

**THE COMPANIES ACT 2006  
COMPANY LIMITED BY GUARANTEE  
AND NOT HAVING A SHARE CAPITAL  
ARTICLES OF ASSOCIATION  
of  
CULTURE AND PERTH KINROSS**

**THE COMPANIES ACT 2006**

**COMPANY LIMITED BY GUARANTEE**

**AND NOT HAVING A SHARE CAPITAL**

**ARTICLES OF ASSOCIATION**

**of**

**CULTURE AND PERTH KINROSS**

<b>CONTENTS</b>		
<b>GENERAL</b>	constitution of the company, defined terms, objects, powers, restrictions on use of assets, limit on liability	1 - 11
<b>MEMBERSHIP</b>	general, withdrawal, register	12 - 19
<b>GENERAL MEETINGS (meetings of sole member)</b>	general, notice, procedure, voting, written resolutions	20 - 43
<b>DIRECTORS</b>	categories, maximum number, eligibility, appointment/removal/retirement, termination of office, office bearers, personal interests, conduct, remuneration and expenses, powers	44 - 85
<b>DIRECTORS' MEETINGS</b>	procedure	86 - 105
<b>ADMINISTRATION</b>	committees, secretary, minutes, accounts, notices	106 - 124
<b>MISCELLANEOUS</b>	winding-up, indemnity	125 - 128

**Constitution of company**

- 1 The model articles of association as prescribed in Schedule 2 to The Companies (Model Articles) Regulations 2008 are excluded in respect of this company.

## Defined terms

- 2 In these articles of association, unless the context requires otherwise:-
- 2.1 “Act” means the Companies Act 2006;
- 2.2 “charity” means a body which is either a “Scottish charity” within the meaning of section 13 of the Charities and Trustee Investment (Scotland) Act 2005 or a “charity” within the meaning of section 1 of the Charities Act 2006, providing (in either case) that its objects are limited to charitable purposes;
- 2.3 “charitable purpose” means a charitable purpose under section 7 of the Charities and Trustee Investment (Scotland) Act 2005 which is also regarded as a charitable purpose in relation to the application of the Taxes Acts;
- 2.4 “conflict of interest” includes a conflict of interest and duty, and a conflict of duty;
- 2.5 “Conflict Situation” means any situation or matter (other than one which cannot reasonably be regarded as likely to give rise to a conflict of interest) in which any director has or could have a direct or indirect interest that conflicts, or possibly might conflict, with the interests of the company including (without limitation) any such situation or matter which relates to the exploitation of any property, information or opportunity (irrespective of whether the company could take advantage of the property, information or opportunity);
- 2.6 “Cultural Activities” means any activity which advances the visual and applied arts, heritage or culture and shall include:
- libraries;
  - visual and applied arts;
  - museums and galleries; and
  - local studies and archives;
- 2.7 “Cultural Facilities” means facilities from which Cultural Activities are provided and which include :
- libraries;
  - museums and galleries; and
  - archives;
- 2.8 “electronic form” has the meaning given in section 1168 of the Act;
- 2.9 “OSCR” means the Office of the Scottish Charity Regulator;
- 2.10 “property” means any property, heritable or moveable, real or personal, wherever situated; and

- 2.11 “subsidiary” has the meaning given in section 1159 of the Act.
- 3 Any reference to a provision of any legislation (including any statutory instrument) shall include any statutory modification or re-enactment of that provision in force from time to time.

## **Objects**

- 4 The company’s objects are:
- 4.1 To advance the visual and applied arts, heritage and culture;
  - 4.2 To provide recreational facilities, and organise recreational activities (in furtherance of article 4.1), with such facilities/activities being made available to members of the public at large, with the object of improving their conditions of life;
  - 4.3 To advance education through promoting knowledge, lifelong learning opportunities and active citizenship;
  - 4.4 To advance citizenship and/or community development (which may include the promotion of civic responsibility, volunteering, the voluntary sector and/or the effectiveness or efficiency of charities);
  - 4.5 To advance such similar charitable purposes as the directors may consider appropriate from time to time,

and all through the provision of services (including those entrusted to it by Perth and Kinross Council and those taken forward in partnership with such other bodies as may be necessary and appropriate), which contribute to advancing wellbeing (primarily the wellbeing of residents of the area served by Perth and Kinross Council) including:

- a) collecting, preserving and interpreting the permanent museum and fine art collections held in stewardship by Perth and Kinross Council;
  - b) advancing those visual and applied arts which are of national and international significance;
  - c) developing the use of library, local studies and archive services;
  - d) operating, managing and developing Cultural Facilities (including arrangements to facilitate access to such facilities by those on lower incomes or with special needs and to encourage wider participation in cultural activities); and
  - e) developing and delivering Cultural Activities and events directed towards wider participation in such activities.
- 5 The company's objects are restricted to those set out in article 4 (but subject to article 6).

