

**[SPV] Limited**

**Articles of association**

Company number:

Private company limited by shares

Articles of association

of

[SPV] Limited

---

**1. Model articles not to apply**

Save as specified in these articles, the model articles of association for private companies limited by shares contained in Schedule 1 to the Companies (Model Articles) Regulations 2008, as amended prior to the date of adoption of these Articles shall not apply to the company. References to **the articles** shall be to the following articles of association as amended from time.

**2. Defined terms**

In the articles, unless the context requires otherwise:

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

**chairman** has the meaning given in article 16;

**chairman of the meeting** has the meaning given in article 49;

**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;

**Councillor** means a Councillor elected to Wyre Forest District Council

**director** means a director of the company, and includes any person occupying the position of director, by whatever name called;

**distribution recipient** has the meaning given in article 41;

**document** includes, unless otherwise specified, any document sent or supplied in electronic form;

**electronic form** has the meaning given in section 1168 of the Companies Act 2006;

**fully paid** in relation to a share, means that the nominal value and any premium to be paid to the company in respect of that share have been paid to the company;

**hard copy form** has the meaning given in section 1168 of the Companies Act 2006;

**holder** in relation to shares means the person whose name is entered in the register of members as the holder of the shares;

**instrument** means a document in hard copy form;

**ordinary resolution** has the meaning given in section 282 of the Companies Act 2006;

**paid** means paid or credited as paid;

**participate**, in relation to a directors' meeting, has the meaning given in article 12;

**proxy notice** has the meaning given in article 55;

**relevant agreement** means the Shareholder Agreement entered into between the Company and the Shareholder from time to time;

**shareholder** means a person who is the holder of a share;

**shares** means shares in the company;

**special resolution** has the meaning given in section 283 of the Companies Act 2006;

**subsidiary** has the meaning given in section 1159 of the Companies Act 2006;

and

**writing** means the representation or reproduction of words, symbols or other information in a visible form by any method or combination of methods, whether sent or supplied in electronic form or otherwise.

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

**3. Liability of members**

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

**4. Registered Office**

The registered office of the company shall be in England and Wales.

**5. Powers of the Company**

To further its objects the Company may do all such lawful things that a natural or corporate person may do which are not prohibited elsewhere in these Articles.

**6. Objects clause**

The company's objects are unrestricted.

**7. 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.

**8. Shareholder Reserved Matters**

8.1 Decisions on matters specified in a Relevant Agreement ("Shareholder Consent Matters") shall be reserved to the Shareholders of the Company from time to time.

8.2 In addition, the Shareholders may, by special resolution, direct the Directors to take, or to refrain from taking, any specified action. No such special resolution shall invalidate anything which the Directors have done before the passing of such resolution.

**9. Directors may delegate**

9.1 Subject to the articles, the directors may delegate any of the powers which are conferred on them under the articles:

- 9.1.1 to such person or committee;
- 9.1.2 by such means (including by power of attorney);
- 9.1.3 to such an extent;
- 9.1.4 in relation to such matters or territories; and
- 9.1.5 on such terms and conditions;

as they think fit.

9.2 If the directors so specify, any such delegation may authorise further delegation of the directors' powers by any person to whom they are delegated.

9.3 The directors may revoke any delegation in whole or part, or alter its terms and conditions.

**10. Committees**

10.1 Committees to which the directors delegate any of their powers must follow procedures which are based as far as they are applicable on those provisions of the articles which govern the taking of decisions by directors.

10.2 The directors may make rules of procedure for all or any committees, which prevail over rules derived from the articles if they are not consistent with them.

**11. Directors to take decisions collectively**

11.1 The general rule about decision-making by directors is that any decision of the directors must be either a majority decision at a meeting or a decision taken in accordance with article 10.

11.2 If:

11.2.1 the company only has one director; and

11.2.2 no provision of the articles requires it to have more than one director,

the general rule does not apply, and the director may take decisions without regard to any of the provisions of the articles relating to directors' decision-making.

**12. Unanimous decisions**

12.1 A decision of the directors is taken in accordance with this article when all eligible directors indicate to each other by any means that they share a common view on a matter.

12.2 Such a decision may take the form of a resolution in writing, which may consist of several copies each signed by one or more eligible directors or to which the eligible directors have otherwise indicated agreement in writing.

12.3 References in this article to eligible directors are to directors who would have been entitled to vote on the matter had it been proposed as a resolution at a directors' meeting.

12.4 A decision may not be taken in accordance with this article if the eligible directors would not have formed a quorum at such a meeting.

**13. Calling a directors' meeting**

13.1 Any director may call a directors' meeting by giving notice of the meeting to the directors or by authorising the company secretary (if any) to give such notice.

13.2 Notice of any directors' meeting must indicate:

13.2.1 its proposed date and time;

13.2.2 where it is to take place; and

13.2.3 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.

13.3 Notice of a directors' meeting must be given to each director, but need not be in writing.

13.4 Notice of a directors' meeting need not be given to directors who waive their entitlement to notice of that meeting. A director may waive the requirement that notice of a meeting of the directors or of a committee of the directors be given to him at any time before or after the date on which the meeting is held by notifying the company to that effect. Where a director gives such notice after the meeting has been held, that does not affect the validity of the meeting, or of any business conducted at it.

**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, the meeting shall be deemed to take place where the largest group of those participating is assembled or, if there is no such group, where the chairman of the meeting 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 the transaction of business of the directors shall be two unless there is a sole director, in which event, the sole director shall constitute a quorum. A person who holds office only as an alternate director shall, if his appointor is not present, be counted in the quorum.
- 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 such number of further directors as are required to make up the quorum required; or
  - 15.3.2 to call a general meeting so as to enable the shareholders to appoint further directors.
  - 15.3.3 to appoint further directors; or
  - 15.3.4 to call a general meeting so as to enable the shareholders to appoint further directors.
- 16. Chairing of directors' meetings**
- 16.1 The Shareholder may appoint a director to chair directors' meetings.
- 16.2 The person so appointed for the time being is known as the chairman.
- 16.3 The Shareholder may terminate the chairman's appointment at any time.
- 17. Casting vote**
- 17.1 If the numbers of votes for and against a proposal are equal, the chairman or other director chairing the meeting has a casting vote.

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

**18. Conflicts of interest**

- 18.1 If a proposed decision of the directors is concerned with an actual or proposed transaction or arrangement with the company in which a director is interested, then provided that the director has disclosed his interest in such actual or proposed transaction or arrangement with the company in accordance with the Companies Acts or the provisions of these articles, he may nevertheless be counted as participating in the decision-making process for quorum and voting purposes in respect of any such matter in which the director is in any way interested, and shall not, save as otherwise agreed, be accountable to the company for any benefit which he derives under or in consequence of any such transaction or arrangement.
- 18.2 For the purposes of this article, references to proposed decisions and decision-making processes include any directors' meeting or part of a directors' meeting.
- 18.3 Subject to paragraph 16.4, if a question arises at a meeting of directors or of a committee of directors as to the right of a director to participate in the meeting (or part of the meeting) for voting or quorum purposes, the question may, before the conclusion of the meeting, be referred to the chairman whose ruling in relation to any director other than the chairman is to be final and conclusive.
- 18.4 If any question as to the right to participate in the meeting (or part of the meeting) should arise in respect of the chairman, the question is to be decided by a decision of the directors at that meeting, for which purpose the chairman is not to be counted as participating in the meeting (or that part of the meeting) for voting or quorum purposes.

**19. Authorisation of directors' conflicts of interest**

- 19.1 For the purposes of section 175 of the Companies Act 2006, as amended, consolidated or re-enacted from time to time (the **2006 Act**), the directors shall have the power to authorise any relationship, situation or other matter which would or might otherwise constitute or give rise to a breach by a director of the duty to avoid conflicts of interest set out in that section of the 2006 Act (a **Conflict Situation**). Any reference in these articles to a conflict of interest includes a conflict of interest and duty and a conflict of duties.
- 19.2 For the purposes of sections 175 and 180(4) of the 2006 Act and for all other purposes, it is acknowledged that a director may be or become subject to a Conflict Situation or Conflict Situations as a result of his also being or having been (or being party to an agreement or arrangement or understanding or circumstances under which he may become) an employee, director, trustee, member, partner, officer or representative of, or a consultant to, or a direct or indirect investor in and/or otherwise involved with or interested in, any of the company, its subsidiaries, any of its holding companies or any subsidiary of any of its holding companies (as such terms are defined in section 1159 of the 2006 Act) or any of its shareholders.

- 19.3 No director shall be in breach of the duty to avoid conflicts of interest in section 175 of the Act as a result of, and no authorisation is required in respect of, any Conflict Situation envisaged by article 17.2 having arisen or existing in relation to him.
- 19.4 Authorisation of a matter under this article 17 shall be effective only if:
- 19.4.1 the matter in question shall have been proposed in writing for consideration by the directors, or in such other manner as the directors may determine;
  - 19.4.2 any requirement as to the quorum at the meeting of the directors at which the matter is considered is met without counting the director in question and any other interested director (together, the **interested directors**); and
  - 19.4.3 the matter was agreed to without the interested directors voting or would have been agreed to if the votes of the interested directors had not been counted.
- 19.5 Unless otherwise determined by the directors (excluding the interested directors), any authorisation of a matter under this article 17 shall extend to any actual or potential conflict of interest which may reasonably be expected to arise out of the matter so authorised.
- 19.6 Any authorisation of a matter under this article 17 shall be on such terms and/or conditions as the directors (excluding the interested directors) may determine, whether at the time such authorisation is given or subsequently and may be varied or terminated by the directors (excluding the interested directors) at any time. Such terms or conditions may include (without limitation) terms and conditions as to the duration, renewal and/or revocation of the authorisation, and/or the exclusion of the interested directors from all information and discussion of the matter in question. A director shall comply with any obligations imposed on him by the directors (excluding the interested directors) pursuant to any such authorisation.
- 19.7 If a director receives or has received any information otherwise than by virtue of his position as a director of the company and in respect of which he owes a duty of confidentiality to another person, the director is under no obligation to:
- 19.7.1 disclose any such information to the company, the directors or any other director or employee of the company; or
  - 19.7.2 use or apply any such information in connection with the performance of his duties as a director;
- provided that to the extent that such duty of confidentiality arises out of a situation or relationship which would or might otherwise constitute or give rise to a breach by the director of the duty to avoid conflicts of interest set out in section 175 of the 2006 Act, this paragraph 17.7 shall apply only if such situation or relationship has been authorised by the directors under this article 19.
- 19.8 A director shall not, save as otherwise agreed by him, be accountable to the company for any benefit which he (or a person connected with him) derives from any matter authorised by the directors under this article and any contract, transaction or arrangement relating thereto shall not be liable to be avoided on the grounds of any such benefit.

**20. Records of decisions to be kept**



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

**21. Directors' discretion to make further rules**

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

**22. Appointment and removal of directors**

22.1 Unless otherwise determined by ordinary resolution, the maximum number of directors is nine and the minimum number is three.

