

# The Companies Act 2006

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## Private Company Limited by Guarantee and Not Having a Share Capital

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### Articles of Association

of

### Visit Inverness Loch Ness Ltd

#### 1 Interpretation

1.1 In these Articles, unless the context otherwise requires:

“**Act**” means the Companies Act 2006;

“**appointor**” has the meaning given in article 15.1;

“**Articles**” means the company’s articles of association for the time being in force;

“**BID**” means the Business Improvement District which operates within the BID Area and which is managed and operated by the company;

“**BID Area**” has the meaning given in article 2.1.1

“**BID Levy**” means the charge to be levied and collected within the BID Area pursuant to the Regulations;

“**Board**” means the board of directors of the company;

“**business day**” means any day (other than a Saturday, Sunday or public holiday in the United Kingdom) on which clearing banks are generally open for business;

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

“**Conflict**” has the meaning given in article 12.1;

“**Council**” means The Highland Council;

“**eligible director**” means a director who would be entitled to vote on the matter at a meeting of directors (but excluding any director whose vote is not to be counted in respect of the particular matter);

“**Interested Director**” has the meaning given in article 12.1;

“**Model Articles**” means the model articles for private companies limited by guarantee contained in Schedule 2 of the Companies (Model Articles) Regulations 2008 (SI 2008/3229) as amended prior to the date of adoption of these Articles;

“**Objects**” has the meaning given in article 2.1;

“**Operating Agreement**” means the agreement between the Council and the company regarding the operation of the BID;

“**Opt-in member**” means ‘business out with the BID area or BID criteria which has nevertheless chosen to join the BID in recognition that such membership carries no voting rights’

“**registered office**” means the registered office for the time being of the company;

“**Regulations**” means The Business Improvement Districts (Scotland) Regulations 2007 as amended by The Business Improvement Districts (Scotland) Amendment Regulations 2007 and The Business Improvement Districts (Scotland) Amendment Regulations 2008 and such other amendments made by The Scottish Ministers pursuant to Part 9 of the Planning etc. (Scotland) Act 2006 (as may be in force from time to time);

“**relevant loss**” has the meaning given in article 22.2.1; and

“**relevant officer**” means any director or other officer or former director or other officer of the company or an associated company (including any company which is a trustee of an occupational pension scheme (as defined by section 235(6) of the Act)), but excluding in each case any person engaged by the company (or associated company) as auditor (whether or not he is also a director or other officer), to the extent he acts in his capacity as auditor).

- 1.2 Save as otherwise specifically provided in these Articles, words and expressions which have particular meanings in the Model Articles shall have the same meanings in these Articles, subject to which and unless the context otherwise requires, words and expressions which have particular meanings in the Act shall have the same meanings in these Articles.
- 1.3 Headings in these Articles are used for convenience only and shall not affect the construction or interpretation of these Articles.
- 1.4 A reference in these Articles to an “**article**” is a reference to the relevant article of these Articles unless expressly provided otherwise.
- 1.5 Unless expressly provided otherwise, a reference to a statute, statutory provision or subordinate legislation is a reference to it as it is in force from time to time, taking account of:
  - 1.5.1 any subordinate legislation from time to time made under it; and
  - 1.5.2 any amendment or re-enactment and includes any statute, statutory provision or subordinate legislation which it amends or re-enacts.

- 1.6 Any phrase introduced by the terms “**including**”, “**include**”, “**in particular**” or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- 1.7 Words in the singular include the plural and in the plural include the singular.
- 1.8 A reference to any gender includes a reference to each of the other genders.
- 1.9 The Model Articles shall apply to the company, except in so far as they are modified or excluded by these Articles.

## **2 Objects**

- 2.1 The company’s objects (the “**Objects**”) are:
  - 2.1.1 to co-operate with the Council to promote the development of a business improvement district as provided by the Planning etc. (Scotland) Act 2006 for such part or parts of Highland Council Wards 13 (Aird & Loch Ness), 14 (Inverness West), 15 (Inverness Central), 17 (Inverness Millburn), 18 (Culloden and Ardersier) and 20 (Inverness South). (the “**BID Area**”) as set out in the business plan put forward by the company to the Council;
  - 2.1.2 to define and procure the delivery of tourism, leisure and business management activities to support the needs of businesses in the BID Area;
  - 2.1.3 to promote the BID Area as a centre for cultural, entertainment, leisure and business tourism activities in the area of operation of the Council and to increase the number of visitors to the BID Area
  - 2.1.4 to strengthen the BID Area trading environment by:
    - 2.1.4.1 marketing and promoting Inverness and Loch Ness as one destination;
    - 2.1.4.2 attracting additional conference and business tourism all year round to the BID Area;
    - 2.1.4.3 promoting and supporting sustainable events and festivals in the BID area
    - 2.1.4.4 helping local businesses to grow by providing business development opportunities and working together with those interested in the economic development of the BID area
    - 2.1.4.5 working to improve the tourism infrastructure of the BID area
  - 2.1.5 to generally promote and improve the social, economic and environmental well being of the BID Area;
  - 2.1.6 to meet such other objectives as may be required in accordance with legislation and which may be added from time to time following consultation with non-domestic rate payers or such rate payers and other eligible owners or tenants within the BID Area; and

2.1.7 to carry out any act which is within, conducive to or facilitated by the Planning etc. (Scotland) Act 2006 (as may be amended from time to time) or such regulations thereunder regulating the operation of Business Improvement Districts as may be prescribed, including, but not limited to, to receive the BID Levy from non-domestic rate payers or such rate payers and other eligible owners or tenants within the BID Area and to enter into such agreements as maybe necessary with the Council, or any other party, for the collection of the BID Levy and to authorise enforcement and recovery on behalf of the company of any BID Levy due, owing or otherwise unpaid.