- 6 The company may (subject to first obtaining the consent of OSCR) add to, remove or alter the statement of the company's objects in article 4; on any occasion when it does so, it must give notice to the registrar of companies and the amendment will not be effective until that notice is registered on the register of companies.

### **Powers**

- 7 In pursuance of those objects (but not otherwise) the company shall have the following powers:-
- 7.1 To initiate, promote, conduct, participate in, co-ordinate, monitor and/or assist (whether financially or otherwise), operations, projects, initiatives and events of all kinds which further any of the objects of the company;
  - 7.2 To prepare, organise, support (financially and/or otherwise) participate in, and/or conduct, conferences, seminars and workshops, and educational and training events, courses, programmes and events of all kinds;
  - 7.3 To commission and/or conduct research, and to publish and promote the results of such research;
  - 7.4 To design, prepare, publish and/or distribute information packs, leaflets, books, newsletters, magazines, posters and other publications, audio and video recordings, multimedia products and display materials, and to create and maintain a website or websites;
  - 7.5 To provide information, advisory, support and/or consultancy services which further any of the objects of the company;
  - 7.6 To liaise with European, UK, Scottish and local government authorities and agencies, voluntary sector bodies and others, all with a view to maximising the effectiveness of the company in pursuing its objectives;
  - 7.7 To initiate, promote, conduct, participate in (whether via a wholly-owned subsidiary, a joint venture company or a limited liability partnership or otherwise), co-ordinate, monitor and/or assist (whether financially or otherwise), projects, initiatives and schemes of all kinds which further any of the objects of the company;
  - 7.8 To carry on any other activity which may be appropriately carried on in connection with any of the objects of the company;
  - 7.9 To promote companies and/or other bodies whose activities may further one or more of the above objects or may generate income to support the activities of the company, acquire and hold shares, stocks, debentures and other interests in such companies, and carry out in

relation to any such company which is a subsidiary of the company, all such functions as may be associated with a holding company;

- 7.10 To acquire and take over the whole or any part of the undertaking and liabilities of any body entitled to any property or rights suitable for any of the objects of the company;
- 7.11 To purchase, take on lease, hire, or otherwise acquire, any property or rights which are suitable for the company's activities;
- 7.12 To improve, manage, develop, or otherwise deal with, all or any part of the property and rights of the company;
- 7.13 To sell, let, hire out, license, or otherwise dispose of, all or any part of the property and rights of the company;
- 7.14 To borrow money, and to give security in support of any such borrowings by the company, in support of any obligations undertaken by the company or in support of any guarantee issued by the company;
- 7.15 To employ such staff as are considered appropriate for the proper conduct of the company's activities;
- 7.16 To engage such consultants and advisers as are considered appropriate from time to time;
- 7.17 To effect insurance of all kinds (which may include officers' liability insurance);
- 7.18 To invest any funds which are not immediately required for the company's activities in such investments as may be considered appropriate (and to dispose of, and vary, such investments);
- 7.19 To establish and/or support any other charity, and to make donations for any charitable purpose falling within the company's objects;
- 7.20 To take such steps as may be deemed appropriate for the purpose of raising funds for the company's activities;
- 7.21 To accept grants, donations and legacies of all kinds (and to accept any reasonable conditions attaching to them);
- 7.22 To oppose, or object to, any application or proceedings which may prejudice the company's interests;
- 7.23 To enter into any arrangement with any organisation, government or authority which may be advantageous for the purposes of the activities of the company, and to enter into any arrangement for co-operation or mutual assistance with any charity;

- 7.24 To do anything which may be incidental or conducive to the furtherance of any of the company's objects.

### **Restriction on use of the company's assets**

- 8 Subject to article 9:
- 8.1 the income and property of the company shall be applied solely towards the promotion of its objects (as set out in article 4);
- 8.2 no part of the income or property of the company shall be paid or transferred (directly or indirectly) to the members of the company by way of dividend, bonus or otherwise;
- 8.3 no director of the company shall be appointed to any office under the company in respect of which a salary or fee is payable;
- 8.4 no benefit (in money or money's worth) shall be given by the company to any director except repayment of out-of-pocket expenses.
- 9 The company shall, notwithstanding the provisions of article 8, be entitled:-
- 9.1 to pay a rent not exceeding the market rent for premises let to the company by any member of the company;
- 9.2 to make any transfer or payment to a member where such transfer or payment is made in direct furtherance of the charitable purposes of the company.

### **Liability of member**

- 10 The liability of Perth and Kinross Council (in its capacity as the sole member of the company) is limited.
- 11 Perth and Kinross Council undertakes that if the company is wound up while it is a member (or within one year after it ceases to be a member), it will contribute - up to a maximum of £1 - to the assets of the company, to be applied towards:
- 11.1 payment of the company's debts and liabilities contracted before it ceases to be a member;
- 11.2 payment of the costs, charges and expenses of winding up; and adjustment of the rights of the contributories among themselves.

### **Membership**

- 12 The subscribers to the memorandum of association and such other bodies (if any) as are admitted to membership of the company under articles 16 and 17 shall be the members of the company.
- 13 Membership shall be open only to Perth and Kinross Council.

