

THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF HARINGEY

**HIGH LEVEL SUMMARY OF DOCUMENTS RELEVANT TO THE COUNCIL'S OWNERSHIP OF HOMES FOR
HARINGEY LIMITED**

20 MAY 2022

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1 INTRODUCTION

- 1.1 The Mayor and Burgesses of the London Borough of Haringey (the **Council, you, your**) is in the process of re-structuring of Homes for Haringey Limited (the **Company**) and as such is putting in place a members agreement and is replacing its articles of association.
- 1.2 This paper reports on the key terms of the following draft documents (together the **Documents**)

Member's Agreement	The agreement will govern the Council's role as sole member and its management of the Company. It includes provisions relating to the business of the Company and also the day to day management of the Company by the directors.
Articles of Association	The Articles of Association set out the rules by which the Company is to be governed and run. In particular, it provides for the Director's powers and authority to carry out the business of the Company, as well as the procedures which must be followed to take certain actions (such as call directors and general meetings). The documents are drafted to fit together, some matters will by convention be referred to in both documents. If there is a conflict the terms of the Member's Agreement shall take precedence.

- 1.3 This is a report summarising the key terms of the Documents and raising material points for the Council to consider and note.
- 1.4 We have used defined terms given in the Documents without further defining them in this note.

2 MEMBER'S AGREEMENT

Document	Member's Agreement 20.05.2022
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Clause	Summary of Function
Parties	<p>(1) The Mayor and Burgesses of the London Borough of Haringey</p> <p>(2) Homes for Haringey Limited</p>
Business and Business Plan (clause 2)	<p>This clause sets out the Business of the Company i.e. to provide housing services and leases to the Council. (clause 2.1)</p> <p>The Company shall provide an annual draft business plan and budget for the following financial year to the Owner for its review and approval. The Owner is to flag any issues with the plan and budget and to work with the Company to resolve such issues before the plan and budget can be implemented. (clauses 2.3 – 2.5)</p> <p>Any business which falls outside the scope of the plan and budget in force at that time must only be carried out with the Owner's prior written consent. (clause 2.6)</p> <p>There shall be no introduction of or amendments to an existing Directors remuneration policy without the Owner's prior written consent. (clause 2.7)</p>
Owner's Role (clause 3)	<p>Key decisions about the Company can only be made with the Owner's prior written consent. These are listed at Schedule 1 of the agreement (see below). The Owner must provide such consent within 20 business days of receipt of a request to do so. Where the Council does not respond within the timescale, this will not amount to consent being provided. (clauses 3.3 & 3.4)</p> <p>The directors are to attend meetings as requested by the Owner to discuss the business of the Company. The Owner will also receive general communications and updates from the directors and will have access to all Company information and documents.</p>
Conduct of the Company's Affairs (clause 4)	<p>There must be at least 4 Directors meetings per year, no more than 3 months apart. (clause 4.1)</p> <p>A managing director may be appointed, replaced or removed by the Company but only with the prior written consent of the Owner. (clause 4.3)</p>

Clause	Summary of Function
	The Directors may exercise all powers and authorities to manage the business and affairs of the Company, subject to the business plan and budget (at clause 2) and those matters requiring Owner's consent. The Company has a responsibility to keep accurate records and information regarding the business and transactions and make these readily available to the Owner and its designated officers on request.
Termination (clause 5)	The Deed shall terminate upon: <ul style="list-style-type: none"> (i) the written agreement of the parties in accordance with the terms agreed; or (ii) when a resolution is passed by the Owner or creditors of the Company, or any order made by a court or other competent body or person instituting a process that shall lead to the Company being wound up and its assets being distributed among the creditors, Owner or other contributors; or (iii) the Company ceasing to carry on its business; or (iv) the Company being convicted of a criminal offence; or (v) upon the Owner giving not less than 3 months' written notice of the date on which this Agreement will terminate.
Confidentiality, Freedom of Information and Data Protection (clause 6)	<p>The Owner and the Company are to treat all confidential information belonging to the other as confidential. Both parties may disclose confidential information to their employees, officers, representatives or advisers for the purposes of carrying out that party's obligations under the Deed, provided such person also comply with the provisions of clause 6. (clause 6.2.1)</p> <p>Each party is required to assist the other as reasonably requested with any Request for Information (as defined in the relevant legislation). In response to a Request for Information, a party may only disclose confidential information about the other after having consulted the other party as to the whether such information is exempt or, in certain circumstances subject to the relevant legislation, without consulting the other party. (clauses 6.5 – 6.7)</p> <p>The Deed is subject to the Freedom of Information Act 2000 and the Environmental Regulations 2004. There is a general obligation for both parties to comply with relevant data protection legislation.</p>
No Partnership (clause 7)	Nothing in the Deed gives rise to a partnership between the parties or constitutes one party acting as the agent of the other.
Contracts (Rights of Third Parties) Act 1999 (clause 8)	No third party rights are granted by the Deed.
Costs of this Agreement (clause 9)	Each Party shall pay its own costs in connection with the negotiation, preparation, execution and performance of this Agreement.

