

# AGENDA

---

Meeting: **Cabinet**

Place: **Kennet Room - County Hall, Bythesea Road, Trowbridge, BA14 8JN**

Date: **Tuesday 23 July 2019**

Time: **9.30 am**

---

Please direct any enquiries on this Agenda to Stuart Figini, of Democratic Services, County Hall, Trowbridge, direct line 01225 718221 or email [stuart.figini@wiltshire.gov.uk](mailto:stuart.figini@wiltshire.gov.uk)

Press enquiries to Communications on direct lines (01225)713114/713115.

All public reports referred to on this agenda are available on the Council's website at [www.wiltshire.gov.uk](http://www.wiltshire.gov.uk)

---

## Membership:

Cllr Philip Whitehead	Leader of the Council and Cabinet Member for Finance, Procurement and Economic Development
Cllr Richard Clewer	Deputy Leader of the Council and Cabinet Member Corporate Services, Heritage, Arts, Tourism and Housing
Cllr Alison Bucknell	Cabinet Member for South Wiltshire Recovery, Communications, Communities, Leisure and Libraries
Cllr Pauline Church	Cabinet Member for Children, Education and Skills
Cllr Laura Mayes	Cabinet Member for Adult Social Care, Public Health and Public Protection
Cllr Toby Sturgis	Cabinet Member for Spatial Planning, Development Management and Property
Cllr Bridget Wayman	Cabinet Member for Highways, Transport and Waste
Cllr Ian Blair-Pilling	Cabinet Member for ICT, Digitalisation and Operational Assets

---

## **Recording and Broadcasting Information**

Wiltshire Council may record this meeting for live and/or subsequent broadcast on the Council's website at <http://www.wiltshire.public-i.tv>. At the start of the meeting, the Chairman will confirm if all or part of the meeting is being recorded. The images and sound recordings may also be used for training purposes within the Council.

By entering the meeting room you are consenting to being recorded and to the use of those images and recordings for broadcasting and/or training purposes.

The meeting may also be recorded by the press or members of the public.

Any person or organisation choosing to film, record or broadcast any meeting of the Council, its Cabinet or committees is responsible for any claims or other liability resulting from them so doing and by choosing to film, record or broadcast proceedings they accept that they are required to indemnify the Council, its members and officers in relation to any such claims or liabilities.

Details of the Council's Guidance on the Recording and Webcasting of Meetings is available on request. Our privacy policy can be found [here](#).

## **Parking**

To find car parks by area follow [this link](#). The three Wiltshire Council Hubs where most meetings will be held are as follows:

**County Hall, Trowbridge**  
**Bourne Hill, Salisbury**  
**Monkton Park, Chippenham**

County Hall and Monkton Park have some limited visitor parking. Please note for meetings at County Hall you will need to log your car's registration details upon your arrival in reception using the tablet provided. If you may be attending a meeting for more than 2 hours, please provide your registration details to the Democratic Services Officer, who will arrange for your stay to be extended.

## **Public Participation**


Please see the agenda list on following pages for details of deadlines for submission of questions and statements for this meeting.

The full constitution can be found at [this link](#). Cabinet Procedure rules are found at Part 7.

For assistance on these and other matters please contact the officer named above for details

## Part I

### Items to be considered while the meeting is open to the public

Key Decisions Matters defined as 'Key' Decisions and included in the Council's Forward Work Plan are shown as 

1 **Apologies**

2 **Minutes of the previous meeting** (*Pages 7 - 12*)

To confirm and sign the minutes of the Cabinet meeting held on 2 July 2019, previously circulated.

3 **Declarations of Interest**

To receive any declarations of disclosable interests or dispensations granted by the Standards Committee.

4 **Leader's announcements**

5 **Public participation and Questions from Councillors**

The Council welcomes contributions from members of the public. This meeting is open to the public, who may ask a question or make a statement. Questions may also be asked by members of the Council. Written notice of questions or statements should be given to Stuart Figini of Democratic Services [stuart.figini@wiltshire.gov.uk](mailto:stuart.figini@wiltshire.gov.uk) 01225 718221 by 12.00 noon on 17 July 2019. Anyone wishing to ask a question or make a statement should contact the officer named above.

6 **Council Tax Reduction Scheme Review** (*Pages 13 - 34*)

 Report by Executive Director Alistair Cunningham OBE.

7 **Performance Management and Risk Outturn Report: Q4 2018/19** (*Pages 35 - 54*)

Report by Executive Directors Dr Carlton Brand, Alistair Cunningham OBE and Terence Herbert.

8 **Budget Monitoring, Performance & Risk Management 2019/20 Q1** (*Pages 55 - 126*)

Report by Executive Directors Dr Carlton Brand, Alistair Cunningham OBE and Terence Herbert.

9 **Provision of ICT Services to Wiltshire Police** (*Pages 127 - 142*)

Report by Executive Director Dr Carlton Brand.

10 **Proposed Loan to Wiltshire Museum** (*Pages 143 - 148*)

Report by Executive Director Alistair Cunningham OBE.

11 **Enterprise Resource Planning** (*Pages 149 - 156*)

 Report by Executive Director Dr Carlton Brand.

12 **Provision of loan facility for Wiltshire College** (*Pages 157 - 162*)

 Report by Executive Director Alistair Cunningham OBE.

13 **Council house build programme phase 2 update** (*Pages 163 - 170*)

 Report by Executive Director Alistair Cunningham OBE.

14 **Establishing local authority companies** (*Pages 171 - 386*)

 Report by Executive Director Terence Herbert.

15 **Urgent Items**

Any other items of business, which the Leader agrees to consider as a matter of urgency.

**Part II**

**Items during consideration of which it is recommended that the public should be excluded because of the likelihood that exempt**



## information would be disclosed

### 16 Exclusion of the Press and Public

This is to give further notice in accordance with paragraph 5 (4) and 5 (5) of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 of the intention to take the following item in private.

To consider passing the following resolution:

To agree that in accordance with Section 100A(4) of the Local Government Act 1972 to exclude the public from the meeting for the business specified in Item Numbers 17, 18, 19 and 20 because it is likely that if members of the public were present there would be disclosure to them of exempt information as defined in paragraph 3 of Part I of Schedule 12A to the Act and the public interest in withholding the information outweighs the public interest in disclosing the information to the public.

Reason for taking item in private:

Paragraph 3 - information relating to the financial or business affairs of any particular person (including the authority holding that information).

### 17 Enterprise Resource Planning (*Pages 387 - 422*)

 Report by Executive Director Dr Carlton Brand.

This item is exempt due to the financial information provided in the Appendix.

### 18 Provision of Loan Facility for Wiltshire College (*Pages 423 - 424*)

 Report by Executive Director Alistair Cunningham OBE.

This item is exempt due to the business information provided in the Appendix.

### 19 Council House Build Programme Phase 2 Update (*Pages 425 - 430*)

 Report by Executive Director Alistair Cunningham OBE.

This item is exempt due to the financial information provided in the Appendix 1,

2 and 3.

20 **Establishing local authority companies** (*Pages 431 - 460*)

 Report by Executive Director Terence Herbert.

This item is exempt due to the financial information provided in Appendix C and E.

Our vision is to create stronger and more resilient communities. Our priorities are: To protect those who are most vulnerable; to boost the local economy - creating and safeguarding jobs; and to support and empower communities to do more themselves.

## CABINET

---

### MINUTES OF THE CABINET MEETING HELD ON 2 JULY 2019 AT THE KENNET ROOM, COUNTY HALL, BYTHESEA ROAD, TROWBRIDGE, BA14 8JN.

#### Present:

Cllr Baroness Scott of Bybrook OBE (Chairman), Cllr John Thomson (Vice-Chairman), Cllr Pauline Church, Cllr Richard Clewer, Cllr Laura Mayes, Cllr Toby Sturgis, Cllr Bridget Wayman and Cllr Philip Whitehead

#### Also Present:

Cllr Chuck Berry, Cllr Ian Blair-Pilling, Cllr Richard Gamble, Cllr Ruth Hopkinson, Cllr Jerry Kunkler, Cllr Horace Prickett, Cllr Ian Thorn, Cllr Ross Henning, Cllr Robert Yuill, Cllr Gordon King and Cllr Graham Wright

---

#### 85 Apologies

There were no apologies.

#### 86 Minutes of the previous meeting

The minutes of the meeting held on 11 June 2019 were presented.

#### Resolved:

**To approve as a correct record and sign the minutes of the meeting held on 11 June 2019.**

#### 87 Declarations of Interest

There were no declarations of interest.

#### 88 Leader's announcements

The Leader explained the approach to public participation during the meeting.

#### 89 Public participation and Questions from Councillors

There was no public participation.

90 **Service Devolution and Asset Transfer Package - Pewsey**

Cllr Richard Clewer presented a report recommending a final package of services and assets to transfer to Pewsey Parish Council from Wiltshire Council and provided detailed information relating to the financial impact this would have on Wiltshire Council.

Cllr Clewer detailed the final package of the services and assets to be transferred and that all Section 106 monies held or due to Wiltshire Council relating to assets within the Pewsey Parish boundary would be transferred to the Parish Council.

The Leader of the Council welcomed Curly Haskell, Chair of Pewsey Parish Council, who spoke in support of the asset transfer package. He thanked officers of the Council for their help and support during the negotiations with the Parish Council, especially as some areas of the negotiations were challenging. Cllr Klunker, member representing Pewsey expressed his support for the proposals.

Cllr Thomson thanked the Parish Council for supporting the package of transfers. He commented positively about working with the Parish Council on two previous projects, namely the library and leisure centre, and had no doubt that the Parish Council would be successful in operating the assets being transferred.

Cllr Clewer and the Leader of the Council thanked members of Pewsey Parish Council for their involvement in securing the transfer of services and assets detailed in the report and wished them well for the future.

**Resolved:**

- 1. To approve the final list of services and assets listed that will be transferred to Pewsey Parish Council. The inclusion of any open space land is subject to consideration of any objections received following the advertising of the disposal in accordance with statutory obligations.**
- 2. Note the net revenue impact to the Council and acknowledge that the Service Devolution programme benefits of cost savings and avoidance will be realised on a cumulative basis as the programme progresses and as more Towns/Parishes complete the process.**
- 3. Delegate the implementation of the transfer of assets and the service delegation to Alan Richell, the Growth & Investment Director in consultation with the Cabinet Member for Housing, Corporate Services, Arts, Heritage and Tourism, Cllr Richard Clewer.**

*Reason for Decision:*

*To complete the transfer of the package of assets and services to Pewsey Parish Council.*

91 **Avon Mutual - The Development of a Regional Mutual Bank**

Cllr Philip Whitehead presented a report recommending Wiltshire Council support the setting up of a regional bank for the wider Avon region, alongside other local authorities in the region.

Cllr Whitehead explained that the Community Savings Bank Association was established in 2015 to apply international best practice to creating a network of 18 co-operative regional banks in the UK, Avon Mutual being one of the regional banks for the South West area. Funding of £2m would be required to support the establishment of the bank prior to it applying for a banking licence from the Financial Conduct Authority. Wiltshire Council's contribution would amount to £50,000.

The Cabinet noted that the Mutual Bank would help to support residents, develop local economies and promoting economic development, supporting small and medium sized enterprises business growth and improving financial inclusion.

In response to a question from Cllr Thorn, Chair of the Financial Planning Task Group, about the proposal for a grant to the mutual bank in preference to an investment, Cllr Whitehead explained that the Council was limited to providing grants at this stage in the process as the Bank was not at the stage of applying for a banking licence. Once the licence was granted the Council would be able to review additional investments.

In response to additional questions from (i) Cllr Church about the funds currently raised by the Bank; (ii) Cllr Mayes about previously unsuccessful attempts to establish similar banks in the UK; (iii) Cllr Clewer about how the Bank would market its operation to those who struggle to acquire credit; (iv) Cllr Thomson about the range of funds managed by the Local Authority for residents, under the Mental Health Act, that could be transferred to the Bank; Cllr Whitehead explained that (i) the Bank had received 95% of its estimated requirement of £2m; (ii) was confident that the Banks would succeed on this occasion as the Banks infrastructure, both in IT and operationally, has received appropriate investment from the Community Savings Bank Association, with the potential for banks to be located in campus hubs, and remain as retail banks that would be stabilised in the market place;

The Leader requested that future discussions with the Bank should include the services to be delivered to Wiltshire residents and businesses, including pop-up banks in leisure centres and community hubs and offering advice to those struggling with financial issues.

**Resolved: To approve a grant of £0.050m to support the funding of the initial process to accreditation by the Financial Conduct Authority.**

*Reason for Decision:*

- 1. In general, the operation of Avon Mutual Bank in the County would align with strategic priorities and support the local authority's existing policy objectives with regard to social mobility, supporting vulnerable people and supporting the growth of businesses across the County. The operation of a mutually owned bank would be a means to reduce the problems of financial exclusion for households and extend the availability of loans and finance to small and micro-companies which presently struggle to access sufficient finance from mainstream banks. In addition, an initial analysis suggests that there would be social and fiscal benefits.*
- 2. One of the main characteristics of financial exclusion is having no bank account and no access to the financial services which are provided through it. It should also be noted that not having a bank account will affect a person's ability to get a job, arrange accommodation, pay bills and prove their identity. In particular, those claiming Universal Credit will need to have a bank account. A consequence of not having a bank account and financial exclusion is that those households could pay a 'poverty premium' because they have to pay more for accessing basic financial products and services as well as higher costs for paying for energy and insurance. The most recent research estimates that the average cost which poor families bear in acquiring cash and credit, and in purchasing goods and services, can amount to a 'poverty premium' of around £490 a year with the most affected experiencing a poverty premium of £750 a year. To poor households these are significant sums. People on low incomes must often rely on 'sub-prime' credit or high-cost mail order at higher rates of interest because they cannot access mainstream financial services.*
- 3. In terms of the impact of SMEs and the economy, only 2-3% of total bank lending in the UK goes to SMEs despite SMEs accounting for 99.9% of all businesses, 60% of employment, and 40% of annual GDP in the UK. Lower rates of SME lending correlate with higher rates of SME failure. Local regional banks with decision making autonomy and local knowledge have an advantage and thus are able to lend far more to SMEs.*
- 4. Restoration of the trust in banks since the financial crisis is key to ensuring that businesses and consumers have the confidence to seek access to finance that they require to make the most of economic opportunities. The Avon Mutual Bank's model redresses this as the customers are also the shareholders thus the Board is directly accountable to the customers.*

92 **Annual Governance Statement**

Cllr Richard Clewer presented the draft Annual Governance Statement for 2018/19 for comment before final approval is sought from the Audit Committee on 24 July 2019.

Cllr Whitehead reported that the Audit Committee, at its meeting on 26 June 2019, had considered the draft Statement and made a number of comments which would be incorporated in the final document and considered further by the Audit Committee on 24 July 2019.

**Resolved:** To note the draft Annual Governance Statement 2018/19 and that it will be revised in the light of the comments made by the Audit Committee on 26 June 2019, prior to final approval by the Audit Committee and publication with the Statement of Accounts and Senior Information Risk Owner Annual Report at the end of July 2019.

*Reason for Decision:*

*The Council is required, as part of its annual review of the effectiveness of its governance arrangements, to produce an Annual Governance Statement (AGS) for 2018/19. This will be signed by the Leader of the Council and the Corporate Directors after final approval by the Audit Committee on 24 July 2019. The AGS will form part of the Annual Statement of Accounts for 2018/19.*

93 **Wiltshire Council Adoption Service: 2018-2019 End of Year Cabinet Report**

Cllr Laura Mayes presented the report which provided a year-end report to Cabinet about the performance of the Adoption Service within Wiltshire Council for the period 1 April 2018 to 31 March 2019. The report also informed Cabinet about the effectiveness of Adoption West.

Cllr Mayes explained that it is a requirement of the condition of registration that Cabinet is satisfied the Adoption Agency complies with the conditions of registration, is effective and is achieving good outcomes for children. She commented on the management of the Adoption Service, the role of Adoption West, the Wiltshire Adoption Scorecard, the numbers of children requiring adoptive families and those already placed with families and the recruitment and approval of adopters by Adoption West.

The Cabinet noted that following an Ofsted inspection of Children's Services in July 2015, which received a decision of Requires Improvement, the Service was now performing well and exceeding national targets in a number of areas. Cllr Mayes and the Leader of the Council thanked all the staff involved in the Adoption Service for their hard work in achieving excellent outcomes for the children in Council care.

Matters highlighted in the course of the discussion included: the national database of adopters; the early preparations for adoption cases with Adoption West; the allocation of placements to suitable adopters outside of the Council boundary; the approach used to work with foster carers with a view to becoming adopters and the rescission of Placement Orders.

**Resolved:** That the Adoption Service 2018/19 Year End Report is noted and accepted.

*Reason for Decision:*

*Wiltshire Council is an Adoption Agency registered with Ofsted. The 2014 Adoption Minimum Standards (25.6) and 2013 Statutory Guidance (3.93 and 5.39) describe the information that is required to be regularly reported to the executive side of the local authority to provide assurance that the adoption agency is complying with the conditions of registration whilst being effective and achieving good outcomes for children and service users.*

94 **Urgent Items**

There were no urgent items.

(Duration of meeting: 9.30 - 10.20 am)

These decisions were published on the 4 July 2019 and will come into force on 12 July 2019

The Officer who has produced these minutes is Stuart Figini of Democratic Services, direct line 01225 718221, e-mail [stuart.figini@wiltshire.gov.uk](mailto:stuart.figini@wiltshire.gov.uk)

Press enquiries to Communications, direct lines (01225) 713114/713115



**Wiltshire Council**

**Cabinet**

**23<sup>rd</sup> July 2019**

---

**Subject: Council Tax Reduction Scheme Review**

**Cabinet member:** Cllr Philip Whitehead – Leader of the Council and Cabinet Member for Finance, Procurement and Economic Development

**Key Decision: Yes**

---

## **Executive Summary**

In 2013 Wiltshire Council introduced a local Council Tax Reduction Scheme which has been subject to a number of amendments since inception to bring it in line with other welfare benefits. Changes to the scheme's operation require consultation and the purpose of this report is to set out proposals for consultation to further adapt the scheme to improve administration and accommodate the effects of Universal Credit.

This report firstly describes costed options for changes to the scheme. These will then be subject to consultation and the results of the consultation will be brought back before Cabinet in time for the calculation and setting of the tax base for council tax purposes in time for implementation in April 2020.

It also sets out the financial impact of the current scheme and the current level of debt owed by those already in receipt of Council Tax Reduction in order to promote discussion regarding the generosity of the current scheme for those of working age.

## **Proposal(s)**

The report sets out five options for Cabinet to determine one option as the basis for consultation. The results will be reported back to Cabinet in November 2019.

## **Reason for Proposal**

Since 2013 the Council has operated two schemes to determine entitlement to council tax reduction. There is a default scheme for those of pensionable age, Council Tax Benefit and a local scheme offering a Council Tax Reduction for those of working age. Both schemes are affected by the roll out of Universal Credit which is managed by the Department of Work and Pensions (DWP) but the most significant impact has been felt by those of working age.

The introduction of Universal Credit has had a number of effects. It has changed the relationship between the council and the claimant, who in the past relied upon the council for all their housing costs. Now Universal Credit includes housing costs for the majority of tenants, lessening both the information local authorities hold and the urgency with which customers once engaged with local authorities. It is a benefit that that can be used to top up a low income. It can be claimed by those temporarily out of work as well as those unable to work. Around one third of all households in receipt of council tax reduction are already in receipt of Universal Credit with the expectation that another two thirds will migrate over the next four or five years. The overall impact of migration upon council services will be significant as many of these customers are also supported by Adult Social Care, Mental Health and Learning Disabilities Teams and the Court of Protection Team.

The sums paid to those in receipt of Universal Credit, in terms of the basic living allowances have also been frozen for the last three years, when in real terms, council tax has increased by 13%.

*According to a recent report by the Institute for Fiscal Studies “There are still substantial cuts planned for working-age benefits in the next years, especially because of the move from the ‘legacy’ benefits system to the overall less generous (in entitlements) universal credit system, which is now expected only to be fully rolled out by 2023–24,” it said.*

*“In combination with cuts to tax credits, this means that benefit entitlements are likely to shrink in real terms, pushing down the incomes of poorer households.”*

Methods of exchanging information between local authorities and the DWP have become more sophisticated. The point has been reached where much of the information sent populates the software system used by Revenue and Benefits. Typically 5,000 notifications are imported from the DWP each month for those on Universal Credit, alone. The current council tax reduction scheme is too sensitive to accommodate those changes. Each notification requires the claim to be looked at. Consequently claims for council tax reduction are subject to frequent amendments, often as a result of a relatively minor change in income. The council tax reduction scheme needs updating to better accommodate these changes.

In conjunction with the introduction of the local scheme in 2013 changes were made to other council tax discounts and exemptions over which the council were given discretion to change to best suit the authority. These changes offset some of the costs of the current scheme. The council have already maximised methods of income generation from local taxation and so any proposal to amend the scheme will have a direct impact upon the council's budget.

The estimated cost of the scheme in 2020-21 will be £24.65 million before any change is made to the scheme (still less than the scheme cost in 2013-14 when it cost £27million). This report sets out proposals for consultation to change the scheme. It provides costed options for a local council tax scheme which may offer better support to those who most need help, particularly those in receipt of Universal Credit. In doing so the council could minimise the administrative costs of maintaining claims for council tax reduction and the collection of arrears. Any proposal to increase the generosity of the scheme will however impact upon the formula used to calculate the tax base and will reduce the tax base which will have an impact upon all precepting authorities and levels of precepts.

**Becky Hellard**  
**Director of Finance and Procurement.**

## Wiltshire Council

### Cabinet

23 July 2019

---

**Subject:** Council Tax Reduction Scheme Review

**Cabinet member:** Cllr Philip Whitehead – Leader of the Council and Cabinet Member for Finance, Procurement and Economic Development

**Key Decision:** Key

---

### Purpose of Report

1. This report provides a series of options for consideration and consultation in order to offer an appropriate, local, means tested, method of calculating a reduction in council tax to those on a low or fixed income, by April 2020, and meet the Government's recommendations for consulting upon those options, with a variety of stakeholders.

### Background

2. Currently almost 24,500 households in Wiltshire receive full or partial help with their council tax through the current scheme amounting to an estimated £24 million for the current financial year. Precise numbers are provided in Appendix 1 but the caseload has fallen since the local scheme was introduced in 2013-14 when almost 29,000 households qualified for a reduction in their council at a cost of £27million.
3. Welfare reform and efforts to reduce the cost of the welfare bill resulted in the abolition of a national council tax benefit scheme with effect from April 2013 for working aged households. The council currently applies the national scheme to those of pensionable age and a locally designed scheme for those of working age.
4. Currently 43% of households who receive council tax benefit are of pensionable age. Entitlement to a reduction in their council tax is determined by the national scheme where the rules are set by government. This scheme is also known as the 'default scheme', where the rules determine the means, criteria and levels of reduction up to 100% of the council tax due. Currently 10,500 pensioner households receive a means tested council tax reduction.
5. Analysis of the remaining 57% of caseload suggests that around 6,150 householders are deemed vulnerable and are in receipt of multiple benefits

which mean they currently receive a full council tax reduction. The remainder, around 7,800 recipients are either working or looking for work and are expected to contribute at least 20% toward their council tax. It is the degree of support offered to this group upon which this report will focus. Of the 14,000 working age household claiming CTR households, 5,000 are currently in receipt of UC.

6. Although the local scheme was successfully launched in 2013 efforts were made to keep the scheme cost neutral. The result was that many working age households were expected to make a contribution toward their council tax for the first time. Whilst this approach was widely adopted by many local authorities, it was not anticipated that the further welfare reforms and the freezing of benefit levels, specifically those in receipt of Universal Credit, would impact on the ability of a household to meet its basic costs.
7. Universal Credit has offered those claimants who can, greater flexibility in terms of working and claiming. The consequence of zero hours contracts and the variability in monthly income has, however resulted in a huge increase in the reporting of these changes by the DWP to local authorities, on which the local authority is expected to act. Typically Wiltshire Council receives 5,000 notifications per month.
8. This supply of information often leads to the amendment of any entitlement to council tax reduction, the production of new bill and the recalculation of instalments. In some cases this may happen four or five times a year. This causes confusion for the customer and a reluctance to pay.
9. As a result of changes to the scheme in 2015, a fund was created to award a discretionary council tax reduction to those who were least able to pay their council tax. Appendix 4 explains how much this scheme has cost since its introduction.

### **Main Considerations for the Council**

10. The council has to publish a draft local scheme, (if it intends not to use the default scheme) on which it must consult and ratify before full council and before implementation in January 2020 and deployment from April 2020.
11. In order to provide options for consideration the data currently held within the revenues and benefits system (Northgate) has been analysed using specially designed software. Analysis has enabled the modelling of planned changes and the costs of a range of options, shown at Appendix 2.

Through analysis, and engagement with neighbouring authorities as well as national bodies, five possible options and been offered for consideration, and within these options there are potentially variations on a theme. Costings for the options are set out in detail at Appendix 1.

1. Do nothing and leave the current scheme for the working aged as it is.
  2. Enhance the existing scheme to better accommodate those in need to meet up to 90% of the council tax for those of working age who do not fall within a protected group.
  3. Enhance the existing scheme to better accommodate those in need to meet up to 100% of the council tax for those of working age who do not fall within a protected group.
  4. In addition to the current local scheme offer a new version to those on Universal Credit whereby the households' income falls into one of a number of bands. Entitlement will only be amended when income increases or falls below the sum set out in those bands. In this case we can also consider offering those with the lowest income a maximum of 80% council tax reduction.
  5. Introduce a combination of the options whereby the existing scheme is enhanced to include a greater percentage of the council tax and a separate scheme is introduced for those on Universal Credit where entitlement is determined by bands of income.
12. Government guidelines suggested any local scheme should:
- be relatively simple to understand from both the customer's perspective and from an administrator's perspective.
  - must minimise the impact on vulnerable groups such as the disabled and those entitled to either war disablement or war widow's pensions.
  - support the aim of making work pay.
  - be feasible in terms of adapting existing software.
  - be fully operational by January 2020 and embedded for the purposes of tax base setting in autumn, 2019.
13. In addition to these changes it should be noted that the overall council tax outstanding at the end of 2018/9 rose from £12.5 to £14.5m. Whilst there are many factors influencing this figure the sum due from those already in receipt of CTR rose from £3.9 to £4.2million. This information is set out in Appendix 3 to the report.

## **Consultation and Communication**

14. If the decision is taken to introduce a local scheme the Government have set out a series of steps that the council will need to follow:

*Before making a scheme the billing authority must in the following order:*

*(a) consult any major precepting authority which it has the power to issue a precept to it  
(b) publish a draft scheme in such a manner as it thinks fit, and  
separate consult such persons as it considers are likely to have an interest in the operation of  
the scheme*

*(This would include specifically the Police and Fire authorities as well as precepting  
authorities, staff, members, customers, and the voluntary sector, prior to finalising the  
scheme before full council)*

15. It is proposed that the Council undertakes consultation, regarding the proposed changes, as it has done in the past. The key stakeholders identified are:

- Current claimants affected
- All precepting bodies, (Parish/Town Councils, Police and Fire)

16. It is proposed that precepting bodies' attention is drawn to this matter by writing to them all with a link to the Council's website. Consultation will also extend to meeting with key claimant representative groups, such as Citizens Advice Bureau (CAB); as well as direct feedback facilities at hub offices and via the website. It is also proposed that the scheme options will also be raised for publication and awareness at Area Committees in the coming months.

Following consultation it is proposed to report back to Cabinet in November 2019 for a final decision to be taken ahead of the timetable for implementation in time for 1<sup>st</sup> April 2020 and those affected will be contacted.

17. Reference has already been made to the Council Tax Discretionary Fund. Traditionally this fund has been used to fund those in severe financial hardship and to encourage the payment of on-going debt through the writing off of historic debt. This discretionary scheme will continue alongside other local welfare schemes operated by the service. These include Discretionary Housing Payments and Local Welfare Provision.

## **Environmental and climate change considerations**

18. None

## **Equalities Impact of the Proposal**

19. An EQIA will not be completed until the options have been debated and have been the subject of a full consultation exercise.

## **Risk Assessment**

20. Changing any new scheme, specifically a local scheme, carries with it the inherent risk, in terms of its design, to minimise challenge and dispute whilst offering a simple and cost effective solution.
21. To reduce the risk of none compliance and / or acceptance the proposed schemed must be determined as soon as is practical in order that it can be the subject of consultation and impact analysis. Through consultation, awareness of the impending changes can be raised with those affected to help them prepare, as well as afford the Council time to develop software solutions, procedures and the communications to deliver this change.
22. The council has managed it's financial risk resulting from the introduction of a local scheme 2013 and met the challenge of collecting income from those entitled to a partial reduction in their council tax. However this risk is made greater going forward by the plans to move those households on legacy benefits to Universal Credit, either by natural or managed migration which will exacerbate the challenges already faced by the team and other services including Housing Management and Adult Social Care.

### **Risks that may arise if the proposed decision and related work is not taken**

23. There is a risk of inheriting further uncollectable council tax debt if the opportunity is not taken to review the current scheme.
24. Maintaining the default scheme as it is will mean the financial burden will continue to fall on those households whose income is fixed, in some cases falling, and in many cases are already in debt to the council.

### **Risks that may arise if the proposed decision is taken and actions that will be taken to manage these risks**

25. The Revenues and Benefits team have a reputation for delivering change projects. They are suitably equipped and have the skills, knowledge and connections with other service providers across the council to model and anticipate the impact of any change on mutual customers. Whilst the team as a whole manage debt and payment plans appropriately the scale in terms of the number of households in debt, the size of debts and limited ability to recover debt would place additional pressures and costs on the team, in terms of the need to recruit more staff to manage the most labour intensive part of income management, debt recovery.



<b>Risk</b>	<b>Action to mitigate the risk</b>
1.Communication	Corporate communications plan and consultation
2.Cost	Analyse all possible options (See supporting papers)
3.Complexity	Ensure understanding of staff & customers who will have to operate and claim for a growing number of benefit schemes

## **Financial Implications**

26. It has been and will continue to be difficult to anticipate demand for the scheme. From the outset it was believed that caseload, particularly pensioners would grow. In fact the number of households claiming council tax reductions has fallen (from 29,000 in 2012-13 to 24,500) and there is an expectation that numbers will continue to fall. A number of factors are at play including the buoyant job market in Wiltshire, however it is anticipated that with the expected growth in new homes, the caseload will plateau at between 24,000-25,000 claims. This is based on the assumption that there is no significant increase in unemployment.
27. If Option 2,3 or 5 were adopted then based on caseload estimates, provision will need to be made for an increase in the cost of the scheme amounting to £1.9m for financial year 2020-21 plus any inflationary factor applied to the council tax. Any change to the scheme would directly affect the formula used to calculate the tax base and affect the overall number of band D dwellings for tax base setting purposes which in turn would have an impact on the Council's medium term financial strategy (MTFS) as current assumptions are based on the scheme remaining unchanged. Any change would therefore need to be built into the MTFS and budget setting process for 2020-21 and onward not only for Wiltshire Council but the Police, Fire and parishes.
28. The net cost of the options are set out in the table below and further explained in Appendix 1. These are based on estimated caseload at March 2020 before any changes are made and before any inflation factor, at an estimated cost of £23.9 million.

Option	Proposed Change	Financial impact of proposal	Total Estimated cost of scheme in 2020-21
Option 1	The scheme remains unchanged	The scheme will increase only by inflation estimated to be 3%, adding £750,000	£24.65m
Option 2	The scheme is changed to offer up to a 90% reduction	This scheme will add £1.1m to the current scheme plus the inflation factor	£25.75m
Option 3	The scheme is changed to offer up to a 100% reduction	This scheme will add £1.9m to the current scheme plus the	£26.55m

		inflation factor	
Option 4	The scheme is changed for those on UC to offer income bands, but designed to be cost neutral	The scheme will only be impacted by the inflation factor estimated to be £750,000	£24.65m
Option 5	The scheme is changed to include a combination of these factors	The scheme could cost up to £1.9m plus inflation factor	£26.55m

29. The implications of choosing Option 2, 3 and 5 are significant for both major precepting authorities (Police and Fire Services) as well as town and parish councils. It is vital therefore that the full impact of the proposals is discussed with precepting authorities as part of the consultation process. The outcomes will be reported alongside the Cabinet paper planned for December 2019 and inform the tax base setting process.

### **Legal Implications**

30. The Government has made provision that a local scheme may be introduced under the discretionary power bestowed upon local authorities by Section 13 (a) of the Local government Finance Act 1992 and will be used in conjunction with the default scheme. Proposals require the drafting and publication of a local scheme for non-pensioners which combines the needs for simplicity, savings and incentives to work.

### **Options Considered**

31. The options for consideration are set out in Appendix 1.

### **Conclusions**

32. The landscape of welfare benefits has greatly changed since the introduction of the local council tax reduction scheme in 2013. Perhaps the most significant issue has been the freezing of national benefits for the last three years. The impact has been felt across the Council as a whole. At the same time households on legacy benefit continue to experience other reductions in welfare benefits, further limiting their ability to pay council tax.

33. The council tax reduction scheme was designed to limit the financial impact of paying council tax on those least able to afford it, but despite the schemes provisions, it is now considered too sensitive to fluctuation in a households' income. The proposals for consultation are made based on a better understanding of Universal Credit and concerns regarding the ability to

collect outstanding council tax from those already receiving a council tax reduction.

34. Whilst there is no simple council tax reduction scheme any adaptation of the must uphold the principle that any scheme should be equitable across all groups and offer incentives for those who can to work, wherever possible. It is hoped that that these proposals will lead to the revision of the scheme and provide a more appropriate scheme for Wiltshire residents.

## Recommendations

35. Of the options provided in Appendix 1 it is recommended that the consultation seeks opinions on Option 4. The consultation will therefore ask two main questions. The first is whether those working age households should pay less council tax and secondly, whether the scheme should be adapted to include income bands to simplify the scheme and avoid unnecessary adjustments.

**Becky Hellard**  
**Director of Finance and Procurement**

---

Report Author: Ian P Brown, Head of Revenues and Benefits  
(ianp.brown@wiltshire.gov.uk, 01225 716701)

Date of report: 19<sup>th</sup> June 2019

**Background Papers**  
**Financial models analysing impact of Options 1-5.**

## Appendices

Appendix 1 = Scheme Options

Appendix 2 = Caseload and Costs for four options.

Appendix 3 = Breakdown of outstanding council tax debt, debt owed by those on CTR and debt owed by those on CTR and UC

Appendix 4 = Annual expenditure on council tax discretionary scheme.

**CTS Modelling**

**Appendix 1**

Base data @ 17/06/19	Caseload: Pension Age: 10511 Working Age Employed: 2399
-------------------------	---

	Working Age Vulnerable: 4464 (including those in receipt of PIP, War Disablement Pension or War Widows Pension) Working Age Other: 5349			
Note:	CTR posted @ 01/04/19 = £24,900,384. Caseload and cost of the scheme is expected to fall to £23.9 during the current financial year			
Caseload trend:	<b>April 2012</b>	<b>April 2019</b>	<b>April 2020(est)</b>	<b>Notes</b>
All claims	30388	24,423	24559	There is no reason to expect any greater increase in caseload, which has been gradually falling since 2014 other than that generated by the building of new homes (Est 0.5%)
Pensioners	12756	10,511	10545	
Vulnerable	1252	6164	6164	
Working age on benefits	10153	5,349	5379	
Other	6227	2,399	2471	
	<b>Scheme Description</b>			<b>Notes</b>
<b>Option 1</b>	<p>Leave scheme as is but include inflationary factor of 3%.</p> <p>Those with Capital/assets of over £6,000 will not be entitled to CTS</p> <p>Non-Dependant deduction standardised at £2.50 per week</p> <p>Earnings taper £0.20 deduction for every £1.00 earned, above need assessment.</p> <p><i>(for cases of hardship we would still offer the discretionary council tax reduction scheme which currently costs £150k per annum)</i></p>			<p>Estimated net cost will be £750K more based on a 3% increase but this option will miss the opportunity to simplify the scheme and still mean collecting council tax from households on the lowest income.</p> <p>This proposal will mean the CTR scheme as a whole will cost approximately £24.65m in 2020-21.</p>
Note				
<b>Option 2</b>	Maximum eligible amount is increased to 90% of the Council Tax chargeable to all except those in protected groups who would retain a 100% reduction (which includes those in receipt of disability premium and war widows disablement pension)			Will be a net cost of £1.1 million (plus inflation) but miss the opportunity to simplify the scheme and

	<p>Those with Capital/assets of over £6,000 will not be entitled to CTS</p> <p>Non-Dependant deduction standardised at £4 per week</p> <p>Earnings taper £0.20 deduction for every £1.00 earned, above need assessment.</p> <p><i>(for cases of hardship we would still offer the discretionary council tax reduction scheme which currently costs £150k per annum)</i></p>	<p>mean the team continue to face the two challenges of debt collection and coping with the reported changes to UC.</p> <p>This proposal will mean the CTR scheme as a whole will cost approximately £25.75 in 2020-21</p>
<p><b>Option 3</b></p> <p><i>Notes</i></p>	<p>Maximum eligible amount is increased to 100% of the Council Tax chargeable limit to</p> <p>Those with Capital/assets of over £6,000 will not be entitled to CTS</p> <p>Non-Dependant deduction standardised at £4 per week</p> <p>Earnings taper £0.20 deduction for every £1.00 earned, above need assessment.</p> <p>Approx no. of claims affected: 5500</p> <p>*It is less likely that there would need for a discretionary council tax reduction scheme and the current costs of £150K would be offset against the additional cost of this scheme.</p>	<p>Will be a net cost of £1.9 million* (plus inflation). This will reduce the administrative burden and avoid the need to instigate debt recovery for those already receiving CTR.</p> <p>This proposal will mean the CTR scheme as a whole will cost approximately £26.55M in 2020-21</p>
<p><b>Option 4</b></p>	<p>Maintain the existing scheme but offers those on Universal Credit a scheme based on the household income which offers 80% maximum entitlement but limits the number of adjustments made to the claim each year.</p> <p>Entitlement will be based on a number of income 'bands'.</p> <p>Those with Capital/assets of over £6,000 will not</p>	<p>The scheme will be designed to be cost neutral other than to include a factor for the overall increase in council tax.</p> <p>This proposal will mean the CTR scheme as a</p>

<p><i>Notes</i></p>	<p>be entitled to CTR</p> <p>Non-Dependant deduction standardised at £4 per week</p> <p>Approx no. of claims affected: 5,500</p> <p><i>(for cases of hardship we would still offer the discretionary council tax reduction scheme which currently costs £150k per annum)</i></p> <p><i>This option will require more specialist software changes with a one off cost of £10,000.</i></p>	<p>whole will cost approximately £24.65m in 2020-21.</p> <p>It will mean that some households on UC will have to pay council tax and there will still be the challenge of recovering debt from households who are on a very low income, but the costs and impact of changes to UC entitlement will be reduced.</p>
<p><b>Option 5</b></p>	<p>Maintain the existing scheme and provide a separate scheme for those on Universal Credit which offers up to 100% maximum entitlement but limits the number of adjustments made to the claim each year.</p> <p>Entitlement will be based on a number of income 'bands'.</p> <p>Those with Capital/assets of over £6,000 will not be entitled to CTR</p> <p>Non-Dependant deduction standardised at £4 per week</p> <p>Approx no. of claims affected: 5,500, there should however be less reliance on the discretionary council tax reduction scheme.</p> <p><i>This option will require more specialist software changes with a one off cost of £10,000.</i></p>	<p>This scheme would be a net cost £1.9 million* (plus inflation). This option will reduce the administrative burden, once the claim is up and running and reduce the need to instigate debt recovery for those already receiving CTR and UC but the team will have to operate another scheme.</p> <p>This proposal could mean the CTR scheme as</p>

		would cost approximately £26.55M in 2020-21
--	--	---

This page is intentionally left blank



## Appendix 2 Caseload and costs of each proposal

Breakdown of current scheme					Total Caseloa Estimated Cost
	Pensioner	Vulnerable	Working age and working	Working age other	Total
No of claims	10511	6164	2399	5349	24423
Award £	10,876,678	7,366,692	1,599,137	4,715,527	<b>£24,558,034.00</b>
Weekly Award	19.79	22.91	12.75	16.86	19

<b>Proposal 1 A 3% increase in council tax and no other change to the scheme.</b>					
	Pensioner	Vulnerable	Working age and working	Working age other	Total
No of claims	10,545	6,164	2,412	5,363	24,484
Weekly Award	20.44	23.61	13.31	17.4	19.6
Award £	11,275,019	7,567,666	1,679,055	4,870,235	<b>£25,391,975.00</b>
<b>N.B.</b>	This proposal will add around £750,000 to the cost of the scheme in 2020-21.				

<b>Proposal 2 Based on a 3% increase in council tax and increase in entitlement from 80% to 90% for working age</b>					
	Pensioner	Vulnerable	Working age and working	Working age other	Total
No of claims	10545	6164	2452	5371	24532
Award £	11,275,020	7,567,666	2,026,119	5,535,468	<b>£26,404,273.00</b>
<b>N.B.</b>	This scheme will cost <b>£1,012,298</b> more than the current scheme, after inflationary pressures are applied				

<b>Proposal 3 Based on a 3% increase in council tax and increase in entitlement from 80% to 100% for working age</b>					
	Pensioner	Vulnerable	Working age and working	Working age other	Total
No of claims	10545	6164	2471	5379	24559
Award £	11,175,020	7,567,666	2,377,171	6,202,436	<b>£27,322,293.00</b>
<b>N.B.</b>	This scheme will cost £1,930,318 more than the current scheme after inflationary pressures are applied and as the scheme becomes more generous more households will qualify				

<b>Proposal 4 Based on a 3% increase in council tax and the introduction of income bands for those of working age to minimise</b>					
	Pensioner	Vulnerable	Working age and working	Working age other	Total
No of claims	10545	6164	2412	5363	24484
Award £	11,275,019	7,567,666	1,679,055	4,870,235	<b>£25,391,975.00</b>
<b>N.B.</b>	This scheme could be cost neutral once full analysis of income is made and the income bands set accordingly				

This page is intentionally left blank

**Council Tax debt**  
**Broken down into the elements owed by those households in receipt of CTR**

Appendix 3

2017-18	All cases	%age of total debt	CTR cases	%age all cases*	Working Age	%age all cases*
			All			
Summonsed	£8,552,752.31	66.39%	#####	30.54%	£2,140,484.56	25.03%
Unsummonsed	£4,330,370.52	33.61%	#####	31.81%	£1,080,813.35	24.96%
<b>Gross Debt</b>	<b>£12,883,122.83</b>		<b>#####</b>	<b>30.97%</b>	<b>£3,221,297.91</b>	<b>25.00%</b>

2018-19	All cases	%age of total debt	CTR cases	%age all cases	Working Age	%age all cases
			All			
Summonsed	£10,673,815.84	72.68%	#####	27.86%	£2,388,083.97	22.37%
Unsummonsed	£4,011,469.03	27.32%	#####	28.94%	£860,723.13	21.46%
<b>Gross Debt</b>	<b>£14,685,284.87</b>		<b>#####</b>	<b>28.15%</b>	<b>£3,248,807.10</b>	<b>22.12%</b>

\* cases mean the number of households with one or more debt that contribute toward the overall gross arrears.

Year	Council tax outstanding at year end	Ctax o/s where UC has been paid to household	No. of cases
2012-13	£12,119,946.99	0	
2013-14	£12,411,082.28	0	
2014-15	£12,613,779.43	£555.79	1
2015-16	£12,239,562.52	£128,316.62	451
2016-17	£11,710,945.38	£267,088.94	869
2017-18	£12,883,122.83	#####	3587
2018-19	£14,685,284.87	#####	2795

This page is intentionally left blank

## Appendix 4

### Council Tax Discretionary Reductions

Year	Discretionary Council Tax Reduction awarded each year
2015- 16	£122,876.00
2016-17	£147,904.00
2017-18	£126,418.00
2018-19	£141,958.00

This page is intentionally left blank

**Wiltshire Council**

**Cabinet**

**23 July 2019**

---

**Subject: Performance Management and Risk Outturn Report: Q4 2018/19**

**Cabinet member: Cllr Philip Whitehead – Leader of the Council and Cabinet Member for Finance, Procurement and Economic Development**

**Key Decision: Non Key**

---

### **Executive Summary**

This report provides an update on performance against the stated aims in the Council's Business Plan 2017-27. The information provided includes key measures as well as the Council's strategic risk register.

### **Proposals**

Cabinet to note updates and outturns

1. Against the measures and activities ascribed against the Council's priorities.
2. To the strategic risk register.

### **Reason for Proposal**

The current corporate performance framework compiles measures used to monitor progress in service areas against planned objectives that relate to the goals laid out in Wiltshire Council's current Business Plan 2017-27.

The strategic risk register captures and monitors significant risks facing the Council: in relation to significant in-service risks facing individual areas and in managing its business across the authority generally.

**Dr Carlton Brand, Alistair Cunningham OBE, and Terence Herbert,  
Corporate Directors**

**23 July 2019**

---

**Subject: Performance Management and Risk Outturn Report: Q4 2018/19**

**Cabinet member: Cllr Philip Whitehead – Leader of the Council and Cabinet Member for Finance, Procurement and Economic Development**

**Key Decision: Non Key**

---

### **Purpose of Report**

1. This report provides an update on the progress against the stated aims in the Council's Business Plan. It includes measures from the corporate performance framework as well as the latest version of the Council's strategic risk register. This report covers the period January to March 2019.

### **Relevance to the Council's Business Plan**

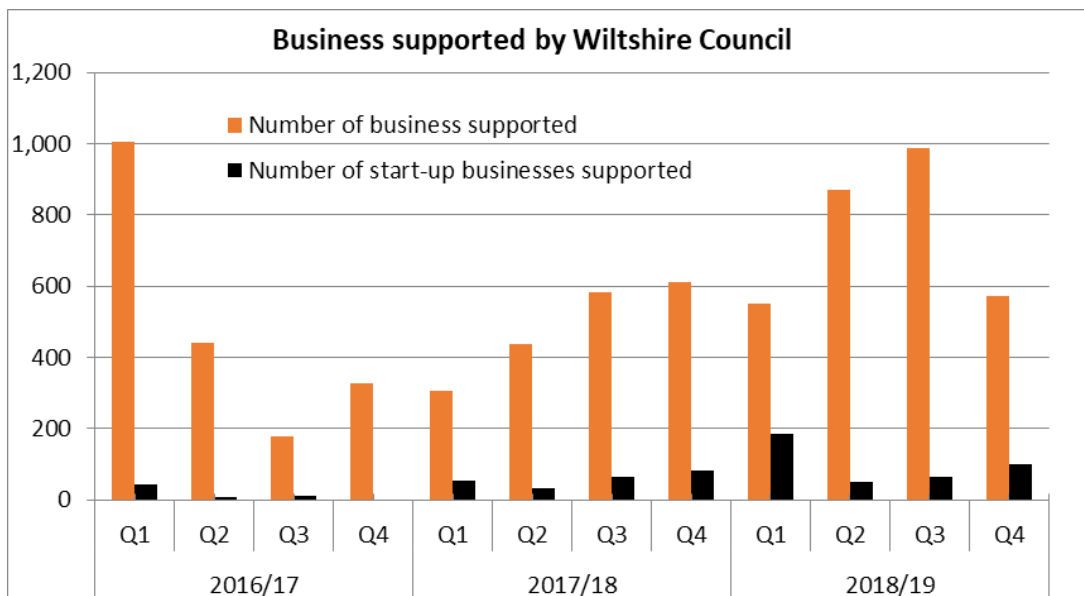
2. This report updates Cabinet on the performance against each of the stated goals contained in the Business Plan 2017 to 2027 at the end of quarter four 2018/19.

### **Overview of outturns**

#### **Priority 1.1 Growing the Economy – Highly Skilled Jobs**

3. Through various initiatives Wiltshire Council aims to grow the skills base and support businesses to deliver high value jobs and commercial opportunities. In the full financial year nearly 3,000 businesses have been supported through the work of the Employment and Skills service and The Enterprise Network and Salisbury Recovery Teams, an increase of more than 50% from 2016/17. Start up businesses make up 13.5% of all businesses supported, the highest proportion in the last three years.

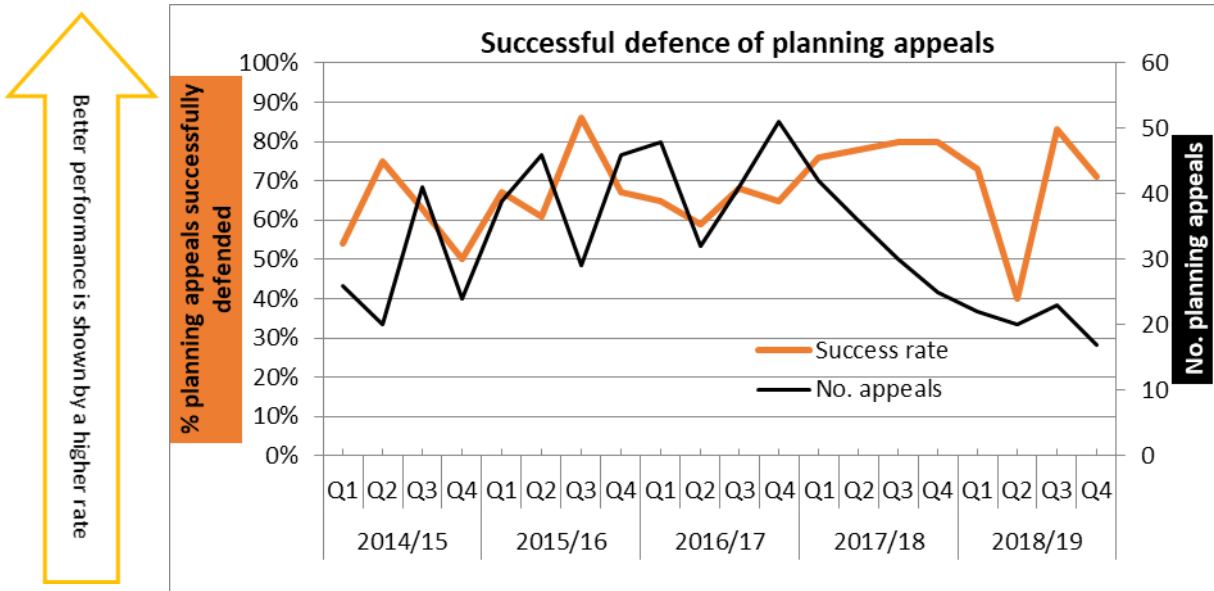




Better performance is shown by a higher number

**Priority 1.2 Growing the Economy – Sustainable Development**

- Wiltshire Council's Business Plan states that sustainable development will be achieved by delivering development where it is needed and in accordance with Wiltshire's Core Strategy. Making the right planning decisions helps enable that ambition. Wiltshire Council's success rate in defending appeals dipped in quarter two of this year to 40%. However, in the final two quarters the success rate was back up above the 70% target level. In fact, despite the dip in quarter two, there were 27 successful planning appeals in the whole financial year; 7.7% fewer than 2017/8 and 56.0% fewer than in 2016/17.

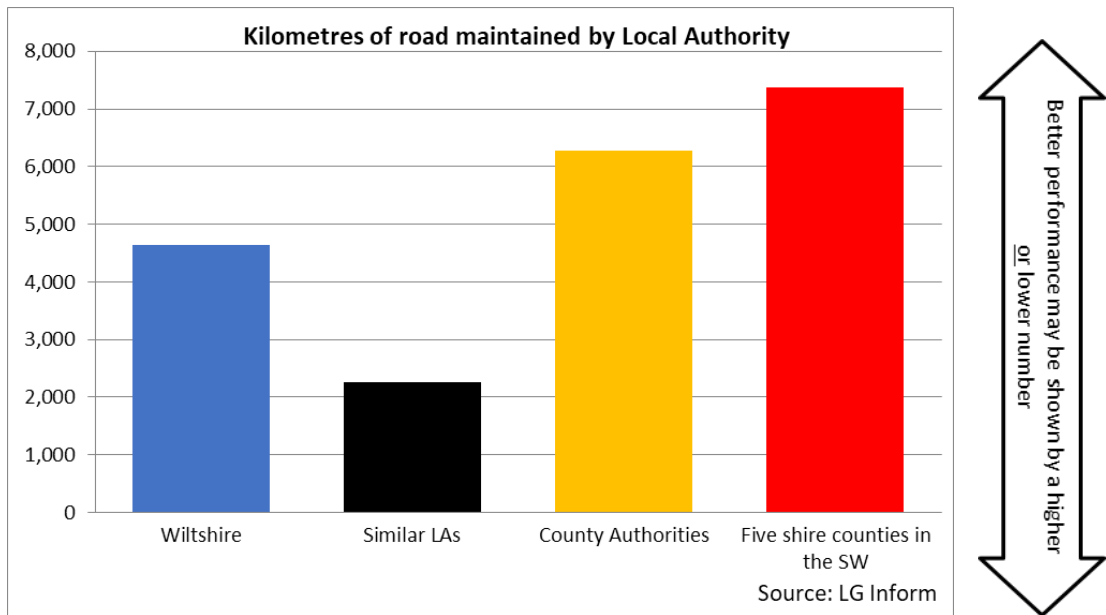


Better performance is shown by a higher rate

Better performance is shown by a lower number

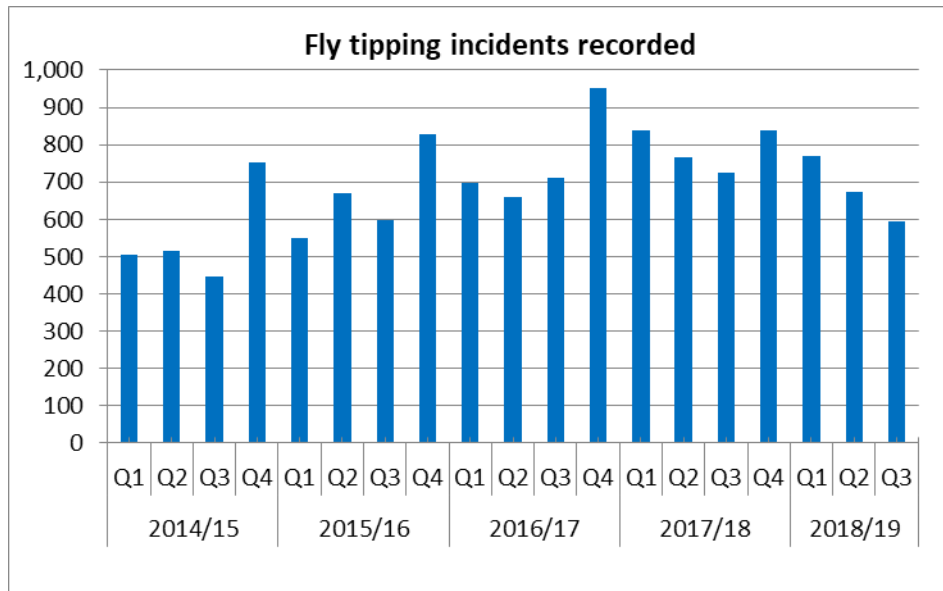
Priority 1.3 Growing the Economy – Transport and Infrastructure

5. In order to support a growing economy Wiltshire Council invests in, and promotes investment in, the county’s infrastructure. As well as communications this includes roads and transport. Wiltshire Council has a greater length of road network that it is responsible for than the average for its comparator authorities but less than the average for all county authorities or the other shire counties in the south west. In the 2018/19 Wiltshire Council surfaced 68 km of A and B roads, an increase of 55% on 2017/18. 11,426 potholes were filled in 2018/19 5% more than in the previous year while public reports of potholes being down by 23%.



Priority 2.1 Strong Communities – Community Wellbeing

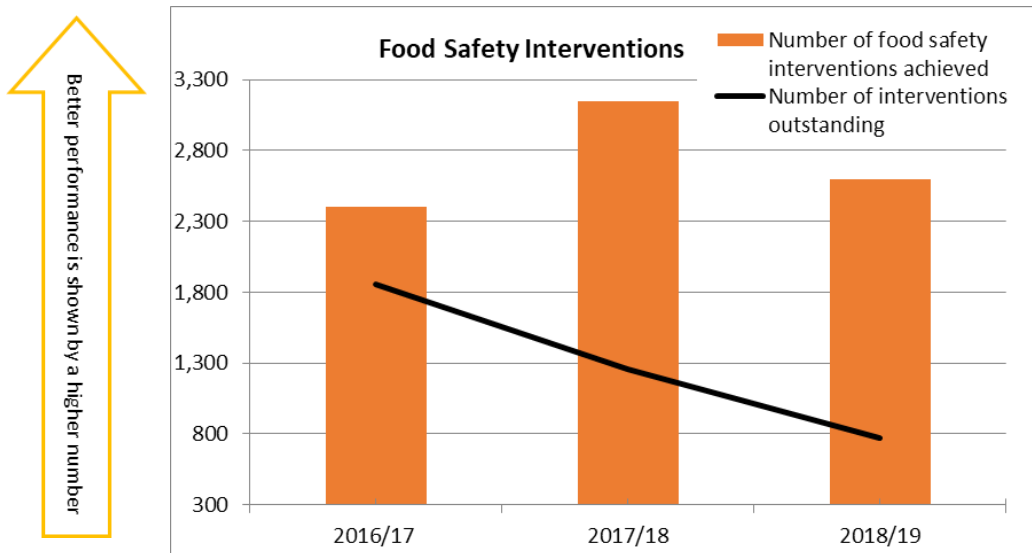
6. Wiltshire’s communities are strengthened by effective management of litter and waste. Wiltshire council provides kerbside collections and household recycling centres in order to provide opportunities for residents to deal effectively with all their own waste. Flytipping on public land is time consuming and expensive for Wiltshire Council. Many local communities operate litter schemes, some supported by Wiltshire Council or Area Boards, to help deal with all kinds of public littering. The general trend in flytipping over the last four years shows an increase although in the latest available data there is an 18% reduction in incidents reported between quarter three 2017/18 and the same period in 2018/19.



Better performance is shown by lower number

**Priority 2.2 Strong Communities – Safe Communities**

- In addition to helping communities feel safe from anti-social behaviour and crime Wiltshire Council’s Public Protection teams undertake an array of other activity to help ensure public safety. These include the monitoring of food standards in businesses and public buildings. Nearly 2,600 food safety interventions, which includes all inspections, revisits, audits, monitoring and sampling, were carried out in the financial year 2018/19. Importantly, the number of planned outstanding interventions has fallen by 38.7% in the last year and by 58.4% in the last two years.

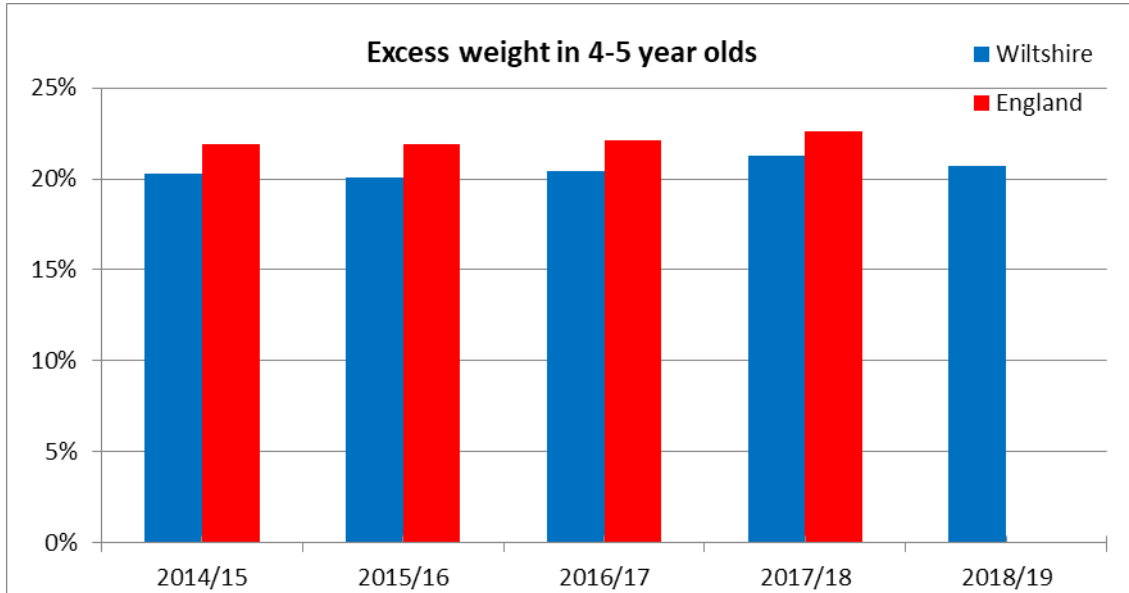


Better performance is shown by a higher number

Better performance is shown by a lower number

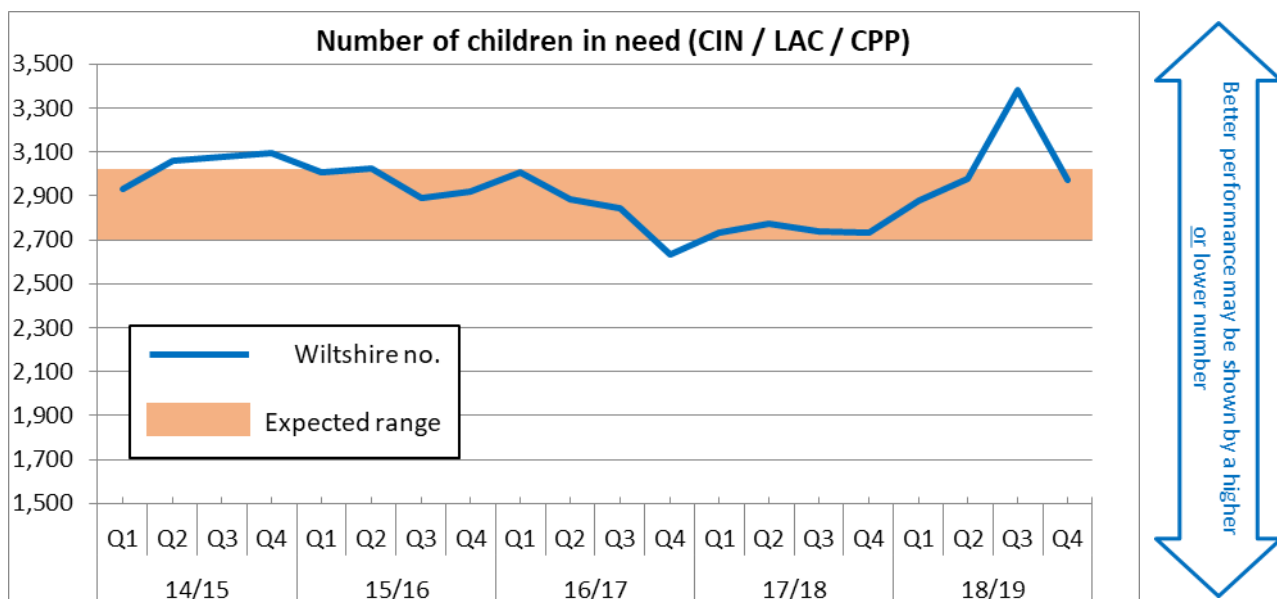
Priority 2.3 Strong Communities – Personal Wellbeing

8. Wiltshire Council works with its partners to deliver programmes aimed at the prevention of ill health and early intervention; moving the focus away from reactive health programmes. One such area of focus is obesity in childhood. Wiltshire has seen a small fall in the rate of obesity amongst four and five year olds (0.6% points) in the most recent data. This is a change; the previous two years having seen a rise in the Wiltshire and the national rate. National figures for 2018/19 are not yet available and will be published as part of the National Childhood Measurement Programme.



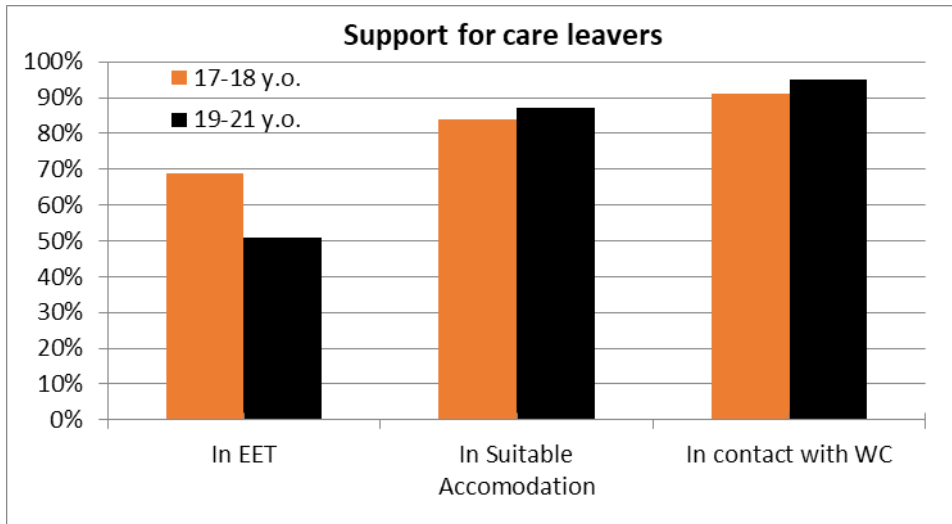
Priority 3.1 Protecting the Vulnerable – Early Intervention

9. In order to protect the most vulnerable in the county Wiltshire Council aims to provide proactive early help across all children’s services. This involves providing more support early in a child’s life as well as engaging with whole families to provide support for parents who may need it. Effective early intervention might be seen to reduce the numbers that social care teams are most involved with but it’s also important to ensure those children who need protection receive it. Therefore, the number of Children in Need is expected to operate within a range of between 260 and 290 per 10,000. The number was above the expected range for the two middle quarters of the financial year but back within the threshold by the end of March.



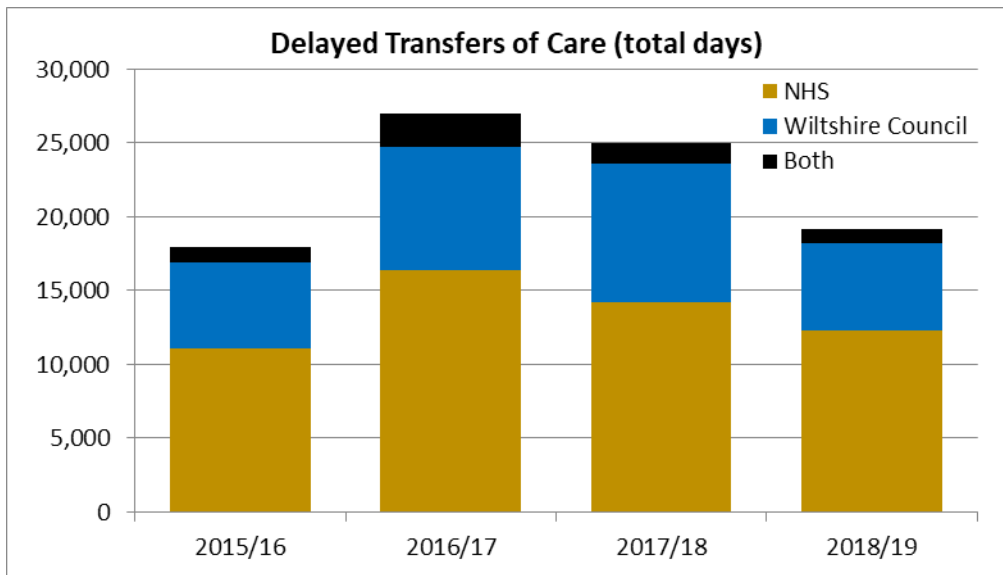
**Priority 3.2 Protecting the Vulnerable – Integration**

10. Wiltshire Council want to maximise the life chances for those young people leaving the care of the local authority. The Care Leavers Promise was unanimously passed by Full Council in October and has already had great feedback from care leavers (the Promise delivers council tax exemption, priority housing, apprenticeships, free leisure passes, etc.). Since the launch of the Care Leavers Promise there are now three Care Leavers working in council apprenticeships and work placements –in Information Technology, Adult Mental Health and Fostering Services. In addition, there are 25 fully trained GrandMentors with matching taking place with care experienced young people (seven matches to date with eight in progress).
11. Wiltshire Council remains ambitious for Care Leavers to ensure they have somewhere suitable to live, stay in touch and are accessing education, employment or training. The Care Leaver Steering Group is a multi-agency group that includes representatives from Building Bridges, DWP, Personal Advisors, HR and the Virtual School and is led by the Employment and Skills team. The group has been established to create opportunities and pathways to support better outcomes into education, employment and training (EET). The Building Bridges programme has bespoke pathways supported by an Employment and Skills officer to coordinate referrals from the Children in Care team. So far, 11 care leavers are engaged on the programme with a further 18 currently meeting with a key worker to begin their engagement.
12. The latest performance data (February 2019) shows the support provided and the success of 216 young people aged 17-21 having left care. Benchmarking data shows Wiltshire performs better than statistical neighbours and national average for care leavers in EET and for those in suitable accommodation.



Better performance is shown by a higher rate

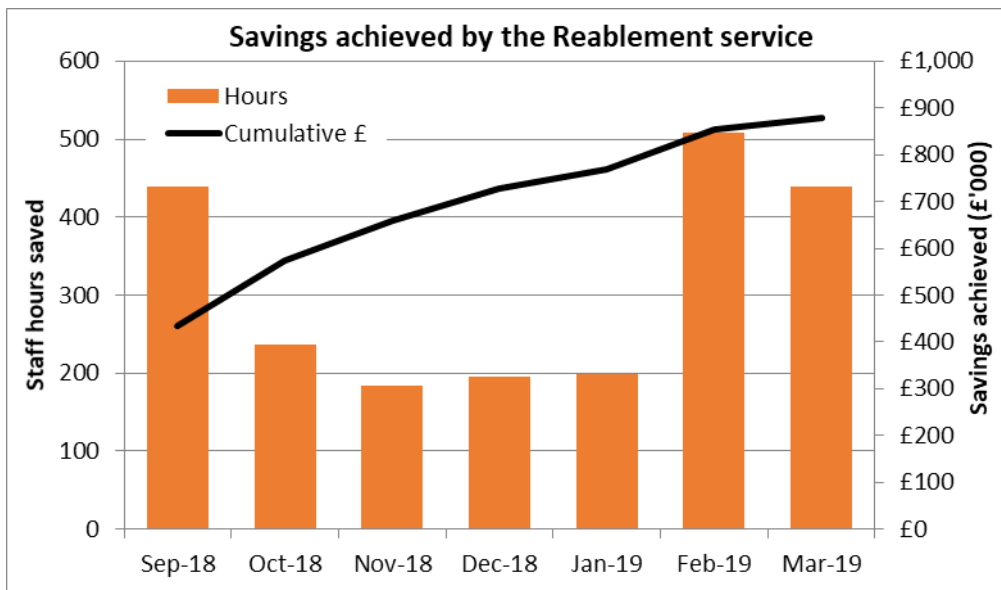
13. Wiltshire Council monitors performance in the delayed transfer of care (DTC); when a patient is ready to leave hospital but is unable to do so because of a lack of appropriate health or social care. Delays are measured in days and can be the responsibility of the NHS, adult social care or both. In the last year real progress has been made in reducing the number of days delayed. Overall the total is 23% less than in 2017/18 with those Wiltshire Council's adult social care are responsible for reduced by 38% to fewer than 6,000 days. Wherever possible adult care reablement teams are focused on allowing clients to remain in their own homes after a stay in hospital or a change in their health or social circumstances.



Better performance is shown by a lower number

14. Wiltshire Council aims to provide care as close to home as possible for its customers. Wiltshire Council's Reablement service became operational in September 2018. Reablement is a short-term intervention in a person's own home designed to maximise independence and reduce the need for long term and ongoing care. In the past 6 months the Reablement service has avoided the need for over 2,000 hours of care and saved nearly £900,000. The reablement service has also worked closely with

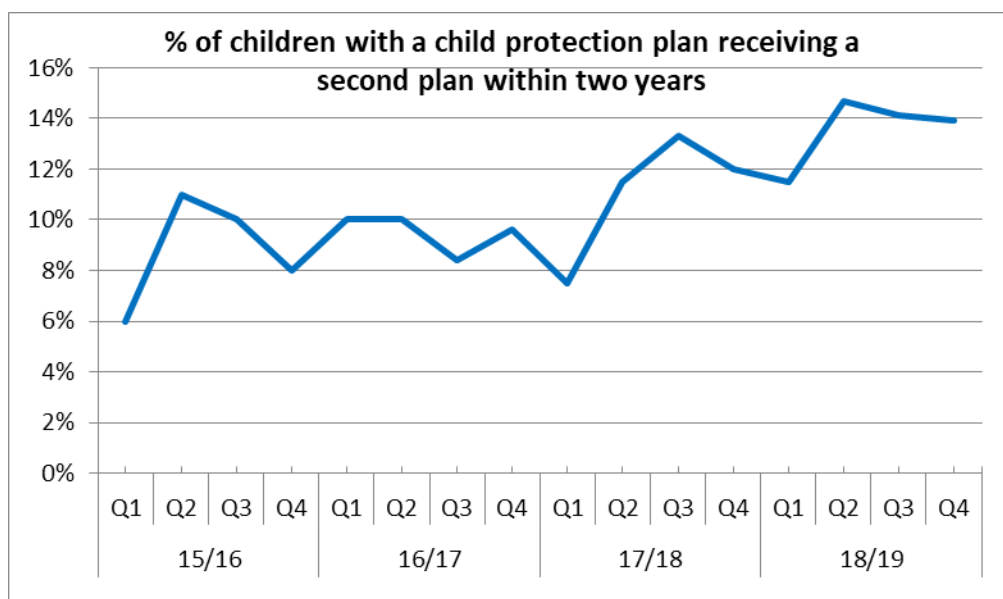
community health providers to ensure people receive an increasingly seamless service and the right support when they are discharged from hospital.



Better performance is shown by a higher number

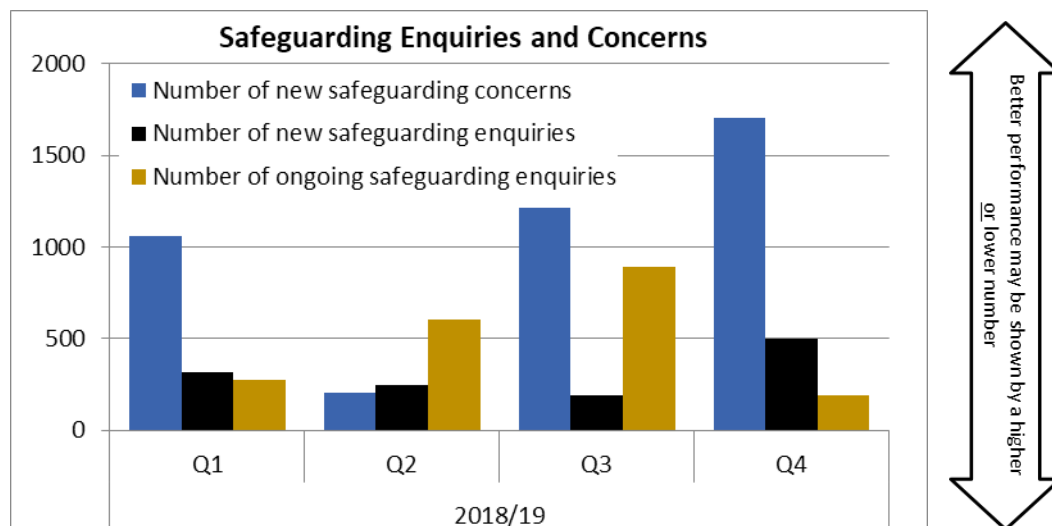
**Priority 3.3 Protecting the Vulnerable – Personalisation**

- 15. By sharing more information with its partners, by creating a single point of contact for safeguarding concerns and identifying more of the risks to Children Wiltshire Council aims to provide the right support early enough to prevent harm. As a result, the proportion of children receiving a second child protection plan within two years should fall. The 2018/19 financial year has the highest percentage of children requiring a second plan within 24 months in the last four years. The proportion in quarter four 2018/19 was 1.9% points higher than the same period in the previous year. Individual cases that that fall into this category are all reviewed and monitored closely. Work is also under way to ensure that the proportion requiring a second plan reduces by introducing earlier plan reviews.



Better performance is shown by lower rate

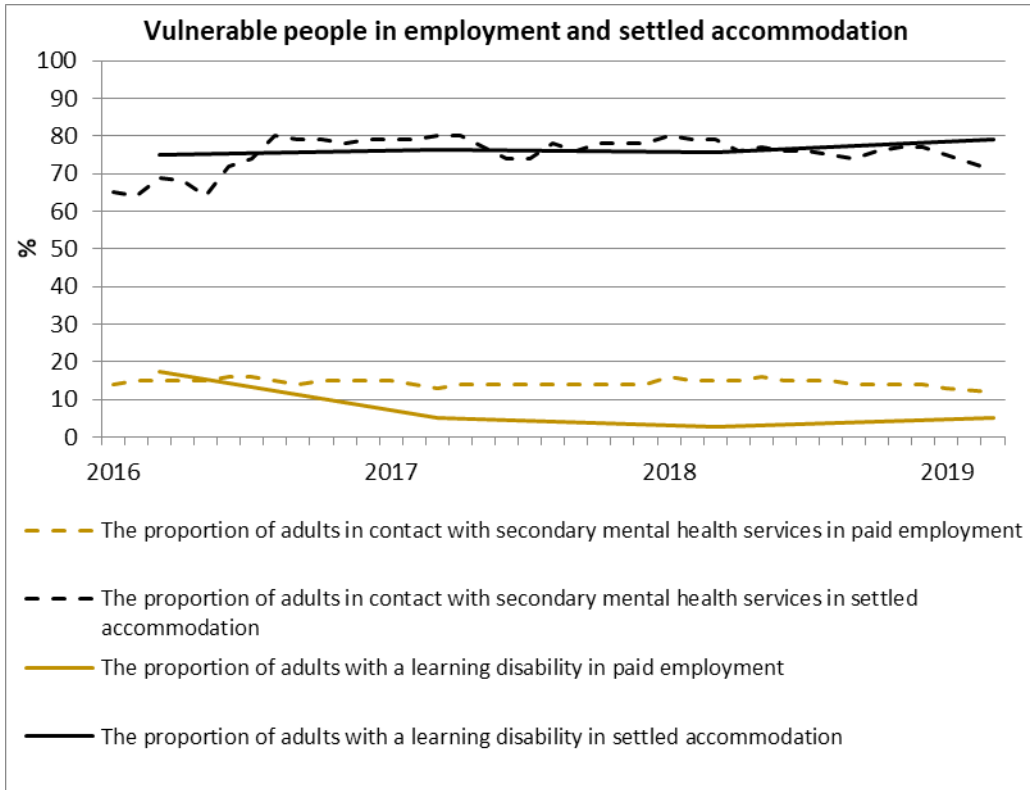
16. Wiltshire Council aims to promote agencies working together to safeguard vulnerable people. The development of a Multi-Agency Safeguarding Hub (MASH) for adults, alongside that already in existence for children, has led to greater consistency in the council's response to safeguarding concerns and the work done to keep individuals safe. The graph below shows the number of enquires made about safeguarding over the last 12 months, the number of incidents which have been recorded as a concern and the number of enquiries that remain ongoing. The increase in enquiries and concerns and the reduction in ongoing enquiries is due to the better recording, reporting and consistency of approach provided by the MASH.



17. Wiltshire Council continues to improve services for people suffering poor mental health and those with learning difficulties. Much of this improvement involves investing in preventative measures to give people more independence and less need to rely on ongoing support. To this end Wiltshire Council supports individuals to live in their own home and to take up a role in paid employment.
18. The most recent figures show that the proportion of adults with a learning difficulty in settled accommodation is at a six year high having increased 3.3% in the last year. The proportion of those in contact with secondary mental health services in settled accommodation fallen 8% points in the last year but remains well above the national average<sup>1</sup>.
19. At just 5% the proportion of adults with a learning disability in paid employment is a slight improvement on the previous year's position but has failed to return to the high of 17.5% in 2015/16. Likewise, the proportion in contact with secondary mental health services in paid employment is slightly lower than last year although Wiltshire is 3% points above the national average<sup>1</sup>. Improving employment for these groups will be part of the redesign of services under the Whole Life Pathway approach. Improving performance in this area will require the support of a number of council services and external partners.

<sup>1</sup> This data is provided by Avon and Wiltshire Mental Health Partnership (AWP) NHS Trust

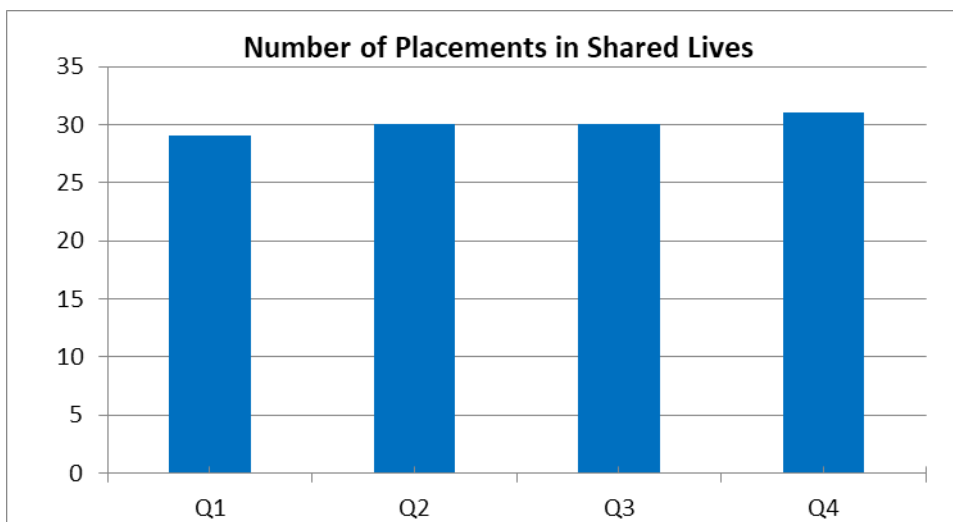




Better performance is shown by a higher rate

20. As part of its aim to protect vulnerable people Wiltshire Council delivers services that put its customers in control. The Shared Lives Service provides accommodation, care and support to people unable to live independently. The service is provided in the home of approved Shared Lives carers, where people are helped with their everyday needs - from guidance, reminders or prompts to help with everyday tasks, personal care and accessing health services.

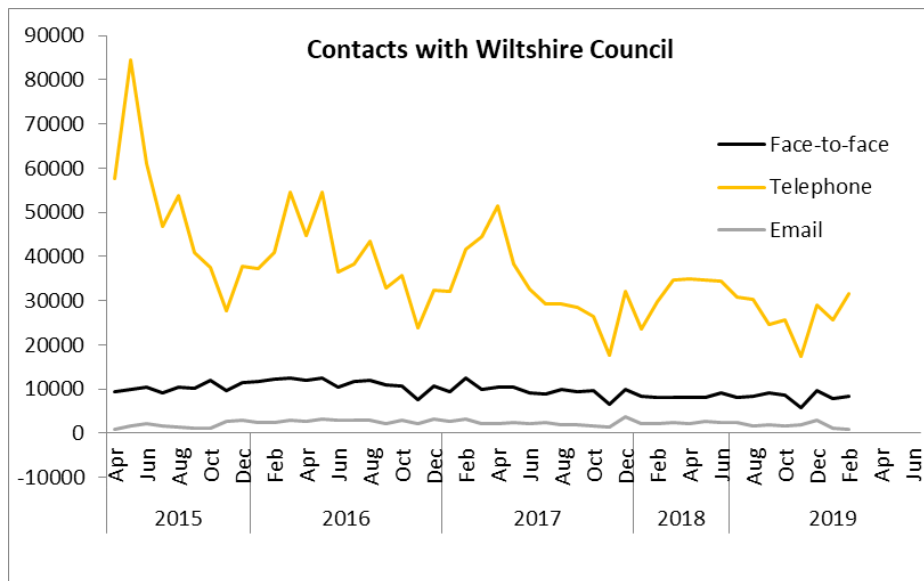
21. There are currently 20 carers providing long-term placements for 27 adult social care customers. In the last quarter the rate paid to carers under the shared life scheme has been increased in order to bring it into line with neighbouring areas. Further plans are in place to boost recruitment and training of Shared Lives carers.