- 14 Perth and Kinross Council's membership shall cease on the dissolution of Perth and Kinross Council or on receipt by the company of a notice of retiral from membership under article 18.
- 15 Perth and Kinross Council may not transfer its membership to any other body or to any individual.

### **Application for membership**

- 16 Any incorporated body eligible for membership under article 13 (as amended from time to time) which wishes to become a member shall lodge with the company a written application for membership (in such form as the directors require); the application for membership shall be signed on the relevant body's behalf by an authorised officer of that body.
- 17 A body eligible for membership under article 13 shall automatically constitute a member of the company immediately upon receipt by the company of the application for membership, duly signed in accordance with article 13.

### **Withdrawal from membership**

- 18 If Perth and Kinross Council wishes to withdraw from membership, it shall lodge with the company a written notice of retiral (in such form as the directors require), signed on its behalf by an authorised officer of Perth and Kinross Council; on receipt of the notice by the company, it shall cease to be a member.

### **Register of members**

- 19 The directors shall procure that a register of members is maintained in accordance with the provisions of the Act.

### **General meetings**

- 20 The directors must convene a general meeting if there is a valid requisition by a resigning auditor (under section 518 of the Act).
- 21 Subject to the provisions of article 20, the directors may convene general meetings whenever they think fit.
- 22 For the avoidance of doubt, the directors shall be under no obligation to convene annual general meetings.

### **Notice of general meetings**

- 23 At least 14 clear days' notice of each general meeting must be given to Perth and Kinross Council (in its capacity as the sole member of the company), to all the directors, and (if auditors are in office at the time) to the auditors.
- 24 The reference to "clear days" in article 23 shall be taken to mean that, in calculating the period of notice, the day after the notice is posted (or, in the



case of notice sent by electronic means, the day after it was sent), and also the day of the meeting, should be excluded.

25 A notice calling a meeting shall specify the time, date and place of the meeting; it shall:

25.1 indicate the general nature of the business to be dealt with at the meeting;

25.2 if a special resolution or a resolution requiring special notice under the Act is to be proposed, state that fact, giving the exact terms of the resolution; and

25.3 contain a statement informing Perth and Kinross Council of its right to appoint a proxy.

26 Notice of every general meeting shall be given: -

26.1 in hard copy form; or

26.2 (where the individual or body to whom/which notice is given has notified the company of an address to be used for the purpose of electronic communication) in electronic form.

### **Proceedings at general meetings**

27 No business shall be transacted at any meeting unless a quorum is present; one person present and entitled to vote (being a proxy for Perth and Kinross Council in its capacity as sole member of the company) or a duly authorised representative of Perth and Kinross Council (in that capacity) shall be a quorum.

28 If the quorum required under article 27 is not present within half an hour after the time appointed for the meeting, or if during a meeting such a quorum ceases to be present, the meeting shall stand adjourned to such time and place as may be fixed by the chairperson of the meeting.

29 The Chair of the company shall (if present and willing to act) preside as chairperson of the meeting; if the Chair is not present and willing to act as chairperson of the meeting within 15 minutes after the time appointed for holding the meeting, the Vice Chair shall act as chairperson of the meeting.

30 If neither the Chair nor the Vice Chair is present and willing to act as chairperson of the meeting within 15 minutes after the time appointed for holding the meeting, the directors present shall elect one of their number to act as chairperson of the meeting; or, if there is only one director present and willing to act, he/she shall be chairperson of the meeting.

31 Each of the directors shall, notwithstanding that he/she is not a member, be entitled to attend and speak at any general meeting.

- 32 The chairperson of the meeting may, with the consent of the meeting at which a quorum is present (and must, if the meeting requests him/her to do so), adjourn the meeting but not for a period in excess of thirty days; no notice need be given of an adjourned meeting.

**Votes of members**

- 33 Perth and Kinross Council (in its capacity as the sole member of the company) shall have one vote, which may be given either via its duly authorised representative present at the meeting or by proxy.

- 34 If Perth and Kinross Council (in its capacity as the sole member of the company) wishes to appoint a proxy to vote on its behalf at any general meeting, it shall:-

34.1 lodge with the company, at the company's registered office, a written instrument of proxy (in such form as the directors require), signed by an appropriate officer of Perth and Kinross Council; or

34.2 send by electronic means to the company at such electronic address as may have been notified to it by the company for that purpose, an instrument of proxy (in such form as the directors require);

providing (in either case) the instrument of proxy is received by the company at the relevant address not less than 48 hours before the time for holding the meeting (or, as the case may be, adjourned meeting); for the avoidance of doubt, in calculating the 48-hour period referred to in the preceding provisions of this article 34, no account shall be taken of any part of a day that is not a working day.

- 35 An instrument of proxy which does not conform with the provisions of article 34, or which is not lodged or sent in accordance with such provisions, shall be invalid.

- 36 Perth and Kinross Council shall not be entitled to appoint more than one proxy to attend on the same occasion.

