

26 January 2016 at 6.30 pm

Conference Room, Argyle Road, Sevenoaks  
Despatched: 18.01.16



## Legal & Democratic Services Advisory Committee

### Membership:

Chairman, Cllr. Firth; Vice-Chairman, Cllr. Pett  
Cllrs. Abraham, Barnes, Bosley, Eyre, Halford, Mrs. Hunter, Lake, Pearsall, Raikes  
and Ms. Tennessee

### Agenda

	Pages	Contact
<b>Apologies for Absence</b>		
1. <b>Minutes</b> To agree the Minutes of the meeting held on 8 October 2015, as a correct record.	(Pages 1 - 4)	
2. <b>Declarations of Interest</b> Any interests not already registered.		
3. <b>Actions from Previous Meeting (if any)</b>		
4. <b>Update from Portfolio Holder</b>	(Pages 5 - 8)	
5. <b>Referrals from Cabinet or the Audit Committee (if any)</b>		
6. <b>Local Government (Miscellaneous Provisions) Act 1982: Scrap Metal Dealer Licence Fees 2016/2017</b>	(Pages 9 - 26)	Claire Perry, Richard Wilson Tel: 01732 227325/7262
7. <b>Work Plan</b>	(Pages 27 - 28)	
8. <b>Sevenoaks District Council Trading Company Named Quercus 7 Limited</b> Trowers & Hamlins LLP in attendance to give a presentation and answer any questions.	(Pages 29 - 82)	Christine Nuttall Tel: 01732 227245
9. <b>Equalities Workshop</b> Seeking authority for the Portfolio Holder to take forward a report on the Councils draft equality commitments following the work of the Workshop taking place after the meeting.	(Pages 83 - 86)	Lee Banks Tel: 01732 227161

## **EXEMPT ITEMS**

(At the time of preparing this agenda there were no exempt items. During any such items which may arise the meeting is likely NOT to be open to the public.)

If you wish to obtain further factual information on any of the agenda items listed above, please contact the named officer prior to the day of the meeting.

Should you need this agenda or any of the reports in a different format, or have any other queries concerning this agenda or the meeting please contact Democratic Services on 01732 227247 or [democratic.services@sevenoaks.gov.uk](mailto:democratic.services@sevenoaks.gov.uk).

**LEGAL & DEMOCRATIC SERVICES ADVISORY COMMITTEE**

Minutes of the meeting held on 8 October 2015 commencing at 7.00 pm

Present: Cllr. Firth (Chairman) (Chairman)

Cllr. Pett (Vice-Chairman)

Cllrs. Abraham, Bosley, Lake, Pearsall, Pett and Raikes

Apologies for absence were received from Cllrs. Barnes, Eyre, Halford, Mrs. Hunter and Ms. Tennessee

Cllrs. Parkin was also present.

9. Minutes

Resolved: That the Minutes of the meeting of the Committee held on 2 July 2015 be approved and signed by the Chairman as a correct record.

10. Declarations of Interest

No additional declarations of interest were made.

11. Actions from Previous Meeting

There were none.

12. Update from Portfolio Holder

The Portfolio Holder updated the Committee on general matters including attendance at the Licensing Partnership open day in July. She had also written to the Boundary Commission supporting the Council's submission which had been accepted in principle subject to a further consultation process. The Portfolio Holder was also supporting the work currently undertaken by the Housing and Community Safety team.

Amongst other items mentioned was the new Individual Electoral Registration system, which because of the complexity of the new system, was proving to be more expensive although the new system was designed to improve the accuracy of the Register and electoral accountability.

The Legal Section had retained their Lexcel accreditation which was the legal practice quality management standard and indicated excellence in client care. The assessor was particularly impressed by the extent to which the v6 Lexcel standard was embedded in the processes of the team and the Portfolio Holder congratulated the team for the efforts that had been made despite being in the middle of a re-structuring exercise.

Within Licensing, work was on-going looking for another partner to add to the Licensing hub.

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### Legal & Democratic Services Advisory Committee - 8 October 2015

The Shared Services programme continued to look for other partner organisations.

#### 13. Referrals from Cabinet or the Audit Committee

There were none.

#### CHANGE IN AGENDA ITEM ORDER

With the agreement of the Committee, the Chairman brought forward consideration of agenda item 8, and took agenda item 9 after agenda item 6.

#### 14. Anti Social Behaviour, Crime and Policing Act 2014

The Community Safety Manager gave a [presentation](#) which provided an update on the Anti-Social Behaviour Crime and Policing Act 2014. The Act replaced 19 pre-existing measures with 6 new measures for tackling anti-social behaviour and each of these were summarised.

Resolved: That the report be noted.

#### 15. Budget: Review of Service Dashboards and Service Change Impact Assessments (SCIAs)

The Chief Finance Officer advised that the report before the Committee was the second stage of the budget process and would be presented to all Advisory Committees. The first stage had been the 'Financial Prospects and Budget Strategy' report which had been reported to Cabinet on 17 September 2015. The purpose of this report was to ensure that all Members of the Advisory Committees had a role to play in the governance of the Council and the budget decision making process and to make suggestions to Cabinet on growth and savings ideas for the services within their terms of reference.

The main message was that this should be a significant step towards the Council becoming financially self-sufficient. The 10-year budget at Appendix F to the report, included no Revenue Support Grant (RSG) from 2016/17 and no New Homes Bonus (NHB) from 2019/20. In practice it was likely that some funding would still be received from these sources in the near future but the amounts were unknown. The Financial Prospects report had recommended that any amounts that were received were placed into the Financial Plan Reserve which could be used to support the 10-year budget by funding invest to save initiatives and support for the Property Investment Strategy (PIS). Using the funding for these purposes would result in additional year on year income that was not impacted by Government decisions.

Members had agreed the last 10-year budget in February and the changes that had been made since then included:

- Rolling the 10-year budget on for one year and updating base figures.
- Removing reliance on RSG
- Reducing the Council Tax increase assumption to 2% for all years
- Reducing fees and charges inflation to 2.5% for all years

**Legal & Democratic Services Advisory Committee - 8 October 2015**

- Reducing pay award inflation to 1% for 4 years
- Including income from PIS for the first time of £500k from 16/17, £700k from 18/19, £800k from 23/24
- Savings of £500k in 16/17 and then £100k pa for all future years

The current list of growth and savings proposals was £52,000 short of the £500,000 target (if all of the proposals were accepted), and Members were therefore being asked for further suggestions for growth and savings ideas. He further reminded Members that £5.3m had been saved from 2011/12 to 2016/17 (113 items) and there had been over £10m of savings since 2005/06.

Members reviewed Appendix D which contained the growth and savings proposals put forward by the Portfolio Holders and Chief Officers, and the Service Change Impact Assessments (SCIAs) in Appendix E. Members also considered and gave individual answers to the following five questions:

- a) What services should the Council invest more in?
- b) What services should the Council disinvest from?
- c) What services work well?
- d) What services don't work well?
- e) What issues would you like Cabinet to take into account?

The Chief Finance Officer summarised the views put forward and Members considered whether there was anything they wanted taken forward as potential growth or savings suggestions.

Public Sector Equality Duty

Members noted that consideration had been given to impacts under the Public Sector Equality Duty.

Resolved: That

- a) the growth proposal identified in Appendix D to the report applicable to the Advisory Committee ( SCIA 7 – Individual Electoral Registration) be recommended to Cabinet;
- b) no further suggestions for growth and savings be recommended to Cabinet.

16. Shared Services

The Chief Finance Officer presented the annual report, previously presented to the Finance and Resources Advisory Committee under previous governance arrangements, which set out the benefits, current partners and possible future suitable areas.

Public Sector Equality Duty

Members noted that consideration had been given to impacts under the Public Sector Equality Duty.

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Resolved: That the report be noted.

#### 17. Further limited consultation period on the Kent County Council (KCC) boundary review

The Electoral Services Manager presented a report updating Members on information recently received from the Local Government Boundary Commission (LGBC). The LGBC would be going out for further public consultation on the boundary scheme identified by Full Council on 21 July 2015. The consultation period ran from 29 September to 26 October and the final recommendations would be published on 19 January 2016.

The Democratic Services Team were thanked for all the work they had undertaken in relation to the boundary review.

Resolved: That

- a) it be noted that the further information from the Local Government Boundary Commission accords with the recommendations made by Full Council on 21 July 2015; and
- b) the LGBC would be informed that the Committee, having looked at the LGBC's new proposals, were fully in support of such proposals.

#### 18. Work Plan

The work plan was noted subject to the following additions and amendments:

26 January 2016:    Trading Company  
                          Update from Equalities Working Group  
                          Licensing  
                          Anti Social Behaviour, Crime & Policing Act 2014

14 April 2016:     Shared Services Update

THE MEETING WAS CONCLUDED AT 8.55 PM

CHAIRMAN

## **LEGAL & DEMOCRATIC SERVICES ADVISORY COMMITTEE**

11<sup>th</sup> January 2016

### **Portfolio Holder Update**

The last quarter has been a particularly busy for Legal & Democratic Services.

#### **Trading Company – Quercus 7 Limited**

- The SDC trading company (needed to support the Council remain independent of direct Government funding and financially secure long-term) was incorporated on 31<sup>st</sup> December 2015 in the name of Quercus 7 Limited. Because all members of the Council will become shareholders of the new Company and because this Committee is charged with the responsibility to advise Cabinet on the working arrangements of the Company there will be presentation by the Solicitors who have set up the Company at the L&D Services Advisory Committee meeting on 26<sup>th</sup> January 2016 to which ALL MEMBERS of the Council are warmly invited from circa 7 pm until 7.45 pm. There will be a further briefing at Cabinet on the 4th February if Members cannot attend the Advisory briefing on the 26th January.

#### **Licensing Partnership**

- The licensing partnership continues to outperform. So far this financial year the partnership has processed 99.7% of all applications within target and completed a total of 4,818 administrative tasks. In addition, a new and important on-lines form project (Victoria Forms) has been successfully implemented. Further, it was gratifying that just before Christmas on Friday, 18th December 2015, an appeal brought against a decision of this Council's Licensing Sub-Committee to suspend a driver's Taxi licence last year was dismissed. The Central Kent Magistrates Court upheld the Sub-Committee's decision and ordered the driver to pay £9,425 in costs. The case has been widely reported and even made its way into the Local Government Lawyer!
- I have been working closely with the Licensing team to expand the Partnership. In July of this year I met with Cllr Teresa O'Neill OBE, Leader of the London Borough of Bexley, and discussed the possibility of exploring joint working between this Council and Bexley Borough Council. Following further discussions with their Licensing Portfolio Holder a meeting was set up in October at which the Licensing Partnership pitched for Bexley Council to join the Partnership. I met again with the Leader, the Deputy-Leader, and various other Cabinet members in December and we now await formal approval from their Cabinet on 26th January 2016. The next step will be to obtain the consent of members from Tunbridge Wells Borough Council and Maidstone Borough Council to a 4<sup>th</sup> partner joining the Partnership but all being well the London borough of Bexley will join the Licensing Partnership from June 2016.
- Finally, the Taxi and Private Hire licensing policy has been updated and will go to Full Council next month with a recommendation to increase the number of wheelchair accessible taxis in the District. Currently, less than 2% of our Hackney carriage vehicles (4 out of 204) are wheelchair accessible. This is much lower than our partner authorities and unacceptable given our ageing population and statutory duty under the Equalities Act 1990. The recommendation is to work towards 35% of the fleet being wheelchair accessible but to ease the burden on the trade this will come in for existing licence holders only when they buy a new vehicle after 2018.

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### **Elections**

- The process of individual registration is now complete and the new register was published on-time on 1st December 2016 showing a total number of electors of 87,700, up 381 from last year. Unfortunately, the cost of the exercise was more than central Government envisaged and left us with a *forecast* £55,000 over spend. Although we are anticipating that the costs will decrease, reducing the over spend to £40,000 next financial year, one of the challenges is to try and encourage more residents to “**save time & register online**”.
- Late December Cllr Fleming and I had a telephone conference with “Bite the Ballot”, a youth engagement charity, to explore the possibility of running a youth voter registration drive in the District. Although too late for this year, this is an area of work that I hope this Committee might wish to explore for next year.

