



CHELtenham

BOROUGH COUNCIL

Notice of a meeting of Cabinet

Thursday, 13 October 2011
6.00 pm

Municipal Offices, Promenade, Cheltenham, GL50 9SA

Membership	
Councillors:	Steve Jordan, John Rawson, Klara Sudbury, Andrew McKinlay, John Webster, Roger Whyborn and Colin Hay

Agenda

	SECTION 1 : PROCEDURAL MATTERS	
1.	APOLOGIES	
2.	DECLARATIONS OF INTEREST	
3.	MINUTES OF THE LAST MEETING To approve the minutes of the last meeting of 27 September 2011	(Pages 1 - 6)
4.	PUBLIC QUESTIONS AND PETITIONS	
	SECTION 2 :THE COUNCIL <i>There are no matters referred to the Cabinet by the Council on this occasion</i>	
	SECTION 3 : OVERVIEW AND SCRUTINY COMMITTEES <i>There are no matters referred to the Cabinet by Scrutiny Committees on this occasion</i>	
	SECTION 4 : OTHER COMMITTEES <i>There are no matters referred to the Cabinet by other Committees on this occasion</i>	
	SECTION 5 : REPORTS FROM CABINET MEMBERS AND/OR OFFICERS	
5.	THE CREATION OF A LOCAL AUTHORITY COMPANY WITH COTSWOLD DISTRICT COUNCIL Report of the Cabinet Member Sustainability	(Pages 7 - 84)

		SECTION 6 : BRIEFING SESSION	
		<ul style="list-style-type: none"> • Leader and Cabinet Members 	
6.		BRIEFING FROM CABINET MEMBERS	
		SECTION 7 : DECISIONS OF CABINET MEMBERS AND OFFICERS	
		Member decisions taken since the last Cabinet meeting	
		SECTION 8 : ANY OTHER ITEM(S) THAT THE LEADER DETERMINES TO BE URGENT AND REQUIRES A DECISION	
		SECTION 9 : LOCAL GOVERNMENT ACT 1972 - EXEMPT BUSINESS	
7.		LOCAL GOVERNMENT ACT 1972 - EXEMPT BUSINESS	
		None	
		Section 10: BRIEFING NOTES	
		Briefing notes are circulated for information with the Cabinet papers but are not on the agenda	

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Cabinet

**Tuesday, 27th September, 2011
6.00 - 7.25 pm**

Attendees	
Councillors:	Steve Jordan (Leader of the Council), John Rawson (Cabinet Member Built Environment), Klara Sudbury (Cabinet Member Housing and Safety), Andrew McKinlay (Cabinet Member Sport and Culture), John Webster (Cabinet Member Finance and Community Development), Roger Whyborn (Cabinet Member Sustainability) and Colin Hay (Cabinet Member Corporate Services)

Minutes

1. APOLOGIES

No apologies were received.

2. DECLARATIONS OF INTEREST

The Leader of the Council declared a personal interest in agenda item 8, specifically relating to the bid from the YMCA, as a Director of the YMCA.

3. MINUTES OF THE LAST MEETING

The minutes of the meeting held on 26 July 2011 had been circulated with the agenda.

RESOLVED that the minutes of the meeting held on 26 July 2011 be agreed and signed as an accurate record.

4. PUBLIC QUESTIONS AND PETITIONS

There were no public questions or petitions.

5. REVIEW OF THE ART GALLERY & MUSEUM'S ACQUISITIONS AND DISPOSAL POLICY

The Cabinet Member Sport and Culture introduced the report which asked Cabinet to consider and make a decision regarding which statements to include under section 12f within the proposed Acquisitions and Disposal Policy for Cheltenham Art Gallery and Museum (AG&M), to approve the revised Acquisitions and Disposal Policy and to consider the request for a return of a clock given to the AG&M in 1963. The Cabinet Member Sport and Culture stressed that any decision made on the Acquisitions and Disposals policy would not impact on any subsequent decision.

The Cabinet Member Sport and Culture referred to the Appendix and the copy of the Acquisitions and Disposal Policy which outlined the terms on which the Council made acquisitions and disposals to the policy. He strongly recommended Option 2 to Cabinet as if the Council adopted a policy of sale for

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profit it would jeopardise the standing of the museum as viewed by the Museums, Libraries and Archives Council and put at risk the funding the Council had in place for improvements to the AG&M. In his view this risk would not be worth any financial gain it may make.

Members supported Option 2 and commended the policy as a whole. With regard to the specific issue on the request by Mr Stuart Latham for a return of a clock given to the AG&M in 1963, the Leader referred Members to the official valuation which had been circulated at the meeting and used his discretion by inviting Mr Latham to address the meeting.

Mr Latham told Cabinet of his early memories of the clock and his disappointment when he discovered its incompleteness (apparent loss of its wooden case, pendulum and weights) and condition upon viewing it at the AG&M. There also appeared to be no record that it had ever been exhibited. He believed that the Museum had failed his family. He had thus put in a formal request to have the clock returned to him, not for financial reasons, but in order to refurbish it and have it in his home.

Cabinet Members appreciated the importance of the clock to Mr Latham but noted that contrary to Mr Latham's opinion the inspection had found that the clock was in a good condition. There was no indication from the acquisition records that there were parts missing nor evidence of its condition upon donation. It was suggested that if Cabinet decided the clock should be retained by the AG&M Mr Latham should be involved in discussions regarding its restoration if deemed necessary. The clock was obviously of historical importance and as such the Council would wish members of the public to have the opportunity to appreciate too.

The Cabinet Member Sport, Leisure and Culture thanked Mr Latham for his contribution.

The Collections Manager and Curator at the AG&M referred to the prime record relating to the acquisition of the clock in 1963 and said that no reference had been made to the pendulum, weights or the wooden case. Whilst there were no records of what had been displayed until the mid 1980s, she believed that it would have been displayed at some point as staff were always keen to display all new acquisitions. The AG&M considered the clock to be complete and intended to display it in a new 18th century gallery relating to Gloucestershire makers once the AG&M reopened in early 2013.

The Cabinet Member Sport and Culture asked Cabinet to consider the 3 options as outlined in the report. In his view Mr Latham's claim that the clock had been seriously neglected by the AG&M was unproven and there was a lack of documentary evidence that parts were missing. The museum wished to display the clock once it reopened and this would fulfil the original intention of the donation. He thus favoured Option 1 but highlighted that the AG&M should display the clock.

The Leader of the Council appreciated that this was a very difficult decision but there was no evidence to suggest that the AG&M had been negligent. The clock would be displayed and he highlighted that a major driver behind the AG&M

extension was indeed to display more of its collection.

RESOLVED that:

- 1. Under section 12f within the proposed Acquisitions & Disposal Policy for Cheltenham Art Gallery & Museum the museum will not undertake disposal motivated principally by financial reasons.**
- 2. The revised Acquisitions & Disposal Policy for Cheltenham Art Gallery & Museum in Appendix 5, incorporating the decision made at 1. above be approved, and that the policy will again be reviewed in 2016.**
- 3. The request for the return of a clock - given to the Art Gallery & Museum in 1963 – be refused.**

6. RENT SUBSIDY REQUEST FROM THIRD SECTOR SERVICES

The Cabinet Member Built Environment introduced the report which asked the Council to consider entering into a formal lease of the Sandford Park Offices to the Trustees of Third Sector Services (a community-based volunteer organisation), on a subsidised rental basis rather than at full market rent.

He highlighted the valuable contribution of Third Sector Services to the community, the local economy and the environment and thus its contribution to the Council's corporate and community plan objectives.

The Cabinet Member Community Development and Finance emphasised the essential role of Third Sector Services in running community transport particularly in view of cuts to public transport which has negatively impacted upon the elderly and the disabled.

The Leader of the Council commended the work that had been undertaken in putting this policy in place and agreed that this was a sensible way forward. He informed members the policy was being shared at the Gloucestershire Leadership level as a good model to work to.

RESOLVED that:

- 1. The Trustees of Third Sector Services be granted a full repairing and insuring lease of the above premises for a term of 15 years and at a rent to be stated in the lease of £10,560 per annum (exclusive) and subject to five yearly rent reviews.**
- 2. Authority be delegated to the Head of Property & Asset Management, in consultation with the Head of Legal Services, to negotiate and finalise the remaining lease terms with the Trustees of Third Sector Services**
- 3. Subject to the Head of Property and Asset Management reaching an early and satisfactory agreement on all lease terms, the**

subsidised rent of 100% of the rent in accordance with the Council's agreed Property Lettings and Disposals to the Third Sector policy be approved.

- 4. The subsidy is to be fully reviewed at the same time as the corresponding five yearly rent review dates.**

7. NATIONAL PLANNING POLICY FRAMEWORK

The Leader of the Council introduced the report which contained comments on the Government's draft National Planning Policy Framework (NPPF). Following Cabinet's consideration these comments would form the basis of the Council's submission to the Department of Communities and Local Government. He made reference to the digest of Planning Committee's comments which had been tabled.

The Leader stated that whilst Cabinet welcomed the drive for localism it appeared that the NPPF contradicted this in the interests of a developer led agenda. He highlighted that Cheltenham's economic health and prosperity depended on its environment and there was a danger that in bringing forward development at an accelerated rate there was a risk that this would be spoiled. The Leader supported all planning committee's comments and the proposed amendment to the recommendations in the Cabinet report with the exception of setting up a working group to inform the consultation as the timescale was insufficient. He informed Cabinet that a letter was being drafted to accompany the submission in order to highlight the key issues.

The Cabinet Member Built Environment highlighted these key issues which included the definition of sustainability, the absence from the framework of the "brownfield first" principle, the protection offered to Green Belt land, the weakening of flood prevention guidance and the restriction in the role of Supplementary Planning Documents.

Cabinet Members supported the comments and the proposed amendment to the recommendations in the Cabinet Report but expressed concern about the time required to prepare the Local Plan in line with the draft NPPF which was scheduled to be completed by April 2012. Concern was also expressed about whether the same rigour would be applied to S106 monies as at present in order to provide the relevant infrastructure to accompany any new development.

