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Chairman: Councillor R.V. Blaney
Vice-Chairman: Councillor D.J. Lloyd

Members of the Committee:

Councillor R.J. Jackson
Councillor R.B. Laughton
Councillor A.C. Roberts
Councillor D. Staples
Councillor Mrs A.A. Truswell (Opposition Spokesperson)

Substitute Members

Councillor Mrs C. Brooks
Councillor P.C. Duncan
Councillor T. Wendels
Councillor Mrs Y. Woodhead

MEETING: Policy and Finance Committee

DATE: Thursday, 4th June 2015 at 6.00pm

VENUE: Room G21, Kelham Hall

**You are hereby requested to attend the above Meeting to be held at the time/place
and on the date mentioned above for the purpose of transacting the
business on the Agenda as overleaf.**

If you have any queries please contact Nigel Hill on 01636 655243.

AGENDA

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NEWARK AND SHERWOOD DISTRICT COUNCIL

Minutes of the Meeting of the **POLICY & FINANCE COMMITTEE** held in the Carriage Court, Kelham Hall, Newark on Tuesday 26 March 2015 at 5.30pm.

PRESENT: Councillor R.V. Blaney (Chairman)
Councillor D.J. Lloyd (Vice- Chairman)

Councillors: Mrs T. Gurney, R.B. Laughton, A.C. Roberts, D. Staples and Mrs A.A. Truswell.

ALSO IN ATTENDANCE: Councillors: T.S. Bickley, Mrs I. Brown, Mrs G.E. Dawn, J.E. Hamilton, R.J. Jackson, M. Shaw and R. Shillito.

82. APOLOGIES FOR ABSENCE

There were no apologies for absence.

83. DECLARATIONS OF INTERESTS BY MEMBERS AND OFFICERS AND AS TO THE PARTY WHIP

There were no declarations of interest.

84. DECLARATIONS OF INTENTIONS TO RECORD THE MEETING

The Chairman advised that the proceedings were being audio recorded by the Council.

85. MINUTES FROM THE MEETING HELD ON 25 FEBRUARY 2015

The minutes from the meeting held on Thursday, 25th February 2015 were agreed as a correct record and signed by the Chairman.

86. DEVOLUTION PACKAGE TO NEWARK TOWN COUNCIL

The Committee considered a report of the Deputy Chief Executive which advised Members of responses to public advertisements relating to the disposal of open space in connection with the proposed devolution package to Newark Town Council. As the devolution package from Newark & Sherwood District Council to Newark Town Council involved the transfer of areas of open space from the District to the Town Council, the District Council was required to give public notice of the proposed land disposal. It was noted that the closing date for any representations was 30 March 2015.

Following the first advertisement the Council received a number of enquiries but correspondents were reassured when it was explained that the transfer was from the District to the Town Council and that the proposal was to continue to use the land as open space. A supplementary report advised that two representations had been received in relation to the play area on the Autumn Croft Road Estate. The representations expressed concerns that if the land was sold to the Town Council it could be developed with housing. A reassurance had been sent to those who had lodged the written representations advising them that this was part of a wider

devolution package in which the freehold interest in the land would transfer from the District Council to the Town Council with the Town Council taking on responsibility for its future maintenance, but that the Town Council did not have any current intentions to change the use of the land. In those circumstances it was considered that the concerns expressed had been adequately addressed.

AGREED (unanimously) that delegated authority be given to the Chief Executive, following consultation with the Chairman and Opposition Spokesman of the Policy & Finance Committee, to consider any responses to the public notices regarding the proposed land transfers from Newark and Sherwood District Council to Newark Town Council as part of the devolution package prior to the land transfers being completed.

Reason for Decision

To enable consideration of any responses to the public notices regarding the proposed land transfers from the District Council to Newark Town Council as part of the devolution package.

87. POTTERDYKE REDEVELOPMENT SCHEME

The Committee considered a report of the Deputy Chief Executive concerning the Potterdyke development. Although the Potterdyke Redevelopment Scheme was substantially completed, the element of the scheme comprising the refurbishment of the former Robin Hood Cottages and the construction of retail units along the pedestrian link from the Asda Store to Cartergate remained incomplete.

Nottinghamshire Building Preservation Trust had secured £10,000 Heritage Lottery Funding to explore the feasibility of restoring the former Cottages. It was anticipated that it may take 3 to 4 months for the study to be concluded following which the Nottinghamshire Building Preservation Trust would then require further time to apply for funding for the restoration and renovation of the Cottages should it be considered that they could viably be restored.

Under the terms of the original Development Agreement, Strawsons were required to complete this element of the scheme by November 2015. In light that Strawsons still had until this date to complete the development the Committee were not minded to grant an extension of the timescale for completing the necessary works for a minimum period of 12 months as was recommended in the report.

AGREED (unanimously) that an update report be presented to any scheduled meeting of the Policy and Finance Committee in July 2015.

Reason for Decision

To enable the potential for the Robin Hood Cottages to be restored, to be fully explored.

88. ANNUAL REVIEW OF THE EXPEMPT REPORTS CONSIDERED BY THE POLICY AND FINANCE COMMITTEE

The Committee considered a report of the Deputy Chief Executive which provided Members with a summary of the exempt business taken by the Committee for the period 13 May 2014 to date. The report included opinions from report authors as to if the information contained within the reports should remain exempt.

AGREED (unanimously) that:

- (a) that the report be noted;
- (b) the report concerning Management Roles and Remuneration be released into the public domain; and
- (c) the Director – Customers be requested to further review the status of the report on Leisure Centre Management Commissioning which went to the Committee on 3 July 2014 and be given delegated authority in consultation with the Chairman and Vice – Chairman of the Committee to release it into the public domain if considered appropriate.

Reason for Decision

To advise Members of the exempt business considered by the Policy & Finance Committee for the 2014/15 Municipal Year and to consider if any reports could be released into the public domain.

89. OLLERTON HALL UPDATE

The Director – Communities presented a report which provided an update on progress regarding exercising the option to repurchase Ollerton Hall. The Council decided to exercise its option to buy back Ollerton Hall in June 2011. Despite attempts to negotiate with the owner, it was not possible to agree the re-purchase and in April 2012 the matter was referred to an arbitrator. It was reported that the Arbitrator's decision had now been received. He had found in favour of the Council and had stipulated the purchase price for the property. The report advised that the purchase price should remain confidential given the Council's stated intention previously to dispose of the property on the open market once the buy back from the current owner had been secured / achieved.

AGREED (unanimously) that:

- (a) the progress report be noted; and
- (b) a further report be submitted to the Committee for its consideration once officers have had the opportunity to undertake feasibility work around the options to secure bringing this important listed building back into a good state of repair and use.

Reason for Decision

To keep Members updated on the current situation concerning Ollerton Hall.

90. URGENCY ITEM- SOCIAL MOBILITY FUND

In accordance with Section 100(B)(4)(b) of the Local Government Act 1972, the Chairman agreed to take this urgency item as a late item of business in order to publish the decision taken prior to the next scheduled meeting after May 2015.

The Committee noted the decision to submit a bid to the Department for Communities and Local Government Right to Buy Social Mobility Fund requesting a grant payment of £400,000 in 2015/16 for a local scheme to enable 20 Council house tenants to access home ownership on the open market.

AGREED (unanimously) that the report be noted.

Reason for Decision

To submit the bid prior to the 18 March 2015 deadline.

91. GENERAL FUND BUDGET PERFORMANCE REPORT TO 31 JANUARY 2015

The Assistant Business Manager – Financial Services presented a report which compared the General Fund Policy and Finance Committee net expenditure for the period ending 31 January 2015 with the profiled budget for the period. The appendices to the report detailed performance against budget for the period to 31 January 2015 for those budgets within the remit of the Policy and Finance Committee.

The total for direct service net expenditure showed an under spend of £638,748 against the profiled budget for the period to 31 January 2015. Excluding demand led housing benefit payments which would be offset by grant payment at the end of the financial year, the under spend reduced to £353,978. The detailed performance figures were given in Appendix A to the report and the variations from the profiled budget to 31 January 2015 were detailed.

AGREED (unanimously) that:

- (a) the overall position of the Policy & Finance Committee net expenditure compared to budget at 31 January 2015 be noted; and
- (b) officers continue to look for additional savings throughout the financial year.

Reason for Decision

To advise Members of the draft outturn monitored against service budgets for the period ending 31st January 2015.

92. OVERALL GENERAL FUND BUDGET PERFORMANCE REPORT TO 31 JANUARY 2015

The Assistant Business Manager – Financial Services presented a report which compared the overall General Fund net expenditure for the period ending 31 January 2015 with the profiled budget for the period. The appendices to the report detailed performance against budget for the period to 31st January 2015 for all General Fund service budgets.

The total for direct service net expenditure showed an under spend of £2,456,534 against the profiled budget for the period to 31st January 2015. Officers from Financial Services were working with service managers to ascertain where any further sustainable underspends could be achieved and ensure that these were built into the base budget for future years. The detailed performance figures were given in Appendix A to the report and the variations from the profiled budget to 31st January 2015 were detailed.

AGREED (unanimously) that:

- (a) the overall position of the General Fund net service expenditure compared to budget at 31st January 2015 be noted; and
- (b) officers continue to look for additional sustainable savings which may be built into future years' budgets.

Reason for Decision

To advise Members of the current net expenditure compared to service budgets for the period ending 31st January 2015.

93. FUTURE COUNCIL ACCOMODATION UPDATE

The Director – Customers presented a report which updated Members with regard to the feasibility stage of the Council's new office accommodation in Newark. It was reported that the feasibility study was nearing completion. The costs of this phase had been £58,000, and whilst this was well within the limit previously approved by the Committee, it had resulted in a minor breach of the Council's Contract Procedure Rules which required a tendering process to be undertaken for contracts in excess of £50,000. At the time of market testing, it was considered that the initial feasibility work would not exceed £50,000, so a full tendering process was not undertaken.

The design development of the scheme would continue to progress with William Saunders Partnership up to the proposal being adequately detailed to allow an approach to the market with a view to engaging a main contractor to build the new offices. The proposed procurement route was to follow a single stage Design & Build contract with the design team being novated to the main contractor in keeping with the approach adopted for the construction of the new Leisure Centre. This approach transferred a significant degree of risk to the main contractor. Total design costs were anticipated to fall within the limits approved by the Policy Committee on 5 December 2013.

AGREED (unanimously) that the report be noted.

Reason for Decision

To keep Members updated in respect of the feasibility stage of the Council's new office accommodation.

94. EXCLUSION OF PRESS AND PUBLIC

AGREED (unanimously) that under Section 100(A) of the Local Government Act 1972, the press and public be excluded from the meeting during discussion of the following item of business on the grounds that it involved the likely disclosure of exempt information as defined in Paragraph 3 of Schedule 12A of the Act and that the public interest in maintaining the exemption outweighed the public interest in disclosing the information.

95. FORMER MUNICIPAL BUILDINGS, 20 BALDERTONGATE, NEWARK

The Committee considered the exempt report presented by the Chief Executive in relation to the proposal to dispose of the above property. The report contained a summary of offers received for the property following a further market testing exercise.

(Summary provided in accordance with 100C(2) of the Local Government Act 1972).

Meeting closed at 6.33pm.

Chairman

RECONSTITUTION OF WORKING PARTIES/TASK & FINISH GROUPS

1.0 Purpose of Report

1.1 To consider reconvening the Working Parties/Task & Finish Groups established by the Policy & Finance Committee.

2.0 Background Information

2.1 It is necessary to reconvene the Working Parties / Task & Finish Groups established by the Policy & Finance Committee that are still operational.

2.2 Details of these groups are attached as an Appendix to the report.

2.3 If Policy and Finance determine that the Working Party/Task & Finish Groups should be reconvened the membership of the Groups will require review.

3.0 Local Development Framework Task and Finish Group

3.1 In addition the Policy Committee has previously appointed a member to the Local Development Framework Task & Finish Group and the Committee are invited to appoint a representative in anticipation that the Group will be reconvened by the Economic Development Committee.

4.0 RECOMMENDATIONS that:

- (a) the Committee determine which Working Parties/Task & Finish Groups need to be reconvened and review the membership of those groups as required;**
- (b) the Committee appoint representatives to the reconvened bodies and also one representative to the Local Development Framework Task & Finish Group.**

Reason for Recommendations

To reconvene the appropriate Working Parties/Task & Finish Groups.

Background Papers

Nil.

For further information please contact Nigel Hill on Ext. 5243.

K.H. Cole
Deputy Chief Executive

WORKING PARTIES AND TASK & FINISH GROUPS

APPENDIX

Working Party/Task & Finish Group	Date First Established	Date of Last Meeting/ (Next Scheduled Meeting)	Previous Membership	Remit
Member Development and Training Task Group Kirsty Cole	18 th December 2006 (Policy Overview and Scrutiny Committee) 14 th May 2013 (Council reconvened)	16 th March 2015 <i>(To be arranged)</i>	<ul style="list-style-type: none"> Leaders of the four political groups on the Council 	<ul style="list-style-type: none"> To review the Member Induction Programme To produce a Member Training & Development Strategy for the life of the current Council To consider the feasibility of pursuing the Member Development Charter
Non Domestic Discretionary Rate Relief Review Panel David Dickinson	7 th June 2007 (Cabinet) 30 th June 2011 (Cabinet reconvened) 14 th May 2013 (Council reconvened)	30 th October 2012 <i>(when required)</i>	<ul style="list-style-type: none"> Panel of three Members drawn from Policy Committee <p>Note: Local Ward Members to be invited to attend if considered appropriate</p>	<ul style="list-style-type: none"> To hear appeals in respect of applications for Discretionary NNDR Relief
Strategic Housing Liaison Panel Karen White	4 th July 2013 (Policy Committee) 3 rd July 2014 (Policy reconvened)	9 th March 2015 (15 th June 2015)	<ul style="list-style-type: none"> Chairman, Vice-Chairman and Opposition Spokesman (Policy Committee) Chairman & Opposition Spokesman (Homes & Communities Committee) 	<ul style="list-style-type: none"> To strengthen the relationship, joint working and common purpose and understanding between the Council and its housing Company To discuss the Council's longer term strategic view and direction for the Company; To develop the forward Delivery Plan; Key Performance Indicators and outcomes; To review progress against the Delivery Plan at a strategic level.
Future Council Accommodation Task and Finish Group Andrew Muter	3 rd July 2014 (Policy Committee)	19 th March 2015 <i>(To be arranged)</i>	<ul style="list-style-type: none"> All Members of Policy Committee Leader of the Independent Group Leader of the Liberal Democrat Group 	<ul style="list-style-type: none"> To make recommendations in relation to the work to relocate the Council offices.

CORPORATE ENFORCEMENT POLICY

1.0 Purpose of Report

- 1.1 To advise the Committee of the review and updating of the Council's Corporate Enforcement Policy and to seek approval for the adoption of the 2015 policy.

2.0 Background Information

- 2.1 The Council adopted its current Corporate Enforcement Policy in 2007. Whilst it has been subject to minor reviews and updating since its adoption it has never, until now been subject to a full review and update.
- 2.2 Business Units within the Council that are involved in regulation and enforcement are diverse but they share a common primary purpose – to regulate for the protection of the vulnerable, the environment, social or other objective. The Enforcement Policy does not detract from these core purposes but seeks to promote proportionate, consistent and targeted regulatory activity through the development of transparent and effective dialogue and understanding between regulators and those they regulate.
- 2.3 In developing the policy the impact of regulation has been considered with particular reference to how it needs to strike a balance between becoming a regulatory burden by over zealous enforcement and how it can support economic growth for compliant business.
- 2.4 The policy has been developed within the Council by a small working group of representatives from Business Units that undertake regulatory activity. It has been designed to provide a framework within which each Business Unit can make informed choices about appropriate enforcement based on the circumstances of each case and within the legislative framework available.
- 2.5 The policy covers the use of warning letters through a hierarchy of options to prosecution and injunction ensuring that proportionate and effective approaches are used at all stages and as such provides a very useful mechanism to demonstrate that consideration has been given to a range of options.
- 2.6 A copy of the Draft Policy is attached as **Appendix One**.