- 37 A proxy appointed to attend and vote at any meeting instead of Perth and Kinross Council shall have the same right as Perth and Kinross Council to speak at the meeting, and notwithstanding that he/she is not a member of the company.

- 38 Perth and Kinross Council (in its capacity as the sole member of the company) may authorise an individual to act as its representative at any general meeting of the company, providing particulars of the individual so authorised are received by the company prior to the commencement of the general meeting; the individual so authorised shall be entitled to exercise the same powers on behalf of Perth and Kinross Council as Perth and Kinross Council could exercise if it were an individual member.

- 39 The chairperson of a meeting shall not be entitled to a casting vote if an equality of votes arises in relation to any resolution.

- 40 A vote given by proxy or by the duly authorised representative of Perth and Kinross Council shall be valid notwithstanding that the authority of the person voting had terminated prior to the giving of such vote unless notice of such termination was received by the company at the company's registered office (or, where contained in an electronic communication, was received by the company at the address notified by the company to Perth and Kinross Council for the purpose of electronic communication) before the commencement of the meeting or adjourned meeting at which the vote was given.

### **Written resolutions**

- 41 A written resolution can be passed by Perth and Kinross Council, in its capacity as the sole member of the company (having been proposed by either Perth and Kinross Council or the directors in accordance with the procedures detailed in Chapter 2 of Part 13 of the Act) and will have effect as if passed by the company in general meeting; a written resolution will be passed when Perth and Kinross Council has signified its agreement to it by sending to the company (in hard copy or electronic form) an authenticated document which identifies the resolution to which it relates and which indicates Perth and Kinross Council's agreement to it.
- 42 For the avoidance of doubt, a resolution to remove a director (under section 168 of the Act) or a resolution to remove an auditor (under section 510 of the Act) cannot be proposed as a written resolution under article 41.
- 43 For the purposes of article 41, a proposed written resolution will lapse if it is not passed before the end of a period of 28 days beginning with the date on which it is sent or submitted to Perth and Kinross Council, and the agreement of Perth and Kinross Council to a written resolution will be ineffective if signified after the expiry of that period.

### **Categories of director**

- 44 For the purposes of these articles:-

“**Council Director**” means a director appointed under articles 46 to 48;

“**Independent Director**” means a director appointed under articles 49 to 53.

### **Number of directors**

- 45 The maximum number of directors shall be 12; out of that number
- 45.1 a maximum of 3 directors shall be Council Directors; and
- 45.2 a maximum of 9 directors shall be Independent Directors.

### **Appointment, removal: Council Directors**

- 46 Subject to articles 45 and 48, Perth and Kinross Council, so long as it remains a member of the company, may by notice in writing, signed on its behalf by an appropriate officer and given to the company:
- 46.1 appoint any elected member of Perth and Kinross Council who is willing so to act to be a director (a “Council Director”); or
  - 46.2 remove any Council Director from office as a director.
- 47 Any appointment or removal of a director under article 46 shall have effect from the date on which the relevant notice is given to the company.
- 48 The powers conferred by article 46 shall be deemed to be limited such that no more than 3 individuals appointed by Perth and Kinross Council may hold office as Council Directors at any given time.

**Appointment, removal: Independent Directors**

- 49 Subject to articles 45, 51 and 52, Perth and Kinross Council, so long as it remains a member of the company, may by notice in writing, signed on its behalf by an appropriate officer and given to the company:
- 49.1 appoint any person (other than an elected member, officer or employee of Perth and Kinross Council) who is willing so to act to be a director (an “Independent Director”); or
  - 49.2 remove any Independent Director from office as a director.
- 50 Any appointment or removal of a director under article 49 shall have effect from the date on which the relevant notice is given to the company.
- 51 The powers conferred by article 49 shall be deemed to be limited such that:
- 51.1 no more than 9 individuals appointed by Perth and Kinross Council may hold office as Independent Directors at any given time;
  - 51.2 the Independent Directors shall be appointed on the basis of their having skills and experience which, in the opinion of Perth and Kinross Council, would allow them to make a substantial contribution to the work of the board of directors.
- 52 Perth and Kinross Council shall be guided by the Nominations Committee (as defined in article 110) in relation to the selection of appropriate individuals for appointment/re-appointment as Independent Directors.
- 53 The directors of the company shall endeavour to establish the Nominations Committee within a reasonable period after the adoption of these articles; until such time as it is established, the reference in article 52 to Perth and Kinross Council being guided by the Nominations Committee shall be disregarded.