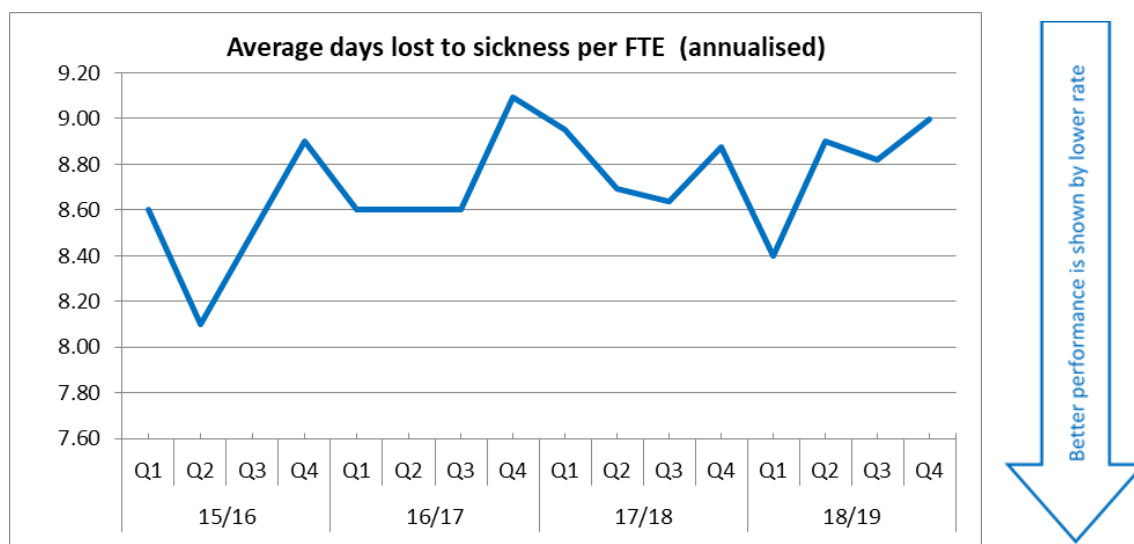
Better performance is shown by a higher number

An Innovative and Effective Council

- 22. It's important for Wiltshire Council to be effective in delivering services to our customers as well as with its inhouse processes.
- 23. Wiltshire Council is improving the efficiency of its interactions with its residents by providing more, and more efficient, ways for people to contact the Council and conduct transactions. The number of occasions where people need to interact with a member of council customer service staff face-to-face has been reduced by 32% in the last 24 months. There have also been reductions in the numbers of email (76%) and telephone contacts (25%) dealt with by Wiltshire Council's customer services team. A consolidation of new channels could help reduce the reliance on existing forms of contact further.



- 24. Wiltshire Council have an outstanding workforce with a can-do attitude - supported through clear career paths, talent management and learning and development. Having a motivated workforce should lead to low levels of absenteeism and a reduction in spending on temporary staff. In the last three years the average number of days sickness per full time equivalent employee has shown only a very slight increase of 1.1%.



### Strategic Risk Register (as at end March 2019)

25. Delivering the Council's Business Plan will continue to offer a significant challenge given an increasing demand for key services, such as care for vulnerable children and adults, waste management and highways maintenance, as well as rising inflation costs and smaller central government grants. The Strategic Risk Register reflects these challenges.
26. The simplified version of the current strategic risk register is provided in appendix 1. The description of how the strategic risk register works, which previously appeared at this point in the report is now available on the first page of appendix 1.
27. Of the 11 risks listed on the main strategic risk register three have an inherent score that puts them in the 'high' bracket.
28. Risks associated with children's safeguarding remain high in this quarter. The risk is heightened by the difficulties in recruiting social workers and the size of caseloads they have to work with. The risk is owned and overseen by the Performance and Outcome Board chaired by the relevant Corporate Director. An ongoing action plan is reviewed every fortnight by the service's senior management team.
29. The contract management risk has seen its inherent score increased in the last quarter. This is due to the central team not seeing all the behaviour changes that had been hoped for following a council wide training programme. As a result, new mitigating actions are being planned including working with HR to ensure that contract management is evidenced in key job descriptions and making resources and support easier to access, while improving routine simple RAG reporting of performance on strategic "Platinum" contracts by those responsible for their management.
30. The lack of certainty around the final detail of the United Kingdom's exit from the European Union and questions about the timing have a potential impact on the Council's resources. This is risk was added to the strategic risk register in the last quarter and represents component risks in a number of different services areas. These include the need for the

elections team to respond at short notice, contracting arrangements with non-UK firms, potential macroeconomic change and the impact on the availability of individuals to fill vacancies in key parts of the county's workforce. The need for the council to respond to holding European Union Elections in May on a shorter timescale is an example of the impact of this uncertainty.

31. The corporate composite risk of budget overspends has been effectively managed down over the previous 12 months. Individual service risks are generally rated as low but the potential combined impact at an organisation level is greater. Ongoing monitoring and support including training of budget managers is in place in order to ensure that the overall year end position is balanced. With greater certainty at the end of the financial year the confidence in this corporate risk being successfully managed is high.
32. For the first time in 12 months the national level risks have been included on the strategic register. National risks, which mirror the most significant risks on the Cabinet Office's [national risk register](#) and is Wiltshire's response should these risks be realised, are reported once a year as there is very little movement in the impact or likelihood of these risks.
33. The most serious risks for Wiltshire are Pandemic Influenza and Flooding. Both these risks have an inherent score in the 'high' bracket.
34. Wiltshire Council works with its partners in the Local Resilience forum to make sure that there are plans in place in order to minimise the impact of any of these potential events.
35. All other risks on the strategic risk register have an inherent score of medium or low and remain at the same level as in the previous quarter.

### **Overview & Scrutiny Engagement**

36. The Financial Planning Task Group is due to consider this report at its meeting on 22 July 2019.

### **Safeguarding Implications**

37. A number of indicators are regularly analysed which directly relate to the safeguarding of children and adults. Action is taken where improvements in performance are required.

### **Public Health Implications**

38. Not applicable as no decision is required.

### **Procurement Implications**

39. Not applicable as no decision is required.

### **Environmental and Climate Change Considerations**

40. Not applicable as no decision is required.

### **Equalities Impact of the Proposal**

41. Not applicable as no decision is required.

### **Risk Assessment**

42. Not applicable as no decision is required.

### **Financial Implications**

43. Not applicable as no decision is required.

### **Legal Implications**

44. Not applicable as no decision is required.

### **Options Considered**

45. Not applicable as no decision is required.

### **Conclusions**

46. This report brings together updates performance indicators that make up the corporate performance framework as well supplementary commentary to provide further context around the Council's activities in these areas and the risks faced by the Council.

**Robin Townsend**  
**Director, Corporate Services & Digital**

*Report Author:*

Toby Eliot, Corporate Support Manager | [toby.eliot@wiltshire.gov.uk](mailto:toby.eliot@wiltshire.gov.uk)

May 2019

### **Appendices**

- Appendix 1: Strategic Risk Register (Q4 March 2019)
-

This page is intentionally left blank

## Wiltshire Council Strategic Risk Register Q4 2018/19

There are significant challenges for Wiltshire Council as it looks to build stronger communities, grow the county's economy and protect the vulnerable. The Strategic Risk Register reflects these challenges.

The Strategic Risk Register draws together information recorded on risk registers of individual services across Wiltshire Council.

Information that has significance across the council as a whole is displayed in two categories on the Strategic Risk Register.

1. Critical service risks: significant risks that sit in a single service but which, should they become an issue, will have a significant impact on the council as a whole.
2. Composite strategic risks: where similar risks exist in a number of different services which would not have a significant impact on the organisation on their own but put together represent a significant impact. These risks are compiled into a single strategic composite risk and included within the strategic risk register. These risks are scored by reviewing the service component risks.

Page 51 Each risk is fully defined by the responsible service (who assess the cause, event and effect that make up the identified risk).

Each risk is scored for impact and likelihood to give an overall score. A risk is scored twice; firstly, as inherent (the current level of risk) and then as residual (the risk as it would be once all mitigating actions are in place).

The progress towards implementing mitigating actions is assessed as red, amber or green. This RAG guides the reader of the register to understand the true current risk.

A whole range of service risks are kept under observation each quarter.

Risk short name	Primary Risk Category	Secondary Risk Category	Q4 Inherent Impact	Q4 Inherent Likelihood	Q4 Inherent Risk Rating	Q4 DoT	Q4 Actions RAG	Q4 Residual Impact	Q4 Residual Likelihood	Q4 Residual Risk Rating	Q4 Comments
<b>Critical Service Risks</b>											
Safeguarding Children	Service Delivery	Reputation	4	3	12	▶	Amber	4	2	8	The risk of a failure to safeguard children and young people is heightened by larger caseloads and a less stable workforce. In this quarter average caseload numbers are lower. Services are working to improve the stability of the workforce with a 10% vacancy rate and 19% of positions covered by agency staff.
Safeguarding Adults	Service Delivery	Reputation	4	2	8	▶	Amber	4	1	4	Ongoing focus on safeguarding issues and a multi agency approach mean that the likelihood of issues arising is being reduced as far as is possible.
Failure to revive Salisbury's economy	Reputation		3	3	9	▶	Green	3	2	6	The council's focus in the south of the county remains on the long-term economic recovery and growth of Salisbury and Amesbury. The team is building and supporting opportunities to revive the high streets, improve the cultural offer and stimulate new growth.
Future Local Government finance funding	Financial	Reputation	2	4	8	▶	Amber	2	4	8	Both impact and likelihood are dependent on decision made by central government and a consolidation is underway. The risk can't be treated until decisions have been made.



Risk short name	Primary Risk Category	Secondary Risk Category	Q4 Inherent Impact	Q4 Inherent Likelihood	Q4 Inherent Risk Rating	Q4 DoT	Q4 Actions RAG	Q4 Residual Impact	Q4 Residual Likelihood	Q4 Residual Risk Rating	Q4 Comments
<b>Composite Corporate Risks</b>											
Staff capacity: Recruitment and Retention	Staffing/ People		3	2	6	▶	Green	3	2	6	Ongoing controls include increased staff engagement, promoting Wiltshire Council as an employer, specific strategies in areas of high concern. A new staff survey is underway and will help guide further mitigation.
Budget management	Financial	Reputation	3	3	9	▶	Green	3	2	6	This risk area is kept under close monthly monitoring review. Potential issues are discussed with the Corporate Leadership Team and budget managers. An update to the financial plan was adopted in February.
Corporate Health, Safety & Wellbeing	Health & Safety		2	2	4	▶	Green	2	2	4	Risk action plans have been updated and remain under review on a rolling timetable.
Contract monitoring and management	Service delivery	Financial	4	3	12	▲	Amber	4	3	12	The contract management training programme has been rolled out across the council and completed. The desired behaviour change has not been seen. Work will commence with HR to make contract management a key part of certain job roles. Other ways to make contract management resources and support easier to access will also be considered.
Income Collection	Financial	Reputation	3	3	9	▶	Amber	3	2	6	Reviews of income collection are included in regular monitoring reviews.
Uncertainty over the type and timing of Brexit and it's impacts mean resources are required for contingency planning and decisions are delayed.	Service delivery	Financial	4	3	12	▶	Amber	3	2	6	As the uncertainty continues beyond the anticipated leaving date in March the composite risk remains for Wiltshire Council. Planned actions remain in place across a number of the council's service areas.
Information Governance	Reputation	Financial	3	2	6	▶	Green	3	1	3	Training continues to be rolled out with awareness being raised across Wiltshire Council keeping the risk low.

Risk short name	Primary Risk Category	Secondary Risk Category	Q4 Inherent Impact	Q4 Inherent Likelihood	Q4 Inherent Risk Rating	Q4 DoT	Q4 Actions RAG	Q4 Residual Impact	Q4 Residual Likelihood	Q4 Residual Risk Rating	Q4 Comments
<b>National Level Risks</b>											
Pandemic influenza	Health & Safety		4	3	12	▶	Green	4	3	12	NATIONAL RISKS - Ratings do not change at a local level. The local resilience plan has been updated using the national guidance and currently out to consultation.
Flooding	Health & Safety		4	3	12	▶	Green	4	3	12	
Widespread electricity failure	Health & Safety		4	2	8	▶	Green	4	2	8	
Catastrophic terrorist attacks	Health & Safety		4	2	8	▶	Green	4	2	8	
Poor air quality events	Health & Safety		4	2	8	▶	Green	4	2	8	
Cyber Security	Legal	Reputation	4	2	8	▼	Amber	4	2	8	

**Wiltshire Council**

**Cabinet**

**23 July 2019**

---

Subject: **Budget Monitoring, Performance & Risk Management  
2019/20 Quarter 1 (30 June 2019)**

Cabinet Member: **Cllr Philip Whitehead – Leader of Wiltshire Council and  
Cabinet member for Finance, Procurement and Economic  
Development**

Key Decision: **Non Key**

---

### **Executive Summary**

This report brings together, for the first time, regular reports on Budget Monitoring, Performance & Risk Management. The aim is to combine key information to give a complete picture of performance, both financial and non-financial, in regular reports which highlights the main area for consideration in a clearer format.

This report advises members of the Budget Monitoring, Performance & Risk Management as at the end of Quarter 1 (as at 30 June 2019) for the financial year 2019/20. Highlighting recommended actions as appropriate.

### **Budget Monitoring**

The forecasts indicate a general fund variance, if no further action is taken, of £0.500 million. This is 0.2% of the Council's net budget.

Overall a good proportion of service expenditure is in line with budget profiles and forecasts. There are some services which have identified larger variances at this stage of the year. Directors and Heads of Service are identifying compensating actions in order to bring these back into a balanced year end position. Individual recovery plans will be produced for areas showing forecast overspends.

The report includes commentary on the Dedicated Schools Grant (DSG). This is coming under increased pressure in Wiltshire as it is across the country. Current forecast is for a £3.000 million overspend.

This report also details changes to the capital budget made since the 2019/20 budget was set on 20 February 2019 and reflects the forecast year end position of the 2019/20 capital spend against budget as at Quarter 1 (as at 30 June 2019).

### **Performance**

Due to the timing of the report not all indicators from the Corporate Performance Framework are available to be included. This is because the time required to record work done, extract data from recording systems, validate that data and report it correctly is, in many cases, weeks rather than days. In addition, a number of the Council's chosen indicators require input from partner organisations who are not ready

to report to the council at this time. Available indicators have been included when they relate to the financial information being reported.

### **Risk Management**

The Council's Strategic Risk Register for Quarter 1 (appendix G) contains 12 significant service and composite corporate risks. Four of those risks have a high inherent rating. Most of the risks on the strategic register remain as they were in quarter four. The risk around cyber security has been redefined to be more specific to Wiltshire Council's situation and moved from the *National Risk* section (reported once a year) to become a *Critical Service risk*.

### **Proposal**

Cabinet is asked to note:

- a) the General Fund quarter 1 projected year end outturn is an overspend of £0.500 million, before management action are made
- b) an HRA quarter 1 projected year end outturn is online
- c) the 2019/20 capital programme as at quarter 1 (30 June 2019) has a spend of 13.602 million
- d) outturns against the selected performance measures in relation to the Council's Business Plan
- e) the scoring and commentary on the Strategic Risk Register (appendix G).

Cabinet are asked to approve:

- f) the budget virements in the revenue budget and capital programme, per appendices C & F.
- g) approve delegation of budget virement approval to the cabinet member for finance, procurement, ICT & operational assets
- h) approve giving delegated authority to the Director of Communities and Neighbourhood to vire budget from Future Developments to individual projects within the Health & Wellbeing Centres Live Schemes budget in the Capital Programme upon completion of a full business case, in consultation with the cabinet member for Communities and Neighbourhood and the Directors for Legal and Democratic Services and Finance.

### **Reason for Proposal**

To inform effective decision making and ensure a sound control environment.

To inform Cabinet of the position of the 2019/20 budget as at Quarter 1 (30 June 2019), including highlighting any budget changes.

To inform Cabinet on Performance and Risk in the context of the financial position in relation to the Council's stated aims in its Business Plan.

**Dr Carlton Brand, Alistair Cunningham OBE and Terence Herbert – Executive Directors**

## **Wiltshire Council**

### **Cabinet**

**23 July 2019**

---

Subject: **Budget Monitoring, Performance & Risk Management  
2019/20 Quarter 1 (30 June 2019)**

Cabinet Member: **Cllr Philip Whitehead – Leader of Wiltshire Council and  
Cabinet member for Finance, Procurement and Economic  
Development**

Key Decision: **Non Key**

---

### **Purpose of Report**

1. To advise Members of the Budget Monitoring, Performance & Risk Management position 2019/20 Quarter 1 (30 June 2019) for the financial year 2019/20 with suggested actions as appropriate.
2. To inform Cabinet on the position of the 2019/20 revenue and capital budgets as at quarter 1 (30 June 2019), including highlighting any budget changes.
3. To provide an update on the progress against the stated aims in the Council's Business Plan to include measures from the corporate performance framework as well as the latest version of the Council's strategic risk register as at the end of June 2019.

### **REVENUE BUDGET BACKGROUND**

4. The Council approved the 2019/20 budget at its meeting on 26 February 2019 for the sum of £332.377 million. The report focuses on forecast exceptions to meeting the approved budget. Comprehensive appendices showing the individual service headings are included in Appendix A. More details on any revisions to the original base budgets in year are also included in the report.

## Revenue Summary

5. The projected year end position for the relevant accounts is set out as follows:

Summary Position	2019/20 Budget	Profiled Budget to date	Actual to date	Projected Position for Year (before mitigation)	Projected Variance
	£ m	£ m	£ m	£ m	£ m
<b>General Fund Total</b>	332.377	88.278	102.929	332.877	0.500
<b>Dedicated Schools Grant (DSG) *</b>	183.655	45.914	46.664	186.655	3.000
<b>Housing Revenue Account</b>	0.000	(3.088)	(4.102)	0.000	0.000

\*High Needs Block

6. This projected position is the current projected outturn position after any current approved recovery actions have been actioned.
7. The figures in the appendix A have been recast to reflect the changes from the recent management restructure. Additionally, there have been a number of budget movements during 2019/20. These are due to budget virements (transfers) relating to factors such as structural changes or allocation of funding for the pay award. A full breakdown is shown in appendix B. The overall net budget remains the same as agreed by Full Council in February 2018.
8. In accordance with the scheme of delegation those budget transfers amounting to more than £0.250 million need to be reported to Members. Details are included in appendix C.

## Virement Authorisation Limits

9. Full Council, on the recommendation of the Cabinet has set limits for virement within the financial regulations.
10. The following delegation of authority applies to approval of virements:
- Up to £50,000 Directors, in consultation with relevant Executive Director and Cabinet Member
  - Above £50,000 and up to £250,000 Executive Directors, in consultation with the Chief Finance Officer and Cabinet

c) Above £250,000 plus Cabinet

11. In the past, Cabinet have retrospectively authorised virement at the end of the quarter where changes have been requested, as included in appendix C of this report.
12. In order to ensure that decision making is made up front, it is recommended that all virements requested will be approved before they are actioned.
13. It is proposed that a monthly reports are sent to the Cabinet for approval of virement before they are posted. It is recommended that the cabinet delegates the approvals to the Cabinet Member for finance, procurement, ICT & operational assets. All virement will still be reported to cabinet quarterly as part of this report.

## REVENUE BUDGETS

14. The breakdown of the projected year end position by services is set out as follows

Summary Position	2019/20 Budget	Profiled Budget to date	Actual to date	Projected Position for Year (before mitigation)	Projected Variance
	£ m	£ m	£ m	£ m	£ m
Adult Care, Public Health & Digital	154.926	41.179	41.167	154.926	0.000
Children & Education Service	81.061	35.295	49.254	81.061	0.000
Growth, Investment & Place Service	102.240	16.185	14.622	105.140	2.900
Corporate	(5.850)	(4.381)	(2.114)	(8.250)	(2.400)
<b>General Fund Total</b>	<b>332.377</b>	<b>88.278</b>	<b>102.929</b>	<b>332.877</b>	<b>0.500</b>

15. The corporate composite risk around budget management remains at a medium level. Details on variations are set out below. The corporate regime of monitoring reporting and assessing budgets by the Corporate Leadership Team on a monthly basis means that the likelihood of these risks becoming an issue has been reduced.

## General Fund Monitoring Details

16. Overall the quarter 1 report identifies potential net year end forecast overspend of £0.500 million. Below are the details of the services and comments on the main forecast variances.



17. As it is early in the financial year, overall a significant proportion of service expenditure is in line with budget profiles and forecasts. Details of these areas are included below. Directors and Heads of Service are identifying compensating actions in order to ensure a balanced year end position.

#### **ADULT SOCIAL CARE, PUBLIC HEALTH AND DIGITAL SERVICE**

<b>Summary Position</b>	<b>2019/20 Budget</b>	<b>Profiled Budget to date</b>	<b>Actual to date</b>	<b>Projected Position for Year (before mitigation)</b>	<b>Projected Variance</b>
	<b>£ m</b>	<b>£ m</b>	<b>£ m</b>	<b>£ m</b>	<b>£ m</b>
Adults 18+	48.792	12.903	12.692	48.792	0.000
Mental Health	18.280	5.050	4.385	18.280	0.000
Learning Disabilities	51.091	12.458	13.002	51.091	0.000
Adults Commissioning	22.809	5.279	3.008	22.809	0.000
<b>Total Adults</b>	<b>140.972</b>	<b>35.690</b>	<b>33.087</b>	<b>140.972</b>	<b>0.000</b>
Public Health	1.436	0.407	(0.533)	1.436	0.000
Information Services	8.791	4.297	7.178	8.791	0.000
Legal & Democratic	3.727	0.785	1.435	3.727	0.000
<b>Adult Care, Public Health &amp; Digital Service Total</b>	<b>154.926</b>	<b>41.179</b>	<b>41.167</b>	<b>154.926</b>	<b>0.000</b>

#### **Adult Social Care**

18. Adult Social Care budgets are projecting a net on line forecast for 2019/20.

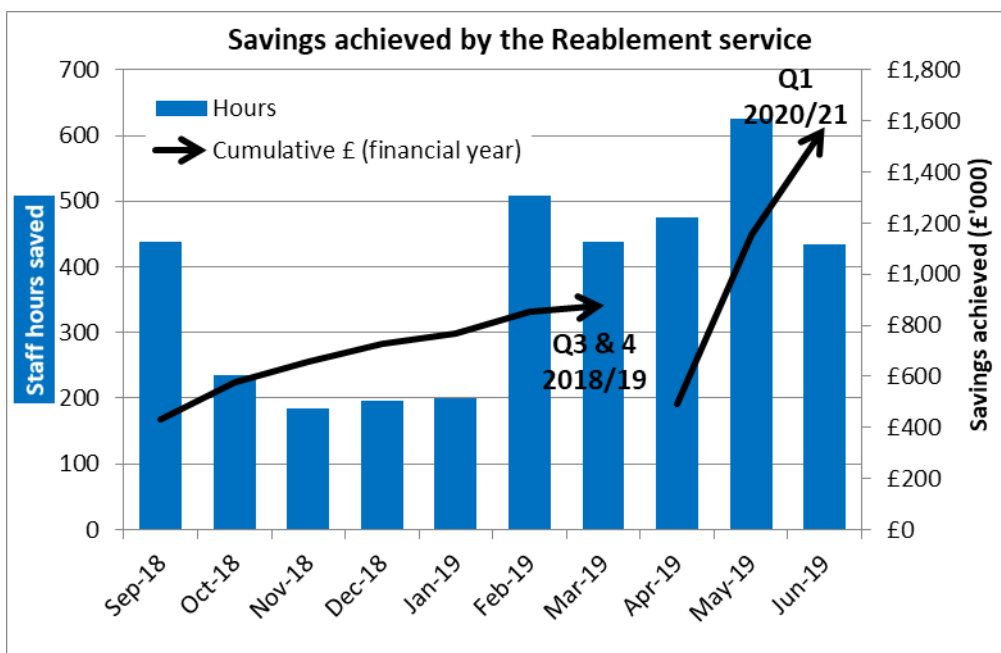
19. Adult Social Care budgets are projecting to achieve a balanced budget position by year end for 2019/20. However, there are additional budget pressures of £0.610 million, if no management action is taken, as described in the below table:

Service Area	Variance Risk Q1 £m
18+ Service	0.838
Mental Health	(0.457)
Learning Disabilities	0.627
Commissioning	£0.398)
<b>TOTAL</b>	<b>0.610</b>

20. The 18+ Service – risk of additional budget pressures of £0.838 million

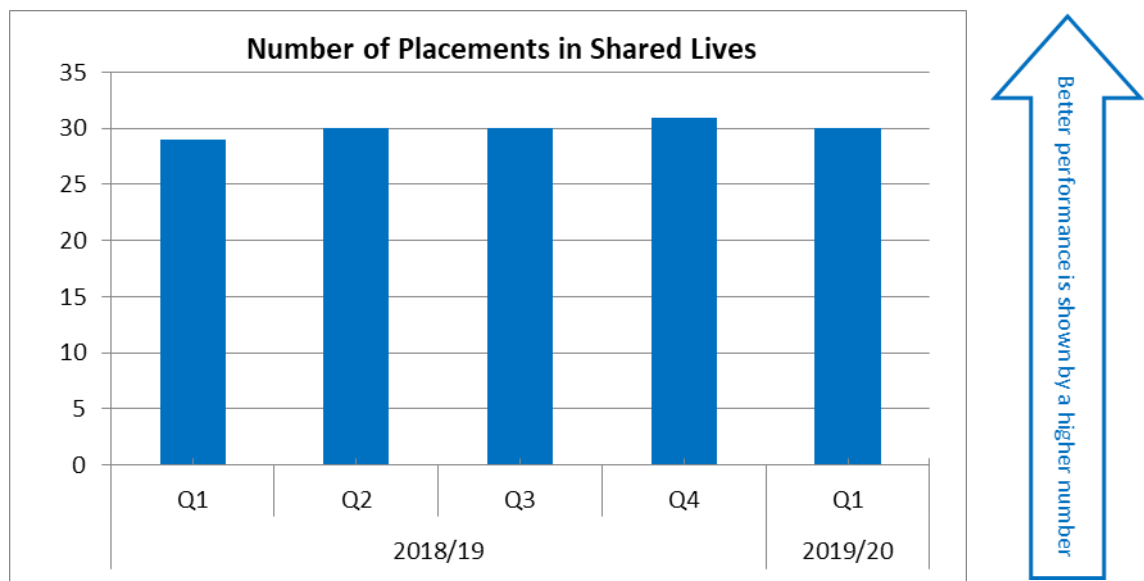
- a. Although the Reablement in-house service is achieving its savings target of £2.350 million (of which £1.573 million has been achieved to date), there has been an increase of 23 residential spot purchases since budget setting which equates to 7.69%. The demographic growth projected (as per ONS) was 4.5%.

21. Wiltshire Council aims to provide care as close to home as possible for its customers. Wiltshire Council’s in-house Reablement service became operational in September 2018. Reablement is a short-term intervention in a person’s own home designed to maximise independence and reduce the need for long term and ongoing care. In the second half of the last financial year the Reablement service avoided the need for over 2,000 hours of care; over 1,500 hours have been saved in the first three months of the current financial year.



22. Mental Health, current trends suggest that they will underspend, however this is after taking into account two savings targets which are still to be achieved:
- i. Shared Lives - £0.135 million savings target; and
  - ii. Service Redesign - £0.232 million
- b. Work is ongoing to achieve these targets.

23. The Shared Lives Service provides accommodation, care and support to people unable to live independently. The service is provided in the home of approved Shared Lives carers, where people are helped with their everyday needs - from guidance, reminders or prompts to help with everyday tasks, personal care and accessing health services. The number of Shared Lives Placements has remained consistent over the last 12 months.

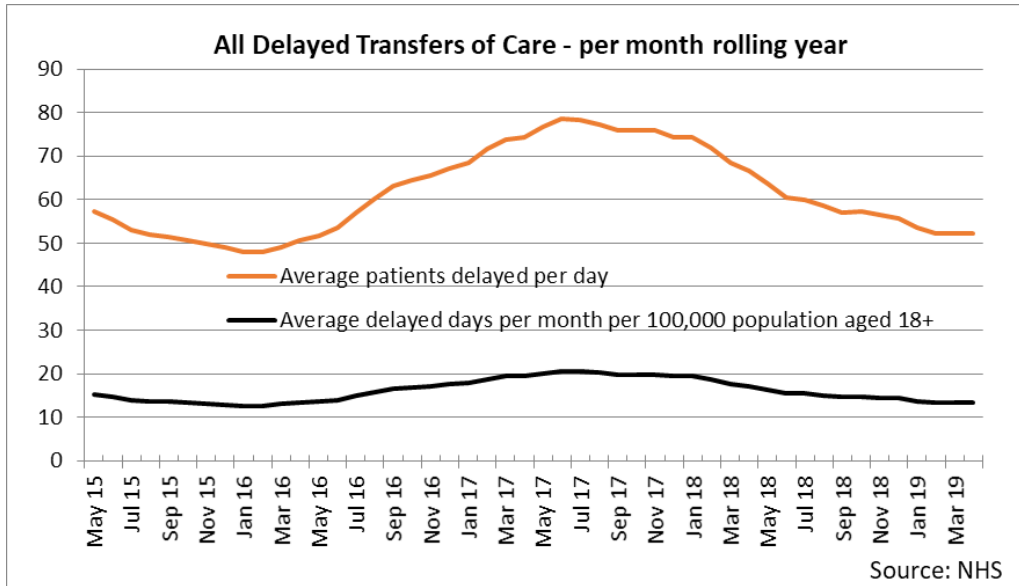


24. Learning Disabilities - risk of additional budget pressures of £0.627 million. This is mainly in the in-house provider service which provides day care and respite. These services are currently being restructured and it is projected that once this has taken place the service will have a breakeven position by year end.

25. Commissioning is currently working towards an underspend of £0.398 million, which relates to the contracts with the OSJ for residential and nursing beds.

26. The main underlying pressure across Adult Social Care relates to placements and the increase in both activity and unit cost.

27. Wiltshire Council monitors performance in the delayed transfer of care (DTOC); when a patient is ready to leave hospital but is unable to do so because of a lack of appropriate health or social care. The most recent data available (for April 2019) shows an increase of 49 delayed days (3.3%) on the March figure although a reduction of 2.0% for days delayed by social care. Despite this overall increase in the month the rolling year average rate (per 100,000 of the population) shows a decrease of 21.6% in the 12 months to April 2019; part of a longer-term positive trend over 18 months.

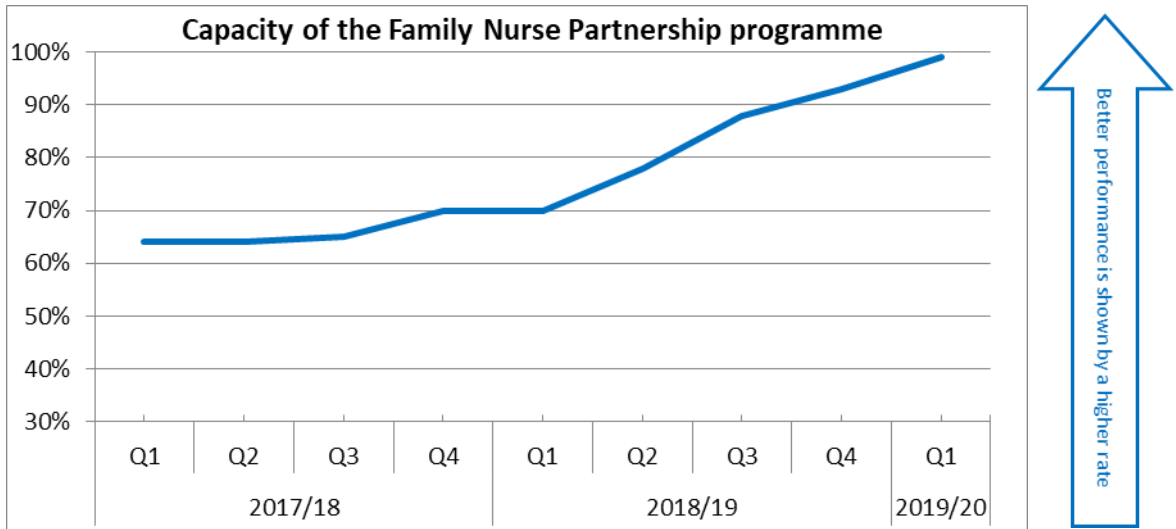


Better performance is shown by a lower rate

28. The significant service risk around safeguarding adults remains at a medium level. The introduction of the Adult Multi-agency Safeguarding Hub (MASH) last year with a formal launch in May 2019 has meant that all planned mitigation is in place and well maintained. The high impact of any safeguarding issues means that reducing the risk score further is difficult if not impossible. It's therefore recommended that this risk is tolerated and monitored at the current level which is within the Council's agreed risk appetite.

**Public Health**

29. Wiltshire Council's public health service coordinates and promotes a number of specific services that aim to promote the health and welling of individuals and whole communities. One such service is the Family Nurse Partnership (FNP) which works with parents aged 24 and under, partnering them with a specially trained family nurse who visits them regularly, from early pregnancy until their child is two. Over the last two years the commissioners of the service have worked hard to improve notifications from the maternity service. The providers of also helped to improve the take up rate of those eligible for the service. As a result, the FNP programme in Wiltshire is now at 99% capacity.



30. The corporate composite risk around health, safety and wellbeing is maintained at the low level that it has been at for the last year. New actions including the introduction of a staff wellbeing platform and a lone working audit help to ensure the component risks across the council are well managed.

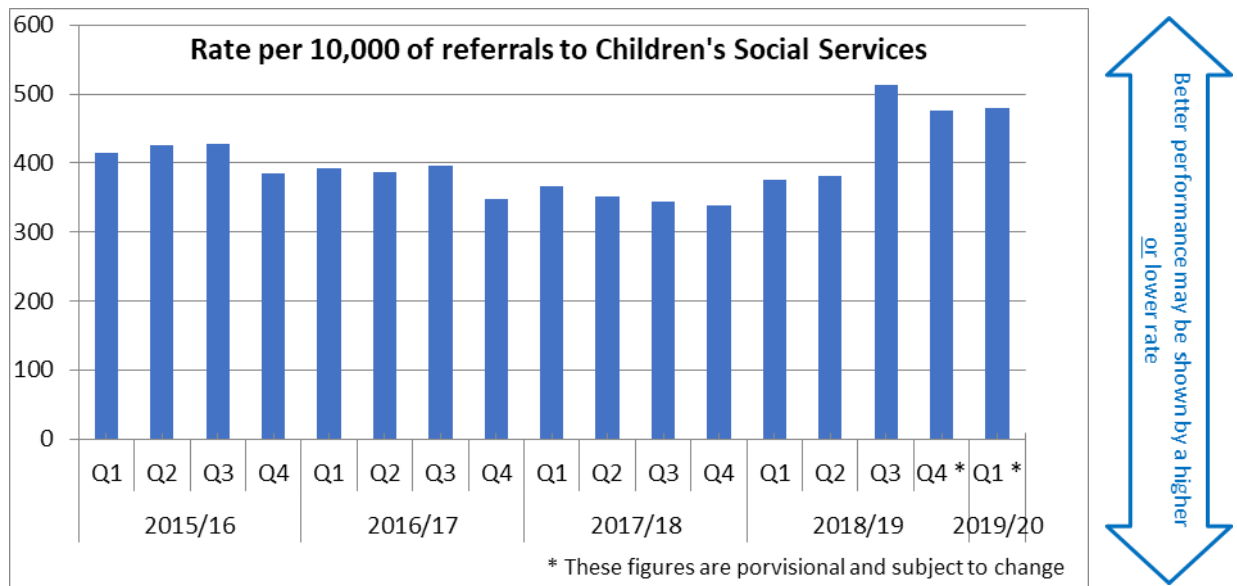
## CHILDREN & EDUCATION, COMMUNITIES & COMMUNICATION AND HUMAN RESOURCES SERVICES

Summary Position	2019/20 Budget	Profiled Budget to date	Actual to date	Projected Position for Year (before mitigation)	Projected Variance
	£ m	£ m	£ m	£ m	£ m
Childrens Commissioning	5.554	8.912	7.054	5.554	0.000
Childrens Social Care	42.281	9.789	12.165	42.281	0.000
0-25 Service: Disabled Children & Adults	20.127	12.937	14.527	20.127	0.000
School Effectiveness	3.801	2.124	1.490	3.801	0.000
Funding Schools	0.000	(0.270)	10.615	0.000	0.000
<b>Children &amp; Education Totals</b>	<b>71.763</b>	<b>33.492</b>	<b>45.851</b>	<b>71.763</b>	<b>0.000</b>
Corporate Services	4.916	0.498	1.906	4.916	0.000
Communications	1.189	0.307	0.420	1.189	0.000
Human Resources & Org Development	3.193	0.998	1.077	3.193	0.000
<b>Children &amp; Education Service Totals</b>	<b>81.061</b>	<b>35.295</b>	<b>49.254</b>	<b>81.061</b>	<b>0.000</b>

### Children & Young People with Social Care Needs

31. The looked after children external placement budget is forecasting additional budget pressure of £1.189 million overspend. On top of this, we use the previous year's trend data to estimate the likely additional activity and cost to 31 March 2020 which is £0.383 million. This is forecasting additional budget pressure of £1.572 million. This is offset by underspends in the in-house foster care and special guardianship orders budgets. At this early stage in the year, it is anticipated this position will be pulled back to an overall nil variance through the Placement budget monitoring project and FACT workstreams.
32. Provisional figures suggest that the number of referrals being made into Children's Services is above the expected level in the last three quarters. The cause is the introduction of a new case management system in November 2018 resulting in duplication of referrals during data migration and changes in workflows – system causes rather than a real increase in demand. Over the next 12 months it is

expected that the referral rate will settle as the new case management system becomes embedded. Over the long-term referral rates have remained within target range and Wiltshire continues to perform well against national averages and similar authorities.



### 0-25 Service: Disabled Children & Adults

33. There is a budget pressure in the SEND placement budget - around transitions cases and the budget savings target – which, has now been reallocated on a 50/50 basis with Adult Social Care and Health. This reflects that there is the opportunity to save across SEND and Adult Social Care and Health where two new transitions workers are based and working on this agenda.

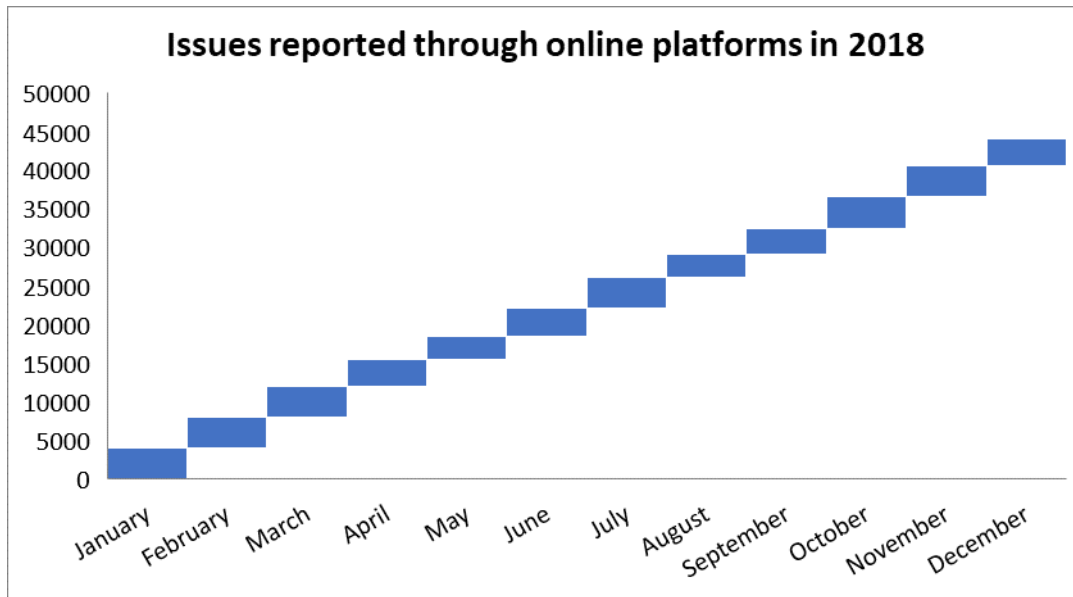
### School Effectiveness

34. School effectiveness is forecasting a balanced year end position.

### Corporate Services & Digital

35. Corporate Services & Digital is forecasting a balanced year end position.

36. The council-wide digital programme is helping to deliver the Council’s strategic aim of becoming an innovative and effective organisation. There were nearly 50,000 reports through the MyWiltshire App and web platform in 2018. Work to roll out a new platform and App is ongoing. For highways issues users will be able to report issues such as fallen trees and potholes using a map. There are three benefits of this new process. First it will be simpler experience for users; second, the user will be able to see if the issue has already been reported; third, users will be directed to the relevant authority if it’s not an issue that Wiltshire Highways can deal with. It is estimated eliminating reports of incidents that are not the responsibility of Wiltshire Council and duplicate reports will save 224 hours of processing time in a 12-month period.



37. Work is being undertaken to improve the Council’s Cyber Resilience. As a result, the national level risk has been reviewed and redefined as a critical service risk. In addition to the loss of personal data this risk now considers the possibility of losing access to systems and being unable to provide services. Therefore, the risk is now scored as high and is outside the Council’s risk appetite for service delivery risks. Planned mitigation is to put in place a whole-council action plan and to provide disaster recovery and contingency planning. This new action plan is not yet in place but is being discussed with the Extended Leadership Team.
38. The corporate composite risk around information governance remains low and well managed by the Information Governance team who have introduced a full reporting process.
39. The uncertainty surrounding the United Kingdom’s departure from the European Union remains just as it did in the previous quarter. The corporate composite risk takes into account the contingency planning required and progress in mitigating the risk remains good.



## GROWTH, INVESTMENT & PLACE SERVICE

Summary Position	2019/20 Budget	Profiled Budget to date	Actual to date	Projected Position for Year (before mitigation)	Projected Variance
	£ m	£ m	£ m	£ m	£ m
Economic Development & Planning	2.382	0.462	0.424	2.382	0.000
Highways	19.356	4.198	4.620	19.356	0.000
Car Parking	(6.813)	(1.183)	(1.435)	(6.813)	0.000
Waste & Environment	41.454	2.349	(4.425)	43.854	2.400
Housing Services	4.057	1.185	2.315	4.057	0.000
Strategic Asset & Facilities Management	12.051	1.948	(0.413)	12.051	0.000
Libraries, Heritage & Arts	5.450	1.234	1.483	5.950	0.500
Leisure	(0.164)	0.010	0.338	(0.164)	0.000
Transport	17.580	3.231	2.432	17.580	0.000
Public Protection	0.547	0.029	(0.339)	0.547	0.000
Finance & Procurement	7.040	2.607	2.884	7.040	0.000
Revenues & Benefits - Subsidy	(0.700)	0.115	6.738	(0.700)	0.000
<b>Growth, Investment &amp; Place Service Totals</b>	<b>102.240</b>	<b>16.185</b>	<b>14.622</b>	<b>105.140</b>	<b>2.900</b>

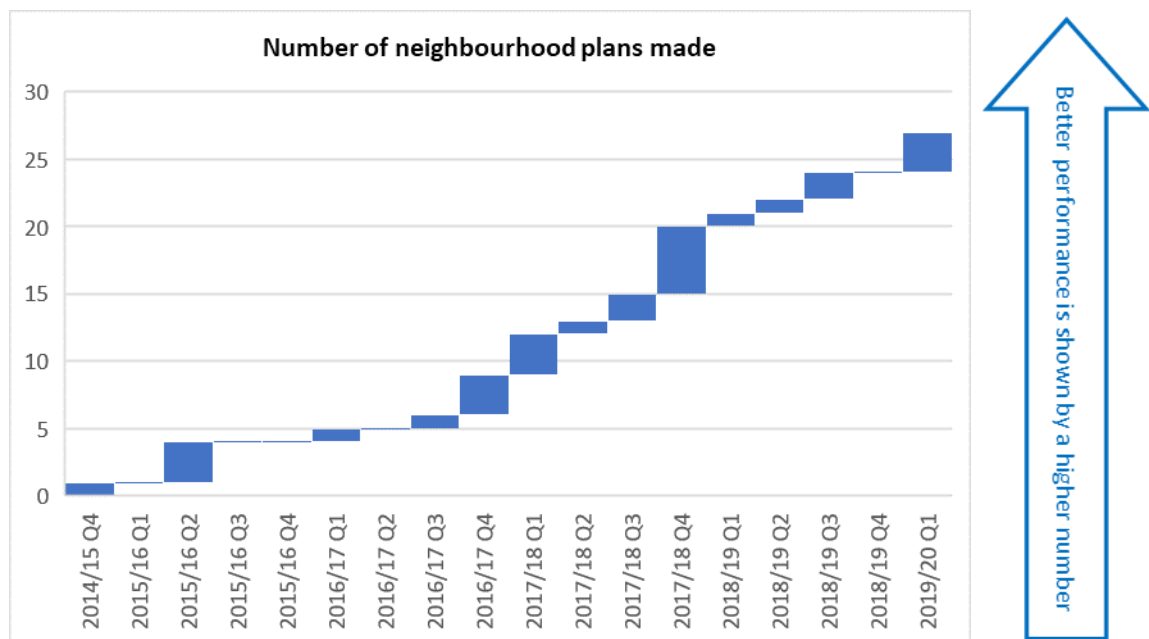
### Economic Development & Planning

40. Economic Development & Planning are forecasting online at this stage; however, the budget carries significant risk as Income Budget totals £7.186 million across Development Management, Building Control and Land Charges.

41. Income budgets were underachieved by £0.871 million in 2018/2019 with major planning applications down by 22% in 2018/19, 158 major applications in 2018 compared to 202 in 2017 (period April to March). Applications have not been this

low since 2013/14. The first quarter of 2019/2020 is also showing underachievement so will need to be closely monitored but it would be unrealistic to provide a forecast at this stage. It is thought that this reduction is in partly down to the uncertainties of Brexit with Developers delaying and shying away from major applications.

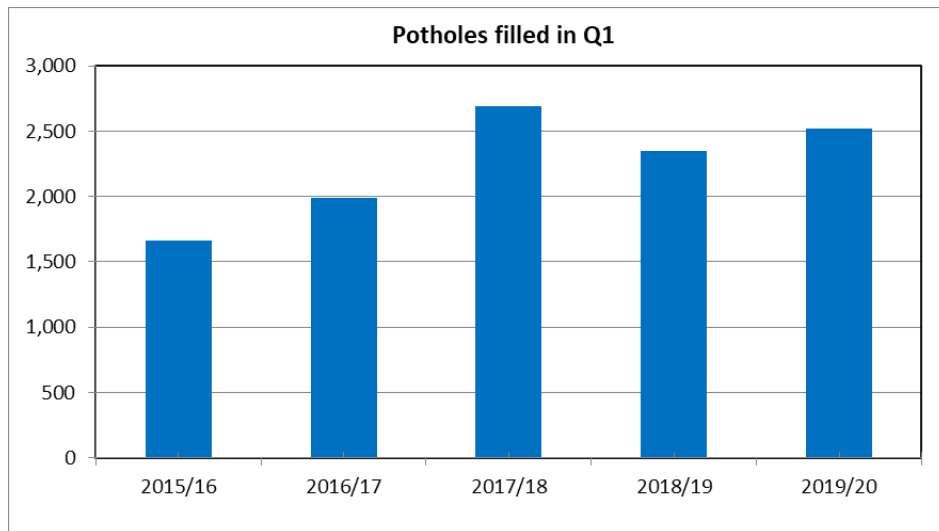
42. Ensuring the right development is enabled in the right place is an aim of Wiltshire Council’s Business Plan. One way in which this is supported is by enabling Neighbourhood Plans which allow communities to have much greater control over how their area is developed. Over all Wiltshire now has 28 plans in place. Three were enabled during the first quarter of this financial year. They were Oaksey in April, Sherston in May and West Lavington in June.



### Highways & Transport

43. Highways is forecasting a balanced year end position.

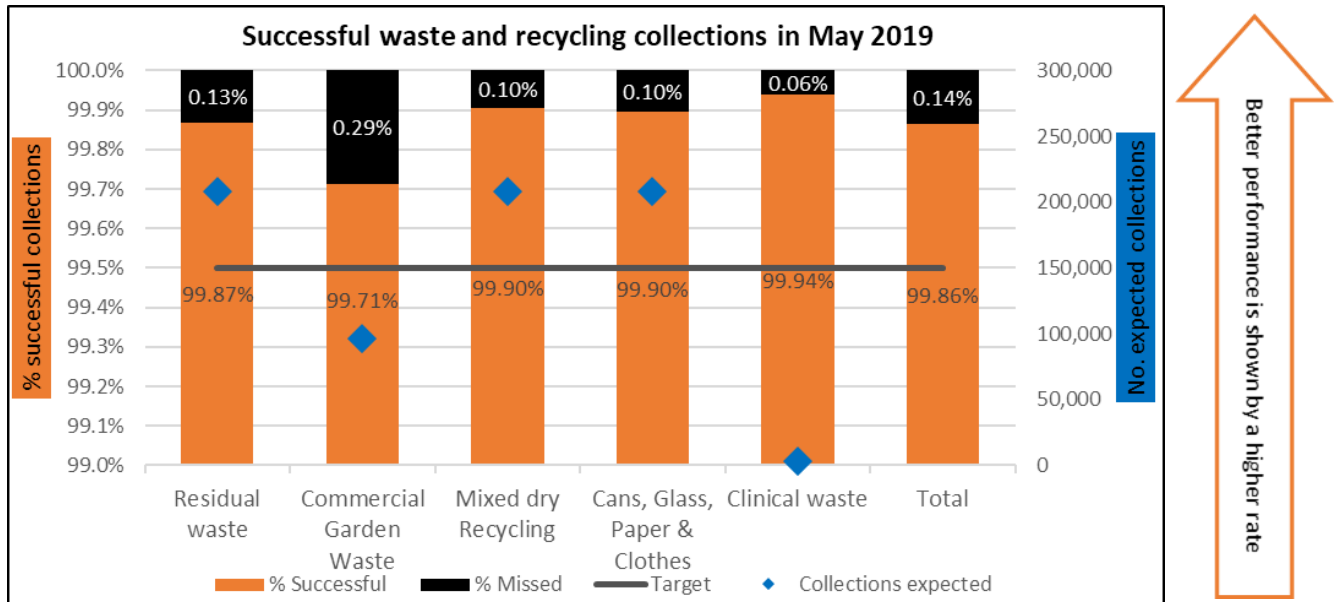
44. Improving the County’s strategic infrastructure is an expressed goal in the Council’s Business Plan. In order to keep the county moving the Highways department and teams deal with thousands of road repairs every year. In quarter one of 2019/20 31.5km of roads were repaired and over 2,500 potholes were filled.



## Waste & Environment

45. The tendered solution for collection of waste and recycling (Lot 5) and the management of dry recyclable material (Lot 1) could not be delivered as originally intended due to significant delay in the council's contractor Hills obtaining planning permission for a new Materials Recovery Facility (MRF) and depot.
46. An interim service change was put in place to enable the collection and recycling of additional plastic materials and cartons from the blue lidded bin. Because the tendered solution could not be implemented, additional vehicles and additional staff were required as the collection of dry recyclable materials continued to be based on separate collection of materials from the black box and the blue lidded bin.
47. The 2019/2020 budget was based on the interim service being in place for 2 months, April and May 2019, and the tendered solution becoming operational from June 2019.
48. The programme has slipped due to difficulties finalising the contract changes and payment arrangements for the Lot 1 MRF equipment and agreeing the parameters for the new rounds design to ensure that the contractor can deliver in accordance with the original tendered solution.
49. The MRF and rounds design are now forecast to be fully operational from February 2020, this will mean that the interim service will need to continue for 8 months more than budgeted. The interim service costs between £0.250 to £0.300 million more than budget per month, the variability is linked to income generation which is a shared risk between the council and the contractor. This is forecast to cost up to £2.400 million above budget in 2019/2020.
50. The other waste contracts and tonnage forecasts have been reviewed and overall are in line with budget setting forecasts.

51. The latest data available (for May 2019) shows that 99.86% of the more than 723,000 waste and recycling collections from households were made successfully. All categories of collection were above the 95% target in May. Reducing litter and improving recycling is a stated aim under goal of building community wellbeing in Wiltshire Council's Business Plan.

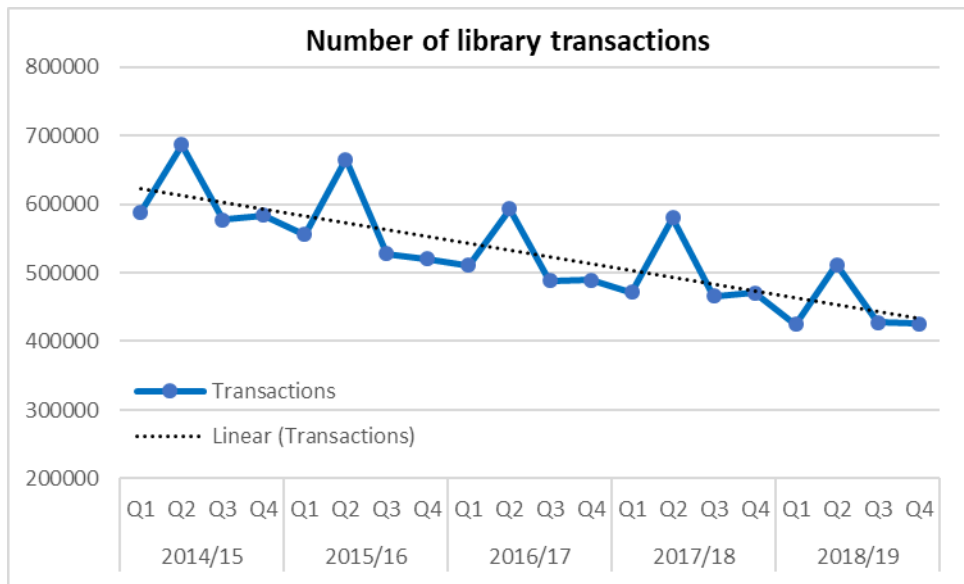


### Libraries, Heritage & Arts

52. Communities & Neighbourhood Services are reporting a £0.500 million pressure in relation to Library Services.

53. In 2018/19 a savings proposal was approved to review and devolve libraries to communities, increasing further volunteers and securing greater efficiencies in sites. To implement successfully this proposal requires a full review and may require Equality Impact Assessments and Consultation. In addition, the Library service Income budget has been declining, income is largely generated through DVD rentals and demand has been gradually decreasing in the last couple of years. The service is confident that overall the savings can be delivered but it does require a full and intelligent review that looks at each community area and its needs and secures the most appropriate and cost-effective delivery option for that area. This needs a realistic timeframe and cannot be done piecemeal in order to achieve the overall objective and deliver the full savings.

54. As library buildings get used for a more diverse range of activities traditional borrowing and hiring transactions are decreasing in number. The latest data (for the last financial year) shows a 10% reduction in transactions in the 12 months to April 2019 as part of a longer-term 27% decline in the last four years.

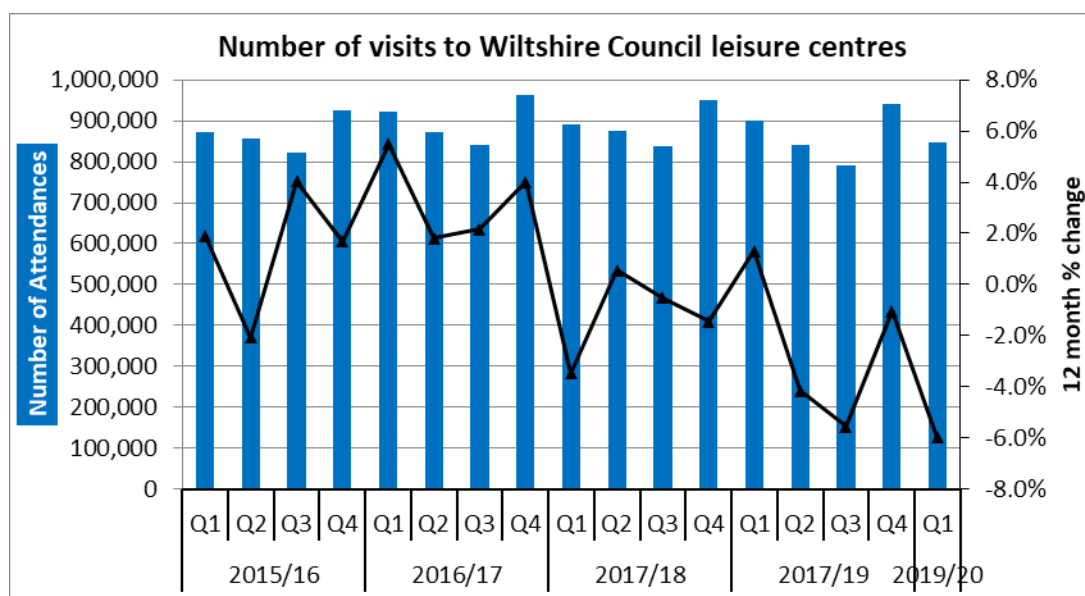


55. It should be recognised that as a service area Income budgets total £13.697 million and are subject to demand, the economy and to an extent the climate. The service continues to work towards these targets and manage any relating pressures, recognising that there are varying degrees of complexity. For example, included within Public Protection for 2019/20 is a target income budget to deliver a new service to provide environmental assessments in line with planning applications. This service is reliant on a buoyant planning environment and unfortunately since the proposal was put forward there has been a significant decline in the number of planning applications received, both in 2018/19 and the first part of 2019/20. Income budgets will continue to be monitored closely but it remains a risk for the service.

## Leisure

56. Leisure is forecasting a balanced year end position.

57. Wiltshire Council aims to provide opportunities for its residents to participate in physical activity through its leisure offer. Visits to Wiltshire Council leisure centres go through an annual cycle with the highest attendance figures in quarter four of each year (following the start of the new calendar year) and quarter three showing the lowest. A major part of the 6% decrease in visits to leisure centres between quarter one 2019/20 and the same period in the previous year is the closure of Christie Miller Sports Centre, Melksham, in October 2018. Despite the overall decrease there are some centres that have seen an increase in the number of visits. These include: Warminster Sports Centre, Amesbury Sports Centre and Durrington Pool.



## CORPORATE EXPENDITURE

Summary Position	2019/20 Budget	Profiled Budget to date	Actual to date	Projected Position for Year (before mitigation)	Projected Variance
	£ m	£ m	£ m	£ m	£ m
Corporate Directors	0.899	0.087	0.444	0.899	0.000
Members	2.230	0.537	0.538	2.230	0.000
Movement on Reserves	(2.297)	(1.636)	(1.701)	(2.297)	0.000
Capital Financing	17.414	2.339	2.671	16.914	(0.500)
Restructure & Contingency	2.545	0.490	0.479	2.545	0.000
General Government Grants	(33.166)	(8.191)	(5.947)	(35.066)	(1.900)
Corporate Levies	6.525	1.993	1.402	6.525	0.000
<b>Corporate Totals</b>	<b>(5.850)</b>	<b>(4.381)</b>	<b>(2.114)</b>	<b>(8.250)</b>	<b>(2.400)</b>

### Capital Financing

58. This is the revenue costs of funding the capital programme. The capital programme was set at budget setting to ensure affordability and deliverability. This included estimates of requirements against large capital schemes in the future plan, such as special schools and the digital programme. These requirements are constantly reviewed. At present it is forecast that Capital Financing will be underspent by £0.500 million at the end of the financial year.

## **General Government Grants**

59. General Government Grants are forecasting to be £1.900 million higher than budget, in respect of business rates. The base is recalculated annually upon submission of the annual return to central government. This is calculated after budget setting is completed. This shows additional £2.300 million grant will be received in 2019/20. Therefore a variance of £1.900 million is reported in this area, after a £0.400 million virement for unachieved cross cutting savings.

## **DEDICATED SCHOOLS GRANT**

60. The high needs block dedicated schools budgets are likely to significantly overspend to a level that is at least 18/19 levels (£3.000 million). This is because there has been no significant increase in national funding levels and no significant changes in policy, procedure or behaviour. The 19/20 solution is to continue with the partnership approach between schools and the local authority. The number of EHCPS at the time of setting the budget was 3,182, the current SEND FTE is 3,543 C&YP (11% increase.) There is much recovery activity in this area. ISOS consultants are working with colleagues from health, the local authority, schools and parents and their initial recommendations have been received, shared and action plans are being implemented. There will be a significant amount of work arising from the final report which will be presented to Schools Forum in October with the findings and detailed action plan. The SEN strategy group is underway and working towards Cabinet approval in February 2020. An external consultant is reviewing processes around transitions and panel arrangements as part of the Families and Children's Transformation – Whole Life Pathway workstream. Wiltshire's involvement in national lobbying consultation and research to evidence the underfunding issue continues.

## **HOUSING REVENUE ACCOUNT SUMMARY**

61. The Housing Revenue Account is forecasting an on line at the year end.

## **SAVINGS DELIVERY PERFORMANCE**

62. The Council has a savings requirement of £27.290 million within its 2019/20 budget which were approved by Council. The deliverability of these proposals are closely monitored and reported to CLT on a regular basis.
63. The quarter 1 assessment on the deliverability of the savings is summarised below. Overall a shortfall of £0.381 million is forecast, for which mitigation plans will be put in place. This is included in the General Fund figures set out in this report.

<b>RAG analysis by Directorate</b>	<b>Saving Target</b>	<b>Green</b>	<b>Amber</b>	<b>Red</b>	<b>Alternative Savings</b>
<b>Adult Care &amp; Public Health Service</b>	<b>(£ m)</b>	<b>(£ m)</b>	<b>(£ m)</b>	<b>(£ m)</b>	<b>(£m)</b>
Access & Reablement Learning Disabilities & Mental Health	(7.057)	(5.755)	(1.002)	(0.300)	(0.300)
Commissioning - Adults Public Health	(3.645)	(1.000)	(1.485)	(1.160)	(1.160)
Digital & Information	(4.031)	(3.065)	-	(0.966)	(0.966)
Legal & Electoral & Registration	(0.506)	(0.025)	(0.481)	-	-
<b>Children &amp; Education Service</b>	(0.716)	(0.451)	(0.265)	-	-
Commissioning - Children Family & Children Services	(0.291)	(0.025)	(0.266)	-	-
Education & Skills	(0.300)	(0.300)	-	-	-
Corporate Services	(2.796)	(1.195)	(1.183)	(0.418)	(0.070)
Human Resources & Org Development	(0.123)	(0.123)	-	-	-
<b>Growth, Investment &amp; Place Service</b>	(0.303)	(0.303)	-	-	-
Economic Development & Planning	(0.213)	(0.092)	(0.121)	-	-
Highways & Environment	(0.151)	(0.134)	(0.017)	-	-
Housing & Commercial Development	(1.195)	(0.962)	(0.200)	(0.033)	-
Communities & Neighbourhood	(0.788)	(0.662)	(0.090)	(0.036)	(0.036)
Finance	(0.932)	(0.647)	(0.262)	(0.023)	(0.023)
<b>Corporate</b>	(0.523)	(0.523)	-	-	-
Corporate Directors	-	-	-	-	-
Corporate	(0.150)	(0.150)	-	-	-
Cross Cutting	(3.300)	(0.650)	(2.150)	(0.500)	(0.500)
	<b>(27.020)</b>	<b>(16.062)</b>	<b>(7.522)</b>	<b>(3.436)</b>	<b>(3.055)</b>

<b>Red savings</b>	<b>(3.436)</b>
<b>Alternative Savings</b>	<b>(3.055)</b>

**Savings Unachievable in 2019/20** 0.381

Key Green = Deliverable  
Amber = Deliverable with risks  
Red = Unlikely to be delivered



64. Out of £27.020 million savings proposals £7.522 million are accessed as amber rated. This means that they are deemed to be deliverable in 2019/20, but with some risks associated with them.
65. £3.436 million of savings targets are currently assessed as red after compensating savings. This means they are deemed unlikely to be delivered as planned. However, officers will continue to try and identify compensating savings and corresponding mitigating actions. So far £3.055 million of alternative savings have been identified, some of which are one-off in nature, and these are included in the figures in this report. This leaves £0.381 million of savings for which further compensating savings are being identified at present.

### CAPITAL SUMMARY

66. The original budget for 2019/20 was approved by Council during budget setting on 5 February 2019. Since that date there have been a number of changes to the budget for 2019/20, largely due to reprogramming of budget from 2018/19 to 2019/20; but also, to reflect additional funding being available. The changes to the budget since it was last amended in the Budget setting report are summarised in the table that follows, a fuller breakdown of the changes made at a scheme by scheme level is attached as Appendix E.

#### Breakdown of Budget Amendments from Original Budget to Quarter 1 Budget (as at 30 June 2019)

Summary of Movements in Capital Programme	£m	Further information
Original Capital Programme Budget (reported to Council 5 Feb 2019)	172.938	Appendix E
<b>Amendments to Capital Programme 2019/20 Since Original Budget Setting:</b>		
Budgets Reprogrammed from 2018/19 to 2019/20	39.667	Appendix E
Additional Budgets added to Programme	9.753	Appendix E & F
Grant Amendments	0.159	Appendix E
Reduced Budgets	(0.361)	Appendix E
Budgets Reprogrammed from 2019/20 to 2020/21	(5.171)	Appendix E & F
<b>Quarter 1 Budget 2019/20</b>	<b>216.985</b>	

67. The budget additions shown above largely reflect increases in funding being available and brought into the programme under the Chief Financial Officer delegated authority. They comprise of additional grants from Central Government and Section 106 contributions and other contributions used to finance capital spend within the capital programme. Further information on the budget movements at an individual scheme level is shown in Appendix E.
68. The Health & Wellbeing Centres Live Schemes budget has been increased by £0.481 million. Cricklade Campus budget has been increased by £0.126 million of S106 contributions, increasing the total budget from £3.444 million to £3.570 million. It is necessary to utilise the S106 funds to fulfil the requirements at the centre, in particular the improvements to the fitness suite and purchase of equipment.
69. Calne Campus Budget has been increased by £0.355 million of S106 and Trust contributions, increasing the total budget from £3.392 million to £3.747 million. The preferred contractors estimate for the Calne Community Campus will enable all identified works to be carried out plus a basic redecoration of the first floor and full refurbishment of the upper floor. This work will provide the full removal of asbestos in this area, improvements to the café/bar, refurbished toilets and the creation of multi-purpose spaces that will improve the financial and operational aspects of the building and ensure a more aesthetically pleasing venue.
70. It is recommended (per proposal h) that the Director of Communities and Neighbourhood has the delegated authority to vire budget from Future Developments to individual projects upon completion of a full business case, in consultation with the cabinet member for Communities and Neighbourhood and the Directors for Legal and Democratic Services and Finance.
71. A new budget of £0.500 million for Community Projects for community led and run hub facilities around Wiltshire has been created by viring budget from Whole Life Building & Equipment Refresh and Waste (by bringing in S106 contributions).
72. The ICT Budget has been increased by £4.559 million in 2019/20 in line with the ICT And Digital Strategy paper that was approved at Full Council on the 30 April 2019. The budget is now presented by programmes as outlined in the strategy.
73. The budgets that have been reprogrammed into 2020/21 are shown in further detail in Appendices E and F.

### **Summary of Capital Position as at 30 June 2019**

74. The current budget for the year 2019/20 is £216.985 million. Actual spend on schemes as at 30 June 2019 was £13.602 million. A full breakdown of these figures is attached in Appendix E.

## **GROWTH, INVESTMENT & PLACE SERVICE**

75. The current budget is £143.678 million, actual spend on schemes as at 30 June 2019 was £6.526 million.
76. £20.448 million budget relates to Local Growth Fund Schemes which are funded by grant and profiled to spend in the last two quarters of the year. Actual spend as at 30 June 2019 was £0.847 million. Significant schemes are Chippenham Station Hub, A350 West Ashton/Yarnbrook and Maltings Salisbury. These are complex infrastructure and City centre regeneration schemes and are being done in conjunction with Developers and Partners.
77. Council House Build programme £9.554 million is progressing and is planned to deliver 49 new affordable homes, design process has started on 4 sites, other sites continue to work through feasibility and new options are also being explored.
78. £20 million budget relates to Commercial Housing Company and Commercial Investment. A separate paper will be presented to Cabinet with the Local Housing Company Business plan for approval so that this programme of work can commence. This is all profiled in the last two quarters of the year.
79. Highways budgets including Structural Maintenance, Bridges and the LED Street Lighting programme total £36.757 million, actual spend as at 30 June 2019 was £3.385 million. These programmes are on profile to spend full budget.
80. ICT Strategy budgets and Microsoft Cloud Navigator Digital programme total £25.305 million in 2019/20. The Digital Board are reviewing project plans and spend profiles to ensure deliverability.

## **CHILDREN & EDUCATION SERVICE**

81. The current budget is £71.700 million, actual spend on schemes as at 30 June 2019 was £7.063 million.
82. Health & Wellbeing Centres – Live Schemes 2019/20 budget is £22.501 million. £5.800 million of the budget is in relation to Calne and Cricklade. Tenders have been received back and evaluated, programmes are both anticipated to complete September 2020. £15.000 million of the budget relates to Melksham Campus, this needs to be re-profiled into future years in line with anticipated programme delivery and will be actioned once confirmed.
83. Basic Need Budget is £31.874 million and is funded by grant and S106, actual spend as at 30 June 2019 was £2.758 million. This budget meets the statutory obligation to meet the predicted school places by completing school extensions and expansions. The budget covers circa 28 projects at varying stages from design to build. Due to the number of projects and complexities with planning permissions and managing the changing need this budget can require re-profiling so requires careful monitoring but at this stage is reported online.

84. School Maintenance and Modernisation has a budget of £8.736 million and is funded by grant and S106, actual spend as at 30 June 2019 was £1.007 million. This covers planned school property maintenance and reactive maintenance when required for example boilers and roofs, work is undertaken around school holidays. This budget is forecast online.

### **ADULT CARE & PUBLIC HEALTH SERVICE**

85. The current budget is £0.816 million, actual spend as at 30 June 2019 was £0.013 million. Adults Transformation Phase 2 has been increased by £0.478 million flexible use of capital receipts.

### **RESERVES**

86. The table below provides the projected position for the year of the general fund balance held by the Council, as at Quarter 1

<b>General Fund Balance</b>	<b>£m</b>
Balance as at 1 April 2019	(15.100)
Projected overspend at Quarter 1	0.500
<b>Forecast Balance 31 March 2020</b>	<b>(14.600)</b>

87. It is expected that further mitigating actions will mean that there is no draw on reserves by the end of the financial year

### **Overall Conclusions**

88. The Council continues to rigorously monitor the budget. At Quarter 1, there are only 2 significant variances which have materialised, as set out in paras 40 and 47. Overall, the overall net forecast position is a £0.500 overspend, if no managerial action is taken.
89. It is vital that focussed attention is given to keep expenditure within budget to avoid the unplanned use of our limited level of reserves. The Corporate Leadership Team will continue to prioritise the identification of opportunities and actions to limit spending and improve income.

### **Implications**

90. This report informs Members' decision making.

### **Overview & Scrutiny Engagement**

91. Regular reports are taken to Overview & Scrutiny relating to the Council's financial position.

### **Safeguarding Implications**

92. Safeguarding remains a key priority for the Council and this report reflects the additional investment support the ongoing spend in looked after children and safeguarding.

### **Public Health Implications**

93. None have been identified as arising directly from this report.

### **Procurement Implications**

94. None have been identified as arising directly from this report.

### **Equalities and diversity impact of the proposals**

95. None have been identified as arising directly from this report.

### **Environmental and Climate Change Considerations**

96. None have been identified as arising directly from this report.

### **Risks Assessment**

97. If the Council fails to take actions to address forecast shortfalls, overspends or increases in its costs it will need to draw on reserves. The level of reserves is limited and a one-off resource that cannot thus be used as a long term sustainable strategy for financial stability. Budget monitoring and management, of which this report forms part of the control environment, is a mitigating process to ensure early identification and action is taken.

### **Financial implications**

98. This is the subject of the report.

### **Legal Implications**

99. None have been identified as arising directly from this report.

### **Proposals**

100. Cabinet is asked to note:

- a) the General Fund quarter 1 projected year end outturn is an overspend of £0.500 million, before management action are made
- b) an HRA quarter 1 projected year end outturn is online
- c) the 2019/20 capital programme as at quarter 1 (30 June 2019) has a spend of 13.602 million

- d) outturns against the selected performance measures in relation to the Council's Business Plan
- e) the scoring and commentary on the Strategic Risk Register.

Cabinet are asked to approve:

- f) the budget virements in the revenue budget and capital programme, per appendices C & F.
- g) approve delegation of budget virement approval to the cabinet member for finance, procurement, ICT & operational assets
- h) approve giving delegated authority to the Director of Communities and Neighbourhood to vire budget from Future Developments to individual projects within the Health & Wellbeing Centres Live Schemes budget in the Capital Programme upon completion of a full business case, in consultation with the cabinet member for Communities and Neighbourhood and the Directors for Legal and Democratic Services and Finance.

