



NOTICE OF MEETING

CABINET

**MONDAY, 14 FEBRUARY 2022 AT 1.10 PM
(OR AT THE RISE OF THE PREVIOUS MEETING)**

COUNCIL CHAMBER - THE GUILDHALL

Telephone enquiries to Democratic Services 023 9283 4060

Email: Democratic@portsmouthcc.gov.uk

Information with regard to public access due to Covid precautions

- Attendees will be requested to undertake an asymptomatic/ lateral flow test within 48 hours of the meeting. Around one in three people who are infected with COVID-19 have no symptoms so could be spreading the virus without knowing it. Asymptomatic testing – getting tested when you don't have symptoms - helps protect people most at risk by helping to drive down transmission rates. We strongly encourage you to take up the habit of regular asymptomatic testing to help prevent the spread of coronavirus to your colleagues and residents you work with.
- We strongly recommend that attendees should be double vaccinated, and if eligible, have received a booster.
- If symptomatic you must not attend and self-isolate following the stay-at-home guidance issued by UK Health Security Agency.
- All attendees are required to wear a face covering while moving around within the Guildhall and are recommended to continue wearing a face covering in the Council Chamber except when speaking.
- Although not a requirement, attendees are strongly encouraged to keep a social distance and take opportunities to prevent the spread of infection.
- Hand sanitiser is provided at the entrance and throughout the Guildhall. All attendees are encouraged to make use of hand sanitiser on entry to the Guildhall and are requested to follow the one-way system in place.
- Attendees are encouraged book in to the venue (QR code). An NHS test and trace log will be retained and maintained for 21 days for those that cannot or have not downloaded the app.
- Those not participating in the meeting and wish to view proceedings are encouraged to do so remotely via the livestream link.

Membership

Councillor Gerald Vernon-Jackson CBE (Chair)

Councillor Suzy Horton (Vice-Chair)

Councillor Chris Attwell

Councillor Dave Ashmore

Councillor Kimberly Barrett

Councillor Ben Dowling

Councillor Jason Fazackarley

Councillor Hugh Mason

Councillor Darren Sanders

Councillor Lynne Stagg

(NB This agenda should be retained for future reference with the minutes of this meeting.)

Please note that the agenda, minutes and non-exempt reports are available to view online on the Portsmouth City Council website: www.portsmouth.gov.uk

Deputations by members of the public may be made on any item where a decision is going to be taken. The request should be made in writing to the contact officer (above) by 12 noon of the working day before the meeting and must include the purpose of the deputation (for example, for or against the recommendations). Email requests are accepted.

AGENDA

The Council Chamber - Risk Assessment

1 Apologies for Absence

2 Declarations of Interests

3 Record of Decisions - Cabinet Sub-Committee meeting on 15 December 2021 (Pages 7 - 10)

A copy of the record of the decisions taken at the Cabinet Sub-Committee meeting on 15 December 2021 are attached.

4 The Council as company owner (Pages 11 - 26)

Purpose

To outline:

- The Council as shareholder and the role of the Cabinet;
- The requirement for commercial support; and
- The rationale for a planned schedule of meetings.

RECOMMENDED that Cabinet:

- 1. Agree that a standing quarterly item (in June, September, December and March) be reserved on Cabinet agenda to report on issues concerning the shareholder function in PCC company matters;**

2. **Authorises the City Solicitor to engage the services of Local Partnerships to provide commercial advice to Cabinet in relation to Council owned companies going forward.**

5 Portico Shipping Limited (Pages 27 - 54)

Purpose

To provide members with an overview of the Council's ownership of Portico Shipping Limited ("Portico"); and to seek approval of the revised Articles of Association of Portico.

RECOMMENDED that Cabinet

1. **Approve the revised Articles of Association of Portico and to delegate authority to the City Solicitor to take such action as shareholder that is necessary to communicate such decision to Portico.**

6 Portsmouth Harbour Renaissance Limited (Pages 55 - 58)

Purpose

To update Cabinet on the Council's part ownership of Portsmouth Harbour Renaissance Limited ("PHRL").

RECOMMENDED that Cabinet

1. **Delegates authority to the Chief Executive, in consultation with the City Solicitor and s151 Officer, to discharge all shareholder functions of the Council in relation to PHRL save as they relate to recommendation 2; and**
2. **Notes that the Chief Executive will initiate discussions with the other shareholder of PHRL in relation to the future of the company; and**
3. **Requests the Chief Executive to report back to Cabinet as to any shareholder action that maybe required as a consequence of the discussions at recommendation 2.**

7 Magna Park Management Limited (Pages 59 - 64)

Purpose

To update the Cabinet on the City Councils ownership of shares in Magna Park Management Limited.

RECOMMENDED that Cabinet

1. **Delegates authority to the Assistant Director Property & Investment, in consultation with the City Solicitor and s151 Officer, to represent the Council as shareholder in matters related to the operation of Magna Park Limited; and**
2. **To report no less than annually to the Cabinet on the performance of the company and any other relevant matters relating to it.**

8 North Harbour Estate Management Limited (Pages 65 - 70)

Purpose

To update the Cabinet on the City Councils ownership and Directorship of North Harbour Estate Management Limited (NHEML).

RECOMMENDED that Cabinet:

- 1. Notes the appointment of the Assistant Director Property and Investment to the board of NHEML;**
- 2. Delegates authority to the City Solicitor to liaise with the company secretary of NHEML to obtain a copy of the terms of appointment of the Assistant Director Property and Investment;**
- 3. Delegates authority to the Director of Regeneration, in consultation with the City Solicitor and s151 Officer, to take decisions as shareholder in matters related to the operation of NHEML;**
- 4. To report no less than annually to the Cabinet on the performance of the company and any other relevant matters relating to it.**

9 Springvale Management Company Limited (Pages 71 - 74)

Purpose

To update the Cabinet on the City Councils part ownership of Springvale Management Company Limited (SMCL).

RECOMMENDED that Cabinet:

- 1. Notes the appointment of the Assistant Director Property and Investment to the board of Springvale Management Company Limited (SMCL);**
- 2. Delegates authority to the City Solicitor to liaise with the company secretary of SCML to obtain a copy of the terms of appointment of the Assistant Director Property and Investment;**
- 3. Delegates authority to the Director of Regeneration, in consultation with the City Solicitor and s151 Officer, to represent the Council as shareholder in matters relating to the operation of SMCL; and**
- 4. To report no less than annually to the Cabinet on the performance of the company and any other relevant matters relating to it.**

10 HCB Holding Limited

This report is to follow.

Agenda Item 3

CABINET SUB-COMMITTEE

RECORD OF DECISIONS of the meeting of the Cabinet Sub-Committee held on Wednesday 15 December 2021 at 1.00 pm at the Guildhall, Portsmouth

Present

Councillor Ben Dowling (in the Chair)
Councillors Kimberley Barrett
Suzy Horton
Hugh Mason

Also present:

Councillor Ryan Brent
Councillor Judith Smyth
Councillor Claire Udy

1. **Appointment of Chair**

Chris Ward, Director of Finance sought nominations for a Chair of the meeting as Councillor Gerald Vernon-Jackson was not present. Councillor Ben Dowling was appointed Chair of the meeting.

2. **Apologies for Absence (AI 1)**

Apologies had been received from Councillor Gerald Vernon-Jackson, a member of the Sub-Committee and Councillor Cal Corkery, opposition spokesperson observer. Councillors Chris Attwell and Jason Fazackarley (Cabinet Members) and David Williams, Chief Executive, had also submitted their apologies.

2. **Declarations of Interests (AI 2)**

There were no declarations of interest from members.

For transparency, Tristan Samuels, Director of Regeneration, declared a non-prejudicial interest in AI 4 Ravelin Housing Limited, in that he is a director of the Ravelin Group. No other interests were declared.

3. **The Council as a Company Owner (AI 3)**

Sophie Mallon, Head of Commercial, Procurement and Regeneration, introduced the report.

Councillor Ben Dowling commented that since the decision to form a Sub-Committee to perform oversight and scrutiny of the companies in Council ownership, there had been considerable engagement with opposition

spokespersons and it was now believed that its role would be better performed by full Cabinet.

The following information was provided by Sophie Mallon in response to members' questions:

- Full Cabinet made the decision to establish the Sub-Committee on 14 July 2020 and therefore had the authority to dissolve.
- The role of the Sub-Committee for each company is set out in each set of constitutional documents.
- The directors of each company carry out the day to day running of the business and it is for the Sub-Committee to observe and have oversight of those companies.
- Commerciality and the need for an understanding of what is best practise elsewhere was noted within the report and as this is a skill set that may not sit in the authority, there is a recommendation to have Local Partnerships onboard and as an advisor to this Sub-Committee.

Councillor Dowling proposed that the recommendations be amended to remove recommendation 1 and replace it with a recommendation to Cabinet that the Sub-Committee be abolished and all work previously the work of the Sub-Committee instead be considered by full Cabinet. Recommendation 2 would therefore require a minor amendment to reflect this.

In discussion, members made the following comments:

- That the report did not set out in detail how issues would be resolved if they arose.
- Local Partnerships would be able to advise on ensuring social value gains are included in the operation of the companies.
- The Sub-Committee or its successor would exercise the due diligence expected of the authority in its role to have oversight and scrutiny over the companies.

Councillor Ben Dowling clarified that the voting members of the Sub-Committee were the Cabinet members present and that it was important for transparency and openness that the opposition leads were present to observe. Chris Ward, Director of Finance, confirmed that opposition members would always be invited to meetings where these matters would be discussed whether that is as a Sub-Committee or as full Cabinet.

Following a further question, it was confirmed that the non-voting members of the Sub-Committee would have speaking rights at full Cabinet on issues relating to the role of the Council as a shareholder.

DECISIONS - Cabinet Sub-Committee:

- 1) Agreed to recommend to the full Cabinet that the Cabinet Sub-Committee is abolished and its responsibilities including the oversight of all PCC companies and all other future company subsidiaries (where relevant) instead be undertaken by and reported to full Cabinet;**

- 2) **Delegated authority to the City Solicitor to engage with all PCC companies and request relevant reports be prepared for a future meeting of the full Cabinet; and**
- 3) **Authorised the City Solicitor to engage the services of Local Partnerships to provide commercial advice to the full Cabinet in relation to its companies going forward.**

4. Ravelin Housing Limited (RHL)

Tristan Samuels, Director of Regeneration, introduced the report and informed members that Tom Southall and Wayne Layton, Directors of Ravelin Housing Limited, were present to answer questions.

Councillor Ben Dowling noted that there was a confidential appendix to the report. Members of the Sub-Committee agreed that it would not be necessary to refer to this in detail and that it would not therefore be necessary to exclude the press and public from the meeting.

Members commented that future staff and non-executive directors of Ravelin Housing Limited should however be aware of the social values of the council.

Following questions, the Directors provided the following information:

- Ravelin Housing Limited aims to interfere with the housing market and deliver multi tenure housing models by identifying unmet demand which is separate from the role of the HRA which is to deliver social housing.
- Expertise and partnership working, including with housing associations will be explored to support a small team of company employees.
- Ravelin Housing Limited uses Homes England's definition of 'affordable housing' and RHL aims to deliver at least 30% affordable housing across its portfolio.
- The social responsibility section in the business plan includes information on sustainability, green credentials, and the company's aim to work towards carbon net zero goal.

Tristan Samuels informed members that Ravelin Housing Limited will work with the HRA but is designed to sit alongside it in the provision of housing in the city. The company has policies to support key workers and those unable to get onto the housing waiting list or on the waiting list but unlikely to qualify for housing in anytime soon. Councillor Ben Dowling noted that business plans for the company would be subject to oversight and scrutiny of full Cabinet in the future.

DECISIONS - Cabinet Sub-Committee:

- 1) **Approved the new five-year Business Plan and Investment & Development plan as set out in this report, attached at Appendix 1 and 2.**

- 2) **Noted the progress made on the existing projects, Brewery House conversion and Arundel Street sites, as recorded in the five-year business plan.**
- 3) **Delegated to the Director of Regeneration, in consultation with the s151 Officer and Monitoring Officer, the authority to approve on behalf of the Council as shareholder, in accordance with the Ravelin Housing Limited Shareholder Agreement, any matter concerning Ravelin Housing Limited; "Forming any subsidiary or acquiring shares in any other company or participating in any partnership or incorporated joint venture vehicle" provided that it is in line with the Business Plan approved at 1) above.**
- 4) **Noted that the sites listed in the development pipeline speak to the aspiration of Ravelin Housing Limited and that they are not currently in the company's ownership.**
- 5) **Noted the content of the Skills Matrix at Appendix 3 and endorses the appointment of Non-Executive Directors (NED's) to Ravelin Housing Limited based on the outcome of the skills assessment contained in the skills matrix.**
- 6) **Noted the need to appoint to permanent positions within Ravelin Housing Limited, as noted in the Business Plan and that this would be the subject of a future report, seeking approval to proceed.**

The meeting concluded at 1.42 pm.

Councillor Ben Dowling

Agenda Item 4



Portsmouth
CITY COUNCIL

Title of meeting:	Cabinet
Date of meeting:	14 February 2021
Subject:	The Council as a company owner.
Report by:	City Solicitor
Wards affected:	All
Key decision:	No
Full Council decision:	No

1. Purpose of report

1.1 The report outlines;

1.1.1 The Council as shareholder and the role of the Cabinet;

1.1.2 The requirement for commercial support; and

1.1.3 The rationale for a planned schedule of meetings.

2. Recommendations

2.1 It is recommended that Cabinet;

2.1.1 agree that a standing quarterly item (in June, September, December and March) be reserved on Cabinet agenda to report on issues concerning the shareholder function in PCC company matters;

2.1.2 authorises the City Solicitor to engage the services of Local Partnerships to provide commercial advice to Cabinet in relation to Council owned companies going forward.

3. The Council as a company owner and the role of the Cabinet

3.1 The Company ownership function is an executive function of the Council and therefore the responsibility of Cabinet to discharge. Cabinet is responsible for the oversight of all Council companies noting the corporate need for a consistent approach by the Council in relation to the governance oversight of its companies.

3.2 Cabinet's role is to hold the directors of the companies (who are responsible for running the companies) to account, approve and oversee the Council's strategic objectives and provide strategic oversight and assurance to the Council that the companies are compliantly run, achieving best value for the Council and are fit for purpose and to ultimately make decisions in the best interests of the Council which may not necessarily be in the best interests of the companies.