3.0 Proposals

- 3.1 The Corporate Enforcement Policy has been developed to provide framework in which council regulators can operate effectively but also to demonstrate to those being enforced against that appropriate and proportionate enforcement decisions are being taken in a consistent and transparent way.
- 3.2 It is proposed therefore Members are asked to consider the draft Corporate Enforcement Policy and to adopt this as Council policy.

4.0 Equalities Implications

5.1 It is not considered that this policy has any adverse equalities impacts. The nature of the policy is such that it seeks to provide a framework in which clear and open decisions on enforcement matters can be taken.

5.0 RECOMMENDATIONS that:

- a) the Corporate enforcement Policy be adopted; and**
- b) the policy be reviewed in three years' time, or sooner if there is significant change in any regulatory provisions impacting on the policy.**

Reason for Recommendations

To provide a reviewed and updated Corporate Enforcement Policy for the Council.

Background Papers

Nil

For further information please contact Alan Batty - Business Manager – Environmental Health on 01636 655467.

Karen White
Director – Safety

**NEWARK AND SHERWOOD
DISTRICT COUNCIL**

**CORPORATE ENFORCEMENT
POLICY**

May 2015

CORPORATE ENFORCEMENT POLICY

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PART ONE - GENERAL PRINCIPLES

1.0 INTRODUCTION

- 1.1 The Council is responsible for ensuring that a wide range of legislation is being properly complied with, to protect the rights and safety of the District's residents, workers, visitors and the local environment.

2.0 AIMS OF THE POLICY

- 2.1 Compliance investigations and enforcement decisions will be carried out under the following legislation and in accordance with any associated guidance or codes of practice:

- the Police and Criminal Evidence Act 1984
- the Criminal Procedure and Investigations Act 1996
- the Regulation of Investigatory Powers Act 2000
- the Criminal Justice and Police Act 2001
- the Human Rights Act 1998

These Acts and associated guidance control how evidence is collected and used and give a range of protections to citizens and potential defendants.

Our authorised officers will also comply with the requirements of the particular legislation under which they are acting, and with any associated guidance or codes of practice in particular those set out in Appendix 1.

- 2.2 Delivering Effective Enforcement

Many of the Council's activities are directed at ensuring that all sectors of society within the Newark & Sherwood District avoid contraventions of the law. The Council will consider the impact of its regulatory intervention by adopting a positive, proactive and balanced approach to ensure compliance. However, it is inevitable that offences will occur and the purpose of this policy is to ensure that they are resolved in a consistent, balanced and fair manner. This will be done through a combination of advice, information, help and support for businesses which will reflect the individual business type and needs. Interventions will be evidence led, targeted and proportionate to the risk identified.

- 2.3 Application of Policy

The application of this policy takes into account the need to support legitimate businesses and activities undertaken by individuals through a programme of effective advice and information in the first instance to help businesses and individuals get things right the first time, however there is an expectation that businesses and individuals will work with officers to prevent contraventions and to resolve breaches. This document contains the detailed statement of policy in respect of the enforcement of legislation by the officers of Newark and Sherwood District Council and the framework upon which enforcement action is based.

- 2.4 This is a generic policy covering the whole of the Council's enforcement activities and that individual service areas will have specific procedures and guidance appropriate to their individual functions. In certain circumstances services will be required to comply with specific legislative requirements and any such requirements would override any provisions contained in this corporate policy. The Business Units covered by this policy are:

Planning
Environmental Health and Licensing
Community Safety
Revenues and Benefits
Housing Options
Building Control
Waste Management

3.0 GENERAL STATEMENT

- 3.1 In seeking to secure the highest possible level of regulatory compliance whilst conforming to the spirit of the Human Rights Act 1998, the Cabinet Office Enforcement Concordat, the Regulator's Compliance Code and the Code for Crown Prosecutors, the principal enforcement activities of the Council are directed towards avoidance of infringements. It is nevertheless inevitable that offences will occur and the purpose of this policy is to ensure that they are resolved in a consistent, transparent, balanced and fair manner.
- 3.2 All enforcement action is primarily based upon assessment of risk to public health and safety, impact of the activities or behaviour on the general public, economic well-being or the environment.
- 3.3 The Council affirms the importance of achieving consistent, balanced and fair enforcement by setting out minimum standards within this policy to be applied by officers of the Council in relevant circumstances. To achieve this, regard will be had to guidance contained in Statutory Codes of Practice and other nationally recognised courses. Specific procedures and guidance will be prepared and reviewed as necessary by the appropriate Business Manager to enable the realisation and implementation of the Council's priorities having regard to national guidelines. The Council will endeavour to deliver a consistent approach in the use of enforcement powers, tools and action, however, practically this is not always simple. There are many variables including the degree of risk, co-operation of persons involved, any history of breaches, previous enforcement action, seriousness of breach and any potential or actual harm arising from the breach. Therefore this policy will not be over prescriptive as there needs to be an element of flexibility in individual officers' judgment.
- 3.4 To protect privacy and the rights of individuals all surveillance will be carried out overtly unless officers happen to come across a potential enforcement situation. Where covert surveillance is essential and where the Regulation of Investigatory Powers Act 2000 allows, the surveillance will be authorised prior to commencement in compliance with the Council's guidelines and procedures.

- 3.5 Any departure from the Council's enforcement policy and the procedures which sit beneath it must be exceptional, capable of justification and be fully considered by the appropriate officer before the decision is taken. The decision shall be fully recorded; unless it is considered there is significant risk to the public or the Council in delaying the decision.
- 3.6 The Council will ensure that all authorised officers are fully acquainted with requirements of this policy and appropriate training will be given.
- 3.7 The Council will provide advice and assistance as required to persons subject to enforcement action to keep them informed of what is expected and the procedures that may be followed to avoid misunderstandings and ensure transparency of all enforcement action. Distinctions between statutory requirements and advice or guidance regarding what is good practice will be made clear.
- 3.8 This policy will be consulted on to take into account the views of all partners, stakeholders and the local community as a whole.
- 3.9 This document and associated procedures derived from it will be subject to regular review.
- 3.10 This policy was approved by **Newark & Sherwood District Council on xxx 2015** and can be accessed via the Council's website using the following link: www.newark-sherwooddc.gov.uk
- 3.11 **Review of the Policy**
This policy document will be reviewed as appropriate in response to changes in the law and in guidance and, in any event, every 3 years. Where the policy can be improved by being amended it will be amended. Any changes which significantly affect the Council's approach to enforcement and prosecution will be taken to the Council's Policy and Finance Committee for approval.

PART TWO – ENFORCEMENT SANCTIONS

4.0 INVESTIGATION

- 4.1 Concerns over breaches of legislation can be made to the Council via the Customer Services Team on 01636 650000 or by registering a complaint on the Council's website using the following link:
<http://www.newark-sherwooddc.gov.uk/transactions/report/> or by e-mailing customerservices@nsdc.info
- 4.2 The Council will investigate complaints made and will use a range of methods for collecting evidence including but not limited to visits to sites or premises, historical data, information sharing with other agencies, taking photos or videos (if appropriate), use of social media sites and the internet (if appropriate), information provided within Requisitions for Information and reporting forms.
- 4.3 Failure to respond to statutory Requisitions for Information is a criminal offence and could result in prosecution.
- 4.4 The Council will consider inviting individuals for an interview under caution ("IUC"). An IUC is a formal interview, which is usually tape recorded to ensure that an accurate record is taken. It is conducted under The Police & Criminal Evidence Act 1984, which is the rules of how the Council must treat individuals during the interview. An interview under caution cannot be conducted by telephone or by letter. The interview under caution is to enable the Council to establish the facts and is also an opportunity for a different version of events to be given. Those being interviewed will be cautioned in the same way that the Police do, which is:
- "You do not have to say anything but it may harm your defence if you do not mention when questioned something which you later rely on in Court. Anything you do say may be given in evidence."
- 4.5 The caution means that a person does not have to answer any of the questions and can remain silent or say 'no comment'. However if the matter proceeded to Court and an answer is given at Court that could have been given at the interview then the Court will wonder why and will draw its own conclusions as to why an answer was not given. The final part of the caution means that anything you do said in the interview can be repeated. Individuals have a right to have legal representation at interview or someone supporting them and can leave at any point if they want to.
- 4.6 The Council will keep all parties involved in a complaint up to date with steps taken or when decisions are made particularly when formal notices are served and court hearings are listed. This may be done by way of email, text, telephone, meeting or letter or by way of a preferred method identified by an individual.

5.0 ENFORCEMENT OPTIONS

- 5.1 The Council's enforcement officers will take a staged approach to the enforcement of legislation. No enforcement action will be taken against any individual or business unless the investigating officer is satisfied that a breach is being or has been committed under a relevant piece of legislation.
- 5.2 Enforcement action may be taken as the result of the investigation of a complaint, following a routine inspection or some other activity. In cases where a witness is essential to support the enforcement process, the Council will not follow up complaints from an anonymous source, except in the case of anonymous calls to our Benefit Fraud telephone hotline or which supports complaints the Council has already received or where complainants are too frightened or intimidated to be a witness.
- 5.3 Where required, the Council will consult with statutory bodies as to the enforcement methods being considered.
- 5.4 Enforcement decisions must be balanced and fair. They must be consistent and taken in the context of ensuring that individuals, the community and the environment are adequately protected. The criteria which should be considered when deciding whether enforcement action is appropriate are:
- Whether an offence has been committed
 - Whether the offence has caused harm or is likely to cause harm
 - The seriousness of the offence
 - The history of the activity
 - Confidence in achieving compliance and previous compliance history
 - Consequences of non-compliance
 - The likely effectiveness of the various enforcement options
 - The existence of any guidance in the form of codes of practice, government circulars etc
 - Expediency
 - The irreversibility of the offence e.g. in planning breaches
 - The alleged offence causes public concern and it is desirable to reassure the public and to deter other offenders
 - Whether evidence of the offence/ breach is available.
 - Any obstruction on the part of the offender
 - Statutory guidance
 - Codes of practice
 - Any legal advice
 - A person's age in relation to young people
- 5.5 These criteria are not exhaustive and those that apply will depend on the particular circumstances in each case. This does not mean that all factors must be in favour of enforcement action rather that, on balance, the preponderance is in favour.
- 5.6 Once these criteria have been considered, a number of options for dealing with the situation present themselves. These are:

- To take no action
- To take informal action to provide advice and guidance
- To issue a fixed penalty notice
- To serve a formal notice
- To make a statutory Order
- Seizure of goods/equipment
- Works in default
- To suspend, revoke or refuse to renew a licence
- To prosecute or to apply for a Court Order (including joint prosecutions) and then follow the options allowed by the relevant legislation
- To offer an Administrative Penalty (including joint Administrative Penalties)
- To issue a simple caution (including joint cautions)
- Deductions from ongoing benefits or other state benefits
- Proceeds of Crime Applications
- Injunctive and other civil sanctions
- To instruct Enforcement Agents

5.7 The order in which the enforcement options are listed above is not necessarily in absolute order of escalating seriousness relative to each other. The Council reserves the right to escalate the level of enforcement action, having regard to the criteria in 5.4 of this policy. In the spirit of taking a staged approach to enforcement, in the first instance the individual or business should be given the opportunity to discuss and remedy problems unless immediate action is required.

5.8 In certain circumstances, a combination of the above options may be relevant as a means of dealing with the offence. Consideration of each of these options should be made in accordance with 5.1 to 5.5.

6.0 NO ACTION

6.1 There will be instances when no action is taken by the Authority following the investigation of a complaint or the carrying out of an inspection. The most likely reason for this will be that following the investigation of complaints it is found that no offence has been committed. However there are other instances where no action may be taken, these are:

- Where the offence is not causing harm or it is not expedient to take action;
- Where the cost of compliance to the offender outweighs the impact of the contravention on the community;
- Where the cost of taking action to the Council outweighs the impact of the offence on the community;
- Formal action would be inappropriate in circumstances such as where a trader has ceased to trade, or the offender is elderly or frail or where formal action could seriously damage their wellbeing.

- 6.2 Inevitably there will be occasions when an individual, group, business or organisation is aggrieved by a decision taken following consideration of this policy. Where this is the case they will be offered the opportunity to discuss the matter with the relevant Business Manager. If the allegation is that the decision is contrary to this policy, that allegation will be tested. Where a decision is in respect of compliance with the policy the rationale behind it will be explained to the aggrieved party. Where a decision is found not to be in compliance with the policy without good reason it should be reconsidered. This is without prejudice to any formal appeals mechanism or to the Council's formal complaints procedure.
- 6.3 Any decision not to take action will be communicated to all the parties involved in the complaint within 10 working days of that decision being made.

7.0 INFORMAL ACTION AND ADVICE

- 7.1 Informal action will be taken when the offence being committed is not serious enough to warrant formal action or where the investigating officer has good reason to believe that informal action will be successful. The factors that will be considered are:

- Previous history of compliance
- Confidence in the individual or management
- The risk of none compliance

- 7.2 When an informal approach is used to secure compliance with legislation, confirmation of what action is required will be confirmed in writing within 10 working days of the decision being taken to take informal action. All correspondence will clearly differentiate between legal requirements and recommendations of good practice and will indicate the laws that are being contravened and the measures that will achieve compliance. Failure to comply could result in an escalation of enforcement action. The local authority will follow up on any advice and guidance given to ensure that there is full compliance.

- 7.3 Where breach is as a result of a disability, the Council will consider alternative measures available. This does not preclude the Council from taking appropriate enforcement action but the Council will ensure any such action is taken in accordance with relevant legislation and particularly the Equality Act 2010.

8.0 ISSUE OF A FIXED PENALTY NOTICE

- 8.1 Certain offences and behaviours are subject to fixed penalty notices where prescribed by legislation. Fixed penalties provide the Council with an effective and visible way of responding to low level areas of none compliance or unacceptable behaviour. Central Government encourages their use by local authorities and other agencies including parish councils.
- 8.2 The use of fixed penalty notices should only be used for the more minor offences, breaches of statutory Orders or Notices. Payment will be required within the specified period as set out on the notice.

8.3 If someone is found to be a repeat offender, and has been issued with a fixed penalty notice on more than one occasion, it can be argued that the sanction of a fixed penalty notice has clearly failed to change that person's behavior. In this instance, to continue to issue fixed penalty notices is futile and as a result consideration will be given to taking legal action in the courts.

8.4 Where there is a failure to accept a fixed penalty notice, the Council will consider escalating the enforcement action which would include the possibility of a prosecution for the original offence under the primary legislation. The Council may also consider civil action to recover the debt owed. Failure to pay a fixed penalty notice is a material consideration for the purposes of deciding whether a prosecution will be taken or civil debt recovery is commenced.

9.0 FORMAL NOTICES AND ORDERS

9.1 Formal Notices and Orders will be considered where one or more of the following criteria apply:

- There is a statutory duty to do so;
- There are contraventions of legislation;
- There is a lack of confidence in the proprietor or business to respond to an informal approach;
- Where informal action has not been complied with;
- There is a history of non-compliance;
- Standards are generally poor with little management awareness of statutory requirements;
- The consequences of non-compliance could be potentially serious to public health, public safety or to the environment or cause public nuisance or be irreversible; or
- Where, in addition, to prosecution, measures need to be taken to remedy conditions that are serious, deteriorating or where the service of a notice is needed to support a prosecution.
- Where the notice or order is required prior to court action being taken

9.2 Formal Notices will be served within 10 working days of the decision to serve them being taken (subject to confirmation of ownership of land and/or following receipt of a completed Requisition for Information or as prescribed within legislation). All notices served will include details of any relevant Appeals Procedures or alternatively where such information can be found. The Council will where possible aim to hand deliver formal notices, however service will be satisfied if posted first class by Royal Mail.

9.3 Failure to comply with a formal notice will, in general, result in prosecution and/or works in default and/or further formal action where appropriate unless there is a good reason not to do so.

