

## **COUNCIL**

**15 APRIL 2010**

### **ROCHESTER RIVERSIDE MANAGEMENT COMPANY**

Portfolio Holder: Councillor Rodney Chambers, Leader

Report from: Robin Cooper, Director of Regeneration, Community and Culture

Author: Sarah Beck, Principal Regeneration Manager

#### **Summary**

This report seeks support for the structure of the proposed Rochester Riverside Management Company, and for the level of influence of Medway Council within the structure. The final approval will facilitate development on the site.

#### **1. Budget and Policy Framework**

- 1.1 Rochester Riverside is a high profile regeneration project within Medway and is of strategic importance within the Thames Gateway. The development of Rochester Riverside is identified within the Council Plan 2009-2012 and fits within the priority of everyone benefiting from the area's regeneration. The progression of Rochester Riverside will see the construction of the first new homes on the site including affordable homes and will contribute to the relevant LAA targets (NI154 and 155). The scheme is also identified within the Local Plan and the emerging Local Development Framework.
- 1.2 Full Council approval is required before any company can be set up.
- 1.3 The Rochester Riverside site is jointly owned and managed by Medway Council and SEEDA. There is a formal Collaboration Agreement between the two organisations, which sets out the project's decision-making process; this is managed by a joint Rochester Riverside Board. The Board considered the matter of the Management Company on 8 December 2009 and agreed to the proposed structure. Matters of representation and formal approval of the structure are matters for Medway Council.

#### **2. Background**

##### *Obligation to establish a Management Company*

- 2.1 There are provisions within the s106 Agreement for Rochester Riverside attached to the Outline Planning Permission, and in the Collaboration Agreement between

Medway Council and SEEDA, requiring:

- a. The establishment of a Management Company prior to the commencement of development on any part of the site (s106 Agreement)
- b. *'The Preferred Developer shall enter into a Development Agreement in a form agreed by the parties and which shall... pay a dowry on a value pro rata basis to any common parts Management Company sufficient to ensure continued good estate management of the Public Art, Community Facilities, continuous river walk/cycleway, the publicly accessible space (including the river walk/cycleway, and the river wall all as envisaged in the Principal Land Components'.* (Collaboration Agreement Annex 3 para. 6.0 VI)

2.2 The current wording of the s106 means that the obligation should be discharged before any development can start on site. This wording is under review, and subject to agreement by SEEDA, will be changed to the Management Company being established three years after development has started. This will tie in with the development programme and with the timescale for funding being available to endow the Management Company. However, A formal decision on the structure of the Management Company is required now, see paragraph 2.3, although the Company will not be established yet.

2.3 Rochester Riverside will be developed in phases. Developers entering into agreements and leases in respect of any part of Rochester Riverside will require confirmation that the Management Company structure has been approved so that it will be able to take on its functions in the future once it is incorporated. The preferred developer for Phase 1, Crest Nicholson, will therefore expect that the structure of the Management Company has been approved by the time they enter into a Development Agreement for Phase 1 (anticipated to be in summer 2010).

#### *Purpose of the Management Company*

2.4 With the exception of the main spine road running the length of the site, there has been an assumption that the Council will not adopt the public areas at Rochester Riverside. A Management Company of some form is therefore required to manage and maintain the open spaces, river walk and other roads. This is not an unusual situation although the scale of the Rochester Riverside and the phased nature of the scheme make it a more complex proposition.

2.5 The Management Company will also be required to maintain and then replace the river wall at Rochester Riverside in circa 75 years.

2.6 It is the combination of the public open space maintenance together with the river wall replacement and maintenance, which makes the Management Company arrangements complex.

2.7 The future quality of life for residents and businesses at Rochester Riverside will be impacted by the scope and standard of the management, together with the capacity for the management organisation to respond to changing conditions over time. As required by the s106 agreement, the management organisation will also need to take on a number of functions such as estate management, the employment of estate manager/s, travel officer/s and others.

### **3. Options**

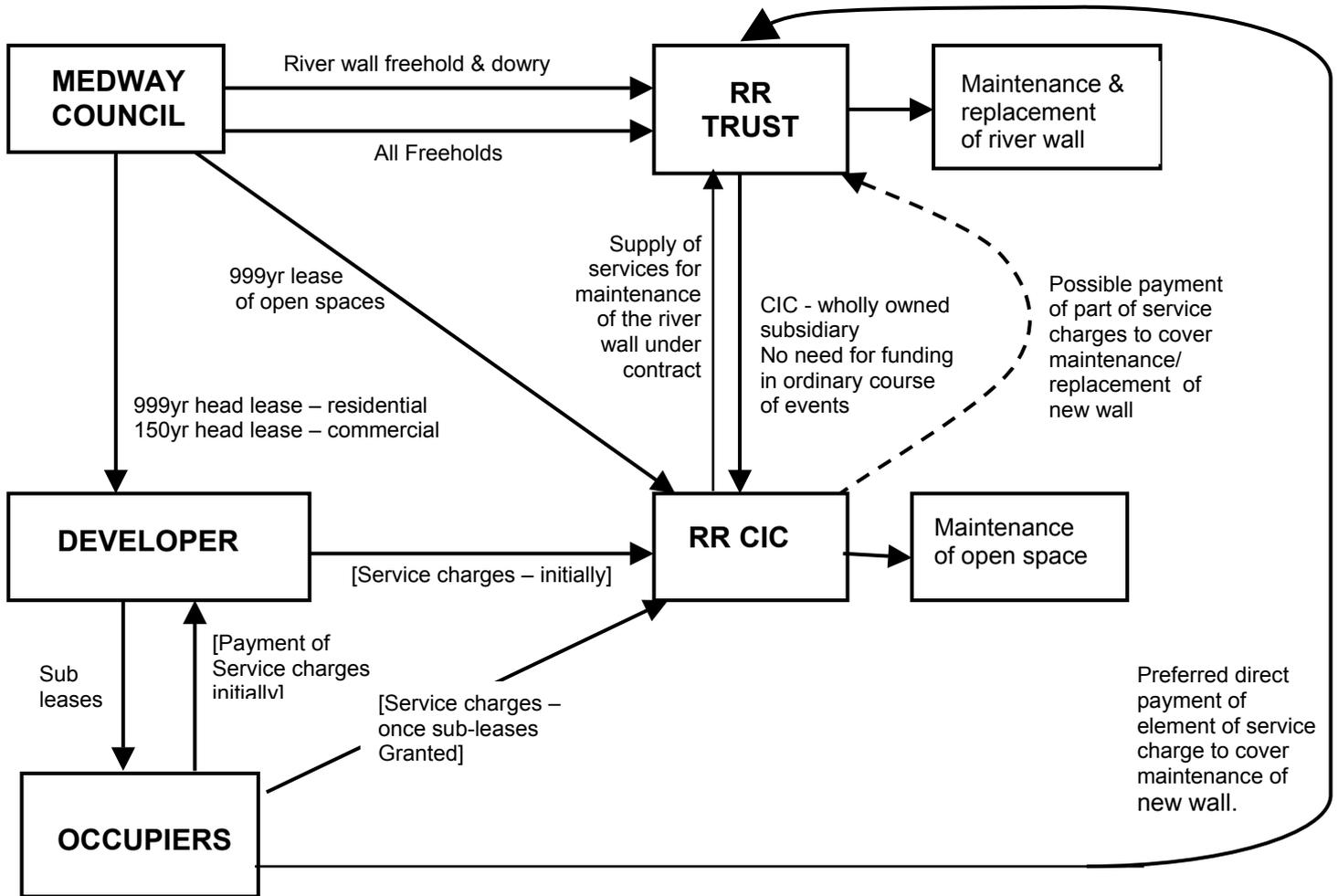
- 3.1 Officers have carried out a significant amount of analysis before arriving at the structure recommended in this report. Officers have been working with consultants and their latest report is enclosed as Appendix 1 of this report.
- 3.2 A range of potential structures have been reviewed including organisations such as an Industrial and Provident Society (IPS), which could also be registered as a charitable body. Similarly, the impact of the Council adopting more of the public open space and other liabilities at Rochester Riverside has also been considered. Both these options have been discounted due to changes in legislation relevant to IPSs and the liabilities that would remain with the Council if all the open space, and the wall replacement remained with the Council.

### **4. Advice and analysis**

#### **4.1 *Proposed structure of the Management Company***

- 4.1.1 The proposed structure is illustrated in the following diagram. It comprises a two-tier structure with the Rochester Riverside Trust (RRT), a Charitable Company limited by guarantee and a separate but wholly owned subsidiary Community Interest Company (CIC). The reasons for a two-tier structure and the proposals for the level of Council involvement in each organisation are set out at 4.1.5 below and in more detail in Appendix 1.
- 4.1.2 The RRT will be responsible for the maintenance and replacement of the river wall and the CIC will be responsible for the management and maintenance of the public open spaces, non-adopted streets and the other functions.
- 4.1.3 It is important that the RRT has the responsibility for maintenance of the river wall, as it requires additional functions over and above managing the future replacement of the river wall if it is to secure charitable status.
- 4.1.4 The Charity Commission would regulate the RRT while the CIC would be regulated (with a lighter touch) by the CIC Regulator and will need to meet a community interest test throughout its life.

**Rochester Riverside Proposed Management Company Structure:  
Charitable Company Limited by Guarantee (RRT) and  
separate Community Interest Company (CIC)**



4.1.5 In summary, the two-tier structure is recommended for the following reasons:

- Having a charity (the RRT) to hold the funding for the replacement of the river wall is a tax efficient way of endowing the long-term replacement of the wall and protects that funding from being used for other purposes. There is a clear ring fencing of the assets of the RRT from those of the CIC
- Having a CIC will provide a community focused and regulated (but not as strictly as a charity) company to undertake public open space management. This will provide flexibility to undertake wider community based initiatives, whilst still maintaining its management responsibilities;
- The arrangement minimises the risk of any dowry payment being considered to be state aid, as the dowry would be paid to the RRT, which is a wholly non-commercial body.

- 4.1.6 While the dual structure will have some additional administration costs, which arguably leads to a slightly more complex structure for residents and other stakeholders to understand, the legal view is that the benefits highlighted above outweigh these potential downsides.
- 4.1.7 Draft Articles of Association for the RRT and for the CIC are included in Appendix 2 and 3

## **4.2 Local Authority involvement**

- 4.2.1 This section of the report considers the options for the level of involvement/influence that the Council could have in respect of each organisation. A SWOT analysis has been prepared setting out the pros and cons of varying levels of representation and this is attached as Appendix 4. The RRT and CIC will both require trustees/directors, probably between 6-10 in number for both. These could be the same persons for each organisation – or different representation on each.
- 4.2.2 Under local authority legislation a company is a *regulated company* if it is either a:
- Controlled company*; or
  - A company that is *under the influence* of a local authority where the local authority either has effective control, or over which the local authority has a dominant influence.
- 4.2.3 A company that is *controlled* by a *regulated company* is also treated as a regulated company itself. Since the CIC will be a wholly owned subsidiary of RRT, if RRT was a regulated company, then the CIC would also be a *regulated company*.
- 4.2.4 A *controlled company* for these purposes is one in which the local authority controls either:
- A majority of the voting rights at general meetings *and*
  - A majority of the voting rights at director's meetings *or*
  - The appointment or removal of a majority of the directors
- 4.2.5 A *company is under the influence of a local authority if:*
- The local authority controls at least 20% of the voting rights at general meetings or at least 20% of the voting rights at director's meetings or at least 20% of the directors are employees or officers of the local authority and
  - There is a business relationship between the local authority and the company. There are defined criteria for what constitutes a business relationship between a local authority and a company.
- 4.2.6 Generally, the Charity Commission prefers to see a minority involvement by local authorities in charities such as the RRT (less than 20% in terms of membership or number of directors) but there is the potential scope for greater involvement by Medway in the management of the CIC.

- 4.2.7 The Charity Commission is sceptical about the involvement of local authorities within charitable structures, often taking the view that local authorities have inherent conflicts of interest and can simply treat charitable assets as part of their corporate property. However, the CIC Regulator has no such views with regard to the involvement by local authorities, so, subject to Medway taking a decision with regard to its level of involvement, the CIC structure provides the opportunity for Medway to have a greater degree of representation on the Board of the CIC than would otherwise be possible within RRT.
- 4.2.8 If the Council has control of the RRT and/or CIC it will have responsibility for the proper management of those organisations it controls. There would be criticism of Medway if an organisation controlled by Medway failed to properly fulfil its functions, as they would be seen to be Medway's responsibility. In the event of financial failure of either RRT or CIC, pressure would be put upon Medway to "step in" and rescue them (including injecting fresh funding into them), although there would be no legal duty on Medway to do so.
- 4.2.9 For the reasons set out above and in the enclosed Appendix 4, officers recommend that the Council has a minority involvement in the RRT (less than 20%) and the same minority level in the CIC.

### **4.3 *Funding the Management Company's activities***

- 4.3.1 Purchasers at Rochester Riverside will want to be clear that the un-adopted roads, river wall and open spaces will be properly maintained and funded. It is proposed that the management and maintenance items are dealt with via a service charge regime (managed by the CIC) and that a dowry funded from future land sales meets the replacement cost of the river wall (managed by the RRT).
- 4.3.2 All users of the site will be bound together in a contributory service charge regime collected and administered by the Management Company. The ground leases will contain obligations on lessees to contribute to the maintenance of the public domain via the Management Company. The level of estate service charges will impact on the perceived affordability of the homes and of the commercial elements. Under the terms of the s106 Agreement, occupiers of the 'social housing' units will not be required to contribute to maintenance of the public open spaces or of the river walkway but will need to contribute to the maintenance costs for the river wall. Eliminating or radically reducing service charges will only be possible if the Council decides to adopt more at Rochester Riverside or increases the dowry payment.
- 4.3.3 Residents occupying flats in the development will also be required to pay a block service charge to meet the cost of upkeep of the blocks. It is not possible to be exact about the level of block service charge, as the scheme is not yet designed in sufficient detail.

### **4.4 *River wall replacement and maintenance***

- 4.4.1 Medway Council is the riparian owner (i.e. one who owns land along the river) of the new river wall at Rochester Riverside. Therefore maintenance liability for the wall and for the replacement of the wall (and maintenance of any land owned by MC) remains with MC until any element is transferred to another party. Under the

terms of the Collaboration Agreement SEEDA has no direct responsibility for the wall or its upkeep/replacement, nor do they own any land adjacent to the river.

- 4.4.2 The Management Company structure proposes that the RRT will take responsibility for the maintenance and replacement of the river wall (in circa 75 years), as anticipated in the Collaboration Agreement (see para. 2.1b of this report). The replacement will be funded by means of a dowry.
- 4.4.3 The timing of receipt of the dowry is dependent on sufficient capital income being generated from land disposals at Rochester Riverside (prior to any division between the investors). However, land values can only be estimated and are not guaranteed in value or timing. Current estimates assume the first element of the dowry sum will be available in 2012 with the full sum sufficient for the river wall dowry received by the end of 2015.
- 4.4.4 The estimated level of dowry for the replacement of the wall is £5.725m to generate a sum of £59m in 75 years, based on the assumption that the dowry is invested in full by 2015. In arriving at the dowry figure, a number of key assumptions have been made:
- River wall cost is £15m at current prices to be replaced in circa 75 years time.
  - The rate of inflation over this period has been set at 2%
  - The real rate of return of cash funds invested has been set at 2% real return
  - The bad debt cost on the residential and commercial charges has been set at 5%
  - A level of £10,000 pa and £20,000 pa has been set for administrators' salary and annual running costs respectively although this level is still under review
  - VAT recovery is maximised. Recent legal advice has confirmed that both the RRT and CIC can both expect to recover VAT (under current VAT rules).
- 4.4.5 The RRT will need to be formally established in sufficient time to receive the first dowry payment to avoid the payment being treated as a capital receipt and therefore divisible between the Rochester Riverside partners. The Trustees of the RRT cannot take on liability for the wall until a contract is in place obliging the landowners to endow the Trust with funds from land sales to meet the obligations.
- 4.4.6 It is therefore proposed that the RRT is formally established before the first dowry payment is expected i.e. by 2012. But the RRT will only take on its full obligations when it is fully endowed financially for its river wall replacement obligations (estimated at 2015).
- 4.4.7 At the point leading up to its establishment the RRT Trustees will need to be appointed and they will also need their own legal and business advisors. The Trustees will therefore require additional funds in 2012 to cover their advisor and set up costs, a source of funds will be need to be identified to cover these.
- 4.4.8 If the Council does not form and endow the Trust then the Council will have to bear the full replacement cost of the river wall in 75 years at £58.8m (VAT recovered) or £70.6m (VAT non recovered).