- 3.3 Cabinet will perform a vital oversight and challenge role and where ownership permits, direct the strategy of the company. It is only in this role that Councillors are able to freely exercise their wider objectives for the residents of the City without being constrained by the requirements that a Company Director has placed upon them through the Companies Act.
- 3.4 The day-to-day responsibility for the operation of the companies will be with the Directors of each company who will be personally responsible and required to make decisions in the best interest of the relevant Company (which are not necessarily the same interests as the Council).
- 3.5 As the owner (or part owner) of a company, the Council can exercise statutory oversight of a company (although the degree it can do so depends on the % of ownership the Council has of each company, the Articles of Association and other governance documents) in relation to things such as;
- Changes to the constitution of the company
 - Declaring a dividend
 - Approving the financial statements of the company
 - Winding up of the company by way of voluntary liquidation
 - Any shareholder's reserve power
 - Appointing/ removing directors (in addition to board if relevant)
 - General meetings as requested (generally annual)
- 3.6 Depending on the nature of the company, Cabinet may also be required to;
- Approve the annual business plan
 - Require or receive regular reports (issues/regular finance and budget updates)
 - Approving reserved matters.
- 3.7 Cabinet may also wish to prepare and maintain a strategic risk register in relation to the Companies to ensure it is clear where risk lies and how such risks to the Council can be addressed or mitigate and ensure constituency across oversight with all companies.
- 3.8 For practical purposes Cabinet may wish to consider delegating certain of its functions as shareholder to the relevant Directors in consultation with the City Solicitor and s151 Officer.
- Confidentiality
- 3.9 Confidentiality within the Cabinet meetings will function in the usual way with Councillor's bound to confidence in relation to the Council's business through their duties enshrined in their Code of Conduct and Officers through their employment contracts.
- 3.10 It is intended that Cabinet discussions and decisions concerning the discharge of the Council's shareholder function in relation to the Council's companies will be in public with the aim of ensuring decision making is as transparent as possible.



3.11 Notwithstanding the aims of transparency, Cabinet will note that the companies operate in a commercial environment and it is important that the companies are able to retain the confidentiality of commercially sensitive information, particularly where such information may lead to those companies' competitors gaining advantages due to information published through the democratic process.

3.12 Cabinet will note therefore that in some circumstance it will need to meet in camera, although such decisions will need to be in compliance with the legislative framework concerning exempt information within the Local Government Act 1972 and associated regulations, Such decisions should be undertaken in consultation with the Council's Monitoring Officer.

4. The Council's Companies

4.1 The Council wholly or part owns the following companies ("the Companies");

4.1.1 Portico Shipping Limited (company no.02012886);

4.1.2 The Ravelin group of companies, consisting of;

(a) Ravelin Group Limited (company no.10551072) which is the parent of two wholly owned subsidiaries;

(b) Ravelin Property Limited (company no.10552514);

(c) Ravelin Housing Limited (company no. 12644895);

4.1.3 Springvale Management Company Limited (company no.02630602);

4.1.4 Magna Park Management Limited (company no. 02224536);

4.1.5 North Harbour Estates Management Limited (company no. 07833141); and

4.1.6 HCB Holding Limited (company no. 9121398).

4.1.7 Portsmouth Harbour Renaissance Ltd (company no 03290436)

4.2 Each company is unique in its function and purpose and the Council's role in them as owner (or part owner). Details in relation to each will be provided in separate reports from the companies.

5. Commercial support

5.1 At present, the Council has no centralised commercial and strategic oversight of the Council's companies. Such a function would be able to robustly challenge assumptions made by the Companies; have oversight of the existing corporate arrangements of the Council in relation to the companies and advise Cabinet on necessary changes; review the business plans of the companies and make recommendations to the Council as to the appropriateness, viability and risks to the Council and to generally support the development of a more commercial mind set and function at the Council whilst focussed on ensuring that this aligns with the strategic objectives of the Council moving forward. This role has been noted as key in best practice guidance as set out in the report to Cabinet on the 14 July 2020.

5.2 It is proposed that Local Partnerships are brought in to support Cabinet and the wider Council in relation to the commercial insight outlined at paragraph 5.1. Local Partnerships is an organisation jointly owned by the Local Government Association, HM Treasury and the Welsh Government. Grounded in public sector ethos, their focus



is on support public sector organisations develop their commercial capabilities, helping them to achieve and maintain financial resilience. They are able to provide active capacity and capability alongside Council Officers to enable the start of the development of these key commercial skills and mindset within the Council itself and act as a key independent critical friend to ensure better outcomes are achieved.

- 5.3 In the short term, thanks to some central government funding, Local Partnerships are able to offer an initial 10 days of support to the Council with a day rate applicable thereafter.
- 5.4 It is proposed that the City Solicitor work with the Council's officers responsible for the oversight of the Council's companies to scope out areas of support that Local Partnerships could provide. A copy of Local Partnerships' proposal is attached at Appendix A.

6. Scheduling of Company Cabinet meetings

- 6.1 To ensure that Cabinet remains apprised of the business of the Companies, it is proposed that initially a quarterly schedule of meetings of Cabinet, devoted specifically to company matters is planned for the following year.
- 6.2 At the outset this would involve planning for meetings in approximately June, September and December 2022 and then in March 2023. The latter date in particular will be important as it ties in with the end of the financial year for companies and Cabinet may wish to review at the accounts and business plans at that point in the year.
- 6.3 Notwithstanding the proposed schedule outlined at 6.2, to some degree the requirement for Cabinet to meet to consider company matters will be dependent on the needs of the companies themselves (i.e. where the company require the approval or endorsement of the Council as shareholder) which Cabinet may wish to explore further with the companies.

7. Reasons for recommendations

Schedule of Company Cabinet meetings

- 7.1 Cabinet should schedule company focused meetings regularly to ensure a planned programme of oversight for the Council's companies and to allow the Companies themselves to plan their decision making around any decisions it needs from Cabinet. It is therefore suggested that initially Cabinet meet quarterly with this being reviewed as the work of Cabinet and its relationship with the Companies and understanding of the function develops.

Commercial insight

- 7.2 At present the Council has no overall commercial strategy in relation to its companies, to ensure that the Council's ownership and investment in its companies is consistent with and advances the Council's corporate objectives and long term plans for the City.
- 7.3 It is recommended that the City Solicitor is delegated authority to engage the services of Local Partnerships who have an experienced team used to working with authorities to develop their commercial capabilities and supporting them to achieve and maintain financial resilience.

8. Integrated impact assessment

8.1 The contents of this report do not have any relevant equalities impact and therefore an Integrated Impact Assessment is not required.

9. Legal implications

9.1 Legal comments are contained within the content of this decision report.

10. Director of Finance's comments

10.1 The financial implications associated with the recommendations contained within this report relate to the cost of retaining Local Partnerships to support the Council's overall commercial strategy and governance arrangements. These are costs associated with the Shareholder function and therefore not chargeable to the Companies themselves. Whilst in the medium term, the dividends from the Council's companies are expected to exceed such costs, any costs in the current year will be funded from the Council's Corporate Contingency, with future costs built into future years' Budgets.

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Signed by: Peter Baulf

Appendices:

- Appendix A - Local Partnership Commercial Support proposal

Background list of documents: Section 100D of the Local Government Act 1972

The following documents disclose facts or matters, which have been relied upon to a material extent by the author in preparing this report:

Title of document	Location

The recommendation(s) set out above were approved/ approved as amended/ deferred/ rejected by on

.....
Signed by:

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LOCAL PARTNERSHIPS



LOCAL PARTNERSHIPS

Portsmouth City Council – Commercial Support

15 December 2021

Contact: David Crowe 07795 418 305
david.crowe@localpartnerships.gov.uk

James Berry
Portsmouth City Council
Civic Offices
Guildhall Square
Portsmouth
PO1 2PX

15 December 2021

Dear James

Local Partnerships' Commercial Support to Portsmouth City Council

Thank you for your email and call on 13 December to discuss your requirements for commercial support and advice in relation to your trading companies. Further to that call, this proposal outlines our understanding of the commercial support you require and the resources we expect to deploy. As with all our proposals, it is submitted on the understanding that we will be happy to discuss and revise the scope and scale of our involvement and resources, to suit your precise requirements. In the meantime, should you have any questions please do not hesitate to contact me.

If you require further information on Local Partnerships, please do not hesitate to ask. This is particularly relevant if you require additional detail on our status as a "Teckal-exempt" public body which, as explained on the call, means that we may be commissioned directly without tendering. Our background, experience, public sector aims and values are briefly outlined in the section "Our Expertise".

Yours sincerely,

David Crowe
Strategic Director

PROJECT PROPOSAL - LOCAL PARTNERSHIPS' COMMERCIAL SUPPORT FOR PORTSMOUTH CITY COUNCIL

OUR UNDERSTANDING OF YOUR REQUIREMENTS

Portsmouth City Council (the Council) is seeking commercial support and advice in relation to its trading companies. The support may include reviewing papers, attending and advising governance forums.

Your key requirements include:

- Acting as a 'critical friend' to the Council
- Reviewing existing corporate arrangements and governance structures for approving and overseeing commercial ventures
- Reviewing plans relating to existing Council commercial entities and recommending how these can be optimised
- Supporting the development of a more commercial mind set and function at the Council

OUR APPROACH

Our approach is informed by:

- Our membership of the local government family which gives us an understanding of local government processes and challenges, enabling us to share knowledge and experience from our work with other councils and to engage sensitively and objectively to engender a trusting and productive working relationship
- The context of Local Partnerships being an independent organisation with no agenda (other than to help deliver good practice and support the delivery of more effective and efficient public services)
- Our broad approach to commercial activity in local government which focuses on ensuring that council investments are protected, appropriate returns on investment can be obtained and, equally importantly, that the activities are aligned and support the values and strategic objectives of the council, as captured in Portsmouth's case in its Imagine Portsmouth 2040 vision.



We can provide the support required, drawing upon our extensive experience of providing similar expertise to other organisations which is described in more detail in the “Our Expertise” section below.

We expect to develop effective and close working relationships with the members of your team. Our natural style is one of collaboration and sharing learning as we work. We will appoint one of our team to act as Local Partnerships’ primary point of contact for engagement to deal with any issues as they arise.

In carrying out this role we expect to undertake the following activities:

- Using our governance and commercial experience to identify areas for improvement in both the oversight and management of commercial entities
- Observing and advising governance forums
- Reviewing papers produced for the above, including business cases and business plans
- Disseminating good practice

OUR EXPERTISE

Providing commercial support is integral to Local Partnerships’ core offering. Relevant projects include:

Liverpool City Council

Local Partnerships is currently working with Liverpool City Council to review its four Council owned companies. The purpose of the reviews is to determine the future of the companies, focusing on whether the Council should continue with these companies in their current form or if an alternative delivery method might be deployed to deliver the priorities and objectives. Local Partnerships has also been asked to identify areas where governance of the companies can be improved.

Stoke City Council

Local Partnerships was commissioned to undertake an independent review of six council owned/influenced entities, and the arrangements relating to them. The scope of the work included considering the operation of the entities to ensure that they are efficient and effective in meeting the required outcomes for the Council and identifying good practice.

Suffolk County Council

For the last three years we have provided critical friend support to Suffolk County Council’s Commercial Board, which supports and oversees all commercial activity across the Council. We bring external perspective and challenge to their commercial initiatives and recently facilitated their Commercial Leaders Network event to look at post COVID commercial opportunities and challenges.

Milton Keynes Council

Local Partnerships has developed a strong working relationship with Milton Keynes Council over a sustained period, providing packages of strategic and commercial support in relation



to building and housing assets. This has included a number of service and delivery options reviews including options for a future operating model for repairs and maintenance, the delivery of energy efficiency measures, and estates regeneration.

Cornwall County Council

Local Partnerships was engaged to complete independent reviews of a number of Cornwall Council's strategic projects. Across all of these reviews we systematically appraised the business cases that had been developed and looked at current project status against objectives to highlight areas of convergence and divergence. Where appropriate, we commented on commercial elements including readiness to scale the approach, lessons learned for future developments, governance, optimising best value, market development and deliverability.

Police National Commercial Board

We have undertaken extensive work with police forces to embed more commercial approaches. Over a three year period (2017 to 2020) we supported the Home Office sponsored and funded Police National Commercial Board. This involved engagement with police forces and Police and Crime Commissioners across England and Wales to develop a new target operating model for police commercial services and to establish a new company (BlueLight Commercial) to support delivery of police commercial services. The work also involved investigating opportunity for police forces to increase their revenue through commercial activities.

Wider experience of reviewing commercial entities

We have extensive experience of undertaking reviews of Council-owned commercial entities at a range of other councils including:

- Slough Borough Council
- Wirral Council
- Torbay Council
- Bournemouth, Christchurch, and Poole Council
- West Lancashire Borough Council

We also recently produced guidance for local authorities to support them in reviewing their companies¹.

Wider commercial support and training

We have extensive experience of developing and delivering commercial training for local authorities. Relevant experience in this area includes:

- Development and delivery in 2021 of a training programme for local government (attended by representatives from 28 councils) which was designed to improve commercial decisions and the quality of contracts placed with contractors, with the

¹ https://localpartnerships.org.uk/wp-content/uploads/2021/09/Local_Partnerships_Local-authority_company_review_guidance_v1.pdf



aim of embedding the key principles of the Cabinet Office's Sourcing Playbook. We are currently delivering the second wave of this training

- Webinars on commercial thinking and commercialisation for a local government audience delivered in 2019
- Webinars in 2020 on embedding commercial approaches in policing, delivered for a national policing audience and supported by the Home Office.

Portsmouth City Council

We have also provided support to Portsmouth City Council

We helped the Council understand the options with respect to a problematic Social Care PFI contract. The Council wanted support with investigating;

- The options available to it under the contractual agreements in light of the contract issues
- How and when these options could be implemented
- What the potential financial and non-financial consequences would be for both parties under the different options

As a result of that work, the Council took a decision to pursue the termination of the contract and we are now working with PCC to pull together a business case to support that decision.

Also in 2019, we supported the Council in relation to its Highways Management PFI Project with Colas. We delivered targeted training on project management and the operational aspects of the project agreement to the whole project team across two sessions. This helped to embed some individuals with new roles within the Council's team structure and ensured that each member of the team understands the overall nature of the contract and relevant detailed aspects. We also delivered a separate targeted training session on financial aspects of the project agreement, payment mechanism and financial model to the Council's project manager and finance director.

ABOUT LOCAL PARTNERSHIPS

Local Partnerships is a joint venture between the Local Government Association, HM Treasury and the Welsh Government. We provide an interface between central government policy and local delivery.

Our principal responsibility is to deliver expert support to the public sector, helping make best use of limited resources as demand for services continues to rise. We work with councils and combined authorities to help transform services across multiple disciplines including:

- development of commercial capability and strategies
- regeneration and tackling the housing crisis
- waste collection and disposal
- infrastructure
- renegotiation of public sector contracts



- energy
- digital transformation
- keeping projects and programmes on track
- mergers and shared services
- production of business cases
- integration of health and social care
- alternative local government models and financial restructuring
- formal collaboration and merger

Our 2019-20 impact report reflects the activities of Local Partnerships and the successes we have helped our clients achieve. It is available on the front page of our website www.localpartnerships.org.uk.

We bring public and private sector experience that provides confidence, additional capacity and commercial capability. Our team of experts works solely for the benefit of the public sector, helping councils and combined authorities overcome challenges to achieve and maintain financial resilience.

