

Schedule of Proposed Amendments

This paper considers the results of the recent review of the Rother Housing Company documents undertaken to update the documents and ensure they are still fit for purpose in supporting both the Council and the Company to strike an appropriate balance between allowing a company the freedom to manage its activities and ensuring that it is accountable for its actions. The review was conducted by Bevan Brittan (BB) from Rother District Council's position and Trowers and Hamlins (T&H) from the Rother Housing Company perspective.

An assessment of the proposed amendments and proposed recommendations is contained below along with officer's comments for further consideration and agreement.

The documents reviewed include the following;

**Appendix 2 – Articles of Association; and
Appendix 3 – Shareholder Agreement**

**Appendix X – Articles of Association
Summary of all proposed amendments**

Clause	Author	Proposed Amendment	Risk mitigation	Agreed Y/N
14.3	Trowers	If the total number of directors for the time being is less than the quorum required, the directors must not take any decision other than a decision to request that the parent appoints such number of further directors as are required to make up the board under articles 20 and 21.	The shareholder retains appointment rights of up to half the board. See 22.1	Yes
15.1	Bevan Brittan	The board shall appoint a director to chair the directors' meetings, such director be a director appointed by the parent.	<p>The proposed amend at Article 21.1 below means that the Council directors will be in a minority where there are an odd number of directors in office.</p> <p>This proposed amend to Article 15.1 will equalize the voting power of the directors as the Chair (per Article 16.1) has a casting vote in the case of deadlock.</p>	Yes
21.0	Bevan Brittan	Unless otherwise determined by ordinary resolution, the maximum number of directors is not subject to any maximum eight and the minimum number is three.	Updated to align with clause 4 of the SHA	Yes
21.1	Trowers & Bevan Brittan	No more than half of the directors appointed at any time may be appointed by the parent. Directors not appointed by the parent shall be appointed by an ordinary resolution of a resolution of the board.	<p>The term “ordinary resolution” refers to resolutions passed by a simple majority of shareholders, rather than directors.</p> <p>This limit on Council directors is reasonable as the Council still holds sufficient power in its role as shareholder through the reserved matters in the SHA. The shareholder can also remove a Director at any point. See below clause 21.2</p>	Yes

21.2	Trowers	Notwithstanding any other provision of these articles, the holder or holders of a majority in nominal value of the issued ordinary shares in the capital of the company may at any time and from time to time: appoint any person to be a director (provided that any such appointment does not cause the number of directors to exceed a number fixed by or in accordance with these articles as the maximum number of directors); or remove any director from office.	To align with amended clause 22.1. Shareholder still retains power to remove any director from office at any time.	Yes
21.3	Trowers	Every such appointment or removal shall be effected by notice in writing to the company which shall take effect immediately (or on such later date, if any, specified in the notice) and the notice of appointment or removal may consist of several documents in similar form, each signed by or on behalf of one or more holders.	To align with amended clause 21.2. Shareholder still retains power to remove any director from office at any time as per clause 21.2	Yes
22.2	Bevan Brittan	<u>If at any time the number of directors appointed by the parent is more than half of the Directors, the parent shall give written notice to the Company in accordance with Article 22.4, to remove the requisite number of directors appointed by it to ensure that the requirements of Article 22.1 are satisfied.</u>	To allow compliance with 21.1	Yes

**Appendix X – Shareholder Agreement
Summary of all proposed amendments**

Clause	Author	Proposed amendment	Risk mitigation	Agreed Y/N
1.0	Trowers	Financial Model means the financial model set out in [file name to follow] and initialled by way of identification by the signatories to this Agreement as amended from time to time with Shareholder Consent;	Definition not required. Removed from Shareholder Consent Matters Part B Relevant to the Development Funding Agreement/Working Capital Agreement??	Yes
2.1.3	Bevan Brittan	developments within the Rother District (subject to any variation of the geographical extent of the Company's activities agreed pursuant to clause 2.5) which it will sell at market or shared equity or shared ownership terms or	See 2.5	Yes
2.2	Bevan Brittan	<u>The Company shall conduct the Business with a view to generating sufficient profits from the Business to invest in the future provision of new homes within the Rother District.</u>	The Company Business and Business Plan should allow it the autonomy to act independently	Yes

