

North Downs Housing Ltd

2016 – 2046 Business Plan

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North Downs Housing Ltd

2016 – 2046 Business Plan

Executive Summary

1.0 The Business

1.1 North Downs Housing Ltd (NDH) is the housing trading arm of Guildford Borough Council. The company has been set up by the Council and is owned by Guildford Borough Council Holdings Ltd. This company in turn is wholly owned by Guildford Borough Council. NDH is a separate legal entity managed by independent Directors.

1.2 NDH has been set up to deliver on the 4 objectives set out below:

- to meet in such manner as the Company thinks fit, identified housing need and increase the provision of new housing in the Guildford borough and surrounding areas;
- to generate returns for the Council's General Fund;
- to accelerate development of brownfield land in the Guildford borough;
- to carry on any other business or do such other things which may seem to the Company capable of being conveniently carried on in connection with any of the above specified objects, or calculated to enhance the value of the Company's services, assets, property or rights.

1.3 Its purpose is to enable the Council to offer a wider range of housing products and solutions to those in our community who for whatever reason find access to purely market-based options a challenge.

The company will therefore deliver homes for rent and homes for sale. The company will principally focus on the lower quartile of the housing market including the rental sector.

1.4 NDH must also deliver an income stream to the Council to reflect the investment it makes in the company.

2.0 Markets

2.1 The Guildford borough housing market is buoyant and noticeably more resilient than the markets in most areas across the South East. In terms of both capital and rental values, it is more closely aligned to the London housing market than much of the South East.

2.2 Demand for all housing tenures is high across all areas of the borough. The western part of the borough is slightly less popular but we are seeing the price differential reducing.

2.3 In the short to medium-term, there is little evidence that the number of new dwellings provided will materially exceed the rolling five-year average. This level of supply will be insufficient to have any noticeable impact on market prices.

2.4 During the last recession, the impact on the local housing market was less marked than across the country. Whilst we saw some house price reductions in most cases it was a reduction in the rate of price inflation rather than absolute falls. The local economy and housing market rebounded more quickly than elsewhere.

2.5 NDH will be focusing on the rental sector recognising that ‘shared living’ accommodation has a role to play. This market has been particularly resilient with good quality properties which are well managed and maintained being in high demand. There is little evidence of rents reducing; however, there is no certainty that this will remain the case. A large reduction in market rents would represent a significant challenge to the company should this occur in the short to medium-term.

The shareholder recognises this risk but view the company as a long-term investment. They are prepared to support the company financially to overcome any short-term shortfalls subject to being satisfied as to the long-term viability of the company.

2.6 There are no large-scale landlords operating in the borough apart from social housing landlords. Most own less than five properties and have few economies of scale. Private sector landlords tend to rely on local managing agents who in turn manage relatively small portfolios compared to the major social housing landlords operating in the borough.

3.0 Who are we

3.1 The chart below sets out the ownership structure



3.2 The Directors have been appointed for both companies, initially for 12 months and are:

Guildford Borough Council Holdings Ltd

- Adrian Maunders – Chief Executive, English Rural Housing
- Andrew Hodges – Accountant (Retired)
- Dennis Paul – Councillor, Guildford Borough Council
- James Whiteman – Managing Director, Guildford Borough Council

North Downs Ltd

- Gordon Jackson – Councillor, Guildford Borough Council – Lawyer (Retired)
- Sarah Creedy – Chair – Strategic Policy Direction – Lawyer (Retired)
- Steve White – Director of Resources, Guildford Borough Council
- Sue Reekie – Accountant (Retired)

4.0 Financial Projection

4.1 NDH was set up on 28 April 2016. The company intends to grow initially by acquiring properties. Its cumulative acquisition and development target for the 5 years period up to 2021 is:

2016/17	2017/18	2018/19	2019/20	2020/21
4	29	85	125	200

4.2 NDH intends to create a development pipeline. As a new entrant to a market where land availability is heavily constrained, achieving this will be challenging.

It is likely that over the first five years NDH will be heavily reliant on the Council to deliver development opportunities. It will, however, proactively seek development opportunities that do not involve reliance on the Council.

Where possible NDH preference is to expand through development should appropriate opportunities arise. In this case, the company will revise its targets for each of the categories.

5.0 Funding requirements and projection

5.1 This initial Business Plan anticipates that over the next 5 years the company will require access to funding of up to £50 million.

Of this, £30 million would be loan capital with the balance (£20 million) being an equity investment.

5.2 The Business Plan makes a series of assumptions, which have been incorporated into a financial model spanning a 30-year period. For the purposes of our financial model, it has been assumed that at this point, the company will be dissolved and all assets sold, debt repaid and share capital redeemed.

5.3 The company projects it will achieve a gross initial yield of 4.5%.

5.4 On the assumption that the Council continues to structure its investments on a 60:40 debt : cash equity basis, NDH project the Council will achieve an equity return of 7.5% (nominal, post-tax) over the 30-year period reflected in the financial model.

North Downs Housing Ltd

2016 – 2046 Business Plan

1.0 The Business

1.1 North Downs Housing Ltd (NDH) has been set up by Guildford Borough Council to increase the availability of housing that is more affordable to local residents whilst at the same time generating a financial return to the Council. It will achieve this through property acquisitions and new developments.

1.2 Before setting up the company, a number of Council committees considered the proposal with the assistance of Pricewaterhouse Coopers (PwC) Consultants. The proposal received wide support and the company was set up with the Articles of Association set out below.

1.3 NDH has been set up to deliver on the 4 objectives set out below:

- to meet in such manner as the Company thinks fit, identified housing need and increase the provision of new housing in the Guildford borough and surrounding areas;
- to generate returns for the Council's General Fund;
- to accelerate development of brownfield land in the Guildford borough;
- to carry on any other business or do such other things which may seem to the Company capable of being conveniently carried on in connection with any of the above specified objects, or calculated to enhance the value of the Company's services, assets, property or rights.

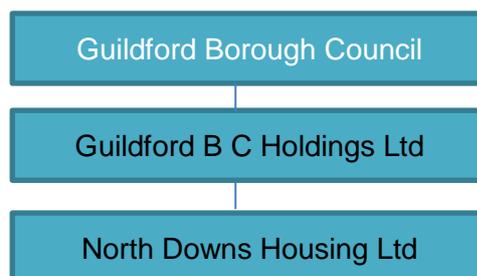
1.4 The Articles of Association are set out in full in Annex 1.

1.5 The NDH Board of Directors comprises:

- The Independent Chairman
- Three Directors, at least one to be independent
- One Director of the Council

The quorum for Directors Board meetings is three.

1.6 The chart below sets out the ownership structure



- 1.7 The Council, which is the sole shareholder, has appointed Directors for both companies, initially for 12 months. The Directors are:

Guildford Borough Council Holdings Ltd

- Adrian Maunder – Chief Executive, English Rural Housing
- Andrew Hodges – Accountant (Retired)
- Dennis Paul – Councillor, Guildford Borough Council
- James Whiteman – Managing Director, Guildford Borough Council

North Downs Ltd

- Gordon Jackson – Councillor, Guildford Borough Council – Lawyer (Retired)
- Sarah Creedy – Chair – Strategic Policy Direction – Lawyer (Retired)
- Steve White – Director of Resources, Guildford Borough Council
- Sue Reekie – Accountant (Retired)

- 1.8 The Shareholder Committee is the Council's Executive for both Guildford Borough Council Holdings Ltd and NDH. Elected Members who are appointed as either Guildford Borough Council Holdings Ltd or NDH board directors, will not be full members or substitutes of the Shareholder Committee.

- 1.9 The role of the Shareholder Committee will be not operational. The Shareholder Committee will have powers to make decisions on behalf of the Council. It can:

- recommend, where relevant:
 - the appointment of the Chairman of the Board and
 - the constitution of the Board of Directors
- receive, review and approve the Business Plans for both Guildford Borough Council Holdings Ltd and NDH
- recommend to the Council how the company should be funded with particular reference to any funding provided by the Council to either company
- review the financial performance of the companies and
- make recommendations to the Council on how it should exercise the functions flowing from its ownership of shares

- 1.10 The Shareholder Committee will meet at least annually to consider and review the matters identified above and, where necessary, call extraordinary meetings to accommodate the business identified above.

- 1.11 NDH operates within a long established sector that is subject to a variety of sector specific controls. These are not considered unduly burdensome and the regulators generally adopt a light touch regulatory approach.

The principal controls fall into three categories:

- Tenancy rights – examples relate to tenancy security and rights to have the property properly maintained.
- Health and safety – examples include gas safety and fire protection.