COSTS

We would be able to offer an initial support package of 10 days support at no cost to the Council (the exact nature of the work would be agreed in the new year but we would expect it to include reviewing papers as well as attending and advising governance meetings). When the 10 days has been used up we would suggest that we review your future requirements in more detail to assess your ongoing support requirements. At that point future work would be charged at Local Partnerships full day rate which is £1,175 per day.

Local Partnerships expects to use standard terms and conditions which will be applied to any contract that we may form in relation to this project. If you would like to discuss these terms and conditions, please contact us on the relevant number as shown on the covering letter.

OUR TEAM

We propose to resource the assignment with an expert team of Local Partnerships' experienced professionals and we will identify the appropriate resources based on the key areas of focus. Our team is set out below along with profiles of team members.

David Crowe

David is a Strategic Director within Local Partnerships and leads our commercialisation work. This involves working with a range of public bodies to support the development of commercial approaches, whilst ensuring they are underpinned by effective governance and risk management mechanisms. He recently led our work to review commercial entities at Liverpool, Stoke-on-Trent, Slough and West Lancashire and is one of the principal authors of our guidance on company reviews. David is also a member of Suffolk County Council's Commercial Board.

David has a wide range of experience across the public sector. Prior to joining Local Partnerships in 2009, David worked as a management consultant, providing advice to public bodies on areas such as change management, transformation, improvement and efficiency,



procurement, governance, delivery models and strategy development. He has also held a number of senior roles within local government.

Martin Walker

Martin is our Housing and Regeneration Programme Director and has responsibility for the successful delivery of our housing and regeneration programme across England and Wales.

Martin has personally led several major public private partnerships, both as a senior leader within local government and since joining Local Partnerships in 2016.

Prior to joining Local Partnerships, Martin's career included Chief Officer level roles within local government, as a Head of Service with a district council and an Area Director with a large metropolitan council (which included lead responsibility for the public sector partner's role in the establishment and operation of a major joint venture with a private sector consortium). Within the private sector, Martin established a new and successful business unit within British Gas, which delivered estate wide domestic energy efficiency schemes in partnership with the public sector.

Martin has degrees in Law and (at Master's level) in Urban Policy and Regeneration.

Julie McEver

Julie McEver is Deputy Corporate Director (Programmes and Projects) at Local Partnerships with responsibility for a wide-ranging set of projects.

Julie has been with Local Partnerships since its inception in 2009 and has over 20 years' experience in the private, non-profit and public sectors in the UK and USA. She has worked for Sun Microsystems, UnLtd – the Foundation for Social Entrepreneurs, New Philanthropy Capital as well as niche consultancy firms (Strategic Management Group and Inspired Leaders). With Local Partnerships, Julie has worked with city and county councils, central government, NHS England, Big Society Capital, Social Investment Business and a number of social enterprises.

Julie has supported those considering fundamental change in the way their services are delivered. She is experienced in working with and supporting local authorities, existing and aspiring social enterprises including public sector spin-outs as well as government departments and the wider community focused 3rd sector. Julie has supported clients with business cases, options appraisals, implementation, service reviews, accessing social investment, business development, forming effective partnerships, business systems, growth strategies, impact measurement and fund management.

Martin Forbes

Martin joined Local Partnerships in 2009 and helps the public sector respond to the significant challenges and opportunities that it faces.

At Local Partnerships Martin has assisted local authorities on their efficiency through the West Midlands Property Alliance, a unique collaboration of West Midland Authorities seeking to drive efficiencies and capital from their operational estates. He also helps councils with their investment and alternative finance options, reform, devolution and restructuring, and



commercial, including the production of a range of business cases for councils wishing to invest in energy, housing and social investment as part of their commercial-led strategies. Martin spent the first part of his career within Big 4 consultancy and corporate finance teams, working mainly with local authorities on major commercial service and investment partnerships. Martin is a CIPFA accountant and holds an MSc in Urban Regeneration.

Sarah-Joy Lewis

Sarah-Joy works across a diverse range of projects and has previously worked extensively with both local authorities and registered providers, as well as national governments. Sarah-Joy has supported clients with projects that include; governance reviews, regulatory support, governance best practice, risk management and contract delivery.

Sarah-Joy began her career working in local authority homelessness, and has since worked in local authority commercialisation roles, has supported the development of local authority wholly owned companies, and has also delivered a wide range of projects to housing associations, including engagement with the regulator of social housing. She is experienced in providing research and insight for organisations making strategic decisions.

Sarah-Joy was part of the core team who recently reviewed Stoke and Liverpool City Councils' owned/influenced entities.

Joran Mendel

Joran has extensive experience working with central and local government bodies on strategic, commercial and financial issues, particularly in the areas complex procurement, privatisation, alternative delivery models and public sector market development. Joran joined Local Partnerships in 2017 and has been working on business cases for a range of commercial programmes.

Prior to Local Partnerships Joran worked for PwC Corporate Finance, Liberata UK, Thompson Financial and Credit Suisse.

Simon Bandy

Simon is a Strategic Director and a chartered Town Planner, and has experience in regeneration, development and infrastructure delivery. Over the past 25 years he has worked for Local Partnerships, the Homes and Communities Agency, English Partnerships and Ashford Borough Council.

Agenda Item 5



Portsmouth
CITY COUNCIL

Title of meeting: Cabinet
Date of meeting: 14 February 2022
Subject: Portico Shipping Limited
Report by: Mike Sellers, Port Director
Wards affected: All
Key decision: No
Full Council decision: No

1. Purpose of report

- 1.1 To provide members with an overview of the Council's ownership of Portico Shipping Limited ("Portico"); and
- 1.2 To seek approval of the revised Articles of Association of Portico

2. Recommendations

- 2.1 To approve the revised Articles of Association of Portico and to delegate authority to the City Solicitor to take such action as shareholder that is necessary to communicate such decision to Portico.

3. Background

- 3.1 The Council acquired Portico, formerly MMD (Shipping Services) Ltd, which was on the brink administration in February 2008, to support the Council's economic growth strategy and safeguard jobs.
- 3.2 The officer employed by the Council as its Director of the Port has since that time been a director of Portico. The Council's s151 officer joined the Portico Board in approximately 2011. In approximately 2018, the then Leader of the Council and the Leader of the Opposition were voted onto the board of Portico and there has been political representation on the board more or less since that time.
- 3.3 Responsibility for the oversight of Portico sits within the Leader's portfolio.
- 3.4 Operationally, the Council's Director of the Port is responsible for oversight of Portico.

4. Board Structure

- 4.1 The current structure of the Portico Board is as follows;
 - Camilla Carlbom Flinn - Independent Non-Executive Director (NED) and Chair of the Portico Board



Camilla is Chair of Carlbom Shipping Ltd, specialist shipping agents based on the Humber. Camilla is also Honorary Consul for Sweden for Humberside, Lincolnshire and Nottinghamshire; Honorary Consul for Finland for Immingham, Grimsby and Hull and Deputy Lieutenant of the County of Lincolnshire.

- Justin Atkin – Independent NED

Justin is the UK and Ireland representative for the Port of Antwerp and an independent industry expert.

- Chris Ward – NED

Chris is employed as the Council's s151 officer however where matters at the Council concern Portico, his role at the Council is discharged by the deputy s151 Officer.

- Mike Sellers - NED

Mike is employed by the Council as the Port Director of Portsmouth International Port. He has 30 years' experience in the port sector and heads up the development of the new business plan for Portico.

- Steve Williams MBE - Executive Director, Portico

Steve has over 30 years' experience in the port sector and is a full-time employee of Portico. Steve was awarded the MBE in the Queen's honours in 2020 for his work at Portico during the pandemic to maintain operations and ensure essential supplies continued to flow to supermarkets.

- Cllr Gerald Vernon-Jackson – NED

Cllr Vernon-Jackson is a Councillor and the Leader of the Council.

- Cllr Simon Boshier – NED

Cllr Boshier has been invited to join the board. He is a Councillor and the Leader of the opposition Conservative group.

4.2 Portico also employs its own Company Secretary, Shakira Hiron, who is a professional in maritime law and a full-time employee of Portico.

4.3 The appointment of Camilla and Justin, the two independent NEDs, followed a restructure of the Portico board to the proposed changes to the Articles of Association, to provide external independent board attendance and following skills review.

4.4 In addition to the board, two senior appointments attend the board meetings to provide financial and general management information. Mark Webb (Finance



Manager) and Ben Harraway (General Manager).

- 4.5 The NEDs are remunerated with the exception of the Councillors who by law have restrictions on the remuneration they can receive from the Company.

5. Company governance

- 5.1 Portico is part of the Council's internal audit plan each year to ensure governance compliance. These reports are presented to the Council's Governance Audit Standards Committee.

6. Portico and its business plan

- 6.1 Portico employs 186 employees with 95% of the staff living in Portsmouth contributing to the economy within the city. Appendix 1 shows the company structure.
- 6.2 In February 2019 a report went to the Council's Cabinet and Full Council that considered an assessment of the available options for the use of the Portico (formally MMD (Shipping Services) Ltd) site.
- 6.3 Part of the £15m loan was needed to invest in assets to allow Portico to retain existing income, and to make operations more efficient and effective. The loan was also needed to allow Portico to invest in facilities to enable Portico to diversify its operations into general cargo.
- 6.4 To 31 December 2021 Portico has drawn down £7m of the £15m loan facility.

7. Portico's Articles of Association.

- 7.1 Portico's Articles of Association (the constitutional document which sets out how the Directors are to run the company) have not been updated since the company was purchased by the Council in 2008.
- 7.2 The articles should have been updated on purchase and a subsequent review of them have identified that they require an update to ensure that they both reflect the modern legislative regime around companies but to also ensure that they reflect the ownership of the company by the Council as a public body and therefore to ensure that there is appropriate oversight of the company by the Council, whilst continuing to allow the board of Directors of the company to operate and run Portico largely independently of the Council.
- 7.3 The changes proposed to be made are shown in full in the comparison document at Appendix 2 but the main updates are;
- 7.3.1 To strengthen the governance of Portico by ensuring that there is a requirement to have independent non-executive Directors appointed, including an independent chair. This will not however overly restrict the ability of the Portico Directors to appoint additional Directors;
- 7.3.2 to strengthen and simplify the rights under statute that the Council (as shareholder) has to appoint and remove Directors; and
- 7.3.3 to expand and simplify the statutory rights of the Council as shareholder to access any information held by Portico (all records, books and documents) as well as giving new rights to the Council to access any and all Portico premises.



- 7.3.4 to address conflict of interest issues where a company Director also has a role, either as an officer or a councillor, at the Council (a "**PCC Director**").
- 7.4 Finally, the revised articles will strengthen the Council's oversight of Portico's business planning and risk profile to the Council so that the Council is better able to evaluate the purpose of Portico against the Council's priorities and risk appetite.
- 7.5 The Council already has some oversight of this through the contractual arrangement of the loan agreement between the parties in 2019, but the revised articles strengthen the Council's position so that Portico is required to submit an annual Business Plan to the Council for approval which covers the next three years and includes;
- 7.5.1 An annual operating revenue plan and capital expenditure requirements (including details of funding sources);
- 7.5.2 A balance sheet forecast;
- 7.5.3 A minimum 3-year term financial strategy plan to include (amongst other items) all proposed investments, borrowings and new business of the company and a list of key risks of its business;
- 7.5.4 A plan for the use of any surpluses made in each year including the making of any distribution of profit subject to the provisions of the Act;
- 7.5.5 An annual profit and loss account.
- 7.6 These changes do not alter the fundamental principle that the Portico Directors will be responsible for running the company as they see fit but will ensure that they do so within a framework (the Business Plan) approved by the Council.
- 8. Reasons for recommendations**
- 8.1 Portico's current Articles of Association refer substantially to the Companies Act 1985 which was largely repealed by the Companies Act 2006. There are other examples of dated practice and crucially they do not recognise the ownership of Portico by the Council and do not give the Council any additional rights to information about the company than is set out in statute, which is to say not a great deal.
- 8.2 The revised Articles of Association will ensure that Portico is able to continue to run and operate as a separate legal entity, operating independent of the Council, whilst ensuring that the Council is easily able to access appropriate information to ensure it can appropriately scrutinise Portico and hold its directors to account.
- 9. Integrated impact assessment**
- 9.1 The contents of this report do not have any relevant equalities impact and therefore an Integrated Impact Assessment is not required.
- 10. Legal implications**
- 10.1 The Articles of Association of a company are the foundation of good governance in a company. Those in relation to Portico are badly dated and should better reflect the reality of a publicly owned, private company. The proposed new Articles of Association have been prepared by the Council's legal services team.



PCC Directors' conflict of interest

10.2 Of particular importance are updates made to address conflict of interest issues where a company Director also has a role, either as an officer or a councillor, at the Council (a "**PCC Director**").

10.3 Portico's Directors do not, by virtue of their office as a Director of the company, owe fiduciary duties to the Council (as shareholder or creditor save where the company is insolvent). Their responsibility is to ensure that they act in the best interests of Portico, which may inevitably conflict with the best interest of the Council. These fiduciary duties are reflected in the seven general duties imposed on company Directors by the Companies Act 2006;

10.3.1 To act within their powers;

10.3.2 To promote the success of the company;

10.3.3 To exercise independent judgement;

10.3.4 To exercise reasonable care, skill and diligence;

10.3.5 To avoid conflicts of interest; and

10.3.6 To declare interest in proposed transaction or arrangement;

10.3.7 To not accept benefits from third parties.

Remedies for breaches of these duties is personal to the Director in question and can include injunctions, damages, set aside orders, termination of appointment as a Director and disqualification as a Director from future appointments.

10.4 In practice, this means that where Portico Directors take into account the wishes of the Council as shareholder, then they may be acting in breach of the statutory duty to 'exercise independent judgement' as their decision is not being taken in the best interest of Portico. In many instances, PCC Directors may also be in breach of the duty to avoid conflicts of interest by their role as a Council officer or Councillor.

10.5 The revised articles will continue to require PCC Directors to exercise independent judgement, but they will be able to take into account the success of the Council in their decision making as a Portico director.

10.6 The revised articles will also ensure that by simply being an employee or Councillor of the Council, PCC Directors will not be in breach of the statutory requirement to avoid conflicts of interest and will be expressly authorised to make decisions on such matters which involve the Council.

10.7 Notwithstanding paragraphs 10.5 and 10.6, the PCC Directors will still owe the duties to Portico as set out in paragraph 10.3. The amendments also do not abrogate any conflict of interest PCC Directors will need to address when acting in their Council role.

11. Deputy Director of Finance's comments

11.1 There are no direct financial implications as a result of approving the recommendations within the report.

.....
Signed by:

Appendices:

Draft Articles of Association.
Portico organisation chart.

