



**BROMSGROVE DISTRICT COUNCIL**

**MEETING OF THE COUNCIL**

WEDNESDAY 30TH JUNE 2010, AT 6.00 P.M.

THE COUNCIL HOUSE, BURCOT LANE, BROMSGROVE

**SUPPLEMENTARY DOCUMENTATION**

The attached papers were specified as "to follow", together with an additional item which has been added to the Agenda previously distributed relating to the above mentioned meeting.

4. National Budget Finance Implications (Pages 1 - 6)
5. Appointments to Bromsgrove Arts Centre Trust (Pages 7 - 28)

K. DICKS  
Chief Executive

The Council House  
Burcot Lane  
BROMSGROVE  
Worcestershire  
B60 1AA

25th June 2010

This page is intentionally left blank

## BROMSGROVE DISTRICT COUNCIL

**COUNCIL**

**30<sup>th</sup> JUNE 2010**

---

### **NATIONAL BUDGET FINANCE IMPLICATIONS** **- REMOVAL OF FUNDING FOR FREE SWIMMING**

Relevant Portfolio Holder	Cllr Mike Webb
Relevant Head of Service	Head of Leisure & Cultural Services
Non-Key Decision	

#### **1. SUMMARY OF PROPOSALS**

- 1.1 The following report outlines the removal of the Department of Culture, Media and Sport (DCMS) grant funding for the provision of free swimming for over sixties as from 31<sup>st</sup> July 2010.

#### **2. RECOMMENDATIONS**

- 2.1 Full Council are recommended to:

- 2.1.1 Acknowledge the removal of the grant funding from the DCMS (31k per annum) for over sixties swimming.
- 2.1.2 Instruct officers to remove the free swimming programme as from the 1<sup>st</sup> August 2010 and prepare a promotional campaign to inform residents of this decision and the circumstances in which it was made.
- 2.1.3 Confirm that as part of the reintroduction of charging for over sixties swimming that the current concessions scheme (50%) discount be implemented.

#### **3. BACKGROUND**

- 3.1 On 17 September 2008 Council agreed to accept the offer of funding free swimming for over 60's.
- 3.2 The funding stream was scheduled to run from April 2009 to March 2011 over two consecutive financial years.
- 3.3 On the 17<sup>th</sup> June 2010 all lead leisure officers received notification from Paul Bolt at the DCMS that the funding stream would cease on 31<sup>st</sup> July 2010 as part of the Government's over all exercise to find savings in 2010/11. This was confirmed to all Local Authority (LA) Chief Executives on the 18<sup>th</sup> June 2010.

- 3.4 The DCMS have confirmed that they will honour the grant funding agreed to the 31<sup>st</sup> July 2010 and will write to all LA's to given further detail on the draw down process shortly.

**4. KEY ISSUES**

- 4.1 The key issue contained within this report will relate to:
- 4.1.1 The ongoing provision of the service, given that the funding stream has ceased and the financial implications of doing so.
- 4.1.2 The re-introduction of the Council's current concession scheme for over sixties swimming.
- 4.1.3 The need to produce a full communications plan to ensure that residents understand fully the reasons behind this decision.

**5. FINANCIAL IMPLICATIONS**

- 5.1 There are no direct financial implications at this stage as removal of the free swimming will coincide with the funding finishing. The £31k grant funding had been included in the service budget of the Dolphin Centre, now transferred to Wychavon Leisure. Any reduction in demand will be monitored and reported to Members ( if relevant ) as part of the quarterly financial and performance monitoring statements.

**6. LEGAL IMPLICATIONS**

- 6.1 There are no legal implications contained within this report.

**7. POLICY IMPLICATIONS**

- 7.1 This report asks Members to reverse the policy that was adopted whilst the grant funding was in place and return to the Council's original policy relating to over sixties swimming.

**8. COUNCIL OBJECTIVES**

- 8.1 The current scheme supports the Council's Vision & Values and the Objective of One Community. The removal of the full concession will impact on some customers, this will however be off set by the re-introduction of the 50% concession scheme on site.

**9. RISK MANAGEMENT INCLUDING HEALTH & SAFETY CONSIDERATIONS**

9.1 None within this report.

**10. CUSTOMER IMPLICATIONS**

10.1 Please see section 8.

**11. EQUALITIES AND DIVERSITY IMPLICATIONS**

11.1 None within this report that can be quantified, however anecdotal evidence would suggest that those on lower incomes would be most affected by removal of the provision in its current format.

**12. VALUE FOR MONEY IMPLICATIONS, PROCUREMENT AND ASSET MANAGEMENT**

12.1 None contained within this report.

**13. CLIMATE CHANGE, CARBON IMPLICATIONS AND BIODIVERSITY**

13.1 None contained within this report.

**14. HUMAN RESOURCES IMPLICATIONS**

14.1 None contained within this report.

**15. GOVERNANCE/PERFORMANCE MANAGEMENT IMPLICATIONS**

15.1 None contained within this report

**16. COMMUNITY SAFETY IMPLICATIONS INCLUDING SECTION 17 OF CRIME AND DISORDER ACT 1998**

16.1 None contained within this report

**17. HEALTH INEQUALITIES IMPLICATIONS**

17.1 Please see section 11. However due to the exercise referral system that the Council operates with NHS Worcestershire the impact in this area it is felt would be minimal.