RESOLVED that :

- 1. Authority be delegated to the Strategic Land Use Manager and the Development Control Manager in consultation with the Leader and the Cabinet Member Built Environment, to amend Appendix 1 to incorporate comments from Cabinet in the response to the draft National Planning Policy Framework, including such Planning Committee comments that the Cabinet would like incorporated.**
- 2. The comments to the draft National Planning Policy Framework as amended be submitted to the Department of Communities and Local Government no later than 17 October 2011.**

8. COMMISSIONING OF POSITIVE ACTIVITIES FOR YOUNG PEOPLE

The Cabinet Member Housing and Safety introduced the report as circulated with the agenda which sought approval for a list of projects to be funded from the Positive Activities Fund (as set out in appendix 2) and to delegate authority to the Policy and Partnerships Manager in consultation with the Cabinet Member Housing and Safety to determine how best to allocate the provisional remaining sum which was now £13 595 (the report circulated referred to a sum of £11 144).

An assessment panel had met on 14 September and that day the Cabinet Member had met with young people from County Community Projects (CCP) to examine the bids and explain the thinking behind the decisions to prioritise the funding. The Cabinet Member outlined to Cabinet the reasons for not supporting certain projects as listed in appendix 2.

There would be a second bidding round and the Council would use CCP in their role as leading the building resilience project to work with potential bidders. There were still geographical gaps in the town which CCP could help to address in order to strengthen youth provision in Cheltenham.

The Leader of the Council declared a personal interest in this agenda item as a Director of Cheltenham YMCA.

Members expressed disappointment that the speed at which the County had withdrawn funding had resulted in an increase in antisocial behaviour. In addition the uncertainty of what the youth service was actually going to provide in the future did not allow other parties time to put together appropriate bids. At the same time it was recognised and welcomed that there were many organisations which were prepared to do positive general youth work and bridge the remaining gaps.

RESOLVED that:

- 1. The list of projects to be funded from the positive activities fund as set out in appendix 2 – “List of projects and recommendations” be approved.**
- 2. Delegate authority to the Policy and Partnerships Manager in consultation with the Cabinet Member Housing and Safety to determine how best to allocate the provisional remaining sum which was now £13 595.**

9. BRIEFING FROM CABINET MEMBERS

The Leader of the Council reminded Members that the deadline for the bids for the Promoting Cheltenham Fund was Friday 30 September.

10. LOCAL GOVERNMENT ACT 1972 - EXEMPT BUSINESS

Upon a vote it was unanimously

RESOLVED that in accordance with Section 100A(4)Local Government Act 1972 the public be excluded from the meeting for the remaining items of business as it is likely that, in view of the nature of the business to be

transacted or the nature of the proceedings, if members of the public are present there will be disclosed to them exempt information as defined in paragraph 3 and 7A, Part 1, Schedule 12A Local Government Act 1972.

**11. APPROVE EXEMPT MINUTES OF THE LAST MEETING
RESOLVED that :**

The exempt minutes of the meeting held on 26 July 2011 be approved as a correct record.

Chairman

Cheltenham Borough Council

Cabinet – 13th October 2011

The creation of a Local Authority Company with Cotswold District Council

Accountable member	Cabinet Member Sustainability, Councillor Roger Whyborn
Accountable officer	Executive Director, Grahame Lewis
Accountable scrutiny committee	Environment
Ward(s) affected	All
Key Decision	Yes
Executive summary	<p>In June 2011 Cabinet considered a report on Joint Working in Waste & Environmental Services and agreed the business case to establish a Company between Cheltenham Borough Council and Cotswold District Council, retaining flexibility to include other partners in the future.</p> <p>Further work has now been undertaken via a separate commissioning exercise to clarify governance and legal issues, agree the range of services and activities which will be carried out by the Company (“the Company”), agree the Articles and Shareholders Agreement for the Company as well as a range of Service Level Agreements / Contracts.</p> <p>It is intended that subject to the approval by Cabinet the Company will be operational from 1st April 2012, with Cheltenham service delivery transferring in 1st April 2012 and Cotswold service delivery transferring in 6th August 2012 when their current arrangement expires.</p>
Recommendations	<p>I therefore recommend that:</p> <p>(1) Cabinet agree that all services in scope and identified in 2.2.5 of the report will be undertaken by the Local Authority Company, namely:-</p> <ul style="list-style-type: none"> • waste collection • kerbside recycling collections • organic waste collections • servicing of neighbourhood recycling sites • operation of Swindon Road recycling centre • street cleaning • public toilet cleaning • maintenance of parks and gardens, sports pitches and open spaces • fleet management and maintenance • Cheltenham Borough Homes (CBH) Grounds Maintenance <p>(2) Cabinet agrees:</p>

- the Articles of Association and Shareholder Agreement, subject to authority being delegated to Grahame Lewis, Executive Director in consultation with the Cabinet Member – Sustainability, Cabinet Member - Finance, s151 officer and Borough Solicitor to make any consequential or minor amendments as necessary to ensure consistency between these documents and the documents referred to below
- to delegate authority to Grahame Lewis, Executive Director in consultation with the Cabinet Member - Sustainability, Cabinet Member – Finance, s151 officer and Borough Solicitor to finalise and complete the Waste/recycling/street cleaning/grounds maintenance Contract, all other contracts (including arrangements for use of the council's depot and other assets) and all other legal documentation as necessary to enable the Company to commence business from 1st April 2012

- (3) Cabinet appoints Grahame Lewis, Executive Director as the council appointed director to the Company's Board of Directors and a Councillor to be appointed as an observer to the Company's Board of Directors. This Councillor will not have any voting rights, but will have speaking rights and confidentiality obligations. This Council observer will not be the Leader or the Cabinet Member – Sustainability.
- (4) Cabinet authorises the Borough Solicitor to register the Company at Companies House, as soon as possible after this Cabinet.
- (5) That a shadow board be set up as soon as practical after the registration of the Company at Companies House.
- (6) Further report on the establishment of the Gloucestershire Waste Partnership Joint Waste Committee will be presented to Cabinet on 15 November 2011.

Financial implications	See Sections 9, 10 and 11 Contact officer: Mark Sheldon, mark.sheldon@cheltenham.gov.uk, 01242 264123
Legal implications	As detailed in the report but specifically in section 4 Contact officer: Shirin Wotherspoon, shirin.wotherspoon@tewkesbury.gov.uk, 01684 272017
HR implications (including learning and organisational development)	As detailed in paragraph 12 and 22 Contact officer: Julie McCarthy, julie.mccarthy@cheltenham.gov.uk, 01242 264355
Key risks	The risk assessment is included as Appendix 1

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Corporate and community plan Implications	The establishment of a Local Authority Company was outlined in the Corporate Strategy 2011/12. The Company will support the delivery of the Council's corporate objectives.
Environmental and climate change implications	It will be important to ensure that the Local Authority Company continues to support the delivery of the Council's climate change and environmental objectives and this will be picked up through monitoring liaison meetings.

1. Background

- 1.1** Both Cheltenham Borough Council (Cheltenham) and Cotswold District Council (Cotswold) have been examining options for joint working in waste services as members of the Gloucestershire Waste Partnership. The Joint Municipal Waste Management Strategy 2007–2020 makes a clear commitment to partnership working to make waste management more sustainable including the development of service delivery partnerships with other authorities and the private sector. Both Councils subsequently considered and accepted a detailed business case that outlines a programme of change to deliver significant efficiency savings across the partnership, with savings being achieved in both collection and disposal budgets. The timeline for change and realisation of the full range of savings is stretched over a period of 10 years, with the maximum benefit being realised once waste services are rationalised and integrated across the county. To achieve this it is necessary to align waste collection service contracts and in-house arrangements and work towards an aggregated waste collection arrangement for all districts within the partnership. Details of how the Gloucestershire Joint Waste Committee will interact with this new Company are contained in Section 3 of this report.
- 1.2** In March 2011 Cheltenham resolved to develop a business case to form a Local Authority Company with Cotswold with opportunities for other partners to join at a later date subject to legal and financial conditions being satisfactorily met.
- 1.3** It should be noted that Cheltenham and Cotswold are committed to improved service delivery and efficiency within their respective council vision and plans. Cheltenham's corporate strategy 2010-2015 has a key outcome that the council delivers cashable savings, as well as improved customer satisfaction, and better overall performance through the effective commissioning of services.
- 1.4** The creation of a local authority company to deliver a waste, recycling and street cleansing service meets the council's priorities of 'Cleaner and Greener' and 'Value for Money'. The development of a modern reactive waste service controlled by the two authorities will enable the amount of waste going to landfill to be reduced, recycling will be increased and litter reduction will be realised through effective street cleansing and the provision and maintenance of litter bins. The governance and financial management of the Company will ensure efficiency and tight financial control where Cheltenham pays for the service 'at cost' instead of funding profit margins. This will contribute to achieving overall cost reduction targets identified within the council's medium term financial strategy. Reducing service costs in this way will therefore assist the council in its commitment to maintaining front-line services despite reductions in government funding levels.

2. What's in scope

2.1 Cheltenham Borough Council – Commissioning approach

- 2.1.1** As part of its commissioning strategy Cheltenham Borough Council has invested time and effort in collaborative working and is considered by its partners to be committed, open and positive. By using a strategic commissioning approach to partnership working the council can improve service outcomes whilst at the same time create opportunities for financial savings.
- 2.1.2** The proposal to form a jointly owned local authority company contributes to the Council's strategic commissioning objectives and provides a sound platform for partnership working to deliver improved outcomes and value for money.
- 2.1.3** Strategic commissioning dictates that the delivery mechanisms chosen for services will depend upon evidence based judgement as to how best to meet the needs of citizens or service users. A

cornerstone of the commissioning strategy is the separation of commissioning from provider activities. This allows service change and development to be driven transparently by the needs of citizens and users, and by partnership opportunities, rather than by the internal needs of the service provider. Having the Company as a service provider satisfies these principles.