22.2 Notwithstanding any other provision of these articles, the holder or holders of a majority in nominal value of the issued ordinary shares in the capital of the company may at any time and from time to time:

22.2.1 appoint any person to be a director (provided that any such appointment does not cause the number of directors to exceed a number fixed by or in accordance with these articles as the maximum number of directors provided that the number of directors who can be Councillors shall not exceed two); or

22.2.2 remove any director from office.

Every such appointment or removal shall be effected by notice in writing to the company and shall take effect immediately (or on such later date, if any, specified in the notice). Any such notice of appointment or removal may consist of several documents in similar form, each signed by or on behalf of one or more holders.

22.3 In any case where, as a result of bankruptcy, the company has no shareholders and no directors, the trustee in bankruptcy or other transmittee(s) of the last shareholder to have a bankruptcy order made against him has the right, by notice in writing, to appoint a natural person (including himself) who is willing to act and is permitted to do so to be a director.

**23. Methods of appointing directors and Chairman of the Board**

23.1 Any person who is willing to act as a director, and is permitted by law to do so, may be appointed to be a director or Chairman:

23.1.1 by ordinary resolution; or

23.1.2 or in any other way permitted by these articles.

**24. Termination of director's appointment**

A person ceases to be a director as soon as:

- 24.1 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;
- 24.2 that person has for more than six consecutive months been absent without permission of the directors from meetings of directors held during that period and the directors resolve that person's office be vacated;
- 24.3 a bankruptcy order is made against that person;
- 24.4 a composition is made with that person's creditors generally in satisfaction of that person's debts;
- 24.5 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; or
- 24.6 is an employee of any shareholder in the company and ceases to be employed as such for any reason.
- 24.7 is a Councillor and ceases to be a Councillor for any reason.
- 24.8 pursuant to clause 22.2.2

## **25 Appointment and removal of alternate directors**

Any director (the **appointor**) may appoint as an alternate any other director to:

- 25.1 exercise that director's powers; and
- 25.2 carry out that director's responsibilities

in relation to the taking of decisions by the directors in the absence of the alternate's appointor. Any appointment or removal of an alternate must be effected by notice in writing to the company signed by the appointor, or in any other manner approved by the directors. The notice must identify the proposed alternate and, in the case of a notice of appointment, contain a statement signed by the proposed alternate that the proposed alternate is willing to act as the alternate of the director giving the notice.

## **26 Rights and responsibilities of alternate directors**

- 26.1 An alternate director has the same rights, in relation to any directors' meeting or directors' written resolution, as the alternate's appointor. Alternate directors are deemed for all purposes to be directors, are liable for their own acts and omissions, are subject to the same restrictions as their appointors, and are not deemed to be agents of or for their appointors. A person who is an alternate director but not a director may be counted as participating for the purposes of determining whether a quorum is participating (but only if that person's appointor is not participating), and may sign a written resolution (but only if it is not signed or to be signed by that person's appointor). No alternate may be counted as more than one director for such purposes.
- 26.2 An alternate director is not entitled to receive any remuneration from the company for serving as an alternate director except such part of the alternate's appointor's remuneration as the appointor may direct by notice in writing made to the company.

**27 Termination of alternate directorship**

An alternate director's appointment as an alternate terminates:

- 27.1 when the alternate's appointor revokes the appointment by notice to the company in writing specifying when it is to terminate;
- 27.2 on the occurrence in relation to the alternate of any event which, if it occurred in relation to the alternate's appointor, would result in the terminate of the appointor's appointment as a director;
- 27.3 on the death of the alternate's appointor; or
- 27.4 when the alternate's appointor's appointment as a director terminates.

**28 Directors' remuneration**

- 28.1 Directors may undertake any services for the company that the directors decide.
- 28.2 Directors shall not be entitled to receive remuneration:
  - 28.2.1 for their services to the company as directors; or
  - 28.2.2 for any other service which they undertake for the company.

**29 Directors' expenses**

The company may pay any reasonable expenses which the directors properly incur in connection with their attendance at:

- 29.1 meetings of directors or committees of directors;
- 29.2 general meetings; or
- 29.3 separate meetings of the holders of any class of shares or of debentures of the company, or otherwise in connection with the exercise of their powers and the discharge of their responsibilities in relation to the company.

**30 Company secretary**

The directors may appoint a company secretary for such term, at such remuneration and upon such conditions as they think fit. Any company secretary may be removed or replaced by the directors.

**31 Nil- or partly-paid shares not permitted**

All shares issued shall be fully paid up shares.

**32 Allotment of shares**

- 32.1 Save as authorised from time to time by an ordinary resolution of the shareholders, the directors shall not exercise any power to allot shares or to grant rights to subscribe for, or to convert any security into, any shares in the company.
- 32.2 Sections 561 and 562 of the Companies Act 2006 shall not apply to any allotment of equity securities (as defined in section 560 of the Companies Act 2006) by the company.

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

Except as required by law, no person is to be recognised by the company as holding any share upon any trust, and except as otherwise required by law or the articles, the company is not in any way to be bound by or recognise any interest in a share other than the holder's absolute ownership of it and all the rights attaching to it.

### **34 Share certificates**

- 34.1 The company must issue each shareholder, free of charge, with one or more certificates in respect of the shares which that shareholder holds.
- 34.2 Every certificate must specify:
  - 34.2.1 in respect of how many shares, of what class, it is issued;
  - 34.2.2 the nominal value of those shares;
  - 34.2.3 the amount paid up on the shares to which it relates; and
  - 34.2.4 any distinguishing numbers assigned to them.
- 34.3 No certificate may be issued in respect of shares of more than one class.
- 34.4 If more than one person holds a share, only one certificate may be issued in respect of it.
- 34.5 Certificates must:
  - 34.5.1 have affixed to them the company's common seal, or
  - 34.5.2 be otherwise executed in accordance with the Companies Acts.

### **35 Replacement share certificates**

- 35.1 If a certificate issued in respect of a shareholder's shares is:
  - 35.1.1 damaged or defaced; or
  - 35.1.2 said to be lost, stolen or destroyed,that shareholder is entitled to be issued with a replacement certificate in respect of the same shares.

- 35.2 A shareholder exercising the right to be issued with such a replacement certificate:
- 35.2.1 may at the same time exercise the right to be issued with a single certificate or separate certificates;
  - 35.2.2 must return the certificate which is to be replaced to the company if it is damaged or defaced; and
  - 35.2.3 must comply with such conditions as to evidence, indemnity and the payment of a reasonable fee as the directors decide.

### **36 Share transfers**

- 36.8 No share shall be transferred without the prior approval of the shareholder.
- 36.9 Shares may be transferred by means of an instrument of transfer in any usual form or any other form approved by the directors, which is executed by or on behalf of the transferor.
- 36.10 The instrument of transfer of any share taken on formation of the company by a subscriber to the company's memorandum of association need not be executed by or on behalf of the transferee even where the share is not fully paid.
- 36.11 No fee may be charged for registering any instrument of transfer or other document relating to or affecting the title to any share.
- 36.12 The company may retain any instrument of transfer which is registered.
- 36.13 The transferor remains the holder of a share until the transferee's name is entered in the register of members as holder of it.
- 36.14 The directors may refuse to register the transfer of a share, and if they do so, the instrument of transfer must be returned to the transferee with the notice of refusal unless they suspect that the proposed transfer may be fraudulent.

### **37 Procedure for declaring dividends**

- 37.1 The company may by ordinary resolution declare dividends, and the directors may decide to pay interim dividends.
- 37.2 A dividend must not be declared unless the directors have made a recommendation as to its amount. Such a dividend must not exceed the amount recommended by the directors.
- 37.3 No dividend may be declared or paid unless it is in accordance with shareholders' respective rights.
- 37.4 Unless the shareholders' resolution to declare or directors' decision to pay a dividend, or the terms on which shares are issued, specify otherwise, it must be paid by reference to each shareholder's holding of shares on the date of the resolution or decision to declare or pay it.

- 37.5 If the company's share capital is divided into different classes, no interim dividend may be paid on shares carrying deferred or non-preferred rights if, at the time of payment, any preferential dividend is in arrear.
- 37.6 The directors may pay at intervals any dividend payable at a fixed rate if it appears to them that the profits available for distribution justify the payment.
- 37.7 If the directors act in good faith, they do not incur any liability to the holders of shares conferring preferred rights for any loss they may suffer by the lawful payment of an interim dividend on shares with deferred or non-preferred rights.

### **38 Calculation of dividends**

Except as otherwise provided by these articles or the rights attached to shares, all dividends must be:

- 38.1 declared and paid according to the amounts paid up on the shares on which the dividend is paid; and
- 38.2 apportioned and paid proportionately to the amounts paid up on the shares during any portion or portions of the period in respect of which the dividend is paid.

If any share is issued on terms providing that it ranks for dividend as from a particular date, that share ranks for dividend accordingly. For the purposes of calculating dividends, no account is to be taken of any amount which has been paid up on a share in advance of the due date for payment of that amount.

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

- 39.1 Where a dividend or other sum which is a distribution is payable in respect of a share, it must be paid by one or more of the following means:
- 39.1.1 transfer to a bank or building society account specified by the distribution recipient either in writing or as the directors may otherwise decide;
- 39.1.2 sending a cheque made payable to the distribution recipient by post to the distribution recipient at the distribution recipient's registered address (if the distribution recipient is a holder of the share), or (in any other case) to an address specified by the distribution recipient either in writing or as the directors may otherwise decide;
- 39.1.3 sending a cheque made payable to such person by post to such person at such address as the distribution recipient has specified either in writing or as the directors may otherwise decide; or
- 39.1.4 any other means of payment as the directors agree with the distribution recipient either in writing or by such other means as the directors decide.

39.2 In these articles, the **distribution recipient** means, in respect of a share in respect of which a dividend or other sum is payable:

39.2.1 the holder of the share; or

39.2.2 if the share has two or more joint holders, whichever of them is named first in the register of members; or

39.2.3 if the holder is no longer entitled to the share by reason of death or bankruptcy, or otherwise by operation of law, the transmittee.

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

The company may not pay interest on any dividend or other sum payable in respect of a share unless otherwise provided by:

40.1 the terms on which the share was issued, or

40.2 the provisions of another agreement between the holder of that share and the company.

#### **41 Unclaimed distributions**

41.1 All dividends or other sums which are:

41.1.1 payable in respect of shares; and

41.1.2 unclaimed after having been declared or become payable,

may be invested or otherwise made use of by the directors for the benefit of the company until claimed.

41.2 The payment of any such dividend or other sum into a separate account does not make the company a trustee in respect of it.

41.3 If:

41.3.1 twelve years have passed from the date on which a dividend or other sum became due for payment; and

41.3.2 the distribution recipient has not claimed it,

the distribution recipient is no longer entitled to that dividend or other sum and it ceases to remain owing by the company.

#### **42 Non-cash distributions**

42.1 Subject to the terms of issue of the share in question, the company may, by ordinary resolution on the recommendation of the directors, decide to pay all or part of a dividend or other distribution payable in respect of a share by transferring non-cash assets of equivalent value (including, without limitation, shares or other securities in any company).

42.2 For the purposes of paying a non-cash distribution, the directors may make whatever arrangements they think fit, including, where any difficulty arises regarding the distribution:

- 42.2.1 fixing the value of any assets;
- 42.2.2 paying cash to any distribution recipient on the basis of that value in order to adjust the rights of recipients; and
- 42.2.3 vesting any assets in trustees.