### **3 Application of income and liability of members**

- 3.1 The company is a private company limited by guarantee and not having a share capital.
- 3.2 The income and property of the company shall be applied solely towards the promotion of its Objects as set forth in these Articles and no portion thereof shall be paid or transferred, directly or indirectly, by way of dividend, bonus or otherwise howsoever by way of profit to members of the company.
- 3.3 The liability of the members of the company is limited.
- 3.4 Every member of the company undertakes to contribute such amount as may be required (not exceeding £1.00) to the company's assets if it should be wound up while he is a member or within one year after he ceases to be a member, for payment of the company's debts and liabilities contracted before he ceases to be a member and of the costs, charges, and expenses of winding up, and for the adjustment of the rights of the contributories among themselves.
- 3.5 If the company is wound up or dissolved and after all its debts and liabilities have been satisfied there remains any property it shall not be paid or distributed among the members of the company, but shall be given or transferred to some other company or organisation having objects similar to the Objects which prohibits the distribution or its or their income and property to an extent at least as great as imposed by article 3.2 above, resolved by the members of the company at or before the time of dissolution, or failing any such resolution to the Council or its successors.

### **4 Members**

- 4.1 The subscribers to the memorandum of association of the company and levy paying businesses are admitted to membership in accordance with these Articles and shall be members of the company.
- 4.2 Every member shall observe all the company's regulations affecting him including these Articles.

### **5 General Meetings**

- 5.1 The directors of the company may call general meetings and, on the requisition of members pursuant to provisions of the Act, shall forthwith proceed to convene a general meeting for a date not later than eight weeks after receipt of the requisition. If there are not within the United Kingdom sufficient directors to call a general meeting, any director or 10% of members of the company may call a general meeting.

- 5.2 General meetings shall be called by at least fourteen clear days' notice, but a general meeting may be called by shorter notice if so agreed by a majority in number of the members having the right to attend and vote being a majority together holding not less than ninety-five per cent of the total voting rights at the meeting of all the members.
- 5.3 The notice shall specify the time and place of the meeting and the general nature of the business to be transacted and, in the case of an annual general meeting, shall specify the meeting as such. The notice shall be given to all members, directors, those with advisory positions, auditors and the Council.
- 5.4 The accidental omission to give notice of a meeting to, or the non-receipt of a notice of a meeting by, any person entitled to receive notice shall not invalidate the proceedings at that meeting.
- 5.5 No business can be transacted at any general meeting unless a quorum is present at the time when the meeting proceeds to business and for its duration. The quorum at a general meeting is the lower of 10 members or 25% of the members, and whom are present in person or by proxy or, in the case of a body corporate, unincorporated association or partnership, by a duly authorised representative.
- 5.6 If a quorum is not present within 30 minutes from the appointed time for a general meeting or is not present for its duration, the meeting will be adjourned to the same day in the next week at the same time and place. If a quorum is not present at that adjourned meeting or does not remain present for its duration, the member or members present will form a quorum. Business transacted with only one member present in accordance with this article 5.6 will be deemed for all purposes to constitute business transacted at a meeting and a resolution will be valid as if passed by a majority vote irrespective of which member or members vote in favour of its being passed (provided that this is only the case for the purposes of the transaction of the business specified in the agenda contained in the notice for that meeting).
- 5.7 The chairman, if any, of the Board or in his absence some other director of the company nominated by the directors shall preside as chairman of the meeting, but if neither the chairman nor such other director (if any) be present within fifteen minutes after the time appointed for holding the meeting and willing to act, the directors present shall elect one of their number to be chairman and, if there is only one director present and willing to act, he shall be chairman.
- 5.8 If no director is willing to act as chairman, or if no director is present within fifteen minutes after the time appointed for holding the meeting, the members present and entitled to vote shall choose one of their number to be chairman.
- 5.9 A director of the company shall, notwithstanding that he is not a member, be entitled to attend and speak at any general meeting.
- 5.10 The chairman may, with the consent of a meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at an adjourned meeting other than business which might properly have been transacted at the meeting had the adjournment not taken place. When a meeting is adjourned for fourteen days or more, at least seven clear days' notice shall be given specifying the time and place of the adjourned meeting and the general nature of the business to be transacted. Otherwise it shall not be necessary to give any such notice.

5.11 A resolution put to the vote of a meeting shall be decided on a show of hands unless before, or on the declaration of the result of, the show of hands a poll is duly demanded. Subject to the provisions of the Act, a poll may be demanded:

5.11.1 by the chairman; or

5.11.2 by any qualifying person (as defined in section 318 of the Act) present and entitled to vote at the meeting;

and a demand by a person as proxy for a member shall be the same as a demand by the member.

