
- There may be site specific risks which create abnormal costs

3.4.8 Conclusions

- There is a potentially viable programme of 12 identified sites which could be delivered in 5 years
- These would create around 700 units
- This could generate a significant profit
- It could additionally involve an on lending benefit
- It could deliver improved community facilities
- It could deliver capital growth

- Overall the consultants commissioned find the business case compelling

4. Options

4.1 Option 1: Not to agree the Business Case and the proposals set out as recommendations below.

Cabinet has the option not to agree the Business Case at appendix 1 to this report.

4.2 Option 2: To agree the Business Case and the proposals set out as recommendations below

Cabinet has the option to accept the findings in the Business Case and to approve the Business Case and agree to the formation of a company.

5. Advice and analysis

5.1 If Cabinet is minded to agree the Business Case and the formation of the Company, the following governance considerations will be relevant. The Roles and the Responsibilities of the Cabinet, the Board of Directors and the Management Board and employees of the company will be:

5.2 **Cabinet (representing the Council Shareholder)** – Responsible for holding the Board of Directors to account for company performance via an Annual General Meeting (AGM); calling any Extraordinary Meetings if required. Its responsibilities would include:

- To receive and review the company's Business Plan
- To receive any proposed variations to the Business Plan
- To receive periodic reports on performance
- To appoint and remove the Managing Director of the Company

5.3 **Executive Board of Directors** – Oversight of the company's trading activities, including signing off the company Business Plan will be conducted by the Executive Board. It will be responsible for reporting to the Shareholder on say a six-monthly basis on company performance and overseeing activities of the Management Board. Two Cabinet Members will be appointed as Directors. Up to four Non-Executive Directors (NEDs) will be appointed to offer wider expertise to the company. The Chair of the Executive Board will be one of the Cabinet Members.

5.4 **Management Board** – will be responsible for developing the strategic plans for the company, considering all potential trading activities, operating, managing and growing the company through the development of existing and new commercial opportunities. It will also be responsible for implementing the company Business Plan, including

day to day management of the company's trading activities. A Managing Director will be appointed in time to the Management Board and will chair it. In the initial stages of the development of the company and to keep initial start up costs to a minimum, an Operational Director and possibly a small team will be employed to drive delivery of the first few sites. The Operational Director will chair the Management Board until a Managing Director is appointed and otherwise deputise for that role.

- 5.5 **Other appointments** – the company will need to appoint a Company Secretary, Company accountants, Company Auditors and insurers. In the first instance these roles will be undertaken by seconding relevant Council officers in return for a service level agreement at commercial rates.
- 5.6 The Council will create a process overseen by the Chief Legal Officer in consultation with the Leader to consider whether current and future sites should be transferred into the company for development or retained by the Council. Sites to be transferred to the company could be those that are “oven ready” for development with relevant de-risking already undertaken or not required. Sites retained by the Council could include those which have commercial opportunities for income. There could also be a set of sites retained by the Council which were not ready for development and required some de-risking works first possibly after obtaining external grants. These might support wider regeneration or economic development aspirations.

6. Risk management

| Risk | Description | Action to avoid or mitigate risk |
|---|---|--|
| Schemes pursued by the Company are built out but not sold or rented | Financial risk to the Council as a potential lender, lack of income and increased borrowing costs | Business Case prepared and audited deals in detail with risks and opportunities for the Council of housing company. Strict financial viability carried out on specific schemes. Marketing expertise sought to promote sites. Consideration of a joint venture in the right circumstances |