- Financial control – examples include protection of tenants’ deposits and mechanisms to ensure the sector is not involved in money laundering.

- 1.12 As NDH is not operating as a social housing provider, it is not subject to regulation by the Homes and Communities Agency. It will, however, become a voluntary member of the Housing Ombudsman Service.
- 1.13 NDH as a matter of policy will operate to high standards and aims to be a landlord of first choice for local residents. Whilst it is a newly established company, it will seek to build on the strong brand its shareholder has in the local housing market.
- 1.14 NDH will maintain an effective service and financial performance management reporting system that will include effective reports to the Shareholder Committee.
- 1.15 NDH will be mindful of the potential conflict of interest that might exist between the Council in its capacity as a ‘regulatory authority’ and will manage its affairs accordingly.

2.0 Market and competition

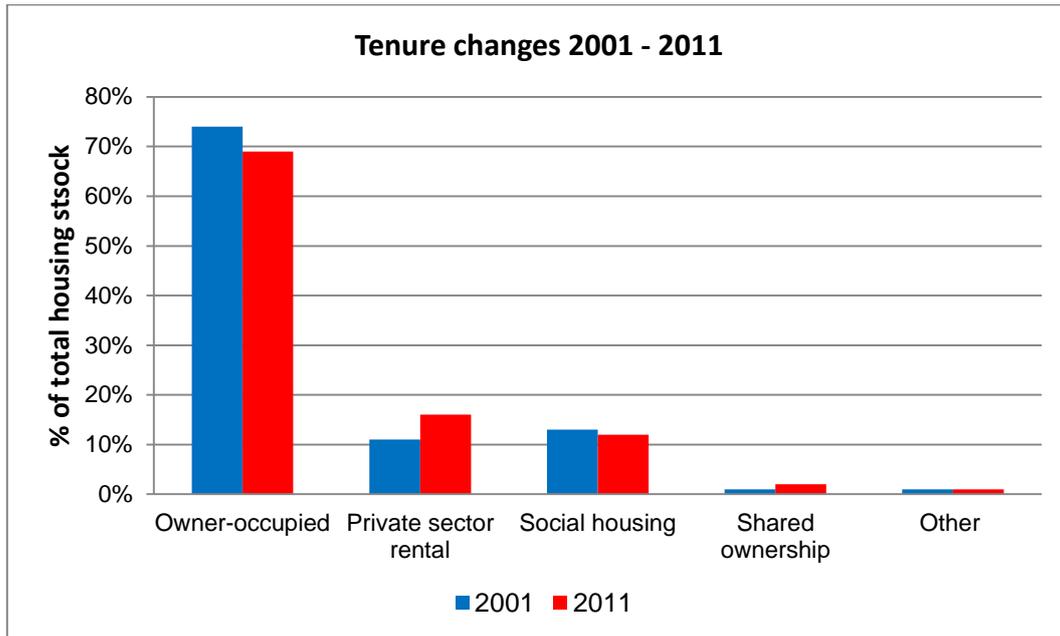
- 2.1 NDH will initially be operating within the borough of Guildford. The local housing market is buoyant and has proved to be resilient during times when there is a downturn in the housing market.

Over time, it may expand its property portfolio to areas outside the Borough where acquisition and development opportunities may be greater.

- 2.2 The supply of new homes in the area has been relatively low over the last five years reflecting the local planning environment. Whilst the Council is making good progress to adopt a new Local Plan, which includes an ambitious new build target, there are significant constraints to overcome.
- 2.3 The area is an attractive place to live and has excellent transport links to other parts of the country, particularly London. Heathrow and Gatwick are easily accessible as are number of regional employment centres.

Employment in the area is high. Both the private sector and public sector struggle to recruit, particularly lower paid staff, because of the high cost of owning or renting in the borough.

- 2.4 Demand for rental property in the borough is high as increasing numbers are unable or have chosen not to buy. The chart below shows the tenure trends over the last 15 years based on the latest available Census data. Without major and sustained Government intervention, it is unlikely we will see any meaningful reversal of this trend.



- 2.5 There are no landlords of scale operating in the local private rental sector market (PRS). The majority of landlords own fewer than five properties. This may change as institutional investors seek stable long-term returns outside the established equity and bond markets. Currently these investors prefer new build properties in high-rise flatted developments aimed at relatively high-income households. On this basis, there is no immediate direct competition to NDH.

Recent changes introduced by the Government make “buy to let” less financial attractive for smaller investors, particularly those on a higher tax band. The phased reduction in tax relief is phased over the next three years so we may not see an immediate impact. However, it is possible we will not only see higher rents being charged to offset the increased costs but a change in landlord profile.

- 2.6 The dominant landlords in the borough are social housing landlords – the Council and a number of housing associations. The Council is not legally able to hold PRS directly and to date, the local housing associations have not been significant players in the local PRS market.
- 2.7 With low supply and high demand, property prices in the borough are high, with the average house price being in the region of £480,000 (April 2016). The table below shows property transactions by price band over the last year.

Price band £'000's	House sales March 2015 – April 2016
£0 - 200	189
£201- 300	541
£301- 400	631
£401- 500	466
£501- 600	219
£601	588
Total sales	2634

- 2.8 During the last year, average house prices have increased by 7%. The Brexit referendum does not appear to have caused any reduction in house prices but did have an impact on transaction numbers. It remains to be seen if this is a short-term effect.
- 2.9 The availability of suitable properties to acquire will become a challenge as the company seeks to expand, if it is to avoid distorting the lower end of the housing market. This may prove to be a constraint.
- 2.10 NDH intends to grow through development as well as acquisition. The development opportunities are limited in the immediate future, however once the proposed Local Plan is approved further opportunities will exist. In the meantime, NDH will proactively seek development opportunities on small sites.

A number of local employers are recognising that they may have to offer housing solutions for their employees if they are to recruit and retain staff. The company is well placed to assist.

- 2.11 **Prospective customers:** NDH has identified a number of prospective customers:
- **Tenants** – the company will initially offer accommodation to smaller households with properties largely being let to working households. It is likely households will have total household incomes in the range £30,000-£65,000 pa.
 - **Owner-occupiers** – any developments the company carry out will be aimed at the lower end of the market (i.e. less than £450,000). Consideration will be given to including some element of part rent : part buy on larger developments once the company expands sufficiently.
 - **Small landlords** – as the company expands and builds management capacity it will offer a management service to small local landlords and public sector residential property owners.
- 2.12 **Alternative suppliers:** Small-scale private landlords dominate the local PRS market. There is increasing evidence that not only institutional investors but also housing associations are prepared to enter the PRS market. Their preference is to develop larger-scale schemes exclusively for rent.

Such schemes minimise both management and maintenance costs but rely on appropriate schemes gaining planning consent. Many schemes consist of flatted developments aimed at younger tenants. Town centre sites fit in well with this concept.

- 2.13 In time, there is scope for NDH to consider entering into joint-venture schemes with these new operators, particularly on any large-scale land holdings currently owned/controlled by the Council. In the short term, the principal NDH competition will come from developers and Housing Associations seeking to acquire development land.

- 2.14 In terms of acquisitions, the challenge will be to avoid creating upward pressures on market prices for first time buyers or small landlords.

3.0 Sales and marketing

- 3.1 NDH will work quickly to establish a strong brand in the local market. It will use a variety of media to do so.

- 3.2 NDH is entering a market where potential tenants use a relatively small number of letting agents and the internet to access rental properties. In order to contain costs it is important NDH quickly establish a local presence.

As the majority of prospective tenants search for properties online, the cost of entry has reduced considerably with it no longer being essential to have a 'high street' presence.

- 3.3 NDH will initially use 'online real estate' portal providers such as Rightmove and Zoopla to market properties and if necessary local letting agents to market their properties.

The company will develop an enhanced website once the initial acquisition phase is completed.

- 3.4 NDH will develop a communication strategy in parallel with its expansion programme. It is planned to offer longer tenancies with a view to providing a more stable renting option than the current market generally offers. This should reduce tenancy turnover and therefore our need for an extensive/costly sales and marketing service.

NDH will seek to ensure the management arrangements are robust and mechanisms are in place to minimise void periods and rental loss.

4.0 Operations

- 4.1 NDH will initially manage its property portfolio through a series of service level agreements with the Council. These agreements will cover:

- Acquisition and disposal of properties including land
- Marketing, letting and management of individual properties
- Development of new properties
- Financial management and reporting for company activities
- Legal support associated with the management of its property portfolio.

