



Public Document Pack

Uttlesford District Council

Chief Executive: Dawn French

SUPPLEMENTARY PACK

Cabinet

Date: Thursday, 26th September, 2019
Time: 5.00 pm
Venue: Committee Room - Council Offices, London Road, Saffron Walden,
Essex CB11 4ER

Chairman: Councillor J Lodge
Members: Councillors A Armstrong, H Asker, D Eke, P Fairhurst, A Gerard,
N Hargreaves, P Lees, B Light and L Pepper

ITEMS WITH SUPPLEMENTARY INFORMATION PART 1

Open to Public and Press

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| | To consider the revised Commercial Strategy 2019-23. | |
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| | To consider establishing a wholly owned subsidiary of the Council, the proposed Articles of Association and the appointment of directors of the subsidiary. | |
| 15 | Loan to Aspire (MRH) Ltd | 39 - 46 |
| | To consider a loan to Aspire (MRH) Ltd to purchase 10 student accommodation units in Cambridge. | |



Uttlesford District Council

Chief Executive: Dawn French

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Committee: Cabinet

Date:

Title: Commercial Strategy

Thursday, 26
September 2019

Portfolio Holder: Cllr Paul Fairhurst, Portfolio Holder for Business, Economy, Jobs, Investment and Strategy; Youth Services

Report Author: Adrian Webb, Director - Finance and Corporate Services
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Key decision:
Yes

Summary

1. This report presents the revised Commercial Strategy, previously known as the Investment Strategy, and recommends the change of name of the associated Working Group.

Recommendations

2. Cabinet is requested to
 - i. approve the Commercial Strategy and recommend it to Council for adoption; and
 - ii. approve the re-naming of the Investment Steering Group to the Investment Board;
 - iii. authorise the recruitment of the two independent members of the Investment Board with the associated remuneration of £520.25 each per annum

Financial Implications

3. There are no new financial implications.

Background Papers

4. The following papers were referred to by the author in the preparation of this report and are available for inspection from the author of the report.

None

Impact

Communication/Consultation	None
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Community Safety	No specific implications
Equalities	None
Health and Safety	No specific implications
Human Rights/Legal Implications	No specific implications
Sustainability	No specific implications
Ward-specific impacts	No specific implications
Workforce/Workplace	None

Situation

5. Council on 21 February 2019 approved the 2019/20 Investment Strategy. This report seeks to update that Strategy and rebrand it as the Commercial Strategy. This rebranding enables it to be clear that this document relates to the commercial activities of the Council and not the treasury management (investments and borrowing) that the Council undertakes on a daily basis.
6. On 9 April 2019 Council endorsed the Executive Decision; taken by the Cabinet Member for Finance and Administration, to establish an Investment Steering Group as a Working Group of Cabinet. The decision has now been taken to rename this Working Group the Investment Board.
7. Attached at Appendix One is the new Commercial Strategy. The new strategy sets out how the Investment Board fits into the governance structure of the Council. In addition, it is more specific on potential asset types and locations.



Uttlesford District Council

Commercial Strategy 2019 to 2023



Prepared by:
Asset Management
Uttlesford District Council
September 2019

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Introduction

1. The Council recognises that as a consequence of reducing government funding there is an increased requirement to generate additional income to underpin the core services provided by the Council to its residents. Traditional ways of generating additional income such as through Council Tax and fees and charges will not be able to absorb the reduction in government funding.
2. This document replaces the General Fund Investment Strategy 2019/20 as approved by Full Council on 21 February 2019.

Current Portfolio

3. In May 2017 the Council, through its wholly owned subsidiary Aspire (CRP) Ltd, acquired a 50% share in Chesterford Research Park and formed a joint venture with Aviva Investors. As part of the Cambridge Life Science cluster the Park is world renowned, having been in existence for 19 years, with available space to significantly increase the commercial floor space, plus expand the Park into other areas of research to diversify and reduce the risk.
4. The Council gave a loan to Aspire (CRP) Ltd for the purchase of 50% of Chesterford Research Park (£47.25m). The loan was funded by

- Phoenix Life – borrowing of £37m for 40 years on a repayment basis @ 2.86% fixed. The first £10m drawdown was 1 July 2017 with the remainder as follows

1 July 2021 - £12m

1 July 2022 - £15m

Whilst this loan is being drawn down the balance will be funded by a mix of local authority and internal borrowing – The amount of each varies during the year dependant on the level of UDC balances available. Average interest rate, interest only, is 0.7%

- Use of reserves and balances (£10.25m) funds the balance.
5. For 2019/20 the income from Chesterford Research Park is expected to be £2,130,000 with the cost of borrowing being £400,000. There is also repayment of staff time.

Loans to wholly owned subsidiaries

6. The Council recognises that, to further support the budget ongoing and to ensure the continued delivery of services at the level currently provided, further investment in the expansion of Chesterford Research Park will be necessary. The first set of additional loans relate to the refurbishment of the Newnham Building. To date, the following loans to Aspire (CRP) Ltd have been made

Date	Amount	Term	Rate	Basis	Annual Repayment	Building	Repaid
03/05/2017	£47,250,000	50 years	4%	Interest Only	£1,890,000.00		
27/06/2017	£60,000	10 months	4%	Interest and principal	£61,827.95		✓
26/03/2018	£223,000	49 years 1 months	4%	Interest only	£8,920.00	Newnham	
02/01/2019	£2,518,000	48 years 4 months	4%	Interest only	£100,720.00	Newnham	
20/08/2019	£3,000,000	20 years	4.5%	Interest and principal	£230,630.00	Newnham	

7. In addition there is approval for a further loan of £1.25m for the fit-out of the Newnham Building on an interest and principal basis over 20 years at an interest rate of 4.5%. This will be drawn down during the latter part of 2019/20 as the Newnham Building refit progresses.

The future

8. The Council is committed to investing in the Park. The Council is keen to see existing tenants expand and grow on the Park and for the Park to attract new tenants from a diverse range of research activities. The Park is within the district boundary and investing helps to sustain existing employment, introduce new employment opportunities and generate additional Business Rates. As part of the 2019/20 Investment Strategy, approved by Full Council in February 2019, an in principle agreement to invest up to £20million at the Park over the next three years was approved.
9. Full Council in February 2019 also agreed an in principle sum of £80million for investments outside of CRP. This sum will, in the main, be invested out of area to offset risks of investing in a small geographical area. To minimise risk to the investment the Council will, in the main, concentrate on areas with above average;
 - Population growth projections
 - Employment growth projections
 - Gross Domestic Product (GDP) growth projections
10. The Investment Portfolio will include a mix of
 - Multi-let urban industrial
 - Offices in dynamic cities
 - Single-let long lease
 - Convenience retail
 - Market rent housing
11. The portfolio will also have a mix of lease lengths again to provide a balance.
12. Evaluation of potential opportunities will be made using a RAG based approach on criteria agreed by the Investment Steering Group.

Key Performance Indicators (KPIs)

13. A suite of KPIs will be developed by the Investment Board for reporting by the Aspire companies on a quarterly basis. These KPIs will be used, as part of suite of information, to inform future investments and disposals and therefore the make-up of the portfolio

Investment Protocol

14. An Investment Protocol will be developed alongside this strategy which sets out the criteria in detail.

Security, Liquidity and Yield

15. As the Council only has a small amount of money of its own to invest, any further expansion of the commercial strategy will necessarily be funded from a mix of external borrowing, from financial institutions, Public Works Loan Board (PWLB) and other local authorities. The Council will not invest in high yield, high risk opportunities. This will be reflected in yield expectations which are currently 3 – 7%.
16. Investments at Chesterford Research Park will be made by way of loans to Aspire (CRP) Ltd the Council's wholly owned subsidiary. All commercial investments outside of CRP will be undertaken by the Council. Property purchase for letting at market rents will be undertaken through a new wholly owned subsidiary company Aspire (UDC) Ltd.
17. By investing mainly, but not exclusively, in areas of above average population growth, employment growth and GDP growth the risk to the Council investment will be reduced.
18. Financing of acquisitions will be decided on a case by case basis. In almost all cases a mix of repayment and interest only loans will be undertaken, with the split being agreed by Cabinet.
19. The option to liquidate funds is either by selling the investment (or part thereof) or by refinancing the debt.

