

NOTICE  
OF  
MEETING



# CABINET REGENERATION SUB COMMITTEE

will meet on

**TUESDAY, 13TH DECEMBER, 2016**

**At 5.30 pm**

in the

**DESBOROUGH 2 & 3 - TOWN HALL, MAIDENHEAD**

TO: MEMBERS OF THE CABINET REGENERATION SUB COMMITTEE

COUNCILLORS SIMON DUDLEY (CHAIRMAN), JACK RANKIN (VICE-CHAIRMAN),  
PHILLIP BICKNELL, CARWYN COX, SAMANTHA RAYNER, MJ SAUNDERS AND  
DEREK WILSON

PRINCIPAL MEMBERS ALSO IN ATTENDANCE: COUNCILLORS CHRISTINE BATESON  
AND DAVID EVANS

Karen Shepherd - Democratic Services Manager - Issued: 5 December 2016

Members of the Press and Public are welcome to attend Part I of this meeting. The agenda is available on the Council's web site at [www.rbwm.gov.uk](http://www.rbwm.gov.uk) or contact the Panel Administrator **Karen Shepherd**

**Fire Alarm** - In the event of the fire alarm sounding or other emergency, please leave the building quickly and calmly by the nearest exit. Do not stop to collect personal belongings and do not use the lifts. Do not re-enter the building until told to do so by a member of staff.

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## AGENDA

### PART I

<u>ITEM</u>	<u>SUBJECT</u>	<u>PAGE NO</u>
1.	<u>APOLOGIES FOR ABSENCE</u>  To receive any apologies for absence	
2.	<u>DECLARATIONS OF INTEREST</u>  To receive any declarations of interest	5 - 6
3.	<u>MINUTES</u>  To consider the Part I minutes of the meeting held on 24 October 2016	7 - 8
4.	<u>RBWM PROPERTY COMPANY INITIAL BUSINESS PLAN</u>  To consider the above report	9 - 102
5.	<u>LOCAL GOVERNMENT ACT 1972 - EXCLUSION OF THE PUBLIC</u>  To consider the following resolution:  'That under Section 100(A)(4) of the Local Government Act 1972, the public be excluded from the remainder of the meeting whilst discussion takes place on items 6-10 on the grounds that they involve the likely disclosure of exempt information as defined in Paragraphs 1-7 of part I of Schedule 12A of the Act'	

**PRIVATE MEETING**

6.	<u>MINUTES</u> To consider the Part II minutes of the meeting held on 24 October 2016 <b><i>(Not for publication by virtue of Paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972)</i></b>	103 - 106
7.	<u>YORK HOUSE UPDATE</u> To consider the above report <b><i>(Not for publication by virtue of Paragraph 3, 4 of Part 1 of Schedule 12A of the Local Government Act 1972)</i></b>	107 - 118
8.	<u>ST EDMUNDS HOUSE SALE</u> To consider the above report <b><i>(Not for publication by virtue of Paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972)</i></b>	119 - 174
9.	<u>CENTRAL HOUSE, MAIDENHEAD</u> To consider the above report <b><i>(Not for publication by virtue of Paragraph 3, 4 of Part 1 of Schedule 12A of the Local Government Act 1972)</i></b>	175 - 226
10.	<u>LAND AT RAY MILL ROAD EAST - APPOINTMENT OF A DEVELOPMENT PARTNER - UPDATE</u> To consider the above report <b><i>(Not for publication by virtue of Paragraph 3, 4 of Part 1 of Schedule 12A of the Local Government Act 1972)</i></b>  <u>Details of representations received on reports listed above for discussion in the Private Meeting</u>  None received	227 - 282



## MEMBERS' GUIDANCE NOTE

### DECLARING INTERESTS IN MEETINGS

#### **DISCLOSABLE PECUNIARY INTERESTS (DPIs)**

DPIs include:

- Any employment, office, trade, profession or vocation carried on for profit or gain.
- Any payment or provision of any other financial benefit made in respect of any expenses occurred in carrying out member duties or election expenses.
- Any contract under which goods and services are to be provided/works to be executed which has not been fully discharged.
- Any beneficial interest in land within the area of the relevant authority.
- Any license to occupy land in the area of the relevant authority for a month or longer.
- Any tenancy where the landlord is the relevant authority, and the tenant is a body in which the relevant person has a beneficial interest.
- Any beneficial interest in securities of a body where
  - a) that body has a piece of business or land in the area of the relevant authority, and
  - b) either (i) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body **or** (ii) the total nominal value of the shares of any one class belonging to the relevant person exceeds one hundredth of the total issued share capital of that class.

#### **PREJUDICIAL INTERESTS**

This is an interest which a reasonable fair minded and informed member of the public would reasonably believe is so significant that it harms or impairs your ability to judge the public interest. That is, your decision making is influenced by your interest that you are not able to impartially consider only relevant issues.

#### **DECLARING INTERESTS**

If you have not disclosed your interest in the register, you **must make** the declaration of interest at the beginning of the meeting, or as soon as you are aware that you have a DPI or Prejudicial Interest. If you have already disclosed the interest in your Register of Interests you are still required to disclose this in the meeting if it relates to the matter being discussed. A member with a DPI or Prejudicial Interest **may make representations at the start of the item but must not take part in discussion or vote at a meeting.** The term 'discussion' has been taken to mean a discussion by the members of the committee or other body determining the issue. You should notify Democratic Services before the meeting of your intention to speak. In order to avoid any accusations of taking part in the discussion or vote, you must move to the public area, having made your representations.

If you have any queries then you should obtain advice from the Legal or Democratic Services Officer before participating in the meeting.

If the interest declared has not been entered on to your Register of Interests, you must notify the Monitoring Officer in writing within the next 28 days following the meeting.

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# Agenda Item 3

## CABINET REGENERATION SUB COMMITTEE

MONDAY, 24 OCTOBER 2016

PRESENT: Councillors Simon Dudley (Chairman), Jack Rankin (Vice-Chairman), Phillip Bicknell, Carwyn Cox, Samantha Rayner, MJ Saunders and Derek Wilson

Also in attendance: Councillors Christine Bateson & David Hilton.

Officers: Alison Alexander, Russell O'Keefe, Chris Hilton, Simon Fletcher, Tanya Leftwich, Robert Large, Shauna Hichens and Rob Stubbs.

### APOLOGIES FOR ABSENCE

Apologies for absence were received from Councillor David Evans (Principal Member).

### DECLARATIONS OF INTEREST

The Managing Director, Alison Alexander, declared an interest in the discussion around the Picturehouse and therefore Phase 1 of the development because she was in the process of purchasing a property in the location.

### MINUTES

**RESOLVED UNANIMOUSLY: That the Part I minutes of the meeting held on 26 September 2016 be approved.**

### RBWM PROPERTY COMPANY INITIAL BUSINESS PLAN

The Vice-Chair, Councillor Rankin, informed Members that this item had been withdrawn from the agenda as the paper was being put back a cycle as Member approvals were not yet completed. It was noted that this delay would have no impact on the timeline of delivery.

### LOCAL GOVERNMENT ACT 1972 - EXCLUSION OF THE PUBLIC

That under Section 100(A)(4) of the Local Government Act 1972, the public be excluded from the remainder of the meeting whilst discussion takes place on items 6-8 on the grounds that they involve the likely disclosure of exempt information as defined in Paragraphs 1-7 of part I of Schedule 12A of the Act.

The meeting, which began at 5.00 pm, finished at 6.00 pm

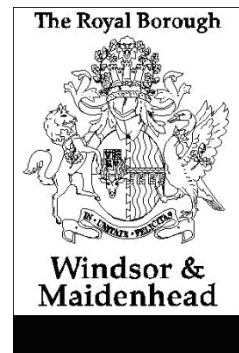
CHAIRMAN.....

DATE.....

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Report for: ACTION



<b>Contains Confidential or Exempt Information</b>	No – Part I
<b>Title</b>	RBWM Property Company Initial Business Plan
<b>Responsible Officer(s)</b>	Alison Alexander, Managing Director/Strategic Director Adults, Children and Health
<b>Contact officer, job title and phone number</b>	Russell O’Keefe, Strategic Director of Corporate and Community Services 01628 796521
<b>Member reporting</b>	Cllr Jack Rankin, Lead Member for Economic Development and Property
<b>For Consideration By</b>	Cabinet Regeneration Sub Committee
<b>Date to be Considered</b>	13 December 2016
<b>Implementation Date if Not Called In</b>	Immediately
<b>Affected Wards</b>	All Wards

## REPORT SUMMARY

1. This report seeks approval of the Company’s initial five year business plan and seeks specific approval for:
  - a. A budget of £200,000 to be provided from S106 funds in 2016/17 to meet the redevelopment of 16 Ray Mill Rd.
  - b. A budget of £400,000 to be provided from S106 funds in 2016/17 to meet the refurbishment of 18-20 Ray Mill Rd.
2. This initial five year Business Plan will be subject to regular and continual review, with a first review after three months, April 2017, a second review August 2017 and at least annually moving forward.
3. Further reports will come back on a quarterly basis with management accounts and operational report, and as required by Shareholder agreement.

## If recommendations are adopted, how will residents benefit?

Benefits to residents and reasons why they will benefit	Dates by which residents can expect to notice a difference
1. Provision of 138 affordable housing units for ‘key workers’ and those in housing need.	Jan 2017-March 2021
2. Through providing income to the Council that can be used to fund services.	Jan 2017-March 2021

## 1. DETAILS OF RECOMMENDATIONS

### RECOMMENDATION: That Cabinet Regeneration Sub Committee:

- i. **Notes and approves of the initial five year Business Plan.**
- ii. **Approves initial budgets of £200,000 and £400,000 respectively in order to undertake works at 16 and 18-20 Ray Mill Road subject to planning being successfully approved.**

## 2. REASON FOR RECOMMENDATION(S) AND OPTIONS CONSIDERED

### Background

- 2.1 In April 2016, Two 5 Nine Ltd, one of the Council's commercial trading companies, was renamed RBWM Property Company Ltd with its sole focus on becoming a property management and development company.
- 2.2 One of the Council's objectives is to increase the supply of affordable housing and to make sure the Council provides a Borough for everyone. This includes the provision of affordable accommodation for key workers and others who are in housing need e.g. homeless and those residing in temporary accommodation.
- 2.3 The Company has an aspiration to develop at least 138 units within the next five years, to be let at affordable rents and to manage a portfolio of at least 1,000 properties within a ten-year timeframe. This will be a mixture of affordable units and private rented sector (PRS) units.
- 2.4 Initially, it is proposed that RBWM Property Company Ltd will develop property for which it will charge 80% of current market rents in order to attract and retain key workers such as teachers and social workers to the Borough where the current cost of housing/accommodation is regarded as high. Properties may be offered to other people who are in housing need e.g. those for whom the Council has a statutory homeless duty to and would be or are residing in temporary accommodation. The Company will only be offering tenants Assured Shorthold Tenancies.
- 2.5 Although the business plan has been modelled on 138 units beyond this period it is envisaged that the company will grow significantly as more properties are added to the portfolio as a result of developments constructed as part of the Council's regeneration projects which will include PRS. The Company will look at new opportunities in line with its objectives.
- 2.6 The Council as the sole shareholder of the company will make funding available to the company through loans at an agreed rate and payment schedule.
- 2.7 The Council will transfer to the Company Council owned properties/assets at an agreed value that have been developed using S106 contributions allocated for affordable housing or properties provided by developers through regeneration sites including PRS.
- 2.8 The Business Plan identifies on a site by site basis potential developments over the term. The majority of which will require planning permission. The schemes at Ray Mill Road are currently being determined and it is envisaged they will be

presented to Maidenhead Development Control Panel in January. As such funding is required in order to ensure that works can commence immediately once approval is given.

- 2.9 The overriding principle of the financial model is that there will be no overall cost, over the life of the business plan, to the Council of setting up and financing the Company. In addition, the Council will benefit from recurring future dividends (profits after tax) from the Company, capital growth in the value of the property portfolio and increased Council tax receipts together from any New Homes Bonus income generated by the new stock.
- 2.10 By the end of the initial five-year period of the Business Plan, the Company will have built an asset base with a value of £46,640,999 and generate profits before tax of c£674,000 per annum.
- 2.11 Profit that comes back to the Council from the Company can be used to invest in service for residents. This ensures the council is not holding on to assets and underutilising them but instead using them proactively in the most efficient and effective way for the benefits of residents through improving the area and services, in line with the council's priority to always put residents first.
- 2.12 The Council originally considered simply providing strategic direction and objectives to the Company was sufficient and the companies should simply deliver on those requirements. However, it has been realised that it is important to residents that how services are delivered through the companies is just as important as what services are delivered. The Council appreciates that residents expect that the public sector concepts of consultation, transparency and open decision-making must apply irrespective who actually delivers the services.
- 2.13 A sound and robust governance structure of the company is in place to protect the Council's financial and reputational investment in the company and ensure transparency. As sole shareholder the Council appoints the directors, approves the business plan and other key decisions. These decisions will be taken by Cabinet in line with the formal shareholders protocol agreement with the Property Company. Regular reviews with the shareholders will be undertaken. The Council will be represented in shareholder reviews by the following:
- Lead Member for Housing
  - Lead Member for Economic Development and Property
  - Lead Member for Finance
  - Lead Member for Legal
  - Managing Director.
- 2.14 The Company will be liable for payment of Corporation tax and VAT.
- 2.15 In accordance with the Initial Business Plan the Company recently invited tenders from a number of Registered Housing Providers for the provision of managing and letting agent services to the Company. Two organisations submitted bids for the total service provision which included the day to day management and letting of the proposed estate together with management of any Council backed/ supported shared ownership or equity schemes. Other organisations declined to bid although declared an interest in the shared ownership aspect should this be tendered as a separate element at some future point in time.

- 2.16 The bids have been evaluated and the next stage is to interview each organisation to clarify elements of the submissions in terms of the costs provided and the range and quality of services. After this stage further due diligence will be undertaken and recommendations for approval made.

### 3. KEY IMPLICATIONS

Defined Outcomes	Unmet	Met	Exceeded	Significantly Exceeded	Date they should be delivered by
Planning Approval for 16,18 &20 Ray Mill Rd Granted.	Jan 2016	Dec 2016	Nov 2016	Nov 2016	Dec 2016
Work to Commence On 16 Ray Mill Rd.	March 2017	Feb 2017	Jan 2017	Jan 2017	Feb 2017
Units available.	Oct 2017	Sept 2017	Aug 2017	July 2017	Sept 2017

### 4. FINANCIAL DETAILS

#### Financial impact on the budget

- 4.1 The company has been funded initially from the provision of a short term loan and income generated from the rental of a small number of flats in York Road, Maidenhead. This has allowed it to fund its initial start up costs, renovate a property in Vansittart Road, Windsor, fund legal advice and finance a number of preliminary planning studies and planning applications.
- 4.2 In order to fund the next property refurbishment a budget of £200,000 is required for 16 Ray Mill Road East and £400,000 for 18-20 Ray Mill Road East. It should be noted that monies will be allocated from S106 funds already received and as such will have no impact on the Council's General Fund.
- 4.3 The Business Plan sets out dividends for the Council commencing with £75,000 in 2017/18 which can be reinvested in services for residents.

	2016/17	2017/18	2018/19
	Capital	Capital	Capital
Addition	£600,000	£0	£0
	Revenue	Revenue	Revenue
Income - dividend	£0 12	(£75,000)	(£250,000)

	<b>2016/17</b>	<b>2017/18</b>	<b>2018/19</b>

## 5. LEGAL IMPLICATIONS

- 5.1 Detailed legal advice is provided in Annex F within the Business Plan. The Council can rely upon the general power of competence within the Localism Act 2011 to form the Housing Company for operating a business to let homes for rent.
- 5.2 The Council has a duty to efficiently manage its assets and has legal powers to hold and transfer/dispose of land under sections 123 of the Local Government Act 1972. Where Councils wish to dispose of land or property at an under value the consent of the Secretary of State will be required in accordance with Section 24 of the Act.
- 5.3 Sections 24 and 25 of the Local Government Act 1988 specifically allows for the Council to provide financial assistance through the provision of loans and subscription to share capital to support the Housing Company with the consent of the Secretary of State.

## 6. VALUE FOR MONEY

- 6.1 Through the better utilisation of Council Assets and the use of existing S106 contributions the Company can develop a property portfolio that is not only of benefit to residents but generates recurring income for the Council.

## 7. SUSTAINABILITY IMPACT APPRAISAL

- 7.1 None.