5.12 Unless a poll is duly demanded a declaration by the chairman that a resolution has been carried unanimously, or by a particular majority, or lost, or not carried by a particular majority and an entry to that effect in the minutes of the meeting shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

5.13 The demand for a poll may, before the poll is taken, be withdrawn but only with the consent of the chairman and a demand so withdrawn shall not be taken to have invalidated the result of a show of hands declared before the demand was made.

5.14 A poll shall be taken as the chairman directs and he may appoint scrutineers (who need not be members) and fix a time and place for declaring the result of the poll. The result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

5.15 In the case of an equality of votes, whether on a show of hands or on a poll, the chairman shall be entitled to a casting vote in addition to any other vote he may have.

5.16 A poll demanded on the election of a chairman or on a question of adjournment shall be taken forthwith. A poll demanded on any other question shall be taken either forthwith or at such time and place as the chairman directs not being more than thirty days after the poll is demanded. The demand for a poll shall not prevent the continuance of a meeting for the transaction of any business other than the question on which the poll was demanded. If a poll is demanded before the declaration of the result of a show of hands and the demand is duly withdrawn, the meeting shall continue as if the demand had not been made.

5.17 No notice need be given of a poll not taken forthwith if the time and place at which it is to be taken are announced at the meeting at which it is demanded. In any other case at least seven clear days' notice shall be given specifying the time and place at which the poll is to be taken.

5.18 A resolution in writing executed by or on behalf of each member who would have been entitled to vote upon it if it had been proposed at a general meeting at which he was present shall be as effectual as if it had been passed at a general meeting duly convened and held and may consist of several instruments in the like form executed by or on behalf of one or more members.

5.19 On a show of hands every member who (being an individual) is present in person or by proxy (not being himself a member entitled to vote) or (being a body corporate, unincorporated association or partnership) is present by a duly authorised representative

or by proxy, not being himself a member entitled to vote, shall have one vote. On a poll every member present in person or by proxy or by duly authorised representative (as the case may be) shall have one vote.

- 5.20 A member in respect of whom an order has been made by any court having jurisdiction (whether in the United Kingdom or elsewhere) in matters concerning mental disorder may vote, whether on a show of hands or on a poll, by his receiver, curator bonis or any other person authorised in that behalf appointed by that court, and any such receiver, curator bonis or other person may, on a poll, vote by proxy. Evidence to the satisfaction of the directors of the authority of the person claiming to exercise the right to vote shall be deposited at the registered office, or at such other place as is specified in accordance with these Articles for the deposit of instruments of proxy, not less than 48 hours before the time appointed for holding the meeting or adjourned meeting at which the right to vote is to be exercised and in default the right to vote shall not be exercisable.
- 5.21 No member shall be entitled to attend and vote at any general meeting either in person or by proxy if the company shall have been notified by the Council or any other responsible body that any amount payable to the Council or any other responsible body for business rates or the BID Levy by such member remains outstanding.
- 5.22 No objection shall be raised to the qualification of any vote except at the meeting or adjourned at which the vote objected to is tendered, and every vote not disallowed at the meeting shall be valid. Any objection made in due time shall be referred to the chairman whose decision shall be final and conclusive.
- 5.23 The appointment of a proxy shall be executed by or on behalf of the appointer and shall be in the following form (or in a form as near thereto as circumstances allow or in any form which the directors may approve):

[BID Co TBC]

I/We, \_\_\_\_\_ of \_\_\_\_\_ member/members of the above-named company, hereby appoint [ \_\_\_\_\_ ] of [ \_\_\_\_\_ ], or failing him/her, [ \_\_\_\_\_ ] of [ \_\_\_\_\_ ], as my/our proxy to vote in my/our name[s] and on my/our behalf at the general meeting of the company to be held on [ \_\_\_\_\_ ] 20[ \_\_\_\_\_ ], and at any adjournment thereof.

Signed on [ \_\_\_\_\_ ]

- 5.24 Where it is desired to afford members an opportunity of instructing the proxy how he shall act the appointment of a proxy shall be in the following form (or in a form as near thereto as circumstances allow or in any form which the directors may approve):

[BID Co]

I/We, \_\_\_\_\_ of \_\_\_\_\_ member/members of the above-named company, hereby appoint [ \_\_\_\_\_ ] of [ \_\_\_\_\_ ], or failing him/her, [ \_\_\_\_\_ ] of [ \_\_\_\_\_ ], as my/our proxy to vote in my/our name[s] and on my/our behalf at the general meeting of the company to be held on [ \_\_\_\_\_ ] 20[ \_\_\_\_\_ ], and at any adjournment thereof.

This form is to be used in respect of the resolutions mentioned below as follows:

Resolution No. 1 \* for \* against

Resolution No. 2 \* for \* against

\* Strike out whichever is not desired.

Unless otherwise instructed, the proxy may vote as he thinks fit or abstain from voting.