Risks

20. Each investment must be considered independently and only those viewed as having a positive expected yield and an acceptable risk profile will be taken forward for consideration by the Council.
21. The Council takes advice from its professional advisers at all times. For example, with the purchase of the 50% share at Chesterford Research Park the Council engaged
 - Arlingclose as its financial advisers who project managed the funding tender
 - Cushman and Wakefield who undertook all of the purchase negotiations and due diligence
 - Hogan Lovells for Legal due diligence
22. For Aspire (CRP) Ltd the Council has appointed two non-executive directors to serve on the Board and bring independent challenge and support. The new delivery company, Aspire (UDC) Ltd, will also have two non-executive directors on the Board.
23. The Aspire companies will use a range of specialists which will vary between investments. This will ensure the continued professionalism and sector knowledge.

Proportionality

24. The aim of the Commercial Strategy is to generate income to underpin the Council's core budget, to invest in other income generating opportunities and also good causes for the district.
25. The Council's main investment at Chesterford Research Park comprises eleven core buildings and circa twenty tenants. For the income to be below the interest repayment amount three of the five largest tenants would be required to default on their tenancy agreement at the same time. Even with this relatively low risk it is important to attract different types of research business to the Park.

Capacity, Skills and Culture

Investment Board (IB)

26. The IB will operate in accordance with the Commercial Strategy which is adopted annually by Full Council. Cabinet will delegate to the Leader; Portfolio Holder for Finance and Budget; Portfolio Holder for Business, Economy, Jobs, Investment and Strategy and Youth Services; and S151 Officer (or Assistant Director of Resources for Aspire investments) to conclude investments where authorisation has been given by Full Council.

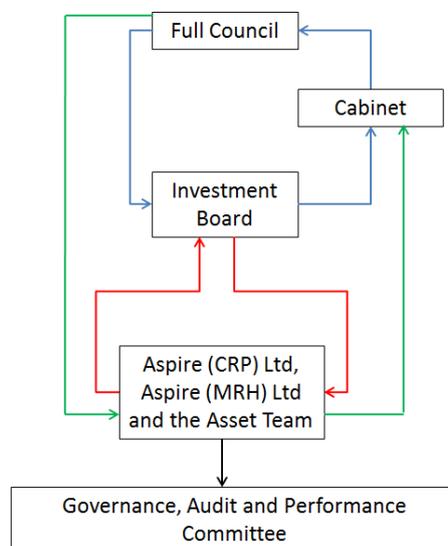
27. Constitution of the IB

a) The IB is a Working Group of Cabinet and membership will be

- Residents for Uttlesford Group – 8 members
- Liberal Democrat Group – 1 member
- Conservative Group – 1 member
- Uttlesford Independents Group – 1 member

b) In addition there will be two independent members to supplement the skills of the elected Members.

28. The investment decision making and monitoring process is as set out below



29. Democratic Process (blue line)

- As part of the annual budget setting process, Cabinet develops the Commercial Strategy in consultation with the IB. Cabinet recommends to Council the adoption of the Commercial Strategy.
- Council adopts the Commercial Strategy.
- The IB develops a protocol to implement the Commercial Strategy which will be approved by Cabinet.
- The Cabinet will receive from the IB quarterly updates, including KPIs, on the performance of the portfolio.

- e) For new investments, the IB reviews the business cases and if appropriate supports a recommendation to Cabinet for the acquisition.
- f) Cabinet reviews the investment and if satisfied recommends to Council that funding is made available. Given that the IB will be constituted by members with a knowledge of commercial investment, supplemented with external training as necessary, and supported by industry expert independent people, it is acknowledged that Cabinet will not, without good reason duly considered, reject opportunities presented by officers that are supported by the IB.
- g) Ahead of the Council meeting, the IB Chairman, along with officers, undertakes an all-Member briefing session to set out the investment and the reasons for its recommendation.

30. Internal Process (red line)

- a) The IB provides the two Aspire companies with a Commercial Protocol and sets out in detail the type of new investments it is seeking. Aspire (CRP) Ltd looks after developments at Chesterford Research Park, whilst Aspire (MRH) Ltd is responsible for residential housing to be let at market rents. The Council's Asset Team will manage all other non-CRP commercial investments.
- b) Depending upon the investment sought Aspire (MRH) Ltd and the Asset Team, working with professional advisers, identify investments that meet the protocol set out by the IB, and prepares investment business cases for each suitable opportunity for consideration by Cabinet. The Boards of Aspire (CRP) Ltd and Aspire (MRH) Ltd approve the investment business cases prior to submission to the IB.
- c) The Aspire companies, along with the Asset Team, prepare the quarterly KPI and other information for submission to the IB.

31. New Investments (green line)

- a) At an Extraordinary Meeting of Council a decision is taken on whether or not to allocate the funding.
- b) If the investment is agreed, funding will be made available to the relevant Aspire company or to the Asset Team to enable the purchase to be made.
- c) The Aspire companies report annually to the Cabinet as the shareholder board of the Council.

32. Governance, Audit and Performance Committee (GAP) (black line)

- a) A report on annual performance of the Aspire companies is taken to the GAP Committee. A similar report will be presented by the Asset Team.

Joint Working

- 33.** The Council recognises the benefits of working with other parties, be they local authorities or private sector. Joint Working mitigates risk and has the potential to enable the Council to consider new commercialisation opportunities in markets that alone they would not be able to do so.

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Committee:	Cabinet	Date:	Thursday, 26 September 2019
Title:	Aspire (MRH) Ltd		
Portfolio Holder:	Cllr Paul Fairhurst, Portfolio Holder for Business, Economy, Jobs, Investment and Strategy; Youth Services		
Report Author:	Adrian Webb, Director - Finance and Corporate Services awebb@uttlesford.gov.uk Tel: 01799 510421	Key decision:	No

Summary

- 1) The Commercial Strategy sets out that as part of a balanced portfolio the Council should invest across a number of asset types including market rent housing properties.
- 2) This report seeks Cabinet approval to establish Aspire (MRH) Ltd as the vehicle to deliver the market rent housing units.

Recommendations

- 3) The Cabinet is requested to
 - i) approve the establishment of Aspire (MRH) Ltd
 - ii) agree the Articles of Association for Aspire (MRH) Ltd as set out at Appendix One
 - iii) appoint the following directors to Aspire (MRH) Ltd
 - (1) Nicola Wittman (UDC Assistant Director of ICT and Facilities)
 - (2) Adrian Webb (UDC Director of Finance and Corporate Services)
 - iv) authorise the recruitment of the two independent members of Aspire (MRH) Ltd with the associated remuneration of £520.25 each per annum

Financial Implications

- 4) There are no financial implications in setting up the companies.