**18. LESSONS LEARNT**

18.1 N/A

**19. COMMUNITY AND STAKEHOLDER ENGAGEMENT**

19.1 N/A

**20. OTHERS CONSULTED ON THE REPORT**

Portfolio Holder	YES
Chief Executive	YES
Executive Director (S151 Officer)	YES
Executive Director – Leisure, Cultural, Environmental and Community Services	YES
Executive Director – Planning & Regeneration, Regulatory and Housing Services	NO
Director of Policy, Performance and Partnerships	NO
Head of Service	YES
Head of Resources	NO
Head of Legal, Equalities & Democratic Services	YES
Corporate Procurement Team	NO

**21. WARDS AFFECTED**

All Wards

**22. APPENDICES**

**23. BACKGROUND PAPERS**

1. Cabinet report of the 3<sup>rd</sup> September 2008 – Free Swimming Scheme/Grant – 2009/10 & 2010/11.

**24. KEY**

**AUTHOR OF REPORT**

Name: John Godwin  
E Mail: [j.godwin@bromsgrove.gov.uk](mailto:j.godwin@bromsgrove.gov.uk)  
Tel: 01527 881730

This page is intentionally left blank

## APPOINTMENTS TO BROMSGROVE ARTS CENTRE TRUST

Organisation	Current representative(s)	Appointments for 2010/11	Length of term
Bromsgrove Arts Centre Trust - charitable company no. 05455644 (5 directors/members to be appointed, 3 for 3 years, 2 for 2 years)	None		3 years 3 years 3 years 2 years 2 years

Further to the Council meeting on 23rd June 2010, the following documents are attached for Member's information:-

1. Cabinet report dated 7th April 2010 – Artrix - Incorporation of Operating Trust
2. Copy of the Memorandum and Articles of Association for Bromsgrove Arts Centre Trust – charitable company number 05455644

This page is intentionally left blank

**BROMSGROVE DISTRICT COUNCIL**

**CABINET**

**7 APRIL 2010**

**ARTRIX - INCORPORATION OF OPERATING TRUST**

Responsible Portfolio Holder	Councillor Mike Webb
Responsible Head of Service	John Godwin
Non-Key Decision	

**1. SUMMARY**

1.1 This report informs Members about the proposal of the Bromsgrove Arts Centre Trust (the Operating Trust) to become a charitable company limited by guarantee. The Incorporation of the Operating Trust will require some consequential amendments to the lease and the various agreements relating to the Artrix and Members' approval to this is sought.

**2. RECOMMENDATION**

- 2.1 That Members note the proposed incorporation of the Operating Trust;
- 2.2 That Members note the proposed Licence to Assign to be entered into between the Holding Trust, the Operating Trust and the new company;
- 2.3 That Members authorise the Head of Legal, Equalities & Democratic Services to finalise and sign the Deed of Variation in respect of the lease on behalf of the Council;
- 2.3 That Members authorise the Head of Legal, Equalities & Democratic Services to finalise and sign the Deed of Novation of the Overarching Agreement and the Deed of Novation of the Dual User Agreement;
- 2.4 that the Deputy Head of Streetscene & Community (and from 20 April 2010 the Head of Leisure & Cultural Services) be authorised to revise the Service Level Agreement to reflect the transfer from the Operating Trust to the new company.

**3. BACKGROUND**

- 3.1 In 2003 the Council entered into an Agreement ("the Overarching Agreement") with the Trustees of New College, the Trustees of the newly-formed Operating Trust and the Trustees of the newly-formed Bromsgrove Arts Development Trust ("the Holding Trust"). In essence, the Overarching Agreement provides that:
- the Council would be responsible for the construction of the Artrix;

- the freehold of the land would be owned by the Holding Trust (with the Council to hold the land as nominee for the Holding Trust);
- the Holding Trust would lease the land to the Operating Trust by way of the Lease;
- the Holding Trust, the Operating Trust and the College would enter into a Dual User Agreement which determined how the facilities at the Artrix would be used to further the objects of the Operating Trust and the aims of the College for the benefit of the local community.

3.2 The Operating Trust was constituted to have 15 trustees, 5 to be appointed by the Council, 5 by the College and 5 co-opted trustees from the community. To date the Operating Trust has been an unincorporated association acting by its trustees which until recently was the only viable legal vehicle by which it could operate. Following recent changes to charity legislation, the Operating Trust has decided to take advantage of a new option of operating by way of a company limited by guarantee. This will enable the Operating Trust to organise its business in a more efficient manner and, importantly, will remove the personal liability which currently sits with the 15 trustees.

3.3 The new company has been formed under the name of Bromsgrove Arts Centre Trust under company number 05455644 and charity number 1124900 and the Council understands that the Operating Trust intends to transfer its the assets and business to the new company as soon as possible. Officers have given careful consideration to the Memorandum and Articles of the new company, which will have 15 directors, 5 appointed by the Council, 5 by the College and 5 co-opted trustees, and have negotiated at length to ensure that the Council's representation cannot be eroded and to ensure that the Council's interests are preserved.

3.4 Once the transfer takes place the current Operating Trust will be dissolved. Before the transfer to the new company takes place, the trustees of the Operating Trust are personally responsible for any liabilities incurred by the Artrix (ie the Operating Trust) up to the date of transfer (except in respect of the lease – see below). After the date of the transfer, it will be the company which will be responsible for any liabilities incurred by the Artrix (ie the new company).

3.5 In order to effectively substitute the new company for the Operating Trust as lessee and as a party to the various current contractual arrangements it is necessary for the Council to enter into a number of agreements with the parties and authority is sought from Cabinet to authorise the Head of Legal & Democratic services to do so on behalf of the Council. The consent of the Holding Trust will also be required; a meeting of the Holding Trust has been convened and its outcome will be reported at the Cabinet meeting.