## **Retiral of Independent Directors**

- 54 Two of the Independent Directors shall retire at each Accounts Sign-off Board Meeting – but each of them shall, providing he/she is willing to act, be eligible for re-appointment under article 46 or (as the case may be) article 49.
- 55 The Independent Directors to retire at each Accounts Sign-off Board meeting shall be those who have been longest in office since they were last appointed or re-appointed; if three or more Independent Directors were last appointed or re-appointed on the same date, the question of which of them are to retire shall be determined by some random method.
- 56 If an individual ceases to hold office as a director but is re-appointed as a director within a period of six months (otherwise than at an Accounts Sign-off Board Meeting at which he/she is retiring), he/she shall be deemed for the purposes of articles 54 and 55 to have held office continuously.
- 57 Retiral under article 54 shall take place immediately after the relevant annual accounts have been approved by the directors, but on the understanding that if a notice re-appointing the director is received prior to the commencement of the board meeting, he/she will be deemed to be immediately re-appointed.
- 58 For the purposes of these articles, an “Accounts Sign-off Board Meeting” means a meeting of directors at which the final accounts of the company for a given financial year are approved by the directors.
- 59 For the avoidance of doubt, the provisions of articles 54 to 57 shall not apply to Council Directors.

## **Disqualification and removal of directors**

- 60 A director shall vacate office if:-
- 60.1 he/she ceases to be a director by virtue of any provision of the Act or becomes prohibited by law from being a director or a charity trustee (within the meaning of the Charities and Trustee Investment (Scotland) Act 2005);
- 60.2 he/she is sequestrated;
- 60.3 he/she becomes incapable for medical reasons of fulfilling the duties of his/her office and such incapacity has continued, or is expected to continue, for a period of more than six months;
- 60.4 in the case of a Council Director, he/she ceases to be an elected member of Perth and Kinross Council;
- 60.5 he/she becomes an employee of the company;
- 60.6 he/she resigns office by notice to the company;

- 60.7 he/she is absent (without permission of the directors) from more than three consecutive meetings of directors and the directors resolve to remove him/her from office;
- 60.8 he/she is removed from office by resolution of the directors on the grounds that he/she is considered to have committed a material breach of the code of conduct for directors in force from time to time (as referred to in article 79);
- 60.9 he/she is removed from office by resolution of the directors on the grounds that he/she is considered to have been in serious or persistent breach of his/her duties under section 66(1) or (2) of the Charities and Trustee Investment (Scotland) Act 2005; or
- 60.10 he/she is removed from office by ordinary resolution (special notice having been given) in pursuance of section 168 of the Act.
- 61 A resolution under paragraph 60.8 or 60.9 shall be valid only if:-
- 61.1 the director who is the subject of the resolution is given reasonable prior written notice by the directors of the grounds upon which the resolution for his/her removal is to be proposed;
- 61.2 the director concerned is given the opportunity to address the meeting of directors at which the resolution is proposed, prior to the resolution being put to the vote; and
- 61.3 at least two thirds (to the nearest round number) of the directors then in office vote in favour of the resolution.

### **Appointments to offices**

- 62 The directors shall elect from among themselves a Chair and a Vice Chair, and such other office bearers (if any) as they consider appropriate, subject to articles 63 and 64.
- 63 A director shall be eligible to hold office as Chair only if he/she is an Independent Director.
- 64 A director shall be eligible to hold office as Chair or Vice Chair for a maximum period of 5 years following which a year must elapse before he/she will be eligible for re-appointment to that office.
- 65 For the purposes of article 64:
- 65.1 the period between the date of appointment of a director to the office of Chair or Vice Chair and the Accounts Sign-off Board Meeting which next follows shall be deemed to be a period of one year, unless it is of less than six months' duration (in which case it shall be disregarded);

- 65.2 if a director ceases to hold office as Chair or Vice Chair but is re-appointed to that office within a period of six months, he/she shall be deemed to have held that office continuously;
- 65.3 the period between one Accounts Sign-off Board Meeting and the Accounts Sign-off Board Meeting which next follows shall be taken to be a period of one year.
- 66 The appointments under article 62 shall be made at meetings of directors.
- 67 Each office shall be held (subject to article 69) until the Accounts Sign-off Board Meeting (as defined in article 58) which next follows the appointment or re-appointment of a director to the relevant office; a director whose period of office expires under this article may (subject to article 64) be re-appointed to that office under article 62 (providing he/she is willing to act).
- 68 Retiral under article 67 shall take place immediately after the relevant annual accounts have been approved by the directors, but on the understanding that the director may subsequently be re-elected to the relevant office at that board meeting.
- 69 The appointment of any director as Chair, or as Vice Chair, or as holder of any other office under article 62, shall terminate if he/she ceases to be a director or if he/she resigns from that office by notice to the company.
- 70 If the appointment of a director to any office under article 62 terminates, the directors shall appoint another director to hold the office in his/her place.

#### **Directors' interests**

- 71 Subject to the provisions of the Act and of article 8 (as read with article 9) and provided that he/she has disclosed to the directors the nature and extent of any personal interest which he/she has (unless immaterial) and has complied with the code of conduct (as referred to in article 79), a director (notwithstanding his/her office):-
- 71.1 may be a party to, or have some other personal interest in, any transaction or arrangement with the company or any associated company;
- 71.2 may be a party to, or have some other personal interest in, any transaction or arrangement in which the company or any associated company has an interest;
- 71.3 may be a director or secretary of, or have some other personal interest in, any associated company (but on the basis that no director of the company shall receive remuneration – whether from the company or from the associated company - in his/her capacity as a director or secretary of an associated company);
- 71.4 shall not, because of his/her office, be accountable to the company for any benefit which he/she derives from any such office or employment

or from any such transaction or arrangement or from any interest in any such company;

and no such transaction or arrangement shall be liable to be treated as void on the ground of any such interest or benefit.