Background Papers

- 5) None

Impact

Communication/Consultation	None
Community Safety	No specific implications
Equalities	None
Health and Safety	No specific implications
Human Rights/Legal Implications	No specific implications
Sustainability	No specific implications
Ward-specific impacts	No specific implications
Workforce/Workplace	None

Situation

- 6) As government funding reduces councils are looking increasingly at alternative ways of generating income. A number of councils similar to ourselves have established wholly owned companies for a range of commercial purposes.
- 7) As part of the ambition to build a balanced investment portfolio it has been identified that the Council should have investment in market properties (houses) for rent.
- 8) To avoid confusing our role as social landlords (council housing) with our aim of generating income from market rent housing, it is proposed that the latter is delivered through a wholly owned subsidiary of the Council, within the Aspire brand.
- 9) **Aspire (MRH) Ltd** – will be a business aimed at letting properties on the open market at full market rents. This will either be by way of developing Council owned land and/or buying existing private sector properties.
- 10) The Articles of Association for the company set out the requirement that a minimum of two directors be appointed. In time the company will have three directors as do all of the other Aspire companies, however It is initially proposed that the directors are:
 - a) Nicola Wittman – Assistant Director ICT and Facilities
 - b) Adrian Webb – Director of Finance and Corporate Services
- 11) The Articles of Association for the company also set out the provision for two non-executive directors to be appointed by the shareholder board (Cabinet). These roles will be advertised locally and the successful people will receive remuneration of £520.25 per annum, which is the same amount paid to the non-executive directors on Aspire (CRP) Ltd.
- 12) The Cabinet will fulfil the role of the shareholder board and they have specific responsibilities including:

- a) The appointment or removal of any director.
- b) Entering into (or agreeing to enter into) any borrowing arrangement on behalf of the Company and giving any security in respect of any such borrowing (including creating any encumbrance over the whole or any part of the undertaking or assets of the Company or over any capital of the Company).
- c) Entry by the Company into any partnership or other profit share arrangement.

Risk Analysis

Risk	Likelihood	Impact	Mitigating actions
Aspire (MRH) Ltd is not able, due to market pricing, to purchase sufficient properties to make the business model viable	1 Before Members tonight is an investment opportunity that would be delivered through this company	3 The future sustainability of the Council budget relies on additional income being generated by commercial activity	The opportunity presented at this meeting demonstrates that suitable opportunities do exist.

- 1 = Little or no risk or impact
- 2 = Some risk or impact – action may be necessary.
- 3 = Significant risk or impact – action required
- 4 = Near certainty of risk occurring, catastrophic effect or failure of project.

Appendix One

Company No

THE COMPANIES ACT 2006

PRIVATE COMPANY LIMITED BY SHARES

ARTICLES OF ASSOCIATION

of

ASPIRE (MRH) LIMITED

Incorporated [DATE OF INCORPORATION]

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Company No

THE COMPANIES ACT 2006

PRIVATE COMPANY LIMITED BY SHARES

ARTICLES OF ASSOCIATION

of

ASPIRE (MRH) LIMITED

Incorporated [DATE OF INCORPORATION]

1. **MODEL ARTICLES**

- 1.1 The Model Articles do not apply to the Company and these Articles alone are the articles of association of the Company.

2. **INTERPRETATION**

- 2.1 In the Articles, unless the context requires otherwise:-

"Act" means the Companies Act 2006

"Articles" means the Company's articles of association

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

"Business" shall have the meaning given to it under Article 4.1

"business day" means any day (other than a Saturday or Sunday) on which clearing banks in the City of London are open for the transaction of normal sterling banking business

"Business Plan" means the business plan approved and adopted by the Company from time to time pursuant to Article 4.2

"Cabinet"	means such elected members of the Council appointed to the cabinet from time to time
"Capitalised Sum"	has the meaning given in Article 34.1.2
"Chairman"	has the meaning given to it in Article 14
"chairman of the meeting"	Has the meaning given to it in Article 38
"Companies Acts"	means the Companies Acts (as defined in section 2 of the Act), in so far as they apply to the Company
"Council"	means Uttlesford District Council, Council Offices, London Road, Saffron Walden, Essex, CB11 4ER
"Deputy Leader"	means the person appointed to the position of deputy leader of the Council from time to time
"director"	means any director for the time being of the Company (whether an Executive Director or a Non-executive Director), and includes any person occupying the position of director, by whatever name called
"distribution recipient"	has the meaning given in Article 32.2
"document"	includes, unless otherwise specified, any document sent or supplied in electronic form
"Eligible Director"	means a director who would have been entitled to vote on the matter had it been proposed as a resolution at a board meeting (but excluding any director whose vote is not to be counted in respect of a particular matter)
"Executive Director"	means any director of the Company other than a Non-executive Director
"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
"Holder"	in relation to shares means the person whose name is entered in the register of members as the holder of the shares
"instrument"	means a document in hard copy form
"Leader"	means the person appointed to the position of leader of the Council from time to time
"Model Articles"	means the model articles for private companies limited by shares contained in Schedule 1 of the Companies (Model Articles) Regulations 2008 as amended prior to the date of adoption of these Articles

"Non-executive Director"	means a person appointed as a non-executive director of the Company and carrying out the role and responsibilities set out in Article 5.1.2
"Opportunity"	means the property development and investment scheme to be strategically pursued by the Company with a view to generating income for the benefit of its Shareholders whilst benefitting the economy and community of Uttlesford
"paid"	means paid or credited as paid
"participate"	in relation to a board meeting, has the meaning given in Article 12
"persons entitled"	has the meaning in Article 34.1.2
"Shareholder"	means a person who is the holder of a share who, at the date hereof, shall be the Council
"Shares"	means shares in the Company
"subsidiary" and "subsidiaries"	has the meaning given in section 1159 of the Act
"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 References in these Articles to Shares being **"paid"** means those Shares being paid or credited as paid.

2.3 References in these Articles to **"writing"** means 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.

2.4 References in these Articles to a document includes, unless otherwise specified, any document sent or supplied in electronic form.

2.5 Unless the context otherwise requires:-

2.5.1 words in the singular include the plural and vice versa;

2.5.2 words in one gender include the other genders; and

2.5.3 words importing natural persons include corporations.

2.6 Words or expressions contained in these Articles which are defined in the Act have the same meaning as in the Act in force on the date of adoption of these Articles including the following words which are defined in the following sections of the Act:-

Word(s)/expression	Section Number in Act
electronic form	section 1168

equity share capital	section 548
hard copy form	section 1168
ordinary resolution	section 282
special resolution	section 283
working day	section 1173

2.7 A reference to an Article by number is to the relevant article of these Articles.

2.8 Headings used in these Articles do not affect their construction or interpretation.

2.9 References to a statute or statutory provision is a reference to it as it is in force as at the date of adoption of these Articles.

3. **LIMITATION OF LIABILITY**

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

4. **THE BUSINESS OF THE COMPANY**

4.1 The Business of the Company shall be to:-

4.1.1 acquire land and/or properties to deliver new and/or improved homes of a mixed tenure with long-term economic and social benefits for the people of the district of Uttlesford;

4.1.2 to dispose of existing property and/or acquire new property in accordance with the terms of the prevailing Business Plan;

4.1.3 to procure and/or deliver the repairs and maintenance service to some or all of the properties;

4.1.4 to develop commercial units and private residential units for private rental and/or sale;

4.1.5 carry out any other activities as the Shareholders may determine from time to time;

4.1.6 carry out the activities described in sub-articles 4.1.1 to 0 in the best interests of the Company and at all times in accordance with the Business Plan.

4.2 **Business Plan**

4.2.1 The Shareholders shall prepare a Business Plan in relation to the Opportunity (and/or in relation to other schemes or projects that the Company may engage in from time to time) which shall be unanimously approved by the Shareholders.

4.2.2 The Business Plan(s) which has been prepared in accordance with Article 4.2.1 shall remain in force as the Business Plan for the Company until such time as it is replaced by an updated Business Plan approved unanimously by the Shareholder(s) from time to time.