### **Reasons for Proposals**

101. To inform effective decision making and ensure a sound financial control environment.

### **Background Papers and Consultation**

None

#### **Contact Name:**

Becky Hellard, Interim Director – Finance and Procurement,

[becky.hellard@wiltshire.gov.uk](mailto:becky.hellard@wiltshire.gov.uk)

Robin Townsend Director – Corporate Services

[robin.townsend@wiltshire.gov.uk](mailto:robin.townsend@wiltshire.gov.uk)

Report Authors: Matthew Tiller, Chief Accountant  
Toby Eliot, Corporate Support Manager

#### **Appendices:**

Appendix A: Revenue Budget Monitoring Statements

Appendix B: Revenue Budget Movements 2019/20

Appendix C: Major Virements between Service Areas from Original budget Revenue

Appendix E: 2019/20 Capital Programme Budget Movements and spend to June 2019

Appendix F: Delegated authority for budget movements

Appendix G: Strategic Risk Register for Q1 (April – June) 2019/20

**Wiltshire Council Revenue Budget Monitoring Statement: Period 3**

<b>Adult Care, Public Health &amp; Digital</b>	
<u>Access &amp; Reablement</u>	
Adults 18+	Gross Costs Income Net
<u>Learning Disabilities &amp; Mental Health</u>	
Mental Health	Gross Costs Income Net
Learning Disabilities	Gross Costs Income Net
<u>Commissioning</u>	
Adults Commissioning	Gross Costs Income Net
<u>Public Health</u>	
Public Health	Gross Costs Income Net
<u>Digital &amp; Information</u>	
Information Services	Gross Costs Income Net
<u>Legal &amp; Democratic</u>	
Legal & Democratic	Gross Costs Income Net
<b>Children &amp; Education</b>	
<u>Commissioning</u>	
Childrens Commissioning	Gross Costs Income Net
<u>Family &amp; Children Services</u>	
Children's Social Care	Gross Costs Income Net
0-25 Service: Disabled Children & Adults	Gross Costs Income Net

Early Help - now closed	Gross Costs
	Income
	Net
<b><u>Education &amp; Skills</u></b>	
School Effectiveness	Gross Costs
	Income
	Net
Funding Schools	Gross Costs
	Income
	Net
<b><u>Corporate Services</u></b>	
Corporate Services	Gross Costs
	Income
	Net
Communications	Gross Costs
	Income
	Net
<b><u>Human Resources &amp; Organisational Development</u></b>	
Human Resources & Organisational Development	Gross Costs
	Income
	Net
<b>Growth, Investment &amp; Place</b>	
<b><u>Economic Development &amp; Planning</u></b>	
Economic Development & Planning	Gross Costs
	Income
	Net
<b><u>Highways &amp; Environment</u></b>	
Highways	Gross Costs
	Income
	Net
Car Parking	Gross Costs
	Income
	Net
Waste & Environment	Gross Costs
	Income
	Net
<b><u>Housing &amp; Commercial Development</u></b>	
Housing Services	Gross Costs
	Income
	Net
Strategic Asset & Facilities Management	Gross Costs



	Income
	Net
<b><u>Communities &amp; Neighbourhood</u></b>	
Libraries, Heritage & Arts	Gross Costs
	Income
	Net
Leisure	Gross Costs
	Income
	Net
Transport	Gross Costs
	Income
	Net
Public Protection	Gross Costs
	Income
	Net
<b><u>Finance</u></b>	
Finance & Procurement	Gross Costs
	Income
	Net
Revenues & Benefits - Subsidy	Gross Costs
	Income
	Net
<b><u>Corporate Directors</u></b>	
Corporate Directors	Gross Costs
	Income
	Net
Members	Gross Costs
	Income
	Net
<b><u>Corporate</u></b>	
Movement on Reserves	
Capital Financing	
Restructure & Contingency	
General Government Grants	
Corporate Levies	Net
<b>Wiltshire Council General Fund Total</b>	<b>Gross Costs</b>
	<b>Income</b>
	<b>Net</b>
Housing Revenue Account (HRA)	Gross Costs
	Income

<b>Total Including HRA</b>	<b>Net</b> <b>Gross Costs</b> <b>Income</b> <b>Net</b>
----------------------------	---

<i>Original Budget</i>	<i>Revised Budget Period 3</i>	<i>Profiled Budget to Period 3</i>	<i>Actual to date</i>	<i>Projected Position for Year</i>	<i>Projected Variation for Year: Overspend / (Underspend)</i>
<i>£m</i>	<i>£m</i>	<i>£m</i>	<i>£m</i>	<i>£m</i>	<i>£m</i>
70.882 (22.913)	72.525 (23.733)	18.024 (5.121)	16.498 (2.536)	72.525 (23.733)	- -
<b>47.969</b>	<b>48.792</b>	<b>12.903</b>	<b>13.962</b>	<b>48.792</b>	<b>-</b>
20.716 (3.197)	31.921 (13.642)	8.478 (3.428)	4.952 (1.684)	31.921 (13.642)	- -
<b>17.519</b>	<b>18.279</b>	<b>5.050</b>	<b>3.268</b>	<b>18.279</b>	<b>-</b>
58.402 (6.666)	68.730 (17.639)	16.813 (4.356)	13.865 (2.524)	68.730 (17.639)	- -
<b>51.736</b>	<b>51.091</b>	<b>12.457</b>	<b>11.341</b>	<b>51.091</b>	<b>-</b>
41.950 (19.540)	41.783 (18.974)	10.349 (5.070)	6.132 (4.886)	41.783 (18.974)	- -
<b>22.410</b>	<b>22.809</b>	<b>5.279</b>	<b>1.246</b>	<b>22.809</b>	<b>-</b>
15.893 (15.683)	17.112 (15.676)	4.306 (3.899)	2.240 (4.236)	17.112 (15.676)	- -
<b>0.210</b>	<b>1.436</b>	<b>0.407</b>	<b>(1.996)</b>	<b>1.436</b>	<b>-</b>
11.355 (2.528)	11.320 (2.529)	4.900 (0.603)	7.180 (0.046)	11.320 (2.529)	- -
<b>8.827</b>	<b>8.791</b>	<b>4.297</b>	<b>7.134</b>	<b>8.791</b>	<b>-</b>
6.512 (2.282)	6.010 (2.283)	1.397 (0.612)	1.882 0.050	6.010 (2.283)	- -
<b>4.230</b>	<b>3.727</b>	<b>0.785</b>	<b>1.932</b>	<b>3.727</b>	<b>-</b>
33.785 (28.864)	35.196 (29.642)	9.182 (0.270)	7.886 (0.492)	35.196 (29.642)	- -
<b>4.921</b>	<b>5.554</b>	<b>8.912</b>	<b>7.394</b>	<b>5.554</b>	<b>-</b>
46.249 (5.021)	47.952 (5.671)	11.359 (1.570)	12.622 (0.844)	47.952 (5.671)	- -
<b>41.228</b>	<b>42.281</b>	<b>9.789</b>	<b>11.778</b>	<b>42.281</b>	<b>-</b>
61.546 (38.937)	57.861 (37.734)	13.247 (0.310)	13.252 (0.208)	57.861 (37.734)	- -
<b>22.609</b>	<b>20.127</b>	<b>12.937</b>	<b>13.044</b>	<b>20.127</b>	<b>-</b>

(1.200)	-	-	-	-	-	-
	-	-	-	-	-	-
<b>(1.200)</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>
7.844	9.854	3.243	2.243	9.854	-	-
(6.105)	(6.053)	(1.119)	(0.750)	(6.053)	-	-
<b>1.739</b>	<b>3.801</b>	<b>2.124</b>	<b>1.493</b>	<b>3.801</b>	<b>-</b>	<b>-</b>
22.357	138.599	5.196	12.212	138.599	-	-
(22.320)	(138.599)	(5.466)	(1.476)	(138.599)	-	-
<b>0.037</b>	<b>-</b>	<b>(0.270)</b>	<b>10.736</b>	<b>-</b>	<b>-</b>	<b>-</b>
6.019	7.670	1.176	1.487	7.670	-	-
(1.178)	(2.754)	(0.678)	0.380	(2.754)	-	-
<b>4.841</b>	<b>4.916</b>	<b>0.498</b>	<b>1.867</b>	<b>4.916</b>	<b>-</b>	<b>-</b>
1.477	1.409	0.352	0.420	1.409	-	-
(0.220)	(0.220)	(0.045)	(0.001)	(0.220)	-	-
<b>1.257</b>	<b>1.189</b>	<b>0.307</b>	<b>0.419</b>	<b>1.189</b>	<b>-</b>	<b>-</b>
5.141	5.043	1.221	1.176	5.043	-	-
(1.814)	(1.850)	(0.223)	(0.090)	(1.850)	-	-
<b>3.327</b>	<b>3.193</b>	<b>0.998</b>	<b>1.086</b>	<b>3.193</b>	<b>-</b>	<b>-</b>
10.504	10.355	2.455	2.344	10.355	-	-
(7.954)	(7.973)	(1.993)	(1.689)	(7.973)	-	-
<b>2.550</b>	<b>2.382</b>	<b>0.462</b>	<b>0.655</b>	<b>2.382</b>	<b>-</b>	<b>-</b>
21.225	21.225	4.608	4.994	21.225	-	-
(1.869)	(1.869)	(0.410)	(0.384)	(1.869)	-	-
<b>19.356</b>	<b>19.356</b>	<b>4.198</b>	<b>4.610</b>	<b>19.356</b>	<b>-</b>	<b>-</b>
1.933	1.932	0.700	0.362	1.932	-	-
(8.465)	(8.745)	(1.883)	(1.657)	(8.745)	-	-
<b>(6.532)</b>	<b>(6.813)</b>	<b>(1.183)</b>	<b>(1.295)</b>	<b>(6.813)</b>	<b>-</b>	<b>-</b>
49.424	49.585	8.138	0.438	51.985	2.400	-
(8.079)	(8.131)	(5.789)	(4.974)	(8.131)	-	-
<b>41.345</b>	<b>41.454</b>	<b>2.349</b>	<b>(4.536)</b>	<b>43.854</b>	<b>2.400</b>	<b>-</b>
8.835	9.091	2.302	2.354	9.091	-	-
(4.855)	(5.034)	(1.117)	(0.293)	(5.034)	-	-
<b>3.980</b>	<b>4.057</b>	<b>1.185</b>	<b>2.061</b>	<b>4.057</b>	<b>-</b>	<b>-</b>
17.289	17.501	3.311	0.824	17.501	-	-

(5.234)	(5.450)	(1.363)	(1.752)	(5.450)	-
<b>12.055</b>	<b>12.051</b>	<b>1.948</b>	<b>(0.928)</b>	<b>12.051</b>	-
5.754	6.752	1.507	1.967	7.252	0.500
(1.723)	(1.302)	(0.273)	(0.491)	(1.302)	-
<b>4.031</b>	<b>5.450</b>	<b>1.234</b>	<b>1.476</b>	<b>5.950</b>	<b>0.500</b>
8.013	8.414	1.988	2.110	8.414	-
(8.169)	(8.578)	(1.978)	(1.729)	(8.578)	-
<b>(0.156)</b>	<b>(0.164)</b>	<b>0.010</b>	<b>0.381</b>	<b>(0.164)</b>	-
19.262	19.269	3.648	3.180	19.269	-
(1.689)	(1.689)	(0.417)	(1.126)	(1.689)	-
<b>17.573</b>	<b>17.580</b>	<b>3.231</b>	<b>2.054</b>	<b>17.580</b>	-
3.715	2.728	0.541	0.638	2.728	-
(2.187)	(2.181)	(0.512)	(0.178)	(2.181)	-
<b>1.528</b>	<b>0.547</b>	<b>0.029</b>	<b>0.460</b>	<b>0.547</b>	-
20.796	20.681	5.211	4.892	20.681	-
(13.671)	(13.641)	(2.604)	(1.800)	(13.641)	-
<b>7.125</b>	<b>7.040</b>	<b>2.607</b>	<b>3.092</b>	<b>7.040</b>	-
111.386	71.397	17.849	18.320	71.397	-
(112.086)	(72.097)	(17.734)	(11.823)	(72.097)	-
<b>(0.700)</b>	<b>(0.700)</b>	<b>0.115</b>	<b>6.497</b>	<b>(0.700)</b>	-
0.495	0.913	0.090	0.444	0.913	-
(0.014)	(0.014)	(0.003)	-	(0.014)	-
<b>0.481</b>	<b>0.899</b>	<b>0.087</b>	<b>0.444</b>	<b>0.899</b>	-
2.230	2.231	0.537	0.537	2.231	-
-	-	-	-	-	-
<b>2.230</b>	<b>2.231</b>	<b>0.537</b>	<b>0.537</b>	<b>2.231</b>	-
(0.651)	(2.297)	(1.636)	(0.223)	(2.297)	-
19.874	17.414	2.339	2.678	16.914	(0.500)
1.669	2.545	0.490	0.207	2.545	-
(32.766)	(33.166)	(8.192)	(2.479)	(35.066)	(1.900)
6.525	6.525	1.993	1.246	6.525	-
<b>(5.349)</b>	<b>(8.979)</b>	<b>(5.006)</b>	<b>1.429</b>	<b>(11.379)</b>	<b>(2.400)</b>
<b>685.640</b>	<b>786.080</b>	<b>157.122</b>	<b>148.882</b>	<b>786.580</b>	<b>0.500</b>
<b>(353.263)</b>	<b>(453.703)</b>	<b>(68.846)</b>	<b>(47.239)</b>	<b>(453.703)</b>	-
<b>332.377</b>	<b>332.377</b>	<b>88.275</b>	<b>101.643</b>	<b>332.877</b>	<b>0.500</b>
25.554	25.534	2.479	1.782	25.534	-
(25.554)	(25.534)	(5.567)	(5.502)	(25.534)	-

-	-	(3.088)	(3.720)	-	-
711.194 (378.817)	811.614 (479.237)	159.601 (74.413)	150.664 (52.741)	812.114 (479.237)	0.500 -
<b>332.377</b>	<b>332.377</b>	<b>85.188</b>	<b>97.922</b>	<b>332.877</b>	<b>0.500</b>









0.1%
-
0.2%

## Wiltshire Council Revenue Budget Movements 2019/2020

Appendix B

Service	Original Budget	Structural Changes	Revised Original Budget	In Year Virements to Period 3	Revised Budget Period 3	Major Virements See Appendix C
	£m	£m	£m	£m		
<b>Adult Care, Public Health &amp; Digital Access &amp; Reablement</b>						
Adults 18+	47.969	(0.354)	47.615	1.177	48.792	*
<b>Learning Disabilities &amp; Mental Health</b>						
Mental Health	17.519	0.000	17.519	0.760	18.279	*
Learning Disabilities	51.736	0.000	51.736	(0.645)	51.091	*
<b>Commissioning - Adults</b>						
Adults Commissioning	22.410	0.000	22.410	0.399	22.809	*
<b>Public Health</b>						
Public Health	0.211	1.297	1.508	(0.072)	1.436	
<b>Digital &amp; Information</b>						
Information Services	8.827	0.000	8.827	(0.036)	8.791	
<b>Legal, Electoral &amp; Registration Services</b>						
Legal & Democratic	4.230	(0.541)	3.689	0.038	3.727	
<b>Children &amp; Education Service</b>						
<b>Commissioning - Childrens</b>						
Childrens Commissioning	4.921	0.000	4.921	0.633	5.554	*
<b>Family &amp; Children Services</b>						
Childrens Social Care	41.228	(0.047)	41.181	1.100	42.281	*
0-25 Service: Disabled Children & Adults	22.609	0.000	22.609	(2.482)	20.127	*
Early Help (now closed)	(0.001)	0.054	0.053	(0.053)	0.000	
<b>Education &amp; Skills</b>						
School Effectiveness	1.739	(0.007)	1.732	2.069	3.801	*
Funding Schools	0.037	0.000	0.037	(0.037)	0.000	
<b>Corporate Services</b>						
Corporate Services	4.841	0.541	5.382	(0.466)	4.916	*
Communications	1.257	0.000	1.257	(0.068)	1.189	
<b>Human Resources &amp; Org Development</b>						
Human Resources & Org Development	3.327	0.000	3.327	(0.134)	3.193	
<b>Growth Investment &amp; Place</b>						
<b>Economic Development &amp; Planning</b>						
Economic Development & Planning	2.550	(0.101)	2.449	(0.067)	2.382	
<b>Highways &amp; Environment</b>						
Highways	19.356	0.000	19.356	0.000	19.356	
Car Parking	(6.532)	0.000	(6.532)	(0.281)	(6.813)	*
Waste & Environment	41.345	(1.166)	40.179	1.275	41.454	*
<b>Housing &amp; Commercial Development</b>						
Housing Services	3.980	0.101	4.081	(0.024)	4.057	
Strategic Asset & Facilities Management	12.055	0.000	12.055	(0.004)	12.051	
<b>Communities &amp; Neighbourhood Services</b>						
Libraries, Heritage & Arts	4.031	1.166	5.197	0.253	5.450	*
Leisure	(0.156)	0.000	(0.156)	(0.008)	(0.164)	
Transport	17.573	0.000	17.573	0.007	17.580	
Public Protection	1.528	(0.943)	0.585	(0.038)	0.547	
<b>Finance</b>						
Finance & Procurement	7.125	0.000	7.125	(0.085)	7.040	
Revenues & Benefits - Subsidy	(0.700)	0.000	(0.700)	0.000	(0.700)	
<b>Corporate Directors</b>						
Corporate Directors & Members	0.481	0.000	0.481	0.418	0.899	*
Members	2.230	0.000	2.230	0.001	2.231	
<b>Corporate</b>						
Movement on Reserves	(0.651)	0.000	(0.651)	(1.646)	(2.297)	*
Capital Financing	19.874	0.000	19.874	(2.460)	17.414	*
Restructure & Contingency	1.669	0.000	1.669	0.876	2.545	*
General Government Grants	(32.766)	0.000	(32.766)	(0.400)	(33.166)	*
Corporate Levies	6.525	0.000	6.525	0.000	6.525	
<b>2019/2020 Budget Requirement</b>	<b>332.377</b>	<b>0.000</b>	<b>332.377</b>	<b>(0.000)</b>	<b>332.377</b>	
HRA Budget		0.000	0.000	0.000	0.000	
	<b>332.377</b>	<b>0.000</b>	<b>332.377</b>	<b>(0.000)</b>	<b>332.377</b>	

More details are given of major virements in Appendix B. These areas are marked above with \*

This page is intentionally left blank

## Major Virements between Services Areas from Period 1 to Period 3

APPENDIX C

Net virements over £250,000

	£m
<b>Adults 18+</b>	
ASC Realignment	0.448
Realignment of salaries reflecting final pay award	0.712
Sundry small budget adjustments	0.017
<b>In Year Virements period 1-3</b>	<b>1.177</b>
<b>Mental Health</b>	
Emergency Duty Service transfer from Childrens	0.253
ASC Realignment	0.437
Sundry small budget adjustments	0.070
<b>In Year Virements period 1-3</b>	<b>0.760</b>
<b>Learning Disabilities</b>	
ASC Realignment	(1.403)
Funding transferring with the Young People transitioning from childrens services	0.933
Share Whole Life Pathway saving between Adults & Childrens	(0.271)
Sundry small budget adjustments	0.096
<b>In Year Virements period 1-3</b>	<b>(0.645)</b>
<b>Adults Commissioning</b>	
ASC Realignment	0.518
Transfer CAB Budget from Corporate Services	0.507
Transfer CAB Budget from HR	0.050
Realignment of salaries reflecting final pay award	(0.676)
<b>In Year Virements period 1-3</b>	<b>0.399</b>
<b>Childrens Commissioning</b>	
Drawdown of Earmarked Reserves Childrens	0.620
Sundry small budget adjustments	0.013
<b>In Year Virements period 1-3</b>	<b>0.633</b>
<b>Childrens Social Care</b>	
Emergency Duty Service transfer Adult Mental Health element	(0.253)
Childrens realignment	0.857
Salary Realignment Adjustments	0.472
Emergency Duty Service transfer Housing element	0.024
<b>In Year Virements period 1-3</b>	<b>1.100</b>
<b>0-25 Service Disabled Children &amp; Adults</b>	
Childrens realignment	(1.665)
Funding transferring with the Young People transitioning to adult services	(0.933)
Share Whole Life Pathway saving between Adults & Childrens	0.271
Sundry small budget adjustments	(0.155)
<b>In Year Virements period 1-3</b>	<b>(2.482)</b>
<b>School Effectiveness</b>	
Service Adjustments final tidy up	
Childrens realignment	0.808
Allocation of schools redundancy provision	0.350
Drawdown of Earmarked Reserves Childrens	0.830
Sundry small budget adjustments	0.081
<b>In Year Virements period 1-3</b>	<b>2.069</b>
<b>Corporate Services</b>	
Transfer CAB Budget to Adult Services	(0.507)
Sundry small budget adjustments	0.041
<b>In Year Virements period 1-3</b>	<b>(0.466)</b>
<b>Car Parking</b>	
Drawdown from Restructure & contingency for Salisbury Carparks	(0.280)
<b>In Year Virements period 1-3</b>	<b>(0.280)</b>
<b>Waste &amp; Environment</b>	
Realignment of salaries reflecting final pay award	(0.185)
Transfer of borrowing costs between waste and capital financing	1.460
<b>In Year Virements period 1-3</b>	<b>1.275</b>
<b>Libraries Heritage &amp; Arts</b>	
Drawdown of Area Boards earmarked reserves	0.167
Sundry small budget adjustments	0.086
<b>In Year Virements period 1-3</b>	<b>0.253</b>
<b>Corporate Directors &amp; Members</b>	
Allocation Government Grant Income to Cross cutting savings	0.400
Sundry small budget adjustments	0.018
<b>In Year Virements period 1-3</b>	<b>0.418</b>
<b>Movement on Reserves</b>	
Drawdown of Area Boards earmarked reserves	(0.167)
Drawdown of Earmarked Reserves Childrens	(1.450)
Sundry small budget adjustments	(0.029)
<b>In Year Virements period 1-3</b>	<b>(1.646)</b>
<b>Capital Financing</b>	
Transfer of borrowing costs between waste and capital financing	(1.460)
Reallocation of Capital Financing to Restructure & Contingency	(1.000)
<b>In Year Virements period 1-3</b>	<b>(2.460)</b>
<b>Restructure &amp; Contingency</b>	
Allocation of schools redundancy provision	(0.350)
Drawdown from Restructure & contingency for Salisbury Carparks	0.280
Reallocation of Capital Financing to Restructure & Contingency	1.000
Sundry small budget adjustments	(0.054)
<b>In Year Virements period 1-3</b>	<b>0.876</b>
<b>Government Grants</b>	
Allocation Government Grant Income to Cross cutting savings	(0.400)
<b>In Year Virements period 1-3</b>	<b>(0.400)</b>

This page is intentionally left blank



Adults Commissioning                      Commissioning - Adults

Adults Commissioning                      Commissioning - Adults

Adults Commissioning                      Commissioning - Adults

Adults Commissioning                      Commissioning - Adults

Adults Commissioning                      Commissioning - Adults

Adults Commissioning                      Commissioning - Adults  
Adults Commissioning                      Commissioning - Adults  
Adults Commissioning                      Commissioning - Adults  
Adults Commissioning                      Commissioning - Adults

Public Health                                      Public Health

Public Health  
Public Health                                      Public Health  
Public Health                                      Public Health

Public Health                                      Public Health

Public Health  
Public Health                                      Public Health  
Public Health                                      Public Health

Information Services                          Digital & Information

Information Services                          Digital & Information



Information Services	Digital & Information
Information Services	Digital & Information
Information Services	Digital & Information
Information Services	Digital & Information
Legal & Democratic	Legal, Electoral & Registration
Legal & Democratic	Legal, Electoral & Registration
Legal & Democratic	Legal, Electoral & Registration
Legal & Democratic	Legal, Electoral & Registration
Children's Commissioning	Commissioning - Childrens
Children's Commissioning	Commissioning - Childrens
Children's Commissioning	Commissioning - Childrens
Children's Social Care	Family & Children Services
Children's Social Care	Family & Children Services
Children's Social Care	Family & Children Services
Children's Social Care	Family & Children Services
Children's Social Care	Family & Children Services
Children's Social Care	Family & Children Services
Children's Social Care	Family & Children Services
Children's Social Care	Family & Children Services
Children's Social Care	Family & Children Services
Children's Social Care	Family & Children Services
0-25 Service: Disabled Children &	Family & Children Services
0-25 Service: Disabled Children &	Family & Children Services

Learning Disabilities                      Learning Disabilities & Mental Health

School Effectiveness                      Education & Skills

School Effectiveness                      Education & Skills

School Effectiveness                      Education & Skills

School Effectiveness                      Education & Skills

Corporate Services                      Corporate Services & Digital

Corporate Services                      Corporate Services & Digital

Communications                      Corporate Services & Digital

Human Resources & Org Develop Human Resources & Org Development

Human Resources & Org Develop Human Resources & Org Development

Human Resources & Org Develop Human Resources & Org Development

Human Resources & Org Develop Human Resources & Org Development

Human Resources & Org Develop Human Resources & Org Development

Human Resources & Org Develop Human Resources & Org Development

Human Resources & Org Develop Human Resources & Org Development

Human Resources & Org Develop Human Resources & Org Development

Human Resources & Org Develop Human Resources & Org Development

Human Resources & Org Develop Human Resources & Org Development

Human Resources & Org Develop Human Resources & Org Development

Human Resources & Org Develop Human Resources & Org Development

Economic Development & Plannin Economic Development & Planning

Economic Development & Plannin Economic Development & Planning

Economic Development & Plannin Economic Development & Planning

Economic Development & Plannin Economic Development & Planning

Economic Development & Plannin Economic Development & Planning

Highways                      Highways & Environment

Highways                      Highways & Environment

Highways                      Highways & Environment

Highways                      Highways & Environment

Car Parking                      Highways & Environment

Car Parking                      Highways & Environment

Waste & Environment                      Highways & Environment

Waste & Environment                      Highways & Environment

Waste & Environment                      Highways & Environment



Cross Cutting  
Cross Cutting  
Cross Cutting  
Cross Cutting  
Cross Cutting  
Cross Cutting

Corporate  
Corporate  
Corporate  
Corporate  
Corporate  
Corporate

<b>Saving / Income Idea</b>	<b>Total Saving (£ m)</b>
Increased Income from full affect of the revision to the charging policy and early assessments	(0.900)
In-house reablement	(2.375)
CHC - Wiltshire CCG	(0.244)
Invest in more CoP Staff - for every two staff members a savings of £40k - 4 additional staff	(0.040)
Review of the Hearing & Vision Team	(0.030)
Targeted review of every package of support requiring double carers from OT with additional potential spend on equipment to minimise ongoing cost of package.	(0.200)
Training Offer to Providers - Charging for QA and other training work that takes place. Eg MCA and DOLS	(0.100)
Means test funded services for carers	(0.200)
Capitalise Liquidlogic CMS	(0.668)
Capitalise Systems Thinking & PMO for Phase 2 Transformation	(0.400)
iBCF Budget Exchange	(0.900)
Allocation of iBCF	(1.000)
Mental Health Redesign	(0.232)
Shared Lives - double current intake	(0.135)
CHC - Wiltshire CCG	(0.256)
Shared Lives - double current intake	(0.165)
Cession of Staff Relief Bank	(0.071)
CHC - 1 case with Hampshire	(0.400)
Potential de-registration	(0.136)
Learning Disabilities Redesign	(0.250)
Allocation of iBCF	(1.000)
Reinstatement of Care Fund Calculator	(1.000)
Housing related Support - already delivered	(0.500)
Telecare / Urgent Care @ Home - Already delivered	(0.441)
OSJ removal of 8 respite beds - Remove block beds and spot purchase as required. Beds currently c. 30% occupied (Balance of budget transferred to placement budgets)	(0.100)
OSJ reduction of beds at Coombe End Court - Reduce block beds by 7 to minimise voids.	(0.197)
Handyperson Scheme (HIA) - To be funded from the DFG going forward - links to bobbyvan and eligibility criteria and full cost for self funders	(0.071)

Housing related support - Non statutory service. Options are	
a) cease	
b) replace with floating support service - e.g. vcse organisation or in-house staff within reablement	
OPTION A FIGURES INCLUDED	(0.800)
Day Opportunities (social clubs) friendship club suggested in previous paper potential reduction by 1/2 = £62,000 next year and then £62,000 following as becomes self funding - no referral process, been in place a long time.	(0.062)
Supported Housing AOWA MH - Ex-Supporting People services. MH accommodation work. Provider engagement started - options (including Dynamic Purchasing System from April 2019) being considered under wider piece of work - Could all be stopped. same as above but less intensive but across the county. 6 contracts larger ones could be reduced. Few vacancies across all. Building based with support	(0.100)
Supporting People (Selwood) Currently exploring options. Potential tender to join together this contract with Richmond Fellowship CHSS (line 51)	(0.053)
Advocacy Services - Current contract expires 31/03/19 - Commissioners agree no value in re-tendering. Contract has 2-year extension option. Business case to be written to extend for 1/2 years. Jointly commissioned/funded with CCG.	(0.081)
Social Inclusion - Currently working with provider around contract savings and improved service specification. Intention to extend contract (under option in contract) following negotiation. Business case to extend to be written once work complete. Jointly commissioned/funded with CCG	(0.160)
Arrangement fee for Self Funders	(0.025)
Block Contract Revaluation	(1.400)
Further reduction in Lunch Club Grant Funding	(0.041)
Occupational Health - Reduce doctor days from 22 to 16 days per annum and upskill nurse	(0.006)
Occupational Health - Counselling – cut down no of sessions being given and / or raise the eligibility bar	(0.010)
Occupational Health - Physio - Stop providing	(0.007)
Occupational Health - Increase Income currently charging:	
1) £50 to schools for training sessions - increase	
2) Ad hoc audits etc to schools - £50 per hour -increase	
3) SLA with Academies - have a minimum charge	(0.025)
Other Public Health Savings to be identified due to cut in Public Health Grant	(0.450)
VCS Saving Public Health - Wiltshire Wildlife Trust	(0.008)
Network - Re-tender current telephony contract & mobile phone solution	(0.145)
Out of Hours Support - Saving based on reduction of staff overtime, allowances & premium pay	(0.067)

Applications Support - Based on re-tender of SAP support costs, and working with the business to reduce costs of maintaining business applications	(0.264)
Street Naming - Based on increasing the sales target from £102k to £150k	(0.050)
Printing - Current copier lease deal has ended; need to determine essential provision (propose initiative to half print levels, and have far fewer machines), and procure new lease deal.	(0.120)
Correction of under-recovery of costs from Police	(0.070)
Increase capacity to enable reduction of external legal costs and generation of income by provision of legal services to parish councils, schools and public bodies	(0.116)
Increase of fees and charges; develop further income generating opportunities through wedding related advertisements on web site and use of council premises eg Atrium as a wedding reception venue.	(0.100)
Review of Service delivery models and structures	(0.020)
Increased efficiencies and income from elections	(0.050)
Legal Share of Pension Recharge	(0.005)
Efficiency savings within the directorates auspices	(0.045)
Children's outreach services expansion	(0.250)
VCS review - childrens care and carers support	(0.005)
1. Reduction in the number of Virtual School Officers attached to the Virtual School 2. Savings achieved through introduction of NWD	(0.649)
Conference and Reviewing Service Savings - Review of Roles	(0.070)
Reduce external legal budget by £80K	(0.080)
Reduction in Council contribution to safeguarding partnership arrangements	(0.036)
Reduction of the Local Authority contribution to the Youth Offending Team	(0.028)
Placement Savings (LAC & SEND) - Building on FACT developments and LAC placement project work being extended to SEND placements. Re-commissioning activity will be required across all placements. A range of options is being explored.	(0.812)
Capitalisation of Previous Invest to Save - CMS Liquid Logic Childrens System	(0.303)
Additional Capitalisation of the School Buildings & Places Team - Childrens Services	(0.036)
Review of Service Efficiencies in Childrens Services	(0.411)
Increased income from Educational Psychology service	(0.100)
Young Adult Provision - The proposal is to re-commission service provision for vulnerable young adults. This would have an impact for SEND, CTPLD and Adult Care.	(0.271)

Young Adult Provision - The proposal is to re-commission service provision for vulnerable young adults. This would have an impact for SEND, CTPLD and Adult Care.	(0.270)
Delete a vacant position within school effectiveness - School coordinator Risk	(0.070)
In order to make the savings of £35,000 required for the operational year 2019/20, the proposal is to merge two distinct teams within the service area making savings of one manager post.	(0.020)
At present there is a budget of £21,900 for 2018/19 to support schools transferring to Academy status. It is proposed to reduce this funding by £10,000 to £11,900.	(0.010)
Remove Pensions Underspend	(0.023)
Programme Office review	(0.068)
CAB Reduction in Funding	(0.035)
Make Events Team self financing	(0.200)
Digital - reductions in staffing due to automation	(0.025)
Care skills partnership contribution reduction and removal	(0.035)
Income from training	(0.029)
Print Contract negotiation	(0.010)
Staff survey in house	(0.005)
Glass Door - subscription stopped	(0.010)
Grow Cost reduction on tender	(0.008)
10% reduction in Recruitment budget	(0.015)
10% increase in advertising income	(0.005)
25K increase in payroll income External customers (diversification) - Includes £10k additional costs, therefore saving of £15k	(0.015)
14K increase in payroll and advisory income ad hoc purchases as a result of right choice	(0.014)
HR Share of Pension Recharge	(0.042)
Reduce Consultants Budget	(0.004)
Reduction to Wiltshire Wildlife Trust SLA	(0.020)
Reduce major projects master planning budget	(0.010)
Reduce WC contribution to Visit Wiltshire by 10% per annum	(0.017)
Castledown Phase 2 Income	(0.100)
Salisbury Asset Transfer Savings	(0.088)
Close all play areas not subject to a transfer agreement. Cease transfer grant	(0.035)
Close Park And Ride Toilets (Salisbury)	(0.045)
Reinstatement of Street Lighting Saving	(0.300)
Increased Parking Charges (revised due to decisions made)	(0.142)
Highways & Transport Efficiency Savings	(0.200)
Increase in charge for collection of garden waste	(0.150)
Closure of Everleigh Household Recycling Centre	(0.135)
Terminate Grant to Wiltshire Wildlife Trust	(0.100)



Delete Commissioning Officer post in Strategic Assets Team in Housing	(0.046)
Move Commissioning Officer post in Strategic Assets Team in Housing from general fund to HRA	(0.046)
Delete Gypsy & Traveller site Manager post	(0.041)
Further capitalise staffing costs of Private Sector Housing Manager. Currently funded 50% from general fund revenue and 50% from DFG grant (central government grant through Better Care Fund). Proposal is to further capitalise 25% of the salary of this post	(0.012)
To put forward a one off saving of £100k due to an increase in the governments FHSG contributions following the introduction of the Homeless Reduction Act for 19/20	(0.100)
Rent Deposits - Proforma to follow	(0.047)
Improve income from existing Commercial Estate through rent reviews, renegotiations of existing leases etc.	(0.100)
Salary Savings	(0.107)
Terminate leases on the North Wilts Rivers Route (Calne to Chippenham Cycle Path) - additional saving in Countryside Team (maintenance cost)	(0.026)
Reactive Building Maintenance - reduce spend	(0.070)
Building closures from services' reviews of property needs:Derriads Respite Centre and RWB Manor House (TENs)	(0.027)
Invest capital in new income-generating Commercial Estate Assets - Identify opportunities to invest capital to acquire commercial property that generates an income for the revenue budget	(0.040)
Improve income from Operational Estate by adopting and implementing a consistent and commercial Third Party Charging Policy	(0.050)
Library Review - close Wilton Barnack Industrial storage and move into depot sites	(0.016)
Trowbridge Town Hall - transfer or sell	(0.010)
Highways Service - close Wilton Highways Depot and dispose	(0.050)
VCS review	(0.011)
Review of Service delivery models and structures	(0.133)
Reduce VCS for Leisure & Sport	(0.012)
Review of Service delivery models and structures	(0.069)
Increase Leisure Income	(0.162)
Reduce VCS for Community Transport & Link Schemes	(0.007)
Environmental assessments linked to planning applications	(0.050)
iBCF Funding	(0.488)
External Review of Single Person Discount	(0.325)
Capitalisation of Capital team salaries	(0.100)
Finance Service Efficiencies	(0.045)
Finance Share of Pension Recharge	(0.053)
Additional Interest Receivable	(0.150)

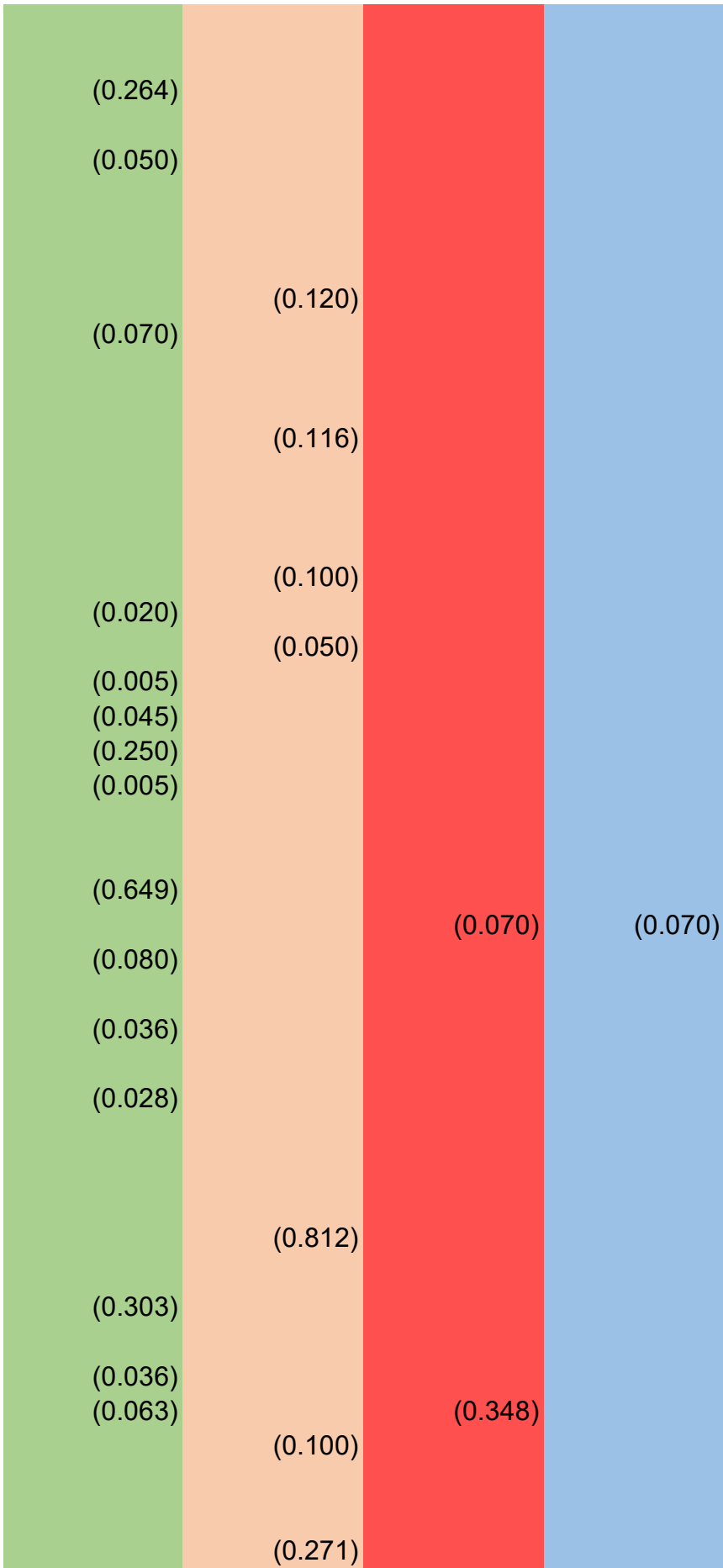
Cross Cutting - Commercial	(0.100)
Cross Cutting - Digital	(0.300)
Cross Cutting - Service Devolution & Asset Transfer	(0.400)
Cross Cutting - Procurement	(0.500)
Cross Cutting - Support Services	(1.000)
Cross Cutting - Management	(1.000)
<b>TOTAL SAVINGS</b>	<b><u>(27.290)</u></b>

**Key**

Green	Deliverable
Amber	Deliverable with risks
Red	Unlikely to be delivered

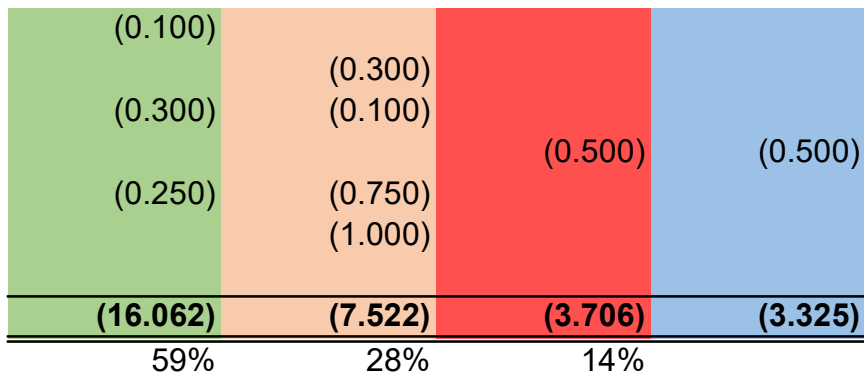
Green (£ m)	Amber (£ m)	Red (£ m)	Alternative Savings (£m)
(0.900)			
(1.573)	(0.802)		
(0.244)			
(0.040)			
(0.030)			
	(0.200)		
		(0.100)	(0.100)
		(0.200)	(0.200)
(0.668)			
(0.400)			
(0.900)			
(1.000)			
	(0.232)		
	(0.135)		
	(0.256)		
	(0.165)		
	(0.047)	(0.024)	(0.024)
	(0.400)		
		(0.136)	(0.136)
	(0.250)		
(1.000)			
		(1.000)	(1.000)
(0.500)			
(0.441)			
		(0.100)	(0.100)
		(0.197)	(0.197)
(0.071)			

(0.316)		(0.484)	(0.484)
(0.042)		(0.020)	(0.020)
(0.100)			
(0.053)			
(0.050)		(0.031)	(0.031)
(0.092)		(0.068)	(0.068)
(1.400)		(0.025)	(0.025)
		(0.041)	(0.041)
	(0.006)		
	(0.010)		
	(0.007)		
(0.025)			
	(0.450)		
	(0.008)		
	(0.145)		
(0.067)			



		(0.270)	(0.270)
(0.070)			
(0.020)			
(0.010)			
(0.023)			
(0.068)			
(0.035)			
(0.200)			
(0.035)	(0.025)		
	(0.029)		
	(0.010)		
	(0.005)		
	(0.010)		
	(0.008)		
(0.015)	(0.005)		
	(0.015)		
	(0.014)		
(0.042)			
(0.004)			
(0.020)			
(0.010)			
(0.100)	(0.017)		
(0.088)			
(0.035)			
(0.045)			
(0.300)			
(0.142)			
(0.150)	(0.200)		
(0.135)			
(0.067)		(0.033)	

(0.046)			
(0.046)			
(0.041)			
(0.012)			
(0.100)			
(0.047)			
(0.100)			
(0.107)			
		(0.026)	(0.026)
(0.070)			
(0.027)			
	(0.040)		
(0.050)			
(0.016)		(0.010)	(0.010)
	(0.050)	(0.011)	(0.011)
(0.083)	(0.050)	(0.012)	(0.012)
(0.069)			
	(0.162)		
(0.007)			
	(0.050)		
(0.488)			
(0.325)			
(0.100)			
(0.045)			
(0.053)			
(0.150)			





**Capital Programme Budget Movements and Spend to 30 June 2019**

**2019/2020 Budget Breakdown**

Scheme Name	Original Capital Programme Budget (reported to Council 5 Feb 2019)	Month 9 Budgets reprogrammed from 2018/2019 into 2019/2020	Outturn 2018/2019 Budgets Reprogrammed into 2019/2020	Outturn Budget Transfer 2018/2019 into 2019/2020	Budget Movements between Schemes	Additional Budgets added to the Programme (Section 1 Appendix B)	Grant Amendments	Reduced Budgets	Budgets reprogrammed from 2019/2020 into 2020/2021 (Section 2 Appendix B)	Current Budget Quarter 1 2019/2020	Spend to 30 June 2019	Current Budget Remaining Quarter 1 2019/2020	Spend to 30 June 2019
	£m	£m	£m	£m	£m	£m	£m	£m	£m	£m	£m	£m	%
<b>Growth, Investment &amp; Place Service</b>													
A350 Dualling Chippenham Bypass	0.185		(0.156)	0.000	0.768					0.797	0.725	0.072	90.97%
M4 Junction 17	0.000			0.000						0.000	0.000	0.000	0.00%
Boscombe Down	0.000			1.213					(0.963)	0.250	0.007	0.243	2.80%
A350 West Ashton/Yarnbrook Junction Improvements	2.283		(0.003)	0.000						2.280	0.000	2.280	0.00%
Chippenham Station HUB	10.497			0.252						10.749	0.102	10.647	0.95%
Corsham Mansion House	0.047			0.091						0.138	(0.016)	0.154	-11.59%
Porton Science Park	0.000			0.000						0.000	0.003	(0.003)	0.00%
Salisbury Central Car Park & Maltings	4.090			1.614						5.704	0.007	5.697	0.12%
Salisbury LGF Schemes	0.000			0.000		0.530				0.530	0.019	0.511	3.58%
LED Street Lighting	7.000			0.000						7.000	0.019	6.981	0.27%
Oil to Biomass Schemes	0.000			0.028						0.028	0.000	0.028	0.00%
Other Economic Development Schemes	0.000			0.006						0.006	0.025	(0.019)	416.67%
Affordable Housing including Commuted Sums	0.000			0.000						0.000	0.000	0.000	0.00%
Council House Build Programme	6.562		(0.029)	3.021						9.554	0.394	9.160	4.12%
Social Care Infrastructure & Strategy	0.000			0.634						0.634	0.000	0.634	0.00%
HRA - Refurbishment of Council Stock	9.383			1.158						10.541	0.860	9.681	8.16%
Commercial - Housing Company	10.000			0.000						10.000	0.000	10.000	0.00%
Commercial - Commercial Investment	10.000			0.000						10.000	0.000	10.000	0.00%
Commercial - Local Development Company	0.000			0.000						0.000	0.000	0.000	0.00%
Gypsies and Travellers Projects	0.000			0.000						0.000	0.000	0.000	0.00%
Disabled Facilities Grants	3.000	1.131		0.218		0.334	0.273			4.956	0.245	4.711	4.94%
Facilities Management Works	2.585			1.885	(0.250)					4.220	0.183	4.037	4.34%
Leisure Centres & Libraries - Capital Works Requirement	0.000			0.219						0.219	0.115	0.104	52.51%
Rural Estates	0.000			0.008						0.008	0.000	0.008	0.00%
Whole Life Building & Equipment Refresh	0.000			0.303						0.303	0.004	0.299	1.32%
Depot & Office Strategy	1.400			0.000					(0.900)	0.500	0.009	0.491	1.80%
Wiltshire Ultrafast Broadband	2.441		(0.171)	0.000						2.270	(0.661)	2.931	-29.12%
Passenger Transport Capital	0.361			0.000				(0.361)		0.000	0.000	0.000	0.00%
DIL Funded Schemes	0.000			0.043		0.058				0.101	0.026	0.075	25.74%
Bridges	3.000			0.564						3.564	0.126	3.438	3.54%
Farmers Roundabout	1.712	0.220		0.147						2.079	0.342	1.737	16.45%
Highway flooding prevention and Land Drainage schemes	0.500			(0.243)						0.257	0.097	0.160	37.74%
Integrated Transport	2.181			0.015						2.196	0.481	1.715	21.90%
National Productivity Investment Schemes	0.000			0.000						0.000	(0.003)	0.003	0.00%
Pothole Fund Grant	0.000			0.817		0.080				0.897	0.867	0.030	96.66%
Pothole Spotter 16/17	0.000			0.054						0.054	0.000	0.054	0.00%
Structural Maintenance (Grant & Council Funded)	21.139			0.304	(0.834)					20.609	1.430	19.179	6.94%
Fleet Vehicles	0.000	0.206		0.227						0.433	0.000	0.433	0.00%
Salisbury CCTV	0.000			0.055						0.055	0.000	0.055	0.00%
Waste Services	1.000			0.000	(0.250)	0.250				1.000	0.064	0.936	6.40%
Digitisation	0.000			0.000						0.000	0.006	(0.006)	0.00%
ICT Schemes	13.256		(0.026)	0.000	(17.789)	4.559				0.000	0.000	0.000	0.00%
ICT Get Well	0.000			0.000	8.927					8.927	0.434	8.493	4.86%
ICT Business as Usual	0.000			0.000	2.518					2.518	0.000	2.518	0.00%
ICT Applications	0.000			0.000	6.300	0.313				6.613	0.124	6.489	1.88%
ICT Other Devices	0.000			0.000	1.911					1.911	0.000	1.911	0.00%
Other Schemes including cross cutting systems	0.000			0.014		0.011				0.025	0.001	0.024	4.00%
Microsoft Cloud Navigator	2.877			2.294	0.478					5.649	1.073	4.576	18.99%
Wiltshire Online	0.000			3.498						3.498	(0.688)	4.186	-19.67%
Churchyards & Cemeteries	0.250			0.000						0.250	0.000	0.250	0.00%
Housing Infrastructure Fund (HIF)	2.000		(0.295)	0.000						1.705	0.106	1.599	6.22%
Service Devolution & Asset Transfer	0.364			0.099						0.463	0.000	0.463	0.00%
Community Projects	0.000			0.000	0.500					0.500	0.000	0.500	0.00%
SAP Enhancement	2.000		(0.010)	0.000	(1.990)					0.000	0.000	0.000	0.00%
<b>Growth, Investment &amp; Place Service Total</b>	<b>120.113</b>	<b>1.557</b>	<b>(0.690)</b>	<b>18.538</b>	<b>0.289</b>	<b>6.135</b>	<b>0.273</b>	<b>(0.361)</b>	<b>(1.863)</b>	<b>143.991</b>	<b>6.526</b>	<b>137.465</b>	<b>4.53%</b>

**Capital Programme Budget Movements and Spend to 30 June 2019**

**2019/2020 Budget Breakdown**

Scheme Name	Original Capital Programme Budget (reported to Council 5 Feb 2019)	Month 9 Budgets reprogrammed from 2018/2019 into 2019/2020	Outturn 2018/2019 Budgets Reprogrammed into 2019/2020	Outturn Budget Transfer 2018/2019 into 2019/2020	Budget Movements between Schemes	Additional Budgets added to the Programme (Section 1 Appendix B)	Grant Amendments	Reduced Budgets	Budgets reprogrammed from 2019/2020 into 2020/2021 (Section 2 Appendix B)	Current Budget Quarter 1 2019/2020	Spend to 30 June 2019	Current Budget Remaining Quarter 1 2019/2020	Spend to 30 June 2019
	£m	£m	£m	£m	£m	£m	£m	£m	£m	£m	£m	£m	%
<b>Children &amp; Education Service</b>													
Area Boards and LPSA PRG Reward Grants	0.800			0.411	(0.006)					1.205	0.132	1.073	10.95%
Health and Wellbeing Centres - Live Schemes	16.823	3.420		1.705	0.072	0.481				22.501	0.133	22.368	0.59%
Health and Wellbeing Centres - In Development	0.000			0.000						0.000	0.000	0.000	0.00%
Hub Programme Office Rationalisation	0.000			0.000						0.000	0.000	0.000	0.00%
Fitness Equipment for Leisure Centres	0.000			0.050						0.050	0.000	0.050	0.00%
Operational Estate	0.000			0.125						0.125	0.000	0.125	0.00%
Libraries - Self Service	0.500			0.000						0.500	0.000	0.500	0.00%
Access and Inclusion	0.000			0.028	0.010					0.038	0.013	0.025	34.21%
Army Rebasing	0.000			0.000		2.305				2.305	2.296	0.009	99.61%
Basic Need	24.231		6.866	3.840	(0.010)				(3.053)	31.874	2.758	29.116	8.65%
Devolved Formula Capital	0.650			0.000			0.009			0.659	0.659	0.000	100.00%
Healthy Pupils Capital Fund	0.000			0.026						0.026	0.000	0.026	0.00%
New Schools	0.000			0.192	(0.075)					0.117	(0.010)	0.127	-8.55%
School Expansions & Replacements	0.000			0.026						0.026	0.000	0.026	0.00%
Schools Maintenance & Modernisation	6.288	0.250	1.075	1.412	0.075	0.014	(0.123)		(0.255)	8.736	1.007	7.729	11.53%
Special Schools	0.100		(0.083)	0.000						0.017	0.059	(0.042)	347.06%
Early Years & Childcare	0.091		0.761	0.000		0.154				1.006	0.000	1.006	0.00%
SEND Capital	0.329			0.255		0.186				0.770	0.005	0.765	0.65%
Transformation schemes in childrens services	1.745			0.000						1.745	0.011	1.734	0.63%
<b>Children &amp; Education Service Total</b>	<b>51.557</b>	<b>3.670</b>	<b>8.619</b>	<b>8.070</b>	<b>0.066</b>	<b>3.140</b>	<b>(0.114)</b>	<b>0.000</b>	<b>(3.308)</b>	<b>71.700</b>	<b>7.063</b>	<b>64.637</b>	<b>9.85%</b>
<b>Adult Care &amp; Public Health Service</b>													
Adult Care Liquid Logic	0.668		(0.313)	0.000	(0.355)					0.000	0.000	0.000	0.00%
Adult Care Transitions	0.000			0.140						0.140	0.000	0.140	0.00%
Adults Transformation Phase 2	0.400		(0.008)	0.000		0.478				0.870	0.013	0.857	1.49%
Sensory Stimulation & Development Play Equipment	0.200			0.084						0.284	0.000	0.284	0.00%
<b>Adult Care &amp; Public Health Service Total</b>	<b>1.268</b>	<b>0.000</b>	<b>(0.321)</b>	<b>0.224</b>	<b>(0.355)</b>	<b>0.478</b>	<b>0.000</b>	<b>0.000</b>	<b>0.000</b>	<b>1.294</b>	<b>0.013</b>	<b>1.281</b>	<b>1.00%</b>
<b>Total 2019/2020 Programme</b>	<b>172.938</b>	<b>5.227</b>	<b>7.608</b>	<b>26.832</b>	<b>(0.000)</b>	<b>9.753</b>	<b>0.159</b>	<b>(0.361)</b>	<b>(5.171)</b>	<b>216.985</b>	<b>13.602</b>	<b>203.383</b>	<b>6.27%</b>

## CHIEF FINANCE OFFICER (CFO) - EXERCISE OF DELEGATED POWERS & REQUESTS FOR ADDITIONAL RESOURCES WITHIN THE CAPITAL PROGRAMME

Cabinet Meeting  
Financial Year:

23rd July 2019

2019/2020

### SECTION 1 - DELEGATED CFO POWERS

"Adjustment/addition of scheme in the capital programme which has no effect on the net funding position of the programme  
i.e. Additional resources available in the form of Grant, Section 106 contributions etc which fund the addition, "

**Project Name:** Salisbury LGF Schemes

**Budget Change:** 2019/2020 2020/2021 2021/2022 2022/2023 2023/2024

530,393

**Funding Source:** LGF Grant

**Project Name:** Disabled Facilities Grants

**Budget Change:** 2019/2020 2020/2021 2021/2022 2022/2023 2023/2024

333,899

**Funding Source:** DFG Reserve & Repaid Housing Grants

**Project Name:** CIL Funded Schemes

**Budget Change:** 2019/2020 2020/2021 2021/2022 2022/2023 2023/2024

58,000

**Funding Source:** CIL

**Project Name:** Potholde Fund Grant

**Budget Change:** 2019/2020 2020/2021 2021/2022 2022/2023 2023/2024

80,000

**Funding Source:** DFT Digital Intelligence Grant

**Project Name:** Waste Services

**Budget Change:** 2019/2020 2020/2021 2021/2022 2022/2023 2023/2024

250,000

**Funding Source:** Section 106 Developer Contributions

**Project Name:** Other Schemes including cross cutting systems

**Budget Change:** 2019/2020 2020/2021 2021/2022 2022/2023 2023/2024

10,500

**Funding Source:** Contribution from Wesses Water

**Project Name:** Health and Wellbeing Centres - Live Schemes

**Budget Change:** 2019/2020 2020/2021 2021/2022 2022/2023 2023/2024

481,000

**Funding Source:** Section 106 Developer Contributions & Residual Assets from White Horse Leisure Centre

**Project Name:** Army Rebasing

**Budget Change:** 2019/2020 2020/2021 2021/2022 2022/2023 2023/2024

2,304,613

**Funding Source:** MOD Section 106 Developer Contributions

**Project Name:** Schools Maintenance & Modernisation

**Budget Change:** 2019/2020 2020/2021 2021/2022 2022/2023 2023/2024

14,300

**Funding Source:** Contribution from Longleat Enterprises Ltd

**Project Name:** Early Years & Childcare

**Budget Change:** 2019/2020 2020/2021 2021/2022 2022/2023 2023/2024

153,654

**Funding Source:** Section 106 Developer Contributions

## CHIEF FINANCE OFFICER (CFO) - EXERCISE OF DELEGATED POWERS & REQUESTS FOR ADDITIONAL RESOURCES WITHIN THE CAPITAL PROGRAMME

Cabinet Meeting: 23rd July 2019  
 Financial Year: 2019/2020

<b>Project Name:</b>	<b>SEND Capital</b>				
<b>Budget Change:</b>	<b>2019/2020</b>	<b>2020/2021</b>	<b>2021/2022</b>	<b>2022/2023</b>	<b>2023/2024</b>
	186,263				
<b>Funding Source:</b>	EFA Grant				

<u>4,402,622</u>	Total Delegated Changes Approved by Section 151 Officer
------------------	---

### SECTION 2 - DELEGATED CFO POWERS

*"Schemes within the capital programme which require the reprogramming of expenditure between years due to scheme not progressing as originally anticipated or other circumstances"*

<b>Project Name:</b>	<b>Boscombe Down</b>				
<b>Budget Change:</b>	<b>2019/2020</b>	<b>2020/2021</b>	<b>2021/2022</b>	<b>2022/2023</b>	<b>2023/2024</b>
	(962,651)	962,651			
<b>Funding Source:</b>	Wiltshire Council Resources (Borrowing & Capital Receipts)				

<b>Project Name:</b>	<b>Depot &amp; Office Strategy</b>				
<b>Budget Change:</b>	<b>2019/2020</b>	<b>2020/2021</b>	<b>2021/2022</b>	<b>2022/2023</b>	<b>2023/2024</b>
	(900,000)	900,000			
<b>Funding Source:</b>	Wiltshire Council Resources (Borrowing & Capital Receipts)				

<b>Project Name:</b>	<b>Basic Need</b>				
<b>Budget Change:</b>	<b>2019/2020</b>	<b>2020/2021</b>	<b>2021/2022</b>	<b>2022/2023</b>	<b>2023/2024</b>
	(3,052,948)	3,052,948			
<b>Funding Source:</b>	EFA Grant				

<b>Project Name:</b>	<b>Schools Maintenance &amp; Modernisation</b>				
<b>Budget Change:</b>	<b>2019/2020</b>	<b>2020/2021</b>	<b>2021/2022</b>	<b>2022/2023</b>	<b>2023/2024</b>
	(254,770)	254,770			
<b>Funding Source:</b>	EFA Grant				

<u>5,170,369</u>	Total Re-programming between years
------------------	------------------------------------

**CHIEF FINANCE OFFICER (CFO) - EXERCISE OF DELEGATED POWERS & REQUESTS FOR  
ADDITIONAL RESOURCES WITHIN THE CAPITAL PROGRAMME**

Cabinet Meeting  
Financial Year:

23rd July 2019

2019/2020

**SECTION 3 - REQUESTS TO CABINET FOR ADDITIONAL RESOURCES**

*"Adjustment/addition of scheme to the capital programme which places an additional funding requirement on the programme"*

<b>Project Name:</b>	<b>ICT Schemes</b>				
<b>Budget Change:</b>	<b>2019/2020</b>	<b>2020/2021</b>	<b>2021/2022</b>	<b>2022/2023</b>	<b>2023/2024</b>
	4,559,000	2,013,000	1,056,000	3,471,000	
<b>Funding Source:</b>	Wiltshire Council Resources (Borrowing & Capital Receipts)				

<b>Project Name:</b>	<b>ICT Applications - Adult Care Liquid Logic</b>				
<b>Budget Change:</b>	<b>2019/2020</b>	<b>2020/2021</b>	<b>2021/2022</b>	<b>2022/2023</b>	<b>2023/2024</b>
	313,000				
<b>Funding Source:</b>	Flexible Use of Capital Receipts				

<b>Project Name:</b>	<b>Adults Transformation Phase 2</b>				
<b>Budget Change:</b>	<b>2019/2020</b>	<b>2020/2021</b>	<b>2021/2022</b>	<b>2022/2023</b>	<b>2023/2024</b>
	478,000				
<b>Funding Source:</b>	Flexible Use of Capital Receipts				

**5,350,000** Total requests for additional resources

In the exercise of my delegated powers (Section 1 and 2), I hereby authorise the amendments to the Capital Programme summarised above.

**CHIEF FINANCE OFFICER:** Becky Hellard

**DATE:** July 2019

This page is intentionally left blank

**Wiltshire Council Strategic Risk Register  
2019/20 Quarter One (at 30 June 2019)**

There are significant challenges for Wiltshire Council as it looks to build stronger communities, grow the county's economy and protect the vulnerable. The Strategic Risk Register reflects these challenges.

The Strategic Risk Register draws together information recorded on risk registers of individual services across Wiltshire Council.

Information that has significance across the council as a whole is displayed in two categories on the Strategic Risk Register.

1. Critical service risks: significant risks that sit in a single service but which, should they become an issue, will have a significant impact on the council as a whole.
2. Composite strategic risks: where similar risks exist in a number of different services which would not have a significant impact on the organisation on their own but put together represent a significant impact. These risks are compiled into a single strategic composite risk and included within the strategic risk register. These risks are scored by reviewing the service component risks.

Each risk is fully defined by the responsible service (who assess the cause, event and effect that make up the identified risk).

Each risk is scored for impact and likelihood to give an overall score. A risk is scored twice; firstly, as inherent (the current level of risk) and then as residual (the risk as it would be once all mitigating actions are in place).

The progress towards implementing mitigating actions is assessed as red, amber or green. This RAG guides the reader of the register to understand the true current risk.

A whole range of service risks are kept under observation each quarter.

Risk short name	Primary Risk Category	Secondary Risk Category	Inherent				Actions Progress RAG	Residual			Q1 Comments
			Impact	Likelihood	Risk Rating	DoT		Impact	Likelihood	Risk Rating	
<b>Critical Service Risks</b>											
Safeguarding Children	Service Delivery	Reputation	4	3	12	▶	Amber	4	2	8	There is a focus on maintaining low caseload sizes in order to ensure safeguarding. The target has not yet been achieved across the board but senior management are focused on ensuring recruitment and retention.
Safeguarding Adults	Service Delivery	Reputation	4	2	8	▶	Green	4	2	8	The Adult Multi-Agency Safeguarding Hub (MASH) has been in place a year with a formal launch in May 2019 and is helping to ensure the safety of vulnerable adults.
Failure to revive Salisbury's economy	Reputation		3	3	9	▶	Amber	3	2	6	The council's focus in the south of the county remains on the long-term economic recovery and growth of Salisbury and Amesbury. The team supporting opportunities to revive the high streets, improve the cultural offer and stimulate new growth. The team is also working on a heritage fund bid amongst others and is awaiting decision on HSF bid to accelerate long term progress.
Future Local Government finance funding	Financial	Reputation	2	2	4	▼	Green	2	2	4	The expected local government finance review is likely to be delayed for another year. As a result of the delay the likelihood of an issue is reduced.
Cyber Resilience	Service delivery	Reputation	4	4	16	▲	Red	2	4	8	A new action plan being discussed with directors to develop a whole council approach. The new action plan not yet in place.



Risk short name	Primary Risk Category	Secondary Risk Category	Inherent				Actions Progress RAG	Residual			Q1 Comments
			Impact	Likelihood	Risk Rating	DoT		Impact	Likelihood	Risk Rating	
<b>Composite Corporate Risks</b>											
Staff capacity: Recruitment and Retention	Staffing/ People		3	2	6	▶	Green	3	2	6	Staff survey has been completed and individual managers are implementing changes in their areas. As always, there are some significant specific risks in specialist service areas but the corporate level risk is well managed.
Budget management	Financial	Reputation	3	3	9	▶	Green	3	2	6	Monthly reporting to CLT and quarterly to Cabinet help mitigate this risk. There is continued monitoring of projected spend, linked metrics and RAG rating on savings.
Contract monitoring and management (Composite Risk)	Service delivery	Financial	4	3	12	▶	Amber	4	3	12	The team is developing a proposal for contract management which seeks to better understand the real risk across the council by ensuring all job roles include contract management. The proposal should be taken forward during quarter two.
Income Collection	Financial	Reputation	3	3	9	▶	Amber	3	2	6	Regular review of income collection vs budgets included in regular monitoring review. Review of sundry income.
Uncertainty over the type and timing of Brexit and it's impacts mean resources are required for contingency planning and decisions are delayed.	Service delivery	Financial	4	3	12	▶	Amber	3	2	6	Planned actions remain in place across a number of the council's service areas.
Corporate Health, Safety & Wellbeing	Health & Safety		2	2	4	▶	Green	2	2	4	Actions are ongoing and frequently reviewed. The lone working audit has been completed and the new wellbeing platform has been launched.
Information Governance	Reputation	Financial	3	2	6	▶	Green	3	1	3	The corporate level risk is kept low with controls administered by the Information Governance team including a relatively new reporting procedure.

This page is intentionally left blank

**Wiltshire Council**

**Cabinet**

**Date of meeting: 23 July 2019**

---

**Subject: Provision of ICT Services to Wiltshire Police**

**Cabinet member: Cllr Ian Blair-Pilling – Cabinet member for ICT, Digitalisation and Operational Assets**

**Key Decision: Non Key**

---

## **Executive Summary**

Since 2014, Wiltshire Police (WP) the council's ICT Department have been running their ICT services. Today, WP's officer satisfaction with their ICT is among the best in the UK. There are now pressing reasons for this service provision to end (as is explained below), but it will be important to ensure that the benefits achieved are not lost, and WP remain technologically enabled to work closely with the council, to the benefit of everyone in the county.

Times are changing in the police technology world. In 2018, the National Police Chiefs' Council (NPCC) agreed the 'Police Vision 2025', a digital vision for policing in the UK. This is focussed on developing nationally consistent digital services, standards and capabilities, on reducing the duplication of effort that would occur if forces developed their own digital solutions, on sharing knowledge, and on achieving greater consistency of service levels nationally.

A key part of the national Digital Programme is standards compliance. If police forces cannot show that they are meeting specific security requirements, they will not in future be allowed to access various national systems, including the Police National Computer, the National Fingerprint Database, the National DNA Database, and others. Access to these systems is essential to operational policing.

The current, shared ICT service and infrastructure is not compatible with these requirements. Considerable effort has been expended in determining how it might become so, but it will be impossible unless the council totally changes the nature of its ICT service provision to the police, and effectively becomes a managed service provider (MSP), with WP dictating what the shared infrastructure would look like. Taking on the role of an MSP is not a priority for the council at this time, in the context of the major portfolio of work now commencing to realise the ICT & Digital Strategy; indeed, it might be questioned whether the council should seek to compete commercially with established suppliers in this intensely competitive marketplace.

There will be implications in separating the service: staff moves will be required under the TUPE regulations, there will be a reduction in income for the council

as WP will no longer pay for the service they receive (although they will want to continue to use the network, host applications in the council data centres for some time, for which they have agreed to pay), and of course WP will themselves have to set up an operational and successful ICT department and will also be building a completely new IT infrastructure, no small undertaking.

The financial impact on the council has been examined, and ways found to mitigate it, in terms of the immediate revenue impact due to the withdrawal of funding for staff. WP will continue to pay the council for the use of infrastructure (currently £477k p.a. for continuing to host applications, use of the network, etc), but as they withdraw and eventually become totally self-sufficient that funding will cease. It should be possible to plan this against the council's own move to the cloud and closure of the in-house data centres, but there is a small risk around the timing of these activities.

The separation itself will need to be carefully planned and controlled, and to that end it is recommended that a joint project team be set up with WP - preferably funded by WP, since this separation is at their request. Meanwhile every step should be taken to preserve those elements in the current arrangement that are valued, especially the ability of police officers and council staff to easily access their applications via the network, on both council and police premises.

### **Proposal**

It is proposed that the current arrangement whereby the council provides an ICT service to WP should end **and that steps are taken to introduce a new infrastructure for ICT services operating in two separate organisations.** This should be undertaken as a progressive, planned and controlled activity – more of a 'conscious uncoupling' than a divorce, and to do so a project team should be set up, with both WP and council staff serving on it, to facilitate the various activities to be undertaken.

The next steps, if Cabinet approves the way ahead, would be further negotiations with WP around costs and staffing, the setting up of a project to move matters forward, and consultation with those staff who could be affected by the proposed changes.

### **Reason for Proposal**

- The council has provided an ICT service to WP since 2014, an arrangement initiated at their request, and which has operated well and to mutual benefit.
- Changes in the police world at a national level would mandate a move to an ICT delivery model that the council cannot accommodate. Specifically, the council would have to become a contracted, managed service provider to WP, with all that entails. That is something which the council's ICT function is not set up to do, nor is it a direction the council would wish to travel in at this time, given other priorities in terms of its ICT & Digital Strategy.



## **Wiltshire Council**

### **Cabinet**

**Date of meeting: 23 July 2019**

---

**Subject: Provision of ICT Services to Wiltshire Police**

**Cabinet member: Cllr Ian Blair-Pilling – Cabinet member for ICT, Digitalisation and Operational Assets**

**Key Decision: Non key**

---

### **Purpose of Report**

1. To seek approval for the council's ICT Dept to continue discussions with Wiltshire Police (WP), with a view to ending the current service provision arrangements in a planned and phased manner, while ensuring that current operational benefits are preserved wherever possible.

### **Relevance to the Council's Business Plan**

2. The Council's Business Plan relies on the efficient and effective operation of many services of a diverse nature, and in the provision of some of these services the council and WP collaborate closely. Examples include the Adult's and Children's MASH – Multi-Agency Safeguarding Hubs – where police officers, council social workers, NHS and others collaborate on safeguarding. Police Officers are also, thanks to the current technology arrangements, able to use their laptops in any council building, seamlessly logging in through the network to their email and applications – and council staff can do the same on police premises. Indeed, several sites in the county are shared by police and council staff. These arrangements contribute to one of the council's primary aims, 'protecting those who are most vulnerable', and indirectly to the aims of 'strong communities' and being 'an innovative and effective council'. These benefits have been achieved primarily because, since 2014, Wiltshire Police have entrusted the council's ICT Department with running their ICT services. Today, WP's officer satisfaction with their ICT is among the best in the UK.
3. There are now pressing reasons for this service provision to end (as is explained below), but it will be important to ensure that the benefits achieved are not lost, and WP remain technologically enabled to work closely with the council, to the benefit of everyone in the county.

### **Main Considerations for the Council**

4. The proposed change in the provision of ICT will have implications for the council:
  - Once WP take back their ICT service in-house, the ICT team in the council will no longer receive funding from the police for staffing elements of the ICT

services they receive. This will result in a change in the size of the council ICT team, with consequent changes in the economies of scale. To maintain the existing council ICT service levels, the cost of providing the service will increase.

- Some council ICT staff will transfer to WP under the TUPE regulations. Staff transferring under TUPE regulations will be supported by the established policies and procedures in place, and the consultation process for this and the changes to ICT structure will be supported by the council's HR team.
- The TUPE of staff can be an unsettling period, however a robust communication plan will be developed which will be supported by advice and guidance from the council's HR team.

## **Background**

5. In 2013 WP approached the council to ask for support with their ICT service, which was in some difficulties. In 2014, the council took over provision of the service, with relevant police staff joining the council under the TUPE regulations. This new arrangement helped WP move forward significantly in its use of technology, and the economies of scale achieved have been of benefit to both organisations.
6. As things operate today, the ICT service provided by the council to WP is primarily a 'business as usual' service, taking calls to the service desk, resolving issues, maintaining applications, ensuring that the network is operating successfully for both organisations, maintaining security, and so forth. In addition, the council ICT team periodically supports specific WP operations, on request. WP have always maintained their own specialist capabilities (Airwave radio system, some secure environments, etc) and have, in recent years, built up a small capability in-house for new developments. They now have their own Digital Programme looking to the future, quite distinct from that run by the council.
7. The nature of the relationship has also always been one of partnership and collaboration rather than a conventional supplier-customer relationship, as would have been the case if WP had outsourced to a commercial provider. Thus, there is no written definition of service levels, no penalties for failure to meet service targets, no formal data sharing agreement, and so forth. Indeed, there is no formal contract, and the ethos of the relationship has been one of shared costs, collaboration on priorities, a Joint Technology Board to discuss and agree technical matters, and collaborative working to resolve any issues. This arrangement has therefore been the equivalent of operating as an internal ICT department for both organisations and has, by and large, worked well.
8. WP are unique in the UK in having their ICT provided by a local authority. They are also a small police force: of the 45 territorial forces and 3 national forces, only Warwickshire and City of London are smaller. This inevitably means that their ability to influence national policing trends is limited. Times are now changing in the police technology world. In 2018, the National Police Chiefs' Council (NPCC) agreed the 'Police Vision 2025', a digital vision for policing in the UK. This is focussed on developing nationally consistent digital services, standards and capabilities, on reducing the duplication of effort that would occur

if police forces developed their own digital solutions, on sharing knowledge, and on achieving greater consistency of service levels nationally.

9. A key part of the national Digital Programme is standards compliance. If police forces cannot show that they are meeting specific security requirements, then they will not in future be allowed to access various national systems, including the Police National Computer, the National Fingerprint Database, the National DNA Database, and others. Access to these systems is vital to operational policing and to successful collaboration with other forces.
10. One of the key issues that has emerged from this is that forces will not be allowed to share infrastructure with a non-police organisation (as WP do currently with the council). Work therefore began some months ago on the “segmentation” of the network, a technical procedure whereby police data carried over the council’s network would travel separately and securely, although still over the same physical wires and fibres, thereby meeting the national security requirements.
11. Over time it became apparent that to comply with national security requirements in the police world, further changes would be needed. One of the key features of the new police approach to ICT at the national level is the creation of the National Management Centre (NMC). This will secure infrastructure and assets, monitor participating police forces and help mitigate information security risks. It will provide centralised security monitoring and response co-ordination, so that police forces are able to identify impending cyber-attacks, and counter insider threat and data loss. The NMC will ensure national standards of cyber-hygiene are adopted and maintained across the UK police service. A specific requirement of the NMC, however, is that NMC staff can access all information on any shared infrastructure, and so all data on the Wiltshire Council infrastructure would be accessible to them. This would not be acceptable to the council.
12. Therefore, WP face a major programme of work to move into their new ICT world, with a completely new infrastructure to build, a new Active Directory (the system that holds details of users with access permission), a new Office 365 implementation (cloud-based email, calendar etc – as currently used in the council), a move to Windows 10, and more.
13. In December 2018 WP and the council agreed to hold joint workshops to explore these changes in detail, with the goal of recommending a way ahead to the senior management of both organisations by June 2019. In the light of this, staff in both organisations were informed that a review was taking place, but that no staff changes would occur before April 2020.
14. This review has now occurred, led by Clive Barker (Chief Financial Officer for WP and the PCC), and Paul Day (Interim Director for Digital, Data & Technology in Wiltshire Council), with the assistance of key staff from both organisations. The review made recommendations (outlined below), and these were reviewed in a discussion between the council’s Executive Directors, the Chief Constable, and the Deputy Chief Executive of the PCC on 17<sup>th</sup> June. The recommendations were also discussed at the council’s CLT meeting of 18<sup>th</sup>



June. In the light of these discussions, a further communication with staff was released on 19<sup>th</sup> June (see Appendix A).

15. The four workshops undertaken produced three options for the way ahead. These were:

- a) Introduce new infrastructure and service with fully integrated teams;
- b) Introduce new infrastructure and service with separate teams, but with shared management;
- c) Introduce new infrastructure and operate ICT as two separate organisations.

16. The option of outsourcing the police ICT service was also discussed in the workshops. When acknowledging the timescales and the lack of defined service outcomes, it was agreed that this is currently not feasible but should be reviewed as an option 2 or 3 years post-implementation. This would include the possibility of sharing with other Police Forces.

### **Option A - Introduce new infrastructure and continue to operate with fully integrated teams**

17. WP consulted with the National Police Information Risk Management Team (NPIRMT, a national team who work for the national Police SIRO employed by the Home Office), and learned that for this to be acceptable the following would have to be in place:

- Signed Contracts specifying the service provided
- Service Level Agreements (SLAs)
- A Data Processing Agreement

18. The financial benefit to the council with the current arrangement lies in reduced costs by sharing overheads such as management, service desks and data centres, and this would remain the case with Option A. However, discussions with the council's Executive Directors suggest that they would not be willing to agree to the above conditions, since that would effectively make the council a managed service provider, with obligations and liabilities that the council is not currently configured to meet. Put simply, serving as an ICT managed service provider is not the council's core business. It is therefore clear that Option A does not look deliverable.

### **Option B - Introduce new infrastructure and operate with separate teams but shared management**

19. This is different to Option A in that it tries to maintain some economies of scale by retaining shared management, while separate, specialist teams would look after each organisation's infrastructure and applications.

20. WP discussed this approach with the NPIRMT. They explained that even though the servicing would be separate, those who provide 'direction and control' would not be within the police force and as such a Contract, SLAs and a Data Processing Agreement would still be required. The situation from the council's perspective therefore remains essentially as with Option A: the council

is not set up to operate as an ICT managed service provider, and so Option B is not viable.

### **Option C - Introduce a new infrastructure for ICT services operating in two separate organisations**

21. With Options A & B seen as not deliverable, the focus of workshops 3 & 4 was on this option, and there was an examination of future structures, costs, timescales, staffing impact, benefits and risks.

#### **Future Costs**

22. Discussions were held around what structures would be appropriate for each organisation; it was agreed that each organisation would address this as an internal matter, and these will progress as required. The principal issue discussed was that of costs, as they are in the current partnership arrangement, and will be after a split.

23. There is considerable complexity in disentangling a shared service, both in terms of staff (some of whom are occupied in 'team posts', some of whom are managers and operate across the whole shared service, and some of whom undertake only council duties), and costs for infrastructure, software, and data centre facilities. Note that WP currently host applications in the council data centres and wish to continue to do so for a period after the separation; this must however be a time-limited exercise as the council plans to move totally to cloud and to shut the data centres as soon as possible, probably within two years or so.

24. Table One below gives details of the costs, as they are currently. Explaining the columns:

- Police Partnership: the sums contributed by WP to the council. This totalled £1.916m in 2018/19. The biggest item was for staff, totalling £1.334m.
- Police Direct: the sums spent by WP directly to their suppliers, software licence providers, and to the in-house staff they employ for their ICT projects, etc. This totalled £3.305m, meaning that overall, both directly and in the partnership, WP spent £5.221m on their ICT.
- Council Total: The costs paid by the council. These are shown as both net (after the contribution from WP), and gross.
- The council total breaks down into two parts, Council Partnership and Council Direct, and these are based on the pro-rata calculations used to determine how much of the ICT spend supports the police, and how much the council. These have been calculated on such factors as service desk usage, network traffic, server usage by applications, etc.

Area	Council Partnership	Council Direct	Council Total	Police Partnership	Police Direct	Police Total
Staff	£3.795m		£3.795m (net) £5.129m (gross)	£1.334m	£0.135m	£1.469m

Infra/Network	£0.816m	£0.484m	£0.920m (net) £1.300m (gross)	£0.380m	£0.750m	£1.130m
SW/Applic.	£0.063m	£3.618m	£3.516 (net) £3.681m (gross)	£0.165m	£2.420m	£2.585m
Data Centres	£0.183m		£0.146m (net) £0.183m (gross)	£0.037m		£0.037m
	£4.857m	£4.102m	£8.959m (net) £10.293m (gross)	£1.916m	£3.305m	£5.221m

**Table One: Council and WP Costs in 2018/19**

25. It is clear from this table that, once WP cease to pay the council for ICT services, the council will lose £1.334m of revenue currently used for staffing. While it might be assumed that the service could just scale down pro-rata, unfortunately that is not the case – certain roles are still needed fully whether the service is delivered to the combined organisations, or just one. This is true of managers, and of specialist technical staff of whom there might be just one currently: clearly it is impossible to just retain a portion of a person, we have to employ the whole individual to continue delivering the service for the council. In addition, some other costs are still borne 100% after the split, including the network, the telephone system, and the data centres (until such time as they are closed, upon the move to the cloud).

26. It will, of course, be appropriate to charge the police for those facilities they still use: they will still make use of the network bearers even after network segmentation, some calls will still be routed through the council's Mitel telephone system, the data centres will still host some police applications, and council ICT staff will still maintain those applications. Therefore, the police will be charged for those elements of the infrastructure they continue to use, and for the effort involved in maintaining those of their applications they leave in the council data centres. (This may then slightly reduce the £1.33m reduction in income for staff). Appendix B provides further details.

27. The council then will suffer some loss of income and cannot simply scale down staff numbers and continue to deliver the same service, due to the loss of economies of scale. The matter has been given considerable thought, and a solution reached that achieves a workable outcome in terms of the reduction in income for staff:

- With some restructuring after the loss of staff to the police, some functions can be delivered more efficiently than they are currently. For instance, some services will no longer need to operate 24x7, as they currently do to serve police needs.

- The ICT budget for 2019/20 has increased somewhat, as part of the normal budgetary cycle, since the 2018/19 calculations on which the police/ICT funding agreement was based, and this partly ameliorates the loss of funding due to the split.
- Specialist staff will be needed for the implementation of the ICT & Digital Strategy, a major capital-funded activity now starting and stretching out over a number of years. It had been assumed that these staff would have been brought in as Fixed-Term Contractors (FTCs) or day-rate contractors, however, current staff may be able to fill these roles.

28. A residual issue lies in the continuing use of the council's ICT infrastructure by WP. Currently WP pays the council £477k p.a. for access to the infrastructure, including for hosting applications in the data centre, use of the network, etc. Over time, WP will become more self-sufficient, and this funding stream will reduce. The council's costs in this area will not reduce significantly until the move to the cloud is completed, and the data centres can be closed. Depending on the timing of this, there is a small risk of a funding gap.

### **The Way Ahead**

29. It is proposed that the split with WP be undertaken as a progressive, planned and controlled activity – more of a 'conscious uncoupling' than a divorce, and that to do so a project team be set up, with both WP and council staff serving on it, to facilitate the various steps to be taken. This is about much more than technology and funding, it is also about staff moves, restructures, revised operating procedures, and of course the retention of those elements of the current service that are of benefit to the two organisations (easy access to the network from both organisations' sites, etc). This should not therefore be undertaken as a background, spare-moments activity, it needs to be run as a well-defined project, properly planned, funded, staffed, and controlled, with good quality communications, coherent risk management, and a clear benefits realisation plan. The funding of the project is a matter for negotiation, but since it is an initiative that has been requested by WP, it seems appropriate that they should fund this activity.

30. The next steps, if Cabinet approves the way ahead, would be further negotiations with WP around costs and staffing, the setting up of a project to move matters forward, and of course consultation with those staff who could be affected by the proposed changes using the council's well established policies and procedures.

### **Overview & Scrutiny Engagement**

31. To be presented to Scrutiny on 22 July.

### **Safeguarding Implications**

32. There are no specific safeguarding implications. It is of paramount importance that the council's and WP's ICT provision supports the council fully in its safeguarding duties, and this will continue to be a key consideration in all future systems implementations.

## **Public Health Implications**

33. There are no specific Public Health implications.

## **Procurement Implications**

34. There are no specific Procurement implications; all future procurements by the council will continue to comply with all procurement regulations and best practice.

## **Equalities Impact of the Proposal**

35. None

## **Environmental and Climate Change Considerations**

36. No specific considerations; both WP and the council will be moving ICT activities progressively to the cloud, which is acknowledged as being more energy-efficient than the use of in-house data centres.

## **Risk Assessment**

### **Risks that may arise if the proposed decision and related work is not taken**

37. The principal risk in these circumstances lies with WP, who would be unable to access national police databases unless they took the proposed steps. This would be operationally unacceptable, hence the recommendations in this paper.

### **Risks that may arise if the proposed decision is taken and actions that will be taken to manage these risks**

38. The TUPE of staff can be an unsettling period, however a robust communication plan will be developed which will be supported by advice and guidance from the council's HR team.

## **Financial Implications:**

39. These have been discussed throughout the report and a detailed breakdown is included in Appendix B.

40. To summarise, if the measures proposed to undertake a controlled separation from the Police for ICT are approved, the Council will not receive income from the Police, this totalled £1.915 million in 18/19 and is built into the ICT revenue budget for 19/20.

41. As detailed above some of the costs that this income supported are direct and will cease and others are shared or overhead and will continue for the Council.

42. By restructuring and revising operating procedures, including legitimate charging to capital projects, initial high-level forecasts indicate that Wiltshire

Council can implement a structure to deliver within the revised establishment budget.

43. However, £0.477 million of the costs relate to services that will not reduce accordingly. For 19/20 subject to negotiation with the Police Wiltshire Council ICT Service forecast that they can manage within the agreed revenue budget as Wiltshire Council would continue to charge the Police for applications until they are transferred and for use of the network.
44. Going forward once the Police have removed all their applications a pressure will remain. If Wiltshire Police continue to use the Council's network, then we can negotiate a suitable charge, however it is unlikely to close the gap completely and is estimated to leave a revenue pressure of circa £0.250 million. The service will continue to work with the Police via the proposed joint project team to review service operations to close this gap for 20/21 and will update as part of 20/21 budget setting process.

### **Legal Implications**

45. There are no specific legal implications yet identified.

### **Options Considered**

46. The options considered are set out in paragraphs 17 – 21 and describe why options A and Option B are not viable. An option to do nothing is also not viable as a split is an absolute requirement of WP if they are to continue to access operationally-vital national databases.

### **Conclusions**

47. While the council has provided WP with an ICT service since 2014, an arrangement that has been mutually beneficial, external factors are now forcing that arrangement to end.
48. The process of disengaging a joint service that has been running successfully for several years, but without a clear contract (or pre-planned definition of how it might end) is not a simple matter. It is, nevertheless, the recommended option as there is no alternative viable option that meets both police and council requirements.
49. As a result it is proposed that a new infrastructure for ICT services operating in two separate organisations is introduced, and that Cabinet direct that further detailed discussions be taken to progress this matter, with costs to the council being minimised, a police-funded, joint project being set up to undertake the work, and the various benefits currently enjoyed by both organisations being preserved, wherever reasonably practicable.

**Paul Day**  
**Interim Director, Digital, Data and IT**

---

Report Author: Paul Day, Interim Director, Digital, Data and Technology  
[paul.day@wiltshire.gov.uk](mailto:paul.day@wiltshire.gov.uk)

## **Appendices**

Appendix A – Communication to Council ICT Staff, 19 June 2019

Appendix B – Further Cost Information

## **Appendix A – Communication to Council ICT Staff, 19 June 2019**

As you are aware the council has been in partnership with Wiltshire Police for the delivery of ICT services since 2014. This provided significant benefits to partnership working and has supported the Police to develop technology to improve their services. However, the landscape for the ICT provision has changed and in 2018 the National Police Chiefs' Council (NPCC) agreed the Police Vision 2025 and within this is a Digital Programme. This programme is focused on developing nationally consistent digital services, standards and capabilities so that duplication is reduced, and learning and knowledge is shared. A key part of the programme is standards compliance and means that if Police Forces cannot show that they are meeting pre-set security requirements they will not be allowed to access critical national systems.

As a result, discussions have now taken place to determine a recommendation about the future partnership arrangements required because of the Police Vision 2025 and the Digital Programme. At this stage no decision has been made as this is a decision for Cabinet, but what we do know already is that the current arrangements will have to change.

I appreciate that this may be unsettling for the team, but I will keep you informed about the timing for the decision and at this stage I would like to reassure you that an outcome of this review and the decision of Cabinet will not result in a reduction in jobs.



## Appendix B – Cost Information

Split of ICT Dept (Council/Police)

Income from Wiltshire Police below (all income is into ICT Budget).

### WC / WP ICT Costs 18-19

		Cost	Police	Revised
		Joint Total	Rev %	Police
				2018-19
<b>Staff</b>	Perm/Agency Staff costs	£5,129,000		1,333,540
	<b>Sub-total</b>			<b>1,333,540</b>
<b>Infrastructure</b>	One Bill	£104,966	100%	104,966
	Infrastructure (ICT Budget 90145)	£100,000	17%	17,000
	Network (ICT Budget 90142)	£873,872	26%	227,207
	Telephony (ICT Budget 90148)	£117,139	26%	30,456
	Applications (ICT Budget 90151)	£60,474	17%	10,281
	Microsoft (ICT Budget 90152)	£17,393.00	26%	4,522
	<b>Sub-total</b>	<b>£1,273,844</b>		<b>394,432</b>
<b>MS Premier Support</b>	Premier Support	£150,000	100%	150,000
	<b>Sub-total</b>			<b>150,000</b>
<b>Data Centre Facilities</b>				
Primary DC	Electricity	£150,000	17%	25,500
	Maintenance	£4,000	17%	680
	Fire suppression	£7,000	17%	1,190
Secondary DC	Electricity	£50,000	17%	8,500
	Maintenance	£3,000	17%	510
	Fire suppression	£6,000	17%	1,020
	<b>Sub-total</b>	<b>£220,000</b>		<b>37,400</b>
	<b>TOTAL</b>			
	<b>£1,915,372</b>			

Applying this income to the 2019/20 budget:  
 Total ICT staff costs 2019/20 (90150) = £5.530m  
 Staff income from Police = £1.334m  
 Council staff costs 2019/20 = £4.196m

### Assumptions on Split

Staff – income will cease

## Infrastructure

- OneBill – this circuits to WP locations. Assume they will be novated to WP so costs will no longer come to Council
- Network – To be negotiated. This is percentage share for using the council network (police at council locations). WP may want to reduce/remove but it should remain while they use Council locations. There is no reduction in cost to the council if WP stop using council network.
- Telephony - To be negotiated. Some WP calls are routed through the council's Mitel system. Unclear whether this will change after split. There is no reduction in cost to the council if WP stop using council telephony.
- Applications – These are applications that can be identified individually in the budget relating to managing the infrastructure. It is assumed we can continue to charge WP for these while they have applications located in council data centres although they may argue that the percentage should reduce as their applications reduce. There is no reduction in cost to the council if Police stop using council data centres.
- Microsoft – as applications.

Microsoft Premier Support – Premier Support Costs are linked to our Microsoft Enterprise agreement so will not change when WP split. It is assumed that we can continue to charge them for this while council hosts WP applications.

Data Centre Facilities – Costs will not change when WP split. It is assumed that we can continue to charge them for this while the council hosts WP applications although WP may want to reduce %age as applications reduce.

## Summary

Both costs and income for staff (£1.334m) and One Bill (£0.105m) will be removed as part of the split (staff immediately, OneBill once circuits novated). The council can insist that remaining income (£0.477m) be paid while we continue to host WP applications, but once they are removed the income will disappear without any reduction in council costs.

That is calculated by £1.915m (total Police payment) - £1.334m (Police payment for staff) – £0.105m (OneBill) = £0.477m

**Wiltshire Council**

**Cabinet**

**23 July 2019**

---

**Subject: Proposed Loan to Wiltshire Museum**

**Cabinet Member:** Cllr Philip Whitehead – Leader of the Council and Cabinet Member for Finance, Procurement and Economic Development; and  
Cllr Richard Clewer – Deputy Leader of the Council and Cabinet member for Corporate services, Heritage, Arts, Tourism and Housing

**Key Decision: Non Key**

---

## **Executive Summary**

The National Planning Policy Framework, where a potential development could impact on archaeology in an area, suggests that the Council acting as Planning Authority may have a duty to impose planning obligations on the developer in respect of archaeological heritage.

The planning obligations may require the developer to commission a study of the site and to deposit the resultant objects and reports referred to as archives with an accredited museum.

The acquisition of a storage facility enables such deposits not to infringe on space in the museum's interpretation and gallery space.

The proposed funding for this acquisition being made up of a grant and a loan.

## **Proposal(s)**

To approve the grant funding of £0.125m to Wiltshire Museum to part fund the acquisition of a storage facility

To approve the principle of a loan to Wiltshire Museum to fund the remainder of the acquisition up to the value of the Property.

Delegate powers to the Director of Finance and Procurement in consultation with the Director of Housing and Commercial to enter into appropriate formal arrangements for the award of a loan to Wiltshire Museum up to the value of the Property.

**Reason for Proposal(s)**

To ensure that the Developers are able to fulfil their obligations under the National Planning Framework, and thus enabling the Council to fulfil its duties in terms of imposition of planning obligations.

To maximise the interpretation and gallery space within Wiltshire Museum

**Alistair Cunningham OBE**  
**Executive Director Investment & Growth**

## Wiltshire Council

### Cabinet

23 July 2019

---

**Subject:** Proposed Loan to Wiltshire Museum

**Cabinet Member:** Cllr Philip Whitehead – Leader of the Council and Cabinet Member for Finance, Procurement and Economic Development; and  
Cllr Richard Clewer – Deputy Leader of the Council and Cabinet member for Corporate services, Heritage, Arts, Tourism and Housing

**Key Decision:** Non Key

---

### 1. Purpose of Report

The National Planning Policy Framework, where a potential development could impact on archaeology in an area, suggests that the Council acting as Planning Authority may have a duty to impose planning obligations on the developer in respect of archaeological heritage.

The planning obligations may require the developer to commission a study of the site and to deposit the resultant objects and reports referred to as archives with an accredited museum.

The acquisition of a storage facility enables such deposits not to infringe on space in the museums interpretation and gallery space.

### 2. Background

The need for storage to house archives resulting from development in Wiltshire was originally recognised by the Council as part of its Core Strategy *ref. Wiltshire Core Strategy, Infrastructure Delivery Plan, IDP2 WC015, Appendix A Wiltshire Strategic, Regional and General, 2011-2016*). Having identified the issues, Wiltshire Council has been seeking to mitigate these through its capital programme and continued partnership work with local museums to enhance the understanding of our heritage, engage wider audiences and facilitate growth of the local tourist economy. Two accredited museums within Wiltshire currently act as repositories for collecting archaeology archives, they are Salisbury Museum and Wiltshire Museum.

In 2018 Wiltshire Council allocated £75K out of a £200K capital fund in the Capital Programme to Salisbury Museum as a grant towards the purchase of suitable storage in Old Sarum, this freed space at the Cathedral close site and helped the museum to secure NHLF funding for gallery expansion.