2.2 What activities are being proposed to be “in scope” services

- 2.2.1** At the cabinet meeting in June members recognised that the services in scope identified in section three of the business case (and which were not in scope for the other partner namely public toilets, grounds maintenance and cemetery and crematorium) should be regarded as indicative. They requested a separate commissioning exercise the results of which should be reported back to cabinet.
- 2.2.2** A small cross party working group was established to undertake this task and they acknowledged that within the timescales they could not undertake a full commissioning review. However the review group took a pragmatic approach and considered the inherent synergies between waste collection, street cleaning, grounds maintenance and other environmental services. The review group considered the additional costs which might be incurred by splitting these functions and also the impact such a split may have on the service quality and neighbourhood management requirements.
- 2.2.3** The group felt that the cemetery and crematorium service is a stand alone service currently delivered in a shared management partnership with Tewkesbury Borough Council. They also considered that the works of the green space development team covered a range of different services and there were linkages to commissioning, asset management and leisure and culture and that therefore should not be included.
- 2.2.4** The review group developed a draft set of outcomes for green environment and also looked at benchmark data for grounds maintenance. They are of the opinion that there is a wider commissioning exercise to be undertaken once the green space strategy has been reviewed by the environment overview and scrutiny committee and officers agreed to develop a scoping proposal.
- 2.2.5** The scope of the services included is therefore not limited to waste but has been widened to include other environmental and support services.

The following services are proposed to be in scope:

- | | | |
|------------|---|---|
| Cheltenham | - | waste collection |
| | - | kerbside recycling collections |
| | - | organic waste collections |
| | - | servicing of neighbourhood recycling sites |
| | - | operation of the Swindon Road recycling centre |
| | - | street cleaning |
| | - | public toilet cleaning |
| | - | grounds maintenance |
| | - | grounds maintenance of Cheltenham Borough Homes |
| | - | fleet management and maintenance |
| Cotswold | - | waste collection |
| | - | kerbside recycling collections |
| | - | organic waste collections |
| | - | servicing of neighbourhood recycling sites |
| | - | street cleaning |

- 2.2.6** Therefore by definition the following activities which are currently delivered within the operations team will fall out of the Company and in the first instance will form part of the Wellbeing & Culture Division:

- Allotments
- Green space development
- Public protection
- Cemeteries & crematorium

- 2.2.7** The Director of the division will work with others across the retained organisation to ensure that these services are aligned to others as appropriate. It is proposed that these services will transfer with effect from 1st November 2011 to enable the Director of Operations and his team to focus on the implementation of the Company and for the managers of the above services to have the necessary support.
- 2.2.8** Each of the Councils has agreed to provide its own customer service interface. Therefore the customer services work which is undertaken by the Operations division will transfer to the customer services team within the Resources division. This will provide a more resilient customer team to deal with customer queries for the services within scope. It is envisaged that both Councils will work together to develop a standardised approach to customer services and the interaction with the Company over time.
- 2.2.9** The client side monitoring of the Council will sit with the Commissioning division. However in order to keep client side monitoring activities to a minimum it is proposed that Cotswold District Council will provide strategic support (as a client agent) in relation to waste, recycling, street cleaning and public toilets, and grounds maintenance strategic support will be provided by the green space development team.
- 2.2.10** Informal discussions have taken place with CBH as to whether some elements of grounds maintenance for CBH estates would be better undertaken as part of a wider estate activity within CBH. If the business case is appropriate then the opportunity will be taken to make this change ahead of the services being transferred to the new Company. Grass cutting will continue to be provided to CBH.

3. The Gloucestershire Waste Partnership and its relationship to the Local Authority Company

- 3.1** Members are aware that as a result of the Gloucestershire Waste Partnership (“GWP”) being established at the start of the next financial year (2012/13) a Joint Waste Committee and a Joint Waste Management Unit (“JWMU”) are to be created which will oversee the implementation of a county wide strategy to drive out further savings in waste collection and disposal.
- 3.2** This proposal will be predicated upon a budget to be agreed by the S151 officers of the participating authorities, which will demonstrate the financial advantages of the partnership. The GWP will bring into existence a Member led Joint Waste Committee (“JWC”) supported by an officer led JWMU. An administration authority will be appointed both to provide a body that can enter into service contracts on behalf of the partnership, and to act as an organisational home for staff who will transfer to the administration authority’s JWMU.

Whilst significant work has been done to identify the exact amount of set up and ongoing running costs of the JWMU further analysis has been requested by the Gloucestershire Joint Waste Programme Board (“GJWPB”). Clearer further details of ongoing savings to be made by the GWP also need to be produced which will clarify amounts and expected dates when any such savings will materialise.

The Company is an operational organisation and while the relationship between it and the JWC is of critical importance these finer points will be explained to Members when the further financial costs and savings are known and agreed.

For these reasons the report on the GWP will not be ready for another month. A further Cabinet

report will therefore be placed before members in November setting out the above.

4. Legal Structure of the Local Authority Company

4.1 The proposal is for Cheltenham and Cotswolds to establish a local authority company limited by shares with each council having 50% voting rights. Both sets of shares will have the same rights and powers. As a result the Company will be regarded as a local authority controlled company and as a consequence will not be subject to E.U. procurement rules.

4.2 The Company will be formed in such a way as to allow other Councils to join at a future date. It is important to facilitate growth in order to deliver economies of scale, increased efficiency savings and improved outcomes. Overall control of the Company will be exercised by the shareholder Councils in accordance with the Articles of Association and the Shareholder Agreement.

4.3 The Shareholder Agreement is a key document in defining the balance of power between the Councils as shareholders and the Company directors. At a practical level it is important that the shareholders and the Company directors are clear how their relationship is to be conducted. The Shareholders Agreement provides the framework for the ongoing relationship.

4.4 Key clauses of the Shareholder Agreement are:

4.4.1 Funding- (see section 10)

4.4.2 Reserved Matters - The Board of Directors require the unanimous approval of the Shareholders before taking any decisions in relation to any of the following matters:

- Varying in any respect the Articles of Association or the rights attaching to any shares in the Company.
- Permitting the registration of any additional Shareholder of the Company.
- Passing any resolution for its winding up or presenting any petition for its administration (unless it has become insolvent).
- Adopting or amending the business plan in respect of each financial year.
- Forming any subsidiary or acquiring shares in any other Company or participating in any partnership or joint venture (incorporated or not).
- Amalgamating or merging with any other Company or business undertaking.
- Entering into any arrangement, contract or transaction over £100,000.
- Agreeing the appointment and appointment terms (including remuneration) of all directors of the Company other than Shareholder appointed directors.
- Agreeing any remuneration terms for Shareholder appointed directors.
- Agreeing changes in employment terms and conditions which would be inconsistent with the National Joint Council National Agreement on Pay and Conditions of Service and any changes to the pay and grading structure of employees of the Company]. Entering into any arrangement, contract or transaction which is not within, ancillary or incidental to the Company's business or is otherwise than on arm's length terms.
- Increasing, reducing, sub-dividing, consolidating, re-denominating, cancelling, purchasing or redeeming any of the capital of, or allotting or issuing any shares or other securities in the capital of, the Company.
- Altering any rights attaching to any class of share in the capital of the Company, or creating any option, warrant or any other right to acquire or subscribe for any shares or other securities in the capital of the Company.
- Declaring, authorising or making dividends or distributions of assets of any kind to a Shareholder.

4.4.3 Board of Directors - to be not less than 4 with each Shareholder entitled to appoint and remove 1 director to the Board.

- 4.4.4 Business Plan - to be prepared by the Company and must be unanimously approved by the Shareholders.
- 4.4.5 Accounts - to be provided by the Company as set out in the agreement.
- 4.4.6 Business activities - the Shareholders will consider the Company as a potential supplier for all activities.
- 4.4.7 Transfer of shares - only by unanimous consent of all shareholders and only to another public body.
- 4.4.8 Issue of further shares- only by unanimous approval of all the shareholders.
- 4.4.9 Dividends - no dividends or distributions except by the unanimous agreement of the shareholders.
- 4.4.10 Termination of agreement - only by agreement, winding up or if there is only a single shareholder and if wound up, the parties will agree a suitable basis for dealing with the interests and assets of the Company.
- 4.4.11 Default - if the default is capable of remedy then the shareholder will be required to remedy the breach within 20 days but if they fail to remedy the breach the disputes resolution process applies.
- 4.4.12 Disputes the directors will try to resolve the dispute within 2 weeks and if that fails the shareholders will nominate representatives to try to resolve the dispute within another 2 week period and if that fails the matter may be referred to an arbitrator and/or to court for resolution.
- 4.5 The Articles of Association constitute a contract between the shareholder Councils and the Company. The articles set out the key framework for the Company's governance structure by setting out the composition of the board of directors and who the shareholders are. In addition, the articles set out the procedural rules for both directors and shareholders, holding meetings and making decisions.
- 4.6 **Key Articles are as follows:**
 - 4.6.1 Objects - to provide services to public bodies (although other customers may be considered if services to such customers remains incidental to the primary aim / object).
 - 4.6.2 Liability is limited to amount, if any, unpaid ie £1.
 - 4.6.3 Decision making – any decision of the directors shall not be effective unless all directors appointed by the shareholders agree to the decision
 - 4.6.4 Quorum – must comprise the directors appointed by each shareholder and either the Managing Director or the finance Director of the Company.
 - 4.6.5 Casting vote - chair will not have a casting vote.
 - 4.6.6 Conflicts of interests - these relate to interests in proposed transactions or arrangements with the Company.
 - 4.6.7 Appointing directors - Each shareholder has the right to appoint a person to be a director so that at all times each shareholder may have 1 appointed director who will be an officer. However, an elected member may be appointed as an "observer" on the Board (such observer will have no voting rights). The shareholders also have the right to appoint the Finance Director and Managing Director of the Company.

4.6.8 Shareholder meetings - quorum requires one council representative of each shareholder present. All reserved matters are decided at the general meetings of the Company.

4.6.9 Indemnities for the directors - paid for by the Company.

5. Shareholder Interests and Director Appointments

5.1 Shareholder Interest

5.1.1 The business of the Company consists of executive functions and so it is for the Leader to decide whether to reserve decisions to himself or whether to delegate some or all of those decisions. The joint programme board considered this matter carefully and concluded that it would be appropriate for decision making to be retained by the Leader. The reason for reaching this conclusion lies in the fact that it is necessary for both councils to agree matters reserved to the shareholders and if this involved arranging cabinet meetings on each occasion, then it may lead to delays and prejudice the efficient operation of the Company. If the Leader retains these decisions it will expedite decision making for the benefit of the shareholder councils and the Company.