### **Equalities**

- On the 2nd December 2016 Cllr Pett and I had a meeting with Lee Banks to plan a members workshop to update the Council's Equalities Action plan.
- Cllr Pearsall is also monitoring the new Equalities Select Committee to see if there are any issues which might have a bearing on this Council.

### **Legal & democratic services**

- One of the major challenges last year was a difficult prosecution being brought against SDC by the Health & Safety Executive relating to the death of a motorcyclist who collided with the back of an SDC road-sweeper as it was sweeping a two lane slip road in Swanley. Both Cllr Pett and I attended a number of conferences with junior and senior Counsel and experts including a site meeting to assess whether SDC would be able to mount a successful defence. Unfortunately, despite many challenges, the QC's final advice was crystal clear that SDC should accept liability and plead guilty but on a very limited basis. Cllr Pett and I attended Maidstone Crown Court on the 15th December 2016 and following submissions from our QC the Judge awarded the minimum sentence possible for the two charges, namely, a total fine of £40,000. SDC was also ordered to pay costs of £32,000 but contrary to the report in the Chronicle these will be paid by our insurers.
- On the 8<sup>th</sup> October 2016 I met with Cllr Lowe, Cllr Stack, Pat Smith, Lesley Bowles and Kelly Webb to discuss strategies for dealing with anti-social behaviour on the part of West Kent tenants including making use of the new powers in the Anti-Social Behaviour, Crime & Policing Act 2014. Victim, rather than perpetrator support, was identified as an area needing more focus.
- Staffing continues to be a challenge in that we are still searching for a permanent planning solicitor as well as now recruiting for a new Head of Legal & Democratic Services. George Lewis left Democratic Services unexpectedly just before Xmas and Charlotte Sinclair went on maternity leave. They are replaced by Josephine Middleton and Mark Avis.
- On the 12<sup>th</sup> November 2016 there was a tour of the Northern part of the District as requested by members at the Conservative away day and in due course there will be a similar one of the Southern Part of the District.

### **Governance**

- There was a KCC Boundary Review which concluded towards the end of last year. Sevenoaks was the only District Council that submitted any alternative proposals and our proposals (which were agreed by Full Council) were adopted by the Boundary commission for consultation in full. The final KCC division pattern will be announced by the Boundary commission on the 26<sup>th</sup> January 2016.
- The Governance Committee, which is tasked with continuing to investigate possible future Governance arrangements, invited Cllr Fran Wilson, Group Leader and Leader of Maidstone Borough, to present on Maidstone's decision to return to the Committee system of governance on 20<sup>th</sup> October 2015. However, this Council's decision to introduce a Hybrid model over the Committee System was chosen as the most appropriate system and appears to incorporate the best of both worlds by allowing through the Cabinet Advisory Committees more Member inclusion.
- The Governance Committee will shortly be canvassing the views of Members on a possible Electoral Review. There is a wide variation in council size across England, not only between different types of authority but also between councils of the same type. The current Government, however, favours smaller Councils and indeed the possibility of fewer Councillors was one of the suggestions raised by members during the budget workshops. As a result a survey will be taking place prior to the next Governance Committee in April to see whether Members would like to invite the Boundary Commission to have an informal dialogue with the Chief Executive and group leaders on the issue of the council size. A useful starting document for members is entitled "Have your say on: council size" and was appended to the last report that went to the Governance Committee in relation to this matter dated 20th October 2015.

### **Shared Services**

- Dartford Borough Council are now buying the Council's HERO project for 2 days a week and our discussions to share our CCTV monitoring capacity with TW/TM are proceeding well.

**Cllr Anna Firth**  
Portfolio Holder for Legal & Democratic Services

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**LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982: SCRAP METAL DEALER LICENCE FEES 2016/2017**

**Legal and Democratic Services Advisory Committee - 26 January 2016**

Report of Chief Officer Environmental and Operational Services

Status: For Decision

Also considered by: Cabinet 4 February 2016

Key Decision: No

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**This report supports the Key Aim of Safe Communities to aid in the reduction of crime within the District.**

**Portfolio Holder** Cllr. Anna Firth (Legal and Democratic Services)

**Contact Officer** Claire Perry Ext. 7325 / 07970 731616

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**Recommendation to Legal and Democratic Services Committee:**

That Cabinet be recommended to approve the appropriate fee levels as set out in paragraph 25 of the report.

**Recommendation to the Cabinet:**

That, subject to the comments of the Legal and Democratic Services Advisory Committee, the fees set out in paragraph 25 of the report be approved.

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**Reason for recommendation:** to ensure that the Council complies with its Statutory duty under the Scrap Metal Dealers Act 2013 and ensure that the licensing of Scrap Metal Dealers is self financing, in accordance with the Council's Service and Budget Plan. A fees model, similar to the one used to first set the Gambling Act fees in 2007 was used.

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**Introduction and Background**

- 1 The Act repeals the Scrap Metal Dealers Act 1964 (and related legislation) and Part 1 of the Vehicles (Crime) Act 2001, creating a revised regulatory regime for the scrap metal recycling and vehicle dismantling industries. The Act maintains local authorities as the principal regulator, but gives them the power to better regulate these industries by allowing them to refuse to grant a licence to 'unsuitable' applicants and a power to revoke licences if the dealer becomes 'unsuitable'.

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- 2 The licensing regime introduced by the Act is very similar to the licensing of taxi drivers and the issuing of Personal Licences under the Licensing Act. The suitability of applicants is based on a number of factors as outlined in the Act, including any unspent relevant criminal convictions. Whilst it is expected that straightforward applications will be decided under delegation to Officers, any applications with objections where the applicant wishes to make representations would need to be heard at a hearing, with an option to appeal their decision to the Magistrates' Court.
- 3 It had been expected that the Home Office would make regulations about the new Scrap Metal Dealer Act which would allow the Council to manage the licensing process in the same way it manages its other licensing functions, namely to delegate them to the Licensing Committee. Although the Act has come into force these regulations have not been made. This means that these matters are the responsibility of Cabinet rather than Council and the Licensing Committee. Delegations from the Leader to the relevant Officers will be made separately.

### Licences

- 4 Under the Act there are two types of licence; a site licence and a collector's licence, which will both be administered by the local authority. Site managers will need to be named on site licences. Collectors will need a licence in each local authority area in which they collect. Both types of licence last for three years.
- 5 The local authority must be satisfied that the applicant is a suitable person to hold a licence before it can grant a licence. The scope of this requirement will include applicants, site managers, directors, secretaries and shadow directors of companies.
- 6 The Council requires a photograph to accompany the application for a Collector's Licence. The photograph forms part of the licence document and enables Officers to identify licensed collectors.

### Determining Applications

- 7 Section 3 of the Act states that a Council must not issue a licence unless it is satisfied the applicant is a suitable person to carry on a business as a scrap metal dealer, identified via a 'suitability test'. In the case of a partnership, the suitability of each partner will be assessed. In the case of a company, it means assessing the suitability of any directors, company secretaries, or shadow directors.
- 8 In assessing an applicant's suitability, the Council can consider any information considered relevant. The Council will be in a stronger position to defend any challenges to a decision to refuse a licence where the decision is based on the factors specifically listed in legislation, which includes whether:

- 9 The applicant or site manager has been convicted of a relevant offence or subject to any relevant enforcement action (Statutory Guidance has been published and is attached as Appendix B);
- 10 The applicant has previously been refused a scrap metal dealers licence or an application to renew a licence has been refused.
- 11 The applicant will be required to complete an application and declare that the information provided is correct. The applicant will commit an offence under the Act should they make a false statement, or recklessly make a statement which is false in a material way.
- 12 The authority will want to satisfy itself that an applicant is suitable by checking they do not have a previous relevant conviction, have not been the subject of enforcement action, or have been refused a licence. There is no requirement under the Act for applicants to provide a Basic Disclosure Certificate (BDC). However, this authority requires applicants to submit a Basic Disclosure Certificate provided by Basic Disclosure Scotland as part of the application process. The Council will require the certificate to be within 30 days of its issue when presented with the application.
- 13 Should an applicant refuse to supply a BDC this would be grounds for the Council to consider what further information was needed to judge whether the applicant was suitable to hold a licence. Refusal to submit a Basic Disclosure Certificate would be grounds for the Council to decline to proceed with the application.
- 14 The Council requires an applicant to provide a Basic Disclosure Certificate (including standard and enhanced disclosures) that are no more than one month old at the time the application is submitted. The authority recognises that a Basic Disclosure Certificate will reveal only any unspent convictions on the Police national computer. The Certificate will not provide details of convictions for relevant offences secured by the Environment Agency or equivalent, or other local authorities. For any new applications, the authority will consult with the Environment Agency or equivalent and the Police. The authority will reserve the right to also contact any other local authority it feels necessary to determine the suitability of an applicant(s).
- 15 In the case where a Basic Disclosure Certificate highlights a relevant conviction the authority will seek further information from the Police to enable the authority to better assess the applicant(s) suitability. The authority will also check public records held by the Environment Agency or equivalent to assess if any enforcement action has been taken against an individual. In certain circumstances it may be necessary to make direct contact with the above to assess if any on-going enforcement action is pending, which may not be held on a public register at the time of application.
- 16 If the Council should receive information that an applicant(s) has been convicted of a relevant offence, a judgement will be made whether to refuse or grant the licence. The Council will take into account any

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information received by an applicant or other bodies. The Council will consider the nature of the offence or enforcement action, the gravity of the offence or enforcement action, when the enforcement action was taken, or any other relevant information as defined by the Act.

### Representations

- 17 In the case where the authority rejects an application(s), or revokes, or varies a licence, the Council will notify the applicant or licence holder by way of a written Notice. The Council will advise the applicant(s) or licence holder what the authority proposes to do and the reasons behind the action. The Notice will stipulate that the applicant/licence holder has the opportunity to make a representation, or let the authority know that they wish to. The applicant/licence holder has up to 14 days from the date of the Notice to respond.
- 18 If the applicant/licence holder does not make a representation, or does not say that they wish to in that time period, then the Council can refuse the application, or revoke, or vary the licence. Where the applicant states they want to make representations, the authority will provide a further reasonable period in which to do so. If the applicant fails to provide a representation within the agreed period then the authority will refuse the application, or revoke, or vary the licence.

### Hearings

- 19 Where the applicant makes representations, the authority has to consider them in accordance with the Act. If the applicant wishes to make oral representations the authority will arrange a hearing. It is anticipated that these hearings will follow the procedures for hearings under the Licensing Act 2003. The Council anticipates that further guidance on hearings will be issued.
- 20 Should the Council refuse an application, revoke or vary a licence the applicant/licence holder will receive a Notice of Decision, which will set out the Council's reasons for its decision. The Notice will inform the applicant, or licence holder of their right to appeal to the Magistrates' Court and, where the licence has been revoked or varied, the date under which that comes into effect.

### Conditions

- 21 In cases where the applicant or any site manager has been convicted of a relevant offence, or where the authority is revoking a licence, the authority can impose conditions on the licence. The authority can impose one or both of two conditions, these conditions specify that:
  - the dealer can receive scrap metal only between 9.00am and 5.00pm on any day, in effect limiting the dealer's operating hours; and/or

- any scrap metal received has to be kept in the form the dealer received it for a set period of time, which cannot be more than 72 hours.

22 There is no equivalent set of conditions for collectors.

**Fees**

23 The Act provides that an application for a licence must be accompanied by a fee. The fee will be set locally by each local authority on a cost recovery basis. Local authorities will have a duty to have regard to guidance issued by the Secretary of State which outlines the issues that should be considered when setting the fee and what activities the fee can cover. This fee will be an essential component of the new regime as it will provide local authorities with the funding they need to administer the legislation and ensure compliance (Appendix A).