Clause	Summary of Function
Variation (clause 11)	Any variation to the agreement must be in writing and signed by or on behalf of each of the parties.
Status of this Agreement (clause 14)	In the event of any conflict between the provisions of the Deed and the Company's Articles of Association, the provisions of the Deed shall take precedence.
Consents (clause 15)	<p>The consent of the Owner, as required, shall be given in writing.</p> <p>The approval, consent or agreement of either party as required under the Deed shall be made in the absolute discretion of that party, save for where expressly provided otherwise in the Deed.</p>
Communications (clause 16)	Sets out the requirements for sending notices or communications between the parties, and each party's contact details. Clause 16.2 sets out deemed receipt depending on the method of delivery.
Counterparts (clause 17)	Each party to execute their respective counterparts before the Deed takes effect.
Owner Consent Matters (Schedule 1)	<p>Schedule 1 of the Deed lists out all of the matters which require the prior written consent of the Council before the directors of the Company can take any steps to action such matters. These include matters relating to:</p> <ul style="list-style-type: none"> • Constitution of the Company (i.e. variations to the Articles of Association); • Officers of the company and their appointment and removal; • Future direction and development of the Company (e.g. mergers, material transactions, approving the business plan and budget); • Management of the business of the Company; • Approving similar matters or a business plan for subsidiary companies.

3 ARTICLES OF ASSOCIATION OF THE COMPANY

Document	Articles of Association 20.05.2022
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Clause	Summary of Function
Liability of the Owner (article 2)	The liability of the Council as Owner of the Company, or within one year of it ceasing to be Owner, is limited to £1.
Objects (article 3)	The objects of the Company are: (i) to provide private sector leases to the Owner for the provision of short term tenancies; (ii) to provide such other housing services as may be required by the Owner from time to time.
Director's General Authority (article 4)	The Directors are responsible for the management of the Company's Business and may exercise all powers of the Company in doing so.
Owner's Reserve Power (article 5)	The Council may direct the Directors to take specified action by way of special resolution.
Directors may Delegate & Committees (articles 6 & 7)	The Directors may delegate any of their powers of management of the Company as they think fit. (article 6) Any committee to which the Directors delegate any of their powers must follow the relevant procedures contained within the Articles, although any rules or procedures made by the Directors for the committee will take precedence. At least one member of a committee must be a Director. (article 7)
Directors to take Decisions Collectively & unanimous decisions (articles 8 & 9)	Directors may only make decisions based on a majority vote of the Directors who are eligible to vote on the matter (i.e. who are not prohibited to vote by way of a conflict of interest). Each Director has one vote on each issue. Where only one Director is eligible to vote then the provisions within the Articles relating to Directors' decision making will not apply. (article 8) A unanimous decision of the Directors takes place when all eligible Directors reach a common view on a matter, subject to the meeting being quorate. (article 9)

Clause	Summary of Function
Director's Meetings (articles 10 – 13)	<p>Article 10 (Calling a Directors' Meetings) sets out the requirements for calling a meeting of the Directors of the Company and giving notice to each Director. A meeting must be called by at least seven days' notice unless the Directors unanimously agree otherwise or the matter is urgent.</p> <p>It does not matter where each Director is or how they communicate with each other for the purposes of participating in the meeting. (article 11 (Participation in Directors' Meetings))</p> <p>The quorum for Directors' Meetings shall be 2 Directors and where the total number of Directors is less than the required quorum no proposal is to be voted on or any decision to be made. The Directors may only call another Directors' Meeting and / or call a general meeting to allow the Owner to appoint further Directors. (article 12)</p> <p>The Owner may appoint and / or remove one of the Directors as the chair of the Directors' Meetings. The Directors may appoint a chair where no chair has been appointed by the Owner, or the appointed chair does not arrive to the meeting within 15 minutes of its start.</p> <p>The Chair shall not have a casting vote. (article 13)</p>
Directors' Conflicts of Interest (articles 14 & 15)	<p>Directors must declare the nature and extent of any direct or indirect interest they may have in a proposed transaction. Such Director may not vote nor count towards the quorum of a meeting to discuss any matter within which they are interested, subject to article 15. (article 14)</p> <p>Article 15 sets out the process for authorisation of a director's conflict of interest subject to the provisions of the Companies Act 2006.</p> <p>A Director will be pre-authorised provided they have declared the nature and extent of their interest. Otherwise, the Directors may consider and vote on whether to authorise the conflicted Director provided that director does not form part of the quorum or vote on the matter of their authorisation.</p>
Records of Decisions to be kept (article 16)	<p>The Directors must keep a record of all decisions made by the Directors for 10 years from the date of the decision.</p>
Directors' Discretion to	<p>The Directors may make any rule about how they take decisions as they think fit.</p>