Background list of documents: Section 100D of the Local Government Act 1972

The following documents disclose facts or matters, which have been relied upon to a material extent by the author in preparing this report:

Title of document	Location

The recommendation(s) set out above were approved/ approved as amended/ deferred/ rejected by on

.....
Signed by:

COMPANY NUMBER 02012886

THE COMPANIES ACT 2006
PRIVATE COMPANY LIMITED BY SHARES
ARTICLES OF ASSOCIATION
OF
PORTICO SHIPPING LIMITED
PRELIMINARY

1 (A) In these articles, unless the context otherwise requires

"Act" means the Companies Act 2006

"address" has the same meaning as in section 1148 of the Act

"articles" means the articles of the Company

"Business Plan" means the business plan approved by the shareholders in accordance with articles 145 and 146 each year

"clear days" means, in relation to the period of notice, that period excluding the day when the notice is given or deemed to be given and the day for which it is given or on which it is to take effect

"Company" means Portico Shipping Limited with registered number 02012886

"Companies Acts" means the Companies Acts (as defined in section 2 of the Act), in so far as they apply to the company

"Conflict" has the meaning given in article 100

"Council" means Portsmouth City Council

"electronic form" and "electronic copy" have the same meaning as in section 1168 of the Act

"electronic means" has the same meaning as in section 1168 of the Act

"executed" means any mode of execution

"Group Company" means:

- (a) any subsidiary of the Company;
- (b) any parent undertaking or undertakings of the Company; and
- (c) any subsidiary of any such parent undertakings

"hard copy form" and "hard copy" have the same meaning as in section 1168 of the Act

"holder" means, in relation to a share, the member whose name is entered in the register of members as the holder of that share

"in writing" means in hard copy form or, to the extent permitted by the Act, in any other form

"office" means the registered office of the Company

“Permitted Situation” has the meaning given in article 104

“Relevant Director” has the meaning given in article 100

“relevant loss” means any loss or liability which has been or may be incurred by a director or former director of the Company or of Group Company in connection with that director’s duties or powers in relation to the relevant company or any pension fund or employees’ share scheme of that company

"seal" means the common seal of the Company

"secretary" means the secretary of the Company or any other person appointed to perform the duties of the secretary of the Company, including a joint, assistant or deputy secretary

“Secured Party” has the meaning given at article 16

“subsidiary” has the same meaning as in section 1159 of the Act

"United Kingdom" means Great Britain and Northern Ireland

- (B) Words and expressions to which a particular meaning is given by the Act in force when the articles (or any part of them) are adopted have the same meaning in the articles or such part of them (as the case may be), except where the word or expression is otherwise defined in paragraph (A).
- (C) Where an ordinary resolution of the Company is expressed to be required for any purpose, a special resolution is also effective for that purpose.
- (D) References to any statutory provision or statute includes all amendments thereto and all subordinate legislation made thereunder. This article does not affect the interpretation of article 1(B).

- 2 No regulations or articles set out in any statute, or in any statutory instrument or other subordinate legislation made under any statute, concerning companies (including the regulations in the Companies (Model Articles) Regulations 2008 (SI 2008/3229)) shall apply as the articles of the Company. These articles alone shall be the articles of association of the Company.

PRIVATE COMPANY

- 3 The Company is a private company limited by shares and accordingly any invitation to the public to subscribe for any shares or debentures of the Company is prohibited.

SHAREHOLDERS' RESERVE POWER

- 4 The shareholders may, by special resolution, direct the board and/or any director to take, or refrain from taking, specified action.
- 5 No special resolution under article 4 shall invalidate anything which the board and/or any director may have done before the resolution is passed.

SHARE CAPITAL

- 6 Subject to the Act and without prejudice to any rights attached to any existing shares, any share may be issued with such rights or restrictions as the Company may by ordinary resolution determine.
- 7 Subject to the Act, shares may be issued which are to be redeemed or are to be liable to be redeemed at the option of the Company or the holder on such terms and in such manner as may be provided by the articles.

- 8 The Company may exercise the powers of paying commissions conferred by the Act. Subject to the Act, any such commission may be satisfied by the payment of cash or by the allotment of fully paid or partly paid shares or partly in one way and partly in the other.
- 9 Except as required by law, no person shall be recognised by the Company as holding any share upon any trust and (except as otherwise provided by the articles or by law) the Company shall not be bound by or recognise any interest in any share except an absolute right to the entirety of that share in the holder.

SHARE CERTIFICATES

- 10 Every member, upon becoming the holder of any shares, shall be entitled without payment to one certificate for all the shares of each class held by him (and, upon transferring a part of his holding of shares of any class, to a certificate for the balance of such holding) or several certificates each for one or more of his shares upon payment for every certificate after the first of such reasonable sum as the directors may determine. Every certificate shall be sealed with the seal and shall specify the number, class and distinguishing numbers (if any) of the shares to which it relates and the amount or respective amounts paid up thereon. The Company shall not be bound to issue more than one certificate for shares held jointly by several persons and delivery of a certificate to one joint holder shall be a sufficient delivery to all of them.
- 11 If a share certificate is defaced, worn out, lost or destroyed, it may be renewed on such terms (if any) as to evidence and indemnity and payment of the expenses reasonably incurred by the Company in investigating evidence as the directors may determine but otherwise free of charge, and (in the case of defacement or wearing out) on delivery up of the old certificate.

LIEN

- 12 The Company shall have a first and paramount lien on every share (not being a fully paid share) for all moneys (whether presently payable or not) payable at a fixed time or called in respect of that share. The directors may at any time declare any share to be wholly or in part exempt from the provisions of this article. The Company's lien on a share shall extend to any amount payable in respect of it.
- 13 The Company may sell in such manner as the directors determine any shares on which the Company has a lien if a sum in respect of which the lien exists is presently payable and is not paid within fourteen clear days after notice has been given to the holder of the share or to the person entitled to it in consequence of the death or bankruptcy of the holder, demanding payment and stating that if the notice is not complied with the shares may be sold.
- 14 To give effect to a sale the directors may authorise some person to execute an instrument of transfer of the shares sold to, or in accordance with the directions of, the purchaser. The title of the transferee to the shares shall not be affected by any irregularity in or invalidity of the proceedings in reference to the sale.
- 15 The net proceeds of the sale, after payment of the costs, shall be applied in payment of so much of the sum for which the lien exists as is presently payable, and any residue shall (upon surrender to the Company for cancellation of the certificate for the shares sold and subject to a like lien for any moneys not presently payable as existed upon the shares before the sale) be paid to the person entitled to the shares at the date of the sale.
- 16 Notwithstanding the provisions contained in articles 12 to 16 (inclusive), any lien which the Company has shall not apply in respect of any shares that have been charged by way of security to a bank or financial institution, a subsidiary or subsidiary undertaking of that bank or financial institution, or the nominee of any such chargee (a "**Secured Party**").

CALLS ON SHARES AND FORFEITURE

- 17 Subject to the terms of allotment, the directors may make calls upon the members in respect of any moneys unpaid on their shares (whether in respect of nominal value or premium) and each member shall (subject to receiving at least fourteen clear days' notice specifying when and where payment is to

be made) pay to the Company as required by the notice the amount called on his shares. A call may be required to be paid by instalments. A call may, before receipt by the Company of any sum due thereunder, be revoked in whole or in part and payment of a call may be postponed in whole or part. A person upon whom a call is made shall remain liable for calls made upon him notwithstanding the subsequent transfer of the shares in respect of which the call was made.

- 18 A call shall be deemed to have been made at the time when the resolution of the directors authorising the call was passed.
- 19 The joint holders of a share shall be jointly and severally liable to pay all calls in respect of the share.
- 20 If a call remains unpaid after it has become due and payable the person from whom it is due and payable shall pay interest on the amount unpaid from the day it became due and payable until it is paid at the rate fixed by the terms of allotment of the share or in the notice of the call or, if no rate is fixed, at the appropriate rate (as defined by the Act) but the directors may waive payment of the interest wholly or in part.
- 21 An amount payable in respect of a share on allotment or at any fixed date, whether in respect of nominal value or premium or as an instalment of a call, shall be deemed to be a call, and if it is not paid when due all the provisions of the articles shall apply as if that amount had become due and payable by virtue of a call.
- 22 Subject to the terms of allotment, the directors may make arrangements on the issue of shares for a difference between the holders in the amounts and times of payment of calls on their shares.
- 23 If a call remains unpaid after it has become due and payable the directors may give to the person from whom it is due not less than fourteen clear days' notice requiring payment of the amount unpaid, together with any interest which may have accrued. The notice shall name the place where payment is to be made and shall state that if the notice is not complied with the shares in respect of which the call was made will be liable to be forfeited.
- 24 If the notice is not complied with any share in respect of which it was given may, before the payment required by the notice has been made, be forfeited by a resolution of the directors and the forfeiture shall include all dividends or other moneys payable in respect of the forfeited shares and not paid before the forfeiture.
- 25 Subject to the Act, a forfeited share may be sold, re-allotted or otherwise disposed of on such terms and in such manner as the directors determine either to the person who was before the forfeiture the holder or to any other person and at any time before a sale, re-allotment or other disposition, the forfeiture may be cancelled on such terms as the directors think fit. Where for the purposes of its disposal a forfeited share is to be transferred to any person the directors may authorise some person to execute an instrument of transfer of the share to that person.
- 26 A person any of whose shares have been forfeited shall cease to be a member in respect of them and shall surrender to the Company for cancellation the certificate for the shares forfeited but shall remain liable to the Company for all moneys which at the date of forfeiture were presently payable by him to the Company in respect of those shares with interest at the rate at which interest was payable on those moneys before the forfeiture or, if no interest was so payable, at the appropriate rate (as defined in the Act) from the date of forfeiture until payment but the directors may waive payment wholly or in part or enforce payment without any allowance for the value of the shares at the time of forfeiture or for any consideration received on their disposal.
- 27 A statutory declaration by a director or the secretary that a share has been forfeited on a specified date shall be conclusive evidence of the facts stated in it as against all persons claiming to be entitled to the share and the declaration shall (subject to the execution of an instrument of transfer if necessary) constitute a good title to the share and the person to whom the share is disposed of shall not be bound to see to the application of the consideration, if any, nor shall his title to the share be affected by any irregularity in or invalidity of the proceedings in reference to the forfeiture or disposal of the share.

TRANSFER OF SHARES

- 28 The instrument of transfer of a share may be in any usual form or in any other form which the directors may approve and shall be executed by or on behalf of the transferor and, unless the share is fully paid, by or on behalf of the transferee.
- 29 The directors may, in their absolute discretion and without giving any reason, refuse to register the transfer of a share to any person, whether or not it is a fully paid share or a share on which the Company has a lien.
- 30 If the directors refuse to register a transfer of a share, they shall within two months after the date on which the transfer was lodged with the Company send to the transferee notice of the refusal.
- 31 The registration of transfers of shares or of transfers of any class of shares may be suspended at such times and for such periods (not exceeding 30 days in any year) as the directors may determine.
- 32 No fee shall be charged for the registration of any instrument of transfer or other document relating to or affecting the title to any share.
- 33 The Company shall be entitled to retain any instrument of transfer which is registered, but any instrument of transfer which the directors refuse to register shall be returned to the person lodging it when notice of the refusal is given.
- 34 Notwithstanding anything otherwise provided in these articles, the directors shall not decline to register any transfer of shares nor suspend the registration thereof where such transfer is in favour of:
- 34.1 a Secured Party;
- 34.2 a purchaser, transferee or other recipient of any shares from a Secured Party; or
- 34.3 a purchaser of any shares from any receiver, administrative receiver or administrator appointed by a Secured Party.
- 35 No resolution shall be proposed or passed the effect of which would be to delete or amend article 34 without the prior written consent of any Secured Party which for the time being holds any mortgage or charge over any shares in the capital of the Company.

TRANSMISSION OF SHARES

- 36 If a member dies the survivor or survivors where he was a joint holder, and his personal representatives where he was a sole holder or the only survivor of joint holders, shall be the only persons recognised by the Company as having any title to his interest, but nothing in the articles shall release the estate of a deceased member from any liability in respect of any share which had been jointly held by him.
- 37 A person becoming entitled to a share in consequence of the death or bankruptcy of a member may, upon such evidence being produced as the directors may properly require, elect either to become the holder of the share or to have some person nominated by him registered as the transferee. If he elects to become the holder he shall give notice to the Company to that effect. If he elects to have another person registered he shall execute an instrument of transfer of the share to that person. All the articles relating to the transfer of shares shall apply to the notice or instrument of transfer as if it were an instrument of transfer executed by the member and the death or bankruptcy of the member had not occurred.
- 38 A person becoming entitled to a share in consequence of the death or bankruptcy of a member shall have the rights to which he would be entitled if he were the holder of the share, except that he shall not, before being registered as the holder of the share, be entitled in respect of it to attend or vote at any meeting of the Company or at any separate meeting of the holders of any class of shares in the Company.

ALTERATION OF SHARE CAPITAL

- 39 The Company may by ordinary resolution:
- 39.1 increase its share capital by new shares of such amount as the resolution prescribes;
 - 39.2 consolidate and divide all or any of its share capital into shares of larger amount than its existing shares;
 - 39.3 subject to the Act, sub-divide its shares, or any of them, into shares of smaller amount and the resolution may determine that, as between the shares resulting from the sub-division, any of them may have any preference or advantage as compared with the others; and
 - 39.4 cancel shares which, at the date of the passing of the resolution, have not been taken or agreed to be taken by any person and diminish the amount of its share capital by the amount of the shares so cancelled.
- 40 Whenever as a result of a consolidation of shares any members would become entitled to fractions of a share, the directors may, on behalf of those members, sell the shares representing the fractions for the best price reasonably obtainable to any person (including, subject to the Act, the Company) and distribute the net proceeds of sale in due proportion among those members, and the directors may authorise some person to execute an instrument of transfer of the shares to, or in accordance with the directions of, the purchaser. The transferee shall not be bound to see to the application of the purchase money nor shall his title to the shares be affected by any irregularity in or invalidity of the proceedings in reference to the sale.
- 41 Subject to the Act, the Company may by special resolution reduce its share capital, any capital redemption reserve and any share premium account in any way.

PURCHASE OF OWN SHARES

- 42 Subject to the Act, the Company may purchase its own shares (including any redeemable shares) and make a payment in respect of the redemption or purchase of its own shares otherwise than out of distributable profits of the Company or the proceeds of a fresh issue of shares.

GENERAL MEETINGS

- 43 All meetings of the members shall be called general meetings.
- 44 The directors may call general meetings and, on the requisition of members pursuant to the Act, shall immediately proceed to convene a general meeting for a date not later than 28 days after receipt of the requisition¹. If there are not within the United Kingdom sufficient directors to call a general meeting, any director or any member may call a general meeting.

NOTICE OF GENERAL MEETINGS

- 45 A general meeting called for the passing of a special resolution shall be called by at least 21 clear days' notice. All other general meetings shall be called by at least 14 clear days' notice but a general meeting may be called by shorter notice if it is so agreed:
- 45.1 in the case of a meeting called for the passing of an elective resolution, by all the members entitled to attend and vote at that meeting, and
 - 45.2 in the case of any other meeting, by a majority in number of the members having a right to attend and vote, being

¹ BB Note: this is the time period under the Act (s.303)

45.2.1 a majority together holding not less than such percentage in nominal value of the shares giving that right as has been determined by elective resolution of the members in accordance with the Act, or

45.2.2 if no such elective resolution is in force, a majority together holding not less than 95 per cent in nominal value of the shares giving that right.