24 In setting a fee, the authority must have regard to any guidance issued by the Secretary of State, the proposed fees have been calculated using that Guidance (Appendix A) and are as follows;

Site Licence - Grant (3 years)	£460
Site Licence - Renewal (3 years)	£390
Collectors Licence - Grant/renewal (3 years)	£280
Minor administrative change to licence -	£30.00
Variation - change of site manager -	£165
Variation from collector to site licence -	£200
Variation from site to collector licence -	£130

**Other Options Considered and/or Rejected**

25 If the Licensing Committee were minded not to approve these fees the Council would not be able to meet the Council’s Service and Budget Plan or ensure the licensing of Scrap Metal Dealers was self-financing.

**Key Implications**

Financial

The cost of licence fees takes into account the need to maintain a ‘self financing’ position for the service. The proposals contained in this report will achieve this.

Legal Implications and Risk Assessment Statement.

Should parts of industry believe the authority’s fees are at a level which is greater than the costs of the statutory functions then it would be open to them to undertake a judicial review proceeding. Should this arise, the authority would need

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to evidence how it arrived at the fee levels to demonstrate that they have been calculated on a cost recovery basis only.

### Equality Assessment

The decisions recommended through this paper have a remote or low relevance to the substance of the Equality Act. There is no perceived impact on end users.

### **Appendices**

Appendix A - Home Office: Scrap Metal Dealers Act 2013: guidance on licence fee charges

Appendix B - Home Office: Scrap Metal Dealers Act 2013 Determining suitability to hold a scrap metal dealer's licence

### **Background Papers**

None.

**Mr Richard Wilson**

**Chief Officer Environmental and Operational Services**

### **Scrap Metal Dealer Act 2013: guidance on licence fee charges**

#### **Context**

The Scrap Metal Dealers Act 2013 (referred to in this guidance as the 2013 Act) received Royal Assent on the 28 February 2013, delivering much needed reform of the scrap metal sector. The 2013 Act will provide effective and proportionate regulation of the sector, creating a more robust, local authority run, licensing regime that will support legitimate dealers yet provide the powers to effectively tackle unscrupulous operators. It will raise trading standards across the whole sector.

#### **Introduction**

The 2013 Act will allow local authorities to decide who should and should not be licensed, allowing them to refuse a licence upon application or to revoke a licence at any time if they are not satisfied that the applicant is a suitable person to carry on business as a Scrap Metal Dealer. The act also creates closure powers for unscrupulous dealers who operate without a licence. It extends the record keeping requirements placed upon scrap metal dealers and requires the verification of the people Scrap Metal Dealers are transacting with. The act will integrate the separate regulation for motor salvage operators with the scrap metal sector and bring to an end the cash exemption given to some collectors under the 1964 Act.

Finally, the 2013 Act creates a fee raising power, to allow local authorities to recover the costs stemming from administering and seeking compliance with the regime. This element of the legislation will be the focus of this guidance.

The intention is for the act to be implemented in October 2013.

#### **Licensing requirements placed upon scrap metal dealers**

Section one of the 2013 Act requires a scrap metal dealer to obtain a licence in order to carry on business as a scrap metal dealer<sup>1</sup>. It will be an offence to carry on a business as a scrap metal dealer in breach of the requirement to hold a licence. This offence is punishable on summary conviction with a fine not exceeding level 5 on the standard scale. In addition, Schedule 1(6) of the 2013 Act provides that an application must be accompanied by a fee set by the authority.

#### **Aim and scope**

Local authorities will be responsible for administration and compliance activity in relation to the 2013 Act. This guidance is provided to local authorities in relation to the carrying out of their fee raising function. It also provides information for the benefit of those who will be applying for a scrap metal dealer's licence and the general public. This guidance applies to local authorities in England and Wales and is produced in accordance with the 2013 Act.

#### **Legal status**

Schedule 1(6) of the 2013 Act provides that an application must be accompanied by a fee set by the local authority. In setting a fee, the authority must have regard to any guidance issued from time to time by the Secretary of State with the approval of the Treasury. This Guidance is therefore binding on all licensing authorities to that extent.

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### **What costs can local authorities charge for when issuing a licence?**

The 2013 Act provides that an application for a licence must be accompanied by a fee set by the local authority. This fee raising power is an essential component of the legislation as it will provide local authorities with the funding they need to administer the regime and ensure compliance.

The power to set fees has been passed to individual local authorities, so that any fees levied in each local area is set by reference to the actual costs to each authority. The EU services directive states that a licence fee can only be used to pay for the cost associated with the licensing process. In effect, each local authority must ensure that the income from fees charged for each service does not exceed the costs of providing the service.

LAs should specify fees for each category of application. Specifically we would expect a fee to be specified for the assessment of an application for a licence, the assessment of an application to vary a licence, and the assessment of an application for licence renewal.

Local authorities should specify fees which are payable by licence applicants for the assessment and administration activity within the new licensing regime brought about by the 2013 Act. They should do this by identifying what they need to do to assess the type of licence in question and calculating their best estimate of the cost to be incurred by the LA. The authority will then be able to calculate a best estimate of unit cost for each case.

In effect, the costs of a licence should reflect the time spent assessing and administering applications, processing them, having experienced licensing officers review them, storing them, consulting on the suitability of an applicant, reviewing relevant offences, the decision on whether to issue a licence, as well as the cost of issuing licences in a format that can be displayed. Consulting the local authority's enforcement records in order to determine the suitability of the applicant is chargeable within the licence fee costs as are costs associated with contested licence applications.

Registering authorities should review fees regularly to check whether they remain appropriate.

### **Can a local authority charge for enforcement activity?**

The licence fee cannot be used to support enforcement activity against unlicensed scrap metal dealers. Any activity taken against unlicensed operators must be funded through existing funds. Such activity against unlicensed operators includes issuing closure notices; with applications for closure orders subsequently made to a magistrates court. The cost of applying to the Magistrates Court for a warrant (Section 16(5)(6) and (7) of the 2013 Act) for entry to unlicensed premises, by force if necessary, will incur legal costs to be borne by the local authority and police.

### **What are the different types of licences?**

There are two types of licence specified within the act, one is for a site licence and the other is for a mobile collector licence (carrying on business otherwise than at a site). The licence authorises the licensee to carry on business as a scrap metal dealer at the sites listed in it (in the case of a site licence) or within the local authority area (in the case of a mobile collector's licence).

### **Site licences**

A site licence requires all of the sites at which the licensee carries on the business as a scrap metal dealer within the local authority area to be identified and a site manager to be named for each site. In doing so, they will be permitted to operate from those sites as a scrap metal dealer, including transporting scrap metal to and from those sites from any local authority area.

### **Collectors licences**

A collector's licence authorises the licensee to operate as a mobile collector in the area of the issuing local authority, permitting them to collect any scrap metal as appropriate. This includes commercial as well as domestic scrap metal.

The licence does not permit the collector to collect from any other local authority area. A separate licence should be obtained from each local authority from which the individual wishes to collect in. A collector's licence does not authorise the licensee to carry on a business at a site within any area. Should a collector wish to use a fixed site, they will need to obtain a site licence from the relevant local authority.

The Act 2013 also specifies that a licence will be issued by the local authority in whose area a scrap metal site is situated, or (in respect of a mobile collector) in the area that the collector operates.

### **Do different fees apply?**

Yes. Fees charged for a site licence would reflect the extra work involved in processing these licences and will vary from a collector's licence.

### **Display of licences**

The form in which a licence is issued must enable it to be displayed in accordance with section ten of the 2013 Act. All licensees are therefore required to display a copy of their licence. For site operators the licence must be displayed in a prominent place in an area accessible to the public. For mobile collectors, it must be in a manner which enables the licence to be easily read by a person outside the vehicle. A criminal offence is committed by any scrap metal dealer who fails to fulfil this requirement. This offence is punishable on summary conviction with a fine not exceeding level 3 on the standard scale.

The cost of providing a licence in a form which can be displayed should be included in the local authority licence fee charges.

### **Police objections to licence applications**

The police may object to a licence application where they believe that the applicant is not a suitable person as defined within the act. The police can object where, for example, the applicant has been convicted of a relevant offence. LAs should also consider representations from other organisations or individuals in considering the applicant's suitability

Where the police do object, the local authority should take this into consideration but must use their own judgement and discretion when taking a licence decision. The local authority must allow for the person whose licence is about to be refused or revoked to be afforded the right to make representations. The local authority considering the matter must restrict its consideration to the issue of suitability of applicant and provide comprehensive reasons for

## Agenda Item 6

its decision.

Costs associated with considering oral and written representations should be included in licence fee charges.

### **Appeals**

There is a right of appeal to the Magistrates' Court against a decision to refuse a licence application, to include a condition within the licence, to revoke the licence or to vary the licence. The costs associated with appeals and the costs of defending an appeal in the Magistrate Court should not be included in licence fee charges.

The costs associated with defending a Judicial Review into whether the local authority has failed to have regard to the guidance on fees is not chargeable under the licence regime.

### **Revocation of a licence and formulating and imposing licence conditions**

If a licence has been granted, it may be revoked or licence conditions imposed on a scrap metal dealer if the subsections within Clause 4 of the Scrap Metal Dealers Act are triggered. A local authority may impose conditions pending an appeal against revocation (section 4 (7)) or if the applicant or site manager has been convicted of a relevant offence (section 3 (8)).

### **Variation of licence**

Schedule 1 paragraph 3(1) indicates that a local authority may, on an application, vary a licence by changing it from one type to another and (2) if there is a change in any of the matters mentioned in section 2(4)(a), (c) or (d) or (6)(a).

These changes should be recorded by the local authority. The applicant is also under a duty to notify any convictions for relevant offences to the local authority. These measures ensure that a single record will be held of the licence holder's history in terms of licensing matters.

### **National Register of Scrap Metal Dealers**

Whilst a local authority can recover any costs incurred in transmitting information about a licence, the costs which the Environment Agency incurs are not chargeable under the licence regime.

### **How long will a licence be valid for?**

Schedule 1 paragraph 1 of the 2013 Act specifies the terms of a licence. It indicates that a licence expires at the end of the period of 3 years beginning with the day on which it is issued.

### **Additional regulations and guidance**

The Home Office will be publishing regulations in relation to relevant offences and the identification required to sell scrap metal over the summer of 2013. These regulations will be published on [www.gov.uk](http://www.gov.uk). We will also be working with the Local Government Association, the British Metal Recycling Association and British Transport Police to produce additional guidance on the requirements of the new act.

The Local Government Association guidance will include a breakdown of reasonable timescales for each of the activities associated with setting a fee.

## **Annex A - Definitions**

### **What is a local authority?**

'Local authority' means —

- (a) in relation to England, the council of a district, the Common Council of the City of London or the council of a London borough;
- (b) in relation to Wales, the council of a county or a county borough.

### **What is a scrap metal dealer?**

#### **21 'Carrying on business as a scrap metal dealer' and 'scrap metal'**

(2) A person carries on business as a scrap metal dealer if the person—

- (a) carries on a business which consists wholly or partly in buying or selling scrap metal, whether or not the metal is sold in the form in which it was bought, or
- (b) carries on business as a motor salvage operator (so far as that does not fall within paragraph (a)).

### **What is a mobile collector?**

'Mobile collector' means a person who—

- (a) carries on business as a scrap metal dealer otherwise than at a site, and
- (b) regularly engages, in the course of that business, in collecting waste materials and old, broken, worn out or defaced articles by means of visits from door to door.

### **What is a motor salvage operator?**

(4) For the purposes of subsection (2)(b), a person carries on business as a motor salvage operator if the person carries on a business which consists —

- (a) wholly or partly in recovering salvageable parts from motor vehicles for re-use or sale and subsequently selling or otherwise disposing of the rest of the vehicle for scrap,
  - (b) wholly or mainly in buying written-off vehicles and subsequently repairing and reselling them,
  - (c) wholly or mainly in buying or selling motor vehicles which are to be the subject (whether immediately or on a subsequent re-sale) of any of the activities mentioned in paragraphs (a) and (b), or
  - (d) wholly or mainly in activities falling within paragraphs (b) and (c).
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Home Office

# **Scrap Metal Dealers Act 2013**

## **Determining suitability to hold a scrap metal dealer's licence**

Statutory guidance for local authorities in England and Wales  
First publication: issued 1 October 2013

### Introduction

The Scrap Metal Dealers Act 2013 received Royal Assent on 28 February 2013. The majority of the provisions within the Act commence on 1 October 2013 including the requirement in section 1(1) to be authorised by a licence in order to carry on business as a scrap metal dealer. Section 3(1) of the Act states that a local authority must not issue or renew a scrap metal dealer's licence unless it is satisfied that the applicant is a suitable person to carry on business as a scrap metal dealer. Section 3(6) states that a local authority must have regard to any guidance on determining suitability issued by the Secretary of State.