Signed on [        ]

5.25 The instrument appointing a proxy and any authority under which it is executed or a copy of such authority certified notarially or in some other way approved by the directors may:

5.25.1 in the case of an instrument in writing be deposited at the registered office or at such other place within the United Kingdom as is specified in the notice convening the meeting or in any instrument of proxy sent out by the company in relation to the meeting not less than 48 hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote; or

5.25.2 in the case of an appointment contained in an electronic communication, where an address has been specified for the purpose of receiving electronic communications:

5.25.2.1 in the notice convening the meeting; or

5.25.2.2 in any instrument of proxy sent out by the company in relation to the meeting; or

5.25.2.3 in any invitation contained in an electronic communication to appoint a proxy issued by the company in relation to the meeting,

be received at such address not less than 48 hours before the time for holding the meeting or adjourned meeting at which the person named in the appointment proposes to vote;

5.25.3 in the case of a poll taken more than 48 hours after it is demanded, be deposited or received as aforesaid after the poll has been demanded and not less than 24 hours before the time appointed for the taking of the poll; or

5.25.4 where the poll is not taken forthwith but is taken nor more than 48 hours after it was demanded, be delivered at the meeting at which the poll was demanded to the chairman or to any director;

and an appointment of proxy, which is not deposited or delivered in a manner so permitted shall be invalid. In this article 5.25 and article 5.26, a reference to electronic communication includes any number or address used for the purposes of such communications.

5.26 A vote given or a poll demanded by proxy or by the duly authorised representative of a body corporate, unincorporated association or partnership shall be valid notwithstanding the previous determination of the authority of the person voting or demanding a poll unless notice of the determination was received by the company at the registered office or at such other place at which the instrument of proxy was duly deposited or where the

appointment of proxy was contained in an electronic communication, at the address at which such appointment was duly received before the commencement of the meeting or adjourned meeting at which the vote is given or the poll demanded or (in the case of a poll taken otherwise than on the same day as the meeting or adjourned meeting) the time appointed for taking the poll.

5.27 No member shall be entitled to vote at any general meeting unless all monies then payable by him to the company have been paid.

5.28 A body corporate, unincorporated association or partnership, which is a member, can authorise any person to act as its representative at any meeting. This person is called an authorised representative. The governing body of the body corporate, unincorporated association or partnership must pass a resolution to appoint the authorised representative. An authorised representative can exercise all powers on behalf of his appointer which his appointer could exercise if it were an individual member. This includes the power to vote on a show of hands when the authorised representative is personally present at a meeting. The directors may require evidence of the authority of an authorised representative.

5.29 Any vote cast by an authorised representative and any demand by him for a poll will be valid even though he is, for any reason, no longer authorised to represent his appointer. However, this does not apply if written notice of the fact that he is no longer authorised has been received at the registered office before the day of the relevant meeting or adjourned meeting or before the day a poll is taken.

## **6 Unanimous decisions**

6.1 A decision of the directors is taken in accordance with this article 6 when all eligible directors indicate to each other by any means that they share a common view on a matter.

6.2 Such a decision may take the form of a resolution in writing, where each eligible director has signed one or more copies of it, or to which each eligible director has otherwise indicated agreement in writing.

6.3 A decision may not be taken in accordance with this article 6 if the eligible directors would not have formed a quorum at such a meeting.

6.4 Where there is only one director that director shall take decisions in the form of resolutions in writing.

## **7 Calling a directors' meeting**

Any director may call a directors' meeting by giving not less than five business days' notice of the meeting (or such lesser notice as all the directors may agree) to the directors or by authorising the company secretary (if any) to give such notice.

## **8 Quorum for directors' meetings, appointment of directors etc.**

8.1 Unless otherwise determined by the members by ordinary resolution there shall be no maximum number of directors and the minimum number of directors shall be 5.

- 8.2 Subject to article 8.3, the quorum for the transaction of business at a meeting of directors is a minimum of 49% of eligible directors rounded down, except when one director only is in office when it shall be one. A director is regarded as present for the purposes of a quorum if he is represented by his alternate director in accordance with these Articles.
- 8.3 If a quorum is not present within 30 minutes from the time appointed for the meeting or is not present for its duration, the meeting will be adjourned for 5 business days. If a quorum is not present at that adjourned meeting or does not remain present for its duration, the meeting will again be adjourned for 3 business days and if a quorum is not present at that second adjourned meeting or does not remain present for its duration any two directors (or their alternates) present will constitute a quorum and a resolution will be valid if passed by majority vote provided that this will only be the case for the purpose of the transaction of the business specified in the agenda contained in the notice of the meeting.
- 8.4 For the purposes of any meeting (or part of a meeting) held pursuant to article 12 to authorise a director's conflict, if there is only one eligible director in office other than the conflicted director(s), the quorum for such meeting (or part of a meeting) shall be one eligible director.
- 8.5 No person shall be appointed a director at any general meeting of the Board of Directors unless he has been elected by the membership to be a director, that have indicated a willingness to be appointed and have stated the particulars which would if he were so appointed be included in the company's register of directors.
- 8.6 Not less than seven nor more than 28 clear days before the date appointed for holding a general meeting notice shall be given to all who are entitled to receive notice of the meeting of any person who has been elected by the membership for appointment as a director at the meeting. The notice shall give particulars of that person which would, if he were so appointed, be required to be included in the company's register of directors.
- 8.7 Subject as aforesaid the company may by ordinary resolution appoint a person who is willing to act to be a director either to fill a vacancy or as an additional director.
- 8.8 The directors may appoint a person who is willing to act to be a director, either to fill a vacancy or as an additional director, provided that the appointment does not cause the number of directors to exceed any maximum number of directors that may be fixed by ordinary resolution.
- 8.9 Directors will not be entitled to remuneration in their capacity as such.
- 8.10 The directors may be paid travelling, hotel and other expenses properly and reasonably incurred by them in connection with their attendance at meetings of directors or general meetings or separate meetings of the company or otherwise in connection with the discharge of their duties.
- 8.11 Without prejudice to the provisions of article 18 of the Model Articles, the office of a director shall be vacated if he shall for more than six consecutive months have been absent without permission of the Board from meetings of the Board held during that period and the Board resolves that his office be vacated.