5. DIRECTORS' ROLES AND GENERAL AUTHORITY

5.1 Subject to the Articles:-

5.1.1 the Executive Directors are responsible for the management of the Company's Business, for which purpose they may, with the exception of the matters requiring Shareholder consent and expressly reserved pursuant to Article 6 (Shareholder Reserved Matters), exercise all the powers of the Company;

5.1.2 the Non-Executive Directors are responsible for exercising appropriate oversight and scrutiny over the management of the Business of the Company by the Executive Director's and the execution of the agreed strategy (including the Business Plan(s)).

6. SHAREHOLDER RESERVE MATTERS

The matters listed in Schedule 1 shall not be carried out without the prior written consent of the Shareholder(s).

7. DIRECTORS MAY DELEGATE

7.1 Subject to the Articles, 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 to such an extent;

7.1.3 in relation to such matters; and

7.1.4 on such terms and conditions;

as they think fit.

7.2 Any such delegation will automatically authorise further delegation of the directors' powers by any person to whom they are delegated, unless the directors specifically state otherwise within such delegation authority.

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 consistent with them.

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 All acts done by a meeting of directors, or a committee of directors or by any director shall, even if it is discovered afterwards that:-

9.2.1 there was a defect in the appointment of any director; or

9.2.2 any director had been disqualified from holding office; or

9.2.3 any director had vacated office or was not entitled to vote;

shall be valid as if every such person had been duly appointed and was qualified and had continued to be a director and had been entitled to vote.

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 save to the extent otherwise provided for in any Business Plan.

10.2 Such a decision may take the form of a resolution in writing, copies of which have been signed by each Eligible Director 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 BOARD MEETING**

11.1 Any director may call a board meeting by giving not less than 20 business days' notice of the meeting (or such lesser notice as all the directors may agree) to the directors.

11.2 Notice of any board meeting must indicate:-

11.2.1 its proposed date and time;

11.2.2 where it is to take place;

11.2.3 the proposed business of the meetings;

11.2.4 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 board meeting must be given to each director, and must be in writing.

11.4 Notice of a board 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 not more than 7 days 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 BOARD MEETINGS**

12.1 Subject to the Articles, directors participate in a board meeting, or part of a board 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 board 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 BOARD MEETINGS

- 13.1 At a board meeting, unless a quorum is participating, no proposal is to be voted on, except a proposal to call another meeting.
- 13.2 The quorum for the transaction of business at a meeting of the directors is any 2 directors.
- 13.3 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 to call a shareholder meeting so as to enable the Shareholder(s) to appoint further directors.

14. CHAIRING OF BOARD MEETINGS

- 14.1 The directors may appoint any director (including, for the avoidance of doubt a Non-Executive director) to chair their meetings.
- 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.
- 14.4 If the Chairman is not participating in a board 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. CHAIRMAN'S 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 shall have a casting vote.

16. RECORDS OF DECISIONS TO BE KEPT

The directors must ensure that the Company keeps a record, in writing, for at least 7 years from the date of the decision recorded, of every unanimous or majority decision taken by the directors.

17. CONFLICTS OF INTEREST

- 17.1 If a proposed decision of the directors is concerned with an actual or proposed transaction or arrangement with the Company in which a director is interested, that director is not to be counted as participating in the decision-making process for quorum or voting purposes.
- 17.2 But if Article 17.3 applies, a director who is interested in an actual or proposed transaction or arrangement with the Company is to be counted as participating in the decision-making process for quorum and voting purposes.
- 17.3 This paragraph applies when—
- 17.3.1 the Company by ordinary resolution disapplies the provision of the articles which would otherwise prevent a director from being counted as participating in the decision-making process; or
 - 17.3.2 the director's interest cannot reasonably be regarded as likely to give rise to a conflict of interest.
- 17.4 For the purposes of this Article, references to proposed decisions and decision-making processes include any directors' meeting or part of a directors' meeting.
- 17.5 Subject to Article 17.7, 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.

- 17.6 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.

18. **NUMBER AND METHOD OF APPOINTING DIRECTORS**

- 18.1 Unless otherwise determined by ordinary resolution, the number of directors shall:-

18.1.1 not be less than 2; and

18.1.2 may include no more than 2 Non-executive Directors.

- 18.2 The appointment or removal of a director shall be a matter to be approved by the Shareholder(s) pursuant to Article 6 (Shareholder Reserved Matters).

19. **TERMINATION OF DIRECTOR'S APPOINTMENT**

- 19.1 A person ceases to be a director as soon as:-

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

19.1.2 a bankruptcy order is made against that person;

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

19.1.4 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;

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

19.1.6 he is convicted of a criminal offence (other than a motoring offence or series of offences not resulting in disqualification) and the directors resolve that his office be vacated; or

19.1.7 in the case of a person who is also an employee of the Company he ceases to be such an employee; or

19.1.8 he shall for more than six consecutive months have been absent without permission of the Shareholder(s) from meetings of directors held during that period and the Shareholder(s) resolve that his office be vacated; or

19.1.9 all the other Shareholder(s) unanimously resolve that his office be vacated.

- 19.2 In addition and without prejudice to the provisions of section 168 of the Act, Shareholder(s) may remove any director before the expiration of his period of office and appoint another director in his place.

20. **DIRECTORS' REMUNERATION**

- 20.1 Directors may undertake any services for the Company that the directors decide.

- 20.2 Directors are not entitled to any remuneration for their services to the Company.
- 20.3 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.

21. DIRECTORS' AND OFFICERS' EXPENSES

- 21.1 The Company may pay any reasonable out-of-pocket expenses which the officers (including alternate directors and the secretary) properly incur in connection with their attendance at:-

- 21.1.1 meetings of directors or committees of directors;
- 21.1.2 shareholder meetings; or
- 21.1.3 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.

22. 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 to remove such person and, if the directors so decide, appoint a replacement, in each case by a decision of the directors.

23. ALL SHARES TO BE FULLY PAID UP

- 23.1 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.
- 23.2 This does not apply to shares taken on the formation of the Company by the subscribers to the Company's memorandum.

24. POWERS TO ISSUE DIFFERENT CLASSES OF SHARE

- 24.1 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 ordinary resolution.
- 24.2 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.

25. 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.

26. DIRECTORS' AUTHORITY TO ALLOT SHARES

Save to the extent authorised from time to time by an ordinary resolution of the Shareholder(s), 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. SHARE CERTIFICATES

27.1 The Company must issue each Shareholder, free of charge, with one or more certificates in respect of the shares which that Shareholder holds.

27.2 Every certificate must specify:-

27.2.1 in respect of how many shares, of what class, it is issued;

27.2.2 the nominal value of those shares;

27.2.3 that the shares are fully paid; and

27.2.4 any distinguishing numbers assigned to them.

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

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

27.5 Certificates must:-

27.5.1 have affixed to them the Company's common seal; or

27.5.2 be otherwise executed in accordance with the Companies Acts.

28. SHARE TRANSFERS

28.1 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.

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

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

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

29. DIRECTORS' POWERS ON TRANSFER OF SHARES

29.1 The directors must not register the transfer of any Share or any interest in any Share unless the transfer is approved by the Shareholder(s) pursuant to Article 6 (Shareholder Reserved Matters).

29.2 The directors may at any time require any Shareholder or any person named as transferee in an instrument of transfer lodged for registration to give the directors such information and evidence as the directors believe is relevant to ensure that a transfer of Shares is being made in accordance with these Articles or that no circumstances have arisen which would result in a Transfer Notice being bound to be given or being deemed to have been given.