NDH will annually review these agreements to ensure they accurately reflect the support required and that it remains in the best interests of the company to continue the arrangements.

- 4.2 As the company expands, NDH may recruit its own staff. The timing will depend on how quickly the company can expand and how diverse its operations become. It is unlikely that the company will be in a position to recruit staff until late 2018 to early 2019.

4.3 NDH will use other suppliers to support those provided by the Council where it is more cost-effective to do so. Examples include conveyancing and specialist development expertise.

4.4 Whilst NDH is wholly owned by the Council, it falls outside the provisions of the Public Contract Regulations. It is therefore free to procure services from the market in a manner that is in the best interests of the company.

NDH will procure in accordance with its approved Procurement Policy.

4.5 NDH will comply with the relevant legislation and guidance concerning Data Protection, including adopting suitable policies and procedures to ensure data is adequately safeguarded.

4.6 NDH recognises it will be involved with requests made under the Freedom of Information Act 2000. It will maintain a record management system that complies with the relevant guidance concerning the maintenance and management of records.

NDH will fully co-operate with the Council to enable it to respond to all FOI requests and provide such information to the Council as it may require.

5.0 Financial

5.1 NDH initially will operate a traditional property investment model. The company will be financed through a series of loans and equity investments. Without an established track-record, the most likely funder in the early stages will be the sole shareholder.

5.2 The Council has agreed to provide an initial loan of £1.44 million to the company and make an equity investment of £0.96 million. It is hoped that a further loan facility of up to £23 million will be made available during 2017-2019 on a 60:40 loan : equity basis.

The loans will be on a drawdown basis and the intention is to use this facility when individual properties are acquired and/or developed.

Financing requirements (Acquisitions & Developments)

5.3 The table below sets out the projected capital investment proposed over the next five years on acquisitions and development activity. The exact timing and ratio of acquisition to development will reflect available market opportunities.

	2016-17	2017-18	2018-19	2019-20	2020-21
Number of properties	4	21	60	40	75
Annual investment	£1,147,700	£6,609,300	£17,344,000	£10,189,000	£19,771,000
Cumulative investment	£1,147,700	£7,757,000	£25,101,000	£35,290,000	£55,061,000

5.4 The table below sets out the financing in more detail.

Year	2016-17	2017-18	2018-19	2019-20	2020-21
Loan	£688,620	£3,965,580	£10,406,400	£6,113,400	£11,862,600
Equity	£459,080	£2,643,720	£6,937,600	£4,075,600	£7,908,400
Total	£1,147,700	£6,609,300	£17,344,000	£10,189,000	£19,771,000

5.5 The initial loan for the first eight properties is on a variable repayment basis at an interest rate of 5.25% (5% over base rate). The cash flows for planned acquisitions up to 2021 will be insufficient to support the costs associated with the loan (interest/repayments) until year seven. The Council has agreed to roll-up the payments due, to maintain a positive cash flow for the company.

5.6 The repayment of the first loan provided by the Council assumes that the repayment is made on a cash-sweep basis. This means only operating surpluses will be used to make loan repayments. If there is an outstanding balance on the loan at the time of sale of a property or at Year 30, this could be repaid using the sale proceeds if circumstances dictate.

In the event the company has insufficient cashflows to service its loans on a long-term basis, the company has the option to sell assets to enable any outstanding loans to be repaid should shareholder support not be forthcoming.

Assumptions

5.7 The financial model for NDH uses the assumptions set out below.

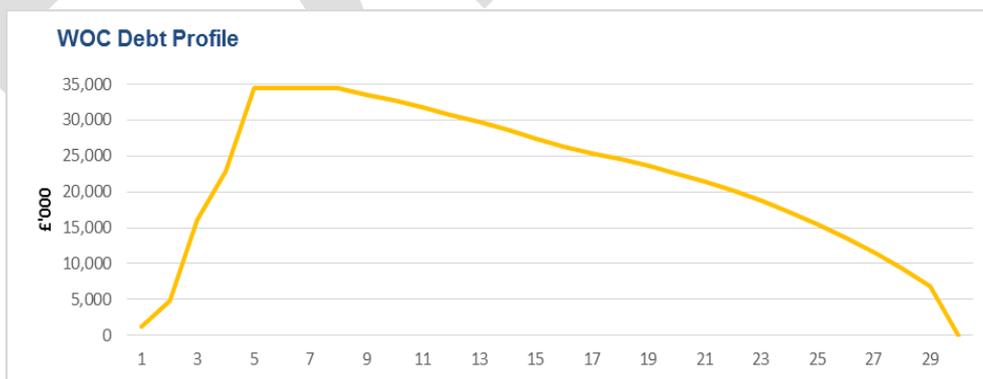
Item	Assumption
Borrowing rate	5.25%
Repayment method	Cash sweep
Equity investment/unit	40% unit cost
Inflation - CPI	2%
Rental inflation	CPI + 1%
Expenditure inflation	2%
Annual house price inflation	5%
Av. Monthly rent 2 bed	£1,050
Av. purchase price 2 bed	£350,000 (house) £280,000 (flat)
Void and bad debts allowance	5% (PRS)
Management fee/unit	8% of rent
Other costs including - marketing fees, maintenance, legal, valuations, stamp duty	At cost

- 5.8 The shareholder recognises that the company will not be in a position to pay dividends on its investment for a considerable period. In the light of the projected capital growth of the portfolio, the shareholder is comfortable with this position.
- 5.9 Whilst NDH propose to hold the properties in its portfolio for the long term it will review its holdings on an annual basis to ensure they are performing adequately.
- 5.10 Based on the financial modelling carried out to date and the assumptions set out in 5.7 NDH have set the following target returns:

Gross initial yield	4.5%
Net initial yield	2.2%
30-year total return	7.5%

Viability assessment

- 5.11 The following sections set out in more detail the projections in respect of the initial five years financing phase to assess the viability of the investment. Three indicators have been used to make this assessment. These are:
- NDH Debt profile – the ability to repay the loan within 30 years
 - Interest cover – extent NDH interest rates are covered by its net rental income
 - Shareholder equity return – the return on the investment made by the shareholder
- 5.12 **Debt profile:** Based on a 60% gearing, NDH will need to increase its total debt, reflecting the need to roll up interest payments of around £3.328 million. Depending on the timing of acquisition, this peak funding requirement will arise in 2020-21. The company will start to service its debt around 2021-2022 with the final payment made in 2045-46. The debt profile is reflected in the chart below.

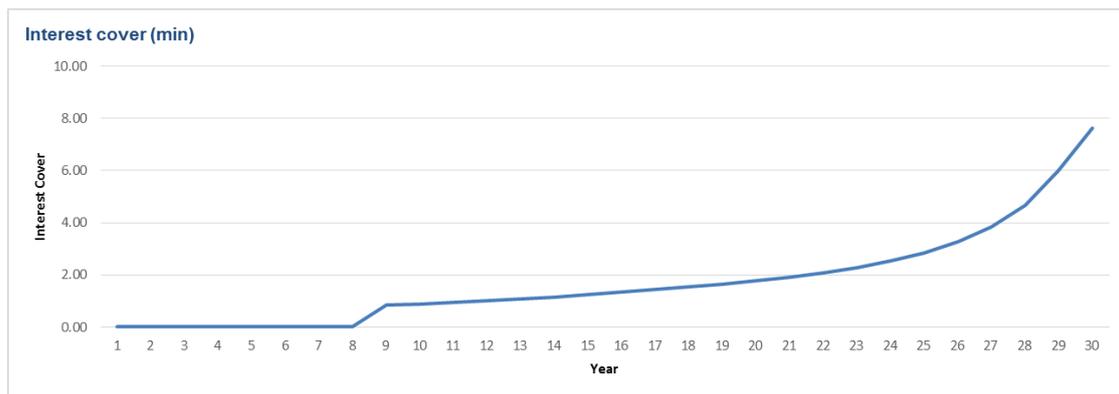


- 5.13 The analysis shows NDH can meet its loan repayment obligations. If the company were able to negotiate future loans on an interest only basis, this would change the debt profile substantially.
- 5.14 **Interest cover:** This reflects the ability and extent to which NDH can service the interest payments from its net rental income. Analysis shows that in the first five

years, it cannot meet its interest payment obligations but the situation steadily improves with rental growth.

While income and cost inflation rates have been projected to increase at the same rate, the net rental figure will improve over time.

- 5.15 The chart below shows how the interest rate cover ratio improves over time. Increasing the size of the portfolio will improve the interest cover ratio, as the company is able to spread its fixed costs over an increased asset base.



