

## **Cabinet**

**19 April 2018**

### **Warwickshire County Council's Membership of the Local Government Association**

#### **Recommendation**

That Cabinet approves the Joint Managing Director (Resources) to sign the relevant application form for Warwickshire County Council to be admitted as a member authority of the LGA's private unlimited company.

#### **1.0 Purpose of report**

- 1.1 To inform Cabinet of a proposed change to the County Council's relationship with the Local Government Association (LGA).

#### **2.0 Summary**

- 2.1 In July 2017, the LGA's General Assembly voted to create a new incorporated LGA in the form of a 'private unlimited company'. On 27 February 2018 the County Council received a letter from the Chief Executive of the LGA asking the County Council to formally apply to become a member of this new company by 31 March 2018. Subject to Cabinet approval, the County Council will be joining shortly after this date (the LGA have been advised of this).
- 2.2 The Joint Managing Director (Resources), in accordance with the County Council's Constitution, has delegated authority to sign the relevant application form for the County Council to be admitted as a member authority of the LGA's private unlimited company.

#### **3.0 Background**

- 3.1 The LGA is the national representative body for local authorities in England and Wales. Cross-party and politically led, it seeks to provide local councils with a strong voice with national government and other stakeholders. In total, 415 local authorities are members of the LGA in 2017/18, including 349 English Councils.
- 3.2 The County Council is a longstanding member of the LGA. The County Council's subscription for the last two years has been £53,069.

3.3 The County Council's representatives on the LGA are appointed by the County Council. The County Council's representative is Councillor Seccombe, Councillor Butlin, Councillor Chattaway and Councillor Roodhouse.

#### **4.0 Proposal to incorporate the LGA as a private unlimited company**

4.1 Like its member councils, the LGA is continually reviewing its arrangements to keep membership costs down. In July 2017, the LGA's General Assembly, its main decision-making body made up of councillors from its member councils, voted to create a new incorporated LGA in the form of a 'private unlimited company'.

4.2 On 27 February 2018 the County Council received a letter from the Chief Executive of the LGA asking it to formally sign up as a member of this new company.

4.3 The LGA considers this change in status will enable it to be more financially sustainable, invest more in the work it does for member councils and keep subscriptions as low as possible. The LGA has stated that incorporation will mean that this change will enable it to enter into contracts and hold property in its own name (which it could not do as an unincorporated association) which will 'regularise' its commercial activities. The LGA has stated that the change will not affect the way that the County Council accesses services as a member of this organisation.

4.4 The LGA has stated that under the proposed unlimited company, member councils would have the same entitlement to a share of the assets of the LGA and the same responsibility for its liabilities in the event of its formal liquidation. This means that the liability position of the County Council as a member of the newly incorporated company would potentially be the same as under the current unincorporated LGA.

4.5 It is understood that the current unincorporated LGA will continue to be run in parallel until its General Assembly on 3 July 2018. At that stage, subject to all member councils having joined the new company, the General Assembly will be invited formally to dissolve the unincorporated LGA.

4.6 As such it is proposed that the Joint Managing Director (Resources) sign the application form for the County Council to be admitted as a member of the new incorporated 'private unlimited company' of the LGA.

#### **5.0 Financial Implications**

5.1 The primary drivers for the change in status are financial with the new LGA offering opportunities for increased commercialisation and tax efficiency. Benefits from these changes will be used to keep annual membership subscription costs low.

- 5.2 The opportunities from increased commercialisation also come with increased risk. The growth income projected for the new company is primarily dependant on forecast increases in property asset valuations which are linked to the economic cycle.
- 5.3 On an annual basis the new arrangements should have no financial impact on the authority, with the annual membership subscription of £53,069 continuing to be the only direct cost.
- 5.4 If the LGA were to be dissolved the authority would receive/be liable for a share of any assets/liabilities. This arrangement is no different than would be the case under current structure of an unincorporated association.
- 5.5 If the authority decides not to be admitted as a member authority, then assuming the majority of other authorities do, the change in structure goes ahead and access to the services and information provided by the LGA will no longer be available. If the authority joins but decides to leave membership in the future then we will remain liable to meet our share of any liabilities for five years. Again this is no different than would be the case under the currently structural arrangements.

## Background papers

None.

## Appendices

1. New LGA Articles of Association Final Draft.
2. Application for Admission to LGA as a member.
3. New LGA – FAQ's.

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The report was circulated to the following members prior to publication:-

Local Member(s): n/a

Other members: Councillors Boad, Kaur, Timms Singh Birdi and O'Rourke

**THE COMPANIES ACT 2006  
PRIVATE UNLIMITED COMPANY**

**ARTICLES OF ASSOCIATION**

**OF**

**LOCAL GOVERNMENT ASSOCIATION**

**(Adopted by special resolution passed on ..... 2018)**

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**THE COMPANIES ACT 2006**  
**PRIVATE UNLIMITED COMPANY**  
**ARTICLES OF ASSOCIATION**  
**OF**  
**LOCAL GOVERNMENT ASSOCIATION**

**PART 1 – NAME, OBJECTS AND POWERS**

**1 NAME**

1.1 The name of the Association shall be the LOCAL GOVERNMENT ASSOCIATION.

**2 OBJECTS AND POWERS**

2.1 The objects of the Association (**Objects**) are:

- 2.1.1 to support, promote and improve local government in England and Wales;
- 2.1.2 to represent, wherever possible by consensus, the interests of Member Authorities to national governments, to Parliament, to political parties, to European and other international institutions and to other bodies, and to negotiate on behalf of local government;
- 2.1.3 to formulate policies to support the improvement and development of local governance, effective management in local authorities and the enhancement of local democracy in England, Wales and elsewhere;
- 2.1.4 to provide forums for discussion of matters of common interest and/or concern to Member Authorities, including groups of Member Authorities, and a means by which joint views may be formulated and expressed;
- 2.1.5 to provide a full range of cost-effective services to Member Authorities in accordance with their wishes, including the dissemination of accurate, timely and relevant information;
- 2.1.6 to co-ordinate collective legal actions on behalf of groups of Member Authorities where authorised by the Leadership Board or relevant Board;
- 2.1.7 to promote the policies of the Association and to provide information on local government issues to the public and outside organisations;
- 2.1.8 to endeavour to give democratically elected local representatives from different political groups the opportunity to contribute to the Association's work and to the development of policies which represent, as far as possible, consensus between the political groups and between groups of Member Authorities;
- 2.1.9 to appoint democratically elected local representatives to the boards of the Improvement and Development Agency for Local Government and Local Partnerships LLP to ensure that the work and priorities of those organisations reflect those of the Member Authorities; and
- 2.1.10 to support all democratically elected local representatives of Member Authorities.