5.2 Contract Monitoring /Commissioning

5.2.1 The cabinet member whose portfolio includes the services within scope of the Company will be responsible for presenting any changes to the service level agreement to cabinet for approval and will report on performance to the overview and scrutiny committee. The cabinet member will have the strategic lead for development of policy for the services within scope. Should the proposal for the creation of a JWC go ahead then some of these strategic responsibilities will transfer to the JWC and JWMU.

5.3 Directors of the Company

5.3.1 Cabinet is required to appoint a person as the council appointed director to the Board of Directors of the Company. It is proposed that Grahame Lewis, Executive Director be appointed as the Council's nominated director.

5.3.2 Part 5G of the Constitution includes guidance for members appointed to represent the council on outside bodies such as the Company. Further information on the duties and liabilities of Directors under the Companies Act 2006 is set out in the note appended to this report (Appendix 2).

6. Shadow Board

6.1 In order to ensure a smooth transition of services from the Council to the Company and to assist in the development of internal processes and procedures (including internal governance of the Company) the proposal is to register the Company at Companies House as soon as possible after cabinet. The council appointed directors from both Cotswold and this Council would be required to sign the necessary company registration documentation.

7. Name of Company

7.1 The Project Board agreed that staff suggestions should be invited from both Cheltenham and Cotswold to determine a name for the company. A total of 95 suggestions were received and reduced through a process of elimination that included the availability of a suitable domain name and checks that the name is not already registered or similar to one already existing.

7.2 A shortlist of 6 was considered by the Project Board and reduced to 2. Following consultation with Chief Executives and lead members a name has been chosen for the company .The name will

remain confidential until the Company has been registered at Companies House. It is proposed that a cross-authority member working group is established to consider how branding of the Company and the two Councils will operate so that there is clarity for the customer.

8. Role of overview and scrutiny committee

- 8.1** The overview and scrutiny committee will hold the Leader, the relevant cabinet members and Directors of the Company to account for the delivery of the services within scope of the Company. The provider of services can be called to the committee should this be felt necessary and the service level agreement includes reference to attendance at committees and working groups as required.

9. Financial Structure of the Local Authority Company

9.1 One off Set Up and On-Going operational costs

- 9.1.1** As outlined to the Cabinet in June 2011, in establishing the Company there will be one-off set up costs and additional on-going costs incurred.
- 9.1.2** The one-off set up costs include administrative and system costs estimated at £248,600. Some of the Company set up costs will be unique to Cotswold and they have set aside significant capital funding for this. The total shared one-off revenue costs to be borne by Cheltenham as the Company's set up costs are estimated to be £124,300 and have already been allocated within base budget.
- 9.1.3** Additional on-going costs for the Company administration are expected to be £98,000 which includes additional banking, insurance, audit and Company secretary costs which are to be shared equally i.e. £49,000 for each council. Included in these costs are ICT costs for support to the new Cotswold operational Depot site which is required for the southern operational crews within the Cotswold geographic area. However, further work needs to be undertaken to ensure that the full ICT implications of creating the Company have been identified and costed.
- 9.1.4** The costs associated with the requirement for a new operational Depot to serve the Cotswold southern geographic area are not included in this report as they have been factored into the Cotswold commissioning budgets as a general operational requirement for Cotswold DC. Running costs for the new Cotswold Depot site are however included in the revenue budget for the Company.

10. Business Plan Budgets

- 10.1** A detailed budgeting exercise has been undertaken to establish the baseline operating budgets for the Company. This was developed using Cheltenham's current budget levels and extrapolating budgets for Cotswold services based on detailed knowledge of the current service delivery and reference to the Eunomia report.
- 10.2** Outside of the current operations divisional budgets there is a corporate target for savings from staff turnover. Initial Company budgets will reflect a proportionate top slicing to reflect its fair share of this target.
- 10.3** The Company will be expected to support the delivery of respective Councils Medium Term Financial Strategy targets, through the governance structure proposed.

- 10.4** The cost of the client function shared with Cotswold will be factored into the Councils base budget for 2012/13 and is estimated to be £25,000 to £30,000.
- 10.5** The shareholders agreement sets out the basis for charging respective Councils for services received. As a basic principle, neither council will cross subsidise the cost of services provided to the respective Councils. The funding policy ensures that costs/savings attributable to specific Councils are 'passport'ed to them and shared costs/savings are fully apportioned based on the principle of service/economic benefit derived.
- 10.6** The shareholders agreement recognises the differences in services provided to respective Councils and as a baseline, maintains the integrity of cost/benefits which flow.
- 10.7** The shareholders agreement allows for any future new (external) incidental business generated to be split equally between respective Councils with the exception of the Nursery.

11. On-going savings

- 11.1** As outlined in the June 2011 Cabinet report, savings are anticipated to be released in phases.
- 11.2** Phase I: The initial net annual service saving to Cheltenham is estimated at £125,000 in a full financial year. In 2012/13 this saving will be prorata for the period Aug 2012 to Mar 2013 and will accrue from the ex-SITA services joining the Company through shared service management costs, depot space and initial operational economies of scale. At this stage, an estimate of the savings target for 2012/13 is therefore likely to be circa £83,000.
- 11.3** Phase II: Procurement and operational savings are expected to deliver a further £50,000 in 2012/13, increasing annual savings to £175,000.
- 11.4** Phase III: Once the Company is established the next phase of savings will be addressed. These Phase III savings in 2013/14 would look at the management structure of the Company with a view to a managerial restructure following the integration of the ex-SITA Cotswold DC operation which are estimated to deliver a further saving of £50,000 increasing annual savings to £225,000.
- 11.5** Phase IV: Additional Phase IV savings will be addressed in 2014/15. The overall operational budget for the combined services is c£6M which provides a significant base from which to drive out considerable operational savings e.g. via waste and recycling round rationalisation which have yet to be analysed and costed but are estimated to be at least a further 6-8% based on Eunomia data which was formulated on the Gloucestershire wide partnership model. Based on a 6% saving target, this would equate to £180,000 per annum per partner, raising the annual savings to £405,000 per annum. These assumptions may need to be reviewed based on GWP and JWMU decisions to be taken in November 2011.
- 11.6** The Company provides scope for further savings through joint working, particularly if additional local authorities join the Company in the future. These have yet to be assumed in the financial projections.
- 11.7** The creation of the Company is a critical catalyst for the ultimate aspiration for a county wide waste partnership including all districts within Gloucestershire and Gloucestershire County Council which would unlock significant savings when existing external contracts expire. Independent work, undertaken by Eunomia is currently being reviewed to determine any additional savings that may be released from the Countywide Joint Waste partnership.
- 11.8** As the company is to be progressed at this stage without the involvement of Tewkesbury it is not possible to continue with the existing interim secondment arrangements. Also, it would not be possible to commit to a longer term Section 101 arrangement between Cheltenham and Tewkesbury for the services in scope, although work will continue to explore options for a S101 arrangement regarding cemetery management. The resulting impact on management and

overhead savings identified in the Cheltenham and Tewkesbury business case of 15th March 2011 has been factored into the business case for the joint Cheltenham and Cotswold company.

- 11.9** Tewkesbury have been informed that both Cheltenham and Cotswold are keen to see the company expand once it is established. The company is being formed in such a way as to allow other public bodies, including Tewkesbury, to join at a future date and overall control of the company will be exercised by shareholder councils in accordance with the Articles of Association and Shareholders Agreement. It is too early however to determine detailed costs or other conditions regarding how Tewkesbury, or any other public body, would join the company and this would be part of any future discussions and subject to an approved business case.

12. Pensions

- 12.1** Pension arrangements for new employees joining the Company and non local government employees who transfer in to the company - Employers who employ more than 5 employees must designate and offer access to a stakeholder pension scheme. A stakeholder pension scheme has been identified from the register of approved providers. This scheme is well established as it is currently open to SITA employees. This scheme will continue to be available to those employees and any new employees who join the company with effect from 1st April 2012.
- 12.2** Pension arrangements for current local government employees who TUPE to the Company April 2012 – The Transfer of Undertakings regulations (TUPE) require that employees main terms and conditions of employment are protected at the date of transfer. Where employees are members of, or were eligible to join, an occupational pension scheme before the transfer they are entitled to have a scheme provided for them after the transfer.. The Local Authority Pension Schemes can allow existing members who are subject to TUPE transfer to remain in the LGPS under a facility called "admitted body status". Discussions are ongoing with Gloucestershire County Council Pensions with regard to this aspect of the transfer.
- 12.3** The impact on Pensions for the controlling Councils on the formation of the Company will be nil. However, the decision on the transfer of pension liabilities has yet to be determined. Advice to date from Gloucestershire's LGPS Actuary indicates that staff transferring to the Company. This means that the Councils will have fewer employees to spread the recovery of that deficit over.

13. Cashflow

- 13.1** It will be necessary for both founding partners to invest (working capital) and revenue into the Company in advance of a service being received to provide for cash flow from the first day of operation. This will not be an additional cost, however, a mechanism to identify the method and timing of repayment will need to be determined as part of the Company set up project. Treasury Management arrangements may need to be established and approved by respective Councils in the budget setting process.

14. Impact on the 'GO' Shared Services

- 14.1** The Company will require Finance, Payroll, Procurement and Human Resources support. It is proposed that 'GO' Shared Services will provide these. This may require an expansion of the size of the proposed 'GO' support team which may be marginal in its impact on the overall size of the combined 'GO' shared service. Any additional costs incurred by 'GO' would be rechargeable to the Company to cover the expansion in its operations as a result of staff being transferred from

Cotswolds outsourced environmental services. A full analysis of the additional resource has yet to be undertaken but, an assumed level of additional 'GO' support in the Company has been included in the financial costings for and signed off by Cotswold DC.

15. Impact on Customer Services Areas

- 15.1** It is currently assumed that, in creating a waste Company, billing and the initial point of contact for enquiries e.g. missed bins etc. will remain with the respective Councils via the Customer Services Teams. This will ensure that residents, who associate the council with the collection of waste and recycling, will continue to be able to contact the council to resolve problems. This will also avoid having to charge VAT for green waste collection, which would be the case if the Company billed for the service. Future investment in systems may be necessary.