| | | |
|--|--|---|
| <p>The Medway market becomes saturated by available units thereby causing capital values to decrease</p> | <p>Financial risk to the Council as a potential lender, lack of income and increased borrowing costs</p> | <p>Business Case prepared and audited to deal in more detail with risks and opportunities for the Council of housing company. Market research is carried out plus expertise sought to promote sites. Consideration of a joint venture in the right circumstances. The Company produces a medium term financial plan which allows flexibility in delivery and in products.</p> |
| <p>There is a crash in the housing market such that capital values reduce significantly</p> | <p>Financial risk to the Council as a potential lender, lack of income and increased borrowing costs</p> | <p>Business Case prepared and audited to deal in more detail with risks and opportunities for the Council of housing company. Market research is carried out plus expertise sought to promote sites. Consideration of a joint venture in the right circumstances. The Company produces a medium term financial plan which allows flexibility in delivery and in products.</p> |

| | | |
|---|---|--|
| <p>Tenants exercise their right to buy of General Fund properties or LATCO properties (if extended to Local Authority Housing Companies as predicted)</p> | <p>Financial risk to the Council as a potential lender, lack of income and increased borrowing costs</p> | <p>Business Case prepared and audited to deal in more detail with risks and opportunities for the Council of housing company. The Company produces a medium term financial plan which allows flexibility in delivery and factors in a given percentage of “right to buy” sales. The Business Case avoids the right to buy risk as no properties are to be retained for rental.</p> |
| <p>The housing company's ethos is contrary to Council Policy.</p> | <p>Reputational risk to the Council.</p> | <p>Business Case prepared and audited to deal in more detail with risks and opportunities for the Council of housing company. Cabinet members on the board. Initial financial funding is from the Council.</p> |
| <p>Planning risks. Proposed company schemes are seen as unsuitable.</p> | <p>Reputational risk to the council. Financial risk to the council as a potential lender, lack of income and increased borrowing costs.</p> | <p>Business Case prepared and audited to deal in more detail with risks and opportunities for the Council of housing company. Specific schemes will need to be planning compliant. The Chief Finance Officer will test individual schemes for financial viability</p> |

| | | |
|--|---|--|
| <p>Company failure. Exit strategy.</p> | <p>Reputational risk to the council. Financial risk to the council as a potential lender, lack of income and increased borrowing costs.</p> | <p>Business Case prepared and audited to deal in more detail with risks and opportunities for the Council of housing company. Specific schemes will need to be planning compliant. The Chief Finance Officer will test individual schemes for financial viability. Company structure ring-fences risk. Insolvency proceedings would protect the council.</p> |
|--|---|--|

6. Consultation

- 6.1 The creation of a housing company has been the subject of internal discussion and the Council has sought professional advice on the prospect. There has been some wider consultation in particular with the Homes and Community Agency who have expressed interest in understanding the opportunities the company might pursue. As sites came forward they would be subject to specific consultation in line with the National Planning Policy Framework. This would involve considerations of sustainable development.

7. Financial Implications

- 7.1 The financial implications are dealt with in detail in the due diligence report at appendix 3.
- 7.2 A detailed financial appraisal of the companies projected performance has been considered as part of the Business Case. Initial revenue start up costs for the company are identified in the Business Case. These will be the subject of a loan agreement to the company to be repaid at commercial rates. Commuted sums for affordable housing could form part of the funding for individual schemes and make them more viable and therefore increase company profits.

8. Legal Implications

- 8.1 The legal implications are set out in detail in the report at exempt appendix 2.
- 8.2 There are powers for the Council to set up the company as proposed. The company is to be set up for commercial reasons, to build housing and to make a profit. Any benefits to the community and council are

incidental. Financing to the company from the council must be at commercial rates. The company whilst having council representation on the board must not be managed by the council and must be sufficiently independent to allow it to flourish, be successful and benefit from flexibilities available to it.