### Status of the guidance

This is statutory guidance and local authorities are under a duty to have regard to it.

### Whose suitability should be assessed?

When assessing an application for a scrap metal dealer's licence, you should consider the suitability of:

- the individual applicant;
- each partner within a partnership;
- any director(s), secretary(s) or shadow director(s) of a company.

You should consider whether a site manager (if an application for a site licence is submitted) has been convicted of a relevant offence or relevant enforcement action and whether this impacts on the applicant's suitability to hold a scrap metal dealer's licence.

### What information may you have regard to?

Under section 3(2) of the Scrap Metal Dealers Act 2013, you may have regard to any information which you consider to be relevant when determining the suitability of a person to hold a scrap metal dealer's licence, including:

1. whether the applicant or any site manager has been convicted of any relevant offence

Under Schedule 1, Para 2 (1) (j), of the Act, a person applying for a scrap metal dealer's licence must provide details of any conviction for a relevant offence. The relevant offences, prescribed by the Secretary of State, can be found in Part 1 and 2 of the Schedule of The Scrap Metal Dealers Act 2013 (Prescribed Relevant Offences and Relevant Enforcement Action) Regulations 2013 using the following link:

<http://www.legislation.gov.uk/id/ukSI/2013/2258>. Under Regulation 2, a relevant offence is also "attempting or conspiring to commit any offence falling within the Schedule; inciting or aiding, abetting, counselling or procuring the commission of any offence falling within the Schedule, and an offence under Part 2 of the Serious Crime Act 2007 (encouraging or assisting crime) committed in relation to any offence falling within the Schedule". These offences should also be considered when determining suitability.

- A conviction for a relevant offence should not automatically lead to the refusal of a scrap metal dealer's licence. You may consult your local police force (section 3 (7)) for further details about the offence including both the seriousness of the offence and the date of when it was committed. Once you have this, you should consider it alongside any other information you may have regard to when determining suitability. If a site manager has been convicted of a relevant offence, the same process applies.

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- Under section 4 (5) of the Act, if a person has been convicted of a relevant offence or is convicted of a relevant offence once a licence has been issued, you may wish to consider, imposing one or both of the following conditions on the licence if you think this is necessary:
    - that the dealer must not receive scrap metal except between 9am and 5pm on any day;
    - that all scrap metal received must be kept in the form in which it is received for a specified period, not exceeding 72 hours, beginning with the time when it is received.
  - These conditions are set out at section 3 (8) of the Act and could be applied until you are satisfied that the inclusion of such a condition in the licence is no longer necessary under all the circumstances.
  - If, during your checks, you discover that the applicant has a relevant conviction which was not detailed in a person's application you should request further information from the applicant (Schedule 1, Para 4). You should also consider whether this is a deliberate omission and therefore impacts on suitability. Making a false statement in an application is a criminal offence (Schedule 1, Para 5) and, where this has happened, it will be at your discretion as to whether you refer this to the police.
  - Only unspent convictions should be considered for individual applicants, site managers, partnerships and companies.
2. whether the applicant or any site manager has been the subject of any relevant enforcement action
- The relevant enforcement action you may have regard to when considering suitability to hold a scrap metal licence has been prescribed in Regulation 3 of The Scrap Metal Dealers Act 2013 (Prescribed Relevant Offences and Relevant Enforcement Action) Regulations 2013 by the Secretary of State which can be found at: <http://www.legislation.gov.uk/id/uksi/2013/2258>.
  - Under Regulation 3(a), a person is the subject of relevant enforcement if *'the person has been charged with an offence specified in the Schedule to these Regulations, and criminal proceedings in respect of that offence have not yet concluded'*. However, you should **not** refuse a licence on this point alone as the action (pending prosecution) is ongoing. If an applicant details a pending prosecution in their application form, you should note this and monitor the outcome. Only once the action is completed should you consider whether the outcome, if a conviction, impacts on a person's suitability to hold a scrap metal dealer's licence and take any necessary action for instance to impose conditions or, ultimately, to revoke.
  - Under Regulation 3 (b), a person is the subject of relevant enforcement action if *"If an environmental permit granted in respect of the person under the Environmental Permitting (England and Wales) Regulations 2010 has been revoked in whole, or partially revoked, to the extent that the permit no longer authorises the recovery of metal"*. You should consult the Environment Agency (in England) or Natural Resources Wales (section 3 (7)) to find out the reasons for the whole or partial revocation and consider if the reasons impact on their suitability.
3. any previous refusal of an application for the issue or renewal of a scrap metal licence (and the reasons for the refusal)
- You should check your local authority area's records to find out whether a scrap metal dealer has previously been refused a scrap metal dealer's licence, taking into consideration

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the reasons for the refusal. Section 3 (7) of the Act states that you may consult other persons regarding the suitability of an applicant, including in particular, any other local authority or officer of a police force. It will be undesirable for a person who has been refused a licence by one local authority area to be issued a licence by another, therefore if a person has been refused a licence in a different local authority area it will be important to scrutinise the reasons for the refusal. For example, the refusal may have been given because the applicant has not demonstrated that there will be adequate procedures in place to comply with the Act (section 3 (2) (f)) but the applicant has now implemented sufficient changes and the reason no longer applies.

4. any previous refusal of an application for a relevant environmental permit or registration (and the reasons for the refusal)

- You should routinely check whether an applicant is on the Environment Agency's/Natural Resources Wales' register of permits and registrations. If you have any concerns or would like to find out further information you should contact the Environment Agency (in England) or Natural Resources Wales. Additionally, if the applicant does not appear on the register and, therefore, does not hold a relevant environmental permit, exemption, or registration, then you may also wish to consult the Environment Agency or Natural Resources Wales as the applicant should not be operating as a scrap metal dealer without one or other of these.

5. any previous revocation of a scrap metal licence (and the reasons for the revocation)

- You should routinely check the register of scrap metal licences, hosted by the Environment Agency/Natural Resources Wales, to find out if a scrap metal dealer has had a licence revoked in another local authority area. If a person has had a licence revoked, you should contact that local authority to understand the reasons why the licence was revoked (section 3 (7)). It will be important for you to scrutinise the reasons for refusal and consider whether these still apply. The reasons for revoking a licence may not always impact on suitability (section 4 (1) (2)).

6. whether the applicant has demonstrated that there will be in place adequate procedures to ensure that the provisions of this Act are complied with

- Where you have information that raises concerns about the adequacy of procedures that the applicant or site manager has in place to comply with section 11 (verifying the supplier's identity), section 12 (offence of buying scrap metal for cash) or section 15 (records: supplementary), you may wish to obtain further information about how the applicant will ensure compliance with the requirements of the Act. For example, where you have concerns about the procedures around the offence of buying scrap metal for cash, you may wish to check the details of the back account which the applicant proposes to use. This information should be included in the application form (Schedule 1, Para 2 (1) (i)).

## Further information

Although section 3 (2) sets out some information you may have regard to, you may request any relevant information from the applicant (either when the application is made or later) to help you consider the application (Schedule 1, Para 4 (1)), this will include determining suitability.

## Reasons for refusal

If a licence application is refused, you should provide full reasons for your decision. This will not only help the applicant to understand the refusal but will allow a Magistrates' Court to clearly understand the reasons should the applicant appeal the decision.



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Legal & Democratic Advisory Committee Work Plan 2015/16 (as at 4/1/16)

26 January 2016	14 April 2016	Summer 2016	Autumn 2016
Trading Company Update from Equalities Working Group	Share Services Update Licensing Anti Social Behaviour, Crime & Policing Act 2014		Budget: Review of Service Dashboards and Service Change Impact Assessments (SCIAs)

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**SEVENOAKS DISTRICT COUNCIL TRADING COMPANY NAMED QUERCUS 7 LIMITED**

**Legal and Democratic Services - 26 January 2016**

Report of Chief Officer Communities and Business, Chief Officer Legal and Governance and the Chief Finance Officer

Status: For Consideration

Also considered by: Cabinet - 4 February 2016

Key Decision: No

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**Executive Summary:** This report provides information on how the new Trading Company Quercus 7 Limited will work operationally and requests Cabinet to approve the current working arrangements and the further proposed arrangements.

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**Portfolio Holder** Cllr. Firth

**Contact Officers** Christine Nuttall Ext. 7245, Adrian Rowbotham Ext. 7153, Lesley Bowles Ext. 7430

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**Recommendation to the Legal and Democratic Services Advisory Committee:**

Advise Cabinet on how the new Trading Company Quercus 7 Limited will work operationally in order for Cabinet to approve the working arrangements, that is:

- a) the appointment of Chief Officers initially put forward as Directors on incorporation;
  - b) the composition of The Trading Board, established to oversee the trading activities of the Company, to comprise the Cabinet with a quorum of three Members to be chaired by the Leader of the Council;
  - c) the job description and specification required to recruit the 2 Non-Executive Directors as set out at Appendix B and such recruitment to be either using internal resources or through a firm of specialist Management & Recruitment Consultants with an approved budget of up to £6,000 in this respect;
  - d) remuneration to be paid to the Non-Executive Directors up to £5,000 each;
  - e) the Chief Officer Legal and Governance in conjunction with the Chief Finance Officer be authorised to finalise a Shareholder Agreement and Loan Arrangements for the Company in conjunction with relevant Portfolio Holders.
-

### **Recommendation to Cabinet:**

Subject to comments from the Legal & Democratic Services Advisory Committee, Cabinet approve how the new Trading Company Quercus 7 Limited will work operationally, and the working arrangements, that is:

- a) the appointment of Chief Officers initially put forward as Directors on incorporation;
- b) the composition of The Trading Board, established to oversee the trading activities of the Company, to comprise the Cabinet with a quorum of three Members to be chaired by the Leader of the Council;
- c) the job description and specification required to recruit the 2 Non-Executive Directors as set out at Appendix B and such recruitment to be either using internal resources or through a firm of specialist Management & Recruitment Consultants with an approved budget of up to £6,000 in this respect;
- d) remuneration to be paid to the Non-Executive Directors up to £5,000 each;
- e) the Chief Officer Legal and Governance in conjunction with the Chief Finance Officer be authorised to finalise a Shareholder Agreement and Loan Arrangements for the Company in conjunction with relevant Portfolio Holders.

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**Reason for recommendation:** It is important that Members are fully informed on the need for SDC to have a Trading Company and how the new Trading Company Quercus 7 Limited will work operationally as they will form the Company Shareholders, and that the views of the Advisory Committee are taken into account by Cabinet when approving the current working arrangements and further proposed arrangements for the future success of the Company.

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### **Introduction and Background**

- 1 Council on 31<sup>st</sup> March 2015 authorised the Chief Officer Legal and Governance to incorporate a company (the Company) wholly owned by the Council in consultation with the Chief Executive, Chief Finance Officer and Portfolio Holder for Finance so as to allow the Council to exercise the power to trade contained in the Local Government Act 2003 and the Localism Act 2011 and to settle the detailed arrangements for the establishment of the Company together with the Governance structure recommended by EC Harris Built Asset Consultancy (EC Harris).
- 2 The establishment of the Company builds on the direction set out in the Corporate Plan for the Council to move towards a more financially self sufficient position. The Company will enable the Council to operate property development on a commercial basis as well as allowing the Council

to invest in residential property to be leased which it is not otherwise allowed to do.

- 3 On the 31<sup>st</sup> December 2015 the Company, Quercus 7 Limited (the Company) was incorporated and the Certificate of Incorporation along with the Articles of Association are Annexed at Appendix A to this report. The Articles of Association are very much in standard format but can be changed if the need arises.