9.4 In the event of full compliance with a formal notice, a letter will be sent confirming the same within 10 working days of satisfactory evidence of compliance.

9.5 The Council will consult with relevant statutory bodies when considering making an Order, taking into consideration any relevant representations which may be made.

9.6 Failure to comply with the provisions as set out in the Order may result in the Council considering further Court action.

10.0 SEIZURE OF GOODS OR EQUIPMENT

10.1 Certain legislation enables authorised Officer's to seize goods, equipment or documents for example unsafe food, sound equipment which is being used to cause a statutory nuisance, unsafe products or any goods which might be required as evidence for possible future court proceedings. When goods are seized the Council will issue a receipt to the owner or person responsible. Information will be provided by the Council (where appropriate) as to how goods seized, can be recovered. The Council will in certain circumstances apply for an Order from the Court to permanently seize and dispose of the items recovered.

11.0 WORKS IN DEFAULT

11.1 Works in default are works which have been the subject of a legal notice served on an individual or company. If the notice expires and these works have not been carried out the Council may carry them out in default of the business or individual on which the notice was served. Where legislation allows, the Council will seek to recover the cost the Council has incurred in carrying out the work. In order to protect public funds a land charge will be placed on property where legislation allows or alternative recovery methods may be undertaken including those remedies through the County Court.

12.0 SUSPENSION, REVOCATION OR REFUSAL TO RENEW A LICENCE

12.1 These steps would be taken as a result of failure to meet requirements in connection with continuing or renewal of, a licence. This could follow receipt of a complaint, the result of a routine inspection, or follow the service of a formal notice. Such a failure must be serious enough to justify these actions.

13.0 PROSECUTION

13.1 The Council recognises that the decision to prosecute is serious and could have far reaching consequences for the offender and/or a business.

13.2 The decision to propose a prosecution will normally be taken by the appropriate Business Manager or Director. There are specific exceptions to this principle. For instance, officers authorised under the Health and Safety at Work Act have the authority to take a decision to commence legal proceedings for offences committed under that Act or under any subordinate legislation. Where the decision to propose a prosecution is delegated to officers rather than a committee but there are significant financial or policy implications, the matter may be referred to the relevant Committee for consultation prior to a decision to be taken. The following criteria will be considered in deciding if prosecution should be considered:

- A flagrant breach of the law such that the safety or well-being of an individual, the community or the environment is or has been put at risk or irreversible damage has been caused;
- The integrity of the licensing framework is threatened;
- The alleged offence involves a failure by the suspected offender to correct an identified potential risk, having been given a reasonable opportunity to comply with the lawful requirements of an authorised officer;
- The alleged offence involves a failure, in full or in part, to comply with the requirements of a formal notice;
- There is a history of similar offences;
- The alleged offence causes public concern and it is desirable to reassure the public and to deter other offenders;
- Where an authorised officer has been intentionally obstructed in the course of his or her duties;
- A formal caution or Administrative Penalty has been offered and refused.

13.3 All relevant evidence and information will be considered before deciding to request legal proceedings in order to enable a consistent, fair and objective decision to be made. Regard shall be had to the guidance contained in the Code for Crown Prosecutors.

13.4 Once the decision has been made to request legal proceedings, the relevant paperwork will normally be forwarded to the Council's Legal Officers within 20 working days of that decision or, in the case of joint prosecutions for housing and council tax benefit offences, the relevant paperwork will be forwarded to the Solicitors Branch of the Department for Works and Pensions. Legal Officers will draft and issue the summons, normally within 20 working days of receiving full instructions. These timescales maybe subject to change depending on the complexity of each case and the requirement to collect sufficient evidence.

13.5 The Council's prosecutor will consider two tests as set out by the Code for Crown Prosecutors:

Is there enough evidence against the Defendant? When deciding whether there is enough evidence to prosecute, the prosecutor must consider what evidence can be used and is reliable. The prosecutor must be satisfied there is enough evidence to provide a "realistic prospect of conviction" against each defendant. This is an objective test. It means that a jury or magistrates' bench, properly directed in accordance with the law, is more likely than not to convict the defendant of the charge alleged.

Is it in the public interest for the Council to bring the prosecution? The public interest test involves a number of factors taken together which are for or against prosecution, for example, "for" can be whether a conviction is likely to result in a significant sentence, or whether it is a repeated offence and "against" could be whether the offender is elderly or vulnerable. Prosecution will usually happen unless the public interest factors against prosecution clearly outweigh those in favour of prosecution.

13.6 The following factors will also be taken into consideration when considering the public interest test:

- The likely sentence if convicted
- Previous convictions and conduct of the Defendant
- Whether there are grounds for believing the offence is likely to be repeated
- The prevalence of the offence in the area
- Whether the offence was committed as a genuine mistake or misunderstanding
- Any delay between the offence taking place and the date of trial
- The likely effect of the prosecution will have on the Defendant
- Whether the Defendant has put right the loss or harm accused

13.7 Whilst, as outlined, these tests apply when considering prosecution, it is important that consideration should first be given to the evidential test before taking formal enforcement action of any kind.

13.8 Deciding on the matter of public interest requires careful consideration of each of the factors involved. For each case these factors will have to be considered separately and given appropriate weight. A decision will then be taken in terms of the case as a whole.

A copy of the Code for Crown Prosecutors can be obtained from:

http://www.cps.gov.uk/publications/code_for_crown_prosecutors/introduction.html

14.0 PROSECUTION WITHOUT WARNING

14.1 As a general rule, a person or business will be given a reasonable opportunity to comply with the law, although in some circumstances, prosecution may be undertaken without prior communication or contact, e.g.

- The contravention is a particularly serious one
- There has been a particularly blatant disregard of the law
- A statutory notice has previously been issued for a similar offence

15.0 ADMINISTRATIVE PENALTY

15.1 Where an allegation of Housing/Council Tax Support fraud has been investigated and officers are satisfied that an offence has been committed, it may, dependant on the severity of the offence and other factors of the case, be considered more appropriate to give the offender opportunity to pay an Administrative Penalty instead of prosecution.

15.2 The Administrative Penalty is calculated as 30% of the amount overpaid. If the offer is not accepted, or is refused after initial acceptance, the case will generally be prepared for prosecution. In all cases the Council will pursue full repayment of any benefit deemed to have been overpaid and recoverable in addition to any Administrative Penalty.

16.0 SIMPLE CAUTIONS

- 16.1 Where appropriate, a caution may be issued as an alternative to prosecution (the offender being over the age of 18 years). Cautions will be issued in order to deal quickly and simply with less serious offences, to divert less serious offences away from the courts; or to reduce the chance of repeat offences.
- 16.2 To safeguard the offender's interests the following conditions must be fulfilled before a caution is administered:
- Evidence of the suspected offender's guilt sufficient to offer a realistic prospect of conviction,
 - The suspected offender must admit the offence; and the suspected offender must understand the significance of a formal caution and give an informed consent to being cautioned.
- 16.3 No pressure should be applied to a person to accept a caution.
- 16.4 Government guidance will be taken into account when issuing a simple caution which can be found at:
<https://www.justice.gov.uk/.../adult-simple-caution-guidance>
- 16.5 As a general rule, a caution will not be considered in the case of a second or subsequent offence.
- 16.6 The offer of a caution will be made within 10 working days of the decision to issue one being taken. The caution will then be issued within 20 working days of the offer being accepted. Should a person offered a caution refuse to accept it then such failure will be a material consideration when deciding whether the offender should be prosecuted or not.

17.0 DEDUCTIONS FROM ONGOING BENEFITS OR OTHER STATE BENEFITS

- 17.1 The Council treats the recovery of overpayments as a serious matter and will pursue full repayment of any benefit deemed to have been overpaid and recoverable. However each case is considered individually and on its own merits.
- 17.2 If the claimant is still in receipt of benefit then the overpayment will normally be recovered from ongoing entitlement at a weekly rate set out within the Housing Benefit Regulations 2006. The Council will have regard to any special health or financial circumstances of the claimant (that it is aware of) before deciding the level of deduction, or when to commence the deductions, to avoid causing undue hardship to the claimant or their dependants.
- 17.3 Where the claimant is no longer in receipt of housing benefit, and /or has moved away from the area, and there is evidence to indicate that the claimant is in receipt of other state benefits, the Council will consider requesting the Department for Works and Pensions to make deductions from those benefits towards the overpayment.

18.0 PROCEEDS OF CRIME APPLICATIONS

- 18.1 The Council either through its own enforcement officers or in cooperation with the police may make an application under the Proceeds of Crime Act 2002 to restrain and/or confiscate the assets of an offender and/or seize cash. The purpose of any such proceedings is to recover the financial benefit that the offender has gained from the criminal conduct.

19.0 ENFORCEMENT AGENTS

- 19.1 The Council will instruct Enforcement Agents to recover monies and sums due to the Council and to enforce its common law powers. The Council will keep a record of such instructions and the reasons why such a service is required.

20.0 INJUNCTIVE AND OTHER CIVIL SANCTIONS

- 20.1 Injunction applications will be made in accordance with relevant legislation. Where offenders are repeatedly found guilty of similar offences or where it is considered that injunctive action is the most appropriate course of enforcement and to limit a type of behaviour. In cases involving anti-social behaviour, where early and informal intervention has been used and failed or is not appropriate, a civil injunction will be sought to include prohibitive and positive requirements. Injunctions will also be considered where an individual is entering Council land without its consent particularly where violent or threatening behaviour has been used. Injunctions may also be used to exclude people from specified locations (including their normal residence) and a power of arrest if there is use or threatened use of violence or there is a significant risk of harm. Injunction applications may be made without notice to the individual depending on the circumstances of the case and taking into account the statutory criteria.
- 20.2 Where the Council has served the required statutory notices, to may look to repossess premises (commercial and non-secure accommodation) through the Court, where the individual who had a right to operate or reside within it no longer has that right. The Council will request a money judgment in respect of the cost it has incurred.
- 20.3 The Council will seek to recover money owed to it by businesses and individuals by using Enforcement Agents as set out in paragraph 15 above or through the County Court. A letter before action will be sent within 10 days of making the decision to take action through the County Court.
- 20.4 Where a money judgment has been ordered by the Court, the Council will seek to enforce such an order through the various enforcement options available and may include an application to force the sale of that individual's property if a charging order is obtained. The Council may also seek to transfer the judgment to the High Court and seek to recover monies owed by instructing a High Court Enforcement Officer.

21.0 WARRANT APPLICATIONS

- 21.1 If an officer needs to enter and search premises, an application for a warrant will be made at the Magistrates Court if voluntary entry is not provided. Such applications are usually made without notice to the person concerned but only after reasonable efforts have been taken to secure peaceful entry.

PART THREE – ENFORCEMENT PRINCIPLES

22.0 PRINCIPLES OF ENFORCEMENT

- 22.1 The Council believes in firm but fair regulation. This policy is underpinned by the principles of openness about how the Council operates consistency of approach and proportionality in the application of the law.
- 22.2 Transparency
Openness is important in maintaining public confidence in the Council's ability to regulate. It means helping all stakeholders to understand what is expected of them and what they should expect from the Council. It also means making it clear why an officer intends to take or has taken enforcement action.
- 22.3 The Council will set about its enforcement work in as open a way as possible. It will make clear to anyone who may be affected by its enforcement actions what the results of those actions may be. The Council will strive to ensure that all stakeholders have a say in the way in which work is done.
- 22.4 The District Council will discuss any issues, either general or in relation specific compliance failures or problems with anyone experiencing difficulties. Subject to the need to protect the safety of any officers concerned, the Council will ensure that people know who they are dealing with by quoting the name and contact number of the officer dealing with any enforcement matter on all correspondence or by giving those details at the beginning of a telephone conversation.
- 22.5 Consistent but Flexible
The Council aims to achieve consistency in advice tendered, the response to complaints and other incidents, the use of powers and decisions whether to prosecute. This policy document will inform that process.
- 22.6 The Council will not commit itself to following a certain course of action in any particular situation. The Council recognises that every situation will have its own particular circumstances and the correct course of action can only be arrived at following full and careful consideration of all these facts and circumstances. Officers will need to use professional judgement in order to determine the correct course of action. These circumstances include, but are not limited to the criteria set out in this policy. The points for consideration against each of the enforcement options and the principles of openness, consistency and proportionality will also inform the decision making process. Through a process of peer review and inter-authority auditing we will promote the development of these decision making skills.

22.7 Proportionality
Any action taken by the Council will be proportionate to the risks posed and to the seriousness of any breaches of the law.

23.0 LIAISON

23.1 The Council will ensure that liaison between Council services is co-ordinated and effective enforcement is carried out where the matter is related to more than one of the Council's services.

23.2 The Council will liaise with other local authorities, agencies and organisations where it is appropriate and to maximise the effectiveness of any enforcement. This may be where an enforcement matter extends beyond the District's boundary or where the Council shares responsibility with another organisation.

23.3 External agencies the Council works with include but are not limited to the following:

- Nottinghamshire Police
- Environment Agency
- Health and Safety Executive
- Food Standards Agency
- Gambling Commission
- Nottinghamshire Fire and Rescue Service
- HM Revenue and Customs
- Department of Work and Pensions
- DEFRA
- Office of Fair Trading
- National Crime Agency
- Other Local Authorities

23.4 Primary Authority (PA)

Primary Authority allows businesses to be involved in their own regulation. It enables them to form a statutory partnership with one local authority or fire and rescue authority, which then provides robust and reliable advice for other local regulators to take into account when carrying out inspections or addressing non-compliance. The aim is to ensure that local regulation is consistent at a national level and sufficiently flexible to address local circumstances.

23.5 The Register of Primary Authorities will be used in all circumstances to ensure that effective liaison and communication takes place between us, the Business involved and the Primary Authority for that business. If an Inspection Plan produced as part of the PA agreement requires specific feedback to the primary authority after an inspection, it will be provided.

24.0 INFORMATION AND CONSULTATION

24.1 The Council will strive to help individuals and organisations to comply with the law wherever possible, especially individuals and small and medium sized businesses. We will seek to do this by offering advice and information translated into foreign languages as and when appropriate. Any letter relating to enforcement will include

an offer to discuss the matter further if the recipient so wishes. Where information and advice leaflets or a digest of the law or the Council's enforcement procedures are available, we will make these accessible to people or businesses which may be affected by the Council's enforcement activities. We will seek to increase the range of this sort of literature so that advice and information is available to everyone having dealings with the Council in its role as an enforcer. Much of this information is available of the Council's web site. <http://www.newark-sherwooddc.gov.uk/>

24.2 The District Council will publicise this enforcement policy in order to ensure that as many stakeholders as possible are aware of it. This publicity will take the form of abstracts of the policy being printed and distributed, the policy being posted on the Council's web site and groups representing interested parties being made aware of it.

25.0 SPECIAL INTERESTS OF STAKEHOLDERS

25.1 The District Council will attempt to take account of any special needs that stakeholders in its services may have. This includes, but not exclusively:

- Making inspection visits outside of normal office hours to businesses which do not trade within those hours e.g. restaurants, takeaways, nightclubs, etc;
- Providing an out of hours emergency telephone number on which complaints can be registered at any time of the day or night;
- Investigating complaints outside of normal office hours
- Providing advice and information on enforcement related matters in languages other than English.

PART FOUR – MANAGING THE ENFORCEMENT ROLE

26.0 TRAINING AND APPOINTMENT OF OFFICERS

- 26.1 All officers undertaking enforcement duties will be suitably trained and qualified in order to ensure that they are fully competent to carry out their enforcement activities.
- 26.2 All officers will be authorised by the Council to exercise powers under specific statutes and subordinate legislation. The level of authorisation for each officer will be determined by their qualifications, experience and competence having regard to any relevant national guidelines. It is considered appropriate that the level of authorisation is reviewed annually during the corporate appraisal process. Authorisations will be in writing and in a form which can be shown on request.
- 26.3 The District Council supports the principle of continuing professional development and will ensure that officers are given additional in-post training to maintain up-to-date knowledge and skills.