Wiltshire Museum requires a solution for its archaeological storage and is currently unable to take any further archaeological archives due to constraints on storage space, which prevents developers discharging their planning obligations. It is proposed that Wiltshire Council release the remaining £125K of the capital fund set aside for archaeological storage as a grant to Wiltshire Museum to part fund the acquisition of a property to fulfil this requirement. Any further funding to be structured as a loan.

To offset some of the running costs, one-off storage fees will be chargeable to developers, which is standard practice by museums across the country.

### **Main Considerations for the Council**

1. In 2018 Wiltshire Council allocated £75K out of a £200K capital fund in the Capital Programme to Salisbury Museum as a grant towards the purchase of suitable storage in Old Sarum, this freed space at the Cathedral close site and helped the museum to secure NHLF funding for gallery expansion.
2. Wiltshire Museum requires a solution for its archaeological storage and is currently unable to take any further archaeological archives due to constraints on storage space, which prevents developers discharging their planning obligations. It is proposed that Wiltshire Council release the remaining £125K of the capital fund set aside for archaeological storage as a grant to Wiltshire Museum to part fund the acquisition of a property to fulfil this requirement. Any further funding to be structured as a loan.
3. To offset some of the running costs, one-off storage fees will be chargeable to developers, which is standard practice by museums across the country.

### **Overview and Scrutiny Engagement**

This report is to be considered by the Financial Planning Task Group on 22 July 2019.

### **Safeguarding Implications**

There are no safeguarding issues arising from this report

### **Public Health Implications**

None

### **Procurement Implications**

While this is not a procurement, the grant agreement will need to be allocated a Unique Reference Number by the Strategic Procurement Hub (SPH) and a copy of the final grant agreement provided to the SPH by Legal Services for inclusion in the published council grants register.

## **Equalities Impact of the Proposal**

None

## **Environmental and Climate Change Considerations**

There are no issues from the development of a formal loan arrangement

## **Risks that may arise if the proposed decision and related work is not taken**

Developers would not be able to fulfil their planning obligations which would lead to conflict of duties

## **Risks that may arise if the proposed decision is taken and actions that will be taken to manage these risks**

The loan would be fully securitised on the property to be acquired.

## **Financial Implications**

1. £125k Capital budget was approved and is set aside in the Capital Programme for this purpose and is funded from Capital Receipts.
2. Any loan made to Wiltshire Museum would be fully securitised on the acquired property and the length of the loan would not exceed the useful economic life of the asset in order to protect the Council from risk.
3. The interest rate would be determined to ensure that any interest on borrowing paid by the Council is fully mitigated and Legal advise will be sought to ensure the rate is set as a level that complies with state aid legislation.

## **Legal Implications**

1. There is a low risk that this grant could constitute state aid. This is mitigated by claw back provisions in the grant agreement but as always there is a risk that these could be resisted as the claw back would potentially require the sale of the property.
2. It is proposed that Wiltshire Council will enter into a formal agreement with Wiltshire Museum to provide a grant and a loan towards the purchase of a property for the storage of existing archaeological finds and archives relating to their geographical collecting area and potentially the whole of the historic county of Wiltshire; future archaeological finds and archives resulting from development-led and research-led archaeological fieldwork and chance discovery in the historic county of Wiltshire; and for the people of Wiltshire.
3. A charge on the property will be registered in favour of Wiltshire Council that will be invoked should Wiltshire Museum default on the agreement i.e. the property

ceases to be an archaeological store and/or the property is let or sold without alternative suitable accommodation for an archaeological store in place.

4. It is proposed that Wiltshire Council, via Libraries, Heritage and Arts, Conservation and Museum Advisory Team, will monitor the Collections Resource Centre through its existing partnership agreements with Salisbury Museum and Wiltshire Museum.

### **Workforce Implications**

None

### **Options Considered**

1. No funding – this may prevent the Council and the developers from fulfilling their planning obligations, or prevent the museum from utilising the interpretation and galleried areas
2. Full grant funding – There is insufficient capital grant funding in the capital programme
3. Grant and Loan funding – this would allow the Council and the developers to fulfil their obligations and give the Council a return on the loan element.

### **Conclusions**

Option 3 allows for planning obligations to be fulfilled and gives a return to the Council

**Alistair Cunningham OBE**  
**Executive Director Investment & Growth**

---

Report Author: Becky Hellard, Director - Finance and Procurement and Section 151 Officer, [becky.hellard@wiltshire.gov.uk](mailto:becky.hellard@wiltshire.gov.uk),

Date of report – 27 June 2019

### **Appendices**

None

### **Background Papers**

None



**Wiltshire Council**

**Cabinet**

**23 July 2019**

---

**Subject: Outline Business Case and Options Appraisal for the Enterprise Resource Planning System – Public Part I**

**Cabinet Member: Cllr Philip Whitehead – Leader of the Council and Cabinet Member for Finance, Procurement and Economic Development**

**Key Decision: Key**

---

### **Executive Summary**

1. To inform Cabinet of the options appraisal undertaken and outline business case associated with the future of delivery our HR, Finance & Procurement Enterprise Resource Planning (ERP) SAP system.
2. This is the public report and the commercially confidential information is in the part 2 report on this agenda.

### **Proposal(s)**

1. Notes the status, progress and options considered for the future delivery of the Councils HR & Finance Enterprise Resource Planning (ERP) system.
2. Make a recommendation on the preferred option to be progressed

### **Reason for Proposal(s)**

1. The proposal full reasons for the preferred option are set out in the private report.

**Alistair Cunningham OBE**

Executive Director, Growth, Investment and Place



**Wiltshire Council**

**Cabinet**

**23 July 2019**

---

**Subject: Outline Business Case and Options Appraisal for the Enterprise Resource Planning System – Public Part I**

**Cabinet Member: Cllr Philip Whitehead – Leader of the Council and Cabinet Member for Finance, Procurement and Economic Development**

**Key Decision: Key**

---

### **Purpose of Report**

1. To inform Cabinet of the options appraisal undertaken and outline business case associated with the future of delivery our HR, Finance & Procurement Enterprise Resource Planning (ERP) SAP system.
2. This is the public report and the commercially confidential information is in the part 2 report on this agenda.

### **Relevance to the Council's Business Plan**

The Council's Business Plan identifies 4 priorities, this report significantly contributes to the innovative and effective council priority.

### **Background**

1. The Council Plan sets out the Council's vision, outcomes and priorities for 2018-2022 with a key priority being an effective and efficient council. The Digital and IT Strategy is being implemented and sets out a clear agenda and key improvements that the Council needs to make to its technological and digital platforms with a key focus on moving all key systems to the Cloud. This includes investment in the Council's corporate HR, Procurement and Finance systems, including payroll, to deliver significant cost reductions and drive changes in business processes to improve the effectiveness of managers and employees. It is anticipated that a new ERP system will provide enhanced functionality to support self-service for managers and employees and significantly improve management information and reporting capabilities, delivering efficiencies in service delivery in HR and Finance and directorates.

## Main Considerations for the Council

1. The Council has used SAP as its ERP system to support delivery of its HR and Finance (including procurement and payroll) services since 2008. The system has been hosted by the council since inception, originally maintained and supported by its ICT partner, CGI, until this was internalized. There has been little investment in the system since the internalisation which reflects budget savings in the face of austerity.
2. The system is currently used to support a wide range of business processes associated with HR and Financial transactions, including supporting 43 separate monthly payrolls, making creditor payments in excess of £5.1m per month; completing 334,935 payment transactions annually and accounting for over 18m income transactions annually.
3. Due to the SAP ERP core functionality not fully meeting business requirements a variety of additional applications have been procured that integrate with SAP. The solution has developed over time in such a way that it's created a complex application landscape, which adds costs to the overall IT expenditure. Although most Local Authorities follow a similar path by customising and adding to the solution, the current SAP ERP solution is not being fully utilised and anomalies within the system mean that there is significant manual intervention required and management information is sub optimal.

In November 2018 Socitm Advisory Limited was commissioned by the Council to complete an OBC and identify options for the development or replacement of its existing SAP ERP system. The project has been ongoing for the last 6 months with senior officers and a large number of managers and staff from across the Council being engaged in As-Is workshops, solution demonstrations and site visits along with providing detailed information on how the council currently operates.

4. The OBC developed six alternative options which were appraised in consultation with senior officers and systems users. These were:

In the Outline Business Case, 6 options have been developed as follows:

### **Option 1 – Do Minimum**

*Due to the current SAP ECC 6.0 being out of support in 2025 this option included the costs of an implementation Programme within the next 5 years. Additional resource was also included to address SAP support resilience and disaster recovery concerns.*

### **Option 2 – Upgrade to SAP S4/Hana Cloud**

*Upgrade the current solution to SAP S4/Hana Cloud with Success Factors for HR. SAP's current upgrade offer does not include upgrading the payroll module into the Cloud.*

**Option 3 – Procure an ERP Cloud Solution**

*Go out to market to procure and implement an ERP Cloud Solution. The council's requirements would be tested in the commercial market allowing us to compare solution requirements at a detailed level. This option does not exclude the selection of SAP 4 Hana Cloud Upgrade.*

**Option 4 – Shared Platform**

*Share an ERP platform with a neighbouring Council. Cornwall Council are currently implementing Oracle Cloud and are due to Go Live in April 2020 but do not have a shared model in place.*

**Option 5 – Procure separate Best of Breed Solutions**

*Procure and implement two separate best of breed solutions which would require additional integration, business change and IT support effort to implement and maintain.*

**Option 6 – Managed Service**

*Outsource transactional services to a Managed Service, specifically the Hampshire Partnership, led by Hampshire Council. The Partnership currently provides a SAP ECC 6.0 platform, transactional services and customer service to 7 other authorities. The systems are currently not in the Cloud.*

5. The financial appraisal of the six options concluded that Option 3 has the greatest potential to deliver the benefits required of a new system in terms of its fit to the Council's overall Digital and IT strategy objectives, self-service capability, improved functionality and business process improvements, significant cultural change and delivery of significant financial savings.
6. The future direction of travel for the Council is to move to Cloud hosting solutions, where applicable. To align with the Digital and IT strategy the recommendation is that the Council procure a Cloud-hosted ERP solution using a Software as a Service (SaaS) approach, procuring the system on a subscription basis, rather than hosting the solution itself.
7. Experience of other local authorities has seen a trend over the last two years to move to Cloud-based (SaaS) solutions for their ERP requirements from former hosted systems. While there have been some examples of authorities who have adopted as 'Best of Breed' approach to replace hosted ERP solutions with separate HR and Finance systems (e.g. Worcestershire County Council and the London Borough of Barnet) these tend to have been exceptions and associated with new back-office outsourcing arrangements. A greater number of authorities have been replacing their ERP systems with new Cloud-ERP solutions, either from the same supplier or alternatives (e.g. London Boroughs of Lambeth and Croydon, Cheshire East and Cheshire West and Chester, Cornwall, Thurrock) or replacing separate systems with new cloud-ERP systems (e.g. Walsall, London Boroughs of Lewisham and Camden).
8. One significant difference with the approach to implementing Cloud-based systems experienced by other local authorities is the change of emphasis

from the design and build of systems to meet local requirements, towards the adoption of common best practice functionality and business processes built into the new systems. This places far greater focus on the support required within organisations to adapt business processes to meet systems functionality (rather than the other way around) and to ensure business readiness to adopt the new solution. The business change support associated with such programmes has been built into the OBC to ensure it provides the resources required to deliver the necessary business process changes.

9. The implementation of any new solution will require the combination of a number of key parties to ensure its success which will be the subject of a procurement exercise:
  - a. An application (or systems) provider – those companies who have developed the latest software available in the market and who offer its use for a license fee (e.g. SAP, Microsoft, Oracle).
  - b. A systems implementation partner (sometime called a Systems Integrator – SI) with specialist knowledge of the chosen solution and with the expert resources required to configure the system to meet the council’s requirements.
  - c. Resources to support the business change activities required to support the changes in business processes and cultural change required to deliver the required benefits of any new system. This has become increasingly important with the advent of cloud-based solutions where there is limited ability to customise the solution to meet local needs and an increased focused on adapting local business processes to align with best practice processes built into the solutions. It is imperative that the Council ‘owns’ the business change process as it needs to be embedded in the culture of the organisation but it is likely that external expertise or capacity will be required to support this activity.
  - d. The implementation of any new system will require significant input from the key users within the Council to provide critical input into the design of the new system set-up, testing the new system once built to ensure that it meets the business requirements and in supporting the adoption of the system during training and post go-live.

## **Overview and Scrutiny Engagement**

This report is to be considered at the Financial Planning Task group meeting on 22 July 2019.

## **Safeguarding Implications**

None

## **Public Health Implications**

None

## **Procurement Implications**

The full procurement strategy is included in the part II report

### **Equalities Impact of the Proposal**

A high-level evaluation of the option indicates that the equalities impact of the proposed implementation of a new HR and Finance ERP system is minimal and that the specification being developed to procure a new solution will ensure that all of the latest equality duty requirements, for example, accessibility for users with specific needs, will be met.

### **Environmental and Climate Change Considerations**

None

### **Risks that may arise if the proposed decision and related work is not taken**

The private report on this agenda highlights the full risk assessment

### **Risks that may arise if the proposed decision is taken and actions that will be taken to manage these risks**

The private report on this agenda highlights the full risk assessment.

### **Financial Implications**

1. The private report on this agenda provides further details of the Outline Business Case and appraisal of each of the four options, including details of existing SAP ERP running costs, estimated running costs of a new ERP system and estimated savings, subject to a detailed procurement exercise.
2. The detailed procurement exercise will provide accurate running and implementation costs of the new ERP which will then form the basis of a Full Business Case for further consideration by Cabinet if required.

### **Legal Implications**

1. The Council may rely on various duties and powers in securing the future delivery of an ERP system, including:

- The general power of competence under sections 1-6 of the Localism Act 2011 provides a wide power to the Council to do anything an individual can do, provided it is not prohibited by other legislation.
- S111 of the Local Government Act 1972 confers power to do anything which is calculated to facilitate, or is conducive or incidental to, the discharge of any of the Council's functions.

- The Council is under a duty under Section 3 of the Local Government Act 1999 to make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness.

### **Workforce Implications**

The Outline Business Case included in the part 2 report sets out the high level workforce implications

### **Options Considered**

The proposal full reasons for the preferred option are set out in the private report.

### **Conclusions**

The Cabinet consider the options set out in the Outline Business case set out in part 2 report

### **Alistair Cunningham OBE**

Executive Director, Growth, Investment and Place

---

Report Author: **Becky Hellard**, Interim Director Finance and Procurement,  
[becky.hellard@wiltshire.gov.uk](mailto:becky.hellard@wiltshire.gov.uk)

Date of report: 27 June 2019

### **Appendices**

None

### **Background Papers**

None



**Wiltshire Council**

**Cabinet**

**23rd July 2019**

---

**Subject: Provision of Loan facility for Wiltshire College**

**Cabinet members: Cllr Philip Whitehead - Leader of the Council and Cabinet Member for Finance, Procurement and Economic Development**

**Key Decision: Key**

---

## **Executive Summary**

This report seeks consideration of the provision of a loan facility to Wiltshire college to enable them to complete their campus redevelopment.

## **Proposal(s)**

To agree to provide a loan facility of £ 2.5 million to Wiltshire college subject to obtaining required security for the loan.

To delegate the detail of the security required and the commensurate interest to be charged on the loan to the Director of finance and procurement in consultation with the Leader of the Council and Cabinet Member for Finance, Procurement and Economic Development.

To delegate to the Director of housing and commercial development the authority to secure the charge on the security offered by Wiltshire college for the loan.

## **Reason for Proposal**

The proposals will enable Wiltshire college to secure the remaining funding that they require to complete the redevelopment of their campus. In turn this will enable the Wiltshire to offer courses to the benefit of young people in Wiltshire as well as enable the Council to generate a return on the loan commensurate with the risk that is presented.

**Alistair Cunningham OBE**  
**Executive Director of Growth, Investment and Place**

## Wiltshire Council

### Cabinet

23<sup>rd</sup> July 2019

---

**Subject:** Provision of Loan facility for Wiltshire College

**Cabinet member:** Cllr Philip Whitehead - Leader of the Council and Cabinet Member for Finance, Procurement and Economic Development

**Key Decision:** Key

---

### Purpose of Report

1. The purpose of this report is to seek consideration of the provision of a loan facility for Wiltshire College

### Main Considerations for the Council

2. Wiltshire College is in process of a redevelopment of the Salisbury and Lackham campus. The cost of redevelopment and funding they have secured to date is as follows,

Salisbury campus redevelopment	£ 15.050m
Lackham campus redevelopment	£ 9.20m
Total costs	£ 24.250m
Funding available	
LEP funding	£ 22.030m
Wiltshire college	£ 2.220m
Total funding	£ 24.250m

3. Wiltshire college has approached Wiltshire Council to provide a loan of £ 2.5m to satisfy current projected costs, and also allow for any minor overspend on the redevelopment.
4. The Council is subject to state aid rules when selectively providing financial support to third parties.
5. There are three exemptions that the Council could rely upon to ensure a loan facility is state aid compliant; the first is the market economy investor principle and lending on commercial terms ,the second is a comparable EC proxy based on the level of collateralisation provided for the loan and a credit rating for the college

which would establish a percentage mark up on the base rate and lastly the Council could conclude that the college is not an economic undertaking under state aid rules meaning it can provide a loan on sub-market terms .

6. If the Council is minded to support the provision of loan facility then it will be necessary to undertake work to establish the loan rate and it is recommended that the detail of the arrangement is delegated to the cabinet member finance , procurement, transformation and operational assets in consultation with the Director of Finance and procurement.

## **Background**

7. Wiltshire College is redeveloping the Salisbury and Lackham college sites to both improve facilities and extend the post 16 educational offer. It has already secured LEP funding for these projects which was based on detailed business case proposals.
8. The terms of the loan are £ 2.5 million to be spent across Salisbury and Lackham college, term of loan 15 years, repaid at maturity and a £ 10,000 arrangement fee and each party to cover their costs.
9. The security offered by Wiltshire College for the loan is shown in appendix A in the exempt part of this agenda. The site is to be valued on the basis of redevelopment potential for residential purposes. The Council will need to be satisfied that sites have a value equivalent to the loan and that the value can be realised without adversely affecting the college if there is a need to realise the charge in the event that the college defaults on the loan.
10. In the event that the value of the sites does not offer sufficient security there will be a need to identify other Wiltshire college assets that could be charged in the interest of the Council. The other Wiltshire college campus sites have charges in the favour of other lenders and as such security would be sought on assets that do not have charges and have a prospect of being able to be realised without adversely affecting the on going operation of the college.
11. The Council has three options in determining the terms of the loan if it is to ensure it is state aid compliant. Offer the loan as a market economy investor on purely commercial basis the same as any other comparable lender in the market. Secondly, it could use the EC proxy to calculate a rate based on collateralisation offered and the credit rating of the college to calculate a mark up on the UK base rate calculated by the EC as currently 1.09%. As an example if the college credit rating is satisfactory and the collateralisation normal the mark up on base rate would be 220 base points giving an overall rate of 3.29%. The margin the Council would take on the loan will depend upon how the loan is financed. The third option is that the college could be considered that as not being an economic undertaking under state aid rules. Provision of public education is not regarded as an economic entity. There are a number of tests the would need to be satisfied but a critical one

would be if the majority of the college's income was derived from the state. Subject to investigation of the college's financial arrangements and external legal advice this may be an option. If it is found to be the case that the college is not an economic undertaking the loan arrangements could be much more flexible.

12. The loan can be financed from the commercial investment provision I the 20119/20 and 2020/21 capital programme.

### **Overview and scrutiny**

13. This report will be considered by financial planning task group.

### **Public Health Implications**

14. No significant implications have been currently identified.

### **Environmental and Climate Change Considerations**

15. No significant implications have been currently identified

### **Equalities Impact of the Proposal**

16. No significant implications have been currently identified

### **Risk Assessment**

17. The due diligence on the loan arrangements will take place based on external specialist legal advice on state aid rules.
18. The security offered by the college will be assessed by external valuation experts.

### **Financial Implications**

19. It has been possible to agree a phasing of the advance of the loan to Wiltshire College so that £1.5 million is provided in 2019-20 and the remaining £1.0 million in 2020-21. This funding is available from the 2019-20 and 2020-21 Commercial Investment capital programme.

The loan made to Wiltshire College would need to be fully securitised on assets that could be realised assets and that are not charged by lenders. The length of the loan would not exceed the useful economic life of the asset in order to protect the Council from risk.

The interest rate would be determined to ensure that any interest on borrowing paid by the Council is fully mitigated and Legal advice will be sought to ensure the rate is set at a level that complies with state aid legislation.

### **Legal Implications**

20. External legal advice has been sought from Bevan Brittan LLP on the state aid implications associated with this proposal. Bevan Brittan has advised on how the arrangements could be structured, as set out in paragraph 11 above.

## **Options Considered**

21. The Council could decide not to offer the loan. This will jeopardise the college's ability to complete their campus redevelopment and thus offer post 16 educational course to young people in Wiltshire. As such it is recommended that the offer of a loan is investigated.
22. The report sets out the three options that will be assessed to establish the best approach to offer a loan based on due diligence that will be presented to the cabinet member to inform the detailed arrangements.

## **Conclusions**

23. It is recommended to agree in principle to offer a loan to Wiltshire college subject to due diligence to ensure that the offer is state aid compliant.

**Alistair Cunningham OBE**  
**Executive Director of Growth, Investment and Place**

---

Report Author: Simon Hendey, Director Housing and Commercial Development

## **Background Papers**

State aid advice on loan to Wiltshire college provided by Bevan Brittan.  
The following unpublished documents have been relied on in the preparation of this report:

## **Appendices**

Appendix A in exempt part of the agenda.

This page is intentionally left blank

Wiltshire Council

Cabinet

23<sup>rd</sup> July 2019

---

<b>Subject:</b>	<b>Council House Build Programme 2</b>
<b>Cabinet Member:</b>	<b>Cllr Richard Clewer Deputy Leader of the Council and Cabinet member for Corporate services, Heritage, Arts, Tourism and Housing</b>
<b>Key Decision:</b>	<b>Key</b>

---

## **Executive Summary**

In October 2018 the Cabinet approved the proposal to proceed with Council House Build Programme Phase 2, committing £9.48m into the development of 49 units over 16 sites. The approval outlined 16 sites that had been identified which would be taken forward subject to the successful approval of the Homes England bids and successful planning permission.

Homes England bids were approved in December, confirming the additional grant borrowing of £0.6m for the development of the accommodation.

Following further investigation, several sites are considered not viable due the nature of the sites and further ground investigation works. As such, a “pot” of reserve sites were identified for this very reason to enable the Council House Build Programme to deliver the programme offering the much-needed Affordable Housing for Wiltshire.

Opportunities have presented themselves since the endorsements in October 2018, to enable us to continue to deliver the programme offering maximum value for money. Such as looking at Right to Buy re-purchases using retained RTB receipts and purchasing s106 units.

## **Proposal(s)**

- a) **To agree to remove 4 schemes from CHBP 2 as no longer viable as stated in Appendix 1**
- b) **To agree to include 2 reserve/substitute sites within the programme as stated in Appendix 2**
- c) **To agree to purchase of 116 Carmelite Way (Re-Purchase RTB)**
- d) **To agree to delegate to the Director of housing and commercial development in consultation with the cabinet member for Corporate**

services, housing , heritage arts and tourism authority to purchase an additional property to be part funded by right to buy receipts outstanding at quarter 2 2019/20.

- e) To agree to make an offer for 5 units at Porton replacing 5 units from the existing Council House Build Programme as stated in Appendix 3
- f) To agree to delegate to Director of Housing and Commercial development authority to enter into contract for the purchase of 5 units at Porton .
- g) To agree to delegate to Director of Housing and Commercial development authority to seek planning permission for sites within CHBP 2 and enter into contracts for Professional Services and Construction.
- h) To agree that if individual schemes prove not to be viable the substitution of schemes within the overall programme budget is delegated to the Director of Housing and commercial development and Director of Finance and procurement in consultation with the cabinet member Cabinet member for Corporate services, Housing, Heritage, Arts and Tourism.
- i) To delegate authority to the Director of Housing and Commercial Development in liaison with the cabinet member for Corporate services, Housing, Heritage, Arts and Tourism and the Director Finance & Procurement to substitute and change funding streams to optimise financing of the programme. HRA borrowing will not exceed £7.5m but other funding streams may be increased or decreased as required providing that they stay within available allocation and do not affect the total budget position.

#### **Reason for Proposal(s)**

The Council has c.£9.48m capital funding set aside within the Council's capital budget for investment in affordable housing. The existing approval to deliver 49 units within this budget does not allow for flexibility within the £9.48m, allowing for sites and finance to be substituted where sites are not viable, nor does it allow for Contracts to be entered for the construction and professional services required to deliver this programme. This paper seeks that the ability to make the necessary changes within the parameters of the agreed budget with delegated authority to the Director of Housing and Commercial Development, in consultation with the Cabinet Member for Housing.

Alistair Cunningham OBE  
**Corporate Director**



23 July 2019

---

<b>Subject:</b>	<b>Council House Build Programme 2</b>
<b>Cabinet Member:</b>	<b>Cllr Richard Clewer Deputy Leader of the Council and Cabinet member for Corporate services, Heritage, Arts, Tourism and Housing</b>
<b>Key Decision:</b>	<b>Key</b>

---

### **Purpose of Report**

1. The purpose of the report is to seek approval to allow the delivery of the Council House Build Programme 2 in line with the approval to spend £9.48m to deliver 49 units, but with the opportunity to substitute sites where further investigation has deemed sites not viable. In addition, to utilise other opportunities such as purchasing s106 units and re-purchasing RTB properties to ensure best value and maximising opportunities for the Council.

### **Relevance to the Council's Business Plan**

2. The delivery of 49 new affordable council homes in Wiltshire will meet the following priorities and goals in the council's business plan;
  - a. Priority – growing the economy
  - b. Goal – more affordable homes to rent and buy
  - c. Priority – protecting the most vulnerable
  - d. Goal – Suitable accommodation in place for vulnerable younger and older people

### **Background**

3. On 9<sup>th</sup> October 2018, Cabinet approved a programme to build 49 new affordable council homes funded with a combination of Housing Revenue Account (HRA) reserves and borrowing with other sources of capital including Right to Buy (RTB) receipts and grant funding secured by bidding to Homes England.
4. The 49 units had been identified over 16 sites, 14 of which were HRA land and 2 within the general fund (to be appropriated).
5. The 14 sites of HRA land, were a mixture of redundant garage sites or sites that created a maintenance liability to the HRA.
6. The 16 identified sites have since undergone further surveys and ground investigations which has resulted in some sites proving to be not viable.

7. Enabling the flexibility to deliver this programme by substituting sites and considering other opportunities available to us, will enable us to deliver maximum value within the agreed budget of £9.48m.
8. Following the refurbishment works that have been undertaken at the Friary housing estate, a previous tenant who purchased their property under the RTB approached the Council consider re-purchasing the property due to the leaseholder not having the funds to pay for their share of the works. The Council has agreed a market valuation with the vendor. The cost of purchase and necessary works will be repaid in the HRA over 25 years. The purchase will be funded by borrowing funded by the HRA, commuted sums and RTB receipts. This purchase secures the use of the RTB receipts which need to be defrayed by Quarter 2 2019/20 or returned to Government.
9. There is a further £ 27,383 of right to buy receipts which if not spent by the end of quarter 2 2019/20 will have to returned to central Government. The resources identified have arisen due to slippage on both a Council house build programme phase 2 and a scheme being undertaken by a registered provider which is part funded by right to buy receipts. Any purchase opportunity identified by the end of the second quarter will need to comply with the RTB funding restrictions.
10. A site in Porton has received planning consent including an affordable housing obligation to provide 5 units of affordable housing. To date registered provider partners have not shown interest in acquiring the units. The refusal reasons given by Registered Providers indicated that the number of units was too small in too remote a location from the rest of their housing stock. We find ourselves in a position to replace 5 of the units identified across two sites on CHBP2 to bring forward 5 units of accommodation that will otherwise be offered outside of our partnership and will not deliver the accommodation that has been identified as the need for the area. The 5 units that will be moved from the programme to make way for the additional 5 units at Porton will be moved into Phase 3 of Council House development thus not lost opportunities.

### **Main Considerations for the Council**

11. Funding. There is £9.48m capital funding available for investment in the Council house build programme phase 2.
12. The use of Right to Buy (RTB) receipts is restricted and can only be used to fund up to 30% of total scheme costs with the remainder expected to be raised through borrowing. Therefore, discounting use of RTB receipts, there remains £8.12m capital funding available for investment. However, when re-purchasing RTB stock, up to 50% can be used.
13. Land. In the main, the land is within the HRA, located on existing housing developments throughout predominantly the South of the County.
14. Planning. Planning permission will be sought once detailed designs have been completed.

15. Housing need. At 28 June 2019 there were 3286 households on the housing register of which 851 were on the open market register and 2453 were on the main register.

16. Timescales. Work has begun on the procurement of a design team, with application for four of the sites expected to go in for planning in early Autumn. It is expected that the first four sites will be on site in the Spring with subsequent sites following closely behind.

### **Overview and Scrutiny Engagement**

17. The Environment Select Committee Chairman received an informal briefing on this item, prior to the report's circulation.

### **Safeguarding Implications**

18. New affordable homes enable children, their families, young people and vulnerable people to live in a safe and secure, affordable and sustainable environment.

### **Public Health Implications**

19. New affordable homes will enable households to live safely and healthily within their home. Having a safe, secure and affordable home has been shown to deliver health benefits alongside benefits relating to accessing education and employment.

### **Procurement Implications**

20. This report seeks authority for directors in consultation with Cabinet Members to agree the appropriate procurement routes and to enter into contracts as required within the funding parameters identified in Appendix 3.

21. Any procurement routes taken will be in line with the council's procurement regulations and the overall direction set by the Corporate Procurement Board requiring that an open and competitive process is used. It will be expedited in the appropriate timeframes to enable effective reporting, decision making and evaluation of the approach taken and benefits arising.

### **Equalities Impact of the Proposal**

22. Equality impacts will be monitored as project progresses. This is to ensure that the Council's statutory commitments to promoting equality and inclusion and tackling inequality are maintained. The delivery of these homes will also support the delivery of the council's vision to create strong communities.

### **Environmental and Climate Change Considerations**

23. The new homes will be built to high standards of energy efficiency. Where possible we will look at piloting different energy models that will future proof our buildings and will create efficient homes for residents and reduce the cost to the Council for maintenance.

- 24. Sustainable building standards link with the equalities and health impacts in terms of reducing the likelihood of fuel poverty and achieving a comfortable living temperature for residents.

**Risks that may arise if the proposed decision and related work is not taken**

- 25. If approval is not granted to substitute the schemes we will lose 8 units from the programme
- 26. There is a reputational risk with Homes England, as we will need to hand back £150,000 of grant funding back to Homes England and they will need to re-adjust their programme
- 27. If we do not look to re-purchase the property in Carmelite Way, we risk difficulty in being able to recover the costs from the existing leaseholder for the roof repairs and may lose RTB funds if we cannot use them effectively
- 28. If we do receive approval to purchase 5 units at Porton, we lose the opportunity to optimise the programme offering value for money

**Risks that may arise if the proposed decision is taken and actions that will be taken to manage these risks**

- 29. There are several risks in association with any housing development as follows;

	<b>Risk</b>	<b>Mitigating Action</b>
a)	Funding viability risks	The proposed build has already been tendered and therefore funding required is known.
b)	Cost of delivery	There is a risk that unforeseen costs will arise during construction. However, the scheme has a contingency sum included in the budget to allow for this
c)	Planning	The scheme has secured planning permission. There are planning conditions to be discharged but the risk of not being able to discharge these conditions is low.
d)	Community support	Consultation with local parish and town councils has been undertaken to ensure in-principle approval. Further consultation will be undertaken with communities with regard to this particular project
f)	Availability of land	The scheme identified is on land that has been secured for affordable housing.
g)	Meeting delivery timescales	A number of the funding streams are tied to delivery timescales. There is a risk of losing the funding if these timescales are not met. Delivery of this project will ensure the funding is retained for affordable housing delivery in Wiltshire.
h)	Right to Buy	Council tenants will have the right to buy their property. However a new tenant will

		<p>have to hold a tenancy for a minimum of 5 years before they can exercise this right. The council can also restrict the discount to ensure that the cost of building the home is covered by the receipt from the property to enable repayment of the capital.</p>
--	--	---

### **Financial Implications**

30. This report is seeking delegated authority to the Director of Housing and Commercial Development to substitute schemes and budget financing within the approved budget envelope of £9.48 million. All budget financing options will be completed in liaison with the Director of Finance and Procurement to ensure the optimal financing for the programme and for the HRA Business Plan

### **Legal Implications**

31. Full title reports will be required for the land used as part of this project to ensure there are no covenants or other issues affecting the development of the sites.
32. Legal advice will be required for entering into both funding and legal agreements in relation to the programme.
33. Legal advice and support will also be required for entering into contracts with consultants and contractors.
34. Land will need to be appropriated to be held for housing purposes if not already held in the Housing revenue account.

### **Options Considered**

35. Other options to secure the commitment of the capital funding available are;
  - a. Use as grant funding for Housing Associations to deliver new affordable homes. There is potential for use of the funds in this way. This will avoid hand back of any funding.
  - b. Hand the funding back to central government/developers. This is not a preferred option as the funding has been secured through either sale of council housing in Wiltshire through Right To Buy sales or planning gain for the purpose of investment in affordable housing. Best use of the funding for Wiltshire is to use the funding to benefit Wiltshire residents in need of affordable homes.
  - c. Retain the funding to use for other potential schemes in the future. This is an option but runs the risk of hand back of funding if alternative opportunities do not arise prior to time limits for use of

funding expiring. In addition, the Southview sites already have planning permission and the schemes have been tendered. The successful bidder is already on site with two parcels being delivered as part of the council house building programme so is prepared to stand by their tender price to enable quick delivery.

## **Conclusions**

36. These amendments to the programme increase the number of units that can be delivered, bringing the total number of homes to 50 within the same budget parameters as agreed to in October 2019. The homes will help meet the needs and ensure the funding available is committed to Wiltshire for Wiltshire residents.

Simon Hendey Director of Housing and commercial development  
Report Author Laura Young Residential development manager  
laura.young@wiltshire.gov.uk

## **Appendices in exempt part of agenda**

- Appendix 1 – Funding table indicating 4 “not viable” sites
- Appendix 2 – Funding table indicating the replacement sites
- Appendix 3 – Funding table indicating the proposed programme for approval

## **Background Papers**

None

**Wiltshire Council**

**Cabinet**

**23rd July 2019**

---

**Subject:**                    **Establishing Local Authority companies**

**Cabinet members:**    **Cllr Philip Whitehead - Leader of the Council and Cabinet  
Member for Finance, Procurement and Economic Development**

**Key Decision:**            **Key**

---

## **Executive Summary**

This report seeks consideration of the detailed arrangements to establish three companies owned by Wiltshire Council. This includes consideration of shareholders agreements, matters reserved for decision by the shareholder (the Council) articles of association and financing arrangements for the companies as well as services the Council will provide to the companies and obligations the companies will have.

## **Proposal(s)**

1. To agree to the shareholder agreements as set out at appendix A.
2. To agree to the articles of association of the companies as set out at appendix B.
3. To agree to the business plan for the companies as at Appendix C in the exempt part of the agenda.
4. To agree to appoint Hazlewoods LLP as auditors of the companies for the financial year 2019/20.
5. To agree loan finance of £ 9.550m in 2019/20 to Stone Circle housing company on terms set out at appendix D.
6. To agree a virement of £7.3 million from Commercial Investment approved 2019/20 budget to Local Development Company to create a total budget of £12.3 million. To re-profile the revised budget to show £0.8 million in 2019/20, £11.1 million in 2020/21 and £0.4 million in 2021/22 so that it is in line with the Local Development Company Business Plan.

7. To agree loan finance of £ 0.670m in 2019/20 to Stone Circle development company on terms set out in appendix D.
8. To agree to the transfer of New Zealand Avenue, Ashton Street resource centre and Marlborough resource centre sites subject to Stone Circle development company providing a project plan as required in the shareholder agreement.
9. To agree to the equity investment required for each development to achieve at least 40% equity based on the value of the sites and cash equity investment in line with the agreed business plan assumptions.
10. To agree that subject to provision of project plan the terms of transfer of sites and cash equity investment will be delegated to an Executive Director other than the Executive Director of Growth Investment and Place, the Director of Finance and procurement in consultation with the Cabinet member for Finance, Procurement and Economic Development.
11. To agree an annual £ 2,000 remuneration for Directors who are independent of the Council or where a Special responsibility allowance is paid to Councillors that does not cover their role on the companies.
12. To agree that Director's expenses can be reimbursed in line with the Council's expenses policy.
13. To agree to delegate the appointment of independent board Directors and Council Director nominees to an Executive Director other than the Executive Director of Growth, investment and place in consultation with the Leader of the Council
14. To agree to enter into a nomination agreement with Stone circle housing company
15. To agree to provide the following services to the Stone Circle housing company; housing management, accountancy, company secretary, conveyancing, property procurement and valuation services and delegate authority to enter into the resources contracts to Director of Housing and commercial development.
16. To agree to provide the following services to the Stone Circle development company; development management services, company secretary, accountancy and delegate authority to enter into the resources contracts to Director of Housing and commercial development
17. To agree that authority to finalise detail of documentation and to enter into agreements is delegated to the Director of Housing and commercial development



in consultation with Director of legal, electoral and registration services and Director of Finance and procurement.

**Reason for Proposal**

The proposals aim at implementing the decision taken by cabinet in January 2019 to establish a local housing company to meet housing needs in the County as well as a development company to develop council owned sites to maximise the value of Council assets.

**Executive Director of Children and Education – Terence Herbert**

## **Wiltshire Council**

### **Cabinet**

**23<sup>rd</sup> July 2019**

---

**Subject:                    Establishing local authority companies**

**Cabinet member:        Cllr Philip Whitehead - Leader of the Council and Cabinet  
Member for Finance, Procurement and Economic Development**

**Key Decision:            Key**

---

### **Purpose of Report**

1.        The purpose of this report is to seek consideration of the detailed arrangements to establish 3 companies owned by Wiltshire Council.

### **Main Considerations for the Council**

2.        The proposal is to establish three companies; a holding company Stone Circle holding company, Stone Circle housing company and Stone Circle development company. The Council will be the shareholder of the companies and therefore it is necessary for the Council to agree the shareholder agreements for the companies and the reserved matters that the Council will retain in relation to the companies.
3.        To establish the companies, articles of association will need to be agreed which will determine the way in which the companies will be governed.
4.        Subject to decisions on the shareholder agreement and articles of associations the Council will need to make decisions on the reserved matters, and financing of the companies.
5.        In the early stages of the companies' development it is proposed that the Council sells services to the companies. This will enable the companies to become established and take decisions on procuring services or employing staff in the future when it becomes economic to do so.

### **Background**

6.        At its meeting on the 15<sup>th</sup> January 2019 Cabinet agreed to establish a local housing company and a local development company. It was agreed to nominate the Cabinet member for Corporate services, Housing, Heritage, Arts and Tourism and the Cabinet Member for Finance, Procurement, ICT and Operational Assets and a representative from the opposition parties to become board members as well as the Executive Director of Growth, investment and Place. Officers have worked with

the shadow board informed by professional advice from external legal advisers and financial advisers to present the proposals contained in this report.

### **Shareholders agreement**

7. Appendix A contains the proposed shareholder agreements. The proposed structure is a holding company wholly owned by the Council with two wholly owned subsidiaries Stone Circle housing company and Stone Circle development company. The agreement intends to regulate the manner in which the Companies carry out business and to ensure that the Council retains decisive influence over both the strategic objectives and significant decisions of the Companies.
8. The companies are required to provide the Council a business plan at least three months before the start of the preceding financial year. The Council will be required to approve the business plan and the other reserved matters.
9. The agreement sets out that there should be at least three directors appointed by the Council to the Stone Circle holding company and the Stone Circle housing company and Stone Circle development company. The Council can terminate Director appointments and appoint Directors. The Council cannot nominate a cabinet member responsible for planning or the Leader of the Council due to obvious conflict of interest. The Council can nominate Executive Directors and has already agreed to nominate independent Directors who are to be recruited subject to decisions contained in this report.
10. The Companies will adopt policies and procedures to enable it to undertake its business or may adopt the Council's policies and procedures. Employment terms and conditions must be agreed by the Council.
11. The Companies will be required to provide the Council quarterly financial information by the 30<sup>th</sup> day after the preceding three-month period. Audited accounts are to be provided to the Council two months after the end of the financial year. The company should also provide minutes of board meeting 20 days after the board meeting. The Council can request information from the Company after providing reasonable notice.
12. The Company should adopt the Council's audit and fraud policies.
13. The company shall prohibit fraud and is required to inform the Council in accordance with the Council's financial regulations and policies of any prohibited act performed by the Company, any Director, employee, adviser or representative of the company.
14. The Company cannot seek third party funding without written approval of the Council.
15. The company can distribute profits if consistent with the agreed business plan and that there are sufficient funds. Distribution of profits to the Council requires approval of the Council following recommendation from the company.
16. The company is required to hold a contract register into which every contract must be registered if it has an annual value greater than a threshold set by the Council.
17. The Council controls any share dealings or admitting new shareholders.
18. The agreement contains a dispute resolution procedure and the ability for the Council to terminate the agreement giving six months notice.
19. The agreement covers the confidentiality responsibilities of the Council and the company as well as freedom of information obligations under the Freedom of Information Act and data protection.

20. The shareholder agreement can only be varied by agreement of both parties. The shareholder agreement will prevail over the articles of association of the company.
21. Schedule 1 of the shareholder agreement contains the reserved matters that the Council retains. The following paragraphs set out the main decisions to be made at this point in time in relation to the reserved matters.
22. The Council has retained the right to agree the business plan of the companies. The business plan is presented at appendix C in the exempt part of this agenda.
23. The business plan for Stone Circle development company is premised on the Council transferring New Zealand Avenue, Ashton Street resource centre, and Marlborough resource centre. The Council has already agreed to the freehold disposal of those three sites. The shareholder agreement provides at schedule 2 the requirements of the Council that Stone Circle development company provides a project plan to the Council before a site is transferred.
24. As a reserved matter the Council appoints the auditors of the companies. Prices were obtained from three companies who had experience of providing audit and accounting functions for council owned trading companies. The companies are as follows,

Hazlewoods LLP  
Wilkins Kennedy LLP  
Monihans LLP

It is recommended that Hazlewoods are appointed as auditors for the financial year 2019/20 as their proposal was the most economic. The proposal is included as Appendix E on the exempt part of the agenda.

25. **Constitution of the Company.**

Appendix B contains the proposed articles of association for the companies. The articles follow the model articles. The following paragraphs draw out the main aspects of the articles.

26. It has been agreed that there will be five directors for Stone Circle local housing company and Stone Circle development company, and it is anticipated there will be four nominees from the Council and an independent nominee. Therefore, although the shareholder agreements require a minimum of three directors the Stone Circle holding company will have six Directors as there will be two independent Directors and the four nominees from the Council. It is recommended quorum for the holding company will be three Directors and three directors for the other companies. The Council has reserve shareholders powers to direct the companies to direct the directors to take or refrain from a course of action.
27. Decisions of the Directors will be based on the majority of the board.
28. The Council has the ability to appoint a Chair of the Directors or Directors can appoint at chair at the meeting.
29. The articles require Directors to state any conflicts of interest for transactions and with arrangements with the companies. The articles cater for the board providing a Director to take part in decisions where a conflict arises.
30. The Council has the power to appoint and terminate Directors. The articles cater for Directors appointment being terminated in the case of bankruptcy of a Director, incapability due to a medical condition or resignation.

### **Directors remuneration**

31. The articles require the Council to give prior approval to remuneration for the Directors of the companies. Following advice received from the Council's legal advisers it has been established that Directors nominated to the companies by the Council who receive a special responsibility allowance which could be considered to cover the work of the company should not receive additional remuneration from the company. If the Council nominates an elected member who has a special responsibility allowance but it does not cover the work of the companies then the company can provide remuneration to the member. In addition, the companies can remunerate the independent Director nominations. It is recommended that elected members who do not receive a relevant special responsibility allowance that would cover the work of the companies should receive £ 2,000 a year per Directorship and the same payment would be made to the independent director nominees. Expenses should be paid to Directors in line with the Council's expenses policy.
32. The Executive Director of Growth, Invest and place who has been nominated as a director will not receive remuneration for his role of Director on the Company boards.
33. The Council will be the shareholder of the company and has to agree any other shareholders. The Council's liability is limited to the amount, if any, unpaid on the Shares held by them.
34. The articles allow for the Directors to declare and pay dividends. As stated above the Council has retained the approval of the company business plans as a reserved matter in the shareholder agreement. As such subject to the operation of the business plan the Council will be aware of any potential dividend payments.
35. The articles cover the organisation of general meetings where the shareholder (the Council can take part). It is recommended that at least 28 days notice is given of a general meeting specifying the business to be dealt with. The articles have been drafted to cover attendance by a representative of the Council as shareholder.
36. The Council has the right, after giving notice, to inspect the accounts and other records of the company as well as appoint the company secretary. The Council will be providing the company secretary role for the companies.
37. The articles allow for indemnity of Directors and insurance against loss for the Directors.
38. **Business Plans**

Appendix C contains the financial business plans for the two companies. For Stone Circle housing company it has been constructed on the basis of the company purchasing properties at no more than mid quartile prices and charging rents at local authority housing allowance rates plus 10%. The Council provides loan finance to the company on an annual basis over five years which will be subject to the company presenting the annual business plan. The assumption is that the loans are repaid at maturity although they can be repaid over the life of the business plan subject to the company having sufficient cash balances available. Based on the assumptions in the business plan the company breaks even at year 13. The business plan shows that at year 50 there is an outstanding debt of £ 8.2m. However, the debt is repaid from predicted cash balances by year 54 reflecting the fact that the last loan is taken at year five of the business plan and as such over a 50-year period the loans are predicted to be repaid from the

- date at which they are taken. The plan indicates that the Council could earn a premium on loan finance of £ 1.416m over the first five years of operation and over 50 years that premium could reach £ 19.641m.
39. The business plan for Stone Circle development company is based on the transfer of three Council owned sites, New Zealand Avenue, Ashton Street resource centre and Marlborough resources centre. The business plan shows that the development of the three sites should return a dividend net of tax to the Council of £ 2.9m over and above the value of the sites over the next 4 years. The Council's asset management group has considered the way to achieve best value for the Council, and concluded that transfer to Stone Circle Development company for development is the best option.
40. The business plan is premised on the Council investing 40% equity into the development through a mixture of the site values and cash equity investment. The Council's equity investment will be reflected in shares in the company on a par value basis. The external advice received is that this should protect the Council from state aid challenges. The business plan assumes £ 0.1m cash equity investment in 20119/20. In addition, Stone Circle development company will require development finance of £ 0.670m in 2019/20 to take forward the development of the sites. The viability assessments of the three sites suggests they may be capable of providing 72 units in total and as Ashton street and Marlborough resource centre sites will be qualifying sites for affordable housing obligations 22 of those units could be affordable.
41. The shareholder agreement requires Stone Circle development company to provide a project plan (as included in appendix A devco shareholder agreement schedule 2) for the development of each site in advance of the transfer of the site taking place. Subject to receipt of satisfactory project plan it is recommended that the transfer of sites is delegated to an Executive Director other than the Executive Director of growth investment and place due to the conflict of interest that exists.
42. The business plans are constructed based on the companies paying VAT on services, stamp duty land tax and corporation tax on profit before payment of dividends. A separate tax strategy has been commissioned that may improve the position as stated in the business plans. This advice has been commissioned by the Council but will be able to be relied upon by the companies and may offer an opportunity to improve the business plan operations.
43. The holding company will be passive and it is not intended that it will trade at this point in time.
44. **Recruitment of independent Directors**  
Subject to Cabinet decision on remuneration for Directors it will be necessary to recruit the independent Directors to Stone Circle housing company and Stone Circle development company. Given the nature of the two companies it is recommended a Director with property management experience and a Director with residential development experience will be sought. Both Directors will sit on the holding company board. Therefore, there will be two independent Directors on the holding company out of six and one in each of the other companies out of five directors.

**Nomination agreement**

45. The nomination agreement will enable the council to make nominations to Stone Circle housing company of people who have a housing need. This could be a homeless household so that the Council can discharge its duty to provide suitable accommodation, a household on the Council’s open market register, key workers or care leavers. The intention is that Stone Circle housing company will be required to request a nomination at least 20 days before the property is available for letting. The Council can continue to provide nominations up to 5 days before the letting date and if at that time the Council has not been able to provide a nominee who will accept the property Stone Circle local housing company will be free to let the property on the open market.

46. **Council services to be provided**

The Council will provide services to the companies until it is economic for the companies to either employ staff or procure services independently subject to agreement from the Council. The table below sets out the services that are proposed to be provided to the companies. The extent to which the income from services will generate additional income for the Council will depend upon the ability for services to contain the additional work within current establishment. Services will be specified within a resourcing contract with the companies

Service	Service area providing service	Cost of service to be charged to the companies	Stone Circle local housing company	Stone Circle local development company
Company secretary	Legal services	9,600	4,800	4,800
Accountancy	Financial services	42,100	32,100	10,000
Housing management	Housing	56,000	48,500	7,500
Conveyancing	Legal services	45,000	900 * 50 = 45,000 first 5 years only	To be determined
Property procurement	Strategic assets	25,000	500 * 50 = 25,000 first 5 years only	
Valuations	Strategic assets	7,200	3,600	3,600
Total		184,900	159,000	25,900

### **Overview and scrutiny**

47. Financial planning task group will consider the report at their meeting on the 22<sup>nd</sup> July.

### **Safeguarding implications**

48. None identified.

### **Public Health Implications**

49. No significant implications have been currently identified.

### **Environmental and Climate Change Considerations**

50. Stone Circle development company will have the ability to seek high levels of sustainability in the new build developments within the commercial envelop in which the developments operate. The build cost assumptions are based on developments achieving at least code level 4 for code for sustainable homes.

### **51. Procurement implications**

All procurements delivered as part of the services sold to the companies will be conducted in accordance with the council's rules and any relevant Public Procurement Regulations

### **Equalities Impact of the Proposal**

52. The Council's nominations to Stone Circle local housing company will be monitored in relation to ensure groups with protected characteristics are not disadvantaged.

### **Risk Assessment**

53. The main risk facing Stone Circle local housing company is that house price inflation increases would make it difficult for the company to purchase properties within the parameters set in the business plan. If that situation arises then the business plan could be remodelled based on higher purchase prices and market rents. However, if market rents are charged the Council would have to charge commercial loan rates to avoid state aid challenges. A secondary risk facing Stone Circle local housing company is that the properties that are acquired have unforeseen major repair requirements that would need capital investment. That risk can be mitigated by undertaking due diligence prior to purchase.
54. The main risk facing Stone Circle local development company is that the housing market falls during the development period and it is not possible for properties to realise predicted sale prices. The company structure would allow Stones Circle development company to offer a 21-year lease to Stone Circle local housing company for the properties with the inclusion of break clauses in the lease. Subject to the Council providing loan finance at commercial rates to Stone Circle local housing company the properties would be let at market rent levels until the market recovers and then consideration could be given to breaking the lease so that the properties could be sold.



## Financial Implications

55. A 50-year plan has been prepared for the Local Housing Company using Savill's, commercial property management consultants, established model. Appendix C1 to C3 show the Income & Expenditure, Balance Sheet and Cash Flow. It has been presented to show the first 5 years and then position at years 10, 20, 30, 40 and 50.
56. The Local Housing Company will be held together with a Local Development Company in a holding company. Wiltshire Council will remain the sole shareholder for the business plan period.
57. Loans will be provided to the Local Housing Company by Wiltshire Council during the first 5 years of operation on a maturity basis. It has been assumed that a rate of interest will be charged equal to the prevailing PWLB rate plus 1.0% (modelled at 3.6% in total).
58. The plan assumes a total of 10 loan advances spread over the first 5 years with a variety of maturities ranging from 26 to 46 years. These have been modelled to minimise accumulated cash balances held and apply them to the repayment of debt as early as possible. This reduces the risk to Wiltshire Council and reduces the interest cost to the Company. The Local Housing Company is forecast to pay interest charges of £5.1 million in the first 5 years and £70.7 million over the 50-year period.
59. The plan assumes a period of 5 years for the acquisition of 50 houses at mid quartile prices for a total of 250 properties. These properties will be broadly located in the Salisbury, Chippenham and Trowbridge areas. They will be acquired in the last 6 months of 2019/2020 and then evenly over the first 6 months of each of the next 4 years. A mixture of 2- and 3-bedroom properties will be acquired.
60. The houses will be let at LHA rates plus 10% so will be let at sub-market rents. The model assumes that there will be voids equivalent to 1.0% and a bad debt provision of 2.0% each year.

The cashflow position (Appendix C 3) as modelled indicates that the Local Housing Company will be generating enough cash to cover its expenditure including Loan interest in year 13.

62. The Business plan allows for additional acquisition costs totalling circa £2,900 for each property, this includes £1,500 capital investment to cover any costs to make the property good and bring it up to a good rentable standard.
63. Annual revenue repairs of £600 per property have been modelled. This is in line with current HRA experience. Initially these services will be provided by the HRA DLO and will be a fixed price per property. In future this service could be procured from open market competitive tender.

64. After year 5 a sum of £1,000 per property per year is allowed for capital planned maintenance to meet the property's life cycle costs.
65. Full year annual company costs circa £0.115m have been allowed for to cover Board costs, professional services, ledger and systems, audit and accounting. A further £0.05m is allowed for set up costs in year 1. It is envisaged that the Company will operate its own general ledger – for example Sage or Quickbooks.
66. The income and expenditure account (Appendix C1) for the Local Housing Company shows annual deficits for the first 4 years of an average circa £0.4m. By year 50 an annual surplus circa £4.7m is achieved.
67. The modelled debt position suggests the borrowing should be repaid within circa 54 years. A balance of £8.2 m remains at the end of 50 years, but continuing income receipts are modelled as repaying fully shortly thereafter. Appendix C4 Graph presents the Local Housing Company Loan and Cash Balances over the 50-year plan period.
68. Balance sheet modelling (Appendix C2) shows properties holdings valued at £117.4m at the end of 50 years, an increase of £72.9 million. Net current assets stand at £97.0m at the end of 50 years, this is the balance sheet figure after Tax liability and remaining Loan Debt. Appendix C6 Graph presents the Loan value to Asset value.
69. All costs have assumed the inclusion of standard rated VAT as appropriate. The Company is subject to the normal commercial VAT tax code.
70. Standard Rated Corporation Tax has been assumed at 19% for 2019-20 and 17% thereafter. This becomes payable once annual surpluses begin to be made and are settled a year in arrears in the normal commercial approach. Wiltshire Council are seeking Tax advice for the company to ensure the companies operate in the most Tax efficient model.
71. The model is based on assumptions listed above and includes various inflation assumptions. Ultimately to deliver to plan the Local Housing Company will need to ensure costs are maintained within the assumed levels and that stock is managed efficiently to keep voids and bad debt low.

#### **Impact on Wiltshire Council**

72. Wiltshire Council will issue loans totalling £49.320 million over the first 5 years. These will be taken out on a maturity basis with PWLB and will be securitized against the Local Housing Company properties to navigate risk. The loan advances are in the current Wiltshire Council approved capital programme at £50m allowing an element of headroom.
73. The loans have been modelled in line with the Local Housing Company forecast cashflows so are for a range of maturity dates from 26 to 46 years. This reduces the risk to Wiltshire Council and reduces the interest cost to the Company. The plan shows that all loan advances are repaid by the end of year 54.

74. Interest will be charged to the Local Housing Company at the PWLB Loan rate plus a premium of 1%. The total interest premium earned by the Council in the first 5 years is £1.416m and at 50 years would be £19.641m. This is a revenue income stream that can be invested in Council services in this period. Appendix C5 Graph presents the Loan premium per year to Wiltshire Council over the 50-year plan period.
75. The exposure of Wiltshire Council will be minimised by not advancing resources in the form of equity. There will therefore also be no requirement for Minimum Revenue Repayment on the Loans.
76. Wiltshire Council will, as sole shareholder, hold the full value of assets including houses valued at £117.4m at the end of 50 years (Appendix 6).

#### **Local Development Company**

77. A Business Plan has been prepared for the Local Development Company using Savill's, commercial property management consultants, established model. Appendix C7 to 9 show the Income & Expenditure, Balance Sheet and Cash Flow. It has been presented to show the first 5 years.
78. The Local Development Company will be held together with a Local Housing Company in a holding company. Wiltshire Council will remain the sole shareholder for the business plan period.
79. The Business plan includes the development of 3 specific sites at New Zealand Avenue Salisbury, Ashton Street Trowbridge and Marlborough Resource Centre for the development of 72 houses. Once developed the properties will be disposed of either to the HRA, the Local Housing Company or by sale on the open market.
80. The sites are already owned by Wiltshire Council and will be transferred into the Local Development Company as equity investment in return for shares. The Council will put in a total of 40% equity investment to each site, this will be made up of land value and the balance as cash equity.
81. The land value for the 3 sites is estimated as £1.3 million and cash equity of £3.6 million. The Local Development Company will repay the equity invested back to Wiltshire Council as cash once the developments are sold, this is forecast to be in 2023/24.
82. Full year annual company costs circa £0.033 million are allowed for within the Business Plan to cover Board costs, professional services, ledger and systems, audit and accounting. A further £0.05m is allowed for set up costs in year 1. Estimated build costs and professional fees have been included at industry standard rates.
83. Appendix C9 shows the cashflow for the 3 developments. In addition to the £3.6 million cash equity the Local Development Company requires Loan finance of £8.7 million for three years to Develop the sites. Interest will be charged at a

commercial rate, the Business Plan assumes 5.5%, this would result in interest payable totalling £1 million.

84. The income and expenditure shown at appendix C7 shows a loss in years 1 and 2 which then moves to profit in year 3 and 4 when all the developments are sold. The total profit made by the Local Development Company is forecast to be £2.9 million by year 2022/23 after repayment of Equity to Wiltshire Council of £4.9 million and Corporation Tax of £0.6 million. The £2.9 million profit will be paid from the Local Development Company to Wiltshire Council as a Dividend. The tax strategy which has been commissioned as stated above may impact on this.
85. All costs have assumed the inclusion of standard rated VAT as appropriate. The Company is subject to the normal commercial VAT tax code.
86. Standard Rated Corporation Tax is also assumed at 19% for 2019/20 and 17% thereafter. This becomes payable once annual surpluses begin to be made and are settled a year in arrears in the normal commercial approach.

#### **Impact on Wiltshire Council**

87. The Business plan shows Wiltshire Council providing land equity totalling £1.3 million and cash equity of £3.6 million for the 3 sites. Wiltshire Council will need to finance the cash equity in the most advantageous way, it is recommended that this is done via capital receipts so that minimum revenue provision is avoided. This will require a review of the financing of the capital programme. If capital receipts cannot be identified, then Minimum Revenue Provision and interest will need to be set aside on the equity value of £3.6 million.
88. In addition to equity Wiltshire Council will issue short term maturity loans totalling £8.7 million. These will be taken out on a maturity basis with PWLB and will be unsecured.
89. Interest will be charged to the Local Development Company at a commercial rate, the business plan assumes 5.5% which would give a premium to Wiltshire Council of circa 2.9%. The total interest premium earned by the Council for the 3 developments is £0.5 million. This is a revenue income stream that can be invested in Council services. If the cash equity cannot be financed from capital receipts and the Council needs to borrow to fund, then the premium would be reduced by interest costs and MRP. Appendix 10 Graph presents the Income to Wiltshire Council over the plan period assuming equity is paid from capital receipts.
90. At the end of 2022/23 when all Developments have been sold the Local Development Company will repay the cash and land equity back to the Council, this will be in cash and will total £4.9 million. The forecast profit of £2.9 million will be paid to Wiltshire Council as a Dividend.
91. Wiltshire Council approved capital programme has £5m profiled across 2020/21 to 2023/24 for the Local Development Company which would be in the wrong period and is not enough to cover the Business Plan as presented. It is recommended that a virement is authorised to move £7.3 million from

Commercial Investment approved 2019/20 budget to Local Development Company to create a total budget of £12.3 million. The budget will then need to be reprofiled to show £0.8 million in 19/20, £11.1 million in 2020/21 and £0.4 million in 2021/22 so that it is in line with the Local Development Company Business Plan. The following table sets this out.

**Wiltshire Council  
Local Development Company Capital Programme**

	2019.20 £ million	2020.21 £ million	2021.22 £ million	2022.23 £ million	2023.24 £ million	Total £ million
1. Existing LDC Funding - Capital Programme	1.00	1.00	1.00	1.00	1.00	5.00
2. Commercial Investment Capital Programme	10.00	-	-	-	-	10.00
3. Less existing commitments Commercial Investment	- 2.70	-	-	-	-	- 2.70
	<u>8.30</u>	<u>1.00</u>	<u>1.00</u>	<u>1.00</u>	<u>1.00</u>	<u>12.30</u>
4. Financing Requirement LDC						
- Debt	0.70	8.00	-	-	-	8.70
- Cash Equity	0.10	3.10	0.40	-	-	3.60
Total	<u>0.80</u>	<u>11.10</u>	<u>0.40</u>	<u>-</u>	<u>-</u>	<u>12.30</u>
5. Virement Required	- 7.50	+ 10.10	- 0.60	- 1.00	- 1.00	-

92. The main risk for Wiltshire Council will be if the Development programmes slip, have cost overrun or the market changes resulting in the Developments taking longer to sell as the Local Development Company would then require longer loan finance cashflow which would ultimately result in lower Dividend return. However, the Council would benefit from the margin on loan finance for longer which may mitigate that position.

### Legal Implications

93. The general power of competence provides a wide power to the Council to do anything an individual can do, provided it is not prohibited by other legislation., This includes power to establish local authority companies, and in exercising this power regard must be had to any relevant statutory restrictions and guidance, including Part V of the Local Government and Housing Act 1989, the Local Authorities (Companies) Order 1995 (regulation of local authority companies), Part 1 of the Local Government Act 2003 (borrowings) and section 123 Local Government Act 1972 (best consideration for land disposals)
94. Specialist external legal advice has been sought in relation to the structure and governance arrangements of the companies as well as the associated legal documentation, including shareholder agreements, articles of association and financing agreements.
95. Specific legal advice in relation to compliance with state aid and procurement law has been sought and steps have been taken to mitigate the risk of any future challenge.

96. The structure and governance arrangements associated with the three companies is set out more fully elsewhere in this Report. In summary, the Council will be the sole shareholder for each of the companies, which are each separate legal entities, albeit within a single group structure. The Council will retain a strategic control function over the company's activities through its role as shareholder. The shareholder's rights and reserved powers are set out in the respective shareholder agreements. Each of the companies will run in accordance with the shareholder's agreements, Companies Act 2006 and the articles of association. Other duties also arise under legislation and common law.
97. The Council will need to be mindful of the governance arrangements underpinning the setting up and operation of the companies and any conflicts of interest managed appropriately. There is potential for conflicts of interest to arise, as officers or members who are appointed as directors of a company have a duty to act in the best interests of the company and this may not always coincide with their role and responsibilities as council employees or members. Special provisions have been incorporated into the articles of association to address the issue of conflicts of interests and specific legal advice will need to be sought where potential conflicts are identified.
98. The companies will purchase services from the Council under separate resourcing contracts, including conveyancing and company secretarial services from the legal team. It is anticipated that the company may wish to seek its own independent legal advice from external advisors as it becomes established.

### **Options Considered**

99. The Cabinet considered the establishment of a local housing company and local development company at its meeting on the 19<sup>th</sup> January.
100. The Council has the option of establishing companies under the Teckel exemption for procurement rules so that it can award contracts to the companies without a tender, or as contracting authorities. In the former case the Council would exercise control over the companies similar to that it exercises over its departments, 80% of the business of the company would be from the Council, and there is no private participation in its capital. The Council also has the right to appoint and remove directors, approve business plans and take majority decisions on reserved matters. For the companies to be a contracting authority they would have to avoid dependency on the Council, avoid having needs in the public interest and have an industrial or commercial interest. If that could be achieved the contracting authority would not be bound by public law. The nature of the business of the companies and the support and level of control recommended means that the companies should be established under the teckel exemption.

### **Conclusions**

101. It is recommended to establish Stone Circle holding company, Stone Circle local housing company and Stone Circle development company as teckel companies to

provide sub market rented housing for households who have a housing need and to develop Council assets so to maximise the return for the Council.

**Terence Herbert**  
**Executive Director of Children and Education**

Report Author: Simon Hendeby, Director Housing and Commercial Development

## **Background Papers**

The following unpublished documents have been relied on in the preparation of this report:

Legal advice from Bevan Brittan  
Business plan advice from Savills

## **Appendices**

Appendix A – Draft shareholder agreements  
Appendix B – Draft articles of association  
Appendix C – Business plans for Stone Circle local housing company and Stone Circle local development company in exempt part of agenda  
Appendix D – Draft loan agreements  
Appendix E- Hazlewoods audit proposal in exempt part of agenda

This page is intentionally left blank



**Dated** \_\_\_\_\_ **2019**

**WILTSHIRE COUNCIL**

**STONE CIRCLE DEVELOPMENT COMPANY LIMITED**

\_\_\_\_\_  
**SHAREHOLDER AGREEMENT**  
\_\_\_\_\_

30659528.230224835.1© Bevan Brittan LLP

Toronto Square - 7<sup>th</sup> Floor | Toronto Street | Leeds LS1 2HJ  
T 0370 194 1000 F 0370 194 5465

Fleet Place House | 2 Fleet Place | Holborn Viaduct | London EC4M 7RF  
T 0370 194 1000 F 0370 194 7800

Kings Orchard | 1 Queen Street | Bristol BS2 0HQ  
T 0370 194 1000 F 0370 194 1001

Interchange Place | Edmund Street | Birmingham B3 2TA  
T 0370 194 1000 F 0370 194 5001

## Contents

Item	Page
<b>PARTIES</b> .....	<b>1</b>
<b>BACKGROUND</b> .....	<b>1</b>
<b>AGREED TERMS</b> .....	<b>1</b>
<b>1</b> <b>DEFINITIONS AND INTERPRETATION</b> .....	<b>1</b>
<b>2</b> <b>COMPLETION</b> .....	<b>5</b>
<b>3</b> <b>THE BUSINESSES AND BUSINESS PLANNING</b> .....	<b>5</b>
<b>4</b> <b>COUNCIL'S ROLE AS SHAREHOLDER</b> .....	<b>6</b>
<b>5</b> <b>DECISION-MAKING</b> .....	<b>7</b>
<b>6</b> <b>BOARD</b> .....	<b>8</b>
<b>7</b> <b>POLICIES AND PROCEDURES</b> .....	<b>8</b>
<b>8</b> <b>PROVISION OF INFORMATION</b> .....	<b>9</b>
<b>9</b> <b>AUDIT AND FRAUD</b> .....	<b>10</b>
<b>10</b> <b>PREVENTION OF BRIBERY</b> .....	<b>10</b>
<b>11</b> <b>FINANCE AND RETURNS</b> .....	<b>11</b>
<b>12</b> <b>CONTRACTS</b> .....	<b>12</b>
<b>13</b> <b>DEALINGS IN SHARES AND NEW SHAREHOLDERS</b> .....	<b>12</b>
<b>14</b> <b>DISPUTE RESOLUTION</b> .....	<b>12</b>
<b>15</b> <b>TERMINATION</b> .....	<b>13</b>
<b>16</b> <b>CONFIDENTIALITY</b> .....	<b>14</b>
<b>17</b> <b>FREEDOM OF INFORMATION</b> .....	<b>15</b>
<b>18</b> <b>DATA PROTECTION</b> .....	<b>15</b>
<b>19</b> <b>UNLAWFUL FETTER ON THE COMPANY'S POWERS</b> .....	<b>15</b>
<b>20</b> <b>FURTHER ASSURANCE</b> .....	<b>16</b>
<b>21</b> <b>ASSIGNMENT AND SUB-CONTRACTING</b> .....	<b>16</b>
<b>22</b> <b>WAIVERS AND CONSENTS</b> .....	<b>16</b>
<b>23</b> <b>RIGHTS AND REMEDIES</b> .....	<b>16</b>
<b>24</b> <b>SEVERANCE</b> .....	<b>16</b>
<b>25</b> <b>COUNTERPARTS</b> .....	<b>16</b>
<b>26</b> <b>THIRD PARTY RIGHTS</b> .....	<b>16</b>
<b>27</b> <b>NOTICES</b> .....	<b>17</b>
<b>28</b> <b>ENTIRE AGREEMENT</b> .....	<b>17</b>
<b>29</b> <b>VARIATION</b> .....	<b>18</b>
<b>30</b> <b>CONFLICT WITH THE ARTICLES</b> .....	<b>18</b>
<b>31</b> <b>COSTS AND EXPENSES</b> .....	<b>18</b>
<b>32</b> <b>SET-OFF</b> .....	<b>18</b>
<b>33</b> <b>NO PARTNERSHIP OR AGENCY</b> .....	<b>18</b>
<b>34</b> <b>GOVERNING LAW AND JURISDICTION</b> .....	<b>18</b>

**SCHEDULE 1 – RESERVED MATTERS..... 20**  
**SCHEDULE 2 – PROJECT PLAN ..... 22**  
**SCHEDULE 3 – LETTER OF APPOINTMENT OF A DIRECTOR..... 23**  
**SCHEDULE 4 – DEED OF ADHERENCE ..... 24**

---

## PARTIES

- (1) **WILTSHIRE COUNCIL**, of County Hall, Bythesea Road, Trowbridge, Wiltshire, BA14 8JN (**Council**)
- (2) **STONE CIRCLE DEVELOPMENT COMPANY LIMITED** (company number [●]) whose registered office is at County Hall, Bythesea Road, Trowbridge, Wiltshire, BA14 8JN (**Company**)

## BACKGROUND

- (A) As at the date of this Agreement, the Council is the sole member of the Company.
- (B) The parties have entered into this Agreement to regulate the manner in which the Company carries out the Business (as defined herein) and to ensure that the Council retains decisive influence over both the strategic objectives and significant decisions of the Company.

## AGREED TERMS

### 1 DEFINITIONS AND INTERPRETATION

In this Agreement:

**Accounting Reference Date** means 31 March

**Approval Date** has the meaning given to it in clause 11.4

**Approved Distribution** has the meaning given to it in clause 11.4

**Articles** means the articles of association of the Company in agreed form to be adopted on Completion pursuant to clause 2.2, as amended or superseded from time to time

**Biannual Report** means the report as specified in clause 8.1.1

**Board** means the board of Directors of the Company or such of them as are present at a duly convened and quorate meeting of the Directors

**Business** has the meaning given to it in clause 3.1

**Business Day** means a day (other than a Saturday, a Sunday or a public holiday in the United Kingdom) on which banks in the United Kingdom are ordinarily open to effect transactions of the kind contemplated in this Agreement and, if a payment is to be made in euros, on which such payment system as the Council chooses is operating for the transfer of funds for the same day value

**Business Plan** means the operational business plan and budget of the Company as adopted and amended in accordance with clause 3

**Cabinet** means the cabinet of the Council as constituted from time to time

**CEDR** means the Centre for Effective Dispute Resolution

**Completion** means the completion of this Agreement in accordance with clause 2

**Completion Date** means the date of this Agreement

**Confidential Information** means, in relation to a person, all technical, commercial, financial or other information of whatever nature relating to that person's business, products, developments, services, trade secrets, know-how, personnel, supplies or historic current or potential customers, whether or not

designated as confidential and whether disclosed orally, pictorially, in writing, by demonstration, by viewing, in machine readable form or by any other means

**Deadlock** has the meaning given to it in clause 14.2

**Deadlock Date** has the meaning given to it in clause 14.2

**Deed of Adherence** means a deed in the form or substantially in the form set out in Schedule 4

**Directors** means the directors of the Company and **Director** means any one of them

**Dispute** has the meaning given to it in clause 14.1

**EIR** means the Environmental Information Regulations 2004 and any subordinate legislation made under the Regulations from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation

**Encumbrance** means:

- (a) a mortgage, charge, pledge, lien or other encumbrance securing any obligation of any person; or
- (b) any arrangement under which money or claims to, or the benefit of, a bank or other account may be applied, set-off or made subject to a combination of accounts so as to effect payment of sums owed or payable to any person; or
- (c) any other type of preferential arrangement (including title transfer and retention arrangements) having a similar effect

**Financial Year** means each accounting reference period of 12 months ending on the Accounting Reference Date other than the First Accounting Reference Period or such longer or shorter period as the Council shall from time to time determine.

**First Accounting Reference Period** means the period which shall run on and from the date of incorporation of the Company to and including the Accounting Reference Date in the calendar year following the date of this Agreement

**FOIA** means the Freedom of Information Act 2000 and any subordinate legislation made under the Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation

**Initial Consideration Date** has the meaning given to it in clause 14.2

**Intellectual Property** means present and future patents, trade marks, service marks, trade names, designs, copyrights, inventions, topographical or similar rights, confidential information and know-how and any interest in any of these rights, whether or not registered, including all applications and rights to apply for registration and all fees, royalties and other rights derived from, or incidental to, these rights

**Law** means:

- (a) any Act of Parliament;
- (b) any subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978;
- (c) any exercise of the Royal Prerogative; and
- (d) any enforceable community right within the meaning of section 2 of the European Communities Act 1972,

in each case in force in the United Kingdom

**Mediation Referral Notice** has the meaning given to it in clause 14.3

**Prohibited Act** means any of the following acts:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the Council a financial or other advantage to:
  - (i) induce that person to perform improperly a relevant function or activity; or
  - (ii) reward that person for improper performance of a relevant function or activity;
- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement;
- (c) committing any offence:
  - (i) under the Bribery Act 2010;
  - (ii) under legislation creating offences concerning fraudulent acts;
  - (iii) at common law concerning fraudulent acts relating to this Agreement or any other contract with the Council; or
  - (iv) defrauding, attempting to defraud or conspiring to defraud the Council

**Project Plan** means a plan for the development of a site consistent with the parameters of the Business Plan containing the information set out at Schedule 2 approved pursuant to clause 3.6

**Reserved Matters** means the matters specified in Schedule 1

**Resourcing Contract** means the contract for the provision of resourcing and support services to be entered into between the Council and the Company on or around the date of this Agreement, as the same may be varied, amended or replaced from time to time

**RICS** means the Royal Institution of Chartered Surveyors

1.2 In this Agreement:

- 1.2.1 clause, Schedule and paragraph headings shall not affect the interpretation of this Agreement;
- 1.2.2 unless the context otherwise requires, a reference to a clause or Schedule is to a clause of, or Schedule to, this Agreement and a reference to a paragraph is to a paragraph of the relevant Schedule;
- 1.2.3 a reference to a **person** shall include a reference to an individual, firm, company, corporation, partnership, unincorporated body of persons, government, state or agency of a state or any association, trust, joint venture or consortium (whether or not having separate legal personality) and that person's personal representatives, successors, permitted assigns and permitted transferees;
- 1.2.4 unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular;
- 1.2.5 unless the context otherwise requires, a reference to one gender shall include a reference to the other genders;

- 1.2.6 a reference to a **party** or the **parties** are to a party or the parties to this Agreement from time to time and any person who agrees to be bound by the provisions of this Agreement from time to time by executing a Deed of Adherence but, for the avoidance of doubt, shall not refer to any person who has ceased to have any obligations under this Agreement from time to time. A reference to a party shall include that party's successors, permitted assigns and permitted transferees;
- 1.2.7 a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time and shall include all subordinate legislation made from time to time under that statute or statutory provision;
- 1.2.8 a reference to a **regulation** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, inter-governmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation;
- 1.2.9 a reference to **writing** or **written** includes email but not fax;
- 1.2.10 an obligation on a party not to do something includes an obligation not to allow that thing to be done;
- 1.2.11 a reference to **this Agreement** (or any provision of it) or to any other agreement or document referred to in this Agreement is a reference to this Agreement, that provision or such other agreement or document as varied, amended or supplemented (in each case, other than in breach of the provisions of this Agreement) from time to time;
- 1.2.12 any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms;
- 1.2.13 a reference to an **amendment** includes a novation, re-enactment, supplement or variation (and amended shall be construed accordingly);
- 1.2.14 a reference to **determines** or **determined** means, unless the contrary is indicated, a determination made at the absolute discretion of the person making it;
- 1.2.15 references to a **month** shall be construed as a reference to a period starting on one day in a calendar month and ending on the day immediately preceding the numerically corresponding day in the next calendar month or, if there is no numerically corresponding day in the next calendar month, the last day in the next calendar month; and
- 1.2.16 the expressions **body corporate, holding company, subsidiary, parent undertaking, subsidiary undertaking** and **parent company** shall have the respective meanings given in the Companies Act 2006, and, for the purposes of sections 1159(1) and 1162(2)(b) and (d) of that Act, a company or undertaking (the **first person**) shall be treated as a member of another company or undertaking if:
- (a) any of the first person's subsidiaries or subsidiary undertakings is a member of that other company or undertaking; or
  - (b) any shares or capital interests in that other company or undertaking are held by a person acting on behalf of the first person or any of its subsidiaries or subsidiary undertakings; or
  - (c) any shares or capital interests in that other company or undertaking are registered in the name of a person (or its nominee) by way of security or in connection with the granting of security over those shares or capital interests by the first person.

In the case of a limited liability partnership which is (or might constitute) a subsidiary or subsidiary undertaking of a company or another limited liability partnership, sections 1159 and 1162 of the Companies Act 2006 shall be amended so that:

- (i) references in sections 1159(1)(a) and (c) and 1162(2)(a) and (d) to "voting rights" are to the members' rights to vote on all or substantially all matters which are decided by a vote of the members of the limited liability partnership; and
- (ii) references in sections 1159(1)(b) and 1162(2)(b) to the "right to appoint or remove a majority of its board of directors" is to the right: (i) to appoint or remove a majority of the directors (or equivalent) of that limited liability partnership; or (ii) if no such directors (or equivalent) exist by virtue of the constitution of that limited liability partnership, members holding a majority of the voting rights,

and unless the context otherwise requires, the application of the definitions of body corporate, holding company, subsidiary, parent undertaking, subsidiary undertaking and parent company shall apply as to the Company or undertaking as it is at that time.

1.3 The Schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the Schedules.

## **2 COMPLETION**

2.1 Completion shall take place on the Completion Date at the offices of Bevan Brittan LLP, Fleet Place House, 2 Fleet Place, London EC4M 7RF or any other place or time agreed in writing by the parties.

2.2 At Completion:

2.2.1 the parties shall procure that such shareholder resolutions are passed and meetings of the Board are held as may be necessary to:

- (a) adopt the Articles in the agreed form;
- (b) adopt the Business Plan applicable to the First Accounting Reference Period;
- (c) appoint the following individuals (identified by their position within the Council) as directors:
  - (i) Cabinet Member responsible for Housing;
  - (ii) a member nominated from an opposition party identified to be a director;
  - (iii) Executive Director of Growth, Investment and Place; and
- (d) enter into the Resourcing Contract.

## **3 THE BUSINESSES AND BUSINESS PLANNING**

3.1 The business of the Company (**Business**) shall be to develop land and/ or property for the provision of housing in accordance with any Business Plan then in force or as otherwise determined by the Shareholder from time to time.

3.2 The Business shall be pursued, and the Company shall be governed, in a manner which ensures that the Company:

3.2.1 is and remains controlled (both by way of membership of the Company and decisive influence over both its strategic objectives and significant decisions) by the Council;



- 3.2.2 carries out the essential part of its activities for the Council and other legal persons controlled by the Council; and
  - 3.2.3 carries out those activities in furtherance of the Council's public service tasks.
- 3.3 The Company shall prepare in respect of each Financial Year a Business Plan to include:
- 3.3.1 an annual operating revenue plan and capital expenditure requirements (including details of funding sources);
  - 3.3.2 a balance sheet forecast;
  - 3.3.3 a minimum five year term financial strategy plan to include (amongst other items) all proposed investments, borrowings and new business of the Company and a list of key risks of its business;
  - 3.3.4 long term projections to cover a period of [ ] years from the Completion Date;
  - 3.3.5 identification of any surpluses made in a Financial Year and the making of any distribution of profit subject to the provisions of the Companies Act 2006;
  - 3.3.6 an annual profit and loss account; and
  - 3.3.7 such other content as the Council may require from time to time and notify to the Company in writing.
- 3.4 The Business Plan for a given Financial Year shall be:
- 3.4.1 prepared by the Board and circulated by the Board to the Council in draft form not less than three months prior to the end of the Financial Year preceding the Financial Year to which the draft Business Plan relates, save that in the event that there is no Cabinet meeting in January of such preceding Financial Year the Business Plan shall be circulated by the Board to the Council in advance of the preceding Cabinet meeting; and
  - 3.4.2 considered and, if thought fit, approved as soon as possible by the Council and in any event within one month of the date of receipt of the draft Business Plan from the Board.
- 3.5 The parties agree to work both together and with any third parties where required in good faith, to procure that each Business Plan is prepared and approved in accordance with clause 3.3 and clause 3.4 and that the business of the Company is carried out, where appropriate, to interface as seamlessly as possible with the operations and services of the Council.
- 3.6 The Board shall prepare a draft Project Plan in respect of each proposed development (which may either be referred to it from the Council or sourced independently). Upon Council approval (pursuant to clause 4.3) the Business Plan shall be deemed amended to include the Project Plan.

#### **4 COUNCIL'S ROLE AS SHAREHOLDER**

- 4.1 The Council will monitor and control the business and operations of the Company through the:
- 4.1.1 approval of the Business Plan;
  - 4.1.2 the right to make decisions on the Reserved Matters;
  - 4.1.3 receiving reports in accordance with clause 8;
  - 4.1.4 exercising the other rights provided to the Council under this agreement and through its role as the sole shareholder of the Company.

- 4.2 The Council:
- 4.2.1 shall, upon request, have unlimited, unrestricted and prompt access to the Company information and documents pursuant to clause 8;
  - 4.2.2 will not usurp the functions of the Board but will monitor the activities of the Company to ensure that they are acceptable and accountable to the Council as owner of the Company; and
  - 4.2.3 may, in addition to those matters requiring Council consent pursuant to clause 5:
    - (a) make recommendations from time to time to the Board; and/or
    - (b) give directions by notice in writing from time to time to the Board.
- 4.3 Where a consent or approval is expressed in this Agreement to be required of the Council, it shall be given in writing in advance of the decision or matter requiring consent or approval and the Council shall use its reasonable endeavours to communicate any such decision, consent or approval (including any decision not to give consent or approval) to the Company within a period of 30 days from receipt of the requests provided that the Council shall not be deemed to have made a decision or given its consent or approval by virtue of the fact that it has not communicated the same within that time limit. Where the Company requires the Council to make any decision or provide any consent or approval, the Company shall provide such material information as the Council may require to enable it to consider the decision, consent or approval in question.
- 4.4 The Company shall ensure that the Board chair and and/or any employees of the Company as requested by the Council shall attend such meetings or parts of meeting(s) of the Council as the Council may require and shall answer questions put by the Council and provide information regarding the activities of the Company as reasonably requested.

## **5 DECISION-MAKING**

- 5.1 Subject to the Articles and with the exception of the Reserved Matters, the Board shall have full and complete authority, power and discretion to direct, manage and control the Business and the affairs and assets of the Company, to make all decisions regarding those matters and to perform any and all other acts or activities customary or incidental to the management of the Business.
- 5.2 The Company agrees that it shall (subject to this clause 5) and in so far as it is legally able to:
- 5.2.1 carry on and conduct its business and affairs in accordance with:
    - (a) this Agreement;
    - (b) the Business Plan then in force;
    - (c) the Articles;
    - (d) all laws relating to companies as amended from time to time;
    - (e) sound governance and good business practice; and
    - (f) in a proper and efficient manner, for its own benefit; and
  - 5.2.2 use all reasonable endeavours to obtain and, if necessary, maintain in full force and effect all licences (including statutory licences), consents and authorities necessary to own and operate its assets and to carry on its business properly and effectively and in accordance with the Business Plan then in force.