- 4.4.9 The RRT will also require a contract to be in place confirming a source of funding for the maintenance of the river wall before taking on the responsibility for that obligation. The Trust will also not accept the responsibility to maintain the wall unless it has been maintained to a satisfactory standard in the period following its construction. The Council is currently incurring minimal HCA funded expenditure on maintaining the wall as most costs are being met by the contractor during the defects liability period.
- 4.4.10 While it is expected that service charges will eventually cover the cost of the river wall maintenance, the site will take approx 12 years before it is fully developed (approx. 2023). Therefore the service charge income from future occupiers will be less than the full amount required for some years. There are two options available;
- a. One option is to provide an additional dowry sum to enable the RRT meet the maintenance costs until the site is 100% developed. An additional dowry sum of £100,000 could be provided to the Management Company in 2015 to cover the years post the RRT's establishment until the development is completed (at which point service charge income should wholly cover the costs).
  - b. The alternative would be for MC to retain responsibility for maintenance of the wall until the whole site is fully developed and the RRT takes the freehold of the wall at that point. If Medway Council retains responsibility for the maintenance of the river wall until development is completed there is an estimated cost of £234,000 for 2011-2023. This approach is not ideal given that the legal advice received stresses that the RRT needs another function in addition to the river wall replacement to meet its charitable objectives – see para 4.1.3.

Officers recommend that the first option is approved and an additional dowry sum is provided to the RRT to cover river wall maintenance costs until the development is completed and sufficient income is available.

#### 4.5 Summary Programme

Spring 2010	Council approves Management Company structure
Summer 2010	Phase 1 developer enters into Development Agreement, which includes reference to the management arrangements and river wall replacement arrangements
2010 – 2012	Finalise the articles of incorporation for the RRT and the CIC and the funding agreements between all parties.
2012	First dowry payment expected from developer
2012	Management Company incorporated, Trustees appointed for RRT and CIC (with their own legal advisors)
2015	Full dowry achieved to meet future river wall replacement; RRT takes on full obligations for maintenance and replacement of the river wall

## 5. Risk Management

5.1 Officers have considered the main risks involved and these are set out below.

<b>Risk</b>	<b>Description</b>	<b>Action to avoid or mitigate risk</b>
Approvals	Failure to secure approvals. This would lead to a delay in discharging the s106 obligation and could lead to difficulties in concluding legal documentation with preferred developers and then delay with the commencement of development. D2	Considerable work has been carried out by Medway and SEEDA to arrive at a robust structure for the Management Company.  If approvals are not secured then the s106 wording may require revision, this is in hand.
Dowry	Failure to secure sufficient income from future land disposals to generate dowry for river wall replacement. D2	Current assessment of future land values indicates that sufficient income should be generated to cover the dowry. This will need to be reviewed regularly.
Charitable Status for the RRT	Failure to secure charitable status for the RRT could impact on the protection of the dowry and its tax efficiency. D3	The articles of incorporation and the level of Council involvement in the RRT will be determining factors in achieving the RRT's charitable status.

## 6. Consultation

- 6.1 There has been extensive work with the Rochester Riverside Project Board on this matter since 2006. This report has been prepared following discussion at the Project Board on 8 December 2009 and includes the additional information that Medway Council Members of that Board requested.
- 6.2 There is no existing community to explore these issues with at Rochester Riverside. However the next stage, subject to Council approval of these arrangements, will be to prepare detailed articles of incorporation for both the RRT and CIC. These will set out the objectives and activities of each organisation in detail. Embedded in both organisations will be a requirement to consider and address both equal opportunity and sustainability issues in accordance with the standards expected by the Council and the relevant legislation.

## **7. Regeneration, Community and Culture Overview and Scrutiny Committee – 18 March 2010**

- 7.1 The Principal Regeneration Manager introduced the report to Members, which had also been debated at the Rochester Riverside Board. She explained that the proposal comprised two bodies with the Rochester Riverside Trust (a charitable company limited by guarantee) and a separate but wholly owned subsidiary Community Interest Company.
- 7.2 A Member raised concern regarding the representation of Medway Council on both bodies. There was little advantage of the Council to be represented and there had been difficulties in the past relating to conflicts of interest for Members of the Council who had also been Members of another charitable trust in Medway. It was therefore suggested that it might be better for the Council to have no representation on the bodies and instead allow the bodies to develop and be run by independent people.
- 7.3 The Head of Legal confirmed that where there is an issue for consideration relating to both the Council and a Trust, Members who represent both would have a conflict of interest.
- 7.4 The Committee recommended to Cabinet on 30 March 2010, to then be considered and agreed at Full Council on 15 April 2010, the recommendations as set out in section 9.

## **8. Cabinet**

- 8.1 The Cabinet considered the report on 30 March 2010 and its recommendations to Council are set out in paragraph 10 of this report (decision no. 53/2010 refers).

## **9. Financial and legal implications**

- 9.1 There are no costs associated with agreeing the structure of the Management Company and any costs associated with the draft articles of incorporation will be met from the HCA grant to Medway Council for Rochester Riverside during 2010/2011. However there will be costs, which could be as high as £100,000, associated with formally incorporating the company and with appointing Trustees (who will then require their own legal advice) in 2012. A source of funds will need to be identified in due course to meet these costs as HCA funding for the project stops in 2011.
- 9.2 The legal implications are set out in the body of the report and in Appendix 1.
- 9.3 Subject to Members' agreement to the proposals, the next steps will be to finalise the articles of incorporation for the RRT and the CIC. In addition, there will be the need to set out clear funding agreements between the Council, the RRT and the CIC as to ensure each party's interests and liabilities are clear. The funding arrangements/transfer of land will be reported to Council at a later date.
- 9.4 Internal trustees (Members) will be appointed in accordance with the council's Constitution Chapter 3, Part 4, paragraph 6.1.

## **10. Recommendation**

10.1 The Cabinet recommends the following to Council:

- (a) To approve the proposed two tier structure for the Rochester Riverside Management Company and the funding arrangements for the Rochester Riverside Trust;
- (b) To agree that the level of local authority control in the Rochester Riverside Trust is less than 20% so that it can more easily achieve its charitable status and that the level of control in the Community Interest Company is also less than 20%;
- (c) To note the programme of Council approvals required prior to establishing the Management Company;
- (d) To note the timescale for establishing and endowing the Rochester Riverside Trust and Community Interest Company;
- (e) That the Director of Regeneration, Community and Culture, in consultation with the Leader of the Council, is delegated the power to:
  - (i) finalise the articles of incorporation based on the principles set out in the draft articles attached to the report and to do anything necessary in order to establish and register the Rochester Riverside Trust and the Community Interest Company (including registration of the Trust as a charity); and
  - (ii) recruit and appoint the external trustees.

### **Lead officer contact**

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### **Background papers**

This report has been prepared based on the following documents and advice:

- Rochester Riverside Development: Report on the proposed Management Company, by Solicitors Nabarro, June 2008
- Rochester Riverside Proposed Management Company: A summary of the structures available, by Solicitors Nabarro June 2008
- Rochester Riverside Management Company: Further report November 2009, Nabarro Solicitors (Appendix 1)
- Draft Articles of Association for the Rochester Riverside Trust: StoneKingSewell February 2010 (Appendix 2)
- Draft Articles of Association for the Rochester Community Interest Trust: StoneKingSewell February 2010 (Appendix 3)
- SWOT analysis of varying levels of Medway involvement in RRT and CIC: StoneKingSewell/Nabarro Solicitors February 2010 (Appendix 4)



# ROCHESTER RIVERSIDE MANAGEMENT COMPANY

## FURTHER REPORT

### 1. EXECUTIVE SUMMARY

The two tier structure is recommended for the following reasons:

- having a charity to hold the funding for the replacement of the river wall is essential to protect it from being used for other purposes;
- having a community focused, regulated (but not as strictly as a charity) company to undertake public open space management will provide flexibility to undertake wider community based initiatives whilst still undertaking its management responsibilities;
- Medway should not control the RRT but if it wishes be able to play a greater role within the CIC it could do so;
- minimises the risk of any dowry payment being considered to be state aid.

It is essential that Medway does not "control" the RRT to such an extent that the Charity Commission refuses to register it as a charity.

The above is a summary of the main points of this report.

### 2. INTRODUCTION

Nabarro LLP and Stone King Sewell LLP have been working closely with members of the Rochester Riverside Officers Working Group to develop proposals for the establishment of a management company regime to manage the public realm comprising the river wall and public open space within the proposed Rochester Riverside development. Following the Rochester Riverside Officers Working Group meeting held on 5 October 2009, we have been asked to prepare a further report which explains:

- 2.1 why the proposed structure is being recommended and how it will operate;
- 2.2 what a CIC is and why it is recommended; and
- 2.3 the advantages and disadvantages of the various levels of local authority control.

It should be noted that, within the previous Nabarro/Stone King Sewell report prepared in June 2008 and within the paper prepared by Reeves & Neylan ("Rochester Riverside – Management Options for the Replacement of River Wall in 2080", dated August 2009) various alternative structures for the management company regime have been considered. The proposed structure which is now preferred by the Rochester Riverside Officers Working Group has emerged following detailed consideration of the alternatives.

The previous Nabarro/Stone King Sewell report contains detailed legal advice on the issues covered by this further report which should be referred to for more information.

### 3. OUTLINE OF PROPOSED STRUCTURE

It is proposed to create a two tier structure comprising the Rochester Riverside Trust and a Community Interest Company. A diagram attached as Appendix 1 sets out the recommended structure.

The Rochester Riverside Trust ("**RRT**"), will be established by Medway as a company limited by guarantee and registered as a charity.

In addition, Medway will set up a Community Interest Company ("**CIC**"), which will be wholly owned by the RRT.

As the Rochester Riverside development progresses, Medway will grant long leases to developers of the commercial and residential areas, on a phase by phase basis. These leases will contain provisions for the payment of two service charges, initially by the developers, which will be paid to and used by the RRT and the CIC to fund the repair and replacement of the river wall and the maintenance of the public open spaces respectively. The obligation to pay the service charges will be passed on by the developers to the ultimate occupiers of the commercial and residential units on the grant of sub-leases by the developers, and then from occupier to occupier when those subleases are transferred.

The freehold of the commercial and residential areas will be transferred by Medway to RRT on a phased basis, as the site is developed.

In addition, Medway will grant long leases of the public open spaces, but not the river wall, to the CIC, again on a phased basis as and when these areas are completed by the developers. These leases will impose obligations upon the CIC to maintain the public open spaces. CIC will fund the cost of maintaining the public open space from the service charges it receives from the occupiers. As with the commercial and residential areas, Medway will transfer the freehold of the public open space areas to RRT again on a phased basis as the site is developed, so that RRT becomes the landlord of the areas leased to the CIC.

Medway will also transfer to RRT the freehold of the river wall, and RRT will, through its constitutional objectives (a draft of which is contained in Appendix 2), be responsible for the future maintenance and replacement of the river wall. This would be funded through a combination of the following:

- 3.1 in all likelihood, a dowry payment from Medway Council. We understand that the principle and quantum of such a dowry payment, and method of payment, is currently under discussion;
- 3.2 the river wall service charges from the residential and commercial occupiers within the development, referred to above. The level of such contributions will be subject to further discussion and is clearly interdependent on the level of the dowry payment made;
- 3.3 although it will be the intention that the CIC service charge regime should break even each year, so that the annual maintenance expenses are covered by service charge receipts and no more, there might occasionally be other sources of income received by the CIC. These could be paid to RRT, utilising "gift aid" for relief, so that CIC did not have to pay corporation tax on them as profits.

## **4. WHAT IS A COMMUNITY INTEREST COMPANY AND WHY IT IS RECOMMENDED**

### **4.1 Introduction**

- 4.1.1 Community Interest Companies (CICs) are a relatively new type of limited company designed specifically for those wishing to operate for the benefit of the community rather than for the benefit of the owners of the company. This means that a CIC cannot be formed or used solely for the personal gain of a particular person, or group of people.
- 4.1.2 CICs are particularly suitable for those who wish to work within the relative freedom of the familiar limited company framework without either the private profit motive or the restrictions of charity status. A CIC can be a useful way for a charity to operate trading activity, particularly a trading activity which is "public facing" like RRT.
- 4.1.3 While CICs do not enjoy any specific tax breaks which are otherwise available to charities, such as corporation tax relief and relief from business rates, it would be possible to utilise gift aid relief (as referred to at 3.3 above) to minimise or remove any corporation tax charge..
- 4.1.4 CICs have a statutory "Asset Lock" to prevent the assets and profits being distributed, except as permitted by legislation. This ensures the assets and profits are retained within the CIC for community purposes, or may only be transferred to an identified body – in this case, the RRT.

### **4.2 Structure**

- 4.2.1 A CIC is created by the incorporation of a company with limited liability. A CIC must adopt a suitable constitution in the form of Articles of Association that comply with the Companies Act and associated Regulations.
- 4.2.2 CICs are regulated by the CIC Regulator whose role is explained further below.
- 4.2.3 When applying for registration with the CIC Regulator, a CIC must make a "community interest statement" declaring that its activities will be carried on for the benefit of the community and provide details on how this will be achieved - this is known as the "community interest test".
- 4.2.4 The CIC will have to continue to meet the community interest test throughout its life and each year must submit a community interest report to the CIC Regulator setting out what it has done to benefit the community. While directors of a CIC may be paid, they may only receive a reasonable level of remuneration which does not outweigh the community benefit of the CIC.
- 4.2.5 The CIC Regulator will review the documents sent to Companies House for the registration of each CIC. He has the power at any time to investigate the affairs of a CIC, remove or appoint its directors and even order the transfer of its shares.

### **4.3 Asset lock**

- 4.3.1 The asset lock is a statutory restriction designed to ensure that the assets of a CIC are used for the benefit of the community, in this case Rochester Riverside.

- 4.3.2 A CIC's assets must either be retained within the CIC to be used for the community purposes for which it was formed, or, if they are transferred out of the CIC, the transfer must satisfy one of the following requirements:
- (a) It is made for full consideration (i.e. at market value), so that the CIC retains the value of the assets transferred;
  - (b) It is made to another asset-locked body (a CIC or charity – in this case, RRT) which is specified in the CIC's articles of association;
  - (c) It is made to another asset locked body with the consent of the CIC Regulator; or
  - (d) It is otherwise made for the benefit of the community.
- 4.3.3 Provision to this effect must be included in a CIC's articles of association.