### **43 Waiver of distributions**

Distribution recipients may waive their entitlement to a dividend or other distribution payable in respect of a share by giving the company notice in writing to that effect, but if:

- 43.1 the share has more than one holder; or
- 43.2 more than one person is entitled to the share, whether by reason of the death or bankruptcy of one or more joint holders, or otherwise,

the notice is not effective unless it is expressed to be given, and signed, by all the holders or persons otherwise entitled to the share.

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

- 44.1 Subject to the articles, the directors may, if they are so authorised by an ordinary resolution:
  - 44.1.1 decide to capitalise any profits of the company (whether or not they are available for distribution) which are not required for paying a preferential dividend, or any sum standing to the credit of the company's share premium account or capital redemption reserve; and
  - 44.1.2 appropriate any sum which they so decide to capitalise (a **capitalised sum**) to the persons who would have been entitled to it if it were distributed by way of dividend (the **persons entitled**) and in the same proportions.
- 44.2 Capitalised sums must be applied:
  - 44.2.1 on behalf of the persons entitled; and
  - 44.2.2 in the same proportions as a dividend would have been distributed to them.
- 44.3 Any capitalised sum may be applied in paying up new shares of a nominal amount equal to the capitalised sum which are then allotted credited as fully paid to the persons entitled or as they may direct.
- 44.4 A capitalised sum which was appropriated from profits available for distribution may be applied in or towards:
  - 44.4.1 paying up new debentures of the company which are then allotted credited as fully paid to the persons entitled or as they may direct;
  - 44.4.2 paying up any amounts unpaid on existing shares held by the persons entitled.
- 44.5 Subject to the articles the directors may:



- 44.5.1 apply capitalised sums in accordance with paragraphs 46.3 and 46.4 partly in one way and partly in another;
- 44.5.2 make such arrangements as they think fit to deal with shares or debentures becoming distributable in fractions under this article (including the issuing of fractional certificates or the making of cash payments); and
- 44.5.3 authorise any person to enter into an agreement with the company on behalf of all the persons entitled which is binding on them in respect of the allotment of shares and debentures to them under this article.

#### **45 GENERAL MEETINGS**

- 45.1 All General Meetings are to be called by the Board.
- 45.2 If there are insufficient Directors in the United Kingdom to form a quorum at a Board Meeting to call a General Meeting it may be called in the same way as a Board Meeting.
- 45.3 On receiving a requisition from the requisite number of Shareholders as specified under Section 303 of the Act the Board must immediately call a General Meeting.
- 45.4 Each year the Company may choose to hold a General Meeting as the AGM (but shall not be required to do so) in addition to any other meetings in that year and shall specify the meeting as such in the notices calling it. The AGM shall be held at such time and place as the Board shall appoint.
- 45.5 In the event that the Company holds an AGM, the business of the AGM is to:
  - 45.5.1 consider the Company's annual report (if any);
  - 45.5.2 fix the remuneration, and appoint and remove, the Company's auditors;
  - 45.5.3 transact any business that relates to Shareholder Reserved Matters; and
  - 45.5.4 transact any other business specified in the notice convening the meeting.

#### **46 NOTICE OF GENERAL MEETINGS**

46.8 General Meetings must be called by at least 14 clear days' notice.

46.9A General Meeting may be called by shorter notice if this is agreed by a majority in number of the Shareholders who may attend and vote and who together hold 90% or more in nominal value of the Shares giving that right.

46.10 The notice must specify:

46.3.1 the time and place of the General Meeting;

46.3.2 the general nature of the business to be transacted; and,

46.3.3 in the case of an AGM, that it is an AGM.

46.11 No business may be transacted at a General Meeting except that specified in the notice convening the meeting.

46.12 Notice of a General Meeting must be given to all of the Shareholders (except any living outside the United Kingdom who have not given an address for service in the United Kingdom), the Directors and the Company's auditors (if any).

46.13 The accidental omission to give notice of a General Meeting to, or the non-receipt of notice of a General Meeting by, any person entitled to receive notice will not invalidate the proceedings at that General Meeting.

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

47.1 A person is able to exercise the right to speak at a general meeting when that person is in a position to communicate to all those attending the meeting, during the meeting, any information or opinions which that person has on the business of the meeting.

47.2 A person is able to exercise the right to vote at a general meeting when:

47.2.1 that person is able to vote, during the meeting, on resolutions put to the vote at the meeting, and

47.2.2 that person's vote can be taken into account in determining whether or not such resolutions are passed at the same time as the votes of all the other persons attending the meeting.

47.3 The directors may make whatever arrangements they consider appropriate to enable those attending a general meeting to exercise their rights to speak or vote at it.

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

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

#### **48 Quorum for general meetings**

48.1 No business may be transacted at a General Meeting unless a quorum is present.

- 48.2 A quorum is one Shareholder entitled to vote upon the business to be transacted present in person or represented by a duly authorised representative.
- 48.3 If a quorum is not present within 30 minutes from the time of the General Meeting or a quorum ceases to be present during a General Meeting it must be adjourned to such time and place as the Board decides.
- 48.4 Notice of an adjournment of a General Meeting because of a lack of quorum and the time and place of the adjourned General Meeting must be given to all Shareholders in accordance with Article 20.3.
- 48.5 If a quorum is not present within 30 minutes from the time of the adjourned General Meeting it is to be dissolved.

#### **49 Chairing general meetings**

- 49.1 If the Shareholder has appointed a chairman, the chairman shall chair general meetings if present and willing to do so.
- 49.2 If the Shareholder has not appointed a chairman, or if the chairman is unwilling to chair the meeting or is not present within ten minutes of the time at which a meeting was due to start:
  - 49.2.1 the directors present; or
  - 49.2.2 (if no directors are present), the meeting,must appoint a director or shareholder to chair the meeting, and the appointment of the chairman of the meeting must be the first business of the meeting.
- 49.3 The person chairing a meeting in accordance with this article is referred to as **the chairman of the meeting**.

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

- 50.1 Directors may attend and speak at general meetings, whether or not they are shareholders.
- 50.2 The chairman of the meeting may permit other persons who are not:
  - 52.2.1 shareholders of the company; or
  - 52.2.2 otherwise entitled to exercise the rights of shareholders in relation to general meetings,to attend and speak at a general meeting.

#### **51 Adjournment**

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

- 51.2 The chairman of the meeting may adjourn a general meeting at which a quorum is present if:
- 51.2.1 the meeting consents to an adjournment; or
  - 51.2.2 it appears to the chairman of the meeting that an adjournment is necessary to protect the safety of any person attending the meeting or ensure that the business of the meeting is conducted in an orderly manner.
- 51.3 The chairman of the meeting must adjourn a general meeting if directed to do so by the meeting.
- 51.4 When adjourning a general meeting, the chairman of the meeting must:
- 51.4.1 either specify the time and place to which it is adjourned or state that it is to continue at a time and place to be fixed by the directors; and
  - 51.4.2 have regard to any directions as to the time and place of any adjournment which have been given by the meeting.
- 51.5 If a general meeting is adjourned, then notice of the time and place to which it is adjourned shall be given:
- 51.5.1 to the same persons to whom notice of the company's general meetings is required to be given; and
  - 51.5.2 containing the same information which such notice is required to contain.
- 51.6 No business may be transacted at an adjourned general meeting which could not properly have been transacted at the meeting if the adjournment had not taken place.

## **52 Voting: general**

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

## **53 Errors and disputes**

- 53.1 No objection may be raised to the qualification of any person voting at a general meeting except at the meeting or adjourned meeting at which the vote objected to is tendered, and every vote not disallowed at the meeting is valid.
- 53.2 Any such objection must be referred to the chairman of the meeting, whose decision is final.

## **54 Poll votes**

- 54.1 A poll on a resolution may be demanded:
- 54.1.1 in advance of the general meeting where it is to be put to the vote, or
  - 54.1.2 at a general meeting, either before a show of hands on that resolution or immediately after the result of a show of hands on that resolution is declared.

54.2 A poll may be demanded by:

54.2.1 the chairman of the meeting;

54.2.2 the directors;

54.2.3 any member (present in person or by proxy) having the right to attend and vote at the meeting or by a duly authorised representative of a corporation.

54.2.4 A demand for a poll may, before the poll is taken, be withdrawn. A demand so withdrawn shall not invalidate the result of a vote on a show of hands declared before the demand was made.

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

## **55 Content of proxy notices**

55.1 Proxies may only validly be appointed by a notice in writing (a **proxy notice**) which:

55.1.1 states the name and address of the shareholder appointing the proxy;

55.1.2 identifies the person appointed to be that shareholder's proxy and the general meeting in relation to which that person is appointed;

55.1.3 is signed by or on behalf of the shareholder appointing the proxy, or is authenticated in such manner as the directors may determine; and

55.1.4 is delivered to the company in accordance with the articles and any instructions contained in the notice of the general meeting to which they relate.

55.2 The company may require proxy notices to be delivered in a particular form, and may specify different forms for different purposes.

55.3 Proxy notices may specify how the proxy appointed under them is to vote (or that the proxy is to abstain from voting) on one or more resolutions.

55.4 Unless a proxy notice indicates otherwise, it must be treated as:

55.4.1 allowing the person appointed under it as a proxy discretion as to how to vote on any ancillary or procedural resolutions put to the meeting; and

55.4.2 appointing that person as a proxy in relation to any adjournment of the general meeting to which it relates as well as the meeting itself.

## **56 Delivery of proxy notices**

56.1 A person who is entitled to attend, speak or vote (either on a show of hands or on a poll) at a general meeting remains so entitled in respect of that meeting or any adjournment of it, even though a valid proxy notice has been delivered to the company by or on behalf of that person.

- 56.2 An appointment under a proxy notice may be revoked by delivering to the company a notice in writing given by or on behalf of the person by whom or on whose behalf the proxy notice was given.
- 56.3 A notice revoking a proxy appointment only takes effect if it is delivered before the start of the meeting or adjourned meeting to which it relates.
- 56.4 If a proxy notice is not executed by the person appointing the proxy, it must be accompanied by written evidence of the authority of the person who executed it to execute it on the appointor's behalf.

## **57 Proxies and corporate representatives**

The failure of any proxy or corporate representative to vote in accordance with any instructions given by the member by whom such proxy or corporate representative is appointed shall not invalidate the result of any vote in which the proxy or corporate representative has participated and the company and the directors shall be under no duty to enquire as to the instructions given to any such proxy or corporate representative.

## **58 Amendments to resolutions**

- 60.1 An ordinary resolution to be proposed at a general meeting may be amended by ordinary resolution if:
- 60.1.1 notice of the proposed amendment is given to the company in writing by a person entitled to vote at the general meeting at which it is to be proposed not less than 48 hours before the meeting is to take place (or such later time as the chairman of the meeting may determine); and
  - 60.1.2 the proposed amendment does not, in the reasonable opinion of the chairman of the meeting, materially alter the scope of the resolution.
- 60.2 A special resolution to be proposed at a general meeting may be amended by ordinary resolution, if:
- 60.2.1 the chairman of the meeting proposes the amendment at the general meeting at which the resolution is to be proposed; and
  - 60.2.2 the amendment does not go beyond what is necessary to correct a grammatical or other non-substantive error in the resolution.
- 60.3 If the chairman of the meeting, acting in good faith, wrongly decides that an amendment to a resolution is out of order, the chairman's error does not invalidate the vote on that resolution.