46 The notice shall specify the time and place of the meeting and the general nature of the business to be transacted and, in the case of an annual general meeting, shall specify the meeting as such.

47 Subject to the provisions of the articles and to any restrictions imposed on any shares, the notice shall be given to all the members, to all the persons entitled to a share in consequence of the death or bankruptcy of a member and to the directors and auditors.

48 The accidental omission to give notice of a general meeting or to send, supply or make available any document or information relating to a meeting to, or the non-receipt of any such notice, document or information by, a person entitled to receive any such notice, document or information shall not invalidate the proceedings at that meeting.

PROCEEDINGS AT GENERAL MEETINGS

49 No business shall be transacted at any meeting unless a quorum is present. Two persons entitled to vote upon the business to be transacted, each being a member or a proxy for a member or a duly authorised representative of a council or corporation, shall be a quorum. If at any time the Company has a sole shareholder, the quorum shall be one person entitled to vote upon the business to be transacted, being a member or a proxy for a member or a duly authorised representative of a council or a corporation.

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

51 The chair, if any, of the board of directors or in his absence some other director nominated by the directors shall preside as chair of the meeting, but if neither the chair nor such other director (if any) is present within 15 minutes after the time appointed for holding the meeting and willing to act, the directors present shall elect one of their number to be chair and, if there is only one director present and willing to act, he shall be chair.

52 If no director is willing to act as chair, or if no director is present within 15 minutes after the time appointed for holding the meeting, the members present and entitled to vote shall choose one of their number to be chair.

53 A director shall, notwithstanding that he is not a member, be entitled to attend and speak at any general meeting and at any separate meeting of the holders of any class of shares in the Company.

54 The chair may, with the consent of a meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at an adjourned meeting other than business which might properly have been transacted at the meeting had the adjournment not taken place. When a meeting is adjourned for 14 days or more, at least seven clear days' notice shall be given specifying the time and place of the adjourned meeting and the general nature of the business to be transacted. Otherwise it shall not be necessary to give any such notice.

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

55.1 by the chair, or

55.2 by any member present in person or by proxy and entitled to vote.

- 56 Unless a poll is duly demanded, a declaration by the chair that a resolution has been carried or carried unanimously, or by a particular majority, or lost, or not carried by a particular majority and an entry to that effect in the minutes of the meeting shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.
- 57 The demand for a poll may, before the poll is taken, be withdrawn but only with the consent of the chair and a demand so withdrawn shall not be taken to have invalidated the result of a show of hands declared before the demand was made.
- 58 A poll shall be taken in such manner as the chair directs and he may appoint scrutineers (who need not be members) and fix a time and place for declaring the result of the poll. The result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.
- 59 In the case of an equality of votes, whether on a show of hands or on a poll, the chair shall be entitled to a casting vote in addition to any other vote he may have.
- 60 A poll demanded on the election of a chair or on a question of adjournment shall be taken immediately. A poll demanded on any other question shall be taken either immediately or at such time and place as the chair directs not being more than 30 days after the poll is demanded. The demand for a poll shall not prevent the continuance of a meeting for the transaction of any business other than the question on which the poll was demanded. If a poll is demanded before the declaration of the result of a show of hands and the demand is duly withdrawn, the meeting shall continue as if the demand had not been made.
- 61 No notice need be given of a poll not taken immediately if the time and place at which it is to be taken are announced at the meeting at which it is demanded. In any other case, at least seven clear days' notice shall be given specifying the time and place time at which the poll is to be taken.
- 62 A resolution in writing executed by or on behalf of each member who would have been entitled to vote upon it if it had been proposed at a general meeting at which he was present shall be as effectual as if it had been passed at a general meeting duly convened and held and may consist of several instruments in the like form each executed by or on behalf of one or more members. If a resolution in writing is described as a special resolution, it has effect accordingly.
- 63 The chair may permit other persons who are not:
- 63.1 shareholders; or
- 63.2 otherwise entitled to exercise the rights of shareholders in relation to general meetings, to attend and speak at a general meeting.

VOTES OF MEMBERS

- 64 Subject to any rights or restrictions attached to any shares, on a show of hands every member who (being an individual) is present in person or (being a council or corporation) is present by a duly authorised representative, not being himself a member entitled to vote, shall have one vote and on a poll every member shall have one vote for every share of which he is the holder.
- 65 In the case of joint holders, the vote of the senior who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint holders, and seniority shall be determined by the order in which the names of the holders stand in the register of members.
- 66 A member in respect of whom an order has been made by any court having jurisdiction (whether in the United Kingdom or elsewhere) in matters concerning mental disorder may vote, whether on a show of hands or on a poll, by his receiver, curator bonis or other person authorised in that behalf appointed by that court, and any such receiver, curator bonis or other person may, on a poll, vote by proxy. Evidence to the satisfaction of the directors of the authority of the person claiming to exercise the right to vote

shall be deposited at the office, or at such other place as is specified in accordance with the articles for the deposit or delivery of forms of appointment of a proxy, or in any other manner specified in the articles for the appointment of a proxy, not less than 48 hours before the time appointed for holding the meeting or adjourned meeting at which the right to vote is to be exercised and in default the right to vote shall not be exercisable.

- 67 No member shall, unless the directors otherwise determine, be entitled to vote at any general meeting or at any separate meeting of the holders of any class of shares in the Company, either in person or by proxy, in respect of any share held by him unless all moneys presently payable by him in respect of that share have been paid.
- 68 No objection shall be raised to the qualification of any voter except at the meeting or adjourned meeting at which the vote objected to is tendered, and every vote not disallowed at the meeting shall be valid. Any objection made in due time shall be referred to the chair whose decision shall be final and conclusive.
- 69 On a poll, votes may be given either personally or by proxy. A member may appoint more than one proxy to attend on the same occasion. Deposit or delivery of a form of appointment of a proxy does not preclude a member from attending and voting at the meeting or at any adjournment of it.
- 70 Subject as set out herein, an instrument appointing a proxy shall be in writing in any usual form or in any other form which the directors may approve and shall be executed by or on behalf of the appointor save that, subject to the Act, the directors may accept the appointment of a proxy received by electronic means at an address specified for such purpose, on such terms and subject to such conditions as they consider fit. The directors may require the production of any evidence which they consider necessary to determine the validity of any appointment pursuant to this article.
- 71 The form of appointment of a proxy and any authority under which it is executed or a copy of such authority certified notarially or in some other way approved by the directors shall be
- 71.1 in the case of an instrument of proxy in hard copy form, left at or sent by post to the office or such other place within the United Kingdom as is specified in the notice convening the meeting or in the form of appointment of proxy sent out by the Company in relation to the meeting at any time before the time for holding the meeting or adjourned meeting at which the person named in the form of appointment of proxy proposes to vote,
- 71.2 in the case of an appointment of a proxy sent by electronic means, where the Company has given an electronic address
- 71.2.1 in the notice calling the meeting; or
- 71.2.2 in an instrument of proxy sent out by the Company in relation to the meeting, or
- 71.2.3 in an invitation to appoint a proxy issued by the Company in relation to the meeting, received at such address at any time before the time for holding the meeting or adjourned meeting at which the person named in the form of appointment of proxy proposes to vote,
- 71.3 in the case of a poll taken more than 48 hours after it is demanded, be deposited or delivered as required by articles 71.1 and 71.2 after the poll has been demanded and at any time before the time appointed for the taking of the poll, or
- 71.4 where the poll is not taken immediately but is taken not more than 48 hours after it was demanded, be delivered at the meeting at which the poll was demanded to the chair or to the secretary or to any director, and a form of appointment of proxy which is not deposited or delivered in accordance with this article is invalid.
- 72 A vote given or poll demanded by a proxy or authorised representative of a company shall be valid notwithstanding the previous determination of the authority of the person voting or demanding a poll unless notice of the determination was received by the Company at the office or, in the case of a proxy,

any other place specified for delivery or receipt of the form of appointment of proxy or, where the appointment of a proxy was sent by electronic means, at the address at which the form of appointment was received, before the commencement of the meeting or adjourned meeting at which the vote is given or the poll demanded or (in the case of a poll taken otherwise than on the same day as the meeting or adjourned meeting) the time appointed for taking the poll.

- 73 A company which is a member may, by resolution of its directors or other governing body, whether or not expressed to be pursuant to any provision of the Act, authorise one or more persons to act as its representatives at a meeting or at a separate meeting of the holders of a class of shares (a "representative"). Each representative is entitled to exercise on behalf of the company (in respect of that part of the company's holding of shares to which the authorisation relates) those powers that the company could exercise if it were an individual member. The company is for the purposes of the articles deemed to be present in person at a meeting if a representative is present. All references to attendance and voting in person shall be construed accordingly. A director, the secretary or other person authorised for the purpose by the secretary may require a representative to produce a certified copy of the resolution of authorisation before permitting him to exercise his powers.

NUMBER OF DIRECTORS

- 74 Unless otherwise determined by ordinary resolution, the number of directors (other than alternate directors) is not subject to a maximum and the minimum number is four comprising those roles set out at article 87.

ALTERNATE DIRECTORS

- 75 Any director (other than an alternate director) may appoint any other director who is willing to act, without the approval of the directors, to be an alternate director and may terminate the appointment of an alternate director so appointed by him.
- 76 An alternate director shall, whether or not he is absent from the United Kingdom, be entitled to receive notice of all meetings of directors and of all meetings of committees of directors of which his appointor is a member. An alternate director may waive the requirement that notice be given to him of a meeting of directors or a committee of directors, either prospectively or retrospectively. Notice of a board meeting is deemed to be duly given to an alternate director if it is given to him personally or by word of mouth or by electronic means to an address given by him to the Company for that purpose or sent in writing to him at his last known address or another address given by him to the Company for that purpose. Where the alternate has already received such notice in his capacity as a director of the Company it shall not be necessary to duplicate such notice for his role as an alternate director. An alternate director shall be entitled to attend and vote at any such meeting at which the director appointing him is not personally present, and generally to perform all the functions of his appointor as a director in his absence but shall not be entitled to receive any remuneration from the Company for his services as an alternate director.
- 77 An alternate director shall cease to be an alternate director if he ceases to be a director or his appointor ceases to be a director.
- 78 Any appointment or removal of an alternate director shall be by notice to the Company signed by the director making or revoking the appointment or in any other manner approved by the directors. Any such notice may be left at or sent by post or facsimile transmission to the office or such other place as may be designated for the purpose by the directors.
- 79 Save as otherwise provided in the articles, an alternate director shall be deemed for all purposes to be a director and shall alone be responsible for his own acts and defaults and he shall not be deemed to be the agent of the director appointing him.

POWERS OF DIRECTORS

- 80 Subject to the Act and articles and to any directions given by special resolution, the business of the Company shall be managed by the directors who may exercise all the powers of the Company. No alteration of the memorandum or articles and no such direction shall invalidate any prior act of the directors which would have been valid if that alteration had not been made or that direction had not been

given. The powers given by this article shall not be limited by any special power given to the directors by the articles and a meeting of directors at which a quorum is present may exercise all powers exercisable by the directors.

- 81 The directors may, by power of attorney or otherwise, appoint any person to be the agent of the Company for such purposes and on such conditions as they determine, including authority for the agent to delegate all or any of his powers.

DELEGATION OF DIRECTORS' POWERS

- 82 The directors may delegate any of their powers to any committee consisting of one or more directors. They may also delegate to any managing director or any director holding any other executive office such of their powers as they consider desirable to be exercised by him. Any such delegation may be made subject to any conditions the directors may impose, and either collaterally with or to the exclusion of their own powers and may be revoked or altered. Subject to any such conditions, the proceedings of a committee with two or more members shall be governed by the provisions of the articles regulating the proceedings of directors so far as they are capable of applying. Where a provision of the articles refers to the exercise of a power, authority or discretion by the directors and that power, authority or discretion has been delegated by the directors to a committee, the provision shall be construed as permitting the exercise of the power, authority or discretion by the committee.

APPOINTMENT AND REMOVAL OF DIRECTORS

- 83 The Company may by ordinary resolution appoint a person who is willing to act to be a director either to fill a vacancy or as an additional director.
- 84 The directors may appoint any person who is willing to act to be a director, either to fill a vacancy or as an additional director, provided that the appointment does not cause the number of directors to exceed any number fixed by or in accordance with the articles as the maximum number of directors, any such appointment shall be notified in writing to the Council immediately upon being made and is subject to Council approval, which approval shall be deemed to have been given if no response has been received by the Company within 14 days of such notification having been delivered. Where the Council in writing within 14 days of receipt of notice reject the board's appointment the board shall immediately upon receipt of such notice terminate such directors appointment.
- 85 The Council may appoint a person who is willing to act to be a director either to fill a vacancy or as an additional director by notice in writing to the Company, such appointment to take effect on the day that the notice is received or such later date as may be specified in the notice.
- 86 Subject to the Act and shareholder approval, the directors may appoint one or more of their number to the office of managing director or to any other executive office under the Company.
- 87 The board of directors shall as a minimum, comprise of the following directors, each of whom shall be appointed and may be removed by the Council by notice in writing, in accordance with articles 85 and 88.8 respectively:

87.1 an independent non-executive chair;

87.2 a minimum of one independent non-executive director; and

87.3 a minimum of two further directors.

DISQUALIFICATION AND REMOVAL OF DIRECTORS

- 88 The office of a director shall be vacated if
- 88.1 he ceases to be a director by virtue of any provision of the Act or he becomes prohibited by law from being a director, or

- 88.2 he becomes bankrupt or makes any arrangement or composition with his creditors generally, or
 - 88.3 a registered medical practitioner who is treating that person gives a written opinion to the Company stating that that person has become physically or mentally incapable of acting as a Director and may remain so for more than three months;, or
 - 88.4 he resigns his office by notice to the Company, or
 - 88.5 he shall for more than six consecutive months have been absent without permission of the directors from meetings of directors held during that period and his alternate director (if any) shall not during such period have attended any such meetings instead of him, and the directors resolve that his office be vacated, or
 - 88.6 he is removed from office by notice addressed to him at his last known address and signed by all his co-directors, or
 - 88.7 he is removed by an ordinary resolution;
 - 88.8 he is removed from office by notice in writing by the Council which shall be effective on the date on which the notice is received by the Company or such later date as may be specified in the notice; or
 - 88.9 in relation to the Council being an employee, councillor, or an elected member or directly elected mayor his appointment to or employment with the Council ceases.
- 89 Any appointment of a director to an executive office shall determine if he ceases to be a director but without prejudice to any claim for damages for breach of the contract of service between the director and the Company.