#### 4.4 **Summary**

We recommend using a CIC for the following reasons:

- 4.4.1 CICs are voluntary organisations. Residents should take comfort that CIC status will ensure that the directors of the CIC can only undertake activities which are considered to be for the benefit of the community;
- 4.4.2 the Asset Lock ensures that income from residents can only be used for the purposes of the development, and not paid out for private profit. Yet the Asset Lock would still allow payments of any profits to be made to RRT if desired;
- 4.4.3 as we will explore at 5.7 below, a CIC allows greater scope for involvement by Medway Council in the management of the open spaces than would otherwise be available in the case of a charity;
- 4.4.4 the Council can be reassured that any inappropriate application of funds by the CIC would be subject to scrutiny by the CIC Regulator, thereby ensuring that the service charges are preserved for the benefit of the community.

### 5. **REASONS TO ADOPT A TWO TIER STRUCTURE**

We recommend that the responsibilities for the maintenance and replacement of the river wall and the maintenance of the public open space should be separated for the following reasons:

- 5.1 in order to protect any dowry paid for the replacement of the river wall, it is essential that the holder of the dowry, which has responsibility for the river wall, has charitable status. This is because the dowry can be held as a restricted fund by the charity. This protection of funding is unique to charities;
- 5.2 it ensures that there is flexibility for the CIC to undertake activities which might not otherwise strictly qualify for charitable status – and therefore means that the activities to be undertaken within RRT are clearly charitable;
- 5.3 having a two tier separation ensures that there is a clear degree of ring fencing of the assets of RRT from those of the CIC. The RRT must accumulate sufficient funds (including the dowry) to maintain and replace the river wall and ensure that those funds are not at risk of being applied for alternative purposes. If there were no separation, there might be a greater risk that the funds would be misapplied for other purposes;

- 5.4 linked to the point above, the ring fencing also ensures that, if a claim were made against the CIC, it would not impact upon RRT. If the CIC simply does not have sufficient funds to meet any such claims, or its insurance was insufficient, then the CIC would itself become insolvent, but RRT (and its dowry funds) would continue in existence and would not be called upon to meet any claims from such creditors;
- 5.5 the greater degree of degree of flexibility that a CIC offers may encourage a more entrepreneurial approach in relation to its role within Rochester Riverside;
- 5.6 the separation of structures also allows an element of oversight of the activities of the CIC by RRT. It provides an additional check and balance in the event that the CIC is failing to fulfil its purposes to a level with which the RRT is comfortable;
- 5.7 there is also the potential scope for greater involvement by Medway in the management of the CIC. Generally, the Charity Commission prefers to see a minority involvement by local authorities in charities (less than 20 per cent in terms of membership or number of directors). The Commission is sceptical about the involvement of local authorities within charitable structures, often taking the view that local authorities have inherent conflicts of interest and can simply treat charitable assets as part of their corporate property. However, the CIC Regulator has no such views with regard to the involvement by local authorities, so, subject to Medway taking a decision with regard to the level of involvement that it would wish to have, the CIC structure does at least provide the possibility that Medway may have a greater degree of representation on the Board of the CIC than would otherwise be possible within RRT;
- 5.8 If the functions of RRT and the CIC were combined in one entity which was not controlled by Medway (see below for the meaning of control), there would be a danger of any dowry being treated as state aid because of the potentially wider role which that entity would have. Separating those functions into the two tier structure minimises that risk, since the dowry would be paid to the RRT being a wholly non-commercial body.

While the dual structure will have some additional administration costs, and arguably leads to a more complex structure for residents and other stakeholders to understand, our view is that the benefits highlighted above outweigh these potential downsides.

Finally, it shall be noted that, provided both RRT and CIC are included in the same VAT group, charges for services passing between them (e.g. if RRT contracts with CIC so that CIC undertakes river wall maintenance at RRT's cost) will not incur VAT. Reeves & Neylan have advised that in these circumstances the same VAT consequences will apply whether under the preferred two tier structure or under a single RRT structure. Either structure will involve partial non-recovery of VAT paid to third party suppliers but this has been factored into Reeves & Neylan's financial modelling for the potential levels of dowry and service charges.

## **6. HOW THE TWO TIER STRUCTURE WILL OPERATE**

- 6.1 We have explained in section 3 above the recommended two tier structure and what land interests the RRT and the CIC will hold.
- 6.2 Once RRT has been established, the freehold of the river wall will be transferred to it. However at that stage the trustees of the RRT will require there to be certainty in relation to the funding for the future maintenance and replacement of the river wall. To the extent the

dowry has not been paid to the RRT at that stage, the RRT will need to have the benefit of a contractual commitment from Medway Council either to pay the dowry or to procure payment from the sales proceeds being paid by the developers of the commercial and residential space. Medway will also have to contract to continue to impose the service charge regime in relation to future development phases.

- 6.3 The RRT will then be in a position to carry out its responsibilities which it will do by letting contracts for the ongoing maintenance of the river wall, and, when necessary, the replacement of the river wall.
- 6.4 The CIC should be set up at the same time as RRT. It will only become operational once areas of public open space have been created as part of the development phases by the developers. It will therefore take a number of years before the CIC is operating over the whole site. However as each phase of development is completed and the public open space leased by Medway to the CIC, it will take responsibility for those areas. As with the RRT, it will let contracts for the ongoing maintenance of the public open space and fund those from the service charges it receives.
- 6.5 Both the RRT and the CIC will have to have in place administrative regimes for the carrying out of their respective responsibilities, and also for the collection of service charges. It would be sensible for the two organisations to work closely together to minimise duplication and overheads. In particular:
  - 6.5.1 the CIC will require more resource for the maintenance etc. of the public open space. For this reason, it will probably wish to employ certain key members of staff and outsource other functions;
  - 6.5.2 it is unlikely that RRT will require the same level of support. It would be sensible for RRT to pay the CIC for assistance with administrative support and also for monitoring the condition of the wall;
  - 6.5.3 in the event that major repairs or maintenance will be required to the wall, RRT may also wish to let the CIC project manage this on its behalf.

## **7. COUNCIL CONTROL OF RRT AND/OR CIC**

The key advantage of Medway having control, which we will explain further below, of RRT and/or the CIC is that Medway will then be able to control the activities of RRT or the CIC, which would not then be independent and therefore able to take decisions with which Medway might disagree (although its directors would still have to act in the best interests of the RRT/CIC). At face value, therefore, it would be attractive for Medway to have control of both RRT and the CIC, to avoid the possibility of areas of disagreement arising between Medway on one hand and the RRT or CIC on the other.

However if Medway wishes to have control of the RRT and/or the CIC, this will give rise to certain consequences which are why, in relation to the RRT in particular, this is not recommended.

### **7.1 Charitable status**

In relation to RRT, which is intended to be registered as a charity, there would be a significant danger that the Charity Commission would not be prepared to register RRT as a

charity if it was controlled by Medway. It is therefore essential that RRT is not "controlled" by Medway. For these purposes, Medway would "control" the RRT if the RRT was a regulated company (see below).

## 7.2 General

7.2.1 If Medway wishes to have control of the RRT and/or CIC, it must recognise that it will have responsibility for the proper management of those organisations it controlled. There would undoubtedly be criticism of Medway if an organisation controlled by Medway failed to properly fulfil its functions, as they would be seen to be Medway's responsibility.

7.2.2 In the event of financial failure of either RRT or CIC, pressure would undoubtedly be put upon Medway to "step in" and rescue them (including injecting fresh funding into them). Although there would be no legal duty on Medway to do so, public pressure would be influential.

## 7.3 Regulated Companies

7.3.1 A company, which would include both RRT and the CIC, will be "regulated company" for the purposes of local authority legislation if it is either a:

- (a) controlled company; or
- (b) a company which is under the influence of a local authority where local authority either has effective control or over which the local authority has a dominant influence. A company which is controlled by a regulated company is also treated as a regulated company itself. Since the CIC will be a wholly owned subsidiary of RRT, if RRT was a regulated company, then the CIC would also be a regulated company.

7.3.2 A controlled company for these purposes is one in which the local authority controls either

- (a) a majority of the voting rights at general meetings and
- (b) a majority of the voting rights at director's meetings or
- (c) the appointment or removal of a majority of the directors

7.3.3 A company is under the influence of a local authority if

- (a) the local authority controls at least 20 per cent of the voting rights at general meetings or at least 20 per cent of the voting rights at director's meetings or at least 20 per cent of the directors are employees or officers of the local authority and
- (b) there is a business relationship between the local authority and the company. There are defined criteria for what constitutes a business relationship between a local authority and a company.

In addition the local authority has to either have the right to exercise or actually have exercised a dominant influence over the company and/or the local authority must be required to prepare group accounts in respect of the company (for further details of this requirement see below).

Regulated companies have to comply with a number of administrative requirements although these are not unduly onerous and it would not be difficult for RRT or the CIC to comply with them.

## **7.4 Accounting Treatment**

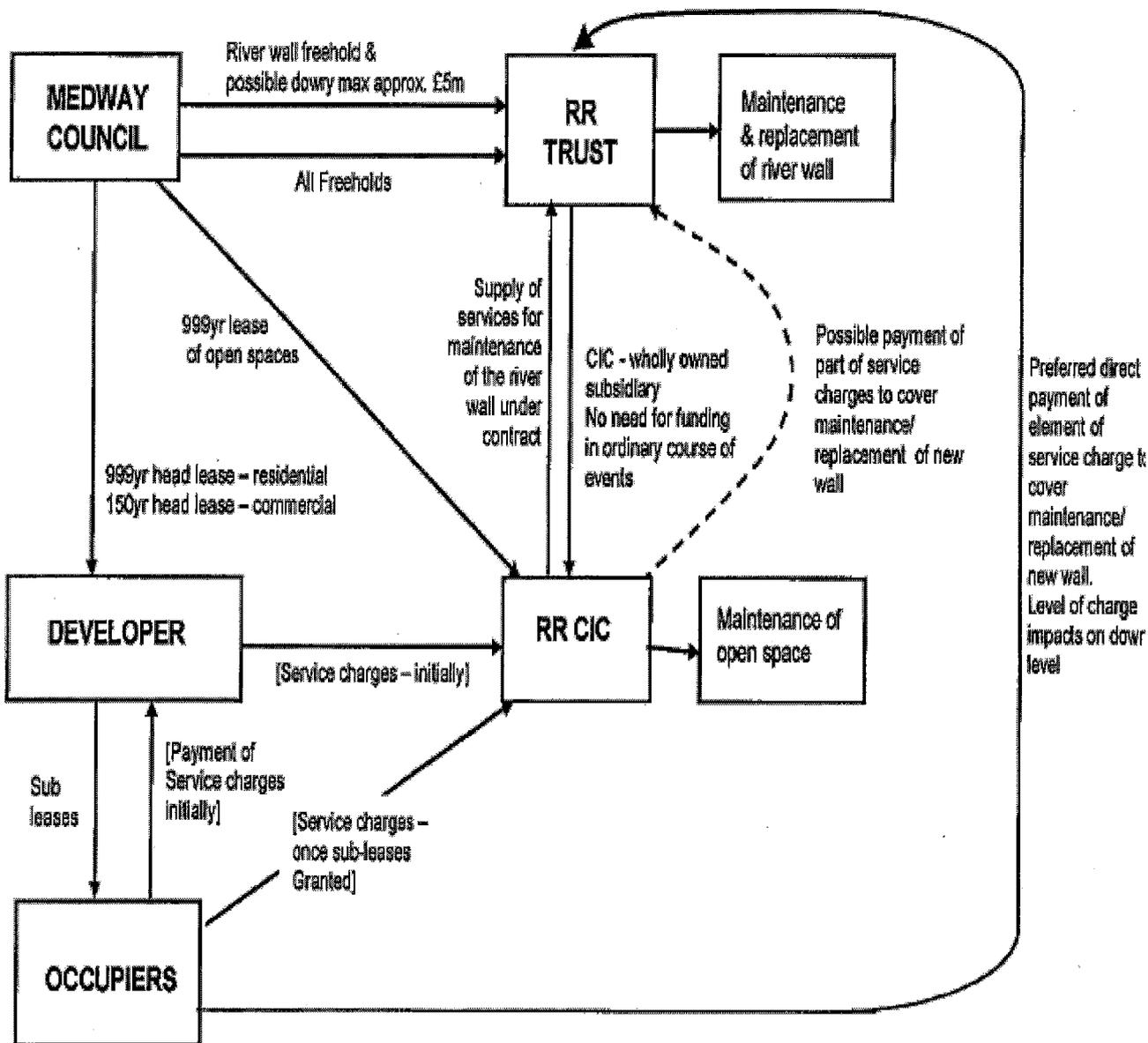
- 7.4.1 A local authority must prepare group accounts in respect of companies in which it has an "interest". A local authority can have an interest in a subsidiary, an associate or a joint venture, and there are different levels of accounting requirements for each of these categories. These requirements would apply if the RRT or the CIC were considered to be companies in which the local authority had such an interest.
- 7.4.2 If Medway was required to prepare group accounts in relation to either RRT or the CIC, this does not mean that Medway will be liable for the debts of those companies or that their borrowings would count for the purposes of Medway's prudential borrowing cap. However it could mean, in practice, that Medway would be considered to be publicly accountable for the affairs of those companies, with the same consequences as referred to above.
- 7.4.3 Provided RRT and the CIC are not regulated companies, and that separately Medway does not have the right to exercise significant influence, it is unlikely that either company would be considered as ones in relation to which Medway had to prepare group accounts.

**Nabarro LLP/Stone King Sewell LLP**

**20 November 2009**

APPENDIX 1

Structure diagram



NB: Membership of RRT and CIC to be determined

## APPENDIX 2

### Proposed charitable objects for Rochester Riverside Trust

We set out below some sample objects which could be used for the purposes of the RRT. These are simply for discussion at this stage.

"The Charity's objects are the provision and maintenance of amenities for the benefit of the **[Rochester Riverside]** area, including, but without limitation, the maintenance and replacement of a river wall, facilities for recreation in the interests of social welfare and the provision and maintenance of public open space."

Note:

1. We are proposing that the objects are limited to the Rochester Riverside development.
2. The draft above includes a broad range of activities in addition to simply the maintenance and replacement of the river wall. We consider that this will be desirable given the need to demonstrate a broader range of activities to the Charity Commission.

**Draft**

**COMPANIES ACT 2006**

**COMPANY NOT HAVING A SHARE CAPITAL**

**MEMORANDUM OF ASSOCIATION**

**OF**

**ROCHESTER RIVERSIDE TRUST**

Each subscriber to this Memorandum of Association wishes to form a company under the Companies Act 2006 and agrees to become a member of the company.

**Name of each subscriber**

**Authentication by each subscriber**

[Name]

.....  
[Signature]

[Name]

.....  
[Signature]

[Name]

.....  
[Signature]

**Date:**

.....

**COMPANIES ACT 2006**

**ARTICLES OF ASSOCIATION**

**OF**

**ROCHESTER RIVERSIDE TRUST**

Incorporated on

Company No:  
Charity No:

**Stone King Sewell** | solitors

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[www.skslaw.co.uk](http://www.skslaw.co.uk)

**COMPANIES ACT 2006**  
**COMPANY LIMITED BY GUARANTEE AND**  
**NOT HAVING A SHARE CAPITAL**

**ARTICLES OF ASSOCIATION**

**OF**

**ROCHESTER RIVERSIDE TRUST**

**1 NAME**

The name of the company is **Rochester Riverside Trust** (the "**Charity**").

**2 REGISTERED OFFICE**

The registered office of the Charity is to be in England and Wales.

**3 OBJECTS**

3.1 The objects of the Charity are :

3.1.1 the maintenance, improvement or provision of public amenities in particular, but without limitation, a flood defence wall located at the Rochester Riverside development ("**River Wall**");

3.1.2 the promotion for the public benefit of urban or rural regeneration in areas of social and economic deprivation (and in particular Medway) by all or any of the following means:

a) the protection or conservation of the environment.

b) the advancement of education, training or retraining, particularly among unemployed people, and providing unemployed people with work experience; and

c) to provide or assist in the provision of facilities in the interests of social welfare for recreation or other leisure time occupation of individuals who have need of such facilities by reason of their youth, age infirmity or disability, financial hardship or social circumstances with the object of improving their conditions of life.