2.2 The Association may do all such things that a person can lawfully do which are or may be necessary, or intended to facilitate, or conducive or incidental to the discharge or achievement of the Objects.

### **3 RESPONSIBILITY FOR ACTION**

3.1 In matters of local government in general or which concern all Member Authorities, the Association will speak for all Member Authorities.

3.2 Recognised groupings of Member Authorities established under these Articles (or standing orders adopted pursuant to these Articles) may speak for the interests they represent, subject to their views not conflicting with or undermining the Association's policy as a whole or damaging the interests of other Member Authorities.

3.3 The Association shall ensure that the appointment of any democratically elected local representative to represent the views of Member Authorities on outside bodies or on delegations shall so far as is practicable reflect the political balance of the Association as calculated in accordance with Article 7.

3.4 The Association shall not in the context of the issue of local government reorganisation adopt or support any policy which adversely affects any Member Authority. Nothing in this Article shall prevent any Member Authority or group of Member Authorities seeking factual information from officers to assist such a Member Authority or group in promoting outside the Association a view in connection with any reorganisation.

3.5 The Association may provide goods and services to other entities engaged in local government (**Associates**) at such times and on such terms, including classes of Associate, as the Leadership Board may approve from time to time.

## **PART 2 – MEMBERSHIP AND MEMBER AUTHORITY REPRESENTATIVES**

### **4 MEMBERSHIP**

4.1 The Association may invite into membership of the Association Principal Councils in England and Wales which are capable of being included in the political balance calculations in Article 7, with each of them upon admission to membership being a **Member Authority**.

4.2 The Association must maintain a register of Member Authorities.

4.3 The liability of the Member Authorities is unlimited.

4.4 Any Member Authority wishing to terminate its membership of the Association shall give not less than twelve months' notice in writing to the Chief Executive to expire on 31 March in any year. At the expiration of the period of notice the Member Authority giving notice shall cease to be a Member Authority and shall become a **Past Member Authority**.

4.5 Subject to Article 4.7, a Past Member Authority shall have:

4.5.1 forfeited all right to and claims upon the Association and its property and funds; and

4.5.2 lost any entitlement whatsoever to any share in the assets of the Association whether on a dissolution or otherwise (save in so far as these Articles provide for the assets of the Association to be set off against the liabilities of the Association to determine the net liabilities under Article 24).

4.6 A Past Member Authority shall remain liable for its share of the net liabilities of the Association, calculated in accordance with Article 24, for a period of five years from the date when it ceased to be a member of the Association and shall discharge its share of the net liabilities of the Association on the Association's dissolution.



4.7 These Articles shall continue to be binding on Past Member Authorities insofar as they relate to the rights and liabilities of Past Member Authorities.

## **5 MEMBER AUTHORITY REPRESENTATIVES**

5.1 Each Member Authority may appoint up to four persons, with each such person being a **Member Authority Representative**. A Member Authority Representative shall serve on/at the General Assembly.

5.2 Each Member Authority Representative shall be a democratically elected local representative of that Member Authority. A Member Authority Representative serving on any of the Association's governance structures, or otherwise representing or undertaking business on behalf of the Association, is required to operate in accordance with the member code of conduct of the Member Authority which appointed him/her.

5.3 The names of the Member Authority Representatives shall be submitted in writing to the Chief Executive not less than five clear working days in advance of the Annual Meeting in each year, by the appropriate officer of the appointing Member Authority. In exceptional circumstances, names can be submitted after that deadline subject to agreement with the Chief Executive.

5.4 The periods of office for Member Authority Representatives appointed to serve on the General Assembly, the Leadership Board and any Board or other governance structure of the Association shall begin as follows:

5.4.1 For any Member Authority Representative appointed to serve on the General Assembly, with effect from the Annual Meeting in a given year.

5.4.2 For any Member Authority Representative elected to serve as a director on the Leadership Board, with effect from the Annual Meeting in a given year.

5.4.3 For any Member Authority Representative appointed to serve on any governance structure (other than the General Assembly or the Leadership Board), on the date specified in his/her letter of appointment.

5.5 A Member Authority Representative shall serve on the General Assembly and (if elected or appointed to do so) as a director on the Leadership Board or member of any other governance structure until the earlier of:

5.5.1 the date of (but excluding) the Annual Meeting in the following year (provided that this shall not apply in relation to a Member Authority Representative appointed to relevant governance structures in accordance with Article 5.4.3);

5.5.2 his/her resignation as a Member Authority Representative;

5.5.3 him/her ceasing to be a democratically elected local representative of his/her appointing Member Authority; and

5.5.4 his/her appointing Member Authority becoming a Past Member Authority.

## **PART 3 – GOVERNANCE STRUCTURE**

### **6 GOVERNANCE STRUCTURE: SUMMARY**

6.1 The General Assembly may from time to time by special resolution passed in accordance with the Companies Acts amend these Articles.

6.2 The General Assembly may from time to time by ordinary resolution:

- 6.2.1 make standing orders for the regulation of its proceedings and conventions governing relationships between the political parties in the conduct of the Association's business; and
- 6.2.2 delegate any of its powers to any person, board or committee on such terms of it shall determine,

provided always that the standing orders, conventions or terms of delegation do not conflict with the provisions of these Articles.