9. Recommendations

- 9.1 Cabinet is asked to approve in the Business Case at exempt appendix 1 and the financial due diligence report at appendix 3.
- 9.2 Cabinet is asked to agree the company will be called Medway Development Company Limited.
- 9.3 Cabinet is asked to agree to exercise the role of shareholder.
- 9.4 Cabinet is asked to delegate authority to the Chief Legal Officer to finalise the Articles of Association in a form similar to those set out in appendix 4.
- 9.5 Cabinet is asked to agree to delegate authority to the Chief Finance Officer, in consultation with the Leader, to provide funding to the Company through state aid compliant loans, subject to appropriate due diligence to verify the Company's on-going viability and the viability of projects for which the loans are being provided and loan agreements between the Council and the Company setting out pre-conditions for draw down as well as performance measurements.
- 9.6 Cabinet is asked to note the amounts required to be provided for in the Capital Programme in respect of initial set up costs and loan funding.
- 9.7 Cabinet is asked to agree to delegate authority to the Chief Finance Officer, in consultation with the Leader, to release funding to the Company for each agreed scheme in the Company's Business Plan subject to financial due diligence and appropriate loan agreements.
- 9.8 Cabinet is asked to delegate authority to the Chief Legal Officer, in consultation with the Leader, to identify, declare surplus and dispose of assets at commercial rates that are state aid compliant or to agree suitable equity arrangements that reflect commercial rates of return to the Council, to the company in line with its Business Plan.
- 9.9 Cabinet is asked to delegate authority to the Chief Legal Officer authority, in consultation with the Leader, to execute the final legal agreements, contracts and all other ancillary documentation that may be needed prior to the setting up of a company setting out the arrangements between the Council and the Company.
- 9.10 The Cabinet is asked to delegate authority to the Chief Executive to make the necessary appointments to the Executive Board of Directors, as set out in paragraph 5.3 of the report, under his delegation from Full

Council as set out in the Employee Delegation Scheme, in consultation with Group Whips and taking into account the views of the Leader.

10. Suggested Reasons for Decision

- 10.1 To enable the generation of new and alternative revenue income streams for the Council and to deliver housing units principally in Medway.

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Background Papers:

Report to Cabinet 11 July 2017:

<https://democracy.medway.gov.uk/ieListDocuments.aspx?CId=115&MId=3694> – item 6 refers

Appendix 1 – Business Case (Exempt)

Appendix 2 – Legal Advice on the Establishment of a Housing Company (Exempt)

Appendix 3 – Finance – Medway Housing Company – Business Case Review

Appendix 4 – Articles of Association

Housing Company: Business Case Review

August 17

Medway Housing Company – Business Case Review

1 Introduction & objectives

- 1.1 In July 2017, Cabinet approved in principle the creation of a Housing Company to develop and invest in property to help the Council achieve it's challenging target to enable the delivery of 29,000 new homes in the area by 2035. The Council commissioned Pod and Altair, two consultancy practices, to provide advice and to develop the Business Case for the creation of a Housing Company.
- 1.2 This review is intended to provide assurance that the Business Case is robust and forms a suitable basis for the Council to move forward on. This review has not sought to independently verify the economic, strategic or financial estimates underpinning the Business Case, but has focussed on confirming that the key principles and risks have been considered and that the Council has sought suitable advice on these.
- 1.3 Medway Council has subscribed to CIPFA's Alternative Service Delivery Network (ASDN) who offer guidance, advisory support and training to public sector organisations implementing new ways of delivering services and identifying new income generation opportunities. The Network delivered an event in April 2017 focussing on developing robust business cases for local authority trading companies and alternative service delivery models. This event was based around the HM Treasury Green Book (a guide for public sector bodies on how to appraise proposals before committing funds to a policy, programme or project) and has been used as the framework against which to assess the Medway Housing Company Business Case.
- 1.4 The following are set out as the key areas that public sector bodies should consider when developing and considering business cases:
 - a. That the intervention is supported by a compelling case for change that provides holistic fit with other parts of the organisation; the 'strategic case'.
 - b. That the intervention represent best public value; the 'economic case'.
 - c. That the proposed Deal is attractive to the market place, can be procured and is commercially viable; the 'commercial case'.
 - d. That the proposed spend is affordable; the financial case'.
 - e. That what is required from all parties is achievable; 'the management case'.