72 For the purposes of the preceding article, an interest of which a director has no knowledge and of which it is unreasonable to expect him/her to have knowledge shall not be treated as an interest of his/hers; the references to “associated company” shall be interpreted as references to any subsidiary of the company or any other company in which the company has a direct or indirect interest.

73 Without prejudice to article 74, a director may be an elected representative of Perth and Kinross Council; the duty of directors under section 175 of the Act to avoid situations under which they have, or could have, a direct or indirect interest that conflicts, or possibly might conflict, with the interests of the company shall not extend to any such relationship with Perth and Kinross Council.

74 In addition to the authorisation given by article 73, the directors shall be entitled, for the purposes of section 175 of the Act, to authorise (by way of resolution to that effect) any Conflict Situation that may arise (such that the duty of the director concerned, under that section, to avoid conflicts of interest is not infringed) and to amend or vary any such authorisation; the directors may give such authorisation subject to such terms and conditions as they may consider appropriate and reasonable in the circumstances.

75 For the avoidance of doubt, articles 73 and 74 shall not apply to a conflict of interest arising in relation to a transaction or arrangement with the company; any conflict of interest of that nature shall be governed by the provisions of articles 71, 72 and 100 to 105 and the code of conduct referred to in article 79.

76 The directors shall procure that a register of directors' interests is maintained in accordance with the provisions in this regard contained in the code of conduct for directors referred to in article 79.

### **Conduct of directors**

77 It is the duty of each director of the company to take decisions (and exercise his/her other powers and responsibilities as a director) in such a way as he/she considers, in good faith, will be most likely to promote the success of the company in achieving its objects (as set out in article 4) and will be in the interests of the company, and irrespective of any office, post, engagement or other connection which he/she may have with any other body which may have an interest in the matter in question.



- 78 Without prejudice to the principle set out in article 77, each of the directors shall have a duty, in exercising functions as a charity trustee, to act in the interests of the company; and, in particular, must:-
- 78.1 seek, in good faith, to ensure that the company acts in a manner which is in accordance with its purposes;
  - 78.2 act with the care and diligence which it is reasonable to expect of a person who is managing the affairs of another person;
  - 78.3 in circumstances giving rise to the possibility of a conflict of interest between the company and any party responsible for the appointment of that director
    - 78.3.1 put the interests of the company before that of the other party;
    - 78.3.2 where any other duty prevents him/her from doing so, disclose the conflicting interest to the company and refrain from participating in any deliberation or decision of the other directors with regard to the matter in question;
  - 78.4 ensure that the company complies with any direction, requirement, notice or duty imposed under or by virtue of the Charities and Trustee Investment (Scotland) Act 2005.
- 79 Each of the directors shall comply with the code of conduct (incorporating detailed rules on conflict of interest) prescribed by the board of directors from time to time; for the avoidance of doubt, the code of conduct shall be supplemental to the provisions relating to the conduct of directors contained in these articles of association, and the relevant provisions of these articles shall be interpreted and applied in accordance with the provisions of the code of conduct in force from time to time.

#### **Directors' remuneration and expenses**

- 80 No director may serve as an employee of the company, and no director may be given any remuneration by the company for carrying out his/her duties as a director or as Chair or as the holder of any other office under article 62.
- 81 The directors may be paid all travelling and other expenses properly incurred by them in connection with their attendance at meetings of directors, general meetings, meetings of committees of directors or otherwise in connection with the carrying-out of their duties.

#### **Powers of directors**

- 82 Subject to the provisions of the Act and 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.

- 83 No alteration of these articles and no direction given by special resolution 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.
- 84 The powers conferred by article 82 shall not be limited by any special power conferred on the directors by these articles.
- 85 A meeting of directors at which a quorum is present may exercise all powers exercisable by the directors.