#### **Company Structure - Governance**

- 4 EC Harris advised on the setting up of a generic trading company which could concentrated, at this stage, on property development as its main activity and it was proposed that the initial Board of Directors comprise three Officers, plus 2 Non-Executive Directors who would be approved by Cabinet and such Non-Executive Directors could receive a small remuneration.
- 5 For the initial set up the following Chief Officers have been appointed as Directors. This being The Chief Finance Officer, Chief Officer Communities & Business and the Chief Officer Environmental & Operational Services. Cabinet is asked to approve such appointments.

#### **The Trading Board**

- 6 It is proposed that The Trading Board is established on behalf of Sevenoaks District Council to oversee the trading activities of the Company. The Trading Board will comprise the Cabinet and for meetings a quorum of three Members will be required with the Leader of the Council being the Chairman of The Trading Board. Cabinet is asked to approve the composition of such Board. Within the Shareholder Agreement the Shareholder (the Members of SDC) will delegate to Cabinet the responsibility to oversee the trading activities of the Company via The Trading Board.

#### **Recruitment of the 2 Non-Executive Directors**

- 7 The 2 Non-Executive Directors now have to be chosen by Cabinet via The Trading Board. Recruitment of the Non-Executive Directors can take place utilising the job description and specification set out at Appendix B to this report, either using internal resources or through a firm of specialist Management & Recruitment Consultants. Cabinet is asked to approve such arrangements with an approved budget of up to £6,000 if using a firm of specialist Management & Recruitment Consultants. The job description and specification has been produced by Trowers & Hamlins LLP based on what is ordinarily required by such a Trading Company taking into account the advice received from EC Harris which was that the Non-Executive Directors be selected on the basis of relevant professional experience in property investment and corporate governance, and with careful consideration given

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to any potential conflicts of interest. In addition, the Council would also be desirous in having Non-Executive Directors with professional experience in property construction and risk assessment.

- 8 Members should be aware that the remuneration of the Non-Executive Directors in relation to a local authority owned company is governed by legislation which does not allow for the Non-Executive Directors to be paid more than an ordinary Member of the Council for sitting on a Council Committee. As a result it is suggested that the Non-Executive Directors be offered no more than the approximate basic allowance for all Members, this being no more than £5,000 and Cabinet approval is sought in this respect.
- 9 However, in order to ensure transparency and competitiveness with the private sector and not to breach the rules in relation to State Aid the Company must not be subsidised by the authority. Therefore if the Non-Executive Directors are paid a salary and such salary is provided via Sevenoaks District Council's payroll, the Council would need to charge the Company at the market rate for providing such a service to the Company.

### Articles of Association

- 10 The Articles of Association govern the way in which a company's internal affairs are regulated. This may be likened to an agreement between all the Shareholders being the Members of Sevenoaks District Council (Members of SDC) and the Company itself. The Articles do follow the relevant model articles. The Articles can be changed if the need arises although the Articles cannot over rule the provisions of the Companies Act and so care needs to be taken if changes are made to the basic model Articles.
- 11 The Articles of Association are exhibited at Appendix A to this report along with the Certificate of Incorporation and, comprise the following:
  - The Articles are for a company limited by shares.
  - The Articles state that there can only be one shareholder and this is defined as all of the Members of SDC.
  - The liability of the Council is limited to the nominal value of its share.
  - The Shareholder (the Members of SDC) will agree the general investment targets for the period and the associated budget, enabling the Board to set an annual and 5 year business plan. Half-yearly reports from the Company will go to Cabinet.
  - The Cabinet appoint the Directors and can remove them.
  - The Directors shall be officers of the Council, together with up to two outside Non-Executive Directors.

- If a Director ceases to be employed by the Council (except the outside Directors) then they will automatically cease to be a Director.
- There must be a minimum of 3 Directors and the number of External Directors shall be two but the Shareholder may choose to increase the number of External Directors.
- Three Directors must be present in order to have a valid Directors meeting.
- The Directors can appoint their own Chair, although this is something that the shareholder (Members of SDC) could decide.
- The Council can pass a resolution that either prevents or directs the Directors to do something.
- The Company can pay dividends, which will accrue to the Council as a whole for the benefit of the District and will not benefit individual Members.
- The Company does not have to have a seal to execute documents. Deeds and documents can be signed by two Directors.
- The Company shall have a Company Secretary.
- The Company is obliged to comply with all requirements that flow from the fact that it is a wholly owned subsidiary of a local authority.
- The Articles cannot be amended or the name of the Company changed unless the Council approves a resolution to amend them.
- The Company cannot engage in anything that represents a substantial change in the business of the Company without a resolution being passed by the Council.
- The Company can purchase indemnity insurance for the Directors

### Shareholder Agreement

- 12 The Shareholder Agreement is separate to the Articles of Association and does not have to be registered at Companies House. The Shareholder Agreement regulates the relationship between the Shareholder and the Company and gives rights and obligations that would not normally be put into the Articles, or would not be appropriate for inclusion in the Articles. The Shareholder Agreement can provide that the Annual General Meeting of the Company takes place in the Council Chamber on an evening when Full Council takes place with the shareholder (Members of SDC) being invited to attend. The Company will be a controlled Company, being entirely owned by Sevenoaks District Council who will approve:

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- The setting of the general investment targets each year and the associated budget;
- Appoint or remove Auditors;
- Any borrowing arrangement and giving security in respect of such borrowing;
- Making any application for planning permission or lodging an appeal against a planning authority;
- And any matter that the Council shall advise the Company of in writing.

In this way the Company shareholder (Members of SDC) has ultimate control over the activities of the Company and the Company's operational matters.

Cabinet is requested to authorise the Chief Officer for Legal and Governance in conjunction with the Chief Finance Officer and the relevant Portfolio Holders to finalise the details of the Shareholder Agreement.

### **Members' Ability to Further Control the Company**

- 13 As can be seen by the suggested provisions within the Articles of Association the Company shareholder (Members of SDC) has ultimate control over who will be the Directors of the Company and the shareholder (Members of SDC) can change the make up of the board with immediate effect if so desired. In addition the Company Secretary can be asked to stand down in the same way.
- 14 The Articles of Association can make provision for the shareholder (the Members of SDC) to appoint Director(s) by serving notice in writing to the Company. Such notice shall state such particulars of the Director(s) as are required to be included in the Company's Register of Directors.
- 15 In addition the Articles of Association can make provision for the shareholder (Members of SDC) to remove any Director(s) by serving notice in writing to the Company and to appoint any other person to be a Director in place of a Director who leaves office by whatever means.
- 16 The notice of appointment or removal of a Director(s) pursuant to the Articles can take place with immediate effect on delivery to the Secretary of the Company.
- 17 The Trading Company will fall within the category of a "controlled company" as defined by the Local Government and Housing Act 1989 and as a result will be subject to The Local Authorities (Companies) Order 1995. The Order sets out regulations that are specific to controlled companies and start from the basis that the public should be aware that the company they are dealing with is controlled by the local authority.

- 18 For example, the company must provide information about the affairs of the company to any Member of the local authority as they shall reasonably require for the proper discharge of duty as a Member. They must also provide information that the local authority's auditors require in relation to the accounts and affairs of the company.

### **The Loan Agreement**

- 19 On the 31<sup>st</sup> March 2015 Full Council gave authority for a budget of £10,000 for set up costs of the Company. This to be funded from the Property Investment Reserve.
- 20 Now that the Company has been incorporated the Council will need to make loans to the Company to fund the Business Cases(s).
- 21 The financial objective of the Property Investment Strategy is to achieve a 6% income return. Different types of investment will provide different levels of return, income and capital.
- 22 The loans will be sourced from the Property Investment Reserve. Amounts in this reserve are agreed by Members as part of the budget setting process.
- 23 There is the potential to increase the amount set aside for the Property Investment Reserve through additional reserves, further capital receipts, although all this would be subject to Council approval.
- 24 Specialist financial advice may need to be sought when the Company makes acquisitions or receives loans from the Council in order to ensure that State Aid regulations are complied with.
- 25 Cabinet is requested to authorise the Chief Officer Legal and Governance in conjunction with the Chief Finance Officer to finalise the Borrowing arrangements and necessary Agreements in conjunction with the relevant Portfolio Holders.

### **Staffing Implications**

- 26 There should be no direct implications for staff currently employed by the Council in relation to the Company as it is not proposed that any staff transfer to the Company. Staff may in time be working on specific work relating to the Company but all time and resources will be specifically accounted for and charged to the Company. If the Company does decide to employ staff directly, with Council staff transferring to the Company under TUPE, the Company will be required to offer any such staff comparable terms and conditions of employment including pension rights. No such plans are currently envisaged.

### **State Aid**

- 27 State Aid is defined as "a Member State's financial aid which favours selected businesses and has the potential to distort competition and affect

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trade between EU Member States”. Article 87(1) European Convention sets out the criteria, all of which must be met for state aid to be present:

The aid favours certain undertakings or the production of certain goods,

The aid is provided through State resources,

The aid distorts or threatens to distort competition,

The aid affects trade between Member States.

- 28 In order to ensure transparency and competitiveness with the private sector and not to breach the rules in relation to State Aid the Company must not be subsidised by the authority. This means that the authority must recover the costs of any accommodation, goods, services, employees or any other support it supplies to the Company. As a result it will be necessary to demonstrate independence of the Company from the authority.
- 29 The Trading Company should be mindful of its trading impact on the local economy. In recognition of this concern it may be decided that new lines of business would only be taken on after a Market Impact Assessment had been carried out.

### **Legal Implications and Risk Assessment Statement**

- 30 A local authority is able to establish a Local Authority Trading Company (“LATC”) through powers in section 95 of the Local Government Act 2003. A local authority is permitted to trade in anything that it is authorised to do under its ordinary functions. The Company can with good business planning generate a surplus which can be re-invested into services, or the Council, being the single shareholder. In addition, the Localism Act 2011 gives a local authority the power to trade. Under section 1 of the Localism Act 2011 Local Authorities now have a general power that enables them to do anything that a private individual is entitled to do, as long as it is not expressly prohibited by other legislation. It is under such legislation, that the Company was incorporated.
- 31 The Local Authorities (Goods and Services) Act 1970 (the 1970 Act) continues in force and it enables Councils to provide services to other Councils and to other public bodies but not to the private sector or the public in general. Successful trading has been undertaken by this authority under this legislation since 1970 enabling the saving of money and the achievement of efficiencies through economies of scale. The trading company will enable the authority to take advantage of trading opportunities that cannot be undertaken using the powers within the 1970 Act. However, it is anticipated that existing trading will continue to happen as it currently does under the 1970 Act as this is the most cost effective way to trade with other local authorities and public bodies.
- 32 The Company is a “controlled company” as defined in the Local Government and Housing Act 1989 as it is a subsidiary company of a local authority and as

such the shareholder (Members of SDC) can have ultimate control over the activities and operational matters of the Company.