16. VAT

- 16.1** The Company will be registered for VAT purposes and issue VAT invoices to its respective client organisations. Under current arrangements Cotswold DC receive VAT invoices from its waste and recycling contractor and therefore no immediate impact on its VAT partial exemption liability is envisaged. The situation is potentially different for Cheltenham however, and this needs to be considered. The Council will need to ensure the VAT efficiency of both the Company and the shareholder Councils. In order to facilitate this external VAT advice will be taken prior to the Company being established.

17. Corporation Tax

- 17.1** The Company will be subject to tax rules as a normal Company. This could mean, in particular, corporation tax being charged on profits.
- 17.2** However, the Company may be exempt from corporation tax on the grounds of mutuality or, potentially, on the basis of qualifying as a "local authority association". Members will recall that the Company provides services to the Councils and, therefore, should not be making any profit.
- 17.3** HMRC must approve it as a "local authority association" before it qualifies for tax purposes. If the authorities are the only customers of the Company, buying services from it, and they also own the Company then it should not be subject to tax - any surplus from operations is considered to be an excess of contributions is the owners' money and returnable to them.
- 17.4** Non-charitable corporations pay corporation tax (current rate between 20% and 28% (and changing to between 20% and 23% over the next few years) depending on the size of the business).
- 17.5** Any new entity will need to be registered with HMRC for tax purposes. The Company implementation team will consider issues relating to corporation tax, taking expert advice as necessary, before concluding on the best way forward.

18. Budget Setting Process

- 18.1** Provision will be made by the s151 Offices to finalise the budgets in accordance with the budget setting process as adopted by the respective shareholder Councils.

19. Financial and Contract Rules

- 19.1** The Company will incorporate the Financial Rules and Contract Rules as adopted by the 'GO' shared services program as approved by Cabinet.

20. Insurances

- 20.1** Consideration needs to be given to insurance requirements in line with the potential liabilities of the new local authority companies, these could be categorised under 4 headings
- 20.2** Necessary Insurance – Public and Employers Liability insurance will need to be obtained in order to for the company to provide services to the public and employee staff, additional covers such as Personal Accident is also likely to be needed to keep the employee's terms in line with that which already exist.
- 20.3** Property – The fixed structures out of which the business operate will need to be insured as they currently are by the respective authorities, the ownership of these assets will have a direct impact on indemnity being provided via insurers by the new Company or respective authority.
- 20.4** Non-Registered and Registered Fleet – much consideration needs to be given to the ownership of fleet and who will provide the companies motor policy. Probably the largest insurable risk faced by the company, it is vitally important that all options are explored in order to find a mutually suitable outcome all interested parties including insurers.
- 20.5** Fixtures and Fittings – likely to be assets that are already insured, however the importance will be inventories to make sure that risks taken on by Company are quantifiable and existing insurances can be amended accordingly.

21. Service Level Agreements/Contracts and Monitoring Arrangements

- 21.1** Service level agreements/contracts will be in place for the services that are in scope. The service levels are based on current service design, policy and quantitative and qualitative standards. The member working group reviewed the draft service specification for grounds maintenance and considered it against the draft outcomes. They felt that it should contain a list of places that are to be maintained, should make some provision as to how the council and Company will work with developers on any new ground provision and ongoing maintenance, should have more explicit reference to how the Company would interface with the council on enforcement activity. They also requested that consideration is given as to how ad-hoc requests would be dealt with, and how the Company might exploit synergies between the different services in scope. They were also mindful that should other Councils join the Company at a future date and include grounds maintenance then there may be some opportunity to revisit the service agreement as there could be synergies to be exploited.
- 21.2** Contained within the service level agreements / contracts will be key performance indicators and targets. The Company will be expected to provide the council with this performance data in a timely manner. The member working group were keen to ensure that monitoring arrangements are proportionate. The council will use its experience of its relationship with CBH to manage the relationship with the Company ie seeing the relationship as a partnership where performance is monitored but the focus is on the delivery of outcomes for the community.
- 21.3** Officers of the Company and the council will meet on no less than a quarterly basis to review performance information and agree any change to the service, and also to discuss strategic issues which may impact on each others service delivery.
- 21.4** A representative of the Company will be required to attend overview and scrutiny committee, audit

committee, working groups or cabinet if requested to do so.

- 21.5** The overview and scrutiny committee will hold the leader, the relevant cabinet members and directors of the Company to account for the delivery of the services within scope of the Company. Performance data will be presented within the regular performance monitoring reports and risks that impact on CBC will be included within the risk register.
- 21.6** The customer services team will be a source of performance data, as will the customer relations team with regards to complaints. The commissioning division will work with the strategic client leads to ensure that issues are raised effectively with the Company as they arise. In the first instance the customer service unit should be contacted to resolve service delivery issues. Where it is necessary to hold site meetings to discuss operational service delivery, Company officers will be available to meet Ward and Cabinet Members. In principle, if matters can be resolved locally they should be, but the client-side must be kept informed and must be consulted if resolution of the issues can not be achieved within existing policies and budgets.
- 21.7** The member working group also requested that within the service level agreement that a clause is included with requests that the Company has to consider any recommendations which may arise from overview and scrutiny committee in relation to the way in which the Company is delivering its services.

22. Council Depots and other Assets

- 22.1** Major assets i.e. Land and Buildings will remain in the ownership of the respective Councils The ownership of other assets are yet to be determined. A 'Schedule of Assets' is being drawn up by property services. The potential for novation of current contracts will need to be considered and will be included in the relevant contracts or as separate arrangements.
- 22.2** The Company will lease all or part of the Swindon Road depot and will use this as its Company head office and base for its Cheltenham operations. As a separate legal identity the Company will require a formal lease for land and buildings and property services have been instructed to draft heads of terms. The Company will also need to utilise the Rose and Crown Passage depot and the Arle Nursery for its day to day Cheltenham operations. A separate depot will be used for Cotswold operations but there will be some degree of sharing according to identified capacity and operational effectiveness.
- 22.3** Other assets will be identified and valued and will be made available to the Company either through a lease, service level agreement or purchase.

23. Support Services

- 23.1** The Company will be supported as detailed below and these arrangements will be the subject of separate service level agreements.
- Finance, Procurement, HR, Payroll, Health and Safety – GO Shared Services
 - Legal - One Legal (including the role of Company Secretary)
 - Internal Audit - Audit Cotswolds
 - Property Services

24. LA Company structure, appointments, and other related HR implications

- 24.1** The creation of a LA Company places significant demand upon officer time both within the services directly affected as well as upon the wider organisation leading up to implementation and changes in business processes (e.g. customer services).

- 24.2** On 1st April 2012, all Cheltenham Borough Council employees within the affected service areas will transfer to the employment of LA Company under the TUPE regulations.
- 24.3** The LA Company will have a Board of Directors who will be responsible for the supervision and management of the Company and its business.
- 24.4** The LA Company Board will consist of a Managing Director, a Finance Director and in addition, each Shareholding authority will be entitled to appoint one person to the board. The shareholder appointed Director will not be an employee of the Company.
- 24.5** It is proposed the process for creating the LA Company Board structure will be in 2 phases:
Phase 1 – Appointment to the post of shareholder nominated Director
Phase 2 – Appointment to post of Managing Director and Finance Director
- 24.6** Phase 1 - Each shareholding authority will appoint one of their existing directors to sit on the Company Board.
- 24.7** Phase 2 – The appointment to the Managing Director role will be made by representatives of the shareholding authorities through a fair & transparent recruitment process. The role of Managing Director will be full time and the successful candidate will be employed by the Company.
- 24.8** Finance Director – The appointment to the Finance Director role will follow the same process as the MD role. The role of Finance Director will be part time.
- 24.9** The LA Company Board of Directors need to be in place in advance of April 2012 (preferably by the end of December 2011) to begin to help to shape and create the new services. As an interim measure Cheltenham Borough Council will act as host employer for the successful candidate(s) pending the go live date in April 2012.
- 24.10** There will be a requirement to transfer under TUPE (Transfer of Undertakings Protection of Employment) Regulations 2006 131 of CBC employees to the Company initially. Subsequently there will be a requirement to transfer Cotswold outsourced service employees into the Company, which will be the responsibility of the Company. The Transfer of Undertakings (Protection of Employment) Regulations 2006, will apply in the creation of the Company as it will constitute a separate undertaking, and the Council's business or undertaking will transfer as a going concern to the Company.
- 24.11** Under TUPE all the employees who spend more than (as a guide) over 50% of their work time on work transferring to the Company will, unless they object, automatically transfer to the employment of the Company under their existing terms and conditions of employment, along with continuity of service.
- 24.12** If any employees object to the transfer then they do not transfer, but equally they do not stay - instead the transfer itself terminates their employment and they usually have no rights against anyone in consequence. A refusal to transfer will usually mean that the employee has in effect resigned, i.e. no entitlement to redundancy.
- 24.13** Work will need to commence to comply with TUPE regulations. Key steps to be taken are as follows:
- (a) Identify which employees will be affected by the transfer. This group includes not only all the transferring employees, but also anyone whose work will be affected by the transfer (e.g. remaining employees who may be taking on additional work, those at CBC who will not transfer under TUPE but may be impact upon the transfer of others into the Company.

- (b) There is a statutory requirement for full and proper consultation with employees, their representatives and any recognised trade unions. Consultation with representatives and employees impacted directly and indirectly needs to take place regarding the TUPE transfer. Consultation must take place in good time before the transfer, and is planned to commence January 2012 through to March 2012.
- (c) Due diligence in passing employee information (see below) to the new employer (the Company) must take place; any failure to carry out this step could cost Cheltenham Borough Council up to 13 weeks' gross pay per affected employee. Note that it is no defence that full information or consultation would make no difference to the end result, or that the staff suffered no loss as a result. There is no specified minimum period over which consultations must be conducted prior to a transfer taking place and it is important to note that there is no link between TUPE and redundancy provisions.
- (d) Cheltenham Borough Council will need to give the Company certain employee liability information about the transferring employees, essentially detailing the financial, legal and contractual information that comes with each. The information must be given no later than 14 days before the transfer and must include:
- each transferring employee's name, age, terms and conditions;
 - information on any grievances they have lodged;
 - any claims they have brought or disciplinary action taken against them.