## **59 Written resolutions**

A proposed written resolution of the members of the company (or of a class of members) shall lapse if it is not passed before the end of the period of six months beginning with the circulation date of such resolution (as defined in section 290 of the Companies Act 2006).

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

- 60.1 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.
- 60.2 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.
- 60.3 A director may agree with the company that notices or documents sent to that director in a particular way are to be deemed to have been received within a specified time of their being sent, and for the specified time to be less than 48 hours.
- 60.4 Any notice, document or other information shall be deemed served on or delivered to the intended recipient:
- 60.4.1 if properly addressed and sent by prepaid United Kingdom first class post to an address in the United Kingdom, 48 hours after it was posted (or five working days after posting either to an address outside the United Kingdom or from outside the United Kingdom to an address within the United Kingdom, if (in each case) sent by reputable international overnight courier addressed to the intended recipient, provided that delivery in at least five working days was guaranteed at the time of sending and the sending party receives a confirmation of delivery from the courier service provider);
  - 60.4.2 if properly addressed and delivered by hand, when it was given or left at the appropriate address;
  - 60.4.3 if properly addressed and sent or supplied by electronic means, one hour after the document or information was sent or supplied; and
  - 60.4.4 if sent or supplied by means of a website, when the material is first made available on the website or (if later) when the recipient receives (or is deemed to have received) notice of the fact that the material is available on the website.
- For the purposes of this article, no account shall be taken of any part of a day that is not a working day.
- 60.5 In proving that any notice, document or other information was properly addressed, it shall be sufficient to show that the notice, document or other information was delivered to an address permitted for the purpose by the Companies Act 2006.

## **61 Company seals**

- 61.1 Any common seal may only be used by the authority of the directors.
- 61.2 The directors may decide by what means and in what form any common seal is to be used.

61.3 Unless otherwise decided by the directors, if the company has a common seal and it is affixed to a document, the document must also be signed by at least one authorised person in the presence of a witness who attests the signature.

61.4 For the purposes of this article, an authorised person is:

61.4.1 any director of the company;

61.4.2 the company secretary (if any); or

61.4.3 any person authorised by the directors for the purpose of signing documents to which the common seal is applied.

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

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

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

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

## **64 Indemnity**

64.1 The company may indemnify any relevant officer out of the assets of the company from and against any loss, liability or expense incurred by him or them in relation to the company (including any liability incurred 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)) **provided that** this article shall have effect, and any indemnity provided by or pursuant to it shall apply, only to the extent permitted by, and subject to the restrictions of, the Companies Act 2006. This article does not allow for or provide (to any extent) an indemnity which is more extensive than as permitted by the Companies Act 2006 and any such indemnity is limited accordingly. This article is also without prejudice to any indemnity to which any person may otherwise be entitled.

64.2 To the extent permitted by, and subject to the restrictions in, the Companies Act 2006 and without prejudice to any indemnity to which he may otherwise be entitled, the board shall have the power to provide funds to meet any expenditure incurred or to be incurred by any relevant officer in defending any criminal or civil (including regulatory) proceedings, or in connection with an application under the Companies Act 2006, or to enable him to avoid incurring such expenditure.

64.3 Without prejudice to the provisions of article 65, the directors may exercise all the powers of the company to purchase and maintain insurance for the benefit of any person who is a relevant officer or an employee or former employee of the company or any associated company or who is or was a trustee of a retirement benefits scheme or another trust in which a relevant officer or an employee or former employee is or has been interested,



indemnifying him against liability for negligence, default, breach of duty or breach of trust or any other liability which may lawfully be insured against by the company.

64.4 In these articles:

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

64.4.2 **relevant officer** means any current or former director, alternate director, secretary or other officer of the company or an associated company (including any company which is a trustee of an occupational pension scheme (as defined in section 235(6) of the Companies Act 2006)), other than any person (whether an officer or not) engaged by the company (or associated company) as an auditor, to the extent he acts as an auditor.

## **65 Insurance**

65.1 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.

65.2 In this article:

65.2.1 a **relevant director** means any director or former director of the company or an associated company;

65.2.2 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

dated [ ] 2018

**Wyre Forest District Council**  
and  
**Local Authority Controlled Company Limited**

## Shareholder's Agreement

in respect of Local Authority Controlled Company Limited

<b>Contents</b>	<b>Page</b>
<b>1 Interpretation</b>	<b>1</b>
<b>2 Business</b>	<b>3</b>
<b>3 Conduct of the Company's Affairs</b>	<b>4</b>
<b>4 Covenants</b>	<b>5</b>
<b>5 Termination</b>	<b>5</b>
<b>6 Confidentiality</b>	<b>6</b>
<b>7 No Partnership</b>	<b>7</b>
<b>8 Contracts (Rights of Third Parties) Act 1999</b>	<b>7</b>
<b>9 Costs of this Agreement</b>	<b>7</b>
<b>10 Waiver</b>	<b>8</b>
<b>11 Variation</b>	<b>8</b>
<b>12 Invalidity</b>	<b>8</b>
<b>13 Entire Agreement</b>	<b>8</b>
<b>14 Status of this Agreement</b>	<b>8</b>
<b>15 Consents</b>	<b>9</b>
<b>16 Communications</b>	<b>9</b>
<b>17 Counterparts</b>	<b>10</b>
<b>18 Governing Law and Jurisdiction</b>	<b>10</b>
<b>Schedule 1 - Shareholder Consent Matters</b>	<b>11</b>
<b>Schedule 2 - Company Covenants</b>	<b>14</b>

## Shareholder's Agreement

dated

2018

### Parties

- (1) **Wyre Forest District Council** of Wyre Forest House, Finepoint Way, Kidderminster, WORCS DY11 7WF (the **Shareholder**).
- (2) **[Local Authority Controlled Company] Limited** (company no [ ]) whose registered office is at Wyre Forest House, Finepoint Way, Kidderminster, WORCS DY11 7WF (the **Company**).

### Introduction

- (A) The Company was incorporated in England under the Companies Act 2006 on [ ] and, at the date of this Agreement, [100] Shares are in issue and are registered in the name of and are beneficially owned by the Shareholder.
- (B) The Company has been established by the Council to allow the Council to exercise the power to trade contained in the Local Government Act 2003 and/or pursuant to the general power of competence in the Localism Act 2011.
- (C) This Agreement sets out the terms upon which the Shareholder will participate in the Company as its shareholder.

### Agreed Terms

#### 1 Interpretation

##### 1.1 In this Agreement:

**Agreed Form** means a form agreed by the Shareholder from time to time, a copy of which has been initialled for the purpose of identification by or on behalf of the Shareholder;

**Articles** means the articles of association of the Company;

**Annual Accounts Date** means the accounting reference dates of the Company from time to time;

**Associate** means, in relation to any party to this Agreement, any person, firm or company which is a connected person (within the meaning of section 1122 of the Corporation Tax Act 2010) of such party or which is an associated company of such party within the meaning of section 449 of the Corporate Tax Act 2010.

**Board of Directors** means the board of directors of the Company;

**Business** means the business of the Company as set out in clause 2.1;

**Business Day** means a day (other than a Saturday or Sunday) on which the banks in the City of London are open for business;

**Business Plan** means the Company's plan for delivery of the Business as updated or amended in accordance with clauses 2.4 - 2.6.

**CA2006** means the Companies Act 2006;

**Council** means Wyre Forest District Council;

**Director** means any director for the time being of the Company, including where applicable any alternative director;

**Dwelling** means any dwelling owned by the Company from time to time;

**Environmental Information Regulations** means the Environmental Information Regulations 2004;

**Finance Documents** means a development facility agreement to be entered into by the Company and the Shareholder on or about the date of this Agreement, a loan note instrument to be entered into by the Company on or about the date of this Agreement, and any other funding and security documentation which is entered into by the Company relating to the provision of funding for the Business from the Council;

**Financial Model** means the financial model set out in a [CD-R with file reference "xxx"] and initialled by way of identification by the signatories to this Agreement, as amended from time to time with Shareholder's consent; Does this mean the business case?

**Group** means in relation to a company that company and any company which is a Parent Undertaking of that company or a Subsidiary Undertaking of that company or of such Parent Undertaking; and the expression Group member shall be construed accordingly;

**FOIA** means the Freedom of Information Act 2000;

**Information** has the meaning given to it under section 84 of the FOIA;

**Lettings Policy** means the policy of the Company under which it will let Dwellings, as amended from time to time in accordance with the Shareholder's consent;

**Parent Undertaking** means a parent undertaking as defined in section 1162 of the Companies Act 2006.

**Remuneration Policy** means a policy adopted by the Company (following receipt of Shareholder's consent) in relation to the remuneration (including salary, bonus, the provision of benefits-in-kind or otherwise) of employees (if any), officers and consultants;

**Rent Policy** means the policy of the Company in relation to setting rents of Dwellings, as amended from time to time in accordance with the Shareholder's consent;

**Request for Information** has the meaning set out in the FOIA or any apparent request for information made under the FOIA or the Environment Information Regulations;

**Sales Policy** means the policy of the Company under which it will sell Dwellings, as amended from time to time in accordance with the Shareholder's consent;

**Shareholder's consent** means consent of the Shareholder in accordance with clause 3.6;

**Shareholder Consent Matters** means those matters listed in schedule 1;

**Shares** means the ordinary shares of £1 each in the issued share capital of the Company.

**Subsidiary** has the meaning given in the CA2006;

**United Kingdom** means the geographical area of the United Kingdom of Great Britain and Northern Ireland as at the date of this Agreement.

1.2 A reference to a statutory provision includes a reference to:

- 1.2.1 a statutory amendment, consolidation or re-enactment (whether before or after the date of this Agreement),
- 1.2.2 statutory instruments or subordinate legislation (as defined in section 21(1) of the Interpretation Act 1978) or orders made under the statutory provision (whether made before or after the date of this Agreement), and
- 1.2.3 statutory provisions of which the statutory provision is an amendment, consolidation or re-enactment.

1.3 Reference to:

- 1.3.1 a person includes a legal or natural person, partnership, trust, company, government or local authority department or other body (whether corporate or unincorporate),
- 1.3.2 a statutory or regulatory body shall include its successors and any substituted body,
- 1.3.3 an individual includes, where appropriate, his personal representatives,
- 1.3.4 the singular includes the plural and vice versa, and
- 1.3.5 one gender includes all genders.

1.4 Unless otherwise stated, a reference to a clause or schedule is a reference to a clause or schedule to this Agreement and a reference to this Agreement includes its schedules.

1.5 Clause headings in this Agreement are for ease of reference only and do not affect its construction.

1.6 In construing this Agreement the so-called ejusdem generis rule does not apply and accordingly the interpretation of general words shall not be restricted by words indicating a particular class or particular examples.

1.7 For the purposes of this Agreement **Party** means a party to this Agreement and reference to **Parties** shall be to all or more than one of them as applicable.