33 The key strategic risks are identified as follows:

Risk	Likelihood 1(low)- 5(high)	Impact 1(low)- 5(high)	Total	Controls
Failure to set up trading arrangement in strict compliance with legislation	1	3	3 Low	Extensive consultation with other authorities and, appropriate, external advice on governance arrangements and financial requirements
Using trading powers where there is a statutory obligation to provide them	1	3	3 Low	Consideration to be given on a case by case basis as to the ownership of assets
Possibility of trading ultra vires	1	2	2 Low	Every new trading activity via the company to consider statutory obligations
Possibility of challenge to state aid	1	2	2 Low	Obtain full cost recovery and any loan given to the Company to be set at commercial lending rates - financial advice sought
Possibility of conflicts of interest arising for members or officers as Directors	1	3	3 Low	Recommendation not to have Members on the Board to remove the possibility of conflicts of interest. Officers to abide by the Code of Conduct for Employees and are subject to the Officer Employment Procedure Rules. Strengthened requirements on conflicts of interest set out in the Articles of Association
Failure to arrange adequate insurance cover for the Company's liabilities/assets	2	4	8 Medium	Ensure Insurer for the Company is kept up to date with any new areas of trading activity
Failure to comply with taxation laws -	2	3	6 Medium	Advice given by EC Harris in relation to taxation generally with further

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corporation tax & vat				advice sought if necessary
Consideration of potential TUPE implications	1	1	1 Low	Review regularly
Trading Company failure	1	3	3 Low	Market testing and valuations to be obtained and the implementation of tight budgetary controls
Conflict of interest over workload priorities of Council projects and Company projects	2	2	4 Low	Effective resource planning and compliance with Corporate Plan. Non-Executive Director(s) on the Board
Company credit rating	1	2	2 Low	Council could act as guarantor and insurance to mitigate
Challenge from Council's Auditors	1	2	2 Low	Follow CIPFA Code of Practice on LA Accounting. All transactions applicable to the Company can be identified using unique transaction records and coding structures. Council's Auditors to be kept fully informed in relation to any new trading activities
Lack of capacity to manage additional work	2	2	4 Low	Careful programming of staff resources
Contractual disputes	2	3	6 Medium	SDC's in house legal section to be employed to check all contracts before they are entered into and expert advice sought when necessary
Poor investment acquisitions if purchased through the Company	2	2	4 Low	Each investment acquisition will be of good quality with the potential of high income return as set out in the EC Harris Report and Business Case
Poor rate of return on investment property	2	2	4 Low	Annual valuation which sets a target rate of return and allows for financing costs and the generation of an annual surplus

### **Business Case**

- 34 The establishment of the Company builds on the direction set out in the Corporate Plan for the Council to move towards a more financially self-sufficient position. The agreed plan articulates an approach of investing in assets that will generate revenue income to allow less reliance on diminishing Government Support.
- 35 In December 2013 the Council was subject to a Peer Challenge process which endorsed the Corporate Plan and the Council's approach recommending that the opportunity to generate greater income from investing in property assets would significantly contribute towards the aim of financial self-sufficiency.
- 36 The Company will enable the Council to operate property development on a commercial basis as well as allowing the Council to invest in residential property to be leased which it is not otherwise allowed to do. In order to operate and manage a balanced portfolio the ability to trade commercially and to invest in residential property is, key.
- 37 Now that the Company has been established the Company's Board will develop and approve an annual and 5 year Business Plan. This will set out in detail the expected financial results of the business. Cabinet via The Trading Board will receive half yearly reports.
- 38 Business opportunities other than trading in property can also be developed within the Business Plan to enhance the profitability of the Company.
- 39 Risks associated with the operation of the Company are set out in detail above.

### **Equality Assessment**

- 40 The decisions recommended through this paper have a remote or low relevance to the substance of the Equality Act. There is no perceived impact on end users.

### **Conclusions**

- 41 The Company was set up as it was considered appropriate to make use of the increased power given by the Localism Act 2011 to enable trading to take place for profit through a limited liability company wholly owned by the Council in order that this Council may enhance the economic wellbeing of the District as well as providing an income stream which will help the Council be self-sufficient and not dependent upon Government funding.

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- 42 This reports sets out the current arrangements that have been put in place for the Company and asks Cabinet to endorse such arrangements and the further proposed arrangements including authorisation to finalise a Shareholder Agreement and Loan Arrangements in conjunction with the relevant Portfolio Holders.

### Appendices

Appendix A - Articles of Association and Certificate of Incorporation

Appendix B - Job Advert and Personal Specification for the recruitment of the 2 Non-Executive Directors

### Background Papers:

[EC Harris Built Asset Consultancy](#)

[Report to Council dated 31<sup>st</sup> March 2015 entitled "Authority to Establish a Local Authority Trading Company"](#)

Christine Nuttall, Chief Officer Legal and Governance

Adrian Rowbotham, Chief Finance Officer

Lesley Bowles, Chief Officer Communities and Business

**ARTICLES OF ASSOCIATION  
of  
QUERCUS 7 LIMITED**

Christine Nuttall  
Chief Officer Legal & Governance  
Sevenoaks District Council  
Council Offices  
Argyle Road  
Sevenoaks  
Kent  
TN13 1HG



**ARTICLES FOR QUERCUS 7 LIMITED  
A PRIVATE COMPANY LIMITED BY SHARES**

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**Part 1**

**Interpretation and limitation of liability**

**1. Defined terms**

1.1 In these Articles, unless the context requires otherwise the following terms shall have the following meanings:

<b>Act</b>		means the Companies Act 2006;
<b>Articles</b>		means the Company's Articles of association;
<b>Sevenoaks Council</b>	<b>District Council</b>	means Sevenoaks District Council of Council Offices, Argyle Road, Sevenoaks, Kent TN13 1HG;
<b>bankruptcy</b>		includes individual insolvency proceedings in a jurisdiction other than England and Wales or Northern Ireland which have an effect similar to that of bankruptcy;
<b>chairman</b>		has the meaning given in Article 3;
<b>chairman of the meeting</b>		has the meaning given in Article 42;
<b>Companies Acts</b>		means the Companies Acts (as defined in section 2 of the Act), in so far as they apply to the Company;
<b>Council</b>		Sevenoaks District Council and any successor body which takes over the majority of the functions of Sevenoaks District Council;
<b>Council Director</b>		means a current employee of the Council;
<b>Director</b>		means a Director of the Company, and includes any person occupying the position of Director whether they are a Council Director or an External Director, by whatever name called;
<b>document</b>		includes, unless otherwise specified, any document sent or supplied in electronic form;
<b>electronic form</b>		has the meaning given in section 1168 of the Act;
<b>External Director</b>		means a director who is a representative of the private and/or community sectors;
<b>fully paid</b>		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;
<b>Group Organisation</b>	means in relation to the Shareholder any holding Company or subsidiary of the Shareholder (with holding Company and subsidiary having the meanings given in section 1159 of the Act) or any organisation of which that Shareholder is a subsidiary;
<b>hard copy form</b>	has the meaning given in section 1168 of the Act;
<b>instrument</b>	means a document in hard copy form;
<b>ordinary resolution</b>	has the meaning given in section 282 of the Act;
<b>paid</b>	means paid or credited as paid;
<b>participate</b>	in relation to a Directors' meeting, has the meaning given in Article 11;
<b>proxy notice</b>	has the meaning given in Article 48;
<b>Representative</b>	means in relation to the Shareholder any person who is for the time being the person authorised by that Shareholder pursuant to Article 43.2 to be its authorised representative;
<b>Shareholder</b>	means the Council or such Group Organisation to which the Council has transferred its shares in accordance with Article 25.2;
<b>shares</b>	means shares in the Company;
<b>special resolution</b>	has the meaning given in section 283 of the Act;
<b>subsidiary</b>	has the meaning given in section 1159 of the Act;
<b>writing</b>	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.

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1.2 Unless the context otherwise requires, other words or expressions contained in these Articles bear the same meaning as in the Act as in force on the date when these Articles become binding on the Company.

### **2. Liability of Shareholder**

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

**Part 2**  
**Directors**

**Directors' Powers and Responsibilities**

**3. Directors' general authority**

Subject to the Articles, the Directors are responsible for the management of the Company's business, for which purpose they may exercise all the powers of the Company.

**4. Shareholder's reserve power**

- 4.1 The Shareholder may, by special resolution, direct the Directors to take, or refrain from taking, specified action.
- 4.2 No such special resolution invalidates anything which the Directors have done before the passing of the resolution.

**5. Directors may delegate**

- 5.1 Subject to the Articles, the Directors may delegate any of the powers which are conferred on them under the Articles:
  - (a) to such person or committee;
  - (b) by such means (including by power of attorney);
  - (c) to such an extent;
  - (d) in relation to such matters or territories; and
  - (e) on such terms and conditions;as they think fit.
- 5.2 If the Directors so specify, any such delegation may authorise further delegation of the Directors' powers by any person to whom they are delegated.
- 5.3 The Directors may revoke any delegation in whole or part, or alter its terms and conditions.
- 5.4 Subject to any terms and conditions under Article 5.1(e), the proceedings of a committee with two or more members shall be governed by the Articles regulating the proceedings of Directors so far as they are capable of applying.

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### **6. Committees**

- 6.1 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.
- 6.2 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**

#### **7. Directors to take decisions collectively**

The general rule about decision-making by Directors is that any decision of the Directors must be either a majority decision at a meeting or a decision taken in accordance with Article 8.

#### **8. Unanimous decisions**

- 8.1 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.
- 8.2 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.
- 8.3 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.
- 8.4 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.

#### **9. Validity of Directors' decisions**

- 9.1 All acts done by a meeting of Directors, or of a committee of Directors, or by a person acting as a Director shall be as valid notwithstanding the participation in any vote of a director:
- (a) discovered afterwards that there was a defect in the appointment of any Director; or

- (b) that any of them were disqualified from holding office; or
- (c) had vacated office; or
- (d) were not entitled to vote on the matter, whether by reason of a conflict of interests or otherwise;

If without:

- (e) the vote of that Director; and
- (f) that Director being counted in the quorum;

the decision has been made by a majority of the Directors at a quorate meeting.

- 9.2 Article 9.1 does not permit a director or a connected person to keep any benefit that may be conferred upon him or her by a resolution of the Directors or of a committee of directors if, but for Article 9.1, the resolution would have been void, or if the Director has not complied with Article 15.
- 9.3 A resolution in writing signed by all the Directors entitled to receive notice of a meeting of Directors or of a committee of Directors, shall be as valid and effective as if it had been passed at a meeting of Directors or (as the case may be) a committee of Directors duly convened and held. Such a resolution may consist of several documents in like form, each signed by one or more of the Directors.

## **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:
- (a) its proposed date and time;
  - (b) where it is to take place; and
  - (c) 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.
- 10.3 Notice of a Directors' meeting must be given to each Director, but need not be in writing.

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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:

- (a) the meeting has been called and takes place in accordance with the Articles, and
- (b) 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 shall be three Directors.

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 to request that the Shareholder appoints 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 has a casting vote.

14.2 But this does not apply if, in accordance with the Articles, the chairman or other Director is not to be counted as participating in the decision-making process for quorum or voting purposes.

#### **15. Declaration of Director's interests**

A Director must declare the nature and extent of any interest, direct or indirect, which he or she has in a proposed transaction or arrangement with the Company or in any transaction or arrangement entered into by the Company which has not previously been declared. Save where Article 16.3 applies, a Director must absent themselves from any discussions of the Directors in which it is possible that a conflict will arise between his or her duty to act solely in the interests of the Company and any personal interest (including but not limited to any personal financial interest).

#### **16. Conflicts of interest**

16.1 If a proposed decision of the Directors is concerned with an actual or proposed transaction or arrangement with the Company in which a Director is interested, that Director is not to be counted as participating in the decision-making process for quorum or voting purposes.

16.2 But if Article 16.3 applies, a Director who is interested in an actual or proposed transaction or arrangement with the Company is to be counted as participating in the decision-making process for quorum and voting purposes.

16.3 This Article applies when:

- (a) the Company by ordinary resolution disapplies the provision of the Articles which would otherwise prevent a Director from being counted as participating in the decision-making process;

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- (b) the Director's interest cannot reasonably be regarded as likely to give rise to a conflict of interest; or
- (c) the Director's conflict of interest arises from a permitted cause.

16.4 For the purposes of Article 16.3, the following are permitted causes:

- (a) the transaction or arrangement is to be made by the Company with the Council, or with any Group Organisation of the Council and the Director's interest arises because they are employed by or are an elected member of the Council;
- (b) a guarantee given, or to be given, by or to a Director in respect of an obligation incurred by or on behalf of the Company or any of its subsidiaries;
- (b) subscription, or an agreement to subscribe, for shares or other securities of the Company or any of its subsidiaries, or to underwrite, sub-underwrite, or guarantee subscription for any such shares or securities; and
- (c) arrangements pursuant to which benefits are made available to employees and Directors or former employees and Directors of the Company or any of its subsidiaries which do not provide special benefits for Directors or former Directors.

16.5 For the purposes of this Article 16, references to proposed decisions and decision-making processes include any Directors' meeting or part of a Directors' meeting.

16.6 Subject to Article 16.7 if a question arises at a meeting of Directors or of a committee of Directors as to the right of a Director to participate in the meeting (or part of the meeting) for voting or quorum purposes, the question may, before the conclusion of the meeting, be referred to the chairman whose ruling in relation to any Director other than the chairman is to be final and conclusive.