## 8. RISK MANAGEMENT

<b>Risks</b>	<b>Uncontrolled Risk</b>	<b>Controls</b>	<b>Controlled Risk</b>
Collapse of housing market could impact on the value of the portfolio.	Low / Medium	Following refurbishment and revaluation the overall value of the portfolio will have increased significantly and any market collapse will need to be dramatic. This will affect the balance sheet value but is unlikely to affect rental income.	Low
Lack of tenants which will impact on any debt servicing and profitability.	Low/Medium	The target market is 'key workers' and provision of social support it is envisaged that there	Low

Risks	Uncontrolled Risk	Controls	Controlled Risk
		<p>will be a continual demand for this type of accommodation and in any economic downturn the requirement may actually increase. In addition given that the residents will be public sector supported this provides an additional level of security in terms of rental income guarantees.</p>	

## 9. LINKS TO STRATEGIC OBJECTIVES

1 The recommendations of this report support the following Strategic Objectives:

- |                                    |  |
|------------------------------------|--|
| Residents First                    | <ul style="list-style-type: none"> <li>• Provides a facility to attract and retain key workers to the Borough</li> <li>• Increases the amount of affordable accommodation</li> </ul> |
| Value for Money                    | <ul style="list-style-type: none"> <li>• Provides a portfolio of homes at affordable rents</li> </ul>  |
| Delivering Together                | <ul style="list-style-type: none"> <li>• Delivering in collaboration with key stakeholders and residents</li> </ul>  |
| Equipping Ourselves for the Future | <ul style="list-style-type: none"> <li>• Secures the assets for future provision</li> <li>• Provision of recurring income</li> </ul>   |

## 10. EQUALITIES, HUMAN RIGHTS AND COMMUNITY COHESION

10.1 None.

## 11. STAFFING/WORKFORCE AND ACCOMMODATION IMPLICATIONS

11.1 As the Company grows it will take on staffing resources as required to deliver the Business Plan.

## 12. PROPERTY AND ASSETS

12.1 As detailed in this report.

## 13. ANY OTHER IMPLICATIONS

13.1 None.

## 14. CONSULTATION

14.1 This report will be sent to the Cabinet Regeneration Sub Committee and Planning and Housing Overview and Scrutiny Panel for review.

## 15. TIMETABLE FOR IMPLEMENTATION

15.1 As set out in detail in the Business Plan at Appendix A.

## 16. APPENDICES

- RBWM Business Plan

## 17. BACKGROUND INFORMATION

- None.

## 18. CONSULTATION (MANDATORY)

Name of consultee	Post held and Department	Date sent	Date received	See comments in paragraph:
<b>Internal</b>				
Cllr Jack Rankin	Lead Member for Economic Development and Property	15/11/16	26/11/16	Comments
Alison Alexander	Managing Director/ Strategic Director Adults, Children and Health	14/11/16	27/11/16	Comments
Russell O'Keefe,	Strategic Director of Corporate and Community Services	14/11/16	26/11/16	Comments
Simon Fletcher	Strategic Director Operations and Customer Services	14/11/16		
Rob Stubbs	Head of Finance	14/11/16		

## REPORT HISTORY

<b>Decision type:</b>	<b>Urgency item?</b>
Key Yes	No

Full name of report author	Job title	Full contact no:
Russell O'Keefe	Strategic Director Corporate and Community Services	01628 796521





# **RBWM PROPERTY COMPANY LIMITED**

## **INITIAL BUSINESS PLAN**

**NOVEMBER 2016**

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## **1. EXECUTIVE SUMMARY**

- 1.1 This document sets out the Business Plan for RBWM Property Company Ltd for the immediate foreseeable future with an emphasis on the next five years. It provides the company's vision and broad strategic objectives, as well as the financial forecasts that sit behind the Business Plan.
- 1.2 Broadly, the Business Plan sets out:
- The context and background to the Company.
  - The longer term growth strategy of the business.
  - The plan for pipeline schemes and scaling of the Company.
  - The profit and loss, balance sheet and cashflow of the Company for the next five years.
- 1.3 The Company has identified opportunities to develop existing Council owned assets with the potential to create up to 138 properties for use as affordable accommodation primarily for 'key workers' which has formed the basis of this initial Business Plan.
- 1.4 The Business Plan demonstrates that through its current projected pipeline RBWM Property Co Ltd will become profitable by year 2 (2017/18), generating a turnover of £230,000 and profit before tax of £113,000, building to a turnover and profit before tax respectively of c£1,500,000 and £674,000 per annum by year 5. In addition this will create an asset base of c £46,640,000.
- 1.5 The future of the business beyond the fifth year is truly exciting with the potential of adding in excess of 850 homes to the Company's property portfolio as a result of the Council's regeneration projects which could boost turnover by £8-10,000,000 per annum, the Company's asset base by a further £250,000,000 and its profit before tax to c £5,000,000 per annum.
- 1.6 Key to the Business Plan in its early stages is the transfer of assets from the Council for development and the provision of funding from the Council through S106 monies provided from developers' contributions to fund the early build and refurbishment programmes.

## **2. INTRODUCTION**

- 2.1 RBWM Property Company Limited has been created as a dedicated and wholly owned property management and development trading company with the aim of developing a property portfolio that is available primarily to rent within both the affordable and private rental markets, initially within the geographic boundary of the Royal Borough of Windsor and Maidenhead.
- 2.2 Provision of properties at affordable rents for 'key workers' is a priority market. This will provide sustainable long term income and a solid asset

base alongside private rented sector (PRS) units. Consideration will be given to the provision of other types of accommodation as the Company develops e.g. shared ownership.

### **3. BACKGROUND**

- 3.1 In 2013 the Royal Borough of Windsor and Maidenhead decided to refurbish two Victorian four storey semi-detached houses in Maidenhead Town Centre (15 – 17 York Road) into flats and to offer them as private lettings through its trading company Two5Nine Ltd. The properties had previously been used as accommodation for homeless single parents, (prior to transferring the service to another location).
- 3.2 With the increasing attractiveness of the Borough as a result of new rail connections to London, the major regeneration of sites within and around Maidenhead, coupled with a general shortage of housing, opportunities exist to develop the company further. As part of its long term strategic vision, the Council recognised that in order to build and sustain a vibrant local economy and ensure it is a town for everyone, it needed to ensure that the supporting social infrastructure in terms of education, health and housing was in place to support it. Increasing property values have made it more difficult to attract and retain those ‘key workers’ such as teachers and social workers that are necessary to support the community.
- 3.3 The Royal Borough of Windsor and Maidenhead own a number of buildings and parcels of land that, due to changes of use or as a result of more efficient ways of working, have been identified as available for redevelopment.
- 3.4 In parallel, the Council is progressing a number of significant regeneration projects which are being managed and developed in conjunction with selected partners. Each major regeneration project will potentially provide a number of properties for the company to manage in the future. This is likely to include affordable and PRS units.
- 3.5 As a result of a number of new developments that have taken place within the Borough over the last few years, the Council has received funds from developers (s106) to be used for affordable housing, which currently amounts to £2,600,000 which has remained unspent. It is believed that a further £300,000 of additional funding may well be received during the remainder of 2016/17. Legal advice has been provided that suggests that these funds can be utilised for the refurbishment / development of affordable housing without breaching state aid provisions.
- 3.6 In order to reflect its primary focus and aid transparency ‘Two5Nine’ changed its name earlier this year to RBWM Property Company Ltd.

#### **4. MISSION**

- 4.1 To support, through development, the Members ambitions to create a Borough for everyone by providing affordable and private rented accommodation for key workers and others requiring housing in the Borough whilst providing an income stream back to the Council that can be re-invested in other services for residents.

#### **5. OBJECTIVES AND TARGETS**

- 5.1 The objectives of RBWM Property Company Ltd are:

- To provide good quality affordable and private rented housing throughout the Borough for rental purposes for the use of key workers and others requiring housing.
- To contribute to the general fund through surpluses generated from housing developed and rents received that can be re-invested in services to residents.
- To contribute towards existing and forecast demand for housing both through the development of existing Council owned sites already identified and through development of new Council owned facilities as yet unidentified.
- To remain financially viable and operate efficiently to ensure it receives sufficient rental income to meet all of its costs including financing, housing management, property maintenance and administration.

- 5.2 The Company has an aspiration to develop 138 properties within five years and thereafter for its portfolio to increase to 1,000 within 10 years from properties being created as a result of the Council's regeneration activities.

- 5.3 The Business Plan demonstrates that through its current forecast pipeline, the business will generate profits before tax of c£318,000 by year 3 (2018/19), building to £674,000 by year 5 (2020/21).

#### **6. COMPANY STRUCTURE AND GOVERNANCE ARRANGEMENTS**

- 6.1 The development of an arm's length wholly owned property development and management company allows for a more flexible and commercial response in order to increase or accelerate the delivery of housing supply. The Localism Act introduced a new 'power of competence' which has increased the Council's ability to act innovatively including creating housing/development companies.

- 6.2 As a company it can determine tenures and rents, build homes and borrow money if required to finance schemes either via the Council or could, if necessary, borrow directly from banks and institutional investors.
- 6.3 The company is one limited by shares (CLS) which is considered the most appropriate form of vehicle for a number of reasons:
- 6.4 The Council is the sole shareholder of RBWM Property Company Ltd and has ultimate control of its business activities.
- 6.5 The Company has been established in accordance with the Companies Act 2006 including the appointment of a Board for the Company. The Memorandum and Articles of Association is in a standard form.
- 6.6 A sound and robust governance structure of the company is being put in place to protect the Council's financial and reputational investment in the company. As sole shareholder the Council will appoint the directors, approve the business plan and other key decisions such as additional borrowing beyond those agreed in the Business Plan. These decisions will be taken by Cabinet in line with a formal shareholders agreement with the Property Company. Regular reviews with the shareholders will be undertaken.
- 6.7 Through the appointment of non-executive directors with appropriate skills and a Chief Executive, the Council is delegating the day to day commercial operation of the business and the delivery of the Business Plan to those individuals within a framework agreed by the Council. This will include:
- Entering into contracts for the refurbishment of existing properties and development of new properties.
  - Agreeing the terms of funding.
  - Marketing strategy and property lets.
  - Management and maintenance arrangements in relation to the properties.
  - Rent setting.
  - Letting policy.
  - Rent arrears and debt recovery.
- 6.8 The flowchart at Annex A gives an overview of the governance arrangements for RBWM Property Company Ltd. Annex B is a copy of the Company's Memorandum and Articles of Association and Annex C is the Shareholders' Protocol Agreement.
- 6.9 Any loans entered into will be documented within a loan agreement which sets out the deals and the terms of any funding arrangements between the Council and the property company.
- 6.10 The Council will control the company at a strategic level with Directors tasked with managing the property company within a framework and through delegated authority as set out in the shareholder's agreement.

6.11 In addition, the Property Company will be governed via a series of operational documents that will be approved by the Council, namely:

- A Business Plan that will cover a rolling 5-year period of investment and activity and outlining the Company's planned operations. The Business Plan will be reviewed regularly (at least annually) and cover the following:
  - a) Company objectives
  - b) Governance arrangements
  - c) Operational plans
  - d) Financial models and assumptions
  - e) Rents, sales and development assumptions
  - f) Operational expenses
  - g) Funding profile
  - h) Profit and loss, balance sheet and cash flows

Together with operational policies relating to:

- a) Rent setting
- b) Letting policy
- c) Rent arrears
- d) Other general policies

6.12 The non-Executive Directors of RBWM Property Company Ltd are as follows:

- Russell O'Keefe – Strategic Director of Corporate and Community Services.
- Rob Stubbs – Head of Finance.
- Chris Hilton – Director of Regeneration, Development and Property.

With an employed Chief Executive (CEO).

## **7. OPERATIONS**

7.1 An initial staffing structure is included at Annex D and consists of:

- Chief Executive Officer - Interim
- Project Management Skills to monitor and manage schemes as the programme increases.
- Communication and Consultation Skills to manage the day to day communication and stakeholder interface.
- Administrative support on a part time basis.

- 7.2 With the exception of the Interim CEO these skills will be commissioned as and when required. As the Company grows the staffing requirements will be kept under constant review and further more permanent staff will be likely to needed in the future.
- 7.3 The Interim CEO will be responsible for all aspects of the development process including negotiations, appraisal, contracting, legal and funding. This will include interaction with third parties including land owners, contractors, consultants etc. There will be an ongoing refurbishment, development and construction programme to oversee and commercial decisions to be made. The individual will work in partnership with both community and private sector organisations.
- 7.4 Within its first four years, the majority of the staffing costs of the Company are allowed for as capital expenditure.
- 7.5 The Company's procurement requirements will include:
- Client representatives/employers agents.
  - CDM (Construction Design Management).
  - Contractors – including specialists such as asbestos, damp.
  - Architects/engineers.
- 7.6 Once properties are built or purchased they will require on going management, maintenance and a range of landlord services. In order to keep fixed overheads low and variable, it would not be cost effective for the Company to employ its own staff and as such these services will be bought in and be tendered to both a range of Housing Associations and private sector companies within the first year of operation.
- 7.7 The Property Company is subject to the public contract regulations in relation to procurement where applicable.
- 7.8 It is proposed that a number of properties that are held by the Council are transferred to the Company once works have been completed.

## **8. DEVELOPMENT STRATEGY**

### Social Affordable Housing

- 8.1 RBWM Property Company's primary initial focus is helping deliver, and manage, the Council's affordable housing programme, primarily utilising Council owned assets or as a beneficiary of its major development programmes.

### Shared Ownership

- 8.2 The high housing costs of owner occupation in the Royal Borough means that for economically active people with limited means, shared ownership



may be an attractive route into owner occupation. In the current market, it could provide the Company with an attractive early capital injection in first tranche sales immediately, giving a return to reinvest in more affordable housing whilst providing a rental income on the unsold equity.

- 8.3 Shared ownership schemes are currently provided by housing associations and this Business Plan has not factored in any shared ownership or asset sales in the first five years.
- 8.4 When taking into account inflation and combined rental and future staircasing income, shared ownership could provide a further useful long term income stream and asset base with which to support future business. This will be explored further as part of the progression of the Business Plan.

### Rental Sales

- 8.5 The current state of the housing market could make some limited private sale opportunities attractive in order to help cross subsidise affordable housing. Any such proposal would need to be carefully evaluated given that a sale of any existing asset would not necessarily allow sufficient funds to be generated to allow for replacement or growth of the portfolio and merely represent a 'one off' capital gain that would be subject to taxation.

### Private Rented Sector (PRS)

- 8.6 High house sales locally provide opportunities around building up a portfolio of private rented stock. Shared ownership will help some of those renting to buy, but evidence is that the PRS sector will continue to be an important part of the UK housing market.
- 8.7 The PRS market provides higher rents and yields than from the affordable market and while the initial focus will be primarily on affordable rents, over time, the Company is likely to have a mixture of affordable and PRS units.
- 8.8 Buying properties and land to develop and rent in the 'open market' locally would be both expensive and capital intensive and given the Council's land and asset base, this will not be an initial priority area.

### Empty Homes List

- 8.9 Whilst it is believed there are in excess of 500 homes on the empty homes list at present, any acquisition would need to be at market value. Given the cost of property in the area the Company would need to consider any purchase carefully given that it is unlikely to provide a sufficient return if used for affordable purposes.
- 8.10 As such, the Company's aims are to develop the Council's assets and use S106 funding, developers' capital and loan funding from the Council to create its portfolio and retain it for the long term in order to generate a recurring income.

## **9. FINANCING THE PROPERTY COMPANY**

- 9.1 The business case is predicated on the basis that the property company is funded in part by S106 monies to be used for affordable housing purposes and loans obtained via the Council.
- 9.2 Financial modelling for the Company has been predicated on there being no overall cost to the Council over the life of the Business Plan and for profits and dividends to be generated.
- 9.3 The funding provided by the Council to the property company is in three parts initially:
- The first part covering the purchase of York Road flats for £1,250,000 and the 'start up' loan of £200,000 will be as a loan on which the property company will pay interest to the Council.
  - The second part requires the use of S106 monies allocated for the use of affordable housing to allow the Council to refurbish properties where no VAT exemption applies (in order for VAT to be recovered) prior to the transfer of the property to the Company for letting purposes.
  - Part 3 is the potential provision of a further loan of c.£5,000,000, subject to the necessary approvals, for the possible future development opportunities.
- 9.4 A portion of the principal amount of the loan will be repaid annually and for the loan to be repaid in full. The term of the loan is set to ensure that this is achievable and allows the Company sufficient 'headroom' in its cash management to make a profit and to pay out dividends.
- 9.5 The loan interest rate charged by the Council takes into account the need to ensure it is a commercial rate and therefore avoid any potential state aid provisions being triggered.

## **10. FINANCIAL MODEL**

- 10.1 In order to ensure that the RBWM Property Company Ltd business is sustainable, the financial projections in the Business Plan will be closely and regularly monitored. There are a set of core assumptions applied to the model which are based upon prevailing market conditions, judgements based on comparators and industry wide standards or norms.
- 10.2 These core assumptions are as follows:
- 10.2.1 Opening year of model – the opening year (Year 1) of the model is 2015/16. This model assumes any principal loans will be for a 45 year period and enables cash flows to be forecast over the period but initially for the first 5 year development period. The loan period is similar to the funding

arrangements of a number of other Local Authority arm's length housing development companies, e.g. Sutton Living.

- 10.2.2 The rate of interest fixed for the term of the loan and based on 4.25% on a reducing balance provides a rate of return for the Council through whom money is funded of 1.94% over the PWLB published rate of 2.31% for a 45 year fixed interest loan as at September 2016. Capital costs will be repaid on a straight line basis over a 45 year period.
- 10.2.3 It is proposed that loans made prior to April 2017 are repaid on an interest only basis for the first two years of the plan to aid cashflow and thereafter all loans will be repaid on a full repayment basis.
- 10.2.4 Voids / bad debts losses – this has been assumed at 5% for affordable rented and shared ownership schemes which is in line with other local authority development companies such as Sutton Living.
- 10.2.5 Management and lettings administration costs have been assumed as 7% of total rental costs in line with current fees for the York Road flats.
- 10.2.6 Lifestyle allowances – these are assumed at £1,000 per dwelling per annum (inclusive of VAT) for major elemental repairs (ie outside of day to day and cyclical maintenance costs such as redecoration etc) with each property being refurbished in or around the 6<sup>th</sup> year after development. In practice, some of these funds may not be needed initially but the equivalent sum should be set aside into an appropriate repairs reserve.
- 10.2.7 Maintenance costs – an amount of £500 per unit per annum (inclusive of VAT) has been set aside for cyclical testing and minor repairs costs.
- 10.2.8 Insurance costs – allowance has been made within the model for building insurance to cover rebuild costs.
- 10.2.9 Rent assumptions – as set out elsewhere in the Business Plan, RBWM Property Company Ltd will principally be focused on provided homes for 'key workers' for which a waiting list currently exists. The majority of the dwellings will be two bedroom apartments although there will be a small number of bedsits, one bedroom units together with three bedroom starter homes. Current market rents are set out in the table below:

<b>Type</b>	<b>Market Rent pcm</b>	<b>Affordable Rent pcm</b>
Room	£375	£300
1 bed	£900	£720
2 bed	£1100	£880
3 bed	£1480	£1184
4 bed	£1850	£1480

- 10.2.10 The current assumption is that affordable rents will be set at 80% of the market rent and that the average unit rental will be £850 - £900 pcm which is in line with current Housing Association rents. The Company would grant

tenancies under the Assured Tenancy Regime of the Housing Act 1988. These will take the form of either periodic ('rolling') tenancies or assured shorthold tenancies (which are for a fixed term ie a minimum of six months), or such other longer periods as agreed by the landlord and tenant. Secure tenancies under the Housing Act 1988 cannot be granted by the Company.