Clause	Summary of Function
make Further Rules (article 17)	
Appointment and Removal of Directors (article 18)	<p>The minimum required number of Directors shall be 3.</p> <p>The maximum required number of Directors shall be 5.</p> <p>The Owner can appoint and remove Directors as it sees fit. Removal of a Director will not prevent that Director from bringing a claim against the Company.</p>
Termination of Director's Appointment (article 19)	<p>Article 19 lists a number of events which will result in a person immediately ceasing to be a Director of the Company. These include:</p> <ul style="list-style-type: none"> • by way of any statutory requirement or prohibition; • more than 6 months' unauthorised absence from Directors' meetings; • bankruptcy and /or an arrangement is made between the Company and that person's creditors; • a medical professional's written opinion confirming mental or physical incapacity for more than 3 months; • ceases to be an employee or elected member of the Council (where applicable); • resignation; • removal by the Owner.
Directors' Remuneration and Expenses (articles 20 & 21)	<p>Subject to the Local Authorities (Companies) Order 1995 and the prior approval of the Council, the Directors are entitled to such remuneration as the Directors may determine for any services they undertake for the Company. (article 20)</p> <p>Subject to the Local Authorities (Companies) Order 1995 and any such limitations imposed by the Owner, the Company may pay the Directors' reasonable expenses which they incur in connection with their attendance at Directors / committee / general meetings or otherwise in connection with the exercise of their powers as Directors of the Company. (article 21)</p>
Company Secretary (article 22)	The Directors may appoint, replace or remove a company secretary on such remuneration as they think fit.
Owner Representative (article 23)	Subject to the provisions of any agreement in force between the Company and the Owner, there shall be a sole Owner of the Company. The Owner may appoint a representative to exercise its rights on the Owner's behalf at meetings and to give or receive notices and any other documents.

Clause	Summary of Function
General Meetings (articles 24 – 26)	<p>The Owner or the Directors may call a general meeting at any time, giving 14 days' notice or by shorter notice if agreed by the Owner. Both the Owner and the Directors must receive notice of the meeting including the date, time, location and the business to be discussed. (article 24)</p> <p>The required quorum for a general meeting is formed by the duly authorised representative of the Owner, who shall also chair the meeting. A resolution put to a vote at a general meeting will be decided on a show of hands and each Owner shall have one vote.</p> <p>Directors may attend and speak at general meetings. (article 25)</p> <p>Any objection to a person voting at a meeting must be raised at that meeting to which the vote in question is related to. Such objection must be referred to the chair of the meeting whose decision is final. (article 26)</p>
Amendments to Resolutions (article 27)	<p>Article 27 allows for amendments to be made to ordinary resolutions to be proposed at a general meeting, provided such amendment is given to the Company 48 hours before the meeting is to take place and does not materially alter the scope of the resolution.</p> <p>Amendments may also be made to special resolutions to be proposed by way of ordinary resolutions, provided the chair proposes the amendment at the meeting and the amendment does not go beyond a grammatical or other non-substantive correction.</p>
Written Resolutions (article 28)	<p>Written resolutions (ordinary and special) shall be effective provided that:</p> <ul style="list-style-type: none"> (i) a copy of the proposed resolution has been sent to each Owner; (ii) the required majority has signified its agreement to the resolution; and (iii) it is contained in an authenticated document which has been received at the Company's registered office within 28 days of the circulation date.
Communication (article 29)	<p>Article 29 sets out the ways and means by which the Company, Owner and Directors may communicate with each other.</p> <p>An owner who does not register an address with the Company shall not be entitled to receive any notice from the Company.</p> <p>Article 29.9 sets out when a notice will be deemed to have been given depending on the method of delivery.</p>
Company Seals (article 30)	<p>Company seals may only be used with the authority of the Directors and any document affixing the company seal must be countersigned by a duly authorised representative (director or company secretary) of the Company in the presence of a witness who attests the signature.</p>

Clause	Summary of Function
Indemnity (article 31)	<p>The Company may indemnify any relevant officer out of the assets of the Company from and against any loss, liability or expense incurred by him or them in relation to the Company.</p> <p>The Directors shall have the power to provide funds to meet any expenditure incurred or to be incurred by any relevant officer in defending any criminal or civil (including regulatory) proceedings, or in connection with an application under the Companies Act 2006, or to enable him to avoid incurring such expenditure.</p>
Insurance (article 32)	<p>The Directors may purchase and maintain insurance, at the Company's expense, for the benefit of any Director in respect of any relevant loss (being any loss or liability which has been or may be incurred by a relevant Director in connection with that Director's duties or powers).</p>