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

**17. Authorisation of directors' conflicts of interest**

17.1 For the purposes of section 175 of the Act, as amended, consolidated or re-enacted from time to time, the Shareholder shall have the power to authorise any matter which would or might otherwise constitute or give rise to a breach by a Director of the duty to avoid conflicts of interest set out in that section of the Act. Any reference in these Articles to a conflict of interest includes a conflict of interest and duty and a conflict of duties.

17.2 A Director, notwithstanding their office, may be a director or other officer of, employed by or an elected member of the Council, or any Group Organisation of the Council, and no authorisation under Article 17.1 shall be necessary in respect of any such interest.

17.3 Any Director shall be entitled from time to time to disclose to the Council or to the Shareholder such information concerning the business and affairs of the Company as they shall at their discretion see fit.

17.4 If a Director receives or has received any information otherwise than by virtue of their position as a director of the Company and in respect of which they owe a duty of confidentiality to another person, the director is under no obligation to:

- (a) disclose any such information to the Company, the directors or any other director or employee of the Company; or
- (b) use or apply any such information in connection with the performance of their duties as a director;

provided that to the extent that such duty of confidentiality arises out of a situation or relationship which would or might otherwise constitute or give rise to a breach by the Director of the duty to avoid conflicts of interest set out in section 175 of the Act, this Article shall apply only if such situation or relationship has been authorised by the Shareholder, or by these Articles.

**18. Records of decisions to be kept**

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

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majority decision taken by the Directors. Such record may be kept in electronic form.

### **19. Directors' discretion to make further rules**

19.1 Subject to the Articles, the Directors may make such rules as they may deem necessary, expedient or convenient for the proper conduct and management of the Company.

19.2 The Company in general meeting shall have power to alter, add to or repeal any rules created by the Directors under Article 19.1.

### **Appointment and retirement of Directors**

#### **20. Number of Directors**

20.1 The number of Directors shall be not less than three but (unless otherwise determined by ordinary resolution) shall not be subject to any maximum.

20.2 The number of External Directors shall not be more than two but the Shareholder may choose to increase the number of External Directors.

#### **21. Methods of appointing and removing Directors**

21.1 The Shareholder shall appoint the Directors by serving notice in writing to the Company. Such notice shall state such particulars of the Director as are required to be included in the Company's register of Directors.

21.2 The Shareholder shall be entitled by notice in writing to remove any Director or Directors and to appoint any other person to be a Director in place of a Director who leaves office by whatever means.

21.3 An External Director shall be appointed for a term of three years and at the end of the three year term the External Director shall be deemed to have retired as a Director unless the Shareholder reappoints that External Director for a further three year term.

21.4 The Shareholder shall not reappoint an External Director if they have already served 9 years as a Director.

21.5 A notice of appointment or removal of a Director pursuant to this Article shall take effect upon delivery to a meeting of the Directors or on delivery to the secretary.

- 21.6 Every Director appointed pursuant to this Article shall hold office until they are either removed in a manner provided by this Article or dies or vacates office pursuant to Article 22 and neither the Company in general meeting nor the Directors shall have power to fill any such vacancy except as expressly provided for in this Article.
- 21.7 Any Director shall be at liberty from time to time to make such disclosure to the Shareholder or to any Group Organisation as to the business and affairs of the Company and its subsidiaries as they shall in their absolute discretion determine.
- 21.8 No Director shall be appointed otherwise than as provided in these Articles.

## **22. Termination of Director's appointment**

22.1 A person ceases to be a Director as soon as:

- (a) that person ceases to be a Director by virtue of any provision of the Act or is prohibited from being a Director by law;
- (b) a bankruptcy order is made against that person;
- (c) a composition is made with that person's creditors generally in satisfaction of that person's debts;
- (d) 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;
- (e) 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;
- (f) 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;
- (g) the Company receives a notice in respect of that person in accordance with Article 21.2;

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- (h) that person is absent without the permission of the Directors from all their meetings held within a period of six months and the Directors resolve and the Shareholder agrees that his/her office be vacated;
- (i) that person ceases to be an elected member or employed by the Shareholder, having been an elected member or employed by the Shareholder when appointed; or
- (j) the third anniversary of their appointment if they are an External Director and they have not been reappointed under Article 21.3.

22.2 No director shall be removed other than as provided for in these Articles.

22.3 Any removal of a Director shall be deemed to be an act of the Company and shall have effect without prejudice to any claim for damages for breach of any contract of services between such Director and the Company.

### **23. Directors' remuneration**

23.1 Directors may undertake any services for the Company that the Directors decide.

23.2 Directors are entitled to such remuneration as may be approved by the Shareholder:

- (a) for their services to the Company as Directors, and
- (b) for any other service which they undertake for the Company.

23.3 Subject to the Articles, a Director's remuneration may:

- (a) take any form, and
- (b) include any arrangements in connection with the payment of a pension, allowance or gratuity, or any death, sickness or disability benefits, to or in respect of that Director.

23.4 Unless the Directors decide otherwise, Directors' remuneration accrues from day to day.

23.5 Unless the Directors decide otherwise, Directors are not accountable to the Company for any remuneration which they receive as Directors or other

officers or employees of the Company's subsidiaries or of any other body corporate in which the Company is interested.

**24. Directors' expenses**

The Company may pay any reasonable expenses which the Directors properly incur in connection with their attendance at:

- (a) meetings of Directors or committees of Directors;
- (b) general meetings; or
- (c) separate meetings of the holders of any class of shares or of debentures of the Company, or otherwise in connection with the exercise of their powers and the discharge of their responsibilities in relation to the Company.

**Part 3**  
**Shares and distributions**

**Shares**

**25. Shareholder**

25.1 There shall be one shareholder. The only body permitted to be registered as a shareholder is Sevenoaks District Council or any person to whom the Shareholder may have transferred its membership to in accordance with Article 25.2.

25.2 The Shareholder may subject to the transferee signing a form consenting to become the Shareholder and agreeing to be bound by the Memorandum and Articles of Association of the Company transfer its membership to a Group Organisation of the Shareholder by notice in writing to the Company signed by or on behalf of the transferee and by or on behalf of the transferor. Upon receipt of such notice and consent form the Group Organisation transferee shall be admitted as the Shareholder and the transferor shall cease to be a shareholder.

**26. All shares to be fully paid up**

26.1 No share is to be issued for less than the aggregate of its nominal value and any premium to be paid to the Company in consideration for its issue.

26.2 This does not apply to shares taken on the formation of the Company by the subscriber to the Company's memorandum.

**27. Powers to issue different classes of share**

27.1 Subject to the Articles, but without prejudice to the rights attached to any existing share, the Company may issue shares with such rights or restrictions as may be determined by ordinary resolution.

27.2 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.

**28. Company not bound by less than absolute interests**

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

**29. Share certificates**

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

29.2 Every certificate must specify:

- (a) in respect of how many shares, of what class, it is issued;
- (b) the nominal value of those shares;
- (c) that the shares are fully paid; and
- (d) any distinguishing numbers assigned to them.

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

29.4 Certificates must:

- (a) have affixed to them the Company's common seal, or
- (b) be otherwise executed in accordance with the Companies Acts.

**30. Replacement share certificates**

30.1 If a certificate issued in respect of the Shareholder's shares is:

- (a) damaged or defaced, or
- (b) said to be lost, stolen or destroyed, that shareholder is entitled to be issued with a replacement certificate in respect of the same shares.

30.2 The Shareholder exercising the right to be issued with such a replacement certificate:

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

**Dividends and other distributions**

**31. Procedure for declaring dividends**

- 31.1 The Company may by ordinary resolution declare dividends, and the Directors may decide to pay interim dividends.
- 31.2 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.
- 31.3 No dividend may be declared or paid unless it is in accordance with the Shareholder's rights.
- 31.4 Unless the Shareholder's 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 the Shareholder's holding of shares on the date of the resolution or decision to declare or pay it.
- 31.5 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.
- 31.6 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.
- 31.7 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.

**32. Payment of dividends and other distributions**

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:

- (a) transfer to a bank or building society account specified by the Shareholder either in writing or as the Directors may otherwise decide;

- (b) any other means of payment as the Directors agree with the Shareholder either in writing or by such other means as the Directors decide.

**33. No interest on distributions**

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

- (a) the terms on which the share was issued, or
- (b) the provisions of another agreement between the holder of that share and the Company.

**34. Unclaimed distributions**

34.1 All dividends or other sums which are:

- (a) payable in respect of shares, and
- (b) 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.

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

34.3 If:

- (a) twelve years have passed from the date on which a dividend or other sum became due for payment, and
  - (b) the Shareholder has not claimed it,
- the Shareholder is no longer entitled to that dividend or other sum and it ceases to remain owing by the Company.

**35. Non-cash distributions**

35.1 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).

## Agenda Item 8

35.2 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:

- (a) fixing the value of any assets;
- (b) paying cash to any distribution recipient on the basis of that value in order to adjust the rights of recipients; and
- (c) vesting any assets in trustees.

### **36. Waiver of distributions**

The Shareholder may waive its entitlement to a dividend or other distribution payable in respect of a share by giving the Company notice in writing to that effect.

### **Capitalisation of Profits**

#### **37. Authority to capitalise and appropriation of capitalised sums**

37.1 Subject to the Articles, the Directors may, if they are so authorised by an ordinary resolution:

- (a) decide to capitalise any profits of the Company (whether or not they are available for distribution) which are not required for paying a preferential dividend, or any sum standing to the credit of the Company's share premium account or capital redemption reserve; and
- (b) appropriate any sum which they so decide to capitalise (a "capitalised sum") to the persons who would have been entitled to it if it were distributed by way of dividend (the "persons entitled") and in the same proportions.

37.2 Capitalised sums must be applied:

- (a) on behalf of the persons entitled, and
- (b) in the same proportions as a dividend would have been distributed to them.

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

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

37.5 Subject to the Articles the Directors may:

- (a) apply capitalised sums in accordance with Articles 37.3 and 37.4 partly in one way and partly in another;
- (b) make such arrangements as they think fit to deal with shares or debentures becoming distributable in fractions under this Article (including the issuing of fractional certificates or the making of cash payments); and
- (c) authorise any person to enter into an agreement with the Company on behalf of all the persons entitled which is binding on them in respect of the allotment of shares and debentures to them under this Article.

**Part 4**

**Decision-making by shareholders**

**Annual General Meeting**

38. The Company shall hold an annual general meeting.

**Organisation of General Meetings**

**39. Attendance and speaking at general meetings**

39.1 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.

39.2 A person is able to exercise the right to vote at a general meeting when:

- (a) that person is able to vote, during the meeting, on resolutions put to the vote at the meeting, and
- (b) 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.

39.3 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.

39.4 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.

**40. Quorum for general meetings**

No business other than the appointment of the chairman of the meeting is to be transacted at a general meeting unless a quorum is present. The presence of the Representative shall constitute a quorum.

**41. Chairing general meetings**

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

41.2 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:

- (a) the Directors present, or
  - (b) (if no Directors are present), the meeting,
- must appoint a Director or the Representative to chair the meeting, and the appointment of the chairman of the meeting must be the first business of the meeting.

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

#### **42. Attendance and speaking by Directors and non-shareholders**

42.1 Directors may attend and speak at general meetings, whether or not they are the Representative.

42.2 The chairman of the meeting may permit other persons who are not:

- (a) the Representative, or
  - (b) otherwise entitled to exercise the rights of a shareholder in relation to general meetings,
- to attend and speak at a general meeting.

#### **43. Adjournment**

43.1 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.

43.2 The chairman of the meeting may adjourn a general meeting at which a quorum is present if:

- (a) the meeting consents to an adjournment, or
- (b) 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.