(the "**Objects**").

3.2 This provision may be amended by special resolution but only with the prior written consent of the Commission.

**4 POWERS**

The Charity has the following powers which may be exercised only in promoting the Objects:

4.1 to enter into contracts for the supply of goods and services, in particular, but without limitation, for the purpose of maintaining and replacing the River Wall;

- 4.2 to receive the freehold of the River Wall from Medway Council and to assume the responsibilities and obligations for maintenance and repair in so doing;
- 4.3 to accept payment of service charges;
- 4.4 to promote or carry out research, surveys, studies or other work, making the useful results available;
- 4.5 to provide advice;
- 4.6 to provide, publish or distribute information; to print, publish, issue, distribute and commission papers, periodicals, books, circulars, pamphlets, leaflets, journals, films, tapes and other instructional matter on any media;
- 4.7 to advertise in such manner as may be thought expedient;
- 4.8 to co-operate with other bodies;
- 4.9 to support, administer or set up other charities;
- 4.10 to establish charitable trusts for any particular purposes of the Charity, to act as trustees of such special charitable trust whether established by the Charity or otherwise and generally to undertake and execute any charitable trust which may lawfully be undertaken by the Charity and may be conducive to its Objects;
- 4.11 to raise funds (but not by means of Taxable Trading) and in its discretion to disclaim any particular contribution;
- 4.12 to receive and administer bequests and donations;
- 4.13 to borrow money and give security for loans (but only in accordance with the restrictions imposed by the Charities Act);
- 4.14 to acquire or hire property of any kind;
- 4.15 to let or dispose of property of any kind (but only in accordance with the restrictions imposed by the Charities Act);
- 4.16 to make grants or loans of money and to give guarantees provided that where any payment is made to the treasurer or other proper official of a charity the receipt of such treasurer or official shall be a complete discharge to the Trustees;
- 4.17 to set aside funds for special purposes or as reserves against future expenditure including, but without limitation, anticipated expenditure in connection with the maintenance and replacement of the River Wall;
- 4.18 to deposit or invest in funds in any manner (but to invest only after obtaining such advice from a Financial Expert as the Trustees consider necessary and having regard to the suitability of investments and the need for diversification) provided that the Charity shall have power to retain any investments donated to it;
- 4.19 to delegate the management of investments to a Financial Expert, but only on terms that:
  - 4.19.1 the investment policy is set down in writing for the Financial Expert by the Trustees;

- 4.19.2 timely reports of all transactions are provided to the Trustees;
- 4.19.3 the performance of the investments is reviewed regularly with the Trustees;
- 4.19.4 the Trustees are entitled to cancel the delegation arrangement at any time;
- 4.19.5 the investment policy and the delegation arrangement are reviewed at least once a year;
- 4.19.6 all payments due to the Financial Expert are on a scale or at a level which is agreed in advance and are notified promptly to the Trustees on receipt;
- 4.19.7 the Financial Expert must not do anything outside the powers of the Trustees;
- 4.20 to arrange for investments or other property of the Charity to be held in the name of a nominee company acting under the direction of the Trustees or controlled by a Financial Expert acting under their instructions and to pay any reasonable fee required;
- 4.21 to deposit documents and physical assets with a company registered or having a place of business in England or Wales as custodian, and to pay any reasonable fee required;
- 4.22 to insure the property of the Charity against any foreseeable risk and take out other insurance policies to protect the Charity when required;
- 4.23 to provide indemnity insurance for the Trustees or any other officer of the Charity in relation to any such liability as is mentioned in Article 4.24, but subject to the restrictions specified in Article 4.25 of this Article;
- 4.24 The liabilities referred to in Article 4.23 are:
  - 4.24.1 any liability that by virtue of any rule of law would otherwise attach to a director of a company in respect of any negligence, default breach of duty or breach of trust of which he or she may be guilty in relation to the Charity;
  - 4.24.2 the liability to make a contribution to the Charity's assets as specified in section 214 of the Insolvency Act 1986 (wrongful trading);
- 4.25 The following liabilities are excluded from Article 4.24.1:
  - 4.25.1 fines;
  - 4.25.2 costs of unsuccessfully defending criminal prosecutions for offences arising out of the fraud, dishonesty or wilful or reckless misconduct of the Trustee or other officer;
  - 4.25.3 liabilities to the Charity that result from conduct that the Trustee or other officer knew or must be assumed to have known was not in the best interests of the Charity or about which the person concerned did not care whether it was in the best interests of the Charity or not;

4.26 There is excluded from Article 4.24.2

any liability to make such a contribution where the basis of the Trustee's liability is his or her knowledge prior to the insolvent liquidation of the Charity (or reckless failure to acquire that knowledge) that there was no reasonable prospect that the Charity would avoid going into insolvent liquidation;

4.27 subject to Article 5 to employ paid or unpaid agents staff or advisers;

4.28 to enter into contracts to provide services to or on behalf of other bodies;

4.29 to establish or acquire subsidiary companies;

4.30 to pay the costs of forming the Charity; and

4.31 to do anything else within the law which promotes or helps to promote the Objects.

## **5 BENEFITS AND CONFLICTS FOR MEMBERS AND TRUSTEES**

5.1 The property and funds of the Charity must be used only for promoting the Objects and do not belong to the Members but:

5.1.1 Members who are not Trustees may be employed by or enter into contracts with the Charity and receive reasonable payment for goods or services supplied; and

subject to compliance with Article 5.4:

5.1.2 Members, Trustees and Connected Persons may be paid interest at a reasonable rate on money lent to the Charity;

5.1.3 Members, Trustees and Connected Persons may be paid a reasonable rent or hiring fee for property let or hired to the Charity; and

5.1.4 Individual Members, Trustees and Connected Persons who are beneficiaries may receive charitable benefits in that capacity.

5.2 A Trustee must not receive any payment of money or other material benefit (whether directly or indirectly) from the Charity except:

5.2.1 as mentioned in Articles 4.23 – 4.26, 5.1.2, 5.1.3, 5.1.4, or 5.3;

5.2.2 reimbursement of reasonable out-of-pocket expenses (including hotel and travel costs) actually incurred in running the Charity;

5.2.3 an indemnity in respect of any liabilities properly incurred in running the Charity (including the costs of a successful defence to criminal proceedings);

5.2.4 payment to any company in which a Trustee or a Connected Person has no more than a one per cent shareholding; or

- 5.2.5 in exceptional cases, other payments or benefits (but only with the written consent of the Commission in advance and subject, where required by the Act, to the approval or affirmation of the Members).
- 5.3 No Trustee or Connected Person may be employed by the Charity except in accordance with Article 5.2.5, but any Trustee or Connected Person may enter into a written contract with the Charity (stating the maximum to be paid), to supply goods or services in return for a payment or other material benefit but only if:
- 5.3.1 the goods or services are actually required by the Charity, and the Trustees decide that it is in the best interests of the Charity to enter into such a contract;
  - 5.3.2 the nature and level of the remuneration is no more than is reasonable in relation to the value of the goods or services and is set in accordance with the procedure in Article 5.4; and
  - 5.3.3 no more than one third of the Trustees are subject to such a contract at any time.
- 5.4 Subject to Article 5.5, any Trustee who becomes a Conflicted Trustee in relation to any matter must:
- 5.4.1 declare the nature and extent of his or her interest at or before discussion begins on the matter;
  - 5.4.2 withdraw from the meeting for that item after providing any information requested by the Trustees;
  - 5.4.3 not be counted in the quorum for that part of the meeting; and
  - 5.4.4 be absent during the vote and have no vote on the matter.
- 5.5 When any Trustee is a Conflicted Trustee, the Trustees who are not Conflicted Trustees, if they form a quorum without counting the Conflicted Trustee and are satisfied that it is in the best interests of the Charity to do so, may by resolution passed in the absence of the Conflicted Trustee authorise the Conflicted Trustee, notwithstanding any conflict of interest or duty which has arisen or may arise for the Conflicted Trustee:
- 5.5.1 except in circumstances which involve the receipt by the Conflicted Trustee or a Connected Person of any payment or material benefit, to continue to participate in discussions leading to the making of a decision and/or to vote, or
  - 5.5.2 to disclose information confidential to the Charity to a third party, or
  - 5.5.3 to take any other action not otherwise authorised which does not involve the receipt by the Conflicted Trustee or a Connected Person of any payment or material benefit from the Charity, or to refrain from taking any step required to remove the conflict.
- 5.6 A Conflicted Trustee who obtains (other than through his position as Trustee) information that is confidential to a third party, shall not be in breach of his or her duties to the Charity if he or she declares the conflict in accordance with Article 5.4 and then withholds such confidential information from the Charity.

- 5.7 For any transaction or arrangement authorised under Articles 4.23 to 4.26, 5.1.2 to 5.1.4, 5.2 and 5.3, the Trustee's duty under the Act to avoid a conflict of interest with the Charity shall be disapplied provided the relevant provisions of Article 5.4 have been followed.

This Article may not be amended without the prior written consent of the Commission.

## 6 MEMBERSHIP

- 6.1 The Charity must maintain a register of Members.
- 6.2 The first Members of the Charity shall be the subscribers to the Memorandum of Association.
- 6.3 Subsequent Members of the Charity shall be:
- 6.3.1 the Trustees; and
  - 6.3.2 **[persons nominated by the Local Authority provided always that Members nominated by the Local Authority shall have no more than 19.9% of the votes of the Members]**.
- 6.4 Every Member must consent in writing to become a Member, and the form and procedure for applying for Membership is to be prescribed by the Trustees.
- 6.5 Membership is terminated if the Member concerned:
- 6.5.1 gives written notice of resignation to the Charity;
  - 6.5.2 dies or, if an organisation, ceases to exist;
  - 6.5.3 is six months in arrears in paying the relevant subscription (if any) (but in such a case the Member may be reinstated on payment of the amount due);
  - 6.5.4 is removed from Membership by resolution of the Trustees on the ground that in their reasonable opinion the Member's continued Membership is harmful to the Charity (but only after notifying the Member in writing and considering the matter in the light of any written representations which the Member concerned puts forward within fourteen Clear Days after receiving notice);
  - 6.5.5 (in the case of a Trustee) ceases to be a Trustee; or
  - 6.5.6 if, in the case of a Member appointed under article 6.3.2, the Local Authority gives written notice to the Charity it is removing their nominee.
- 6.6 Membership of the Charity is not transferable.
- 6.7 The Trustees may establish different classes of Membership and recognise one or more classes of supporters who are not Members (but who may nevertheless be termed "members") and set out their respective rights and obligations.

- 6.8 Any corporate or unincorporated organisation that is a Member of the Charity may nominate any person to act as its duly authorised representative at any meeting of the Charity, provided that:
- 6.8.1 the organisation must give written notice to the Charity of the name of its representative. The nominee shall not be entitled to represent the organisation at any meeting unless the notice has been received by the Charity. The nominee may continue to represent the organisation until written notice to the contrary is received by the Charity;
  - 6.8.2 any notice given to the Charity will be conclusive evidence that the nominee is entitled to represent the organisation or that his or her authority has been revoked. The Charity shall not be required to consider whether the nominee has been properly appointed by the organisation;
  - 6.8.3 the duly authorised representative of an unincorporated organisation shall be entered in the register of Members as the Member, with the name of the unincorporated organisation which they represent noted next to them.

## **7 LIMITED LIABILITY**

The liability of Members is limited.

## **8 GUARANTEE**

Every Member promises if the Charity is dissolved while he she or it remains a Member or within twelve months afterwards to contribute up to one pound (£1) towards the costs of dissolution and the liabilities incurred by the Charity while he she or it was a Member.

## **9 GENERAL MEETINGS OF MEMBERS**

### **9.1 General Meetings**

9.1.1 Members are entitled to attend general meetings. A general meeting may be called at any time by the Trustees and must be called on a request from the requisite number of Members in accordance with the Act.

9.1.2 A Trustee or Secretary shall, notwithstanding that he or she is not a Member, be entitled to attend and speak at any general meeting.

### **9.2 Notice**

9.2.1 Subject to Article 9.2.2, general meetings are called on at least fourteen Clear Days notice (unless the Act requires a longer notice period) specifying: the time, date and place of the meeting; the general nature of the business to be transacted; and notifying Members of their right to appoint a proxy.

9.2.2 A general meeting may be called by shorter notice if ninety per cent of the Members entitled to vote upon the business to be transacted agree.

9.2.3 Notice of general meetings should be given to every Member and Trustee, and to the Charity's auditors.

9.2.4 The proceedings at a general meeting shall not be invalidated because a person who was entitled to receive notice of the meeting did not receive it because of an accidental omission by the Charity.

9.3 **Quorum**

9.3.1 No business shall be transacted at any meeting unless a quorum is present. There is a quorum at a general meeting if the number of Members present in person or by proxy or by the duly authorised representative of an organisation, is at least three or fifty percent of the total Membership, whichever is the greater.

9.3.2 If such a quorum is not present within half an hour from the time appointed for the meeting, or if during a meeting such a quorum ceases to be present, the meeting shall stand adjourned to the same day in the next week at the same time and place or to such time and place as the Trustees may determine.

9.4 **Chairperson of the Meeting**

9.4.1 The Chairperson or (if the Chairperson is unable or unwilling to do so) some other Trustee elected by the board of Trustees presides at a general meeting.

9.4.2 If no Trustee is willing to act as chairperson, or if no Trustee is present within fifteen minutes after the time appointed for holding the meeting, the Members present and entitled to vote shall choose one of their number to be chairperson. Save that a proxy who is not a Member entitled to vote shall not be entitled to be appointed as chairperson.

9.5 **Adjournment**

The chairperson may, with the consent of a meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at an adjourned meeting other than business which might properly have been transacted at the meeting had the adjournment not taken place. When a meeting is adjourned for fourteen days or more, at least seven Clear Days' notice shall be given specifying the time and place of the adjourned meeting and the general nature of the business to be transacted. Otherwise it shall not be necessary to give any such notice.

9.6 **Voting General**

9.6.1 On a show of hands or a poll every Member who (being an individual) is present in person or by proxy or (being an organisation) is present by a duly authorised representative or by proxy, unless the proxy (in either case) or the representative is himself a Member entitled to vote, shall have one vote.

9.6.2 A Member in respect of whom an order has been made by any court having jurisdiction (whether in the United Kingdom or elsewhere) in matters concerning mental incapacity may vote, whether on a show of hands or on a poll, by his or her deputy, registered attorney, curator bonis or other person authorised in that behalf appointed by that court, and any such deputy, registered attorney, curator bonis or other person may, on a show of hands or on a poll, vote by proxy. Evidence to the satisfaction of the Trustees of the authority of the person claiming to exercise the right to vote shall be deposited at the Charity's registered office, or at such other place as is specified in accordance with these Articles for the deposit of instruments of proxy, not less than forty eight hours (excluding public holidays and weekends) before the time appointed for holding the meeting or adjourned meeting at which the right to vote is to be exercised and in default the right to vote shall not be exercisable.

9.6.3 No objection shall be raised to the qualification of any voter except at the meeting or adjourned meeting at which the vote objected to is tendered, and every vote not disallowed at the meeting shall be valid. Any objection made in due time shall be referred to the chairperson whose decision shall be final and conclusive.

## 9.7 **Poll Voting**

9.7.1 A resolution put to the vote of a meeting shall be decided on a show of hands unless before, or on the declaration of the result of, the show of hands a poll is duly demanded. Subject to the provisions of the Act, a poll may be demanded:

- (A) by the chairperson; or
- (B) by at least two Members having the right to vote at the meeting; or
- (C) by a Member or Members representing not less than one-tenth of the total voting rights of all the Members having the right to vote at the meeting;

and a demand by a person as proxy for a Member, or as the duly authorised representative of a Member (being an organisation) or as proxy for a duly authorised representative of an organisation, shall be the same as a demand by the Member.

