

Summary of Key Matters – Draft Members Agreement/Draft Articles of Association

The incorporation of the Company will involve the Council agreeing, as a founding member, 2 principle documents. The first being the articles of association which is the legal constitutional document of the corporation which sets out how the company is constituted and the basic rules around how the company will be run. The second is a Members' agreement, this is a "private" contract between the member councils which regulates the relationship between them. Whilst you do not have to have a members' agreement it is a very common document in these kind of joint venture type arrangements

The key points to note for the documents are as follows:

Articles:

- The company will be established as a company limited by guarantee, to this end in principle, the council will only be liable for the amount of the guarantee (being £1) should the company be wound up. This should however, be separated from the prospect of repayment of any sums loaned to the company which would also be at risk in the situation where the company is wound up.
- The board of directors shall be 11, made up of 6 independent directors and 5 directors appointed by the councils, each council having the power to appoint a director and remove that director. The Chair shall be an independent director but will not have a casting vote.
- The independent directors will be appointed following a transparent process and subject to the approval of members in accordance with the Members' agreement.
- Where any decision is reserved to the member councils (rather than the board of directors) then the members will have weighted voting rights. With each County having a vote representing 33% of the rights and each district having a vote which has 11% of the rights.

Members' Agreement:

- At present the agreement obliges the company to apply to MHLG for all the funds required by the Company. Once the MHCLG funding has been determined the Members will be asked what level of contribution they will be willing to make.
- Contributions will either be given as a grant or the loan. The Members' lawyers are discussing the best route to provide such a contribution, however even under a loan agreement repayments are likely to be minimal.

- The council may withdraw from the agreement and membership of the company by giving not less than 12 months' notice.
- As drafted presently the agreement provides that certain matters are reserved to the member councils to decide upon. These decisions are split into matters requiring all councils to agree to and those which require members holding not less than 75% of the voting rights (both county councils and at least 1 district council) to agree to. The list requiring unanimity only includes a decision around formally constituting the statutory development company. The Councils' lawyers are seeking to include, approval and material variation of the business plan, appointment and removal of the independent directors and any variation of the voting rights of the members in the articles of association.
- The Members shall determine the business plan for the company which the Directors will enact. In this way the Members will set the scope and objectives for the company over the next three years, with an annual refresh.

REFERENCE