27.0 MANAGEMENT SYSTEMS

- 27.1 In order to ensure consistency of practice and compliance with legal requirements and, where appropriate, Statutory Codes of Practice, management control measures are operated. This is based on an appropriate level of delegation to relevant officers. These are as follows:
- All correspondence is signed by an appropriately qualified and authorised officer and checked by his/her line manager before despatch.
 - All prosecutions and formal cautions are agreed in line with the Council's Scheme of Delegation.
<http://www.newark-sherwooddc.gov.uk/constitution/>
 - Practical issues are regularly and openly discussed at team meetings.
 - Shadowing of officers where necessary.
 - Training requirements are identified during the Employee Appraisal Process.
 - Consistency exercises are a routine part of training
- 27.2 The Council will maintain management systems to monitor the quality and nature of enforcement actions undertaken so as to ensure, as far as is reasonably practicable, a uniform and consistent approach, which follows local or national guidance if mandatory.

28.0 EQUALITIES

- 28.1 Equality issues have been considered when drawing up this policy. The application of this Enforcement Policy will be in accordance with the Council's Race, Disability and Gender Equality Schemes and the Equality and Diversity Action Plan. The use of an impact needs assessments process will inform service delivery under this Policy and will be subject to ongoing monitoring during the life of this Policy within the framework of the applicable legislation to each enforcement issue.

29.0 DATA PROTECTION

- 29.1 The Council needs to hold and process personal information so that it may properly perform its statutory functions. The Data Protection Act 1998 requires that the Council looks after personal information it holds, keep only what is needed and dispose of it in accordance with the Council's Data Retention Schedule. The Council may share personal information held where legislation allows and will have information sharing protocols in place where required. Prior to sharing information, the Council will consider the proposed use of the information, the secure transfer of information and measures that are in place to keep the information secure once it has left the Council's control.
- 29.2 In accordance with the Data Protection Act 1998 any individual has the right to see any personal data that the Council may hold about that person, subject to any relevant exemptions that may apply. Any personal data held in relation to Enforcement is covered by this requirement and therefore any individual seeking this information should make a Subject Access Request in accordance with the guidance given on the council's website at the link below:
<http://www.newark-sherwooddc.gov.uk/yourcouncil/makingarequestforinformation/>

30.0 OFFICER CONDUCT

- 30.1 In addition to the principles set out in this Policy, officers will always present themselves professionally and courteously. Officers will introduce themselves and in what capacity they are acting, however there may be occasions when officers legitimately delay identifying themselves until a later stage of an investigation, particularly where they are engaged in authorised covert operations. Officers will carry and show their identify card or authorisation as appropriate.

31.0 THE REGULATORS COMPLIANCE CODE

- 31.1 The Council has been required by the Legislative and Regulatory Reform Act 2006 ("the Act") to have regard to the Regulators Code when developing this policy and the operational procedures sitting beneath it, taking into consideration the six core objectives. In so far as it relates to the enforcement sanctions, this enforcement policy is compliant with the Code in that it aims to promote efficient and effective approaches to regulatory inspection and enforcement. The Council has considered in detail the core objectives as follows:
- 31.2 Supporting those Regulated to Comply and Grow
The Council recognises the need to allow and encourage economic progress and therefore any enforcement action will take into account the cost of compliance in relation to the benefits achieved.
- 31.3 Simple and Straightforward Engagement
The Council will provide clear and simple guidance and advice, providing a range of methods in which businesses and individuals can engage with officers. Contact details of officers will be provided in most circumstances. The Policy provides details of how complaints can be made in respect of decisions made under this policy and the Council has a formal complaints procedure and also welcomes feedback through the Council's customer services team.

31.4 Risk Based Regulation

The Council will ensure that consideration will be given to the likelihood of non-compliance taking into account the history of the business, competence of the management and willingness to comply. The Council will review the effectiveness of the approach to enforcement against defined outcomes.

31.5 Information Sharing Re Compliance and Risk

The Council will endeavour to minimise the amount of data that they require business and individuals to provide and where possible such data will be shared with other departments of the Council and other enforcement agencies to promote “collect once use many times”.

31.6 Provision of Clear Information, Guidance and Advice to Assist in Achieving Compliance

The Council will provide general information, advice and guidance to businesses and individuals so statutory obligations are easier to understand. Any advice given will distinguish between best practice and statutory requirements to improve minimum stands.

31.7 Transparency

The clear aim of this policy is to provide information as to how the Council seeks to achieve efficient enforcement. It sets standards that can be expected by businesses and individuals as well as clarifying what is expected in return. Details of feedback, including complaints and appeals against decision are made available on the Council’s website.

Guidance and Codes that Influenced the Preparation of the Enforcement Policy

A. Principles of Good Regulation

The Legislative and Regulatory Reform Act 2006, Part 2, requires Newark and Sherwood DC to have regard to the Principles of Good Regulation when exercising a specified regulatory function. For local authorities, the specified functions include those carried out by our environmental health, trading standards and licensing services.

We will exercise our regulatory activities in a way which is:

- (i) Proportionate – our activities will reflect the level of risk to the public and enforcement action taken will relate to the seriousness of the offence,
- (ii) Accountable – our activities will be open to public scrutiny, with clear and accessible policies, and fair and efficient complaints procedures,
- (iii) Consistent – our advice to those we regulate will be robust and reliable and we will respect advice provided by others. Where circumstances are similar, we will endeavour to act in similar ways to other local authorities,
- (iv) Transparent – we will ensure that those we regulate are able to understand what is expected of them and what they can anticipate in return, and
- (v) Targeted – we will focus our resources on higher risk enterprises and activities, reflecting local need and national priorities.

B. Regulators' Code

Newark & Sherwood DC has had regard to the [Regulators' Code](#) in the preparation of this policy. In certain instances we may conclude that a provision in the Code is either not relevant or is outweighed by another provision. We will ensure that any decision to depart from the Code will be properly reasoned, based on material evidence and documented.

C. Human Rights Act 1998

Newark & Sherwood DC is a public authority for the purposes of the Human Rights Act 1998. We therefore apply the principles of the European Convention for the Protection of Human Rights and Fundamental Freedoms. This Policy and all associated enforcement decisions take account of the provisions of the Human Rights Act 1998. In particular, due regard is had to the right to a fair trial and the right to respect for private and family life, home and correspondence.

D. Data Protection Act 1998

#Where there is a need for the Council to share enforcement information with other agencies, we will follow the provisions of the Data Protection Act 1998.

E. The Code for Crown Prosecutors

When deciding whether to prosecute Newark and Sherwood DC has regard to the provisions of [The Code for Crown Prosecutors](#) as issued by the Director of Public Prosecutions.

The Code for Crown Prosecutors is a public document that sets out the general principles to follow when decisions are made in respect of prosecuting cases. The Code sets out two tests that must be satisfied, commonly referred to as the 'Evidential Test' and the 'Public Interest Test':

- a. Evidential Test - is there enough evidence against the defendant?
When deciding whether there is enough evidence to prosecute, the council will consider what evidence can be used in court and is reliable. We must be satisfied there is enough evidence to provide a "realistic prospect of conviction" against each alleged offender.
- b. Public Interest Test - is it in the public interest for the case to be brought to court?
The local authority will balance factors for and against prosecution carefully and fairly, considering each case on its merits. The public interest factors that we will take into account are detailed under the enforcement options available to us in [Appendix C](#).

F. Regulatory Enforcement and Sanctions Act 2008 ('the RES Act')

The Regulatory Enforcement and Sanctions Act 2008, as amended, established the Primary Authority scheme. We will comply with the requirements of the Act when we are considering taking enforcement action against any business or organisation that has a primary authority, and will have regard to guidance issued by the Secretary of State in relation to Primary Authority.

NEWARK WOMEN'S REFUGE FUNDING

1.0 Purpose of Report

- 1.1 To advise Members of a successful grant application from the Nottinghamshire Districts and Boroughs to the government for refuge funding and request authority to agree the funding is managed through Gedling Borough Council.

2.0 Background Information

- 2.1 In November 2014 DCLG announced that it would be offering funding to all housing authorities to support existing Domestic Violence Refuges. This funding would be to a maximum of £100,000 per housing authority area, split 30/70 over two years (2015/16 – 16/17).
- 2.2 The timescales were tight, with applications required back by 5pm on Friday, 16th January 2015. However fortunately applications forms were relatively straight forward and were required to be a maximum of six pages long.
- 2.3 After advice from the Government, John Robinson, Chief Executive of Gedling Borough Council and Chair of the Strategic Domestic Violence Group, believed that the funding may be under- subscribed, and as the money was not ring-fenced, he encouraged the Districts and Boroughs to apply for a county wide bid, requesting the maximum £700,000, with the authorities without a refuge supporting the existing four county wide refuges (these are in Mansfield, Newark, Bassetlaw and Gedling). All seven districts / boroughs and the refuge providers were invited to discuss a county wide funding bid and the decision was that this would be taken forward. Funding would be used to support the refuge accommodation but also would be allocated to assist with move on costs such as deposits and initial rent to support women who were ready to move on, and as a result, freeing up more bed space within the refuges. There was also a bid to go towards dispersed refuge accommodation in Ashfield, using social housing premises, supporting by Midlands Women's Aid. Previously Ashfield had no refuge provision.
- 2.4 The final bid was submitted with a total countywide funding bid for £680K. This was collated and submitted by Gedling Borough council on behalf of the other local authorities and correspondence with the government has been directly through them. Although a joint bid, Gedling District provided all the administration for this, in conjunction with the refuge providers, which was greatly appreciated.
- 2.5 We were not made aware that the bid had been successful until 10th March 2015, however the Government has been flexible on the spending criteria as a result of this.

3.0 Proposals

- 3.1 As the bid was co-ordinated and managed by Gedling Borough Council, it is proposed that all the funding is initially held by Gedling Borough Council and then 'passported' out to the refuges as per the funding bids. This should make the process quicker and prevent those districts/boroughs without refuge provision having to make several agreements with refuges outside their area.

- 3.2 As outlined in the application, Newark Women's Aid will receive £100,000 which will assist in sustaining the current bed space, increasing the bed space by 1 unit (two bed spaces) and also increasing staffing levels. The refuge will also receive £25,000 which will be used to assist women to move on from the refuge, either by funding necessary household good such as fridges or paying deposits for alternative housing. This will result in bed spaces being made available sooner. The funding has been a great boost the Newark Women's aid who would have struggled to keep open without this grant.
- 3.2 However to allow this funding proposal to be taken forward, the Council needs to agree to the finding arrangements being managed by Gedling Borough Council on its behalf. Gedling Borough Council has provided a draft legal agreement, and in partnership with them, we have also drafted a Service Level Agreement to be signed by the refuge. These have been reviewed and approved by our legal team.
- 3.3 There has also been the development of a Working Group to manage the funding and the service level agreements which have been made up from representatives from all the districts/boroughs. This is to ensure the funding is spent as required and any issues can be resolved centrally.

4.0 Equalities Implications

- 4.1 This funding was only made available to support existing refuge provision, which in Newark and Sherwood means it can only be allocated to the Newark Women's Aid Refuge. At this time there is no such provision for male victims of domestic abuse, although the District does link in with Domestic violence services from around the county. The Refuge is also not at this time suitable for wheelchair users, although it has been acknowledged by the refuge and it is hoped that capital works in the future may make their building more accessible to persons with a disability.

5.0 Impact on Budget/Policy Framework

- 5.1 There will be no direct impact on the Council's budget.

6.0 Comments of Director - Resources

- 6.1 As this money will be held, distributed and accounted for by Gedling Borough Council, there will be no direct impact on Newark & Sherwood District Council resources or accounts. Monitoring of outcomes will be via the Working Group.

7.0 RECOMMENDATIONS that:

- (a) the Council agrees the administrative arrangements by which Gedling Borough Council will be the fund holder for the funding to support the Newark Women's Aid Refuge as set out in the report; and**
- (b) the Director - Safety be given delegated authority for signing the necessary legal documents to facilitate the funding arrangements.**

Reason for Recommendations

To allow the funding to be distributed effectively and efficiently.

Background Papers

Draft Legal Agreement

Draft Service Level Agreement

For further information please contact Lisa Lancaster, Business Manager Community Safety on Ext 5232

Karen White

Director - Safety

NEWARK AND SHERWOOD HOMES – PROPOSED CHANGES TO THE COMPANY’S ARTICLES OF ASSOCIATION

1.0 Purpose of Report

1.1 The purpose of this report is for the Committee to consider recommendations received from the Board of Newark and Sherwood Homes for changes to the Company’s Articles of Association.

2.0 Background Information

2.1 At its meeting on 18th September 2014, the Policy and Finance Committee resolved to ask the Board of Newark and Sherwood Homes Ltd to consider reducing the size of the Board and also to consider the role of the Board’s Chairman as part of the governance review that was then being undertaken by the Board and for it to then put forward proposals to be considered and implemented by the Council as the sole shareholder.

2.2 Whilst the Company’s constitution (articles of Association) had been brought up to date and amended to take account of changes in company law when the Council renewed its Management Agreement in October 2013, the amendments made at the time had been relatively minor and administrative in nature. The Committee had expressed the wish that any governance review by the Board should look to incorporate a new governance structure that aimed to better reflect the Council’s aspiration, as the sole shareholder, to have more influence and opportunity to contribute to how the Company is run and the things it does.

2.3 Currently the Company’s Articles of Association provide that the number of Board Members shall be fifteen, made up of five Council, Tenant and Independent Board Members. It was considered that whilst the balance of ‘Member Types’ on the Board should be maintained, it was possible to alter/reduce the total numbers in order to improve the efficiency, cohesion and effectiveness of the Board.

3.6 It was also considered that the role of the Chairman of the Board was an important one given that the Chairman plays a significant role in liaising with the Council and maintaining confidence that the Company’s direction and activities dovetail and reflect accurately with Council’s strategic objectives. It has added significance given the desired closer relationship with the Company discussed in paragraph 2.2 above. However, the Company’s current Articles of Association do not adequately reflect the importance of this position. The only mention currently in the Articles is that the Board Members shall appoint one of their ‘number’ annually to be the Chairman of the Board and preside at Board meetings. Further to this, whilst they are entitled to be paid travelling, and other reasonable expenses, the Articles currently preclude Board Members, including the Chairman, from being remunerated.

3.0 **Proposals**

3.1 The Company's Board has now concluded its governance review and, taking account of the views of the Committee from its meeting in September, have made the following recommendations to the Council as the sole shareholder for changes to the Company's articles of association:

- a) A reduction of the Board size to 12 members with the ratio of the constituent parts and all other aspects remaining the same;
- b) The quorum for board meetings to be 1 person present from each of the three constituent parts of the Board;
- c) The provision of a honorarium payment, as approved by the Board from time to time, to the Chairman of the Board in recognition of the skills, knowledge and time commitment required of the role; and
- d) The Chairman to be recruited through a process which enables the consideration of external candidates where necessary

3.2 A copy of the proposed new Articles of Association amended to take into account the above changes is attached to this report as **Appendix A**. A new clause 6.3.7 has been inserted to authorise an honorarium payment to the Chairman of NSH in recognition of the skills, knowledge and time commitment required of the role. The ability for such a payment to be made has been qualified so that no payment can be made to a Chairman who is an elected member of the Council and/or is a Council appointed board member. This is because section 80 of the Local Government Act 1972 provides that a person will be disqualified from local authority election and membership if that person holds any paid office or employment appointments which are made or confirmed by the local authority.

3.3 The board has indicated that it considers an honorarium level of £6500 per annum to be appropriate, subject to it deciding such honorarium is necessary to recruit a Chair with the skills and time required to effectively discharge the role,.

3.4 The size of the Board has been reduced from fifteen to twelve (excluding co-optees) and each of the constituent parts of the Board have been scaled down accordingly so that the Board will be comprised of four Council Board Members, four Tenant Board Members and four Independent Board Members (article 13.1). The subsequent articles 13.2 and 13.3 have been adjusted so that the Board can only ever have a maximum of five board members who can be tenants and leaseholders or five board members who can be local authority persons. This is to ensure no constituent part ever holds a majority on the Board.