REMUNERATION & EXPENSES OF DIRECTORS

- 90 Subject to these articles, the directors shall be entitled to such remuneration as the Company may by ordinary resolution determine and, unless the resolution provides otherwise, the remuneration shall be deemed to accrue from day to day.
- 91 Directors who are Council officers shall be remunerated and must claim expenses in accordance with their contracts of employment or terms of appointment with the Council.
- 92 Where any director is a councillor, or an elected member or directly elected mayor of the Council then such a director may only be paid such fees and/or expenses as are permitted by the Local Authorities (Companies) Order 1995.
- 93 The Company may enter into an agreement or arrangement with any director for his employment by the Company or for the provision by him of any services outside the scope of the ordinary duties of a director, subject to prior shareholder approval by ordinary resolution.
- 94 Subject to articles 91 and 92, the Company shall in accordance with any expenses policy adopted by ordinary resolution pay any reasonable expenses which the directors and the secretary (if any) properly incur in connection with their attendance at:
- 94.1 meetings of directors or committees of directors,
 - 94.2 General Meetings, or
 - 94.3 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.

- 95 The payment of expenses to directors is subject to the production of satisfactory receipts.

DIRECTORS' INTERESTS

CONFLICTS OF INTEREST – TRANSACTIONS OR ARRANGEMENTS WITH THE COMPANY

- 96 The relevant provisions of the Act (including, without limitation, sections 177 and 182) shall apply in relation to declarations of interest in proposed and existing transactions or arrangements with the Company.
- 97 Provided that he has disclosed to the directors the nature and extent of any interest of his in accordance with and to the extent required by the Act, a director notwithstanding his office:
- 97.1 may be a party to, or otherwise interested in, any contract with the Company or a Group Company or in which any of them is/are otherwise interested;
- 97.2 may be an elected member, director or other officer of, employed by, a party to any contract with, or otherwise interested in, the Council, any Group Company, or in which any of them is/are interested; and
- 97.3 may act by himself or his firm in a professional capacity for the Company (otherwise than as auditor).
- 98 For the purposes of article 96:
- 98.1 a director shall be deemed to have disclosed the nature and extent of an interest which consists of him being an elected member, director, officer or employee of the Council or any Group Company; and
- 98.2 a general notice given to the directors that a director is to be regarded as having an interest of the nature and extent specified in the notice in any contract in which a specified person or class of persons is interested shall be deemed to be a disclosure that the director has an interest in any such contract of the nature and extent so specified.
- 99 Where a director is an elected member, director, officer, directly elected mayor or employee of the Council or a Group Company; he:
- 99.1 may in exercising his independent judgment take into account the success of the Council or Group Company as well as the success of the Company; and
- 99.2 shall in the exercise of his duties have a duty of confidentiality to the Council or Group Company in relation to confidential information of that shareholder or Group Company, but he shall not be restricted by any duty of confidentiality to the Company from providing information to the Council or Group Company.

CONFLICTS OF INTEREST REQUIRING BOARD AUTHORISATION

- 100 The directors may authorise any matter which would otherwise involve a director (a Relevant Director) breaching his duty under section 175 of the Act to avoid a situation in which he has, or can have, a direct or indirect interest that conflicts, or possibly may conflict, with the interests of the Company (a Conflict).
- 101 Any director (including the Relevant Director) may propose that the Relevant Director be authorised in relation to any matter the subject of a Conflict. Such proposal and any authority given by the directors shall be effected in the same way that any other matter may be proposed to and decided upon by the directors under these articles save that the Relevant Director (and any director) shall not count towards the quorum nor vote on any resolution giving such authority.
- 102 Where the directors give authority in relation to a Conflict:

102.1 the terms of the authority shall be recorded in writing (but the authority shall be effective whether or not the terms are so recorded); and

102.2 the directors may revoke or vary such authority at any time but this will not affect anything done by the Relevant Director prior to such revocation in accordance with the terms of such authority.

103 A Conflict in relation to a director arising solely as a result of him being an elected member, director, officer, directly elected mayor or employee of the Council or any Group Company of the Company shall be deemed to have been authorised for the purposes of article 100 and section 175 of the Act.

104 Where article 103 above applies or the directors otherwise gives authority in relation to a Conflict, or where any of the situations referred to in article 98 (a Permitted Situation) applies:

104.1 the directors may (whether at the relevant time or subsequently) (i) require that the Relevant Director is excluded from the receipt of information, the participation in discussion and/or the making of decisions (whether at directors meetings or otherwise) related to the Conflict or Permitted Situation; and (ii) impose upon the Relevant Director such other terms for the purpose of dealing with the Conflict as they may determine;

104.2 the Relevant Director will be obliged to conduct himself in accordance with any terms imposed by the directors in relation to the Conflict or Permitted Situation; and

104.3 the directors may provide that where the Relevant Director obtains (otherwise than through his position as a director of the Company) information that is confidential to a third party, the director will not be obliged to disclose that information to the Company, or to use or apply the information in relation to the Company's affairs, where to do so would amount to a breach of that confidence.

105 A director shall not, by reason of his office or of the fiduciary relationship thereby established, be liable to account to the Company or the shareholders for any remuneration, profit or other benefit realised by reason of his having any type of interest in a Conflict authorised under this article or in any Permitted Situation and no contract shall be liable to be avoided on the grounds of a director having any such interest.

EFFECT OF DIRECTORS' INTERESTS ON QUORUM AND VOTING

106 Subject where applicable to disclosure in accordance with these articles and subject to any terms imposed by the directors in relation to any Conflict or Permitted Situation, a director shall be entitled to vote in respect of any matter in which he is interested directly or indirectly (where that interest arises by virtue of a Conflict which has been authorised or a Permitted Situation) and if he shall do so his vote shall be counted and, whether or not he does, his presence at the meeting shall be taken into account in ascertaining whether a quorum is present.

107 However, a director shall not be entitled to vote in respect of any other matter in which he is interested directly or indirectly and his presence at the meeting shall not be taken into account in ascertaining whether a quorum is present.

108 Subject to article 109 below, 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 chair whose ruling in relation to any director other than the chair is to be final and conclusive.

109 If any question as to the right to participate in the meeting (or part of the meeting) should arise in respect of the chair, the question is to be decided by a decision of the directors at that meeting, for which purpose the chair is not to be counted as participating in the meeting (or that part of the meeting) for voting or quorum purposes.

PROCEEDINGS OF DIRECTORS

110 Subject to the provisions of the articles, the directors may regulate their proceedings as they think fit. A director may, and the secretary at the request of a director shall, call a meeting of the directors. Every

director shall receive notice of a meeting, whether or not he is absent from the United Kingdom. Notice of a board meeting is deemed to be duly given to a director if it is given to him personally or by word of mouth or by electronic means to an address given by him to the Company for that purpose or sent in writing to him at his last known address or other address given by him to the Company for that purpose. A director may waive the requirement that notice be given to him of a meeting of directors or a committee of directors, either prospectively or retrospectively.

- 111 Questions arising at a meeting shall be decided by a majority of votes. In the case of an equality of votes, the chair shall have a second or casting vote. A director who is also an alternate director shall be entitled in the absence of his appointor to a separate vote on behalf of his appointor in addition to his own vote.
- 112 A director or his alternate director may participate in a meeting of directors or a committee of directors through the medium of conference telephone or similar form of communications equipment if all persons participating in the meeting are able to hear and speak to each other throughout the meeting. A person participating in this way is deemed to be present in person at the meeting and is counted in a quorum and entitled to vote. Subject to the Act, all business transacted in this way by the directors or a committee of directors is for the purposes of the articles deemed to be validly and effectively transacted at a meeting of the directors or of a committee of directors although fewer than two directors or alternate directors are physically present at the same place. The meeting is deemed to take place where the largest group of those participating is assembled or, if there is no such group, where the chair of the meeting then is.
- 113 The quorum for the transaction of the business of the directors may be fixed by the directors and unless so fixed at any other number shall be two. A person who holds office only as an alternate director shall, if his appointor is not present, be counted in the quorum.
- 114 The directors may appoint one of their number to be the chair of the board of directors and may at any time remove him from that office. Unless he is unwilling to do so, the director so appointed shall preside at every meeting of directors at which he is present. But if there is no director holding that office, or if the director holding it is unwilling to preside or is not present within five minutes after the time appointed for the meeting, the directors present may appoint one of their number to be chair of the meeting.
- 115 All acts done by a meeting of directors, or of a committee of directors, or by a person acting as a director shall, notwithstanding that it be afterwards discovered that there was a defect in the appointment of any director or that any of them were disqualified from holding office, or had vacated office, or were not entitled to vote, be as valid as if every such person had been duly appointed and was qualified and had continued to be a director and had been entitled to vote.
- 116 A resolution in writing signed by all the directors entitled to receive notice of a meeting of directors or of a committee of directors shall be as valid and effectual as if it has been passed at a meeting of directors or (as the case may be) a committee of directors duly convened and held and may consist of several documents in the like form each signed by one or more directors, but a resolution signed by an alternate director need not also be signed by his appointor and, if it is signed by a director who has appointed an alternate director, it need not be signed by the alternate director in that capacity.
- 117 If and for so long as there is a sole director of the Company
- 117.1 he may exercise all the powers conferred on the directors by the articles by any means permitted by the articles or the Act,
- 117.2 for the purpose of article 112 the quorum for the transaction of business is one, and
- 117.3 all other provisions of the articles apply with any necessary modification (unless the provision expressly provides otherwise).

SECRETARY

- 118 Subject to the Act, the secretary shall be appointed by the directors for such term, at such remuneration and upon such conditions as they may think fit, and any secretary so appointed may be removed by the directors.

MINUTES

- 119 The directors shall cause minutes to be made in books kept for the purpose
- 119.1 of all appointments of officers made by the directors, and
- 119.2 of all proceedings of meetings of the Company, of the holders of any class of shares in the Company, and of the directors, and of committees of directors, including the names of the directors present at each such meeting.

DIVIDENDS

- 120 Subject to the Act, the Company may by ordinary resolution declare dividends in accordance with the respective rights of the members, but no dividend shall exceed the amount recommended by the directors.
- 121 Subject to the Act, the directors may pay interim dividends if it appears to them that they are justified by the profits of the Company available for distribution. If the share capital is divided into different classes, the directors may pay interim dividends on shares which confer deferred or non-preferred rights with regard to dividend as well as on shares which confer preferential rights with regard to dividend, but no interim dividend shall be paid on shares carrying deferred or non-preferred rights if, at the time of payment, any preferential dividend is in arrears. The directors may also pay at intervals settled by them any dividend payable at a fixed rate if it appears to them that the profits available for distribution justify the payment. Provided the directors act in good faith they shall 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 any shares having deferred or non-preferred rights.
- 122 Except as otherwise provided by the rights attached to shares, all dividends shall be declared and paid according to the amounts paid up on the shares on which the dividend is paid. All dividends shall be 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, but, if any share is issued on terms providing that it shall rank for dividend as from a particular date, that share shall rank for dividend accordingly.
- 123 The directors may deduct from a dividend or other amounts payable to a person in respect of a share any amounts due from him to the Company on account of a call or otherwise in relation to a share.
- 124 A general meeting declaring a dividend may, upon the recommendation of the directors, direct that it shall be satisfied wholly or partly by the distribution of assets and, where any difficulty arises in regard to such distribution, the directors may settle the same and in particular may issue fractional certificates and fix the value for distribution of any assets and may determine that cash shall be paid to any member upon the footing of the value so fixed in order to adjust the rights of members and may vest any assets in trustees.
- 125 Any dividend or other moneys payable in respect of a share may be paid by cheque sent by post to the registered address of the person entitled or, transfer to a bank or building society account specified by the distribution recipient either in writing or 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. Every cheque shall be made payable to the order of the person or persons entitled or to such other person as the person or persons entitled may in writing direct and payment of the cheque shall be a good discharge to the Company. Any joint holder or other person jointly entitled to a share as aforesaid may give receipts for any dividend or other moneys payable in respect of the share.
- 126 No dividend or other moneys payable in respect of a share shall bear interest against the Company unless otherwise provided by the rights attached to the share.

ACCOUNTS

- 127 The Company shall provide the Council with access to (and/ or at the Council's election copies of) all records, books and documents of the Company, including access to its premises upon receipt of notice from the Council.

CAPITALISATION OF PROFITS

- 128 The directors may with the authority of an ordinary resolution of the Company
- 128.1 subject as provided in this article, resolve to capitalise any undivided profits of the Company not required for paying any preferential dividend (whether or not they are available for distribution) or any sum standing to the credit of the Company's share premium account or capital redemption reserve,
- 128.2 appropriate the sum resolved to be capitalised to the members who would have been entitled to it if it were distributed by way of dividend and in the same proportions and apply such sum on their behalf either in or towards paying up the amounts, if any, for the time being unpaid on any shares held by them respectively, or in paying up in full unissued shares or debentures of the Company of a nominal amount equal to such sum, and allot the shares or debentures credited as fully paid to those members, or as they may direct, in those proportions, or partly in one way and partly in the other but the share premium account, the capital redemption reserve, and any profits which are not available for distribution may, for the purposes of this article, only be applied in paying up unissued shares to be allotted to members credited as fully paid,
- 128.3 resolve that any shares so allotted to any member in respect of a holding by him of any partly paid shares rank for dividend, so long as such shares remain partly paid, only to the extent that such partly paid shares rank for dividend,
- 128.4 make such provision by the issue of fractional certificates or by payment in cash or otherwise as they determine in the case of shares or debentures becoming distributable under this article in fractions, and
- 128.5 authorise any person to enter on behalf of all the members concerned into an agreement with the Company providing for the allotment to them respectively, credited as fully paid, of any shares or debentures to which they may be entitled upon such capitalisation, any agreement made under such authority being binding on all such members.

NOTICES AND COMMUNICATIONS

- 129 Save where these articles expressly require otherwise, any notice, document or information to be sent or supplied by the Company may be sent or supplied in accordance with the Act (whether authorised or required to be sent or supplied by the Act or otherwise) in hard copy form, in electronic form or by means of a website.
- 130 A notice, document or information sent by post and addressed to a member at his registered address or address for service in the United Kingdom is deemed to be given to or received by the intended recipient 24 hours after it was put in the post if pre-paid as first class post and 48 hours after it was put in the post if pre-paid as second class post, and in proving service it is sufficient to prove that the envelope containing the notice, document or information was properly addressed, pre-paid and posted.
- 131 A notice, document or information sent or supplied by electronic means to an address specified for the purpose by the member is deemed to have been given to or received by the intended recipient 24 hours after it was sent, and in proving service it is sufficient to prove that the communication was properly addressed and sent.
- 132 A notice, document or information sent or supplied by means of a website is deemed to have been given to or received by the intended recipient when (i) the material was first made available on the website or (ii) if later, when the recipient received (or, in accordance with this article 132, is deemed to have received) notification of the fact that the material was available on the website.