5.3 Except as set out in clause 5.4, insofar as a matter is a Reserved Matter relating to the Company, the Company shall not make any decision in relation to, or undertake, that Reserved Matter except with the prior written consent of the Council and such consent shall be sought with the intention to facilitate decisions being given by the Council as quickly as reasonably practicable.

5.4 Clause 5.3 shall not apply in connection with any decision or action relating to a Reserved Matter:

5.4.1 approved in the Business Plan then in force;

5.4.2 which has been properly delegated in accordance with this Agreement to the Board or to a particular person or committee; or

5.4.3 to the extent the same decision has been taken by the Council in accordance with this Agreement,

and in those circumstances only, any reference in this Agreement to the approval of the Council (or similar wording) shall be amended so that it is a reference to the approval of the Board or the approval of that other person, as the case may be.

5.5 Any variation to the list of Reserved Matters must be approved by the Council in writing. For the avoidance of doubt, the Reserved Matters may be varied and/or replaced in part or entirely, by the Council at its absolute discretion. Upon the Council giving notice in writing to the Board that such a variation or replacement has occurred, this Agreement and Schedule 1 shall be deemed modified from the date specified in the varied or replacement schedule.

5.6 If this Agreement is validly varied in accordance with its terms, the relevant sections of the Business Plan shall be deemed amended on and with effect from the date of the variation of this Agreement to the extent (but only to the extent) such amendment is necessary to ensure that the Business Plan is fully consistent, and does not conflict, with the terms of this Agreement (as varied).

## **6 BOARD**

6.1 Subject to the Articles, there shall be a minimum of three Directors, which:

6.1.1 shall be appointed by the Council in accordance with clause 6.2;

6.1.2 for the avoidance of doubt, shall not be the elected member of the Council who has responsibility for planning or the Council leader; and

6.1.3 shall be comprised of such number of executive or non-executive Directors as the Council shall see fit.

6.2 Subject to the Articles, any appointment(s) or termination(s) of a Director made under this clause 6 shall be effected by the Council by giving notice in writing to the Company, on the date on which the notice from the Council is received by the Company, or if a later date is specified in the notice, on that date.

6.3 The Company shall review its Board every year to ensure that the composition and membership of the Board is such that it has the ability to sufficiently understand the Company's obligations and make sufficiently robust decisions in relation to those obligations.

6.4 On the appointment of a Director to the Board, the Board shall issue to that person a letter of appointment which in the case of Council appointed Directors shall be substantially in the form contained in Schedule 3, as may be amended or updated from time to time by the Council, together with a summary of a Director's duties in relation to the Company.

## **7 POLICIES AND PROCEDURES**

7.1 In respect of policies and procedures of the Company (**Policies and Procedures**):

- 7.1.1 the Company shall adopt necessary Policies and Procedures that enable it to act legally, efficiently and appropriately as a subsidiary of a local authority, and in the absence of any such Policies and Procedures, the Company shall adopt the relevant Policies and Procedures of the Council from time to time;
- 7.1.2 Policies and Procedures shall be approved by the Board; and
- 7.1.3 the Policies and Procedures shall be subject to an internal audit and audit by the Council when requested by the Council.
- 7.2 The employment terms and conditions of the Company shall be approved by the Board. The Board shall not implement such terms without prior written approval from the Council.
- 7.3 The Board shall adopt and apply an agreed policy as to how conflicts of interest are to be dealt with both in recruitment and in carrying out its Business. This agreed policy shall be approved by the Council for use by the Company and may thereafter be revised as required by the Council. Any such revisions shall be implemented by the Board.
- 7.4 The Company specifically confirms that no arrangement or contract has already been entered into which would require the approval of the Council under this Agreement if it were entered into after the date on which it becomes a party to this Agreement.

## **8 PROVISION OF INFORMATION**

- 8.1 The Company shall provide to the Council:
  - 8.1.1 a Biannual Report before 5pm on the 30th day after the end of each six month period of a Financial year, which shall include:
    - (a) a balance sheet (based on trial balance without timing adjustments such as accruals and prepayments) for the Company as at close of business on the last day of the month just ended (including comparatives from previous month);
    - (b) a profit and loss account (based on trial balance i.e. excluding timing adjustments) for the Company covering the period from the start of the Financial Year to the end of the month just ended;
    - (c) for each business division, profit and loss performance against the Business Plan and the Business Plan targets;
    - (d) a statement of cash flow for the Company covering the period from the start of the Financial Year to the end of the month just ended;
    - (e) forecast profit and loss account for the Company for the period to the end of the current Financial Year on an accruals basis;
    - (f) a note of all matters in respect of which legal action (potential or actual) has been commenced by or against the Company and an update on ongoing legal action;
    - (g) an assurance statement from the Directors that all core account reconciliations have been carried out, with exceptions listed if necessary; and
    - (h) any other information reasonably required by the Shareholder as shareholder from time to time;
  - 8.1.2 the annual accounts of the Company, audited if that is a requirement, as soon as practicable together with a general review of the business in the year to which the annual accounts apply and a copy of the current Business Plan, at the latest by the end of two months after the end of the relevant Financial Year;

- 8.1.3 minutes of all Board meetings within 20 Business Days after the relevant Board meeting to which they relate;
  - 8.1.4 any other information reasonably required by the Council from time to time, as notified to the Company in writing by the Council.
- 8.2 The Company shall respond promptly to all reasonable requests from the Shareholder for clarification of any parts of the information and shall forthwith upon such request supply any additional information and/or evidence that the Shareholder may require.
- 8.3 The Council and its authorised representatives shall have the right during the standard working hours of the Council (as prescribed by the Council's policies from time to time), on giving to the Company reasonable advance notice, and at the Council's own cost, to inspect the books and records of the Company from time to time and to be supplied with all information in such form as it or they may reasonably require to keep the Council properly informed about the business and affairs of the Company and shall have the right to take copies of any such books and records or parts thereof.
- 8.4 The Company agrees that it shall give notice of any Directors' meeting to the Council at the same time as it gives notice to the Directors.
- 8.5 The Company shall immediately notify the Council of any legal action (potential, threatened or actual) of which it becomes aware which has been commenced by or against the Company.

## **9 AUDIT AND FRAUD**

The Company shall operate in accordance with, and comply with, all of the Council's guidance, policies, codes, standards and practices in respect of audit and fraud in place from time to time.

## **10 PREVENTION OF BRIBERY**

- 10.1 The Company:
- 10.1.1 shall not, and shall procure that any Director, officer, employee, adviser or representative of any of them shall not, in connection with this Agreement commit a Prohibited Act;
  - 10.1.2 warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Council, or that an agreement has been reached to that effect, in connection with the execution of this Agreement, excluding any arrangement of which full details have been disclosed in writing to the Council before execution of this Agreement;
  - 10.1.3 shall, if requested, provide the Council with any reasonable assistance, at the Council's reasonable cost, to enable the Council to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act 2010; and
  - 10.1.4 within five Business Days of the date of this Agreement, and annually thereafter, certify to the Council in writing (such certification to be signed by an officer of such company) compliance with this clause 10 by such company and all persons associated with it or other persons who are supplying goods or services in connection with this Agreement. Such company shall provide such supporting evidence of compliance as the Council may reasonably request.
- 10.2 The Company shall have an anti-bribery policy (which shall be disclosed to the Council) to prevent any of its Directors, officers, employees, advisers or representatives of the company from committing a Prohibited Act and shall enforce it where appropriate.
- 10.3 If any breach of clause 10.1 is suspected or known, the Company must notify the Council immediately.

- 10.4 If the Company notifies the Council that it suspects or knows that there may be a breach of clause 10.1, the Company must respond promptly to the Council's enquiries, co-operate with any investigation, and allow the Council to audit books, records and any other relevant documentation.
- 10.5 The Council may terminate this Agreement or any other agreement with the Company by written notice with immediate effect if the Company or any Director, officer, employee, adviser or representative of the Company (in all cases whether or not acting with such Company's knowledge) breaches clause 10.1.
- 10.6 Any notice of termination under clause 10.5 must specify:
- 10.6.1 the nature of the Prohibited Act;
  - 10.6.2 the identity of the party whom the Council believes has committed the Prohibited Act; and
  - 10.6.3 the date on which this Agreement shall terminate.
- 10.7 Any dispute relating to:
- 10.7.1 the interpretation of this clause 10; or
  - 10.7.2 the amount or value of any gift, consideration or commission;
- shall be determined by the Council and its decision shall be final and conclusive.
- 10.8 Any termination under clause 10.5 shall be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Council.

## 11 FINANCE AND RETURNS

- 11.1 The Company shall not seek third party funding without written approval of the Council.
- 11.2 The Board may recommend a distribution of the Company's profits, which recommendation may take the form of year end and/ or interim distribution(s). The Board shall not approve any distribution of profits if and to the extent that:
- 11.2.1 it is contrary to any distribution policy contained in a Business Plan;
  - 11.2.2 there is insufficient cash available;
  - 11.2.3 it would render the Company insolvent;
  - 11.2.4 the Board resolves that the Company would be left with insufficient funds to meet any current or future contemplated obligations or contingencies; or
  - 11.2.5 it would materially adversely affect the ability of the Company to comply with a Business Plan.
- 11.3 A distribution of profits to the Council shall require the approval of the Council which shall be given within ten Business Days of the Board recommending the same to the Council.
- 11.4 Upon approval from the Council with ten Business Days the proposed distribution would become an **Approved Distribution** and the date on which that approval is given shall be the **Approval Date**.
- 11.5 The Company shall credit an Approved Distribution to the Council within ten Business Days of the Approval Date. Payments will be in cash, unless a distribution was expressly approved by the Council in specie.

## 12 CONTRACTS

- 12.1 The Company shall retain a contracts register into which every contract entered into with an aggregate annual value which is greater than any threshold set in respect of the Council's own contracts from time to time shall be recorded.

## 13 DEALINGS IN SHARES AND NEW SHAREHOLDERS

- 13.1 The Company shall not create any Encumbrance over, transfer, or otherwise dispose of or give any person any rights in or over any share in its capital unless it is:

13.1.1 permitted under this Agreement and the Articles; and/or

13.1.2 carried out in accordance with the terms of this Agreement and the Articles.

- 13.2 Admitting a person as a new shareholder or member of the Company is a Reserved Matter and shall also be subject to such person executing a Deed of Adherence. Should the Company wish to admit a new shareholder or new member, the Board must procure that Deed of Adherence is signed and the prior written consent of the Council is obtained, prior to such new shareholder or member being admitted.

## 14 DISPUTE RESOLUTION

- 14.1 In the event of any disagreement or dispute arising between the parties in connection with this Agreement (a **Dispute**), the parties shall use all reasonable endeavours to resolve the matter on an amicable basis. If one party serves formal written notice on one or more of the others that a Dispute has arisen and the parties are unable to resolve the Dispute within a period of 20 Business Days from the service of such notice, then the Dispute shall be referred to an executive director of each of the parties or such other director nominated by each party for the purpose of this clause 14 who shall attempt to resolve the Dispute within the next following 20 Business Days. No recourse to arbitration or litigation by any party against any other under this Agreement shall take place unless and until such procedure has been followed.

- 14.2 If the executive directors or other nominated director of each of the parties (as the case may be) to whom the Dispute was referred in accordance with clause 14.1 are unable to resolve a Dispute within two months of such Dispute being referred to them (**Initial Consideration Date**), then a **Deadlock** shall be deemed to have arisen on the date either two months after the Initial Consideration Date or the date on which the parties agree that Deadlock has arisen, if earlier (the **Deadlock Date**). Any Deadlock shall be dealt with in accordance with clause 14.3.

- 14.3 In the event that a Deadlock has arisen, then any party shall be entitled to serve a notice in writing on the other parties referring the Deadlock to mediation (**Mediation Referral Notice**) in accordance with clause 14.4.

- 14.4 On the service of a Mediation Referral Notice, the parties shall jointly appoint a mediator to mediate the Deadlock, the cost of which shall be borne equally between the parties.

- 14.5 If:

14.5.1 the parties do not agree on the appointment of a mediator within 15 Business Days of service of the Mediation Referral Notice (the first day of that 15 Business Day period being the first Business Day after the service of the Mediation Referral Notice); or

14.5.2 the person appointed or to be appointed is unable or unwilling to act,

the mediator shall be appointed by the Chief Executive for the time being of CEDR or RICS (whichever is the most relevant having regard to the subject matter of the dispute) following a request made by any party to the Chief Executive for that purpose.

- 14.6 The mediation shall be conducted in the English language in accordance with the then current CEDR Model Mediation Procedure or RICS procedure, which is deemed to be incorporated in this Agreement.
- 14.7 If an agreement is reached on the Deadlock during the mediation, that agreement shall be reduced to writing and, once signed by the parties, shall be binding on all parties.
- 14.8 The mediation will take place where the Council deems appropriate.
- 14.9 Unless concluded with a written legally binding agreement, the mediation shall be concluded in confidence and without prejudice to the rights of any of the parties in any further proceedings.
- 14.10 If the Deadlock cannot be resolved following mediation, the parties shall be entitled to commence arbitration or litigation proceedings to settle the Dispute.

## **15 TERMINATION**

- 15.1 Subject to clause 15.2, this Agreement may be terminated by the Council serving no less than six months' written notice on the Company.
- 15.2 The Council may terminate this Agreement immediately where required in accordance with any Law.
- 15.3 Termination of this Agreement shall not affect any accrued rights or liabilities of any person or any liability or obligation arising under or pursuant to this Agreement or any other agreement or arrangement between any of the parties hereto or, except where this Agreement expressly provides to the contrary, affect the provisions of:
- 15.3.1 clause 1 (*Definitions and Interpretation*);
  - 15.3.2 this clause 15 (*Termination*);
  - 15.3.3 clause 16 (*Confidentiality*);
  - 15.3.4 clause 17 (*Freedom of Information*);
  - 15.3.5 clause 21 (*Assignment and Subcontracting*);
  - 15.3.6 clause 22 (*Waivers and Consents*);
  - 15.3.7 clause 23 (*Rights and Remedies*);
  - 15.3.8 clause 27 (*Notices*);
  - 15.3.9 clause 28 (*Entire Agreement*);
  - 15.3.10 clause 29 (*Variation*);
  - 15.3.11 clause 30 (*Conflict with the Articles*);
  - 15.3.12 clause 31 (*Costs and Expenses*);
  - 15.3.13 clause 32 (*Set-off*);
  - 15.3.14 clause 33 (*No Partnership or Agency*); and
  - 15.3.15 clause 34 (*Governing Law and Jurisdiction*);
- which shall continue in full force and effect after termination.



- 15.4 Where the Company is to be wound up and its assets distributed, the parties shall endeavour to ensure that:
- 15.4.1 all existing contracts of the Company are performed to the extent that there are sufficient resources;
  - 15.4.2 the Company shall not enter into any new contractual obligations;
  - 15.4.3 the Company is dissolved and its assets are distributed as soon as practical in accordance with clauses 15.4.4 or 15.4.5 as applicable;
  - 15.4.4 any other proprietary information or Intellectual Property Rights belonging to or originating from a party shall be returned to it by the other party or the Company and all such proprietary information or Intellectual Property Rights shall be erased from the computer systems (to the extent possible) of the person who is/are returning it; and
  - 15.4.5 the assets of the Company remaining after payment of all debts and liabilities of such company and of all costs, charges and expenses of winding up the same, shall be distributed amongst the current shareholders or members of the Company.

## **16 CONFIDENTIALITY**

- 16.1 Each party undertakes that they shall not at any time hereafter use or disclose (in each case except for the purpose of exercising its rights and fulfilling its obligations under this Agreement) to any person any Confidential Information of any other party which may have or may in future come to its knowledge or possession, provided that any party may share such information:
- 16.1.1 with its professional advisers or to those of its directors, members, officers, employees, advisers and representatives who are directly concerned with the relevant party or its business;
  - 16.1.2 as may be required by any applicable law or by any supervisory or regulatory body with whose rules it is necessary for that party to comply;
  - 16.1.3 in connection with any proceedings arising out of or in connection with this Agreement; or
  - 16.1.4 once it enters the public domain otherwise than by reason of a breach of this clause 16.1.
- 16.2 All parties shall use its reasonable endeavours to prevent the use or disclosure of any such Confidential Information otherwise than in accordance with this clause 16.
- 16.3 Notwithstanding the restrictions in clauses 16, any party may use such Confidential Information for the purpose of the promotion of the Business.
- 16.4 Each Director shall be entitled to disclose to the Council, all information to which the Council is entitled pursuant to clause 8 from time to time.
- 16.5 The parties shall use their reasonable endeavours to procure that any of their officers, employees, advisers and representatives coming into receipt of such Confidential Information shall be informed upon receipt that such information is confidential and (so far as such party is able to procure the same) shall comply with the provisions of this clause 16.5 in respect of such Confidential Information as if they were parties.
- 16.6 Where any party is required by any law, regulation or governmental or regulatory authority to retain any information (or copies of such information) of any other party, it shall notify the other party in writing of such retention giving details of the information that it is required to retain.

## **17 FREEDOM OF INFORMATION**

- 17.1 The parties acknowledge that the parties are subject to the requirements of the FOIA and the EIR and the parties shall, where reasonable, assist and co-operate (at their own expense) with the other parties for information to enable the other parties (where required) to comply with their information disclosure obligations.
- 17.2 Subject to clause 17.1, where the Company receives a request for information under either the FOIA or the EIR which it is holding on behalf of any other party, it shall:
- 17.2.1 transfer the request for information to the relevant party (or such other party as it is otherwise agreed between the parties is the best person to deal with such request) as soon as practicable after receipt and in any event within two Business Days of receiving a request for information;
  - 17.2.2 provide the relevant or other party with a copy of all information in its possession or power in the form that the relevant or other party requires within ten Business Days (or such longer period as the relevant or other party may specify) of the relevant or other party requesting that information; and
  - 17.2.3 provide all necessary assistance as reasonably requested by the relevant or other party to enable the relevant or other party to respond to a request for information within the time for compliance set out in the FOIA or the EIR.
- 17.3 Where the Council receives a request under FOIA or EIR which relates to the operations of the Company, it shall notify the Company and afford them an opportunity to make any comments or representations in respect of the disclosure of the information sought. The Company shall respond within five Business Days of receipt of this notification. The Council shall take into account any such comments or representations in so doing and shall not respond to the request until the five Business Days response period referred to above has passed.
- 17.4 Each party shall be responsible for determining in its absolute discretion whether any information requested under the FOIA and EIR:
- 17.4.1 is exempt from disclosure; or
  - 17.4.2 is to be disclosed in response to a request for information.
- 17.5 Each party acknowledges that the other party may be obliged under the FOIA and EIR to disclose information:
- 17.5.1 without consulting with the other parties where it has not been practicable to achieve such consultation; or
  - 17.5.2 following consultation with the other parties and having taken their views into account.

## **18 DATA PROTECTION**

The parties shall comply with Law relating to data protection at all times when carrying out their respective obligations pursuant to this Agreement and any other agreement to which it is a party.

## **19 UNLAWFUL FETTER ON THE COMPANY'S POWERS**

Notwithstanding any other provision contained in this Agreement, the Company shall not be bound by any provision of this Agreement to the extent that it would constitute an unlawful fetter on any of its statutory powers, but any such provision shall remain valid and binding as regards all other parties to which it is expressed to apply.

## **20 FURTHER ASSURANCE**

Each party shall at its own cost and expense, on being required to do so by another party now or at any time in the future, do or procure the doing of all such acts and things and/or execute or procure the execution of all such deeds and documents in a form satisfactory to such other party which such other party may reasonably consider necessary for giving effect to this Agreement.

## **21 ASSIGNMENT AND SUB-CONTRACTING**

21.1 This Agreement is personal to the parties and no party shall assign, transfer, subcontract or deal in any other manner with any of its rights and obligations under this Agreement without the prior written consent of the Council. Each party hereby undertakes and represents to the other parties that it is entering into this Agreement only for its own benefit.

21.2 This Agreement shall be binding on and shall endure for the benefit of each party's successors.

## **22 WAIVERS AND CONSENTS**

22.1 A waiver of any right or remedy under this Agreement or by Law, or any consent given under this Agreement, is only effective if given in writing by the waiving or consenting party and shall not be deemed a waiver of any other breach or default. It only applies in the circumstances for which it is given and shall not prevent the party giving it from subsequently relying on the relevant provision.

22.2 A failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall not constitute a waiver of that or any other right or remedy, prevent or restrict any further exercise of that or any other right or remedy or constitute an election to affirm this Agreement. No single or partial exercise of any right or remedy provided under this Agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy. No election to affirm this Agreement by the Council shall be effective unless it is in writing.

## **23 RIGHTS AND REMEDIES**

The rights and remedies provided under this Agreement are cumulative and are in addition to, and not exclusive of, any rights and remedies provided by law.

## **24 SEVERANCE**

If any provision (or part of a provision) of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision (or part of a provision) shall be deemed deleted. Any modification to or deletion of a provision (or part of a provision) under this clause shall not affect the legality, validity and enforceability of the rest of this Agreement.

## **25 COUNTERPARTS**

This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute one Agreement.

## **26 THIRD PARTY RIGHTS**

Except as expressly provided elsewhere in this Agreement, a person who is not a party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce, or enjoy the benefit of, any term of this Agreement. This does not affect any right or remedy of a third party which exists, or is available, apart from that Act.

## **27 NOTICES**

### **27.1 Delivery**

Any notice or other communication required to be given to a party under or in connection with this Agreement shall be:

27.1.1 in writing;

27.1.2 delivered by hand, by pre-paid first-class post or other next working day delivery service or sent by electronic mail; and

27.1.3 sent to:

(a) the Council at:

Address: County Hall, Bythesea Road, Trowbridge, Wiltshire, BA14 8JN

Email: [simon.hendey@wiltshire.gov.uk](mailto:simon.hendey@wiltshire.gov.uk)

Attention: Simon Hendey, Director of Housing & Commercial

(b) the Company

Address: County Hall, Bythesea Road, Trowbridge, Wiltshire, BA14 8JN

Email: [•]

Attention: **Company Secretary**

or to any other address or email address as is notified in writing by one party to the other from time to time.

### **27.2 Receipt**

Any notice or other communication shall be deemed to have been received:

27.2.1 if delivered by hand, at the time it is left at the relevant address;

27.2.2 if posted by pre-paid first-class post or other next working day delivery service, on the second Business Day after posting; and

27.2.3 if sent by electronic mail, upon receipt by the party to which it is given.

A notice or other communication given as described in clause 27.2.1 or clause 27.2.3 on a day that is not a Business Day, or after normal business hours, in the place it is received, shall be deemed to have been received on the next Business Day.

### **27.3 Receipt by Council**

Any notice or other communication given to the Council shall be deemed to have been received only on actual receipt.

## **28 ENTIRE AGREEMENT**

28.1 This Agreement and the documents referred to in it (including the Articles and any Deed of Adherence) constitute the entire agreement between the parties relating to its/their subject matter and supersede all previous agreements between the parties relating to such matters.

28.2 Each of the parties acknowledges that in agreeing to enter into this Agreement it has not relied on any representation, warranty, collateral contract or other assurance (except those set out in this Agreement and/or the documents referred to in it) made by or on behalf of any other party before the signature of this Agreement. Each of the parties waives:

28.2.1 all rights and remedies which, but for this clause 28.2, might otherwise be available to it in respect of any such representation, warranty, collateral contract or other assurance; and

28.2.2 all rights and remedies, other than remedies for breach of contract available in respect of a breach of this Agreement and/or the documents referred to in it, which, but for this clause 28.2, might otherwise be available to it in respect of the falsity of any representation or warranty set out in this Agreement and/or the documents referred to in it,

provided that nothing in this clause 28.2 shall limit or exclude any liability for fraud or dishonesty on the part of any party.

## **29 VARIATION**

No variation to the terms of this Agreement shall be effective unless made in writing and signed by each of the parties and any person who agrees to be bound by this Agreement.

## **30 CONFLICT WITH THE ARTICLES**

If any provision of this Agreement is inconsistent with a provision of the Articles, then the terms of this Agreement shall prevail and the member(s) of such Company agree to procure the making of any amendment to the Company's Articles as soon as reasonably practicable which is required in order to make the Articles consistent with the provisions of this Agreement and the Council hereby consents to any such changes to the Company's Articles.

## **31 COSTS AND EXPENSES**

All costs and expenses in relation to the negotiation, preparation, execution and carrying into effect of this Agreement and all other documents referred to in it shall be borne by the Council, save for any private advice sought by any party which shall be for the cost of that party.

## **32 SET-OFF**

All amounts falling due under this Agreement shall be paid in full without any set-off or counterclaim.

## **33 NO PARTNERSHIP OR AGENCY**

Nothing in this Agreement is intended to or shall operate to create a partnership between the parties or any of them, or to authorise any party to act as agent for any other party, and no party shall have authority to act in the name or on behalf of or otherwise to bind any other party in any way.

## **34 GOVERNING LAW AND JURISDICTION**

34.1 This Agreement is governed by and shall be construed in accordance with the laws of England and each party submits to the exclusive jurisdiction of the courts of England for all purposes relating to this Agreement.

34.2 Each party irrevocably consents to any process in any legal action or proceedings arising out of or in connection with this Agreement being served on it in accordance with the provisions of clause 14. Nothing contained in this Agreement shall affect the right to serve process in any other manner permitted by law.

This Agreement has been executed as a deed and has been entered into on the date stated at the beginning of it.

**AS WITNESS** the hands of the parties or their duly authorised representatives the day and year first before written

Executed as a deed by affixing ) Seal  
the common seal of )  
**WILTSHIRE COUNCIL** )  
)  
)  
in the presence of )  
)  
)  
..... )  
Authorised signatory )

Executed as a deed by )  
**STONE CIRCLE DEVELOPMENT** )  
**COMPANY LIMITED** )  
acting by ....., )  
a director, in the presence of ) **Director** .....

Signature: .....

Name of witness: .....

Address: .....

.....

.....

Occupation of witness: .....

## SCHEDULE 1 – RESERVED MATTERS

Number	Reserved Matter
	<b>Constitution of the company</b>
1	Varying in any respect the articles or the rights attaching to any of the shares or memberships (as applicable) in the company.
	<b>Officers and Shareholders of the company</b>
2	The appointment and the appointment terms (including any remuneration terms) of any Directors.
3	The appointment and the appointment terms (including any remuneration terms) of any employees.
4	The removal of any Directors (including any terms on which such Directors are removed from their office as Directors).
5	The admission of further shareholders or members to the Company or agreeing any rights or restrictions attaching to any shares or memberships allocated to such new shareholders or members as applicable).
	<b>Future direction and development of the company</b>
6	Forming any subsidiary or acquiring shares in any other company or participating in any partnership or incorporated joint venture vehicle.
7	Amalgamating or merging with any other company or business undertaking.
8	Selling or disposing of any part of the business of the Company.
9	Agreeing the Business Plan and any in-year material changes.
10	Undertaking any business or action which is inconsistent with the Business Plan then in force or omitting to undertake any action which is required by that Business Plan except with the prior written consent of the Council
11	Passing any resolution for its winding up or presenting any petition for its administration (unless it has become insolvent).
12	Agreeing or approving any other material services the total value of which exceeds £10,000 per annum to be provided by the Company to a third party not approved under the Business Plan.
13	Appointing any agent (not being a subcontractor) to conduct the whole or any part of the business of the Company, other than the appointment of an agent to conduct an area of the business of the Company
14	Applying for the listing or trading of any shares in its issued capital or debt securities on any stock exchange or market (where applicable).
	<b>Management of the business of the company</b>

15	Changing the Company's registered office.
16	Changing the Company's name.
17	Creating or agreeing to create a charge, security or encumbrance over the Company's assets, shares or income
18	Approving any matter that will have an adverse effect on the reputation of the Council.
19	Changing the nature of the business or commencing any new business which is not ancillary or incidental to the business of the Company.
20	Agreeing to enter into or entering into any acquisition or disposal of any material assets by the Company the total value of which exceeds £30,000 per annum not approved in the Business Plan.
21	Giving notice of termination of any arrangements, contracts or transactions the total value of which exceeds £500,000 per annum or materially varying any such arrangements, contracts or transactions and such termination or variation is likely to have an adverse impact on the financial status of a Company.
22	Granting rights (by licence or otherwise) in or over any intellectual property owned or used by the Company.
23	Appointing and changing the Company's auditors.
24	Changing the Financial Year of the Company.
25	Agreeing to make or making any loan (otherwise than by way of a deposit with a bank or other institution, the normal business of which includes the acceptance of deposits or in the ordinary course of business) or granting any credit (other than in the normal course of trading or the granting of trade credit to a company which has been approved under the Business Plan) or giving any guarantee or indemnity (other than in the normal course of trading).
26	Increasing or reducing the amount of its issued share capital, granting any option over or in its share capital, redeeming or purchasing any of its own shares or otherwise altering, or effecting any reorganisation of, its share capital (where applicable).
27	Declaring or paying any end of year dividend of the Company.



## **SCHEDULE 2– PROJECT PLAN**

1. Identification of site
2. Comment on the legal title
3. Description of the development proposed, which will include feedback from the Council's planning department.
4. Proposed land transfer value
5. Estimated development costs of project
6. Funding requirement and a plan for how this will be met (from equity or debt from the Council and/ or third party debt)
7. Estimated proceeds of sale – i.e. transfer value

**SCHEDULE 3 – LETTER OF APPOINTMENT OF A DIRECTOR**

[on the headed notepaper of the Company]

To: [Name and address of Director]

[Date]

Dear ●

● Limited (the **Company**)

This letter contains the terms which we have discussed and agreed for your appointment as a director of the Company, as [a][the] Director of Wiltshire Council (the **Council**). Your appointment is made pursuant to and is subject to the terms and conditions set in the Shareholder Agreement dated ● 2019 (**Agreement**).

You shall not be entitled to any fees or remuneration save as paid to you by your appointer or as otherwise expressly agreed in writing.

You shall be expected to attend Board meetings and general meetings (where requested) of the Company. You shall receive details of all such meetings in advance.

You shall not, whether during the appointment or after its termination, except in the proper course of your duties or as required by law, use or divulge, and shall use all reasonable endeavours to prevent the use or disclosure of, any trade or business secrets or any information concerning the business or finances of the Company or of any dealings, transactions, or affairs of the Company or any client, customer or supplier of the Company which comes to your knowledge during the course of this appointment and shall comply with the provisions of clause 16 (*Confidentiality*) of the Agreement as if it applied to you. You shall, however, be entitled to disclose information to the shareholder appointing you as permitted under the Agreement.

The appointment shall automatically cease in relation to the Company in the event that: (a) you resign as a director; or (b) upon the delivery of a notice from the Council in accordance with the Company's Articles of Association removing you from office in relation to the Company. Without limitation to (a) and (b) above, in signing this letter, you acknowledge that your office is subject to the terms of the Agreement and the Company's Articles of Association and may be determined as permitted under the terms of the Agreement and the Articles and that upon such termination you shall vacate office in relation to the Company forthwith without raising any claim whatsoever against the Company.

On termination of your appointment, you agree that you shall promptly return to the Company all papers and property of the Company which are in your possession or under your control.

Please indicate your acceptance and acknowledgement of these terms by signing the attached copy and returning it to me. I look forward to seeing you at our next Board meeting.

Yours sincerely

.....  
Signatory, duly authorised  
for and on behalf of the Company

I agree to and acknowledge the terms and conditions set out above relating to my appointment as director of the Company.

Signed .....

Dated .....

**SCHEDULE 4 – DEED OF ADHERENCE**

**THIS DEED** is made on

BY ● (company number ●) whose registered office is at ● (the **Covenantor**) in favour of the persons whose names are set out in the schedule to this deed and is supplemental to the Shareholder Agreement dated ● (the **Agreement**)

**THIS DEED WITNESSES** as follows:

- 1 The Covenantor confirms that it has been given and read a copy of the Agreement and covenants with each person named in the schedule to this deed to perform and be bound by all the terms of the Agreement and to perform the obligations contained in the Agreement which are expressed to be performed by the Company (as defined in the Agreement), as if the Covenantor were a party to the Agreement.
- 2 This deed is governed by the laws of England and Wales.

**IN WITNESS WHEREOF** this deed has been executed by the Covenantor and is intended to be and is hereby delivered on the date first above written.

**[Insert correct execution block]**

Executed as a deed by )  
● )  
acting by a director and a director/ ) .....  
Secretary ) **Director**  
 )  
 )  
 ) .....  
 ) **Director/Secretary**

SCHEDULE – List of parties to Shareholder Agreement including those who have executed earlier deeds of adherence

This page is intentionally left blank

**Dated** \_\_\_\_\_ **2019**

**WILTSHIRE COUNCIL**

**STONE CIRCLE HOUSING COMPANY LIMITED**

\_\_\_\_\_  
**SHAREHOLDER AGREEMENT**  
\_\_\_\_\_

30659518.230224835.1© Bevan Brittan LLP

Toronto Square - 7<sup>th</sup> Floor | Toronto Street | Leeds LS1 2HJ  
T 0370 194 1000 F 0370 194 5465

Fleet Place House | 2 Fleet Place | Holborn Viaduct | London EC4M 7RF  
T 0370 194 1000 F 0370 194 7800

Kings Orchard | 1 Queen Street | Bristol BS2 0HQ  
T 0370 194 1000 F 0370 194 1001

Interchange Place | Edmund Street | Birmingham B3 2TA  
T 0370 194 1000 F 0370 194 5001

## Contents

Item	Page
<b>PARTIES</b> .....	<b>1</b>
<b>BACKGROUND</b> .....	<b>1</b>
<b>AGREED TERMS</b> .....	<b>1</b>
<b>1</b> <b>DEFINITIONS AND INTERPRETATION</b> .....	<b>1</b>
<b>2</b> <b>COMPLETION</b> .....	<b>5</b>
<b>3</b> <b>THE BUSINESSES AND BUSINESS PLANNING</b> .....	<b>5</b>
<b>4</b> <b>COUNCIL'S ROLE AS SHAREHOLDER</b> .....	<b>6</b>
<b>5</b> <b>DECISION-MAKING</b> .....	<b>7</b>
<b>6</b> <b>BOARD</b> .....	<b>8</b>
<b>7</b> <b>POLICIES AND PROCEDURES</b> .....	<b>8</b>
<b>8</b> <b>PROVISION OF INFORMATION</b> .....	<b>9</b>
<b>9</b> <b>AUDIT AND FRAUD</b> .....	<b>10</b>
<b>10</b> <b>PREVENTION OF BRIBERY</b> .....	<b>10</b>
<b>11</b> <b>FINANCE AND RETURNS</b> .....	<b>11</b>
<b>12</b> <b>CONTRACTS</b> .....	<b>11</b>
<b>13</b> <b>DEALINGS IN SHARES AND NEW SHAREHOLDERS</b> .....	<b>12</b>
<b>14</b> <b>DISPUTE RESOLUTION</b> .....	<b>12</b>
<b>15</b> <b>TERMINATION</b> .....	<b>13</b>
<b>16</b> <b>CONFIDENTIALITY</b> .....	<b>14</b>
<b>17</b> <b>FREEDOM OF INFORMATION</b> .....	<b>14</b>
<b>18</b> <b>DATA PROTECTION</b> .....	<b>15</b>
<b>19</b> <b>UNLAWFUL FETTER ON THE COMPANY'S POWERS</b> .....	<b>15</b>
<b>20</b> <b>FURTHER ASSURANCE</b> .....	<b>15</b>
<b>21</b> <b>ASSIGNMENT AND SUB-CONTRACTING</b> .....	<b>15</b>
<b>22</b> <b>WAIVERS AND CONSENTS</b> .....	<b>16</b>
<b>23</b> <b>RIGHTS AND REMEDIES</b> .....	<b>16</b>
<b>24</b> <b>SEVERANCE</b> .....	<b>16</b>
<b>25</b> <b>COUNTERPARTS</b> .....	<b>16</b>
<b>26</b> <b>THIRD PARTY RIGHTS</b> .....	<b>16</b>
<b>27</b> <b>NOTICES</b> .....	<b>16</b>
<b>28</b> <b>ENTIRE AGREEMENT</b> .....	<b>17</b>
<b>29</b> <b>VARIATION</b> .....	<b>18</b>
<b>30</b> <b>CONFLICT WITH THE ARTICLES</b> .....	<b>18</b>
<b>31</b> <b>COSTS AND EXPENSES</b> .....	<b>18</b>
<b>32</b> <b>SET-OFF</b> .....	<b>18</b>
<b>33</b> <b>NO PARTNERSHIP OR AGENCY</b> .....	<b>18</b>
<b>34</b> <b>GOVERNING LAW AND JURISDICTION</b> .....	<b>18</b>

**SCHEDULE 1 – RESERVED MATTERS..... 20**  
**SCHEDULE 2 – LETTER OF APPOINTMENT OF A DIRECTOR..... 22**  
**SCHEDULE 3 – DEED OF ADHERENCE ..... 23**

---

## PARTIES

- (1) **WILTSHIRE COUNCIL**, of County Hall, Bythesea Road, Trowbridge, Wiltshire, BA14 8JN (**Council**)
- (2) **STONE CIRCLE HOUSING COMPANY LIMITED** (company number [●]) whose registered office is at County Hall, Bythesea Road, Trowbridge, Wiltshire, BA14 8JN (**Company**)

## BACKGROUND

- (A) As at the date of this Agreement, the Council is the sole member of the Company.
- (B) The parties have entered into this Agreement to regulate the manner in which the Company carries out the Business (as defined herein) and to ensure that the Council retains decisive influence over both the strategic objectives and significant decisions of the Company.

## AGREED TERMS

### 1 DEFINITIONS AND INTERPRETATION

In this Agreement:

**Accounting Reference Date** means 31 March

**Approval Date** has the meaning given to it in clause 11.4

**Approved Distribution** has the meaning given to it in clause 11.4

**Articles** means the articles of association of the Company in agreed form to be adopted on Completion pursuant to clause 2.2, as amended or superseded from time to time

**Biannual Report** means the report as specified in clause 8.1.1

**Board** means the board of Directors of the Company or such of them as are present at a duly convened and quorate meeting of the Directors

**Business** has the meaning given to it in clause 3.1

**Business Day** means a day (other than a Saturday, a Sunday or a public holiday in the United Kingdom) on which banks in the United Kingdom are ordinarily open to effect transactions of the kind contemplated in this Agreement and, if a payment is to be made in euros, on which such payment system as the Council chooses is operating for the transfer of funds for the same day value

**Business Plan** means the operational business plan and budget of the Company as adopted and amended in accordance with clause 3

**Cabinet** means the cabinet of the Council as constituted from time to time

**CEDR** means the Centre for Effective Dispute Resolution

**Completion** means the completion of this Agreement in accordance with clause 2

**Completion Date** means the date of this Agreement

**Confidential Information** means, in relation to a person, all technical, commercial, financial or other information of whatever nature relating to that person's business, products, developments, services, trade secrets, know-how, personnel, supplies or historic current or potential customers, whether or not



designated as confidential and whether disclosed orally, pictorially, in writing, by demonstration, by viewing, in machine readable form or by any other means

**Deadlock** has the meaning given to it in clause 14.2

**Deadlock Date** has the meaning given to it in clause 14.2

**Deed of Adherence** means a deed in the form or substantially in the form set out in Schedule 3

**Directors** means the directors of the Company and **Director** means any one of them

**Dispute** has the meaning given to it in clause 14.1

**EIR** means the Environmental Information Regulations 2004 and any subordinate legislation made under the Regulations from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation

**Encumbrance** means:

- (a) a mortgage, charge, pledge, lien or other encumbrance securing any obligation of any person; or
- (b) any arrangement under which money or claims to, or the benefit of, a bank or other account may be applied, set-off or made subject to a combination of accounts so as to effect payment of sums owed or payable to any person; or
- (c) any other type of preferential arrangement (including title transfer and retention arrangements) having a similar effect

**Financial Year** means each accounting reference period of 12 months ending on the Accounting Reference Date other than the First Accounting Reference Period or such longer or shorter period as the Council shall from time to time determine.

**First Accounting Reference Period** means the period which shall run on and from the date of incorporation of the Company to and including the Accounting Reference Date in the calendar year following the date of this Agreement

**FOIA** means the Freedom of Information Act 2000 and any subordinate legislation made under the Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation

**Initial Consideration Date** has the meaning given to it in clause 14.2

**Intellectual Property** means present and future patents, trade marks, service marks, trade names, designs, copyrights, inventions, topographical or similar rights, confidential information and know-how and any interest in any of these rights, whether or not registered, including all applications and rights to apply for registration and all fees, royalties and other rights derived from, or incidental to, these rights

**Law** means:

- (a) any Act of Parliament;
- (b) any subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978;
- (c) any exercise of the Royal Prerogative; and
- (d) any enforceable community right within the meaning of section 2 of the European Communities Act 1972,

in each case in force in the United Kingdom

**Mediation Referral Notice** has the meaning given to it in clause 14.3

**Prohibited Act** means any of the following acts:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the Council a financial or other advantage to:
  - (i) induce that person to perform improperly a relevant function or activity; or
  - (ii) reward that person for improper performance of a relevant function or activity;
- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement;
- (c) committing any offence:
  - (i) under the Bribery Act 2010;
  - (ii) under legislation creating offences concerning fraudulent acts;
  - (iii) at common law concerning fraudulent acts relating to this Agreement or any other contract with the Council; or
  - (iv) defrauding, attempting to defraud or conspiring to defraud the Council

**Reserved Matters** means the matters specified in Schedule 1

**Resourcing Contract** means the contract for the provision of resourcing and support services to be entered into between the Council and the Company on or around the date of this Agreement, as the same may be varied, amended or replaced from time to time

**RICS** means the Royal Institution of Chartered Surveyors

1.2 In this Agreement:

- 1.2.1 clause, Schedule and paragraph headings shall not affect the interpretation of this Agreement;
- 1.2.2 unless the context otherwise requires, a reference to a clause or Schedule is to a clause of, or Schedule to, this Agreement and a reference to a paragraph is to a paragraph of the relevant Schedule;
- 1.2.3 a reference to a **person** shall include a reference to an individual, firm, company, corporation, partnership, unincorporated body of persons, government, state or agency of a state or any association, trust, joint venture or consortium (whether or not having separate legal personality) and that person's personal representatives, successors, permitted assigns and permitted transferees;
- 1.2.4 unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular;
- 1.2.5 unless the context otherwise requires, a reference to one gender shall include a reference to the other genders;
- 1.2.6 a reference to a **party** or the **parties** are to a party or the parties to this Agreement from time to time and any person who agrees to be bound by the provisions of this Agreement

from time to time by executing a Deed of Adherence but, for the avoidance of doubt, shall not refer to any person who has ceased to have any obligations under this Agreement from time to time. A reference to a party shall include that party's successors, permitted assigns and permitted transferees;

- 1.2.7 a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time and shall include all subordinate legislation made from time to time under that statute or statutory provision;
- 1.2.8 a reference to a **regulation** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, inter-governmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation;
- 1.2.9 a reference to **writing** or **written** includes email but not fax;
- 1.2.10 an obligation on a party not to do something includes an obligation not to allow that thing to be done;
- 1.2.11 a reference to **this Agreement** (or any provision of it) or to any other agreement or document referred to in this Agreement is a reference to this Agreement, that provision or such other agreement or document as varied, amended or supplemented (in each case, other than in breach of the provisions of this Agreement) from time to time;
- 1.2.12 any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms;
- 1.2.13 a reference to an **amendment** includes a novation, re-enactment, supplement or variation (and amended shall be construed accordingly);
- 1.2.14 a reference to **determines** or **determined** means, unless the contrary is indicated, a determination made at the absolute discretion of the person making it;
- 1.2.15 references to a **month** shall be construed as a reference to a period starting on one day in a calendar month and ending on the day immediately preceding the numerically corresponding day in the next calendar month or, if there is no numerically corresponding day in the next calendar month, the last day in the next calendar month; and
- 1.2.16 the expressions **body corporate, holding company, subsidiary, parent undertaking, subsidiary undertaking** and **parent company** shall have the respective meanings given in the Companies Act 2006, and, for the purposes of sections 1159(1) and 1162(2)(b) and (d) of that Act, a company or undertaking (the **first person**) shall be treated as a member of another company or undertaking if:
- (a) any of the first person's subsidiaries or subsidiary undertakings is a member of that other company or undertaking; or
  - (b) any shares or capital interests in that other company or undertaking are held by a person acting on behalf of the first person or any of its subsidiaries or subsidiary undertakings; or
  - (c) any shares or capital interests in that other company or undertaking are registered in the name of a person (or its nominee) by way of security or in connection with the granting of security over those shares or capital interests by the first person.

In the case of a limited liability partnership which is (or might constitute) a subsidiary or subsidiary undertaking of a company or another limited liability partnership, sections 1159 and 1162 of the Companies Act 2006 shall be amended so that:

- (i) references in sections 1159(1)(a) and (c) and 1162(2)(a) and (d) to "voting rights" are to the members' rights to vote on all or substantially all matters which are decided by a vote of the members of the limited liability partnership; and
- (ii) references in sections 1159(1)(b) and 1162(2)(b) to the "right to appoint or remove a majority of its board of directors" is to the right: (i) to appoint or remove a majority of the directors (or equivalent) of that limited liability partnership; or (ii) if no such directors (or equivalent) exist by virtue of the constitution of that limited liability partnership, members holding a majority of the voting rights,

and unless the context otherwise requires, the application of the definitions of body corporate, holding company, subsidiary, parent undertaking, subsidiary undertaking and parent company shall apply as to the Company or undertaking as it is at that time.

1.3 The Schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the Schedules.

## **2 COMPLETION**

2.1 Completion shall take place on the Completion Date at the offices of Bevan Brittan LLP, Fleet Place House, 2 Fleet Place, London EC4M 7RF or any other place or time agreed in writing by the parties.

2.2 At Completion:

2.2.1 the parties shall procure that such shareholder resolutions are passed and meetings of the Board are held as may be necessary to:

- (a) adopt the Articles in the agreed form;
- (b) adopt the Business Plan applicable to the First Accounting Reference Period;
- (c) appoint the following individuals (identified by their position within the Council) as directors:
  - (i) Cabinet Member responsible for Housing;
  - (ii) a member nominated from an opposition party identified to be a director;
  - (iii) Executive Director of Growth, Investment and Place; and
- (d) enter into the Resourcing Contract.

## **3 THE BUSINESSES AND BUSINESS PLANNING**

3.1 The business of the Company (**Business**) shall be to acquire land and/ or property for the provision of housing in accordance with any Business Plan then in force or as otherwise determined by the Shareholder from time to time.

3.2 The Business shall be pursued, and the Company shall be governed, in a manner which ensures that the Company:

3.2.1 is and remains controlled (both by way of membership of the Company and decisive influence over both its strategic objectives and significant decisions) by the Council;

3.2.2 carries out the essential part of its activities for the Council and other legal persons controlled by the Council; and

- 3.2.3 carries out those activities in furtherance of the Council's public service tasks.
- 3.3 The Company shall prepare in respect of each Financial Year a Business Plan to include:
  - 3.3.1 an annual operating revenue plan and capital expenditure requirements (including details of funding sources);
  - 3.3.2 a balance sheet forecast;
  - 3.3.3 a minimum five year term financial strategy plan to include (amongst other items) all proposed investments, borrowings and new business of the Company and a list of key risks of its business;
  - 3.3.4 long term projections to cover a period of [•] years from the Completion Date;
  - 3.3.5 identification of any surpluses made in a Financial Year and the making of any distribution of profit subject to the provisions of the Companies Act 2006;
  - 3.3.6 an annual profit and loss account; and
  - 3.3.7 such other content as the Council may require from time to time and notify to the Company in writing.
- 3.4 The Business Plan for a given Financial Year shall be:
  - 3.4.1 prepared by the Board and circulated by the Board to the Council in draft form not less than three months prior to the end of the Financial Year preceding the Financial Year to which the draft Business Plan relates, save that in the event that there is no Cabinet meeting in January of such preceding Financial Year the Business Plan shall be circulated by the Board to the Council in advance of the preceding Cabinet meeting; and
  - 3.4.2 considered and, if thought fit, approved as soon as possible by the Council and in any event within one month of the date of receipt of the draft Business Plan from the Board.
- 3.5 The parties agree to work both together and with any third parties where required in good faith, to procure that each Business Plan is prepared and approved in accordance with clause 3.3 and clause 3.4 and that the business of the Company is carried out, where appropriate, to interface as seamlessly as possible with the operations and services of the Council.

#### **4 COUNCIL'S ROLE AS SHAREHOLDER**

- 4.1 The Council will monitor and control the business and operations of the Company through the:
  - 4.1.1 approval of the Business Plan;
  - 4.1.2 the right to make decisions on the Reserved Matters;
  - 4.1.3 receiving reports in accordance with clause 8;
  - 4.1.4 exercising the other rights provided to the Council under this agreement and through its role as the sole shareholder of the Company.
- 4.2 The Council:
  - 4.2.1 shall, upon request, have unlimited, unrestricted and prompt access to the Company information and documents pursuant to clause 8;

4.2.2 will not usurp the functions of the Board but will monitor the activities of the Company to ensure that they are acceptable and accountable to the Council as owner of the Company; and

4.2.3 may, in addition to those matters requiring Council consent pursuant to clause 5:

- (a) make recommendations from time to time to the Board; and/or
- (b) give directions by notice in writing from time to time to the Board.

4.3 Where a consent or approval is expressed in this Agreement to be required of the Council, it shall be given in writing in advance of the decision or matter requiring consent or approval and the Council shall use its reasonable endeavours to communicate any such decision, consent or approval (including any decision not to give consent or approval) to the Company within a period of 30 days from receipt of the requests provided that the Council shall not be deemed to have made a decision or given its consent or approval by virtue of the fact that it has not communicated the same within that time limit. Where the Company requires the Council to make any decision or provide any consent or approval, the Company shall provide such material information as the Council may require to enable it to consider the decision, consent or approval in question.

4.4 The Company shall ensure that the Board chair and and/or any employees of the Company as requested by the Council shall attend such meetings or parts of meeting(s) of the Council as the Council may require and shall answer questions put by the Council and provide information regarding the activities of the Company as reasonably requested.

## **5 DECISION-MAKING**

5.1 Subject to the Articles and with the exception of the Reserved Matters, the Board shall have full and complete authority, power and discretion to direct, manage and control the Business and the affairs and assets of the Company, to make all decisions regarding those matters and to perform any and all other acts or activities customary or incidental to the management of the Business.

5.2 The Company agrees that it shall (subject to this clause 5) and in so far as it is legally able to:

5.2.1 carry on and conduct its business and affairs in accordance with:

- (a) this Agreement;
- (b) the Business Plan then in force;
- (c) the Articles;
- (d) all laws relating to companies as amended from time to time;
- (e) sound governance and good business practice; and
- (f) in a proper and efficient manner, for its own benefit; and

5.2.2 use all reasonable endeavours to obtain and, if necessary, maintain in full force and effect all licences (including statutory licences), consents and authorities necessary to own and operate its assets and to carry on its business properly and effectively and in accordance with the Business Plan then in force.

5.3 Except as set out in clause 5.4, insofar as a matter is a Reserved Matter relating to the Company, the Company shall not make any decision in relation to, or undertake, that Reserved Matter except with the prior written consent of the Council and such consent shall be sought with the intention to facilitate decisions being given by the Council as quickly as reasonably practicable.

5.4 Clause 5.3 shall not apply in connection with any decision or action relating to a Reserved Matter:

- 5.4.1 approved in the Business Plan then in force;
- 5.4.2 which has been properly delegated in accordance with this Agreement to the Board or to a particular person or committee; or
- 5.4.3 to the extent the same decision has been taken by the Council in accordance with this Agreement,

and in those circumstances only, any reference in this Agreement to the approval of the Council (or similar wording) shall be amended so that it is a reference to the approval of the Board or the approval of that other person, as the case may be.

- 5.5 Any variation to the list of Reserved Matters must be approved by the Council in writing. For the avoidance of doubt, the Reserved Matters may be varied and/or replaced in part or entirely, by the Council at its absolute discretion. Upon the Council giving notice in writing to the Board that such a variation or replacement has occurred, this Agreement and Schedule 1 shall be deemed modified from the date specified in the varied or replacement schedule.
- 5.6 If this Agreement is validly varied in accordance with its terms, the relevant sections of the Business Plan shall be deemed amended on and with effect from the date of the variation of this Agreement to the extent (but only to the extent) such amendment is necessary to ensure that the Business Plan is fully consistent, and does not conflict, with the terms of this Agreement (as varied).

## **6 BOARD**

- 6.1 Subject to the Articles, there shall be a minimum of three Directors, which:
  - 6.1.1 shall be appointed by the Council in accordance with clause 6.2;
  - 6.1.2 for the avoidance of doubt, shall not be the elected member of the Council who has responsibility for planning or the Council leader; and
  - 6.1.3 shall be comprised of such number of executive or non-executive Directors as the Council shall see fit.
- 6.2 Subject to the Articles, any appointment(s) or termination(s) of a Director made under this clause 6 shall be effected by the Council by giving notice in writing to the Company, on the date on which the notice from the Council is received by the Company, or if a later date is specified in the notice, on that date.
- 6.3 The Company shall review its Board every year to ensure that the composition and membership of the Board is such that it has the ability to sufficiently understand the Company's obligations and make sufficiently robust decisions in relation to those obligations.
- 6.4 On the appointment of a Director to the Board, the Board shall issue to that person a letter of appointment which in the case of Council appointed Directors shall be substantially in the form contained in Schedule 2, as may be amended or updated from time to time by the Council, together with a summary of a Director's duties in relation to the Company.

## **7 POLICIES AND PROCEDURES**

- 7.1 In respect of policies and procedures of the Company (**Policies and Procedures**):
  - 7.1.1 the Company shall adopt necessary Policies and Procedures that enable it to act legally, efficiently and appropriately as a subsidiary of a local authority, and in the absence of any such Policies and Procedures, the Company shall adopt the relevant Policies and Procedures of the Council from time to time;
  - 7.1.2 Policies and Procedures shall be approved by the Board; and

7.1.3 the Policies and Procedures shall be subject to an internal audit and audit by the Council when requested by the Council.

7.2 The employment terms and conditions of the Company shall be approved by the Board. The Board shall not implement such terms without prior written approval from the Council.

7.3 The Board shall adopt and apply an agreed policy as to how conflicts of interest are to be dealt with both in recruitment and in carrying out its Business. This agreed policy shall be approved by the Council for use by the Company and may thereafter be revised as required by the Council. Any such revisions shall be implemented by the Board.

7.4 The Company specifically confirms that no arrangement or contract has already been entered into which would require the approval of the Council under this Agreement if it were entered into after the date on which it becomes a party to this Agreement.

## **8 PROVISION OF INFORMATION**

8.1 The Company shall provide to the Council:

8.1.1 a Biannual Report before 5pm on the 30th day after the end of each six month period of a Financial year, which shall include:

- (a) a balance sheet (based on trial balance without timing adjustments such as accruals and prepayments) for the Company as at close of business on the last day of the month just ended (including comparatives from previous month);
- (b) a profit and loss account (based on trial balance i.e. excluding timing adjustments) for the Company covering the period from the start of the Financial Year to the end of the month just ended;
- (c) for each business division, profit and loss performance against the Business Plan and the Business Plan targets;
- (d) a statement of cash flow for the Company covering the period from the start of the Financial Year to the end of the month just ended;
- (e) forecast profit and loss account for the Company for the period to the end of the current Financial Year on an accruals basis;
- (f) a note of all matters in respect of which legal action (potential or actual) has been commenced by or against the Company and an update on ongoing legal action;
- (g) an assurance statement from the Directors that all core account reconciliations have been carried out, with exceptions listed if necessary; and
- (h) any other information reasonably required by the Shareholder as shareholder from time to time;

8.1.2 the annual accounts of the Company, audited if that is a requirement, as soon as practicable together with a general review of the business in the year to which the annual accounts apply and a copy of the current Business Plan, at the latest by the end of two months after the end of the relevant Financial Year;

8.1.3 minutes of all Board meetings within 20 Business Days after the relevant Board meeting to which they relate;

8.1.4 any other information reasonably required by the Council from time to time, as notified to the Company in writing by the Council.



- 8.2 The Company shall respond promptly to all reasonable requests from the Shareholder for clarification of any parts of the information and shall forthwith upon such request supply any additional information and/or evidence that the Shareholder may require.
- 8.3 The Council and its authorised representatives shall have the right during the standard working hours of the Council (as prescribed by the Council's policies from time to time), on giving to the Company reasonable advance notice, and at the Council's own cost, to inspect the books and records of the Company from time to time and to be supplied with all information in such form as it or they may reasonably require to keep the Council properly informed about the business and affairs of the Company and shall have the right to take copies of any such books and records or parts thereof.
- 8.4 The Company agrees that it shall give notice of any Directors' meeting to the Council at the same time as it gives notice to the Directors.
- 8.5 The Company shall immediately notify the Council of any legal action (potential, threatened or actual) of which it becomes aware which has been commenced by or against the Company.

## **9 AUDIT AND FRAUD**

The Company shall operate in accordance with, and comply with, all of the Council's guidance, policies, codes, standards and practices in respect of audit and fraud in place from time to time.

## **10 PREVENTION OF BRIBERY**

- 10.1 The Company:
- 10.1.1 shall not, and shall procure that any Director, officer, employee, adviser or representative of any of them shall not, in connection with this Agreement commit a Prohibited Act;
  - 10.1.2 warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Council, or that an agreement has been reached to that effect, in connection with the execution of this Agreement, excluding any arrangement of which full details have been disclosed in writing to the Council before execution of this Agreement;
  - 10.1.3 shall, if requested, provide the Council with any reasonable assistance, at the Council's reasonable cost, to enable the Council to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act 2010; and
  - 10.1.4 within five Business Days of the date of this Agreement, and annually thereafter, certify to the Council in writing (such certification to be signed by an officer of such company) compliance with this clause 10 by such company and all persons associated with it or other persons who are supplying goods or services in connection with this Agreement. Such company shall provide such supporting evidence of compliance as the Council may reasonably request.
- 10.2 The Company shall have an anti-bribery policy (which shall be disclosed to the Council) to prevent any of its Directors, officers, employees, advisers or representatives of the company from committing a Prohibited Act and shall enforce it where appropriate.
- 10.3 If any breach of clause 10.1 is suspected or known, the Company must notify the Council immediately.
- 10.4 If the Company notifies the Council that it suspects or knows that there may be a breach of clause 10.1, the Company must respond promptly to the Council's enquiries, co-operate with any investigation, and allow the Council to audit books, records and any other relevant documentation.
- 10.5 The Council may terminate this Agreement or any other agreement with the Company by written notice with immediate effect if the Company or any Director, officer, employee, adviser or representative of

the Company (in all cases whether or not acting with such Company's knowledge) breaches clause 10.1.

10.6 Any notice of termination under clause 10.5 must specify:

10.6.1 the nature of the Prohibited Act;

10.6.2 the identity of the party whom the Council believes has committed the Prohibited Act; and

10.6.3 the date on which this Agreement shall terminate.

10.7 Any dispute relating to:

10.7.1 the interpretation of this clause 10; or

10.7.2 the amount or value of any gift, consideration or commission;

shall be determined by the Council and its decision shall be final and conclusive.

10.8 Any termination under clause 10.5 shall be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Council.

## 11 FINANCE AND RETURNS

11.1 The Company shall not seek third party funding without written approval of the Council.

11.2 The Board may recommend a distribution of the Company's profits, which recommendation may take the form of year end and/ or interim distribution(s). The Board shall not approve any distribution of profits if and to the extent that:

11.2.1 it is contrary to any distribution policy contained in a Business Plan;

11.2.2 there is insufficient cash available;

11.2.3 it would render the Company insolvent;

11.2.4 the Board resolves that the Company would be left with insufficient funds to meet any current or future contemplated obligations or contingencies; or

11.2.5 it would materially adversely affect the ability of the Company to comply with a Business Plan.

11.3 A distribution of profits to the Council shall require the approval of the Council which shall be given within ten Business Days of the Board recommending the same to the Council.

11.4 Upon approval from the Council with ten Business Days the proposed distribution would become an **Approved Distribution** and the date on which that approval is given shall be the **Approval Date**.

11.5 The Company shall credit an Approved Distribution to the Council within ten Business Days of the Approval Date. Payments will be in cash, unless a distribution was expressly approved by the Council in specie.

## 12 CONTRACTS

12.1 The Company shall retain a contracts register into which every contract entered into with an aggregate annual value which is greater than any threshold set in respect of the Council's own contracts from time to time shall be recorded.

### 13 DEALINGS IN SHARES AND NEW SHAREHOLDERS

- 13.1 The Company shall not create any Encumbrance over, transfer, or otherwise dispose of or give any person any rights in or over any share in its capital unless it is:
- 13.1.1 permitted under this Agreement and the Articles; and/or
  - 13.1.2 carried out in accordance with the terms of this Agreement and the Articles.
- 13.2 Admitting a person as a new shareholder or member of the Company is a Reserved Matter and shall also be subject to such person executing a Deed of Adherence. Should the Company wish to admit a new shareholder or new member, the Board must procure that Deed of Adherence is signed and the prior written consent of the Council is obtained, prior to such new shareholder or member being admitted.

### 14 DISPUTE RESOLUTION

- 14.1 In the event of any disagreement or dispute arising between the parties in connection with this Agreement (a **Dispute**), the parties shall use all reasonable endeavours to resolve the matter on an amicable basis. If one party serves formal written notice on one or more of the others that a Dispute has arisen and the parties are unable to resolve the Dispute within a period of 20 Business Days from the service of such notice, then the Dispute shall be referred to an executive director of each of the parties or such other director nominated by each party for the purpose of this clause 14 who shall attempt to resolve the Dispute within the next following 20 Business Days. No recourse to arbitration or litigation by any party against any other under this Agreement shall take place unless and until such procedure has been followed.
- 14.2 If the executive directors or other nominated director of each of the parties (as the case may be) to whom the Dispute was referred in accordance with clause 14.1 are unable to resolve a Dispute within two months of such Dispute being referred to them (**Initial Consideration Date**), then a **Deadlock** shall be deemed to have arisen on the date either two months after the Initial Consideration Date or the date on which the parties agree that Deadlock has arisen, if earlier (the **Deadlock Date**). Any Deadlock shall be dealt with in accordance with clause 14.3.
- 14.3 In the event that a Deadlock has arisen, then any party shall be entitled to serve a notice in writing on the other parties referring the Deadlock to mediation (**Mediation Referral Notice**) in accordance with clause 14.4.
- 14.4 On the service of a Mediation Referral Notice, the parties shall jointly appoint a mediator to mediate the Deadlock, the cost of which shall be borne equally between the parties.
- 14.5 If:
- 14.5.1 the parties do not agree on the appointment of a mediator within 15 Business Days of service of the Mediation Referral Notice (the first day of that 15 Business Day period being the first Business Day after the service of the Mediation Referral Notice); or
  - 14.5.2 the person appointed or to be appointed is unable or unwilling to act,
- the mediator shall be appointed by the Chief Executive for the time being of CEDR or RICS (whichever is the most relevant having regard to the subject matter of the dispute) following a request made by any party to the Chief Executive for that purpose.
- 14.6 The mediation shall be conducted in the English language in accordance with the then current CEDR Model Mediation Procedure or RICS procedure, which is deemed to be incorporated in this Agreement.
- 14.7 If an agreement is reached on the Deadlock during the mediation, that agreement shall be reduced to writing and, once signed by the parties, shall be binding on all parties.

- 14.8 The mediation will take place where the Council deems appropriate.
- 14.9 Unless concluded with a written legally binding agreement, the mediation shall be concluded in confidence and without prejudice to the rights of any of the parties in any further proceedings.
- 14.10 If the Deadlock cannot be resolved following mediation, the parties shall be entitled to commence arbitration or litigation proceedings to settle the Dispute.

## **15 TERMINATION**

15.1 Subject to clause 15.2, this Agreement may be terminated by the Council serving no less than six months' written notice on the Company.

15.2 The Council may terminate this Agreement immediately where required in accordance with any Law.

15.3 Termination of this Agreement shall not affect any accrued rights or liabilities of any person or any liability or obligation arising under or pursuant to this Agreement or any other agreement or arrangement between any of the parties hereto or, except where this Agreement expressly provides to the contrary, affect the provisions of:

15.3.1 clause 1 (*Definitions and Interpretation*);

15.3.2 this clause 15 (*Termination*);

15.3.3 clause 16 (*Confidentiality*);

15.3.4 clause 17 (*Freedom of Information*);

15.3.5 clause 21 (*Assignment and Subcontracting*);

15.3.6 clause 22 (*Waivers and Consents*);

15.3.7 clause 23 (*Rights and Remedies*);

15.3.8 clause 27 (*Notices*);

15.3.9 clause 28 (*Entire Agreement*);

15.3.10 clause 29 (*Variation*);

15.3.11 clause 30 (*Conflict with the Articles*);

15.3.12 clause 31 (*Costs and Expenses*);

15.3.13 clause 32 (*Set-off*);

15.3.14 clause 33 (*No Partnership or Agency*); and

15.3.15 clause 34 (*Governing Law and Jurisdiction*);

which shall continue in full force and effect after termination.

15.4 Where the Company is to be wound up and its assets distributed, the parties shall endeavour to ensure that:

15.4.1 all existing contracts of the Company are performed to the extent that there are sufficient resources;

15.4.2 the Company shall not enter into any new contractual obligations;

- 15.4.3 the Company is dissolved and its assets are distributed as soon as practical in accordance with clauses 15.4.4 or 15.4.5 as applicable;
- 15.4.4 any other proprietary information or Intellectual Property Rights belonging to or originating from a party shall be returned to it by the other party or the Company and all such proprietary information or Intellectual Property Rights shall be erased from the computer systems (to the extent possible) of the person who is/are returning it; and
- 15.4.5 the assets of the Company remaining after payment of all debts and liabilities of such company and of all costs, charges and expenses of winding up the same, shall be distributed amongst the current shareholders or members of the Company.

## **16 CONFIDENTIALITY**

- 16.1 Each party undertakes that they shall not at any time hereafter use or disclose (in each case except for the purpose of exercising its rights and fulfilling its obligations under this Agreement) to any person any Confidential Information of any other party which may have or may in future come to its knowledge or possession, provided that any party may share such information:
  - 16.1.1 with its professional advisers or to those of its directors, members, officers, employees, advisers and representatives who are directly concerned with the relevant party or its business;
  - 16.1.2 as may be required by any applicable law or by any supervisory or regulatory body with whose rules it is necessary for that party to comply;
  - 16.1.3 in connection with any proceedings arising out of or in connection with this Agreement; or
  - 16.1.4 once it enters the public domain otherwise than by reason of a breach of this clause 16.1.
- 16.2 All parties shall use its reasonable endeavours to prevent the use or disclosure of any such Confidential Information otherwise than in accordance with this clause 16.
- 16.3 Notwithstanding the restrictions in clauses 16, any party may use such Confidential Information for the purpose of the promotion of the Business.
- 16.4 Each Director shall be entitled to disclose to the Council, all information to which the Council is entitled pursuant to clause 8 from time to time.
- 16.5 The parties shall use their reasonable endeavours to procure that any of their officers, employees, advisers and representatives coming into receipt of such Confidential Information shall be informed upon receipt that such information is confidential and (so far as such party is able to procure the same) shall comply with the provisions of this clause 16.5 in respect of such Confidential Information as if they were parties.
- 16.6 Where any party is required by any law, regulation or governmental or regulatory authority to retain any information (or copies of such information) of any other party, it shall notify the other party in writing of such retention giving details of the information that it is required to retain.

## **17 FREEDOM OF INFORMATION**

- 17.1 The parties acknowledge that the parties are subject to the requirements of the FOIA and the EIR and the parties shall, where reasonable, assist and co-operate (at their own expense) with the other parties for information to enable the other parties (where required) to comply with their information disclosure obligations.
- 17.2 Subject to clause 17.1, where the Company receives a request for information under either the FOIA or the EIR which it is holding on behalf of any other party, it shall:

- 17.2.1 transfer the request for information to the relevant party (or such other party as it is otherwise agreed between the parties is the best person to deal with such request) as soon as practicable after receipt and in any event within two Business Days of receiving a request for information;
  - 17.2.2 provide the relevant or other party with a copy of all information in its possession or power in the form that the relevant or other party requires within ten Business Days (or such longer period as the relevant or other party may specify) of the relevant or other party requesting that information; and
  - 17.2.3 provide all necessary assistance as reasonably requested by the relevant or other party to enable the relevant or other party to respond to a request for information within the time for compliance set out in the FOIA or the EIR.
- 17.3 Where the Council receives a request under FOIA or EIR which relates to the operations of the Company, it shall notify the Company and afford them an opportunity to make any comments or representations in respect of the disclosure of the information sought. The Company shall respond within five Business Days of receipt of this notification. The Council shall take into account any such comments or representations in so doing and shall not respond to the request until the five Business Days response period referred to above has passed.
- 17.4 Each party shall be responsible for determining in its absolute discretion whether any information requested under the FOIA and EIR:
- 17.4.1 is exempt from disclosure; or
  - 17.4.2 is to be disclosed in response to a request for information.
- 17.5 Each party acknowledges that the other party may be obliged under the FOIA and EIR to disclose information:
- 17.5.1 without consulting with the other parties where it has not been practicable to achieve such consultation; or
  - 17.5.2 following consultation with the other parties and having taken their views into account.

**18 DATA PROTECTION**

The parties shall comply with Law relating to data protection at all times when carrying out their respective obligations pursuant to this Agreement and any other agreement to which it is a party.

**19 UNLAWFUL FETTER ON THE COMPANY'S POWERS**

Notwithstanding any other provision contained in this Agreement, the Company shall not be bound by any provision of this Agreement to the extent that it would constitute an unlawful fetter on any of its statutory powers, but any such provision shall remain valid and binding as regards all other parties to which it is expressed to apply.

**20 FURTHER ASSURANCE**

Each party shall at its own cost and expense, on being required to do so by another party now or at any time in the future, do or procure the doing of all such acts and things and/or execute or procure the execution of all such deeds and documents in a form satisfactory to such other party which such other party may reasonably consider necessary for giving effect to this Agreement.

**21 ASSIGNMENT AND SUB-CONTRACTING**

- 21.1 This Agreement is personal to the parties and no party shall assign, transfer, subcontract or deal in any other manner with any of its rights and obligations under this Agreement without the prior written

consent of the Council. Each party hereby undertakes and represents to the other parties that it is entering into this Agreement only for its own benefit.

21.2 This Agreement shall be binding on and shall endure for the benefit of each party's successors.

## **22 WAIVERS AND CONSENTS**

22.1 A waiver of any right or remedy under this Agreement or by Law, or any consent given under this Agreement, is only effective if given in writing by the waiving or consenting party and shall not be deemed a waiver of any other breach or default. It only applies in the circumstances for which it is given and shall not prevent the party giving it from subsequently relying on the relevant provision.

22.2 A failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall not constitute a waiver of that or any other right or remedy, prevent or restrict any further exercise of that or any other right or remedy or constitute an election to affirm this Agreement. No single or partial exercise of any right or remedy provided under this Agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy. No election to affirm this Agreement by the Council shall be effective unless it is in writing.

## **23 RIGHTS AND REMEDIES**

The rights and remedies provided under this Agreement are cumulative and are in addition to, and not exclusive of, any rights and remedies provided by law.

## **24 SEVERANCE**

If any provision (or part of a provision) of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision (or part of a provision) shall be deemed deleted. Any modification to or deletion of a provision (or part of a provision) under this clause shall not affect the legality, validity and enforceability of the rest of this Agreement.

## **25 COUNTERPARTS**

This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute one Agreement.

## **26 THIRD PARTY RIGHTS**

Except as expressly provided elsewhere in this Agreement, a person who is not a party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce, or enjoy the benefit of, any term of this Agreement. This does not affect any right or remedy of a third party which exists, or is available, apart from that Act.

## **27 NOTICES**

### **27.1 Delivery**

Any notice or other communication required to be given to a party under or in connection with this Agreement shall be:

27.1.1 in writing;

27.1.2 delivered by hand, by pre-paid first-class post or other next working day delivery service or sent by electronic mail; and

27.1.3 sent to:

(a) the Council at:

Address: County Hall, Bythesea Road, Trowbridge, Wiltshire, BA14 8JN  
Email: simon.hendey@wiltshire.gov.uk  
Attention: Simon Hendey, Director of Housing & Commercial

(b) the Company

Address: County Hall, Bythesea Road, Trowbridge, Wiltshire, BA14 8JN  
Email: [•]  
Attention: Company Secretary

or to any other address or email address as is notified in writing by one party to the other from time to time.

## 27.2 Receipt

Any notice or other communication shall be deemed to have been received:

- 27.2.1 if delivered by hand, at the time it is left at the relevant address;
- 27.2.2 if posted by pre-paid first-class post or other next working day delivery service, on the second Business Day after posting; and
- 27.2.3 if sent by electronic mail, upon receipt by the party to which it is given.

A notice or other communication given as described in clause 27.2.1 or clause 27.2.3 on a day that is not a Business Day, or after normal business hours, in the place it is received, shall be deemed to have been received on the next Business Day.

## 27.3 Receipt by Council

Any notice or other communication given to the Council shall be deemed to have been received only on actual receipt.

## 28 ENTIRE AGREEMENT

- 28.1 This Agreement and the documents referred to in it (including the Articles and any Deed of Adherence) constitute the entire agreement between the parties relating to its/their subject matter and supersede all previous agreements between the parties relating to such matters.
- 28.2 Each of the parties acknowledges that in agreeing to enter into this Agreement it has not relied on any representation, warranty, collateral contract or other assurance (except those set out in this Agreement and/or the documents referred to in it) made by or on behalf of any other party before the signature of this Agreement. Each of the parties waives:
  - 28.2.1 all rights and remedies which, but for this clause 28.2, might otherwise be available to it in respect of any such representation, warranty, collateral contract or other assurance; and
  - 28.2.2 all rights and remedies, other than remedies for breach of contract available in respect of a breach of this Agreement and/or the documents referred to in it, which, but for this clause 28.2, might otherwise be available to it in respect of the falsity of any representation or warranty set out in this Agreement and/or the documents referred to in it,

provided that nothing in this clause 28.2 shall limit or exclude any liability for fraud or dishonesty on the part of any party.



**29 VARIATION**

No variation to the terms of this Agreement shall be effective unless made in writing and signed by each of the parties and any person who agrees to be bound by this Agreement.

**30 CONFLICT WITH THE ARTICLES**

If any provision of this Agreement is inconsistent with a provision of the Articles, then the terms of this Agreement shall prevail and the member(s) of such Company agree to procure the making of any amendment to the Company's Articles as soon as reasonably practicable which is required in order to make the Articles consistent with the provisions of this Agreement and the Council hereby consents to any such changes to the Company's Articles.

**31 COSTS AND EXPENSES**

All costs and expenses in relation to the negotiation, preparation, execution and carrying into effect of this Agreement and all other documents referred to in it shall be borne by the Council, save for any private advice sought by any party which shall be for the cost of that party.

**32 SET-OFF**

All amounts falling due under this Agreement shall be paid in full without any set-off or counterclaim.

**33 NO PARTNERSHIP OR AGENCY**

Nothing in this Agreement is intended to or shall operate to create a partnership between the parties or any of them, or to authorise any party to act as agent for any other party, and no party shall have authority to act in the name or on behalf of or otherwise to bind any other party in any way.

**34 GOVERNING LAW AND JURISDICTION**

34.1 This Agreement is governed by and shall be construed in accordance with the laws of England and each party submits to the exclusive jurisdiction of the courts of England for all purposes relating to this Agreement.

34.2 Each party irrevocably consents to any process in any legal action or proceedings arising out of or in connection with this Agreement being served on it in accordance with the provisions of clause 14. Nothing contained in this Agreement shall affect the right to serve process in any other manner permitted by law.

This Agreement has been executed as a deed and has been entered into on the date stated at the beginning of it.

**AS WITNESS** the hands of the parties or their duly authorised representatives the day and year first before written

Executed as a deed by affixing ) Seal  
the common seal of )  
**WILTSHIRE COUNCIL** )  
)  
)  
in the presence of )  
)  
..... )  
Authorised signatory )

Executed as a deed by )  
**STONE CIRCLE HOUSING COMPANY** )  
**LIMITED** )  
acting by ....., ) .....  
a director, in the presence of ) **Director**

Signature: .....

Name of witness: .....

Address: .....

.....

.....

Occupation of witness: .....

## SCHEDULE 1 – RESERVED MATTERS

Number	Reserved Matter
	<b>Constitution of the company</b>
1	Varying in any respect the articles or the rights attaching to any of the shares or memberships (as applicable) in the company.
	<b>Officers and Shareholders of the company</b>
2	The appointment and the appointment terms (including any remuneration terms) of any Directors.
3	The appointment and the appointment terms (including any remuneration terms) of any employees.
4	The removal of any Directors (including any terms on which such Directors are removed from their office as Directors).
5	The admission of further shareholders or members to the Company or agreeing any rights or restrictions attaching to any shares or memberships allocated to such new shareholders or members as applicable).
	<b>Future direction and development of the company</b>
6	Forming any subsidiary or acquiring shares in any other company or participating in any partnership or incorporated joint venture vehicle.
7	Amalgamating or merging with any other company or business undertaking.
8	Selling or disposing of any part of the business of the Company.
9	Agreeing the Business Plan and any in-year material changes.
10	Undertaking any business or action which is inconsistent with the Business Plan then in force or omitting to undertake any action which is required by that Business Plan except with the prior written consent of the Council
11	Passing any resolution for its winding up or presenting any petition for its administration (unless it has become insolvent).
12	Agreeing or approving any other material services the total value of which exceeds £10,000 per annum to be provided by the Company to a third party not approved under the Business Plan.
13	Appointing any agent (not being a subcontractor) to conduct the whole or any part of the business of the Company, other than the appointment of an agent to conduct an area of the business of the Company
14	Applying for the listing or trading of any shares in its issued capital or debt securities on any stock exchange or market (where applicable).
	<b>Management of the business of the company</b>

15	Changing the Company's registered office.
16	Changing the Company's name.
17	Creating or agreeing to create a charge, security or encumbrance over the Company's assets, shares or income
18	Approving any matter that will have an adverse effect on the reputation of the Council.
19	Changing the nature of the business or commencing any new business which is not ancillary or incidental to the business of the Company.
20	Agreeing to enter into or entering into any acquisition or disposal of any material assets by the Company the total value of which exceeds £30,000 per annum not approved in the Business Plan.
21	Giving notice of termination of any arrangements, contracts or transactions the total value of which exceeds £50,000 per annum or materially varying any such arrangements, contracts or transactions and such termination or variation is likely to have an adverse impact on the financial status of a Company.
22	Granting rights (by licence or otherwise) in or over any intellectual property owned or used by the Company.
23	Appointing and changing the Company's auditors.
24	Changing the Financial Year of the Company.
25	Agreeing to make or making any loan (otherwise than by way of a deposit with a bank or other institution, the normal business of which includes the acceptance of deposits or in the ordinary course of business) or granting any credit (other than in the normal course of trading or the granting of trade credit to a company which has been approved under the Business Plan) or giving any guarantee or indemnity (other than in the normal course of trading).
26	Increasing or reducing the amount of its issued share capital, granting any option over or in its share capital, redeeming or purchasing any of its own shares or otherwise altering, or effecting any reorganisation of, its share capital (where applicable).
27	Declaring or paying any end of year dividend of the Company.

**SCHEDULE 2– LETTER OF APPOINTMENT OF A DIRECTOR**

[on the headed notepaper of the Company]

To: [Name and address of Director]

[Date]

Dear ●

● Limited (the **Company**)

This letter contains the terms which we have discussed and agreed for your appointment as a director of the Company, as [a][the] Director of Wiltshire Council (the **Council**). Your appointment is made pursuant to and is subject to the terms and conditions set in the Shareholder Agreement dated ● 2019 (**Agreement**).

You shall not be entitled to any fees or remuneration save as paid to you by your appointer or as otherwise expressly agreed in writing.

You shall be expected to attend Board meetings and general meetings (where requested) of the Company. You shall receive details of all such meetings in advance.

You shall not, whether during the appointment or after its termination, except in the proper course of your duties or as required by law, use or divulge, and shall use all reasonable endeavours to prevent the use or disclosure of, any trade or business secrets or any information concerning the business or finances of the Company or of any dealings, transactions, or affairs of the Company or any client, customer or supplier of the Company which comes to your knowledge during the course of this appointment and shall comply with the provisions of clause 16 (*Confidentiality*) of the Agreement as if it applied to you. You shall, however, be entitled to disclose information to the shareholder appointing you as permitted under the Agreement.

The appointment shall automatically cease in relation to the Company in the event that: (a) you resign as a director; or (b) upon the delivery of a notice from the Council in accordance with the Company's Articles of Association removing you from office in relation to the Company. Without limitation to (a) and (b) above, in signing this letter, you acknowledge that your office is subject to the terms of the Agreement and the Company's Articles of Association and may be determined as permitted under the terms of the Agreement and the Articles and that upon such termination you shall vacate office in relation to the Company forthwith without raising any claim whatsoever against the Company.

On termination of your appointment, you agree that you shall promptly return to the Company all papers and property of the Company which are in your possession or under your control.

Please indicate your acceptance and acknowledgement of these terms by signing the attached copy and returning it to me. I look forward to seeing you at our next Board meeting.

Yours sincerely

.....  
Signatory, duly authorised  
for and on behalf of the Company

I agree to and acknowledge the terms and conditions set out above relating to my appointment as director of the Company.

Signed .....

Dated .....

**SCHEDULE 3 – DEED OF ADHERENCE**

**THIS DEED** is made on

BY ● (company number ●) whose registered office is at ● (the **Covenantor**) in favour of the persons whose names are set out in the schedule to this deed and is supplemental to the Shareholder Agreement dated ● (the **Agreement**)

**THIS DEED WITNESSES** as follows:

- 1 The Covenantor confirms that it has been given and read a copy of the Agreement and covenants with each person named in the schedule to this deed to perform and be bound by all the terms of the Agreement and to perform the obligations contained in the Agreement which are expressed to be performed by the Company (as defined in the Agreement), as if the Covenantor were a party to the Agreement.
- 2 This deed is governed by the laws of England and Wales.

**IN WITNESS WHEREOF** this deed has been executed by the Covenantor and is intended to be and is hereby delivered on the date first above written.

