

Waverley Borough Council

Briefing Note for members in relation to the incorporation of Waverley Initiatives Limited

1 Introduction

- 1.1 This Briefing Note explains the format of the draft Articles of Association prepared for the incorporation of Waverley Initiatives Limited (the **Company**).
- 1.2 The Company will be incorporated as a company limited by shares with the sole shareholder being Waverley Borough Council.
- 1.3 The Company will have a board of directors comprised of Council members and Council officers.

2 Articles of Association

- 2.1 Following the commencement of the Companies Act 2006, all of the administrative details contained in a company's constitution are contained in the Companies Articles of Association; the traditional formulation of company constitutions with which members may be familiar (i.e. a separate Memorandum of Association and Articles of Association) was abandoned with the commencement of the Companies Act 2006
- 2.2 The Memorandum of Association has not been circulated as it will merely serve to record the subscriber's (in this case Waverley Borough Council) intention to incorporate the Company.
- 2.3 Article 5 establishes the Company with the broadest possible Article permitted under the Companies Act 2006. This allows utmost flexibility in relation to any functions that may be undertaken by the Company.
- 2.4 In practice, the Council may decide to restrict the activities to be undertaken by the Company, either contractually under the terms of the Procedure Agreement (explained at paragraph 3 below) or by way of a resolution directing the board (see Article 28.3 explained below).
- 2.5 Articles 6 through to 22 deal with the nature of the Company's shares and the procedure for the payment of dividends. These Articles are based on the model Articles prescribed by the Companies Act 2006. In practice, of course, it is envisaged that the only shareholder of the Company will be Waverley Borough Council, so this means that many of the provisions in these Articles won't apply in practice but they are included as 'catch all' provisions and to allow for future flexibility.
- 2.6 From a practical perspective, the fact that Waverley Borough Council will be the only shareholder of the Company gives the Council a very significant degree of control over the future activities and direction of the Company. In particular, the Council (in its capacity as the sole shareholder) is entitled;
 - 2.6.1 to determine dividends from the Company (Article 17);
 - 2.6.2 pass a resolution directing the directors of the Company to take a particular course of action or to refrain from a particular course of action (Article 28.3);
 - 2.6.3 to remove any director or appoint any director (Article 30);

- 2.7 Articles 23 through to 26 deal with the procedure for shareholders meetings; again most of these provisions will not apply in practice because the Waverley Borough Council will be the only shareholder of the Company and, accordingly, we would anticipate that the Council will exercise its rights as shareholder simply by way of written resolutions rather than by holding formal meetings.
- 2.8 Articles 27 through to 35 deal with the nature of and powers of the directors of the Company. Members should particularly note
- 2.8.1 Article 31, which sets out the restrictions on individuals who are eligible to be directors of the Company;
 - 2.8.2 Article 28 which directs that the directors shall have control over the decisions to be made by the Company (except in circumstances where the Council in its capacity as shareholder has directed otherwise)
 - 2.8.3 Article 34 which permits the directors to authorise particular conflicts of interest and Article 33.3.3 which states that a director shall not be deemed to have a interest in a transaction simply because they are a member of or employee of the Council (i.e. therefore permitting transactions between the Council and the Company).
- 2.9 Finally Articles 36 through to 42 deal with administrative aspects of the Company's business.
- 3 Other control mechanisms**
- 3.1 In addition to the control which is available to the Council by virtue of the Articles of Association and the Council's role as the sole shareholder of the Company, we would anticipate (and recommend) in due course that additional controls are imposed on Waverley Initiatives by way of a so called Procedure Agreement (sometimes known as an Intragroup Agreement). In particular, such an agreement would impose additional controls on the Company by way of a legally binding contract.
- 3.2 In particular, we would anticipate that such an agreement would include controls over the following:
- 3.2.1 the nature of the business to be undertaken by the Company;
 - 3.2.2 a procedure for the annual approval of a business plan for the Company and a commitment to operate the business in accordance with that agreed business plan;
 - 3.2.3 a commitment to operate within particular financial constraints (for example not letting contracts of a particular size or duration without the Council's permission);
 - 3.2.4 an obligation to provide interim management accounts to the Council;
- 3:3 The Procedure Agreement may also deal with more operational aspects of the Company's business once the detail of the Company's activities has been established and agreed with the Council.

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March 2010

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