2.3	Trowers	<p>The first Business Plan of the Company is to be agreed by Full Council once the company commences trading. Subsequently, Tthe Company shall circulate the Business Plan to the Shareholder by the end of November in each year and invite the Shareholder to provide comments on the proposed Business Plan or to provide Shareholder Consent. The Shareholder will use reasonable endeavours to respond by the end of the following February. Subject to the receipt of Shareholder Consent, before the end of each Accounting Period the Directors shall (in accordance with this Agreement) consider and, if appropriate, adopt an updated and revised Business Plan. No adoption, variation or replacement of any Business Plan shall take effect unless such adoption, variation or replacement has received Shareholder Consent.</p>	<p>There will need to be a mechanism for approving the first Business Plan as otherwise a Business Plan will not be adopted until the start of the next Accounting Period. BB suggest <i>“The first Business Plan of the Company will be adopted upon receiving Shareholder Consent and the Company and the Shareholder shall co-operate in good faith with a view to adopting the first Business Plan as soon as practicable after the Company commences trading.”</i> This does not give the Council any more rights than it already has in relation to the Business Plans.</p>	Yes
2.5	Trowers	<p>The Company shall not acquire any property or otherwise trade outside of the Rother District without Shareholder Consent.</p>	<p>The Housing Company needs the autonomy to act independently and therefore this clause should be removed. In any event, the Council has the right to approve each Business Plan of the Company and any such proposal to trade outside of the Rother District should be contained in a Business Plan.</p>	Yes
4.1 4.2 4.3	Trowers	<p>Subject to the Articles, there shall be a minimum of three Directors and a maximum of not more than eight Directors, which:</p> <p>4.1.1—shall be appointed by the Council in accordance with clause 4.2;</p> <p>The board shall be comprised of such number of executive or non-executive Directors as are required to ensure that the board of the Company has the appropriate skills and experience to deliver the objectives set out in clause 2.1.</p> <p>-No more than half of the Directors appointed at any one time may be appointed by the Council. the Council shall see fit; </p>	<p>The Council is happy with these amends. The wording at clause 4.2 is standard commercial wording and clause 4.3 aligns with the Articles.</p>	Yes

5	Bevan Brittan	<p><u>Finance</u></p> <p><u>The Board shall procure that:</u></p> <p><u>5.1.1 all payments due to the Council pursuant to Finance Documents entered into by the Company prior to the date of this Agreement are made on standard market terms and on the basis of standard market rates; and</u></p> <p><u>5.1.2 all Finance Documents entered into by the Company on or after the date of this Agreement are entered into on standard market-terms.</u></p>	To underline the current practice for financial agreements between the Company and the Council are on commercial terms.	Yes
Schedule 1 – Shareholder Consent Matters				
8	Trowers	<p>engage in any business other than as contemplated by the Business Plan or defray any monies other than in good faith for the purposes of or in connection with the carrying on of such business; or</p>	Officers recommend that this is re-instated as its deletion detracts from the Council’s rights to approve each Business Plan; there is little point the Council having the right to approve each Business Plan if the Company is free to stray from it.	No
9 & 10	Trowers	<p>form any Subsidiary or acquire shares in any other company or participate in any partnership or joint venture (incorporated or not); or</p>	This is a standard right for a majority shareholder and should be re-instated.	No
10	Trowers	<p>close down any business operation, or dispose of or dilute its interest in any of its Subsidiaries for the time being, or dispose of any material asset unless in each case such closure or disposal is expressly contemplated by the Business Plan; or</p>	Majority shareholder right under the Articles to give directions to the Board and right under the SHA to approve each Business Plan. The Council should ensure it does not manage or supervise the Company and strike an appropriate balance between allowing a company the freedom to manage its activities and ensuring that it is accountable for its actions.	Yes
14 & 15	Trowers	<p>enter into any arrangement, contract or transaction outside the normal course of its business or otherwise than on arm's length terms; or </p> <p>enter into, as lessor or as lessee, any finance lease; or</p>	Majority shareholder right under the Articles to give directions to the Board and right under the SHA to approve each Business Plan. The Council should ensure it does not manage or supervise the	Yes