10.2.11 Inflation – given the change in the Consumer Price Index over the last 12 months of just 0.6% (year to July 2016), the Bank of England is forecasting that CPI inflation will increase to 0.8% in Q3 of 2016 rising to 1.9% in Q3 of 2017 and 2.4% of Q3 in 2018 and holding. At present all cost and income including rents are assumed to increase by 2% pa as from April 2017.

## **11. DEVELOPMENT / REFURBISHMENT COSTS**

11.1 Assumptions have been made for the development / refurbishment costs for the different schemes based on industry bench marks, contractual estimates, soft market testing and local knowledge/research.

11.2 In addition to the main acquisition and construction costs allowances for fees including architects, planning and other specialist services are included in the estimated costs.

## **12. TAX AND FINANCIAL SUPPORT**

12.1 RBWM Property Company Ltd will be subject to various different taxation regimes, including Stamp Duty Land Tax (SDLT), Corporation Tax and VAT.

12.2 SDLT has been built into the model based on current thresholds and chargeable on relevant acquisitions at the appropriate rate. As the Council is a Local Authority, group relief should be available on the purchase of land. This means that no SDLT should be chargeable whether land was sold or gifted.

12.3 Corporation Tax has also been included in the model at the current rate of 20% and is chargeable on relevant surpluses after deducting allowable costs including loan interest. The model also reflects the proposed changes announced in the summer Budget of 2015 and the 2016 Budget with rates reducing to 17% as from 1<sup>st</sup> April 2020.

12.4 No provision has been made for capital gains tax as it is not envisaged that this will apply as the Company will not be disposing of assets.

12.5 Whilst certain types of construction activity are zero exempt or subject to a 5% exemption, it is envisaged that initially any works will be undertaken by the Council.

12.6 Although it is the intention to register the Company for VAT it is not envisaged that the Company will be able to recover all of the VAT that it

incurs on the purchase of goods and services. An allowance has been made for VAT payments within the cash flow model.

- 12.7 The Company will obtain appropriate external advice with regard to its tax affairs.
- 12.8 The Company will be self-sufficient and supporting with its own distinct bank account and locally appointed auditors and accountants.

### **13. DIVIDENDS**

- 13.1 It is envisaged that any surplus funds/profits will be paid to shareholders through the use of Dividends.
- 13.2 Any cash sums available for Dividends will be affected by any loan repayments and taxation and the amount of cash to be retained by the Company for ongoing business requirements and re-investment. The Council as shareholders will give the Company a steer in terms of their aspirations for dividends. Formally each year BWM Property Company Ltd will recommend to the shareholder the level of Dividend which is currently projected to be in the region of 70% as a minimum of post-tax profits.

### **14. CASH RETENTION**

- 14.1 In order to ensure that the Company has sufficient funds in place to meet its day to day obligations, a minimum amount of cash equivalent to 30% of post-tax profits, will be retained at all times after the initial two year period. In addition, the allowance for any repair/refurbishment costs will be held in a separate reserve account and used as required.

### **15. ASSET VALUATIONS**

- 15.1 It is envisaged that all the identified Council owned properties that have redevelopment potential as shown in Annex E are transferred to RBWM Property Company at a 'peppercorn value' and subsequently revalued at market rates to reflect the enhanced value as a result of the refurbishment and representing their investment income potential.
- 15.2 Given that the properties are to be used for key worker/affordable housing purposes and that s106 monies are to be used in their development, based on advice, 'state aid' rules are not being breached, although formal approval from DCLG is required and will be sought. Appropriate legal advice has been taken on this matter and is attached at Annex F.
- 15.3 Revaluations of the asset base will be undertaken at market rates on a 3 year cycle to reflect market conditions or more frequently depending on cost.

## **16. FUNDING**

- 16.1 The initial development programme of 138 units is funded over a five year period. In order for the Company to purchase, invest in and refurbish the properties it needs to be well funded initially. The Company already services interest payments relating to a loan of £1,250,000 for the purchase of the York Road flats. In addition, a further loan of £200,000 was provided in early 2016 as 'seed funding' to kick-start the focused development of the property company and refurbishment of Vansittart Road, Windsor. Within the Council there is currently £2,600,000 of s106 monies which it is proposed to use on the refurbishment and purchase of those sites identified within Annex E.
- 16.2 It is envisaged that a further £5,000,000 of borrowing from the Council will be required to fund the business of which approximately £250,000 will be used for working capital purposes and the remainder for future development opportunities (where 75 new units will be created). Based on the assumptions within the model, the assumed level of borrowing of £6,450,000 peaks in year 4 (2019/20).
- 16.3 In order to ensure the Company has sufficient cash flow to meet operational needs and provide for future capital, interest and dividend payment any loans made prior to 2017 will be repaid on an interest only basis for the first two years and thereafter all loans will be repaid on a full repayment basis. In addition, in order to allow for the repayment of any loans (both capital and interest), from projected cash flows, whilst also ensuring that the Company makes a reasonable rate of return, it is proposed that any loan is repayable over a 45 year term (which is consistent with other local authority arm's length housing development companies, such as Sutton Living).

## **17. DEVELOPERS**

- 17.1 Beyond year 5, significant additional properties will be provided to the Company as a result of the Council working with companies to develop land areas for regeneration purposes. It is envisaged that the future development of Maidenhead Golf Course will generate a significant number of properties to be let through RBWM Property Company Ltd. These opportunities have not been factored into the medium term plan at this stage. The plan will be reviewed regularly and updated as other projects progress.

## **18. PROFIT AND LOSS, BALANCE SHEET AND CASHFLOW PROJECTION**

- 18.1 Financial projections over the medium term (5 years) have been provided at Annex G, H and I reflecting the assumptions made within this Business Plan.
- 18.2 The financial models show that based on the assumptions used, the business is profitable, has a high asset value and that the cash flow can be sustained and provides for payment of all operational costs, taxes and dividends.

## **19. KEY FINANCIAL PERFORMANCE MEASURES**

- 19.1 It is proposed to use a variety of measures to measure the financial health of the Company, namely:
- 19.1.1 Rental yield of which there are two typical measures, gross and net. The latter takes out expenses (management and maintenance costs, debt charges). Net yield being calculated as  $\text{rent} - \text{expenses} / \text{house price}$ . Given the fact that the initial estate is being rented primarily on an affordable basis (i.e. below market rents) and the assets are being valued at market levels, yields will be lower than typical industry norms. The anticipated net yield for the Company will be in the region of 3%.
- 19.1.2 Return on capital employed which looks at the profit against the combined equity and debt capital invested in the Company. This is regarded as a good measure of the business as it looks at how effectively debt is being used and is calculated as  $\text{earnings before interest and tax (debit)} / \text{Assets} - \text{Liabilities (non-current)}$  with a target of 15% plus by year 5.
- 19.1.3 Price to earnings ratio, which is a commonly used measure in commercial finance in relation to share value which in relation to rented housing is calculated as the increase of the yield calculated as:  $\text{House price} / \text{rent} - \text{expenses}$  which theoretically indicates how much investors should be willing to pay per pound of earnings.
- 19.1.4 Profitability (profit on cost – POC) which demonstrates the profit of the business over its cost.
- 19.1.5 Investor Dividend per Share – which will provide the shareholder value per share and demonstrate its growth value.

## **20. SWOT ANALYSIS**

- 20.1 The following is a summary of the key strengths, weaknesses, opportunities and threats to RBWM Property Company Ltd:

### Strengths:

- Ability to secure funding at competitive rates.
- Council support
- Initial funding of £2,600,000 from s106 funding for the development of affordable/key worker accommodation.
- A number of available Council owned buildings/sites available for refurbishment/redevelopment.
- Council plans to work with developers to maximise land bank opportunities and provide properties for the Company to use as affordable housing.
- A development key worker accommodation process and an initial base/list of 50 + applicants.

### Weaknesses:

- Timescales for planning, development and construction before significant number of homes available.

### Opportunities:

- Increase of affordable housing within the Borough.
- Income generation for the General Fund.
- Increased service resilience in hard to recruit to service area
- Support for local people to rent or buy a home.
- Increase in the value of the Council's asset base.

### Threats:

- Any future government change in the view of council companies / prudential borrowing.
- Downturn in economy – fall in market rents and house prices.
- Increase in interest rates.
- Sustained low period of inflation.
- Legal challenge over 'state aid'.

20.2 In response to the above, it is believed that the Company is well positioned over the next 5 years and can manage any significant market downturn in that it:

- has a relatively low borrowing requirement;
- has a high value asset base;
- has a low fixed cost management structure;
- has a high projected levels of profitability;
- can fix interest rates for longer term loans;

which would give sufficient protection against marked changes in property prices and a fall in rental income or utilisation of 30 – 40%.

## **21. CONCLUSION**

21.1 Through the effective development and operation of RBWM Property Services Company Ltd, the Council has the opportunity to stimulate the development of affordable housing throughout the Borough to support economic growth and generate surpluses that can be used for the benefit of the Council and residents in future years.

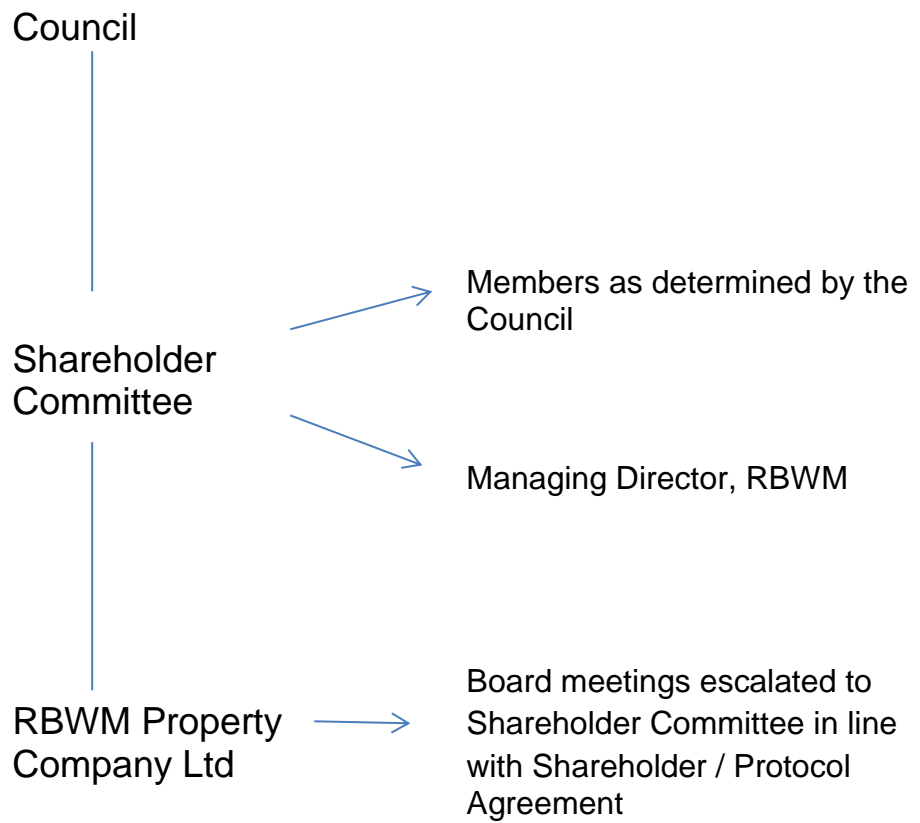
21.2 Whilst the financial elements of this Business Plan over the coming 5 years are based on 10 areas of work, there is no certainty that all will proceed. The backdrop of changing government policy on housing, the Company will



need to monitor alongside other factors and risks including changes in the local government / property market and wider economic changes in interest rates and inflation.

- 21.3 RBWM Property Company Ltd provides an additional route to improve the local housing position within the Borough. This Business Plan sets out the framework that will provide the Council the opportunity to support housing development and creation within the Borough, particularly for 'key workers' and secure additional income in the medium to longer term from dividends that the Council can use to invest in services to residents.

GOVERNANCE ARRANGEMENTS



**MEMORANDUM AND ARTICLES OF ASSOCIATION**

**APPENDIX B**

THE COMPANIES ACT 2006

A PRIVATE COMPANY LIMITED BY SHARES

ARTICLES OF ASSOCIATION OF

TWO 5 NINE LIMITED

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PART 1  
INTERPRETATION AND LIMITATION OF LIABILITY

**Defined terms**

1. In the articles, unless the context requires otherwise—

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

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

"chairman" has the meaning given in article 12;

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

"Companies Acts" means the Companies Acts (as defined in section 2 of the Companies Act 2006), in so far as they apply to the company;

"director" means a director of the company, and includes any person occupying the position of director, by whatever name called;

"distribution recipient" has the meaning given in article 31;

"document" includes, unless otherwise specified, any document sent or supplied in electronic form;

"electronic form" has the meaning given in section 1168 of the Companies Act 2006; "fully paid" in relation to a share, means that the nominal value and any premium to be paid to the company in respect of that share have been paid to the company;

"hard copy form" has the meaning given in section 1168 of the Companies Act 2006;

"holder" in relation to shares means the person whose name is entered in the register of members as the holder of the shares;

"instrument" means a document in hard copy form;

"ordinary resolution" has the meaning given in section 282 of the Companies Act 2006;

"paid" means paid or credited as paid;

"participate", in relation to a directors' meeting, has the meaning given in article 10;

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

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

"shares" means shares in the company;

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

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

"transmittee" means a person entitled to a share by reason of the death or bankruptcy of a shareholder or otherwise by operation of law; and

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

Unless the context otherwise requires, other words or expressions contained in these articles bear the same meaning as in the Companies Act 2006 as in force on the date when these articles become binding on the company.

### **Liability of members**

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

## **PART 2**

### **DIRECTORS**

#### **DIRECTORS' POWERS AND RESPONSIBILITIES Directors'**

##### **general authority**

3. Subject to the articles, the directors are responsible for the management of the company's business, for which purpose they may exercise all the powers of the company.

##### **Shareholders' reserve power**

- 4.—(1) The shareholders may, by special resolution, direct the directors to take, or refrain from taking, specified action.  
(2) No such special resolution invalidates anything which the directors have done before the passing of the resolution.

##### **Directors may delegate**

5. \_\_\_\_\_ (1) Subject to the articles, the directors may delegate any of the powers which are conferred on them under the articles
  - (a) to such person or committee;
  - (b) by such means (including by power of attorney);
  - (c) to such an extent;
  - (d) in relation to such matters or territories; and
  - (e) on such terms and conditions; as they think fit.
- (2) If the directors so specify, any such delegation may authorise further delegation of the directors' powers by any person to whom they are delegated.
- (3) The directors may revoke any delegation in whole or part, or alter its terms and conditions.

## DECISION-MAKING BY DIRECTORS

### Directors to take decisions collectively

7. (1) The general rule about decision-making by directors is that any decision of the directors must be either a majority decision at a meeting or a decision taken in accordance with article 8.

(2) If

- (a) the company only has one director, and
- (b) no provision of the articles requires it to have more than one director, the general rule does not apply, and the director may take decisions without regard to any of the provisions of the articles relating to directors' decision-making.

### Unanimous decisions

8. (1) A decision of the directors is taken in accordance with this article when all eligible directors indicate to each other by any means that they share a common view on a matter.

- (2) Such a decision may take the form of a resolution in writing, copies of which have been signed by each eligible director or to which each eligible director has otherwise indicated agreement in writing.
- (3) References in this article to eligible directors are to directors who would have been entitled to vote on the matter had it been proposed as a resolution at a directors' meeting.
- (4) A decision may not be taken in accordance with this article if the eligible directors would not have formed a quorum at such a meeting.

### Calling a directors' meeting

9. (1) Any director may call a directors' meeting by giving notice of the meeting to the directors or by authorising the company secretary (if any) to give such notice.

(2) Notice of any directors' meeting must indicate

- (a) its proposed date and time;
- (b) where it is to take place; and
- (c) if it is anticipated that directors participating in the meeting will not be in the same place, how it is proposed that they should communicate with each other during the meeting.

(3) Notice of a directors' meeting must be given to each director, but need not be in writing.

(4) Notice of a directors' meeting need not be given to directors who waive their entitlement to notice of that meeting, by giving notice to that effect to the company not more than 7 days after the date on which the meeting is held. Where such notice is given after the meeting has been held, that does not affect the validity of the meeting, or of any business conducted at it.