- 6.3 The General Assembly may from time to time by ordinary resolution passed in accordance with the Companies Acts approve (and/or amend existing) standing orders for the Leadership Board to cover any matter relating to the Leadership Board not already covered by these Articles (the **Leadership Board Standing Orders**) including the delegated powers, size and political composition of the Leadership Board.
- 6.4 If there is any conflict between the provisions of these Articles and the provisions of the Leadership Board Standing Orders, the provisions of these Articles shall prevail and the Member Authorities shall exercise all voting and other rights and powers available to them to give effect to the provisions of the Articles and/or to remedy to conflict.
- 6.5 The Leadership Board may from time to time approve (and/or amend existing) standing orders (other than the Leadership Board Standing Orders) for any Board (the **Board Standing Orders**), to cover any matter relating to any Board not already covered by these Articles including the delegated powers, size, periods of office and political composition of that Board.
- 6.6 If there is any conflict between the provisions of these Articles and the provisions of any Board Standing Orders, the provisions of the Articles shall prevail and the Leadership Board shall exercise all voting and other rights and powers available to them to give effect to the provisions of the Articles and/or to remedy the conflict.

## **7 POLITICAL BALANCE AND SUPPORT FOR POLITICAL GROUPS**

- 7.1 The political balance on the Leadership Board and any Board or other governance structure of the Association shall be calculated annually and approved by the Leadership Board by reference to the overall electorate represented by the democratically elected local representatives of each party, immediately after the last principal elections of Member Authorities and in accordance with the following principles:
  - 7.1.1 only Principal Councils which are Member Authorities before the polls open on the day of the principal local elections shall be included in the political balance calculations; and
  - 7.1.2 to be included in the political balance calculations, Principal Councils joining the Association on or after 1 April of the membership year must have paid their subscriptions in full, with the funds cleared in an account nominated by the Leadership Board prior to the opening of the polls on the day of the principal local elections.
  - 7.1.3 A 50% weighting will be applied in respect of Member Authorities in areas with county and district councils and in Wales.
- 7.2 When director resigns or his/her period of office terminates prior to the Annual Meeting at which he/she would otherwise cease to be a director in accordance with Article 5.5.1, his/her nominating party may elect or appoint a replacement, who will be designated as "acting" until formally elected by the General Assembly at that Annual Meeting.
- 7.3 Political groups recognised by the Association for the purposes of representation on its governance structures, and whose total share of the weighted electorate is 5% or more, shall be entitled to reasonable support from the Association to enable them to play their part in influencing parties on behalf of Member Authorities.

- 7.4 Independent democratically elected Member Authority Representatives and Member Authority Representatives from smaller recognised political groups may join together voluntarily to secure a collective share of the weighted electorate of 5% or more, in order to qualify for support from the Association comparable to that provided to larger political groups.

## **8 PRESIDENT AND VICE PRESIDENTS**

- 8.1 A President of the Association (**President**) shall be elected at the Annual Meeting in each year and shall be eligible for re-election for up to a maximum of eight years in the post.
- 8.2 Vice-Presidents shall be appointed annually by the leaders of the Association's political groups and be reported at the Annual Meeting.
- 8.3 The President and Vice-Presidents need not be democratically elected local representatives of Member Authorities and shall not have a vote at the General Assembly.
- 8.4 The President and Vice-Presidents are required to operate in accordance with the Code of Conduct for members of Parliament, members of the House of Lords, for MEPs or for members of the Welsh Assembly.

## **9 CHIEF EXECUTIVE AND STAFF**

- 9.1 There shall be a Chief Executive of the Association (who shall not be a director) appointed on such terms and conditions as agreed by the Leadership Board and such other staff as may be necessary for the purpose of implementing the Association's Objects. The Chief Executive and Deputy Chief Executive shall act as advisers to the Leadership Board
- 9.2 The Association may appoint a company secretary on such terms as may be agreed by the Leadership Board.

## **PART 4 – THE GENERAL ASSEMBLY**

### **10 THE GENERAL ASSEMBLY: INTRODUCTORY PROVISIONS**

- 10.1 A reference in these Articles to the **General Assembly** is to the Member Authorities in general meeting or to the general meeting itself, as the case may be.
- 10.2 The General Assembly shall be held on such days and at such places as may be decided by the Leadership Board.
- 10.3 Once each year, the General Assembly will elect the directors as set out in Article 20. This shall be the **Annual Meeting**. Other meetings (known as extraordinary general meetings or EGMs) may be held as required.
- 10.4 The General Assembly shall deal with such business (including at the Annual Meeting) as may be determined by the Leadership Board.

### **11 CALLING THE GENERAL ASSEMBLY**

- 11.1 A General Assembly may be called at any time by the Chief Executive with the approval of the Leadership Board and must be called within 21 days of a written request from Member Authorities representing at least 5% of the total voting rights of all the Member Authorities having a right to vote at general meetings and made in accordance with section 303 of the Companies Act 2006.
- 11.2 The Chief Executive shall:
- 11.2.1 not less than three months before the Annual Meeting, and not less than 28 clear days before each extraordinary general meeting, send to each Member Authority, to their chief

executive or clerk, all Leadership Board directors and the Association's auditors a notice stating:

- (a) the date, time and place of the meeting (and in the case of an Annual Meeting shall specify the meeting as such); and
- (b) if a special resolution is proposed, the full text of the resolution and that it is a special resolution,

together with a proxy card; and

11.2.2 not less than 10 working days before the Annual Meeting, or extraordinary general meeting, send to each Member Authority Representative appointed by a Principal Council, and publish on the Association's website, an agenda specifying the business to be transacted.

11.3 Notice must be given in hard copy form, electronic form or by means of a website, in each case in accordance with the Companies Act 2006.

11.4 The accidental omission to give notice of a General Assembly meeting to, or the non-receipt of notice of a meeting by, any person entitled to receive notice, or a technical defect in the timing or manner of giving such notice of which the directors are unaware shall not invalidate the proceedings of that meeting, shall not invalidate the proceedings at that meeting.