29.3 If the directors are not given such information or evidence within 20 days after they have requested it, the directors may in their absolute discretion give notice of refusal to register the transfer concerned together with reasons for the refusal to the person named as transferee or require the Shareholder by written notice to give a Transfer Notice in respect of the relevant Shares. If the information or evidence received by the directors discloses to their satisfaction that a Shareholder may be bound to give or is deemed to have given a Transfer Notice, the directors may in their absolute discretion by written notice to the relevant Shareholder require that a Transfer Notice be given in respect of the relevant Shares.

29.4 An obligation to transfer a Share under these Articles is an obligation to transfer the entire legal and beneficial interest in such Share free from any lien, charge or encumbrance.

30. **PROCEDURE FOR DECLARING DIVIDENDS**

30.1 The Company may by ordinary resolution declare dividends, and the directors may decide to pay interim dividends.

30.2 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.

30.3 No dividend may be declared or paid unless it is in accordance with Shareholders' respective rights and approved in the prevailing Business Plan.

30.4 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.

30.5 If the Company's share capital is divided into different classes, no interim dividend may be paid on shares carrying deferred or non-preferred rights if, at the time of payment, any preferential dividend is in arrear.

30.6 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.

30.7 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.

31. **CALCULATION OF DIVIDENDS**

31.1 Except as otherwise produced by these Articles or the rights attached to the shares, all dividends must be declared and distributed amongst the holders of shares proportionately according to the number of shares held (and in irrespective of the amount paid up on such shares).

31.2 If any share is issued on terms providing that it ranks for dividend as from a particular date, that share ranks for dividend accordingly.

32. **PAYMENT OF DIVIDENDS AND OTHER DISTRIBUTIONS**

32.1 Where a dividend or other sum which is a distribution is payable in respect of a share, it must be paid by one or more of the following means:-

32.1.1 transfer to a bank or building society account specified by the distribution recipient in writing;

32.1.2 sending a cheque made payable to the distribution recipient by post to the distribution recipient at the distribution recipient's registered address (if the distribution recipient is a holder of the share), or (in any other case) to an address specified by the distribution recipient in writing;

32.1.3 sending a cheque made payable to such person by post to such person at such address as the distribution recipient has specified in writing; or

32.1.4 any other means of payment as the directors agree with the distribution recipient in writing.

32.2 In the Articles, the "**distribution recipient**" means, in respect of a share in respect of which a dividend or other sum is payable:-

- 32.2.1 the holder of the share; or
- 32.2.2 if the share has two or more joint holders, whichever of them is named first in the register of members; or
- 32.2.3 if the holder is no longer entitled to the share by reason of death or bankruptcy, or otherwise by operation of law, the transmittee.

33. **NO INTEREST ON DISTRIBUTIONS**

- 33.1 The Company may not pay interest on any dividend or other sum payable in respect of a share unless otherwise provided by:-
 - 33.1.1 the terms on which the share was issued; or
 - 33.1.2 the provisions of another agreement between the holder of that share and the Company.

34. **CAPITALISATION OF PROFITS**

- 34.1 Subject to the Articles, the directors may, if they are so authorised by an ordinary resolution:-
 - 34.1.1 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
 - 34.1.2 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.
- 34.2 Capitalised Sums must be applied:-
 - 34.2.1 on behalf of the persons entitled; and
 - 34.2.2 in the same proportions as a dividend would have been distributed to them.
- 34.3 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.
- 34.4 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.
- 34.5 Subject to the Articles the directors may:-
 - 34.5.1 apply Capitalised Sums in accordance with Articles 34.3 and 34.4 partly in one way and partly in another;
 - 34.5.2 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
 - 34.5.3 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.

35. **NOTICE OF SHAREHOLDER MEETINGS**

35.1 The notice of a shareholder meeting of the Company must state:-

35.1.1 the time and date of the meeting;

35.1.2 the place of the meeting; and

35.1.3 the general nature of the business to be transacted.

36. **ATTENDANCE AND SPEAKING AT SHAREHOLDER MEETINGS**

36.1 A person is able to exercise the right to speak at a shareholder meeting when that person is a member of the Cabinet of the Council.

36.2 A person is only able to exercise the right to vote at a shareholder meeting if that person is a member of the Cabinet of the Council.

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

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

36.5 Two or more persons who are not in the same place as each other attend a shareholder 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.

37. **QUORUM FOR SHAREHOLDER MEETINGS**

37.1 No business other than the appointment of the chairman of the meeting is to be transacted at a shareholder meeting if the persons attending it do not constitute a quorum, pursuant to Article 37.2 below.

37.2 A quorum for the transaction of business at a meeting of the shareholders is:-

37.2.1 the Leader of the Council or the Deputy Leader of the Council; or

37.2.2 in the absence of the Leader of the Council or the Deputy Leader of the Council two other members of the Cabinet of the Council.

38. **CHAIRING SHAREHOLDER MEETINGS**

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

38.2 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:-

38.2.1 the directors present; or

38.2.2 (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.

38.3 The person chairing a meeting in accordance with this Article is referred to as "**the chairman of the meeting**".

39. **ATTENDANCE AND SPEAKING BY DIRECTORS AND NON-SHAREHOLDERS**

39.1 Directors may attend and speak at shareholder meetings, whether or not they are shareholders.

39.2 The chairman of the meeting may in his absolute discretion permit other persons who are not:-

39.2.1 shareholders of the Company; or

39.2.2 otherwise entitled to exercise the rights of shareholders in relation to shareholder meetings

to attend and speak at a shareholder meeting.

40. **ADJOURNMENT**

40.1 If the persons attending a shareholder 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.

40.2 The chairman of the meeting may adjourn a shareholder meeting at which a quorum is present if:-

40.2.1 the meeting consents to an adjournment; or

40.2.2 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.

40.3 The chairman of the meeting must adjourn a shareholder meeting if directed to do so by the meeting.

40.4 When adjourning a shareholder meeting, the chairman of the meeting must:-

40.4.1 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

40.4.2 have regard to any directions as to the time and place of any adjournment which have been given by the meeting.

40.5 If the continuation of an adjourned meeting is to take place more than 14 days after it was adjourned, the Company must give at least 7 clear days' notice of it (that is, excluding the day of the adjourned meeting and the day on which the notice is given):-

40.5.1 to the same persons to whom notice of the Company's shareholder meetings is required to be given, and

40.5.2 containing the same information which such notice is required to contain.

40.6 No business may be transacted at an adjourned shareholder meeting which could not properly have been transacted at the meeting if the adjournment had not taken place.

41. **VOTING AT SHAREHOLDER MEETINGS**

41.1 A resolution put to the vote of a shareholder meeting must be decided on a show of hands.

41.2 No objection may be raised to the qualification of any person voting at a shareholder 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.

41.3 Any such objection must be referred to the chairman of the meeting, whose decision is final.

42. **AMENDMENTS TO RESOLUTIONS**

42.1 An ordinary resolution to be proposed at a shareholder meeting may be amended by ordinary resolution if:-

42.1.1 notice of the proposed amendment is given to the Company in writing by a person entitled to vote at the shareholder 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

42.1.2 the proposed amendment does not, in the reasonable opinion of the chairman of the meeting, materially alter the scope of the resolution.

42.2 A special resolution to be proposed at a shareholder meeting may be amended by ordinary resolution, if:-

42.2.1 the chairman of the meeting proposes the amendment at the shareholder meeting at which the resolution is to be proposed; and

42.2.2 the amendment does not go beyond what is necessary to correct a grammatical or other non-substantive error in the resolution.

42.3 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.

43. **NOTICES AND COMMUNICATIONS**

43.1 The Company may send, supply or give any document, information or notice to a Shareholder by hard copy, electronic form or by making that document or information available on a website and giving notice of the availability of that document or information to the relevant Shareholder (provided that Shareholder has individually agreed (or is deemed to have agreed) to the Company sending or supplying documents or information generally or those documents or information in question to him by means of a website), in each case subject to the provisions of sections 1143 to 1148 and Schedule 5 of the Act.