- 5.16 NDH recognises that should the inflation assumptions made prove to be incorrect, this will directly impact on the interest rate cover ratio. The model is particularly sensitive to lower rates of rental growth.

- 5.17 **Shareholder equity return:**

Shareholder return over 30 years	
Total return at year 30	£196,555,000
Equity (Internal rate of return)	7.6%

- 5.18 **Sensitivity analysis:** The long-term nature of the business makes it susceptible to a number of market and operational risks. These fall broadly under three headings:

- property acquisition prices
- operating cash flow – includes loan rates, income and cost inflation rates and void costs
- property disposal prices

The following table summarises the impact of a series of changes in the assumptions we have made.

	Base case	Rent Inflation			House price inflation	Borrowing rate			Operating costs
		+ 1%	- 1%	- 2 %		+2%	+ 1%	- 1%	
Shareholder return		+ 1%	- 1%	- 2 %	- 2.5%	+2%	+ 1%	- 1%	+10%
Total return at year 30*	£198,436	£213,714	£185,475	£174,409	£101,891	£204,986	£201,418	£195,876	£196,555
Return over first five years – incl dividends*	£3,239	£3,375	£3,107	£2,881	£2,908	£3,074	£3,221	£3,234	£3,136
Equity IRR (cash and land) %	7.67	8.03	7.31	6.98	5.0	7.03	7.42	7.83	7.60
Return on shareholder investment	7.85	8.62	7.16	6.56	3.90	6.65	7.36	8.20	7.73

Note: * '000s

5.19 The analysis shows the viability of the company is most sensitive to changes in the following assumptions:

- **Rate of rent inflation:** This is our greatest risk should rents increase more slowly than assumed, conversely it is the factor that would most increase the viability of the company if the rates were higher than projected.
- **Increase in loan interest:** The flexible nature of the property portfolio together with the inherent flexibility in its loan arrangements will allow the company to mitigate the impact of a material increase in debt servicing costs.
- **House price inflation:** This factor's greatest impact is on the equity return to the shareholder. The assumed rate used in the base assessment is conservative when taken over a 30-year period. However, what is difficult to assess is the likelihood of a major and long-term market price correction.

6.0 Risks

6.1 NDH, whilst operating in an established market and using a familiar model faces a series of risks. Property markets are cyclical in nature, prone to unconnected financial shocks and are subject to political interference nationally.

6.2 As a new entrant, it faces challenges from the existing local providers both in terms of visibility and having an established supply chain. These will be quickly overcome. Establishing a strong portfolio will be more difficult and will take time.

6.3 The company has identified the following as key risks:

- Financial environment
- Operating
- Supply/demand
- Political influence

6.4 **Financial** – there are a number of key risks:

- Funding costs – the company in the early stages has to rely on the Council for both loan and equity finance. Loans will be influenced by the circumstances prevailing at the time.
- Funding availability – changes in national or local policies may limit the Council's ability to grant loans and/or make equity investments.

Over time, NDH may need to finance its expansion plans externally.

- Cash flow – in the early days NDH will not generate significant income to service its debt/operating costs. The rate of rental growth will determine how quickly this changes and relies on local market conditions. Operating costs may be higher and rental income lower with a consequential impact on the cash flows currently projected.

The company relies on the rental income to service its debt and fund its operating costs. We have to recognise there is increasing uncertainty around the wider economy. The rate of inflation appears to be increasing whilst there continues to be a strong downward pressure on wages. This could further reduce the ability of tenants to meet their rental obligations. In turn, this may create pressure to reduce market rents, particularly at the lower end of the spectrum.

- Capital appreciation – The property market has historically been cyclical in nature and we have to recognise that from time to time there will be market corrections. NDH plans to hold its properties for the long-term and therefore will not be directly affected by individual corrections. However, over time, the projected level of capital appreciation may be less than forecast and that will reduce the long-term returns it can deliver.

6.5 **Operating risks:** These are principally:

Tenancy issues – whilst most tenants fully comply with their tenancy obligations, this is not universally the case. Bad debts, high repair costs and prolonged void periods can be the result. To mitigate these risks, lettings will focus initially on those best placed to sustain their tenancy.

As the portfolio grows, the impact of such issues will be less but in the early days, they could have a disproportionate effect on our cash flow.

- Health and safety – the consequence of not managing the health and safety issues are serious.

6.6 **Supply and demand:** These will increase in importance as the company expands and as both national and local housing/planning policies evolve.

6.7 Expansion by acquisitions will be constrained by not only the availability of suitable properties but also the impact an acquisition programme might have on the local market.

Expansion through development relies on being able to acquire suitable sites in an extremely competitive market. Until NDH is seen as an established player in the market it will prove challenging.

- 6.8 The proposed Local Plan represents a major opportunity however until this has been approved the limited scale of development in the borough continues to exert significant upward cost pressures in respect of land and property.
- 6.9 Looking ahead over the next five years, there are no developments currently planned that will materially influence demand for rental accommodation in the borough. National policies remain focused on supporting home ownership, however recent announcements suggest there may be greater focused help to the PRS market.
- 6.10 **Political influence:** the company, through its Directors, will need to develop a relationship with the Council. For both it will be new and each will need to work through their respective boundaries. This will be greatly assisted through the common objectives they have, however at times there may be differences in how best to achieve them.

This risk should not be overstated, nevertheless it is important for both parties to recognise the risk exists.

- 6.11 As already mentioned, the greater risk arises as a result of national policies. There remains a lack of clarity from the government on the extent they are happy for local authorities to trade in local housing markets. This reflects wider housing policies and how they use the housing market to manage the wider economy.

The change in SDLT rates is a recent example of how changes in national policy can adversely affect a business such as NDH.

Annexes

- 1 Articles of Association
- 2 Financial information (see "Not for Publication" item 14 elsewhere on this agenda)



Annex 1

THE COMPANIES ACT 2006

PRIVATE COMPANY LIMITED BY SHARES

ARTICLES OF ASSOCIATION OF NORTH DOWNS HOUSING LIMITED

Draft

PART 1

INTERPRETATION AND LIMITATION OF LIABILITY

1 Model articles not to apply

The model articles for private companies limited by shares contained in Schedule 1 of The Companies (Model Articles) Regulations 2008 (SI 2009/3229) as amended prior to the date of adoption of these Articles shall not apply to the Company. References to the “**Articles**” shall be to the following articles of association as amended from time to time.

2 Defined terms

2.1 In these Articles, unless the context requires otherwise—

“**Act**” means the Companies Act 2006;

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

“**board**” means the board of directors of the Company;

“**business day**” means any day (other than a Saturday, Sunday or public holiday in the United Kingdom) on which clearing banks in the City of London are generally open for business;

“**chairman**” has the meaning given in article 14;

“**chairman of the meeting**” has the meaning given in article 45;

“**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 17.1;

“**council**” means Guildford Borough Council or any successor body thereto;

“**councillor director**” means an elected member of the council who is appointed as a director of the Company;

“**delegation matrix**” the delegation matrix document adopted and approved by the council and the holding company at the date of adoption of these Articles as amended from time to time by the Company (and if required with the consent of the council and/or the holding company in accordance with article 5.2);

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

“**distribution recipient**” has the meaning given in article 37.2;

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

“**electronic form**” has the meaning given in section 1168 of the Act;

“**eligible director**” means a director who would be entitled to vote on the matter at a meeting of directors (but excluding any director whose vote is not to be counted in respect of the particular matter);

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

“**hard copy form**” has the meaning given in section 1168 of the Act;

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

“**holding company**” shall mean the Company which is the holder of the entire issued share capital of the Company from time to time;

“**independent director**” means a director of the Company (who is not a local authority person);

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

“**local authority person**” means any person:

- a) who is a member of the council;
- b) who is an officer of the council;

“**officer director**” means an officer of the council who is appointed as a director of the Company;

“**ordinary resolution**” has the meaning given in section 282 of the Act;

“**paid**” means paid or credited as paid;

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

“**proxy notice**” has the meaning given in article 51;

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

“**shares**” means shares in the Company;

“**special resolution**” has the meaning given in section 283 of the Act;

“**subsidiary**” has the meaning given in section 1159 of the Act;

“**transmittee**” means a person entitled to a share by reason of the death or bankruptcy of a shareholder or otherwise by operation of law; and

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

- 2.2 Unless the context otherwise requires, words and expressions which have particular meanings in the Act shall have the same meanings in these Articles.
- 2.3 Headings in these Articles are used for convenience only and shall not affect the construction or interpretation of these Articles.
- 2.4 A reference in these Articles to an “**article**” is a reference to the relevant article of these Articles unless expressly provided otherwise.
- 2.5 Unless expressly provided otherwise, a reference to a statute, statutory provision or subordinate legislation is a reference to it as it is in force from time to time, taking account of—
 - 2.5.1 any subordinate legislation from time to time made under it, and
 - 2.5.2 any amendment or re-enactment and includes any statute, statutory provision or subordinate legislation which it amends or re-enacts.
- 2.6 Any phrase introduced by the terms “**including**”, “**include**”, “**in particular**” or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

3 Liability of members

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

4 Objects clause

4.1 The objects for which the Company is established are:

- 4.1.1 to meet in such manner as the Company thinks fit identified housing need and increase the provision of new housing in the Guildford borough and surrounding areas;
- 4.1.2 to generate returns for the council's general fund;
- 4.1.3 to accelerate development of brownfield land in the Guildford borough; and
- 4.1.4 to carry on any other business or do such other things which may seem to the Company capable of being conveniently carried on in connection with any of the above specified objects, or calculated to enhance the value of the Company's services, assets, property or rights.