2 Work Completed & findings

- 2.1 **That the intervention is supported by a compelling case for change that provides holistic fit with other parts of the organisation; the 'strategic case'.**
- 2.2 The report on which the Cabinet made the decision to agree in principle to the creation of a Housing Company set out the purpose of the company based on a range of aims and potential benefits, principally:
 - Leading by example to facilitate the delivery of the 29,000 new homes required by 2035 to meet the target set in the Local Plan.
 - Bringing forward Council sites for development to make a contribution to alleviating the pressure in the system between the demand for housing and the supply.
 - To provide a revenue income to the Council through the creation of a profitable trading company.

- 2.3 The Business Case further expands on these themes, and provides detailed analysis of the area and the from which it is clear that these strategic objectives are appropriate to Medway.
- 2.4 There is a however a potential conflict between ‘social’ objectives of regeneration and boosting housing supply and the economic benefits to the Council of operating in this model; it is suggested that the Council makes a clear strategic statement within the formation of the company that defines the extent to which these competing objectives will be prioritised.
- 2.5 That the intervention represent best public value; the ‘economic case’.**
- 2.6 There are two aspects to consider; the economic case for the council to develop sites for housing, and for that development to be delivered through a Housing Company.
- 2.7 The Cabinet report asked Members to consider options including ‘do nothing’ and sell off its surplus assets, and to develop the sites in-house with no company structure, but recommended the creation of a Housing Company, on the basis that it would: enable the generation of new and alternative revenue income streams for the Council and to deliver housing units principally in Medway. This suggests the principal driver is the potential economic benefit to the Council.
- 2.8 The Business Case provides an analysis of the property markets of the area and based on the evidence makes a compelling case for investment of this nature; supply of property is tight and despite a slight fall in transaction volumes, Medway overall is experiencing significant growth in property values. The analysis suggests that new build homes sell quickly, for a premium over older housing stock, again supporting the proposed model of new build development. The Business Case also identifies a clear target market for the properties to be developed to achieve maximum return and wider economic benefits for the area; commuters being priced out of London considering Medway’s good transport links, supported by local first-time buyers who realise the appeal of getting onto the property ladder swiftly and successfully.
- 2.9 There is however a potential risk of ‘optimism bias’; the Council may not be the only organisation considering this type of development in the area, or the market conditions could attract a range of competitors to the market who could have significantly greater experience and funding in such developments, reducing the Council’s returns.
- 2.10 That the proposed Deal is attractive to the market place, can be procured and is commercially viable; the ‘commercial case’.**
- 2.11 The Business Case includes detailed individual modelling of the twelve sites identified by the Council as suitable for development through the Housing Company, and presents two options for overarching draft business plans for the programme of works to these sites. The programmes include sites that the economic analysis demonstrates are not viable as individual projects, but with the overarching programme made viable through the contributions of the sites that would be viable as standalone projects.
- 2.12 The Council will need to carefully consider the programme and ensure that the potential risk of developing these unviable sites does not materialise into a significant negative impact on the success of the programme, or the Council’s financial return overall.
- 2.13 It should be noted that the detail of the calculations to support the Findings Options presented in the Business Case was not provided and as such, while the assumptions and figures appear reasonable, there has been not testing carried out to validate these.
- 2.14 That the proposed spend is affordable; the financial case’.**
- 2.15 The Business Case sets out the legal gateways that give the Council has the power to borrow to fund the Housing Company through the provision of loans and subscription to share capital, and to provide financial

assistance to the housing company for the purpose of funding rented accommodation. The Business Case is also clear that the Council can exercise its general power of competence on the basis that it is lawful for an individual to lend and/or invest and that there are no pre-existing limitations which would prevent it from doing so. While no evidence has been found to the contrary in this review, these legal gateways should be carefully considered by the Council's Legal Team prior to establishing the Company.