The reduced size of the Board will take effect from the point at which the resolution is passed by the Council as the sole member of Newark and Sherwood Homes Ltd. The proposed changes to the Company's article of Association can be amended by special resolution (which may be done by written resolution, as attached at **Appendix B**) and without the requirement for an extraordinary general meeting.

3.5 The quorum of the Board has been reduced to five to reflect the smaller size of the Board and wording has been inserted so that for a quorum to be deemed present there must be at least one board member from each of the constituent parts of the Board present (article 25.4).

3.6 New wording has been inserted to article 26.1 to allow for the Chairman to be appointed in accordance with a policy adopted by the Board. The policy will set out in detail the recruitment and appointment process for the Chairman and how it will be managed to ensure the maximum board size does not exceed twelve and the number of board members in each constituent part is maintained at the correct level. The new wording in Article 26.1 highlights that the Board can if necessary utilise the powers contain in Article 18 which allow the Board to remove a Board Member by passing a resolution with at least a three quarters majority of all other Board Members. The policy can provide for the Chairman to be recruited from either within the Board or externally so as to ensure the best candidate is appointed.

4.0 Equalities Implications

4.1 The proposals do not involve any equalities implications.

5.0 Impact on Budget/Policy Framework

5.1 If approved, the changes to the Company's Articles of Association have an increased cost implication due to potential honorarium of up to £6,500 for the Chairman of the Board.

6.0 RECOMMENDATIONS that:

- (a) the Committee consider and resolve that the Council, as the sole shareholder of the Company, make the changes to the Company's Articles of Association as detailed in the report and as attached at Appendix A; and**
- (b) the Chief Executive be given delegated authority, as the Council's representative, to give effect to the special resolution required (as attached at Appendix B) to adopt the amended Articles of Association.**

Reason for Recommendations

To enable the Committee to consider recommendations received from the Board of Newark and Sherwood Homes for changes to the Company's Articles of Association.

Background Papers

Nil

For further information please contact Karen White on Ext 5240

Karen White
Director - Safety

Registered number: 5145364

The Companies Act 1985

Company limited by guarantee and not having a share capital

Articles of association

of

Newark and Sherwood Homes Limited

1 Definitions and interpretations

1.1 In these Articles unless the context otherwise requires:

"the 1989 Act" means the Local Government and Housing Act 1989 and any statutory modification or re-enactment thereof for the time being in force;

"the 2006 Act" means the Companies Act 2006 and any statutory modification or re-enactment thereof for the time being in force;

"the Appraisal" means the annual appraisal (conducted in accordance with the Board's policy from time to time and the Protocol) prior to the Board Member's reappointment for a second term;

"the Articles" means these Articles of Association as originally adopted or as altered from time to time;

"Board" means the Board of directors of the Organisation from time to time;

"Board Members" means the directors for the time being of the Organisation and shall exclude Co-optees;

"Chairman" means the Chairman of the Organisation appointed pursuant to Article 26.1 or 26.2 or in his absence any vice or deputy chairman appointed pursuant to Article 26.3;

"clear days" in relation to the period of a notice means that period excluding the day when the notice is given or deemed to be given and the day for which it is given or on which it is to take effect;

"Companies Acts" means any provisions of the Companies Act 1985 and of the 2006 Act and any statutory modification or re-enactment thereof for the time being in force;

"Co-optee" means a person co-opted by the Board pursuant to Article 17.2;

"Council" means Newark and Sherwood District Council or any successor body thereto;

"Council Board Member" means a Board Member nominated by the Council and appointed pursuant to Article 14;

"Council Representative" means the person from time to time nominated by the Council pursuant to Article 11.2;

"Independent Board Member" means a Board Member who is not a Tenant, Leaseholder or Local Authority Person and appointed pursuant to Article 16;

"Leaseholder" means an individual who holds a lease of a residential property from and occupies a property belonging to the Council and excludes Tenants;

"Local Authority Person" means any person:

- (i) who is a member of the Council; or
- (ii) who is an officer of the Council (which for these purposes shall not include employees with non-managerial posts apart from housing employees);

"the Protocol" means the protocol set out in Schedule 10 to the Management Agreement between the Organisation and the Council and as may be amended from time to time by the parties;

"the seal" means the common seal of the Organisation;

"Secretary" means the secretary of the Organisation or any other person appointed to perform the duties of the secretary of the Organisation, including a joint, assistant or deputy secretary;

"Tenant" means an individual who holds a secure tenancy of a residential property from and occupies a property belonging to the Council;

"Tenant Board Member" means a Board Member appointed pursuant to Article 15;

"Tenants Federation" means Newark and Sherwood Tenants Federation or any successor body thereto or such other body as the Board shall from time to time resolve to be representative of the Tenants whose dwellings are managed by the Organisation;

"the United Kingdom" means Great Britain and Northern Ireland.

1.2 Unless the context otherwise requires, words or expressions contained in these Articles bear the same meaning as in the Companies Acts but excluding any statutory modification thereof not in force when these Articles become binding on the Organisation.

1.3 In these Articles words importing individuals shall, unless the context otherwise require, include corporations and words importing the singular number shall include the plural, and vice versa and words importing the masculine gender shall include the feminine gender.

2 **Name**

The name of the company is **Newark and Sherwood Homes Limited** (the **Organisation**).

3 **Registered Office**

The Organisation's registered office is to be located in England.

4 **Objects**

The objects of the Organisation shall be primarily in the areas where the Council owns or manages housing stock to:

- 4.1 provide, manage, maintain, improve, demolish or convert the housing stock owned, managed or provided by the Council from time to time and any other social housing and other housing stock together with any other amenities or facilities for the benefit of residents of such housing stock either exclusively or together with persons who are not residents of such housing stock;
- 4.2 provide amenities and services of any description for residents of housing stock referred to in Article 4.1 either exclusively or together with persons who are not residents of such housing stock;
- 4.3 provide advice and assistance to all tenants, leaseholders and licensees of the Council and applicants for housing and applicants for housing advice in respect of the housing owned, managed or provided by the Council;
- 4.4 carry out any activity which contributes to the regeneration or development in the area of the Council (within the meaning of Section 126 of the Housing Grants Construction and Regeneration Act 1996) including but not limited to:-
 - 4.4.1 securing that land and buildings are brought into effective use;
 - 4.4.2 contributing to or encouraging economic development;
 - 4.4.3 creating an attractive and safe environment;
 - 4.4.4 preventing crime or reducing the fear of crime;
 - 4.4.5 providing or improving housing or social and recreational facilities for the purpose of encouraging people to live or work in the said area or for the purpose of benefiting people who live there;
 - 4.4.6 providing employment for local people;
 - 4.4.7 providing or improving training, educational facilities or health services for local people;
 - 4.4.8 assisting local people to make use of opportunities for education, training or employment; and

- 4.4.9 meeting the special needs of local people which arise because of disability or because of their sex or the racial group to which they belong;
- 4.5 provide, construct, repair, improve, manage or maintain housing and hostels to be kept available for letting;
- 4.6 provide, construct, repair, improve, manage, or maintain accommodation required from time to time for the benefit of persons who require temporary accommodation;
- 4.7 provide, construct, repair, improve, manage or maintain housing for sale (including for sale on shared equity or shared ownership or other similar terms) or otherwise dispose of on such terms as the Organisation shall determine;
- 4.8 provide services of any description for the Council or any third party subject to Council consent;
- 4.9 assess applicants for housing assistance;
- 4.10 assess applications by residents of housing stock owned, managed or provided by the Council to exercise the right to buy under Part V of the Housing Act 1985 or enfranchisement or commonhold applications under the Leasehold Reform Housing and Urban Development Act 1993 and the Commonhold and Leasehold Reform Act 2002;
- 4.11 enable or assist any residents of the housing stock owned, managed or provided by either the Council or the Organisation to acquire, or to acquire and enter into occupation of, houses; and
- 4.12 do all such other acts and things as may be incidental or conducive to the attainment of the foregoing objects.

5 **Powers**

- 5.1 Subject to Article 5.3 the Organisation shall have power to do any thing that a natural or corporate person can lawfully do which is necessary or expedient in furtherance of its objects unless prohibited by these Articles.
- 5.2 Subject to Article 5.3 and without limiting the powers described in Article 5.1 the Organisation shall have power to:
 - 5.2.1 carry out works to land, buildings or other property;
 - 5.2.2 purchase, lease, exchange, hire or otherwise acquire any real or personal property rights or privileges (including shared or contingent interests);
 - 5.2.3 sell, lease, licence, exchange, dispose of or otherwise deal with property;
 - 5.2.4 contract with the Council or any other person or organisation in furtherance of its objects;
 - 5.2.5 subject to the prior written consent of the Council and to such consents as may be required by law to borrow money, issue loan stock or raise money in such manner as the Organisation shall determine and to secure the

repayment of any money borrowed raised or owing by such security as the Organisation shall determine (including by way of floating charge) upon the whole or any part of the Organisation's property or assets (whether present or future) and also by giving similar security to secure and guarantee the performance by the Organisation of any obligation or liability it may undertake or which may become binding on it;

- 5.2.6 insure and arrange insurance cover for the Organisation from and against all such risks as the Board may determine and to pay any premium in respect of such insurance;
- 5.2.7 subject to Article 33, insure and arrange insurance cover for and to indemnify its Board Members, employees and voluntary workers and the Council from and against all such risks incurred in the proper performance of their duties as it shall consider appropriate and to pay any premium in relation to indemnity insurance in respect of liabilities of its Board Members or any of them which would otherwise attach to them in respect of any negligence, default, breach of duty or breach of trust of which they may be guilty in respect of the Organisation **provided that** such insurance shall not extend to any liability in respect of an act or omission which such Board Member or Board Members knew or ought reasonably to have known was a breach of duty or trust or which was committed by such Board Member or Board Members recklessly without due regard as to whether such act or omission might be a breach of duty or trust;
- 5.2.8 invest any monies of the Organisation not immediately required for the furtherance of its objects as it determines and as permitted by law;
- 5.2.9 subject to such consents as may be required by law and compliance with all formal guidance issued by any statutory regulator with authority over the Organisation to purchase or otherwise acquire or to encourage or promote and in any way support or aid the establishment and development of any subsidiary, or any other body established for the purposes of carrying on any trade or business either for the purpose of raising funds for the Organisation or for the furtherance of the objects of the Organisation;
- 5.2.10 subject to the prior written consent of the Council, make donations, grants or loans or provide services or assistance to such persons and organisations and on such terms as the Organisation may determine to further the objects of the Organisation;
- 5.2.11 to carry out on behalf of the Council such of the Council's duties and functions as to keeping of the Council's Housing Revenue Account for the purposes of Section 74 of the 1989 Act as may be lawfully undertaken otherwise than by the Council directly; and
- 5.2.12 to provide services or assistance to such persons and organisations as permitted by the objects and on such terms as the Board shall determine to further the objects of the Organisation.

provided that in the event that the Organisation shall take or hold any property which may be subject to any trusts, the Organisation shall only deal with or invest the same in such manner as allowed by law, having regard to such trusts.

5.3 The Organisation shall not do any act or thing which causes or might cause the Council to be in breach of the CIPFA Prudential Code for Capital Finance in Local Authorities.

6 **Application of income and property**

6.1 The income and property of the Organisation shall be applied solely towards the promotion of its objects as set forth in these Articles.

6.2 Save as provided in Articles 6.3 – 6.4, no portion of the income and property of the Organisation shall be paid or transferred, directly or indirectly, by way of dividend, bonus or otherwise howsoever by way of profit to the Council and no Board Member (other than a Co-optee) shall be appointed to any office of the Organisation paid by salary or fees or receive any remuneration or other benefit or money or money's worth from the Organisation.

6.3 Notwithstanding the provisions of Articles 6.1 and 6.2 the Organisation may make payment in good faith:

6.3.1 of reasonable and proper remuneration (including pensions, contributory pension payments, payment of premiums to pension policies and terminal grants and gratuities) to any officer or employee of the Organisation (not being a Board Member other than a Co-optee) in return for any services rendered to the Organisation;

6.3.2 of fees, remuneration or other benefit in money or money's worth to a company or other body corporate of which a Board Member may be a member holding not more than 2% of the share capital of the company or body corporate;

6.3.3 to any Board Member of reasonable expenses in accordance with Article 23 and such other sums as may be determined by the Council **provided that** no sum shall be paid to a Board Member:

(a) who is an elected member of the Council, in excess of that which would be permitted to be paid by the Local Authorities (Companies) Order 1995; and

(b) in excess of that which would be permitted to be paid to a board member pursuant to any guidance issued from time to time by any statutory regulator or other competent body with authority over the Organisation;

6.3.4 of reasonable and proper remuneration to the Council or employees thereof (not being Board Members) in return for any services rendered to the Organisation;

6.3.5 of reasonable and proper rent for premises demised or let by the Council;

- 6.3.6 of reasonable and proper interest on money lent by the Council; or
- 6.3.7 of a honorarium payment, as shall be approved by the Board from time to time, to the Chairman in recognition of the skills, knowledge and time commitment required of the role **provided that** no such payment is paid to a Chairman who is an elected member of the Council and/or is a Council Board Member.
- 6.4 Notwithstanding the provisions of Articles 6.1 and 6.2, the Organisation may manage a property in accordance with its objects (including the full range of activities it may undertake) notwithstanding the fact that the tenant, lessee or licensee (or prospective tenant, lessee or licensee) of such property may be a Board Member **provided that** no Board Member shall be entitled to speak in any debate or cast any vote in respect of any matter relating specifically to the property of which he is tenant, lessee or licensee and to no other property of the Organisation and shall absent himself/herself from such proceedings.
- 7 **Equal Opportunities**
- The Organisation shall at all times take into consideration and take positive action to promote the principles of equality of opportunity irrespective of age, gender, race, nationality, ethnic origin, religion, sexual orientation or disability.
- 8 **Limited Liability**
- The liability of the Council is limited.
- 9 **Members' Guarantee**
- The Council undertakes to contribute to the assets of the Organisation, in the event of the same being wound up while they are a member of the Organisation, or within one year after they cease to be a member of the Organisation, for payment of the debts and liabilities of the Organisation contracted before they cease to be a member of the Organisation, and of the costs, charges and expenses of winding up, and for the adjustment of the rights of the contributories among themselves, such amount as may be required not exceeding one pound.
- 10 **Winding up**
- If, upon the winding up or dissolution of the Organisation, there remains, after the satisfaction of all its debts and liabilities any property whatsoever, the same shall be paid or transferred to the Housing Revenue Account (as defined in the 1989 Act) of the Council.
- 11 **Admission of Members**
- 11.1 No person other than the Council shall be admitted to membership of the Organisation.
- 11.2 The Council shall nominate a person to act as its representative in the manner provided in Section 323 of the 2006 Act. Such representative shall have the right on behalf of the Council to attend meetings of the Organisation and vote thereat, and generally exercise all rights of membership on behalf of the Council. The Council may

from time to time by written notice to the Secretary revoke the nomination of such representative and may nominate another representative in his place.

11.3 The rights of the Council shall be personal and shall not be transferable.

12 **General meetings and resolutions**

12.1 All general meetings other than annual general meetings shall be called extraordinary general meetings.

12.2 The Board Members may call general meetings and, on the requisition of the Council , shall forthwith proceed to convene a general meeting as required pursuant to the provisions of Section 304 of the 2006 Act. If there are not within the United Kingdom sufficient Board Members to call a general meeting, any Board Member or the Council may call a general meeting.

12.3 Any general meeting not called on the requisition of the Council pursuant to Article 12.2 shall be called by at least fourteen clear days' notice or by shorter notice if it is so agreed by the Council. The notice shall specify the time and place of the meeting and, in the case of an annual general meeting, shall specify the meeting as such. The notice shall be given to the Council and to the Board Members and to the Organisation's auditors.

