

THE COMPANIES ACT 2006
PRIVATE COMPANY LIMITED BY GUARANTEE
AND NOT HAVING A SHARE CAPITAL
MEMORANDUM AND ARTICLES OF ASSOCIATION
of
HIGH LIFE HIGHLAND

THE COMPANIES ACT 2006

PRIVATE COMPANY LIMITED BY GUARANTEE

AND NOT HAVING A SHARE CAPITAL

MEMORANDUM OF ASSOCIATION OF

HIGH LIFE HIGHLAND

Each subscriber to this memorandum of association wishes to form a company under the Companies Act 2006 and agrees to become a member of the company.

Name of each subscriber

Authentication by each subscriber

THE HIGHLAND COUNCIL

Dated: 19 December 2013

THE COMPANIES ACT 2006

PRIVATE COMPANY LIMITED BY GUARANTEE

AND NOT HAVING A SHARE CAPITAL

ARTICLES OF ASSOCIATION

of

HIGH LIFE HIGHLAND

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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 “electronic form” has the meaning given in section 1168 of the Act;
 - 2.7 “OSCR” means the Office of the Scottish Charity Regulator;
 - 2.8 “property” means any property, heritable or moveable, real or personal, wherever situated; and
 - 2.9 “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 arts, heritage, culture and science;
 - 4.2 To advance public participation in sport;
 - 4.3 To provide recreational facilities, and organise recreational activities, with such facilities/activities being made available to members of the public at large, with the object of improving their conditions of life;
 - 4.4 To advance education;
 - 4.5 To advance health;
 - 4.6 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);
 - 4.7 To relieve those in need by reason of age, ill health, disability, financial hardship or other disadvantage;

- 4.8 To advance such similar charitable purposes as the directors may consider appropriate from time to time, through the provision of services (including those entrusted to it by The Highland Council), which contribute to advancing wellbeing (primarily the wellbeing of residents of the area served by The Highland Council) including the operation, management, development and (where appropriate) delivery of the following facilities and services:-
- (a) services which meet the needs of young people;
 - (b) adult learning services;
 - (c) arts and cultural activities and events, artistic programmes, research programmes and educational projects;
 - (d) outdoor educational facilities;
 - (e) art galleries, archives, museums and other facilities which provide public access to collections of works of art, antiquities and objects of scientific interest;
 - (f) libraries and library and archive services;
 - (g) indoor and outdoor sports facilities (including arrangements to facilitate access to such facilities by those on lower incomes or having special needs and to encourage wider participation in healthy exercise);
 - (h) sports activities and events directed towards wider participation in sport; and
 - (i) services which promote health and well-being.

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, local development companies, 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 person 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 Members

10 The liability of the members is limited.

11 Each member 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 payments 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 0 and 17 shall be the members of the company.

13 Membership shall cease on the dissolution, winding-up, striking-off or receivership of the body which constituted the member or on receipt of a notice of retiral of the relevant body from membership under article 18.

14 A member may not transfer its membership to any other individual or body.

Qualifications for membership

15 Subject to article 12, membership shall be open only to The Highland Council.

Application For Membership

16 Any incorporated body eligible for membership under article 15 (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 15 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 16.

Withdrawal From Membership

- 18 Any body which wishes to withdraw from membership 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 that body; 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 and shall ensure that the appropriate entries in the register of members are made immediately after any change in the membership of the company occurs.

General Meetings

- 20 The directors shall convene an annual general meeting in each year (but excluding the year in which the company is formed); the first annual general meeting shall be held not later than 18 months after the date of incorporation of the company.
- 21 Not more than 15 months shall elapse between one annual general meeting and the next.
- 22 The directors must convene a general meeting if there is a valid requisition by members (under section 303 of the Act) or a requisition by a resigning auditor (under section 518 of the Act).
- 23 Subject to the provision of articles 20, 21 and 22, the directors may convene general meetings whenever they think fit.

Notice Of General Meetings

- 24 At least 14 clear days' notice of each general meeting must be given to all the members and directors and (if auditors are in office at the time) to the auditors.
- 25 The reference to "clear days" in article 24 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.
- 26 A notice calling a meeting shall specify the time, date and place of the meeting; it shall (a) indicate the general nature of the business to be dealt

with at the meeting; (b) if a special resolution (see article 43) or a resolution requiring special notice under the Act is to be proposed, state that fact, giving the exact terms of the resolution; and (c) contain a statement informing members of their right to appoint a proxy.