- 2.16 It is likely the Council will need to borrow to fund the creation of the Housing Company and its programme of works, with funding provided through a combination of investment in share capital and the provision of loans. To avoid state aid the Council would need to charge market rates of interest to the Housing Company, benefitting from an supplementary income stream. However while the cost of borrowing to the Council is currently low, there would need to be careful consideration of the portfolio of loans taken out to ensure that this continues to be financially beneficial to the Council in the longer term.
- 2.17 It will be necessary for the Council to model the overall impact of the Housing Company, particularly in respect of the required treasury activities to accurately reflect the potential impact on the Council's overall finances in the medium term. It has not been possible to complete this work at this time, but it is anticipated that some assumptions will be built into the 2017/18 Medium Term Financial Strategy, that will be presented to Cabinet in September 2017.
- 2.18 That what is required from all parties is achievable; 'the management case'.**
- 2.19 The Business Case sets out some considerations for the Council around how the Housing Company might be governed, but is clear that this area requires further decisions by the Council to ensure that the balance between direct oversight and control over the Company, and enabling the company the independence to operate commercially, free from some of the restrictive constraints local authorities face.
- 2.20 It is critical that it is clear from the outset to what extent the Council seeks to retain control, or give independence to the Housing Company to ensure the expectations of Members and Officers are met.

3 Conclusions

- 3.1 Based on the Business Case provided, and subject to the caveats detailed above, the Business Case is considered to be sound and no significant issues have been identified.

Company number 10043013
PRIVATE COMPANY LIMITED BY SHARES
WRITTEN RESOLUTION
of
MEDWAY COMMERCIAL SERVICES LIMITED
(Company)

Circulation Date: 1 June 2016

Under Chapter 2 of Part 13 of the Companies Act 2006, the directors of the Company propose that the following resolution is passed as a special resolution (Resolution).

SPECIAL RESOLUTION

THAT the draft articles of association attached to this resolution be adopted as the articles of association of the Company in substitution for, and to the exclusion of, the Company's existing articles of association.

AGREEMENT

Please read the notes at the end of this document before signifying your agreement to the Resolution.

The undersigned, a member entitled to vote on the Resolution on the Circulation Date, hereby irrevocably agrees to the Resolution:

Signed by:

Name: Perry Holmes, Chief Legal Officer

Signature



An authorised signatory for and on behalf of **MEDWAY COUNCIL**

Date: 1 June 2016



A11 *A58F8T8Z* #235
04/06/2016
COMPANIES HOUSE

NOTES

1. If you agree with the Resolution, please indicate your agreement by signing and dating this document where indicated above and returning it to the Company using one of the following delivery methods:

- **By hand:** delivering the signed copy to Lynne Rathbone, Browne Jacobson LLP, 1 Manor Court, Dix's Field, Exeter EX1 1UP.
- **Post:** returning the signed copy by post to Browne Jacobson LLP, 1 Manor Court, Dix's Field, Exeter EX1 1UP marked for the attention of 'Lynne Rathbone'.
- **Email:** by attaching a scanned copy of the signed document to an email and sending it to lynne.rathbone@brownejacobson.com.

If you do not agree to the Resolution, you do not need to do anything. You will not be deemed to agree if you fail to reply.

2. Once you have indicated your agreement to the Resolution, you may not revoke your agreement.

3. Unless by 30 days from the Circulation Date, sufficient agreement is received for the Resolution to pass, it will lapse. If you agree to the Resolution, please ensure that your agreement reaches us before or during this date.

4. In the case of joint holders of shares, only the vote of the senior holder who votes will be counted by the Company. Seniority is determined by the order in which the names of the joint holders appear in the register of members.

5. If you are signing this document on behalf of a person under a power of attorney or other authority please send a copy of the relevant power of attorney or authority when returning this document.