9.7.2 Unless a poll is duly demanded a declaration by the chairperson that a resolution has been carried or carried unanimously, or by a particular majority, or lost, or not carried by a particular majority and an entry to that effect in the minutes of the meeting shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

9.7.3 A demand for a poll may be withdrawn if the poll has not yet been taken; and the chairperson consents to the withdrawal. A demand so withdrawn shall not be taken to have invalidated the result of a show of hands declared before the demand was made.

9.7.4 A poll shall be taken as the chairperson directs and he or she may appoint scrutineers (who need not be Members) and fix a time and place for declaring the result of the poll. The result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

9.7.5 A poll demanded on the election of a chairperson or on a question of adjournment shall be taken immediately. A poll demanded on any other question shall be taken either immediately or at such time and place as the chairperson directs not being more than thirty days after the poll is demanded. The demand for a poll shall not prevent the continuance of a meeting for the transaction of any business other than the question on which the poll was demanded. If a poll is demanded before the declaration of the result of a show of hands and the demand is duly withdrawn, the meeting shall continue as if the demand had not been made.

9.7.6 No notice need be given of a poll not taken immediately if the time and place at which it is to be taken are announced at the meeting at which it is demanded. In any other case at least seven Clear Days' notice shall be given specifying the time and place at which the poll is to be taken.

9.8 **Proxy Voting**

9.8.1 On a poll or a show of hands, votes may be given either personally or by the duly authorised representative of an organisation or by proxy.

9.8.2 The appointment of a proxy shall be executed by or on behalf of the appointor and shall be in a form approved by the Trustees which:

- (A) states the name and address of the Member ,or the duly authorised representative of an organisation, appointing the proxy;
- (B) identifies the person appointed to be that Member's ,or the duly authorised representative of an organisation's, proxy and the general meeting in relation to which that person is appointed;
- (C) is executed by or on behalf of the Member,or the duly authorised representative of an organisation, appointing the proxy; and
- (D) is delivered to the Charity in accordance with these Articles and any instructions contained in the notice of the general meeting to which the proxy relates.

9.8.3 The appointment of a proxy and any authority under which it is executed or a copy of such authority certified notarially or in some other way approved by the Trustees may:

- (A) in the case of an instrument in Hard Copy Form be deposited at the Charity's registered office or at such other place within the United Kingdom as is specified in the notice convening the meeting or in any instrument of proxy sent out by the Charity in relation to the meeting not less than forty eight hours (excluding public holidays and weekends) before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote; or
- (B) in the case of an appointment contained in an Electronic Form, where an address has been specified for the purpose of receiving information by Electronic Means:
  - (i) in the notice convening the meeting, or
  - (ii) in any instrument of proxy sent out by the Charity in relation to the meeting, or
  - (iii) in any invitation which is sent by Electronic Means to appoint a proxy issued by the Charity in relation to the meeting,

be received at such address not less than forty eight hours (excluding public holidays and weekends) before the time for holding the meeting or adjourned meeting at which the person named in the appointment proposes to vote;

- (C) in the case of a poll taken more than forty eight hours (excluding public holidays and weekends) after it is demanded, be deposited or received as aforesaid after the poll has been demanded and not less than twenty four hours (excluding public holidays and weekends) before the time appointed for the taking of the poll; or

- (D) where the poll is not taken immediately but is taken not more than forty eight hours (excluding public holidays and weekends) after it was demanded, be delivered at the meeting at which the poll was demanded to the chairperson or to the Secretary or to any Trustee;

and an appointment of proxy which is not deposited, delivered or received in a manner so permitted shall be invalid.

9.8.4 A vote given or poll demanded by the duly authorised representative of an organisation or by proxy shall be valid notwithstanding the previous determination of the authority of the person voting or demanding a poll unless notice of the determination was received by the Charity at its registered office or at such other place at which the instrument of proxy was duly deposited or, where the appointment of the proxy was sent by Electronic Means, at the address at which such appointment was duly received before the commencement of the meeting or adjourned meeting at which the vote is given or the poll demanded or (in the case of a poll taken otherwise than on the same day as the meeting or adjourned meeting) the time appointed for taking the poll.

9.8.5 An appointment of a proxy may be revoked by delivering to the Charity a notice given by or on behalf of the person by whom or on whose behalf the proxy notice was given. A notice revoking the appointment of a proxy only takes effect if it is delivered before the start of the meeting or adjourned meeting to which it relates.

## 9.9 **Written Resolutions**

Subject to the provisions of the Act:

9.9.1 A written resolution is passed as an ordinary resolution if it is agreed to by Members representing a simple majority of the total voting rights of Eligible Members.

9.9.2 A written resolution is passed as a special resolution if it is agreed to by Members representing not less than seventy five percent of the total voting rights of Eligible Members; and states that it is a special resolution.

9.9.3 A Members' resolution under the Act removing a Trustee or an auditor before the expiration of his or her term of office may not be passed by a written resolution.

9.9.4 A copy of the written resolution must be sent to every Eligible Member together with a statement informing them of the date by which the resolution must be passed if it is not to lapse, and how to indicate their agreement to the resolution.

9.9.5 A Member indicates his or her agreement to a written resolution when the Charity receives from the Member an authenticated document identifying the written resolution and indicating his or her agreement to it:

- (A) by the Member's signature if the document is in Hard Copy Form; or
- (B) by the Member's signature, or confirmation of the Member's identity in a manner specified by the Charity, accompanied by a statement

of the Member's identity which the Charity has no reason to doubt, if the document is in Electronic Form.

9.9.6 A written resolution lapses if the required number of agreements has not been obtained by twenty eight days beginning with the Circulation Date of the resolution.

and a written resolution signed by the duly authorised representative of a Member (being an organisation), shall be as valid as a written resolution signed by the Member.

#### 9.10 **[AGMs]**

9.10.1 Except at first, the Charity must hold an AGM in every year which all Members are entitled to attend. The first AGM must be held within eighteen months after the Charity's incorporation.

9.10.2 At an AGM the Members:

- (A) receive the accounts of the Charity for the previous financial year;
- (B) receive the Trustees' report on the Charity's activities since the previous AGM;
- (C) accept the retirement of those Trustees who wish to retire or who are retiring by rotation;
- (D) elect persons to be Trustees to fill vacancies arising;
- (E) appoint independent examiners or auditors for the Charity; and
- (F) discuss and determine any issues of policy or deal with any other business put before them by the Trustees.]

[a1]

#### 9.11 **[EGMs]**

Any general meeting which is not an AGM is an EGM.]

### 10 **THE TRUSTEES**

10.1 The Trustees as Charity Trustees have control of the Charity and its property and funds.

10.2 The first Trustees shall be the subscribers to the Memorandum.

10.3 Future Trustees shall be appointed as subsequently laid out in these Articles.

10.4 The Trustees when complete shall consist of at least three but (unless otherwise determined by ordinary resolution) shall not exceed nine comprising:

10.4.1 one nominee of the Residential Occupants;

10.4.2 one nominee of the Commercial Occupants;

10.4.3 **[one nominee of the Local Authority]**; and

10.4.4 up to six persons elected by the **[Trustees]/[Members]** ("the Elected Trustees")..

- 10.5 Every Trustee must sign a declaration of willingness to act as a Charity Trustee of the Charity before he or she is eligible to vote at any meeting of the Trustees.
- 10.6 One-third (or the number nearest one-third) of the Elected Trustees must retire at each **[AGM]/[First Trustee Meeting]** those longest in office retiring first and the choice between any of equal service being made by drawing lots. For the avoidance of doubt, the Nominated Trustees shall be exempt from retirement in this way.
- 10.7 The Nominated Trustees shall serve terms of office of up to three years. Nominated Trustees shall be eligible to serve a total of three consecutive terms of office but thereafter a Nominated Trustee shall not be eligible to serve as a Trustee until one year after his or her retirement.
- 10.8 A retiring Elected Trustee shall be eligible for re-election for consecutive periods not exceeding in aggregate nine years from the date of his or her original appointment but thereafter an Elected Trustee shall not be eligible for re-appointment until one year after his or her retirement. In this Article a 'year' means the period between one **[AGM]/[First Trustee Meeting]** and the next.
- 10.9 No person other than a Trustee retiring by rotation shall be appointed or re-appointed a Trustee at any [AGM]/[First Trustee Meeting] unless:
- 10.9.1 he or she is recommended by the Trustees; or
- 10.9.2 not less than fourteen nor more than thirty five Clear Days before the date appointed for the meeting notice executed by a member qualified to vote at the meeting has been given to the Charity of the intention to propose that person for appointment or re-appointment stating the particulars which would if he or she were so appointed or re-appointed be required to be included in the Charity's register of Trustees together with a notice executed by that person of his or her willingness to be appointed or re-appointed.
- 10.10 A Trustee's term of office automatically terminates if he or she:
- 10.10.1 is disqualified under the Charities Act from acting as a Charity Trustee;
- 10.10.2 is incapable, whether mentally or physically, of managing his or her own affairs;
- 10.10.3 is absent without permission of the Trustees from three consecutive meetings and is asked by a majority of the Trustees to resign;
- 10.10.4 resigns by written notice to the Trustees (but only if at least two Trustees will remain in office);
- 10.10.5 is removed by resolution passed by the Members present and voting at a general meeting after the meeting has invited the views of the Trustee concerned and considered the matter in the light of any such views; or
- 10.10.6 in the case of Trustees nominated in accordance with articles 10.4.1 – 10.4.3, the nominator gives written notice to the Charity

that they are removing their nominee. The nominator will thereafter be entitled to nominate another Trustee in their place.

- 10.11 The Trustees may at any time co-opt any person duly qualified to be appointed as a Trustee to fill a vacancy in their number or (subject to Article 10.4) as an additional Trustee, but a co-opted Trustee holds office only until the next **[AGM]/[First Trustee meeting]**.
- 10.12 A technical defect in the appointment of a Trustee of which the Trustees are unaware at the time does not invalidate decisions taken at a meeting.

## **11 PROCEEDINGS OF TRUSTEES**

- 11.1 The Trustees must hold at least three meetings each year.
- 11.2 A quorum at a meeting of the Trustees is three or fifty percent of the total number of Trustees whichever is the greater.
- 11.3 A meeting of the Trustees may be held either in person or by suitable Electronic Means agreed by the Trustees in which all participants may communicate with all the other participants simultaneously.
- 11.4 The Chairperson or (if the Chairperson is unable or unwilling to do so) some other Trustee chosen by the Trustees present presides at each meeting.
- 11.5 Every issue may be determined by a simple majority of the votes cast at a meeting but a resolution in writing agreed by all the Trustees (other than any Conflicted Trustee who has not been authorised to vote) is as valid as a resolution passed at a meeting. For this purpose the resolution may be contained in more than one document and will be treated as passed on the date of the last signature.
- 11.6 Except for the chairperson of the meeting, who has a second or casting vote, every Trustee has one vote on each issue.
- 11.7 A Trustee must declare the nature and extent of any interest, direct or indirect, which he or she has in a proposed transaction or arrangement with the Charity or in any transaction or arrangement entered into by the Charity which has not previously been declared; and a Trustee must comply with the requirements of Article 5.
- 11.8 A procedural defect of which the Trustees are unaware at the time does not invalidate decisions taken at a meeting.

## **12 POWERS OF TRUSTEES**

The Trustees have the following powers in the administration of the Charity:

- 12.1 to appoint (and remove) any Member (who may be a Trustee) to act as Secretary to the Charity;
- 12.2 to appoint a Chairperson, Treasurer and other honorary officers from among their number;
- 12.3 to delegate any of their functions to committees consisting of two or more individuals appointed by them (but at least one member of every committee must

be a Trustee and all proceedings of committees must be reported promptly to the Trustees);

- 12.4 to make standing orders consistent with these Articles and the Act to govern proceedings at general meetings;
- 12.5 to make rules consistent with these Articles and the Act to govern proceedings at their meetings and at meetings of committees;
- 12.6 to make regulations consistent with these Articles and the Act to govern the administration of the Charity and the use of its seal (if any);
- 12.7 to establish procedures to assist the resolution of disputes within the Charity; and
- 12.8 to exercise any powers of the Charity which are not reserved to the Members.
- 12.9 to change the name of the Charity.

### 13 **RECORDS & ACCOUNTS**

- 13.1 The Trustees must comply with the requirements of the Act and of the Charities Act as to keeping financial records, the audit of accounts and the preparation and transmission to the Registrar of Companies and the Commission of:

- 13.1.1 annual reports;

- 13.1.2 annual returns; and

- 13.1.3 annual statements of account.

- 13.2 The Trustees must keep records of:

- 13.2.1 all proceedings at general meetings;

- 13.2.2 all proceedings at meetings of the Trustees;

- 13.2.3 all reports of committees; and

- 13.2.4 all professional advice obtained.

- 13.3 Accounting records relating to the Charity must be made available for inspection by any Trustee at any reasonable time during normal office hours and may be made available for inspection by Members who are not Trustees if the Trustees so decide.

- 13.4 A copy of the Charity's latest available statement of account must be supplied on request to any Trustee or Member, or to any other person who makes a written request and pays the Charity's reasonable costs, within two months.

### 14 **MEANS OF COMMUNICATION TO BE USED**

(In this Article "**Document**" includes without limitation a notice, proxy form, guarantee certificate or other information, except where expressly excluded.)

- 14.1 Any Document to be given to or by any person pursuant to these Articles must be in writing and sent or supplied in Hard Copy Form or Electronic Form, or (in the case of communications by the Charity) by making it available on a website, to an

address for the time being notified for that purpose to the person giving the Document.

- 14.2 A Document may only be given in Electronic Form where the recipient has agreed (specifically or generally) that the document or information may be sent in that form, and this agreement has not been revoked.
- 14.3 A Document may only be given by being made available on a website if the recipient has agreed (specifically or generally) that the document or information may be sent in that form, or if the recipient is deemed to have agreed in accordance with the Act.
- 14.4 The Charity may deliver a Document to a Member:
  - 14.4.1 by delivering it by hand to the postal address recorded for the Member on the register;
  - 14.4.2 by sending it by post or other delivery service in an envelope (with postage or delivery paid) to the postal address recorded for the Member on the register;
  - 14.4.3 by fax (except a guarantee certificate) to a fax number notified by the Member in writing;
  - 14.4.4 by electronic mail (except a guarantee certificate) to an address notified by the Member in writing;
  - 14.4.5 by a website (except a guarantee certificate) the address of which shall be notified to the Member in writing; or
  - 14.4.6 by advertisement in at least two national newspapers.

This Article does not affect any provision in any relevant legislation or these Articles requiring notices or documents to be delivered in a particular way.

- 14.5 If a Document is delivered by hand, it is treated as being delivered at the time it is handed to or left for the Member.
- 14.6 If a Document is sent by post or other delivery service not referred to below, it is treated as being delivered:
  - 14.6.1 forty eight hours after it was posted, if first class post was used; or
  - 14.6.2 seventy two hours after it was posted or given to delivery agents, if first class post was not used;provided it can be proved conclusively that a Document was delivered by post or other delivery service by showing that the envelope containing the Document was:
  - 14.6.3 properly addressed; and
  - 14.6.4 put into the post system or given to delivery agents with postage or delivery paid.
- 14.7 If a Document (other than a guarantee certificate) is sent by fax, it is treated as being delivered at the time it was sent.