- 133 A notice, document or information not sent by post but left at a registered address or address for service in the United Kingdom is deemed to be given on the day it is left.
- 134 A notice, document or information served or delivered by the Company by any other means authorised in writing by the member concerned is deemed to be served when the Company has taken the action it has been authorised to take for that purpose.
- 135 A member present, either in person or by proxy, at any meeting of the Company or of the holders of any class of shares in the Company shall be deemed to have received notice of the meeting, and, where requisite, of the purposes for which it was called.
- 136 Every person who becomes entitled to any share shall be bound by any notice in respect of that share which, before his name is entered in the register of members, has been given to the person from whom he derives his title.
- 137 A notice may be given by the Company to the persons entitled to a share in consequence of the death or bankruptcy of a member by sending or delivering it, in any manner authorised by the articles for the giving of notice to a member, addressed to them by name, or by the title of representatives of the deceased, or trustee of the bankrupt or by any like description, at the address, if any, supplied for that purpose by the persons claiming to be so entitled. Until such an address has been supplied, a notice may be given in any manner in which it might have been given if the death or bankruptcy had not occurred.

WINDING UP

- 138 If the Company is wound up, the liquidator may, with the sanction of a special resolution of the Company and any other sanction required by the Act, divide among the members in specie the whole or any part of the assets of the Company and may, for that purpose, value any assets and determine how the division shall be carried out as between the members or different classes of members. The liquidator may, with the like sanction, vest the whole or any part of the assets in trustees upon such trusts for the benefit of the members as he with the like sanction determines, but no member shall be compelled to accept any assets upon which there is a liability.

INDEMNITY, DEFENCE COSTS AND INSURANCE

- 139 Subject to article 140, a director or former of the Company or a Group Company may be indemnified out of the company's assets against:
- 139.1 any liability incurred by that director in connection with any negligence, default, breach of duty or breach of trust in relation to the company or an associated company,
- 139.2 any liability incurred by that director in connection with the activities of the Company or an associated company in its capacity as a trustee of an occupational pension scheme (as defined in section 235(6) of the Act),
- 139.3 any other liability incurred by that director as an officer of the Company or a Group Company.
- 140 Article 139 does not authorise any indemnity which would be prohibited or rendered void by any provision of the Companies Acts or by any other provision of law.
- 141 The directors may decide to purchase and maintain insurance, at the expense of the Company, for the benefit of any director or former of the Company or a Group Company in respect of any relevant loss.

REPORTING

- 142 All proceedings of any committee of the board shall be reported promptly to the board. The directors shall meet the reporting requirements as set out in the Company's Business Plan from time to time. The directors must ensure that the Company keeps a record, in writing, for at least ten years from the date of the decision recorded, of every unanimous or majority decision taken by the directors.

RESERVED MATTERS

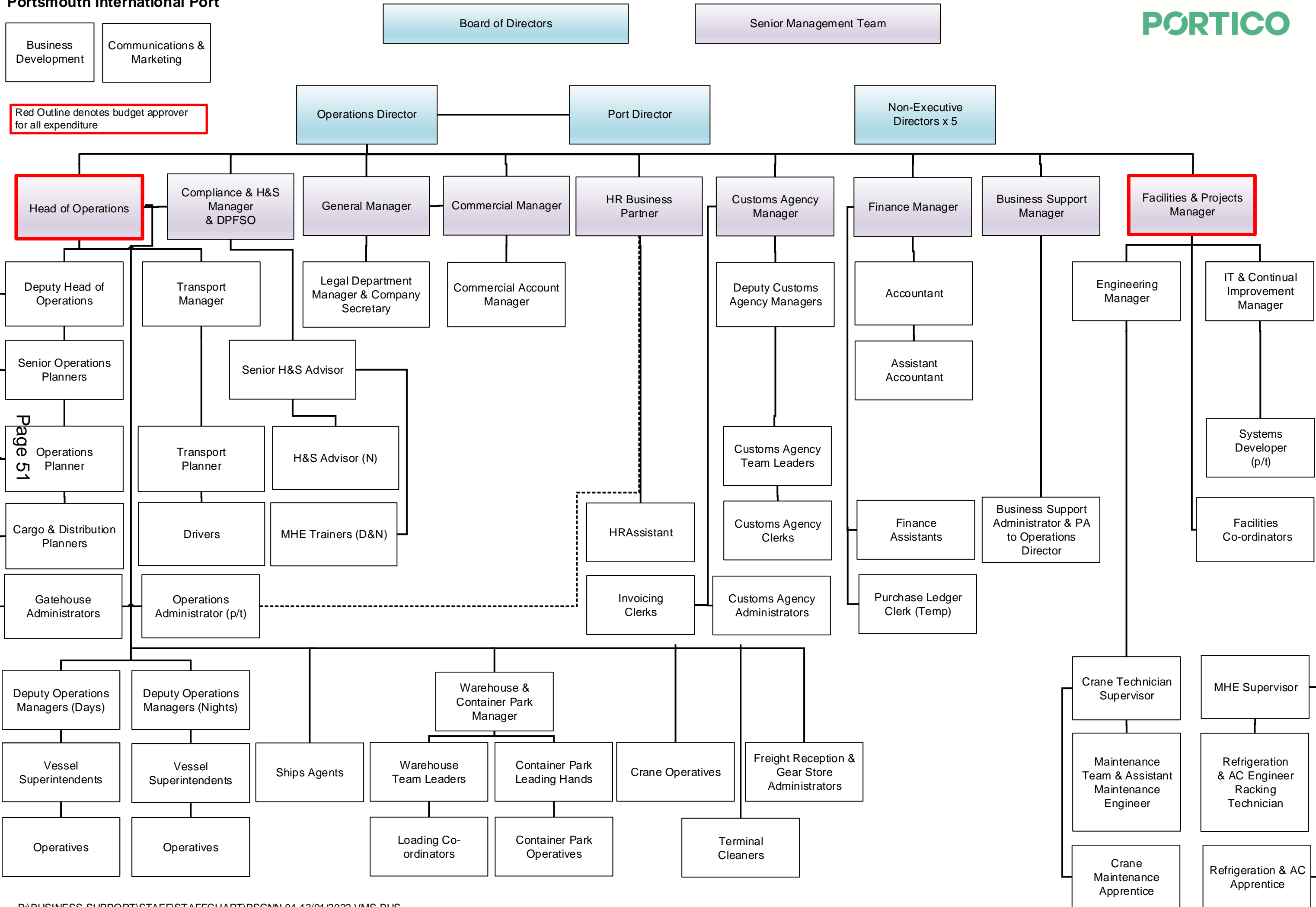
- 143 Without prejudice to any other matter that expressly requires a shareholder resolution or approval under the Act or these articles, subject to these articles neither the Company nor the board shall pass any resolution or take any action in respect of the matters set out in this article unless the prior written approval of the shareholders by ordinary resolution has been obtained.
- 144 The matters that require prior member approval pursuant to this article are:
- 144.1 the approval, adoption and amendment of the Business Plan;
 - 144.2 the drawdown of further capital under any loan agreement made between the Company and its shareholders or third parties; and
 - 144.3 any appointment and/or removal of any director and/or any changes to the terms of such appointment, save where a director is appointed by the board pursuant to article 84 in which case approval shall be deemed to have been given if the members have not approved or rejected the appointment within 14 days of receipt of notice.

BUSINESS PLAN

- 145 Each year, commencing on 1 April the board shall prepare and submit a draft Business Plan for approval by the shareholders covering the next three years.
- 146 The content of each Business Plan shall, among other things, include relevant information under each of the following headings:
- 146.1 an annual operating revenue plan and capital expenditure requirements (including details of funding sources);
 - 146.2 a balance sheet forecast;
 - 146.3 a minimum 3 year term financial strategy plan to include (amongst other items) all proposed investments, borrowings and new business of that Company and a list of key risks of its business;
 - 146.4 a plan for the use of any surpluses made in each year including the making of any distribution of profit subject to the provisions of the Act;
 - 146.5 an annual profit and loss account; and
 - 146.6 such other content as the shareholders may require from time to time and notify to the Company in writing.
- 147 A Business Plan may be varied in-year with the approval of the shareholders (where applicable) pursuant to article 144.1.
- 148 The board shall be responsible for securing the shareholders' approval of any draft Business Plan and, once such approval is obtained, the same shall become the Business Plan.
- 149 If, prior to the start of the relevant year, the board has not secured the approval of the shareholders of the Business Plan, then, for so long as such approval has not been secured for such year, the Business Plan for the previous year shall continue to apply.
- 150 The board shall conduct the Company's business in accordance with the terms of the Business Plan.
- 151 The Company shall not enter into any transaction, agreement or contract unless it is in accordance with the Business Plan (but this does not necessarily mean that the relevant transaction, agreement or contract has to have been actually specified in the Business Plan).

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Portsmouth International Port



Red Outline denotes budget approver for all expenditure

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Agenda Item 6



Portsmouth
CITY COUNCIL

Title of meeting: Cabinet

Date of meeting: 14 February 2022

Subject: Portsmouth Harbour Renaissance Limited

Report by: David Williams, Chief Executive

Wards affected: All

Key decision: No

Full Council decision: No

1. Purpose of report

- 1.1 To update Cabinet on the Council's part ownership of Portsmouth Harbour Renaissance Limited ("**PHRL**").

2. Recommendations

That Cabinet;

- 2.1 Delegates authority to the Chief Executive, in consultation with the City Solicitor and s151 Officer, to discharge all shareholder functions of the Council in relation to PHRL save as they relate to recommendation 2.2; and
- 2.2 Notes that the Chief Executive will initiate discussions with the other shareholder of PHRL in relation to the future of the company; and
- 2.3 Requests the Chief Executive to report back to Cabinet as to any shareholder action that maybe required as a consequence of the discussions at recommendation 2.2.

3. Background

- 3.1 PHRL originated out of the "Renaissance of Portsmouth Harbour Millennium Scheme" ("**the Project**") in the middle of the 1990s funded by the Millennium Commission (superseded in 2006 by the "National Lottery Community Fund" also known as "Big Lottery Fund"). The responsibility for the delivery of the Project was a multi-party engagement involving the Council, Gosport Borough Council, the Portsmouth Naval Base Property Trust and the Portsmouth and South East Hampshire Partnership ("**the Partners**") each of whom were to be responsible for certain elements of the project. It is understood that a condition of the funding, required at the time by the Millennium Commission, was that those parties set up a joint venture vehicle to receive and manage funding.



- 3.2 As a consequence PHRL was set up in 1996 to act as that joint venture vehicle and each of the Partners was allocated $\frac{1}{4}$ ownership of the company (25 shares at a value of £1 per share).
- 3.3 The Articles of Association of PHRL envisaged there being not more than 11 directors of the company, consisting of 2 nominated by each of the Partners with no more than a further 3 who were not linked to the Partners.
- 3.4 Following its establishment, PHRL entered into a Shareholder Agreement dated 19 May 1997 with the Partners. This set out how the board of directors of PHRL were to run the company and to interact with the Partners.
- 3.5 From the Council's records, PHRL entered into a number of agreements in relation to the Project.

The Principal (Grant) Agreement

- 3.6 This agreement is between PHRL and the Millennium Commission and is dated 19 May 1997. The agreement placed obligations on PHRL to ensure that all Projects are carried out, completed and operated in accordance with the agreement. PHRL are also obliged to ensure that no asset created or purchased as a result of grant funding is to be disposed of without the consent of the Millennium Commission, and that where such asset is disposed of, such funds realised are to be part returned to the Commission.
- 3.7 The agreement requires the consent of the Commission in relation to any agreement, decision or determination in accordance with the agreement including the consent in relation to change of ownership, composition or structure of PHRL. The agreement is to continue until the Commission specifies (i.e. it is not dependent upon the completion of the Projects).
- 3.8 It should be noted that if the Commission is not adequately engaged in matters concerning the agreement then an Event of Default may occur which in theory could result in a demand for re-payment of any grant made.

The 1st Supplementary Agreement

- 3.9 The 1st Supplementary Agreement is between PHRL and the Millennium Commission to which the Partners (except the Portsmouth and South East Hampshire Partnership) were also party and was dated 19 May 1997. It records certain variations to the Principal Agreement, to enable PHRL to add additional elements to the Project and to cap the Millennium Commission's obligations to pay Grant for each element of the Project until certain conditions were made.
- 3.10 The primary purpose of the 1st Supplementary Agreement is to bind the Partners so that they observe and perform as though they were each a party to the Principal Agreement (*mutatis mutandis*).
- 3.11 A 2nd Supplementary Agreement between PHRL and the Millennium Commission (to which the Partners except the Portsmouth and South East Hampshire Partnership were also party) was dated 3 October 2002. It records certain variations to the Principal Agreement and the 1st Supplementary agreement.



4. Current status

- 4.1 The purpose of PHRL appears to have been largely met by 2006 (likely tied in with the completion of the Spinnaker Tower) as the independent non-executive directors appear to have left around that time.
- 4.2 Today, PHRL has only two directors, Stephen Baily (Director of Culture, Leisure and Regulatory Services at Portsmouth City Council) and Hannah Prowse (Chief Executive Officer of Portsmouth Naval Base Property Trust) who also acts as the company secretary. Gosport Borough Council have not appointed a director since their Chief Executive Ian Lycett departed the authority in 2016. It is understood that the Portsmouth and South East Hampshire Partnership have had little involvement with PHRL since 2006.
- 4.3 It is not entirely clear what purpose PHRL currently fulfils. As far as the Council understand, it commissions no services and has little funds remaining in its bank account although it is understood that PHRL may retain certain obligations under certain unidentified agreements.
- 4.4 According to the last accounts files for the year ending 31 March 2020, PHRL owes £2,548 to the Council.

5. Reasons for recommendations

- 5.1 There is little action currently required from the Council as shareholder. The assets of the company are minimal and as far as the Council is aware it does not actively trade.
- 5.2 It is proposed that that Chief Executive write to both the Company and the other shareholders in the company to enable a full understanding of the purpose of the company's continued existence, to ascertain the other shareholder's intentions in relation to the company, and to decide as shareholders what to do with the company in the long term.
- 5.3 Although the Project has long since completed, it is unclear whether PHRL remains subject to any obligations under the various funding agreements with Big Lottery, for example regarding maintenance. Consequently, it is likely that further engagement will be needed with the Big Lottery Fund should any significant changes to PHRL be made.

6. Integrated impact assessment

- 6.1 The contents of this report do not have any relevant equalities impact and therefore an Integrated Impact Assessment is not required.

7. Legal implications

- 7.1 PHRL is a private limited company. Because the Council owns no more than 25% of the PHRL, it is unable to exert significant influence over it without the support of other shareholders. It is able, but does not have to, appoint directors to PHRL.

Those directors are required by law to act in the best interest of PHRL and not simply act as a proxy for the decisions of their nominee, save where such action is required by the Shareholder Agreement.

7.2 Through the shareholder agreement, the Council retains an on-going duty to fund PHRL although this responsibility is split with Gosport Borough Council and Portsmouth Naval Base Property Trust.

7.3 The recommendations outlined in this paper pose no significant risk to the Council.

8. Director of Finance's comments

8.1 There are no direct financial implications as a result of approving the recommendations within the report.

.....
Signed by:

Appendices:

Background list of documents: Section 100D of the Local Government Act 1972

The following documents disclose facts or matters, which have been relied upon to a material extent by the author in preparing this report:

Title of document	Location

The recommendation(s) set out above were approved/ approved as amended/ deferred/ rejected by on

.....
Signed by:



Title of meeting: Cabinet Meeting
Date of meeting: 14th February 2022
Subject: Magna Park Management Limited (company no. 2224536)
Report by: Tom Southall - Assistant Director Property & Investment

1. Purpose of report

- 1.1 To update the Cabinet on the City Councils ownership of shares in Magna Park Management Limited.