43.2 A notice given by means of a website shall be deemed to have been sent, supplied or given when the material was first made available on the website or, if later, when the recipient received (or is deemed to have received) notice of the fact that the material was available on the website.

43.3 Any document, information or notice which is required to be sent or given to the Company shall be sent by hard copy or electronic form in each case, subject to the provisions of sections 1143 to 1148, Schedule 4 and Schedule 5 of the Act.

43.4 Any notice, document or other information shall be deemed served on or delivered to the intended recipient:-

43.4.1 if properly addressed and sent by prepaid United Kingdom first class post to an address in the United Kingdom, on the second working day 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);

43.4.2 if properly addressed and delivered by hand, the next working day after it was given or left at the appropriate address; and

43.4.3 if properly addressed and sent or supplied by electronic means, the next working day after the document or information was sent or supplied.

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

43.5 Proof that an envelope containing a document, notice or information was properly addressed, prepaid and posted shall be conclusive evidence that the document, notice or information was sent, supplied or given by post. A copy of a record of the total number of recipients sent to or each recipient to whom an e-mail message was sent together with any notices of failed transmissions and copies of records of subsequent re-sending, suitably certified by or on behalf of the Company, shall be conclusive evidence that the document, notice or information was sent, supplied or given by e-mail.

43.6 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.

43.7 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.

43.8 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.

44. **COMPANY SEALS**

44.1 Any common seal may only be used by the authority in writing of the directors.

44.2 The directors may decide by what means and in what form any common seal is to be used.

44.3 Unless otherwise decided by the directors in writing, if the Company has a common seal and it is affixed to a document, the document must also be signed by at least one authorised person.

44.4 An authorised person is:-

44.4.1 any director of the Company;

44.4.2 the Company secretary (if any); or

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

45. **NO RIGHT TO INSPECT ACCOUNTS AND OTHER RECORDS**

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

46. **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.

47. **DIRECTORS' INDEMNITY AND INSURANCE**

47.1 Subject to Article 47.2, but without prejudice to any indemnity to which a relevant officer is otherwise entitled:-

47.1.1 each relevant officer shall be indemnified out of the out of the Company's assets against all costs, charges, losses, expenses and liabilities incurred by him as a relevant officer in the actual or purported execution and/or discharge of his duties, or in relation to them 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

47.1.2 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 47.1.1 and otherwise may take any action to enable any such relevant officer to avoid incurred such expenditure.

47.2 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.

47.3 In this Article:-

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

47.3.2 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).

48. **COUNCIL CONTROL OVER SUBSIDIARIES**

48.1 The Company shall be entitled to establish any subsidiary in furtherance of the Business of the Company and provided that the Council remains the holder of not less than 90 per cent of the Shares of the Company the following provisions will apply and to the extent of any inconsistency will have overriding effect as against all other provisions of the articles for any such subsidiary;

48.1.1 the Company may at any time and from time to time appoint any person to be a director of the subsidiary or remove from office any director of the subsidiary howsoever appointed and so that in the case of his removal from office will be deemed an act of the subsidiary and will have effect without prejudice to any claim for damages in respect of the consequent termination of his office;

48.1.2 no securities or shares may be issued or agreed to be issued or put under option by the subsidiary without the consent of the Company; and

48.1.3 any or all powers of the directors of the subsidiary will be restricted in such respects and to such extent as the Company may by notice to the subsidiary from time to time prescribe.

SCHEDULE 1

Shareholder Reserve Matters

1. Approval and adoption of each Business Plan (and any amendments/variations) in respect of the Opportunity and/or each and every scheme that the Company may participate in from time to time.
2. Alteration in the nature/scope of the Business in respect of the Opportunity and/or each and every scheme that the Company may participate in from time to time, closing down/commencing any new business which is not ancillary or otherwise incidental to the business of the Company and/or its subsidiaries.
3. Taking any action outside the parameters of the Business Plans in a manner not reasonably contemplated within the scope of the Business Plan or which could not reasonably be expected to fall within the scope of the Business Plan including but not limited to contract expenditure or increasing any indebtedness of the Company and/or its subsidiaries outside the parameters of the Business Plans.
4. Acquiring, disposing or agreeing to acquire or dispose of any asset, any interest in an asset (including the exercise of an option) or any other land or buildings, by either the Company and/or its subsidiaries.
5. Declaring or paying any distribution in respect of profits, assets or reserves of the Company or in any other way reducing the reserves of the Company.
6. Forming any Company subsidiary or associated undertaking, acquiring shares in any other company or entity (subscription or transfer) such that the company becomes a Subsidiary, entering into joint ventures or partnerships.
7. Alteration of authorised or issued partnership capital, or classification thereof, allotment of partnership capital or securities, granting options or rights to subscribe to the Company; issuing loan capital of the Company.
8. Granting or entering into any license agreement or arrangement concerning the trading names of the Company and/or its subsidiaries and goodwill attached thereto.
9. Waiving or delaying the rights of the Company and/or those of the Company to be exercised by the Company under any agreement to which the Company is a party.
10. Making any petition or passing any resolution to wind up the Company and/or its subsidiaries or making any application for an administration or winding up order or any order having similar effect in relation to the Company and/or its subsidiaries or giving notice of intention to appoint an administrator or file a notice of appointment of an administrator.
11. Changing the name of the Company and/or its subsidiaries.
12. Change in status of the Company and/or its subsidiaries.
13. Entry by the Company and/or its subsidiaries into any partnership or other profit share arrangement.
14. The admission of a new shareholder to the Company or the expulsion of any then existing shareholder.
15. Contracting and/or entering into a commitment to contract expenditure outside the parameters of activity (as set out in the budget) contemplated by the agreed Business Plans.

16. Giving a guarantee, suretyship or indemnity to secure the liabilities of any person (including its subsidiaries) or assume the obligations of any person (including its subsidiaries).
17. Any other matters not covered within the Company's usual day-to-day business and within the scope of the Business Plans.
18. Entering into (or agreeing to enter into) any borrowing arrangement on behalf of the Company and/or its subsidiaries and giving any security in respect of any such borrowing (including creating any encumbrance over the whole or any part of the undertaking or assets of the Company or over any capital of the Company).
19. Agreeing to pay any remuneration to an employee of a Company and/or its subsidiaries other than out of pocket expenses.
20. The appointment or removal of any director of the Company and/or its subsidiaries.
21. Any other activity the Shareholders of the Company may determine from time to time.

Committee: Cabinet

Date:

Title: Loan to Aspire (MRH) Ltd

Thursday, 26
September 2019

Portfolio Holder: Cllr Paul Fairhurst, Portfolio Holder for Business, Economy, Jobs, Investment and Strategy; Youth Services

Report Author: Adrian Webb, Director - Finance and Corporate Services
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Tel: 01799 510421

Key decision:
Yes

Summary

1. This report presents an opportunity to acquire 10 student accommodation apartments in Cambridge through the Council's wholly owned subsidiary Aspire (MRH) Ltd.

Recommendations

2. Cabinet is recommended
 - i. To approve the acquisition of the 10 student accommodation apartments at Purbeck House in Cambridge; and
 - ii. to approve the loan of up to £2.1m to Aspire (MRH) Ltd for a period of 10 years, at an interest only rate of 5.5%; and
 - iii. to request that Council endorses the purchase and loan and authorises the necessary borrowing.

Financial Implications

3. As set out in this paper.

Background Papers

4. The following papers were referred to by the author in the preparation of this report and are available for inspection from the author of the report.