## **12 ATTENDANCE AND SPEAKING AT THE GENERAL ASSEMBLY**

12.1 A person is able to exercise the right to speak at the General Assembly when that person is in a position to communicate to all those attending the meeting, during the meeting, any information or opinions which that person has on the business of the meeting.

12.2 A person is able to exercise the right to vote at the General Assembly when:

12.2.1 that person is able to vote, during the meeting, on resolutions put to the vote at the meeting; and

12.2.2 that person's vote can be taken into account in determining whether or not such resolutions are passed at the same time as the votes of all the other persons attending the meeting.

12.3 The Leadership Board may make whatever arrangements it considers appropriate to enable those attending a general meeting to exercise their rights to speak or vote at it.

12.4 In determining attendance at the General Assembly, it is immaterial whether any two or more persons attending it are in the same place as each other.

12.5 Two or more persons who are not in the same place as each other attend the General Assembly if their circumstances are such that if they have (or were to have) rights to speak and vote at that meeting, they are (or would be) able to exercise them.

## **13 QUORUM**

13.1 The quorum for the General Assembly shall be one-third of the total number of Member Authorities.

13.2 No business other than the appointment of the General Assembly Chair is to be transacted at a General Assembly if the persons attending it do not constitute a quorum.

## **14 CHAIRING THE GENERAL ASSEMBLY**

- 14.1 At the Annual Meeting, the President shall chair the General Assembly so as to elect the Chair of the Association and thereafter the Chair shall chair the General Assembly. At other meetings of the General Assembly, the Chair, or in his/her absence the senior Vice Chair, or in their absence another Vice Chair or person chosen by the meeting, shall preside. The person presiding as chair of the General Assembly at any time is the **General Assembly Chair**.

## **15 ADJOURNMENT OF GENERAL MEETINGS**

- 15.1 If the persons attending the General Assembly within half an hour of the time at which the meeting was due to start do not constitute a quorum, or if during a meeting a quorum ceases to be present, the General Assembly Chair must adjourn it.
- 15.2 The General Assembly Chair must adjourn a general meeting if directed to do so by the meeting.
- 15.3 The General Assembly Chair may adjourn a meeting at which a quorum is present if:
- 15.3.1 the meeting consents to an adjournment; or
  - 15.3.2 it appears to the General Assembly Chair that an adjournment is necessary to protect the safety of any person attending the meeting or ensure that the business of the meeting is conducted in an orderly manner.
- 15.4 When adjourning a general meeting, the General Assembly Chair must:
- 15.4.1 either specify the time and place to which it is adjourned or state that it is to continue at a time and place to be fixed by the Leadership Board; and
  - 15.4.2 have regard to any directions as to the time and place of any adjournment which have been given by the meeting.
- 15.5 If the continuation of an adjourned meeting is to take place more than 14 days after it was adjourned, the Association must give at least 7 clear days' notice of it:
- 15.5.1 to the same persons to whom notice of the General Assembly is required to be given; and
  - 15.5.2 containing the same information which such notice is required to contain.
- 15.6 No business may be transacted at an adjourned general meeting which could not properly have been transacted at the meeting if the adjournment had not taken place.

## **16 VOTING AT THE GENERAL ASSEMBLY**

- 16.1 Member Authorities shall be entitled to vote on matters at the General Assembly as follows:
- 16.1.1 in areas with both a county and district councils, each district council shall have one vote and the county council shall have votes equal to the number of district councils in its area;
  - 16.1.2 the total number of votes of unitary authorities shall represent the same proportion of the total votes of county and district councils, as the total population of unitary authorities in relation to the total population of county and district councils. Votes shall be allocated between individual unitary authorities on the basis of population bands that are reviewed and determined by the Leadership Board from time to time; and
  - 16.1.3 the population for this purpose shall be as given in the latest figures published by the Registrar General before the convening of each Annual Meeting. Welsh Member Authorities shall be entitled to vote on the election of a Chair, Vice-Chairs and Deputy

Chairs of the Association and on non-devolved matters directly relevant to their statutory duties and responsibilities.

- 16.2 Where a Member Authority is entitled to more than one vote, then:
- 16.2.1 the Member Authority Representative(s) appointed by the Member Authority and attending the General Assembly shall be entitled to cast collectively all votes of that Member Authority;
  - 16.2.2 written notice of the intention of those Member Authority Representatives present on behalf of an appointing Member Authority to exercise the votes of those Member Authority Representatives not present (or not appointed) by the same Member Authority must be given to the Chief Executive before the start of the General Assembly. The notice must be from the Member Authority in question; and
  - 16.2.3 it shall be the responsibility of the Member Authority Representatives present to ensure that they are in agreement as to how their Member Authority's votes should be cast.
- 16.3 In the case of an equality of votes, the General Assembly Chair shall have the casting vote in addition to any vote(s) he or she may be entitled to cast as a Member Authority Representative on behalf of his/her appointing Member Authority.

## **17 AMENDMENTS TO RESOLUTIONS**

- 17.1 An ordinary resolution to be proposed at the General Assembly may be amended by ordinary resolution if:
- 17.1.1 notice of the proposed amendment is given to the Association in writing by a person entitled to vote at the meeting at which it is to be proposed not less than 48 hours before the meeting is to take place (or such later time as the General Assembly Chair may determine); and
  - 17.1.2 the proposed amendment does not, in the reasonable opinion of the General Assembly Chair, materially alter the scope of the resolution.
- 17.2 A special resolution to be proposed at the General Assembly may be amended by ordinary resolution, if:
- 17.2.1 the General Assembly Chair proposes the amendment at the general meeting at which the resolution is to be proposed; and
  - 17.2.2 the amendment does not go beyond what is necessary to correct a grammatical or other non-substantive error in the resolution.
- 17.3 If the General Assembly Chair, acting in good faith, wrongly decides that an amendment to a resolution is out of order, the General Assembly Chair's error does not invalidate the vote on that resolution.