**Variation and Assignment of the Lease**

3.6 The parties to the Lease are the Council (as nominee for the Holding Trust), the Operating Trust (as lessee) and the Holding Trust (as lessor). It is

proposed that the new company takes the place of the Operating Trust as lessee; there are a number of mechanisms by which this can be done, but it is now proposed that it should be by way of assignment of the Lease from the Operating Trust to the new company, as this has no Stamp Duty Land Tax or VAT implications for the Council or the Holding Trust. The Lease does not prohibit assignment but it does provide that the Lease can be forfeited if the Operating Trust is dissolved. Therefore the Lease needs to be varied by way of a Deed of Variation to enable the Lease to be assigned to the new company and for the Operating Trust then to be dissolved without the right of forfeiture arising. The Council will be a party to the Deed of Variation as it was a party to the original lease. Officers and solicitors representing the Artrix have spent some considerable time negotiating and by the date of this meeting it is anticipated that a draft Deed of Variation will have been agreed, subject to the approval of Cabinet and the Holding Trust. Approval is sought from Cabinet to authorise the Head of Legal, Equalities & Democratic Services to finalise and sign this document.

- 3.7 A Licence to Assign the Lease needs to be entered into between the Holding Trust, the Operating Trust and the new company. The effect of this will be to absolve the trustees of the Operating Trust from any subsisting non-compliance with the requirements of the lease but instead the new company will become liable not only for any breaches of the Lease subsisting at the date of transfer but also for compliance with the obligations of the Lease after the date of transfer. The Council is not a party to this document.

#### **Overarching Agreement and Dual User Agreement**

- 3.8 The parties to the Overarching Agreement were the Council, the College, the Operating Trust and the Holding Trust. In order that the new company can effectively take the place of the Operating Trust, the parties will need to enter into a Deed of Novation. The effect of this will be that the position of the Council and the College remains unaffected, but any liabilities arising from the date of transfer will attach to the new company. Officers do not think that there are any significant rights or liabilities which continue under this agreement and this Deed is required more for the sake of completeness. Approval is sought from Cabinet to authorise the Head of Legal, Equalities & Democratic Services to finalise and sign the Deed of Variation.
- 3.9 The parties to the Dual User Agreement were the Operating Trust, the Holding Trust and the College. Again it is proposed that a Deed of Novation should be signed effectively to substitute the new company for the current Operating Trust. A draft Deed of Novation has been agreed subject to the approval of Cabinet and the Holding Trust. Approval is sought from Cabinet to authorise the Head of Legal, Equalities & Democratic Services to finalise and sign this document.

#### **Service Level Agreement**

- 3.10 Assuming the transfer proceeds, the Service Level Agreement will need to reflect that the business of the Operating Trust has been transferred to the new company. For the sake of clarity, authority is sought from Cabinet to enable officers to effect the appropriate revisions required to the documentation.

**Council Appointments**

- 3.11 The Council has not formally appointed directors to the new company. The Council appointees to the Operating Trust have been treated as the Council appointments to the new company for the time being; Council will be requested to make formal appointments in the new municipal year.

**4. FINANCIAL IMPLICATIONS**

- 4.1 There are no financial implications for the Council. Those members who sit as trustees will no longer be personally liable for the debts of the Operating Trust.

**5. LEGAL IMPLICATIONS**

- 5.1 The legal implications are set out in the report.

**6. COUNCIL OBJECTIVES**

- 6.1 CO3 – Sense of Community and Well-Being, Priority – Community Events

**7. RISK MANAGEMENT INCLUDING HEALTH & SAFETY CONSIDERATIONS**

There are no risks associated with this report.

**8. CUSTOMER IMPLICATIONS**

- 8.1 The recommendations will only impact upon the Operating Trust and its trustees.

**9. EQUALITIES AND DIVERSITY IMPLICATIONS**

- 9.1 None

**10. VALUE FOR MONEY IMPLICATIONS**

- 10.1 None

**11. CLIMATE CHANGE AND CARBON IMPLICATIONS**

- 11.1 None

**12. OTHER IMPLICATIONS**

Procurement Issues	None
Personnel	None
Governance/Performance Management	None
Community Safety including Section 17 of Crime and Disorder Act 1998	None
Policy	None
Biodiversity	None

**13. OTHERS CONSULTED ON THE REPORT**

Portfolio Holder	Yes
Chief Executive	No
Executive Director - Partnerships and Projects	
Executive Director - Services	
Assistant Chief Executive	
Head of Service	Yes
Head of Financial Services	Yes
Head of Legal, Equalities & Democratic Services	Yes
Head of Organisational Development & HR	No
Corporate Procurement Team	No

**14. WARDS AFFECTED**

All wards

**15. APPENDICES**

None

**16. BACKGROUND PAPERS**

None

**CONTACT OFFICER**

Name: Debbie Warren  
E Mail: d.warren@bromsgrove.gov.uk  
Tel: (01527) 881609

THE COMPANIES ACT 1985 as amended by THE COMPANIES ACT 1989

COMPANY LIMITED BY GUARANTEE AND NOT  
HAVING A SHARE CAPITAL

MEMORANDUM OF ASSOCIATION  
of  
BROMSGROVE ARTS CENTRE TRUST

1. The name of the Company (hereinafter called "the Company") is Bromsgrove Arts Centre Trust.
2. The registered office of the Company shall be situated in England and Wales.
3. The objects for which the Company is established are:
  - 3.1 To advance education in and increase appreciation and understanding of all forms of the arts amongst members of the public including (without limitation) the arts of drama, dance, music and performance and visual arts generally in particular but without limitation:-
    - 3.1.1 by presenting, producing, organising or promoting or procuring to be presented, produced, organised or promoted either alone or with others performances of music, drama, dance or any other form of arts; and
    - 3.1.2 by providing organising or promoting classes and courses in drama, music, painting or any other form of the arts.
  - 3.2 To promote or assist in the provision of facilities for recreation or other leisure-time occupation with the object of improving the conditions of life for members of the public in the interests of social welfare.
4. And the Company shall have the following powers exercisable in furtherance of its said objects but not further or otherwise namely:
  - (a) to present, promote, organise, provide, manage and produce dramas, dance, operas, films, broadcasts, concerts, musical pieces, entertainments, exhibitions, tutorials, seminars, courses and workshops, whether on any premises of the Company or elsewhere.
  - (b) to procure to be written, printed, published and issued gratuitously or otherwise such papers, books, pamphlets or other documents as shall further the above objects.
  - (c) to open and maintain a bank account or bank accounts in the name of the Company.
  - (d) to employ staff and/or agents, and to make provisions for the proper remuneration of any such person including power to make all reasonable and necessary provision for the payment of pensions and superannuation to or on behalf of employees and their widows, widowers and other dependents.
  - (e) to purchase, acquire and obtain interests in the copyrights of or the right to show any opera, play, mime, comedy, drama, dance, film, stage piece or musical composition.