### Participation in directors' meetings

10.—(1) Subject to the articles, directors participate in a directors' meeting, or part of a directors' meeting, when

- (a) the meeting has been called and takes place in accordance with the articles, and
- (b) they can each communicate to the others any information or opinions they have on any particular item of the business of the meeting.

(2) In determining whether directors are participating in a directors' meeting, it is irrelevant where any director is or how they communicate with each other.

(3) If all the directors participating in a meeting are not in the same place, they may decide that the meeting is to be treated as taking place wherever any of them is.



### **Quorum for directors' meetings**

- 11.—(1) At a directors' meeting, unless a quorum is participating, no proposal is to be voted on, except a proposal to call another meeting.
- (2) The quorum for directors' meetings may be fixed from time to time by a decision of the directors, but it must never be less than three, and unless otherwise fixed it is three.
- (3) If the total number of directors for the time being is less than the quorum required, the directors must not take any decision other than a decision
- (a) to appoint further directors, or
  - (b) to call a general meeting so as to enable the shareholders to appoint further directors.

### **Chairing of directors' meetings**

12. (1) The directors may appoint a director to chair their meetings.
- (2) The person so appointed for the time being is known as the chairman.
- (3) The directors may terminate the chairman's appointment at any time.
- (4) If the chairman is not participating in a directors' meeting within ten minutes of the time at which it was to start, the participating directors must appoint one of themselves to chair it.

### **Casting vote**

13. (1) If the numbers of votes for and against a proposal are equal, the chairman or other director chairing the meeting has a casting vote.
- (2) But this does not apply if, in accordance with the articles, the chairman or other director is not to be counted as participating in the decision-making process for quorum or voting purposes.

## **Conflicts of interest**

**14.—(1)** If a proposed decision of the directors is concerned with an actual or proposed transaction or arrangement with the company in which a director is interested, that director is not to be counted as participating in the decision-making process for quorum or voting purposes.

(2) But if paragraph (3) applies, a director who is interested in an actual or proposed transaction or arrangement with the company is to be counted as participating in the decision-making process for quorum and voting purposes.

(3) This paragraph applies when

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

(b) the director's interest cannot reasonably be regarded as likely to give rise to a conflict of interest; or

(c) the director's conflict of interest arises from a permitted cause.

(4) For the purposes of this article, the following are permitted causes

(a) a guarantee given, or to be given, by or to a director in respect of an obligation incurred by or on behalf of the company or any of its subsidiaries;

(b) subscription, or an agreement to subscribe, for shares or other securities of the company or any of its subsidiaries, or to underwrite, sub-underwrite, or guarantee subscription for any such shares or securities; and

(c) arrangements pursuant to which benefits are made available to employees and directors or former employees and directors of the company or any of its subsidiaries which do not provide special benefits for directors or former directors.

(5) For the purposes of this article, references to proposed decisions and decision-making processes include any directors' meeting or part of a directors' meeting.

(6) Subject to paragraph (7), if a question arises at a meeting of directors or of a committee of directors as to the right of a director to participate in the meeting (or part of the meeting) for voting or quorum purposes, the question may, before the conclusion of the meeting, be referred to the chairman whose ruling in relation to any director other than the chairman is to be final and conclusive.

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

## **Records of decisions to be kept**

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

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

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

## APPOINTMENT OF DIRECTORS

### Methods of appointing directors

- 17.** \_\_\_\_\_ (1) Any person who is willing to act as a director, and is permitted by law to do so, may be appointed to be a director—
- (a) by ordinary resolution, or
  - (b) by a decision of the directors.
- (2) In any case where, as a result of death, the company has no shareholders and no directors, the personal representatives of the last shareholder to have died have the right, by notice in writing, to appoint a person to be a director.
- (3) For the purposes of paragraph (2), where 2 or more shareholders die in circumstances rendering it uncertain who was the last to die, a younger shareholder is deemed to have survived an older shareholder.

### Termination of director's appointment

- 18.** A person ceases to be a director as soon as
- (a) that person ceases to be a director by virtue of any provision of the Companies Act 2006 or is prohibited from being a director by law;
  - (b) a bankruptcy order is made against that person;
  - (c) a composition is made with that person's creditors generally in satisfaction of that person's debts;
  - (d) a registered medical practitioner who is treating that person gives a written opinion to the company stating that that person has become physically or mentally incapable of acting as a director and may remain so for more than three months;
  - (e) by reason of that person's mental health, a court makes an order which wholly or partly prevents that person from personally exercising any powers or rights which that person would otherwise have;
  - (f) notification is received by the company from the director that the director is resigning from office, and such resignation has taken effect in accordance with its terms.

### Directors' remuneration

- 19.—(1)** Directors may undertake any services for the company that the directors decide.
- (2) Directors are entitled to such remuneration as the directors determine
- (a) for their services to the company as directors, and
  - (b) for any other service which they undertake for the company.
- (3) Subject to the articles, a director's remuneration may
- (a) take any form, and
  - (b) include any arrangements in connection with the payment of a pension, allowance or gratuity, or any death, sickness or disability benefits, to or in respect of that director.
- (4) Unless the directors decide otherwise, directors' remuneration accrues from day to day.
- (5) Unless the directors decide otherwise, directors are not accountable to the company for any remuneration which they receive as directors or other officers or employees of the company's subsidiaries or of any other body corporate in which the company is interested.

### Directors' expenses

- 20.** The company may pay any reasonable expenses which the directors properly incur in connection with their attendance at
- (a) meetings of directors or committees of directors,
  - (b) general meetings, or

(c) separate meetings of the holders of any class of shares or of debentures of the company, or otherwise in connection with the exercise of their powers and the discharge of their responsibilities in relation to the company.

### PART 3

#### SHARES AND DISTRIBUTIONS

##### SHARES

###### **All shares to be fully paid up**

- 21.** (1) No share is to be issued for less than the aggregate of its nominal value and any premium to be paid to the company in consideration for its issue.  
(2) This does not apply to shares taken on the formation of the company by the subscribers to the company's memorandum.

###### **Powers to issue different classes of share**

- 22.** (1) Subject to the articles, **but** without prejudice to the rights attached to any existing share, the company may issue shares with such rights or restrictions as may be determined by ordinary resolution.  
(2) The company may issue shares which are to be redeemed, or are liable to be redeemed at the option of the company or the holder, and the directors may determine the terms, conditions and manner of redemption of any such shares.

###### **Company not bound by less than absolute interests**

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

###### **Share certificates**

- 24.** (1) The company must issue each shareholder, free of charge, with one or more certificates in respect of the shares which that shareholder holds.  
(2) Every certificate must specify—  
(a) in respect of how many shares, of what class, it is issued;  
(b) the nominal value of those shares;  
(c) that the shares are fully paid; and  
(d) any distinguishing numbers assigned to them.  
(3) No certificate may be issued in respect of shares of more than one class.  
(4) If more than one person holds a share, only one certificate may be issued in respect of it  
(5) Certificates must  
(a) have affixed to them the company's common seal, or  
(b) be otherwise executed in accordance with the Companies Acts.

###### **Replacement share certificates**

- 25.** (1) If a certificate issued in respect of a shareholder's shares is  
(a) damaged or defaced, or

- (b) said to be lost, stolen or destroyed, that shareholder is entitled to be issued with a replacement certificate in respect of the same shares.
- (2) A shareholder exercising the right to be issued with such a replacement certificate—
  - (a) may at the same time exercise the right to be issued with a single certificate or separate certificates;
  - (b) must return the certificate which is to be replaced to the company if it is damaged or defaced; and
  - (c) must comply with such conditions as to evidence, indemnity and the payment of a reasonable fee as the directors decide.

#### Share transfers

- 26. (1) Shares may be transferred by means of an instrument of transfer in any usual form or any other form approved by the directors, which is executed by or on behalf of the transferor.
- (2) No fee may be charged for registering any instrument of transfer or other document relating to or affecting the title to any share.
- (3) The company may retain any instrument of transfer which is registered.
- (4) The transferor remains the holder of a share until the transferee's name is entered in the register of members as holder of it
- (5) The directors may refuse to register the transfer of a share, and if they do so, the instrument of transfer must be returned to the transferee with the notice of refusal unless they suspect that the proposed transfer may be fraudulent.

#### Transmission of shares

- 27. (1) If title to a share passes to a transferee, the company may only recognise the transferee as having any title to that share.
- (2) A transferee who produces such evidence of entitlement to shares as the directors may properly require
  - (a) may, subject to the articles, choose either to become the holder of those shares or to have them transferred to another person, and
  - (b) subject to the articles, and pending any transfer of the shares to another person, has the same rights as the holder had.
- (3) But transferees do not have the right to attend or vote at a general meeting, or agree to a proposed written resolution, in respect of shares to which they are entitled, by reason of the holder's death or bankruptcy or otherwise, unless they become the holders of those shares.

#### Exercise of transferees' rights

- 28.—(1) Transferees who wish to become the holders of shares to which they have become entitled must notify the company in writing of that wish.
- (2) If the transferee wishes to have a share transferred to another person, the transferee must execute an instrument of transfer in respect of it.
- (3) Any transfer made or executed under this article is to be treated as if it were made or executed by the person from whom the transferee has derived rights in respect of the share, and as if the event which gave rise to the transmission had not occurred.

#### Transferees bound by prior notices

- 29. If a notice is given to a shareholder in respect of shares and a transferee is entitled to those shares, the transferee is bound by the notice if it was given to the shareholder before the transferee's name has been entered in the register of members.

## DIVIDENDS AND OTHER DISTRIBUTIONS

### Procedure for declaring dividends

**30.—(1)** The company may by ordinary resolution declare dividends, and the directors may decide to pay interim dividends.

(2) A dividend must not be declared unless the directors have made a recommendation as to its amount. Such a dividend must not exceed the amount recommended by the directors.

(3) No dividend may be declared or paid unless it is in accordance with shareholders' respective rights.

(4) Unless the shareholders' resolution to declare or directors' decision to pay a dividend, or the terms on which shares are issued, specify otherwise, it must be paid by reference to each shareholder's holding of shares on the date of the resolution or decision to declare or pay it.

(5) If the company's share capital is divided into different classes, no interim dividend may be paid on shares carrying deferred or non-preferred rights if, at the time of payment, any preferential dividend is in arrear.

(6) The directors may pay at intervals any dividend payable at a fixed rate if it appears to them that the profits available for distribution justify the payment.

(7) If the directors act in good faith, they do not incur any liability to the holders of shares conferring preferred rights for any loss they may suffer by the lawful payment of an interim dividend on shares with deferred or non-preferred rights.

### Payment of dividends and other distributions

**31.—(1)** Where a dividend or other sum which is a distribution is payable in respect of a share, it must be paid by one or more of the following means

(a) transfer to a bank or building society account specified by the distribution recipient either in writing or as the directors may otherwise decide;

(b) sending a cheque made payable to the distribution recipient by post to the distribution recipient at the distribution recipient's registered address (if the distribution recipient is a holder of the share), or (in any other case) to an address specified by the distribution recipient either in writing or as the directors may otherwise decide;

(c) sending a cheque made payable to such person by post to such person at such address as the distribution recipient has specified either in writing or as the directors may otherwise decide; or

(d) any other means of payment as the directors agree with the distribution recipient either in writing or by such other means as the directors decide.

(2) In the articles, "the distribution recipient" means, in respect of a share in respect of which a dividend or other sum is payable—

(a) the holder of the share; or

(b) if the share has two or more joint holders, whichever of them is named first in the register of members; or

(c) if the holder is no longer entitled to the share by reason of death or bankruptcy, or otherwise by operation of law, the transmittee.

### No interest on distributions

**32.** The company may not pay interest on any dividend or other sum payable in respect of a share unless otherwise provided by—

(a) the terms on which the share was issued, or

(b) the provisions of another agreement between the holder of that share and the company.

### **Unclaimed distributions**

- 33.** (1) All dividends or other sums which are
- (a) payable in respect of shares, and
  - (b) unclaimed after having been declared or become payable,
- may be invested or otherwise made use of by the directors for the benefit of the company until claimed.
- (2) The payment of any such dividend or other sum into a separate account does not make the company a trustee in respect of it.
- (3) If
- (a) twelve years have passed from the date on which a dividend or other sum became due for payment, and
  - (b) the distribution recipient has not claimed it,
- the distribution recipient is no longer entitled to that dividend or other sum and it ceases to remain owing by the company.

### **Non-cash distributions**

- 34.** (1) Subject to the terms of issue of the share in question, the company may, by ordinary resolution on the recommendation of the directors, decide to pay **all** or part of a dividend or other distribution payable in respect of a share by transferring non-cash assets of equivalent value (including, without limitation, shares or other securities in any company).
- (2) For the purposes of paying a non-cash distribution, the directors may make whatever arrangements they think fit, including, where any difficulty arises regarding the distribution—
- (a) fixing the value of any assets;
  - (b) paying cash to any distribution recipient on the basis of that value in order to adjust the rights of recipients; and
  - (c) vesting any assets in trustees.

### **Waiver of distributions**

- 35.** Distribution recipients may waive their entitlement to a dividend or other distribution payable in respect of a share by giving the company notice in writing to that effect, but if—
- (a) the share has more than one holder, or
  - (b) more than one person is entitled to the share, whether by reason of the death or bankruptcy of one or more joint holders, or otherwise,
- the notice is not effective unless it is expressed to be given, and signed, by all the holders or persons otherwise entitled to the share.

## **CAPITALISATION OF PROFITS**

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

- 36.—(1)** Subject to the articles, the directors may, if they are so authorised by an ordinary resolution—
- (a) decide to capitalise any profits of the company (whether or not they are available for distribution) which are not required for paying a preferential dividend, or any sum standing to the credit of the company's share premium account or capital redemption reserve; and

- (b) appropriate any sum which they so decide to capitalise (a "capitalised sum") to the persons who would have been entitled to it if it were distributed by way of dividend (the "persons entitled") and in the same proportions.
- (2) Capitalised sums must be applied
- (a) on behalf of the persons entitled, and
  - (b) in the same proportions as a dividend would have been distributed to them.
- (3) Any capitalised sum may be applied in paying up new shares of a nominal amount equal to the capitalised sum which are then allotted credited as fully paid to the persons entitled or as they may direct
- (4) A capitalised sum which was appropriated from profits available for distribution may be applied in paying up new debentures of the company which are then allotted credited as fully paid to the persons entitled or as they may direct.
- (5) Subject to the articles the directors may
- (a) apply capitalised sums in accordance with paragraphs (3) and (4) partly in one way and partly in another;
  - (b) make such arrangements as they think fit to deal with shares or debentures becoming distributable in fractions under this article (including the issuing of fractional certificates or the making of cash payments); and
  - (c) authorise any person to enter into an agreement with the company on behalf of all the persons entitled which is binding on them in respect of the allotment of shares and debentures to them under this article.

## PART 4

### DECISION-MAKING BY SHAREHOLDERS

#### ORGANISATION OF GENERAL MEETINGS

##### **Attendance and speaking at general meetings**

- 37.** \_\_\_\_ (1) A person is able to exercise the right to speak at a general meeting when that person is in a position to communicate to all those attending the meeting, during the meeting, any information or opinions which that person has on the business of the meeting.
- (2) A person is able to exercise the right to vote at a general meeting when
- (a) that person is able to vote, during the meeting, on resolutions put to the vote at the meeting, and
  - (b) that person's vote can be taken into account in determining whether or not such resolutions are passed at the same time as the votes of all the other persons attending the meeting.
- (3) The directors may make whatever arrangements they consider appropriate to enable those attending a general meeting to exercise their rights to speak or vote at it
- (4) In determining attendance at a general meeting, it is immaterial whether any two or more members attending it are in the same place as each other.
- (5) Two or more persons who are not in the same place as each other attend a general meeting if their circumstances are such that if they have (or were to have) rights to speak and vote at that meeting, they are (or would be) able to exercise them.

##### **Quorum for general meetings**

- 38.** No business other than the appointment of the chairman of the meeting is to be transacted at a general meeting if the persons attending it do not constitute a quorum.



### **Chairing general meetings**

**39.—(1)** If the directors have appointed a chairman, the chairman shall chair general meetings if present and willing to do so.

(2) If the directors have not appointed a chairman, or if the chairman is unwilling to chair the meeting or is not present within ten minutes of the time at which a meeting was due to start—

(a) the directors present, or

(b) (if no directors are present), the meeting,

must appoint a director or shareholder to chair the meeting, and the appointment of the chairman of the meeting must be the first business of the meeting.

(3) The person chairing a meeting in accordance with this article is referred to as "the chairman of the meeting".

### **Attendance and speaking by directors and non-shareholders**

**40.** (1) Directors may attend and speak at general meetings, whether or not they are shareholders.

(2) The chairman of the meeting may permit other persons who are not

(a) shareholders of the company, or

(b) otherwise entitled to exercise the rights of shareholders in relation to general meetings,

to attend and speak at a general meeting.

### **Adjournment**

**41.** (1) If the persons attending a general meeting within half an hour of the time at which the meeting was due to start do not constitute a quorum, or if during a meeting a quorum ceases to be present, the chairman of the meeting must adjourn it.

(2) The chairman of the meeting may adjourn a general meeting at which a quorum is present if

(a) the meeting consents to an adjournment, or

(b) it appears to the chairman of the meeting that an adjournment is necessary to protect the safety of any person attending the meeting or ensure that the business of the meeting is conducted in an orderly manner.

(3) The chairman of the meeting must adjourn a general meeting if directed to do so by the meeting.

(4) When adjourning a general meeting, the chairman of the meeting must—

(a) either specify the time and place to which it is adjourned or state that it is to continue at a time and place to be fixed by the directors, and

(b) have regard to any directions as to the time and place of any adjournment which have been given by the meeting.