This is legally required by TUPE (to ensure all possible cost liabilities are known pre-transfer) therefore there are no data protection issues as it is covered by the legal obligation exemption in respect of the disclosure of this information (see The Employment Practices Data Protection Code). Wherever practicable information handed over to the new employer (the Company) will be anonymised.

Employees will be advised that their employment records are to be disclosed to the new employer before transfer. Cheltenham Borough Council will need to obtain formal assurances regarding the use and safekeeping of the information and its return if the transfer does not in the event proceed.

There is a penalty of a minimum of £500 in respect of each employee for whom the required information was not provided or was defective, in addition to which the new employer (the Company) can bring proceedings to recover any loss arising from its reliance on poor or incomplete information.

- (e) It is worth noting that if any employee is dismissed for reasons connected to the transfer, this dismissal may be automatically unfair. The new employer (the Company) may, however, dismiss them post transfer from some other reason not connected with the transfer (e.g. for economic, technical or organisational reasons entailing a change in the workforce).
- (f) All relevant employees will transfer into the Company with effect from 1 April 2012, the date that it is envisaged that the TUPE transfer will take effect, and will fall under the Company management arrangements described above. No immediate staffing changes, with the exception of the management arrangements, are envisaged before this date, nor on transfer. Any variations to operational arrangements post 1 April 2012, for example the transfer of Cotswold's outsourced employees, will be subject to separate discussions and consultation and be the responsibility of the Company. It is envisaged that the shadow management arrangements described above will be set in place to take effect fully from the date the TUPE transfer is affected.

24.14 A significant piece of work has been scoped and will be carried out to set in place the relevant employment policy framework (including Health and Safety) and pensions arrangements (e.g.

stakeholder pension for SITA employees) for the Company to operate effectively as an employer in its own right.

24.15 There are significant employee relations implications, as detailed above and informal consultation has already commenced with the Trade Unions. A detailed communication and consultation plan has been drafted.

24.16 The Human Resources (including Health and Safety) and Payroll service provision to the Company will be provided from the GO Shared Services, with effect from 1 April 2012, using the ERP Agresso Business World platform. A Service Level Agreement has been drafted together with costings for the service provision for both initial set up and ongoing, and included in the business case.

Background Papers

Cabinet 15th March 2011 Joint Working in Waste and Environmental Services

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Appendices

1. Risk Assessment
2. Duties of Directors
3. Articles of Association
4. Shareholders Agreement

The risk				Original risk score (impact x likelihood)			Managing risk				
Risk ref.	Risk description	Risk Owner	Date raised	I	L	Score	Control	Action	Deadline	Responsible officer	Transferred to risk register
	If the financial projections in the business case prove to be inaccurate then target savings may not be achieved.	Dir Ops	01/06/11	3	3	9	Reduce	Continuously scrutinise and challenge assumptions and projections and refresh business case.	31/10/11	Dir Ops	
	If we fail to resource the project effectively the project implementation deadlines will not met and the challenging timescale for creating the Company will be affected and efficiencies put at risk.	Dir Ops	01/06/11	4	3	12	Reduce	A project manager has been appointed with capacity to drive the project forward. Regular progress meetings take place and there are clear work strands with project leads.	02/09/12	Dir Ops	
	If the GO system implementation is delayed then it will impact on the financial and operational arrangements of the Company.	Dir Ops	01/06/11	3	3	9	Reduce	Funding has been included in the set up costs to facilitate the Company inclusion in the GO project within the relevant timescales.		Dir Ops Go Prog Manager	
	If the Company is limited in the value	Dir Ops	01/06/11	2	4	8	Accept	Current external contract values are	31/03/2012	Dir Ops Dir Resources	

	of external works it may reduce income to CBC.							within the specified limitations. Public service charges to be administered by CBC therefore not in scope for the Company.			
	If TBC decide to terminate the depot lease there will be a loss of rental income in 2014/15.	Dir Ops	01/06/11	3	3	9	Reduce	Work with TBC to secure continued tenancy. Prepare contingency plan to mitigate impact – lease to third party of disposal of unoccupied land.	31/03/2014	Property	
	If we fail to procure the necessary vehicles for the Company by the key milestones then this will impact on the delivery and business case.	Dir Ops	25/08/11	4	3	12	Reduce	Project work plan is included within the overall programme. Mitigation could be temporary vehicle hire.	31/08/11	Dir Ops	
	If the customer interface is not transferred effectively with sufficient resource there could be an impact on the customer experience, reputation and service delivery.	Dir resources	25/08/11	4	3	12	Reduce	Project work plan is included within the overall programme. Resource issues will form part of TUPE negotiations.	01/04/12	Customer services manager	
	If the Company cannot secure a	Dir Ops	11/08/11	4	3	12	Reduce	Project work plan is included within the			

	depot within CDC boundaries it could impact on service delivery and the business case.							overall programme.			
	If we fail to properly plan the transfer of retained services there could be an impact on morale and service delivery.	Dir Comm	14/09/11	3	2	6	Reduce	managers who are not in scope have met with provider directors Briefing sessions to be had Transfer to take place as soon as practicable after decision to set up the Company.			
	There is a risk during the implementation stage of the Company that the council is reliant on a few key individuals.	Exec Dir	16/09/11	3	3	9	Accept	The council has limited capacity and resources. Within the timescale it is not feasible to bring in additional resources but the council is delivering the implementation via a project management approach, so work is planned and monitored, documents are stored and everyone is aware of key risks and issues so if key personnel are unavailable others would be aware of			

								what was required.			
	The council currently provides services to Gloucestershire Highways under an agency agreement. If this contract is not renewed or the borough council is unable to continue supporting the "top up" arrangements then it will impact on the business of the Company and contribution towards fixed costs.	Exec Dir	16/09/11	3	3	9	Reduce	Discussions on-going with the Highways Agency regarding future contractual arrangements.			
	If the council and Company does not fully exploit the synergies that could arise when other parties join the Company by aligning service provision, where applicable, there is a risk that the benefits and savings might not accrue, and community outcomes not achieved.	Director commissioning	16/09/11	2	3	6	Reduce	When new partners wish to join the Company there will need to be a fully costed business case. Discussions will be had with Councils as to what synergies, economies of scale and joint outcomes can be commissioned through the Company.	Ongoing	Director commissioning MD of the Company	Divisional

APPENDIX TO CABINET REPORT 13TH OCTOBER 2011**DUTIES OF DIRECTORS UNDER THE COMPANIES ACT 2006**

Summarised below are the seven general duties set out in ss.170 to 181 of the Companies Act 2006 ('the Act').

1. Duty to act within their powers

This duty is set out in section 171 of the Act and codifies the common law rules that directors should exercise their powers under the terms that were granted for a proper purpose. A director's powers are set out in the articles of association and in the Shareholders Agreement. It should be noted that the Shareholders Agreement reserves a number of key decisions to the Shareholder Councils and so these decisions will not be exercisable by the directors of the company

2. Duty to promote the success of the company

This duty is set out in section 172 of the Act. It imposes a duty to act in the way a director considers, in good faith, would be most likely to promote the success of the company. Although this duty is still owed to the Shareholders as a whole, when exercising this duty the director is required to have regard to various factors, including, the following:

- (a) the likely consequences of any decision in the long term,
- (b) the interests of the company's employees,
- (c) the need to foster the company's business relationships with suppliers, customers and others,
- (d) the impact of the company's operations on the community and the environment,
- (e) the desirability of the company maintaining a reputation for high standards of business conduct, and
- (f) the need to act fairly as between members

It can be seen that among other things, this duty introduces wider corporate social responsibility into a director's decision making process.

It is important that detailed minutes are taken when exercising decisions to document the fact that directors have had regards to various factors listed in section 172.

3. Duty to exercise independent judgment

Section 173 of the Act imposes a positive duty on a director of a company to exercise independent judgment. It is important to recognise that a Council nominated director cannot subordinate the interests of the company to those of the Council.

4. Duty to exercise reasonable care, skill and diligence

This duty is set out in s. 174. It prescribes the degree of 'care, skill and diligence' expected from a director as follows:

- a. the general knowledge, skill and experience that may reasonably be expected of a person carrying out the functions carried out by the director in relation to the company; and
- b. the general knowledge, skill and experience that the director has.

If a director is appointed to undertake a particular function, then that director will be expected to exercise the skills required of that post in all aspects of decision making e.g. the Finance director.

5. Duty to avoid conflicts of interest

This duty is set out in section 174 of the Act. It applies to a transaction between a director and a third party, such as the exploration of any property, information, opportunity. The duty does not extend to a transaction between a director and his own company, in respect of which s177 applies which requires a director to declare his interest to the other directors. It should be noted that such transactions can be authorised by the non-conflicted directors on the board provided that certain requirements as listed in s175 (5) (6) including who can participate and vote on such authorisation are complied with.

6. Duty not to accept benefits from third parties

This duty is set out in section 176 of the Act and states that a director is not permitted to accept a benefit from a third party by reason of (a) his being a director or (b) his doing or not doing anything as a director.

7. Duty to declare interest in proposed transaction or arrangement with the company

Section 177 of the Act requires a director to disclose his interest to the board of the company when a transaction is proposed between a director and his company. The requirement for disclosure is dispensed in circumstances where the interest cannot reasonably be regarded as likely to give rise to a conflict of interest or if other directors are already aware or 'ought reasonably to be aware' of the director's interest.

LIABILITIES OF DIRECTORS UNDER THE COMPANIES ACT 2006

Personal liability

Directors act as agents of the company. The general principle, therefore, is that liability associated with LA Co's operations will rest with the company and its assets. There are, however, a number of exceptions to this principle which, when applicable, could result in a director being held personally liable for company debts.

- Wrongful Trading - A director could be found guilty of wrongful trading if, at some point prior to the company going into insolvent liquidation, they knew or ought to have concluded that the company would have no reasonable prospect of avoiding insolvent liquidation. If a director is found to be guilty of wrongful trading, the Court may make an order to require a contribution to the assets of the company, to be distributed amongst its creditors.
- Fraudulent Trading – A director would be found guilty of fraudulent trading if it appeared to the liquidator that the company carried on business with the *intent* to defraud its creditors or for any other fraudulent purpose. It is not enough to show that the directors continued to run up debts whilst the company was insolvent, it must be shown that there was actual dishonesty, involving real moral blame.
- Misfeasance or breach of fiduciary duty - A director has a duty to act in the best interests of the company. Therefore if, in the course of a winding up the company, it appears that a director has misapplied or retained, or become

accountable, for any money or other property of the company; or been guilty of any misfeasance or breach of any fiduciary or other duty, the Court may order the director to restore money or property with interest or pay compensation to the company. Some examples include: where a director enters into a contract on behalf of the company, but fails to disclose the company's interest; or if a director signs a cheque or places an order without stating that they are acting on the company's behalf, the other party may hold him liable. If the company avoids the transaction, the director may be left to deal with the financial consequences.