1.8 Where a consent and/or permission is required under this Agreement from one Party to the other that consent and/or permission should not be unreasonably withheld or delayed.

1.9 Completion shall take place immediately following execution of this Agreement, when the parties shall procure that meetings of the Company and the Board or Directors are held as may be necessary.

## **2 Business**

2.1 The Business of the Company shall be:

- 2.1.1 to operate as a commercial company (for trading or other purposes) and deliver a financial return for the benefit of the Shareholder and/or to fund the Company's future Business activities;
- 2.1.2 to acquire land and property within the Council's administrative area and beyond from either the Council or on the open market;
- 2.1.3 To act on behalf of the Council to obtain the necessary regulatory permissions to increase the value of land for disposal and to undertake land disposals;
- 2.1.4 to develop, construct and/or refurbish any land or property within the Council's administrative area and beyond provided such land or property are to be sold on market or shared ownership terms or rented (either on the open market or at a sub-market rent) and in either case in accordance with the Lettings Policy and the Sales Policy (as the case may be),
- 2.1.5 to include a leasing model, i.e. Council owned assets are leased to the company who then let them at market rents.

together with any activities reasonably incidental to the above.

- 2.2 The Company shall send a Business Plan to the Shareholder by the end of xxxxx in each year and invite the shareholder to provide comments on the proposed Business Plan or to provide Shareholder's consent. The Shareholder will use reasonable endeavours to respond by the end of the following February. Subject to the receipt of Shareholder's consent before the end of each accounting period, the Directors shall (in accordance with this Agreement) consider and, if appropriate, adopt an updated and revised Business Plan. No adoption, variation or replacement of any Business Plan shall take effect unless such adoption, variation or replacement has received Shareholder's consent.
- 2.3 Each Business Plan shall be substantially in the format of the previous Business Plan (unless otherwise stipulated by the Shareholder) and shall be for a three year period.
- 2.4 Notwithstanding any other provision of this clause 2, following the requisite approval by the Directors of a new proposed Business Plan or an amended or updated Business Plan, such draft Business Plan shall become, or such amended or updated Business Plan shall become, the Business Plan for the relevant accounting periods. For any period when a proposed Business Plan sent by the Company to the Shareholder under clause 2.3 has not been approved and adopted by the Directors in accordance with this Agreement the relevant existing Business Plan shall continue to be the Business Plan of the Company.
- 2.5 The Company will not make any external appointment of employees or consultees until it has submitted a draft Remuneration Policy to the Shareholder for Shareholder's Consent and such policy has been approved.

### **3 Conduct of the Company's Affairs**

- 3.1.1 Meetings of the Directors shall be held no less than four times in every year and held at regular intervals throughout the year.
- 3.1.2 Unless otherwise agreed by all the Directors, at least 10 Business Days notice shall be given to each of the Directors of all Board Meetings. The notice convening a Board

Meeting shall include an agenda specifying in reasonable detail the matters to be discussed, together with any relevant papers for discussion at such meeting.

- 3.2 With the exception of those matters requiring Shareholder's consent pursuant to clause 3.6, the management of the Company shall be vested in the Directors. The Directors may appoint a managing director on such terms as they may think fit (Provided that if the Managing Director shall be an employee of the Council the Managing Director will receive no remuneration other than reasonable and properly incurred expenses from the Company for their services to the Company as Managing Director) who shall be responsible for the day to day management of the Business within the terms of the Business Plan and this Agreement and perform such duties as may be delegated to him or her by the Directors. The Directors may remove such managing director on such terms as it may think fit, providing that no such or similar appointment shall be made except by the Shareholder.
- 3.3 The Directors will determine the general policies of the Company and the manner in which the Business is to be carried out, subject to (a) the Business Plan, (b) those matters requiring Shareholder's consent pursuant to clause 3.6 and (c) any other express provisions of this Agreement. In particular, but without limitation, the Directors will shall exercise all voting rights and other powers of control available to them in relation to the Company so as to procure (in so far as they are able in the exercise of such rights and power) that, at all times during the term of this Agreement, the Company shall:
- 3.3.1 carry on and conduct its business and affairs in a proper and efficient manner, for its own benefit and in accordance with the Business Plan and good business practices; and
- 3.3.2 transact all its business on arm's length terms.
- 3.4 The Company shall not carry out any activity which would render the holding of Shares by the Shareholder unlawful provided that where a proposed change of law would render such shareholding unlawful the Shareholder will use its reasonable endeavours to take such steps as are necessary to allow it to continue lawfully to hold its Shares.
- 3.5 The Company will, if it requires any approval, consent or licence for the carrying on of its Business in the manner in which it is from time to time carried on or proposed to be carried on, obtain and maintain the same in full force and effect.
- 3.6 The Company shall ensure that no Shareholder Consent Matters shall be carried out without the prior consent in writing of the Shareholder.
- 3.7 The Company shall permit any Director to discuss the affairs, finances and accounts of the Company and its subsidiaries with the Shareholder's designated officers and executives at any time. All books, records, accounts and documents relating to the business and the affairs of the Company shall be open to the inspection of any such person, who shall be entitled to make any copies thereof as he or she deems appropriate to keep the Shareholder properly informed about the business and affairs of the Company or to protect its interests as Shareholder. Any information secured as a consequence of such discussions and inspections shall be kept confidential by the Shareholder and its designated officers and executives in accordance with the terms of clause 6.
- 3.8 The Company agrees with the Shareholder that it will maintain effective and appropriate control systems in relation to the financial, accounting and record-keeping functions of the Company and will generally keep the Shareholder informed of the progress of the



Company's business and affairs and in particular will procure that the Shareholder is given such information and such access to the officers, employees and premises of the Company as it may reasonably require for the purposes of enabling it to monitor its investment and interest in the Company.

- 3.9 The Company shall at all times comply with and not breach nor cause the Shareholder to be in breach of the Local Authorities (Companies) Order 1995 and any legislation that amends or replaces such order.
- 3.10 The Company shall itself comply with and assist the Shareholder in complying with its statutory obligations relating to propriety, governance, public procurement or state aid in force from time to time and any other legal obligations insofar as such obligations arise from the Company's legal or contractual relationship with the Council.
- 3.11 Any reference to a statute or statutory provision is a reference to but as it is in force from time to time, taking account of any change, extension, consolidation or re-enactment and includes any subordinate legislation for the time being in force made under it.

#### **4 Covenants**

The Company covenants with the Shareholder in accordance with the terms of Schedule 2.

#### **5 Finance for the Company**

- 5.1 If the Company requires capital, the Company may request such capital from the Shareholder **provided that** the Shareholder shall not be obliged to provide any guarantee or security in respect of any indebtedness of the Company or to put up the finance concerned.
- 5.2. If the Company requires further capital, the Company shall endeavour to obtain such finance from a third party lender in the best terms which could reasonably be expected to be obtained in the open market provided that the Shareholder shall not be obliged to provide any guarantee or security in respect of any indebtedness of the Company or to put up the finance concerned.
- 5.3 Upon termination of this Agreement pursuant to clause 11.1 the Shareholder shall do all such acts and things as are necessary to procure (so far as they are able) (including, without limitation, the holding of a general meeting of the Company and the passing of appropriate shareholder resolutions) that the Company be wound up.
- 5.4 the Company being convicted of a criminal offence; or
- 5.5 the Council giving not less than 90 days written notice of the date on which this Agreement will terminate.

#### **6 Confidentiality**

- 6.1 Each Party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other Party except as permitted by clause 6.2.
- 6.2 Each Party may disclose the other Party's confidential information:
  - 6.2.1 to its employees, officers, representatives or advisers who need to have such information for the purposes of carrying out the Party's obligations under this

Agreement. Each Party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other Party's confidential information comply with this clause 6; or

6.2.2 as may be required by law, court order or any governmental or regulatory authority.

6.3 Each Party acknowledges that the other Party is subject to the requirements of the FOIA and the Environmental Information Regulations, and shall facilitate the other Party's compliance with its Information disclosure requirements pursuant to and in the manner provided for in clauses 6.4 - 6.7.

6.4 If either Party (the **Recipient**) receives a Request for Information in relation to Information relating to the business of the Company that the other Party is holding and which the Recipient does not hold itself, the Recipient shall refer to the other Party such Request for Information as soon as practicable and in any event within 5 Business Days of receiving a Request for Information, and the other Party shall:

6.4.1 provide the Recipient with a copy of all such Information in the form that the Recipient requires as soon as practicable and in any event within 10 Business Days (or such other period as the Recipient acting reasonably may specify) of the Recipient's request; and

6.4.2 provide all necessary assistance as reasonably requested by the Recipient to enable the Recipient to respond to a Request for Information within the time for compliance set out in Section 10 of the FOIA or Regulation 5 of the Environmental Information Regulations.

6.5 Following notification under clause 6.4, and up until such time as the other Party has provided the Recipient with all the Information specified in that clause, the other Party may make representations to the Recipient as to whether or not or on what basis Information requested should be disclosed, and whether further Information should reasonably be provided in order to identify and locate the Information requested, provided always that the Recipient shall be responsible for determining, at its absolute discretion:

6.5.1 whether Information is exempt from disclosure under the FOIA and the Environmental Information Regulations; and

6.5.2 whether Information is to be disclosed in response to a Request for Information,

and in no event shall the other Party respond directly to a Request for Information unless the Request for Information is addressed to it.

6.6 The Parties acknowledge that (notwithstanding the provisions of clause 6.1) the Recipient may, acting in accordance with the Code of Practice on the Discharge of Public Authorities' Functions under part I of the Freedom of Information Act 2000, be obliged under the FOIA or the Environmental Information Regulations to disclose Information concerning the other Party:

6.6.1 in certain circumstances without consulting with the other Party; or

6.6.2 following consultation with the other Party and having taken their views into account.

- 6.7 Each Party shall transfer to the other Party any Request for Information which it receives but is addressed to the other Party as soon as practicable and in any event within 3 Business Days of receiving it.
- 6.8 The Parties acknowledge that any lists provided which itemise or outline confidential information are of indicative value only and that a Recipient may nevertheless be obliged to disclose confidential information in accordance with this clause 6.

**7 Production of accounts**

- 7.1 The Company shall instruct its auditors or accountants (as applicable) to prepare and audit a balance sheet of the Company, as at the Annual Accounts Date each year and a consolidated profit and loss account of the Company, for the financial period ending on the Annual Accounts Date each year to be presented to the Shareholder within 3 calendar months after the end of the period to which such accounts relate. The balance sheet and profit and loss account will be accompanied by an annual report.
- 7.2 All accounts referred to in this clause shall be prepared in pounds sterling and in accordance with applicable law and generally accepted accounting standards, principles and practices in the United Kingdom.
- 7.3 All accounts referred to in this clause shall be prepared in pounds sterling and in accordance with applicable law and generally accepted accounting standards, principles and practices in the United Kingdom.