## **PART 5 – LEADERSHIP BOARD**

### **POWERS AND RESPONSIBILITIES**

#### **18 DIRECTORS' GENERAL AUTHORITY AND MEMBER AUTHORITIES' RESERVE POWER**

- 18.1 Subject to these Articles, the directors are responsible for the management of the Association's business for which purpose they may exercise all the powers of the Association.

18.2 The General Assembly may, by special resolution, direct the directors to take, or refrain from taking, specified action. No such special resolution invalidates anything which the directors have done before the passing of the resolution.

## **19 DIRECTORS MAY DELEGATE**

19.1 Subject to these Articles, the Leadership Board may delegate any of the powers which are conferred on it under these Articles:

19.1.1 to such Board;

19.1.2 by such means (including by power of attorney);

19.1.3 to such an extent;

19.1.4 in relation to such matters or territories; and

19.1.5 on such terms and conditions,

as it thinks fit.

19.2 If the Leadership Board so specifies, any such delegation may authorise further delegation of the directors' powers by any person to whom they are delegated.

19.3 The Leadership Board may revoke any delegation in whole or part, or alter its terms and conditions.

## **APPOINTMENT AND REMOVAL OF DIRECTORS**

### **20 APPOINTMENT OF DIRECTORS**

20.1 The General Assembly shall, at the Annual Meeting each year, elect from amongst the Member Authority Representatives:

20.1.1 the Chair of the Association;

20.1.2 Vice Chairs of the Association; and

20.1.3 Deputy Chairs of the Association.

20.2 Each of the above directors shall be a representative of a political group of democratically elected local representatives, whose share of the weighted electorate exceeds 5% of the total. The largest group at the point of calculating the political balance shall appoint the chair of the Leadership Board (the **Chair**).

20.3 The remaining directors are appointed according to proportionality in line with Article 7 (*Political balance*).

20.4 The Vice Chair nominated by the second largest group shall be the **Senior Vice Chair**.

### **21 TERMINATION OF A DIRECTOR'S APPOINTMENT**

21.1 A person ceases to be a director as soon as:

21.1.1 that person ceases to be a Member Authority Representative pursuant to Article 5.5;

21.1.2 the Leadership Board determines that he or she has breached the code of conduct of the Member Authority which appointed him/her;

- 21.1.3 that person ceases to be a director by virtue of any provision of the Companies Act 2006 or is prohibited from being a director by law;
- 21.1.4 a bankruptcy order is made against that person;
- 21.1.5 a composition is made with that person's creditors generally in satisfaction of that person's debts;
- 21.1.6 a registered medical practitioner who is treating that person gives a written opinion to the Association stating that that person has become physically or mentally incapable of acting as a director and may remain so for more than three months; or
- 21.1.7 notification is received by the Association from the director that the director is resigning from office, and such resignation has taken effect in accordance with its terms.

## **PART 6 – FINANCE AND DISSOLUTION**

### **22 FINANCE**

- 22.1 The Leadership Board shall approve prior to the last day of March in each year a statement of estimated expenditure for the year commencing on the following first day of April.
- 22.2 The subscriptions of Member Authorities for each year commencing 1 April shall be at rates to be determined annually by the Leadership Board.
- 22.3 The annual subscription of each Member Authority shall be calculated according to a formula determined by the Leadership Board, having regard to the allocation of votes as set out in Article 16.1. A maximum subscription for any year shall be set.
- 22.4 Where one or more Principal Councils that make up a Combined Authority are not Member Authorities, a separate subscription will be charged to that Combined Authority in respect of those Principal Councils.
- 22.5 Subscriptions shall be payable on 1 April in each year.
- 22.6 The Chief Executive shall be responsible for the preparation of an Income and Expenditure Account and Balance Sheet each year, for their examination and certification by independent professional auditors and for the submission of those accounts to the General Assembly.
- 22.7 The Association may invest, lend or otherwise deal with monies not immediately required for its purposes in such manner as may be thought fit by the Leadership Board and may borrow or raise money in accordance with financial regulations agreed by the Leadership Board.
- 22.8 The Association may purchase, take on lease or otherwise obtain land and buildings for use as offices, to provide accommodation for meetings of the Association, for the use of staff and ancillary and related bodies and for the purpose of generating income to support the activities of the Association; and may sell, or otherwise dispose of, such land and buildings all on such terms and in such manner as the Leadership Board considers suitable, and may establish companies for this purpose.

### **23 SCHEME OF ALLOWANCES**

- 23.1 The Association shall provide a scheme for the payment of allowances and expenses to democratically elected local representatives appointed to agreed Association roles, in recognition of duties carried out on behalf of the Association (**Scheme of Allowances**).
- 23.2 The Leadership Board will consider annually whether to establish an Independent Panel to review the Scheme of Allowances and to make recommendations for decision by the Leadership Board. An independent review of the Scheme should be carried out at least every 4 years.



23.3 The membership of the Panel shall comprise of a minimum of 3 and a maximum of 5 members and be agreed by the Leadership Board. The Chair of the Panel must be independent of the Association and may not be a serving democratically elected local representative. The remaining Panel members may be serving democratically elected local representatives, but must not hold an Association role whilst a member of the Panel.

## 24 DISSOLUTION

24.1 If at any General Assembly where at least two-thirds of Member Authorities are represented a motion for the winding up of the Association is passed by a two-thirds majority, a special resolution must then be put to all Member Authorities for decision via an electronic or postal vote. For the special resolution to be passed, it must be agreed by at least 75% of the votes capable of being cast by all Member Authorities.

24.2 If the Association is wound up for any reason, the remaining assets of the Association (if any) shall be distributed to each Member Authority at the date of dissolution (the **Existing Member Authorities**) in proportion to the amount which the total annual subscriptions paid by that Existing Member Authority in the last ten full accounting periods prior to the date when the winding up resolution was passed bears to the total subscriptions paid by all Existing Member Authorities in the same period.