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- 43.3 The chairman of the meeting must adjourn a general meeting if directed to do so by the meeting.
- 43.4 When adjourning a general meeting, the chairman of the meeting must:
- (a) 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
  - (b) have regard to any directions as to the time and place of any adjournment which have been given by the meeting.
- 43.5 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):
- (a) to the same persons to whom notice of the Company's general meetings is required to be given, and
  - (b) containing the same information which such notice is required to contain.
- 43.6 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**

#### **44. Vote of Shareholder**

- 44.1 The Shareholder shall have one vote on a show of hands.
- 44.2 The Shareholder may by resolution of its Cabinet (or a duly formed committee of the Cabinet) authorise such person as it thinks fit to act as its representative at any meeting of the Company, and the person so authorised shall be entitled to exercise the same powers on behalf of the Shareholder which he represents as the Shareholder could exercise if it were an individual shareholder.
- 44.3 A vote given by a Representative shall be valid notwithstanding the previous determination of the authority of the person voting unless notice of the

determination was received by the Company before the commencement of the meeting or adjourned meeting at which the vote is given.

**45. Errors and disputes**

45.1 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.

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

**46. Content of proxy notices**

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

Which:

- (a) states the name and address of the Representative appointing the proxy;
- (b) identifies the person appointed to be the Representative’s proxy and the general meeting in relation to which that person is appointed;
- (c) is signed by or on behalf of the Representative appointing the proxy, or the Shareholder or is authenticated in such manner as the Directors may determine; and
- (d) 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.

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

46.3 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.

46.4 Unless a proxy notice indicates otherwise, it must be treated as:

- (a) 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

## Agenda Item 8

- (b) 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.

### **47. Delivery of proxy notices**

- 47.1 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.
- 47.2 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.
- 47.3 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.
- 47.4 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 appointer's behalf.

### **48. Amendments to resolutions**

- 48.1 An ordinary resolution to be proposed at a general meeting may be amended by ordinary resolution if:
  - (a) 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
  - (b) the proposed amendment does not, in the reasonable opinion of the chairman of the meeting, materially alter the scope of the resolution.
- 48.2 A special resolution to be proposed at a general meeting may be amended by ordinary resolution, if:
  - (a) the chairman of the meeting proposes the amendment at the general meeting at which the resolution is to be proposed, and
  - (b) the amendment does not go beyond what is necessary to correct a grammatical or other non-substantive error in the resolution.

48.3 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**

**49. Means of communication to be used**

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

49.2 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.

49.3 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.

**50. Company seals**

50.1 The Company need not have a common seal and pursuant to section 44 of the Act the Company may execute any document by the signature of any two authorised persons.

50.2 If the Company has a common seal it may only be used by the authority of the Directors.

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

50.4 Unless otherwise decided by the Directors, if the Company has a common seal and it is affixed to a document, the document must also be signed by at least one authorised person in the presence of a witness who attests the signature.

50.5 For the purposes of this Article, an authorised person is:

- (a) any Director of the Company; and
- (b) the Company secretary (if any).

**51. Provision for employees on cessation of business**

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

**52. Access to Information**

- 52.1 Except as provided by law or authorised by the Directors or an ordinary resolution of the Company, no person having an interest in the Company is entitled to inspect any of the Company's accounting or other records or documents.
- 52.2 The Company shall provide and instruct its auditors to provide to the Shareholder such information as it may reasonably require for the purpose of preparing and auditing the Shareholder's accounts or for investigating value for money or any other reasonable purpose.
- 52.3 The Company shall provide any member or officer of the Shareholder with such information about the activities of the Company which it may reasonably need for the discharge of its functions.

**53. Secretary**

Subject to the provisions of the Act the secretary, if required, shall be appointed by the Directors for such term, at such remuneration (if not a director) and upon such conditions as the Directors shall think fit and any secretary so appointed may be removed by them.

**54. Local Government**

- 54.1 The Company shall observe all legal requirements imposed on it by virtue of the Shareholder being a Local Authority. In particular (but without limitation) the Company shall:
  - (a) not engage in activities for party political purposes or publish party political materials;
  - (b) comply with the Shareholder's procedure rules in relation to the tendering and letting of contracts.

## Agenda Item 8

54.2 The Company shall observed all legal requirements imposed on it by virtue of it being a controlled company as defined by section 68 of the Local Government and Housing Act 1989 and by virtue of the provisions of the Local Authorities (Companies) Order 1995 and any other statute or regulations made from time to time.

### **55. Amendment of Articles**

The Company shall not without a special resolution:

- (a) amend the memorandum or articles of association of the Company;
- (b) alter any rights or restrictions attaching to any class of share in the capital of the Company;
- (c) change the name of the Company;
- (d) pass any resolution or engage in any other matter which represents a substantial change in the nature of the business of the Company or in the manner in which such business is conducted;
- (e) issue any additional shares.

### **Directors' Indemnity and Insurance**

#### **56. Indemnity**

56.1 Subject to paragraph (2), a relevant Director of the Company or an associated Company may be indemnified out of the Company's assets against:

- (a) 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;
- (b) any liability incurred by that Director in connection with the activities of the Company or an associated Company in its capacity as a trustee of an occupational pension scheme (as defined in section 235(6) of the Act);
- (c) any other liability incurred by that Director as an officer of the Company or an associated Company.

56.2 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.

56.3 In this Article:

- (a) companies are associated if one is a subsidiary of the other or both are subsidiaries of the same body corporate; and
- (b) a “relevant Director” means any Director or former Director of the Company or an associated Company.

**57. Insurance**

57.1 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.

57.2 In this Article:

- (a) a “relevant Director” means any Director or former Director of the Company or an associated Company;
- (b) 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
- (c) companies are associated if one is a subsidiary of the other or both are subsidiaries of the same body corporate.

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**CERTIFICATE OF INCORPORATION  
OF A  
PRIVATE LIMITED COMPANY**

Company Number **9933195**

The Registrar of Companies for England and Wales, hereby certifies that

**QUERCUS 7 LIMITED**

is this day incorporated under the Companies Act 2006 as a private company, that the company is limited by shares, and the situation of its registered office is in England and Wales.

Given at Companies House, Cardiff, on **31st December 2015**.

The above information was communicated by electronic means and authenticated by the Registrar of Companies under section 1115 of the Companies Act 2006



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## **TWO NON-EXECUTIVE DIRECTORS**

### **Quercus 7 Limited**

#### **Payment - Non-Executive Director £X**

Sevenoaks District Council covers almost 142 square miles with nearly 60% of the District being made up of Areas of Outstanding Natural Beauty. There is now an exciting opportunity to be part of Quercus 7 Limited, a generic trading company which will concentrate on property development as its main activity. This new venture is pioneering and aims to increase investment income for Sevenoaks District Council and to make Sevenoaks District Council more self-sufficient, as well as to deliver social outcomes and add financial value to the District.

We are now recruiting two non-executive directors, one of whom may be appointed as Board Chair, who will form part of the Board of Quercus 7 Limited and have responsibility for the governance of this new business opportunity. The core requirements for Board Members are strong entrepreneurial backgrounds, including risk management, and relevant professional experience in property investment and corporate governance.

Quercus 7 Limited is a new company limited by shares with Sevenoaks District Council as its sole shareholder. This is an exciting time to join the Board as the successful candidates will have responsibility for taking forward the next phase of property development projects for the benefit of Quercus 7 Limited and its shareholder, Sevenoaks District Council.

We are looking to recruit a Board that is balanced and comprised of business professionals who have a track record of building commercial value and translating strategic visions into priority investment and ultimately business success.

Further details of each role are contained within the recruitment pack. For additional information, or an informal discussion about any role, please contact [insert name] on [insert contact number].



## TWO NON-EXECUTIVE DIRECTORS

Quercus 7 Limited (the 'Company')

Job Descriptions

January 2016

### Role Profiles

#### Non-Executive Director

<b>Role Summary:</b>
To ensure the success of the Company by maintaining compliance with legal and regulatory obligations and setting and monitoring the strategic direction of the Company. Each Non-Executive Director is expected to contribute to and share responsibility for decision making at Board level.
<b>Main Responsibilities:</b>
To approve ambitious but financially prudent business plans, budgets and accounts.
To monitor organisational performance of the annual business plan, budgets and accounts and to monitor the performance and conduct of management in meeting agreed goals.
To contribute to Board discussion of agenda items and to provide independent

judgement and advice on strategic aims.
To ensure that Company performance is subject to appropriate and effective controls where risk can be assessed and managed.
To ensure that the Company's affairs are conducted lawfully and in accordance with regulatory requirements.
To make sure that all decisions taken by the Board are in the Company's best interests.
Develop a good working relationship with other Board members.
Maintain Company confidentiality.
To represent the Company externally as required; acting as an ambassador for the Company.
<b>Business Skills/Experience:</b>
Board or senior management level experience in a property investment company.
Experience engaging positively and collaboratively in Board discussions.
Knowledge and understanding of complying with corporate governance.
Experience of risk identification and risk management.
Understanding of financial planning, monitoring financial performance and accounting.
Ability to communicate and engage in discussions including listening to and considering the views of other Board members, and accepting challenge of own views.
Communicating with clarity; strong interpersonal skills and negotiation skills.
Ability to critically evaluate information and constructively challenge the Board where required.

## EQUALITIES WORKSHOP

### Legal and Democratic Services Advisory Committee - 26 January 2016

Report of: Chief Executive

Status: For Consideration

Key Decision: No

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**Portfolio Holder** Cllr. Anna Firth

**Contact Officer** Lee Banks (Ext 7161)

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#### **Recommendation to Legal and Democratic Services Advisory Committee:**

To delegate authority to the Portfolio Holder for Legal & Democratic Services to take forward a report on the Councils draft equality commitments based on the work of the Members Workshop on Equalities.

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**Reason for recommendation:** To ensure a report can be taken to Cabinet to consider the Councils equality commitments for 2016 prior to the start of the new financial year.

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#### **Introduction and Background**

- 1 The Council is required to publish its commitments under the Equality Act 2010. The current commitments expire at the end of March 2016 and the council is required to identify what its priorities will be for the coming period.
- 2 To inform this process the Portfolio Holder for Legal & Democratic Services requested that a Members Workshop is held after the meeting of the Legal & Democratic Services Advisory Committee on 26 January 2016. All Council Members have been invited to attend.

#### **Members Workshop**

- 3 The Members Equalities Workshop will provide an opportunity for Members to set out what is important to them and what they would like to see the Council take forward or tackle in relations to equalities in the coming years. These can be objectives that relate to what we do as a community leader, a service provider or as an employer.
- 4 The feedback received from Members is important in ensuring that Officers are asked to deliver actions that matter most and will make a difference to our communities.

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- 5 To ensure that the Council's Equalities Commitments are in place for the new financial year it is necessary to report to Cabinet at their meeting in March 2016. Unfortunately this means that insufficient time exists to bring a report back to the Advisory Committee to feedback on the feedback from the workshop and to set out a draft of the Council's equalities commitments.
- 6 It is therefore recommended that authority is delegated to the Portfolio Holder for Legal & Democratic Services to work with officers to ensure members feedback is properly evaluated and is used to form the basis of the equalities commitments reported to Cabinet at their March meeting.

### **Other Options Considered and/or Rejected**

- 7 It was considered that a report could be brought back to the next meeting of the Advisory Committee, likely to be held in July 2016, before Cabinet receive a report on the Council's equalities commitments. However this would mean the Council did not have its equalities commitments published until September 2016 and would be in breach of requirements of the Council set out in regulations.

### **Key Implications**

#### Financial

- 8 Understanding the needs of people with protected characteristics under the Equality Act (2010) will assist the Council in allocating resources to areas or services where it is considered to be a greater priority.

#### Legal Implications and Risk Assessment Statement

- 9 The Council is required to prepare and publish one or more objectives in regards of its commitment to equality and review these at least every four years. Failure to do so would be a breach of the Council's legal duty.

#### Equality Assessment

- 10 Members are reminded of the requirement, under the Public Sector Equality Duty (section 149 of the Equality Act 2010) to have due regard to (i) eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Equality Act 2010, (ii) advance equality of opportunity between people from different groups, and (iii) foster good relations between people from different groups.
- 11 This report sets out a recommendation for Members to help ensure that the Council adheres to the requirements of the Public Sector Equality Duty

### **Conclusions**

- 12 The Council is required by the Equality Act 2010 to prepare and publish one or more objectives in regards of its commitment to equality and review these at least every four years. A Members Workshop is to be held to ensure



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