- 27 A notice convening an annual general meeting shall specify that the meeting is to be an annual general meeting.
- 28 Notice of every general meeting shall be given: -
- 28.1 in hard copy form;
- 28.2 (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; or
- 28.3 subject to the company notifying members of the presence of the notice on the website, and complying with the other requirements of section 309 of the Act, by means of a website.

Proceedings At General Meetings

- 29 No business shall be transacted at any meeting unless a quorum is present; one person present and entitled to vote (being a proxy for a member or a duly authorised representative of a member which is a corporate body) shall be a quorum.
- 30 If the quorum required under article 29 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.
- 31 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.
- 32 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.
- 33 Each of the directors shall, notwithstanding that he/she is not a member, be entitled to attend and speak at any general meeting.
- 34 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

- 35 Every member shall have one vote, which may be given either via its duly authorised representative present at the meeting or by proxy.
- 36 A member which wishes to appoint a proxy to vote on its behalf at any meeting:-
- 36.1 shall 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 the member; or
- 36.2 shall send by electronic means to the company at such electronic address as may have been notified to the members 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 36, no account shall be taken of any part of a day that is not a working day.
- 37 An instrument of proxy which does not conform with the provisions of article 36, or which is not lodged or sent in accordance with such provisions, shall be invalid.
- 38 A member shall not be entitled to appoint more than one proxy to attend on the same occasion.
- 39 A proxy appointed to attend and vote at any meeting instead of a member shall have the same right as the member which appointed him/her to speak at the meeting and need not be a member of the company.
- 40 A member which is an incorporated body may authorise an individual to act as its representative at any general meeting of the company, providing particulars of the individual so authorised and of the body which he/she is to represent 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 the member which he/she represents as that incorporated body could exercise if it were an individual member.
- 41 The chairperson of a meeting shall not be entitled to a casting vote if an equality of votes arises in relation to any resolution.
- 42 A vote given by proxy or by the duly authorised representative of a member which is an incorporated body 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 the members for the purpose of electronic communication) before the commencement of the meeting or adjourned meeting at which the vote was given.

Special Resolutions And Ordinary Resolutions

43 For the purposes of these articles, a “special resolution” means a resolution of the members, which is either (a) passed by 75% or more of the votes cast on the resolution at a general meeting, providing proper notice of the meeting and of the intention to propose the resolution has been given in accordance with articles 24 to 28 (for the avoidance of doubt, the reference to a 75% majority relates only to the number of votes cast in favour of the resolution as compared with the number of votes cast against the resolution and accordingly no account shall be taken of abstentions or members absent from the meeting); or (b) passed by members representing not less than 75% of the total voting rights of eligible members when passed by way of a written resolution, in accordance with articles 46 to 49.

44 In addition to the matters expressly referred to elsewhere in these articles, the provisions of the Act allow the company, by special resolution:-

44.1 to alter its name; and

44.2 to alter any provision of these articles or adopt new articles of association.

45 For the purposes of these articles, an “ordinary resolution” means a resolution of the members, which is either (a) passed by majority vote (taking account only of those votes cast in favour as compared with those votes cast against), at a general meeting, providing proper notice of the meeting has been given in accordance with articles 24 to 28; or (b) passed by members representing a simple majority of the total voting rights of eligible members, when passed by way of a written resolution in accordance with articles 46 to 49.

Written Resolutions

46 A written resolution can be passed by the members of the company (having been proposed by either the members 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 members of the company in general meeting; a written resolution is passed when the required majority of eligible members have signified their 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 the member's agreement to it.

47 For the purposes of the preceding article: -

47.1 the reference to “eligible members” is to those members who would have been entitled to vote on the resolution on the circulation date of the resolution (which is either (a) the date on which copies of the

written resolution are sent or submitted to the members in accordance with the procedures detailed in Chapter 2 of Part 13 of the Act; or (b) if copies are sent or submitted to members on different days, the first of those dates);

47.2 the reference to “required majority” is to the majority required to pass an ordinary or a special resolution under the Act, as follows: -

47.2.1 in order to pass an ordinary resolution by way of written resolution, it must be passed (in accordance with article 46) by members representing a simple majority of the total voting rights of eligible members;

47.2.2 in order to pass a special resolution by way of written resolution, it must be passed (in accordance with article 46) by members representing not less than 75% of the total voting rights of eligible members and the resolution must specifically state that it was proposed as a special resolution.

48 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 46.

49 For the purposes of article 46, a proposed written resolution will lapse if it is not passed before the end of a period of 28 days beginning with the circulation date (as defined in article 47) and the agreement of any member to a written resolution will be ineffective if signified after the expiry of that period.