12.4 The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any person entitled to receive notice shall not invalidate the proceedings at that meeting.

12.5 No business shall be transacted at any general meeting unless a quorum is present. The presence of a duly authorised representative of the Council shall be a quorum.

12.6 If the Council Member makes a decision which is required to be taken in a general meeting or by means of a written resolution, that decision shall be valid and effectual as if agreed by the Organisation in general meeting **provided that** any such decision taken by the Council pursuant to this Article 12.6 is recorded in writing, signed by the Council Representative and delivered to the Secretary for entry in the Organisation's minute book.

12.7 An entry in the minutes of any general meeting stating that a resolution has been carried or lost shall be conclusive evidence of the fact.

13 **The Board**

13.1 The number of Board Members shall be twelve, comprising:

13.1.1 four Council Board Members;

13.1.2 four Tenant Board Members; and

13.1.3 four Independent Board Members;

13.2 No more than five Board Members shall be Tenants and Leaseholders.

13.3 No more than five Board Members shall be Local Authority Persons.

- 13.4 In the event that the number of Board Members shall be less than the numbers specified in this Article 13 the remaining Board Members shall use reasonable endeavours to appoint further Board Members and may act notwithstanding this Article.
- 13.5 Save for any appointments under Article 17, each Board Member shall be appointed for a fixed term of office expiring at the conclusion of an annual general meeting (each a **fixed term**) and the period between consecutive annual general meetings is hereinafter in these Articles called a **year**. The fixed term shall be for a term expiring at the conclusion of the third annual general meeting unless a shorter term was set for an individual Board Member so as not to cause that Board Member to serve for more than six consecutive years.
- 13.6 At every annual general meeting each Board Member who has served on the Board for their fixed term shall retire from the office.
- 13.7 Any Board Member who retires from office at an annual general meeting under Article 13.6 shall be eligible for re-appointment subject to a satisfactory Appraisal and subject also to the provisions of Article 18.15.
- 13.8 For the purposes of these Articles, any Board Member serving on the Board before these Articles were adopted shall be deemed to have been appointed at the time of their last appointment to the Board for a fixed term of three years and shall be eligible for reappointment subject as provided in Article 13.7.
- 13.9 Notwithstanding any other provisions in these Articles, the Council shall have power at any time by notice in writing signed by the Council Representative and delivered to the Secretary to appoint and remove any Board Member.

14 **Council Board Members**

- 14.1 Subject to Article 13 the Council shall from time to time nominate four persons for appointment as Council Board Members and shall have the power to remove from office any such Board Member.
- 14.2 Nomination or removal pursuant to Article 14.1 shall be by notice in writing signed by the Council Representative and delivered to the Secretary. In case of a removal, it shall take effect from the date the notice was delivered to the Secretary or such other date as may be specified in the notice. In case of a nomination, the person so nominated shall be duly appointed as a Council Board Member with effect from the close of the annual general meeting at which the Secretary announces the nomination.

15 **Tenant Board Members**

- 15.1 Prior to every annual general meeting at which any Tenant Board Member vacancies need to be filled, direct elections shall be held among the Tenants for the number of Tenant Board Members to be appointed thereat **provided that** no such elections are required for any re-appointment of a retiring Tenant Board Member pursuant to Articles 13.7 and 15.3. Only Tenants and Leaseholders shall be eligible to be appointed as Tenant Board Members but otherwise the mode and manner of such

- elections shall be as the Board may from time to time agree subject at all times to compliance with Article 13.
- 15.2 The Secretary shall announce the results of the elections referred to in Article 15.1 at each relevant annual general meeting and the Tenants so elected shall be duly appointed as Tenant Board Members with effect from the close of such meeting.
- 15.3 If, at the annual general meeting at which any Tenant Board Member vacancies need to be filled, there are no other candidates to fill the post the retiring Tenant Board Member shall, if willing to act and subject to Article 13.7, be deemed to have been re-appointed unless a resolution not to reappoint that Board Member is passed by the Board.
- 16 Independent Board Members**
- 16.1 If, at the annual general meeting at which any Independent Board Member vacancies need to be filled, there are no other candidates to fill the post the retiring Independent Board Member shall, if willing to act and subject to Article 13.7, be deemed to have been re-appointed unless a resolution not to reappoint that Board Member is passed by the Board.
- 16.2 Except in the case of a casual vacancy filled by the Board under Article 17 below, no person other than an Independent Board Member who is deemed to have been re-appointed under Article 16.1 shall be appointed as an Independent Board Member at any general meeting unless he is recommended by the Board.
- 16.3 Subject to Articles 13 and 16.1 – 16.2 the Council shall by ordinary resolution appoint any eligible person who is willing to act as an Independent Board Member.
- 16.4 Not less than seven nor more than twenty-eight clear days before the date appointed for holding an annual general meeting notice shall be given to the Council of any person (other than a Board Member who is deemed to have been re-appointed under Article 16.1) who is recommended by the Board for appointment or reappointment as an Independent Board Member at the meeting. The notice shall give the particulars of that person which would, if he were so appointed or re-appointed, be required to be included in the Organisation's register of Board Members.
- 17 Casual vacancies and Co-optees**
- 17.1 Subject to Article 13 the Board may appoint a person who is willing to act to be a Board Member to fill a vacancy which arises between annual general meetings **provided that:**
- 17.1.1 the Board may only fill vacancies occurring among Council Board Members where the Council shall have failed within three months of a written request by the Organisation or prior to the relevant annual general meeting to make the appropriate nominations pursuant to Articles 14.1 – 14.2 or shall have given notice to the Organisation in writing that it does not intend to do so;
- 17.1.2 the Board may only fill vacancies occurring among Tenant Board Members where the Tenants' Federation shall have failed within three months of a written request by the Organisation or prior to the relevant annual general

meeting to make a nomination to fill such vacancy or shall have given notice to the Organisation in writing that it does not intend to do so.

A Board Member appointed under this Article 17.1 shall hold office only until the next following annual general meeting. If not re-appointed at such annual general meeting he shall vacate office at the conclusion thereof.

17.2 The Board may from time to time co-opt up to a maximum of three persons (including no more than one Leaseholder) to the Board and may at any time revoke such co-option.

18 **Disqualification and removal of Board Members**

A person shall be ineligible for appointment as a Board Member or as a Co-optee and if already appointed shall immediately cease to be a Board Member or a Co-optee if the relevant individual:-

18.1 ceases to be a Board Member by virtue of any provision of the Companies Acts or becomes prohibited by law from being a company director; or

18.2 is or becomes a person disqualified or suspended from elected membership of a local authority; or

18.3 becomes bankrupt or makes any arrangement or composition with his creditors generally; or

18.4 resigns his office by notice to the Organisation; or

18.5 is removed from office by a resolution (or written notice signed by) at least three quarters of all the other Board Members from time to time; or

18.6 shall for more than six consecutive months have been absent without permission of the Board from meetings of the Board held during that period and the Board resolves that his office be vacated; or

18.7 in any period of 12 months, he shall have been absent (without the permission of the Board Members) from at least 60% of the meetings of the Board held during that period and the Board resolves that his office be vacated; or

18.8 in the case of a Tenant Board Member he ceases to be a Tenant or Leaseholder **provided that** this Article 18.8 shall not apply in respect of a Tenant Board Member temporarily ceasing to be a Tenant as a result of the demolition of or works carried out to that Tenant Board Member's home; or

18.9 is a Tenant Board Member and is (in the reasonable opinion of a majority of Board Members) in serious breach of their obligations as a Tenant or Leaseholder (as the case may be); or

18.10 is a Council Board Member and is or becomes a Tenant or Leaseholder leading to a breach of the limit in Article 13.2; or

18.11 is a Tenant Board Member and is or becomes a Local Authority Person leading to a breach of the limit in Article 13.3; or

- 18.12 is an Independent Board Member and is or becomes a Tenant, a Leaseholder or a Local Authority Person; or
- 18.13 is removed by resolution of the Council pursuant to Article 13.9; or
- 18.14 is a Co-optee and his co-option is revoked by the Board; or
- 18.15 shall have served on the Board for a period of six consecutive years or less than three years has elapsed since his previous service.

19 **Powers of the Board**

19.1 Subject to:

- 19.1.1 the provisions of the Companies Acts;
- 19.1.2 directions of the Council in general meetings; and
- 19.1.3 these Articles,

the business of the Organisation shall be managed by the Board who may exercise all the powers of the Organisation. No alteration of these Articles or directions of the Council shall invalidate any prior act of the Board which would have been valid if that alteration had not been made. The powers given by this Article shall not be limited by any special power given to the Board by these Articles and a meeting of the Board at which a quorum is present may exercise all powers exercisable by the Board.

19.2 The Board may, by power of attorney or otherwise, appoint any person to be the agent of the Organisation for such purposes and on such conditions as they determine, including authority for the agent to delegate all or any of his powers.

20 **Borrowing Powers**

Subject to Article 5 the Board may exercise all the powers of the Organisation to borrow money without limit as to amount and upon such terms and in such manner as the Board considers fit, and to grant any mortgage, charge or other security over the undertaking and property of the Organisation, or any part thereof, and to issue any debenture, whether outright or as security for any debt, liability or obligation of the Organisation or of any third party.

21 **Delegation of Board Members' Powers**

21.1 The Board may delegate in writing any of its powers to any committee consisting of two or more Board Members together with such other persons as the Board sees fit (but so that Board Members shall constitute a majority).

21.2 The Board may delegate in writing to the Chairman or any vice or deputy Chairman or to any executive officer such of its powers as it considers desirable to be exercised by him.

21.3 Any delegation under this Article 21 may be made subject to any conditions the Board may impose, and either collaterally with or to the exclusion of their own powers and may be revoked or altered. Subject to any such conditions, the proceedings of a

committee with two or more members shall be governed by the Articles regulating the proceedings of the Board so far as they are capable of applying.

22 **Alternate Board Members**

No Board Member shall be entitled to appoint any person as an alternate Board Member.

23 **Board Members' expenses**

The Board Members and Co-optees may be paid all travelling, hotel, and other expenses reasonably and properly incurred by them in connection with their attendance at meetings of the Board or committees of the Board or general meetings or otherwise in connection with the discharge of their duties and such other sums as may be determined by the Council pursuant to Article 6.3.3.

24 **Board Members' interests**

24.1 A Board Member (or Co-optee) may not have any financial interest personally or as a member of a firm or as a director or senior employee (being an employee with managerial status) or in any contract or other transaction of the Organisation unless it is permitted by these Articles and is not prohibited by Article 6.

24.2 Each Board Member (and Co-optee) shall ensure that the Secretary has at all times an up to date list of:-

24.2.1 all bodies trading in which he or she has an interest as:

- (a) a director or senior employee; or
- (b) a member of a firm; or
- (c) the owner or controller of more than 2% of the issued share capital in a company or other body corporate having a share capital; or ,

24.2.2 all interests as an official or elected member of any statutory body; or

24.2.3 all interests as the occupier of any property owned or managed by the Organisation; or

24.2.4 any other significant or material interest.

24.3 **Authorisation of conflicts**

24.3.1 If an actual or potential conflict of interest arises for a Board Member other than in relation to a transaction or arrangement with the Organisation and the conflict is not authorised by virtue of any other provision in the Articles, the un-conflicted Board Members may authorise such a conflict of interests **provided that:**

- (a) any conflicted Board Member is not to be counted in the quorum of Board Members at the meeting where the conflict is to be authorised; and

- (b) the un-conflicted Board Members consider it is in the interests of the Organisation to authorise the conflict of interest in the circumstances applying.

24.3.2 The Board Members may attach any conditions to an authorisation given under Article 24.3.1 that they consider to be in the best interests of the Organisation.

24.3.3 The Board should consider whether any actual or potential conflicts should be authorised in accordance with Article 24.3.1 each time:

- (a) a new Board Member is appointed; or
- (b) a new situation (not already authorised) arises for an existing Board Member that gives rise to an actual or potential conflict of interests.

24.3.4 In authorising any matter under this Article 24.3, the Board may also decide that if a Board Member receives or has received information otherwise than by virtue of his position as a Board Member of the Organisation and in respect of which he owes a duty of confidentiality to another person, the Board Member is under no obligation to:

- (a) disclose any such information to the Organisation, the Board or any other Board Member or employee of the Organisation; or
- (b) use or apply any such information in connection with the performance of his duties as a Board Member.

24.4 **Interests**

24.4.1 Any Board Member (or Co-optee) having an interest in any arrangement between the Organisation and another person or body shall disclose that interest to the meeting before the matter is discussed by the Board or committee of the Board. Unless the interest is of the type specified in Article 24.4.2 or 24.4.3 the Board Member (or Co-optee) concerned shall not remain present during the discussion of that item unless requested to do so by the remaining members of the Board or committee of the Board and may not vote on the matter in question, but no decision of the Board or any committee of the Board shall be invalidated by the subsequent discovery of an interest which should have been declared.

24.4.2 Provided the interest has been properly disclosed pursuant to Article 24.4.1 a Board Member (or Co-optee) may remain present during the discussion and a Board Member (but not a Co-optee) may vote on the matter under discussion where the interest arises because:

- (a) the Board Member (or Co-optee) is a Tenant or Leaseholder, so long as the matter in question affects all or a substantial group of Tenants or Leaseholders; or
- (b) the Board Member (or Co-optee) is a director or other officer of a company or body which is a parent, subsidiary or associate of the Organisation; or

- (c) the Board Member (or Co-optee) is an official or elected member of any statutory body; or
- (d) of any other reason but the conflict was authorised under Article 24.3.

24.4.3 A Board Member (or Co-optee) shall not be treated as having an interest:

- (a) of which the Board Member (or Co-optee) has no knowledge and of which it is unreasonable to expect him to have knowledge;
- (b) in the establishment of a policy in respect of Board Member (or Co-optee) expenses payable pursuant to Article 23.

24.5 If a question arises at a meeting of the Board or of a committee of the Board as to the right of a Board Member (other than the chairman of the meeting) to vote, the question may, before the conclusion of the meeting, be referred to the chairman of the meeting and his ruling in relation to any Board Member (other than himself) shall be final and conclusive

24.6 If a question arises at a meeting of the Board or of a committee of the Board as to the right of the chairman of the meeting to vote, and such question is not resolved by his voluntarily agreeing to abstain from voting, such question shall be decided by resolution of the Board Members present at that meeting (excluding the chairman), whose majority vote shall be final and conclusive.

25 **Proceedings of board meetings**

25.1 Subject to:

- 25.1.1 these Articles;
- 25.1.2 any regulations established from time to time by the Organisation; and
- 25.1.3 compliance with all relevant statutory requirements

the Board may regulate its proceedings as it determines.

25.2 One third of the total number of Board Members (or such whole number of Board Members nearest to one third) may call a meeting of the Board. It shall not be necessary to give notice of a meeting to a Board Member who is absent from the United Kingdom.

25.3 A Board meeting or a meeting of a committee of the Board may consist of a conference between Board Members or committee members through the medium of conference telephone or any form of electronic communication or similar form of communications equipment or combination of such methods **provided that** each Board Member or committee member participating in the meeting is able to hear and speak to each other participating Board Member or committee member throughout the meeting. A Board Member or committee member so participating shall be deemed to be present in person at the meeting and shall accordingly be counted in a quorum and be entitled to vote. Subject to the Companies Acts, all business transacted in such manner by the Board Members or by a committee of the Board shall for the purposes

of these Articles be deemed to be validly and effectively transacted at a meeting of the Board or of a committee notwithstanding that fewer than two Board Members or committee members are physically present at the same place. Such a meeting shall be deemed to take place where the largest group of those participating is assembled or if there is no such group where the chair of the meeting then is. The word "meeting" in these Articles shall be construed accordingly.