**[Insert correct execution block]**

Executed as a deed by	)	
●	)	
acting by a director and a director/ Secretary	)	.....
	)	<b>Director</b>
	)	
	)	.....
	)	<b>Director/Secretary</b>

SCHEDULE – List of parties to Shareholder Agreement including those who have executed earlier deeds of adherence

**Dated** \_\_\_\_\_ **2019**

**WILTSHIRE COUNCIL**

**STONE CIRCLE HOUSING COMPANY LIMITED**

\_\_\_\_\_  
**SHAREHOLDER AGREEMENT**  
\_\_\_\_\_

30659518.230224835.1© Bevan Brittan LLP

Toronto Square - 7<sup>th</sup> Floor | Toronto Street | Leeds LS1 2HJ  
T 0370 194 1000 F 0370 194 5465

Fleet Place House | 2 Fleet Place | Holborn Viaduct | London EC4M 7RF  
T 0370 194 1000 F 0370 194 7800

Kings Orchard | 1 Queen Street | Bristol BS2 0HQ  
T 0370 194 1000 F 0370 194 1001

Interchange Place | Edmund Street | Birmingham B3 2TA  
T 0370 194 1000 F 0370 194 5001

## Contents

Item	Page
<b>PARTIES</b> .....	<b>1</b>
<b>BACKGROUND</b> .....	<b>1</b>
<b>AGREED TERMS</b> .....	<b>1</b>
<b>1 DEFINITIONS AND INTERPRETATION</b> .....	<b>1</b>
<b>2 COMPLETION</b> .....	<b>5</b>
<b>3 THE BUSINESSES AND BUSINESS PLANNING</b> .....	<b>5</b>
<b>4 COUNCIL'S ROLE AS SHAREHOLDER</b> .....	<b>6</b>
<b>5 DECISION-MAKING</b> .....	<b>7</b>
<b>6 BOARD</b> .....	<b>8</b>
<b>7 POLICIES AND PROCEDURES</b> .....	<b>8</b>
<b>8 PROVISION OF INFORMATION</b> .....	<b>9</b>
<b>9 AUDIT AND FRAUD</b> .....	<b>10</b>
<b>10 PREVENTION OF BRIBERY</b> .....	<b>10</b>
<b>11 FINANCE AND RETURNS</b> .....	<b>11</b>
<b>12 CONTRACTS</b> .....	<b>11</b>
<b>13 DEALINGS IN SHARES AND NEW SHAREHOLDERS</b> .....	<b>12</b>
<b>14 DISPUTE RESOLUTION</b> .....	<b>12</b>
<b>15 TERMINATION</b> .....	<b>13</b>
<b>16 CONFIDENTIALITY</b> .....	<b>14</b>
<b>17 FREEDOM OF INFORMATION</b> .....	<b>14</b>
<b>18 DATA PROTECTION</b> .....	<b>15</b>
<b>19 UNLAWFUL FETTER ON THE COMPANY'S POWERS</b> .....	<b>15</b>
<b>20 FURTHER ASSURANCE</b> .....	<b>15</b>
<b>21 ASSIGNMENT AND SUB-CONTRACTING</b> .....	<b>15</b>
<b>22 WAIVERS AND CONSENTS</b> .....	<b>16</b>
<b>23 RIGHTS AND REMEDIES</b> .....	<b>16</b>
<b>24 SEVERANCE</b> .....	<b>16</b>
<b>25 COUNTERPARTS</b> .....	<b>16</b>
<b>26 THIRD PARTY RIGHTS</b> .....	<b>16</b>
<b>27 NOTICES</b> .....	<b>16</b>
<b>28 ENTIRE AGREEMENT</b> .....	<b>17</b>
<b>29 VARIATION</b> .....	<b>18</b>
<b>30 CONFLICT WITH THE ARTICLES</b> .....	<b>18</b>
<b>31 COSTS AND EXPENSES</b> .....	<b>18</b>
<b>32 SET-OFF</b> .....	<b>18</b>
<b>33 NO PARTNERSHIP OR AGENCY</b> .....	<b>18</b>
<b>34 GOVERNING LAW AND JURISDICTION</b> .....	<b>18</b>



**SCHEDULE 1 – RESERVED MATTERS..... 20**  
**SCHEDULE 2 – LETTER OF APPOINTMENT OF A DIRECTOR..... 22**  
**SCHEDULE 3 – DEED OF ADHERENCE ..... 23**

---

## PARTIES

- (1) **WILTSHIRE COUNCIL**, of County Hall, Bythesea Road, Trowbridge, Wiltshire, BA14 8JN (**Council**)
- (2) **STONE CIRCLE HOUSING COMPANY LIMITED** (company number [●]) whose registered office is at County Hall, Bythesea Road, Trowbridge, Wiltshire, BA14 8JN (**Company**)

## BACKGROUND

- (A) As at the date of this Agreement, the Council is the sole member of the Company.
- (B) The parties have entered into this Agreement to regulate the manner in which the Company carries out the Business (as defined herein) and to ensure that the Council retains decisive influence over both the strategic objectives and significant decisions of the Company.

## AGREED TERMS

### 1 DEFINITIONS AND INTERPRETATION

In this Agreement:

**Accounting Reference Date** means 31 March

**Approval Date** has the meaning given to it in clause 11.4

**Approved Distribution** has the meaning given to it in clause 11.4

**Articles** means the articles of association of the Company in agreed form to be adopted on Completion pursuant to clause 2.2, as amended or superseded from time to time

**Biannual Report** means the report as specified in clause 8.1.1

**Board** means the board of Directors of the Company or such of them as are present at a duly convened and quorate meeting of the Directors

**Business** has the meaning given to it in clause 3.1

**Business Day** means a day (other than a Saturday, a Sunday or a public holiday in the United Kingdom) on which banks in the United Kingdom are ordinarily open to effect transactions of the kind contemplated in this Agreement and, if a payment is to be made in euros, on which such payment system as the Council chooses is operating for the transfer of funds for the same day value

**Business Plan** means the operational business plan and budget of the Company as adopted and amended in accordance with clause 3

**Cabinet** means the cabinet of the Council as constituted from time to time

**CEDR** means the Centre for Effective Dispute Resolution

**Completion** means the completion of this Agreement in accordance with clause 2

**Completion Date** means the date of this Agreement

**Confidential Information** means, in relation to a person, all technical, commercial, financial or other information of whatever nature relating to that person's business, products, developments, services, trade secrets, know-how, personnel, supplies or historic current or potential customers, whether or not

designated as confidential and whether disclosed orally, pictorially, in writing, by demonstration, by viewing, in machine readable form or by any other means

**Deadlock** has the meaning given to it in clause 14.2

**Deadlock Date** has the meaning given to it in clause 14.2

**Deed of Adherence** means a deed in the form or substantially in the form set out in Schedule 3

**Directors** means the directors of the Company and **Director** means any one of them

**Dispute** has the meaning given to it in clause 14.1

**EIR** means the Environmental Information Regulations 2004 and any subordinate legislation made under the Regulations from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation

**Encumbrance** means:

- (a) a mortgage, charge, pledge, lien or other encumbrance securing any obligation of any person; or
- (b) any arrangement under which money or claims to, or the benefit of, a bank or other account may be applied, set-off or made subject to a combination of accounts so as to effect payment of sums owed or payable to any person; or
- (c) any other type of preferential arrangement (including title transfer and retention arrangements) having a similar effect

**Financial Year** means each accounting reference period of 12 months ending on the Accounting Reference Date other than the First Accounting Reference Period or such longer or shorter period as the Council shall from time to time determine.

**First Accounting Reference Period** means the period which shall run on and from the date of incorporation of the Company to and including the Accounting Reference Date in the calendar year following the date of this Agreement

**FOIA** means the Freedom of Information Act 2000 and any subordinate legislation made under the Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation

**Initial Consideration Date** has the meaning given to it in clause 14.2

**Intellectual Property** means present and future patents, trade marks, service marks, trade names, designs, copyrights, inventions, topographical or similar rights, confidential information and know-how and any interest in any of these rights, whether or not registered, including all applications and rights to apply for registration and all fees, royalties and other rights derived from, or incidental to, these rights

**Law** means:

- (a) any Act of Parliament;
- (b) any subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978;
- (c) any exercise of the Royal Prerogative; and
- (d) any enforceable community right within the meaning of section 2 of the European Communities Act 1972,

in each case in force in the United Kingdom

**Mediation Referral Notice** has the meaning given to it in clause 14.3

**Prohibited Act** means any of the following acts:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the Council a financial or other advantage to:
  - (i) induce that person to perform improperly a relevant function or activity; or
  - (ii) reward that person for improper performance of a relevant function or activity;
- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement;
- (c) committing any offence:
  - (i) under the Bribery Act 2010;
  - (ii) under legislation creating offences concerning fraudulent acts;
  - (iii) at common law concerning fraudulent acts relating to this Agreement or any other contract with the Council; or
  - (iv) defrauding, attempting to defraud or conspiring to defraud the Council

**Reserved Matters** means the matters specified in Schedule 1

**Resourcing Contract** means the contract for the provision of resourcing and support services to be entered into between the Council and the Company on or around the date of this Agreement, as the same may be varied, amended or replaced from time to time

**RICS** means the Royal Institution of Chartered Surveyors

1.2 In this Agreement:

- 1.2.1 clause, Schedule and paragraph headings shall not affect the interpretation of this Agreement;
- 1.2.2 unless the context otherwise requires, a reference to a clause or Schedule is to a clause of, or Schedule to, this Agreement and a reference to a paragraph is to a paragraph of the relevant Schedule;
- 1.2.3 a reference to a **person** shall include a reference to an individual, firm, company, corporation, partnership, unincorporated body of persons, government, state or agency of a state or any association, trust, joint venture or consortium (whether or not having separate legal personality) and that person's personal representatives, successors, permitted assigns and permitted transferees;
- 1.2.4 unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular;
- 1.2.5 unless the context otherwise requires, a reference to one gender shall include a reference to the other genders;
- 1.2.6 a reference to a **party** or the **parties** are to a party or the parties to this Agreement from time to time and any person who agrees to be bound by the provisions of this Agreement

from time to time by executing a Deed of Adherence but, for the avoidance of doubt, shall not refer to any person who has ceased to have any obligations under this Agreement from time to time. A reference to a party shall include that party's successors, permitted assigns and permitted transferees;

- 1.2.7 a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time and shall include all subordinate legislation made from time to time under that statute or statutory provision;
- 1.2.8 a reference to a **regulation** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, inter-governmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation;
- 1.2.9 a reference to **writing** or **written** includes email but not fax;
- 1.2.10 an obligation on a party not to do something includes an obligation not to allow that thing to be done;
- 1.2.11 a reference to **this Agreement** (or any provision of it) or to any other agreement or document referred to in this Agreement is a reference to this Agreement, that provision or such other agreement or document as varied, amended or supplemented (in each case, other than in breach of the provisions of this Agreement) from time to time;
- 1.2.12 any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms;
- 1.2.13 a reference to an **amendment** includes a novation, re-enactment, supplement or variation (and amended shall be construed accordingly);
- 1.2.14 a reference to **determines** or **determined** means, unless the contrary is indicated, a determination made at the absolute discretion of the person making it;
- 1.2.15 references to a **month** shall be construed as a reference to a period starting on one day in a calendar month and ending on the day immediately preceding the numerically corresponding day in the next calendar month or, if there is no numerically corresponding day in the next calendar month, the last day in the next calendar month; and
- 1.2.16 the expressions **body corporate, holding company, subsidiary, parent undertaking, subsidiary undertaking** and **parent company** shall have the respective meanings given in the Companies Act 2006, and, for the purposes of sections 1159(1) and 1162(2)(b) and (d) of that Act, a company or undertaking (the **first person**) shall be treated as a member of another company or undertaking if:
- (a) any of the first person's subsidiaries or subsidiary undertakings is a member of that other company or undertaking; or
  - (b) any shares or capital interests in that other company or undertaking are held by a person acting on behalf of the first person or any of its subsidiaries or subsidiary undertakings; or
  - (c) any shares or capital interests in that other company or undertaking are registered in the name of a person (or its nominee) by way of security or in connection with the granting of security over those shares or capital interests by the first person.

In the case of a limited liability partnership which is (or might constitute) a subsidiary or subsidiary undertaking of a company or another limited liability partnership, sections 1159 and 1162 of the Companies Act 2006 shall be amended so that:

- (i) references in sections 1159(1)(a) and (c) and 1162(2)(a) and (d) to "voting rights" are to the members' rights to vote on all or substantially all matters which are decided by a vote of the members of the limited liability partnership; and
- (ii) references in sections 1159(1)(b) and 1162(2)(b) to the "right to appoint or remove a majority of its board of directors" is to the right: (i) to appoint or remove a majority of the directors (or equivalent) of that limited liability partnership; or (ii) if no such directors (or equivalent) exist by virtue of the constitution of that limited liability partnership, members holding a majority of the voting rights,

and unless the context otherwise requires, the application of the definitions of body corporate, holding company, subsidiary, parent undertaking, subsidiary undertaking and parent company shall apply as to the Company or undertaking as it is at that time.

1.3 The Schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the Schedules.

## **2 COMPLETION**

2.1 Completion shall take place on the Completion Date at the offices of Bevan Brittan LLP, Fleet Place House, 2 Fleet Place, London EC4M 7RF or any other place or time agreed in writing by the parties.

2.2 At Completion:

2.2.1 the parties shall procure that such shareholder resolutions are passed and meetings of the Board are held as may be necessary to:

- (a) adopt the Articles in the agreed form;
- (b) adopt the Business Plan applicable to the First Accounting Reference Period;
- (c) appoint the following individuals (identified by their position within the Council) as directors:
  - (i) Cabinet Member responsible for Housing;
  - (ii) a member nominated from an opposition party identified to be a director;
  - (iii) Executive Director of Growth, Investment and Place; and
- (d) enter into the Resourcing Contract.

## **3 THE BUSINESSES AND BUSINESS PLANNING**

3.1 The business of the Company (**Business**) shall be to acquire land and/ or property for the provision of housing in accordance with any Business Plan then in force or as otherwise determined by the Shareholder from time to time.

3.2 The Business shall be pursued, and the Company shall be governed, in a manner which ensures that the Company:

3.2.1 is and remains controlled (both by way of membership of the Company and decisive influence over both its strategic objectives and significant decisions) by the Council;

3.2.2 carries out the essential part of its activities for the Council and other legal persons controlled by the Council; and

- 3.2.3 carries out those activities in furtherance of the Council's public service tasks.
- 3.3 The Company shall prepare in respect of each Financial Year a Business Plan to include:
  - 3.3.1 an annual operating revenue plan and capital expenditure requirements (including details of funding sources);
  - 3.3.2 a balance sheet forecast;
  - 3.3.3 a minimum five year term financial strategy plan to include (amongst other items) all proposed investments, borrowings and new business of the Company and a list of key risks of its business;
  - 3.3.4 long term projections to cover a period of [•] years from the Completion Date;
  - 3.3.5 identification of any surpluses made in a Financial Year and the making of any distribution of profit subject to the provisions of the Companies Act 2006;
  - 3.3.6 an annual profit and loss account; and
  - 3.3.7 such other content as the Council may require from time to time and notify to the Company in writing.
- 3.4 The Business Plan for a given Financial Year shall be:
  - 3.4.1 prepared by the Board and circulated by the Board to the Council in draft form not less than three months prior to the end of the Financial Year preceding the Financial Year to which the draft Business Plan relates, save that in the event that there is no Cabinet meeting in January of such preceding Financial Year the Business Plan shall be circulated by the Board to the Council in advance of the preceding Cabinet meeting; and
  - 3.4.2 considered and, if thought fit, approved as soon as possible by the Council and in any event within one month of the date of receipt of the draft Business Plan from the Board.
- 3.5 The parties agree to work both together and with any third parties where required in good faith, to procure that each Business Plan is prepared and approved in accordance with clause 3.3 and clause 3.4 and that the business of the Company is carried out, where appropriate, to interface as seamlessly as possible with the operations and services of the Council.

#### **4 COUNCIL'S ROLE AS SHAREHOLDER**

- 4.1 The Council will monitor and control the business and operations of the Company through the:
  - 4.1.1 approval of the Business Plan;
  - 4.1.2 the right to make decisions on the Reserved Matters;
  - 4.1.3 receiving reports in accordance with clause 8;
  - 4.1.4 exercising the other rights provided to the Council under this agreement and through its role as the sole shareholder of the Company.
- 4.2 The Council:
  - 4.2.1 shall, upon request, have unlimited, unrestricted and prompt access to the Company information and documents pursuant to clause 8;

4.2.2 will not usurp the functions of the Board but will monitor the activities of the Company to ensure that they are acceptable and accountable to the Council as owner of the Company; and

4.2.3 may, in addition to those matters requiring Council consent pursuant to clause 5:

(a) make recommendations from time to time to the Board; and/or

(b) give directions by notice in writing from time to time to the Board.

4.3 Where a consent or approval is expressed in this Agreement to be required of the Council, it shall be given in writing in advance of the decision or matter requiring consent or approval and the Council shall use its reasonable endeavours to communicate any such decision, consent or approval (including any decision not to give consent or approval) to the Company within a period of 30 days from receipt of the requests provided that the Council shall not be deemed to have made a decision or given its consent or approval by virtue of the fact that it has not communicated the same within that time limit. Where the Company requires the Council to make any decision or provide any consent or approval, the Company shall provide such material information as the Council may require to enable it to consider the decision, consent or approval in question.

4.4 The Company shall ensure that the Board chair and and/or any employees of the Company as requested by the Council shall attend such meetings or parts of meeting(s) of the Council as the Council may require and shall answer questions put by the Council and provide information regarding the activities of the Company as reasonably requested.

## **5 DECISION-MAKING**

5.1 Subject to the Articles and with the exception of the Reserved Matters, the Board shall have full and complete authority, power and discretion to direct, manage and control the Business and the affairs and assets of the Company, to make all decisions regarding those matters and to perform any and all other acts or activities customary or incidental to the management of the Business.

5.2 The Company agrees that it shall (subject to this clause 5) and in so far as it is legally able to:

5.2.1 carry on and conduct its business and affairs in accordance with:

(a) this Agreement;

(b) the Business Plan then in force;

(c) the Articles;

(d) all laws relating to companies as amended from time to time;

(e) sound governance and good business practice; and

(f) in a proper and efficient manner, for its own benefit; and

5.2.2 use all reasonable endeavours to obtain and, if necessary, maintain in full force and effect all licences (including statutory licences), consents and authorities necessary to own and operate its assets and to carry on its business properly and effectively and in accordance with the Business Plan then in force.

5.3 Except as set out in clause 5.4, insofar as a matter is a Reserved Matter relating to the Company, the Company shall not make any decision in relation to, or undertake, that Reserved Matter except with the prior written consent of the Council and such consent shall be sought with the intention to facilitate decisions being given by the Council as quickly as reasonably practicable.

5.4 Clause 5.3 shall not apply in connection with any decision or action relating to a Reserved Matter:



- 5.4.1 approved in the Business Plan then in force;
- 5.4.2 which has been properly delegated in accordance with this Agreement to the Board or to a particular person or committee; or
- 5.4.3 to the extent the same decision has been taken by the Council in accordance with this Agreement,

and in those circumstances only, any reference in this Agreement to the approval of the Council (or similar wording) shall be amended so that it is a reference to the approval of the Board or the approval of that other person, as the case may be.

- 5.5 Any variation to the list of Reserved Matters must be approved by the Council in writing. For the avoidance of doubt, the Reserved Matters may be varied and/or replaced in part or entirely, by the Council at its absolute discretion. Upon the Council giving notice in writing to the Board that such a variation or replacement has occurred, this Agreement and Schedule 1 shall be deemed modified from the date specified in the varied or replacement schedule.
- 5.6 If this Agreement is validly varied in accordance with its terms, the relevant sections of the Business Plan shall be deemed amended on and with effect from the date of the variation of this Agreement to the extent (but only to the extent) such amendment is necessary to ensure that the Business Plan is fully consistent, and does not conflict, with the terms of this Agreement (as varied).

## **6 BOARD**

- 6.1 Subject to the Articles, there shall be a minimum of three Directors, which:
  - 6.1.1 shall be appointed by the Council in accordance with clause 6.2;
  - 6.1.2 for the avoidance of doubt, shall not be the elected member of the Council who has responsibility for planning or the Council leader; and
  - 6.1.3 shall be comprised of such number of executive or non-executive Directors as the Council shall see fit.
- 6.2 Subject to the Articles, any appointment(s) or termination(s) of a Director made under this clause 6 shall be effected by the Council by giving notice in writing to the Company, on the date on which the notice from the Council is received by the Company, or if a later date is specified in the notice, on that date.
- 6.3 The Company shall review its Board every year to ensure that the composition and membership of the Board is such that it has the ability to sufficiently understand the Company's obligations and make sufficiently robust decisions in relation to those obligations.
- 6.4 On the appointment of a Director to the Board, the Board shall issue to that person a letter of appointment which in the case of Council appointed Directors shall be substantially in the form contained in Schedule 2, as may be amended or updated from time to time by the Council, together with a summary of a Director's duties in relation to the Company.

## **7 POLICIES AND PROCEDURES**

- 7.1 In respect of policies and procedures of the Company (**Policies and Procedures**):
  - 7.1.1 the Company shall adopt necessary Policies and Procedures that enable it to act legally, efficiently and appropriately as a subsidiary of a local authority, and in the absence of any such Policies and Procedures, the Company shall adopt the relevant Policies and Procedures of the Council from time to time;
  - 7.1.2 Policies and Procedures shall be approved by the Board; and

7.1.3 the Policies and Procedures shall be subject to an internal audit and audit by the Council when requested by the Council.

7.2 The employment terms and conditions of the Company shall be approved by the Board. The Board shall not implement such terms without prior written approval from the Council.

7.3 The Board shall adopt and apply an agreed policy as to how conflicts of interest are to be dealt with both in recruitment and in carrying out its Business. This agreed policy shall be approved by the Council for use by the Company and may thereafter be revised as required by the Council. Any such revisions shall be implemented by the Board.

7.4 The Company specifically confirms that no arrangement or contract has already been entered into which would require the approval of the Council under this Agreement if it were entered into after the date on which it becomes a party to this Agreement.

## **8 PROVISION OF INFORMATION**

8.1 The Company shall provide to the Council:

8.1.1 a Biannual Report before 5pm on the 30th day after the end of each six month period of a Financial year, which shall include:

- (a) a balance sheet (based on trial balance without timing adjustments such as accruals and prepayments) for the Company as at close of business on the last day of the month just ended (including comparatives from previous month);
- (b) a profit and loss account (based on trial balance i.e. excluding timing adjustments) for the Company covering the period from the start of the Financial Year to the end of the month just ended;
- (c) for each business division, profit and loss performance against the Business Plan and the Business Plan targets;
- (d) a statement of cash flow for the Company covering the period from the start of the Financial Year to the end of the month just ended;
- (e) forecast profit and loss account for the Company for the period to the end of the current Financial Year on an accruals basis;
- (f) a note of all matters in respect of which legal action (potential or actual) has been commenced by or against the Company and an update on ongoing legal action;
- (g) an assurance statement from the Directors that all core account reconciliations have been carried out, with exceptions listed if necessary; and
- (h) any other information reasonably required by the Shareholder as shareholder from time to time;

8.1.2 the annual accounts of the Company, audited if that is a requirement, as soon as practicable together with a general review of the business in the year to which the annual accounts apply and a copy of the current Business Plan, at the latest by the end of two months after the end of the relevant Financial Year;

8.1.3 minutes of all Board meetings within 20 Business Days after the relevant Board meeting to which they relate;

8.1.4 any other information reasonably required by the Council from time to time, as notified to the Company in writing by the Council.

- 8.2 The Company shall respond promptly to all reasonable requests from the Shareholder for clarification of any parts of the information and shall forthwith upon such request supply any additional information and/or evidence that the Shareholder may require.
- 8.3 The Council and its authorised representatives shall have the right during the standard working hours of the Council (as prescribed by the Council's policies from time to time), on giving to the Company reasonable advance notice, and at the Council's own cost, to inspect the books and records of the Company from time to time and to be supplied with all information in such form as it or they may reasonably require to keep the Council properly informed about the business and affairs of the Company and shall have the right to take copies of any such books and records or parts thereof.
- 8.4 The Company agrees that it shall give notice of any Directors' meeting to the Council at the same time as it gives notice to the Directors.
- 8.5 The Company shall immediately notify the Council of any legal action (potential, threatened or actual) of which it becomes aware which has been commenced by or against the Company.

## **9 AUDIT AND FRAUD**

The Company shall operate in accordance with, and comply with, all of the Council's guidance, policies, codes, standards and practices in respect of audit and fraud in place from time to time.

## **10 PREVENTION OF BRIBERY**

- 10.1 The Company:
- 10.1.1 shall not, and shall procure that any Director, officer, employee, adviser or representative of any of them shall not, in connection with this Agreement commit a Prohibited Act;
  - 10.1.2 warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Council, or that an agreement has been reached to that effect, in connection with the execution of this Agreement, excluding any arrangement of which full details have been disclosed in writing to the Council before execution of this Agreement;
  - 10.1.3 shall, if requested, provide the Council with any reasonable assistance, at the Council's reasonable cost, to enable the Council to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act 2010; and
  - 10.1.4 within five Business Days of the date of this Agreement, and annually thereafter, certify to the Council in writing (such certification to be signed by an officer of such company) compliance with this clause 10 by such company and all persons associated with it or other persons who are supplying goods or services in connection with this Agreement. Such company shall provide such supporting evidence of compliance as the Council may reasonably request.
- 10.2 The Company shall have an anti-bribery policy (which shall be disclosed to the Council) to prevent any of its Directors, officers, employees, advisers or representatives of the company from committing a Prohibited Act and shall enforce it where appropriate.
- 10.3 If any breach of clause 10.1 is suspected or known, the Company must notify the Council immediately.
- 10.4 If the Company notifies the Council that it suspects or knows that there may be a breach of clause 10.1, the Company must respond promptly to the Council's enquiries, co-operate with any investigation, and allow the Council to audit books, records and any other relevant documentation.
- 10.5 The Council may terminate this Agreement or any other agreement with the Company by written notice with immediate effect if the Company or any Director, officer, employee, adviser or representative of

the Company (in all cases whether or not acting with such Company's knowledge) breaches clause 10.1.

10.6 Any notice of termination under clause 10.5 must specify:

10.6.1 the nature of the Prohibited Act;

10.6.2 the identity of the party whom the Council believes has committed the Prohibited Act; and

10.6.3 the date on which this Agreement shall terminate.

10.7 Any dispute relating to:

10.7.1 the interpretation of this clause 10; or

10.7.2 the amount or value of any gift, consideration or commission;

shall be determined by the Council and its decision shall be final and conclusive.

10.8 Any termination under clause 10.5 shall be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Council.

## 11 FINANCE AND RETURNS

11.1 The Company shall not seek third party funding without written approval of the Council.

11.2 The Board may recommend a distribution of the Company's profits, which recommendation may take the form of year end and/ or interim distribution(s). The Board shall not approve any distribution of profits if and to the extent that:

11.2.1 it is contrary to any distribution policy contained in a Business Plan;

11.2.2 there is insufficient cash available;

11.2.3 it would render the Company insolvent;

11.2.4 the Board resolves that the Company would be left with insufficient funds to meet any current or future contemplated obligations or contingencies; or

11.2.5 it would materially adversely affect the ability of the Company to comply with a Business Plan.

11.3 A distribution of profits to the Council shall require the approval of the Council which shall be given within ten Business Days of the Board recommending the same to the Council.

11.4 Upon approval from the Council with ten Business Days the proposed distribution would become an **Approved Distribution** and the date on which that approval is given shall be the **Approval Date**.

11.5 The Company shall credit an Approved Distribution to the Council within ten Business Days of the Approval Date. Payments will be in cash, unless a distribution was expressly approved by the Council in specie.

## 12 CONTRACTS

12.1 The Company shall retain a contracts register into which every contract entered into with an aggregate annual value which is greater than any threshold set in respect of the Council's own contracts from time to time shall be recorded.

### 13 DEALINGS IN SHARES AND NEW SHAREHOLDERS

- 13.1 The Company shall not create any Encumbrance over, transfer, or otherwise dispose of or give any person any rights in or over any share in its capital unless it is:
- 13.1.1 permitted under this Agreement and the Articles; and/or
  - 13.1.2 carried out in accordance with the terms of this Agreement and the Articles.
- 13.2 Admitting a person as a new shareholder or member of the Company is a Reserved Matter and shall also be subject to such person executing a Deed of Adherence. Should the Company wish to admit a new shareholder or new member, the Board must procure that Deed of Adherence is signed and the prior written consent of the Council is obtained, prior to such new shareholder or member being admitted.

### 14 DISPUTE RESOLUTION

- 14.1 In the event of any disagreement or dispute arising between the parties in connection with this Agreement (a **Dispute**), the parties shall use all reasonable endeavours to resolve the matter on an amicable basis. If one party serves formal written notice on one or more of the others that a Dispute has arisen and the parties are unable to resolve the Dispute within a period of 20 Business Days from the service of such notice, then the Dispute shall be referred to an executive director of each of the parties or such other director nominated by each party for the purpose of this clause 14 who shall attempt to resolve the Dispute within the next following 20 Business Days. No recourse to arbitration or litigation by any party against any other under this Agreement shall take place unless and until such procedure has been followed.
- 14.2 If the executive directors or other nominated director of each of the parties (as the case may be) to whom the Dispute was referred in accordance with clause 14.1 are unable to resolve a Dispute within two months of such Dispute being referred to them (**Initial Consideration Date**), then a **Deadlock** shall be deemed to have arisen on the date either two months after the Initial Consideration Date or the date on which the parties agree that Deadlock has arisen, if earlier (the **Deadlock Date**). Any Deadlock shall be dealt with in accordance with clause 14.3.
- 14.3 In the event that a Deadlock has arisen, then any party shall be entitled to serve a notice in writing on the other parties referring the Deadlock to mediation (**Mediation Referral Notice**) in accordance with clause 14.4.
- 14.4 On the service of a Mediation Referral Notice, the parties shall jointly appoint a mediator to mediate the Deadlock, the cost of which shall be borne equally between the parties.
- 14.5 If:
- 14.5.1 the parties do not agree on the appointment of a mediator within 15 Business Days of service of the Mediation Referral Notice (the first day of that 15 Business Day period being the first Business Day after the service of the Mediation Referral Notice); or
  - 14.5.2 the person appointed or to be appointed is unable or unwilling to act,
- the mediator shall be appointed by the Chief Executive for the time being of CEDR or RICS (whichever is the most relevant having regard to the subject matter of the dispute) following a request made by any party to the Chief Executive for that purpose.
- 14.6 The mediation shall be conducted in the English language in accordance with the then current CEDR Model Mediation Procedure or RICS procedure, which is deemed to be incorporated in this Agreement.
- 14.7 If an agreement is reached on the Deadlock during the mediation, that agreement shall be reduced to writing and, once signed by the parties, shall be binding on all parties.

- 14.8 The mediation will take place where the Council deems appropriate.
- 14.9 Unless concluded with a written legally binding agreement, the mediation shall be concluded in confidence and without prejudice to the rights of any of the parties in any further proceedings.
- 14.10 If the Deadlock cannot be resolved following mediation, the parties shall be entitled to commence arbitration or litigation proceedings to settle the Dispute.

## **15 TERMINATION**

15.1 Subject to clause 15.2, this Agreement may be terminated by the Council serving no less than six months' written notice on the Company.

15.2 The Council may terminate this Agreement immediately where required in accordance with any Law.

15.3 Termination of this Agreement shall not affect any accrued rights or liabilities of any person or any liability or obligation arising under or pursuant to this Agreement or any other agreement or arrangement between any of the parties hereto or, except where this Agreement expressly provides to the contrary, affect the provisions of:

15.3.1 clause 1 (*Definitions and Interpretation*);

15.3.2 this clause 15 (*Termination*);

15.3.3 clause 16 (*Confidentiality*);

15.3.4 clause 17 (*Freedom of Information*);

15.3.5 clause 21 (*Assignment and Subcontracting*);

15.3.6 clause 22 (*Waivers and Consents*);

15.3.7 clause 23 (*Rights and Remedies*);

15.3.8 clause 27 (*Notices*);

15.3.9 clause 28 (*Entire Agreement*);

15.3.10 clause 29 (*Variation*);

15.3.11 clause 30 (*Conflict with the Articles*);

15.3.12 clause 31 (*Costs and Expenses*);

15.3.13 clause 32 (*Set-off*);

15.3.14 clause 33 (*No Partnership or Agency*); and

15.3.15 clause 34 (*Governing Law and Jurisdiction*);

which shall continue in full force and effect after termination.

15.4 Where the Company is to be wound up and its assets distributed, the parties shall endeavour to ensure that:

15.4.1 all existing contracts of the Company are performed to the extent that there are sufficient resources;

15.4.2 the Company shall not enter into any new contractual obligations;

- 15.4.3 the Company is dissolved and its assets are distributed as soon as practical in accordance with clauses 15.4.4 or 15.4.5 as applicable;
- 15.4.4 any other proprietary information or Intellectual Property Rights belonging to or originating from a party shall be returned to it by the other party or the Company and all such proprietary information or Intellectual Property Rights shall be erased from the computer systems (to the extent possible) of the person who is/are returning it; and
- 15.4.5 the assets of the Company remaining after payment of all debts and liabilities of such company and of all costs, charges and expenses of winding up the same, shall be distributed amongst the current shareholders or members of the Company.

## **16 CONFIDENTIALITY**

- 16.1 Each party undertakes that they shall not at any time hereafter use or disclose (in each case except for the purpose of exercising its rights and fulfilling its obligations under this Agreement) to any person any Confidential Information of any other party which may have or may in future come to its knowledge or possession, provided that any party may share such information:
  - 16.1.1 with its professional advisers or to those of its directors, members, officers, employees, advisers and representatives who are directly concerned with the relevant party or its business;
  - 16.1.2 as may be required by any applicable law or by any supervisory or regulatory body with whose rules it is necessary for that party to comply;
  - 16.1.3 in connection with any proceedings arising out of or in connection with this Agreement; or
  - 16.1.4 once it enters the public domain otherwise than by reason of a breach of this clause 16.1.
- 16.2 All parties shall use its reasonable endeavours to prevent the use or disclosure of any such Confidential Information otherwise than in accordance with this clause 16.
- 16.3 Notwithstanding the restrictions in clauses 16, any party may use such Confidential Information for the purpose of the promotion of the Business.
- 16.4 Each Director shall be entitled to disclose to the Council, all information to which the Council is entitled pursuant to clause 8 from time to time.
- 16.5 The parties shall use their reasonable endeavours to procure that any of their officers, employees, advisers and representatives coming into receipt of such Confidential Information shall be informed upon receipt that such information is confidential and (so far as such party is able to procure the same) shall comply with the provisions of this clause 16.5 in respect of such Confidential Information as if they were parties.
- 16.6 Where any party is required by any law, regulation or governmental or regulatory authority to retain any information (or copies of such information) of any other party, it shall notify the other party in writing of such retention giving details of the information that it is required to retain.

## **17 FREEDOM OF INFORMATION**

- 17.1 The parties acknowledge that the parties are subject to the requirements of the FOIA and the EIR and the parties shall, where reasonable, assist and co-operate (at their own expense) with the other parties for information to enable the other parties (where required) to comply with their information disclosure obligations.
- 17.2 Subject to clause 17.1, where the Company receives a request for information under either the FOIA or the EIR which it is holding on behalf of any other party, it shall:

- 17.2.1 transfer the request for information to the relevant party (or such other party as it is otherwise agreed between the parties is the best person to deal with such request) as soon as practicable after receipt and in any event within two Business Days of receiving a request for information;
  - 17.2.2 provide the relevant or other party with a copy of all information in its possession or power in the form that the relevant or other party requires within ten Business Days (or such longer period as the relevant or other party may specify) of the relevant or other party requesting that information; and
  - 17.2.3 provide all necessary assistance as reasonably requested by the relevant or other party to enable the relevant or other party to respond to a request for information within the time for compliance set out in the FOIA or the EIR.
- 17.3 Where the Council receives a request under FOIA or EIR which relates to the operations of the Company, it shall notify the Company and afford them an opportunity to make any comments or representations in respect of the disclosure of the information sought. The Company shall respond within five Business Days of receipt of this notification. The Council shall take into account any such comments or representations in so doing and shall not respond to the request until the five Business Days response period referred to above has passed.
- 17.4 Each party shall be responsible for determining in its absolute discretion whether any information requested under the FOIA and EIR:
- 17.4.1 is exempt from disclosure; or
  - 17.4.2 is to be disclosed in response to a request for information.
- 17.5 Each party acknowledges that the other party may be obliged under the FOIA and EIR to disclose information:
- 17.5.1 without consulting with the other parties where it has not been practicable to achieve such consultation; or
  - 17.5.2 following consultation with the other parties and having taken their views into account.

**18 DATA PROTECTION**

The parties shall comply with Law relating to data protection at all times when carrying out their respective obligations pursuant to this Agreement and any other agreement to which it is a party.

**19 UNLAWFUL FETTER ON THE COMPANY'S POWERS**

Notwithstanding any other provision contained in this Agreement, the Company shall not be bound by any provision of this Agreement to the extent that it would constitute an unlawful fetter on any of its statutory powers, but any such provision shall remain valid and binding as regards all other parties to which it is expressed to apply.

**20 FURTHER ASSURANCE**

Each party shall at its own cost and expense, on being required to do so by another party now or at any time in the future, do or procure the doing of all such acts and things and/or execute or procure the execution of all such deeds and documents in a form satisfactory to such other party which such other party may reasonably consider necessary for giving effect to this Agreement.

**21 ASSIGNMENT AND SUB-CONTRACTING**

- 21.1 This Agreement is personal to the parties and no party shall assign, transfer, subcontract or deal in any other manner with any of its rights and obligations under this Agreement without the prior written



consent of the Council. Each party hereby undertakes and represents to the other parties that it is entering into this Agreement only for its own benefit.

21.2 This Agreement shall be binding on and shall endure for the benefit of each party's successors.

## **22 WAIVERS AND CONSENTS**

22.1 A waiver of any right or remedy under this Agreement or by Law, or any consent given under this Agreement, is only effective if given in writing by the waiving or consenting party and shall not be deemed a waiver of any other breach or default. It only applies in the circumstances for which it is given and shall not prevent the party giving it from subsequently relying on the relevant provision.

22.2 A failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall not constitute a waiver of that or any other right or remedy, prevent or restrict any further exercise of that or any other right or remedy or constitute an election to affirm this Agreement. No single or partial exercise of any right or remedy provided under this Agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy. No election to affirm this Agreement by the Council shall be effective unless it is in writing.

## **23 RIGHTS AND REMEDIES**

The rights and remedies provided under this Agreement are cumulative and are in addition to, and not exclusive of, any rights and remedies provided by law.

## **24 SEVERANCE**

If any provision (or part of a provision) of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision (or part of a provision) shall be deemed deleted. Any modification to or deletion of a provision (or part of a provision) under this clause shall not affect the legality, validity and enforceability of the rest of this Agreement.

## **25 COUNTERPARTS**

This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute one Agreement.

## **26 THIRD PARTY RIGHTS**

Except as expressly provided elsewhere in this Agreement, a person who is not a party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce, or enjoy the benefit of, any term of this Agreement. This does not affect any right or remedy of a third party which exists, or is available, apart from that Act.

## **27 NOTICES**

### **27.1 Delivery**

Any notice or other communication required to be given to a party under or in connection with this Agreement shall be:

27.1.1 in writing;

27.1.2 delivered by hand, by pre-paid first-class post or other next working day delivery service or sent by electronic mail; and

27.1.3 sent to:

(a) the Council at:

Address: County Hall, Bythesea Road, Trowbridge, Wiltshire, BA14 8JN  
Email: simon.hendey@wiltshire.gov.uk  
Attention: Simon Hendey, Director of Housing & Commercial

(b) the Company

Address: County Hall, Bythesea Road, Trowbridge, Wiltshire, BA14 8JN  
Email: [•]  
Attention: Company Secretary

or to any other address or email address as is notified in writing by one party to the other from time to time.

## 27.2 Receipt

Any notice or other communication shall be deemed to have been received:

- 27.2.1 if delivered by hand, at the time it is left at the relevant address;
- 27.2.2 if posted by pre-paid first-class post or other next working day delivery service, on the second Business Day after posting; and
- 27.2.3 if sent by electronic mail, upon receipt by the party to which it is given.

A notice or other communication given as described in clause 27.2.1 or clause 27.2.3 on a day that is not a Business Day, or after normal business hours, in the place it is received, shall be deemed to have been received on the next Business Day.

## 27.3 Receipt by Council

Any notice or other communication given to the Council shall be deemed to have been received only on actual receipt.

## 28 ENTIRE AGREEMENT

- 28.1 This Agreement and the documents referred to in it (including the Articles and any Deed of Adherence) constitute the entire agreement between the parties relating to its/their subject matter and supersede all previous agreements between the parties relating to such matters.
- 28.2 Each of the parties acknowledges that in agreeing to enter into this Agreement it has not relied on any representation, warranty, collateral contract or other assurance (except those set out in this Agreement and/or the documents referred to in it) made by or on behalf of any other party before the signature of this Agreement. Each of the parties waives:
  - 28.2.1 all rights and remedies which, but for this clause 28.2, might otherwise be available to it in respect of any such representation, warranty, collateral contract or other assurance; and
  - 28.2.2 all rights and remedies, other than remedies for breach of contract available in respect of a breach of this Agreement and/or the documents referred to in it, which, but for this clause 28.2, might otherwise be available to it in respect of the falsity of any representation or warranty set out in this Agreement and/or the documents referred to in it,

provided that nothing in this clause 28.2 shall limit or exclude any liability for fraud or dishonesty on the part of any party.

**29 VARIATION**

No variation to the terms of this Agreement shall be effective unless made in writing and signed by each of the parties and any person who agrees to be bound by this Agreement.

**30 CONFLICT WITH THE ARTICLES**

If any provision of this Agreement is inconsistent with a provision of the Articles, then the terms of this Agreement shall prevail and the member(s) of such Company agree to procure the making of any amendment to the Company's Articles as soon as reasonably practicable which is required in order to make the Articles consistent with the provisions of this Agreement and the Council hereby consents to any such changes to the Company's Articles.

**31 COSTS AND EXPENSES**

All costs and expenses in relation to the negotiation, preparation, execution and carrying into effect of this Agreement and all other documents referred to in it shall be borne by the Council, save for any private advice sought by any party which shall be for the cost of that party.

**32 SET-OFF**

All amounts falling due under this Agreement shall be paid in full without any set-off or counterclaim.

**33 NO PARTNERSHIP OR AGENCY**

Nothing in this Agreement is intended to or shall operate to create a partnership between the parties or any of them, or to authorise any party to act as agent for any other party, and no party shall have authority to act in the name or on behalf of or otherwise to bind any other party in any way.

**34 GOVERNING LAW AND JURISDICTION**

34.1 This Agreement is governed by and shall be construed in accordance with the laws of England and each party submits to the exclusive jurisdiction of the courts of England for all purposes relating to this Agreement.

34.2 Each party irrevocably consents to any process in any legal action or proceedings arising out of or in connection with this Agreement being served on it in accordance with the provisions of clause 14. Nothing contained in this Agreement shall affect the right to serve process in any other manner permitted by law.

This Agreement has been executed as a deed and has been entered into on the date stated at the beginning of it.

**AS WITNESS** the hands of the parties or their duly authorised representatives the day and year first before written

Executed as a deed by affixing ) Seal  
the common seal of )  
**WILTSHIRE COUNCIL** )  
)  
)  
in the presence of )  
)  
..... )  
Authorised signatory )

Executed as a deed by )  
**STONE CIRCLE HOUSING COMPANY** )  
**LIMITED** )  
acting by ....., )  
a director, in the presence of ) **Director** .....

Signature: .....

Name of witness: .....

Address: .....

.....

.....

Occupation of witness: .....

**SCHEDULE 1 – RESERVED MATTERS**

<b>Number</b>	<b>Reserved Matter</b>
	<b>Constitution of the company</b>
1	Varying in any respect the articles or the rights attaching to any of the shares or memberships (as applicable) in the company.
	<b>Officers and Shareholders of the company</b>
2	The appointment and the appointment terms (including any remuneration terms) of any Directors.
3	The appointment and the appointment terms (including any remuneration terms) of any employees.
4	The removal of any Directors (including any terms on which such Directors are removed from their office as Directors).
5	The admission of further shareholders or members to the Company or agreeing any rights or restrictions attaching to any shares or memberships allocated to such new shareholders or members as applicable).
	<b>Future direction and development of the company</b>
6	Forming any subsidiary or acquiring shares in any other company or participating in any partnership or incorporated joint venture vehicle.
7	Amalgamating or merging with any other company or business undertaking.
8	Selling or disposing of any part of the business of the Company.
9	Agreeing the Business Plan and any in-year material changes.
10	Undertaking any business or action which is inconsistent with the Business Plan then in force or omitting to undertake any action which is required by that Business Plan except with the prior written consent of the Council
11	Passing any resolution for its winding up or presenting any petition for its administration (unless it has become insolvent).
12	Agreeing or approving any other material services the total value of which exceeds £10,000 per annum to be provided by the Company to a third party not approved under the Business Plan.
13	Appointing any agent (not being a subcontractor) to conduct the whole or any part of the business of the Company, other than the appointment of an agent to conduct an area of the business of the Company
14	Applying for the listing or trading of any shares in its issued capital or debt securities on any stock exchange or market (where applicable).
	<b>Management of the business of the company</b>

15	Changing the Company's registered office.
16	Changing the Company's name.
17	Creating or agreeing to create a charge, security or encumbrance over the Company's assets, shares or income
18	Approving any matter that will have an adverse effect on the reputation of the Council.
19	Changing the nature of the business or commencing any new business which is not ancillary or incidental to the business of the Company.
20	Agreeing to enter into or entering into any acquisition or disposal of any material assets by the Company the total value of which exceeds £30,000 per annum not approved in the Business Plan.
21	Giving notice of termination of any arrangements, contracts or transactions the total value of which exceeds £50,000 per annum or materially varying any such arrangements, contracts or transactions and such termination or variation is likely to have an adverse impact on the financial status of a Company.
22	Granting rights (by licence or otherwise) in or over any intellectual property owned or used by the Company.
23	Appointing and changing the Company's auditors.
24	Changing the Financial Year of the Company.
25	Agreeing to make or making any loan (otherwise than by way of a deposit with a bank or other institution, the normal business of which includes the acceptance of deposits or in the ordinary course of business) or granting any credit (other than in the normal course of trading or the granting of trade credit to a company which has been approved under the Business Plan) or giving any guarantee or indemnity (other than in the normal course of trading).
26	Increasing or reducing the amount of its issued share capital, granting any option over or in its share capital, redeeming or purchasing any of its own shares or otherwise altering, or effecting any reorganisation of, its share capital (where applicable).
27	Declaring or paying any end of year dividend of the Company.

**SCHEDULE 2– LETTER OF APPOINTMENT OF A DIRECTOR**

[on the headed notepaper of the Company]

To: [Name and address of Director]

[Date]

Dear ●

● Limited (the **Company**)

This letter contains the terms which we have discussed and agreed for your appointment as a director of the Company, as [a][the] Director of Wiltshire Council (the **Council**). Your appointment is made pursuant to and is subject to the terms and conditions set in the Shareholder Agreement dated ● 2019 (**Agreement**).

You shall not be entitled to any fees or remuneration save as paid to you by your appointer or as otherwise expressly agreed in writing.

You shall be expected to attend Board meetings and general meetings (where requested) of the Company. You shall receive details of all such meetings in advance.

You shall not, whether during the appointment or after its termination, except in the proper course of your duties or as required by law, use or divulge, and shall use all reasonable endeavours to prevent the use or disclosure of, any trade or business secrets or any information concerning the business or finances of the Company or of any dealings, transactions, or affairs of the Company or any client, customer or supplier of the Company which comes to your knowledge during the course of this appointment and shall comply with the provisions of clause 16 (*Confidentiality*) of the Agreement as if it applied to you. You shall, however, be entitled to disclose information to the shareholder appointing you as permitted under the Agreement.

The appointment shall automatically cease in relation to the Company in the event that: (a) you resign as a director; or (b) upon the delivery of a notice from the Council in accordance with the Company's Articles of Association removing you from office in relation to the Company. Without limitation to (a) and (b) above, in signing this letter, you acknowledge that your office is subject to the terms of the Agreement and the Company's Articles of Association and may be determined as permitted under the terms of the Agreement and the Articles and that upon such termination you shall vacate office in relation to the Company forthwith without raising any claim whatsoever against the Company.

On termination of your appointment, you agree that you shall promptly return to the Company all papers and property of the Company which are in your possession or under your control.

Please indicate your acceptance and acknowledgement of these terms by signing the attached copy and returning it to me. I look forward to seeing you at our next Board meeting.

Yours sincerely

.....  
Signatory, duly authorised  
for and on behalf of the Company

I agree to and acknowledge the terms and conditions set out above relating to my appointment as director of the Company.

Signed .....

Dated .....

**SCHEDULE 3 – DEED OF ADHERENCE**

**THIS DEED** is made on

BY ● (company number ●) whose registered office is at ● (the **Covenantor**) in favour of the persons whose names are set out in the schedule to this deed and is supplemental to the Shareholder Agreement dated ● (the **Agreement**)

**THIS DEED WITNESSES** as follows:

- 1 The Covenantor confirms that it has been given and read a copy of the Agreement and covenants with each person named in the schedule to this deed to perform and be bound by all the terms of the Agreement and to perform the obligations contained in the Agreement which are expressed to be performed by the Company (as defined in the Agreement), as if the Covenantor were a party to the Agreement.
- 2 This deed is governed by the laws of England and Wales.

**IN WITNESS WHEREOF** this deed has been executed by the Covenantor and is intended to be and is hereby delivered on the date first above written.

**[Insert correct execution block]**

Executed as a deed by )  
● )  
acting by a director and a director/ ) .....  
Secretary ) **Director**  
 )  
 )  
 ) .....  
 ) **Director/Secretary**

SCHEDULE – List of parties to Shareholder Agreement including those who have executed earlier deeds of adherence



COMPANY NUMBER [●]

THE COMPANIES ACT 2006  
PRIVATE COMPANY LIMITED BY SHARES

---

ARTICLES OF ASSOCIATION  
OF  
STONE CIRCLE DEVELOPMENT COMPANY LIMITED

---

## Contents

Item	Page
STONE CIRCLE DEVELOPMENT COMPANY LIMITED .....	1
PART 1 – INTERPRETATION .....	1
1 DEFINED TERMS .....	1
PART 2 - DIRECTORS.....	4
DIRECTORS' POWERS AND RESPONSIBILITIES .....	4
2 DIRECTORS' GENERAL AUTHORITY .....	4
3 SHAREHOLDERS' RESERVE POWER .....	4
4 DIRECTORS MAY DELEGATE.....	4
5 COMMITTEES.....	4
DECISION-MAKING BY DIRECTORS .....	4
6 DIRECTORS TO TAKE DECISIONS COLLECTIVELY .....	4
7 UNANIMOUS DECISIONS .....	5
8 CALLING A DIRECTORS' MEETING .....	5
9 PARTICIPATION IN DIRECTORS' MEETINGS.....	5
10 QUORUM FOR DIRECTORS' MEETINGS .....	6
11 CHAIRING OF DIRECTORS' MEETINGS.....	6
12 CONFLICTS OF INTEREST – TRANSACTIONS OR ARRANGEMENTS WITH THE COMPANY .....	6
13 CONFLICTS OF INTEREST REQUIRING BOARD AUTHORISATION .....	7
14 EFFECT OF DIRECTORS' INTERESTS ON QUORUM AND VOTING .....	8
15 RECORDS OF DECISIONS TO BE KEPT .....	8
16 DIRECTORS' DISCRETION TO MAKE FURTHER RULES.....	8
APPOINTMENT OF DIRECTORS .....	8
17 METHODS OF APPOINTING DIRECTORS.....	8
18 TERMINATION OF A DIRECTOR'S APPOINTMENT .....	9
19 DIRECTORS' REMUNERATION AND EXPENSES.....	9
20 ALTERNATE DIRECTORS .....	9
PART 3 - SHARES AND DISTRIBUTIONS.....	11
SHARES.....	11
21 APPOINTMENT OF SHAREHOLDERS .....	11
22 LIABILITY OF SHAREHOLDERS .....	11
23 ALL SHARES TO BE FULLY PAID UP .....	11
24 POWERS TO ISSUE DIFFERENT CLASSES OF SHARE.....	11
25 COMPANY NOT BOUND BY LESS THAN ABSOLUTE INTERESTS .....	11
26 SHARE CERTIFICATES.....	11
27 REPLACEMENT SHARE CERTIFICATES .....	12
28 SHARE TRANSFERS.....	12
29 TRANSMISSION OF SHARES.....	12
30 EXERCISE OF TRANSMITEES' RIGHTS.....	13
31 TRANSMITEES BOUND BY PRIOR NOTICES.....	13

DIVIDENDS AND OTHER DISTRIBUTIONS.....	13
32 PROCEDURE FOR DECLARING DIVIDENDS.....	13
33 PAYMENT OF DIVIDENDS AND OTHER DISTRIBUTIONS.....	13
34 NO INTEREST ON DISTRIBUTIONS.....	14
35 UNCLAIMED DISTRIBUTIONS.....	14
36 NON-CASH DISTRIBUTIONS.....	14
37 WAIVER OF DISTRIBUTIONS.....	15
CAPITALISATION OF PROFITS.....	15
38 AUTHORITY TO CAPITALISE AND APPROPRIATION OF CAPITALISED SUMS.....	15
PART 4 - DECISION-MAKING BY SHAREHOLDERS.....	16
39 WRITTEN RESOLUTIONS.....	16
ORGANISATION OF GENERAL MEETINGS.....	16
40 GENERAL MEETINGS.....	16
41 ATTENDANCE AND SPEAKING AT GENERAL MEETINGS.....	16
42 QUORUM FOR GENERAL MEETINGS.....	17
43 CHAIRING GENERAL MEETINGS.....	17
44 ATTENDANCE AND SPEAKING BY DIRECTORS AND NON-SHAREHOLDERS.....	17
45 ADJOURNMENT.....	17
VOTING AT GENERAL MEETINGS.....	18
46 VOTING: GENERAL.....	18
47 ERRORS AND DISPUTES.....	18
48 POLL VOTES.....	18
49 CONTENT OF PROXY NOTICES.....	19
50 DELIVERY OF PROXY NOTICES.....	19
51 AMENDMENTS TO RESOLUTIONS.....	19
PART 5 - ADMINISTRATIVE ARRANGEMENTS.....	20
52 MEANS OF COMMUNICATION TO BE USED.....	20
53 COMPANY SEALS.....	20
54 RIGHT TO INSPECT ACCOUNTS AND OTHER RECORDS.....	20
55 APPOINTMENT OF COMPANY SECRETARY.....	20
56 PROVISION FOR EMPLOYEES ON CESSATION OF BUSINESS.....	21
DIRECTORS' INDEMNITY AND INSURANCE.....	21
57 INDEMNITY.....	21
58 INSURANCE.....	21

**THE COMPANIES ACT 2006**  
**PRIVATE COMPANY LIMITED BY SHARES**  
**ARTICLES OF ASSOCIATION**  
**OF**  
**STONE CIRCLE DEVELOPMENT COMPANY LIMITED**

**PART 1 – INTERPRETATION**

**1 DEFINED TERMS**

1.1 In the Articles, unless the context requires otherwise:

**Appointer** has the meaning given in Article 20.1

**Articles** means the Company's articles of association as amended from time to time

**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

**capitalised sum** has the meaning given to it in Article 38.1.2

**Chair** has the meaning given in Article 11

**Chair of the Meeting** has the meaning given in Article 43

**Companies Acts** means the Companies Acts (as defined in section 2 of the Companies Act 2006), in so far as they apply to the Company

**Company** means the company governed by the Articles

**Conflict** has the meaning given in Article 13

**Council** means Horsham District Council, of Parkside, Chart Way, Horsham, West Sussex, RH12 1RL and any statutory successor

**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 33.2

**Document** includes, unless otherwise specified, any Document sent or supplied in Electronic Form

**Electronic Form** has the meaning given in section 1168 of the Companies Act 2006

**Eligible Director** means a Director who would have been entitled to vote on the matter had it been proposed as a resolution at a meeting of the Directors

**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

**Group Company** means, in relation to a company:

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

**Hard Copy Form** has the meaning given in section 1168 of the Companies Act 2006

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

**Instrument** means a Document in Hard Copy Form

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

**paid** means paid or credited as paid

**participate**, in relation to a Directors' meeting, has the meaning given in Article 9

**Permitted Situation** has the meaning given in Article 13.5

**persons entitled** has the meaning given in Article 38.1.2 **Proxy Notice** has the meaning given in Article 49

**Relevant Director** has the meaning given in Article 13.1

**Shareholder** means a person who is the Holder of a Share.

**Shares** means shares in the Company

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

**Transmittee** means a person entitled to a Share by reason of the death or bankruptcy of a Shareholder or otherwise by operation of law

**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

- 1.2 Unless the context otherwise requires, other words or expressions contained in the Articles bear the same meaning as in the Companies Act 2006 as in force on the date when the Articles become binding on the Company.
- 1.3 A reference to a **person** shall include a reference to an individual, firm, company, corporation, partnership, unincorporated body of persons, government, state or agency of a state or any association, trust, joint venture or consortium (whether or not having separate legal personality) and that person's personal representatives, successors, permitted assigns and permitted transferees.
- 1.4 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.5 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.6 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.7 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.

- 1.8 A reference to a **regulation** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, inter-governmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation.
- 1.9 A reference to **writing** or **written** includes email but not fax.
- 1.10 A reference to any agreement or document (or any provision of it) referred to in the Articles is a reference to that agreement or document (or the relevant provision of it) as varied, amended or supplemented (in each case, other than in breach of the provisions of that agreement or document) from time to time.
- 1.11 Any words following the terms **including**, **include**, **in particular**, **for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.12 A reference to an **amendment** includes a novation, re-enactment, supplement or variation (and amended shall be construed accordingly).
- 1.13 A reference to **determines** or **determined** means, unless the contrary is indicated, a determination made at the absolute discretion of the person making it.
- 1.14 references to a **month** shall be construed as a reference to a period starting on one day in a calendar month and ending on the day immediately preceding the numerically corresponding day in the next calendar month or, if there is no numerically corresponding day in the next calendar month, the last day in the next calendar month; and
- 1.15 The expressions **body corporate**, **holding company**, **subsidiary**, **parent undertaking**, **subsidiary undertaking** and **parent company** shall have the respective meanings given in the Companies Act 2006, and, for the purposes of sections 1159(1) and 1162(2)(b) and (d) of that Act, a company or undertaking (the **first person**) shall be treated as a member of another company or undertaking if:
- 1.15.1 any of the first person's subsidiaries or subsidiary undertakings is a member of that other company or undertaking; or
- 1.15.2 any shares or capital interests in that other company or undertaking are held by a person acting on behalf of the first person or any of its subsidiaries or subsidiary undertakings; or
- 1.15.3 any shares or capital interests in that other company or undertaking are registered in the name of a person (or its nominee) by way of security or in connection with the granting of security over those shares or capital interests by the first person.

In the case of a limited liability partnership which is (or might constitute) a subsidiary or subsidiary undertaking of a company or another limited liability partnership, sections 1159 and 1162 of the Companies Act 2006 shall be amended so that:

- (a) references in sections 1159(1)(a) and (c) and 1162(2)(a) and (d) to "voting rights" are to the members' rights to vote on all or substantially all matters which are decided by a vote of the members of the limited liability partnership; and
- (b) references in sections 1159(1)(b) and 1162(2)(b) to the "right to appoint or remove a majority of its board of directors" is to the right: (i) to appoint or remove a majority of the directors (or equivalent) of that limited liability partnership; or (ii) if no such directors (or equivalent) exist by virtue of the constitution of that limited liability partnership, members holding a majority of the voting rights,

and unless the context otherwise requires, the application of the definitions of body corporate, holding company, subsidiary, parent undertaking, subsidiary undertaking and parent company shall apply as to the relevant company or undertaking as it is at that time.

## **PART 2 - DIRECTORS**

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

#### **2 DIRECTORS' GENERAL AUTHORITY**

Subject to the Articles, the Directors are responsible for the management of the Company's business, for which purpose they may exercise all the powers of the Company.

#### **3 SHAREHOLDERS' RESERVE POWER**

3.1 The Shareholders may, by special resolution, direct the Directors to take, or refrain from taking, specified action.

3.2 No such special resolution invalidates anything which the Directors have done before the passing of the resolution.

#### **4 DIRECTORS MAY DELEGATE**

4.1 Subject to the Articles, the Directors may delegate any of the powers which are conferred on them under the Articles as follows:

4.1.1 to such person or committee;

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

4.1.3 to such an extent;

4.1.4 in relation to such matters or territories; and

4.1.5 on such terms and conditions,

as they think fit.

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

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

#### **5 COMMITTEES**

5.1 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.

5.2 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.

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

#### **6 DIRECTORS TO TAKE DECISIONS COLLECTIVELY**

6.1 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 7.

6.2 If only one Director is eligible to vote on any authorisation required under Article 13, the general rule does not apply and the Eligible Director may take decisions in relation to the relevant matter without regard to any of the provisions in the Articles relating to Directors' decision-making.

- 6.3 Each Director shall be entitled to cast one vote on any resolution put to the Directors.
- 6.4 If the numbers of votes for and against a proposal are equal, the Chair shall not have a casting vote.

## **7 UNANIMOUS DECISIONS**

- 7.1 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.
- 7.2 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.
- 7.3 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.

## **8 CALLING A DIRECTORS' MEETING**

- 8.1 Any Director may call a Directors' meeting by giving notice of the meeting to the Directors and the Council in accordance with Article 8.2 or by authorising the company secretary (if any) to give such notice.
- 8.2 A meeting of the Directors must be called by at least 7 days' notice unless either:
- 8.2.1 the Directors and the Council unanimously agree otherwise; or
  - 8.2.2 urgent circumstances require shorter notice.
- 8.3 Notice of any Directors' meeting must include:
- 8.3.1 its proposed date and time;
  - 8.3.2 where it is to take place;
  - 8.3.3 if it is anticipated that persons 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;
  - 8.3.4 an agenda specifying in reasonable detail the matters to be raised at the meeting or the committee meeting; and
  - 8.3.5 copies of any papers to be discussed at the meeting or the committee meeting.
- 8.4 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 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.

## **9 PARTICIPATION IN DIRECTORS' MEETINGS**

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



9.3 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.

9.4 The Council shall have the right to attend and receive notice of (but not vote at) any Board meetings and receive papers in relation to such meetings at the same time as those papers are given to the Directors.

## **10 QUORUM FOR DIRECTORS' MEETINGS**

10.1 At a Directors' meeting, unless a quorum is participating, no proposal is to be voted on, except a proposal to call another meeting.

10.2 Subject to Article 6.2 the quorum for a Directors' meeting shall be three Directors.

10.3 If the total number of Directors for the time being is less than the quorum required, the Directors must not take any decision other than a decision:

10.3.1 to appoint further Directors; or

10.3.2 to call a general meeting so as to enable the Shareholders to appoint further Directors.

10.4 If a quorum is not present with half an hour from the time appointed for the meeting, or during a meeting a quorum ceases to be present, the meeting shall be adjourned to such time and place as the Directors may determine in accordance with the Articles.

## **11 CHAIRING OF DIRECTORS' MEETINGS**

11.1 The person appointed pursuant to Article 11.2 or Article 11.3 (as the case may be) shall be known as the Chair.

11.2 With the prior written consent of the Council, the Directors may:

11.2.1 appoint a person Chair of the Directors;

11.2.2 determine the period for which he is to hold office; and

11.2.3 at any time remove him from office.

11.3 If at the date and time of a meeting of the Directors no person has been appointed as Chair pursuant to Article 11.2, then the participating Directors at that meeting may appoint a Director present to chair the meeting. The participating Directors may also terminate the appointment of a person as Chair made under this Article 11.3 at any time during the meeting at which he is appointed.

## **12 CONFLICTS OF INTEREST – TRANSACTIONS OR ARRANGEMENTS WITH THE COMPANY**

12.1 The relevant provisions of the Companies Act 2006 (including, without limitation, sections 177 and 182) shall apply in relation to declarations of interest in proposed and existing transactions or arrangements with the Company.

12.2 Provided that he has disclosed to the Directors the nature and extent of any interest of his in accordance with and to the extent required by the Companies Act 2006, a Director notwithstanding his office:

12.2.1 may be a party to, or otherwise interested in, any contract with the Company or a Group Company of the Company or in which either or both of them is/are otherwise interested;

12.2.2 may be an elected member, director or other officer of, employed by, a party to any contract with, or otherwise interested in, the Council, any Group Company of the Company or in any

body corporate promoted by the Company, the Council, or a Group Company of the Company, or in which any of them is/are interested; and

12.2.3 may act by himself or his firm in a professional capacity for the Company (otherwise than as auditor).

12.3 For the purposes of this Article 12.3:

12.3.1 a Director shall be deemed to have disclosed the nature and extent of an interest which consists of him being an elected member, director, officer or employee of the Council or any Group Company of the Company; and

12.3.2 a general notice given to the Directors that a Director is to be regarded as having an interest of the nature and extent specified in the notice in any contract in which a specified person or class of persons is interested shall be deemed to be a disclosure that the Director has an interest in any such contract of the nature and extent so specified.

12.4 Where a Director is an elected member, director, officer, or employee of the Council or a Group Company of the Company, he:

12.4.1 may in exercising his independent judgment take into account the success of the Council or Group Company as well as the success of the Company; and

12.4.2 shall in the exercise of his duties have a duty of confidentiality to the Council or Group Company in relation to confidential information of that Shareholder or Group Company, but he shall not be restricted by any duty of confidentiality to the Company from providing information to the Council or Group Company except as may be imposed under Article 13.5.

### **13 CONFLICTS OF INTEREST REQUIRING BOARD AUTHORISATION**

13.1 The Directors may authorise any matter which would otherwise involve a Director (a **Relevant Director**) breaching his duty under section 175 of the Companies Act 2006 to avoid a situation in which he has, or can have, a direct or indirect interest that conflicts, or possibly may conflict, with the interests of the Company (a **Conflict**).

13.2 Any Director (including the Relevant Director) may propose that the Relevant Director be authorised in relation to any matter the subject of a Conflict. Such proposal and any authority given by the Directors shall be effected in the same way that any other matter may be proposed to and decided upon by the Directors under the Articles save that the Relevant Director (and any Director) shall not count towards the quorum nor vote on any resolution giving such authority.

13.3 Where the Directors give authority in relation to a Conflict:

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

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

13.4 A Conflict in relation to a Director arising solely as a result of him being an elected member, director, officer or employee of the Council or any Group Company of the Company shall be deemed to have been authorised for the purposes of this Article 13 and section 175 of the Companies Act 2006.

13.5 Where Article 13.4 above applies or the Directors otherwise gives authority in relation to a Conflict, or where any of the situations referred to in Article 12 (a **Permitted Situation**) applies:

- 13.5.1 the Directors may (whether at the relevant time or subsequently) (i) require that the Relevant Director is excluded from the receipt of information, the participation in discussion and/or the making of decisions (whether at Directors meetings or otherwise) related to the Conflict or Permitted Situation; and (ii) impose upon the Relevant Director such other terms for the purpose of dealing with the Conflict as they may determine;
- 13.5.2 the Relevant Director will be obliged to conduct himself in accordance with any terms imposed by the Directors in relation to the Conflict or Permitted Situation; and
- 13.5.3 the Directors may provide that where the Relevant Director obtains (otherwise than through his position as a Director of the Company) information that is confidential to a third party, the Director will not be obliged to disclose that information to the Company, or to use or apply the information in relation to the Company's affairs, where to do so would amount to a breach of that confidence.
- 13.6 A Director shall not, by reason of his office or of the fiduciary relationship thereby established, be liable to account to the Company or the Shareholders for any remuneration, profit or other benefit realised by reason of his having any type of interest in a Conflict authorised under this Article or in any Permitted Situation and no contract shall be liable to be avoided on the grounds of a Director having any such interest.

#### **14 EFFECT OF DIRECTORS' INTERESTS ON QUORUM AND VOTING**

- 14.1 Subject where applicable to disclosure in accordance with the Articles and subject to any terms imposed by the Directors in relation to any Conflict or Permitted Situation, a Director shall be entitled to vote in respect of any matter in which he is interested directly or indirectly (where that interest arises by virtue of a Conflict which has been authorised or a Permitted Situation) and if he shall do so his vote shall be counted and, whether or not he does, his presence at the meeting shall be taken into account in ascertaining whether a quorum is present.
- 14.2 However, a Director shall not be entitled to vote in respect of any other matter in which he is interested directly or indirectly and his presence at the meeting shall not be taken into account in ascertaining whether a quorum is present.
- 14.3 Subject to Article 14.4 below, if a question arises at a meeting of Directors or of a committee of Directors as to the right of a Director to participate in the meeting (or part of the meeting) for voting or quorum purposes, the question may, before the conclusion of the meeting, be referred to the Chair whose ruling in relation to any Director other than the Chair is to be final and conclusive.
- 14.4 If any question as to the right to participate in the meeting (or part of the meeting) should arise in respect of the Chair, the question is to be decided by a decision of the Directors at that meeting, for which purpose the Chair is not to be counted as participating in the meeting (or that part of the meeting) for voting or quorum purposes.

#### **15 RECORDS OF DECISIONS TO BE KEPT**

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

#### **16 DIRECTORS' DISCRETION TO MAKE FURTHER RULES**

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

### **APPOINTMENT OF DIRECTORS**

#### **17 METHODS OF APPOINTING DIRECTORS**

- 17.1 The board of Directors shall comprise of a minimum of three Directors.

- 17.2 Any person who is willing to act as a Director, and is permitted by law to do so, may be appointed as a Director in accordance with these Articles.
- 17.3 Subject to the Articles, any appointment(s) or termination(s) of a Director made under this Article 17 shall be effected (as relevant) by the Council giving notice in writing to the Company, on the date on which the notice from the Council is received by the Company, or if a later date is specified in the notice, on that date.
- 17.4 The Council may at any time appoint any person to be a Director, whether as an additional Director or to fill a vacancy, and may remove from office any Director howsoever appointed and any alternate Director. Any such appointment or removal shall be effected by an ordinary resolution or otherwise by notice in writing to the Company by the Council. Any such appointment or removal shall take effect:
- 17.4.1 if it is effected by ordinary resolution, at the point the resolution is passed; and
- 17.4.2 if it is effected by notice in writing to the Company, when it is delivered to the registered office of the Company or, if it is produced at a meeting of the Directors, when it is so produced or, if sent by electronic means to an address generally used by the Company, when it is sent.
- 17.5 Any removal pursuant to this Article 17 shall be without prejudice to any claim that a Director may have under any contract between him and the Company.

## **18 TERMINATION OF A DIRECTOR'S APPOINTMENT**

- 18.1 A person ceases to be a Director as soon as:
- 18.1.1 the Council notifies the Company that the individual is to be removed as a Director;
- 18.1.2 the Council serves notice to remove the Director in accordance with Article 17.4, and such notice has taken effect in accordance with its terms;
- 18.1.3 that person ceases to be a Director by virtue of any provision of the Companies Act 2006 or is prohibited from being a Director by law;
- 18.1.4 a bankruptcy order is made against that person;
- 18.1.5 a composition is made with that person's creditors generally in satisfaction of that person's debts;
- 18.1.6 a registered medical practitioner who is treating that person gives a written opinion to the Company stating that that person has become physically or mentally incapable of acting as a Director and may remain so for more than three months; or
- 18.1.7 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 DIRECTORS' REMUNERATION AND EXPENSES**

- 19.1 Any remuneration of the Directors shall require the prior approval of the Council.
- 19.2 The Council's expenses policies from time to time shall apply to any expenses of Directors (and alternate Directors).

## **20 ALTERNATE DIRECTORS**

- 20.1 Any Director (the **Appointor**) may, with the prior written approval of the Council, appoint any person (whether or not a Director) to be his or her alternate to exercise the Appointor's powers, and carry out

the Appointor's responsibilities, in relation to the taking of decisions by the Directors, in the absence of the Appointor. A person may be appointed an alternate by more than one Director.

- 20.2 Any appointment or removal of an alternate must be effected by notice in writing to the Company (and to the alternate, on removal) signed by the Appointor, or in any other manner approved by the Directors.
- 20.3 The notice must:
- 20.3.1 identify the proposed alternate; and
  - 20.3.2 in the case of a notice of appointment, contain a statement signed by the proposed alternate that he is willing to act as the alternate of the Appointor.
- 20.4 An alternate has the same rights, in relation to any decision of the Directors, as the alternate's Appointor.
- 20.5 Except as the Articles specify otherwise, alternates:
- 20.5.1 are deemed for all purposes to be Directors;
  - 20.5.2 are liable for their own acts and omissions;
  - 20.5.3 are subject to the same restrictions as their Appointors; and
  - 20.5.4 are not deemed to be agents of or for their Appointors,
- and, in particular (without limitation), each alternate shall be entitled to receive notice of all meetings of Directors and of all meetings of committees of Directors of which his Appointor is a member.
- 20.6 A person who is an alternate but not a Director may<sup>1</sup>:
- 20.6.1 be counted as participating for the purposes of determining whether a quorum is present at a meeting of Directors (but only if that person's Appointor is an Eligible Director and is not participating); and
  - 20.6.2 participate in a unanimous decision of the Directors (but only if his Appointor is an Eligible Director in relation to that decision, and does not himself participate).
- 20.7 A Director who is also an alternate is entitled, in the absence of his Appointor(s), to a separate vote on behalf of each Appointor (provided that an Appointor is an Eligible Director in relation to that decision), in addition to his own vote on any decision of the Directors.
- 20.8 An alternate may be paid expenses and may be indemnified by the Company to the same extent as if he were a Director but shall not be entitled to receive from the Company any remuneration in his capacity as an alternate except such part (if any) of the remuneration otherwise payable to the alternate's Appointor as the Appointor may by notice in writing to the Company from time to time direct.
- 20.9 A person's appointment as an alternate (in respect of a particular Appointor) terminates:
- 20.9.1 when the alternate's Appointor revokes the appointment by notice to the Company and the alternate in writing specifying when it is to terminate; or
  - 20.9.2 on the occurrence, in relation to the alternate, of any event which, if it occurred in relation to the alternate's Appointor, would result in the termination of the Appointor's appointment as a director; or

---

<sup>1</sup> BB Note: is it ok for an alternate to not be a director?

20.9.3 when the alternate's Appointor ceases to be a Director for whatever reason.

## **PART 3 - SHARES AND DISTRIBUTIONS**

### **SHARES**

#### **21 APPOINTMENT OF SHAREHOLDERS**

- 21.1 The subscribers to the Memorandum are the first Shareholders.
- 21.2 No person shall be admitted as a Shareholder unless they are approved unanimously by the Shareholders.
- 21.3 The Directors or company secretary (if appointed) must keep a register of names and addresses of the Shareholders.

#### **22 LIABILITY OF SHAREHOLDERS**

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

#### **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 SHARE CERTIFICATES**

- 26.1 The Company must issue each Shareholder, free of charge, with one or more certificates in respect of the Shares which that Shareholder holds.
- 26.2 Every certificate must specify:
  - 26.2.1 in respect of how many Shares, of what class, it is issued;
  - 26.2.2 the nominal value of those Shares;
  - 26.2.3 that the Shares are fully paid; and
  - 26.2.4 any distinguishing numbers assigned to them.

- 26.3 No certificate may be issued in respect of Shares of more than one class.
- 26.4 If more than one person holds a Share, only one certificate may be issued in respect of it.
- 26.5 Certificates must be executed in accordance with the Companies Act 2006.

## **27 REPLACEMENT SHARE CERTIFICATES**

- 27.1 If a certificate issued in respect of a Shareholder's Shares is:
  - 27.1.1 damaged or defaced; or
  - 27.1.2 said to be lost, stolen or destroyed,that Shareholder is entitled to be issued with a replacement certificate in respect of the same Shares.
- 27.2 A Shareholder exercising the right to be issued with such a replacement certificate:
  - 27.2.1 may at the same time exercise the right to be issued with a single certificate or separate certificates;
  - 27.2.2 must return the certificate which is to be replaced to the Company if it is damaged or defaced; and
  - 27.2.3 must comply with such conditions as to evidence, indemnity and the payment of a reasonable fee as the Directors decide.

## **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.
- 28.5 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.

## **29 TRANSMISSION OF SHARES**

- 29.1 If title to a Share passes to a Transmittree, the Company may only recognise the Transmittree as having any title to that Share.
- 29.2 A Transmittree who produces such evidence of entitlement to Shares as the Directors may properly require:
  - 29.2.1 may, subject to the Articles, choose either to become the Holder of those Shares or to have them transferred to another person; and
  - 29.2.2 subject to the Articles, and pending any transfer of the Shares to another person, has the same rights as the Holder had.

29.3 However, 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.

### **30 EXERCISE OF TRANSMITEES' RIGHTS**

30.1 Transmittees who wish to become the holders of Shares to which they have become entitled must notify the Company in writing of that wish.

30.2 If the Transmitttee wishes to have a Share transferred to another person, the Transmitttee must execute an Instrument of transfer in respect of it.

30.3 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 Transmitttee has derived rights in respect of the Share, and as if the event which gave rise to the transmission had not occurred.

### **31 TRANSMITEES BOUND BY PRIOR NOTICES**

If a notice is given to a Shareholder in respect of Shares and a Transmitttee is entitled to those Shares, the Transmitttee is bound by the notice if it was given to the Shareholder before the Transmitttee's name has been entered in the register of members.

## **DIVIDENDS AND OTHER DISTRIBUTIONS**

### **32 PROCEDURE FOR DECLARING DIVIDENDS**

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

32.2 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.

32.3 No dividend may be declared or paid unless it is in accordance with Shareholders' respective rights.

32.4 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.

32.5 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.

32.6 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.

32.7 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.

### **33 PAYMENT OF DIVIDENDS AND OTHER DISTRIBUTIONS**

33.1 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:

33.1.1 transfer to a bank or building society account specified by the Distribution Recipient either in writing or as the Directors may otherwise decide; or

33.1.2 any other means of payment as the Directors agree with the Distribution Recipient either in writing or by such other means as the Directors decide.



- 33.2 In the Articles, the **Distribution Recipient** means, in respect of a Share in respect of which a dividend or other sum is payable:
- 33.2.1 the Holder of the Share; or
  - 33.2.2 if the Share has two or more joint holders, whichever of them is named first in the register of members; or
  - 33.2.3 if the Holder is no longer entitled to the Share by reason of death or bankruptcy; or
  - 33.2.4 otherwise by operation of law, the Transmitter.

#### **34 NO INTEREST ON DISTRIBUTIONS**

- 34.1 The Company may not pay interest on any dividend or other sum payable in respect of a Share unless otherwise provided by:
- 34.1.1 the terms on which the Share was issued; or
  - 34.1.2 the provisions of another agreement between the Holder of that Share and the Company.

#### **35 UNCLAIMED DISTRIBUTIONS**

- 35.1 All dividends or other sums which are:
- 35.1.1 payable in respect of Shares; and
  - 35.1.2 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.
- 35.2 The payment of any such dividend or other sum into a separate account does not make the Company a trustee in respect of it.
- 35.3 If:
- 35.3.1 twelve years have passed from the date on which a dividend or other sum became due for payment; and
  - 35.3.2 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.

#### **36 NON-CASH DISTRIBUTIONS**

- 36.1 Subject to the terms of issue of the Share in question, the Company may, by ordinary resolution on the recommendation of the Directors, decide to pay all or part of a dividend or other distribution payable in respect of a Share by transferring non-cash assets of equivalent value (including, without limitation, Shares or other securities in any Company).
- 36.2 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:
- 36.2.1 fixing the value of any assets;
  - 36.2.2 paying cash to any Distribution Recipient on the basis of that value in order to adjust the rights of recipients; and

36.2.3 vesting any assets in trustees.

### **37 WAIVER OF DISTRIBUTIONS**

37.1 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:

37.1.1 the Share has more than one Holder; or

37.1.2 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**

#### **38 AUTHORITY TO CAPITALISE AND APPROPRIATION OF CAPITALISED SUMS**

38.1 Subject to the Articles, the Directors may, if they are so authorised by an ordinary resolution:

38.1.1 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

38.1.2 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.

38.2 Capitalised sums must be applied:

38.2.1 on behalf of the persons entitled; and

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

38.3 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.

38.4 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.

38.5 Subject to the Articles, the Directors may:

38.5.1 apply capitalised sums in accordance with Articles 38.3 and 38.4 partly in one way and partly in another;

38.5.2 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

38.5.3 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**

### **39 WRITTEN RESOLUTIONS**

A resolution of the Shareholder (or class thereof) may be passed as a written resolution in accordance with Chapter 2 of Part 13 of the Companies Act 2006.

### **ORGANISATION OF GENERAL MEETINGS**

#### **40 GENERAL MEETINGS**

40.1 The Council shall appoint and may remove or replace a person by notice in writing to the Company, in accordance with section 323 of the Companies Act 2006, to act as the representative of the Council in accordance with the Articles.

40.2 Notice of a general meeting shall be given in Hard Copy Form, in Electronic Form or by means of a website, provided that the meeting is called by notice of at least 28 days and that the Company otherwise complies with any requirements relating to the giving of notice under the Companies Act 2006.

40.3 Any Director or the company secretary (if any) shall send notice of a general meeting to the Council every Director and any other person required by law to be sent such notice.

40.4 Notice of a general meeting shall:

40.4.1 state the time, date and place of the meeting;

40.4.2 specify the general nature of the business to be dealt with at the meeting and set out the text of any special resolution to be voted upon at the meeting; and

40.4.3 be accompanied by a proxy form; and

notice of a general meeting need not be in writing.

40.5 The accidental omission to give notice of a general meeting to, or the non-receipt of notice by, any person entitled to receive the notice; or a technical defect in the timing or manner of giving such notice of which the Directors are unaware shall not invalidate the proceedings of that meeting.

#### **41 ATTENDANCE AND SPEAKING AT GENERAL MEETINGS**

41.1 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.

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

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

41.2.2 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.

41.3 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.

41.4 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.

41.5 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.

## **42 QUORUM FOR GENERAL MEETINGS**

No business other than the appointment of the Chair of the Meeting is to be transacted at a general meeting unless an authorised representative of each Shareholder is present.

## **43 CHAIRING GENERAL MEETINGS**

43.1 The person chairing a meeting in accordance with this Article is referred to as the **Chair of the Meeting**.

43.2 The Chair (if one is appointed under Article 11.2) shall chair general meetings if present and willing to do so.

43.3 If no Chair has been appointed under Article 11.2 or (if appointed) the Chair is unwilling to chair the meeting or is not present within ten minutes of the time at which a meeting was due to start:

43.3.1 the Directors present; or

43.3.2 (if no Directors are present) the meeting,

must appoint a Director or Shareholder to chair the meeting, and the appointment of the Chair of the meeting must be the first business of the meeting.

## **44 ATTENDANCE AND SPEAKING BY DIRECTORS AND NON-SHAREHOLDERS**

44.1 Directors may attend and speak at general meetings, whether or not they are Shareholders.

44.2 The Chair of the Meeting may permit other persons who are not:

44.2.1 Shareholders; or

44.2.2 otherwise entitled to exercise the rights of Shareholders in relation to general meetings, to attend and speak at a general meeting.

## **45 ADJOURNMENT**

45.1 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 Chair of the meeting must adjourn it.

45.2 The Chair of the Meeting may adjourn a general meeting at which a quorum is present if:

45.2.1 the meeting consents to an adjournment; or

45.2.2 it appears to the Chair 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.

45.3 The Chair of the meeting must adjourn a general meeting if directed to do so by the meeting.

45.4 When adjourning a general meeting, the Chair of the meeting must:

45.4.1 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

- 45.4.2 have regard to any directions as to the time and place of any adjournment which have been given by the meeting.
- 45.5 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):
  - 45.5.1 to the same persons to whom notice of the Company's general meetings is required to be given; and
  - 45.5.2 containing the same information which such notice is required to contain.
- 45.6 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**

### **46 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.

### **47 ERRORS AND DISPUTES**

- 47.1 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.
- 47.2 Any such objection must be referred to the Chair of the Meeting, whose decision is final.

### **48 POLL VOTES**

- 48.1 A poll on a resolution may be demanded:
  - 48.1.1 in advance of the general meeting where it is to be put to the vote, or
  - 48.1.2 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.
- 48.2 A poll may be demanded by:
  - 48.2.1 the Chair of the Meeting;
  - 48.2.2 the Directors;
  - 48.2.3 two or more persons having the right to vote on the resolution; or
  - 48.2.4 a person or persons representing not less than one tenth of the total voting rights of all the Shareholders having the right to vote on the resolution.
- 48.3 A demand for a poll may be withdrawn if:
  - 48.3.1 the poll has not yet been taken; and
  - 48.3.2 the Chair of the Meeting consents to the withdrawal.
- 48.4 Polls must be taken immediately and in such manner as the Chair of the Meeting directs.

## **49 CONTENT OF PROXY NOTICES**

- 49.1 Proxies may only validly be appointed by a notice in writing (a **Proxy Notice**) which:
- 49.1.1 states the name and address of the Shareholder appointing the proxy;
  - 49.1.2 identifies the person appointed to be that Shareholder's proxy and the general meeting in relation to which that person is appointed;
  - 49.1.3 is signed by or on behalf of the Shareholder appointing the proxy, or is authenticated in such manner as the Directors may determine; and
  - 49.1.4 is delivered to the Company in accordance with the Articles and any instructions contained in the notice of the general meeting to which they relate.
- 49.2 The Company may require Proxy Notices to be delivered in a particular form, and may specify different forms for different purposes.
- 49.3 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.
- 49.4 Unless a Proxy Notice indicates otherwise, it must be treated as:
- 49.4.1 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
  - 49.4.2 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.