THE COMPANIES ACT 2006
PRIVATE COMPANY LIMITED BY SHARES
ARTICLES OF ASSOCIATION
OF
MEDWAY COMMERCIAL SERVICES LIMITED
Company Number 10043013

(Adopted by special resolution passed on 1 June 2016)

Introduction

1 Interpretation

1.1 The following definitions and rules of interpretation apply in these Articles:

Act: means the Companies Act 2006.

Appointor: has the meaning given in article 10.1.

Articles: means the company's articles of association for the time being in force.

Business Day: means any day other than a Saturday, Sunday or public holiday in England on which banks in London are open for business.

Conflict: has the meaning given in article 7.1.

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).

Model Articles: means the model articles for private companies limited by shares contained in Schedule 1 of the Companies (Model Articles) Regulations 2008 (SI 2008/3229) as amended prior to the date of adoption of these Articles.

1.2 Save as otherwise specifically provided in these Articles, words and expressions which have particular meanings in the Model Articles shall have the same meanings in these Articles, subject to which and unless the context otherwise requires, words and expressions which have particular meanings in the Act shall have the same meanings in these Articles.

1.3 Headings in these Articles are used for convenience only and shall not affect the construction or interpretation of these Articles.

1.4 A reference in these Articles to an "article" is a reference to the relevant article of these Articles unless expressly provided otherwise.

1.5 Unless expressly provided otherwise, a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

1.6 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.

- 1.7 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.8 Where the context permits, **other** and **otherwise** are illustrative and shall not limit the sense of the words preceding them.
- 1.9 The Model Articles shall apply to the company, except in so far as they are modified or excluded by, or are inconsistent with, these Articles.
- 1.10 Articles 7(2), 8, 9(1) and (3), 11(2) and (3), 13, 14(1), (2), (3) and (4), 18(e), 52 and 53 of the Model Articles shall not apply to the company.
- 1.11 Article 19(2) of the Model Articles shall be amended by the insertion of the words "subject to any statutory maximum" after the word "determine".
- 1.12 Article 20 of the Model Articles shall be amended by:
 - 1.13 the insertion of the words "(including alternate directors) and the secretary" before the words "properly incur";
 - 1.13.1 the insertion of the words "Subject to any statutory maximum" before the words "The Company may pay".
- 1.14 In article 25(2)(c) of the Model Articles, the words "evidence, indemnity and the payment of a reasonable fee" shall be deleted and replaced with the words "evidence and indemnity".
- 1.15 Article 29 of the Model Articles shall be amended by the insertion of the words ", or the name of any person(s) named as the transferee(s) in an instrument of transfer executed under article 28(2) of the Model Articles," after the words "the transmittee's name".
- 1.16 Articles 31(1)(a) to (c) (inclusive) of the Model Articles shall be amended by the deletion, in each case, of the words "either" and "or as the directors may otherwise decide". Article 31(d) of the Model Articles shall be amended by the deletion of the words "either" and "or by such other means as the directors decide"

Directors

2 Unanimous decisions

- 2.1 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.
- 2.2 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.
- 2.3 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.

3 Calling a directors' meeting

Any director may call a directors' meeting by giving not less than 5 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 (if any) to give such notice.

4 Quorum for directors' meetings

- 4.1 Subject to article 4.2, the quorum for the transaction of business at a meeting of directors is any two Eligible Directors.
- 4.2 For the purposes of any meeting (or part of a meeting) held pursuant to article 7 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 meeting (or part of a meeting) shall be one Eligible Director.
- 4.3 If at any time 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:
 - 4.3.1 to appoint further directors; or
 - 4.3.2 to call a general meeting so as to enable the shareholders to appoint further directors.

5 Casting vote

If the numbers of votes for and against a proposal at a meeting of directors are equal, the chairman or other director chairing the meeting shall not have a casting vote.