(5) If the continuation of an adjourned meeting is to take place more than 14 days after it was adjourned, the company must give at least 7 clear days' notice of it (that is, excluding the day of the adjourned meeting and the day on which the notice is given)

(a) to the same persons to whom notice of the company's general meetings is required to be given, and

(b) containing the same information which such notice is required to contain.

(6) No business may be transacted at an adjourned general meeting which could not properly have been transacted at the meeting if the adjournment had not taken place.

## VOTING AT GENERAL MEETINGS

### **Voting: general**

**42.** A resolution put to the vote of a general meeting must be decided on a show of hands unless a poll is duly demanded in accordance with the articles.

### **Errors and disputes**

**43.** (1) No objection may be raised to the qualification of any person voting at a general meeting except at the meeting or adjourned meeting at which the vote objected to is tendered, and every vote not disallowed at the meeting is valid.

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

### **Amendments to resolutions**

**44.** (1) An ordinary resolution to be proposed at a general meeting may be amended by ordinary resolution if

(a) notice of the proposed amendment is given to the company in writing by a person entitled to vote at the general meeting at which it is to be proposed not less than 48 hours before the meeting is to take place (or such later time as the chairman of the meeting may determine), and

(b) the proposed amendment does not, in the reasonable opinion of the chairman of the meeting, materially alter the scope of the resolution.

(2) A special resolution to be proposed at a general meeting may be amended by ordinary resolution, if

(a) the chairman of the meeting proposes the amendment at the general meeting at which the resolution is to be proposed, and

(b) the amendment does not go beyond what is necessary to correct a grammatical or other non-substantive error in the resolution.

(3) If the chairman of the meeting, acting in good faith, wrongly decides that an amendment to a resolution is out of order, the chairman's error does not invalidate the vote on that resolution.

## PART 5

### ADMINISTRATIVE ARRANGEMENTS

#### **Means of communication to be used**

**45.** (1) Subject to the articles, anything sent or supplied by or to the company under the articles may be sent or supplied in any way in which the Companies Act 2006 provides for documents or information which are authorised or required by any provision of that Act to be sent or supplied by or to the company.

(2) Subject to the articles, any notice or document to be sent or supplied to a director in connection with the taking of decisions by directors may also be sent or supplied by the means by which that director has asked to be sent or supplied with such notices or documents for the time being.

(3) A director may agree with the company that notices or documents sent to that director in a particular way are to be deemed to have been received within a specified time of their being sent, and for the specified time to be less than 48 hours.

## **Company seals**

- 49.—(1)** Any common seal may only be used by the authority of the directors.
- (2) The directors may decide by what means and in what form any common seal is to be used.
- (3) Unless otherwise decided by the directors, if the company has a common seal and it is affixed to a document, the document must also be signed by at least one authorised person in the presence of a witness who attests the signature.
- (4) For the purposes of this article, an authorised person is
- (a) any director of the company;
  - (b) the company secretary (if any); or
  - (c) any person authorised by the directors for the purpose of signing documents to which the common seal is applied.

## **No right to inspect accounts and other records**

47. Except as provided by law or authorised by the directors or an ordinary resolution of the company, no person is entitled to inspect any of the company's accounting or other records or documents merely by virtue of being a shareholder.

## **Provision for employees on cessation of business**

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

## **DIRECTORS' INDEMNITY AND INSURANCE**

### **Indemnity**

- 49.—(1)** Subject to paragraph (2), a relevant director of the company or an associated company may be indemnified out of the company's assets against
- (a) any liability incurred by that director in connection with any negligence, default, breach of duty or breach of trust in relation to the company or an associated company,
  - (b) any liability incurred by that director in connection with the activities of the company or an associated company in its capacity as a trustee of an occupational pension scheme (as defined in section 235(6) of the Companies Act 2006),
  - (c) any other liability incurred by that director as an officer of the company or an associated company.
- (2) This article does not authorise any indemnity which would be prohibited or rendered void by any provision of the Companies Acts or by any other provision of law.
- (3) In this article—
- (a) companies are associated if one is a subsidiary of the other or both are subsidiaries of the same body corporate, and
  - (b) a "relevant director" means any director or former director of the company or an associated company.

### **Insurance**

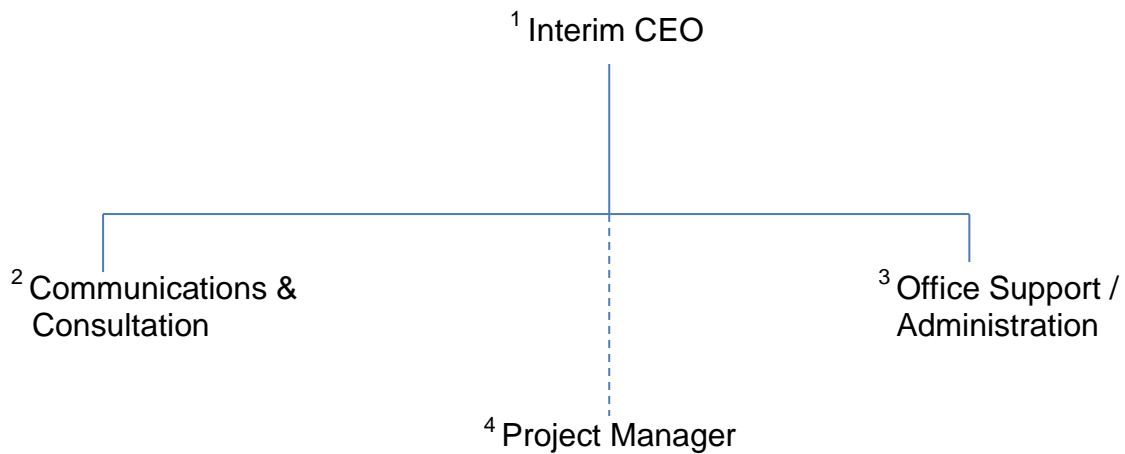
- 50. \_\_\_\_** (1) The directors may decide to purchase and maintain insurance, at the expense of the company, for the benefit of any relevant director in respect of any relevant loss.
- (2) In this article

- (a) a "relevant director" means any director or former director of the company or an associated company,
- (b) a "relevant loss" means any loss or liability which has been or may be incurred by a relevant director in connection with that director's duties or powers in relation to the company, any associated company or any pension fund or employees' share scheme of the company or associated company, and
- (c) companies are associated if one is a subsidiary of the other or both are subsidiaries of the same body corporate.

**SHAREHOLDERS' PROTOCOL AGREEMENT**

See separate document.

STAFFING STRUCTURE



<sup>1</sup> Initial appointments (interim + agency before permanent).

<sup>2</sup> Communications and Consultation Co-ordinator skills required when projects increase.

<sup>3</sup> Office Support / Administration – part time support.

<sup>4</sup> Project Manager – interim funded from capital and initially covered by Director in start-up phase. Flexible resource brought in on a project by project basis as required.

## THE ESTATE

Potential availability date	Description	Use	Current Balance Sheet Valuation	Redevelopment Cost	Value after Development	Max affordable Rental income	Source of Funds	Approval Date	Comments
2016	Vansittart Road, Windsor Ex Caretakers House	Multiple Occupancy	£550,000	£100,000	£650,000	£10,800	Loan (in place)		
Complete	Hampden Road Flat above retail unit	Multiple Occupancy	N/A	-	£300,000	£10,500	Fully funded		Not separately valued-This is part of a shop parade-value of entire parade £760,000
2017	16 Ray Mill Road East, (The House training facility)	4 flats	N/A	£200,000	£1,163,636	£40,800	S106		Not separately valued-Valuation includes land that was sold for development-value of land and property £3,978,000
2017	18 – 20 Ray Mill Road East (The Family Centre)	7 flats	N/A	£400,000	£2,036,363	£71,400	S106		

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Potential availability date	Description	Use	Current Balance Sheet Valuation	Redevelopment Cost	Value after Development	Max affordable Rental income	Source of Funds	Approval Date	Comments
2017	The Brocket, Maidenhead Former PRU, listed building, parking restriction, limited alternative use – subject to further formal decision from the Council	6 flats	£1,000,000	£495,000	£2,300,000	£66,000	S106		
Complete (Re-developed 2014)	York Road, Maidenhead Flats	8 flats	£1,245,000	£1,245,000	£2,400,000	£82,000	Loan (in place)		
2017	Station Road, Wraysbury Private land sale	5 units	Not Council owned	£500,000	£1,500,000	£51,000	Self funded / S106		
2017 – onwards	School Caretaker Properties	7 units	£2,041,000	£730,000	£2,041,000	£43,100	S106 / Loan (subject to business case approval)		The redevelopment costs are a provision only for potential improvements that will increase the asset value. Any redevelopment can only be fully assessed once the tenants vacate. Rental does not reflect the affordable rates but is an assumed rate for caretakers in residence.



Potential availability date	Description	Use	Current Balance Sheet Valuation	Redevelopment Cost	Value after Development	Max affordable Rental income	Source of Funds	Approval Date	Comments
2018-2020	Future development opportunities	78 units	£6,248,572	£5,350,000	£27,250,000	£840,600	S106 / Loan (subject to business case approval)		It is assumed some of the funding could also utilise the S106 budget as it will be creating affordable units.
2020	Ray Mill Road East Land sold to developer	20 units	N/A	-	£7,000,000	£204,000	Developer Funding		
<b>Totals</b>		<b>138 units</b>	<b>£11,406,572</b>	<b>£9,020,000</b>	<b>£46,640,999</b>	<b>£1,420,200</b>			<b>The redevelopment costs will be funded as follows: c£2.9m of S106 funding, £1.45m of existing agreed loans and £4.7m of new borrowing.</b>

## PROPERTY STATUS

Property	Status	Budget	Alternatives	Current Balance Sheet Value	Transfer Status	Availability Date	Risk	Approval Date
99 Vansittart Road	Ex Caretaker House (3 bed). Vacant. Planning permission to extend granted. HMO – key workers	Yes (Budget provided)	None considered	£550,000	Transfer at undervalue on works completion	December 2016	None	
Hampden Road	3 bed flat recently refurbished Key worker	None required	None considered	N/A	Transfer at undervalue	September 2016	None	
RMRE (Family Centre & The House)	House vacant. Family centre being relocated. Planning permission submitted. 11 flats	No (S106 monies)	None considered	N/A	Transfer at undervalue on works completion	April – June 2017	Planning not granted, modified or appealed	
The Brocket	Grade II listed former PRU feasibility study complete. Proposed conversion. 6 flats	No (S106 monies)	Mixed use registry, offices, flats, conservation, parking and location issues	£1,000,000	Transfer of works completion at undervalue	April – June 2017	Planning not granted, proposed use changed	

Property	Status	Budget	Alternatives	Current Balance Sheet Value	Transfer Status	Availability Date	Risk	Approval Date
York Road Flats	8 flats. Refurbished 2014 commercial let in occupation.	Yes	No	£1,245,000	Already an asset of the Property Company	-	None	
Station Road	Land offered by private landowner to develop properties at 50% of market value. Surveys undertaken to determine feasibility. Potential 15 units of which 5 for rent.	No (S106 monies/sales)	None considered	N/A	Transfer 5 units at undervalue on completion	2017	Planning as development within flood plain.	
Caretaker Properties	School Caretaker properties that are not identified as Academies, transfer for potential key worker use.	No (S106 monies)	Keep as is	£2,024,500	Transfer at undervalue on works completion	2018/19	Planning. DfE block. Incumbent caretakers. Academies.	
RMRE Land Site	Land sold to developer 2016. 20 units to be transferred to RBWM on completion.	No (None required)	None	N/A	Transfer on works completion at undervalue	2020	Development delayed.	

**LEGAL ADVICE**

See separate document.

## PROJECTED PROFIT &amp; LOSS

	2016/17	2017/18	2018/19	2019/20	2020/21
Pipeline (Units)	10	30	64	103	138
	£	£	£	£	£
Turnover	93,000	234,000	658,643	1,060,004	1,420,200
Taxation (VAT)	(3,602)	(8,735)	(26,504)	(43,600)	(61,332)
inflation		4,680	26,346	63,600	113,616
Turnover	89,398	229,945	658,485	1,080,004	1,472,484
Salaries	0	0	0	0	188,700
Accounting	1,500	1,530	1,561	3,180	3,244
Office Costs	10,000	11,220	18,512	27,136	35,288
Third Party Management fee	6,510	16,708	47,949	78,652	116,570
Interest & Financing Costs	61,615	61,615	189,125	274,125	268,048
Misc Repairs	3,336	8,507	27,756	45,528	62,376
Contribution to repairs provision	6,664	16,932	55,255	90,640	124,476
	89,625	116,512	340,158	519,261	798,702
Profit before Interest & Tax	(227)	113,433	318,327	560,743	673,782
Taxation	0	22,687	63,665	112,149	134,756
P&L	(227)	90,746	254,662	448,594	539,026
Dividend	0	75,000	250,000	314,016	377,318
to Income/Expenditure Reserve	(227)	15,746	4,662	134,578	161,708

## Assumes:

- Voids at 5%
- Refurbishment at 5/6 years
- All salary costs years 1-4 capitalised
- Inflation inbuilt at 2% pa on cost and income from April 2017
- Office/other fees includes buildings insurance and accommodation fee
- All loans prior to April 2017 will be paid on an interest only basis for the first two years
- All loans post April 2017 will be repaid on a capital/interest basis from the date when the first repayment commences

**PROJECTED BALANCE SHEET**

	2016/17	2017/18	2018/19	2019/20	2020/21
	£	£	£	£	£
<b>Fixed Assets</b>					
Housing Properties	3,650,000	11,700,000	29,140,999	39,640,999	46,640,999
<b>Total Fixed Assets</b>	<b>3,650,000</b>	<b>11,700,000</b>	<b>29,140,999</b>	<b>39,640,999</b>	<b>46,640,999</b>
<b>Current Assets</b>					
Debtors	7,750	19,890	57,082	93,634	127,818
Cash at Bank	60,302	172,090	505,625	831,874	938,488
	68,052	191,980	562,707	925,508	1,066,306
<b>Current Liabilities</b>					
Dividends Payable	0	(75,000)	(250,000)	(314,016)	(377,442)
Creditors falling due within one year	(61,625)	(84,312)	(252,790)	(386,274)	(402,804)
<b>Net Current Assets</b>	<b>6,427</b>	<b>32,668</b>	<b>59,917</b>	<b>225,218</b>	<b>286,060</b>
<b>Total Assets less current liabilities</b>	<b>3,656,427</b>	<b>11,732,668</b>	<b>29,200,916</b>	<b>39,866,217</b>	<b>46,927,059</b>
<b>Creditors: amounts falling due after more than one year</b>	<b>(1,450,000)</b>	<b>(1,450,000)</b>	<b>(4,450,000)</b>	<b>(6,450,000)</b>	<b>(6,307,000)</b>
<b>Provisions - maintenance of properties</b>	<b>(6,664)</b>	<b>(16,932)</b>	<b>(55,255)</b>	<b>(90,640)</b>	<b>(124,476)</b>
<b>Total Net Assets</b>	<b>2,206,427</b>	<b>10,282,668</b>	<b>24,750,916</b>	<b>33,416,217</b>	<b>40,620,059</b>
<b>Reserves:</b>					
Share Capital	100	100	100	100	100
Income and expenditure reserve	(227)	15,519	20,408	139,240	296,286
Revaluation Reserve	2,206,554	10,267,049	24,730,408	33,276,877	40,323,673
<b>Total Reserves</b>	<b>2,206,427</b>	<b>10,282,668</b>	<b>24,750,916</b>	<b>33,416,217</b>	<b>40,620,059</b>

**PROJECTED CASH FLOW (1)**

**ASSUMPTIONS**

**LOANS**

£1,245,000 York Road  
£200,000 Start up (booster loan)  
£5,000,000 Future potential funding requirement

Loan term: 45 years  
Loan projections: Straight line  
Rental growth:  
& inflation 2%  
Interest rate: 4.25% reducing balance  
Corporation tax: 20%  
Dividends: Normally 70% of post tax profit as a minimum apart from years 2 and 3 where it is 83% and 98% respectively.

## PROJECTED CASH FLOW (2)

### Projected Cashflow Forecast

	2016/17	2017/18	2018/19	2019/20	2020/21
	£	£	£	£	£
Bal b/fwd	0	6,427	289,095	250,123	290,408
Lettings Income	93,000	238,680	684,989	1,123,604	1,533,816
<b>Total Income</b>	<b>93,000</b>	<b>245,107</b>	<b>974,084</b>	<b>1,373,727</b>	<b>1,824,224</b>
Capital	0	0	98,889	143,333	143,333
Interest	61,625	61,625	189,125	274,125	270,852
Operating costs	21,346	37,965	95,778	154,496	406,178
Refurbishment	0	0	0	41,600	16,200
Tax	3,602	31,422	90,169	155,749	196,088
dividends	0	75,000	250,000	314,016	377,318
<b>Cash outflow</b>	<b>86,573</b>	<b>206,012</b>	<b>723,961</b>	<b>1,083,319</b>	<b>1,409,969</b>
<b>Bal c/fwd</b>	<b>6,427</b>	<b>39,095</b>	<b>250,123</b>	<b>290,408</b>	<b>414,255</b>

- The cash flow position will be further improved by the release of the balance sheet reserve provisions for refurbishment works.
- £250,000 of the £5,000,000 loan provision to be used for working capital purposes in year 3 and is reflected in the year 3 cash b/f figure.
- Dividend for year 2 and 3 represents 83% and 988% of post-tax profits and reduces to 70% thereafter.