Categories Of Director

50 For the purposes of these articles:-

“**Council Director**” means a director appointed or re-appointed under articles 53 to 55;

“**Independent Director**” means a director appointed or re-appointed under articles 56 to 59.

Number Of Directors

51 The maximum number of directors shall be 12; out of that number

51.1 a maximum of 4 directors shall be Council Directors; and

51.2 a maximum of 8 directors shall be Independent Directors.

Composition Of The Board: General

52 The composition of the board shall reflect the following principles:-

- 52.1 an individual shall not be eligible for appointment as a director if he/she is an employee of the company;
- 52.2 the Nominations Committee shall, without displacing its primary focus on the skills that candidates would bring to the board, take account, in the course of carrying out its functions, of (a) the desirability of having some degree of representation at board level from each of the main geographical areas served by the company and (b) principles of good practice as regards equalities.

Appointment, Removal, Retirement: Council Directors

- 53 Subject to articles 51, 52 and 55, The Highland 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:-
 - 53.1 appoint any elected member of The Highland Council who is willing so to act to be a director (a “Council Director”); or
 - 53.2 remove any Council Director from office as a director.
- 54 Any appointment or removal of a director under article 53 shall have effect from the date on which the relevant notice is given to the company.
- 55 The powers conferred by article 53 shall be deemed to be limited such that no more than 4 individuals appointed by The Highland Council may hold office as Council Directors at any given time.

Appointment, Removal: Independent Directors

- 56 Subject to articles 51, 52 and 58, The Highland 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:-
 - 56.1 appoint any person (other than an elected member, officer or employee of Highland Council) who is willing so to act to be a director (an “Independent Director”); or
 - 56.2 remove any Independent Director from office as a director.
- 57 Any appointment or removal of a director under article 56 shall have effect from the date on which the relevant notice is given to the company.
- 58 The powers conferred by article 56 shall be deemed to be limited such that:-
 - 58.1 no more than 8 individuals appointed by The Highland Council may hold office as Independent Directors at any given time;
 - 58.2 the Independent Directors shall be appointed on the basis of their having skills and experience which, in the opinion of The Highland Council, would allow them to make a substantial contribution to the work of the board of directors.

- 59 The Highland Council shall be guided by the Nominations Committee (as defined in article 114) in relation to the selection of appropriate individuals for appointment/reappointment as Independent Directors.
- 60 The directors of the company shall endeavour to establish the Nominations Committee within a reasonable period after the incorporation of the company; until such time as it is established, the reference in article 59 to The Highland Council being guided by the Nominations Committee shall be disregarded.

Retirement: Independent Directors

- 61 At the conclusion of each annual general meeting, two of the Independent Directors shall retire from office, but shall then be eligible for re-appointment under article 56.
- 62 The question of which Independent Directors are to retire under article 61 at a given annual general meeting shall be determined at a board meeting held six months or more in advance of the anticipated date of that annual general meeting, on the basis of the following principles:
- (a) any Independent Director may put himself/herself forward for retirement at the forthcoming annual general meeting;
 - (b) if no Independent Director puts himself/herself forward for retirement at the forthcoming annual general meeting, the Independent Directors who are to retire at that annual general meeting shall be the two Independent Directors who have been longest in office since they were last appointed/re-appointed; and on the basis that as between individuals who were last appointed/re-appointed on the same date, the question of which of them is to retire shall be determined by some random method conducted at the board meeting;
 - (c) if only one Independent Director puts himself/herself forward for retirement at the forthcoming annual general meeting, the other Independent Director who is to retire at that annual general meeting shall be the Independent Director (out of those remaining) who has been longest in office since he/she was last appointed/re-appointed; and on the basis that as between individuals who were last appointed/re-appointed on the same date, the question of which of them is to retire shall be determined by some random method conducted at that board meeting;
 - (d) if two Independent Directors put themselves forward for retirement at the forthcoming annual general meeting, they will retire from office at the forthcoming annual general meeting accordingly;
 - (e) if more than two Independent Directors put themselves forward for retirement at the forthcoming annual general meeting, the question of which of them is to retire shall be determined by some random method conducted at the board meeting.