4.2 In pursuance of the object set out in article 4.1, the company has the power to:

- 4.2.1 buy, lease or otherwise acquire and deal with any property real or personal and any rights or privileges of any kind over or in respect of any property real or personal and to improve, manage, develop, construct, repair, sell, lease, mortgage, charge, surrender or dispose of or otherwise deal with all or any part of such property and any and all rights of the company;
- 4.2.2 borrow and raise money in such manner as the directors shall think fit and secure the repayment of any money borrowed, raised or owing by mortgage, charge, lien or other security on the company's property and assets;
- 4.2.3 invest and deal with the funds of the company not immediately required for its operations in or upon such investments, securities or property as may be thought fit;
- 4.2.4 subscribe for, take, buy or otherwise acquire, hold, sell, deal with and dispose of, place and underwrite shares, stocks, debentures, debenture stocks, bonds, obligations or securities issued or guaranteed by any government or authority in any part of the world;
- 4.2.5 lend and advance money or give credit on such terms as may seem expedient and with or without security to customers and others, to enter into guarantees, contracts of indemnity and suretyships of all kinds to receive money on deposit or loan upon such terms as the

company may approve and to secure or guarantee the payment of any sums of money or the performance of any obligation by any company, firm or person including any holding company or subsidiary;

- 4.2.6 lobby, advertise, publish, educate, examine, research and survey in respect of all matters of law, regulation, economics, accounting, governance, politics and/or other issues and to hold meetings, events and other procedures and co-operate with or assist any other body or organisation in each case in such way or by such means as may, in the opinion of the directors, affect or advance the principal object in any way;
- 4.2.7 pay all or any expenses incurred in connection with the promotion, formation and incorporation of the company and to contract with any person, firm or company to pay the same;
- 4.2.8 enter into contracts to provide services to or on behalf of other bodies;
- 4.2.9 provide and assist in the provision of money, materials or other help;
- 4.2.10 open and operate bank accounts and other facilities for banking and draw, accept, endorse, issue or execute promissory notes, bills of exchange, cheques and other instruments;
- 4.2.11 incorporate subsidiary companies to carry on any trade; and
- 4.2.12 do all such other lawful things as are incidental or conducive to the pursuit or to the attainment of any of the object set out in article 4.1.

PART 2

DIRECTORS

DIRECTORS' POWERS AND RESPONSIBILITIES

5 Directors' general authority

5.1 Subject to any provision of these Articles to the contrary (including but not limited to article 5.2), the directors are responsible for the management of the Company's business, for which purpose they may exercise all the powers of the Company.

5.2 Any matters which require the consent of council and/or the holding company pursuant to the delegation matrix from time to time shall not be carried out without the prior written consent of the council and/or the holding company (as appropriate) and each of the directors shall use their respective rights and powers to procure, so far as they are each able, that no such matter is carried out unless the required consent has been given. In particular no amendment or variation to the delegation matrix which would reduce or limit those matters which require the consent of the council and/or the holding company shall be approved by the Company without the prior written consent of the council and/or the holding company (as appropriate).

6 Shareholders' reserve power

6.1 The shareholders may, by special resolution, direct the directors to take, or refrain from taking, specified action.

6.2 No such special resolution invalidates anything which the directors have done before the passing of the resolution.

7 Directors may delegate

7.1 Subject to the Articles (and in particular article 5.2), the directors may delegate any of the powers which are conferred on them under the Articles—

7.1.1 to such person or committee;

7.1.2 by such means (including by power of attorney);

7.1.3 to such an extent;

7.1.4 in relation to such matters or territories; and

7.1.5 on such terms and conditions,

as they think fit, and the directors may make any rule which they think fit about how any such delegation should operate.

7.2 If the directors so specify, any such delegation (subject to article 5.2) may authorise further delegation of the directors' powers by any person to whom they are delegated.

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

8 Committees

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

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

DECISION-MAKING BY DIRECTORS

9 Directors to take decisions collectively

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

9.2 If—

9.2.1 the Company only has one director for the time being, and

9.2.2 no provision of the Articles requires it to have more than one director,

the general rule does not apply, and the director may (for so long as he remains the sole director) take decisions without regard to any of the provisions of the Articles relating to directors' decision-making.

10 Unanimous decisions

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

10.2 Such a decision may take the form of a resolution in writing, where each eligible director has signed one or more copies of it, or to which each eligible director has otherwise indicated agreement in writing.

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

11 Calling a directors' meeting

- 11.1 Any director may call a directors' meeting by giving notice of the meeting to the directors or by authorising the company secretary (if any) to give such notice.
- 11.2 Notice of any directors' meeting must indicate—
 - 11.2.1 its proposed date and time;
 - 11.2.2 where it is to take place; and
 - 11.2.3 if it is anticipated that directors participating in the meeting will not be in the same place, how it is proposed that they should communicate with each other during the meeting.
- 11.3 Notice of a directors' meeting must be given to each director, but need not be in writing.
- 11.4 Notice of a directors' meeting need not be given to directors who waive their entitlement to notice of that meeting, by giving notice to that effect to the Company at any time before or after the date on which the meeting is held. Where such notice is given after the meeting has been held, that does not affect the validity of the meeting, or of any business conducted at it.

12 Participation in directors' meetings

- 12.1 Subject to the Articles, directors participate in a directors' meeting, or part of a directors' meeting, when—
 - 12.1.1 the meeting has been called and takes place in accordance with the Articles; and
 - 12.1.2 they can each communicate to the others any information or opinions they have on any particular item of the business of the meeting.
- 12.2 In determining whether directors are participating in a directors' meeting, it is irrelevant where any director is or how they communicate with each other.
- 12.3 If all the directors participating in a meeting are not in the same place, they may decide that the meeting is to be treated as taking place wherever any of them is.

13 Quorum for directors' meetings

- 13.1 At a directors' meeting, unless a quorum is participating, no proposal is to be voted on, except a proposal to call another meeting.
- 13.2 Subject to article 13.3, the quorum for the transaction of business at a meeting of directors shall be three eligible directors.

13.3 For the purposes of any meeting (or part of a meeting) held pursuant to article 0 to authorise a director's conflict, if there are fewer directors in office of any class other than the conflicted director(s) who would constitute a quorum, the quorum for such meeting (or part of a meeting) shall be the remaining eligible directors.

13.4 If the total number of directors in office for the time being is less than the quorum required, the directors must not take any decision other than a decision—

13.4.1 to request that the holding company appoint further directors in accordance with the Articles, or

13.4.2 to call a general meeting so as to enable the shareholders to appoint further directors.

14 Chairing of directors' meetings

14.1 The directors may appoint a director to chair their meetings. The first chairman shall be the director holding the position of managing director of the Company.

14.2 The person so appointed for the time being is known as the chairman.

14.3 The directors may terminate the chairman's appointment at any time and appoint a replacement.

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

15 Casting vote

15.1 If the numbers of votes for and against a proposal at a meeting of directors are equal, the chairman or other director chairing the meeting has a casting vote.

15.2 Article 15.1 shall not apply in respect of a particular meeting (or part of a meeting) if, in accordance with the Articles, the chairman or other director is not an eligible director for the purposes of that meeting (or part of a meeting).