6 Transactions or other arrangements with the company

- 6.1 Subject to sections 177(5) and 177(6) and sections 182(5) and 182(6) of the 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:
 - 6.1.1 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;
 - 6.1.2 shall be an Eligible Director for the purposes of any proposed decision of the directors (or committee of directors) in respect of such existing or proposed transaction or arrangement in which he is interested;
 - 6.1.3 shall be entitled to vote at a meeting of directors (or of a committee of the directors) or participate in any unanimous decision, in respect of such existing or proposed transaction or arrangement in which he is interested;
 - 6.1.4 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;
 - 6.1.5 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
 - 6.1.6 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 Act.

7 Directors' conflicts of interest

- 7.1 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 Act to avoid conflicts of interest (Conflict).
- 7.2 Any authorisation under this article 7 will be effective only if:
- 7.2.1 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;
 - 7.2.2 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
 - 7.2.3 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.
- 7.3 Any authorisation of a Conflict under this article 7 may (whether at the time of giving the authorisation or subsequently):
- 7.3.1 extend to any actual or potential conflict of interest which may reasonably be expected to arise out of the matter or situation so authorised;
 - 7.3.2 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;
 - 7.3.3 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;
 - 7.3.4 impose upon the Interested Director such other terms for the purposes of dealing with the Conflict as the directors think fit;
 - 7.3.5 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
 - 7.3.6 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.
- 7.4 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.

7.5 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.

7.6 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.

8 Records of decisions to be kept

Where decisions of the directors are taken by electronic means, such decisions shall be recorded by the directors in permanent form, so that they may be read with the naked eye.

9 Number of directors

Unless otherwise determined by ordinary resolution, the number of directors (other than alternate directors) shall not be subject to any maximum and shall not be less than three.

10 Appointment and removal of alternate directors

10.1 Any director (Appointor) may appoint as an alternate any other director, or any other person approved by resolution of the directors, to:

10.1.1 exercise that director's powers; and

10.1.2 carry out that director's responsibilities,

in relation to the taking of decisions by the directors, in the absence of the alternate's Appointor.

10.2 Any appointment or removal of an alternate must be effected by notice in writing to the company signed by the Appointor, or in any other manner approved by the directors.

10.3 The notice must:

10.3.1 identify the proposed alternate; and

10.3.2 in the case of a notice of appointment, contain a statement signed by the proposed alternate that the proposed alternate is willing to act as the alternate of the director giving the notice.

11 Rights and responsibilities of alternate directors

11.1 An alternate director may act as alternate director to more than one director and has the same rights in relation to any decision of the directors as the alternate's Appointor.

11.2 Except as the Articles specify otherwise, alternate directors:

11.2.1 are deemed for all purposes to be directors;

11.2.2 are liable for their own acts and omissions;

11.2.3 are subject to the same restrictions as their Appointors; and

11.2.4 are not deemed to be agents of or for their Appointors

and, in particular (without limitation), each alternate director shall be entitled to receive notice of all meetings of directors and of all meetings of committees of directors of which his Appointor is a member.

11.3 A person who is an alternate director but not a director:

11.3.1 may be counted as participating for the purposes of determining whether a quorum is present (but only if that person's Appointor is not participating);

11.3.2 may participate in a unanimous decision of the directors (but only if his Appointor is an Eligible Director in relation to that decision, but does not participate); and

11.3.3 shall not be counted as more than one director for the purposes of article 11.3.

11.4 A director who is also an alternate director is entitled, in the absence of his Appointor, to a separate vote on behalf of his Appointor, in addition to his own vote on any decision of the directors (provided that his Appointor is an Eligible Director in relation to that decision), but shall not count as more than one director for the purposes of determining whether a quorum is present.

11.5 An alternate director may be paid expenses and may be indemnified by the company to the same extent as his Appointor but shall not be entitled to receive any remuneration from the company for serving as an alternate director except such part of the alternate's Appointor's remuneration as the Appointor may direct by notice in writing made to the company.