- 62A. At the board meeting referred to in article 62, as soon as the question of which Independent Directors are to retire under article 61 at the forthcoming annual general meeting has been determined, each of those two Independent Directors shall intimate whether or not he/she is willing to be re-appointed with effect from the conclusion of that annual general meeting.
- 62B. The chairperson of the board meeting referred to in article 62 shall formally declare at the board meeting the names of the two Independent Directors who are to retire from office at the forthcoming annual general meeting, and whether or not (based on the intimations under article 62A) each of them is willing to be re-appointed with effect from the conclusion of that annual general meeting; any such declaration shall be final and conclusive and (for the avoidance of doubt) it shall not be open to any Independent Director to withdraw, after that declaration has been made, his/her statement of willingness to retire at the forthcoming annual general meeting nor his/her intimation of willingness to be re-appointed with effect from the conclusion of that annual general meeting except (in either case) in exceptional circumstances where the directors have resolved that it would be reasonable for him/her to do so.
- 62C. Immediately after the conclusion of the board meeting referred to in article 62, the directors shall request the Nominations Committee to address the question of which individuals should be appointed/re-appointed as Independent Directors with effect from the conclusion of the forthcoming annual general meeting (advising the Nominations Committee at the same time of which (if any) of the retiring Independent Directors are willing to be re-appointed, on the basis of the intimations given under article 62A), and on the basis that the Nominations Committee should be asked to make recommendations to The Highland Council in that regard in good time to enable the appropriate decision-making processes within The Highland Council to be carried through and completed prior to the annual general meeting.
- 63 For the avoidance of doubt, there shall be no limit on the number of occasions on which a given Independent Director can be re-appointed under article 56.

Disqualification And Removal Of Directors

- 64 A director shall vacate office if:-
- 64.1 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);
 - 64.2 he/she is sequestrated;
 - 64.3 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;

- 64.4 the body which appointed him/her ceases to be a member of the company;
 - 64.5 in the case of a Council Director, he/she ceases to be an elected member of The Highland Council;
 - 64.6 he/she becomes an employee of the company;
 - 64.7 he/she resigns office by notice to the company;
 - 64.8 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;
 - 64.9 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 81);
 - 64.10 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
 - 64.11 he/she is removed from office by ordinary resolution (special notice having been given) in pursuance of section 168 of the Act.
- 65 A resolution under paragraph 64.9 or 64.10 shall be valid only if:-
- 65.1 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;
 - 65.2 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
 - 65.3 at least two thirds (to the nearest round number) of the directors then in office vote in favour of the resolution.

Appointments To Offices

- 66 The directors shall elect from among themselves a Chair, a Vice Chair and such other office bearers (if any) as they consider appropriate.
- 67 The appointments under article 66 shall be made at meetings of directors.
- 68 Each office shall be held (subject to article 71) until the conclusion of the second annual general meeting which follows the date of appointment of an individual to the relevant office; a director whose period of office expires under this article may (subject to article 69) be re-appointed to that office under article 66 (providing he/she is willing to act).

- 69 A director who has held an office under article 66 for a period of four consecutive years shall not be eligible for re-appointment to that office until a further period of one year has elapsed.
- 70 For the purposes of article 69:-
- 70.1 the period between the date of appointment of a director to an office under article 66 and the annual general 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);
- 70.2 the period between one annual general meeting and the next shall be deemed to be a period of one year;
- 70.3 if a director ceases to hold office under article 66 but is re-appointed to that office within a period of six months, he/she shall be deemed to have held that office continuously.
- 71 The appointment of any director as Chair, Vice Chair or as holder of any other office under article 66, shall terminate if he/she ceases to be a director or if he/she resigns from that office by notice to the company.
- 72 If the appointment of a director to any office under article 66 terminates, the directors shall appoint another director to hold the office in his/her place.

Directors' Interests

- 73 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 81), a director (notwithstanding his/her office):-
- 73.1 may be a party to, or have some other personal interest in, any transaction or arrangement with the company or any associated company;
- 73.2 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;
- 73.3 may be a director or secretary of, or employed by, or have some other personal interest in, any associated company;
- 73.4 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.

- 74 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.
- 75 Without prejudice to article 76, a director may be an elected representative of The Highland 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 The Highland Council.
- 76 In addition to the authorisation given by article 75, 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.
- 77 For the avoidance of doubt, articles 75 and 76 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 73, 74 and 101 to 106 and the code of conduct referred to in article 81.
- 78 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 81.

Conduct Of Directors

- 79 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 outlined 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.
- 80 Without prejudice to the principle set out in article 79, 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:-
- 80.1 seek, in good faith, to ensure that the company acts in a manner which is in accordance with its purposes;
- 80.2 act with the care and diligence which it is reasonable to expect of a person who is managing the affairs of another person;

80.3 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

80.3.1 put the interests of the company before that of the other party;

80.3.2 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;

80.4 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.