# **Shareholder Operating Protocol**

**Between**

**Royal Borough of Windsor & Maidenhead**

**and**

**Shareholder of the Companies**

**and**

**RBWM Property Company Ltd**

**and**

**RBWM Commercial Services Limited**

## GROUP OPERATION PROTOCOL

### 1.0 AGREEMENT

Date: [ \_\_\_\_\_ ] 2015

This agreement ('the Protocol') is between  
Royal Borough of Windsor & Maidenhead ('the Council'); the Shareholder; and  
the Companies

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1.1 The Council the Shareholder and the Companies agree :

1.1.1 to comply and observe all the requirements, covenants, obligations and procedures as contained within this Protocol;

1.1.2 at all times;

1.1.3 as amended in writing by the parties from time to time; and

1.1.4 to use all reasonable endeavours to ensure observance of this protocol by its members, officers, directors, employees and consultants and take all such action required to secure compliance at all times.

This Protocol is agreed by:

For and on behalf of RBWM Property Company Ltd:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name & Position

For and on behalf of RBWM Commercial Services Limited:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name & Position

For and on behalf of the Shareholder:

\_\_\_\_\_  
Signature Alison Alexander, Managing Director

For and on behalf of the Council:

\_\_\_\_\_  
Signature Leader of the Council

1.2 Interpretation

The following terms are defined within this Protocol

	<b>Term</b>	<b>Description</b>
	Companies	Means the companies RCS and RPC and such further additional companies if incorporated within a group and 'companies' shall mean either all the companies or a single company as the context so determines
	Council	Means Royal Borough of Windsor & Maidenhead and in reference to this Protocol means the Council exercising its rights as sole shareholder of the Companies through either decisions of the Cabinet or the Shareholder.
	Shareholder	The Council's representative with delegated authority to make decisions on behalf of the Council in its capacity as owner and shareholder of the Companies. The current Shareholder representative is the Managing Director of the Council and Lead Member for Economic Development and Property with authority in a resolution of cabinet dated [ ] reference [ ].
	Protocol	This document and each variation from time to time
	RCS	The company RBWM Commercial Services Limited (company registration no. 07432503)
	RPC	The company RBWM Property Company Ltd (company registration no. 07588433)

### 1.3 Introduction

The Royal Borough of Windsor & Maidenhead decided to deliver services through means other than by the employees of the Council or third party contractors. The Council has formed wholly owned private companies, transferred its services to the newly formed company or decided to utilise the company to develop land and other assets.

The Council is the sole shareholder of all the companies within the group and each company operates through its board of directors who are tasked to make a success and act in the best interest of the company for the benefit of the shareholders and by association, the residents of the Borough.

As the Council and the companies have become more mature, the parties have realised that the relatively innovative wholly owned concept doesn't entirely fit within the rights and obligations of the public or private sector but needs to draw on the benefits of both but appreciate that there are limitations - the rules and laws governing the relationships between the parties cross boundaries of public and private sectors and the interactions are often not clear.

The Council originally considered simply providing strategic direction and objective was sufficient and the companies should simply deliver on those requirements. However, it has been realised that it is important to residents that how services are delivered through the companies is just as important as what services are delivered. The Council appreciates that residents expect that the public sector concepts of consultation, transparency and open decision-making must apply irrespective who actually delivers the services.

The purpose of this Group Operating Protocol is to be a simple document providing clarity on the decision making, transparency and consultation, and identifying whom within organisation has the duty and the function. This Protocol shall function as a single point of information and clarity between the parties and shall provide a simple and easy guidance as how decisions are made.

This Protocol does not absolve any Party from complying with any other law, standard or requirement not limited to but including:

- a. Companies Act
- b. Relevant Articles of Association
- c. Constitution of the Council
- d. Accounting or audit standard or principles
- e. Procurement regulations
- f. Relevant local government rules or regulations

In relation to the Council all obligations relate to its capacity as shareholder only and nothing in this Protocol fetters any statutory discretion or absolves any party from consulting, notifying or obtaining consent from the Council acting in a statutory capacity.

#### 1.4 Contents

Section	Description	Version No	Approval
1.0	Agreement, Introduction, Interpretation and Contents	1.0	01/11/16
2.0	Timetable and Notable Dates	1.0	01/11/16
3.0	Decision Making	1.0	01/11/16
4.0	Audit Protocol	1.0	01/11/16
5.0	Reporting & Risk	1.0	01/11/16
6.0	Key Documents	1.0	01/11/16
7.0	Investment Protocol	1.0	01/11/16

#### 2.0 Timetable & Notable Dates

The attached table contains the timescale during the year when a particular task shall be performed and documents the party(ies) responsible to perform the task.

Unless otherwise stated the task needs to be completed by the end of the month in question.

<b>Shareholder Operating Protocol</b>													
<b>2.0 Timetable and Notable Dates</b>		Key <span style="display: inline-block; width: 15px; height: 10px; background-color: orange; border: 1px solid black;"></span> RCS & RPC <span style="display: inline-block; width: 15px; height: 10px; background-color: cyan; border: 1px solid black;"></span> RPC <span style="display: inline-block; width: 15px; height: 10px; background-color: yellow; border: 1px solid black;"></span> RCS <span style="display: inline-block; width: 15px; height: 10px; background-color: green; border: 1px solid black;"></span> Shareholder <span style="display: inline-block; width: 15px; height: 10px; background-color: purple; border: 1px solid black;"></span> Audit											
<b>Task Category</b>	<b>Task -</b>	<b>Jan</b>	<b>Feb</b>	<b>Mar</b>	<b>Apr</b>	<b>May</b>	<b>Jun</b>	<b>Jul</b>	<b>Aug</b>	<b>Sep</b>	<b>Oct</b>	<b>Nov</b>	<b>Dec</b>
<b>Accounts</b>	Accounts - drafting												
	Accounts - approval												
	CHEW Accounts Submission												
	HMRC Accounts Submission												
<b>Reporting</b>	Monthly Accounts and Operational Reports to Shareholder												
	Quarterly Accounts and Operational Updates to Cabinet												
	CHEW Annual Return												
<b>Business Planning</b>	Business Plan (1yr) & (5yr)- drafting												
	Business Plan (1yr) & (5yr) - approval												
	Remit Document - drafting												
	Remit Document - approval												
<b>Transparency</b>	Council Website - accounts/directors												

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### **3. Decision Making Protocol**

#### **3.1 Introduction**

The Decision Making Protocol specifies the obligations and expectations on the parties and designates who within the Protocol can make a decision and who that party is required to consult or notify.

The protocol then provides the decision process that must be followed and complied with before the decision can be made.

The protocol consists of Part I specified decisions and Part II general decisions. Where a decision does not fall within Part I then the decision is reserved to and can only be made by the party in Part II and in accordance with Part II. Part IV contains those express matters reserved to the Shareholder.

Part III documents the process where an Urgent Decision is required.

#### **3.2 Interpretation**

In this part the following terms apply:

<b>Term</b>	<b>Description</b>
Audit	Means the minimum documentary evidence required to prove that the decision has been made in accordance with this Protocol and the necessary documentation has been finalised.
Accountable	The party undertaking the process, task or procedure to facilitate the decision from the party Responsible.
Consulted	The party who must be consulted and who's comments or opinion must be considered as part of the decision process by the party Responsible.
Document – inside group	Document used to evidence or secure the decision and may contain commercially sensitive or confidential information and permits disclosure within group only. Group means the board of the companies, Shareholder and Cabinet.
Document – outside group	Document used to evidence or secure the decision and for disclosure in public.
Decision	Means the type of decision a party can make without recourse, notification or consultation with any other party in this protocol unless expressly stated in Part I or Part II
Includes	A further breakdown of subcategories for included within the Decision
Informed	A party is advised of the decision made or to be made. Responsible is not required (but may) take into consideration any comments made by the Informed. Informed could be



		advised during or after the decision has been made.
	Procedure	The procedural steps that must be followed to secure the decision.
	Responsible	The party have authority and required to make a decision providing that necessary consultation and information has been complied with.
	Scheme	Means scheme or business case for a particular property development
	Source	The original decision resolution or law that requires that the decision is reserved to the party or procedure is required to be followed. Ordinarily this is a decision of Council or Shareholder.
	Subsidiary	Means RPC or RCS as the context so determines.
	Timescale	The estimated time required to secure the decision.
	Urgent Decision	A decision required outside of the Part I or II decision making framework due to reasons such as a party cannot be consulted or a decision is required at a faster timescale.

**3.3 PART I – SPECIFIED DECISIONS**

<b>Decision:</b>	<b>Annual Business Plan (including Operational Budget)</b>	<b>3.3.1</b>
<b>Includes:</b>	(i) Approval (ii) Variation (any)	
<b>Subsidiary:</b>	RPC or RPS	
<b>Source:</b>	This Protocol	
<b>Responsible:</b>	Cabinet	
<b>Accountable:</b>	RPC or RCS	
<b>Consulted:</b>	Leader Lead Member for Regeneration and Property Lead Member for Finance Strategic Director(s) Head of Finance	
<b>Informed:</b>	Council (by inclusion on Operation Budget in Budget)	
<b>Timescale:</b>	Business Plan - 3 months after first submission by Accountable party and to be finalised by the end of February. Remit Document – completed 1 month after approval of Business Plan	
<b>Procedure:</b>	a. Shareholder to issue draft Remit Document to Subsidiary in September b. Subsidiary to issue draft business plan to Shareholder in December. c. Shareholder to consult with Lead Member for Finance and relevant Strategic Director(s) and feedback to Subsidiary. d. Shareholder to approve Business Plan by January e. Shareholder to issue the Remit Document and Business Plan to next Cabinet. f. Cabinet to consider Business Plan as Part II item. If remains Part II then Remit Document only published as Part I	
<b>Documentation Inside Group:</b>	Annual Business Plan	
<b>Documentation Outside Group:</b>	Remit Document Council Budget	
<b>Audit :</b>	Business Plan and Remit document completed by both Shareholder and Subsidiary in accordance with Timescale.	

<b>Decision:</b>	<b>Approval of Scheme of Development (including allocation of capital expenditure Funding)</b>	<b>3.3.2</b>
<b>Includes:</b>	(i) Outline Scheme (ii) Variation to Scheme (iii) Detailed Scheme	
<b>Subsidiary:</b>	RPC	
<b>Source:</b>	Applicable decision of Shareholder and Cabinet	
<b>Responsible:</b>	Shareholder/Cabinet/Council	
<b>Accountable:</b>	RPC and Shareholder	
<b>Consulted:</b>	Lead Member for Regeneration and Property Lead Member for Finance Strategic Director(s) Head of Finance (if general funds to be used) Head of Planning (if s106 funds to be used) Property Manager (if Council assets to be used)	
<b>Informed:</b>	Ward Councillor(s) – Detailed and Variation. Not Informed at Outline stage.	
<b>Timescale:</b>	New – 4 weeks Variation & Detailed – up to 3 months from submission of Scheme of Development	
<b>Procedure:</b>	<b>Decision in Principal on Outline Scheme</b>	
	a. Subsidiary to issue to Shareholder the Outline Scheme (outline) including proposal on feasibility, amount and type of funding b. Shareholder to approve/reject scheme within 14 days. c. If Shareholder approves scheme then Subsidiary move to Detailed Scheme.	
	<b>Decision on Detailed Scheme &amp; Variation to Scheme</b>	
	a. Subsidiary to consult with relevant parties in Consulted to finalise the Detailed or Variation Scheme including full details of requested funding, source of funding and any assets required. b. Subsidiary to submit Scheme to Shareholder and to inform Ward Councillor requesting comments to be forward to Shareholder in 14 days. c. If Shareholder approves the Scheme then : (i) Property Leasehold Assets - if term exceeds 25 years and annual rent £100K (occupational asset) or 150 years or annual rent £50K or premium>£250K; or (ii) Property freehold Assets – acquisition or disposal > £500K; or (iii) Funding exceeds £250K (Cabinet) or £500K (Council); then Shareholder will submit Scheme to Cabinet for Approval (where budgetary provision exists) or full Council as	

	appropriate. d. If Shareholder approves Scheme and conditions c (i) to c (iii) do not apply, then Shareholder will notify Consulted to implement Scheme.	
<b>Documentation Inside Group:</b>	Development Scheme (outline) & Development Scheme (Detailed) & Cabinet or Council Reports (Part II items)	
<b>Documentation Outside Group:</b>	Cabinet or Council Reports (Part I items)	
<b>Audit :</b>	Decision of Shareholder for Outline, Detailed or Variation to Scheme Resolution of Cabinet or Council approving Development Scheme. Legal Documentation executed by all parties	

<b>Decision:</b>	<b>Funding Request &amp; Drawdown (Property Development)</b>	<b>3.3.3</b>
<b>Includes:</b>	(i) Grant Funding (ii) General Funds (iii) Commuted Sums (section 106 funds) after Scheme of Development has been approved.	
<b>Subsidiary:</b>	RPC	
<b>Source:</b>	Applicable resolution of Shareholder	
<b>Responsible:</b>	Shareholder/Cabinet/Council	
<b>Accountable:</b>	RPC	
<b>Consulted:</b>	Lead Member for Regeneration and Property Lead Member for Finance Strategic Director(s) Head of Finance S106 officer (if s106 funds to be used)	
<b>Informed:</b>	Cabinet	
<b>Timescale:</b>	No less than 14 days from submission	
<b>Procedure:</b>	<ol style="list-style-type: none"> <li>a. Subsidiary to issue Funding Request to Shareholder.</li> <li>b. Shareholder to consult with Consulted</li> <li>c. Shareholder resolution to reject – with reasons or recommendations for compliance.</li> <li>d. Shareholder resolution to approve – with necessary documentation and terms as pre-condition for funding.</li> <li>e. Shareholder to see approval where request exceeds £250K (Cabinet) or £500K (Council); then Shareholder will submit Scheme to Cabinet for Approval (where budgetary provision exists) or full Council as appropriate.</li> <li>f. Legal documentation as per Shareholder resolution completed and signed off.</li> <li>g. Subsidiary to request drawdown of funding in accordance with Funding Request &amp; legal documentation.</li> <li>h. Quarterly updates to Cabinet s standing item showing progress of scheme and expenditure of funding.</li> </ol>	
<b>Documentation Inside Group:</b>	Funding Request Document, Legal Documentation	
<b>Documentation Outside Group:</b>	Cabinet or Council Report Quarterly updates to Cabinet	
<b>Audit :</b>	Resolution of Shareholder and Cabinet/Council permitted drawdown Legal Documentation executed by all parties	

<b>Decision:</b>	<b>Funding Request &amp; Drawdown (All other)</b>	<b>3.3.4</b>
<b>Includes:</b>	(i) Loans/Grants from Council (ii) Council equity funding	
<b>Subsidiary:</b>	RCS	
<b>Source:</b>	Applicable resolution of Shareholder	
<b>Responsible:</b>	Shareholder/Cabinet/Council	
<b>Accountable:</b>	RCS	
<b>Consulted:</b>	Lead Member for Finance & relevant Lead Member Strategic Director(s) Head of Finance	
<b>Informed:</b>	Cabinet	
<b>Timescale:</b>	No less than 14 days from submission	
<b>Procedure:</b>	<ol style="list-style-type: none"> <li>a. Subsidiary to issue Funding Request to Shareholder.</li> <li>b. Shareholder to consult with Consulted</li> <li>c. Shareholder resolution to reject – with reasons or recommendations for compliance.</li> <li>d. Shareholder resolution to approve – with necessary documentation and terms as pre-condition for funding.</li> <li>e. Shareholder to seek approval where request exceeds £250K (Cabinet) or £500K (Council); then Shareholder will submit Scheme to Cabinet for Approval (where budgetary provision exists) or full Council as appropriate.</li> <li>f. Legal documentation as per Shareholder resolution completed and signed off.</li> <li>g. Subsidiary to request drawdown of funding in accordance with Funding Request &amp; legal documentation.</li> <li>h. Quarterly updates to Cabinet s standing item showing progress of scheme and expenditure of funding.</li> </ol>	
<b>Documentation Inside Group:</b>	Funding Request Document, Legal Documentation	
<b>Documentation Outside Group:</b>	Cabinet or Council Report Quarterly updates to Cabinet	
<b>Audit :</b>	Resolution of Shareholder and Cabinet/Council permitted drawdown Legal Documentation executed by all parties	