- (f) to enter into agreement with authors, actors, dancers, singers, composers, musicians, producers and script writers.
- (g) subject to such consents as may be required by law to purchase, take on lease or in exchange, hire or otherwise acquire any real or personal property and any rights or privileges which the Company may think necessary for the promotion of its objects and to construct, maintain and alter any buildings or erections necessary for the work of the Company.
- (h) subject to such consents as may be required by law to sell, let, mortgage, dispose of or turn to account all or any of the property or assets of the Company as may be thought necessary for the promotion of its objects.
- (i) to undertake and execute any charitable trusts which may lawfully be undertaken by the Company and may be necessary for its objects.
- (j) subject to such consents as may be required by law to borrow or raise money for the purposes of the Company on such terms and on such security as may be thought fit PROVIDED ALWAYS that the Company shall undertake no permanent trading activities in raising funds to achieve its charitable objects.
- (k) to invest the monies of the Company not immediately required for its purposes in be upon such investments, securities or property as may be thought fit, subject nevertheless to such conditions (if any) and such consents (if any) as may for the time being be imposed or required by law and subject also as hereinafter provided.
- (l) to establish and support or aid in the establishment and support of any charitable Companies or institutions and to subscribe or guarantee money for charitable purposes in any way connected with the purposes of the Company or calculated to further its objects.
- (m) to do all such other lawful things as shall further any or all of the above objects.

PROVIDED THAT:

- (1) In case the Company shall take or hold any property which may be subject to any trusts, the Company shall only deal with or invest the same in such a manner as allowed by law, having regard to such trusts.
- (2) The objects of the Company shall not extend to the regulation of relations between employers and workers or organisations of employers and organisations of workers.
- (3) In case the Company shall take or hold any property subject to the jurisdiction of the Charity Commissioners for England and Wales, the Company shall not sell, mortgage, charge or lease the same without such authority, approval or consent as may be required by law.
- 5. The income and property of the Company, whencesoever derived shall be applied solely towards the promotion of the objects of the Company as set forth in this Memorandum of Association, and no portion thereof shall be paid or transferred directly or indirectly by way of dividend, bonus or otherwise howsoever by way of profit, to the members of the Company and no member of the Board of Directors or Governing Body shall be appointed to any office of the Company paid by salary or fees or receive any remuneration or other benefit in money or money's worth from the Company.

PROVIDED THAT nothing herein shall prevent the payment, in good faith by the Company:

- (A) of reasonable and proper remuneration to any member, officer or servant of the Company for any services rendered to the Company (not being a member of its

Board of Directors), provided nevertheless that a member of the Board of Directors shall be entitled to be reimbursed for any reasonable out-of-pocket expenses incurred in carrying out any business of the Company;

- (B) of interest on money lent by any member of the company or of its Board of Directors or Governing Body at a rate per annum not exceeding 2% less than the base lending rate of a clearing bank to be selected by the Board of Directors or Governing Body; or 3% whichever is the greater;
  - (C) of reasonable and proper rent for premises demised or let by any member of the Company or of its Board of Directors or Governing Body;
  - (D) of fees remuneration or other benefit in money or money's worth to a company of which a member of its Board of Directors or Governing Body may be a member holding not more than one hundredth part of the capital of such company;
6. The liability of the members is limited.
7. Every member of the Company undertakes to contribute to the assets of the Company, in the event of the same being wound up while he or she is a member, or within one year after he or she ceases to be a member, for payment of the debts and liabilities of the Company contracted before he or she ceases to be a member, and of the costs, charges and expenses of winding up, and for the adjustment of the rights of the contributories among themselves, such amount as may be required not exceeding one pound.
8. If upon winding up or dissolution of the Company there remains, after the satisfaction of all its debts and liabilities, any property whatsoever, the same shall not be paid to or distributed among the members of the Company, but shall be given or transferred to some other charitable institution or institutions having charitable objects similar to the objects of the Company, and shall prohibit the distribution of its or their income and property among its or their members to an extent at least as great as is imposed on the Company under or by virtue of Clause 4 hereof such institution or institutions to be determined by the members of the Company at or before the time of dissolution, and if and so far as effect cannot be given to such provision, then to some other charitable object subject to the prior approval of the Charity Commissioners for England and Wales.