- 25.4 The quorum for the transaction of the business of the Board at the time when any Board meeting proceeds to business shall be five. The Board will not be quorate unless the quorum consists of at least one Council Board Member, one Independent Board Member and one Tenant Board Member. Co-optees may not count towards a quorum.
- 25.5 If a quorum is not present within half an hour from the time appointed for a Board meeting the Board meeting shall, if requested by a majority of those Board Members present, be adjourned to the same day in the next week at the same time and place or to such other day and at such other time and place as the Board Members present may determine.
- 25.6 If at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting then notwithstanding Article 25.4 the Board Members present shall constitute a quorum.
- 25.7 Questions arising at a Board Meeting shall be decided by a majority of votes and each Board Member present in person shall be entitled to one vote. In the case of an equality of votes, the Chairman shall have a second or casting vote.
- 25.8 Co-optees shall be entitled to attend and to speak but not to vote at meetings of the Board or of a committee of the Board.
- 25.9 All acts done by a meeting of the Board, or of a committee of the Board or by a person acting as a Board Member shall, notwithstanding that it be afterwards discovered that there was a defect in the appointment of any Board Member or that any of them were disqualified from holding office, or had vacated office, or were not entitled to vote, be as valid as if every such person had been duly appointed and was qualified and had continued to be a Board Member and had been entitled to vote.

26 **Chairman and vice or deputy chairman**

- 26.1 The Board Members shall appoint one of their number to be the Chairman of the Board in accordance with a policy on the recruitment and selection of the Chairman adopted by the Board from time to time. The appointment of the Chairman is subject to the Board being compliant with Articles 13.1 to 13.3 at all times by, if necessary, utilising the powers of the Board to remove a Board Member contained in Article 18.
- 26.2 Unless he is unwilling to do so, the Board Member so appointed shall preside at every meeting of the Board at which he is present. But if there is no Board Member holding that office, or if the Board Member holding it is unwilling to preside or is not present within five minutes after the time appointed for the meeting, the Board Members present may appoint one of their number to be Chairman of the meeting.

26.3 The Board may appoint a vice or deputy chairman to act in the absence of the Chairman on such terms as the Board shall think fit.

27 **Written resolution**

A resolution in writing signed by:

27.1 three quarters of all the Board Members entitled to receive notice of a meeting of the Board or of a committee of the Board; and

27.2 the Chairman of the Organisation or of the relevant committee; and

which satisfies the quorum requirements of Article 25.4 shall be as valid and effectual as if it had been passed at a meeting of the Board or (as the case may be) a committee of the Board duly convened and held and may consist of several documents in the like form each signed by one or more Board Members.

28 **Secretary**

The Organisation may have a Secretary (and any deputy or alternate Secretary) who shall be appointed by the Board for such term, at such remuneration and upon such conditions as the Board may determine and any Secretary so appointed may be removed by the Board.

29 **Minutes**

The Board shall cause minutes to be made in books kept for the purpose:-

29.1 of all appointments of officers made by the Board Members; and

29.2 of all proceedings at meetings of the Organisation and of the Board, and of committees of the Board and of the Council in its capacity as the sole member of the Organisation, including the names of the Board Members present at each such meeting.

30 **Records accounts and returns**

The Organisation shall comply with the provisions of the Companies Acts in respect of:-

30.1 the keeping and auditing of accounting records;

30.2 the provision of accounts and annual reports of the directors; and

30.3 the making of an annual return.

31 **The Seal**

31.1 If the Organisation has a seal it shall only be used with the specific or general authority of the Board or of a duly authorised committee of the Board. The Board may determine who shall sign any instrument to which the seal is affixed and unless otherwise so determined it shall be signed by a Board Member and by the Secretary or a second Board Member.

31.2 The Organisation may exercise the powers conferred by Section 49 of the 2006 Act with regard to having an official seal for use abroad, and such powers shall be vested in the Board Members.

32 Notices

32.1 Any notice to be given to or by any person pursuant to the Articles shall be in writing except that a notice calling a meeting of the Board or of a committee of the Board need not be in writing.

32.2 The Organisation may give any notice to the Council either personally or by sending it by post in a prepaid envelope addressed to the Council at their registered address or by leaving it at that address.

32.3 The Council present by duly authorised representative at any meeting of the Organisation shall be deemed to have received notice of the meeting and, where requisite, of the purposes for which it was called.

32.4 Proof that an envelope containing a notice was properly addressed, prepaid and posted shall be conclusive evidence that the notice was given. A notice shall be deemed to be given at the expiration of 48 hours after the envelope containing it was posted.

33 Indemnity

33.1 Every Board Member or other officer of the Organisation shall be indemnified out of the assets of the Organisation against all losses or liabilities which he may sustain or incur in or about the execution of the duties of his office or otherwise in relation thereto, including any liability incurred by him in defending any proceedings, whether civil or criminal, in which judgement is given in his favour or in which he is acquitted or in connection with any application under Section 1157 of the 2006 Act in which relief is granted to him and no Board Member or other officer shall be liable for any loss, damage or misfortune which may happen to or be incurred by the Organisation in the execution of the duties of his office or in relation thereto **provided that** this Article shall only have effect in so far as its provisions are not avoided by Section 232 of the 2006 Act.

33.2 Save as provided in Article 5.2.7, the Board shall have power to purchase and maintain for any Board Member or officer of the Organisation insurance against any such liability as is referred to in Section 232 of the 2006 Act.

Newark and Sherwood Homes Limited (the Company)

Company number: 5145364

Sole member resolution of the Company pursuant to sections 357 of the Companies Act 2006 (the Act)

The undersigned, being the sole eligible member of the Company, passes the following special resolution:

THAT the draft articles of association attached to this resolution be adopted as the articles of association of the Company in substitution for, and to the exclusion of, the existing articles of association

Signed:

Date:

For and on behalf of

Newark and Sherwood District Council

HOUSING GROWTH - BOWBRIDGE ROAD

1.0 Purpose of Report

- 1.1 To update Members of the Committee on the progress being made to deliver the housing growth strategy for the Council, with a focus upon the proposal for residential housing development on the Council owned land at Bowbridge Road, Newark.

2.0 Background Information

- 2.1 The Committee at its meeting on 4th December 2014 resolved to approve the report (*Agenda Item No.9*), which supported the principle of a collaboration with Nottinghamshire County Council to deliver an extra care housing scheme, along with further consideration to be given to the opportunity to develop a small housing scheme for younger adults on general fund land at Bowbridge Road, Newark.
- 2.2 The sources of finance available to fund the scheme(s) were set out in the December report.
- 2.3 Members will be aware that the Bowbridge Road site is where the new leisure centre is being developed by the Council with the residue of the site earmarked for housing development. It is an allocated site for housing within the Council's Allocations and Development Management Development Plan Document.
- 2.4 A further update on the collaboration work with the County has been given within the Urgency Item reported to the Committee on this Agenda, where authority was given to submit a grant bid to the Homes & Communities Agency's (HCA) Care and Support Specialised Housing Fund. The following section will provide Members with progress on the proposals.

3.0 Bowbridge Road

- 3.1 Discussions have been ongoing with the County Council on the proposal to utilise a proportion of the land at Bowbridge Road, directly adjacent to the new leisure centre, to develop 16 apartments of supported living accommodation for younger adults, together with an extra care housing scheme of 60 apartments.
- 3.2 For the extra care housing scheme Nottinghamshire County Council have now confirmed their in principal capital provision, with the overall financial split being:

Funding Source	% Capital Contribution towards Total Scheme Costs
Homes & Communities Agency <i>(Subject to a successful funding bid application to be announced October 2015).</i>	18%
Nottinghamshire County Council	38%
Newark & Sherwood District Council <i>(Through Housing Revenue Account (HRA) Balances and/or Borrowing).</i>	44%

Newark & Sherwood Homes <i>(The Company's Board has approved a contribution from their reserves).</i>	
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- 3.3 Unfortunately, the supported living scheme for younger adults will no longer form part of the HCA bid submission as detailed in the Urgency Item. This is because a request was made by the District Council for the County to contribute a similar capital provision to that of the extra care housing scheme due to particular risks this scheme would present to the HRA Business Plan, primarily relating to void periods and the County having direct nominations for all of the units.
- 3.4 However, for this scheme the County Council wanted to contribute a significantly lower capital contribution percentage and based their decision on the existing financial models they have with other Registered Providers (RPs) when building new units for this client group. Unfortunately this financial model is not sustainable for the District Council which is subject to different financial requirements to RPs.
- 3.5 Members should note that there still may be other opportunities to develop such a scheme in the future.
- 3.6 It is disappointing that on this occasion the supported living scheme will not form part of the funding bid to the HCA's Care and Support Specialised Housing Fund, which would have added value to the overall submission. This, however, should not be of significant detriment to the extra care housing scheme proposal and the bid will be submitted by the deadline of 29th May 2015 with the outcome of this not being announced until October 2015.
- 3.7 Subject to a successful HCA bid and the Committee formally approving the arrangement to fund its element of the capital contributions for the scheme, work is also required to formalise the co-operation agreement between the District and County Council. This will cover the 40 units the County will have direct nominations to sitting outside of the Council's allocation scheme, consideration will also have to be given to any tenancy issues that may arise.
- 3.8 Such a co-operation agreement is normally in place for a 30 year period, with the County Council covering lost rental income for the nominated extra care units during void periods after an agreed period of time and registering an interest in the land to protect its capital contribution. A template for the co-operation agreement has already been drawn from the work undertaken for the 9 units at the Scarborough Road, Bilsthorpe development that the County have direct nominations to.
- 3.9 The Committee should note that the extra care housing scheme is still subject to gaining full planning permission. Also once developed the scheme would be in the ownership of the District Council's HRA, let at an affordable rent and managed by Newark & Sherwood Homes.

Project Management

- 3.10 Newark & Sherwood Homes has assisted the Council to submit the bid to the HCA through engaging an architect and quantity surveyor to draw up the scheme design, set against the County's and District Council's requirements, and appraising the total scheme costs. The Company has also collated and input all the necessary information onto the HCA's Investment Management Submission to enable submission of the bid signed off by the Director – Resources.

- 3.11 Dependant on the notification of a successful bid to the HCA and each partner's formal commitment to its capital contribution a decision is required on who will undertake the project management of the build programme.
- 3.12 To maximise the use of resources required to progress new build developments the Council has undertaken a market testing exercise to ascertain what other Registered Providers charge for project management. This is set against the Company's current project management fee of 5% of the total scheme costs of a development.
- 3.13 From this exercise the Council found that the Providers it contacted charged a lower fee compared to the Company. The Company were made aware of this and advised that should they be appointed to project manage the build programme, their fee would be fixed at £60,000, which is a significant reduction to the 5% fee considering the total scheme costs to develop an extra care housing scheme of 60 apartments. The Company have indicated that their fee proposal has been prepared on a one off basis to support this growth opportunity and to enable the Company to deliver one of its key tasks in the 2015/16 Delivery Plan: 'Support the Council in its strategic approach to growth'. For future developments the Company has advised that it will look to formulate a matrix of charges, reflective of different sites/schemes and which would be commensurate to market rates.
- 3.14 It is proposed therefore that the Company should be appointed to undertake the project management of the complete build programme, as it has done with the previous Council house building programmes, and a specification for this be drawn up considering the contents of paragraph 3.13.
- 3.15 The project management specification for such a build programme will cover matters around monitoring, contract management, planning, procurement of key services (*e.g. architects, employer's agents, engineers*) and the main build contract, financial management and relationship management, especially considering the inputs of the District and County Council especially around the final design and specification of the extra care housing scheme.

Residue of the Site

- 3.16 An expression of interest has now been finalised, after taking further advice from the HCA, for submission to its Delivery Partner Panel to seek developer interest in working with the Council through a building agreement/lease or similar to deliver a market housing development on the residue of the Bowbridge Road site.
- 3.17 Once submitted the outcome of this initial stage will be presented to a later Committee meeting. In taking forward the proposals a fundamental consideration will be to ensure that this opportunity is considered against the impact and any risks to the Council's General Fund and viability of the HRA BP. To assess whether it would either sustain the HRA BP or that it offers the best return for the Council on its investment in terms of scale of growth or numbers of units that it is able to deliver – i.e. that it maximises the outputs achievable. In addition the Council's ambition and risk appetite will need to be taken into account.

4.0 **Housing Growth Delivery**

- 4.1 The table below provides the Committee with an update on the development activities it is currently undertaking or supporting to deliver the Council’s housing growth strategy across all areas of the district.

Affordable Housing Schemes
<p><i>Delivered:</i> 25 HRA bungalows at Scarborough Road, Bilsthorpe supported by grant funding through the first phase of the HCA’s Care & Support Programme. 9 units have been designated as extra care for nomination by the County Council.</p> <p><i>Completed March 2015</i></p>
<p><i>In development:</i> 32 1 and 2 bed HRA apartments are being developed on a total of 5 HRA sites in Balderton, Newark & Edwinstowe, supported by grant funding through the HCA’s Affordable Homes Programme 2015-18.</p> <p><i>Expected completion early 2016</i></p>
<p><i>In development:</i> The Council approved a proportion of capital funding to Nottingham Community Housing Association, in addition to HCA grant funding, to deliver 15 affordable housing units in Walesby.</p> <p><i>Expected completion early 2016</i></p>

- 4.2 The Council is continuing to explore further housing growth opportunities in both its urban and particularly in smaller rural localities across the district be it through direct delivery or in partnership with other providers.

5.0 **Equalities Implications**

- 5.1 In taking forward the Housing Growth Strategy, equality implications will be considered and assessed against the delivery of additional housing to ensure the evidenced housing need across all tenures and communities is addressed.

6.0 **Impact on Budget/Policy Framework**

- 6.1 Within the contents of the main report all the budgetary and policy framework requirements have been considered.

7.0 **RECOMMENDATIONS** that:

- a) the report be noted; and
- b) approval be given, in principle, to Newark and Sherwood Homes being appointed to undertake the project management of the complete extra care build scheme on the basis as set out in paragraph 3.13 of the report.

Reason for Recommendations

The housing growth strategy will contribute to the wider strategic priorities of the Council, meet the evidenced housing need across the district for all tenures and maintain a viable Housing Revenue Account Business Plan.

Background Papers

None

For further information please contact Rob Main (5930), Amanda Wasilewski (5331), or Karen White (5240).

Karen White
Director – Safety

David Dickinson
Director - Resources

URGENCY ITEMS – MINUTE OF DECISION

Delegation arrangements for dealing with matters of urgency

Paragraph 7.2.1 of the Council's Constitution provides that Chief Officers may take urgent decisions if they are of the opinion that circumstances exist which make it necessary for action to be taken by the Council prior to the time when such action could be approved through normal Council Procedures. They shall, where practicable, first consult with the Leader and Chairman (or in their absence the Vice Chairman) and the Opposition Spokesperson of the appropriate Committee (Constitution incorporating a scheme of delegation approved by the Council in May 2013).

Subject: Funding Bid Submission – Homes and Communities Agency, Care and Supported Specialised Housing Fund

Appropriate Committee: Policy & Finance

Details of item (including reason(s) for use of urgency procedure):

Policy & Finance Committee at its meeting on 4th December 2014 considered a report titled Housing Growth (Agenda Item No.9) and gave the approval to the principle of a collaboration with Nottinghamshire County Council to deliver an extra care/supported housing scheme and to also consider the opportunity to develop a small housing scheme for supported younger adults on the Council (General Fund) owned land at Bowbridge Road, Newark.

In terms of the finance required to fund this housing growth opportunity, the Committee were informed that contributions would be required from the Housing Revenue (Balances and/or Borrowing) and through the County's 'Living at Home' extra care capital programme, in addition to the possible opportunity to bid for grant funding through the Homes and Communities Agency's (HCA) Affordable Homes Programme 2015-18.

On 17th February 2015, the HCA launched the second phase of the 'Care and Support Specialised Housing Fund'. This fund makes available up to £120 million of capital grant for innovative and well-designed affordable housing for older people and adults with disabilities and mental health problems – including the possibility of grant funding for new Extra Care schemes.