## **50 DELIVERY OF PROXY NOTICES**

- 50.1 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.
- 50.2 An appointment under a Proxy Notice:
- 50.2.1 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; and
  - 50.2.2 shall be revoked if the person by whom or on whose behalf the Proxy Notice was given is present at the meeting or adjourned meeting to which it relates.
- 50.3 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.
- 50.4 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.

## **51 AMENDMENTS TO RESOLUTIONS**

- 51.1 An ordinary resolution to be proposed at a general meeting may be amended by ordinary resolution if:
- 51.1.1 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 Chair of the Meeting may determine); and

- 51.1.2 the proposed amendment does not, in the reasonable opinion of the Chair of the Meeting, materially alter the scope of the resolution.
- 51.2 A special resolution to be proposed at a general meeting may be amended by ordinary resolution, if:
  - 51.2.1 the Chair of the Meeting proposes the amendment at the general meeting at which the resolution is to be proposed; and
  - 51.2.2 the amendment does not go beyond what is necessary to correct a grammatical or other non-substantive error in the resolution.
- 51.3 If the Chair of the Meeting, acting in good faith, wrongly decides that an amendment to a resolution is out of order, the Chair of the Meeting's error does not invalidate the vote on that resolution.

## **PART 5 - ADMINISTRATIVE ARRANGEMENTS**

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

- 52.1 Subject to the Articles, anything sent or supplied by or to the Company under the Articles may be sent or supplied in any way in which the Companies Act 2006 provides for Documents or information which are authorised or required by any provision of that Act to be sent or supplied by or to the Company.
- 52.2 Subject to the Articles, any notice or Document to be sent or supplied to a Director in connection with the taking of decisions by Directors may also be sent or supplied by the means by which that Director has asked to be sent or supplied with such notices or Documents for the time being.
- 52.3 A Director may agree with the Company that notices or Documents sent to that Director in a particular way are to be deemed to have been received within a specified time of their being sent, and for the specified time to be less than 48 hours.

### **53 COMPANY SEALS**

- 53.1 Any common seal may only be used by the authority of the Directors.
- 53.2 The Directors may decide by what means and in what form any common seal is to be used.
- 53.3 Unless otherwise decided by the Directors, if the Company has a common seal and it is affixed to a Document, the Document must also be signed by at least one authorised person in the presence of a witness who attests the signature.
- 53.4 For the purposes of this Article, an authorised person is:
  - 53.4.1 any Director;
  - 53.4.2 the company secretary (if any); or
  - 53.4.3 any person authorised by the Directors for the purpose of signing Documents to which the common seal is applied.

### **54 RIGHT TO INSPECT ACCOUNTS AND OTHER RECORDS**

The Shareholders and their authorised representatives shall have the right on giving to the Company reasonable advance notice, during normal business hours to inspect the books and records of the Company.

### **55 APPOINTMENT OF COMPANY SECRETARY**

The Council may appoint (and remove) the company secretary by notice in writing to the Company.

## 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, a relevant Director of the Company or an associated Company may be indemnified out of the Company's assets against:

57.1.1 any liability incurred by that Director in connection with any negligence, default, breach of duty or breach of trust in relation to the Company or an associated Company;

57.1.2 any liability incurred by that Director in connection with the activities of the Company or an associated Company in its capacity as a trustee of an occupational pension scheme (as defined in section 235(6) of the Companies Act 2006); and

57.1.3 any other liability incurred by that Director as an officer of the Company or an associated Company.

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 Director** means any Director or former Director of the Company or an associated Company.

### 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 Director in respect of any relevant loss.

58.2 In this Article:

58.2.1 a **relevant Director** means any Director or former Director of the Company or an associated Company;

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

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



COMPANY NUMBER [●]

THE COMPANIES ACT 2006  
PRIVATE COMPANY LIMITED BY SHARES

---

ARTICLES OF ASSOCIATION  
OF  
STONE CIRCLE HOLDING COMPANY LIMITED

---

## Contents

Item	Page
STONE CIRCLE HOLDING COMPANY LIMITED .....	1
PART 1 – INTERPRETATION .....	1
1 DEFINED TERMS .....	1
PART 2 - DIRECTORS.....	4
DIRECTORS' POWERS AND RESPONSIBILITIES .....	4
2 DIRECTORS' GENERAL AUTHORITY .....	4
3 SHAREHOLDERS' RESERVE POWER .....	4
4 DIRECTORS MAY DELEGATE.....	4
5 COMMITTEES.....	4
DECISION-MAKING BY DIRECTORS .....	4
6 DIRECTORS TO TAKE DECISIONS COLLECTIVELY .....	4
7 UNANIMOUS DECISIONS .....	5
8 CALLING A DIRECTORS' MEETING .....	5
9 PARTICIPATION IN DIRECTORS' MEETINGS.....	5
10 QUORUM FOR DIRECTORS' MEETINGS .....	6
11 CHAIRING OF DIRECTORS' MEETINGS.....	6
12 CONFLICTS OF INTEREST – TRANSACTIONS OR ARRANGEMENTS WITH THE COMPANY .....	6
13 CONFLICTS OF INTEREST REQUIRING BOARD AUTHORISATION .....	7
14 EFFECT OF DIRECTORS' INTERESTS ON QUORUM AND VOTING .....	8
15 RECORDS OF DECISIONS TO BE KEPT .....	8
16 DIRECTORS' DISCRETION TO MAKE FURTHER RULES.....	8
APPOINTMENT OF DIRECTORS .....	8
17 METHODS OF APPOINTING DIRECTORS.....	8
18 TERMINATION OF A DIRECTOR'S APPOINTMENT .....	9
19 DIRECTORS' REMUNERATION AND EXPENSES.....	9
20 ALTERNATE DIRECTORS .....	9
PART 3 - SHARES AND DISTRIBUTIONS.....	11
SHARES.....	11
21 APPOINTMENT OF SHAREHOLDERS .....	11
22 LIABILITY OF SHAREHOLDERS .....	11
23 ALL SHARES TO BE FULLY PAID UP .....	11
24 POWERS TO ISSUE DIFFERENT CLASSES OF SHARE.....	11
25 COMPANY NOT BOUND BY LESS THAN ABSOLUTE INTERESTS .....	11
26 SHARE CERTIFICATES.....	11
27 REPLACEMENT SHARE CERTIFICATES .....	12
28 SHARE TRANSFERS.....	12
29 TRANSMISSION OF SHARES.....	12
30 EXERCISE OF TRANSMITEES' RIGHTS.....	13
31 TRANSMITEES BOUND BY PRIOR NOTICES.....	13

DIVIDENDS AND OTHER DISTRIBUTIONS.....	13
32 PROCEDURE FOR DECLARING DIVIDENDS.....	13
33 PAYMENT OF DIVIDENDS AND OTHER DISTRIBUTIONS.....	13
34 NO INTEREST ON DISTRIBUTIONS.....	14
35 UNCLAIMED DISTRIBUTIONS.....	14
36 NON-CASH DISTRIBUTIONS.....	14
37 WAIVER OF DISTRIBUTIONS.....	15
CAPITALISATION OF PROFITS.....	15
38 AUTHORITY TO CAPITALISE AND APPROPRIATION OF CAPITALISED SUMS.....	15
PART 4 - DECISION-MAKING BY SHAREHOLDERS.....	16
39 WRITTEN RESOLUTIONS.....	16
ORGANISATION OF GENERAL MEETINGS.....	16
40 GENERAL MEETINGS.....	16
41 ATTENDANCE AND SPEAKING AT GENERAL MEETINGS.....	16
42 QUORUM FOR GENERAL MEETINGS.....	17
43 CHAIRING GENERAL MEETINGS.....	17
44 ATTENDANCE AND SPEAKING BY DIRECTORS AND NON-SHAREHOLDERS.....	17
45 ADJOURNMENT.....	17
VOTING AT GENERAL MEETINGS.....	18
46 VOTING: GENERAL.....	18
47 ERRORS AND DISPUTES.....	18
48 POLL VOTES.....	18
49 CONTENT OF PROXY NOTICES.....	19
50 DELIVERY OF PROXY NOTICES.....	19
51 AMENDMENTS TO RESOLUTIONS.....	19
PART 5 - ADMINISTRATIVE ARRANGEMENTS.....	20
52 MEANS OF COMMUNICATION TO BE USED.....	20
53 COMPANY SEALS.....	20
54 RIGHT TO INSPECT ACCOUNTS AND OTHER RECORDS.....	20
55 APPOINTMENT OF COMPANY SECRETARY.....	20
56 PROVISION FOR EMPLOYEES ON CESSATION OF BUSINESS.....	21
DIRECTORS' INDEMNITY AND INSURANCE.....	21
57 INDEMNITY.....	21
58 INSURANCE.....	21

**THE COMPANIES ACT 2006**  
**PRIVATE COMPANY LIMITED BY SHARES**  
**ARTICLES OF ASSOCIATION**  
**OF**  
**STONE CIRCLE HOLDING COMPANY LIMITED**

**PART 1 – INTERPRETATION**

**1 DEFINED TERMS**

1.1 In the Articles, unless the context requires otherwise:

**Appointer has the meaning given in Article 20.1**

**Articles** means the Company's articles of association as amended from time to time

**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

**capitalised sum** has the meaning given to it in Article 38.1.2

**Chair** has the meaning given in Article 11

**Chair of the Meeting** has the meaning given in Article 43

**Companies Acts** means the Companies Acts (as defined in section 2 of the Companies Act 2006), in so far as they apply to the Company

**Company** means the company governed by the Articles

**Conflict** has the meaning given in Article 13

**Council** means Horsham District Council, of Parkside, Chart Way, Horsham, West Sussex, RH12 1RL and any statutory successor

**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 33.2

**Document** includes, unless otherwise specified, any Document sent or supplied in Electronic Form

**Electronic Form** has the meaning given in section 1168 of the Companies Act 2006

**Eligible Director** means a Director who would have been entitled to vote on the matter had it been proposed as a resolution at a meeting of the Directors

**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

**Group Company** means, in relation to a company:

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

**Hard Copy Form** has the meaning given in section 1168 of the Companies Act 2006

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

**Instrument** means a Document in Hard Copy Form

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

**paid** means paid or credited as paid

**participate**, in relation to a Directors' meeting, has the meaning given in Article 9

**Permitted Situation** has the meaning given in Article 13.5

**persons entitled** has the meaning given in Article 38.1.2

**Proxy Notice** has the meaning given in Article 49

**Relevant Director** has the meaning given in Article 13.1

**Shareholder** means a person who is the Holder of a Share.

**Shares** means shares in the Company

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

**Transmittee** means a person entitled to a Share by reason of the death or bankruptcy of a Shareholder or otherwise by operation of law

**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

- 1.2 Unless the context otherwise requires, other words or expressions contained in the Articles bear the same meaning as in the Companies Act 2006 as in force on the date when the Articles become binding on the Company.
- 1.3 A reference to a **person** shall include a reference to an individual, firm, company, corporation, partnership, unincorporated body of persons, government, state or agency of a state or any association, trust, joint venture or consortium (whether or not having separate legal personality) and that person's personal representatives, successors, permitted assigns and permitted transferees.
- 1.4 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.5 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.6 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

- 1.7 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.8 A reference to a **regulation** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, inter-governmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation.
- 1.9 A reference to **writing** or **written** includes email but not fax.
- 1.10 A reference to any agreement or document (or any provision of it) referred to in the Articles is a reference to that agreement or document (or the relevant provision of it) as varied, amended or supplemented (in each case, other than in breach of the provisions of that agreement or document) from time to time.
- 1.11 Any words following the terms **including**, **include**, **in particular**, **for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.12 A reference to an **amendment** includes a novation, re-enactment, supplement or variation (and amended shall be construed accordingly).
- 1.13 A reference to **determines** or **determined** means, unless the contrary is indicated, a determination made at the absolute discretion of the person making it.
- 1.14 references to a **month** shall be construed as a reference to a period starting on one day in a calendar month and ending on the day immediately preceding the numerically corresponding day in the next calendar month or, if there is no numerically corresponding day in the next calendar month, the last day in the next calendar month; and
- 1.15 The expressions **body corporate**, **holding company**, **subsidiary**, **parent undertaking**, **subsidiary undertaking** and **parent company** shall have the respective meanings given in the Companies Act 2006, and, for the purposes of sections 1159(1) and 1162(2)(b) and (d) of that Act, a company or undertaking (the **first person**) shall be treated as a member of another company or undertaking if:
- 1.15.1 any of the first person's subsidiaries or subsidiary undertakings is a member of that other company or undertaking; or
- 1.15.2 any shares or capital interests in that other company or undertaking are held by a person acting on behalf of the first person or any of its subsidiaries or subsidiary undertakings; or
- 1.15.3 any shares or capital interests in that other company or undertaking are registered in the name of a person (or its nominee) by way of security or in connection with the granting of security over those shares or capital interests by the first person.

In the case of a limited liability partnership which is (or might constitute) a subsidiary or subsidiary undertaking of a company or another limited liability partnership, sections 1159 and 1162 of the Companies Act 2006 shall be amended so that:

- (a) references in sections 1159(1)(a) and (c) and 1162(2)(a) and (d) to "voting rights" are to the members' rights to vote on all or substantially all matters which are decided by a vote of the members of the limited liability partnership; and
- (b) references in sections 1159(1)(b) and 1162(2)(b) to the "right to appoint or remove a majority of its board of directors" is to the right: (i) to appoint or remove a majority of the directors (or equivalent) of that limited liability partnership; or (ii) if no such directors (or equivalent) exist by virtue of the constitution of that limited liability partnership, members holding a majority of the voting rights,

and unless the context otherwise requires, the application of the definitions of body corporate, holding company, subsidiary, parent undertaking, subsidiary undertaking and parent company shall apply as to the relevant company or undertaking as it is at that time.

## **PART 2 - DIRECTORS**

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

#### **2 DIRECTORS' GENERAL AUTHORITY**

Subject to the Articles, the Directors are responsible for the management of the Company's business, for which purpose they may exercise all the powers of the Company.

#### **3 SHAREHOLDERS' RESERVE POWER**

- 3.1 The Shareholders may, by special resolution, direct the Directors to take, or refrain from taking, specified action.
- 3.2 No such special resolution invalidates anything which the Directors have done before the passing of the resolution.

#### **4 DIRECTORS MAY DELEGATE**

- 4.1 Subject to the Articles, the Directors may delegate any of the powers which are conferred on them under the Articles as follows:
  - 4.1.1 to such person or committee;
  - 4.1.2 by such means (including by power of attorney);
  - 4.1.3 to such an extent;
  - 4.1.4 in relation to such matters or territories; and
  - 4.1.5 on such terms and conditions,as they think fit.
- 4.2 If the Directors so specify, any such delegation may authorise further delegation of the Directors' powers by any person to whom they are delegated.
- 4.3 The Directors may revoke any delegation in whole or part, or alter its terms and conditions.

#### **5 COMMITTEES**

- 5.1 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.
- 5.2 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.

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

#### **6 DIRECTORS TO TAKE DECISIONS COLLECTIVELY**

- 6.1 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 7.

- 6.2 If only one Director is eligible to vote on any authorisation required under Article 13, the general rule does not apply and the Eligible Director may take decisions in relation to the relevant matter without regard to any of the provisions in the Articles relating to Directors' decision-making.
- 6.3 Each Director shall be entitled to cast one vote on any resolution put to the Directors.
- 6.4 If the numbers of votes for and against a proposal are equal, the Chair shall not have a casting vote.

## **7 UNANIMOUS DECISIONS**

- 7.1 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.
- 7.2 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.
- 7.3 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.

## **8 CALLING A DIRECTORS' MEETING**

- 8.1 Any Director may call a Directors' meeting by giving notice of the meeting to the Directors and the Council in accordance with Article 8.2 or by authorising the company secretary (if any) to give such notice.
- 8.2 A meeting of the Directors must be called by at least 7 days' notice unless either:
- 8.2.1 the Directors and the Council unanimously agree otherwise; or
  - 8.2.2 urgent circumstances require shorter notice.
- 8.3 Notice of any Directors' meeting must include:
- 8.3.1 its proposed date and time;
  - 8.3.2 where it is to take place;
  - 8.3.3 if it is anticipated that persons 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;
  - 8.3.4 an agenda specifying in reasonable detail the matters to be raised at the meeting or the committee meeting; and
  - 8.3.5 copies of any papers to be discussed at the meeting or the committee meeting.
- 8.4 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 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.

## **9 PARTICIPATION IN DIRECTORS' MEETINGS**

- 9.1 Subject to the Articles, Directors **participate** in a Directors' meeting, or part of a Directors' meeting, when:
- 9.1.1 the meeting has been called and takes place in accordance with the Articles; and
  - 9.1.2 they can each communicate to the others any information or opinions they have on any particular item of the business of the meeting.



- 9.2 In determining whether Directors are participating in a Directors' meeting, it is irrelevant where any Director is or how they communicate with each other.
- 9.3 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.
- 9.4 The Council shall have the right to attend and receive notice of (but not vote at) any Board meetings and receive papers in relation to such meetings at the same time as those papers are given to the Directors.

## **10 QUORUM FOR DIRECTORS' MEETINGS**

- 10.1 At a Directors' meeting, unless a quorum is participating, no proposal is to be voted on, except a proposal to call another meeting.
- 10.2 Subject to Article 6.2 the quorum for a Directors' meeting shall be three Directors.
- 10.3 If the total number of Directors for the time being is less than the quorum required, the Directors must not take any decision other than a decision:
- 10.3.1 to appoint further Directors; or
  - 10.3.2 to call a general meeting so as to enable the Shareholders to appoint further Directors.
- 10.4 If a quorum is not present with half an hour from the time appointed for the meeting, or during a meeting a quorum ceases to be present, the meeting shall be adjourned to such time and place as the Directors may determine in accordance with the Articles.

## **11 CHAIRING OF DIRECTORS' MEETINGS**

- 11.1 The person appointed pursuant to Article 11.2 or Article 11.3 (as the case may be) shall be known as the Chair.
- 11.2 With the prior written consent of the Council, the Directors may:
- 11.2.1 appoint a person Chair of the Directors;
  - 11.2.2 determine the period for which he is to hold office; and
  - 11.2.3 at any time remove him from office.
- 11.3 If at the date and time of a meeting of the Directors no person has been appointed as Chair pursuant to Article 11.2, then the participating Directors at that meeting may appoint a Director present to chair the meeting. The participating Directors may also terminate the appointment of a person as Chair made under this Article 11.3 at any time during the meeting at which he is appointed.

## **12 CONFLICTS OF INTEREST – TRANSACTIONS OR ARRANGEMENTS WITH THE COMPANY**

- 12.1 The relevant provisions of the Companies Act 2006 (including, without limitation, sections 177 and 182) shall apply in relation to declarations of interest in proposed and existing transactions or arrangements with the Company.
- 12.2 Provided that he has disclosed to the Directors the nature and extent of any interest of his in accordance with and to the extent required by the Companies Act 2006, a Director notwithstanding his office:
- 12.2.1 may be a party to, or otherwise interested in, any contract with the Company or a Group Company of the Company or in which either or both of them is/are otherwise interested;

- 12.2.2 may be an elected member, director or other officer of, employed by, a party to any contract with, or otherwise interested in, the Council, any Group Company of the Company or in any body corporate promoted by the Company, the Council, or a Group Company of the Company, or in which any of them is/are interested; and
  - 12.2.3 may act by himself or his firm in a professional capacity for the Company (otherwise than as auditor).
- 12.3 For the purposes of this Article 12.3:
- 12.3.1 a Director shall be deemed to have disclosed the nature and extent of an interest which consists of him being an elected member, director, officer or employee of the Council or any Group Company of the Company; and
  - 12.3.2 a general notice given to the Directors that a Director is to be regarded as having an interest of the nature and extent specified in the notice in any contract in which a specified person or class of persons is interested shall be deemed to be a disclosure that the Director has an interest in any such contract of the nature and extent so specified.
- 12.4 Where a Director is an elected member, director, officer, or employee of the Council or a Group Company of the Company, he:
- 12.4.1 may in exercising his independent judgment take into account the success of the Council or Group Company as well as the success of the Company; and
  - 12.4.2 shall in the exercise of his duties have a duty of confidentiality to the Council or Group Company in relation to confidential information of that Shareholder or Group Company, but he shall not be restricted by any duty of confidentiality to the Company from providing information to the Council or Group Company except as may be imposed under Article 13.5.

### **13 CONFLICTS OF INTEREST REQUIRING BOARD AUTHORISATION**

- 13.1 The Directors may authorise any matter which would otherwise involve a Director (a **Relevant Director**) breaching his duty under section 175 of the Companies Act 2006 to avoid a situation in which he has, or can have, a direct or indirect interest that conflicts, or possibly may conflict, with the interests of the Company (a **Conflict**).
- 13.2 Any Director (including the Relevant Director) may propose that the Relevant Director be authorised in relation to any matter the subject of a Conflict. Such proposal and any authority given by the Directors shall be effected in the same way that any other matter may be proposed to and decided upon by the Directors under the Articles save that the Relevant Director (and any Director) shall not count towards the quorum nor vote on any resolution giving such authority.
- 13.3 Where the Directors give authority in relation to a Conflict:
- 13.3.1 the terms of the authority shall be recorded in writing (but the authority shall be effective whether or not the terms are so recorded); and
  - 13.3.2 the Directors may revoke or vary such authority at any time but this will not affect anything done by the Relevant Director prior to such revocation in accordance with the terms of such authority.
- 13.4 A Conflict in relation to a Director arising solely as a result of him being an elected member, director, officer or employee of the Council or any Group Company of the Company shall be deemed to have been authorised for the purposes of this Article 13 and section 175 of the Companies Act 2006.
- 13.5 Where Article 13.4 above applies or the Directors otherwise gives authority in relation to a Conflict, or where any of the situations referred to in Article 12 (a **Permitted Situation**) applies:

- 13.5.1 the Directors may (whether at the relevant time or subsequently) (i) require that the Relevant Director is excluded from the receipt of information, the participation in discussion and/or the making of decisions (whether at Directors meetings or otherwise) related to the Conflict or Permitted Situation; and (ii) impose upon the Relevant Director such other terms for the purpose of dealing with the Conflict as they may determine;
- 13.5.2 the Relevant Director will be obliged to conduct himself in accordance with any terms imposed by the Directors in relation to the Conflict or Permitted Situation; and
- 13.5.3 the Directors may provide that where the Relevant Director obtains (otherwise than through his position as a Director of the Company) information that is confidential to a third party, the Director will not be obliged to disclose that information to the Company, or to use or apply the information in relation to the Company's affairs, where to do so would amount to a breach of that confidence.
- 13.6 A Director shall not, by reason of his office or of the fiduciary relationship thereby established, be liable to account to the Company or the Shareholders for any remuneration, profit or other benefit realised by reason of his having any type of interest in a Conflict authorised under this Article or in any Permitted Situation and no contract shall be liable to be avoided on the grounds of a Director having any such interest.

#### **14 EFFECT OF DIRECTORS' INTERESTS ON QUORUM AND VOTING**

- 14.1 Subject where applicable to disclosure in accordance with the Articles and subject to any terms imposed by the Directors in relation to any Conflict or Permitted Situation, a Director shall be entitled to vote in respect of any matter in which he is interested directly or indirectly (where that interest arises by virtue of a Conflict which has been authorised or a Permitted Situation) and if he shall do so his vote shall be counted and, whether or not he does, his presence at the meeting shall be taken into account in ascertaining whether a quorum is present.
- 14.2 However, a Director shall not be entitled to vote in respect of any other matter in which he is interested directly or indirectly and his presence at the meeting shall not be taken into account in ascertaining whether a quorum is present.
- 14.3 Subject to Article 14.4 below, if a question arises at a meeting of Directors or of a committee of Directors as to the right of a Director to participate in the meeting (or part of the meeting) for voting or quorum purposes, the question may, before the conclusion of the meeting, be referred to the Chair whose ruling in relation to any Director other than the Chair is to be final and conclusive.
- 14.4 If any question as to the right to participate in the meeting (or part of the meeting) should arise in respect of the Chair, the question is to be decided by a decision of the Directors at that meeting, for which purpose the Chair is not to be counted as participating in the meeting (or that part of the meeting) for voting or quorum purposes.

#### **15 RECORDS OF DECISIONS TO BE KEPT**

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

#### **16 DIRECTORS' DISCRETION TO MAKE FURTHER RULES**

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

### **APPOINTMENT OF DIRECTORS**

#### **17 METHODS OF APPOINTING DIRECTORS**

- 17.1 The board of Directors shall comprise of a minimum of three Directors.

- 17.2 Any person who is willing to act as a Director, and is permitted by law to do so, may be appointed as a Director in accordance with these Articles.
- 17.3 Subject to the Articles, any appointment(s) or termination(s) of a Director made under this Article 17 shall be effected (as relevant) by the Council giving notice in writing to the Company, on the date on which the notice from the Council is received by the Company, or if a later date is specified in the notice, on that date.
- 17.4 The Council may at any time appoint any person to be a Director, whether as an additional Director or to fill a vacancy, and may remove from office any Director howsoever appointed and any alternate Director. Any such appointment or removal shall be effected by an ordinary resolution or otherwise by notice in writing to the Company by the Council. Any such appointment or removal shall take effect:
- 17.4.1 if it is effected by ordinary resolution, at the point the resolution is passed; and
- 17.4.2 if it is effected by notice in writing to the Company, when it is delivered to the registered office of the Company or, if it is produced at a meeting of the Directors, when it is so produced or, if sent by electronic means to an address generally used by the Company, when it is sent.
- 17.5 Any removal pursuant to this Article 17 shall be without prejudice to any claim that a Director may have under any contract between him and the Company.

## **18 TERMINATION OF A DIRECTOR'S APPOINTMENT**

- 18.1 A person ceases to be a Director as soon as:
- 18.1.1 the Council notifies the Company that the individual is to be removed as a Director;
- 18.1.2 the Council serves notice to remove the Director in accordance with Article 17.4, and such notice has taken effect in accordance with its terms;
- 18.1.3 that person ceases to be a Director by virtue of any provision of the Companies Act 2006 or is prohibited from being a Director by law;
- 18.1.4 a bankruptcy order is made against that person;
- 18.1.5 a composition is made with that person's creditors generally in satisfaction of that person's debts;
- 18.1.6 a registered medical practitioner who is treating that person gives a written opinion to the Company stating that that person has become physically or mentally incapable of acting as a Director and may remain so for more than three months; or
- 18.1.7 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 DIRECTORS' REMUNERATION AND EXPENSES**

- 19.1 Any remuneration of the Directors shall require the prior approval of the Council.
- 19.2 The Council's expenses policies from time to time shall apply to any expenses of Directors (and alternate Directors).

## **20 ALTERNATE DIRECTORS**

- 20.1 Any Director (the **Appointor**) may, with the prior written approval of the Council, appoint any person (whether or not a Director) to be his or her alternate to exercise the Appointor's powers, and carry out

the Appointor's responsibilities, in relation to the taking of decisions by the Directors, in the absence of the Appointor. A person may be appointed an alternate by more than one Director.

- 20.2 Any appointment or removal of an alternate must be effected by notice in writing to the Company (and to the alternate, on removal) signed by the Appointor, or in any other manner approved by the Directors.
- 20.3 The notice must:
- 20.3.1 identify the proposed alternate; and
  - 20.3.2 in the case of a notice of appointment, contain a statement signed by the proposed alternate that he is willing to act as the alternate of the Appointor.
- 20.4 An alternate has the same rights, in relation to any decision of the Directors, as the alternate's Appointor.
- 20.5 Except as the Articles specify otherwise, alternates:
- 20.5.1 are deemed for all purposes to be Directors;
  - 20.5.2 are liable for their own acts and omissions;
  - 20.5.3 are subject to the same restrictions as their Appointors; and
  - 20.5.4 are not deemed to be agents of or for their Appointors,
- and, in particular (without limitation), each alternate shall be entitled to receive notice of all meetings of Directors and of all meetings of committees of Directors of which his Appointor is a member.
- 20.6 A person who is an alternate but not a Director may<sup>1</sup>:
- 20.6.1 be counted as participating for the purposes of determining whether a quorum is present at a meeting of Directors (but only if that person's Appointor is an Eligible Director and is not participating); and
  - 20.6.2 participate in a unanimous decision of the Directors (but only if his Appointor is an Eligible Director in relation to that decision, and does not himself participate).
- 20.7 A Director who is also an alternate is entitled, in the absence of his Appointor(s), to a separate vote on behalf of each Appointor (provided that an Appointor is an Eligible Director in relation to that decision), in addition to his own vote on any decision of the Directors.
- 20.8 An alternate may be paid expenses and may be indemnified by the Company to the same extent as if he were a Director but shall not be entitled to receive from the Company any remuneration in his capacity as an alternate except such part (if any) of the remuneration otherwise payable to the alternate's Appointor as the Appointor may by notice in writing to the Company from time to time direct.
- 20.9 A person's appointment as an alternate (in respect of a particular Appointor) terminates:
- 20.9.1 when the alternate's Appointor revokes the appointment by notice to the Company and the alternate in writing specifying when it is to terminate; or
  - 20.9.2 on the occurrence, in relation to the alternate, of any event which, if it occurred in relation to the alternate's Appointor, would result in the termination of the Appointor's appointment as a director; or

---

<sup>1</sup> Drafting Note: is it ok for a non director to be an alternate?

20.9.3 when the alternate's Appointor ceases to be a Director for whatever reason.

## **PART 3 - SHARES AND DISTRIBUTIONS**

### **SHARES**

#### **21 APPOINTMENT OF SHAREHOLDERS**

- 21.1 The subscribers to the Memorandum are the first Shareholders.
- 21.2 No person shall be admitted as a Shareholder unless they are approved unanimously by the Shareholders.
- 21.3 The Directors or company secretary (if appointed) must keep a register of names and addresses of the Shareholders.

#### **22 LIABILITY OF SHAREHOLDERS**

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

#### **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 SHARE CERTIFICATES**

- 26.1 The Company must issue each Shareholder, free of charge, with one or more certificates in respect of the Shares which that Shareholder holds.
- 26.2 Every certificate must specify:
  - 26.2.1 in respect of how many Shares, of what class, it is issued;
  - 26.2.2 the nominal value of those Shares;
  - 26.2.3 that the Shares are fully paid; and
  - 26.2.4 any distinguishing numbers assigned to them.

- 26.3 No certificate may be issued in respect of Shares of more than one class.
- 26.4 If more than one person holds a Share, only one certificate may be issued in respect of it.
- 26.5 Certificates must be executed in accordance with the Companies Act 2006.

## **27 REPLACEMENT SHARE CERTIFICATES**

- 27.1 If a certificate issued in respect of a Shareholder's Shares is:
  - 27.1.1 damaged or defaced; or
  - 27.1.2 said to be lost, stolen or destroyed,that Shareholder is entitled to be issued with a replacement certificate in respect of the same Shares.
- 27.2 A Shareholder exercising the right to be issued with such a replacement certificate:
  - 27.2.1 may at the same time exercise the right to be issued with a single certificate or separate certificates;
  - 27.2.2 must return the certificate which is to be replaced to the Company if it is damaged or defaced; and
  - 27.2.3 must comply with such conditions as to evidence, indemnity and the payment of a reasonable fee as the Directors decide.

## **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.
- 28.5 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.

## **29 TRANSMISSION OF SHARES**

- 29.1 If title to a Share passes to a Transmittree, the Company may only recognise the Transmittree as having any title to that Share.
- 29.2 A Transmittree who produces such evidence of entitlement to Shares as the Directors may properly require:
  - 29.2.1 may, subject to the Articles, choose either to become the Holder of those Shares or to have them transferred to another person; and
  - 29.2.2 subject to the Articles, and pending any transfer of the Shares to another person, has the same rights as the Holder had.

29.3 However, 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.

### **30 EXERCISE OF TRANSMITEES' RIGHTS**

30.1 Transmittees who wish to become the holders of Shares to which they have become entitled must notify the Company in writing of that wish.

30.2 If the Transmitttee wishes to have a Share transferred to another person, the Transmitttee must execute an Instrument of transfer in respect of it.

30.3 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 Transmitttee has derived rights in respect of the Share, and as if the event which gave rise to the transmission had not occurred.

### **31 TRANSMITEES BOUND BY PRIOR NOTICES**

If a notice is given to a Shareholder in respect of Shares and a Transmitttee is entitled to those Shares, the Transmitttee is bound by the notice if it was given to the Shareholder before the Transmitttee's name has been entered in the register of members.

## **DIVIDENDS AND OTHER DISTRIBUTIONS**

### **32 PROCEDURE FOR DECLARING DIVIDENDS**

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

32.2 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.

32.3 No dividend may be declared or paid unless it is in accordance with Shareholders' respective rights.

32.4 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.

32.5 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.

32.6 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.

32.7 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.

### **33 PAYMENT OF DIVIDENDS AND OTHER DISTRIBUTIONS**

33.1 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:

33.1.1 transfer to a bank or building society account specified by the Distribution Recipient either in writing or as the Directors may otherwise decide; or

33.1.2 any other means of payment as the Directors agree with the Distribution Recipient either in writing or by such other means as the Directors decide.



- 33.2 In the Articles, the **Distribution Recipient** means, in respect of a Share in respect of which a dividend or other sum is payable:
- 33.2.1 the Holder of the Share; or
  - 33.2.2 if the Share has two or more joint holders, whichever of them is named first in the register of members; or
  - 33.2.3 if the Holder is no longer entitled to the Share by reason of death or bankruptcy; or
  - 33.2.4 otherwise by operation of law, the Transmitter.

#### **34 NO INTEREST ON DISTRIBUTIONS**

- 34.1 The Company may not pay interest on any dividend or other sum payable in respect of a Share unless otherwise provided by:
- 34.1.1 the terms on which the Share was issued; or
  - 34.1.2 the provisions of another agreement between the Holder of that Share and the Company.

#### **35 UNCLAIMED DISTRIBUTIONS**

- 35.1 All dividends or other sums which are:
- 35.1.1 payable in respect of Shares; and
  - 35.1.2 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.
- 35.2 The payment of any such dividend or other sum into a separate account does not make the Company a trustee in respect of it.
- 35.3 If:
- 35.3.1 twelve years have passed from the date on which a dividend or other sum became due for payment; and
  - 35.3.2 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.

#### **36 NON-CASH DISTRIBUTIONS**

- 36.1 Subject to the terms of issue of the Share in question, the Company may, by ordinary resolution on the recommendation of the Directors, decide to pay all or part of a dividend or other distribution payable in respect of a Share by transferring non-cash assets of equivalent value (including, without limitation, Shares or other securities in any Company).
- 36.2 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:
- 36.2.1 fixing the value of any assets;
  - 36.2.2 paying cash to any Distribution Recipient on the basis of that value in order to adjust the rights of recipients; and

36.2.3 vesting any assets in trustees.

### **37 WAIVER OF DISTRIBUTIONS**

37.1 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:

37.1.1 the Share has more than one Holder; or

37.1.2 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**

#### **38 AUTHORITY TO CAPITALISE AND APPROPRIATION OF CAPITALISED SUMS**

38.1 Subject to the Articles, the Directors may, if they are so authorised by an ordinary resolution:

38.1.1 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

38.1.2 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.

38.2 Capitalised sums must be applied:

38.2.1 on behalf of the persons entitled; and

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

38.3 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.

38.4 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.

38.5 Subject to the Articles, the Directors may:

38.5.1 apply capitalised sums in accordance with Articles 38.3 and 38.4 partly in one way and partly in another;

38.5.2 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

38.5.3 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**

### **39 WRITTEN RESOLUTIONS**

A resolution of the Shareholder (or class thereof) may be passed as a written resolution in accordance with Chapter 2 of Part 13 of the Companies Act 2006.

### **ORGANISATION OF GENERAL MEETINGS**

#### **40 GENERAL MEETINGS**

- 40.1 The Council shall appoint and may remove or replace a person by notice in writing to the Company, in accordance with section 323 of the Companies Act 2006, to act as the representative of the Council in accordance with the Articles.
- 40.2 Notice of a general meeting shall be given in Hard Copy Form, in Electronic Form or by means of a website, provided that the meeting is called by notice of at least 28 days and that the Company otherwise complies with any requirements relating to the giving of notice under the Companies Act 2006.
- 40.3 Any Director or the company secretary (if any) shall send notice of a general meeting to the Council every Director and any other person required by law to be sent such notice.
- 40.4 Notice of a general meeting shall:
- 40.4.1 state the time, date and place of the meeting;
  - 40.4.2 specify the general nature of the business to be dealt with at the meeting and set out the text of any special resolution to be voted upon at the meeting; and
  - 40.4.3 be accompanied by a proxy form; and
- notice of a general meeting need not be in writing.
- 40.5 The accidental omission to give notice of a general meeting to, or the non-receipt of notice by, any person entitled to receive the notice; or a technical defect in the timing or manner of giving such notice of which the Directors are unaware shall not invalidate the proceedings of that meeting.

#### **41 ATTENDANCE AND SPEAKING AT GENERAL MEETINGS**

- 41.1 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.
- 41.2 A person is able to exercise the right to vote at a general meeting when:
- 41.2.1 that person is able to vote, during the meeting, on resolutions put to the vote at the meeting; and
  - 41.2.2 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.
- 41.3 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.
- 41.4 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.

- 41.5 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.

## **42 QUORUM FOR GENERAL MEETINGS**

No business other than the appointment of the Chair of the Meeting is to be transacted at a general meeting unless an authorised representative of each Shareholder is present.

## **43 CHAIRING GENERAL MEETINGS**

- 43.1 The person chairing a meeting in accordance with this Article is referred to as the **Chair of the Meeting**.

- 43.2 The Chair (if one is appointed under Article 11.2) shall chair general meetings if present and willing to do so.

- 43.3 If no Chair has been appointed under Article 11.2 or (if appointed) the Chair is unwilling to chair the meeting or is not present within ten minutes of the time at which a meeting was due to start:

43.3.1 the Directors present; or

43.3.2 (if no Directors are present) the meeting,

must appoint a Director or Shareholder to chair the meeting, and the appointment of the Chair of the meeting must be the first business of the meeting.

## **44 ATTENDANCE AND SPEAKING BY DIRECTORS AND NON-SHAREHOLDERS**

- 44.1 Directors may attend and speak at general meetings, whether or not they are Shareholders.

- 44.2 The Chair of the Meeting may permit other persons who are not:

44.2.1 Shareholders; or

44.2.2 otherwise entitled to exercise the rights of Shareholders in relation to general meetings, to attend and speak at a general meeting.

## **45 ADJOURNMENT**

- 45.1 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 Chair of the meeting must adjourn it.

- 45.2 The Chair of the Meeting may adjourn a general meeting at which a quorum is present if:

45.2.1 the meeting consents to an adjournment; or

45.2.2 it appears to the Chair 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.

- 45.3 The Chair of the meeting must adjourn a general meeting if directed to do so by the meeting.

- 45.4 When adjourning a general meeting, the Chair of the meeting must:

45.4.1 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

- 45.4.2 have regard to any directions as to the time and place of any adjournment which have been given by the meeting.
- 45.5 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):
  - 45.5.1 to the same persons to whom notice of the Company's general meetings is required to be given; and
  - 45.5.2 containing the same information which such notice is required to contain.
- 45.6 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**

### **46 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.

### **47 ERRORS AND DISPUTES**

- 47.1 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.
- 47.2 Any such objection must be referred to the Chair of the Meeting, whose decision is final.

### **48 POLL VOTES**

- 48.1 A poll on a resolution may be demanded:
  - 48.1.1 in advance of the general meeting where it is to be put to the vote, or
  - 48.1.2 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.
- 48.2 A poll may be demanded by:
  - 48.2.1 the Chair of the Meeting;
  - 48.2.2 the Directors;
  - 48.2.3 two or more persons having the right to vote on the resolution; or
  - 48.2.4 a person or persons representing not less than one tenth of the total voting rights of all the Shareholders having the right to vote on the resolution.
- 48.3 A demand for a poll may be withdrawn if:
  - 48.3.1 the poll has not yet been taken; and
  - 48.3.2 the Chair of the Meeting consents to the withdrawal.
- 48.4 Polls must be taken immediately and in such manner as the Chair of the Meeting directs.

## **49 CONTENT OF PROXY NOTICES**

- 49.1 Proxies may only validly be appointed by a notice in writing (a **Proxy Notice**) which:
- 49.1.1 states the name and address of the Shareholder appointing the proxy;
  - 49.1.2 identifies the person appointed to be that Shareholder's proxy and the general meeting in relation to which that person is appointed;
  - 49.1.3 is signed by or on behalf of the Shareholder appointing the proxy, or is authenticated in such manner as the Directors may determine; and
  - 49.1.4 is delivered to the Company in accordance with the Articles and any instructions contained in the notice of the general meeting to which they relate.
- 49.2 The Company may require Proxy Notices to be delivered in a particular form, and may specify different forms for different purposes.
- 49.3 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.
- 49.4 Unless a Proxy Notice indicates otherwise, it must be treated as:
- 49.4.1 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
  - 49.4.2 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.

## **50 DELIVERY OF PROXY NOTICES**

- 50.1 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.
- 50.2 An appointment under a Proxy Notice:
- 50.2.1 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; and
  - 50.2.2 shall be revoked if the person by whom or on whose behalf the Proxy Notice was given is present at the meeting or adjourned meeting to which it relates.
- 50.3 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.
- 50.4 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.

## **51 AMENDMENTS TO RESOLUTIONS**

- 51.1 An ordinary resolution to be proposed at a general meeting may be amended by ordinary resolution if:
- 51.1.1 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 Chair of the Meeting may determine); and

- 51.1.2 the proposed amendment does not, in the reasonable opinion of the Chair of the Meeting, materially alter the scope of the resolution.
- 51.2 A special resolution to be proposed at a general meeting may be amended by ordinary resolution, if:
  - 51.2.1 the Chair of the Meeting proposes the amendment at the general meeting at which the resolution is to be proposed; and
  - 51.2.2 the amendment does not go beyond what is necessary to correct a grammatical or other non-substantive error in the resolution.
- 51.3 If the Chair of the Meeting, acting in good faith, wrongly decides that an amendment to a resolution is out of order, the Chair of the Meeting's error does not invalidate the vote on that resolution.

## **PART 5 - ADMINISTRATIVE ARRANGEMENTS**

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

- 52.1 Subject to the Articles, anything sent or supplied by or to the Company under the Articles may be sent or supplied in any way in which the Companies Act 2006 provides for Documents or information which are authorised or required by any provision of that Act to be sent or supplied by or to the Company.
- 52.2 Subject to the Articles, any notice or Document to be sent or supplied to a Director in connection with the taking of decisions by Directors may also be sent or supplied by the means by which that Director has asked to be sent or supplied with such notices or Documents for the time being.
- 52.3 A Director may agree with the Company that notices or Documents sent to that Director in a particular way are to be deemed to have been received within a specified time of their being sent, and for the specified time to be less than 48 hours.

### **53 COMPANY SEALS**

- 53.1 Any common seal may only be used by the authority of the Directors.
- 53.2 The Directors may decide by what means and in what form any common seal is to be used.
- 53.3 Unless otherwise decided by the Directors, if the Company has a common seal and it is affixed to a Document, the Document must also be signed by at least one authorised person in the presence of a witness who attests the signature.
- 53.4 For the purposes of this Article, an authorised person is:
  - 53.4.1 any Director;
  - 53.4.2 the company secretary (if any); or
  - 53.4.3 any person authorised by the Directors for the purpose of signing Documents to which the common seal is applied.

### **54 RIGHT TO INSPECT ACCOUNTS AND OTHER RECORDS**

The Shareholders and their authorised representatives shall have the right on giving to the Company reasonable advance notice, during normal business hours to inspect the books and records of the Company.

### **55 APPOINTMENT OF COMPANY SECRETARY**

The Council may appoint (and remove) the company secretary by notice in writing to the Company.

## 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, a relevant Director of the Company or an associated Company may be indemnified out of the Company's assets against:

57.1.1 any liability incurred by that Director in connection with any negligence, default, breach of duty or breach of trust in relation to the Company or an associated Company;

57.1.2 any liability incurred by that Director in connection with the activities of the Company or an associated Company in its capacity as a trustee of an occupational pension scheme (as defined in section 235(6) of the Companies Act 2006); and

57.1.3 any other liability incurred by that Director as an officer of the Company or an associated Company.

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 Director** means any Director or former Director of the Company or an associated Company.

### 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 Director in respect of any relevant loss.

58.2 In this Article:

58.2.1 a **relevant Director** means any Director or former Director of the Company or an associated Company;

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

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



COMPANY NUMBER [●]

THE COMPANIES ACT 2006  
PRIVATE COMPANY LIMITED BY SHARES

---

ARTICLES OF ASSOCIATION  
OF  
STONE CIRCLE HOUSING COMPANY LIMITED

---

## Contents

Item	Page
STONE CIRCLE HOUSING COMPANY LIMITED .....	1
PART 1 – INTERPRETATION .....	1
1 DEFINED TERMS .....	1
PART 2 - DIRECTORS.....	4
DIRECTORS' POWERS AND RESPONSIBILITIES .....	4
2 DIRECTORS' GENERAL AUTHORITY .....	4
3 SHAREHOLDERS' RESERVE POWER .....	4
4 DIRECTORS MAY DELEGATE.....	4
5 COMMITTEES.....	4
DECISION-MAKING BY DIRECTORS .....	4
6 DIRECTORS TO TAKE DECISIONS COLLECTIVELY .....	4
7 UNANIMOUS DECISIONS .....	5
8 CALLING A DIRECTORS' MEETING .....	5
9 PARTICIPATION IN DIRECTORS' MEETINGS.....	5
10 QUORUM FOR DIRECTORS' MEETINGS .....	6
11 CHAIRING OF DIRECTORS' MEETINGS.....	6
12 CONFLICTS OF INTEREST – TRANSACTIONS OR ARRANGEMENTS WITH THE COMPANY .....	6
13 CONFLICTS OF INTEREST REQUIRING BOARD AUTHORISATION .....	7
14 EFFECT OF DIRECTORS' INTERESTS ON QUORUM AND VOTING .....	8
15 RECORDS OF DECISIONS TO BE KEPT .....	8
16 DIRECTORS' DISCRETION TO MAKE FURTHER RULES.....	8
APPOINTMENT OF DIRECTORS .....	8
17 METHODS OF APPOINTING DIRECTORS.....	8
18 TERMINATION OF A DIRECTOR'S APPOINTMENT .....	9
19 DIRECTORS' REMUNERATION AND EXPENSES.....	9
20 ALTERNATE DIRECTORS .....	9
PART 3 - SHARES AND DISTRIBUTIONS.....	11
SHARES.....	11
21 APPOINTMENT OF SHAREHOLDERS .....	11
22 LIABILITY OF SHAREHOLDERS .....	11
23 ALL SHARES TO BE FULLY PAID UP .....	11
24 POWERS TO ISSUE DIFFERENT CLASSES OF SHARE.....	11
25 COMPANY NOT BOUND BY LESS THAN ABSOLUTE INTERESTS .....	11
26 SHARE CERTIFICATES.....	11
27 REPLACEMENT SHARE CERTIFICATES .....	12
28 SHARE TRANSFERS.....	12
29 TRANSMISSION OF SHARES.....	12
30 EXERCISE OF TRANSMITEES' RIGHTS.....	13
31 TRANSMITEES BOUND BY PRIOR NOTICES.....	13

DIVIDENDS AND OTHER DISTRIBUTIONS.....	13
32 PROCEDURE FOR DECLARING DIVIDENDS.....	13
33 PAYMENT OF DIVIDENDS AND OTHER DISTRIBUTIONS.....	13
34 NO INTEREST ON DISTRIBUTIONS.....	14
35 UNCLAIMED DISTRIBUTIONS.....	14
36 NON-CASH DISTRIBUTIONS.....	14
37 WAIVER OF DISTRIBUTIONS.....	15
CAPITALISATION OF PROFITS.....	15
38 AUTHORITY TO CAPITALISE AND APPROPRIATION OF CAPITALISED SUMS.....	15
PART 4 - DECISION-MAKING BY SHAREHOLDERS.....	16
39 WRITTEN RESOLUTIONS.....	16
ORGANISATION OF GENERAL MEETINGS.....	16
40 GENERAL MEETINGS.....	16
41 ATTENDANCE AND SPEAKING AT GENERAL MEETINGS.....	16
42 QUORUM FOR GENERAL MEETINGS.....	17
43 CHAIRING GENERAL MEETINGS.....	17
44 ATTENDANCE AND SPEAKING BY DIRECTORS AND NON-SHAREHOLDERS.....	17
45 ADJOURNMENT.....	17
VOTING AT GENERAL MEETINGS.....	18
46 VOTING: GENERAL.....	18
47 ERRORS AND DISPUTES.....	18
48 POLL VOTES.....	18
49 CONTENT OF PROXY NOTICES.....	19
50 DELIVERY OF PROXY NOTICES.....	19
51 AMENDMENTS TO RESOLUTIONS.....	19
PART 5 - ADMINISTRATIVE ARRANGEMENTS.....	20
52 MEANS OF COMMUNICATION TO BE USED.....	20
53 COMPANY SEALS.....	20
54 RIGHT TO INSPECT ACCOUNTS AND OTHER RECORDS.....	20
55 APPOINTMENT OF COMPANY SECRETARY.....	20
56 PROVISION FOR EMPLOYEES ON CESSATION OF BUSINESS.....	21
DIRECTORS' INDEMNITY AND INSURANCE.....	21
57 INDEMNITY.....	21
58 INSURANCE.....	21

---

**THE COMPANIES ACT 2006**  
**PRIVATE COMPANY LIMITED BY SHARES**  
**ARTICLES OF ASSOCIATION**  
**OF**  
**STONE CIRCLE HOUSING COMPANY LIMITED**

**PART 1 – INTERPRETATION**

**1 DEFINED TERMS**

1.1 In the Articles, unless the context requires otherwise:

**Appointer** has the meaning given in Article 20.1

**Articles** means the Company's articles of association as amended from time to time

**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

**capitalised sum** has the meaning given to it in Article 38.1.2

**Chair** has the meaning given in Article 11

**Chair of the Meeting** has the meaning given in Article 43

**Companies Acts** means the Companies Acts (as defined in section 2 of the Companies Act 2006), in so far as they apply to the Company

**Company** means the company governed by the Articles

**Conflict** has the meaning given in Article 13

**Council** means Horsham District Council, of Parkside, Chart Way, Horsham, West Sussex, RH12 1RL and any statutory successor

**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 33.2

**Document** includes, unless otherwise specified, any Document sent or supplied in Electronic Form

**Electronic Form** has the meaning given in section 1168 of the Companies Act 2006

**Eligible Director** means a Director who would have been entitled to vote on the matter had it been proposed as a resolution at a meeting of the Directors

**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

**Group Company** means, in relation to a company:

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

**Hard Copy Form** has the meaning given in section 1168 of the Companies Act 2006

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

**Instrument** means a Document in Hard Copy Form

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

**paid** means paid or credited as paid

**participate**, in relation to a Directors' meeting, has the meaning given in Article 9

**Permitted Situation** has the meaning given in Article 13.5

**persons entitled** has the meaning given in Article 38.1.2

**Proxy Notice** has the meaning given in Article 49

**Relevant Director** has the meaning given in Article 13.1

**Shareholder** means a person who is the Holder of a Share.

**Shares** means shares in the Company

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

**Transmittee** means a person entitled to a Share by reason of the death or bankruptcy of a Shareholder or otherwise by operation of law

**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

- 1.2 Unless the context otherwise requires, other words or expressions contained in the Articles bear the same meaning as in the Companies Act 2006 as in force on the date when the Articles become binding on the Company.
- 1.3 A reference to a **person** shall include a reference to an individual, firm, company, corporation, partnership, unincorporated body of persons, government, state or agency of a state or any association, trust, joint venture or consortium (whether or not having separate legal personality) and that person's personal representatives, successors, permitted assigns and permitted transferees.
- 1.4 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.5 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.6 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

- 1.7 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.8 A reference to a **regulation** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, inter-governmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation.
- 1.9 A reference to **writing** or **written** includes email but not fax.
- 1.10 A reference to any agreement or document (or any provision of it) referred to in the Articles is a reference to that agreement or document (or the relevant provision of it) as varied, amended or supplemented (in each case, other than in breach of the provisions of that agreement or document) from time to time.
- 1.11 Any words following the terms **including**, **include**, **in particular**, **for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.12 A reference to an **amendment** includes a novation, re-enactment, supplement or variation (and amended shall be construed accordingly).
- 1.13 A reference to **determines** or **determined** means, unless the contrary is indicated, a determination made at the absolute discretion of the person making it.
- 1.14 references to a **month** shall be construed as a reference to a period starting on one day in a calendar month and ending on the day immediately preceding the numerically corresponding day in the next calendar month or, if there is no numerically corresponding day in the next calendar month, the last day in the next calendar month; and
- 1.15 The expressions **body corporate**, **holding company**, **subsidiary**, **parent undertaking**, **subsidiary undertaking** and **parent company** shall have the respective meanings given in the Companies Act 2006, and, for the purposes of sections 1159(1) and 1162(2)(b) and (d) of that Act, a company or undertaking (the **first person**) shall be treated as a member of another company or undertaking if:
- 1.15.1 any of the first person's subsidiaries or subsidiary undertakings is a member of that other company or undertaking; or
- 1.15.2 any shares or capital interests in that other company or undertaking are held by a person acting on behalf of the first person or any of its subsidiaries or subsidiary undertakings; or
- 1.15.3 any shares or capital interests in that other company or undertaking are registered in the name of a person (or its nominee) by way of security or in connection with the granting of security over those shares or capital interests by the first person.

In the case of a limited liability partnership which is (or might constitute) a subsidiary or subsidiary undertaking of a company or another limited liability partnership, sections 1159 and 1162 of the Companies Act 2006 shall be amended so that:

- (a) references in sections 1159(1)(a) and (c) and 1162(2)(a) and (d) to "voting rights" are to the members' rights to vote on all or substantially all matters which are decided by a vote of the members of the limited liability partnership; and
- (b) references in sections 1159(1)(b) and 1162(2)(b) to the "right to appoint or remove a majority of its board of directors" is to the right: (i) to appoint or remove a majority of the directors (or equivalent) of that limited liability partnership; or (ii) if no such directors (or equivalent) exist by virtue of the constitution of that limited liability partnership, members holding a majority of the voting rights,

and unless the context otherwise requires, the application of the definitions of body corporate, holding company, subsidiary, parent undertaking, subsidiary undertaking and parent company shall apply as to the relevant company or undertaking as it is at that time.

## **PART 2 - DIRECTORS**

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

#### **2 DIRECTORS' GENERAL AUTHORITY**

Subject to the Articles, the Directors are responsible for the management of the Company's business, for which purpose they may exercise all the powers of the Company.

#### **3 SHAREHOLDERS' RESERVE POWER**

- 3.1 The Shareholders may, by special resolution, direct the Directors to take, or refrain from taking, specified action.
- 3.2 No such special resolution invalidates anything which the Directors have done before the passing of the resolution.

#### **4 DIRECTORS MAY DELEGATE**

- 4.1 Subject to the Articles, the Directors may delegate any of the powers which are conferred on them under the Articles as follows:
  - 4.1.1 to such person or committee;
  - 4.1.2 by such means (including by power of attorney);
  - 4.1.3 to such an extent;
  - 4.1.4 in relation to such matters or territories; and
  - 4.1.5 on such terms and conditions,as they think fit.
- 4.2 If the Directors so specify, any such delegation may authorise further delegation of the Directors' powers by any person to whom they are delegated.
- 4.3 The Directors may revoke any delegation in whole or part, or alter its terms and conditions.

#### **5 COMMITTEES**

- 5.1 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.
- 5.2 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.

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

#### **6 DIRECTORS TO TAKE DECISIONS COLLECTIVELY**

- 6.1 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 7.

- 6.2 If only one Director is eligible to vote on any authorisation required under Article 13, the general rule does not apply and the Eligible Director may take decisions in relation to the relevant matter without regard to any of the provisions in the Articles relating to Directors' decision-making.
- 6.3 Each Director shall be entitled to cast one vote on any resolution put to the Directors.
- 6.4 If the numbers of votes for and against a proposal are equal, the Chair shall not have a casting vote.

## **7 UNANIMOUS DECISIONS**

- 7.1 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.
- 7.2 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.
- 7.3 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.

## **8 CALLING A DIRECTORS' MEETING**

- 8.1 Any Director may call a Directors' meeting by giving notice of the meeting to the Directors and the Council in accordance with Article 8.2 or by authorising the company secretary (if any) to give such notice.
- 8.2 A meeting of the Directors must be called by at least 7 days' notice unless either:
- 8.2.1 the Directors and the Council unanimously agree otherwise; or
  - 8.2.2 urgent circumstances require shorter notice.
- 8.3 Notice of any Directors' meeting must include:
- 8.3.1 its proposed date and time;
  - 8.3.2 where it is to take place;
  - 8.3.3 if it is anticipated that persons 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;
  - 8.3.4 an agenda specifying in reasonable detail the matters to be raised at the meeting or the committee meeting; and
  - 8.3.5 copies of any papers to be discussed at the meeting or the committee meeting.
- 8.4 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 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.

## **9 PARTICIPATION IN DIRECTORS' MEETINGS**

- 9.1 Subject to the Articles, Directors **participate** in a Directors' meeting, or part of a Directors' meeting, when:
- 9.1.1 the meeting has been called and takes place in accordance with the Articles; and
  - 9.1.2 they can each communicate to the others any information or opinions they have on any particular item of the business of the meeting.



- 9.2 In determining whether Directors are participating in a Directors' meeting, it is irrelevant where any Director is or how they communicate with each other.
- 9.3 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.
- 9.4 The Council shall have the right to attend and receive notice of (but not vote at) any Board meetings and receive papers in relation to such meetings at the same time as those papers are given to the Directors.

## **10 QUORUM FOR DIRECTORS' MEETINGS**

- 10.1 At a Directors' meeting, unless a quorum is participating, no proposal is to be voted on, except a proposal to call another meeting.
- 10.2 Subject to Article 6.2 the quorum for a Directors' meeting shall be three Directors.
- 10.3 If the total number of Directors for the time being is less than the quorum required, the Directors must not take any decision other than a decision:
- 10.3.1 to appoint further Directors; or
- 10.3.2 to call a general meeting so as to enable the Shareholders to appoint further Directors.
- 10.4 If a quorum is not present with half an hour from the time appointed for the meeting, or during a meeting a quorum ceases to be present, the meeting shall be adjourned to such time and place as the Directors may determine in accordance with the Articles.

## **11 CHAIRING OF DIRECTORS' MEETINGS**

- 11.1 The person appointed pursuant to Article 11.2 or Article 11.3 (as the case may be) shall be known as the Chair.
- 11.2 With the prior written consent of the Council, the Directors may:
- 11.2.1 appoint a person Chair of the Directors;
- 11.2.2 determine the period for which he is to hold office; and
- 11.2.3 at any time remove him from office.
- 11.3 If at the date and time of a meeting of the Directors no person has been appointed as Chair pursuant to Article 11.2, then the participating Directors at that meeting may appoint a Director present to chair the meeting. The participating Directors may also terminate the appointment of a person as Chair made under this Article 11.3 at any time during the meeting at which he is appointed.

## **12 CONFLICTS OF INTEREST – TRANSACTIONS OR ARRANGEMENTS WITH THE COMPANY**

- 12.1 The relevant provisions of the Companies Act 2006 (including, without limitation, sections 177 and 182) shall apply in relation to declarations of interest in proposed and existing transactions or arrangements with the Company.
- 12.2 Provided that he has disclosed to the Directors the nature and extent of any interest of his in accordance with and to the extent required by the Companies Act 2006, a Director notwithstanding his office:
- 12.2.1 may be a party to, or otherwise interested in, any contract with the Company or a Group Company of the Company or in which either or both of them is/are otherwise interested;

- 12.2.2 may be an elected member, director or other officer of, employed by, a party to any contract with, or otherwise interested in, the Council, any Group Company of the Company or in any body corporate promoted by the Company, the Council, or a Group Company of the Company, or in which any of them is/are interested; and
  - 12.2.3 may act by himself or his firm in a professional capacity for the Company (otherwise than as auditor).
- 12.3 For the purposes of this Article 12.3:
- 12.3.1 a Director shall be deemed to have disclosed the nature and extent of an interest which consists of him being an elected member, director, officer or employee of the Council or any Group Company of the Company; and
  - 12.3.2 a general notice given to the Directors that a Director is to be regarded as having an interest of the nature and extent specified in the notice in any contract in which a specified person or class of persons is interested shall be deemed to be a disclosure that the Director has an interest in any such contract of the nature and extent so specified.
- 12.4 Where a Director is an elected member, director, officer, or employee of the Council or a Group Company of the Company, he:
- 12.4.1 may in exercising his independent judgment take into account the success of the Council or Group Company as well as the success of the Company; and
  - 12.4.2 shall in the exercise of his duties have a duty of confidentiality to the Council or Group Company in relation to confidential information of that Shareholder or Group Company, but he shall not be restricted by any duty of confidentiality to the Company from providing information to the Council or Group Company except as may be imposed under Article 13.5.

### 13 CONFLICTS OF INTEREST REQUIRING BOARD AUTHORISATION

- 13.1 The Directors may authorise any matter which would otherwise involve a Director (a **Relevant Director**) breaching his duty under section 175 of the Companies Act 2006 to avoid a situation in which he has, or can have, a direct or indirect interest that conflicts, or possibly may conflict, with the interests of the Company (a **Conflict**).
- 13.2 Any Director (including the Relevant Director) may propose that the Relevant Director be authorised in relation to any matter the subject of a Conflict. Such proposal and any authority given by the Directors shall be effected in the same way that any other matter may be proposed to and decided upon by the Directors under the Articles save that the Relevant Director (and any Director) shall not count towards the quorum nor vote on any resolution giving such authority.
- 13.3 Where the Directors give authority in relation to a Conflict:
- 13.3.1 the terms of the authority shall be recorded in writing (but the authority shall be effective whether or not the terms are so recorded); and
  - 13.3.2 the Directors may revoke or vary such authority at any time but this will not affect anything done by the Relevant Director prior to such revocation in accordance with the terms of such authority.
- 13.4 A Conflict in relation to a Director arising solely as a result of him being an elected member, director, officer or employee of the Council or any Group Company of the Company shall be deemed to have been authorised for the purposes of this Article 13 and section 175 of the Companies Act 2006.
- 13.5 Where Article 13.4 above applies or the Directors otherwise gives authority in relation to a Conflict, or where any of the situations referred to in Article 12 (a **Permitted Situation**) applies:

- 13.5.1 the Directors may (whether at the relevant time or subsequently) (i) require that the Relevant Director is excluded from the receipt of information, the participation in discussion and/or the making of decisions (whether at Directors meetings or otherwise) related to the Conflict or Permitted Situation; and (ii) impose upon the Relevant Director such other terms for the purpose of dealing with the Conflict as they may determine;
- 13.5.2 the Relevant Director will be obliged to conduct himself in accordance with any terms imposed by the Directors in relation to the Conflict or Permitted Situation; and
- 13.5.3 the Directors may provide that where the Relevant Director obtains (otherwise than through his position as a Director of the Company) information that is confidential to a third party, the Director will not be obliged to disclose that information to the Company, or to use or apply the information in relation to the Company's affairs, where to do so would amount to a breach of that confidence.
- 13.6 A Director shall not, by reason of his office or of the fiduciary relationship thereby established, be liable to account to the Company or the Shareholders for any remuneration, profit or other benefit realised by reason of his having any type of interest in a Conflict authorised under this Article or in any Permitted Situation and no contract shall be liable to be avoided on the grounds of a Director having any such interest.

#### **14 EFFECT OF DIRECTORS' INTERESTS ON QUORUM AND VOTING**

- 14.1 Subject where applicable to disclosure in accordance with the Articles and subject to any terms imposed by the Directors in relation to any Conflict or Permitted Situation, a Director shall be entitled to vote in respect of any matter in which he is interested directly or indirectly (where that interest arises by virtue of a Conflict which has been authorised or a Permitted Situation) and if he shall do so his vote shall be counted and, whether or not he does, his presence at the meeting shall be taken into account in ascertaining whether a quorum is present.
- 14.2 However, a Director shall not be entitled to vote in respect of any other matter in which he is interested directly or indirectly and his presence at the meeting shall not be taken into account in ascertaining whether a quorum is present.
- 14.3 Subject to Article 14.4 below, if a question arises at a meeting of Directors or of a committee of Directors as to the right of a Director to participate in the meeting (or part of the meeting) for voting or quorum purposes, the question may, before the conclusion of the meeting, be referred to the Chair whose ruling in relation to any Director other than the Chair is to be final and conclusive.
- 14.4 If any question as to the right to participate in the meeting (or part of the meeting) should arise in respect of the Chair, the question is to be decided by a decision of the Directors at that meeting, for which purpose the Chair is not to be counted as participating in the meeting (or that part of the meeting) for voting or quorum purposes.

#### **15 RECORDS OF DECISIONS TO BE KEPT**

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

#### **16 DIRECTORS' DISCRETION TO MAKE FURTHER RULES**

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

### **APPOINTMENT OF DIRECTORS**

#### **17 METHODS OF APPOINTING DIRECTORS**

- 17.1 The board of Directors shall comprise of a minimum of three Directors.

- 17.2 Any person who is willing to act as a Director, and is permitted by law to do so, may be appointed as a Director in accordance with these Articles.
- 17.3 Subject to the Articles, any appointment(s) or termination(s) of a Director made under this Article 17 shall be effected (as relevant) by the Council giving notice in writing to the Company, on the date on which the notice from the Council is received by the Company, or if a later date is specified in the notice, on that date.
- 17.4 The Council may at any time appoint any person to be a Director, whether as an additional Director or to fill a vacancy, and may remove from office any Director howsoever appointed and any alternate Director. Any such appointment or removal shall be effected by an ordinary resolution or otherwise by notice in writing to the Company by the Council. Any such appointment or removal shall take effect:
- 17.4.1 if it is effected by ordinary resolution, at the point the resolution is passed; and
- 17.4.2 if it is effected by notice in writing to the Company, when it is delivered to the registered office of the Company or, if it is produced at a meeting of the Directors, when it is so produced or, if sent by electronic means to an address generally used by the Company, when it is sent.
- 17.5 Any removal pursuant to this Article 17 shall be without prejudice to any claim that a Director may have under any contract between him and the Company.

## **18 TERMINATION OF A DIRECTOR'S APPOINTMENT**

- 18.1 A person ceases to be a Director as soon as:
- 18.1.1 the Council notifies the Company that the individual is to be removed as a Director;
- 18.1.2 the Council serves notice to remove the Director in accordance with Article 17.4, and such notice has taken effect in accordance with its terms;
- 18.1.3 that person ceases to be a Director by virtue of any provision of the Companies Act 2006 or is prohibited from being a Director by law;
- 18.1.4 a bankruptcy order is made against that person;
- 18.1.5 a composition is made with that person's creditors generally in satisfaction of that person's debts;
- 18.1.6 a registered medical practitioner who is treating that person gives a written opinion to the Company stating that that person has become physically or mentally incapable of acting as a Director and may remain so for more than three months; or
- 18.1.7 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 DIRECTORS' REMUNERATION AND EXPENSES**

- 19.1 Any remuneration of the Directors shall require the prior approval of the Council.
- 19.2 The Council's expenses policies from time to time shall apply to any expenses of Directors (and alternate Directors).

## **20 ALTERNATE DIRECTORS**

- 20.1 Any Director (the **Appointor**) may, with the prior written approval of the Council, appoint any person (whether or not a Director) to be his or her alternate to exercise the Appointor's powers, and carry out

the Appointor's responsibilities, in relation to the taking of decisions by the Directors, in the absence of the Appointor. A person may be appointed an alternate by more than one Director.

- 20.2 Any appointment or removal of an alternate must be effected by notice in writing to the Company (and to the alternate, on removal) signed by the Appointor, or in any other manner approved by the Directors.
- 20.3 The notice must:
- 20.3.1 identify the proposed alternate; and
  - 20.3.2 in the case of a notice of appointment, contain a statement signed by the proposed alternate that he is willing to act as the alternate of the Appointor.
- 20.4 An alternate has the same rights, in relation to any decision of the Directors, as the alternate's Appointor.
- 20.5 Except as the Articles specify otherwise, alternates:
- 20.5.1 are deemed for all purposes to be Directors;
  - 20.5.2 are liable for their own acts and omissions;
  - 20.5.3 are subject to the same restrictions as their Appointors; and
  - 20.5.4 are not deemed to be agents of or for their Appointors,
- and, in particular (without limitation), each alternate shall be entitled to receive notice of all meetings of Directors and of all meetings of committees of Directors of which his Appointor is a member.
- 20.6 A person who is an alternate but not a Director<sup>1</sup> may:
- 20.6.1 be counted as participating for the purposes of determining whether a quorum is present at a meeting of Directors (but only if that person's Appointor is an Eligible Director and is not participating); and
  - 20.6.2 participate in a unanimous decision of the Directors (but only if his Appointor is an Eligible Director in relation to that decision, and does not himself participate).
- 20.7 A Director who is also an alternate is entitled, in the absence of his Appointor(s), to a separate vote on behalf of each Appointor (provided that an Appointor is an Eligible Director in relation to that decision), in addition to his own vote on any decision of the Directors.
- 20.8 An alternate may be paid expenses and may be indemnified by the Company to the same extent as if he were a Director but shall not be entitled to receive from the Company any remuneration in his capacity as an alternate except such part (if any) of the remuneration otherwise payable to the alternate's Appointor as the Appointor may by notice in writing to the Company from time to time direct.
- 20.9 A person's appointment as an alternate (in respect of a particular Appointor) terminates:
- 20.9.1 when the alternate's Appointor revokes the appointment by notice to the Company and the alternate in writing specifying when it is to terminate; or
  - 20.9.2 on the occurrence, in relation to the alternate, of any event which, if it occurred in relation to the alternate's Appointor, would result in the termination of the Appointor's appointment as a director; or

---

<sup>1</sup> BB Note: is it ok for a non director to be an alternate?

20.9.3 when the alternate's Appointor ceases to be a Director for whatever reason.

## **PART 3 - SHARES AND DISTRIBUTIONS**

### **SHARES**

#### **21 APPOINTMENT OF SHAREHOLDERS**

- 21.1 The subscribers to the Memorandum are the first Shareholders.
- 21.2 No person shall be admitted as a Shareholder unless they are approved unanimously by the Shareholders.
- 21.3 The Directors or company secretary (if appointed) must keep a register of names and addresses of the Shareholders.

#### **22 LIABILITY OF SHAREHOLDERS**

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

#### **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 SHARE CERTIFICATES**

- 26.1 The Company must issue each Shareholder, free of charge, with one or more certificates in respect of the Shares which that Shareholder holds.
- 26.2 Every certificate must specify:
  - 26.2.1 in respect of how many Shares, of what class, it is issued;
  - 26.2.2 the nominal value of those Shares;
  - 26.2.3 that the Shares are fully paid; and
  - 26.2.4 any distinguishing numbers assigned to them.

- 26.3 No certificate may be issued in respect of Shares of more than one class.
- 26.4 If more than one person holds a Share, only one certificate may be issued in respect of it.
- 26.5 Certificates must be executed in accordance with the Companies Act 2006.

## **27 REPLACEMENT SHARE CERTIFICATES**

- 27.1 If a certificate issued in respect of a Shareholder's Shares is:
  - 27.1.1 damaged or defaced; or
  - 27.1.2 said to be lost, stolen or destroyed,that Shareholder is entitled to be issued with a replacement certificate in respect of the same Shares.
- 27.2 A Shareholder exercising the right to be issued with such a replacement certificate:
  - 27.2.1 may at the same time exercise the right to be issued with a single certificate or separate certificates;
  - 27.2.2 must return the certificate which is to be replaced to the Company if it is damaged or defaced; and
  - 27.2.3 must comply with such conditions as to evidence, indemnity and the payment of a reasonable fee as the Directors decide.

## **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.
- 28.5 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.

## **29 TRANSMISSION OF SHARES**

- 29.1 If title to a Share passes to a Transmittree, the Company may only recognise the Transmittree as having any title to that Share.
- 29.2 A Transmittree who produces such evidence of entitlement to Shares as the Directors may properly require:
  - 29.2.1 may, subject to the Articles, choose either to become the Holder of those Shares or to have them transferred to another person; and
  - 29.2.2 subject to the Articles, and pending any transfer of the Shares to another person, has the same rights as the Holder had.

29.3 However, 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.

### **30 EXERCISE OF TRANSMITEES' RIGHTS**

30.1 Transmittees who wish to become the holders of Shares to which they have become entitled must notify the Company in writing of that wish.

30.2 If the Transmitttee wishes to have a Share transferred to another person, the Transmitttee must execute an Instrument of transfer in respect of it.

30.3 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 Transmitttee has derived rights in respect of the Share, and as if the event which gave rise to the transmission had not occurred.

### **31 TRANSMITEES BOUND BY PRIOR NOTICES**

If a notice is given to a Shareholder in respect of Shares and a Transmitttee is entitled to those Shares, the Transmitttee is bound by the notice if it was given to the Shareholder before the Transmitttee's name has been entered in the register of members.

## **DIVIDENDS AND OTHER DISTRIBUTIONS**

### **32 PROCEDURE FOR DECLARING DIVIDENDS**

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

32.2 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.

32.3 No dividend may be declared or paid unless it is in accordance with Shareholders' respective rights.

32.4 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.

32.5 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.

32.6 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.

32.7 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.

### **33 PAYMENT OF DIVIDENDS AND OTHER DISTRIBUTIONS**

33.1 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:

33.1.1 transfer to a bank or building society account specified by the Distribution Recipient either in writing or as the Directors may otherwise decide; or

33.1.2 any other means of payment as the Directors agree with the Distribution Recipient either in writing or by such other means as the Directors decide.



- 33.2 In the Articles, the **Distribution Recipient** means, in respect of a Share in respect of which a dividend or other sum is payable:
- 33.2.1 the Holder of the Share; or
  - 33.2.2 if the Share has two or more joint holders, whichever of them is named first in the register of members; or
  - 33.2.3 if the Holder is no longer entitled to the Share by reason of death or bankruptcy; or
  - 33.2.4 otherwise by operation of law, the Transmitter.

#### **34 NO INTEREST ON DISTRIBUTIONS**

- 34.1 The Company may not pay interest on any dividend or other sum payable in respect of a Share unless otherwise provided by:
- 34.1.1 the terms on which the Share was issued; or
  - 34.1.2 the provisions of another agreement between the Holder of that Share and the Company.

#### **35 UNCLAIMED DISTRIBUTIONS**

- 35.1 All dividends or other sums which are:
- 35.1.1 payable in respect of Shares; and
  - 35.1.2 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.
- 35.2 The payment of any such dividend or other sum into a separate account does not make the Company a trustee in respect of it.
- 35.3 If:
- 35.3.1 twelve years have passed from the date on which a dividend or other sum became due for payment; and
  - 35.3.2 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.

#### **36 NON-CASH DISTRIBUTIONS**

- 36.1 Subject to the terms of issue of the Share in question, the Company may, by ordinary resolution on the recommendation of the Directors, decide to pay all or part of a dividend or other distribution payable in respect of a Share by transferring non-cash assets of equivalent value (including, without limitation, Shares or other securities in any Company).
- 36.2 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:
- 36.2.1 fixing the value of any assets;
  - 36.2.2 paying cash to any Distribution Recipient on the basis of that value in order to adjust the rights of recipients; and

36.2.3 vesting any assets in trustees.

### **37 WAIVER OF DISTRIBUTIONS**

37.1 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:

37.1.1 the Share has more than one Holder; or

37.1.2 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**

#### **38 AUTHORITY TO CAPITALISE AND APPROPRIATION OF CAPITALISED SUMS**

38.1 Subject to the Articles, the Directors may, if they are so authorised by an ordinary resolution:

38.1.1 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

38.1.2 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.

38.2 Capitalised sums must be applied:

38.2.1 on behalf of the persons entitled; and

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

38.3 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.

38.4 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.

38.5 Subject to the Articles, the Directors may:

38.5.1 apply capitalised sums in accordance with Articles 38.3 and 38.4 partly in one way and partly in another;

38.5.2 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

38.5.3 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**

### **39 WRITTEN RESOLUTIONS**

A resolution of the Shareholder (or class thereof) may be passed as a written resolution in accordance with Chapter 2 of Part 13 of the Companies Act 2006.

### **ORGANISATION OF GENERAL MEETINGS**

#### **40 GENERAL MEETINGS**

40.1 The Council shall appoint and may remove or replace a person by notice in writing to the Company, in accordance with section 323 of the Companies Act 2006, to act as the representative of the Council in accordance with the Articles.

40.2 Notice of a general meeting shall be given in Hard Copy Form, in Electronic Form or by means of a website, provided that the meeting is called by notice of at least 28 days and that the Company otherwise complies with any requirements relating to the giving of notice under the Companies Act 2006.

40.3 Any Director or the company secretary (if any) shall send notice of a general meeting to the Council every Director and any other person required by law to be sent such notice.

40.4 Notice of a general meeting shall:

40.4.1 state the time, date and place of the meeting;

40.4.2 specify the general nature of the business to be dealt with at the meeting and set out the text of any special resolution to be voted upon at the meeting; and

40.4.3 be accompanied by a proxy form; and

notice of a general meeting need not be in writing.

40.5 The accidental omission to give notice of a general meeting to, or the non-receipt of notice by, any person entitled to receive the notice; or a technical defect in the timing or manner of giving such notice of which the Directors are unaware shall not invalidate the proceedings of that meeting.

#### **41 ATTENDANCE AND SPEAKING AT GENERAL MEETINGS**

41.1 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.

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

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

41.2.2 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.

41.3 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.

41.4 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.

41.5 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.

## **42 QUORUM FOR GENERAL MEETINGS**

No business other than the appointment of the Chair of the Meeting is to be transacted at a general meeting unless an authorised representative of each Shareholder is present.

## **43 CHAIRING GENERAL MEETINGS**

43.1 The person chairing a meeting in accordance with this Article is referred to as the **Chair of the Meeting**.

43.2 The Chair (if one is appointed under Article 11.2) shall chair general meetings if present and willing to do so.

43.3 If no Chair has been appointed under Article 11.2 or (if appointed) the Chair is unwilling to chair the meeting or is not present within ten minutes of the time at which a meeting was due to start:

43.3.1 the Directors present; or

43.3.2 (if no Directors are present) the meeting,

must appoint a Director or Shareholder to chair the meeting, and the appointment of the Chair of the meeting must be the first business of the meeting.

## **44 ATTENDANCE AND SPEAKING BY DIRECTORS AND NON-SHAREHOLDERS**

44.1 Directors may attend and speak at general meetings, whether or not they are Shareholders.

44.2 The Chair of the Meeting may permit other persons who are not:

44.2.1 Shareholders; or

44.2.2 otherwise entitled to exercise the rights of Shareholders in relation to general meetings, to attend and speak at a general meeting.

## **45 ADJOURNMENT**

45.1 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 Chair of the meeting must adjourn it.

45.2 The Chair of the Meeting may adjourn a general meeting at which a quorum is present if:

45.2.1 the meeting consents to an adjournment; or

45.2.2 it appears to the Chair 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.

45.3 The Chair of the meeting must adjourn a general meeting if directed to do so by the meeting.

45.4 When adjourning a general meeting, the Chair of the meeting must:

45.4.1 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

- 45.4.2 have regard to any directions as to the time and place of any adjournment which have been given by the meeting.
- 45.5 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):
  - 45.5.1 to the same persons to whom notice of the Company's general meetings is required to be given; and
  - 45.5.2 containing the same information which such notice is required to contain.
- 45.6 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**

### **46 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.

### **47 ERRORS AND DISPUTES**

- 47.1 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.
- 47.2 Any such objection must be referred to the Chair of the Meeting, whose decision is final.

### **48 POLL VOTES**

- 48.1 A poll on a resolution may be demanded:
  - 48.1.1 in advance of the general meeting where it is to be put to the vote, or
  - 48.1.2 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.
- 48.2 A poll may be demanded by:
  - 48.2.1 the Chair of the Meeting;
  - 48.2.2 the Directors;
  - 48.2.3 two or more persons having the right to vote on the resolution; or
  - 48.2.4 a person or persons representing not less than one tenth of the total voting rights of all the Shareholders having the right to vote on the resolution.
- 48.3 A demand for a poll may be withdrawn if:
  - 48.3.1 the poll has not yet been taken; and
  - 48.3.2 the Chair of the Meeting consents to the withdrawal.
- 48.4 Polls must be taken immediately and in such manner as the Chair of the Meeting directs.

## **49 CONTENT OF PROXY NOTICES**

- 49.1 Proxies may only validly be appointed by a notice in writing (a **Proxy Notice**) which:
- 49.1.1 states the name and address of the Shareholder appointing the proxy;
  - 49.1.2 identifies the person appointed to be that Shareholder's proxy and the general meeting in relation to which that person is appointed;
  - 49.1.3 is signed by or on behalf of the Shareholder appointing the proxy, or is authenticated in such manner as the Directors may determine; and
  - 49.1.4 is delivered to the Company in accordance with the Articles and any instructions contained in the notice of the general meeting to which they relate.
- 49.2 The Company may require Proxy Notices to be delivered in a particular form, and may specify different forms for different purposes.
- 49.3 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.
- 49.4 Unless a Proxy Notice indicates otherwise, it must be treated as:
- 49.4.1 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
  - 49.4.2 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.

## **50 DELIVERY OF PROXY NOTICES**

- 50.1 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.
- 50.2 An appointment under a Proxy Notice:
- 50.2.1 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; and
  - 50.2.2 shall be revoked if the person by whom or on whose behalf the Proxy Notice was given is present at the meeting or adjourned meeting to which it relates.
- 50.3 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.
- 50.4 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.

## **51 AMENDMENTS TO RESOLUTIONS**

- 51.1 An ordinary resolution to be proposed at a general meeting may be amended by ordinary resolution if:
- 51.1.1 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 Chair of the Meeting may determine); and

- 51.1.2 the proposed amendment does not, in the reasonable opinion of the Chair of the Meeting, materially alter the scope of the resolution.
- 51.2 A special resolution to be proposed at a general meeting may be amended by ordinary resolution, if:
  - 51.2.1 the Chair of the Meeting proposes the amendment at the general meeting at which the resolution is to be proposed; and
  - 51.2.2 the amendment does not go beyond what is necessary to correct a grammatical or other non-substantive error in the resolution.
- 51.3 If the Chair of the Meeting, acting in good faith, wrongly decides that an amendment to a resolution is out of order, the Chair of the Meeting's error does not invalidate the vote on that resolution.

## **PART 5 - ADMINISTRATIVE ARRANGEMENTS**

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

- 52.1 Subject to the Articles, anything sent or supplied by or to the Company under the Articles may be sent or supplied in any way in which the Companies Act 2006 provides for Documents or information which are authorised or required by any provision of that Act to be sent or supplied by or to the Company.
- 52.2 Subject to the Articles, any notice or Document to be sent or supplied to a Director in connection with the taking of decisions by Directors may also be sent or supplied by the means by which that Director has asked to be sent or supplied with such notices or Documents for the time being.
- 52.3 A Director may agree with the Company that notices or Documents sent to that Director in a particular way are to be deemed to have been received within a specified time of their being sent, and for the specified time to be less than 48 hours.

### **53 COMPANY SEALS**

- 53.1 Any common seal may only be used by the authority of the Directors.
- 53.2 The Directors may decide by what means and in what form any common seal is to be used.
- 53.3 Unless otherwise decided by the Directors, if the Company has a common seal and it is affixed to a Document, the Document must also be signed by at least one authorised person in the presence of a witness who attests the signature.
- 53.4 For the purposes of this Article, an authorised person is:
  - 53.4.1 any Director;
  - 53.4.2 the company secretary (if any); or
  - 53.4.3 any person authorised by the Directors for the purpose of signing Documents to which the common seal is applied.

### **54 RIGHT TO INSPECT ACCOUNTS AND OTHER RECORDS**

The Shareholders and their authorised representatives shall have the right on giving to the Company reasonable advance notice, during normal business hours to inspect the books and records of the Company.