**We, the several persons whose names and addresses are written below wish to be formed into a company under this Memorandum of Association.**

**SIGNATURES, NAMES AND ADDRESSES OF SUBSCRIBERS**

Mr Neil Bromley	35 Kings Edwards Road, Malvern Hills, Worcs WR14 4AJ	<i>Neil Bromley</i>
Ms Tricia Burton	46 The Spinney Finchfield, Wolverhampton WB3 9EU	<i>T Burton</i>
Mr Carl Dolan	1A Churchfields Road, Bromsgrove B61 8EB	<i>C Dolan</i>
Mrs June Griffiths	Tre Dhen, 439 Birmingham Road, Bordsley, Redditch B97 6RL	<i>J M L A Griffiths</i>
Ms Sian Hirst	Stonehouse Farm, Dusthouse Lane, Finstall, Bromsgrove B60 3AE	<i>S Hirst</i>
Ron Howells	New College, Blackwood Road, Bromsgrove B60 1PQ	<i>R Howells</i>
Winifred Maton	25 Linthurst, Newtown, Blackwell Bromsgrove B60 1PQ	<i>W Maton</i>
Bill Newnes	17 Planetree Close, Bromsgrove B60 1AW	<i>B Newnes</i>
Dennis Norton	The Forge, Broad Green, Tardebigge, Bromsgrove B60 1LW	<i>D Norton</i>
Dr Mary White	7 Marlborough Avenue, Bromsgrove B60 2PG	<i>M White</i>
Bob Adams	80 Finstall Road, Bromsgrove B60 2EJ	<i>B Adams</i>
Ms Dorothy Wilson	21 Oakfield Drive, Cofton Hackett, Birmingham B45 8AN	<i>D Wilson</i>

**WITNESS TO SIGNATURES**

NAME: *Andrew Woods*

ADDRESS: *39 Kingsholm Road, Gloucestershire GL1 3AL*

SIGNATURE: *A Woods*

DATE: 25 – 04- 08

THE COMPANIES ACT 1985 as amended by THE COMPANIES ACT  
1989

COMPANY LIMITED BY GUARANTEE AND  
NOT HAVING A SHARE CAPITAL

ARTICLES OF ASSOCIATION

of

BROMSGROVE ARTS CENTRE TRUST

GENERAL

1. In these Articles the words standing in the first column of the Table next hereinafter contained shall bear the meaning set opposite to them respectively in the second column thereof, if not inconsistent with the subject or context:

WORDS	MEANINGS
The Act	The Companies Act 1985 as amended by the Companies Act 1989.
The Company	The above-named Company.
The Board of Directors	The Council of Management for the time being of the Company
The Office	The registered office of the Company
The Seal	The common seat of the Company
The United Kingdom	Great Britain and Northern Ireland
Month	Calendar Month
In Writing	Written, printed or lithographed or partly one and partly another, and other modes of representing or reproducing words in a visible form.

And the words importing the singular number only shall include the plural number, and vice versa. Words importing the masculine gender only shall include the feminine gender; and Words importing persons shall include corporations.

Subject as aforesaid, any words or expressions defined in the Act or any statutory modification thereof in force at the date on which these Articles become binding on the Company shall, if not inconsistent with the subject or context, bear the same meanings in these Articles.

2. The number of members with which the Company proposes to be registered is 15 but the Board of Directors may from time to time register an increase in members.
3. A person shall cease to be a member if he or she ceases to be a Director.

4. The Board of Directors shall have the right for good and sufficient reason to terminate the membership of any member PROVIDED ALWAYS that the member concerned shall have a right to be heard before a final decision is made.

5. The provisions of section 352 of the Act shall be observed by the Company, and every member of the Company shall either sign a written consent to become a member or sign the register of members on becoming a member.

6. The Company is established for the purposes expressed in the Memorandum of Association.

7. The subscribers to the Memorandum of Association and such other persons as the Company shall admit to membership in accordance with such regulations as the Board of Directors shall make from time to time shall be members of the Company.

#### GENERAL MEETINGS

8. The Company shall hold a General Meeting in every calendar year as its Annual General Meeting at such time and place as may be determined by the Company and shall specify the meeting as such in the notices calling it, provided that every Annual General Meeting except the first shall be held not more than fifteen months after the holding of the last preceding Annual General Meeting, and that so long as the Company holds its first Annual General Meeting within eighteen months after its incorporation it need not hold it in the year of its incorporation or in the following year.

9. All Meetings, other than Annual General Meetings, shall be called Extraordinary General Meetings.

10. The Board of Directors may whenever they think fit convene a General Meeting, and Extraordinary General Meetings shall also be convened on such requisition, or in default may be convened by such requisitionists, as provided by section 368 of the Act

11. Twenty-one days' notice in writing at the least of every Annual General Meeting and of every meeting convened to pass a Special Resolution, and fourteen days' notice in writing at the least of every other General Meeting (exclusive in every case both of the day on which it is served or deemed to be served and of the day for which it is given), specifying the place, the day and the hour of meeting, and in the case of special business the general nature of that business, shall be given in manner hereinafter mentioned to such persons (including the Auditors) as are under these Articles or under the Act entitled to receive such notices from the Company; but with the consent of all the members having the right to attend and vote thereat, or of such proportion of them as is prescribed by the Act in the case of meetings other than Annual General Meetings, a meeting may be convened by such notice as those members may think fit.

12. The accidental omission to give notice of a meeting to, or the non-receipt of such notice by, any person entitled to receive notice thereof shall not invalidate any resolution passed, or proceedings at any meeting.

#### PROCEEDINGS AT GENERAL MEETINGS

13. All business shall be deemed special that is transacted at an Extraordinary General Meeting, and all that is transacted at an Annual General Meeting shall also be deemed special, with the exception of the consideration of the income and expenditure account and balance sheet, and the reports of the Board of Directors and of the Auditors, the election of members of the Board of Directors in the place of those retiring, and the appointment of, and the fixing of the remuneration of, the Auditors.

14. No business shall be transacted at any General Meeting unless a quorum is present when the meeting proceeds to business. Save as herein otherwise provided one third of the members present in person or by proxy shall be a quorum so long as two persons who are also

Council Appointees, two persons who are also College Appointees and two persons who are also Co-optees are present in person or by proxy. At a meeting to remove a Director under Section 303 of the Act or Article 41, a quorum will only be achieved if three persons who are also Council Appointees, three persons who are also College Appointees and three persons who are also Co-optees are present in person or by proxy.