It is worth noting that the primary catalyst for directors' external personal liability is the imminent insolvency or winding up of the company. It is rare for directors to experience personal financial liability whilst the company is a going concern.

THE COMPANIES ACT 2006
PRIVATE COMPANY LIMITED BY SHARES

ARTICLES OF ASSOCIATION

OF

[]LTD

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PART 1

INTERPRETATION AND LIMITATION OF LIABILITY

1 Defined terms

1.1 In the articles, unless the context requires otherwise—

"**articles**" means the company's articles of association;

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

"**chairman**" has the meaning given in article 13;

"**chairman of the meeting**" has the meaning given in article 39;

"**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;

"**Conflict**" has the meaning given in article 16;

"**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 31.2;

"**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;

"**Finance Director**" means the person, who may or may not be a person engaged on a full time basis with the operations of the company, appointed as finance director by the shareholders;

"**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 subsidiary undertaking or parent undertaking of the company or a subsidiary undertaking of any parent undertaking of the company, provided that the definition of "undertaking" in section 1161 of the Companies Act 2006 shall for these purposes also include any person (incorporated or unincorporated) created by statute;

"**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 shareholders as the holder of the shares;

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

"**Managing Director**" means the person, who may or may not be a person engaged on a full time basis in the management of the company, appointed as managing director by the shareholders;

"**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 10;

"**Permitted Situation**" has the meaning given in article 16;

"**proxy notice**" has the meaning given in article 45;

"**public body**" means a contracting authority as such term is defined in the Public Contracts Regulations 2006 (as may be amended from time to time) and "**public bodies**" shall be construed accordingly;

"**relevant director**" has the meaning given in article 51;

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

"**shares**" means shares in the company;

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

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

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

- 1.2 No model articles contained in any statute or subordinate legislation, including those contained in the model articles for private companies limited by shares contained in Schedule 1 of the Companies Act (Model Articles) Regulations 2008, shall apply to the company.
- 1.3 Unless the context otherwise requires, other words or expressions contained in these articles bear the same meaning as in the Companies Act 2006 as in force on the date when these articles become binding on the company.
- 1.4 References to a "**person**" shall be construed so as to include any individual, firm, corporation, government, state or agency of a state or any joint venture, trust, association or partnership (whether or not having separate legal personality).

2 Objects

- 2.1 The object of the company is to provide services:
 - 2.1.1 to public bodies; and
 - 2.1.2 other customers (whether public bodies or not) as considered appropriate by the shareholders from time to time provided services to non-public bodies shall always remain incidental to the primary aim of providing services to public bodies.

3 Liability of shareholders

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

PART 2 DIRECTORS

DIRECTORS' POWERS AND RESPONSIBILITIES

4 Directors' general authority

- 4.1 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.

5 Shareholders' reserve power

- 5.1 The shareholders may, by special resolution, direct the directors to take, or refrain from taking, specified action.
- 5.2 No such special resolution invalidates anything which the directors have done before the passing of the resolution.

6 Directors may delegate

- 6.1 Subject to the articles, the directors may delegate any of the powers which are conferred on them under the articles:
- 6.1.1 to such person or committee;
 - 6.1.2 by such means (including by power of attorney);
 - 6.1.3 to such an extent;
 - 6.1.4 in relation to such matters or territories; and
 - 6.1.5 on such terms and conditions;
- as they decide
- 6.2 If the directors so specify, any such delegation may authorise further delegation of the directors' powers by any person to whom they are delegated.
- 6.3 The directors may revoke any delegation in whole or part, or alter its terms and conditions.

7 Committees

- 7.1 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.

- 7.2 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

8 Directors to take decisions collectively

- 8.1 Each director shall have one vote.
- 8.2 Any decision of the directors shall not be effective unless all directors appointed in accordance with article 20.1 agree to the decision.
- 8.3 If:
- 8.3.1 the company only has one director, and
 - 8.3.2 no provision of the articles requires it to have more than one director,
- the general rule does not apply, and the director may take decisions without regard to any of the provisions of the articles relating to directors' decision-making.
- 8.4 If only one director is eligible to vote on any authorisation required under article 16, 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.

9 Unanimous decisions

- 9.1 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.
- 9.2 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.
- 9.3 References in this article to eligible directors are to directors who would have been entitled to vote on the matter had it been proposed as a resolution at a directors' meeting.
- 9.4 A decision may not be taken in accordance with this article if the eligible directors would not have formed a quorum at such a meeting.

10 Calling a directors' meeting

- 10.1 Any director may call a directors' meeting by giving notice of the meeting to the directors or by authorising the company secretary (if any) to give such notice.
- 10.2 Notice of any directors' meeting must indicate:
- 10.2.1 its proposed date and time;
 - 10.2.2 where it is to take place;

- 10.2.3 if it is anticipated that directors participating in the meeting will not be in the same place, how it is proposed that they should communicate with each other during the meeting;
 - 10.2.4 an agenda specifying in reasonable detail the matters to be raised at the meeting or the committee meeting; and
 - 10.2.5 copies of any papers to be discussed at the meeting or the committee meeting.
- 10.3 Notice of a directors' meeting must be given to each director, but need not be in writing.
- 10.4 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.

11 Participation in directors' meetings

- 11.1 Subject to the articles, directors participate in a directors' meeting, or part of a directors' meeting, when:
- 11.1.1 the meeting has been called and takes place in accordance with the articles, and
 - 11.1.2 they can each communicate to the others any information or opinions they have on any particular item of the business of the meeting.
- 11.2 In determining whether directors are participating in a directors' meeting, it is irrelevant where any director is or how they communicate with each other.
- 11.3 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.

12 Quorum for directors' meetings

- 12.1 At a directors' meeting, unless a quorum is participating, no proposal is to be voted on, except a proposal to call another meeting.
- 12.2 The quorum for directors' meetings may be fixed from time to time by a decision of the directors, but it must comprise of the directors appointed by each shareholder appointed in accordance with article 20.1 and either the Managing Director or the Finance Director of the company.
- 12.3 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:
- 12.3.1 to appoint further directors, or
 - 12.3.2 to call a general meeting so as to enable the shareholders to appoint further directors.

13 Chairing of directors' meetings

- 13.1 The directors may appoint a director to chair their meetings.
- 13.2 The person so appointed for the time being is known as the “**chairman**”.
- 13.3 The directors may terminate the chairman's appointment at any time.
- 13.4 If the chairman is not participating in a directors' meeting within ten minutes of the time at which it was to start, the participating directors must appoint one of themselves to chair it.

14 Casting vote

- 14.1 If the numbers of votes for and against a proposal are equal, the chairman or other director chairing the meeting will not have a casting vote.

15 Conflicts of interest – transactions or arrangements with the company

- 15.1 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.
- 15.2 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 Acts, a director notwithstanding his office:
 - 15.2.1 may be a party to, or otherwise interested in, any contract with the company or in which the company is otherwise interested;
 - 15.2.2 may be a director or other officer of, employed by, a party to any contract with or otherwise interested in any group company or in any body corporate promoted by the company or any group company or in which the company or any group company is interested; and
 - 15.2.3 may act by himself or his firm in a professional capacity for the company (otherwise than as auditor).
- 15.3 For the purposes of this article 15:
 - 15.3.1 a director shall be deemed to have disclosed the nature and extent of an interest which consists of him being a director, officer or employee of any group company; and
 - 15.3.2 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.
- 15.4 Where a director is a director or other officer of, or employed by, a group company (including a local authority), he:

- 15.4.1 may in exercising his independent judgment take into account the success of other group companies as well as the success of the company; and
- 15.4.2 shall in the exercise of his duties, where that other group company is a parent company, have a duty of confidentiality to the parent company in relation to confidential information of the parent company, but he shall not be restricted by any duty of confidentiality to the company from providing information to any parent company.

16 Conflicts of interest requiring board authorisation

- 16.1 The directors may, subject to the quorum and voting requirements set out in the articles, authorise any matter which would otherwise involve a director ("relevant director") breaching his duty under the Companies Acts to avoid conflicts of interest (a "**Conflict**").
- 16.2 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 provisions of the articles save that the relevant director shall not count towards the quorum nor vote on any resolution giving such authority and save further that if there are insufficient directors eligible to vote and therefore to form a quorum, article 16.3 will apply.
- 16.3 Where the directors give authority in relation to a Conflict:
 - 16.3.1 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
 - 16.3.2 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.
- 16.4 A Conflict in relation to a director arising solely as a result of him being a director, officer or employee of any group company (including a local authority) shall be deemed to have been authorised for the purposes of this article 16 and section 175 of the Companies Act 2006.
- 16.5 Where article 16.4 above applies or the directors otherwise give authority in relation to a Conflict, or where any of the situations referred to in article 15 (a "**Permitted Situation**") applies:
 - 16.5.1 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 meetings of the directors 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;

- 16.5.2 the relevant director will be obliged to conduct himself in accordance with any terms imposed by the board in relation to the Conflict or Permitted Situation; and
- 16.5.3 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.
- 16.6 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.

17 Directors may vote when interested

- 17.1 Subject where applicable to disclosure in accordance with the Companies Acts or 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 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.
- 17.2 Subject to article 17.3 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 chairman whose ruling in relation to any director other than the chairman is to be final and conclusive.
- 17.3 If any question as to the right to participate in the meeting (or part of the meeting) should arise in respect of the chairman, the question is to be decided by a decision of the directors at that meeting, for which purpose the chairman is not to be counted as participating in the meeting (or that part of the meeting) for voting or quorum purposes.