#### **Proceedings of directors**

- 86 Subject to the provisions of these articles, the directors may regulate their proceedings as they think fit.
- 87 Any director may call a meeting of the directors or request the secretary to call a meeting of the directors.
- 88 Questions arising at any meeting of directors shall be decided by a majority of votes; the chairperson of a meeting of directors shall be entitled to a second (casting) vote.
- 89 The quorum for the transaction of the business of the directors shall be as follows:
- 89.1 if there is an even number of directors in office - one half of the total number of directors then in office, plus one;
- 89.2 if there is an odd number of directors in office – one half (rounded upwards) of the total number of directors then in office.
- 90 If the quorum required under article 95 is not present within half an hour after the time appointed for the meeting, or if during a meeting such a quorum ceases to be present, the meeting shall stand adjourned to such time and place as may be fixed by the chairperson of the meeting.
- 91 A director may participate in a meeting of the directors or a meeting of a committee of directors by means of a conference telephone, video conferencing facility or similar communications equipment whereby all the directors participating in the meeting can hear each other; a director participating in a meeting in this manner shall be deemed, for the purposes of calculating the quorum, to be present in person at the meeting.
- 92 The continuing directors or a sole continuing director may act notwithstanding vacancies, but if the number of remaining directors is less than the number fixed as the quorum they may act only for purposes connected with the filling of vacancies or for the purpose of calling a general meeting.
- 93 Unless he/she is unwilling to do so, the Chair of the company shall preside as chairperson at every meeting of directors at which he/she is present; if the Chair is unwilling to act as chairperson of a meeting of directors or is not

present within 15 minutes after the time appointed for the meeting, the Vice Chair shall act as chairperson of the meeting.

- 94 If neither the Chair nor the Vice Chair is present and willing to act as chairperson of the meeting within 15 minutes after the time appointed for holding the meeting, the directors present shall elect one of their number to act as chairperson of the meeting or, if there is only one director present and willing to act, he/she shall be chairperson of the meeting.
- 95 The directors shall allow an officer of Perth and Kinross Council nominated from time to time by Perth and Kinross Council (or, in his/her absence, a substitute nominated from time to time by Perth and Kinross Council) to attend and speak (but not vote) at all meetings of the directors and shall issue to that officer all notices of board meetings, agendas, draft minutes of board meetings and accompanying papers at the same time as they are issued to the directors; the directors shall, however, be entitled to require him/her to absent himself/herself from a meeting of directors during any discussion of matters which, in the reasonable opinion of the directors, involve issues of sensitivity provided that sufficient written notice (of not less than 24 hours) of the sensitive topic(s) to be discussed has been given to that officer (or, in his/her absence, a substitute nominated from time to time by Perth and Kinross Council).
- 96 Without prejudice to the provisions of article 95, the directors shall be entitled to allow any person to attend and speak (but not vote) at any meeting of the directors.
- 97 A person invited to attend a meeting of the directors under article 95 or 96 shall not be entitled to exercise any of the powers of a director, and shall not be deemed to constitute a director for the purposes of the Act or any provision of these articles.
- 98 All acts done by a meeting of directors or by a meeting of a committee of directors or by a person acting as a director shall, notwithstanding that it is afterwards discovered that there was a defect in the appointment of any director or that any of them was disqualified from holding office or had vacated office or was 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.
- 99 A resolution in writing signed by all the directors 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; it may consist of several documents in the same form, each signed by one or more directors.
- 100 Subject to article 102, a director shall not vote at a meeting of directors or at a meeting of a committee of directors on any resolution concerning a matter in which he/she has, directly or indirectly, a personal interest or duty (unless immaterial) which conflicts or may conflict with the interests of the company.

- 101 For the purposes of the preceding article:-
- 101.1 an interest of a person who is taken to be connected with a director for any purpose of the Act, shall be treated as a personal interest of the director; and
- 101.2 a director shall (subject to article 102) be deemed to have a personal interest in relation to a particular matter if a body in relation to which he/she is an employee, director, member of the management committee, officer or elected member has an interest in that matter.
- 102 A Council Director shall, notwithstanding the provisions of article 100 and paragraph 101.2 of article 101, be entitled to vote in relation to a particular matter notwithstanding that Perth and Kinross Council has an interest in that matter; but on the basis that in exercising their voting rights in respect of any such matter, the Council Directors shall comply with the provisions of articles 77, 78 and 79.
- 103 A director shall not be counted in the quorum present at a meeting in relation to a resolution on which he/she is not entitled to vote.
- 104 The company may (subject to the Charities and Trustee Investment (Scotland) Act 2005) by ordinary resolution suspend or relax to any extent, either generally or in relation to any particular matter, the provisions of articles 100 to 103.
- 105 If a question arises at a meeting of directors or at a meeting 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 chairperson of the meeting; his/her ruling in relation to any director other than himself/herself shall be final and conclusive.

#### **Delegation to committees of directors and holders of offices**

- 106 The directors may delegate any of their powers to any committee consisting of two or more directors; they may also delegate to the Chair or a director holding any other office such of their powers as they consider appropriate.
- 107 Any delegation of powers under the preceding article may be made subject to such conditions as the directors may impose and either collaterally with or to the exclusion of their own powers and may be revoked or altered.
- 108 Subject to any condition imposed in pursuance of the preceding article, the proceedings of a committee consisting of two or more directors shall be governed by the articles regulating the proceedings of meetings of directors so far as they are capable of applying.
- 109 In addition to their powers under article 106, the directors may delegate their powers to any committee consisting of one or more directors and such other individuals (who need not be directors or employees of the company) as the directors may consider appropriate; the provisions of articles 107 and 108 shall apply in relation to any such committee, subject to the qualification that

the role of any committee formed under the preceding provisions of this article shall be limited (except to the extent that the directors otherwise determine) to the issue of reports and recommendations for consideration by the board of directors.