None

Impact

Communication/Consultation	None
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Community Safety	No specific implications
Equalities	None
Health and Safety	No specific implications
Human Rights/Legal Implications	No specific implications
Sustainability	No specific implications
Ward-specific impacts	No specific implications
Workforce/Workplace	None

Situation

5. The Medium Term Financial Strategy sets out a significant funding gap in the near term and identified that commercial investment would be used in part to bridge that gap.
6. The current issues in Government have meant a one year delay in implementing significant changes to the way in which the Council is funded. However, whilst the Council may be in a slightly better financial position in 2020/21 than previously identified this is only delaying the challenge faced.
7. Investments considered, and the way in which they will be delivered, as part of the Commercial Strategy comply with the guidance set out by CIPFA and Government.
8. As part of the Commercial Strategy it has been identified that in order to establish a balanced portfolio an element of market rent housing is required.
9. An opportunity has arisen to purchase 10 student accommodation apartments in Purbeck House in Cambridge. Purbeck House consists of 151 apartments, all of which are let to Alpha Plus Group Limited (www.alphaplusgroup.co.uk) which is a private education group that owns and manages 20 schools, nurseries and sixth form colleges across the country and had a turnover to the year end 31 August 2018 of £91.1 million and a profit before tax of £21.7 million.
10. Abbey College (www.abbeycambridge.co.uk), which is adjacent to the accommodation is one of the sixth form colleges that Alpha Plus runs and it has 400 pupils at any point in time, all of whom live in nearby student accommodation.
11. As the age of the Abbey College student is primarily ranging from 16 -19 years old this is not a 'traditional' student accommodation unit. Purbeck House is split into a number of blocks and each block has a house parent in residence. All food is provided by the college within the college canteen and therefore no cooking is

done in the accommodation itself. The house parents undertake inspections of the accommodation three times a week, no alcohol is allowed and there is a curfew at 11pm each day.

12. Each apartment is held by way of a 125 year head lease expiring 31 December 2132 with a current ground rent of £200 per apartment per annum. The service charge for 2019/20 is estimated at £1,500 per apartment per annum.
13. The 10 apartments being sold consist of 9 studio and 1 one bedroom and were retained by the developer at the time of construction as a personal investment. The rental income varies by design but ranges from £12,168 - £15,548 per annum. This increases annually by the highest of 3.5% or RPI.
14. The lease to Alpha Plus Group Limited expires on 31 August 2022 and can be terminated earlier by giving 3 months' notice on 31 July each year. We understand that the tenant is currently discussing implementing a card based door entry system, at their cost, which would indicate their intention to stay beyond 2022 as the capital commitment of such a system would not be viable on the basis of the three years remaining on the current lease. However in the worst case scenario and they did terminate the lease the accommodation would be able to be let as general rental apartments (subject to legal due diligence). Purbeck House is within 15 minutes' walk of the city centre and many of the university colleges, the mainline railway station and Addenbrookes Hospital. In addition, the building is adjacent to Homerton College and Hills Road Sixth Form College.
15. The cost of purchase is £1.9 million plus legal, tax, agents fees etc. amounting to circa £100,000 making the total loan circa £2 million. In order for the completion to proceed it is recommended that the agreed loan is up to £2.1million to allow for additional work if needed. The final sum will be reported to Cabinet in due course.
16. Attached at Appendix One is the sales brochure outlining the opportunity. Since the production of the brochure, agreement has been reached with the tenant on double occupancy rates in the 9 studio apartments. Each apartment will generate an additional £1,500 in rental income per annum with an offset of an additional £38 per apartment in service charge. This has the effect of increasing the net income by just over £13,000 per annum to £144,540 in 2019/20.
17. Aspire (MRH) Ltd will incur costs for service charge, ground rent, management fees, tax advice and tax payment which reduces the net income to £114,614 in 2019/20
18. It is proposed that the Council loans to Aspire (MRH) Ltd the sum of up to £2.1 million at an interest only rate of 5.5%. This rate is based on State Aid advice given a couple of years ago where it was recommended that a new company entering this market, with no track record would expect to be charged an interest

rate of 5.08%. Since this information there have been two 0.25% interest rate raises hence the proposed rate of 5.5%.

19. At the expected borrowing requirement of £1,981,900 the annual loan repayment, by Aspire (MRH) Ltd to the Council would be £109,005 plus officer time spent working for the company, which is estimated to be £4,000 giving a total figure of £113,005 this leaves the company with a surplus of £1,609 (£114,614 - £113,005).
20. The remaining sum of £1,609 would normally be available as a dividend for the shareholder (the Council) however dividends cannot be paid until the council has a positive balance sheet. As costs such as Stamp Duty and Legal fees are included in the purchase price it inevitably means the amount paid is greater than the value of the asset. It is anticipated that within three years of purchase the asset value will have exceeded the amount paid. As an indication Purbeck House prices have increased in capital value by an average of 51% between 2008 and 2018.
21. The Council will, as set out in paragraph 19, receive £113,005 in the first 12 months by way of loan repayment and repayment of officer time. The cost to the Council of borrowing the £1,981,900 on a 10 year interest only loan from the Public Works Loan Board (PWLB) would be £29,729 leaving a surplus (profit) for the Council from this investment of £83,726
22. As the proposal is for a ten year interest only loan, at the end of the period the Council will be required to establish whether they wish the loan to be repaid (and therefore the asset sold) or whether they wish to enter into new borrowing and lending arrangements with the PWLB and Aspire (MRH) Ltd.
23. The current status of this opportunity is that, following the agreement for the double occupancy of the studio apartments, the Leader authorised a 'subject to contract and formal approval' bid of £1.9 million which has been accepted by the vendor.



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10 Individual Student Apartments For Sale

Purbeck House, Purbeck Road, Cambridge CB2 8HY

An opportunity to acquire a substantial portfolio in the centre of the world-renowned city of Cambridge providing secure income with further rental and capital growth potential. Purbeck House comprises a six storey building with 151 purpose-built student apartments, all en-suite and including communal cinema room, common room, laundry, CCTV, and secure bicycle parking.

The Cambridge Student Market

Cambridge is a world-renowned University city with a population of around 125,000 and catchment population of around 560,000. It is a highly affluent city recognised globally for its innovation and technology base, and is forecast to be the fastest growing UK city economy over the next ten years.

(Source: Cities Outlook 2018, Irwin Mitchell).

As well as the top ranking University in the UK Cambridge is also home to Anglia Ruskin University, and a large number of other educational institutions including further education colleges, independent sixth form colleges, language schools, schools of performing arts and theological colleges. Out of a total estimated student population of around 50,000 there are around 15,000 studying full or part time in non-university educational establishments.

Of the estimated 46,000 students in Cambridge requiring some form of accommodation, 22,400 are housed in purpose-built student accommodation (PBSA) with the remainder in shared or family housing. The non-university institutions have very little directly-owned accommodation (around 750 bed spaces among 15,000 students) and therefore rely heavily on the use of private halls.

(Source: Cambridge Centre for Housing & Planning Research – Jan 2017).

PBSA schemes in Cambridge have found a ready market with the best equipped, managed and located sites enjoying very high occupancy rates and strong rental and capital growth over the last number of years. The sale of the 251 bed Brunswick House on Newmarket Road in 2018 for £38 million, reflecting an initial investment yield of 4.76%, set a record for direct let asset student accommodation outside of London/M25, and further demonstrated the strength of the student property market in Cambridge.

Purbeck House

Purbeck House is situated on Purbeck Road, off Hills Road, within 15 minutes walk of Cambridge city centre and many of the University colleges, the mainline railway station and Addenbrookes Hospital. The property adjoins Abbey College's main campus, Homerton College and Hills Road Sixth Form College. Cambridge Leisure centre, including cinema, hotel, bowling, music venue and restaurants is close by.