24.3 In the event that the Association's assets should prove to be insufficient to discharge its liabilities, Member Authorities and Past Member Authorities (subject to Article 4.6) shall contribute such additional sums as are required to eliminate the deficiency. Where any one or more Existing Member Authorities or Past Member Authorities is/are required to contribute more than its/their proper proportion towards the Association's liabilities, as calculated below, the Existing Member Authorities and Past Member Authorities shall ensure that they pay across to those "over-contributing" such amount(s) as may be required to ensure that all Existing Member Authorities and Past Member Authorities contribute in accordance with this Article 24.

24.4 Every Existing Member Authority and Past Member Authority (subject to Article 4.6) shall contribute towards any deficiency in the proportion to which the annual subscription which it was liable to pay in its last year of membership (which in the case of an Existing Member Authority shall be the full accounting year immediately before the accounting year in which the winding up resolution was passed, and in the case of Past Member Authorities shall be the accounting year at the end of which its membership ceased) bears to the total amount of subscriptions, as so determined, payable by all Member Authorities (both existing and past).

24.5 The liabilities of the Association shall include (without prejudice to the general meaning of "liabilities") the following:

24.5.1 any sums which are or may in the future become due and payable by the Association under the terms of any lease, licence, mortgage, debenture, loan, guarantee, indemnity or any other agreement or arrangement to which the Association is a party and pursuant to which the Association is or becomes indebted;

24.5.2 any sums which are or may in the future become due and payable by the Association:

(a) to an administering authority for the purposes of the local government pension scheme regulations for the time being in force; and

(b) in respect of the Association's liability to pay the amount of any unfunded pension costs rechargeable to the Association. The amount of such unfunded pension costs shall be determined by an actuary acting as an expert and appointed by the Association and whose determination shall be conclusive;

24.5.3 any sums which are or may in the future become due and payable to officers and/or employees of the Association including salary, wages, redundancy, compensation for loss of office or employment or any other benefits (including early retirement packages) to which such officer or employee is or becomes entitled by reason of law or in

circumstances where the Association is dissolved, in accordance with the policy of the Association existing at the date of the passing of winding up resolution; and

24.5.4 any sums (whether by way of damages or otherwise) which are or may in the future become due and payable in respect of any liability in law whether in contract, tort or otherwise.

24.6 For the purposes of Article 24.5:

24.6.1 a sum may become due in the future in whatever circumstance including on the dissolution of the Association;

24.6.2 net liabilities shall mean the assets of the Association less "the liabilities" of the Association; and

24.6.3 "the assets of the Association" shall include all legal and equitable interests in any asset whatsoever including fixed, current, tangible and intangible assets.

24.7 In the event of a dispute between an Existing Member Authority or Past Member Authority and the Association as to the amount which the Existing Member Authority or Past Member Authority should contribute or receive under this Article 24 the matter shall be referred to arbitration. Any arbitration shall be conducted in accordance with the Arbitration Rules of the Chartered Institute of Arbitrators. The Arbitrator shall be appointed by the President for the time being of the Institute of Chartered Accountants of England and Wales. In the event that the Arbitrator issues a determination providing that the Existing Member Authority or Past Member Authority is liable to contribute a specified sum under this Article the Existing Member Authority or Past Member Authority shall pay the monies which the Arbitrator determines it ought to pay within seven days of the issue of the award.

24.8 The provisions set out in Articles 24.2 to 24.4 do not apply where dissolution is effected for the purpose of reconstitution or merger.

## **PART 7 – ADMINISTRATIVE ARRANGEMENTS**

### **25 MEANS OF COMMUNICATION TO BE USED**

25.1 Subject to the Articles, anything sent or supplied by or to the Association under these Articles may be sent or supplied in any way in which the Companies Act 2006 provides for documents or information which are authorised or required by any provision of that Act to be sent or supplied by or to the Association.

25.2 Subject to the Articles, any notice or document to be sent or supplied to a director in connection with the taking of decisions by directors may also be sent or supplied by the means by which that director has asked to be sent or supplied with such notices or documents for the time being.

25.3 A director may agree with the Association that notices or documents sent to that director in a particular way are to be deemed to have been received within a specified time of their being sent, and for the specified time to be less than 48 hours.

### **26 SEAL**

26.1 Any common seal may only be used by the authority of the Leadership Board.

26.2 The Leadership Board may decide by what means and in what form any common seal is to be used.

26.3 Unless otherwise decided by the Leadership Board, if the Association has a common seal and it is affixed to a document, the document must also be signed by at least one authorised person in the presence of a witness who attests the signature.

26.4 For the purposes of this Article, an **authorised person** is:

- 26.4.1 any director;
- 26.4.2 the secretary (if any); or
- 26.4.3 any person authorised by the Leadership Board for the purpose of signing documents to which the common seal is applied.

## 27 INDEMNITY

- 27.1 Subject to Article 27.2, a relevant director of the Association or an associated company may be indemnified out of the Association's assets against:
  - 27.1.1 any liability incurred by that director in connection with any negligence, default, breach of duty or breach of trust in relation to the Association or an associated company;
  - 27.1.2 any liability incurred by that director in connection with the activities of the Association or an associated company in its capacity as a trustee of an occupational pension scheme (as defined in section 235(6) of the Companies Act 2006); and
  - 27.1.3 any other liability incurred by that director as an officer of the Association or an associated company.
- 27.2 This Article does not authorise any indemnity which would be prohibited or rendered void by any provision of the Companies Acts or by any other provision of law.
- 27.3 In this Article:
  - 27.3.1 companies are **associated** if one is a subsidiary of the other or both are subsidiaries of the same body corporate; and
  - 27.3.2 a **relevant director** means any director or former director of the Association or an associated company.