15. If within half an hour from the time appointed for the holding of a General Meeting a quorum is not present, the meeting, if convened on the requisition of members, shall be dissolved. In any other case it shall stand adjourned to the same day in the next week, at the same time and place, or at such other place as the Board of Directors may determine, and if at such adjourned meeting a quorum is not present within half an hour from the time appointed for holding the meeting the members present shall be a quorum.

16. The Chair (if any) of the Board of Directors shall preside as Chair at every General Meeting, but if there be no such Chair, or if at any meeting he or she shall not be present within fifteen minutes after the time appointed for holding the same, or shall be unwilling to preside, the members present shall choose some member of the Board of Directors, or if no such member be present, or if all the members of the Board of Directors present decline to take the chair, they shall choose some member of the Company who shall be present to preside.

17. The Chair may, with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting) adjourn the meeting from time to time, and from place to place, but no business shall be transacted at any adjourned meeting other than business which might have been transacted at the meeting from which the adjournment took place. Whenever a meeting is adjourned for thirty days or more, notice of the adjourned meeting shall be given in the same manner as of an original meeting. Save as aforesaid, the members shall not be entitled to any notice of an adjournment, or of the business to be transacted at an adjourned meeting.

18. At any General Meeting a resolution put to the vote of the meeting shall be decided on a show of hands, unless a poll is, before or upon the declaration of the result of the show of hands, demanded by the Chair or by at least three members having the right to vote at the meeting or a member or members representing not less than one-tenth of the total voting rights of all the members having the right to vote at the meeting, and unless a poll be so demanded a declaration by the Chair of the meeting that resolution has been carried, or carried unanimously or carried by a particular majority, or lost, or not carried by a particular majority, and an entry to that effect in the minute book of the Company shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against that resolution. The demand for a poll may be withdrawn.

19. Subject to the provisions of Article 20, if a poll be demanded in the manner aforesaid, it shall be taken at such time and place, and in such manner, as the Chair of the meeting shall direct, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

20. No poll shall be demanded on the election of a Chair of a meeting, or on any question of adjournment.

21. In the case of an equality of votes, whether on a show of hands or on a poll, the Chair of the meeting shall be entitled to a second or casting vote.

22. The demand for a poll shall not prevent the continuance of a meeting for the transaction of any business other than the question on which a poll has been demanded.

#### VOTES OF MEMBERS

23. Subject as hereinafter provided, every member shall have one vote.

24. Save as herein expressly provided, no member other than a member duly registered, who shall have paid every subscription and other sum (if any) which shall be due and payable to the Company in respect of his or her membership, shall be entitled to vote on any question at any General Meeting.

#### BOARD OF DIRECTORS

25. The number of the members of the Board of Directors shall never be less than 3 and, until otherwise determined by a General Meeting, shall not be more than 15.

26. The Board of Directors when complete shall consist of fifteen persons:

26.1 Five "Council Appointees" being persons appointed by Bromsgrove District Council ("the Council")

26.2 Five "College Appointees" being persons appointed by North East Worcestershire College ("the College")

26.3 Five Co-optees.

27. No person who is not a member of the Company shall in any circumstances be eligible to hold office as a member of the Board of Directors.

28. Each appointment of a Council Appointee or a College Appointee shall be made at a meeting convened and held in accordance with the ordinary practice of the appointing body. The Chair of the meeting shall cause the name of each person appointed to be notified immediately to the trustees. The person appointed may be, but need not be a member or employee of the appointing body.

29. The power to appoint Co-optees shall be vested in the Board of Directors.

30. None of the Co-optees shall be persons who are members for the time being of the Council nor employed in any capacity by either the Council or the College Corporation.

#### POWERS OF THE BOARD OF DIRECTORS

31. The business of the Company shall be managed by the Board of Directors who may pay all such expenses of, and preliminary and incidental to, the promotion, formation, establishment and registration of the Company as they think fit, and may exercise all such powers of the Company, and do on behalf of the Company all such acts as may be exercised and done by the Company, and as are not by statute or by these Articles required to be exercised or done by the Company in General Meeting, subject nevertheless to any regulations of these Articles, to the provisions of the statutes for the time being in force and affecting the Company, and to such regulations, being not inconsistent with the aforesaid regulations or provisions, as may be prescribed by the Company in General Meeting, but no regulation made by the Company in General Meeting shall invalidate any prior act of the Board of Directors which would have been valid if such regulation had not been made.

31. The members for the time being of the Board of Directors may act notwithstanding any vacancy in their body; provided always that in case the members of the Board of Directors shall at any time be or be reduced in number to less than the minimum number prescribed by or in accordance with these Articles, it shall be lawful for them to act as the Board of Directors for the purpose of admitting persons to membership of the Company, filling up vacancies on their body, or of summoning a General Meeting, but not for any other purpose.

## SECRETARY

33. The Secretary shall be appointed by the Board of Directors for such time, at such remuneration and upon such conditions as they may think fit, and any Secretary so appointed may be removed by them. The provisions of section 283 of the Act shall apply and be observed. The Board of Directors may from time to time by resolution appoint an assistant or deputy Secretary, and any person so appointed may act in place of the Secretary if there be no Secretary or no Secretary capable of acting PROVIDED ALWAYS that no member of the Board of Directors shall occupy the salaried position of Secretary.

## THE SEAL

34. The seal of the Company shall not be affixed to any instrument except by the authority of a resolution of the Board of Directors and in the presence of at least one member of the Board of Directors and of the Secretary, and the said member and Secretary shall sign every instrument to which the seal shall be so affixed in their presence, and in favour of any purchaser or person bona fide dealing with the Company such signatures shall be conclusive evidence of the fact that the seal has been properly affixed.