- 14.8 If a Document (other than a guarantee certificate) is sent by electronic mail, it is treated as being delivered at the time it was sent..
- 14.9 If a Document (other than a guarantee certificate) is sent by a website (in the case of communications by the Charity), it is treated as being delivered when the material was first made available on the website, or if later, when the recipient received (or is deemed to have received) notice of the fact that the material was available on the website.
- 14.10 If a Document is given by advertisement, it is treated as being delivered at midday on the day when the last advertisement appears in the newspapers.
- 14.11 A technical defect in the giving of notice of which the Trustees are unaware at the time does not invalidate decisions taken at a meeting.
- 14.12 A Member present in person, by duly authorised representative of an organisation or by proxy at any general meeting of the Charity shall be deemed to have received notice of the meeting, and where necessary of the purpose for which it was called.
- 14.13 A Member who does not register an address with the Charity or who registers only a postal address that is not within the United Kingdom shall not be entitled to receive any notice from the Charity.

## **15 EXCLUSION OF MODEL ARTICLES**

The model Articles if any for a company limited by guarantee are hereby expressly excluded.

## **16 INDEMNITY**

Subject to the provisions of the Act every Trustee or other officer of the Charity shall be indemnified out of the assets of the Charity against any liability incurred by him or her in that capacity in defending any proceedings whether civil or criminal in which judgment is given in his or her favour or in which he or she is acquitted or in connection with any application in which relief is granted to him or her by the court from liability for negligence default breach of duty or breach of trust in relation to the affairs of the Charity.

## **[17 AVOIDING INFLUENCED COMPANY STATUS**

- 17.1 Notwithstanding the number of Members from time to time, the maximum aggregate number of votes exercisable by Local Authority Associated Persons shall never exceed 19.9% of the total number of votes exercisable by Members in general meeting and the votes of the other Members having a right to vote at the meeting will be increased on a pro-rata basis.
- 17.2. No person who is a Local Authority Associated Person may be appointed as a Trustee if, once the appointment had taken effect, the number of Trustees who are Local Authority Associated Persons would represent 20% or more of the total number of Trustees. Upon any resolution put to the Trustees, the maximum aggregate number of votes exercisable by any Trustees who are Local Authority Associated Persons shall represent a maximum of 19.9% of the total number of votes cast by the Trustees on such a resolution and the votes of the other Trustees having a right to vote at the meeting will be increased on a pro-rata

basis.

- 17.3. No person who is a Local Authority Associated Person is eligible to be appointed to the office of Trustee unless his appointment to such office is authorised by the local authority to which he is associated.
- 17.4. If at the time of either his becoming a Member of the Charity or his first appointment to office as a Trustee any Member or Trustee was not a Local Authority Associated Person but later becomes so during his membership or tenure as a Trustee he shall be deemed to have immediately resigned his membership and/or resigned from his office as a Trustee as the case may be.
- 17.5. If at any time the number of Trustees or Members who are also Local Authority Associated Persons represent 20% or more of the total number of Trustees or Members (as the case may be) then a sufficient number of the Trustees or Members (as the case may be) who are Local Authority Associated Persons shall be deemed to have resigned as Trustees or Members (as the case may be) immediately before the occurrence of such an event to ensure that at all times the number of such Trustees or Members (as the case may be) is never equal to or greater than 20% of the total number of Trustees or Members (as the case may be). Trustees or Members (as the case may be) who are Local Authority Associated Persons shall be deemed to have resigned in order of their appointment date the most recently appointed resigning first.
- 17.6. The Members will each notify the Charity and each other if at any time they believe that the Charity or any of its subsidiaries has become subject to the influence of a local authority (as described in section 69 of the Local Government and Housing Act).]

## **18 DISSOLUTION**

- 18.1 If the Charity is dissolved the assets (if any) remaining after provision has been made for all its liabilities must be applied in one or more of the following ways as the Trustees may decide:
  - 18.1.1 by transfer to one or more other bodies established for exclusively charitable purposes within, the same as or similar to the Objects;
  - 18.1.2 directly for the Objects or for charitable purposes which are within or similar to the Objects; or
  - 18.1.3 in such other manner consistent with charitable status as the Commission approves in writing in advance.
- 18.2 A final report and statement of account must be sent to the Commission.
- 18.3 This Article may not be amended without the prior written consent of the Commission.

## **19 INTERPRETATION**

- 19.1 References to an Act of Parliament are references to that Act as amended or re-enacted from time to time and to any subordinate legislation made under it.
- 19.2 Throughout these Articles of Association, "charitable" means charitable in accordance with the law of England and Wales, provided that it will not include any purpose which is not charitable in accordance with section 7 of the Charities

and Trustee Investment (Scotland) Act 2005. For the avoidance of doubt, the system of law governing the Articles of Association of the Charity is the law of England and Wales.

19.3 In these Articles:

**"Act"** means the Companies Acts as defined in section 2 of the Companies Act 2006, in so far as they apply to the Charity;

**"Address"** includes a number or address used for the purposes of sending or receiving documents by Electronic Means;

[**"AGM"** means an annual general meeting of the Charity;]

**"these Articles"** means these articles of association;

**"Chairperson"** means the person elected under Article 12.2 to chair Trustees' meetings and other meetings as laid out in these Articles;

**"Charities Act"** means the Charities Acts 1992 to 2006, including any statutory modifications or re-enactment thereof for the time being in force, and any provisions of the Charities Act 2006 for the time being in force;

**"Charity"** means the company governed by these Articles;

**"Charity Trustee"** has the meaning prescribed by section 97(1) of the Charities Act 1993;

**"Circulation Date"** has the meaning prescribed by section 290 of the Companies Act 2006;

**"Clear Day"** means 24 hours from midnight following the relevant event;

**"Commercial Occupants"** means those persons occupying the Estate for commercial purposes under a lease or sub-lease;

**"the Commission"** means the Charity Commission for England and Wales or any body which replaces it;

**"Conflicted Trustee"** means a Trustee in respect of whom a conflict of interest arises or may reasonably arise because the Conflicted Trustee or a Connected Person stands to receive a benefit from the Charity, or has some separate interest or duty in a matter to be decided, or in relation to information which is confidential to the Charity;

**"Connected Person"** means, in relation to a Trustee, a person with whom the Trustee shares a common interest such that he/she may reasonably be regarded as benefiting directly or indirectly from any material benefit received by that person, being either a member of the Trustee's family or household or a person, or body who is a business associate of the Trustee, and (for the avoidance of doubt) does not include a company with which the Trustee's only connection is an interest consisting of no more than one per cent of the voting rights;

[**"EGM"** means an extraordinary general meeting of the Charity;]

**"Electronic Form"** and **"Electronic Means"** have the meanings respectively prescribed to them in the Companies Act 2006;

**"Eligible Member"** has the meaning prescribed by the Companies Act 2006;

**"Estate"** means the Rochester Riverside development;

**"executed"** includes any mode of execution;

**"Financial Expert"** means an individual, company or firm who is authorised to give investment advice under the Financial Services and Markets Act 2000;

**"firm"** includes Limited Liability Partnership;

[**"First Trustee Meeting"** means the first Trustee meeting to be held in each financial year of the Charity;]

**"Hard Copy Form"** has the meaning prescribed by the Companies Act 2006;

**"Local Authority"** means Medway Council or any successor authority responsible for the area in and around the Estate;

**"Local Authority Associated Persons"** means any person associated with any local authority within the meaning given in section 69 of the Local Government and Housing Act 1989;

**"Member"** and **"Membership"** refer to company membership of the Charity;

**"Memorandum"** means the Charity's memorandum of association;

**"month"** means calendar month;

**"Nominated Trustee"** means the Trustees nominated by the Residential Occupants, the Commercial Occupants and the Local Authority;

**"Objects"** means the Objects of the Charity as defined in Article 3;

**"Residential Occupants"** means those persons occupying the Estate for residential purposes under a lease or sub-lease;

**"Secretary"** means the Secretary of the Charity;

**"Taxable Trading"** means carrying on a trade or business on a continuing basis for the principal purpose of raising funds and not for the purpose of actually carrying out the Objects and the profits of which are liable to tax;

**"Trustee"** means a director of the Charity and **"Trustees"** means the directors;

**"written"** or **"in 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, without limitation by, Hard Copy, Electronic Means or otherwise; and

**"year"** means calendar year.

19.4 Expressions not otherwise defined which are defined in the Act have the same meaning.

19.5 References to an Act of Parliament are to that Act as amended or re-enacted from time to time and to any subordinate legislation made under it.





**DRAFT**

**The Companies Act 2006**

**Community Interest Company Limited by Guarantee**

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**Articles of Association**

**of**

**[Rochester Riverside Community Interest Company]**

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## The Companies Act 2006

### Community Interest Company Limited by Guarantee

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**The Companies Act 2006**

**Articles of Association**

**of**

**[Rochester Riverside Community Interest Company]**

**INTERPRETATION**

**1. Defined Terms**

- 1.1 The interpretation of these Articles is governed by the provisions set out in the Schedule at the end of the Articles.

**COMMUNITY INTEREST COMPANY AND ASSET LOCK**

**2. Community Interest Company**

- 2.1 The Company is to be a community interest company.

**3. Asset Lock**

- 3.1 The Company shall not transfer any of its assets other than for full consideration.

- 3.2 Provided the conditions in Article 3.3 are satisfied, Article 3.1 shall not apply to:

- (a) the transfer of assets to any specified asset-locked body, or (with the consent of the Regulator) to any other asset-locked body; and
- (b) the transfer of assets made for the benefit of the community other than by way of a transfer of assets into an asset-locked body.

- 3.3 The conditions are that the transfer of assets must comply with any restrictions on the transfer of assets for less than full consideration which may be set out elsewhere in the memorandum and Articles of the Company.

- 3.4 If:

3.4.1 the Company is wound up under the Insolvency Act 1986; and

3.4.2 all its liabilities have been satisfied

any residual assets shall be given or transferred to the asset-locked body specified in Article 3.5 below.

- 3.5 For the purposes of this Article 3, the following asset-locked body is specified as a potential recipient of the Company's assets under Articles 3.2 and 3.4:

3.5.1 Name: Rochester Riverside Trust

3.5.2 Company Registration Number [ ]

3.5.3 Registered Office: [ ]

#### **4. Not for profit**

- 4.1 The Company is not established or conducted for private gain: any profits or assets are used principally for the benefit of the community.

### **OBJECTS, POWERS AND LIMITATION OF LIABILITY**

#### **5. Objects**

The objects of the Company are to carry on activities which benefit the community and in particular (without limitation):

- 5.1 maintenance and renewal of non-adopted roads, pavements and paths including river wall and associated street furniture;
- 5.2 maintenance and renewal of play areas and associated equipment;
- 5.3 maintenance and renewal of ecological areas, open space and landscaping;
- 5.4 maintenance and renewal of public art;
- 5.5 provision of a travel plan co-ordinator;
- 5.6 maintenance and renewal of any areas of public parking for cars or coaches;
- 5.7 such other services for the benefit of the community of Medway as the Directors see fit.

#### **6. Powers**

- 6.1 To further its objects the Company may do all such lawful things as may further the Company's objects and, in particular, but, without limitation, may borrow or raise and secure the payment of money for any purpose including for the purposes of investment or of raising funds.

#### **7. Liability of the member**

The liability of the member is limited to £1, being the amount that the member undertakes to contribute to the assets of the Company in the event of its being wound up while it is a member or within one year after it ceases to be a member, for:

- 7.1 payment of the Company's debts and liabilities contracted before he or she ceases to be a member;
- 7.2 payment of the costs, charges and expenses of winding up; and
- 7.3 adjustment of the rights of the contributories among themselves.

## **DIRECTORS**

### **DIRECTORS' POWERS AND RESPONSIBILITIES**

#### **8. Directors' general authority**

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.

#### **9. Member's reserve power**

- 9.1 The member may, by special resolution, direct the Directors to take, or refrain from taking, specific action.
- 9.2 No such special resolution invalidates anything which the Directors have done before the passing of the resolution.

#### **10. Chair**

The Directors may appoint one of their number to be the chair of the Directors for such term of office as they determine and may at any time remove him or her from office.

#### **11. Directors may delegate**

- 11.1 Subject to the Articles, the Directors may delegate any of the powers which are conferred on them under the Articles or the implementation of their decisions or day to day management of the affairs of the Company:
  - 11.1.1 to such person or committee;
  - 11.1.2 by such means (including by power of attorney);
  - 11.1.3 to such an extent;
  - 11.1.4 in relation to such matters or territories; and
  - 11.1.5 on such terms and conditions;as they think fit.
- 11.2 If the Directors so specify, any such delegation of this power may authorise further delegation of the Directors' powers by any person to whom they are delegated.
- 11.3 The Directors may revoke any delegation in whole or part, or alter its terms and conditions.

### **DECISION-MAKING BY DIRECTORS**

#### **12. Directors to take decisions collectively**

Any decision of the Directors must be either a majority decision at a meeting or a decision taken in accordance with Article 18.

#### **13. Calling a Directors' meeting**

- 13.1 Two Directors may (and the Secretary, if any, must at the request of two Directors) call a Directors' meeting.
- 13.2 A Directors' meeting must be called by at least seven Clear Days' notice unless either:
  - 13.2.1 all the Directors agree; or
  - 13.2.2 urgent circumstances require shorter notice.
- 13.3 Notice of Directors' meetings must be given to each Director.
- 13.4 Every notice calling a Directors' meeting must specify:
  - 13.4.1 the place, day and time of the meeting; and
  - 13.4.2 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.
- 13.5 Notice of Directors' meetings need not be in Writing.
- 13.6 Notice of Directors' meetings may be sent by Electronic Means to an Address provided by the Director for the purpose.

#### **14. Participation in Directors' meetings**

- 14.1 Subject to the Articles, Directors participate in a Directors' meeting, or part of a Directors' meeting, when:
  - 14.1.1 the meeting has been called and takes place in accordance with the Articles; and
  - 14.1.2 they can each communicate to the others any information or opinions they have on any particular item of the business of the meeting.
- 14.2 In determining whether Directors are participating in a Directors' meeting, it is irrelevant where any Director is or how they communicate with each other.
- 14.3 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.

#### **15. Quorum for Directors' meetings**

- 15.1 At a Directors' meeting, unless a quorum is participating, no proposal is to be voted on, except a proposal to call another meeting.
- 15.2 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 **[three or one-half of the total number of Directors, whichever is the greater]**.
- 15.3 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:
  - 15.3.1 to appoint further Directors; or

15.3.2 to call a general meeting so as to enable the member to appoint further Directors.

## **16. Chairing of Directors' meetings**

The Chair, if any, or in his or her absence another Director nominated by the Directors present shall preside as chair of each Directors' meeting.

## **17. Decision-making at meetings**

17.1 Questions arising at a Directors' meeting shall be decided by a majority of votes.

17.2 In all proceedings of Directors each Director must not have more than one vote.

## **18. Decisions without a meeting**

18.1 The Directors may take a unanimous decision without a Directors' meeting in accordance with this Article by indicating to each other by any means, including without limitation by Electronic Means, that they share a common view on a matter. Such a decision may, but need not, take the form of a resolution in Writing, copies of which have been signed by each Director or to which each Director has otherwise indicated agreement in Writing.

18.2 A decision which is made in accordance with Article 18.1 shall be as valid and effectual as if it had been passed at a meeting duly convened and held, provided the following conditions are complied with:

18.2.1 approval from each Director must be received by one person being either such person as all the Directors have nominated in advance for that purpose or such other person as volunteers if necessary ("the Recipient"), which person may, for the avoidance of doubt, be one of the Directors;

18.2.2 following receipt of responses from all of the Directors, the Recipient must communicate to all of the Directors by any means whether the resolution has been formally approved by the Directors in accordance with this Article 18.2;

18.2.3 the date of the decision shall be the date of the communication from the Recipient confirming formal approval;

18.2.4 the Recipient must prepare a minute of the decision in accordance with Article 31.