## **9 Casting vote**

If the numbers of votes for and against a proposal at a meeting of directors are equal, the chairman or other director chairing the meeting shall have a casting vote.

## **10 Powers and Proceedings of Directors**

- 10.1 Subject to the provisions of the Act, these Articles and to any directions given by special resolution, the business of the company shall be managed by the directors who may exercise all the powers of the company. No alteration of these Articles and no such direction shall invalidate any prior act of the directors which would have been valid if that alteration had not been made or that direction had not been given. The powers given by this article 10 shall not be limited by any special power given to the directors by these Articles and a meeting of directors at which a quorum is present may exercise all powers exercisable by the directors.
- 10.2 The directors may, by power of attorney or otherwise, appoint any person to be the agent of the company for such purposes and on such conditions as they determine, including authority for the agent to delegate all or any of his powers.
- 10.3 Subject to the provisions of the Act, the directors may appoint one or more of their number to the office of managing director or to any other executive office under the company and may enter into an agreement or arrangement with any director for his employment by the company or for the provision by him of any services outside the scope of the ordinary duties of a director. Any such appointment, agreement or arrangement may be made upon such terms as the directors determine and they may remunerate any such director for his services as they think fit. Any appointment of a director to an executive office shall terminate if he ceases to be a director but without prejudice to any claim to damages for breach of the contract of service between the director and the company.
- 10.4 The directors may delegate any of their powers to any committee consisting of one or more directors. They may also delegate to any managing director or any director holding any other executive office such powers as they consider desirable to be exercised by him. Any such delegation may be made subject to any conditions the directors may impose and either collaterally with or to the exclusion of their own powers and may be revoked or altered. Subject to any such conditions, the proceedings of a committee with two or more members shall be governed by these Articles regulating the proceedings of directors so far as they are capable of applying.
- 10.5 Board meetings should be convened at least 4 times a year. Subject to the provisions of these Articles, the directors may regulate their proceedings as they think fit. Directors will be informed of Board meetings by e mail. Notice of Board meetings will be made by the CEO not less than three weeks before the meeting, although any director may call a meeting of the directors at any time. It shall not be necessary to give notice of a meeting to a director who is absent from the United Kingdom. However, any director may waive notice of a meeting either prospectively or retrospectively and if he does so, no objection can be raised as to the validity of that meeting on the basis that notice was not given to him.
- 10.6 The continuing directors or a sole continuing director may act notwithstanding any vacancies in their number, but, if the number of directors is less than the number fixed

as the quorum, the continuing directors or director may act only for the purpose of filling vacancies or of calling a general meeting.

- 10.7 The directors may appoint one of their number to be the chairman of the Board and may at any time remove him from that office. Unless he is unwilling to do so, the director so appointed shall preside at every meeting of directors at which he is present. If there is no director holding that office, or if the director holding it is unwilling to preside or is not present within five minutes after the time appointed for the meeting, the directors present may appoint one of their number to be chairman of the meeting.
- 10.8 Except where specifically provided in these Articles matters for decision by the directors will be decided by simple majority vote. Each director has one vote. A director who is also an alternate director shall be entitled in the absence of his appointer to a separate vote on behalf of the appointer in addition to his own vote.
- 10.9 A committee of directors may meet and adjourn as it sees fit. The regulations in these Articles applicable to meetings of the directors apply in exactly the same way to meetings of any committee of the directors save that the directors may determine the regulations to govern such meetings of a committee of the directors including without limitation the quorum of such meetings.
- 10.10 All acts done by a meeting of directors, or a committee of directors, or by a person acting as a director shall, notwithstanding that it be afterwards discovered that there was a defect in the appointment of any director or that any of them were disqualified from holding office, or had vacated office, or were not entitled to vote, be as valid as if every such person had been duly appointed and was qualified and had continued to be a director and had been entitled to vote if such acts are ratified by the Board.
- 10.11 A resolution in writing signed by all the directors (including a sole director) entitled to receive notice of a meeting of directors or of a committee of directors shall be as valid and effectual as if it had been passed at a meeting of directors or (as the case may be) a committee of directors duly convened and held and may consist of several documents in the like form each signed by one or more directors, but a resolution signed by an alternate director need not also be signed by his appointer and, if it is signed by a director who has appointed an alternate director, it need not be signed by the alternate director in that capacity.
- 10.12 Any director for the time being absent from the United Kingdom may supply to the company an e-mail address to which notices of meetings of the directors may be sent and shall then be entitled to receive at such address or number notice of such meetings.
- 10.13 A meeting of the directors may be validly held notwithstanding that all of the directors are not present at the same place and at the same time provided that:
  - 10.13.1 a quorum of the directors at the time of the meeting are in direct communication with each other whether by way of telephone, audio-visual link or other form of communication; and
  - 10.13.2 a quorum of the directors entitled to attend a meeting of the directors agree to the holding of the meeting in this manner.