12 Termination of alternate directorship

12.1 An alternate director's appointment as an alternate terminates:

12.1.1 when the alternate's Appointor revokes the appointment by notice to the company in writing specifying when it is to terminate;

12.1.2 on the occurrence, in relation to the alternate, of any event which, if it occurred in relation to the alternate's Appointor, would result in the termination of the Appointor's appointment as a director;

12.1.3 on the death of the alternate's Appointor; or

12.1.4 when the alternate's Appointor's appointment as a director terminates.

13 Secretary

The directors may appoint any person who is willing to act as the secretary for such term, at such remuneration and upon such conditions as they may think fit and from time to time remove such person and, if the directors so decide, appoint a replacement, in each case by a decision of the directors.

Shares

14 Further issue of shares: authority

Save to the extent 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.

15 Purchase of own shares

15.1 Subject to the Act but without prejudice to any other provision of these Articles, the Company may purchase its own shares in accordance with Chapter 4 of Part 18 of the Act, including (without limitation) out of capital up to any amount in a financial year not exceeding the lower of:

15.1.1 £15,000; and

15.1.2 the nominal value of 5% of the Company's fully paid share capital at the beginning of each financial year of the Company.

Decision making by shareholders

16 Proxies

16.1 Article 45(1)(d) of the Model Articles shall be deleted and replaced with the words "is delivered to the company in accordance with the Articles not less than 48 hours before the time appointed for holding the meeting or adjourned meeting at which the right to vote is to be exercised and in accordance with any instructions contained in the notice of the general meeting (or adjourned meeting) to which they relate".

16.2 Article 45(1) of the Model Articles shall be amended by the insertion of the words "and a proxy notice which is not delivered in such manner shall be invalid, unless the directors, in their discretion, accept the notice at any time before the meeting" as a new paragraph at the end of that article.

Administrative arrangements

17 Means of communication to be used

17.1 Subject to article 17.2, any notice, document or other information shall be deemed served on, or delivered to, the intended recipient:

17.1.1 if delivered by hand, on signature of a delivery receipt; or

17.1.2 if sent by pre-paid United Kingdom first class post, recorded delivery or special delivery to an address in the United Kingdom, at 9.00 am on the second Business Day after posting; and

17.1.3 if deemed receipt under the previous paragraphs of this article 17.2 would occur outside business hours (meaning 9.00 am to 5.30 pm Monday to Friday on a day that is not a public holiday in the place of deemed receipt), at 9.00 am on the day when business next starts in the place of deemed receipt. For the purposes of this article, all references to time are to local time in the place of deemed receipt.

17.2 To prove service, it is sufficient to prove that:

17.2.1 if delivered by hand, the notice was delivered to the correct address and signed for on delivery; or

17.2.2 if sent by post, the envelope containing the notice was properly addressed, paid for and posted.

18 Indemnity

18.1 Subject to article 18.2, but without prejudice to any indemnity to which a relevant officer is otherwise entitled:

18.1.1 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:

(a) in the actual or purported execution and/or discharge of his duties, or in relation to them; and

(b) 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

18.1.2 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 18.1.1 and otherwise may take any action to enable any such relevant officer to avoid incurring such expenditure.

18.2 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.

18.3 In this article:

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

18.3.2 a "relevant officer" means any director or other officer or former director or other officer 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), but excluding in each case any person engaged by the company (or associated company) as auditor (whether or not he is also a director or other officer), to the extent he acts in his capacity as auditor).

19 Insurance

19.1 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.

19.2 In this article:

19.2.1 a "relevant officer" means any director or other officer or former director or other officer 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) , but excluding in each case any person engaged by the company (or associated company) as auditor (whether or not he is also a director or other officer), to the extent he acts in his capacity as auditor);

- 19.2.2 a "relevant loss" means any loss or liability which has been or may be incurred by a relevant officer in connection with that relevant 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
- 19.2.3 companies are associated if one is a subsidiary of the other or both are subsidiaries of the same body corporate.