## **19. Conflicts of interest**

19.1 Whenever a Director finds himself or herself in a situation that is reasonably likely to give rise to a Conflict of Interest, he or she must declare his or her interest to the Directors unless, or except to the extent that, the other Directors are or ought reasonably to be aware of it already.

19.2 If any question arises as to whether a Director has a Conflict of Interest, the question shall be decided by a majority decision of the other Directors.

- 19.3 Whenever a matter is to be discussed at a meeting or decided in accordance with Article 18 and a Director has a Conflict of Interest in respect of that matter then, subject to Article 20, he or she must:
- 19.3.1 remain only for such part of the meeting as in the view of the other Directors is necessary to inform the debate;
  - 19.3.2 not be counted in the quorum for that part of the meeting; and
  - 19.3.3 withdraw during the vote and have no vote on the matter.
- 19.4 When a Director has a Conflict of Interest which he or she has declared to the Directors, he or she shall not be in breach of his or her duties to the Company by withholding confidential information from the Company if to disclose it would result in a breach of any other duty or obligation of confidence owed by him or her.

## **20. Directors' power to authorise a conflict of interest**

- 20.1 The Directors have power to authorise a Director to be in a position of Conflict of Interest provided:
- 20.1.1 in relation to the decision to authorise a Conflict of Interest, the conflicted Director must comply with Article 19.3;
  - 20.1.2 in authorising a Conflict of Interest, the Directors can decide the manner in which the Conflict of Interest may be dealt with and, for the avoidance of doubt, they can decide that the Director with a Conflict of Interest can participate in a vote on the matter and can be counted in the quorum;
  - 20.1.3 the decision to authorise a Conflict of Interest can impose such terms as the Directors think fit and is subject always to their right to vary or terminate the authorisation.
- 20.2 If a matter, or office, employment or position, has been authorised by the Directors in accordance with Article 20.1 then, even if he or she has been authorised to remain at the meeting by the other Directors, the Director may absent himself or herself from meetings of the Directors at which anything relating to that matter, or that office, employment or position, will or may be discussed.
- 20.3 A Director shall not be accountable to the Company for any benefit which he or she derives from any matter, or from any office, employment or position, which has been authorised by the Directors in accordance with Article 20.1 (subject to any limits or conditions to which such approval was subject).

## **21. Register of Directors' interests**

The Directors shall cause a register of Directors' interests to be kept. A Director must declare the nature and extent of any interest, direct or indirect, which he or she has in a proposed transaction or arrangement with the Company or in any transaction or arrangement entered into by the Company which has not previously been declared.

## **APPOINTMENT AND RETIREMENT OF DIRECTORS**

### **22. Methods of appointing Directors**

- 22.1 Those persons notified to the Registrar of Companies as the first Directors of the Company shall be the first Directors.
- 22.2 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 by a decision of the **[Directors][Member].[DN: Consider here appointment provisions for Medway]**.

### **23. Termination of Director's appointment**

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, or an order is made against that person in individual insolvency proceedings in a jurisdiction other than England and Wales or Northern Ireland which have an effect similar to that of bankruptcy;
- (c) a composition is made with that person's creditors generally in satisfaction of that person's debts;
- (d) the Directors reasonably believe he or she is suffering from mental disorder and incapable of acting and they resolve that he or she be removed from office;
- (e) 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 (but only if at least two Directors will remain in office when such resignation has taken effect); or
- (f) the Director fails to attend three consecutive meetings of the Directors and the Directors resolve that the Director be removed for this reason.

### **24. Directors' remuneration**

- 24.1 The property and funds of the Company must be used only for promoting the objects and do not belong to the Member but:
- 24.1.1 The Member may be employed by or enter into contracts with the Company and receive reasonable payment for goods or services supplied;
  - 24.1.2 Members, Directors and Connected Persons may be paid interest at a reasonable rate on money lent to the Company;
  - 24.1.3 Members, Directors and Connected Persons may be paid a reasonable rent or hiring fee for property let or hired to the Company; and
  - 24.1.4 Individual Members, Directors and Connected Persons who are beneficiaries may receive charitable benefits in that capacity.
- 24.2 A Director must not receive any payment of money or other material benefit (whether directly or indirectly) from the Company except:
- 24.2.1 as mentioned in Articles 24.1.2 to 24.1.4 and 24.3;

- 24.2.2 reimbursement of reasonable out-of-pocket expenses (including hotel and travel costs) actually incurred in running the Company;
  - 24.2.3 an indemnity in respect of any liabilities properly incurred in running the Company (including the costs of a successful defence to criminal proceedings);
  - 24.2.4 payment to any company in which a Director or a Connected Person has no more than a one per cent shareholding; or
  - 24.2.5 in exceptional cases, other payments or benefits (but only with the approval or affirmation of the Member).
- 24.3 No Director or Connected Person may be employed by the Company, but any Director or Connected Person may enter into a written contract with the Company (stating the maximum to be paid), to supply goods or services in return for a payment or other material benefit but only if:
- 24.3.1 the goods or services are actually required by the Company, and the Directors decide that it is in the best interests of the Company to enter into such a contract;
  - 24.3.2 the nature and level of the remuneration is no more than is reasonable in relation to the value of the goods or services; and
  - 24.3.3 no more than one third of the Directors are subject to such a contract at any time.

## **MEMBERSHIP**

### **BECOMING AND CEASING TO BE A MEMBER**

#### **25. Becoming a member**

- 25.1 **[Rochester Riverside Trust shall from be the only member of the Company]. [DN: Medway may choose to become a member]**

#### **26. Termination of membership**

- 26.1 Membership is not transferable to anyone else.
- 26.2 Membership is terminated if the member ceases to exist.

### **DECISION MAKING BY THE MEMBER**

#### **27. Member's meetings**

- 27.1 The Directors may call a general meeting at any time.
- 27.2 General meetings must be held in accordance with the provisions regarding such meetings in the Companies Acts.
- 27.3 A person who is not a member of the Company shall not have any right to vote at a general meeting of the Company; but this is without prejudice to any right to vote on a resolution affecting the rights attached to a class of the Company's debentures.

- 27.4 Article 27.3 shall not prevent a person who is a proxy for a member or a duly authorised representative of a member from voting at a general meeting of the Company.

## **28. Written resolutions**

- 28.1 Subject to Article 28.3, a written resolution of the Company passed in accordance with this Article 28 shall have effect as if passed by the Company in general meeting:
- 28.1.1 A written resolution is passed as an ordinary resolution if it is passed by a simple majority of the total voting rights of eligible members provided that where Rochester Riverside Trust is the sole member they may pass such resolution solely.
- 28.1.2 A written resolution is passed as a special resolution if it is passed by members representing not less than 75% of the total voting rights of eligible members. A written resolution is not a special resolution unless it states that it was proposed as a special resolution provided that where Rochester Riverside Trust is the sole member they may pass such resolution solely.
- 28.2 In relation to a resolution proposed as a written resolution of the Company the eligible members are the members who would have been entitled to vote on the resolution on the circulation date of the resolution.
- 28.3 A member's resolution under the Companies Acts removing a Director or an auditor before the expiration of his or her term of office may not be passed as a written resolution.
- 28.4 A copy of the written resolution must be sent to the member together with a statement informing the member how to signify their agreement to the resolution and the date by which the resolution must be passed if it is not to lapse. Communications in relation to written notices shall be sent to the Company's auditors in accordance with the Companies Acts.
- 28.5 The member signifies their agreement to a proposed written resolution when the Company receives from them an authenticated Document identifying the resolution to which it relates and indicating their agreement to the resolution.
- 28.5.1 If the Document is sent to the Company in Hard Copy Form, it is authenticated if it bears the member's signature.
- 28.5.2 If the Document is sent to the Company by Electronic Means, it is authenticated if it bears the member's signature or if the identity of the member is confirmed in a manner agreed by the Directors or if it is accompanied by a statement of the identity of the member and the Company has no reason to doubt the truth of that statement or if it is from an email Address notified by the member to the Company for the purposes of receiving Documents or information by Electronic Means.
- 28.6 A written resolution is passed when the Member has signified their agreement to it.
- 28.7 A proposed written resolution lapses if it is not passed within 28 days beginning with the circulation date.

## **ADMINISTRATIVE ARRANGEMENTS AND MISCELLANEOUS**

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

- 29.1 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.
- 29.2 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.
- 29.3 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 an agreed time of their being sent, and for the agreed time to be less than 48 hours.

### **30. Irregularities**

The proceedings at any meeting or on the taking of any poll or the passing of a written resolution or the making of any decision shall not be invalidated by reason of any accidental informality or irregularity (including any accidental omission to give or any non-receipt of notice) or any want of qualification in any of the persons present or voting or by reason of any business being considered which is not referred to in the notice unless a provision of the Companies Acts specifies that such informality, irregularity or want of qualification shall invalidate it.

### **31. Minutes**

- 31.1 The Directors must cause minutes to be made in books kept for the purpose:
  - 31.1.1 of all appointments of officers made by the Directors;
  - 31.1.2 of all resolutions of the Company and of the Directors (including, without limitation, decisions of the Directors made without a meeting); and
  - 31.1.3 of all proceedings at meetings of the Company and of the Directors, and of committees of Directors, including the names of the Directors present at each such meeting;and any such minute, if purported to be signed (or in the case of minutes of Directors' meetings signed or authenticated) by the chair of the meeting at which the proceedings were had, or by the chair of the next succeeding meeting, shall, as against any member or Director of the Company, be sufficient evidence of the proceedings.
- 31.2 The minutes must be kept for at least ten years from the date of the meeting, resolution or decision.

### **32. Records and accounts**

The Directors shall comply with the requirements of the Companies Acts as to maintaining a members' register, keeping financial records, the audit or examination of accounts and the preparation and transmission to the Registrar of Companies and the Regulator of:

- 32.1 annual reports;
- 32.2 annual returns; and
- 32.3 annual statements of account.
- 32.4 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 member.

### **33. Indemnity**

- 33.1 Subject to Article 33.2, 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); and
  - (c) any other liability incurred by that Director as an officer of the Company or an associated company.
- 33.2 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.
- 33.3 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.

### **34. Insurance**

- 34.1 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.
- 34.2 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.

**35. Exclusion of model articles**

The relevant model articles for a company limited by guarantee are hereby expressly excluded.

## SCHEDULE

### INTERPRETATION

#### Defined terms

1. In the Articles, unless the context requires otherwise, the following terms shall have the following meanings:

Term	Meaning
1.1 "Address"	includes a number or address used for the purposes of sending or receiving Documents by Electronic Means;
1.2 "Articles"	the Company's articles of association;
1.3 "asset-locked body"	means (i) a community interest company, a charity or a Permitted Industrial and Provident Society; or (ii) a body established outside the United Kingdom that is equivalent to any of those;
1.4 "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;
1.5 "Chair"	has the meaning given in Article 10;
1.6 "Circulation Date"	in relation to a written resolution, has the meaning given to it in the Companies Acts;
1.7 "Clear Days"	in relation to the period of a notice, that period excluding the day when the notice is given or deemed to be given and the day for which it is given or on which it is to take effect;
1.8 "community"	is to be construed in accordance with accordance with Section 35(5) of the Company's (Audit) Investigations and Community Enterprise) Act 2004;
1.9 "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;
1.10 "Company"	Rochester Riverside Community Interest Company;
1.11 "Conflict of Interest"	any direct or indirect interest of a Director (whether personal, by virtue of a duty of loyalty to another organisation or otherwise) that conflicts, or might conflict with the interests of the Company;
1.12 "Connected Person"	means, in relation to a Director, a person with whom the Director shares a common interest

			such that he/she may reasonably be regarded as benefiting directly or indirectly from any material benefit received by that person, being either a member of the Director's family or household or a person, or body who is a business associate of the Director, and (for the avoidance of doubt) does not include a company with which the Director's only connection is an interest consisting of no more than one per cent of the voting rights
1.13	"Director"		a director of the Company, and includes any person occupying the position of director, by whatever name called;
1.14	"Document"		includes, unless otherwise indicated, any document sent or supplied in Electronic Form;
1.15	"Electronic Form" "Electronic Means"	and	have the meanings respectively given to them in Section 1168 of the Companies Act 2006;
1.16	"Hard Copy Form"		has the meaning given to it in the Companies Act 2006;
1.17	"Memorandum"		the Company's memorandum of association;
1.18	"participate"		in relation to a Directors' meeting, has the meaning given in Article 14;
1.19	"Permitted Industrial Provident Society"	and	an industrial and provident society which has a restriction on the use of its assets in accordance with Regulation 4 of the Community Benefit Societies (Restriction on Use of Assets) Regulations 2006 or Regulation 4 of the Community Benefit Societies (Restriction on Use of Assets) Regulations (Northern Ireland) 2006;
1.20	"the Regulator"		means the Regulator of Community Interest Companies;
1.21	"Rochester Riverside Trust"		means the charitable company known as Rochester Riverside Trust (registered company number [                    ]);
1.22	"Secretary"		the secretary of the Company (if any);
1.23	"specified"		means specified in the memorandum or articles of association of the Company for the purposes of this paragraph;
1.24	"subsidiary"		has the meaning given in section 1159 of the Companies Act 2006;
1.25	"transfer"		includes every description of disposition, payment, release or distribution, and the creation or extinction of an estate or interest in, or right over, any property; and
1.26	"Writing"		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.

2. Subject to clause 3 of this Schedule, any reference in the Articles to an enactment includes a reference to that enactment as re-enacted or amended from time to time and to any subordinate legislation made under it.
3. Unless the context otherwise requires, other words or expressions contained in these Articles bear the same meaning as in the Companies Acts as in force on the date when these Articles become binding on the Company.



## APPENDIX 4

### ROCHESTER RIVERSIDE RECOMMENDATIONS FROM SWOT ANALYSIS

We would recommend the following: -

#### **1. Rochester Riverside Trust**

We consider that the Council representation on the Board of the Rochester Riverside Trust should be a minority interest of between 1% - 19.9%. This level of representation ensures that the RRT would not be viewed as being a regulated company and would comply with the Charity Commission's preference with regard to the levels of local authority involvement on the boards of charities. This level of representation ensures that the Council is involved going forward, but is, equally, less likely to face pressure to intervene in the event of financial difficulties on the Board of the RRT.

#### **2. Community Interest Company**

Our recommendation is that the Community Interest Company should have minority representation from the Council on the Board, again between 1% - 19.9%. This has similar benefits as identified for the RRT. However, there is potentially greater flexibility with regard to the role of the Council in the operation of the CIC and, if it were felt appropriate for the CIC to have greater involvement by the Council during the initial phases of the construction project, then it would be possible to have a board of between 20% - 49.9%. This would provide greater control, but it must be appreciated that such greater control would lead to greater moral pressure being exerted upon the Local Authority in the event of problems arising, whether financial or operational.