<b>Decision:</b>	<b>Development of Council Land assets/rights</b>	<b>3.3.5</b>
<b>Includes:</b>	(i) New Outline Scheme (ii) Variation to Scheme (iii) Detailed Scheme	
<b>Subsidiary:</b>	RPC	
<b>Source:</b>	Applicable resolution of Shareholder and Cabinet	
<b>Responsible:</b>	Shareholder or Cabinet	
<b>Accountable:</b>	RPC and Shareholder	
<b>Consulted:</b>	Lead Member for Finance Lead Member for Regeneration and Property Strategic Director(s) Property Manager	
<b>Informed:</b>	Ward Councillor	
<b>Timescale:</b>	New – 4 weeks Variation & Detailed – up to 3 months from submission of Scheme of Development	
<b>Procedure:</b>	<b>Decision in Principal on Outline Scheme</b>	
	<ul style="list-style-type: none"> <li>a. Subsidiary to issue to Shareholder the Outline Scheme (outline) including proposal on feasibility, amount and type of funding</li> <li>b. Shareholder to approve/reject scheme within 14 days.</li> <li>c. If Shareholder approves scheme then Subsidiary move to Detailed Scheme.</li> </ul>	
	<b>Decision on Detailed Scheme &amp; Variation to Scheme</b>	
	<ul style="list-style-type: none"> <li>a. Subsidiary to consult with relevant parties in Consulted to finalise the Detailed or Variation Scheme including full details of requested funding, source of funding and any assets required.</li> <li>b. Subsidiary to submit Scheme to Shareholder and to inform Ward Councillor requesting comments to be forward to Shareholder in 14 days.</li> <li>c. If Shareholder approves the Scheme then : <ul style="list-style-type: none"> <li>(i) Property Leasehold Assets - if term exceeds 25 years and annual rent £100K (occupational asset) or 150 years or annual rent £50K or premium &gt;£250K; or</li> <li>(ii) Property freehold Assets – acquisition or disposal &gt; £500K;</li> </ul> then Shareholder will submit Scheme to Cabinet for Approval (where budgetary provision exists) or full Council as appropriate. </li> <li>d. If Shareholder approves Scheme and conditions c (i) to c (ii) do not apply, then Shareholder will notify Consulted to</li> </ul>	

	implement Scheme.	
<b>Documentation Inside Group:</b>	Development Scheme (outline) & Development Scheme (Detailed) & Cabinet or Council Reports (Part II items)	
<b>Documentation Outside Group:</b>	Cabinet or Council Reports (Part I items)	
<b>Audit :</b>	Decision of Shareholder for Outline, Detailed or Variation to Scheme Resolution of Cabinet or Council approving Development Scheme. Legal Documentation executed by all parties	



<b>Decision:</b>	<b>Changes to Company Directors, Secretary and Chairperson.</b>	<b>3.3.6</b>
<b>Includes:</b>	(i) Changes to terms and conditions (ii) changes to salary (iii) award of any benefits in kind (iv) the assessment and award of Performance Related Pay or discretionary payments (v) Terms of new Performance Related Pay scheme or discretionary payments (vi) appointment (vii) dismissal (viii) changes of board numbers (ix) appointment of chairperson.	
<b>Subsidiary:</b>	RPC and RCS	
<b>Source:</b>	Adoption of this Protocol	
<b>Responsible:</b>	Shareholder	
<b>Accountable:</b>	RPC and RCS	
<b>Consulted:</b>	Leader Lead Member for Regeneration and Property (RPC only) Lead Member for Finance Strategic Director(s)	
<b>Informed:</b>	Cabinet	
<b>Timescale:</b>	No less than 1 month from initial request	
<b>Procedure:</b>	<ul style="list-style-type: none"> <li>a. Subsidiary to issue to Shareholder a report for reason for change, justification and operational/financial impact.</li> <li>b. Shareholder to consult with Leader</li> <li>c. If proposal involves remuneration of officers or a member of the Council then must be in accordance with the Council Remuneration Scheme</li> <li>d. If Shareholder approves scheme then issue resolution with details of decision and documentation if required.</li> <li>e. Subsidiary implements once legal documentation signed off and completed.</li> <li>f. External Executive Directors of the Subsidiary shall only be appointed to the office of director after probationary period has completed.</li> </ul>	
<b>Documentation Inside Group:</b>	Company Report. Legal Documentation (ie. employment contract, agreed PRP scheme, Indemnity Deed)	
<b>Documentation Outside Group:</b>	Cabinet reports / Council transparency website (unless Part II or confidential)	
<b>Audit :</b>	(i) Resolution of Shareholder permitted change (ii) Completion of legal documentation (iii) Cabinet Update.	

<b>Decision:</b>	<b>Company Structure &amp; Changes</b>	<b>3.3.7</b>
<b>Includes:</b>	(i) Changes to existing company structures (ii) changes in shareholding (iii) creation of new companies (iv) merger (v) dissolution of company	
<b>Subsidiary:</b>	RPC and RCS	
<b>Source:</b>	Adoption of this Protocol	
<b>Responsible:</b>	Shareholder	
<b>Accountable:</b>	RPC and RCS	
<b>Consulted:</b>	Leader Lead Member for Regeneration and Property Lead Member for Finance Strategic Director(s) Strategic Director(s)	
<b>Informed:</b>	Cabinet	
<b>Timescale:</b>	No less than 28 days from initial request	
<b>Procedure:</b>	<ul style="list-style-type: none"> <li>a. Subsidiary to issue report to Shareholder documenting change, justification and operational/financial impact.</li> <li>b. Shareholder to Consult.</li> <li>c. If scheme involves remuneration of officers or member of Council then must be in accordance with the Council Remuneration Scheme.</li> <li>d. If Shareholder approves scheme then issue resolution with details of decision and documentation if required.</li> </ul> Subsidiary implements once legal documentation signed off and completed	
<b>Documentation Inside Group:</b>	Company Report. Legal Documentation (i.e. contract, Articles of Association) e.	
<b>Documentation Outside Group:</b>	Cabinet quarterly update reports / Council transparency website (unless Part II or confidential)	
<b>Audit :</b>	Resolution of Shareholder permitted change Completion of legal documentation Executive Update.	

<b>Decision:</b>	<b>Company staffing changes</b>	<b>3.3.8</b>
<b>Includes:</b>	Changes affecting a significant number of staff collectively including (i) change to terms and conditions, (ii) restructures, (iii) awards, (iv) outsourcing, (v) TUPE which reasonably be expected to impact on service delivery by the Companies, (vi) any award of discretionary bonus or Performance Related Pay	
<b>Subsidiary:</b>	RPC and RCS	
<b>Source:</b>	Adoption of this Protocol	
<b>Responsible:</b>	Shareholder	
<b>Accountable:</b>	RPC and RCS	
<b>Consulted:</b>	Leader Lead Member for Regeneration and Property (RPC only) Lead Member for Finance Strategic Director(s)	
<b>Informed:</b>	N/A	
<b>Timescale:</b>	No less than 28 days from initial request	
<b>Procedure:</b>	<ol style="list-style-type: none"> <li>Subsidiary to issue report to Shareholder documenting change, justification and operational/financial impact.</li> <li>Shareholder to Consult.</li> <li>If scheme involves remuneration of officers or member of Council then must be in accordance with the Council Remuneration Scheme.</li> <li>If Shareholder approves scheme then issue resolution with details of decision and documentation if required.</li> <li>Subsidiary implements once legal documentation signed off and completed</li> </ol>	
<b>Documentation Inside Group:</b>	Company Report. Legal Documentation (i.e. contract, Articles of Association)	
<b>Documentation Outside Group:</b>	Cabinet quarterly update reports / Council transparency website (unless Part II or confidential)	
<b>Audit :</b>	Resolution of Shareholder permitted change Completion of legal documentation Executive Update.	

### **3.4 PART II – GENERAL DECISIONS**

General Decisions made by the Shareholder or Council in this section require a resolution in writing of the Board of Directors or Cabinet of the Council.

All decisions must be submitted to the Shareholder or Council using the Decision Request Document.

<b>Decisions Permitted by Subsidiary</b>		
3.4.1	All decisions permitted by, to give effect to or reasonably ancillary to the approved Business Plan or any scheme or project expressly approved by the Shareholder	
3.4.2	All decisions reasonably permitted by, to give effect to or reasonably ancillary to express resolutions of the Shareholder	
3.4.3	All decisions not falling into 3.4.1 and 3.4.2 and necessary for the day to day management of the business of the companies providing that such decision does not result in total additional expenditure or income of greater than £100,000 in any one calendar year.	
<b>Decisions Permitted by Shareholder</b>		
3.4.4	All decisions necessary for the day to day management of the business of the Subsidiary NOT reserved to Subsidiaries providing that such decision does not result in expenditure or income of greater than £250,000 in any one calendar year.  The Shareholder Reserved Decisions in Part IV.	
<b>Decisions Permitted by Cabinet</b>		
3.4.5	All other decisions not granted to Subsidiaries or Shareholder. If financial decision then no greater than £500K or if budgetary framework does not exist.	
<b>Decisions Permitted by Council (full Council)</b>		
3.4.6	Decisions requiring funding over £500K and where no budgetary framework exists	

### **3.5 PART III – URGENT DECISIONS**

Urgent Decisions should only used in rare circumstances where an outside or third party opportunity or challenge results in the decision being required outside of Part III Decision Making Protocol. Authority under an Urgent Decision shall only last until the next relevant meeting of Shareholder or Council.

The procedure is:

3.5.1	An Urgent Decision can only be taken with the unanimous agreement of the Leader of the Council, Shareholder and Chairman of the relevant Subsidiary	
3.5.2	During the decision making process the Shareholder or Subsidiary must comply with as much of this Protocol as possible within timescales including Informing or Consulting the relevant parties as set out in the Protocol.	
3.5.3	A written record of the Urgent Decision must be made and immediately distributed via email to the relevant parties as set out in the relevant Part.  <b><u>The written record must set out the date or time that the Urgent Decision shall take effect.</u></b>	
3.5.4	The party enacting the Urgent Decision shall bring a report to the next Shareholder meeting setting out the reason for the Urgent Decision, the outcome and the results of any consultation or informing the necessary parties.	
3.5.5	The Shareholder will determine the appropriate actions and determine whether further reports to Council Executive are required and whether the Urgent Decision shall continue in force.	

### **3.6 PART IV – SHAREHOLDER RESERVED DECISIONS**

The Subsidiaries shall not, unless it has Shareholder Consent:

3.6.1	vary in any respect its articles of association or the rights attaching to any of its shares	
3.6.2	Change the shareholding of the Companies in any way, change company name, change registered office or company auditors/year end	
3.6.3	Enter into any loan, credit, guarantee, borrowing, contract or commitment with any person where total commitment is greater than £25,000 (whether singularly or cumulatively with any other commitment)	
3.6.4	Enter into or cease business other than that authorised in the Business Plan or on terms other than at arms length	
3.6.5	Enter into any contract with a Director or person connected with a director (as defined in 1122 and 1123 of the Corporation Tax Act 2010)	
3.6.6	institute, settle or compromise any material legal proceedings other than debt recovery proceedings in the ordinary course of business or where the Value of such claim is reasonably believed by the Company to be less than £10,000	

## **4. Audit Protocol**

### **4.1 Introduction**

Effective risk management is a cornerstone of good corporate governance. This Audit Protocol specifies the corporate expectation of correctly following process and procedure, correct use of documentation, evidenced based decision making and risk management.

### **4.2 Decision Making – Audit Requirements**

The Decision Making Protocol specifies the minimum documents required to evidence compliance with Subsidiaries and Council procedures during any decision making. Where the Decision Making Protocol specifies an Audit Requirement then the Council's auditors shall have the right to request to production of such documentary evidence. This is separate from any audit requirement for the annual accounts pursuant to the CA2006.

### **4.3 Audit Protocol**

- 4.3.1 The Council has the right to conduct both financial and operational audits of the Subsidiaries at its discretion. The Council will provide two weeks' notice of any such audit.
- 4.3.2 The Subsidiaries shall grant to the Council or its auditors the right of reasonable access to any premises of the Subsidiaries which are used in connection with the performance of the Subsidiaries' responsibilities and obligations together with a right to reasonable access to all records.
- 4.3.3 The Subsidiaries shall provide or procure the provision of all reasonable assistance at all times for the purposes of carrying out an audit of the Subsidiaries.
- 4.3.4 The Subsidiaries shall adopt any recommendations made by the Council to improve or change its processes and records.
- 4.3.5 In the event of an investigation into suspected fraudulent activity or other impropriety by the Subsidiaries the Council reserves for itself or any auditor the right of immediate access to the premises and of any documents and the Subsidiaries agrees to render all necessary assistance to the conduct of such investigation at all times.
- 4.3.6 The Council shall use all reasonable endeavours to ensure that its auditors cause the minimum amount of disruption to the business of the Subsidiaries.
- 4.3.7 The Council will invite the Subsidiaries to comment on the results of any audit exercise and any proposed publication material and will take account of those comments to the extent that it deems fit in any publication.

## **5. Reporting & Risks**

### **5.1 Introduction**

The Council believes transparency is a key condition and driver for the delivery of Council services whether they are delivered directly or through the Companies. As a publically funded organisation, the Council has a duty to the residents it serves to be transparent in its business operations and outcomes. In addition, the Council expects its Companies to be transparent on the financial and operational risks. This transparency is demonstrated by regular meetings, within group reports and published reporting.

### **5.2 Reports**

The following reports are delivered by the Companies and Council:

<b>Report</b>	<b>Reporting</b>	<b>Recipient</b>	<b>Method</b>	<b>Purpose</b>	<b>Publically available</b>
<b>Individual</b>					
Decision Request	All Companies	Shareholder or Council	Report to Shareholder or Cabinet	A specific request for a decision outside of the Decision Making Protocol.	Dependent on nature of request
<b>Monthly</b>					
Finance & Operational Reports	Subsidiary	Shareholder	Report to Board	Monthly update of Subsidiary financial and operational issues to Shareholder. Includes reporting of risks and delivery against business plan	No
<b>Quarterly</b>					
Finance & Operational Reports	Shareholder	Cabinet	Council Cabinet Reporting process	Quarterly high level report updating the Council as to the finances or operational status of the Companies	Yes
<b>Annual</b>					
Annual Return	All Companies	Companies House	Companies House procedure	Annual return statement of company including directors and shareholders	Yes

Annual Accounts	All Companies	Companies House	Companies House procedure	Annual statement of company accounts	Yes
Business Plan	Subsidiaries	Shareholder	Report to Board	To agree the strategic or organisational plan for next year	No
Annual Remit	Shareholder	Council	Report to Council	To provide a high level report on the expectations of Shareholder and what it will achieve from the Subsidiaries	Yes
Council Company website	All Companies	Public	Website on Council internet site	To provide information on the company structures and annual accounts. Includes lists of directors and remuneration for Council NED's. Updated annually or upon change to directorship.	Yes
Managing Assurance Statement	All Companies	Cabinet	Report to Shareholder or Cabinet	Declaration of satisfactory risk management and control and compliance with good corporate governance.	Yes
HMRC Tax returns	All Companies	HMRC	Corporation and VAT returns	Return to Inland Revenue in relation to Corporation Tax and VAT	No

### **5.3 Risks**

The Council and the Companies recognise that each organisation is different and each organisation is expected to maintain an effective risk management strategy and maintain effective processes, business continuity and emergency plans that minimise such risks.

Risks have been identified between organisations principally where there has not been effective communication or a difference in expectations. As such the intra-group risks have been identified and managed by way of regular reporting and meetings between the various stakeholders to achieve a pragmatic and effective approach to risk management that adds value to decision makers and does not impose an excessive bureaucratic or administrative burden.



Operational risks are monitored by Shareholder by regular monthly reporting by the Subsidiaries. Where requested by the Shareholder, the Companies have agreed to meetings with the following attendees:

- the Shareholder
- Lead Member for Finance and/or Leader
- Strategic Director(s)
- the Head of Finance of the Council
- the Managing Director, Finance Director and Chairman of each Subsidiary.

The purposes of the quarterly Shareholder Board are:

1. To monitor the operational performance of Subsidiaries, including transparent review of any compliance or quality related risks
2. To monitor progress against the agreed Business Plan
3. To monitor the financial position of the Subsidiary
4. To act as a forum for strategic partnership and decision making
5. To agree the method for bringing issues from the Shareholder to the Council
6. To share and resolve known sensitivities of a political and/or financial nature
7. To review issues which impact upon the wider strategic objectives of the Council and the Subsidiary
8. To provide oversight and to consider in the context of the overall strategy any proposed changes by the Subsidiary, etc. in respect of the appointment of auditors, changes to senior staff, or other matters of a structural nature
9. To consider any risks identified by the Council or the Subsidiary (financial, operational, reputational, legal) and to agree actions in mitigation
10. To enable the Subsidiary to make the Council aware when support from the Council may be required
11. To facilitate consideration by the Council of proposals by the Subsidiary for strategic investment aimed at growth or development
12. To enable the Council to provide clarity and strategic direction in a timely fashion in respect to all items including:

#### **5.4 Managing Risks**

The Companies will issue a Managing Assurance Statement each year confirming that they have effective risk management strategies in place and have complied with such strategies.

<b>Subsidiary Monthly Report to the Shareholder</b> <b>Subsidiary :</b> RBWM Property Company Ltd or RBWM Commercial Services Limited <b>Date:</b> <b>Author Name:</b> <b>Author Position:</b>
<b>1. Operational Update:</b> (Referring as necessary to Board Papers, other documents as appendices)

<b>2. Financial Update:</b> (Referring as necessary to Board Papers, other documents as appendices)
<b>3. Business Development Update: including progress against business plan; new business development</b> (Referring as necessary to Board Papers, other documents as appendices)
<b>4. Commissioner's Commentary:</b> (to be incorporated prior to submission to Holdings)
<b>Commissioner Name :</b> [ _____ ]
<b>5. Financial Requirements</b> (Specify Capital and Revenue Requirements/Approvals over next 6 month Period)

<b>6. Marketing &amp; Publicity</b>
<b>7. Decisions/Resolutions Required (set out below or by reference to section in report)</b>
<b>8. Any other Business</b>

**7.0 Investment Protocol**

**7.1 RCS**

As RCS is a general commercial company, any investments by the Council in the Company will be made on a scheme by scheme basis.

## **7.2 RPC**

### **7.2.1 The Council's investment priorities for RPC include:**

- i. Provision of high quality affordable and private housing to meet the Borough's requirements for housing need;
- ii. To maximise the utilisation of centrally available grant funding and commuted sums received to mitigate harm as result of third party development;
- iii. To ensure that where possible any profits received can be recycled into social housing or (where possible) utilised to enable the Council to delivery on other functions;
- iv. Utilisation of current Council land assets and underutilised stock to generate a market rate capital receipt or income stream.