**8 Anti-corruption**

- 8.1 In this clause:

**Adequate Procedures** means adequate procedures, as referred to in section 7(2) of the Bribery Act 2010 and any guidance issued by the Secretary of State under section 9 of the Bribery Act 2010;

**Associated Person** means in relation to a party to this Agreement, any person (including an officer, employee, agent or subsidiary) who performs services for or on behalf of that party;

**Corrupt Activity** means extortion, fraud, deception, collusion, cartels, abuse of power, embezzlement, trading in influence, money-laundering or any similar activity including without limitation any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 Bribery Act;

- 8.2 Each party declares and undertakes to the other parties that:

- 8.2.1 it has not and will not in relation to the Company or the operation of the Business, engage in any Corrupt Activity;
- 8.2.2 it will not authorise or acquiesce in or turn a blind eye to, any Corrupt Activity;
- 8.2.3 it has and will maintain in place, or in the case of the Company it will put and maintain in place, Adequate Procedures designed to prevent any Associated Person from undertaking any conduct that would give rise to an offence under section 7 of the Bribery Act 2010;

- 8.2.4 it has not and will not engage in any activity, practice or conduct which could place the Company or any other party in breach of section 7(1) Bribery Act;
- 8.2.5 from time to time, at the reasonable request of the other party, it will confirm in writing that it has complied with its undertakings under this clause 8.2 and will provide any information reasonably requested by the other party in support of such compliance; and
- 8.2.6 it will ensure that its Associated Persons will comply with its commitments under this clause 8.

8.3 Breach of any of the undertakings in this clause shall be deemed to be a material breach of this Agreement.

**9 Conflict with the Articles**

In the event of any ambiguity or discrepancy between the provisions of this Agreement and the Articles, then it is the intention of the Shareholder that the provisions of this Agreement shall prevail. Accordingly, the Shareholder (so far as each is able) shall take all such steps and do all such acts and things as may be necessary or desirable, including, without limitation, exercising all voting and other rights and powers of control available to it in relation to the Company, so as to give effect to the provisions of this Agreement and shall further if necessary procure (insofar as it is able to do so by the exercise of those rights and powers) any required amendment to the Articles.

**10 No fetter**

Nothing in this Agreement shall operate to bind the Company to the extent that it constitutes an unlawful fetter on any statutory power of the Company (but this shall not affect the validity of the relevant provision as between the other parties to this Agreement or the respective obligations of such other parties as between themselves under clause 9).

**11 Duration and termination**

11.1 This Agreement shall continue in full force and effect, unless otherwise agreed in writing by the Shareholder until the earlier of the following events:

- 11.1.1 the Shareholder agrees in writing to terminate this Agreement;
- 11.1.2 an effective resolution is passed or a binding order is made for the winding up of the Company;

**provided that** this Agreement shall cease to have effect as regards any Shareholder who ceases to hold any Shares in the Company, except for any provisions which are expressed to continue in force thereafter.

11.2 Termination of this Agreement pursuant to this clause shall not release any party from any liability which at the time of termination has already accrued to another party or which may accrue after termination of this Agreement in respect of any act or omission prior to such termination.

11.3 Upon termination of this Agreement pursuant to clause 11.1 the Shareholder shall do all

such acts

**12. Assignment**

This Agreement is personal to the parties and neither party shall assign, transfer, charge, make the subject of a trust or deal in any other manner with this Agreement or any of its rights or obligations under it, or purport to do any of the same, nor subcontract any or all of its obligations under this Agreement without the prior written consent of the other party.

**13 No Partnership**

Nothing in this Agreement gives rise to a partnership between the Parties or constitutes one Party as the agent of the other.

**14 Contracts (Rights of Third Parties) Act 1999**

14.1 Unless the right of enforcement is expressly granted, it is not intended that a third party, other than a lawful successor in title or a lawful assignee, should have the right to enforce a provision of this Agreement pursuant to the Contracts (Rights of Third Parties) Act 1999.

14.2 The Parties may rescind or vary this Agreement without the consent of a third party to whom an express right to enforce any of its terms has been provided.

**15 Costs of this Agreement**

Each party shall pay its own costs in connection with the negotiation, preparation, execution and performance of this Agreement.

**16 Waiver**

16.1 The rights of each of the Parties in respect of a breach of this Agreement shall not be affected by completing, rescinding, or failing to rescind, this Agreement, or failing to exercise, or delaying to exercise, a right or remedy, or by anything else, except a specifically authorised written waiver or release. A single or partial exercise of a right or remedy provided by this Agreement or by law does not prevent its further exercise or the exercise of another right or remedy.

16.2 Waiver of a breach of a term of this Agreement, or of a default under it, does not constitute a waiver of another breach or default nor affect the other terms of this Agreement.

16.3 The rights and remedies provided in this Agreement are cumulative and not exclusive of any other rights or remedies.

**17 Variation**

A purported variation of this Agreement is not effective unless in writing and signed by or on behalf of each of the Parties.

**18 Invalidity**

If a provision of this Agreement is held to be illegal or unenforceable, in whole or in part, under an enactment or rule of law, it shall to that extent be deemed not to form part of this Agreement and the enforceability of the remainder of this Agreement shall not be affected. The Parties agree to negotiate in good faith to agree the terms of a mutually satisfactory

provision to be substituted for the provision found to be illegal or unenforceable.

**19 Entire Agreement**

- 19.1 This Agreement (together with any documents entered into under it or at the same time as it) supersedes all prior understandings and agreements between the Parties (whether written or oral) relating to its subject-matter and contains the entire agreement between the Parties relating to its subject-matter.
- 19.2 Each Party acknowledges that it does not enter into this Agreement on the basis of, and does not rely on, warranties or representations made, or agreed to, by any person (whether a party to this Agreement or not).
- 19.3 Each Party waives its rights against the other in respect of warranties and representations (whether written or oral) not expressly set out or referred to in this Agreement.
- 19.4 Nothing in this clause 18 limits or excludes liability for fraud.

**20 Status of this Agreement**

In the event of any ambiguity or discrepancy between the provisions of this Agreement and the Articles, then it is the intention of the Shareholder that the provisions of this Agreement shall prevail. Accordingly, the Shareholder shall take all such steps and do all such acts and things as may be necessary or desirable, including, without limitation, exercising all voting and other rights and powers of control available to it in relation to the Company, so as to give effect to the provisions of this Agreement and shall further if necessary procure (insofar as it is able to do so by the exercise of those rights and powers) any required amendment to the Articles.

**21 Consents**

- 21.1 Consents, notices, approvals or agreements to be given by the Shareholder under this Agreement shall be given in writing.
- 21.2 Where this Agreement provides that a matter is subject to the consent, approval or Agreement of either Party then (except as expressly provided otherwise), it shall be in the absolute discretion of that Party as to whether (and if so, on what terms and conditions) the consent, approval or agreement is made.

**22 Communications**

- 22.1 Any notice or other communication under or in connection with this Agreement shall be in writing and shall be delivered personally or sent by first-class post or by email as follows:

21.1.1 if to the Shareholder, to:

Address: Wyre Forest House, Finepoint Way, Kidderminster, WORCS DY11 7WF

Email: [ESO@wyreforestdc.gov.uk](mailto:ESO@wyreforestdc.gov.uk)

marked for the attention of the Chief Executive;

21.1.2 if to the Company, to:

Address: Wyre Forest House, Finepoint Way, Kidderminster, WORCS DY11 7WF

Email: ESO@wyreforestdc.gov.uk

marked for the attention of Director of Economic Prosperity & Place;

or to such other person, address, or email as any Party may specify by notice in writing to the other.

22.2 In the absence of evidence of earlier receipt, any notice or other communication shall be deemed to have been duly given:

22.2.1 if delivered personally, when left at the address referred to in clause 22.1;

22.2.2 if sent by mail two Business Days after posting it;

22.2.3 if sent by email, when sent and there has been no communication by the recipient to the sender that the email has not been received,

provided always that a notice given in accordance with the above but received on a day which is not a Business Day or after business hours on a Business Day will only be deemed to be given on the next Business Day.

## **23 Counterparts**

23.1 This Agreement may be executed in counterparts and by the Parties on different counterparts, but shall not be effective until each Party has executed at least one counterpart.

23.2 Each counterpart, when executed, shall be an original, but all the counterparts together constitute the same document.

## **24 Governing Law and Jurisdiction**

24.1 This Agreement and the rights and obligations of the Parties shall be governed by and construed in accordance with the laws of England and Wales.

24.2 The Parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales in respect of any dispute or claim arising out of or in connection with this Agreement or any of the documents to be executed pursuant to this Agreement or their subject-matter or formation (including non-contractual disputes or claims).

24.3 This Agreement has been executed as a deed and delivered on the date stated at the beginning of this Agreement.

**Schedule 1**

**Shareholder Consent Matters**

**Part A (Corporate Matters)**

The Company shall not, unless it has Shareholder's consent:

1. vary in any respect its articles of association or the rights attaching to any of its shares; or
2. permit the registration (upon subscription or transfer) of any person as a member of the Company other than the Shareholder in accordance with the terms of this Agreement; or
3. increase the amount of its issued share capital except as provided in this Agreement, grant any option or other interest (in the form of convertible securities or in any other form) over or in its share capital, redeem or purchase any of its own shares or effect any other reorganisation of its share capital; or
4. issue any loan capital or enter into any commitment with any person with respect to the issue of any loan capital; or
5. make any borrowing other than under the Finance Documents; or
6. dispose of any assets of the Company or any subsidiary undertaking of the Company or any subsidiary undertaking of the Company
7. apply for the listing or trading of any shares or debt securities on any stock exchange or market; or
8. making, declaration or payment of any dividend or distribution by the Company or any Subsidiary Undertaking of the Company;
9. pass any resolution for its winding up or present any petition for its administration (unless it has become insolvent); or
10. engage in any business other than as contemplated by the Business Plan or defray any monies other than in good faith for the purposes of or in connection with the carrying on of such business; or
11. form any Subsidiary or acquire shares in any other company or participate in any partnership or joint venture (incorporated or not); or
12. close down any business operation, or dispose of or dilute its interest in any Subsidiary for the time being, or dispose of any material asset, unless in each case such closure or disposal is expressly contemplated by the Business Plan; or
13. amalgamate or merge with any other company or business undertaking; or
14. alter its name or registered office; or
15. sell, transfer or dispose of the whole or a substantial part of the Business, or any dilution of the Company's interest in any Subsidiary Undertaking.
16. form any Subsidiary Undertaking or the acquisition of or investment in any other company or business
17. promote or progress the merger or amalgamation of the Company or any Subsidiary Undertaking of the Company with any other company or the participation in any



partnership or joint venture

18. enter into any transaction or arrangement of any nature whatsoever (including, for the avoidance of doubt, a service contract) with any of its directors or any person who is connected (within the meaning of sections 1122 and 1123 of the Corporation Tax Act 2010) to any of its directors, whether or not any other person shall be party to such transaction or arrangement; or
19. enter into any arrangement, contract or transaction outside the normal course of its business or otherwise than on arm's length terms; or
20. create or permit to be created any mortgage, charge, encumbrance or other security interest whatsoever on any material asset or its business in whole or in part or on any of its shares other than:
  - 20.1. as contemplated in the Finance Documents;
  - 20.2. liens arising in the ordinary course of business; or
  - 20.3. any charge arising by the operation or purported operation of title retention clauses and in the ordinary course of business; or
21. adopt or amend its annual Business Plan; or
22. change either:
  - 22.1 its statutory auditors; or
  - 22.2 its financial year end; or
23. make or permit to be made any material change in the accounting policies and principles adopted by the Company in the preparation of its audited accounts except as may be required to ensure compliance with relevant accounting standards under the CA2006 or any other generally accepted accounting principles in the United Kingdom; or
24. make any loan (otherwise than by way of deposit with a bank or other institution the normal business of which includes the acceptance of deposits) or grant any credit, guarantee or indemnity (otherwise than in all three cases in the normal course of trading); or
25. give any guarantee, suretyship or indemnity to secure the liability of any person or assume the obligations of any person outside the scope of its Business Plan; or
26. factor or assign any of its book debts; or
27. establish or amend any profit-sharing, share option, bonus or other incentive scheme of any nature for directors, officers or employees; or
28. establish or amend any pension scheme or grant any pension rights to any director, officer, employee, former director, officer or employee, or any member of any such person's family; or
29. Determine the terms and conditions of appointment of executive directors or appoint or dismiss any director (executive or non executive); or
30. adopt or amend its Remuneration Policy; or
31. agree to remunerate (by payment of salary, bonus, the provision of benefits-in-kind or otherwise) or to increase the remuneration of any employee, officer or

consultant to the Company unless the annual aggregate amount of such remuneration (by payment of salary, bonus, the provision of benefits-in-kind or otherwise) is in accordance with the Company's current Remuneration Policy or is expressly referred to in the Business Plan or agree to remunerate (by payment of salary, bonus, the provision of benefits-in-kind or otherwise) any director; or