16 Transactions or other arrangements with the Company

16.1 Subject to sections 177(5) and 177(6) and sections 182(5) and 182(6) of the Act and provided he has declared the nature and extent of his interest in accordance with the requirements of the Companies Acts, a director who is in any way, whether directly or indirectly, interested in an existing or proposed transaction or arrangement with the Company—

- 16.1.1 may be a party to, or otherwise interested in, any transaction or arrangement with the Company or in which the Company is otherwise (directly or indirectly) interested;
 - 16.1.2 shall be an eligible director for the purposes of any proposed decision of the directors (or committee of directors) in respect of such existing or proposed transaction or arrangement in which he is interested;
 - 16.1.3 shall be entitled to vote at a meeting of directors or of a committee of the directors, or participate in any unanimous decision, in respect of such existing or proposed transaction or arrangement in which he is interested;
 - 16.1.4 may act by himself or his firm in a professional capacity for the Company (otherwise than as auditor) and he or his firm shall be entitled to remuneration for professional services as if he were not a director;
 - 16.1.5 may be a director or other officer of, or employed by, or a party to a transaction or arrangement with, or otherwise interested in, any body corporate in which the Company is otherwise (directly or indirectly) interested; and
 - 16.1.6 shall not, save as he may otherwise agree, be accountable to the Company for any benefit which he (or a person connected with him (as defined in section 252 of the Act)) derives from any such contract, transaction or arrangement or from any such office or employment or from any interest in any such body corporate and no such contract, transaction or arrangement shall be liable to be avoided on the grounds of any such interest or benefit nor shall the receipt of any such remuneration or other benefit constitute a breach of his duty under section 176 of the Act.
- 16.2 For the purposes of this article, references to proposed decisions and decision-making processes include any directors' meeting or part of a directors' meeting.
- 16.3 Subject to article 16.4, if a question arises at a meeting of directors or of a committee of directors as to the right of a director to participate in the meeting (or part of the meeting) for voting or quorum purposes, the question may, before the conclusion of the meeting, be referred to the chairman whose ruling in relation to any director other than the chairman is to be final and conclusive.
- 16.4 If any question as to the right to participate in the meeting (or part of the meeting) should arise in respect of the chairman, the question is to be decided by a decision of the directors at that meeting, for which purpose the chairman is not to be counted as participating in the meeting (or that part of the meeting) for voting or quorum purposes.

17 Directors' conflicts of interest

- 17.1 The directors may, in accordance with the requirements set out in this article, authorise any matter or situation proposed to them by any director which would, if not authorised, involve a director (an “**Interested Director**”) breaching his duty under section 175 of the Act to avoid conflicts of interest (a “**Conflict**”).
- 17.2 Any authorisation under this article 0 will be effective only if—
- 17.2.1 the matter in question shall have been proposed by any director for consideration in the same way that any other matter may be proposed to the directors under the provisions of these Articles or in such other manner as the directors may determine;
 - 17.2.2 any requirement as to the quorum for consideration of the relevant matter is met without counting the Interested Director; and
 - 17.2.3 the matter was agreed to without the Interested Director voting or would have been agreed to if the Interested Director’s vote had not been counted.
- 17.3 Any authorisation of a Conflict under this article 0 may (whether at the time of giving the authorisation or subsequently)—
- 17.3.1 extend to any actual or potential conflict of interest which may reasonably be expected to arise out of the matter or situation so authorised;
 - 17.3.2 provide that the Interested Director be excluded from the receipt of documents and information and the participation in discussions (whether at meetings of the directors or otherwise) related to the Conflict;
 - 17.3.3 provide that the Interested Director shall or shall not be an eligible director in respect of any future decision of the directors in relation to any resolution related to the Conflict;
 - 17.3.4 impose upon the Interested Director such other terms for the purposes of dealing with the Conflict as the directors think fit;
 - 17.3.5 provide that, where the Interested Director obtains, or has obtained (through his involvement in the Conflict and otherwise than through his position as a director of the Company) information that is confidential to a third party, he will not be obliged to disclose that information to the Company, or to use it in relation to the Company’s affairs where to do so would amount to a breach of that confidence; and
 - 17.3.6 permit the Interested Director to absent himself from the discussion of matters relating to the Conflict at any meeting of the directors and be excused from reviewing papers prepared by, or

for, the directors to the extent to which they relate to such matters.

- 17.4 Where the directors authorise a Conflict the Interested Director will be obliged to conduct himself in accordance with any terms and conditions imposed by the directors in relation to the Conflict.
- 17.5 The directors may revoke or vary such authorisation at any time, but this will not affect anything done by the Interested Director, prior to such revocation of variation, in accordance with the terms of such authorisation.
- 17.6 A director is not required, by reason of being a director (or because of the fiduciary relationship established by reason of being a director), to account to the Company for any remuneration, profit or other benefit which he derives from or in connection with a relationship involving a Conflict which has been authorised by the directors or by the Company in general meeting (subject in each case to any terms, limits or conditions attaching to that authorisation) and no contract shall be liable to be avoided on such grounds.
- 17.7 For the purposes of sections 175 and 180(4) of the Act and for all other purposes, it is acknowledged that a director may be or become subject to a Conflict as a result of his also being or having been (or being party to an agreement or arrangement or understanding or circumstances under which he may become) an employee, director, trustee, member, partner, officer or representative of, or a consultant to, or a direct or indirect investor in and/or otherwise involved with or interested in, any of the council, the Company, its subsidiaries, any of its holding companies or any subsidiary of any of its holding companies (as such terms are defined in section 1159 of the Act) or any of its shareholders.
- 17.8 No director shall be in breach of the duty to avoid conflicts of interest in section 175 of the Act as a result of, and no authorisation is required in respect of, any Conflict envisaged by article 17.7 having arisen or existing in relation to him.

18 Records of decisions to be kept

- 18.1 The directors must ensure that the Company keeps a record, in writing, for at least 10 years from the date of the decision recorded, of every unanimous or majority decision taken by the directors.
- 18.2 Where decisions of the directors are taken by electronic means, such decisions shall be recorded by the directors in permanent form, so that they may be read with the naked eye.

19 Directors' discretion to make further rules

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

APPOINTMENT OF DIRECTORS

20 Number of directors

Unless otherwise determined by the holding company, the number of directors shall not exceed eight but shall not be less than three and the board of directors shall comprise of such directors as the holding company shall from time to time determine.

21 Methods of appointing directors

21.1 Any person who is willing to act as a director, and is permitted by law and these Articles to do so, may be appointed to be a director—

21.1.1 by the holding company, or

21.1.2 by a decision of the directors.

21.2 The holding company shall from time to time have the right, by notice in writing addressed to the Company, to:

21.2.1 appoint and maintain in office such number of directors as the holding company shall determine; and

21.2.2 remove any such person as a director of the Company and to appoint a replacement.

21.3 Any appointment or removal of a director in accordance with article 21.2 shall take immediate effect upon receipt (or deemed receipt) by the Company of such notice in writing, or the production of such notice in writing at a meeting of the directors or, if later, the date (if any) specified in such notice.

21.4 Subject to article **Error! Reference source not found.:**

21.4.1 the first directors of the Company (the “**first directors**”) being those in office at the date of appointment of these articles shall be appointed for a fixed term of twelve months, at the end of which each of the directors shall retire from the board unless he is re-appointed pursuant to article 21.1 and/or article **Error! Reference source not found.;**

21.4.2 any directors appointed by the directors pursuant to article 21.1.2 shall hold office only until the following annual general meeting and if such directors are not re-appointed at such general meeting, he must vacate office at the end of the meeting;

21.4.3 any other directors appointed pursuant to article 21.1 and/or article **Error! Reference source not found.** shall be appointed for a fixed term of four years, save where a shorter term is set prior to appointment (the “**fixed term**”). The fixed term for any directors appointed by the directors pursuant to article 21.1.2 who have

been re-appointed at an annual general meeting pursuant to article 21.4.2 shall commence from the date of the directors' appointment by the directors;

21.4.4 directors shall retire from the board at the end of the fixed term but shall be eligible for re-appointment for a further term of four years, or such shorter term as is set prior to such re-appointment, at the end of which the directors shall retire from the board and shall not be re-appointed as a director; and

21.4.5 any directors who have been in office for an aggregate term of eight years shall not be eligible to be re-appointed as a director.