- 10.14 The company may by ordinary resolution suspend or relax to any extent, either generally or in respect of any particular matter, any provision of the Articles prohibiting a director from voting at a meeting of directors or of a committee of directors.
- 10.15 If a question arises at a meeting of directors or of a committee of directors as to the right of a director to vote, the question may, before the conclusion of the meeting, be referred to the chairman of the meeting and his ruling in relation to any director other than himself shall be final and conclusive.
- 10.16 The directors shall cause minutes to be made in books kept for the purpose:
- 10.16.1 of all appointments of officers made by the directors; and
  - 10.16.2 of all proceedings at meetings of the company, of the directors, of committees of directors, including the names of the directors present at each such meeting.

## **11 Transactions or other arrangements with the company**

- 11.1 Subject to sections 177(5) and 177(6) and sections 182(5) and 182(6) of the Act and provided he has declared the nature and extent of his interest in accordance with the requirements of the Companies Acts, a director who is in any way, whether directly or indirectly, interested in an existing or proposed transaction or arrangement with the company:
- 11.1.1 may be a party to, or otherwise interested in, any transaction or arrangement with the company or in which the company is otherwise (directly or indirectly) interested;
  - 11.1.2 shall be an eligible director for the purposes of any proposed decision of the directors (or committee of directors) in respect of such contract or proposed contract in which he is interested;
  - 11.1.3 shall be entitled to vote at a meeting of directors (or of a committee of the directors) or participate in any unanimous decision, in respect of such contract or proposed contract in which he is interested;
  - 11.1.4 may act by himself or his firm in a professional capacity for the company (otherwise than as auditor) and he or his firm shall be entitled to remuneration for professional services as if he were not a director;
  - 11.1.5 may be a director or other officer of, or employed by, or a party to a transaction or arrangement with, or otherwise interested in, any body corporate in which the company is otherwise (directly or indirectly) interested; and
  - 11.1.6 shall not, save as he may otherwise agree, be accountable to the company for any benefit which he (or a person connected with him (as defined in section 252 of the Act)) derives from any such contract, transaction or arrangement or from any such office or employment or from any interest in any such body corporate and no such contract, transaction or arrangement shall be liable to be avoided on the grounds of any such interest or benefit nor shall the receipt of any such

remuneration or other benefit constitute a breach of his duty under section 176 of the Act.

## **12 Directors' conflicts of interest**

- 12.1 The directors may, in accordance with the requirements set out in this article 12, authorise any matter or situation proposed to them by any director which would, if not authorised, involve a director (an “**Interested Director**”) breaching his duty under section 175 of the Act to avoid conflicts of interest (“**Conflict**”).
- 12.2 Any authorisation under this article 12 will be effective only if:
- 12.2.1 to the extent permitted by the Act, the matter in question shall have been proposed by any director for consideration in the same way that any other matter may be proposed to the directors under the provisions of these Articles or in such other manner as the directors may determine;
  - 12.2.2 any requirement as to the quorum for consideration of the relevant matter is met without counting the Interested Director; and
  - 12.2.3 the matter was agreed to without the Interested Director voting or would have been agreed to if the Interested Director’s vote had not been counted.
- 12.3 Any authorisation of a Conflict under this article 12 may (whether at the time of giving the authorisation or subsequently):
- 12.3.1 extend to any actual or potential conflict of interest which may reasonably be expected to arise out of the matter or situation so authorised;
  - 12.3.2 provide that the Interested Director be excluded from the receipt of documents and information and the participation in discussions (whether at meetings of the directors or otherwise) related to the Conflict;
  - 12.3.3 provide that the Interested Director shall or shall not be an eligible director in respect of any future decision of the directors vote in relation to any resolution related to the Conflict;
  - 12.3.4 impose upon the Interested Director such other terms for the purposes of dealing with the Conflict as the directors think fit;
  - 12.3.5 provide that, where the Interested Director obtains, or has obtained (through his involvement in the Conflict and otherwise than through his position as a director of the company) information that is confidential to a third party, he will not be obliged to disclose that information to the company, or to use it in relation to the company’s affairs where to do so would amount to a breach of that confidence; and
  - 12.3.6 permit the Interested Director to absent himself from the discussion of matters relating to the Conflict at any meeting of the directors and be excused from reviewing papers prepared by, or for, the Directors to the extent they relate to such matters.