			Company and strike an appropriate balance between allowing a company the freedom to manage its activities and ensuring that it is accountable for its actions.	
17	Trowers	adopt or amend its annual Business Plan; or	As above the officer recommendation is that this clause should be reinstated as its deletion contradicts the Council's rights to approve each Business Plan.	No
	Bevan Brittan	factor or assign any of its book debts; or	The Company Business and Business Plan should allow it the autonomy to act independently	Yes
21	Trowers	give any guarantee, suretyship or indemnity to secure the liability of any person or assume the obligations of any person outside the scope of its Business Plan; or	The Housing Company needs the autonomy to act independently and therefore this clause should be removed.	Yes
23	Trowers	establish or amend any profit-sharing, share option, bonus or other incentive scheme of any nature for directors, officers or employees (but for the avoidance of doubt, this will not prevent any Group Company from awarding a discretionary cash bonus to directors, officers or employees); or	Majority shareholder right under the Articles to give directions to the Board and right under the SHA to approve each Business Plan. The Council should ensure it does not manage or supervise the Company and strike an appropriate balance between allowing a company the freedom to manage its activities and ensuring that it is accountable for its actions.	Yes
24	Trowers	establish or amend any pension scheme or grant any pension rights to any director, officer, employee, former director, officer or employee, or any member of any such person's family; or	Majority shareholder right under the Articles to give directions to the Board and right under the SHA to approve each Business Plan. The Council should ensure it does not manage or supervise the Company and strike an appropriate balance between allowing a company the freedom to manage its activities and ensuring that it is accountable for its actions.	Yes

25	Trowers	dismiss any director	The Council has the right to remove directors pursuant to Article 22 of the Articles.	Yes
26	Trowers	adopt or amend its Remuneration Policy;	The Housing Company needs the autonomy to act independently and therefore this clause should be removed.	Yes
27	Trowers	agree to remunerate (by payment of salary, bonus, the provision of benefits in kind or otherwise) or to increase the remuneration of any employee, officer or consultant to the Company unless the annual aggregate amount of such remuneration (by payment of salary, bonus, the provision of benefits in kind or otherwise) is in accordance with the Company's current Remuneration Policy or Business Plan; or	Majority shareholder right under the Articles to give directions to the Board and right under the SHA to approve each Business Plan. The Council should ensure it does not manage or supervise the Company and strike an appropriate balance between allowing a company the freedom to manage its activities and ensuring that it is accountable for its actions.	Yes
28	Trowers	institute, settle or compromise any material legal proceedings (other than debt recovery proceedings in the ordinary course of business or where the Value of such claim is reasonably believed by the Company to be less than £100,000) instituted or threatened against it or submit to arbitration or alternative dispute resolution any dispute if the effect of this is that its solvency may be imperilled, or it may require additional funding in order to undertake its Business Plan; or	This term is fairly standard, and the officer recommendation is that it should be reinstated.	No
29	Trowers	Make any agreement with any revenue or tax authorities or make any claim, disclaimer, election or consent for tax purposes in relation to the Group Company or its business if the effect of this is that its solvency may be imperilled, or it may require additional funding in order to undertake its Business Plan.	Majority shareholder right under the Articles to give directions to the Board and right under the SHA to approve each Business Plan. The Council should ensure it does not manage or supervise the Company and strike an appropriate balance between allowing a company the freedom to manage its activities and ensuring that it is accountable for its actions.	
30	Trowers	Enter into any contract with a value in excess of £10,000,000.	This term is fairly standard, and the officer recommendation is that it should be reinstated.	No

Shareholder Consent Matters Part B (Operational Matters)				
N/A	Trowers	The Company and any Group Company shall not unless it has Shareholder Consent make any amendments to the Financial Model or to its Remuneration Policy	Majority shareholder right under the Articles to give directions to the Board and right under the SHA to approve each Business Plan. The Council should ensure it does not manage or supervise the Company and strike an appropriate balance between allowing a company the freedom to manage its activities and ensuring that it is accountable for its actions.	Yes
Schedule 2 – Company Covenants				
1.	Trowers	To only acquire land or a dwelling if the acquisition is in accordance with the Financial Model.	Not flagged as a concern by Bevan Brittan. Subject to Development Funding Agreement terms.	Yes