18 Records of decisions to be kept

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

19 Directors' discretion to make further rules

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

APPOINTMENT OF DIRECTORS

20 Methods of appointing directors

- 20.1 Each shareholder has the right to appoint a person who is willing to act as a director, and is permitted by law to do so, to be a director so that at all times each shareholder may have one (1) appointed director.
- 20.2 The shareholders have the right to appoint the Managing Director and Finance Director of the company

21 Termination of director's appointment

- 21.1 A person ceases to be a director as soon as:
- 21.1.1 The shareholder who appointed the director notifies the company that the individual is to be removed as a director;
 - 21.1.2 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;
 - 21.1.3 a bankruptcy order is made against that person;
 - 21.1.4 a composition is made with that person's creditors generally in satisfaction of that person's debts;
 - 21.1.5 a registered medical practitioner who is treating that person gives a written opinion to the company stating that that person has become physically or mentally incapable of acting as a director and may remain so for more than three months;
 - 21.1.6 by reason of that person's mental health, a court makes an order which wholly or partly prevents that person from personally exercising any powers or rights which that person would otherwise have; or
 - 21.1.7 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.

22 Directors' remuneration

- 22.1 Any remuneration of directors shall be determined by the shareholders. Directors may undertake any services for the company that the directors decide.
- 22.2 Unless the directors decide otherwise, directors' remuneration accrues from day to day.
- 22.3 Unless the directors decide otherwise, directors are not accountable to the company for any remuneration which they receive as directors or other officers or employees of the company's subsidiaries or of any other body corporate in which the company is interested.

23 Directors' expenses

Any expenses of directors shall be determined by the shareholders.

PART 3
SHARES AND DISTRIBUTIONS
SHARES

24 All shares to be fully paid up

24.1 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.

24.2 This does not apply to shares taken on the formation of the company by the subscribers to the company's memorandum.

25 Powers to issue different classes of share

25.1 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 unanimous consent of the shareholders.

25.2 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.

26 Company not bound by less than absolute interests

26.1 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.

27 Share certificates

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

27.2 Every certificate must specify:

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

27.2.2 the nominal value of those shares;

27.2.3 that the shares are fully paid; and

27.2.4 any distinguishing numbers assigned to them.

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

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

27.5 Certificates must be executed in accordance with the Companies Acts.

28 Replacement share certificates

28.1 If a certificate issued in respect of a shareholder's shares is:

28.1.1 damaged or defaced, or

28.1.2 said to be lost, stolen or destroyed, that shareholder is entitled to be issued with a replacement certificate in respect of the same shares.

28.2 A shareholder exercising the right to be issued with such a replacement certificate:

28.2.1 may at the same time exercise the right to be issued with a single certificate or separate certificates;

28.2.2 must return the certificate which is to be replaced to the company if it is damaged or defaced; and

28.2.3 must comply with such conditions as to evidence, indemnity and the payment of a reasonable fee as the directors decide.

29 Share transfers

29.1 Shares may only be transferred by shareholders to public bodies.

29.2 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.

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

29.4 The company may retain any instrument of transfer which is registered.

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

29.6 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.

DIVIDENDS AND OTHER DISTRIBUTIONS

30 Procedure for declaring dividends

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

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

31 Payment of dividends and other distributions

- 31.1 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:
- 31.1.1 transfer to a bank or building society account specified by the distribution recipient either in writing or as the directors may otherwise decide;
 - 31.1.2 sending a cheque made payable to the distribution recipient by post to the distribution recipient at the distribution recipient's registered address (if the distribution recipient is a holder of the share), or (in any other case) to an address specified by the distribution recipient either in writing or as the directors may otherwise decide;
 - 31.1.3 sending a cheque made payable to such person by post to such person at such address as the distribution recipient has specified either in writing or as the directors may otherwise decide; or
 - 31.1.4 any other means of payment as the directors agree with the distribution recipient either in writing or by such other means as the directors decide.
- 31.2 In the articles, the "**distribution recipient**" means, in respect of a share in respect of which a dividend or other sum is payable:
- 31.2.1 the holder of the share; or
 - 31.2.2 if the holder is no longer entitled to the share by reason of bankruptcy, or otherwise by operation of law, the transmittee.

32 No interest on distributions

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

32.1.1 the terms on which the share was issued, or

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

33 Unclaimed distributions

33.1 All dividends or other sums which are:

33.1.1 payable in respect of shares, and

33.1.2 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.

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

33.3 If:

33.3.1 twelve (12) years have passed from the date on which a dividend or other sum became due for payment, and

33.3.2 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.

34 Non-cash distributions

34.1 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).

34.2 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:

34.2.1 fixing the value of any assets;

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

34.2.3 vesting any assets in trustees.

35 Waiver of distributions

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

PART 4

DECISION-MAKING BY SHAREHOLDERS

ORGANISATION OF GENERAL MEETINGS

36 Representatives of shareholders

- 36.1 A public body who is a shareholder may be represented at any general meeting of the company by any authorised councillor or officer for the time being of the public body as notified by the public body in question to the company in writing in advance of such individual attending as a representative (a “**Representative**”).
- 36.2 A Representative shall be deemed to have full authority to act on behalf of an authority in relation to any discussion or vote at a general meeting.

37 Attendance and speaking at general meetings

- 37.1 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.
- 37.2 A person is able to exercise the right to vote at a general meeting when:
- 37.2.1 that person is able to vote, during the meeting, on resolutions put to the vote at the meeting, and
 - 37.2.2 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.
- 37.3 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.
- 37.4 In determining attendance at a general meeting, it is immaterial whether any two or more shareholders attending it are in the same place as each other.
- 37.5 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.

38 Quorum for general meetings

- 38.1 No business other than the appointment of the chairman of the meeting is to be transacted at a general meeting unless one Representative of each shareholder is present.

39 Chairing general meetings

- 39.1 If the directors have appointed a chairman, the chairman shall chair general meetings if present and willing to do so.
- 39.2 If the directors have not appointed a chairman, or if the chairman is unwilling to chair the meeting or is not present within ten minutes of the time at which a meeting was due to start:
- 39.2.1 the directors present, or
- 39.2.2 (if no directors are present), the meeting,
- must appoint a director or shareholder to chair the meeting, and the appointment of the chairman of the meeting must be the first business of the meeting.
- 39.3 The person chairing a meeting in accordance with this article is referred to as "**the chairman of the meeting**".

40 Attendance and speaking by directors and non-shareholders

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

41 Adjournment

- 41.1 If the persons attending a general meeting within half an hour of the time at which the meeting was due to start do not constitute a quorum, or if during a meeting a quorum ceases to be present, the chairman of the meeting must adjourn it.
- 41.2 The chairman of the meeting may adjourn a general meeting at which a quorum is present if:
- 41.2.1 the meeting consents to an adjournment, or
- 41.2.2 it appears to the chairman of the meeting that an adjournment is necessary to protect the safety of any person attending the meeting or ensure that the business of the meeting is conducted in an orderly manner.
- 41.3 The chairman of the meeting must adjourn a general meeting if directed to do so by the meeting.
- 41.4 When adjourning a general meeting, the chairman of the meeting must:

- 41.4.1 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
- 41.4.2 have regard to any directions as to the time and place of any adjournment which have been given by the meeting.
- 41.5 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):
 - 41.5.1 to the same persons to whom notice of the company's general meetings is required to be given, and
 - 41.5.2 containing the same information which such notice is required to contain.
- 41.6 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

42 Voting: general

- 42.1 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.

43 Errors and disputes

- 43.1 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.
- 43.2 Any such objection must be referred to the chairman of the meeting, whose decision is final.

44 Poll votes

- 44.1 A poll on a resolution may be demanded:
 - 44.1.1 in advance of the general meeting where it is to be put to the vote, or
 - 44.1.2 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.
- 44.2 A poll may be demanded by:
 - 44.2.1 the chairman of the meeting;
 - 44.2.2 the directors;

- 44.2.3 two or more persons having the right to vote on the resolution; or
- 44.2.4 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.
- 44.3 A demand for a poll may be withdrawn if:
 - 44.3.1 the poll has not yet been taken, and
 - 44.3.2 the chairman of the meeting consents to the withdrawal.
- 44.4 Polls must be taken immediately and in such manner as the chairman of the meeting directs.

45 Content of proxy notices

- 45.1 Proxies may only validly be appointed by a notice in writing (a "**proxy notice**") which:
 - 45.1.1 states the name and address of the shareholder appointing the proxy;
 - 45.1.2 identifies the person appointed to be that shareholder's proxy and the general meeting in relation to which that person is appointed;
 - 45.1.3 is signed by or on behalf of the shareholder appointing the proxy, or is authenticated in such manner as the directors may determine; and
 - 45.1.4 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.
- 45.2 The company may require proxy notices to be delivered in a particular form, and may specify different forms for different purposes.
- 45.3 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.
- 45.4 Unless a proxy notice indicates otherwise, it must be treated as:
 - 45.4.1 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
 - 45.4.2 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.

46 Delivery of proxy notices

- 46.1 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.

- 46.2 An appointment under a proxy notice may be revoked by delivering to the company a notice in writing given by or on behalf of the person by whom or on whose behalf the proxy notice was given.
- 46.3 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.
- 46.4 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.

47 Amendments to resolutions

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

PART 5

ADMINISTRATIVE ARRANGEMENTS

48 Means of communication to be used

- 48.1 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.

48.2 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.

48.3 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.

49 Right to inspect accounts and other records

49.1 Each Shareholder and its authorised representatives shall have the right, in accordance with the Shareholders' Agreement and on giving to the Company reasonable advance notice, during normal business hours to inspect the books and records of the Company and any subsidiary of the Company.

DIRECTORS' INDEMNITY AND INSURANCE

50 Indemnity

50.1 Subject to article 50.2, a relevant director of the company or an associated company may be indemnified out of the company's assets against:

50.1.1 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;

50.1.2 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);

50.1.3 any other liability incurred by that director as an officer of the company or an associated company.

50.2 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.

50.3 In this article:

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

50.3.2 a "**relevant director**" means any director or former director of the company or an associated company.

51 Insurance

51.1 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.

51.2 In this article:

- 51.2.1 a "**relevant director**" means any director or former director of the company or an associated company;
- 51.2.2 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
- 51.2.3 companies are associated if one is a subsidiary of the other or both are subsidiaries of the same body corporate.

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