## 28 INSURANCE

- 28.1 The directors may decide to purchase and maintain insurance, at the expense of the Association, for the benefit of any relevant director in respect of any relevant loss.
- 28.2 In this Article:
  - 28.2.1 a **relevant director** means any director or former director of the Association or an associated company;
  - 28.2.2 a **relevant loss** means any loss or liability which has been or may be incurred by a relevant director in connection with that director's duties or powers in relation to the Association, any associated company or any pension fund or employees' share scheme of the Association or associated company; and
  - 28.2.3 companies are **associated** if one is a subsidiary of the other or both are subsidiaries of the same body corporate.

## PART 8 - INTERPRETATION

### 29 INTERPRETATION

- 29.1 In these Articles:

**Annual Meeting** has the meaning given in Article 10.3

**Articles** means these articles of Association as amended from time to time

**Association** means the company governed by these Articles

**bankruptcy** includes individual insolvency proceedings in a jurisdiction other than England and Wales or Northern Ireland which have an effect similar to that of bankruptcy

**Board** means any person, board or committee to whom or which any of the Leadership Board's powers are delegated

**Board Standing Orders** has the meaning given in Article 6.5

**Chair** has the meaning given in Article 20.2

**Companies Acts** means the Companies Acts (as defined in section 2 of the Companies Act 2006) in so far as they apply to the Association;

**director** means a director of the Association, and includes any person occupying the position of director, by whatever name called

**document** includes, unless otherwise specified, any Document sent or supplied in Electronic Form

**electronic form** has the meaning given in section 1168 of the Companies Act 2006

**General Assembly** has the meaning given in Article 10.1

**General Assembly Chair** has the meaning given in Article 14

**hard copy form** has the meaning given in section 1168 of the Companies Act 2006

**instrument** means a document in hard copy form

**Leadership Board** means the directors of the Association or such of them as are present at a meeting of the directors at which a quorum is present

**Leadership Board Standing Orders** has the meaning given in Article 6.3

**Member Authority** has the meaning given in Article 4.1

**Member Authority Representative** has the meaning given in Article 5

**Objects** has the meaning given in Article 2.1

**ordinary resolution** has the meaning given in section 282 of the Companies Act 2006

**Past Member Authority** has the meaning given in Article 4.4

**Scheme of Allowances** has the meaning given in Article 23

**Senior Vice Chair** has the meaning given in Article 20.4

**special resolution** has the meaning given in section 283 of the Companies Act 2006

**writing** means the representation or reproduction of words, symbols or other information in a visible form by any method or combination of methods, whether sent or supplied in electronic form or otherwise, but excluding fax

**year** means calendar year

- 29.2 Unless the context otherwise requires, other words or expressions contained in these Articles bear the same meaning as in the Companies Act 2006 as in force on the date when these Articles become binding on the Association.
- 29.3 A reference to a person shall include a reference to an individual, firm, company, corporation, partnership, unincorporated body of persons, government, state or agency of a state or any association, trust, joint venture or consortium (whether or not having separate legal personality) and that person's personal representatives, successors, permitted assigns and permitted transferees.
- 29.4 Unless the context otherwise requires:
- 29.4.1 words in the singular shall include the plural and in the plural shall include the singular; and
- 29.4.2 a reference to one gender shall include a reference to the other genders.
- 29.5 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time. A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision. A reference to a regulation includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, inter-governmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation.
- 29.6 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 29.7 References to a **month** shall be construed as a reference to a period starting on one day in a calendar month and ending on the day immediately preceding the numerically corresponding day in the next calendar month or, if there is no numerically corresponding day in the next calendar month, the last day in the next calendar month.
- 29.8 The expressions **body corporate, holding company, subsidiary, parent undertaking, subsidiary undertaking** and **parent company** shall have the respective meanings given in the Companies Act 2006, and, for the purposes of sections 1159(1) and 1162(2)(b) and (d) of that Act, a company or undertaking (the first person) shall be treated as a member of another company or undertaking if:
- 29.8.1 any of the first person's subsidiaries or subsidiary undertakings is a member of that other company or undertaking; or
- 29.8.2 any shares or capital interests in that other company or undertaking are held by a person acting on behalf of the first person or any of its subsidiaries or subsidiary undertakings; or
- 29.8.3 any shares or capital interests in that other company or undertaking are registered in the name of a person (or its nominee) by way of security or in connection with the granting of security over those shares or capital interests by the first person.

**LOCAL GOVERNMENT ASSOCIATION**

**APPLICATION FOR ADMISSION AS A MEMBER AUTHORITY**

To the Board of Local Government Association (the **Association**)

[ ] Council hereby applies for admission as a Member Authority of the Local Government Association in accordance with the Association's Articles of Association, such admission to take effect on 1 April 2018.

On and from the Admission Date, the Council agrees to be bound by the Articles of Association of the Association and by such rules, standing orders and resolutions made or passed under or pursuant to them from time to time.

The council agree that all notices, documents or other information from the Association may, at the option of the Association, be sent to any address specified below, or to such other address as we may subsequently notify to the Association in accordance with the Articles of Association.

Signed:

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Name (printed):

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Position:

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Date:

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For and on behalf of (applicant council):

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Address of applicant council:

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Contact e-mail address:

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All communications to be marked for  
the attention of:

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## **Incorporating the LGA – FAQs**

## **APPENDX 3**

### **1. Why do we need to change?**

The LGA is currently an Unincorporated Association and its Constitution is similar to any voluntary club. In law it cannot enter into contracts or own title to property. Because of this, the LGA's two properties – Layden House in Farringdon 18 Smith Square in Westminster - are owned by separate property companies.

Rationalising the company structure will enable us to be more tax efficient and ensure that as much income as possible is used for the benefit of member councils.

### **2. Why are we doing this now?**

The LGA wants to become more commercial in order to offer best value to member councils and keep subscriptions low. As part of this we are redeveloping 18 Smith Square and Layden House to increase their capital value and to give the LGA a sustainable income stream. However under the current company structure

- Commercial income would go to the property companies and would be taxable.
- The transfer or sale of either building would be subject to capital gains tax.