22 Termination of director's appointment

22.1 A person shall be ineligible for appointment to the board and if already appointed shall cease to be a director as soon as—

22.1.1 that person ceases to be a director by virtue of any provision of the Act or is prohibited from being a director by law;

22.1.2 that person has for more than six consecutive months been absent without permission of the directors from meetings of directors held during that period and the directors resolve that person's office be vacated;

22.1.3 a bankruptcy order is made against that person;

22.1.4 a composition is made with that person's creditors generally in satisfaction of that person's debts;

22.1.5 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;

22.1.6 notification is received by the Company from the director that the director is resigning from office, and such resignation has taken effect in accordance with its terms;

22.1.7 that person is removed by the holding company by a notice in writing to the Company;

22.1.8 that person is or becomes a person disqualified from being an elected councillor of a local authority; or

22.1.9 that person is removed from office by a resolution of or written notice signed by not less than three quarters of all the other directors from time to time.

23 Directors' remuneration

- 23.1 Directors may undertake any services for the Company that the directors decide.
- 23.2 Independent directors (and not councillor directors or officer directors) are entitled to such remuneration as the directors determine—
- 23.2.1 for their services to the Company as directors, and
 - 23.2.2 for any other service which they undertake for the Company.
- 23.3 Subject to the Articles, remuneration of an independent director may—
- 23.3.1 take any form, and
 - 23.3.2 include any arrangements in connection with the payment of a pension, allowance or gratuity, or any death, sickness or disability benefits, to or in respect of that director.
- 23.4 Unless the directors decide otherwise, such remuneration accrues from day to day.
- 23.5 Unless the directors decide otherwise, directors are not accountable to the Company for any remuneration which they receive as directors or other officers or employees of the Company's subsidiaries or of any other body corporate in which the Company is interested.

24 Directors' expenses

The Company may pay any reasonable expenses which the directors and the secretary properly incur in connection with their attendance at—

- 24.1 meetings of directors or committees of directors,
- 24.2 general meetings, or
- 24.3 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.

25 Secretary

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

PART 3

SHARES AND DISTRIBUTIONS

SHARES

26 All shares to be fully paid up

- 26.1 No share is to be issued for less than the aggregate of its nominal value and any premium to be paid to the Company in consideration for its issue.
- 26.2 This does not apply to shares taken on the formation of the Company by the subscribers to the Company's memorandum.

27 Allotment of shares

- 27.1 Save to the extent authorised by these Articles, or authorised from time to time by the holding company, the directors shall not exercise any power to allot shares or to grant rights to subscribe for, or to convert any security into, any shares in the Company.
- 27.2 In accordance with section 567(1) of the Act, sections 561 and 562 of the Act shall not apply to an allotment of equity securities (as defined in section 560(1) of the Act) made by the Company.

28 Powers to issue different classes of share

- 28.1 Subject to the Articles, but without prejudice to the rights attached to any existing share, the Company may issue shares with such rights or restrictions as may be determined by the holding company.
- 28.2 The Company may issue shares which are to be redeemed, or are liable to be redeemed at the option of the Company or the holder, and the directors may determine the terms, conditions and manner of redemption of any such shares.

29 Company not bound by less than absolute interests

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

30 Share certificates

- 30.1 The Company must issue each shareholder, free of charge, with one or more certificates in respect of the shares which that shareholder holds.
- 30.2 Every certificate must specify—
- 30.2.1 in respect of how many shares, of what class, it is issued;

- 30.2.2 the nominal value of those shares;
- 30.2.3 that the shares are fully paid; and
- 30.2.4 any distinguishing numbers assigned to them.

30.3 No certificate may be issued in respect of shares of more than one class.

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

30.5 Certificates must—

- 30.5.1 have affixed to them the Company's common seal, or
- 30.5.2 be otherwise executed in accordance with the Companies Acts.

31 Replacement share certificates

31.1 If a certificate issued in respect of a shareholder's shares is—

- 31.1.1 damaged or defaced, or
- 31.1.2 said to be lost, stolen or destroyed,

that shareholder is entitled to be issued with a replacement certificate in respect of the same shares.

31.2 A shareholder exercising the right to be issued with such a replacement certificate—

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

32 Share transfers

32.1 Shares may be transferred by means of an instrument of transfer in any usual form or any other form approved by the directors, which is executed by or on behalf of the transferor.

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

32.3 The Company may retain any instrument of transfer which is registered.

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

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

33 Transmission of shares

- 33.1 If title to a share passes to a transmittee, the Company may only recognise the transmittee as having any title to that share.
- 33.2 A transmittee who produces such evidence of entitlement to shares as the directors may properly require—
- 33.2.1 may, subject to the Articles, choose either to become the holder of those shares or to have them transferred to another person, and
- 33.2.2 subject to the Articles, and pending any transfer of the shares to another person, has the same rights as the holder had.
- 33.3 Transmittees do not have the right to attend or vote at a general meeting, or agree to a proposed written resolution, in respect of shares to which they are entitled, by reason of the holder's death or bankruptcy or otherwise, unless they become the holders of those shares.

34 Exercise of transmittees' rights

- 34.1 Transmittees who wish to become the holders of shares to which they have become entitled must notify the Company in writing of that wish.
- 34.2 If the transmittee wishes to have a share transferred to another person, the transmittee must execute an instrument of transfer in respect of it.
- 34.3 Any transfer made or executed under this article is to be treated as if it were made or executed by the person from whom the transmittee has derived rights in respect of the share, and as if the event which gave rise to the transmission had not occurred.

35 Transmittees bound by prior notices

If a notice is given to a shareholder in respect of shares and a transmittee is entitled to those shares, the transmittee is bound by the notice if it was given to the shareholder before the transmittee's name, or the name of any person(s) named as the transferee(s) in an instrument of transfer executed under article 34.2, has been entered in the register of members.

DIVIDENDS AND OTHER DISTRIBUTIONS

36 Procedure for declaring dividends

- 36.1 The Company may by ordinary resolution of the holding company declare dividends, and the directors may decide to pay interim dividends.

- 36.2 A dividend must not be declared unless the directors have made a recommendation as to its amount. Such a dividend must not exceed the amount recommended by the directors.
- 36.3 No dividend may be declared or paid unless it is in accordance with shareholders' respective rights.
- 36.4 Unless the shareholders' resolution to declare or directors' decision to pay a dividend, or the terms on which shares are issued, specify otherwise, it must be paid by reference to each shareholder's holding of shares on the date of the resolution or decision to declare or pay it.
- 36.5 If the Company's share capital is divided into different classes, no interim dividend may be paid on shares carrying deferred or non-preferred rights if, at the time of payment, any preferential dividend is in arrears.
- 36.6 The directors may pay at intervals any dividend payable at a fixed rate if it appears to them that the profits available for distribution justify the payment.
- 36.7 If the directors act in good faith, they do not incur any liability to the holders of shares conferring preferred rights for any loss they may suffer by the lawful payment of an interim dividend on shares with deferred or non-preferred rights.

37 **Payment of dividends and other distributions**

- 37.1 Where a dividend or other sum which is a distribution is payable in respect of a share, it must be paid by such means of payment as the directors may determine.
- 37.2 In the Articles, "**the distribution recipient**" means, in respect of a share in respect of which a dividend or other sum is payable—
 - 37.2.1 the holder of the share; or
 - 37.2.2 if the share has two or more joint holders, whichever of them is named first in the register of members; or
 - 37.2.3 if the holder is no longer entitled to the share by reason of death or bankruptcy, or otherwise by operation of law, the transmittee.

38 **No interest on distributions**

- 38.1 The Company may not pay interest on any dividend or other sum payable in respect of a share unless otherwise provided by—
 - 38.1.1 the terms on which the share was issued, or
 - 38.1.2 the provisions of another agreement between the holder of that share and the Company.

39 Unclaimed distributions

39.1 All dividends or other sums which are—

39.1.1 payable in respect of shares, and

39.1.2 unclaimed after having been declared or become payable,

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

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

39.3 If—

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

39.3.2 the distribution recipient has not claimed it,

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

40 Non-cash distributions

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

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

40.2.1 fixing the value of any assets;

40.2.2 paying cash to any distribution recipient on the basis of that value in order to adjust the rights of recipients; and

40.2.3 vesting any assets in trustees.

41 Waiver of distributions

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

41.1.1 the share has more than one holder, or

41.1.2 more than one person is entitled to the share, whether by reason of the death or bankruptcy of one or more joint holders, or otherwise,

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

CAPITALISATION OF PROFITS

42 Authority to capitalise and appropriation of capitalised sums

42.1 Subject to the Articles, the directors may, if they are so authorised by an ordinary resolution of the holding company—

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

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

42.2 Capitalised sums must be applied—

42.2.1 on behalf of the persons entitled, and

42.2.2 in the same proportions as a dividend would have been distributed to them.