**Stone King Sewell/Nabarro**  
**February 2010**

## ROCHESTER RIVERSIDE

### SWOT Analysis of differing levels of Medway involvement: RRT

Level of Medway Council representation on RRT	Strengths	Weaknesses	Opportunities	Threats
50%+ (controlled company)	<ul style="list-style-type: none"> <li>• Control of composition of board of the Trust. It is important to note that this does not equate with control of the Trust itself, since those trustees, once appointed, owe duties to act in the best interests of the Trust (under both company law and charity law), to the exclusion of the interests of their appointer</li> <li>• Council has the ability to appoint the majority of the trustees and can therefore take comfort that the Trust has appropriate people on its board to ensure the protection and sensible investment of the Dowry</li> <li>• Landlords and occupiers may take</li> </ul>	<ul style="list-style-type: none"> <li>• The company would be a controlled company and therefore a regulated company for the purposes of Local Government and Housing Act 1989 (“LACO”). While the practical reporting and accounting consequences of this are limited, it does bring the following issues:</li> <li>• Group accounting: the Council is likely to be required to account for the company as a subsidiary under the group accounting rules</li> <li>• Charity Commission’s views. The Charity Commission is generally sceptical of local authorities being in a controlling position on the boards of charities</li> <li>• Moral expectation that Council may support</li> </ul>	<ul style="list-style-type: none"> <li>• Ability to appoint trusted people to board to ensure success of the Trust</li> <li>• Degree of Council involvement and influence over investment decisions</li> </ul>	<ul style="list-style-type: none"> <li>• Risk that appointees may not always make decisions in accordance with wishes of Council</li> <li>• Less “buy-in” from the local community if seen to be a part of the Council?</li> <li>• Charity Commission registration and ongoing regulation likely to be more difficult</li> <li>• Decision making may be confused between interests of Trust and Medway</li> <li>• Conflicts of interest will need to be managed and may lead to limited role for Council appointees in decision making</li> </ul>

	<p>comfort from the Council's control of the Trust (and thus oversight with regard to management of the facilities)</p>	<p>Trust financially in the future in the event of problems (this moral duty is highlighted by the high degree of Council involvement in the Trust)</p> <ul style="list-style-type: none"> <li>• Confusion of role of company – is it established for the benefit of the public/community or is it simply part of the Council?</li> <li>• Local community may feel disenfranchised in the event of a minority role only in the governance and operation of the Trust</li> <li>• No clean exit of the Council from the project</li> <li>• If trustees are appointed by the Council who are also members etc of the Council, then conflicts of interest and duty will need to be borne in mind, while additionally that trustee will have duties of confidentiality towards the Trust which will mean that issues discussed at board level cannot (without consent) be relayed to the Council. This may impede open discussion</li> </ul>		
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		and debate		
20-49.9% (influenced company)	<ul style="list-style-type: none"> <li>• A high level of involvement in the entity (but stopping short of outright control). This allows the Council to select as trustees those that it would trust to have more detailed oversight with regard to the management and administration of the Trust and its dowry</li> <li>• Less pressure or “moral obligation” to assist the Trust in the event of future financial difficulties</li> <li>• Still a high degree of Council “visibility” in the management of the Trust, thereby giving occupiers and other stakeholders comfort</li> </ul>	<ul style="list-style-type: none"> <li>• If there is additionally a business relationship with the Council, the company will be a company influenced by the Council for the purposes of LACO and therefore a regulated company. This has the following consequences: <ul style="list-style-type: none"> <li>• Group accounting: the Council is likely to be required to account for the company as a subsidiary under the group accounting rules</li> <li>• The Charity Commission is still likely to express some concern with the level of local authority involvement in the Trust, although these concerns are likely to be less severe given the lack of a controlling interest</li> <li>• The Council would still be likely to face financial pressures to intervene to assist the Trust in times of financial difficulty,</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Ability through the appointment of a significant proportion of the trustees, to influence the direction of the Trust</li> <li>• Ability to distance activities of Trust from Council</li> </ul>	<ul style="list-style-type: none"> <li>• Council appointees will be in the minority on the board</li> <li>• Risk that appointees may not always make decisions in accordance with wishes of Council</li> <li>• Less “buy-in” from the local community if seen to be a part of the Council?</li> <li>• Charity Commission registration and ongoing regulation likely to be more difficult</li> <li>• Decision making may be confused between interests of Trust and Medway</li> <li>• Conflicts of interest will need to be managed and may lead to limited role for Council appointees in decision making</li> </ul>

		<p>although this pressure would be not as great as in the case of a controlled company</p> <ul style="list-style-type: none"> <li>• The position with regard to conflicts of interest and duties of confidentiality outlined above will still apply here</li> </ul>		
1- 19.9% (minority)	<ul style="list-style-type: none"> <li>• A minority interest company for the purposes of LACO (and therefore not a regulated company) thereby ensuring that the Council is not required to comply with the various reporting etc obligations required by LACO (but, as indicated previously, the LACO provisions are not particularly demanding)</li> <li>• The Council would not be required to account for the company as a subsidiary under the group accounting rules</li> <li>• The Charity Commission is generally comfortable with local authority representation under 20%. Further, it is</li> </ul>	<ul style="list-style-type: none"> <li>• Lower degree of control exercisable by the Council – this may put the Dowry at risk, and increase the risk of inappropriate management decisions being taken without the Council being able to influence those decisions. To an extent, these risks can be addressed through restrictions within the terms of the Grant Agreement for the payment of the Dowry while the oversight of the Charity Commission will lessen the risks</li> <li>• Still a risk of the Council being placed under a moral obligation to intervene within the Trust in the event of difficulties, but arguably this risk is lower than would</li> </ul>	<ul style="list-style-type: none"> <li>• Low level of responsibility for Council for the activities of the company</li> <li>• Likely to be more acceptable to Charity Commission and to the local community – might encourage involvement in the Trust from the local community</li> </ul>	<ul style="list-style-type: none"> <li>• Council will have limited role in the company and its ability to influence decisions taken etc is limited.</li> </ul>

	<p>generally accepted as being appropriate within charities generally for local authorities to have this level of representation</p> <ul style="list-style-type: none"> <li>• Ensures a degree of involvement of the Council in the operation of the Trust, but the minority level of the interest lessens the perceived moral requirement for the Council to intervene in the event of financial difficulties</li> <li>• Ensures a greater degree of community involvement</li> </ul>	<p>otherwise be the case where a greater degree of representation</p> <ul style="list-style-type: none"> <li>• Conflict of interest and confidentiality concerns still apply</li> </ul>		
None	<ul style="list-style-type: none"> <li>• Complete legal exit from the management of the area</li> <li>• Avoids any concerns with regard to conflicts of interest and duties of confidentiality</li> <li>• Almost removes any moral obligation to intervene in the event of financial difficulties. However, it should be borne in mind that, in the event that the Dowry is held to be</li> </ul>	<ul style="list-style-type: none"> <li>• Lack of control with regard to the governance of the Trust and the investment of the dowry etc (although the terms of the Grant Agreement will provide some comfort here)</li> <li>• Possible criticism of the Council in the event of problems for adopting a position which does not follow "normal" practice (typically, one might expect a local authority to</li> </ul>	<ul style="list-style-type: none"> <li>• Trust will have complete freedom from local authority involvement – might encourage a sense of greater financial responsibility and accountability by the trustees</li> <li>• No financial responsibility for</li> </ul>	<ul style="list-style-type: none"> <li>• No involvement at all in the composition of the board of trustees, thereby placing responsibility for ensuring effective governance in the trustees/local community – might increase the risk of improper management of the Trust</li> </ul>

	<p>insufficient, or the level of service charge is not enough to meet ongoing maintenance obligations, then the Council may well still face some pressure to intervene</p> <ul style="list-style-type: none"> <li>• No concerns with regard to application of LACO – or, indeed, of any future legislation which may place controls upon all local authority companies</li> <li>• Complete community “ownership” of the Trust</li> <li>• No problems with the Charity Commission and no risk of the Council’s role becoming confused in the future</li> </ul>	<p>retain at least some involvement)</p> <ul style="list-style-type: none"> <li>• Significant site where the Council will have no control, but where its tax payers will be resident and may well seek to hold the Council accountable. Might be difficult to achieve complete moral separation</li> </ul>	<p>the Council for the activities of the Trust</p>	
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## ROCHESTER RIVERSIDE

### SWOT Analysis of differing levels of Medway involvement: CIC

Level of Medway Council representation on CIC	Strengths	Weaknesses	Opportunities	Threats
50%+ (controlled company)	<ul style="list-style-type: none"> <li>• Control of composition of board of the CIC. It is important to note that this does not equate with control of the CIC itself, since those directors, once appointed, owe duties to act in the best interests of the CIC (under company law), to the exclusion of the interests of their appointer</li> <li>• Council has the ability to appoint the majority of the directors and can therefore take comfort that the CIC has appropriate people on its board to manage the development</li> <li>• Landlords and occupiers may take comfort from the Council's control of the CIC (and thus oversight</li> </ul>	<ul style="list-style-type: none"> <li>• The company would be a controlled company and therefore a regulated company for the purposes of Local Government and Housing Act 1989 ("LACO"). While the practical reporting and accounting consequences of this are limited, it does bring the following issues:</li> <li>• Group accounting: the Council is likely to be required to account for the company as a subsidiary under the group accounting rules</li> <li>• Moral expectation that Council may support CIC financially in the future in the event of problems (this moral duty is highlighted by the high degree of Council involvement in the CIC)</li> <li>• Confusion of role of</li> </ul>	<ul style="list-style-type: none"> <li>• Ability to appoint trusted people to board to ensure success of the CIC</li> <li>• Degree of Council involvement and influence over management decisions</li> <li>• Ensures that the composition of the board of the CIC is not simply decided by the RRT and therefore provides the opportunity to distinguish the operation of the RRT from the CIC</li> </ul>	<ul style="list-style-type: none"> <li>• Risk that appointees may not always make decisions in accordance with wishes of Council</li> <li>• Less "buy-in" from the local community if seen to be a part of the Council?</li> <li>• Decision making may be confused between interests of CIC and Medway</li> <li>• Conflicts of interest will need to be managed and may lead to limited role for Council appointees in decision making</li> </ul>

	<p>with regard to management of the facilities)</p> <ul style="list-style-type: none"> <li>The Council's ability to control composition of the board of the CIC will ensure that the CIC is not simply viewed as being under the control of the RRT</li> </ul>	<p>company – is it established for the benefit of the public/community or is it simply part of the Council?</p> <ul style="list-style-type: none"> <li>Local community may feel disenfranchised in the event of a minority role only in the governance and operation of the CIC</li> <li>No clean exit of the Council from the project</li> <li>If directors are appointed by the Council who are also members etc of the Council, then conflicts of interest and duty will need to be borne in mind, while additionally that director will have duties of confidentiality towards the CIC which will mean that issues discussed at board level cannot (without consent) be relayed to the Council. This may impede open discussion and debate</li> </ul>		
20-49.9% (influenced company)	<ul style="list-style-type: none"> <li>A high level of involvement in the entity (but stopping short of outright control). This allows</li> </ul>	<ul style="list-style-type: none"> <li>If there is additionally a business relationship with the Council, the company will be a company influenced by the Council</li> </ul>	<ul style="list-style-type: none"> <li>Ability through the appointment of a significant proportion of the directors, to</li> </ul>	<ul style="list-style-type: none"> <li>Council appointees will be in the minority on the board</li> <li>Risk that appointees may not always make</li> </ul>

	<p>the Council to select as directors those that it would trust to have more detailed oversight with regard to the management and administration of the CIC</p> <ul style="list-style-type: none"> <li>• Less pressure or “moral obligation” to assist the CIC in the event of future financial difficulties</li> <li>• Still a high degree of Council “visibility” in the management of the CIC, thereby giving occupiers and other stakeholders comfort</li> </ul>	<p>for the purposes of LACO and therefore a regulated company. This has the following consequences:</p> <ul style="list-style-type: none"> <li>• Group accounting: the Council is likely to be required to account for the company as a subsidiary under the group accounting rules</li> <li>• The Council would still be likely to face financial pressures to intervene to assist the CIC in times of financial difficulty, although this pressure would be not as great as in the case of a controlled company</li> <li>• The position with regard to conflicts of interest and duties of confidentiality outlined above will still apply here</li> </ul>	<p>influence the direction of the CIC</p> <ul style="list-style-type: none"> <li>• Ability to distance activities of CIC from Council</li> <li>• Ensures that the composition of the board of the CIC is not simply decided by the RRT and therefore provides the opportunity to distinguish the operation of the RRT from the CIC</li> </ul>	<p>decisions in accordance with wishes of Council</p> <ul style="list-style-type: none"> <li>• Less “buy-in” from the local community if seen to be a part of the Council?</li> <li>• Decision making may be confused between interests of CIC and Medway</li> <li>• Conflicts of interest will need to be managed and may lead to limited role for Council appointees in decision making</li> </ul>
1- 19.9% (minority)	<ul style="list-style-type: none"> <li>• A minority interest company for the purposes of LACO (and therefore not a regulated company) thereby ensuring that the Council is not required to comply with the various reporting etc obligations required by LACO (but, as</li> </ul>	<ul style="list-style-type: none"> <li>• Lower degree of control exercisable by the Council – this may increase the risk of inappropriate management decisions being taken without the Council being able to influence those decisions.</li> <li>• Still a risk of the Council being placed under a</li> </ul>	<ul style="list-style-type: none"> <li>• Low level of responsibility for Council for the activities of the company</li> <li>• Likely to be more acceptable to the local community – might</li> </ul>	<ul style="list-style-type: none"> <li>• Council will have limited role in the company and its ability to influence decisions taken etc is limited.</li> </ul>

	<p>indicated previously, the LACO provisions are not particularly demanding)</p> <ul style="list-style-type: none"> <li>• The Council would not be required to account for the company as a subsidiary under the group accounting rules</li> <li>• Ensures a degree of involvement of the Council in the operation of the CIC, but the minority level of the interest lessens the perceived moral requirement for the Council to intervene in the event of financial difficulties</li> <li>• Ensures a greater degree of community involvement</li> </ul>	<p>moral obligation to intervene within the CIC in the event of difficulties, but arguably this risk is lower than would otherwise be the case where a greater degree of representation</p> <ul style="list-style-type: none"> <li>• Conflict of interest and confidentiality concerns still apply</li> </ul>	<p>encourage involvement in the CIC from the local community</p> <ul style="list-style-type: none"> <li>• Ensures that the composition of the board of the CIC is not simply decided by the RRT and therefore provides the opportunity to distinguish the operation of the RRT from the CIC</li> </ul>	
None	<ul style="list-style-type: none"> <li>• Complete legal exit from the management of the area</li> <li>• Avoids any concerns with regard to conflicts of interest and duties of confidentiality</li> <li>• Almost removes any moral obligation to intervene in the event of financial difficulties. However, it should be</li> </ul>	<ul style="list-style-type: none"> <li>• Lack of control with regard to the governance of the CIC</li> <li>• Possible criticism of the Council in the event of problems for adopting a position which does not follow "normal" practice (typically, one might expect a local authority to retain at least some involvement)</li> </ul>	<ul style="list-style-type: none"> <li>• CIC will have complete freedom from local authority involvement – might encourage a sense of greater financial responsibility and accountability</li> </ul>	<ul style="list-style-type: none"> <li>• No involvement at all in the composition of the board of directors, thereby placing responsibility for ensuring effective governance in the directors/local community – might increase the risk of improper management of the CIC</li> </ul>

	<p>borne in mind that, in the event that the the level of service charge is not enough to meet ongoing maintenance obligations, then the Council may well still face some pressure to intervene</p> <ul style="list-style-type: none"> <li>• No concerns with regard to application of LACO – or, indeed, of any future legislation which may place controls upon all local authority companies</li> <li>• Complete community “ownership” of the CIC</li> </ul>	<ul style="list-style-type: none"> <li>• Significant site where the Council will have no control, but where its tax payers will be resident and may well seek to hold the Council accountable. Might be difficult to achieve complete moral separation</li> </ul>	<p>by the directors</p> <ul style="list-style-type: none"> <li>• No financial responsibility for the Council for the activities of the CIC</li> </ul>	<ul style="list-style-type: none"> <li>• The composition of the board of the CIC will be determined by the RRT and there is an increased threat that the operations of the CIC will be synonymous with those of the RRT – in this event, the hoped-for separation of the functions of the RRT and the CIC will be difficult to achieve.</li> </ul>
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Stone King Sewell LLP/Nabarro LLP