

EAST HERTS COUNCIL

NON-KEY DECISION – 17/15

REPORT BY THE EXECUTIVE MEMBER FOR FINANCE AND
SUPPORT SERVICES

APPROVAL OF THE FINAL VERSION OF THE COUNCIL'S
PROPERTY INVESTMENT COMPANY'S MEMORANDUM AND
ARTICLES OF ASSOCIATION

WARD(S) AFFECTED: ALL

Purpose/Summary of Report

- This report concerns the non-key decision by the Executive Member for Finance and Support Services, acting in consultation with the Head of Legal and Democratic Services and Head of Housing and Health, to approve the final version of the Memorandum and Articles of Association of the council's Property Investment Company.

RECOMMENDATION FOR DECISION: That:

(A)	the document constituting the Memorandum and Articles of Association for the Council's Property Investment Company attached at Essential Reference Paper B be approved.
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1.0 Background

1.1 At its meeting of 5th September 2017, the Executive approved the establishment of a Property Investment Company, to be registered in due course as Millstream Property Investments Limited.

1.2 At the same meeting, the Executive approved a draft version of the Memorandum and Articles of Association (herein termed 'the Articles') for the company with the approval of the final version delegated to the Executive Member for Finance and Support Services, acting in consultation with the Head of Legal and Democratic Services and Head of Housing and Health.

2.0 Report

- 2.1 To be registered at Companies House, the company needs to have a written Memorandum and Articles of Association. The company's Articles have been drafted by the council's Legal Services Manager and Head of Housing and Health. The Articles adopt the Model Articles of Association for Private Companies Limited by Shares as available on the 'Starting a company' pages on the gov.uk website. The Model Articles have been varied, deleted or replaced where appropriate to reflect the specific requirements of the council's wholly-owned company.
- 2.2 Since the draft version was considered by the Executive at its meeting on 5 September 2017, the draft Articles have been reviewed by Hertfordshire County Council's Legal Team to check their coverage, applicability and clarity.
- 2.3 The following amendments to the Articles previously considered by the Executive have been made following the County's Legal Team's review.

Hertfordshire County Council's Legal Team's comment / suggestion	Amendment to the draft Articles
No reference in the Articles to the Company's Objects; it could be prudent to do so to ensure that the directors operate the business in alignment with the Recommendations. As future potential plans, such as property development, evolve the Articles could be changed	New paragraph 1.12 added: <i>The objects of the Company are to acquire or develop residential and commercial property to be let, leased out, managed or disposed of by the Company.</i>
The requirement in Article 17 for there to always be 3 Core Directors is consistent with the Recommendation but you may wish to consider a mechanism in order to create some 'wriggle room' in order to pre-empt any practical difficulties around achieving this number at all times, particularly given that the appointment of a replacement may take a little while.	Paragraph 17.1 amended to read [addition in italics]: The number of Core Directors shall not be less than nor more than three, <i>save for any period before the appointment of the first Core Directors or between subsequent appointments.</i>
No express provision stating that an alternate for a Core Director must be an EHDC employee; nor any control over alternates for Independent Directors (if	Paragraph 17.7 amended to read [deletion in italics]: A Director (other than an Alternate Director) (the Appointor) may appoint any

<p>this is required).</p>	<p>person (whether or not a Director) other than an existing Director to be an alternate Director to exercise the Appointor's powers, and carry out the Appointor's responsibilities, in relation to the taking of decisions by the Directors, in the absence of the Appointor.</p> <p>[NOTE: this should be read in conjunction with the unchanged paragraph 17.12(c):</p> <p>Except as the Articles specify otherwise, alternate Directors:... (c) are subject to the same restrictions as their Appointors...]</p>
<p>Further clarification of the reasons for a person ceasing to be Director recommended</p>	<p>Paragraph 18.1 amended to read [addition in italics]:</p> <p>A person ceases to be a Director as soon as...</p> <p>(g) any Director who is an employee of the Company ceases to be an employee <i>of the Company</i></p> <p>(h) <i>any Core Director who is an employee of East Herts Council ceases to be an employee of East Herts Council.</i></p>
<p>Article 34 will need to align with the Shareholder Agreement and vice versa. [NOTE: this concerns the power to the Company to recommend to the Shareholder a non-cash distribution of dividends]</p>	<p>Paragraph 34.1 amended to read [addition in italics]:</p> <p>Subject to the terms of issue of the Share in question <i>and the Company's annual business plan</i>, the company may, by Ordinary Resolution on the recommendation of the Directors, decide to recommend to the Shareholder that all or part of a dividend or other distribution payable in respect of a Share be Paid by transferring non-cash assets of equivalent value (including, without limitation, Shares or other securities in any company).</p> <p>[NOTE: this accommodates the County's Legal Team's suggestion as the content of the Company's annual business plan is reserved for the Shareholder; this is enshrined in the Shareholder Agreement]</p>

2.4 The final version of the Articles is attached at **Essential Reference Paper B**. This final version consists of the draft version considered by the Executive with the amendments listed in the table above included. Once approved, these Articles will be submitted to Companies House as part of the registration process.

3.0 Implications/Consultations

3.1 Information on any corporate issues and consultation associated with this report can be found within **Essential Reference Paper 'A'**.

Background Papers

None

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