## DISQUALIFICATION OF MEMBERS OF THE BOARD OF DIRECTORS

35. The office of a member of the Board of Directors shall be vacated:

- (A) If a receiving order is made against him or her or he or she makes any arrangement or composition with his or her creditors.
- (B) If he or she becomes of unsound mind.
- (C) If he or she ceases to be a member of the Company.
- (D) If by notice in writing to the Company he or she resigns his or her office.
- (E) If he or she ceases to hold office by reason of any order made under the Company Directors Disqualification Act 1986.
- (F) If he or she is removed from office by a resolution duly passed pursuant to section 303 of the Act.
- (G) If he or she fails without reasonable excuse to attend three consecutive meetings of the Board of Directors.
- (H) If he or she ceases to be a trustee by virtue of any provision in the Act or is disqualified from acting as a trustee by virtue of section 72 of the Charities Act 1993 (or any statutory re-enactment or modification of that provision).

## ROTATION OF MEMBERS OF THE BOARD OF DIRECTORS

36. Except at first every appointment of a Council Appointee, a College Appointee or a Co-optee is for a term of four years subject in every case to earlier termination under Article 35 hereof.

37. The first Council Appointees shall be the first five subscribers to the Memorandum of Association who shall act as Directors for the following periods (subject in every case to earlier termination under Article 35 hereof):

37.1 the first three parties shall act as Directors for a period of three years from the date hereof, and

37.2 the fourth and fifth parties shall act as trustees for a period of two years from the date hereof.

38. The first College Appointees shall be the sixth to tenth subscribers to the Memorandum of Association who shall act as Directors for the following periods (subject in every case to earlier termination under Article 35 hereof:-

38.1 the first sixth to eighth parties shall act as Directors for a period of three years from the date hereof, and

38.2 the ninth and tenth parties shall act as trustees for a period of two years from the date hereof

39. The first Co-Optees shall be the eleventh to fifteenth subscribers to the Memorandum of Association who shall act as Directors for a period of four years from the date hereof (subject always to the provisions of Article 35 hereof).

40. If for any reasons Directors cannot be appointed in accordance with the provisions of Clauses 25 to 28 above the statutory power of appointing new or additional Directors shall be exercisable.

41 In addition and without prejudice to the provisions of section 303 of the Act, the Company may by Extraordinary Resolution remove any member of the Board of Directors before the expiration of his or her period of office. The Council may appoint a person as a Council Appointee to replace a Council Appointee who is removed under this Article 41 and the College may appoint a person as a College Appointee to replace a College Appointee who is removed under this Article 41. A person may be appointed as a Co-Optee to replace a Co-optee removed under this Article 41 by Ordinary Resolution of the members. Any person appointed as a Director under this Article 41 shall retain his or her office so long only as the Director in whose place he or she is appointed would have held the same if he or she had not been removed.

#### PROCEEDINGS OF THE BOARD OF DIRECTORS

42. The Board of Directors may meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit provided that they meet at least 4 times a year, and determine the quorum necessary for the transaction of business, provided that the quorum for meetings of the Board of Directors shall never be less than three Council appointees, three College appointees and three co-optees PROVIDED THAT

42.1 If a College appointee cannot be counted in the quorum by virtue of a personal interest in a matter being discussed at the meeting the meeting will be quorate when three Council appointees and three Co-optees are present;

42.2 If a Council appointee cannot be counted in the quorum by virtue of a personal interest in a matter being discussed at the meeting the meeting will be quorate when three College appointees and three Co-optees are present.

43. Questions arising at any meeting shall be decided by a majority of votes. In case of an equality of votes the Chair shall have a second or casting vote.

44. A member of the Board of Directors may, and on the request of a member of the Board of Directors the Secretary shall, at any time, summon a meeting of the Board of Directors by notice served upon the several members of the Board of Directors. A member of the Board of Directors who is absent from the United Kingdom shall not be entitled to notice of a meeting.

45. The Board of Directors shall from time to time elect a Chair who shall be entitled to preside at all meetings of the Board of Directors at which he or she shall be present, and may determine for what period he or she is to hold office, but if no such Chair be elected, or if at any meeting the Chair be not present within five minutes after the time appointed for holding the meeting and willing to preside, the members of the Board of Directors present shall choose one of their number to be Chair of the meeting.

46. A meeting of the Board of Directors at which a quorum is present shall be competent to exercise all the regulations of the Company for the time being vested in the Board of Directors generally.

47. The Board of Directors may delegate any of their powers to committees consisting of such member or members of the Board of Directors or others as they think fit, and any committee so formed shall, in the exercise of the powers so delegated, conform to any regulations imposed on it by the Board of Directors. The meetings and proceedings of any such committee shall be governed by the provisions of these Articles for regulating the meetings and proceedings of the Board of Directors so far as applicable and so far as the same shall not be superseded by regulations made by the Board of Directors. Any such committees shall report to the Board of Directors on any decisions taken as soon as possible. No such committee shall incur expenditure on behalf of the Company except in accordance with a budget that has been approved by the Board of Directors.

48. All acts bona fide done by any meeting of the Board of Directors or by any committee of the Board of Directors, or by any person acting as a member of the Board of Directors, shall, notwithstanding it be afterwards discovered that there was some defect in the appointment or continuance of office of any such member or person acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed or had duly continued in office and was qualified to be a member of the Board of Directors.

49. The Board of Directors shall cause proper minutes to be made of all appointments of officers made by the Board of Directors and of the proceedings of all meetings of the Company and of the Board of Directors and of committees of the Board of Directors, and all business transacted at such meetings, and any such minutes of any meeting, if purporting to be signed by the Chair of such meeting, or by the Chair of the next succeeding meeting, shall be sufficient evidence without any further proof of the facts therein stated.

50. A resolution in writing signed by all members for the time being of the Board of Directors or of any committee of the Board of Directors who are entitled to receive notice of a meeting of the Board of Directors or of such committee shall be as valid and effectual as if it had been passed at a duly convened and constituted meeting of the Board of Directors or such committee (as the case may be).