32. institute, settle or compromise any material legal proceedings (other than debt recovery proceedings in the ordinary course of business or where the value of such is less than [£50,000]) instituted or threatened against it or submit to arbitration or alternative dispute resolution any dispute if the effect of this is that its solvency may be imperilled, or it may require additional funding in order to deliver its Business Plan; or
33. make any agreement with any revenue or tax authorities or make any claim, disclaimer, election or consent for tax purposes in relation to the Company or its business if the effect of this is that its solvency may be imperilled, or it may require additional funding in order to deliver its Business Plan.

**Part B (Operational Matters)**

The Company shall not, unless it has Shareholder's consent:

- 1        acquire any land or assets with a value in excess of such value as is agreed as part of the Business Plan; or
- 2        enter into any contract with a value in excess of such value as is agreed as part of the Business Plan; or
- 3        enter into, as lessor or as lessee, any finance lease [if doing so would mean that the aggregate value of such arrangements entered into exceeds £[50,000]]; or
- 4        make any amendments to:
  - 4.1       the Financial Model; or
  - 4.2       the Lettings Policy and/or Sales Policy; or
  - 4.3       the Rent Policy;

.

**Schedule 2**

**Company Covenants**

The Company covenants with the Shareholder as follows:

- 1        Only to acquire land or assets if any such acquisition is in accordance with both the Financial Model and the Business Plan
- 2        To comply with the Lettings Policy and the Sales Policy
- 3        To comply with the Rent Policy
- 4        To appoint the Council's auditors as its statutory auditors and to maintain the Shareholder's financial year end as the Company's financial year end.

**In witness** whereof the parties have executed this Agreement as a deed.

The **Common Seal** of **Wyre Forest**  
**District Council** )

was hereunto )

authenticated in the presence of: ) .....  
Authorised Signatory

Executed as a deed by )

**[Local Authority Controlled**  
**Company]** )

acting by: ) .....  
a director in the presence of: ) Director

Witness signature

Name

Address

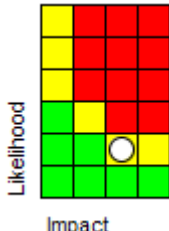
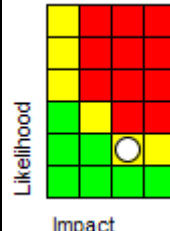
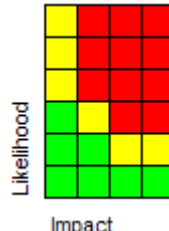

# LATC Risk Register





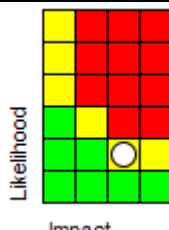
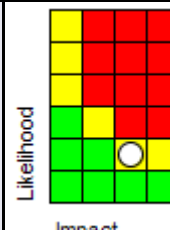


<b>LATC01</b>	<b>Council acts ultra vires</b>					
<b>Original Matrix</b>		<b>Current Risk Matrix</b>		<b>Target Risk Matrix</b>		

<b>MITIGATING ACTIONS</b>					
<b>Description</b>	<b>Managed By</b>	<b>Due Date</b>	<b>Latest Note</b>		
External advice from Mazars including Anthony Collins Solicitors confirms ability for Council to act within current legislation	Mike Parker	07-Feb-2018		100%	
Changes to Prudential and Treasury Management Codes are considered in conjunction with the revised MHCLG Guidance on Investments and MRP and specific advice sought if further clarity is required on risk in relation to specific investment proposals in relation to the LATC Group structure.	Helen Ogram; Tracey Southall	31-Mar-2019		0%	


<b>LATC02</b>	<b>State Aid</b> Relationship between Council and LATC breaches State Aid regulations.					
---------------	--	--	--	--	--	--

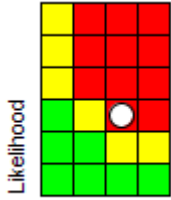
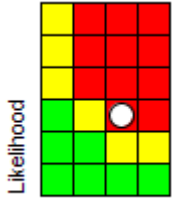
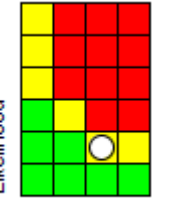

Original Matrix		Current Risk Matrix		Target Risk Matrix		
-----------------	---	---------------------	---	--------------------	---	---




MITIGATING ACTIONS					
Description	Managed By	Due Date	Latest Note		
External advice from Mazars including Anthony Collins Solicitors confirms ability for Council to act within current legislation	Mike Parker	07-Feb-2018		<div><div>100%</div></div>	
The relevance of the external advice from Mazars will be monitored as the LATC business progresses.	Caroline Newlands; Mike Parker; Tracey Southall	31-Mar-2019		<div><div>0%</div></div>	

LATC03	Accounting and tax treatment Council fails to properly account for tax implications of LATC activities.						
	Original Matrix		Current Risk Matrix		Target Risk Matrix		

MITIGATING ACTIONS			
Description	Managed By	Due Date	Latest Note


External advice from Mazars including Anthony Collins Solicitors advises on tax implications and advantages and disadvantages of group structure	Tracey Southall	07-Feb-2018		<div><div>100%</div></div>	
--	-----------------	-------------	--	----------------------------	---





LATC04 Financial Modelling Financial modelling of LATC demonstrates that developments proposed are not financially viable.						
Original Matrix		Current Risk Matrix		Target Risk Matrix		
	Likelihood Impact		Likelihood Impact		Likelihood Impact	

MITIGATING ACTIONS					
Description	Managed By	Due Date	Latest Note		
External advice from Mazars including financial modelling by FPM has modelled financial viability from both LATC and Council perspectives	Tracey Southall	07-Feb-2018		<div><div>100%</div></div>	
Any financial transactions between the Council and the LATC e.g. lending through the Development Loan Fund will be subject to individual scrutiny and due diligence including financial viability sensitivity analysis before final decisions are proposed/taken.	Mike Parker; Tracey Southall	31-Mar-2018		<div><div>0%</div></div>	
Through the shareholder agreement and through the establishment of the business plan within which the LATC operates, the Council will be able to ensure that all financial arrangements are viable	Mike Parker	01-Sep-2018		<div><div>0%</div></div>	



The LATC is closed down - an exit strategy will be considered as a contingency plan to protect the Council against unknown events in the future.	Caroline Newlands; Mike Parker; Tracey Southall	31-Mar-2019		0%	
--	---	-------------	--	----	---

LATC05	<b>Funding and interest</b> Ability of the Council to continue to provide commercial funding and/or fluctuations in interest rates render support for the LATC untenable.					
	<div>Original Matrix</div> <div><div>Likelihood</div><div><div><div><div><div></div><div></div><div></div><div></div><div></div></div><div><div></div><div></div><div></div><div></div><div></div></div><div><div></div><div></div><div></div><div></div><div></div></div><div><div></div><div></div><div></div><div></div><div></div></div><div><div></div><div></div><div></div><div></div><div></div></div></div><div>Impact</div></div></div><div></div><div><div>Current Risk Matrix</div><div><div>Likelihood</div><div><div><div><div><div></div><div></div><div></div><div></div><div></div></div><div><div></div><div></div><div></div><div></div><div></div></div><div><div></div><div></div><div></div><div></div><div></div></div><div><div></div><div></div><div></div><div></div><div></div></div><div><div></div><div></div><div></div><div></div><div></div></div></div><div>Impact</div></div></div><div></div><div><div>Target Risk Matrix</div><div><div>Likelihood</div><div><div><div><div><div></div><div></div><div></div><div></div><div></div></div><div><div></div><div></div><div></div><div></div><div></div></div><div><div></div><div></div><div></div><div></div><div></div></div><div><div></div><div></div><div></div><div></div><div></div></div><div><div></div><div></div><div></div><div></div><div></div></div></div><div>Impact</div></div></div><div></div></div></div></div></div></div>					

MITIGATING ACTIONS					
Description	Managed By	Due Date	Latest Note		
External advice from Mazars including financial modelling by FPM has modelled financial viability from both LATC and Council perspectives	Tracey Southall	07-Feb-2018		100%	
The LATC is closed down - an exit strategy will be considered as a contingency plan to protect the Council against unknown events in the future.	Caroline Newlands; Mike Parker; Tracey Southall	31-Mar-2019		0%	
The development activity of the LATC is financially self sustainable and not reliant upon funding from the Council	Tracey Southall	31-Mar-2018		0%	
Changes to Prudential and Treasury Management Codes are considered in conjunction with the revised MHCLG Guidance on Investments and MRP and specific advice sought if further clarity is	Helen Ogram; Tracey Southall	31-Mar-2019		0%	

required on risk in relation to specific investment proposals in relation to the LATC Group structure.					
--	--	--	--	--	--

LATC06	Changes in legislation or Government policy Statutory or policy changes render the LATC no longer vires						
	<div>Original Matrix</div> <div><div>Likelihood</div><div><div><div><div></div><div></div><div></div><div></div></div><div><div></div><div></div><div></div><div></div></div><div><div></div><div></div><div></div><div></div></div><div><div></div><div></div><div></div><div></div></div></div><div>Impact</div></div></div>	<div>Current Risk Matrix</div> <div><div>Likelihood</div><div><div><div></div><div></div><div></div><div></div></div><div><div></div><div></div><div></div><div></div></div><div><div></div><div></div><div></div><div></div></div><div><div></div><div></div><div></div><div></div></div></div><div>Impact</div></div>	<div>Target Risk Matrix</div> <div><div>Likelihood</div><div><div><div></div><div></div><div></div><div></div></div><div><div></div><div></div><div></div><div></div></div><div><div></div><div></div><div></div><div></div></div><div><div></div><div></div><div></div><div></div></div></div><div>Impact</div></div>	<div></div>			