### **7.2.2 Methodology**

The core development activity for RPC is the provision of affordable housing, both rent and sale, but also provide a variety of products to meet the housing needs of different segments of the housing market in the Borough. The products include **Social Rent, Private, Affordable Rent, Shared Ownership, Outright Sale, Market Rent** and **Extra Care**.

The Council will initially be the sole or main funder of the Company's operations on the following principles:

#### Monies

Money will be provided to the Company from two sources:

- a. Commuted – These are funds held in trust for developers and received pursuant to the Council's planning policies to mitigate planning harm. Their use must be in accordance with the terms of the original section 106 agreement and use of the funds are normally conditional (for example a particular type of housing or a time period of use). The terms of provision of the monies must be as per the s106 and Council's housing policies.

Commuted sums can only be used for affordable housing.

- b. General funds – these are funds that the Council can lend on such terms as it see's fit and can be used for affordable or private housing. Monies can be lent on non-commercial terms for affordable housing or at market terms for private.

#### Assets

Land and other assets can be provided to the Companies at market rate or at undervalue providing that the necessary consent from the Secretary of State is obtained (whether under a General Consent or an express consent).

Where monies are not available, then land can be 'sold' in consideration of future debt obligation or leased to the Company in return of rent. Rent could include market rate or turn over.

**7.2.3 Procedure**

The Company will specify in its Annual Business Plan its financial and land requirements. The Business Plan will include sufficient financial detail on matters included in this Protocol.



**ANNEX F**

**draft 2 dated 24 May 2016**

## **The Royal Borough of Windsor and Maidenhead**

### **Report on legal issues**

in relation to the use of RBWM Property Limited as a housing company

Exempt information: subject to Legal Professional Privilege and containing commercially confidential information, hence exempt from disclosure pursuant to Sections 42 and 43 of the Freedom of Information Act 2000 (the "Act").

This means that our legal advice to you as our client is privileged and exempt from disclosure under the Act to a third party. To continue to have the benefit of this privilege our advice to you should not be released to third parties. Any release of information to a third party may constitute a waiver of this privilege.

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## 1 Introduction

- 1.1 We have been asked by the Royal Borough of Windsor and Maidenhead (the **Council**) to advise on the legal issues surrounding the use of their current subsidiary company RBWM Property Limited (currently registered as RBWM Property Limited) (the **Company**) as a housing company to encompass housing development and ownership.
- 1.2 It is understood that the Council would like to transfer between 6 – 10 properties currently owned by the Council to the Company. It is also envisioned by the Council that if a new development is built, pending the agreement of the developer to provide a number of units for affordable housing purposes, these could be owned by the Company. The Council would also like to fund the Company with between £2,500,000 and £3,000,000 worth of Section 106 contribution monies. It is also understood that the Council would also like to fund the Company by providing £200,000 from other Council funds.
- 1.3 We understand that the rationale for using the Company as a property development and management Company is the following:
- 1.3.1 To make a profit by delivering housing for market rent or market sale with a view to providing a revenue return to the Council as owner of the Company; and
- 1.3.2 Provide affordable accommodation for keyworkers.
- 1.4 This report covers the legal issues surrounding the powers of the Council to allow the Company to work as a property ownership development and management Company. It will also cover the powers of the Council to transfer properties and provide funding to the Company including in relation to vires (powers), state aid and governance.

## 2 General Power of Competence

- 2.1 Local Authorities have the power to do anything that an individual may do in accordance with Section 1 of the Localism Act 2011 (the **2011 Act**). This is referred to as the general power of competence, and a local authority may use this power for its own purpose, a commercial purposes or/and for the benefit of others. This power is however subject to a number of limitations, including pre-commencement limitations; which confirms that any legal restrictions, prohibitions or limitations that existed prior to 18 February 2012 (when the 2011 Act came into force) will remain in force.
- 2.2 Section 2 of the 2011 Act limits the general power of competence where it 'overlaps' with a power which predates it. This means that where the Council relies on the general power of competence and there is the same power which pre-dates it and is subject to restrictions, then the general power of competence will be subject to these restrictions. An example of this is Section 95 Local Government Act 2003, which gives the Council the power to trade, but is subject to restrictions contained within Regulation 2 of the Local Government (Best Value Authorities) (Power to Trade) (England) Order 2009 which requires a business case to be prepared and approved by the Council before the Company starts trading. Additionally, in accordance with section 4 (2) Localism Act 2011, a local authority wants to do anything for a commercial purpose, they must only use the general power contained in section 1 Localism Act 2011 through a Company.
- 2.3 The Council has already set up the Company, and therefore has satisfied itself as to the power to establish the Company. However, it is important to recognise that to the extent

that the Council wish to rely on the general power of competence to undertake market rent activities, then that is likely to constitute a commercial purpose, so a company must be used to do so. The Company will be subject to restrictions contained within Company law and its Articles of Association (the **Articles**).

### 3 Powers of the Company

3.1 The Company will have Articles which will contain the Company's specific objects, and the Company must act in accordance with the object and its powers as granted by the Articles. We have undertaken a review of the Company's Articles and note that the articles are fit for purpose for use as a housing company.

3.2 Additionally we would recommend that a Shareholders Agreement is required to ensure that the extent of the Company's authority and powers are properly documented once they received the proposed property transfer and funding. Below is a decision making matrix, which provides an example of the decisions that can be made at board level or at shareholder level within a housing company:

Issue	Officers of RBWM Property	Board of RBWM Property	Council (acting as shareholder of RBWM Property) (decisions taken via shareholder committee)
<b>Customer issues</b>	✓		
make any amendments to any Lettings Policy and Sales Policy;		✓	
implement the Rent Policy;	✓		
implement the Debt Recovery Policy;	✓		
<b>Business issues</b>	✓	✓	
Approve any business other than as contemplated by the Business Plan;			✓
Engage in business contemplated by the Business Plan (including acquisition of property that fits with an agreed Financial Model);	✓	✓	
Approve any contract with a value in excess of £500,000];			✓
Approve any arrangement, contract or transaction outside the normal course of its business or otherwise than on arm's length terms.			✓



Issue	Officers of RBWM Property	Board of RBWM Property	Council (acting as shareholder of RBWM Property) (decisions taken via shareholder committee)
Close down any business operation, or dispose of any material asset unless in each case such closure or disposal is expressly contemplated by the Business Plan;		✓	✓
Acquire any land with a value in excess of £500,000;			✓
Approve acquisition of any land or property outside of the Council's administrative area			✓
Make any amendments to the Financial Model;			✓
Adopt or amend RBWM Property's Remuneration Policy;			✓
Adopt or amend RBWM Property's annual Business Plan.		✓	✓

#### 4 **Should the Company be a Registered Provider registered with the HCA?**

On balance, our recommendation is not to register the Company as a Registered Provider with the HCA (particularly because of recent government policy changes relating to the Right to Buy and the rent reduction regime), unless the potential availability of HCA grant is a key consideration for the Company, or if (for new developments of sufficient scale) local planning policies require an RP to take the affordable elements of a new scheme

#### 5 **Council's power to provide funding to the Company**

5.1 Section 24 of the Local Government Act 1988 (**the 1988 Act**) provides the Council as housing authority the power to provide any person with financial assistance for the purposes of, or in connection with, the acquisition, construction, conversion, rehabilitation, improvement, maintenance or management (whether by that person or by another) of any property which is or intended to be privately let as housing accommodation. To 'make a grant or loan' is caught by this provision and land transfers and the provision of funding is would fall within this definition.

5.2 Section 25 of the Act provides that the power in Section 24 of the 1988 Act may only be exercised in accordance with consent of the Secretary of State. The Secretary of State has issued general consent under Section 25 of the 1988 Act – General Consent C - the general consent under section 25 of the 1988 Act for financial assistance to any person 2010 (**the 2010 Consent**). The consent provided states that a local authority may provide

any person with any financial assistance (other than the disposal of an interest in land or property) for the purposes of or in connection with the matters in section 24 of the 1988 Act. Accordingly there is a clear power for the Council to invest monies in the Company whether by way of loan of (additional) share equity. The Council could not rely on General Consent C as blanket consent for the transfer of land at an under-value. Additionally there is a risk to the Council that providing grant to the Council or on-lending at a preferential rate could be deemed to be State Aid (see below) if the land/monies were not applied to the provisions of affordable housing.

- 5.3 An additional consideration for the Council is that funds which have been received from Section 106 Town and Country Planning Act 1990 contributions will be ring-fenced. The Council must be satisfied that the funds being transferred to the Company are being used for the purposes that the funds were obtained. The Council may wish to develop properties and sell these at a lower value as affordable housing to key workers. This may be possible, but the concept will be subject to the terms of the relevant s106 agreements and the Council's planning policy A review of the relevant s106 agreements will be undertaken to ensure that funds are able to be utilised by the Company.
- 5.4 Note that the provisions of s24 and 25 of the 1988 Act only apply in relation to the provision of rented accommodation by the Council and alternative powers would need to be used to fund the Company for any development for sale (most likely to be the utilisation of the General Power of Competence under Section 1 of the Localism Act 2011) discussed in paragraph 2 above.
- 5.5 **Council's Power to transfer land to the Company**
- 5.6 Section 123 Local Government Act 1972 (the **1972 Act**) provides the Council with the power to dispose of land held by them in any manner than they wish; the restriction on this being that, except with consent from the Secretary of State, a Council shall not dispose of land (otherwise than by way of a short tenancy), for consideration less than the best that can reasonably be obtained.
- 5.7 It has been recognised that there may be circumstances where local authorities consider it appropriate to dispose of land or property at an under-value and general consent has been granted Local Government Act 1972; General Disposal Consent 2003 (the **2003 Consent**). The general consent applies where the disposal of any interest in land is considered by the local authority to help secure the promotion or improvement of the economic, social or environmental well-being of its area. Where applicable, local authorities should have regard to their community strategy, and in all cases the under-value of the disposal cannot exceed £2,000,000.
- 5.8 The £2,000,000 limit is per individual disposal and is assessed on an unrestricted value basis - so a valuation cannot be artificially reduced by the imposition of voluntary conditions of sale (so for example a restriction on the Company use a property for affordable housing purposes would need to be disregarded for valuation purposes). Therefore a disposal of a property that is market valued at £1,999,999 and transferred or disposed of for a premium of £1 or nil value, would fall within the provisions of the 2003 Consent. Therefore the Council may transfer or dispose of land for a value that it feels fit, as long as it fits the criteria in point 4.7 above, and subject to the other considerations contained within this report.

- 5.9 Therefore if the properties are being transferred for the best value that can reasonably be obtained, or fall within the requirements of the 2003 consent, then the Council can transfer the properties to the Company.
- 5.10 The Council must be mindful however that if the transfer is for the purposes of rented accommodation then Section 24 of the 1988 Act will also apply. As stated previously, whilst the powers provided by Section 24 of the 1988 Act are available to disposals of land, the 2010 Consent does not extend to land disposals.
- 5.11 If the Council were to dispose of the properties at an under-value then because of the 1988 Act they would require consent from the Secretary of State via DCLG.
- 5.12 Finally, there is a risk that transferring land/property to the Company at a below market rate could be deemed to be State Aid (see below).
- 5.13 To avoid the complications of Section 24 of the 1988 Act and Section 123 of the 1972 Act, and to avoid the State Aid provisions, we would advise that it is generally easier to provide sufficient funding to the Company so that the land can be acquired for market value, but that where State Aid provisions are not an issue (broadly where the property is to be used for affordable housing) then it (subject to obtaining consent under section 24 of the 1988 Act and the disposal falling within the 2003 Consent) then the land/property can be sold at and undervalue .

## 6 **Fiduciary duties**

- 6.1 The Council's has fiduciary duties which can be summarised as acting as a trustee of tax and public sector income on behalf of its rates and tax payers. The Council in effect hold money but do not own it, and spend that money on behalf of its business rate and Council tax payers.
- 6.2 In making decisions concerning any investment and loans the Council makes to the Company they must, on each occasion, act efficiently and undertake funding (and related decisions) after proper consideration of the risks and rewards of them doing so. The Council will want to ensure that it achieves an appropriate return for any risk they take and that it has minimised the risks and potential costs to it if the Company becomes insolvent and/or defaults on any loans following the transition to a property management and development Company. The Council must also ensure that the transaction is proportionate and properly balanced against the anticipated benefit and the wider interests of its local tax payers, considering whether any monies they intend to invest/lend to the Company could be better used by the Council for the wider interest of its local tax payers. The Council must ensure that the decision to use the section 106 and other monies, and to transfer the land has been assessed with a proper consideration of the risks and that the transaction is proportionate. One way of assessing this test is to consider how else the the section 106 and other monies could be used and how such uses could benefit the Council (e.g. grant funding local RPs to acquire or develop housing).

## 7 **Tax**

- 7.1 The Council would need to obtain specific tax advice in relation to the Company and we are not instructed at present to provide this advice. In general however the Company will be subject to corporation tax on its profits and can only declare dividends out of its net-of-tax profits.

7.2 It may be possible to extract some of the profits to the participating Councils tax-free, for example by arm's length interest payments on loans or management charges but there will still be at least some tax liability in the Company.

7.3 In relation to carrying out letting via the Company, the Company will be subject to normal VAT recovery and residential rents and sales of houses are exempt from VAT. As such, irrecoverable VAT costs will need to be incorporated into the Company's business plan in relation to services purchased by it.

## 8 **Stamp Duty Land Tax (SDLT) on land transfers**

8.1 It would be possible to obtain "Group" relief on land/property transferred from the Council which would mean that any transfers of property from the Council to the Company would not incur SDLT.

8.2 For any other acquisition of land or property by the Company (as is the case with the Council) SDLT will be payable by the Company and SDLT liability will therefore need to be factored into the Company's business plan. Unfortunately, the Company would be liable to the additional 3% "surcharge" introduced on 1 April 2016 following the spring Budget in respect of investment properties.

This means that the rate of SDLT payable on "external" acquisitions would be as follows

	<b>Purchase price</b>	<b>rate</b>
	up to £125,000	3%
£250,000	over £125,000 and up to	5%
£925,000	over £250,000 and up to	8%
£1.5 million	over £925,000 and up to	13%
	over £1.5 million	15%

If more than 6 or more dwellings are purchased from a single purchaser then the Company could elect to treat the SDLT position as per a commercial property transaction, which may achieve a modest SDLT saving depending on the value of the property acquired.

## 9 **State Aid**

9.1 If the Council provides financial assistance to the Company by way of providing below market rate funding or transferring land at an under-value, then this may constitute State Aid.

9.2 The legal requirements of State Aid and what will constitute as State Aid is set out in the Treaty of the Functioning of the European Union (TFEU). Article 107 (1) TFEU confirms that the following aspects must be present for State Aid to exist:

9.2.1 amount to a grant of public money or a transfer of public resources;

- 9.2.2 favour certain undertakings (selective element);
- 9.2.3 which distort or threaten to distort competition in the European Union; and
- 9.2.4 affect trade between the Member States of the European Union.
- 9.3 Both financial payments to the Company and the transfer of property to the Company can be caught by the State Aid provisions and therefore funding arrangements between the Council and the Company must be correctly structured so that State Aid, as defined above, does not arise. The structure of any financial arrangement between the Council and the Company will be required to be in a manner which is permitted under the TFEU and European Directives, European Commission communications and decisions from the European Court of Justice.- either as a service of a general economic interest (in which case an exemption applies -see para 8.4 or via a market economy investor principle (para 8.5)
- 9.4 There is an exemption to State Aid for service of a general economic interest and therefore if the properties are developed or acquired for letting as social/affordable or intermediate housing then this exemption would be able to be applied. Provided that the accommodation is let at a rent which is demonstrably below market (as a rule of thumb 80% of market rate would seem a sensible starting point) , then this exemption would apply.
- 9.5 With regard to funding outside of this exemption, there are also provisions for which the funding could fall outside of the State Aid definition where the Council is acting in a way that a private lender and/or investor would in similar circumstances in a market economy – this is known as the Market Economy Investor Principle (**MEIP**).
- 9.6 The terms of a MEIP compliant loan must be commercial in nature and contain provisions which a private lender would require (clauses on regular payment, default, security over assets and similar terms); have a commercial interest rate which properly reflects the risk and security, and other factors which a private/commercial lender would take into account in calculating an appropriate interest rate.
- 9.7 We have been instructed by the Council that the loan of £200,000, which is being provided out of other Council funds, is being charged interest at a rate which a private lender would require. The Council must also ensure that the non-financial element of the loan complies with terms and conditions which a private lender would require to be compliant with MEIP. We recommend that if the Council decides to provide any further loans to the Company, an independent report which analyses the relevant risk in relation to the loan is obtained to confirm the above provisions apply to ensure compliance with the MEIP.
- 9.8 The Council also has the option to invest money into the Housing Company as equity (i.e subscription to share capital) either instead of providing it with a loan and/or as mixed equity/debt funding and the evidence which the Council would require in connection with any equity investment mirrors that which is required for a loan.
- 10 **Third party reliance**
- 10.1 This note has been prepared for the sole use of the Royal Borough of Windsor and Maidenhead. We do not accept or assume any liability or duty of care to any other body or

person to whom this note is shown, or into whose hands it may come, save or expressly agreed by our prior consent in writing.

**Trowers & Hamlins LLP**  
**May 2016**

# Agenda Item 6

By virtue of paragraph(s) 3 of Part 1 of Schedule 12A of the Local Government Act 1972.

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# Agenda Item 9

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