- 12.4 Where the directors authorise a Conflict, the Interested Director will be obliged to conduct himself in accordance with any terms and conditions imposed by the directors in relation to the Conflict.
- 12.5 The directors may revoke or vary such authorisation at any time, but this will not affect anything done by the Interested Director, prior to such revocation or variation, in accordance with the terms of such authorisation.
- 12.6 A director is not required, by reason of being a director (or because of the fiduciary relationship established by reason of being a director), to account to the company for any remuneration, profit or other benefit which he derives from or in connection with a relationship involving a Conflict which has been authorised by the directors or by the company in general meeting (subject in each case to any terms, limits or conditions attaching to that authorisation) and no contract shall be liable to be avoided on such grounds.

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

Where decisions of the directors are taken by electronic means, such decisions shall be recorded by the directors in permanent form, so that they may be read with the naked eye.

### **14 Election of directors and number of directors**

- 14.1 Unless otherwise determined by ordinary resolution, the number of directors (other than alternate directors) shall be 12 in number.
- 14.2 Individual representatives, nominated in writing by levy paying businesses, shall comprise 10 of the 12 directors
- 14.3 Up to two further directors will be co- opted. The first of these will be a councillor nominated by The Highland Council. In respect of the second, the Board the Board will each year invite nominations from levy paying and opt-in members
- 14.4 The directors may invite other representatives from the local authorities and from other organisations (whether from the public, private or voluntary sectors) to attend Board meetings as they see fit
- 14.5 A third of directors should retire at each AGM (2<sup>nd</sup> onwards) and can only stand for reselection once
- 14.5.1 The directors to retire under Pt14.5 shall be those who have been longest in office since they were last elected or re-elected; as between persons who were last elected/re-elected on the same date, the question of which of them is to retire shall be determined by some random method
- 14.5.2 Any individual who wishes to be considered for election as a director at the AGM must lodge with the company, no later than 21 days prior to the date of the AGM a written nomination whether it be for themselves as the eligible voter of a member business or as the nominee of the eligible voter.

- 14.5.3 If there are more nominations received than director positions available, the election process will take place electronically in the 21 days prior to the AGM with the result of the election announced at the AGM
- 14.5.4 If there are less or the same number of nominations as director positions available then those nominated will be duly elected as directors and will be confirmed as such at the AGM
- 14.6 The maximum term of office for a director will be two three year terms
- 14.7 If in the course of period of office the status of an elected director changes, he/she must vacate the position if a) he/she is no longer the nominated person for the levy paying business they have represented b) the business that they represent ceases to be a levy paying business
- 14.8 Nominees for the position of co-opted director will be short listed (if numbers require). Those short listed will then meet with directors who will appoint their preferred choice thereafter. If there is only one nomination for the position, directors reserve the right to appoint or decline the nominee's application to the Board
- 14.9 The longest period a co-opted director can be appointed for is a maximum of six years
- 14.10 If the co-opted director is a representative of an opt in business and in the course of period of office the business chooses to no longer opt in or if a business ceases trading, the co-opted director must vacate the position with immediate effect

## **15 Appointment and removal of alternate directors**

- 15.1 With the exception of the director representing The Highland Council, no director (“**appointor**”) may appoint as an alternate any other director, or any other person to:
  - 15.1.1 exercise that director's powers; and
  - 15.1.2 carry out that director's responsibilities,
 in relation to the taking of decisions by the directors
- 15.2 Where the director representing The Highland Council wishes to appoint an alternate, any appointment or removal of an alternate must be effected by notice in writing to the company signed by the appointor, or in any other manner approved by the directors.
- 15.3 The notice must:
  - 15.3.1 identify the proposed alternate; and
  - 15.3.2 in the case of a notice of appointment, contain a statement signed by the proposed alternate that the proposed alternate is willing to act as the alternate of the director giving the notice.

## **16 Rights and responsibilities of alternate directors**

16.1 An alternate director may act as alternate director to only The Highland Council director.

16.2 Except as the Articles specify otherwise, alternate directors:

16.2.1 are deemed for all purposes to be directors;

16.2.2 are liable for their own acts and omissions;

16.2.3 are subject to the same restrictions as their appointors; and

16.2.4 are not deemed to be agents of or for their appointors,

and, in particular (without limitation), an alternate director shall be entitled to receive notice of all meetings of directors and of all meetings of committees of directors of which his appointor is a member.

16.3 A person who is an alternate director but not a director:

16.3.1 may be counted as participating for the purposes of determining whether a quorum is present (but only if that person's appointor is not participating);

16.3.2 may participate in a unanimous decision of the directors (but only if his appointor is an eligible director in relation to that decision, but does not participate); and

16.3.3 shall not be counted as more than one director for the purposes of articles 16.3.1 and 16.3.2.

16.4 A director who is also an alternate director is entitled, in the absence of his appointor, to a separate vote on behalf of his appointor, in addition to his own vote on any decision of the directors (provided that his appointor is an eligible director in relation to that decision), but shall not count as more than one director for the purposes of determining whether a quorum is present.

16.5 An alternate director may be paid expenses and may be indemnified by the company to the same extent as his appointor but shall not be entitled to receive any remuneration from the company for serving as an alternate director except such part of the alternate's appointor's remuneration as the appointor may direct by notice in writing made to the company.