## ACCOUNTS

51. The Board of Directors shall cause proper books of account to be kept in accordance with the provisions of Part VII of the Companies Act 1985 with respect to:

- (A) all sums of money received and expended by the Company and the matters in respect of which such receipts and expenditure take place;
- (B) all sales and purchases of goods by the Company; and
- (C) the assets and liabilities of the Company

Proper books shall not be deemed to be kept if there are not kept such books of account as are necessary to give a true and fair view of the state of the affairs of the Company and to explain its transactions.

52. The books of account shall be kept at the registered office or at such other place or places as the Board of Directors shall think fit, and shall always be open to the inspection of the members of the Board of Directors.

53. The Board of Directors shall from time to time determine whether and to what extent and at what times and places and under what conditions and/or regulations the accounts and books of the Company or any of them shall be open to the inspection of members not being members of the Board of Directors, and no member (not being a member of the Board of Directors) shall have any right of inspecting any account or book or document of the Company except as conferred by statute or authorised by the Board of Directors or by the Company in General Meeting.

54. At the Annual General Meeting in every year the Board of Directors shall lay before the Company a proper income and expenditure account for the period since the last preceding account (or in the case of the first account since the incorporation of the Company) made up to a date not more than ten months before such meeting, together with a proper balance sheet made up as at the same date. Every such balance sheet shall be accompanied by proper reports of the Board of Directors and the Auditors (where applicable), and copies of such account, balance sheet and reports (all of which shall be framed in accordance with any statutory requirements for the time being in force) and of any other documents required by law to be annexed as attached thereto or to accompany the same shall not less than twenty-one clear days before the date of the meeting, subject nevertheless to the provisions of section 240 of the Act, be sent to the Auditors (where applicable) and to all other persons entitled to receive notices of General Meetings in the manner in which notices are hereinafter directed to be served. The Auditors' report shall be open to inspection and be read before the meeting as required by the Act.

55. Accounts shall be prepared in accordance with the provisions of the Charities and Companies Acts at the time in force. If the turnover of the Company is within the statutory requirements for having a formal Audit the following provisions shall apply:

a) Once at least in every year the accounts of the Company shall be examined and the correctness of the income and expenditure account and balance sheet ascertained by one or more properly qualified Auditor or Auditors.

b) Auditors shall be appointed and their duties regulated in accordance with the provisions of the Act, the members of the Board of Directors being treated as the Directors mentioned in the relevant sections.

## NOTICES

56. A notice may be served by the Company upon any member, either personally or by sending it through the post in a prepaid letter, addressed to such member at his or her registered address as appearing in the register of members.

57. Any member described in the register of members by an address not within the United Kingdom, who shall from time to time give the Company an address within the United Kingdom at which notices may be served upon him or her shall be entitled to have notices served upon him or her at such address, but, save as aforesaid and as provided by the Act, only those members who are described in the register of members by an address within the United Kingdom shall be entitled to receive notices from the Company.

58. Any notice, if served by post, shall be deemed to have been served on the day following that on which the letter containing the same is put into the post, and in proving such service it shall be sufficient to prove that the letter containing the notice was properly addressed and put into the post office as a prepaid letter.

## DISSOLUTION

59. Clause 9 of the Memorandum of Association relating to the winding up and dissolution of the Company shall have effect as if the provisions thereof were repeated in these Articles.

## INDEMNITY

60. Subject to the provisions of the Act but without prejudice to any indemnity to which a member of the Board of Directors may otherwise be entitled, every member of the Board of Directors or other officer or auditor of the Company shall be indemnified out of the assets of the Company against any liability incurred by him or her in defending any proceedings, whether civil or criminal, in which judgment is given in his or her favour or in which he or she is acquitted or in connection with any application on which relief is granted to him or her by the court from liability for negligence, default, breach of duty or breach of trust in relation to the affairs of the Company.

We, the several persons whose names and addresses are written below wish to be formed into a company under this Memorandum of Association.

**SIGNATURES, NAMES AND ADDRESSES OF SUBSCRIBERS**

Mr Neil Bromley	35 Kings Edwards Road, Malvern Hills, Worcs WR14 4AJ	<i>Neil Bromley</i>
Ms Tricia Burton	46 The Spinney Finchfield, Wolverhampton WB3 9EU	<i>T Burton</i>
Mr Carl Dolan	1A Churchfields Road, Bromsgrove B61 8EB	<i>C Dolan</i>
Mrs June Griffiths	Tre Dhen, 439 Birmingham Road, Bordsley, Redditch B97 6RL	<i>J M L A Griffiths</i>
Ms Sian Hirst	Stonehouse Farm, Dusthouse Lane, Finstall, Bromsgrove B60 3AE	<i>S Hirst</i>
Ron Howells	New College, Blackwood Road, Bromsgrove B60 1PQ	<i>R Howells</i>
Winifred Maton	25 Linthurst, Newtown, Blackwell Bromsgrove B60 1PQ	<i>W Maton</i>
Bill Newnes	17 Planetree Close, Bromsgrove B60 1AW	<i>B Newnes</i>
Dennis Norton	The Forge, Broad Green, Tardebigge, Bromsgrove B60 1LW	<i>D Norton</i>
Dr Mary White	7 Marlborough Avenue, Bromsgrove B60 2PG	<i>M White</i>
Bob Adams	80 Finstall Road, Bromsgrove B60 2EJ	<i>B Adams</i>
Ms Dorothy Wilson	21 Oakfield Drive, Cofton Hackett, Birmingham B45 8AN	<i>D Wilson</i>

**WITNESS TO SIGNATURES**

NAME: *Andrew Woods*

ADDRESS: *39 Kingsholm Road, Gloucestershire GL1 3AL*

SIGNATURE: *A Woods*

DATE: *25 – 04- 08*