MITIGATING ACTIONS					
Description	Managed By	Due Date	Latest Note		
External advice from Mazars including Anthony Collins Solicitors confirms ability for Council to act within current legislation	Mike Parker	07-Feb-2018		100%	✓
The LATC is closed down - an exit strategy will be considered as a contingency plan to protect the Council against unknown events in the future.	Caroline Newlands; Mike Parker; Tracey Southall	31-Mar-2019		0%	▶



<b>LATC07</b>	<b>Governance arrangements</b> Establishment of the LATC fails to ensure separation between decision making of the Council and the commercial decision making of the LATC				
---------------	---	--	--	--	--

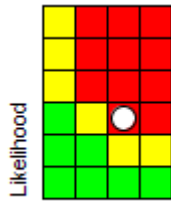
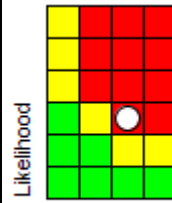
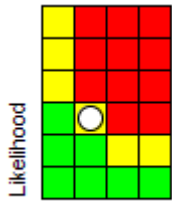

Original Matrix		Current Risk Matrix		Target Risk Matrix		
-----------------	--	---------------------	--	--------------------	--	--




MITIGATING ACTIONS					
Description	Managed By	Due Date	Latest Note		
External advice from Mazars including Anthony Collins Solicitors confirms ability for Council to act within current legislation	Mike Parker	07-Feb-2018		<div>100%</div>	
The Council ensures that only those officers and members of the Council who are able to take objective decisions are appointed to the LATC	Caroline Newlands	01-Sep-2018		<div>0%</div>	

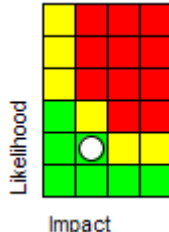
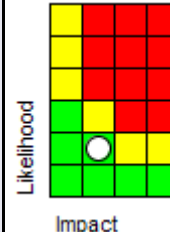
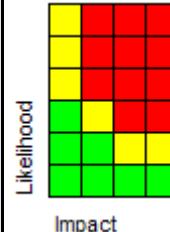

LATC08	Resources LATC has insufficient officer resource to operate effectively					
	<div>Original Matrix</div> <div><div>Likelihood</div><div><div><div><div><div></div><div></div><div></div><div></div><div></div></div><div><div></div><div></div><div></div><div></div><div></div></div><div><div></div><div></div><div></div><div></div><div></div></div><div><div></div><div></div><div></div><div></div><div></div></div><div><div></div><div></div><div></div><div></div><div></div></div></div><div>Impact</div></div></div></div>	<div>Current Risk Matrix</div> <div></div>	<div>Current Risk Matrix</div> <div><div>Likelihood</div><div><div><div><div><div></div><div></div><div></div><div></div><div></div></div><div><div></div><div></div><div></div><div></div><div></div></div><div><div></div><div></div><div></div><div></div><div></div></div><div><div></div><div></div><div></div><div></div><div></div></div><div><div></div><div></div><div></div><div></div><div></div></div></div><div>Impact</div></div></div></div>	<div>Target Risk Matrix</div> <div></div>	<div>Target Risk Matrix</div> <div><div>Likelihood</div><div><div><div><div><div></div><div></div><div></div><div></div><div></div></div><div><div></div><div></div><div></div><div></div><div></div></div><div><div></div><div></div><div></div><div></div><div></div></div><div><div></div><div></div><div></div><div></div><div></div></div><div><div></div><div></div><div></div><div></div><div></div></div></div><div>Impact</div></div></div></div>	<div></div> <div></div>


MITIGATING ACTIONS			
Description	Managed By	Due Date	Latest Note


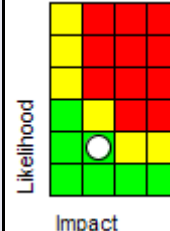
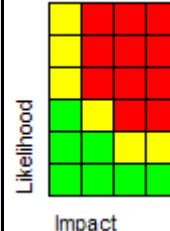

External advice from Mazars including financial modelling by FPM has modelled financial viability from both LATC and Council perspectives	Tracey Southall	07-Feb-2018		<div><div>100%</div></div>	
The LATC is able to purchase support from existing council officers until such time as it is able to or requires the appointment of its own staff	Mike Parker; Tracey Southall	31-Mar-2018		<div><div>0%</div></div>	


LATC09 Availability of development opportunities LATC fails to find sufficient development sites to remain viable							
	Original Matrix		Current Risk Matrix		Target Risk Matrix		




MITIGATING ACTIONS					
Description	Managed By	Due Date	Latest Note		
External advice from Mazars including financial modelling by FPM has modelled financial viability from both LATC and Council perspectives	Tracey Southall	07-Feb-2018		<div><div>100%</div></div>	
The LATC is closed down - an exit strategy will be considered as a contingency plan to protect the Council against unknown events in the future.	Caroline Newlands; Mike Parker; Tracey Southall	31-Mar-2019		<div><div>0%</div></div>	
The LATC business case identifies a suitable pipeline of development opportunities and this will be refreshed and updated on a regular basis.	Mike Parker	31-Mar-2018		<div><div>0%</div></div>	






LATC10	Governance Arrangements - company structure With hindsight the company structure selected does not work effectively.						
	Original Matrix		Current Risk Matrix		Target Risk Matrix		

MITIGATING ACTIONS					
Description	Managed By	Due Date	Latest Note		
Mazars have confirmed that the Group Structure proposed is capable of organic growth and this has been tested by other Councils.	Caroline Newlands; Mike Parker	31-Mar-2019		<input type="text" value="0%"/>	

LATC11	<b>Performance</b> The LATC fails to operate successfully and makes a loss or encounters operational problems that are costly either in financial or reputational terms that reflects not only on the LATC Group but also the Council.						
	Original Matrix		Current Risk Matrix		Target Risk Matrix		

MITIGATING ACTIONS					
Description	Managed By	Due Date	Latest Note		
External advice from Mazars including Anthony Collins Solicitors confirms ability	Mike Parker	07-Feb-2018		<input type="text" value="100%"/>	

for Council to act within current legislation					
External advice from Mazars including financial modelling by FPM has modelled financial viability from both LATC and Council perspectives	Tracey Southall	07-Feb-2018		<div>100%</div>	
Appropriate appointments are made to the LATC Group companies	Mike Parker	31-Mar-2018		<div>0%</div>	
The governance arrangements should ensure proposals are fully assessed before approval and then delivery monitored by regular reporting	Mike Parker	31-Mar-2019		<div>0%</div>	

Risk Status	
	Alert
	High Risk
	Warning
	OK
	Unknown

car Matters	Reserved Matters for Shareholder Approval	Matters Delegated for Board Approval	Matters Delegated for Individual Board Member Approval
<b>Business Plan</b>	Adopting the first and all future Business Plans.	Varying the timing, scale or programme of works or projects that are included in the Business Plan where the change in the budgeted revenue is less than £1m in any one financial year.  Non-material departures from the Business Plan	The Board shall be entitled to delegate decisions as detailed in the Business Plan and/or decisions which relate to commitments up to a value of £50,000 to a named Director of the Company.
<b>Appointment of Removal of Directors</b>	Appointment and removal of all Directors.	Appointment of a Chair	None.
<b>Variations to the Articles of Association</b>	Material variations to the Company's Articles	Minor variations to Articles which do not affect those matters reserved for shareholder approval.	None.
<b>Executive Director Terms &amp; Conditions</b>	The approval of the terms and conditions of employment of any executive director of the company.	Non-material alterations to terms and conditions	None.
<b>Employee Recruitment and Remuneration</b>		Recruitment of employees. Agreeing the remuneration of employees where the total remuneration for that position is greater than £50K.	Recruitment of employees and/or agreeing the remuneration of employees where the total remuneration for that position is no more than £50K.

car Matters	Reserved Matters for Shareholder Approval	Matters Delegated for Board Approval	Matters Delegated for Individual Board Member Approval
<b>Shares</b>	<p>The acquisition of any shares or any option over shares in the capital of any company.</p> <p>The creation, allotment, issuing or redemption of any shares or securities, or the granting of any right to require the creation, allotment, issuing or redemption of any such shares or securities.</p>	None.	None.
<b>Issuing or Accepting of Borrowing/Loan Capital</b>	Entering into any borrowing, the issuing of any loan capital or entering into any commitments with any person regarding the issue of any loan capital outside of the approved Business Plan.	Entering into any borrowing or issuing any loan capital where this is approved in the current Business Plan.	None.
<b>Company Winding up</b>	Passing any resolution for the winding up of the Company, or presenting any petition for its administration (save for in insolvency).	None.	None.
<b>Nature of Company Business</b>	Any material changes to the nature of the Company's business, or commencing any new business not contemplated by the approved Business Plan.	Any changes to the nature of the Company's business, or commencing any new business, but only where this is contemplated by the approved Business Plan.	None.



car Matters	Reserved Matters for Shareholder Approval	Matters Delegated for Board Approval	Matters Delegated for Individual Board Member Approval
<b>Acquisition or Disposals</b>	The acquisition or disposal of any land or building or the entering into of any option in respect of any land or building where this is not contemplated by the approved Business Plan.	The acquisition or diosposal of any land or building or the entering in of any option in respect of any land or building specifically contemplated by the approved Business Plan including granting leaseholds.	None.
<b>Company/Group Structure</b>	Forming any subsidiary or acquiring an interest in any other company or participating in any partnership or corporate joint venture.  Amalgamating or merging with any other company or undertaking.	None.	None.
<b>Stock Exchange Listing</b>	The listing or trading of any shares or debt securities on any stock exchange or market.	None.	None.
<b>Appointment of Agents or Subcontractors or Arms' Length Transactions</b>		Appointment of contractors or subcontractors where this is in pursuance of the agreed Business Plan	
<b>Part sale of the business</b>	Selling any part of the business, unless specifically contemplated and authorised in the approved Business Plan.	None.	None.
<b>Business Name and Location</b>	Changing the Company name, trading name, or registered office.	Changing the location of any offices outside of the Company's registered office.	None.

car Matters	Reserved Matters for Shareholder Approval	Matters Delegated for Board Approval	Matters Delegated for Individual Board Member Approval
<b>Intellectual Property</b>	The disposal, sale, assignment or granting of any rights in the Company's intellectual property outside of the normal course of business.	The granting of any rights (by licence or otherwise) in or over any intellectual property owned or used by the Company in the normal course of business	None.
<b>Encumbrances</b>	Creating or granting any encumbrance over the whole or any part of the Company or its business, undertaking or assets, or over any shares in the Company other than liens arising in the normal course of business.	None.	None.
<b>Incurring redundancy payments</b>		Dismissing any employee in circumstances in which the Company will incur or agrees to bear redundancy or other costs (including actuarial costs) in excess of £50K.	Dismissing any employee in circumstances in which the Company will incur or agrees to bear redundancy or other costs (including actuarial costs) no greater than £50K.
<b>Pension</b>	Establishing any new pension scheme, or granting any pension rights to any director, former director, or any members of any such person's family.  Changes to pension arrangements for staff in the Local Government Pension Scheme.	Establishing any new pension scheme, or amending any pension scheme, provided by the Company to employees.	None.