2. Recommendations

That the Cabinet

- 2.1. Delegates authority to the Assistant Director Property & Investment, in consultation with the City Solicitor and s151 Officer, to represent the Council as shareholder in matters related to the operation of Magna Park Limited; and
- 2.2. To report no less than annually to the Cabinet on the performance of the company and any other relevant matters relating to it.

3. Background

- 3.1. Portsmouth City Council owns 14 out of 965 ordinary shares (c.1.45%) in Magna Park Management Limited (MPML).
- 3.2. The ownership of the company shares is necessitated by the ownership of Unit 3420, Buccaneer Way, Lutterworth (Travis Perkins). Unit 3420 was acquired in December 2016 and forms part of the Council national property investment fund which yields the council in excess of £9 million per annum.
- 3.3. MPML operates as a property management company and is responsible for the management (including maintenance) of the Magna Park estate shown in appendix A.
- 3.4. Each freeholder owner on the Magna Park estate owns shares in MPML. The Council share ownership is not significant enough to give any responsibility for Directorship of the company.

- 3.5. The total cost of the services performed by the company in relation to the estate are recovered from all the shareholders / occupiers on the estate by way of service charge.
- 3.6. PCC costs in relation to MPML activities charged under the service charge are paid by the occupying tenant Travis Perkins.
- 3.7. As a minority shareholder PCC has voting rights at the AGM of the company, the Assistant Director Property & Investment has historically represented the Council in these meetings. Voting at the AGM is limited to approval of the accounts and the appointment of the annual auditors.

4. Legal comments

- 4.1. The City Solicitor has had no involvement in this company and has not reviewed the company governance arrangements (i.e. Articles of Association and, if there is one, the shareholder agreement) which govern the functioning of the company.
- 4.2. MPML is a private limited company and as such the Council's liability to the company is limited to the value of its shareholding in the company. The Council owns approximately 1.45% of MPML. As a part owner, the Council has a statutory right to inspect certain documents, records and registers of the company (including but not limited to the register of members, directors, debenture holders, resolutions and meetings). However such a small shareholder does not give the Council any additional rights to unilaterally influence the strategy and functions of the company, such as to appoint directors, to require the circulation of a written resolution, require a general meeting to be held or to block or pass ordinary or special resolutions of the company.
- 4.3. As such the role that the Council, as shareholder, will have in relation to the company is likely to be minimal and will likely be largely limited to attendance at general meeting of the company.
- 4.4. The recommendations in this report therefore pose no significant risk to the Council.

5. Chief Finance Officers Comments

- 5.1. There are no direct financial implications as a result of the recommendations within the report.
- 5.2. The Council's share ownership as stated in the main body of the report is minimal and any losses or obligations in the event of default of this company are limited to its £14 shareholding.

.....
Signed by: Tristan Samuels, Director of Regeneration

Appendices:

Appendix A - Magna Park Estate

Background list of documents: Section 100D of the Local Government Act 1972

The following documents disclose facts or matters, which have been relied upon to a material extent by the author in preparing this report:

Title of document	Location

The recommendation(s) set out above were approved/ approved as amended/ deferred/ rejected by on

.....
Signed by:

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Magna Park Lutterworth

Magna Park Management
The Estate Office
Harrier Parkway
Magna Park, Lutterworth
Leicester LE17 4XT
T: 01455 247542



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Agenda Item 8



Portsmouth
CITY COUNCIL

Title of meeting: Cabinet Meeting

Date of meeting: 14th February 2022

Subject: North Harbour Estate Management Limited (company no. 7833141)

Report by: Tristan Samuels Director Regeneration

1. Purpose of report

- 1.1 To update the Cabinet on the City Councils ownership and Directorship of North Harbour Estate Management Limited (NHEML).

2. Recommendations

That the Cabinet

- 2.1 Notes the appointment of the Assistant Director Property and Investment to the board of NHEML;
- 2.2 Delegates authority to the City Solicitor to liaise with the company secretary of NHEML to obtain a copy of the terms of appointment of the Assistant Director Property and Investment;
- 2.3 Delegates authority to the Director of Regeneration, in consultation with the City Solicitor and s151 Officer, to take decisions as shareholder in matters related to the operation of NHEML;
- 2.4 To report no less than annually to the Cabinet on the performance of the company and any other relevant matters relating to it.

3. Background

- 3.1 Portsmouth City Council owns all 10 class A shares and 156944 of 166422 B shares in North Harbour Estate Management Limited with PCC also being named as a "person with significant control" (due to owning 75% or more of the shares and having 75% or more of the voting rights).
- 3.2 Tom Southall is the nominated and sole Director of the company on behalf of Portsmouth City Council. Clyde Secretaries Limited are appointed to provide company secretarial services to the company.
- 3.3 The ownership of the company shares is necessitated by the ownership of Lakeside North Harbour. Lakeside was acquired in July 2019 and returns in excess of £9M per annum to the City Council.

- 3.4 NHEML is registered as a dormant company which means that it is not 'trading' and doesn't have any other income for example investments.
- 3.5 Each freeholder owner on the Lakeside site owns shares in NHEML. The extent of the Lakeside site is shown in Appendix A.
- 3.6 The company was established by IBM as part of their original sale and leaseback of the lakeside campus. Deeds of covenant registered on the titles and deeds of adherence are present to ensure that the structure of the company is maintained in perpetuity. The existence of this structure means that any freehold disposals of the site are bound into the control of the management of the entire site.
- 3.7 In practice as the company is dormant the activities that the company would be expected to undertake are performed by the Lakeside management team (Portsmouth City Council). The costs of these activities are recovered as service charge from the Council tenants and the freehold owners within the boundaries of the site.
- 3.8 Whilst it would in theory be possible to wind up and do away with the NHEML company this would require the consent of all the shareholders and the beneficiaries of the deeds of covenant and adherence. It is not clear whether all parties would be willing to remove this structure of compliance for estate management.
- 3.9 Given the dormant nature of the company minimal costs are currently incurred by the Council, these costs are limited to the annual filing return.

4. Legal comments

- 4.1 NHEML is a private limited company and as such the Council's liability to the company is limited to the value of its shareholder in the company. The company has two class of share; "A" Ordinary share worth £0.01 per share and "B" Ordinary Share worth £0.01 per share. As such the Council's liability is limited to £1,569.54 (10p in relation to ownership of 10 x A shares and £1,569.44 in relation to ownership of 156944 x B shares).
- 4.2 As the Council owns 100% of the A shares and 94% of the B shares, it is able to exert significant unilateral influence on the strategy and functions of the company such as being able to appoint directors and to pass ordinary and special resolutions of the company (such that it could for example re-write the articles of association of the company).
- 4.3 Under the Companies Act 2006, a company is dormant if it had no 'significant' transactions in the financial year. Where a dormant company is also considered 'small' (i.e. if it has any of the 2 of the following (a) a turnover of £10.2 million or less; (b) £5.1 million or less on its balance sheet; (c) 50 employees or less) then the company can simply file with Companies House dormant accounts and there is no need to include an auditor's report with the accounts. A dormant company must still hold an Annual General Meeting if required to do so by its articles of association (although this requirement could be removed by special resolution).
- 4.4 It is understood from external advice provided to the Council, that the existence of the company is required as a result of a 2005 transfer of the Lakeside site (which did not involve the Council) which obliged the transferee (i.e. the purchaser at that

time) to set up a Management Company (NHEML). It is understood that certain additional rights were reserved to the Management Company under a subsequent transfer of land in 2011 (which also did not involve the Council). At the time of purchase of Lakeside by the Council in 2019, the Management Company services were provided by a third party and since purchase have been provided in-house by the Council.

- 4.5 It is not clear at the present time therefore whether the Council could simply wind up NHEML and further Legal advice would be needed to understand further the legal necessity for the existence of the company.
- 4.6 The recommendations in this report pose no significant risk to the Council.

5. Chief Finance Officers Comments

- 5.1 There are no direct financial implications associated with the approval of the recommendations within the report.
- 5.2 As stated in the legal comments the liability in the event of default by the company is limited to £1,569.44. The company is currently dormant so the risk of the Council losing this money is extremely unlikely.
- 5.3 The company has no current function and again as the legal comments state the Council should consider whether it should wind the company up.

.....
Signed by: Tristan Samuels, Director of Regeneration

Appendices:

Appendix A - Boundary extent of Lakeside

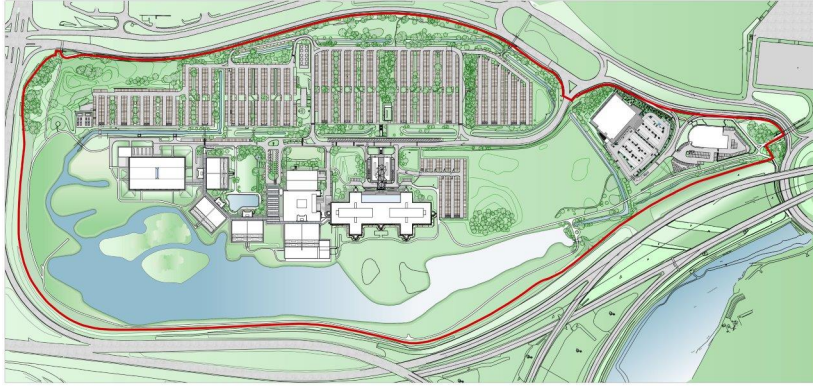
Background list of documents: Section 100D of the Local Government Act 1972

The following documents disclose facts or matters, which have been relied upon to a material extent by the author in preparing this report:

Title of document	Location

The recommendation(s) set out above were approved/ approved as amended/ deferred/
rejected by on

.....
Signed by:



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Title of meeting: Cabinet Meeting

Date of meeting: 14th February 2022

Subject: Springvale Management Company Limited (company 2630602)

Report by: Tristan Samuels Director Regeneration

1. Purpose of report

- 1.1 To update the Cabinet on the City Councils part ownership of Springvale Management Company Limited.

2. Recommendations

That the Cabinet

- 2.1 Notes the appointment of the Assistant Director Property and Investment to the board of Springvale Management Company Limited (SMCL);
- 2.2 Delegates authority to the City Solicitor to liaise with the company secretary of SCML to obtain a copy of the terms of appointment of the Assistant Director Property and Investment
- 2.3 Delegates authority to the Director of Regeneration, in consultation with the City Solicitor and s151 Officer, to represent the Council as shareholder in matters relating to the operation of SMCL; and
- 2.4 To report no less than annually to the Cabinet on the performance of the company and any other relevant matters relating to it

3. Background

- 3.1 Portsmouth City Council owns 18 out of 112 ordinary shares in Springvale Management Company Limited and holds a (1 out of 2) Directorship of the company.
- 3.2 Tom Southall is the nominated Director of the company on behalf of Portsmouth City Council. The business activities of the company are managed and undertaken by Savills, Birmingham.
- 3.3 The ownership of the company shares is necessitated by the ownership of Unit 3 Springvale Business Park, Bilston (Sharps Bedrooms). Unit 3 was acquired in December 2016 and forms part of the Council national property investment fund which yields the council in excess of £9 million per annum.

- 3.4 SCML operates as a property management company and is responsible for the management (including maintenance) of Springvale Business.
- 3.5 Each freeholder owner on the Springvale Business Park estate owns shares in SCML. The two largest shareholders have responsibility to control / operate the business through Directorships (currently PCC and Canada Life).
- 3.6 The total cost of the services performed by the company (circa £40K per annum) in relation to the Business Park are recovered from all the shareholders / occupiers on the estate by way of service charge.
- 3.7 PCC costs in relation to SCMLs activities charged under the service charge are paid by the occupying tenant Sharps Bedrooms. However, not all costs in relation to discharging the duties as Director of the company are recoverable through the service charge provision. These fluctuate annually and are estimated to be circa £5,000 per annum.
- 3.8 The activity (management of the estate) carried out by the company is undertaken under contract by Savills. Savills have undertaken this role for many years and the company is currently planning to review this operational contract in the coming financial year.

4. Legal comments

- 4.1 The City Solicitor has had no involvement in the governance of this company and has not significantly considered the company governance arrangements (i.e. Articles of Association and, if there is one, the shareholder agreement) which govern the functioning of the company. It is noted that Companies House records that Canada Life Limited is the listed Persons with Significant Control on the basis of owning more than 25% but not more than 50% of the company.
- 4.2 It is understood that the Council's involvement in the Company is as a direct consequence of the Council's ownership of the property referred to at paragraph 3.3 of this report. The property is within an 'estate' referred to as the "Springvale Business Park" which is managed by SMCL. As part of a land transaction in 1995 (to which the Council was not a party), the property benefits from 18 shares in SMCL and the right to nominate a person to be a director of the company. These benefits transferred to the Council on purchase of the property in 2016 whereupon the Council's Assistant Director of Property and Investment became the Council's nominated person to the company board. The arrangement described in this paragraph is quite a common arrangement to ensure a common property maintenance responsibility over the common areas of such an estate. SMCL is a private limited company and as such the Council's liability to the company is limited to the value of its shareholding in the company. The Council owns approximately 16% of SMCL. As part owner, the Council has a statutory right to inspect certain documents, records and registers of the company (including but not limited to the register of members, directors, debenture holders, resolutions and meetings). It is not clear at this time whether the % of ownership of the company gives the Council a similar share of the vote in company decisions or whether the shares carry additional voting rights.

- 4.3 If ownership rights and voting rights are equal, then because the Council owns more than 10% of the company, then by law the Council also has additional rights such as the ability to circulate a written resolution, require a general meeting to be held and to require an audit (where the company would otherwise be exempt)
- 4.4 However it is likely that such a small shareholder would not give the Council any additional rights to unilaterally influence the strategy and functions of the company, such as to appoint directors (save the right to appoint a director as detailed in paragraph 4.2), or to block or pass ordinary or special resolutions of the company.
- 4.5 The recommendations in this report therefore pose no significant risk to the Council.

5. Chief Finance Officers Comments

- 5.1 There are no direct financial implications as a result of the recommendations within this report.
- 5.2 As the main body of the report suggests there is a small cost to the Council through its shareholding in this company of £5,000 payable to Savils, this is met from the rent generated from the Freehold ownership that yields £9m per annum.
- 5.3 An examination of the latest set of audited accounts shows the company breaks even as charges incurred by it are then levied to the occupiers of the site through a service charge.

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Signed by: Tristan Samuels, Director of Regeneration

Background list of documents: Section 100D of the Local Government Act 1972

The following documents disclose facts or matters, which have been relied upon to a material extent by the author in preparing this report:

Title of document	Location

The recommendation(s) set out above were approved/ approved as amended/ deferred/ rejected by on

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Signed by:

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