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

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

42.5 Subject to the Articles the directors may—

42.5.1 apply capitalised sums in accordance with articles 42.3 and 42.4 partly in one way and partly in another;

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

42.5.3 authorise any person to enter into an agreement with the Company on behalf of all the persons entitled which is binding on them in

respect of the allotment of shares and debentures to them under this article.

PART 4

DECISION-MAKING BY SHAREHOLDERS

ORGANISATION OF GENERAL MEETINGS

43 Attendance and speaking at general meetings

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

43.2 A person is able to exercise the right to vote at a general meeting when—

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

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

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

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

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

44 Quorum for general meetings

No business other than the appointment of the chairman of the meeting is to be transacted at a general meeting if the persons attending it do not constitute a quorum. The presence of a duly authorised representative of the holding company shall constitute a quorum.

45 Chairing general meetings

45.1 If the directors have appointed a chairman, the chairman shall chair general meetings if present and willing to do so.

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

45.2.1 the directors present, or

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

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

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

46 Attendance and speaking by directors and non-shareholders

46.1 Directors may attend and speak at general meetings, whether or not they are shareholders.

46.2 The chairman of the meeting may permit other persons who are not—

46.2.1 shareholders of the Company, or

46.2.2 otherwise entitled to exercise the rights of shareholders in relation to general meetings,

to attend and speak at a general meeting.

47 Adjournment

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

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

47.2.1 the meeting consents to an adjournment, or

47.2.2 it appears to the chairman of the meeting that an adjournment is necessary to protect the safety of any person attending the meeting or ensure that the business of the meeting is conducted in an orderly manner.

47.3 The chairman of the meeting must adjourn a general meeting if directed to do so by the meeting.

47.4 When adjourning a general meeting, the chairman of the meeting must—

- 47.4.1 either specify the time and place to which it is adjourned or state that it is to continue at a time and place to be fixed by the directors, and
 - 47.4.2 have regard to any directions as to the time and place of any adjournment which have been given by the meeting.
- 47.5 If a general meeting is adjourned, the Company must give notice of the time and place to which it is adjourned:
- 47.5.1 to the same persons to whom notice of the Company's general meetings is required to be given, and
 - 47.5.2 containing the same information which such notice is required to contain.
- 47.6 No business may be transacted at an adjourned general meeting which could not properly have been transacted at the meeting if the adjournment had not taken place.

VOTING AT GENERAL MEETINGS

48 Voting: general

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

49 Errors and disputes

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

50 Poll votes

- 50.1 A poll on a resolution may be demanded—
 - 50.1.1 in advance of the general meeting where it is to be put to the vote, or
 - 50.1.2 at a general meeting, either before a show of hands on that resolution or immediately after the result of a show of hands on that resolution is declared.
- 50.2 A poll may be demanded at any general meeting by any qualifying person (as defined in section 318 of the Act) present and entitled to vote at the meeting.
- 50.3 A demand for a poll may be withdrawn if—

50.3.1 the poll has not yet been taken, and

50.3.2 the chairman of the meeting consents to the withdrawal.

A demand so withdrawn shall not invalidate the result of a show of hands declared before the demand was made.

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

51 Content of proxy notices

51.1 Proxies may only validly be appointed by a notice in writing (a “proxy notice”) which—

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

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

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

51.1.4 is delivered to the Company in accordance with the Articles and any instructions contained in the notice of the general meeting (or adjourned meeting) to which they relate,

and a proxy notice which is not delivered in such manner shall be invalid, unless the directors, in their discretion, accept the notice at any time before the meeting.

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

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

51.4 Unless a proxy notice indicates otherwise, it must be treated as—

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

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

52 Delivery of proxy notices

52.1 A person who is entitled to attend, speak or vote (either on a show of hands or on a poll) at a general meeting remains so entitled in respect of that

meeting or any adjournment of it, even though a valid proxy notice has been delivered to the Company by or on behalf of that person.

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

53 Amendments to resolutions

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

PART 5

ADMINISTRATIVE ARRANGEMENTS

54 Means of communication to be used

- 54.1 Subject to the Articles, anything sent or supplied by or to the Company under the Articles may be sent or supplied in any way in which the Act provides for documents or information which are authorised or required by any provision of the Act to be sent or supplied by or to the Company.

- 54.2 Any notice, document or other information shall be deemed served on or delivered to the intended recipient—
- 54.2.1 if properly addressed and sent by prepaid United Kingdom first class post to an address in the United Kingdom, 48 hours after it was posted (or five business days after posting either to an address outside the United Kingdom or from outside the United Kingdom to an address within the United Kingdom if (in each case) sent by reputable international overnight courier addressed to the intended recipient, provided that delivery in at least five business days was guaranteed at the time of sending and the sending party receives a confirmation of delivery from the courier service provider);
 - 54.2.2 if properly addressed and delivered by hand, when it was given or left at the appropriate address;
 - 54.2.3 if properly addressed and sent or supplied by electronic means, one hour after the document or information was sent or supplied; and
 - 54.2.4 if sent or supplied by means of a website, when the material is first made available on the website or (if later) when the recipient receives (or is deemed to have received) notice of the fact that the material is available on the website.

For the purposes of this article, no account shall be taken of any part of a day that is not a business day.

- 54.3 In proving that any notice, document or other information was properly addressed, it shall be sufficient to show that the notice, document or other information was delivered to an address permitted for the purpose by the Act.
- 54.4 Subject to the Articles, any notice or document to be sent or supplied to a director in connection with the taking of decisions by directors may also be sent or supplied by the means by which that director has asked to be sent or supplied with such notices or documents for the time being.
- 54.5 A director may agree with the Company that notices or documents sent to that director in a particular way are to be deemed to have been received within a specified time of their being sent, and for the specified time to be less than 48 hours.

55 No right to inspect accounts and other records

Except as provided by law or authorised by the directors or an ordinary resolution of the Company but save for the external auditor appointed by the Company and representative of the chief financial officer of the council no person is entitled to inspect any of the Company's accounting or other records or documents merely by virtue of being a shareholder.

56 Provision for employees on cessation of business

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

DIRECTORS' INDEMNITY AND INSURANCE

57 Indemnity

57.1 Subject to article 57.2, but without prejudice to any indemnity to which a relevant officer is otherwise entitled—

57.1.1 each relevant officer shall be indemnified out of the Company's assets against all costs, charges, losses, expenses and liabilities incurred by him as a relevant officer—

- (a) in the actual or purported execution and/or discharge of his duties, or in relation to them; and
- (b) in relation to the Company's (or any associated Company's) activities as trustee of an occupational pension scheme (as defined in section 235(6) of the Act),

including (in each case) any liability incurred by him in defending any civil or criminal proceedings, in which judgment is given in his favour or in which he is acquitted or the proceedings are otherwise disposed of without any finding or admission of any material breach of duty on his part or in connection with any application in which the court grants him, in his capacity as a relevant officer, relief from liability for negligence, default, breach of duty or breach of trust in relation to the Company's (or any associated Company's) affairs; and

57.1.2 the Company may provide any relevant officer with funds to meet expenditure incurred or to be incurred by him in connection with any proceedings or application referred to in article 57.1.1 and otherwise may take any action to enable any such relevant officer to avoid incurring such expenditure.

57.2 This article does not authorise any indemnity which would be prohibited or rendered void by any provision of the Companies Acts or by any other provision of law.

57.3 In this article—

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

57.3.2 a “**relevant officer**” means any director or other officer or former director or other officer of the Company or an associated Company (including any company which is a trustee of an occupational pension scheme (as defined by section 235(6) of the Act, but excluding in each case any person engaged by the Company (or associated Company) as auditor (whether or not he is also a director or other officer), to the extent he acts in his capacity as auditor).

58 Insurance

58.1 The directors may decide to purchase and maintain insurance, at the expense of the Company, for the benefit of any relevant officer in respect of any relevant loss.

58.2 In this article—

58.2.1 a “**relevant officer**” means any director or other officer or former director or other officer of the Company or an associated Company (including any such Company which is a trustee of an occupational pension scheme (as defined by section 235(6) of the Act, but excluding in each case any person engaged by the Company (or associated Company) as auditor (whether or not he is also a director or other officer), to the extent he acts in his capacity as auditor),

58.2.2 a “**relevant loss**” means any loss or liability which has been or may be incurred by a relevant officer in connection with that relevant officer’s duties or powers in relation to the Company, any associated Company or any pension fund or employees’ share scheme of the Company or associated Company, and

58.2.3 companies are “**associated**” if one is a subsidiary of the other or both are subsidiaries of the same body corporate.