81 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

82 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 66.

83 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

84 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.

85 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.

86 The powers conferred by article 84 shall not be limited by any special power conferred on the directors by these articles.

87 A meeting of directors at which a quorum is present may exercise all powers exercisable by the directors.

Proceedings Of Directors

- 88 Subject to the provisions of these articles, the directors may regulate their proceedings as they think fit.
- 89 Any director may call a meeting of the directors or request the secretary to call a meeting of the directors.
- 90 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 casting vote.
- 91 The quorum for the transaction of the business of the directors shall (subject to article 92) be 5.
- 92 A quorum shall not be deemed to be constituted at any meeting of the directors unless there is at least one Council Director and at least one Independent Director present at the meeting.
- 93 If the quorum required under article 91 (as read with article 92) 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.
- 94 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 (but shall be deemed to be absent from the meeting without permission of the directors for the purposes of paragraph 63.8).
- 95 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 vacancies or for the purpose of calling a general meeting.
- 96 Unless he/she is unwilling to do so, the Chair of the board of directors 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.
- 97 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.

- 98 The directors shall be entitled to allow any person to attend and speak (but not vote) at any meeting of the directors; a person invited to attend a meeting of the directors under the preceding provisions of this article 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.
- 99 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.
- 100 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.
- 101 Subject to article 103, 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.
- 102 For the purposes of the preceding article:-
- 102.1 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
- 102.2 a director shall (subject to article 103) 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 representative has an interest in that matter.
- 103 A Council Director shall, notwithstanding the provisions of article 101 and paragraph 102.2 of article 102, be entitled to vote in relation to a particular matter notwithstanding that The Highland 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 79, 80 and 81.
- 104 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.
- 105 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 101 to 104.

- 106 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

- 107 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.
- 108 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.
- 109 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.
- 110 In addition to their powers under article 107, 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 108 and 109 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.

Finance And Audit Committee

- 111 The directors shall establish a committee (referred to in these articles as “the Finance and Audit Committee”) to assist the board of directors in fulfilling its responsibilities with regard to oversight of (a) the company's financial statements and auditing, accounting and related reporting processes and (b) the company's systems of internal control regarding finances, accounting and financial reporting.
- 112 The Finance and Audit Committee shall comprise
- 112.1 the chief executive of the company, the principal finance officer of the company and the head of resources of the company;
 - 112.2 one Council Director;
 - 112.3 one Independent Director; and

- 112.4 such other individuals (if any) - who need not be directors of the company - as the directors may determine.
- 113 Subject to article 112, the composition and proceedings of the Finance and Audit Committee shall be governed by such standing orders as may be issued by the directors from time to time.

Nominations Committee

- 114 The directors shall establish a committee (referred to in these articles as “the Nominations Committee”) to make recommendations to The Highland Council in relation to the selection of appropriate individuals for appointment as Independent Directors.
- 115 The members of the Nominations Committee shall comprise:
- 115.1 one Council Director;
 - 115.2 one Independent Director; and
 - 115.3 two further individuals (not being directors of the company) with specialist expertise (one of whom shall be a senior officer of The Highland Council and the other shall have expertise in the leisure and/or culture sectors).
- 116 Subject to article 115, 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.
- 117 In carrying out its functions, the Nominations Committee shall give effect to the following principles:-
- 117.1 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;
 - 117.2 nominations for directors falling within the remit of the Nominations Committee should be sought from a range of appropriate sources;
 - 117.3 all expressions of interest should be considered by the Nominations Committee; and
 - 117.4 the Nominations Committee should maintain a register of suitable candidates for future reference

Secretary

- 118 The directors shall (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

- 119 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

- 120 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.
- 121 The directors shall ensure that proper accounting records are maintained in accordance with all applicable statutory requirements.
- 122 The directors shall prepare annual accounts, complying with all relevant statutory requirements.
- 123 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

- 124 Any notice to be given in pursuance of these articles shall be in writing.
- 125 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.
- 126 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.
- 127 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.

- 128 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.
- 129 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

- 130 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 The Highland Council to be used solely for a charitable purpose or charitable purposes.
- 131 To the extent that effect cannot be given to article 130, the relevant property shall be applied to some charitable purpose or purposes.

Indemnity

- 132 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.
- 133 For the avoidance of doubt, the company shall be entitled 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 extend to liabilities of the nature referred to in section 232(2) of the Act (negligence etc. of a director).