### **55 APPOINTMENT OF COMPANY SECRETARY**

The Council may appoint (and remove) the company secretary by notice in writing to the Company.

## 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, a relevant Director of the Company or an associated Company may be indemnified out of the Company's assets against:

57.1.1 any liability incurred by that Director in connection with any negligence, default, breach of duty or breach of trust in relation to the Company or an associated Company;

57.1.2 any liability incurred by that Director in connection with the activities of the Company or an associated Company in its capacity as a trustee of an occupational pension scheme (as defined in section 235(6) of the Companies Act 2006); and

57.1.3 any other liability incurred by that Director as an officer of the Company or an associated Company.

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 Director** means any Director or former Director of the Company or an associated Company.

### 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 Director in respect of any relevant loss.

58.2 In this Article:

58.2.1 a **relevant Director** means any Director or former Director of the Company or an associated Company;

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

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



**Dated**

---

**STONE CIRCLE DEVELOPMENT COMPANY LIMITED**

**and**

**WILTSHIRE COUNCIL**

---

**WORKING CAPITAL FACILITY AGREEMENT<sup>1</sup>**

---

---

<sup>1</sup> **Note the draft contains some comments and optional drafting for discussion with the council.**

© Bevan Brittan LLP

Toronto Square - 7<sup>th</sup> Floor | Toronto Street | Leeds LS1 2HJ  
T 0370 194 1000 F 0370 194 5465

Fleet Place House | 2 Fleet Place | Holborn Viaduct | London EC4M 7RF  
T 0370 194 1000 F 0370 194 7800

Kings Orchard | 1 Queen Street | Bristol BS2 0HQ  
T 0370 194 1000 F 0370 194 1001

Interchange Place | Edmund Street | Birmingham B3 2TA  
T 0370 194 1000 F 0370 194 5001

Contents

---

Item	Page
<b>PARTIES</b> .....	<b>1</b>
<b>BACKGROUND</b> .....	<b>1</b>
<b>AGREED TERMS</b> .....	<b>1</b>
<b>1</b> <b>DEFINITIONS AND INTERPRETATION</b> .....	<b>1</b>
<b>2</b> <b>THE FACILITY</b> .....	<b>3</b>
<b>3</b> <b>PURPOSE</b> .....	<b>3</b>
<b>4</b> <b>DRAWING</b> .....	<b>4</b>
<b>5</b> <b>CONDITIONS PRECEDENT</b> .....	<b>4</b>
<b>6</b> <b>INTEREST</b> .....	<b>4</b>
<b>7</b> <b>COSTS</b> .....	<b>4</b>
<b>8</b> <b>REPAYMENT AND CANCELLATION</b> .....	<b>5</b>
<b>9</b> <b>PAYMENTS</b> .....	<b>5</b>
<b>10</b> <b>REPRESENTATIONS AND WARRANTIES</b> .....	<b>5</b>
<b>11</b> <b>COVENANTS</b> .....	<b>7</b>
<b>12</b> <b>EVENTS OF DEFAULT</b> .....	<b>8</b>
<b>13</b> <b>REMEDIES, WAIVERS, AMENDMENTS AND CONSENTS</b> .....	<b>9</b>
<b>14</b> <b>SEVERANCE</b> .....	<b>10</b>
<b>15</b> <b>ASSIGNMENT</b> .....	<b>10</b>
<b>16</b> <b>COUNTERPARTS</b> .....	<b>10</b>
<b>17</b> <b>THIRD PARTY RIGHTS</b> .....	<b>10</b>
<b>18</b> <b>NOTICES</b> .....	<b>10</b>
<b>19</b> <b>GOVERNING LAW AND JURISDICTION</b> .....	<b>10</b>
<b>20</b> <b>STATE AID LAW</b> .....	<b>10</b>

---

**THIS AGREEMENT** is made on

## **PARTIES**

- (1) **STONE CIRCLE DEVELOPMENT COMPANY LIMITED** incorporated and registered in England and Wales with company number [Borrower Company Number] whose registered office is at County Hall, Bythesea Rd, Trowbridge BA14 8JN (**Borrower**);
- (2) **WILTSHIRE COUNCIL** of County Hall, Bythesea Rd, Trowbridge BA14 8JN (**Lender**),

each one a Party and together the Parties.

## **BACKGROUND**

The Lender has agreed to provide the Borrower an unsecured<sup>2</sup> working capital facility of [Insert amount] pounds (£[insert numerical amount]) sterling, subject to the terms and conditions of this Agreement.

## **AGREED TERMS**

### **1 DEFINITIONS AND INTERPRETATION**

#### **1.1 Definitions**

In this Agreement:

**Available Commitment** means the Facility minus:

- (a) the amount of any outstanding Loans under the Facility; and
- (b) in relation to any proposed Loan, the amount of any other Loans that are due to be made under the Facility on or before the proposed Utilisation Date (provided that any Loans that are due to be repaid on or before the proposed Utilisation Date shall not be deducted from the Available Commitment);

**Availability Period** means from the date of this Agreement for a period of [ ];

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

**Event of Default** means any event or circumstance listed in clause **Error! Reference source not found.** (Events of Default);

**Facility** means the credit facility made available under clause 2.1 (The Facility) of this Agreement to the extent not cancelled or reduced in accordance with the terms of this Agreement;

**Indebtedness** means any obligation, whether incurred as principal or surety, solely or jointly, for the payment or repayment of money, whether actual or contingent, present or future, secured or unsecured;

**Interest Period** means in relation to a Loan, each period determined in accordance with clause 6.2 (*Interest*) and, in relation to any sum due and payable but unpaid by the Borrower under this Agreement each period determined in accordance with clause 6.7 (*Interest*);

**Interest Rate** means a rate equivalent to [the [49.5 to 50] year PWLB maturity rate as at the date of drawdown (or the closest working day) [plus x%], which will be applied to the outstanding principal

---

<sup>2</sup> WC to confirm.

balance on a daily basis, or such other rate as the Lender shall notify to the Borrower from time to time;]<sup>3</sup>

**Loan** means a loan made or to be made under the Facility following the issue of a utilisation request;

**Maturity Date** means the date falling [10 years]<sup>4</sup> after the date of this Agreement or such other date as may be agreed from time to time by the Parties pursuant to clause 2.3 (*The Facility*).

**Permitted Security** means:

- (i) any Security arising by operation of law;
- (ii) any item arising by operation of law and in the ordinary course of trading; or
- (iii) any Security arising under any retention of title, leasing, hire purchase or conditional sale arrangements having similar effect in respect of goods or vehicles supplied to the Borrower in the ordinary course of trading and/or business and on the relevant supplier's standard usual terms;

**Potential Event of Default** means any event or circumstance specified in clause **Error! Reference source not found.** (Events of Default) which would (with the expiry of a grace period, the giving of notice, the making of any determination under this Agreement or any combination thereof) be an Event of Default;

**Security** means any mortgage, charge (whether fixed or floating, legal or equitable), pledge, lien, assignment by way of security or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect;

**State Aid Regulations** means any European Union state aid laws (including without limitation under any Articles 86 to 89 inclusive of the Treaty of Rome (as amended from time to time) and/or any applicable judgement, court order, statute, statutory instrument, regulation, directive or decision;

**Subsidiary** means a subsidiary within the meaning of section 1159 of the Companies Act 2006;

**Utilisation Date** means the date on which the relevant Loan is made; and

## 1.2 Interpretation

- 1.2.1 Clause headings shall not affect the interpretation of this Agreement.
- 1.2.2 A reference to this Agreement (or any provision of it) or any other document shall be construed as a reference to this Agreement, that provision or that document as it is in force for the time being and as amended, varied or supplemented from time to time in accordance with its terms, or with the agreement of the relevant parties.
- 1.2.3 A reference to a person shall include a reference to an individual, firm, company, corporation, unincorporated body of persons, or any state or any agency of any person.
- 1.2.4 A reference to a statute, statutory provision or subordinate legislation is a reference to it as it is in force for the time being, taking account of any amendment, extension or re-enactment and includes any former statute, statutory provision or subordinate legislation which it amends or re-enacts.
- 1.2.5 A reference to writing or written includes email but not faxes.

---

<sup>3</sup> WC to clarify if known at this stage.

<sup>4</sup> TBC

- 1.2.6 A reference to a document in the agreed form is to that document in the form agreed by the Parties and initialled by or on behalf of them for identification (including any alteration which may be so agreed).
- 1.2.7 Unless the context otherwise requires, words in the singular include the plural and in the plural include the singular.
- 1.2.8 A reference to an amendment includes a novation, re-enactment, supplement or variation (and amended shall be construed accordingly).
- 1.2.9 A reference to an authorisation includes an approval, authorisation, consent, exemption, filing, licence, notarisation, registration or resolution.
- 1.2.10 A reference to the Borrower and the Lender shall include their respective successors, permitted transferees and permitted assigns.
- 1.2.11 A reference to a regulation includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any government, inter-governmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation.
- 1.2.12 A reference to determines or determined means, unless the contrary is indicated, a determination made at the discretion of the person making it.
- 1.2.13 A reference to assets includes present and future properties, undertakings, revenues, rights and benefits of every description.
- 1.2.14 A reference to a disposal of any asset, undertaking or business, includes a sale, lease, licence, transfer, loan or other disposal by that person of that asset, undertaking or business (whether by a voluntary or involuntary single transaction or series of transactions).
- 1.2.15 A reference to a clause is to a clause of this Agreement unless the context requires otherwise.
- 1.2.16 A reference to continuing in relation to an Event of Default means an Event of Default which has not been remedied or waived.

## **2 THE FACILITY**

- 2.1 The Lender grants to the Borrower an unsecured sterling credit facility of up to [ insert amount] sterling (£[insert numerical amount]) on the terms and subject to the conditions of this Agreement.
- 2.2 Subject to the terms and conditions of this Agreement, the Borrower may drawdown the Facility on any Business Day during the Availability Period provided that the Lender shall have received a utilisation request from the Borrower by [insert time] [am/pm] three (3) Business Days before the proposed Utilisation Date and the Lender is able to determine the Interest Rate.

## **3 PURPOSE**

- 3.1 The Borrower shall apply all amounts borrowed by it under this Agreement towards its [working capital requirements].<sup>5</sup>
- 3.2 The Lender is not bound to monitor or verify the application of any amount borrowed pursuant to this Agreement.

---

<sup>5</sup> WC to confirm what development costs need to be included.

#### 4 DRAWING

- 4.1 Only **one (1)** Loan may be requested in a utilisation request.
- 4.2 The amount of the proposed Loan must be no more than the Available Commitment or such other amount as may be agreed by the Lender.

#### 5 CONDITIONS PRECEDENT

- 5.1 The Lender will only be obliged to make a Loan available if, on both the utilisation request and the Utilisation Date:
- 5.1.1 no Event of Default or Potential Event of Default is continuing or would result from the proposed Loan;
- 5.1.2 the representations and warranties in clause **Error! Reference source not found.** (Representations and Warranties) are true in all respects;
- 5.1.3 the proposed Utilisation Date is a Business Day within the Availability Period; and
- 5.1.4 the Available Commitment is sufficient to meet the proposed Loan.

#### 6 INTEREST

- 6.1 Interest will accrue during each Interest Period for a Loan at the Interest Rate applicable to that Loan.
- 6.2 The Interest Period of each Loan shall (subject to the terms of this clause 6) be **[[insert number of days] ([insert numerical number of days]) Business Days] OR [equal to the outstanding number of days in the relevant [insert defined period] in which the Loan was made and shall commence on the Utilisation Date of that Loan.]<sup>6</sup>**
- 6.3 Interest on each Loan shall accrue from the Utilisation Date on a day-to-day basis, calculated according to the number of actual days elapsed and a year of three hundred and sixty five (365) days and shall be payable in arrears on the last Business Day of each Interest Period relating to such Loan, provided that all accrued interest shall be paid in full on the Maturity Date.
- 6.4 The Interest Period for any Loan to which default interest applies pursuant to Clause 6.7 below, shall be of a period of such duration as the Lender may from time to time determine in accordance with that Clause.
- 6.5 Any Interest Period for a Loan which would otherwise extend beyond the Maturity Date shall be shortened so that it ends on that Maturity Date.
- 6.6 If an Interest Period would otherwise end on a day which is not a Business Day, that Interest Period will instead end on the preceding Business Day.
- 6.7 If the Borrower fails to make any payment due under this Agreement on the due date for payment, interest on the unpaid amount shall accrue daily, from the date of non-payment to the date of actual payment (both before and after judgment), at **one** per cent (1%) above the rate specified in clause 6.1 above for successive Interest Periods each of a duration selected by the Lender. Any interest accruing under this clause 6 shall be immediately payable by the Borrower on demand by the Lender.

#### 7 COSTS<sup>7</sup>

**[The Borrower shall pay, within [insert number of days] ([insert numerical number of days]) Business Days of demand or such other greater period specified at the time of demand at its discretion, all costs**

<sup>6</sup> WC to confirm. Same as LHC? Capitalised monthly?

<sup>7</sup> WC to confirm if Borrower paying costs?

and expenses (together with any value added tax on them) that the Lender incurs in connection with the amendment, extension, alteration, preservation and enforcement of a Loan and/or this Agreement.]

## 8 REPAYMENT AND CANCELLATION

8.1 All outstanding Loans, accrued interest and all other amounts outstanding under this Agreement shall in any event be repaid in full on or before the Maturity Date.

8.2 [All amounts repaid under Clause **Error! Reference source not found.** may not be re-borrowed.]

8.3 The Borrower may at any time, without penalty, by written notice to the Lender (effective only on actual receipt) cancel, with effect from a date not less than [insert number of days] ([insert numerical number of days]) Business Days after receipt by the Lender of such notice, the whole or any part (in minimum amounts and multiples of [insert amount] thousand pounds (£[ insert numerical amount])) of the Facility which has not (at the proposed date of cancellation) been drawdown or has not then been requested. Any such notice of cancellation once given shall be irrevocable and any amount so cancelled shall, unless otherwise agreed by the Lender in writing, not be reinstated.

8.4 If it becomes unlawful for the Lender to perform any of its obligations as contemplated by this Agreement or to fund or maintain any part of any Loan:

8.4.1 the Lender shall promptly notify the Borrower upon becoming aware of the event; and

8.4.2 upon the Lender notifying the Borrower, the Borrower shall repay to the Lender all Loans (together with any accrued interest and all other amounts outstanding under this Agreement) on the last day of the Interest Period in which the Lender notifies the Borrower.

## 9 PAYMENTS

9.1 All payments made by the Borrower under this Agreement shall be in sterling and in immediately available cleared funds to the Lender to its account number as the Lender may notify the Borrower.

9.2 If any payment becomes due on a day that is not a Business Day, the due date of such payment will be extended to the next succeeding Business Day, or, if that Business Day falls in the following Month, such due date shall be the immediately preceding Business Day.

9.3 All payments made by the Borrower under this Agreement shall be made in full, without set-off, counterclaim or condition, and free and clear of, and without any deduction or withholding, provided that, if the Borrower is required by law or regulation to make such deduction or withholding, it shall:

9.3.1 ensure that the deduction or withholding does not exceed the minimum amount legally required;

9.3.2 pay to the relevant taxation or other authorities, as appropriate, the full amount of the deduction or withholding;

9.3.3 furnish to the Lender, within the period for payment permitted by the relevant law, either:

(a) an official receipt of the relevant taxation authorities concerned on payments to them of amounts so deducted or withheld; or

(b) if such receipts are not issued by the taxation authorities concerned on payment to them of amounts so deducted or withheld, a certificate of deduction or equivalent evidence of the relevant deduction or withholding.

## 10 REPRESENTATIONS AND WARRANTIES

10.1 The Borrower makes the representations and warranties set out in this clause **Error! Reference source not found.** to the Lender.

- 10.2 It:
- 10.2.1 is a duly incorporated private company limited validly existing under the laws of its jurisdiction of incorporation; and
  - 10.2.2 has the power to own its assets and carry on its business as it is being conducted.
- 10.3 It has the power and authority to execute, deliver and perform its obligations under this Agreement and the transactions contemplated by it and no limit on its powers will be exceeded as a result of the borrowing contemplated in this Agreement.
- 10.4 The execution, delivery and performance of the obligations in, and transactions contemplated by, this Agreement, do not and will not contravene or conflict with:
- 10.4.1 its constitutional documents;
  - 10.4.2 any agreement or instrument binding on it or its assets or constitute a default or termination event (however described) under any such agreement or instrument; or
  - 10.4.3 any law or regulation or judicial or official order, applicable to it in any material respect.
- 10.5 It has taken all necessary action and obtained all required authorisations to enable it to execute, deliver and perform its obligations under this Agreement and the transactions contemplated by it and to make it admissible in evidence in its jurisdiction of incorporation and all such authorisations are in full force and effect.
- 10.6 The obligations expressed to be assumed by it in this Agreement are legal, valid, binding and enforceable obligations.
- 10.7 It is not necessary to file, record or enrol this Agreement with any court or other authority or pay any stamp, registration or similar taxes relating to this Agreement or the transactions contemplated by this Agreement.
- 10.8 No Event of Default or Potential Event of Default has occurred or is continuing, or is reasonably likely to result from the Lender making a Loan to the Borrower or the entry into or the performance of any transaction contemplated by this Agreement.
- 10.9 No other event or circumstance is outstanding which constitutes (or, with the expiry of a grace period, the giving of notice, the making of any determination or any combination thereof, would constitute) a default or termination event (howsoever described) under any other agreement or instrument which is binding on the Borrower or to which any of its assets is subject which has or is reasonably likely to have a material adverse effect on its business, assets or condition, or its ability to perform or comply with its obligations under this Agreement.
- 10.10 No litigation, arbitration or administrative proceedings are taking place, pending or, to the Borrower's knowledge, threatened against it, any of its directors or any of its assets, which, if adversely determined, might reasonably be expected to have a material adverse effect on its business, assets or condition, or its ability to perform or comply with its obligations under this Agreement.
- 10.11 The information, in written or electronic format, supplied by, or on its behalf, to the Lender in connection with the Facility and this Agreement was, at the time it was supplied or at the date it was stated to be given (as the case may be), to the best of its knowledge and belief having made all due enquiry:
- 10.11.1 if it was factual information, complete, true and accurate in all material respects;
  - 10.11.2 if it was a financial projection or forecast, prepared on the basis of recent historical information and on the basis of reasonable assumptions and was fair and made on reasonable grounds; and



10.11.3 if it was an opinion or intention, made after careful consideration and was fair and made on reasonable grounds; and

10.11.4 not misleading in any material respect, nor rendered misleading by a failure to disclose other information,

except to the extent that it was amended, superseded or updated by more recent information supplied by, or on behalf of, the Borrower to the Lender.

10.12 Each of the representations and warranties in this clause **Error! Reference source not found.** are deemed to be repeated by the Borrower:

10.12.1 on the date of the request to drawdown a Loan;

10.12.2 on each Utilisation Date; and

10.12.3 on each date immediately succeeding the date on which interest is paid under this Agreement in accordance with clause **Error! Reference source not found.** (Interest),

by reference to the facts and circumstances existing on each such date.

## 11 COVENANTS

11.1 The Borrower shall provide to the Lender such information about the Borrower which the Lender may reasonably request from time to time.

11.2 The Borrower will promptly, after becoming aware of them, notify the Lender in writing of any litigation, arbitration or administrative proceedings or claim of the kind described in clause 10.10.

11.3 The Borrower shall, promptly upon becoming aware of it, notify the Lender of:

11.3.1 any circumstances which have led or which are reasonably likely to lead to this Agreement not being in full force and effect;

11.3.2 any material breach of this Agreement; and

11.3.3 any circumstances (whether as a result of force majeure or any other reason) which have led or will lead to any material obligation of this Agreement being suspended or incapable of fulfilment.

11.4 The Borrower shall duly comply with all its obligations under this Agreement, in all material respects.

11.5 The Borrower will promptly obtain all consents or authorisations necessary (and do all that is needed to maintain them in full force and effect) under any law or regulation to enable it to perform its obligations under this Agreement and to ensure the legality, validity, enforceability and admissibility in evidence of this Agreement in its jurisdiction of incorporation.

11.6 The Borrower will procure that any of its unsecured and unsubordinated obligations and liabilities under this Agreement rank, and will rank, at least pari passu in right and priority of payments with all its other unsecured and unsubordinated obligations and liabilities, present or future, actual or contingent, except for those obligations and liabilities mandatorily preferred by law of general application to companies.

11.7 The Borrower will comply, in all respect, with all laws, if failure to do so has or is reasonably likely to have a material adverse effect on its business, assets or condition, or its ability to perform its obligations under this Agreement.

11.8 The Borrower will promptly notify the Lender of any Potential Event of Default or Event of Default (and the steps, if any, being taken to remedy it) promptly on becoming aware of its occurrence.

11.9 The Borrower will carry on and conduct its activities in a proper and efficient manner and in accordance with its constitutional documents and will not make any substantial change to the general nature or scope of its constitutional documents at the date of this Agreement without the prior written consent of the Lender (such consent not to be unreasonably withheld or delayed).

## 12 EVENTS OF DEFAULT

12.1 Each of the events or circumstances set out in Clauses 12.2 to 12.17 is an Event of Default and Clause 12.18 shall apply.

12.2 The Borrower fails to pay any sum payable under this Agreement, unless its failure to pay is caused solely by an administrative error or technical problem and payment is made within [insert number of days] ([insert numerical number of days ]) Business Days of its due date.

12.3 The Borrower fails (other than by failing to pay) to comply with any provision of this Agreement (and if the Lender considers, acting reasonably, that the default is capable of remedy), such default is not remedied within [insert number of days ] ([insert numerical number of days]) Business Days of the earlier of:

12.3.1 the Lender notifying the Borrower of the default and the remedy required; and

12.3.2 the Borrower becoming aware of the default.

12.4 Any representation, warranty or statement made, repeated or deemed made by the Borrower in, or pursuant to, this Agreement is (or proves to have been) incomplete, untrue, incorrect or misleading in any material respect when made, repeated or deemed made.

12.5 The Borrower stops or suspends payment of any of its debts, or is unable to, or admits its inability to pay its debts as they fall due.

12.6 Any Indebtedness of the Borrower becomes immediately due and payable, or capable of being declared so due and payable, prior to its stated maturity, by reason of default (however so described), or the Borrower fails to discharge any Indebtedness on its due date or within any applicable grace period (other than a liability which the Borrower is contesting in good faith on the basis of favourable legal advice) and such is likely to have a material adverse effect on the Borrower's ability to perform or comply with its obligations under this Agreement.

12.7 The Borrower is unable or admits inability to pay its debts as they fall due, suspends making payments on any of its debts.

12.8 A moratorium is declared in respect of any Indebtedness of the Borrower.

12.9 Any action, proceedings, procedure or step (other than a winding-up petition which is frivolous or vexatious and is discharged, stayed or dismissed within [insert number of days] ([insert numerical number of days ]) Business Days of commencement or, if earlier, the date on which it is advertised) is taken for:

12.9.1 the suspension of payments, a moratorium of any Indebtedness, winding up, dissolution, administration or reorganisation (using a voluntary arrangement, scheme of arrangement or otherwise) of the Borrower; or

12.9.2 the composition, compromise, assignment or arrangement with any creditor; or

12.9.3 the appointment of a liquidator, receiver, administrative receiver, administrator, compulsory manager or other similar officer in respect of the Borrower or any of its assets.

12.10 A distress, attachment, execution, expropriation, sequestration or another analogous legal process is levied, enforced or sued out on, or against, the Borrower's assets and such would in the Lender's sole

opinion have a material adverse effect on the Borrower's ability to perform or comply with its obligations under this Agreement.

- 12.11 Any litigation, arbitration, adjudication, administrative, governmental, regulatory or other investigations, proceedings or disputes are commenced or threatened in relation to this Agreement or the transactions contemplated by it which has or is reasonably likely to materially and adversely affect the Borrower's ability to perform all or any of its obligations under, or otherwise comply with the terms of, this Agreement.
- 12.12 Any provision of this Agreement is or becomes, for any reason, invalid, unlawful, unenforceable, terminated (other than in the case of termination of this Agreement as a result of a Lender default of it where such default was the result of an event wholly within the Lenders control), disputed or ceases to be effective or to have full force and effect.
- 12.13 The Borrower repudiates or shows an intention to repudiate this Agreement.
- 12.14 The Borrower ceases, or threatens to cease, to carry on all or a substantial part of its business.
- 12.15 Any person (other than the Lender) rescinds or purports to rescind or repudiates or purports to repudiate this Agreement or evidences an intention to repudiate it.
- 12.16 This Agreement becomes capable of being terminated, avoided, cancelled, revoked, forfeited, surrendered, suspended or otherwise is not in full force, effect and unconditional (otherwise than by reason of full performance of any agreement or expiry of its term or other than as a result of a Lender default of this Agreement where such default was the result of an event wholly within the Lenders control).
- 12.17 Any event occurs (or circumstances exist) which, in the reasonable opinion of the Lender, has or is likely to materially and adversely affect the Borrower's ability to perform all or any of its obligations under, or otherwise comply with the terms of, this Agreement.
- 12.18 At any time after an Event of Default has occurred which is continuing, the Lender may, by notice to the Borrower:
  - 12.18.1 cancel all outstanding obligations of the Lender under this Agreement whereupon they shall be immediately be cancelled; and/or
  - 12.18.2 declare that all or part of the Loans (and all accrued interest and all other amounts outstanding under this Agreement) is immediately due and payable, whereupon they shall become immediately due and payable; and/or
  - 12.18.3 declare that all or part of the Loans (and all accrued interest and all other amounts outstanding under this Agreement) be payable on demand, whereupon it shall become immediately payable on demand by the Lender.

### **13 REMEDIES, WAIVERS, AMENDMENTS AND CONSENTS**

- 13.1 Any amendment to this Agreement shall be in writing and signed by, or on behalf of, each Party.
- 13.2 Any waiver of any right or remedy or any consent given under this Agreement is only effective if it is in writing and signed by the waiving or consenting Party. It shall apply only in the circumstances for which it is given and shall not prevent the Party giving it from subsequently relying on the relevant provision.
- 13.3 No delay or failure to exercise any right or remedy under this Agreement on the part of the Lender shall operate as a waiver of any such right or remedy.
- 13.4 No single or partial exercise of any right or remedy under this Agreement by the Lender shall prevent any further or other exercise or the exercise of any other right or remedy under this Agreement.

13.5 Rights and remedies under this Agreement are cumulative and do not exclude any other rights or remedies provided by law or otherwise.

#### **14 SEVERANCE**

14.1 The invalidity, unenforceability or illegality of any provision (or part of a provision) of this Agreement under the laws of any jurisdiction shall not affect the validity, enforceability or legality of the other provisions.

14.2 If any invalid, unenforceable or illegal provision would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with whatever modification as is necessary to give effect to the commercial intention of the Parties.

#### **15 ASSIGNMENT**

15.1 The Lender may assign any of its rights under this Agreement or transfer all its rights or obligations by novation.

15.2 The Borrower may not assign any of its rights or transfer any of its rights or obligations under this Agreement.

#### **16 COUNTERPARTS**

This Agreement may be executed and delivered in any number of counterparts, each of which is an original and which, together, have the same effect as if each Party had signed the same document.

#### **17 THIRD PARTY RIGHTS**

A person who is not a party to this Agreement cannot enforce, or enjoy the benefit of, any term of this Agreement under the Contracts (Rights of Third Parties) Act 1999.

#### **18 NOTICES**

18.1 Any notice or service to the Lender or Borrower under this Agreement shall be addressed and delivered to the Lender or Borrower at the address stated above.

18.2 Any notice or communication under this Agreement shall be given by first class prepaid post addressed to the relevant party.

#### **19 GOVERNING LAW AND JURISDICTION**

##### **19.1 Governing law**

This Agreement and any non-contractual obligations arising out of it or in connection with it are governed by and construed in accordance with English law.

##### **19.2 Jurisdiction**

19.2.1 The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute regarding the existence, validity or termination of this Agreement) (a **Dispute**).

19.2.2 The Parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.

#### **20 STATE AID LAW**

20.1 The Lender may vary or withhold payment and/or require repayment of any loan payments already paid if:

20.1.1 repayment or recovery is required under State Aid Regulations; and/or

20.1.2 The Lender is otherwise required to repay or recover such payments in whole or in part by the European Commission or any court or tribunal of competent jurisdiction.

20.2 Any payments required to be repaid in accordance with this Clause 20 (State Aid Law) shall bear interest as required under State Aid Regulations.

**AS WITNESS** the hands of the duly authorised representatives of the Parties hereto the day and year first before written.

**EXECUTION PAGE**

Executed as a deed by affixing ) Seal  
the common seal of )  
**WILTSHIRE COUNCIL** )  
)  
)  
in the presence of )  
)  
..... )  
Authorised signatory )

Executed as a deed by )  
**STONE CIRCLE DEVELOPMENT** )  
**COMPANY LIMITED** )  
acting by ....., ) .....  
a director, in the presence of ) **Director**

Signature: .....

Name of witness: .....

Address: .....

.....

.....

Occupation of witness: .....

## Loan Agreement

**DATED** 2019

**Between**

- (1) **Wiltshire Council** of County Hall, Bythesea Rd, Trowbridge BA14 8JN (the “**Lender**”); and
- (2) **Stone Circle (Housing Company)** incorporated and registered in England and Wales with company number [REDACTED] whose registered office is at County Hall, Bythesea Rd, Trowbridge BA14 8JN (the “**Borrower**”).

### WHEREAS

- A. The Lender has agreed to offer to place at the disposal of and make available to the Borrower a loan of up to £[REDACTED] on the following terms and conditions (the “**Facility**”).
- B. The Loan under this Agreement is made in compliance with the European Commission's Decision of 20 December 2011 concerning public service compensation granted for Services of General Economic Interest (2012/21/EU).

### I. Definitions

- 1.1 In this Agreement, the following expressions shall, except where the context otherwise requires, bear the meanings attributed to them respectively:

“**Arrangement Fee**” means a sum equivalent to 0.025% of the Facility being [REDACTED], payable to the Lender on the day of the first drawdown;

“**Assets**” means the properties purchased by the Borrower for the agreed Purpose;

“**Business Day**” means a day (other than Saturday and Sunday) on which banks are open for normal banking business in London;

**“Business Plan”** means the most current business plan approved in accordance with the Shareholder Agreement;

**“Event of Default”** means any one of the events specified in paragraph 5 of this Agreement;

**“Incompatible State Aid” means (as the case may be):**

- (a) State Aid which has been granted in contravention of Article 107(1) of the Treaty of the Functioning of the European Union (TFEU) and which does not qualify for an exemption pursuant to any of the provisions of the TFEU or any of its subsidiary instruments or a decision of the Commission of the European Union;
- (b) State Aid which has been granted after the United Kingdom ceases to be a Member State of the European Union to the extent that the same is granted contrary to or is an infringement of any United Kingdom Competition Requirement;

**“Indebtedness”** means the Loan together with all interest (if any) thereon and all other sums owing from time to time under this Agreement from the Borrower to the Lender;

**“Legal Charge”** means each legal charge entered into between the Borrower and the Lender from time to time in the form approved by the Lender in respect of the relevant Assets;

**“Loan”** means the aggregate principal amount for the time being advanced and outstanding under this Agreement;

**“Purpose”** means pursuant to the SGEI Decision, the purchase of properties (approved by the Lender) to be utilised as affordable housing to house those in housing need including homeless people and individuals with specialist needs in the county of Wiltshire in accordance with the Business Plan approved by the Lender;

**“Repayment Date”** means the date falling ten (10) years from the date of this Agreement unless extended by the Lender at its discretion, which for the avoidance of doubt is permissible up to eight (8) times each for a period of up to five (5) years;



**“Security”** means a Legal Charge and any other charge requested in accordance with paragraph 2.4;

**“Shareholder Agreement”** means the shareholder agreement entered into between the Borrower and the Lender dated [REDACTED];

**“SGEI Decision”** means European Commission's Decision of 20 December 2011 concerning public service compensation granted for Services of General Economic Interest (2012/21/EU);

**“State Aid”** means (as the case may be):

- (a) any aid granted by a Member State of the European Union or through the resources of such Member State in any form whatsoever which distorts or threatens to distort competition by favouring a particular undertaking or the production of certain goods insofar as such aid affects trade between Member States of the European Union;
- (b) any aid benefit or advantage (which includes but is not limited to assets, rates, funds and land) granted by or through a public sector body which is subject to any United Kingdom Competition Requirement; and

**“United Kingdom Competition Requirement”** means any legislation which:

- (a) is in force and/or in effect and/or applies (in England) on or after the date the United Kingdom ceases to be a Member State of the European Union; and
- (b) which regulates any aid funding assets or advantage granted or directed by a public sector body to the extent that the same has the ability to threaten to or actually distort either competition or an economic market in the United Kingdom and/or in any part of the European Economic Area and/or in any other country or countries (as the case may be).

- 1.2 The headings in this Agreement are inserted for convenience only and shall be ignored in construing this Agreement.
- 1.3 Reference to any statute or statutory provision includes a reference to that statute or statutory provision as from time to time amended, extended or re-enacted or consolidated and to all statutory instruments or orders made pursuant to it.
- 1.4 Words denoting the singular number only shall include the plural and vice versa. Words denoting any gender include all the genders and wording denoting persons shall include legal and natural persons.

## **2. The Loan**

- 2.1 The Lender will (in consideration of the Borrower agreeing to pay the Arrangement Fee, provide the required Security and repay the Loan on the terms of this Agreement) advance up to the amount of [XXXX (£xxx)] in instalments to the Borrower for the agreed Purpose as set out in this Agreement.
- 2.2 The Borrower may request an instalment of the Loan is made prior to the first anniversary of this Agreement by delivering a written notice to the Lender a minimum of 3 Business Days prior to the proposed drawdown date.
- 2.3 The Lender shall not be obliged to make the Loan to the Borrower: (a) where an Event of Default under paragraph 5 has occurred and is continuing, or will occur or continue following or as a result of the making of the Loan; and (b) where the purpose of the Loan is the purchase of new property, until such time as the Borrower has delivered to the Lender a Legal Charge in a form approved by the Lender or an undertaking to deliver the same within a reasonable period.
- 2.4 The Lender reserves the right to require and register a charge (of whatever nature it considers appropriate) over such assets of the Borrower as it considers necessary in its absolute discretion in order to secure the Loan.

## **3. Repayment of indebtedness**

- 3.1 The Borrower shall repay the Loan together with all Indebtedness without deduction or set off by the Repayment Date.
- 3.2 The Borrower shall repay all or part of the Loan together with all Indebtedness immediately upon request by the Lender.
- 3.2 The Borrower may repay or prepay the Loan and/or the Indebtedness (or any part of it) early, provided that at least 3 Business Days written notice of such intention is given to the Lender.

## **4. Interest and default interest**

- 4.1 The principal amount of the Loan outstanding shall carry interest at a rate equivalent to the [49.5 to 50] year PWLB maturity rate as at the date of drawdown (or the closest working day) [plus x%], which will be applied to the outstanding principal balance on a daily basis.
- 4.2 All unpaid interest shall be compounded on the last business day of each month.
- 4.3 Interest (including interest compounded in accordance with paragraph 4.2 above) is payable by the Borrower on an annual basis within one (1) month of notification of the amount due. The first interest payment is due on [31 March 2020].

- 4.3 On the repayment of the Loan in accordance with paragraphs 3.1 or 3.2, all accrued interest shall be paid unless otherwise agreed by the parties.
- 4.4 For the avoidance of doubt, any sum paid to the Lender shall be applied firstly in settlement of any interest due under this Agreement, secondly in settlement of the principal sum due thirdly in prepayment of any other sums due under this Agreement.
- 4.5 Following the occurrence of an Event of Default interest shall accrue on all outstanding amounts at the rate set out in paragraph 4.1 above plus an additional 1%.

## **5. Events of default**

- 5.1 The Lender shall be entitled at any time after the occurrence of an Event of Default by notice in writing to the Borrower to declare that the Indebtedness has become immediately due and payable whereupon the same shall become immediately due and payable and the Borrower shall immediately pay the same to the Lender.
- 5.2 An Event of Default occurs if:
- (a) the Borrower commits a material breach of any of the terms of this Agreement; or
  - (b) performance against the Business Plan has repeatedly not been achieved; or
  - (c) any distress, execution or other process is levied upon any of the assets of the Borrower; or
  - (d) the Borrower has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Seller or notice of intention to appoint an administrator is given by the Seller; or
  - (e) the Borrower ceases or threatens to cease to carry on its business.
- 5.3 In the event that the Loan shall be declared immediately due and payable as stated above, the Borrower will reimburse the Lender for all losses and expenses incurred by the Lender as a consequence of the Event of Default. The certificate of the Lender as to the amount of such losses and expenses shall, in the absence of manifest error, be conclusive.

## **6. Costs**

The Borrowers shall pay any stamp, documentary and other similar duties and taxes to which the Security may be subject, or give rise and shall indemnify the Lender against any losses or liabilities that it may incur as a result of any delay or omission by the Borrower in paying any such duties or taxes. The parties shall otherwise bear their own costs associated with the preparation and enforcement of this Agreement.

## **7. Compensation**

7.1 The Borrower shall co-operate with the Lender at its own cost to review the level of compensation paid to it under this Agreement to ensure that no overcompensation has or will be provided under the terms of the SGEI Decision.

7.2 If the Lender decides that the Borrower has been overcompensated under the terms of the SGEI Decision then it may recover from the Borrower such overpayment together with interest at the statutory rate. The Borrower shall repay such sum within 20 Business Days of receipt of a request from the Lender to do so.

## **8. Currency and payments**

8.1 All payments to be made under this Agreement shall be made without deduction or offset in pounds sterling, in immediately available funds during normal banking hours to such bank account as the Lender shall specify.

8.2 All sums payable by the Borrower under this Agreement shall be paid in full without any set off or counterclaim and (save insofar as required by law to the contrary) free and clear of and without any deduction or withholding from any payment to the Lender then the Borrower will immediately pay to the Lender such additional amounts as will result in the Lender receiving the full amount it would have received had no such deduction or withholding been required and will simultaneously provide the Lender with a certificate of deduction or withholding in respect of the amount deducted or withheld together with evidence satisfactory to the Lender that the amount so deducted or withheld has been paid over to the relevant authorities as and when due.

## **9. Notices**

9.1 Any notice or service to the Lender or Borrower under this Agreement shall be addressed and delivered to the Lender or Borrower at the address stated above.

9.2 Any notice or communication under this Agreement shall be given by first class prepaid post addressed to the relevant party.

## 10. Assignment

Neither party may assign or transfer any of its rights or obligations under this Agreement without the prior written consent of the other party (such consent not to be unreasonably withheld or delayed) unless it is the Lender to its successors in title.

## 11. Miscellaneous

- 11.1 Any decision made or opinion held by the Lender concerning the provisions of this Agreement shall be made in its absolute discretion and shall (in the absence of manifest error) be final and binding on the Borrower.
- 11.2 Any calculation made by the Lender as to the amount of any Indebtedness shall be conclusive and binding in the absence of manifest error.
- 11.3 **Waiver:** No failure or delay by the Lender in exercising any right, power or privilege under this Agreement shall impair the same or operate as a waiver of the same nor shall any single or partial exercise of any right, power or privilege preclude any further exercise of the same or the exercise of any other right, power or privilege. No waiver, compromise agreement or other dealing with one person jointly and severally liable shall affect or reduce the liability of any other such person.
- 11.4 **Cumulative Remedies:** The rights and remedies provide in this Agreement are cumulative and not exclusive of any rights or remedies provided by law.
- 11.5 **Entire Agreement:** This Agreement and documents referred to in it shall prevail in the event of any conflict between them and any previous agreement between the parties in relation to the Loan.
- 11.6 **Borrower Constitution:** No change shall be affected to the constitution, ownership or Purpose of the Borrower during the life of the Facility except with the prior written consent of the Lender.
- 11.7 **Modifications:** This Agreement may be amended or modified in whole or in part at any time by an agreement in writing executed in the same manner and by the same persons as this Agreement.
- 11.8 **Record:** The Lender shall maintain a record of the amount of all principal, interest and other sums due or to become due from the Borrower under this Agreement. In any legal action or proceeding arising out of or in connection with this Agreement, the entries made in the accounts or records maintained by the Lender in connection with this Agreement shall be prima facie evidence of the existence and amounts of the obligation of the Borrower expressed in this Agreement.
- 11.9 **Interpretation:** Unless the context otherwise requires, words importing the singular shall include the plural and vice versa; word importing the masculine gender shall

include the feminine gender and vice versa; reference to persons shall include bodies of persons whether corporate or incorporate.

- 11.10 **Further Assurance:** At any time after the date of this Agreement, the Borrower, shall, at the request and cost of the Lender, execute or procure the execution of such documents and do or procure the doing of such acts and things the Lender requires or may require for the purpose of giving the Lender the full benefit of all the provisions of this Agreement.
- 11.11 **Third Party Borrowing:** The Borrower shall not enter into any other borrowing facility without the prior written consent of the Lender.
- 11.12 **Third Party Rights:** Unless otherwise expressly provided a person which is not a party to this Deed has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement but this does not affect any right or remedy which exists or is available part from that Act.
- 11.13 **Information:** The Borrower shall provide to the Lender during the term of this Agreement:
- (a) reports setting out financial and operational performance against the Business Plan when requested by the Lender;
  - (b) an annual confirmation that, based on the current information available, the funding under this Agreement together with all revenue generated in providing the SGEI shall not exceed the net costs permitted under the SGEI Decision; and
  - (c) such other information about the Borrower which the Lender may reasonably request from time to time.
- 11.14 **Illegality:** If, in any applicable jurisdiction, it becomes unlawful for the Lender to perform any of its obligations as contemplated by this Agreement or to fund or maintain the Loan upon the Lender notifying the Borrower, the Loan shall become immediately repayable in accordance with paragraph 5.3 of this Agreement.
- 11.15 **State Aid Law:** If the Loan is found to constitute Incompatible State Aid (or is under investigation or subject to judicial proceedings in relation to State Aid compliance) then and is not capable of being restructured so as to be compliant then the Borrower must repay any sum of Incompatible State Aid plus such interest as is prescribed by State Aid law within 20 Business Days of the Lender issuing it with a written demand for payment, or a longer period with agreement of the Lender.

## 12. Law

This Agreement and the contract arising out of the Borrower's acceptance of the loan facility on the terms and conditions set out in this Agreement shall be governed by and construed in all respects in accordance with the laws of England. The parties submit to the exclusive jurisdiction of the English courts.



**In Witness hereof the parties have cause these presents to be duly Executed but not delivered until the date hereof**

**Executed by  
Stone Circle (Housing Company) Limited  
acting by**

.....

Director

**The Common Seal of Wiltshire Council was hereunto affixed in the presence of:**

.....

Authorised Signatory



**Dated**

**2019**

---

**STONE CIRCLE (HOUSING COMPANY) LIMITED**

**and**

**WILTSHIRE COUNCIL**

---

**LEGAL MORTGAGE OVER [PROPERTY DETAILS]**

---

© Bevan Brittan LLP

Toronto Square - 7<sup>th</sup> Floor | Toronto Street | Leeds LS1 2HJ  
T 0370 194 1000 F 0370 194 5465

Fleet Place House | 2 Fleet Place | Holborn Viaduct | London EC4M 7RF  
T 0370 194 1000 F 0370 194 7800

Kings Orchard | 1 Queen Street | Bristol BS2 0HQ  
T 0370 194 1000 F 0370 194 1001

Interchange Place | Edmund Street | Birmingham B3 2TA  
T 0370 194 1000 F 0370 194 5001

## Contents

---

Item		Page
1	DEFINITIONS AND INTERPRETATION	1
2	COVENANT TO PAY	3
3	GRANT OF SECURITY	4
4	PERFECTION OF SECURITY	4
5	LIABILITY OF THE BORROWER	5
6	REPRESENTATIONS AND WARRANTIES	5
7	COVENANTS	6
8	POWERS OF THE LENDER	6
9	WHEN SECURITY BECOMES ENFORCEABLE	7
10	ENFORCEMENT OF SECURITY	7
11	RECEIVERS	9
12	POWERS OF RECEIVER	9
13	DELEGATION	12
14	APPLICATION OF PROCEEDS	12
15	COSTS AND INDEMNITY	13
16	FURTHER ASSURANCE	13
17	POWER OF ATTORNEY	14
18	RELEASE	14
19	ASSIGNMENT AND TRANSFER	14
20	SET-OFF	14
21	AMENDMENTS, WAIVERS AND CONSENTS	14
22	SEVERANCE	15
23	COUNTERPARTS	15
24	THIRD PARTY RIGHTS	15
25	FURTHER PROVISIONS	15
26	NOTICES	16
27	GOVERNING LAW AND JURISDICTION	17
	SCHEDULE 1 - PROPERTY	18
	SCHEDULE 2 - COVENANTS	19
	Part 1 - General covenants	19

---

THIS DEED is dated

2019

## PARTIES

- (1) **STONE CIRCLE (HOUSING COMPANY) Limited**, incorporated and registered in England and Wales with company number [REDACTED] whose registered office is at County Hall, Bythesea Rd, Trowbridge BA14 8JN (the "**Borrower**"); and
- (2) **WILTSHIRE COUNCIL** of County Hall, Bythesea Rd, Trowbridge BA14 8JN (the "**Lender**").

## BACKGROUND

- (A) The Lender has agreed, under the Facility Agreement, to provide the Borrower with loan facilities on a secured basis.
- (B) The Borrower owns the Property.
- (C) This deed provides security which the Borrower has agreed to give the Lender for the loan facilities made or to be made available under the Facility Agreement.

## AGREED TERMS

### 1 DEFINITIONS AND INTERPRETATION

#### 1.1 Definitions

The following definitions apply in this deed.

**Business Day** means a day (other than Saturday and Sunday) on which banks are open for normal banking business in London;

**Charged Property** means all the assets, property and undertaking for the time being subject to any Security created by this deed (and references to the Charged Property shall include references to any part of it).

**Delegate** means any person appointed by the Lender or any Receiver under clause 11 and any person appointed as attorney of the Lender, Receiver or Delegate.

**Event of Default** has the meaning given to that expression in the Facility Agreement.

**Facility Agreement** means the facility agreement entered into between the Borrower and the Lender on or around the date of this deed for the provision of the loan facilities secured by this deed.

**Insurance Policy** means each contract or policy of insurance effected or maintained by the Borrower from time to time in respect of the Property.

**LPA 1925** means the Law of Property Act 1925.

**Property** means the property owned by the Borrower and described in Schedule 1.

**Receiver** means a receiver or a receiver and manager of any or all of the Charged Property.

**Secured Liabilities** means all present and future monies, obligations and liabilities owed by the Borrower to the Lender, whether actual or contingent and whether owed jointly or severally, as principal or surety or in any other capacity, under or in connection with the Facility Agreement or this deed (including, without limitation, those arising under clause 25.3.2 together with all interest (including, without limitation, default interest) accruing in respect of those monies or liabilities.

**Security** means any mortgage, charge (whether fixed or floating, legal or equitable), pledge, lien, assignment by way of security or other security interest securing any obligation of any person, or any other agreement or arrangement having a similar effect.

**Security Period** means the period starting on the date of this deed and ending on the date on which the Lender is satisfied that all the Secured Liabilities have been unconditionally and irrevocably paid and discharged in full and no further Secured Liabilities are capable of being outstanding.

**VAT** means value added tax.

## 1.2 Interpretation

In this deed:

- 1.2.1 clause, Schedule and paragraph headings shall not affect the interpretation of this deed;
- 1.2.2 a reference to a **person** shall include a reference to an individual, firm, company, corporation, partnership, unincorporated body of persons, government, state or agency of a state or any association, trust, joint venture or consortium (whether or not having separate legal personality) and that person's personal representatives, successors, permitted assigns and permitted transferees;
- 1.2.3 unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular;
- 1.2.4 unless the context otherwise requires, a reference to one gender shall include a reference to the other genders;
- 1.2.5 a reference to a party shall include that party's successors, permitted assigns and permitted transferees;
- 1.2.6 a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time;
- 1.2.7 a reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision;
- 1.2.8 a reference to **writing** or **written** includes fax;
- 1.2.9 an obligation on a party not to do something includes an obligation not to allow that thing to be done;
- 1.2.10 a reference to **this deed** (or any provision of it) or to any other agreement or document referred to in this deed is a reference to this deed, that provision or such other agreement or document as varied, amended or supplemented (in each case, other than in breach of the provisions of this deed) from time to time;
- 1.2.11 unless the context otherwise requires, a reference to a clause or Schedule is to a clause of, or Schedule to, this deed and a reference to a paragraph is to a paragraph of the relevant Schedule;
- 1.2.12 any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms;
- 1.2.13 a reference to an **amendment** includes a novation, re-enactment, supplement or variation (and **amended** shall be construed accordingly);

- 1.2.14 a reference to **assets** includes present and future properties, undertakings, revenues, rights and benefits of every description;
- 1.2.15 a reference to an **authorisation** includes an approval, authorisation, consent, exemption, filing, licence, notarisation, registration and resolution;
- 1.2.16 a reference to **continuing** in relation to an Event of Default means an Event of Default that has not been remedied or waived;
- 1.2.17 a reference to **determines** or **determined** means, unless the contrary is indicated, a determination made at the absolute discretion of the person making it; and
- 1.2.18 a reference to a **regulation** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, inter-governmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation.

### 1.3 Clawback

If the Lender considers that an amount paid by the Borrower in respect of the Secured Liabilities is capable of being avoided or otherwise set aside on the liquidation or administration of the Borrower or otherwise, then that amount shall not be considered to have been irrevocably paid for the purposes of this deed.

### 1.4 Nature of security over real property

A reference in this deed to a **charge or mortgage of or over the Property** includes:

- 1.4.1 all buildings and fixtures and fittings (including trade and tenant's fixtures and fittings) and fixed plant and machinery that are situated on or form part of the Property at any time;
- 1.4.2 the proceeds of the sale of any part of the Property and any other monies paid or payable in respect of or in connection with the Property;
- 1.4.3 the benefit of any covenants for title given, or entered into, by any predecessor in title of the Borrower in respect of the Property and any monies paid or payable in respect of those covenants; and
- 1.4.4 all rights under any licence, agreement for sale or agreement for lease in respect of the Property.

### 1.5 Law of Property (Miscellaneous Provisions) Act 1989

For the purposes of section 2 of the Law of Property (Miscellaneous Provisions) Act 1989, the terms of the Facility Agreement and of any side letters between any parties in relation to the Facility Agreements are incorporated into this deed.

### 1.6 Perpetuity period

If the rule against perpetuities applies to any trust created by this deed, the perpetuity period shall be 125 years (as specified by section 5(1) of the Perpetuities and Accumulations Act 2009).

### 1.7 Schedules

The Schedules form part of this deed and shall have effect as if set out in full in the body of this deed. Any reference to this deed includes the Schedules.

## 2 COVENANT TO PAY

The Borrower shall, on demand, pay to the Lender and discharge the Secured Liabilities when they become due.

### **3 GRANT OF SECURITY**

#### **3.1 Legal mortgage and fixed charges**

As a continuing security for the payment and discharge of the Secured Liabilities, the Borrower with full title guarantee charges to the Lender:

3.1.1 by way of legal mortgage, the Property; and

3.1.2 by way of fixed charge:

- (a) all its rights in each Insurance Policy, including all claims, the proceeds of all claims and all returns of premiums in connection with each Insurance; and
- (b) the benefit of all other contracts, guarantees, appointments and warranties relating to the Charged Property and other documents to which the Borrower is a party or which are in its favour or of which it has the benefit relating to any letting, development, sale, purchase, use or the operation of the Charged Property or otherwise relating to the Charged Property (including, in each case, but without limitation, the right to demand and receive all monies whatever payable to or for its benefit under or arising from any of them, all remedies provided for in any of them or available at law or in equity in relation to any of them, the right to compel performance of any of them and all other rights, interests and benefits whatever accruing to or for its benefit arising from any of them).

#### **3.2 Assignment**

As a continuing security for the payment and discharge of the Secured Liabilities, the Borrower with full title guarantee assigns to the Lender absolutely, subject to a proviso for reassignment on irrevocable discharge in full of the Secured Liabilities.

### **4 PERFECTION OF SECURITY**

#### **4.1 Registration of legal mortgage at the Land Registry**

The Borrower consents to an application being made by the Lender to the Land Registrar for the following restriction in Form P to be registered against its title to the Property:

"No disposition of the registered estate by the proprietor of the registered estate or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction is to be registered without a written consent signed by the proprietor for the time being of the charge dated [ ] in favour of Wiltshire Council referred to in the charges register."

#### **4.2 Further advances**

Subject to the terms of the Facility Agreement, the Lender covenants with the Borrower that it shall perform its obligations to make advances under the Facility Agreement (including any obligation to make available further advances).

#### **4.3 Cautions against first registration and notices**

Whether or not title to the Property is registered at the Land Registry, if any caution against first registration or any notice (whether agreed or unilateral) is registered against the Borrower's title to the Property, the Borrower shall immediately provide the Lender with full particulars of the circumstances relating to such caution or notice. If such caution or notice was registered to protect a purported interest the creation of which is not permitted under this deed, the Borrower shall immediately, and at its own

expense, take such steps as the Lender may require to ensure that the caution or notice, as applicable, is withdrawn or cancelled.

## **5 LIABILITY OF THE BORROWER**

### **5.1 Liability not discharged**

The Borrower's liability under this deed in respect of any of the Secured Liabilities shall not be discharged, prejudiced or affected by:

- 5.1.1 any security, guarantee, indemnity, remedy or other right held by, or available to, the Lender that is or becomes wholly or partially illegal, void or unenforceable on any ground;
- 5.1.2 the Lender renewing, determining, varying or increasing any facility or other transaction in any manner or concurring in, accepting or varying any compromise, arrangement or settlement, or omitting to claim or enforce payment from any other person; or
- 5.1.3 any other act or omission, which but for this clause 5.1 might have discharged, or otherwise prejudiced or affected, the liability of the Borrower.

### **5.2 Immediate recourse**

The Borrower waives any right it may have to require the Lender to enforce any security or other right, or claim any payment from, or otherwise proceed against, any other person before enforcing this deed against the Borrower.

## **6 REPRESENTATIONS AND WARRANTIES**

### **6.1 Times for making representations and warranties**

The Borrower makes the representations and warranties set out in this clause 6 to the Lender on the date of this deed and the representations and warranties contained in clauses 6.2 (No prohibitions or breaches) to 6.5 (Power and authority) (are deemed to be repeated on each day of the Security Period with reference to the facts and circumstances existing at the time of repetition.

### **6.2 No prohibitions or breaches**

There is no prohibition on the Borrower assigning its rights in any of the Charged Property referred to in clause 3.2 and the entry into of this deed by the Borrower does not and will not constitute a breach of any policy, agreement, document, instrument or obligation binding on the Borrower or its assets.

### **6.3 Avoidance of security**

No Security expressed to be created under this deed is liable to be avoided, or otherwise set aside, on the liquidation or administration of the Borrower or otherwise.

### **6.4 Enforceable security**

This deed constitutes and will constitute the legal, valid, binding and enforceable obligations of the Borrower and is and will continue to be effective security over all and every part of the Charged Property in accordance with its terms.

### **6.5 Power and authority**

- 6.5.1 The Borrower has the power to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of this deed and the transactions contemplated by this deed.
- 6.5.2 No limit on its powers will be exceeded as a result of granting the Security pursuant to this deed.

## **7 COVENANTS**

The Borrower covenants with the Lender in the terms set out in Schedule 2.

## **8 POWERS OF THE LENDER**

### **8.1 Power to remedy**

8.1.1 The Lender shall be entitled (but shall not be obliged) to remedy, at any time, a breach by the Borrower of any of its obligations contained in this deed.

8.1.2 The Borrower irrevocably authorises the Lender and its agents to do all things that are necessary or desirable for that purpose.

8.1.3 Any monies expended by the Lender in remedying a breach by the Borrower of its obligations contained in this deed shall be reimbursed by the Borrower to the Lender on a full indemnity basis and shall carry interest in accordance with clause 15.1.

8.1.4 In remedying any breach in accordance with this clause 8.1, the Lender, its agents and their respective officers, agents and employees shall be entitled to enter onto the Property and to take any action as the Lender may reasonably consider necessary or desirable including, without limitation, carrying out any repairs, other works or development.

### **8.2 Exercise of rights**

The rights of the Lender under clause 8.1 are without prejudice to any other rights of the Lender under this deed. The exercise of any rights of the Lender under this deed shall not make the Lender liable to account as a mortgagee in possession.

### **8.3 Lender has Receiver's powers**

To the extent permitted by law, any right, power or discretion conferred by this deed on a Receiver may, after the security constituted by this deed has become enforceable, be exercised by the Lender in relation to any of the Charged Property whether or not it has taken possession of any Charged Property and without first appointing a Receiver or notwithstanding the appointment of a Receiver.

### **8.4 Conversion of currency**

8.4.1 For the purpose of, or pending, the discharge of any of the Secured Liabilities, the Lender may convert any monies received, recovered or realised by it under this deed (including the proceeds of any previous conversion under this clause 8.4) from their existing currencies of denomination into any other currencies of denomination that the Lender may think fit.

8.4.2 Any such conversion shall be effected at the then prevailing spot selling rate of exchange for such other currency against the existing currency of a bank nominated at the time by the Lender.

8.4.3 Each reference in this clause 8.4 to a currency extends to funds of that currency and, for the avoidance of doubt, funds of one currency may be converted into different funds of the same currency.

### **8.5 New accounts**

8.5.1 If the Lender receives, or is deemed to have received, notice of any subsequent Security or other interest, affecting all or part of the Charged Property, the Lender may open a new account for the Borrower in the Lender's books. Without prejudice to the Lender's right to combine accounts, no money paid to the credit of the Borrower in any such new account shall be appropriated towards, or have the effect of discharging, any part of the Secured Liabilities.



8.5.2 If the Lender does not open a new account immediately on receipt of the notice, or deemed notice, referred to in clause 8.5.1, then, unless the Lender gives express written notice to the contrary to the Borrower, all payments made by the Borrower to the Lender shall be treated as having been credited to a new account of the Borrower and not as having been applied in reduction of the Secured Liabilities, as from the time of receipt or deemed receipt of the relevant notice by the Lender.

## 8.6 Lender's set-off rights

If the Lender has more than one account for the Borrower in its books, the Lender may at any time after:

8.6.1 the security constituted by this deed has become enforceable; or

8.6.2 the Lender has received, or is deemed to have received, notice of any subsequent Security or other interest affecting all or any part of the Charged Property,

transfer, without prior notice, all or any part of the balance standing to the credit of any account to any other account that may be in debit. After making any such transfer, the Lender shall notify the Borrower of that transfer.

## 8.7 Indulgence

The Lender may, at its discretion, grant time or other indulgence or make any other arrangement, variation or release with any person not being a party to this deed (whether or not any person is jointly liable with the Borrower) in respect of any of the Secured Liabilities or of any other security for them without prejudice either to this deed or to the liability of the Borrower for the Secured Liabilities.

## 9 WHEN SECURITY BECOMES ENFORCEABLE

### 9.1 Security becomes enforceable on Event of Default

The security constituted by this deed shall be immediately enforceable if an Event of Default occurs and is continuing.

### 9.2 Discretion

After the security constituted by this deed has become enforceable, the Lender may, in its absolute discretion, enforce all or any part of that security at the times, in the manner and on the terms it thinks fit, and take possession of and hold or dispose of all or any part of the Charged Property.

## 10 ENFORCEMENT OF SECURITY

### 10.1 Enforcement powers

10.1.1 The power of sale and other powers conferred by section 101 of the LPA 1925 (as varied or extended by this deed) shall, as between the Lender and a purchaser from the Lender, arise on and be exercisable at any time after the execution of this deed, but the Lender shall not exercise such power of sale or other powers until the security constituted by this deed has become enforceable under clause 9.1.

10.1.2 Section 103 of the LPA 1925 does not apply to the security constituted by this deed.

### 10.2 Extension of statutory powers of leasing

The statutory powers of leasing and accepting surrenders conferred on mortgagees under the LPA 1925 and by any other statute are extended so as to authorise the Lender and any Receiver, at any time after the security constituted by this deed has become enforceable, whether in its own name or in that of the Borrower, to:

- 10.2.1 grant a lease or agreement for lease;
- 10.2.2 accept surrenders of leases; or
- 10.2.3 grant any option of the whole or any part of the Property with whatever rights relating to other parts of it,

whether or not at a premium and containing such covenants on the part of the Borrower and on such terms and conditions (including the payment of money to a lessee or tenant on a surrender) as the Lender or Receiver thinks fit, without the need to comply with any of the restrictions imposed by sections 99 and 100 of the LPA 1925.

### 10.3 Prior Security

At any time after the security constituted by this deed has become enforceable, or after any powers conferred by any Security having priority to this deed shall have become exercisable, the Lender may:

- 10.3.1 redeem that or any other prior Security;
- 10.3.2 procure the transfer of that Security to itself; and
- 10.3.3 settle any account of the holder of any prior Security.

The settlement of any such account shall be, in the absence of any manifest error, conclusive and binding on the Borrower. All monies paid by the Lender to an encumbrancer in settlement of such an account shall be, as from its payment by the Lender, due from the Borrower to the Lender on current account and shall bear interest at the default rate of interest specified in the Facility Agreement and be secured as part of the Secured Liabilities.

### 10.4 Protection of third parties

No purchaser, mortgagee or other person dealing with the Lender, any Receiver or Delegate shall be concerned to enquire:

- 10.4.1 whether any of the Secured Liabilities have become due or payable, or remain unpaid or undischarged;
- 10.4.2 whether any power the Lender, a Receiver or Delegate is purporting to exercise has become exercisable or is properly exercisable; or
- 10.4.3 how any money paid to the Lender, any Receiver or any Delegate is to be applied.

### 10.5 Privileges

Each Receiver and the Lender is entitled to all the rights, powers, privileges and immunities conferred by the LPA 1925 on mortgagees and receivers.

### 10.6 No liability as mortgagee in possession

Neither the Lender, any Receiver nor any Delegate shall be liable to account as mortgagee in possession in respect of all or any of the Charged Property, nor shall any of them be liable for any loss on realisation of, or for any neglect or default of any nature in connection with, all or any of the Charged Property for which a mortgagee in possession might be liable as such.

### 10.7 Relinquishing possession

If the Lender, any Receiver or Delegate enters into or takes possession of the Charged Property, it or he may at any time relinquish possession.

### 10.8 Conclusive discharge to purchasers

The receipt of the Lender or any Receiver or Delegate shall be a conclusive discharge to a purchaser and, in making any sale or other disposal of any of the Charged Property or in making any acquisition in the exercise of their respective powers, the Lender, every Receiver and Delegate may do so for any consideration, in any manner and on any terms that it or he thinks fit.

## **11 RECEIVERS**

### **11.1 Appointment**

At any time after the security constituted by this deed has become enforceable, or at the request of the Borrower, the Lender may, without further notice, appoint by way of deed, or otherwise in writing, any one or more person or persons to be a Receiver of all or any part of the Charged Property.

### **11.2 Removal**

The Lender may, without further notice (subject to section 45 of the Insolvency Act 1986), from time to time, by way of deed, or otherwise in writing, remove any Receiver appointed by it and may, whenever it thinks fit, appoint a new Receiver in the place of any Receiver whose appointment may for any reason have terminated.

### **11.3 Remuneration**

The Lender may fix the remuneration of any Receiver appointed by it without the restrictions contained in section 109 of the LPA 1925 and the remuneration of the Receiver shall be a debt secured by this deed, which shall be due and payable immediately on its being paid by the Lender.

### **11.4 Power of appointment additional to statutory powers**

The power to appoint a Receiver conferred by this deed shall be in addition to all statutory and other powers of the Lender under the Insolvency Act 1986, the LPA 1925 or otherwise, and shall be exercisable without the restrictions contained in sections 103 and 109 of the LPA 1925 or otherwise.

### **11.5 Power of appointment exercisable despite prior appointments**

The power to appoint a Receiver (whether conferred by this deed or by statute) shall be, and remain, exercisable by the Lender despite any prior appointment in respect of all or any part of the Charged Property.

### **11.6 Agent of the Borrower**

Any Receiver appointed by the Lender under this deed shall be the agent of the Borrower and the Borrower shall be solely responsible for the contracts, engagements, acts, omissions, defaults, losses and remuneration of that Receiver and for liabilities incurred by that Receiver. The agency of each Receiver shall continue until the Borrower goes into liquidation and after that the Receiver shall act as principal and shall not become the agent of the Lender.

## **12 POWERS OF RECEIVER**

### **12.1 Powers additional to statutory powers**

12.1.1 Any Receiver appointed by the Lender under this deed shall, in addition to the powers conferred on him by statute, have the powers set out in clause 12.2 to clause 12.20.

12.1.2 If there is more than one Receiver holding office at the same time, each Receiver may (unless the document appointing him states otherwise) exercise all of the powers conferred on a Receiver under this deed individually and to the exclusion of any other Receiver.

12.1.3 Any exercise by a Receiver of any of the powers given by clause 12 may be on behalf of the Borrower, the directors of the Borrower or himself.

## 12.2 Repair and develop the Property

A Receiver may undertake or complete any works of repair, alteration, building or development on the Property and may apply for and maintain any planning permission, development consent, building regulation approval or any other permission, consent or licence to carry out any of the same.

## 12.3 Grant or accept surrenders of leases

A Receiver may grant, or accept surrenders of, any leases or tenancies affecting the Property and may grant any other interest or right over the Property on any terms and subject to any conditions that he thinks fit.

## 12.4 Employ personnel and advisers

A Receiver may provide services and employ, or engage, such managers, officers, servants, contractors, workmen, agents, other personnel and professional advisers on such terms, and subject to such conditions, as he thinks fit. A Receiver may discharge any such person or any such person appointed by the Borrower.

## 12.5 Make and revoke VAT options to tax

A Receiver may exercise or revoke any VAT option to tax as he thinks fit.

## 12.6 Charge for remuneration

A Receiver may charge and receive any sum by way of remuneration (in addition to all costs, charges and expenses incurred by him) that the Lender may prescribe or agree with him.

## 12.7 Realise Charged Property

A Receiver may collect and get in the Charged Property or any part of it in respect of which he is appointed and make any demands and take any proceedings as may seem expedient for that purpose, and take possession of the Charged Property with like rights.

## 12.8 Manage or reconstruct the Borrower's business

A Receiver may carry on, manage, develop, reconstruct, amalgamate or diversify or concur in carrying on, managing, developing, reconstructing, amalgamating or diversifying the business of the Borrower carried out at the Property.

## 12.9 Dispose of Charged Property

A Receiver may grant options and licences over all or any part of the Charged Property, sell, assign, lease and accept surrenders of leases of (or concur in selling, assigning, leasing or accepting surrenders of leases of) all or any of the Charged Property in respect of which he is appointed for such consideration and in such manner (including, without limitation, by public auction or private sale) and generally on any terms and conditions that he thinks fit. A Receiver may promote, or concur in promoting, a company to purchase the Charged Property to be disposed of by him.

## 12.10 Sever fixtures and fittings

A Receiver may sever and sell separately any fixtures or fittings from the Property without the consent of the Borrower.

## 12.11 Give valid receipts

A Receiver may give valid receipts for all monies and execute all assurances and things that may be proper or desirable for realising any of the Charged Property.

12.12 Make settlements

A Receiver may make any arrangement, settlement or compromise between the Borrower and any other person that he may think expedient.

12.13 Bring proceedings

A Receiver may bring, prosecute, enforce, defend and abandon all actions, suits and proceedings in relation to any of the Charged Property as he thinks fit.

12.14 Insure

A Receiver may, if he thinks fit, but without prejudice to the indemnity in clause 15.2, effect with any insurer any policy of insurance either in lieu or satisfaction of, or in addition to, the insurance required to be maintained by the Borrower under this deed.

12.15 Powers under LPA 1925

A Receiver may exercise all powers provided for in the LPA 1925 in the same way as if he had been duly appointed under the LPA 1925 and exercise all powers provided for an administrative receiver in Schedule 1 to the Insolvency Act 1986.

12.16 Borrow

A Receiver may, for any of the purposes authorised by this clause 12, raise money by borrowing from the Lender (or from any other person) either unsecured or on the security of all or any of the Charged Property in respect of which he is appointed on any terms that he thinks fit (including, if the Lender consents, terms under which that security ranks in priority to this deed).

12.17 Redeem prior Security

A Receiver may redeem any prior Security and settle the accounts to which the Security relates. Any accounts so settled shall be, in the absence of any manifest error, conclusive and binding on the Borrower, and the monies so paid shall be deemed to be an expense properly incurred by the Receiver.

12.18 Delegation

A Receiver may delegate his powers in accordance with this deed.

12.19 Absolute beneficial owner

A Receiver may, in relation to any of the Charged Property, exercise all powers, authorisations and rights he would be capable of exercising, and do all those acts and things, as an absolute beneficial owner could exercise or do in the ownership and management of the Charged Property or any part of the Charged Property.

12.20 Incidental powers

A Receiver may do any other acts and things:

12.20.1 that he may consider desirable or necessary for realising any of the Charged Property;

12.20.2 that he may consider incidental or conducive to any of the rights or powers conferred on a Receiver under or by virtue of this deed or law; or

12.20.3 that he lawfully may or can do as agent for the Borrower.

## **13 DELEGATION**

### 13.1 Delegation

The Lender or any Receiver may delegate (either generally or specifically) by power of attorney or in any other manner to any person any right, power, authority or discretion conferred on it by this deed (including the power of attorney granted under clause 17.1).

### 13.2 Terms

The Lender and each Receiver may make a delegation on the terms and conditions (including the power to sub-delegate) that it thinks fit.

### 13.3 Liability

Neither the Lender nor any Receiver shall be in any way liable or responsible to the Borrower for any loss or liability arising from any act, default, omission or misconduct on the part of any Delegate.

## **14 APPLICATION OF PROCEEDS**

### 14.1 Order of application of proceeds

All monies received by the Lender, a Receiver or a Delegate under this deed after the security constituted by this deed has become enforceable (other than sums received under any Insurance Policy), shall (subject to the claims of any person having prior rights and by way of variation of the LPA 1925) be applied in the following order of priority:

14.1.1 in or towards payment of or provision for all costs, charges and expenses incurred by or on behalf of the Lender (and any Receiver, Delegate, attorney or agent appointed by it) under or in connection with this deed and of all remuneration due to any Receiver under or in connection with this deed;

14.1.2 in or towards payment of or provision for the Secured Liabilities in any order and manner that the Lender determines; and

14.1.3 in payment of the surplus (if any) to the Borrower or other person entitled to it.

### 14.2 Appropriation

Neither the Lender, any Receiver nor any Delegate shall be bound (whether by virtue of section 109(8) of the LPA 1925, which is varied accordingly, or otherwise) to pay or appropriate any receipt or payment first towards interest rather than principal or otherwise in any particular order between any of the Secured Liabilities.

### 14.3 Suspense account

All monies received by the Lender, a Receiver or a Delegate under this deed (other than sums received under any Insurance Policy that are not going to be applied in or towards discharge of the Secured Liabilities):

14.3.1 may, at the discretion of the Lender, Receiver or Delegate, be credited to any suspense or securities realised account;

14.3.2 shall bear interest, if any, at the rate agreed in writing between the Lender and the Borrower; and

14.3.3 may be held in that account for so long as the Lender, Receiver or Delegate thinks fit.

## **15 COSTS AND INDEMNITY**

### **15.1 Costs**

The Borrower shall, within five Business Days of demand, pay to, or reimburse, the Lender and any Receiver, on a full indemnity basis, all costs, charges, expenses, taxes and liabilities of any kind (including, without limitation, legal, printing and out-of-pocket expenses) incurred by the Lender, any Receiver or any Delegate in connection with:

- 15.1.1 this deed or the Charged Property;
- 15.1.2 taking, holding, protecting, perfecting, preserving or enforcing (or attempting to do so) any of the Lender's, a Receiver's or a Delegate's rights under this deed; or
- 15.1.3 taking proceedings for, or recovering, any of the Secured Liabilities,

together with interest, which shall accrue and be payable (without the need for any demand for payment being made) from the date on which the relevant cost or expense arose until full discharge of that cost or expense (whether before or after judgment, liquidation, winding up or administration of the Borrower) at the rate and in the manner specified in the Facility Agreement.

### **15.2 Indemnity**

The Borrower shall indemnify the Lender, each Receiver and each Delegate, and their respective employees and agents against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by any of them arising out of or in connection with:

- 15.2.1 the exercise or purported exercise of any of the rights, powers, authorities or discretions vested in them under this deed or by law in respect of the Charged Property;
- 15.2.2 taking, holding, protecting, perfecting, preserving or enforcing (or attempting to do so) the security constituted by this deed; or
- 15.2.3 any default or delay by the Borrower in performing any of its obligations under this deed.

Any past or present employee or agent may enforce the terms of this clause 15.2 subject to and in accordance with the provisions of the Contracts (Rights of Third Parties) Act 1999.

## **16 FURTHER ASSURANCE**

### **16.1 Further assurance**

The Borrower shall, at its own expense, take whatever action the Lender or any Receiver may reasonably require for:

- 16.1.1 creating, perfecting or protecting the security intended to be created by this deed;
- 16.1.2 facilitating the realisation of any of the Charged Property; or
- 16.1.3 facilitating the exercise of any right, power, authority or discretion exercisable by the Lender or any Receiver in respect of any of the Charged Property,

including, without limitation (if the Lender or Receiver thinks it expedient) the execution of any transfer, conveyance, assignment or assurance of all or any of the assets forming part of (or intended to form part of) the Charged Property (whether to the Lender or to its nominee) and the giving of any notice, order or direction and the making of any registration.

## **17 POWER OF ATTORNEY**

### **17.1 Appointment of attorneys**

By way of security, the Borrower irrevocably appoints the Lender, every Receiver and every Delegate separately to be the attorney of the Borrower and, in its name, on its behalf and as its act and deed, to execute any documents and do any acts and things that:

17.1.1 the Borrower is required to execute and do under this deed; or

17.1.2 any attorney deems proper or desirable in exercising any of the rights, powers, authorities and discretions conferred by this deed or by law on the Lender, any Receiver or any Delegate.

### **17.2 Ratification of acts of attorneys**

The Borrower ratifies and confirms, and agrees to ratify and confirm, anything that any of its attorneys may do in the proper and lawful exercise, or purported exercise, of all or any of the rights, powers, authorities and discretions referred to in clause 17.1.

## **18 RELEASE**

### **18.1 Release**

Subject to clause 25.3, on the expiry of the Security Period (but not otherwise), the Lender shall, at the request and cost of the Borrower, take whatever action is necessary to:

18.1.1 release the Charged Property from the security constituted by this deed; and

18.1.2 reassign the Charged Property to the Borrower.

## **19 ASSIGNMENT AND TRANSFER**

### **19.1 Assignment by Lender**

19.1.1 At any time, without the consent of the Borrower, the Lender may assign or transfer any or all of its rights and obligations under this deed.

19.1.2 The Lender may disclose to any actual or proposed assignee or transferee any information in its possession that relates to the Borrower, the Charged Property and this deed that the Lender considers appropriate.

### **19.2 Assignment by Borrower**

The Borrower may not assign any of its rights, or transfer any of its rights or obligations, under this deed.

## **20 SET-OFF**

### **20.1 Lender's right of set-off**

The Lender may at any time set off any liability of the Borrower to the Lender against any liability of the Lender to the Borrower, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under this deed. If the liabilities to be set off are expressed in different currencies, the Lender may convert either liability at a market rate of exchange for the purpose of set-off. Any exercise by the Lender of its rights under this clause 20.1 shall not limit or affect any other rights or remedies available to it under this deed or otherwise.

## **21 AMENDMENTS, WAIVERS AND CONSENTS**



## 21.1 Amendments

No amendment of this deed shall be effective unless it is in writing and signed by, or on behalf of, each party (or its authorised representative).

## 21.2 Waivers and consents

21.2.1 A waiver of any right or remedy under this deed or by law, or any consent given under this deed, is only effective if given in writing by the waiving or consenting party and shall not be deemed a waiver of any other breach or default. It only applies in the circumstances for which it is given and shall not prevent the party giving it from subsequently relying on the relevant provision.

21.2.2 A failure or delay by a party to exercise any right or remedy provided under this deed or by law shall not constitute a waiver of that or any other right or remedy, prevent or restrict any further exercise of that or any other right or remedy or constitute an election to affirm this deed. No single or partial exercise of any right or remedy provided under this deed or by law shall prevent or restrict the further exercise of that or any other right or remedy. No election to affirm this deed by the Lender shall be effective unless it is in writing.

## 21.3 Rights and remedies

The rights and remedies provided under this deed are cumulative and are in addition to, and not exclusive of, any rights and remedies provided by law.

## 22 SEVERANCE

### 22.1 Severance

If any provision (or part of a provision) of this deed is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision (or part of a provision) shall be deemed deleted. Any modification to or deletion of a provision (or part of a provision) under this clause shall not affect the legality, validity and enforceability of the rest of this deed.

## 23 COUNTERPARTS

### 23.1 Counterparts

This deed may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute one deed.

## 24 THIRD PARTY RIGHTS

### 24.1 Third party rights

Except as expressly provided elsewhere in this deed, a person who is not a party to this deed shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce, or enjoy the benefit of, any term of this deed. This does not affect any right or remedy of a third party which exists, or is available, apart from that Act.

## 25 FURTHER PROVISIONS

### 25.1 Independent security

This deed shall be in addition to, and independent of, any other security or guarantee that the Lender may hold for any of the Secured Liabilities at any time. No prior security held by the Lender over the whole or any part of the Charged Property shall merge in the security created by this deed.

## 25.2 Continuing security

This deed shall remain in full force and effect as a continuing security for the Secured Liabilities, despite any settlement of account, or intermediate payment, or other matter or thing, unless and until the Lender discharges this deed in writing.

## 25.3 Discharge conditional

Any release, discharge or settlement between the Borrower and the Lender shall be deemed conditional on no payment or security received by the Lender in respect of the Secured Liabilities being avoided, reduced or ordered to be refunded under any law relating to insolvency, bankruptcy, winding-up, administration, receivership or otherwise. Despite any such release, discharge or settlement:

25.3.1 the Lender or its nominee may retain this deed and the security created by or under it, including all certificates and documents relating to the whole or any part of the Charged Property, for any period that the Lender deems necessary to provide the Lender with security against any such avoidance, reduction or order for refund; and

25.3.2 the Lender may recover the value or amount of such security or payment from the Borrower subsequently as if the release, discharge or settlement had not occurred.

## 25.4 Certificates

A certificate or determination by the Lender as to any amount for the time being due to it from the Borrower under this deed and the Facility Agreement shall be, in the absence of any manifest error, conclusive evidence of the amount due.

## 25.5 Consolidation

The restriction on the right of consolidation contained in section 93 of the LPA 1925 shall not apply to this deed.

## 26 NOTICES

### 26.1 Delivery

Any notice or other communication given to a party under or in connection with this deed shall be:

26.1.1 in writing;

26.1.2 delivered by hand, by pre-paid first-class post or other next working day delivery service or sent by electronic email; and

26.1.3 sent to:

(a) the Borrower at:

Address: County Hall, Bythesea Road, Trowbridge, Wiltshire, BA14 8JN

Email: 

Attention: Company Secretary

(b) the Lender at:

Address: County Hall, Bythesea Road, Trowbridge, Wiltshire, BA14 8JN

Email: [simon.hendey@wiltshire.gov.uk](mailto:simon.hendey@wiltshire.gov.uk)

Attention: Simon Hendey, Director of Housing & Commercial

or to any other address or email address as is notified in writing by one party to the other from time to time.

## 26.2 Receipt by Borrower

Any notice or other communication that the Lender gives to the Borrower shall be deemed to have been received:

26.2.1 if delivered by hand, at the time it is left at the relevant address;

26.2.2 if posted by pre-paid first-class post or other next working day delivery service, on the second Business Day after posting; and

26.2.3 if it is electronic mail, upon receipt by the party to which it is given.

A notice or other communication given as described in clause 26.2 on a day that is not a Business Day, or after normal business hours, in the place it is received, shall be deemed to have been received on the next Business Day.

## 26.3 Receipt by Lender

Any notice or other communication given to the Lender shall be deemed to have been received only on actual receipt.

## 27 GOVERNING LAW AND JURISDICTION

### 27.1 Governing law

This deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

### 27.2 Jurisdiction

Each party irrevocably agrees that, subject as provided below, the courts of England and Wales shall have exclusive jurisdiction over any dispute or claim arising out of or in connection with this deed or its subject matter or formation (including non-contractual disputes or claims). Nothing in this clause shall limit the right of the Lender to take proceedings against the Borrower in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdictions, whether concurrently or not, to the extent permitted by the law of such other jurisdiction.

### 27.3 Other service

The Borrower irrevocably consents to any process in any legal action or proceedings under clause 27.2 being served on it in accordance with the provisions of this deed relating to service of notices. Nothing contained in this deed shall affect the right to serve process in any other manner permitted by law.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

**SCHEDULE 1 - PROPERTY**

[Property detail]

## **SCHEDULE 2 - COVENANTS**

### **Part 1 - General covenants**

#### **1 NEGATIVE PLEDGE AND DISPOSAL RESTRICTIONS**

The Borrower shall not at any time, except with the prior written consent of the Lender or as expressly permitted by the Facility Agreement:

- 1.1 create, purport to create or permit to subsist any Security on, or in relation to, any Charged Property other than any Security created by this deed;
- 1.2 sell, assign, transfer, part with possession of or otherwise dispose of in any manner (or purport to do so) all or any part of, or any interest in, the Charged Property; or
- 1.3 create or grant (or purport to create or grant) any interest in the Charged Property in favour of a third party.

#### **2 PRESERVATION OF CHARGED PROPERTY**

The Borrower shall not do, or permit to be done, any act or thing that would or might depreciate, jeopardise or otherwise prejudice the security held by the Lender or materially diminish the value of any of the Charged Property or the effectiveness of the security created by this deed.

#### **3 TITLE DOCUMENTS**

The Borrower shall, on the execution of this deed, deposit with the Lender and the Lender shall, for the duration of this deed, be entitled to hold:

- 3.1 all deeds and documents of title relating to the Charged Property that are in the possession or control of the Borrower (if these are not within the possession and/or control of the Borrower, the Borrower undertakes to obtain possession of all such deeds and documents of title); and
- 3.2 each Insurance Policy.

#### **4 BORROWER'S WAIVER OF SET-OFF**

The Borrower waives any present or future right of set-off it may have in respect of the Secured Liabilities (including sums payable by the Borrower under this deed).

#### **5 INSPECTION**

The Borrower shall permit the Lender and any Receiver and any person appointed by either of them to enter on and inspect the Property on reasonable prior notice.

**EXECUTION PAGE**

Executed as a deed by affixing ) Seal  
the common seal of )  
**WILTSHIRE COUNCIL** )  
)  
)  
in the presence of )  
)  
..... )  
Authorised signatory )

Executed as a deed by )  
**BLUE STONES (HOUSING COMPANY)** )  
**LIMITED** )  
acting by ....., ) .....  
a director, in the presence of ) **Director**

Signature: .....

Name of witness: .....

Address: .....

.....

Occupation of witness: .....

By virtue of paragraph(s) 3 of Part 1 of Schedule 12A of the Local Government Act 1972.

Document is Restricted

This page is intentionally left blank



By virtue of paragraph(s) 3 of Part 1 of Schedule 12A  
of the Local Government Act 1972.

Document is Restricted

This page is intentionally left blank

By virtue of paragraph(s) 3 of Part 1 of Schedule 12A  
of the Local Government Act 1972.

Document is Restricted

This page is intentionally left blank

By virtue of paragraph(s) 3 of Part 1 of Schedule 12A  
of the Local Government Act 1972.

Document is Restricted

This page is intentionally left blank

By virtue of paragraph(s) 3 of Part 1 of Schedule 12A  
of the Local Government Act 1972.

Document is Restricted

This page is intentionally left blank



By virtue of paragraph(s) 3 of Part 1 of Schedule 12A  
of the Local Government Act 1972.

Document is Restricted

This page is intentionally left blank

By virtue of paragraph(s) 3 of Part 1 of Schedule 12A  
of the Local Government Act 1972.

Document is Restricted

This page is intentionally left blank