## **17 Termination of alternate directorship**

17.1 An alternate director's appointment as an alternate terminates:

17.1.1 when the alternate's appointor revokes the appointment by notice to the company in writing specifying when it is to terminate;

17.1.2 on the occurrence, in relation to the alternate, of any event which, if it occurred in relation to the alternate's appointor, would result in the termination of the appointor's appointment as a director;

17.1.3 on the death of the alternate's appointor; or

17.1.4 when the alternate's appointor's appointment as a director terminates.

## **18 Secretary**

The directors may appoint any person who is willing to act as the secretary for such term, at such remuneration and upon such conditions as they may think fit and from time to time remove such person and, if the directors so decide, appoint a replacement, in each case by a decision of the directors.

## **19 Minutes**

19.1 The Directors will keep minutes of the following a) The appointment of all officers  
b) Proceedings at Board meetings of the company, including the name of directors present at such meetings

## **20 Accounts**

20.1 The company shall cause accounting records to be kept in accordance with (a) normal accounting practice and (b) the statutory requirements from time to time applying.

20.2 The accounting records shall be kept at the Registered Office or, subject to Section 222 of the Act, at such other place or places as the Directors shall think fit, and shall always be open to the inspection of the Directors.

20.3 The Directors shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounts and books of the company or any of them shall be open to the inspection of members and no member has any right to inspect any account or book or document of the company except as conferred by statute or authorised by the Directors or by the Company in general meeting.

20.4 The Directors shall from time to time in accordance with the requirements of the Act cause to be prepared and to be laid before the Company in general meeting such profit and loss accounts, balance sheets, and other accounts (if any) and reports as are required by the Act.

## **21 Rules or Bye Laws**

The company may from time to time make such rules or bye laws as they may deem necessary or expedient or convenient for the proper conduct and management of the company. The company in general meeting shall have the power to alter or repeal the rules or bye laws and to make additions thereto and the directors shall adopt such means as they deem sufficient to bring to the notice of members of the company all such rules or bye laws, which so long as they shall be in force, shall be binding on all members of the company. No rule or bye law shall be inconsistent with, or shall affect or repeal anything contained in, these Articles.

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

22.1 Any notice, document or other information shall be deemed served on or delivered to the intended recipient:

- 22.1.1 if properly addressed and sent by prepaid United Kingdom first class post to an address in the United Kingdom, 48 hours after it was posted or five business days after posting either to an address outside the United Kingdom or from outside the United Kingdom to an address within the United Kingdom, if (in each case) sent by reputable international overnight courier addressed to the intended recipient, provided that delivery in at least five business days was guaranteed at the time of sending and the sending party receives a confirmation of delivery from the courier service provider);
- 22.1.2 if properly addressed and delivered by hand, when it was given or left at the appropriate address;
- 22.1.3 if properly addressed and sent or supplied by electronic means, one hour after the document or information was sent or supplied; and
- 22.1.4 if sent or supplied by means of a website, when the material is first made available on the website or (if later) when the recipient receives (or is deemed to have received) notice of the fact that the material is available on the website.

For the purposes of this article 22, no account shall be taken of any part of a day that is not a business day.

22.2 In proving that any notice, document or other information was properly addressed, it shall be sufficient to show that the notice, document or other information was delivered to an address permitted for the purpose by the Act.

## **23 Indemnity**

23.1 Subject to article 21.2, but without prejudice to any indemnity to which a relevant officer is otherwise entitled:

- 23.1.1 each relevant officer shall be indemnified out of the company's assets against all costs, charges, losses, expenses and liabilities incurred by him as a relevant officer:
  - 23.1.1.1 in the actual or purported execution and/or discharge of his duties, or in relation to them; and
  - 23.1.1.2 in relation to the company's (or any associated company's) activities as trustee of an occupational pension scheme (as defined in section 235(6) of the Act),

including (in each case) any liability incurred by him in defending any civil or criminal proceedings, in which judgment is given in his favour or in which he is acquitted or the proceedings are otherwise disposed of without any finding or admission of any material breach of duty on his

part or in connection with any application in which the court grants him, in his capacity as a relevant officer, relief from liability for negligence, default, breach of duty or breach of trust in relation to the company's (or any associated company's) affairs; and

23.1.2 the company may provide any relevant officer with funds to meet expenditure incurred or to be incurred by him in connection with any proceedings or application referred to in article 21.1.1 and otherwise may take any action to enable any such relevant officer to avoid incurring such expenditure.

23.2 This article 23, 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.

23.3 In this article 23, companies are associated if one is a subsidiary of the other or both are subsidiaries of the same body corporate.

## **24 Insurance**

24.1 The directors may decide to purchase and maintain insurance, at the expense of the company, for the benefit of any relevant officer in respect of any relevant loss.

24.2 In this article 24:

24.2.1 a “**relevant loss**” means any loss or liability which has been or may be incurred by a relevant officer in connection with that relevant officer's duties or powers in relation to the company, any associated company or any pension fund of the company or associated company; and

24.2.2 companies are associated if one is a subsidiary of the other or both are subsidiaries of the same body corporate.

Graeme Ambrose,  
CEO  
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17/05/16