Subsequent to the presentation of the Housing Growth report to the Policy & Finance Committee and the announcement by the HCA, work has been on-going between officers of the District, County Council and Newark & Sherwood Homes to draw up and submit a funding bid. The bid is based on the proposal to use some of the District Council's land at Bowbridge Rd to develop an Extra Care Housing scheme of 60 apartments. Whilst it had been hoped to include within the bid 16 apartments of Supported Living accommodation for younger adults, the County Council feel unable to support the scheme with the level of capital contribution that would be required by the District in order to make the Scheme viable. Therefore, very regrettably, it is not proposed to include this development within the bid. The Extra Care scheme would be in the ownership of the District Council's HRA, the units let at an affordable rent and managed by Newark & Sherwood Homes.

It is intended that the County Council will have nomination rights to 40 of the 60 new Extra Care apartments. The remaining 20 units will be allocated through the District Council's Housing Allocation Scheme for older people. For the County's nominated units through its Core Provider Model, the County Council has designated care providers who are already operating in the District, and would be ready to take on the delivery of personal care services to the future residents of the new Bowbridge Road schemes.

Reports on this matter have been presented to Nottinghamshire County Council's Adult Social Care and Health (ASCH) Committee who will provide a letter of support to the bid submission.

The funding bid has to be submitted to the HCA by the deadline of 29th May 2015 with the outcome of bids not known until October 2015.

Subject to the successful award of HCA grant funding, the Policy & Finance Committee will be asked to consider and approve the capital funding, through the use of HRA Balances and/or Borrowing, as part of the District Council's contribution towards the costs of the schemes and the mechanism to deliver this proposal. The County Council's ASCH Committee will follow the same approach and Newark & Sherwood Homes Board, set against its requirement to meet the Council strategic housing priorities, will also approve its capital contribution.

The creation of this new, purpose built, Extra Care/supported housing scheme in Newark would be a unique opportunity to greatly improve the lives of older persons living in our district and their families, meeting their housing and social care needs.

In taking forward the proposal to submit a funding bid to the HCA, officers have considered the impact and risks to the Council's General Fund and viability of the HRA BP.

Decision

That a funding bid is submitted by the Council, in partnership with Nottinghamshire County Council and Newark & Sherwood Homes, to the Homes and Communities Agency's Care and Support Specialised Housing Fund (Phase 2) based on the delivery of a 60 apartment Extra Care Housing Scheme.

On the outcome of the bid submission a further report will then be submitted to the Policy & Finance Committee to consider and approve the Council's capital contribution towards the costs of the scheme and mechanism to deliver the development proposals.

Members Consulted

Councillor Roger Blaney
Councillor David Lloyd
Councillor Abbie Truswell

Signed:

Karen White

Date: 26th May 2015

**Karen White
Director - Safety**

NEWARK AND SHERWOOD DISTRICT COUNCIL

Minutes of the meeting of the **Strategic Housing Liaison Panel** held in G21, Kelham Hall on Monday 9 March 2015 at 5.00pm.

PRESENT: Council Panel Members: R.V. Blaney (Chairman),
Councillors: R.B. Laughton, Mrs A.A. Truswell and Mrs T. Gurney

Company Panel Members:
Board Members: Christine Rose, Mike Frettsome
Ben Wells, David Roebuck and Jean Clarke

**Officers
in Attendance:** Karen White - Director – Safety
Amanda Wasilewski - Asst. Business Manager – Financial Services
Rob Main - Business Manager - Strategic Housing
Stephen Feast – Director – Newark and Sherwood Homes
Andy Dewberry- Assistant Director, Asset and Development Services-
Newark and Sherwood Homes

53. APOLOGIES FOR ABSENCE

Apologies for absence were received from Councillor D.J. Lloyd, Lynn Clayton-Chairman of Newark and Sherwood Homes Board and Rebecca Rance - Chief Executive - Newark and Sherwood Homes.

54. DECLARATIONS OF INTERESTS BY MEMBERS AND OFFICERS

There were no declarations of interest by Members or officers.

55. MINUTES OF THE MEETING HELD ON MONDAY 8 DECEMBER 2014

The Panel considered and agreed the minutes of the meeting held on Monday 8 December 2014 as a correct record.

56. HOUSING GROWTH

The Business Manager - Strategic Housing, presented a report detailing funding available from the Homes and Communities Agency Affordable Housing Programme through the Continuous Market Engagement process. Details of schemes on-going and shortly commencing around the District were included in the report. A correction to the report was noted as the 'Available Funding for Future Project' total was £11,460,180 and not as stated in the report £11,460,880.

£800million was available for bidding nationally from the Homes and Communities Agency, available on a continuous market engagement basis allowing opportunities to bid for firm schemes until all the funding was allocated. Officers of the Council and Newark and Sherwood Homes were appraising HRA (Housing Revenue Account) sites for potential developments, with an indicative 50 additional units, to be spread across the District. The Panel considered the report, agreeing that this was a very positive opportunity and welcomed the work to formulate a bid.

The Director - Safety also informed the Panel that the Government had recently made additional funds available to help council tenants who wished to purchase private housing. A fund of £65million was available for Councils to make bids to provide up to £20,000 for individual tenants to buy a property in the private sector, and help free-up more social housing.

The deadline for bidding was mid-march. The Panel considered the opportunity to be a positive one, which could assist in alleviating pressure on housing stock. It was acknowledged that the level of up-take was uncertain, however, it was felt that a bid for a potential of 20 tenant purchasers might be appropriate.

AGREED (unanimously) that the Panel support:

- (a) the work to formulate a bid for submission through the Homes and Communities Agency's Continuous Market Engagement process for the Council and Newark and Sherwood Homes Board approval; and
- (b) work by Officers from the Council and Newark and Sherwood Homes work to formulate a bid to secure funding for tenants to purchase a property in the private sector.

57. DESIGNATED SUPPORTED ACCOMODATION

The Business Manager- Strategic Housing presented a report detailing a review of the designation of supported accommodation and the housing based support charge that was to be undertaken. The Council had requested that Newark and Sherwood Homes undertake the review, following the decision of the County Council to terminate the Supporting People Contracts, to ensure that housing based support services to tenants could continue whilst mitigating the effects of the withdrawal of Supporting People funding on the HRABP (Housing Revenue Account Business Plan).

Around half of the housing stock was currently designated supported accommodation, which included a mandatory, chargeable lifeline service charge of £1.50, and a range of discretionary services at an additional charge. It was noted that where a property had been designated as supported accommodation, the Right-to-Buy was not available.

The Panel considered the proposed review, and it was noted that some tenants had expressed concerns over being obliged to pay the mandatory lifeline charge when they did not wish or need to receive the service. The Director- Newark and Sherwood Homes acknowledged that following the withdrawal of Supporting People funding some tenants who had previously had the lifeline charge paid for through the supporting people funding, were now required to pay the charge themselves, although the cost of this had been reduced from £3.60 to £1.50 per week. Other services associated with supported accommodation were optional for the tenant. He confirmed that the lifeline charge was not eligible to be covered by Housing Benefit.

With regard to the telephone line rental for the lifeline, some concerns were raised that tenants should have to pay line rental charges. It was requested that alternative technologies be considered, such as mobile phone connections, and also that tenants would not be charged for installation of a phone line where it was purely required for a lifeline.

AGREED (unanimously) that the Panel noted the commissioning of the review of the designated supported accommodation scheme.

58. NEWARK AND SHERWOOD HOMES ANNUAL BOARD REVIEW 2014/15-PROGRESS UPDATE

A Board Member of Newark and Sherwood Homes Board- Councillor Mrs Christine Rose presented a report detailing the progress of the review of the Board. The three main elements of the review included the Board capacity and capability, overall size of the Board, and Board remuneration and recruitment.

The Panel considered the issues that had arisen in the course of the review, and there was general agreement that consideration should be given to an honorarium payment for the Chairman of the Board, in recognition of the work undertaken for that role. Appointments made to the Board should have appropriate skills, and with regard to Councillor appointments, an argument was made for political balance. A proposed reduction in size of the Board was also welcomed.

The Panel also discussed the nature of the relationship between Newark and Sherwood Homes and the Council, agreeing that confidential report items should be shared with the Council, excepting where there was a conflict of interest.

AGREED (unanimously) that the Panel noted the progress of the Board in undertaking its 2014/15 governance year Annual Board Review.

59. REVIEW OF TENANT INFLUENCE AND INTEGRATION IN DECISION MAKING

The Director-Newark and Sherwood Homes presented a report detailing the proposals following a review of tenant influence and integration into decision making. A number of changes were proposed to enhance tenant engagement, and these were detailed in the report. Discussions with tenants had resulted in requests to reduce the formal structure and requirement for constitutions, to create a more flexible approach to make it easier for people to get involved. The proposed structure would require direct support from Newark and Sherwood Homes to each of the proposed influence mechanisms, negating the need for grants as was the current practice.

There would be further methods employed to enable short-term engagement with tenants, and also anonymous engagement via the website and text. The proposed structure comprised: Tenant Board Directors; Tenant Forum; Tenant Scrutiny Panel; Performance Monitoring Panel; Service Improvement Panel; and the Tenant and Residents Associations.

Following consideration by the Panel, a report would be submitted to the Council's Homes and Communities Committee for consideration and approval, and an implementation plan would then be developed. It was anticipated that the new mechanisms could be in place by October 2015.

AGREED (unanimously) that the review of Tenant Influence and Integration in Decision making report be noted.

60. HOUSING PROVISION FOR AN AGEING POPULATION

The Business Manager- Strategic Housing presented a late report regarding the anticipated growth in the ageing population and the resultant housing provision that would be required, particularly in terms of housing growth opportunities and housing management and maintaining a viable HRABP (Housing Revenue Account Business Plan). Housing provision for older people had been identified as a priority within the Housing Growth Strategy.

In anticipation of the increasing need, the Council were building 25 'extra care' bungalows, and were appraising potential for an extra care scheme at Bowbridge Road, Newark. However, consideration would also be needed to meet demands to support tenants to remain in their homes as they got older which would include complex issues such as ensuring 'dementia friendly' properties. It was likely that the demand for intensive housing management services would increase as a result of the ageing population.

Members of the Panel considered the issues raised in the report, and forecasting of the anticipated growth of the older population over the next 20 years. The Panel agreed that a strategic and proactive approach between the Council and Newark and Sherwood Homes was required to provide supported housing management services for the increasing older people population, and the associated business risk that this could have on the long term viability of the HRABP. Consideration would be required with regard to the type of services and support that could be offered and any charges associated, where any other partner agencies could provide appropriate support. It was noted that this may involve a change to the management fee in order to reflect the changing requirements for additional support.

AGREED (unanimously) that the report be noted and further updates be brought back to the Panel.

61. DATE OF NEXT MEETING

Monday, 15th June 2015.

The meeting closed at 6:12pm

Chairman

URGENCY ITEMS - MINUTE OF DECISION

Delegation arrangements for dealing with matters of urgency

Paragraph 7.2.1 of the Council's Constitution provides that Chief Officers may take urgent decisions if they are of the opinion that circumstances exist which make it necessary for action to be taken by the Council prior to the time when such action could be approved through normal Council Procedures. They shall, where practicable, first consult with the Leader and Chairman (or in their absence the Vice Chairman) and the Opposition Spokesperson of the appropriate committee (Constitution incorporating a scheme of delegation approved by the Council on 14th May 2013)

Subject:

Active4Today Limited – appointment of Authorised Officer for Council as sole shareholder Member of Company and amendment of Articles of Association

Appropriate Committee:

Policy and Finance Committee

Details of Item (including reason(s) for use of urgency procedure):

At the meeting of Policy and Finance Committee on 29 January 2015 it was resolved to establish a wholly owned leisure company to provide leisure and sports development services on the Council's behalf. The Company, Active4Today, was duly incorporated on 9 March 2015.

The Company's Articles of Association provide that the Council as the sole shareholder may authorise such persons as it thinks fit to act as its representative at any meeting of the Company. A copy of such authorisation shall be in writing and signed or executed in accordance with the Council's internal processes and shall take effect when delivered to the registered office of the Company.

Following incorporation, work has been progressing on the VAT registration for the Company. Guidance has now been received that HMRC generally looks for specific provisions to be included within the Memorandum and Articles of a non-profit making company indicating what happens to the company's assets on winding up the company. Whilst it is considered that an express provision concerning this is unnecessary because the Company's Memorandum and Articles already make it clear that all income and property of the company should be applied solely towards the promotion of its objects and not for personal benefit, it is felt that this should be added as it is something relatively simple and would minimise HMRC's queries regarding the NPDO (Non-Profit Distributing Organisation) status of the Company. This philanthropic or non-profit distributing requirement is essential in order to achieve the taxation benefits which underpin the project and Company set up.

It is therefore proposed to make the necessary changes to the Memorandum and Articles of Association as a matter of urgency so that the application for registration can be made to HMRC in good time for the 1st June start date when it is proposed that the leisure services be transferred to the Company. This decision needs to be taken before the next Policy and Finance Committee which is not scheduled to take place until 4th June.

The amendment proposed is to add the following wording at the end of Article 6 of the Memorandum and Articles:

“and provided that if upon the winding up or dissolution of the company there remains, after the satisfaction of all its debts and liabilities, any property whatsoever, the same shall not be paid to or distributed among the members of the company, but shall be given or transferred to any company, organisation or association having objects similar to the objects of the company (and which prohibits the distribution of its income and property to an extent at least as great as is imposed on the company by these articles) chosen by the members of the company at or before the time of dissolution, and if that cannot be done then to some charitable or philanthropic object for the benefit of the inhabitants of the area of the Council and/or its surrounding area”.

In order for the decision to be properly taken in accordance with the Company’s constitution it is also proposed to authorise the Director of Safety to act as the Council’s representative of the Company in accordance with Article 54. A report will then be taken to the first meeting of Policy and Finance following the elections to determine the Council’s representative at any meetings of the Company on a more permanent basis.

Decision Taken:-

1. That the Director of Safety be authorised to act as the Council’s representative of the Company in accordance with Article 54 a copy of this authorisation be sent to the registered office of the Company
2. To amend the Company’s Memorandum and Articles of Association (Article 6) to add the wording as indicated above to set out expressly what happens to the Company’s assets upon dissolution.

Members Consulted: Councillor Roger Blaney (Chairman Policy & Finance)
Councillor Mrs Abbie Truswell (Opposition Spokesperson – Policy & Finance Committee)

Signed

Karen White

Date 10 April 2015

URGENCY ITEMS - MINUTE OF DECISION

Delegation arrangements for dealing with matters of urgency

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Subject: Council Tax and Business Rates Summons Costs 2015

Appropriate Committee: Policy & Finance 4th June 2015

Details of Item

To seek approval to reduce the level of summons costs to £80 (council tax) and £100 (business rates) following a review of the charges incurred.

The current level of costs set for 2015 is £100 (council tax) and £125 (business rates). The costs reflect the level of charges incurred and post liability order recovery action when issuing a magistrates court summons due to non-payment of council tax or business rates. Magistrates grant the costs when application is made for a liability order at the court hearing.

The level of costs charged by London Borough of Haringey was recently challenged by a council taxpayer at a Magistrates court hearing. The judge found that the Council did not provide sufficient evidence to demonstrate that the request for costs was at a reasonable level. The judge gave advice on what could and could not be taken into account when calculating the level of charges incurred.

Subsequently, the Nottingham Magistrates Court has advised that there should be an explanation and justification for the amount of costs requested at subsequent liability order hearings.

The next scheduled liability order hearing is Thursday 28th May.

Certain elements of our calculation can no longer be taken into account when assessing the level of costs – these include elements for the issue of a reminder notice and recovery costs after the court hearing. The revised calculation shows that, in light of the recent advice from the judge, the appropriate level of costs should be revised to £80 (council tax) and £100 (business rates).

It is expected that the loss of costs income caused by the reduction will be subsumed within the existing revenue budget due to the increased level of court activity.

Members Consulted:

Councillor Roger Blaney
Councillor Abbie Truswell

Signed 

Date 21st May 2015

David Dickinson
Director - Resources