Purbeck House comprises a six storey building with 151 purpose-built student apartments, all en-suite and including communal cinema room, common room, laundry, CCTV, and secure bicycle parking. The property was built in around 2007. Since 2017 all of the rooms have been let to Abbey College for their international sixth form boarders. It is understood that Purbeck House has enjoyed 100% occupancy since it was completed.

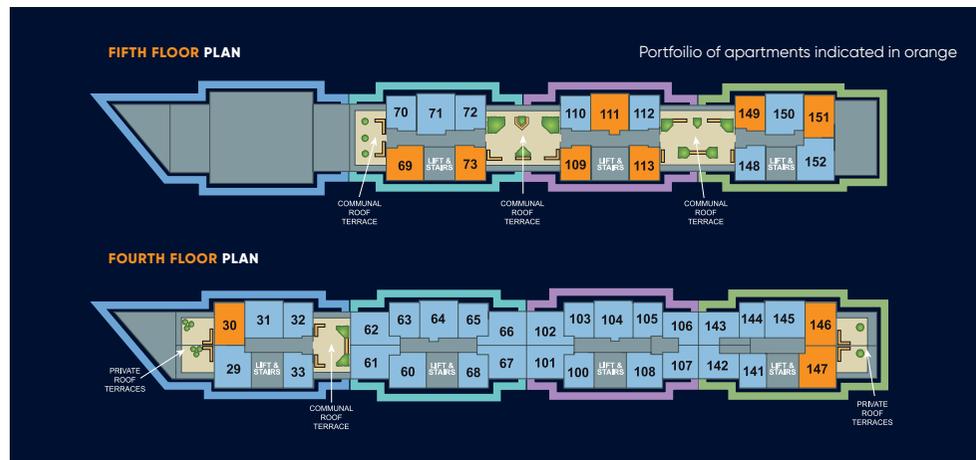


The Portfolio

The portfolio offered for sale comprises ten individual apartments within Purbeck House, all in single ownership. The apartments consist of a range of unit types, some with private balconies, and all are let to Alpha Plus Group Limited (the owner of Abbey College). Details are as follows:

Apartment Number	Apartment Type	Size (Sq Ft)	Rents Payable* Per Week (09/19 – 08/20)	Rents Payable* Per Year (09/19 – 08/20)	EPC Rating
30	E Studio & Terrace	323	£259	£13,364	C
69	A1 Studio	292	£245	£12,740	C
73	A Studio	256	£234	£12,168	C
109	A Studio	256	£234	£12,168	C
111	B 1 Bed Apartment	363	£270	£14,040	C
113	A1 Studio	292	£245	£12,740	C
146	E Studio & Terrace	323	£257	£13,364	C
147	F Studio & Terrace	354	£299	£15,548	C
149	A Studio	256	£234	£12,168	C
151	J Studio	323	£245	£12,740	C
TOTAL			£2,520	£131,040	

*The tenant has agreed that if any of the apartments are used for double occupancy from 01/09/2019 the rents will be subject to an agreed increase. The managing agents will advise on this immediately prior to the beginning of the new academic year.



Tenancies and Management

All the apartments are let on separate tenancy agreements each for a term of five years commencing 01/09/2017 and ending 31/08/2022. The rents are to be paid in three equal instalments on 1st September, 1st January and 1st May (although we understand that the individual landlords are paid out monthly through the managing agents). There are annual rent reviews effective from 1st September each year to the higher of 3.5% or Retail Price Index Linked increase. The tenant may terminate the agreement on 31st July of each year by giving no less than three months' notice to the landlord.

The apartments may only be used by students attending Abbey College, and are subject to a number of occupancy rules which are enforced by the managing agents.

The managing agents for the building, Corporate Residential Management Limited (CRM), are contracted to supply management and letting services to all of the owners. Their fees in respect of this portfolio are calculated at 6% of the total rental income of the portfolio. The agreement is determinable upon 12 months' notice by the owner. Copies of tenancy agreements, and the management agreement are available on request.

All of the apartments in the portfolio are let to Alpha Plus Group Limited (Co Number 438111) which owns and runs Abbey College (www.abbeycambridge.co.uk). Alpha Plus is a private education group which owns and manages 20 schools, nurseries and sixth form colleges across the country (www.alphaplusgroup.co.uk) and had a turnover to the year end 31st August 2018 of £91.1 million and a profit before tax of £21.7 million.

Tenure

Each of the apartments is held by way of a 125 year head lease commencing 01/01/2008 (expiring 31/12/2132), with a current ground rent payable per apartment of £200 per annum which doubles in 2033 and every 25 years thereafter.

The head leaseholder is responsible for the payment of a contribution towards buildings insurance and maintenance of Purbeck House calculated at 1/151 of the overall cost for each apartment.

The service charge payable for each apartment for the year 2018/2019 was around £1,330 and the budget for the year 2019/2020 is around £1,500 per apartment.

Investment Considerations

- An opportunity to acquire a substantial portfolio in the centre of the world-renowned city of Cambridge providing secure income with further rental and capital growth potential.

Let until August 2022 to substantial and established independent education operator.

Annual uplifts in the rent and also an opportunity to receive additional rental income if the apartments are double-occupied.

- A well-managed, modern, purpose-built student block in a highly accessible location – understood to have maintained full occupancy since opening in 2008.

- Recent sales evidence shows apartments in Purbeck House have increased in capital value by an average of 51% between 2008 – 2018 (apartments/maisonettes generally in Cambridge have increased by 52% and in England as a whole by 30% during the same period).

(Source: Land Registry Data)

- Net income 2019/2020 (allowing for service charge, management and ground rent) of around £105,000 (ignoring any double occupancy).

VAT

We understand that VAT is not payable on the purchase price.

Proposal

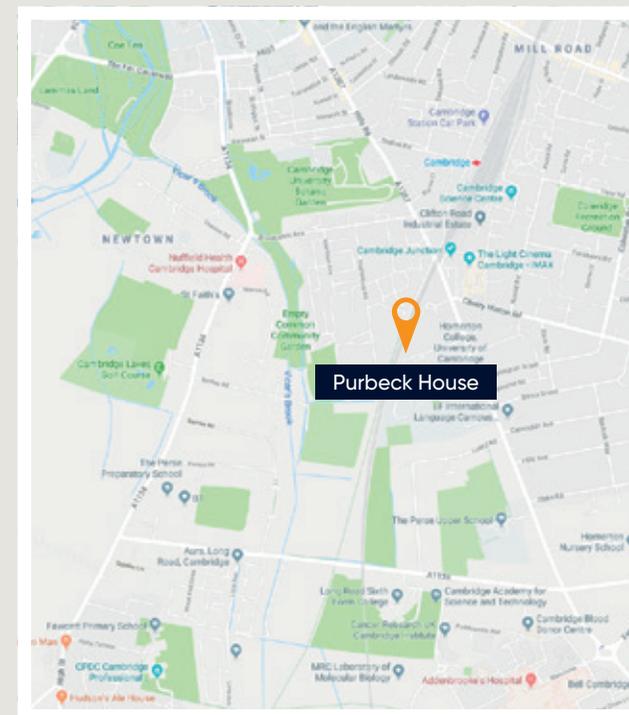
The portfolio of 10 apartments is offered for sale, leasehold subject to the occupational tenancies described above at a guide price of £1.95 Million.

A purchase at this level (ignoring any rental uplift due to double occupancy) would reflect gross yield of 6.72% and a net initial yield of 5.1% (assuming purchaser's costs of 4.8% – based on the sale attracting multiple dwellings relief).

Viewing and Further Information

Strictly through the sole agent, Cheffins:

Philip Woolner | 01223 213666
philip.woolner@cheffins.co.uk



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