### **Nominations Committee**

- 110 The directors shall establish a committee (referred to in these articles as “**the Nominations Committee**”) to make recommendations to Perth and Kinross Council in relation to the selection of appropriate individuals for appointment, re-appointment and removal of Independent Directors.
- 111 The composition and proceedings of the Nominations Committee shall be governed by such standing orders as may be issued by the directors from time to time.
- 112 In carrying out its functions, the Nominations Committee shall give effect to the following principles:
- 112.1 the Nominations Committee should set an appropriate skills matrix to guide it in selecting and evaluating appropriate candidates, and should review and adjust that skills matrix from time to time;
  - 112.2 nominations for directors falling within the remit of the Nominations Committee should be sought from a range of appropriate sources;
  - 112.3 all expressions of interest should be considered by the Nominations Committee; and
  - 112.4 the Nominations Committee should maintain a register of suitable candidates for future reference

### **Secretary**

- 113 The directors may (notwithstanding the provisions of the Act) appoint a company secretary, and on the basis that the term of office, remuneration (if any), and other terms and conditions attaching to the appointment of the company secretary shall be as determined by the directors; the company secretary may be removed by the directors at any time.

### **Minutes**

- 114 The directors shall ensure that minutes are made (in books kept for the purpose) of all proceedings at general meetings, meetings of the directors and meetings of committees of directors; a minute of a meeting of directors or of a committee of directors shall include the names of the directors present, and the minutes of each meeting shall be signed by the chairperson of that meeting.

## **Accounts**

- 115 Accounting records shall be kept in accordance with all applicable statutory requirements and such accounting records shall, in particular, contain entries from day to day of all sums of money received and expended by the company and the matters in respect of which such receipt and expenditure take place and a record of the assets and liabilities of the company; such accounting records shall be open to inspection at all times by any director of the company.
- 116 The directors shall ensure that proper accounting records are maintained in accordance with all applicable statutory requirements.
- 117 The directors shall prepare annual accounts, complying with all relevant statutory requirements.
- 118 No member shall (as such) have any right of inspecting any accounting records or other book or document of the company except as conferred by statute or as authorised by the directors or by ordinary resolution of the company.

## **Notices**

- 119 Any notice to be given in pursuance of these articles shall be in writing.
- 120 The company may give any notice to a member in pursuance of these articles either personally or by sending it by post in a pre-paid envelope addressed to the member at its registered address or by leaving it at that address; alternatively, in the case of a member which has notified the company of an electronic address to be used for this purpose, the company may give any notice to that member by electronic means.
- 121 Any notice, if sent by post, shall be deemed to have been given at the expiry of twenty four hours after posting; for the purpose of proving that any notice was given, it shall be sufficient to prove that the envelope containing the notice was properly addressed and posted.
- 122 Any notice sent by electronic means shall be deemed to have been given at the expiry of 24 hours after it is sent; for the purpose of proving that any notice sent by electronic means was indeed sent, it shall be sufficient to provide any of the evidence referred to in the relevant guidance issued from time to time by the Chartered Institute of Secretaries and Administrators.
- 123 A member may give any notice to the company either by sending it by post in a pre-paid envelope addressed to the company at its registered office or by leaving it, addressed to the company secretary, at the company's registered office.
- 124 A member present or represented at any meeting of the company shall be deemed to have received notice of the meeting and, where requisite, of the purposes for which it was called.

## **Winding-up**

- 125 If on the winding-up of the company any property remains after satisfaction of all the company's debts and liabilities, such property shall be paid or transferred to Perth and Kinross Council to be used solely for a charitable purpose or charitable purposes.
- 126 To the extent that effect cannot be given to article 125, the relevant property shall be applied to some charitable purpose or purposes.

## **Indemnity**

- 127 Every director or other officer or auditor of the company shall be indemnified (to the extent permitted by sections 232, 234, 235, 532 and 533 of the Act) out of the assets of the company against any loss or liability which he/she may sustain or incur in connection with the execution of the duties of his/her office including, without prejudice to that generality (but only to the extent permitted by those sections of the Act) any liability incurred by him/her in defending any proceedings, whether civil or criminal, in which judgement is given in his/her favour or in which he/she is acquitted or in connection with any application in which relief is granted to him/her by the court from liability for negligence, default, breach of duty or breach of trust in relation to the affairs of the company.
- 128 For the avoidance of doubt, the company shall be entitled (subject to the provisions of section 68A of the Charities and Trustee Investment (Scotland) Act 2005) to purchase and maintain insurance against any loss or liability which any director or other officer of the company may sustain or incur in connection with the execution of the duties of his/her office; and such insurance may (subject to the provisions of section 68A of the Charities and Trustee Investment (Scotland) Act 2005) extend to liabilities of the nature referred to in section 232(2) of the Act (negligence etc. of a director).