### **3. Why is an unlimited company proposed? Why not a limited liability company?**

A senior member task group was set up in 2016 to review the LGA's company structures, supported by deputy chief executive Sarah Pickup and advised by leading tax specialists, Crowe Clark Whitehill. The task group considered a wide range of possibilities, including charitable status, limited liability partnership, community interest company, company limited by shares, company limited by guarantee and an unlimited company.

The task group concluded that an unlimited company best replicated the current arrangements, enabling the Association to continue to share assets and liabilities between its member councils according to the proportion of subscriptions paid, to maintain the current covenant allowing it to be treated as local authority by its pension trustees and to form a tax group with the property companies and a VAT group with the property companies and the IDeA company.

The definition of a company for tax grouping purposes specifically excludes limited liability companies and for this reason this option was discounted.

### **4. What is being proposed?**

There are three parts to the proposal:-

- To establish a new incorporated LGA, set up as an unlimited company, to take on the activities, assets and liabilities of the current LGA.

- To convert the property companies to unlimited companies with share capital, and to issue their shares to the new LGA. The two properties can then be transferred to the LGA without the need to pay capital gains tax or stamp duty.
- To form tax and VAT groups between the new LGA and its companies to maximise their tax efficiency.

#### 5. Why is the LGA choosing to replicate the previous governance arrangements rather than move to a more streamlined corporate model?

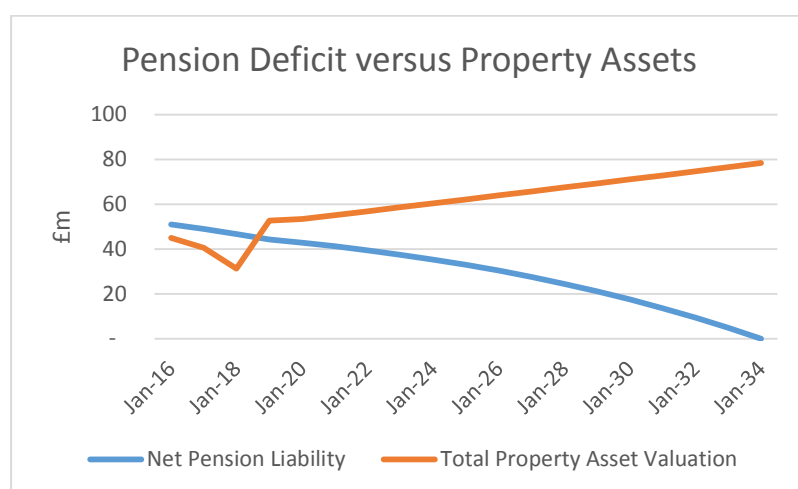
In 2014, the LGA undertook an extensive review of its governance arrangement with a view to creating a more streamlined model. However following extensive consultation, lead members concluded that as a national membership body, ensuring the active engagement of a wide number of members from across the country was more important than creating a streamlined structure. There has been no political appetite since then to revisit this.

#### 6. What will happen to the LGA's assets?

The majority of the LGA's interests – for example its share in Local Partnerships – will be transferred to the new company. The two property companies - LGA Properties Ltd and LGMB - will be converted to unlimited companies with share capital, with the shares issued to the new Incorporated LGA. This will enable the income from the two properties to go straight to the LGA, with consequent benefits for the LGA and its membership.

#### 7. What about its liabilities?

The LGA has a mortgage on 18 Smith Square and this, along with our pension liabilities, will be transferred to the new company. However under current projections, our assets will exceed liabilities by the end of the next financial year.



#### 8. What about my council's liability if the company is unlimited by guarantee?

Under the current Constitution all member councils, both existing and past, must contribute to any deficit if the Association were to be dissolved. Contributions are



proportionate to the levels of annual subscription paid. Conversely, member councils would also be entitled to a share of any assets. This will not change under the proposals.

**9. Why should the Council sign up to the proviso that it underwrites the Association's costs for five years if it decides to leave?**

This replicates the arrangement in the current Constitution of the LGA. It is designed to give stability to the organisation and to protect member authorities from being left with significant costs in the event of a large number of councils leaving the Association.

In renewing its membership each year, each council already signs up to this and has done since the LGA was created in 1997.

**10. Should the decision to join the new LGA Company be a member decision or can the Chief Executive signed the application?**

From a member council perspective, the risks and benefits of the new LGA company closely resemble those of the incorporated Association, with assets and liabilities continuing to be shared between its member councils according to the proportion of subscriptions paid.

It is of course up to individual councils to decide but many Chief Executives have already signed up to the new LGA, as they have done each year to the unincorporated Association.

**11. What does this mean for my council?**

Practically, there will be no change for member councils. Our Boards, Fire Services Management Committee, LGA Executive and the Leadership Board will all continue to operate in the same way and we will continue to deliver the same services to our membership.

However the new arrangements will enable us to maximise income available to support our work with councils, whilst keeping subscriptions as low as possible. This means that overall, member councils will be better off under the new arrangements.

**12. Who will be the company directors?**

The Chairman, Vice and Deputy Chairs of the Association will form the Board of Directors of the new LGA. They are elected annually by the General Assembly.

**13. Why couldn't we use the IDeA company instead of creating something new?**

The IDeA company is the specified body for receipt of government grant for our improvement activities. There has to be clear segregation between our grant funded work and our political lobbying activity which is central to the LGA.

**14. What happens next?**

General Assembly approved the change on 4 July 2017 and the new company has been registered with the chairman, vice and deputy chairs as the directors and interim members. The Board met on 7 March to ratify the appointments, followed by the first general meeting of the interim members to adopt the new articles of association.

On 26 February 2018, every member council received an invitation to join the new incorporated company by 31 March 2018, along with their 2018 membership pack. Councils will need to complete and sign a simple form and return it in hard copy to the Chief Executive. A copy of the form is attached.

Councils' 2018/19 subscription will give them membership both of the current unincorporated LGA and the new LGA company.

Assuming that all member councils have signed up to the new LGA, we will invite General Assembly in 2018 to pass a resolution to dissolve the unincorporated Association once all its activities, assets and liabilities have been transferred to the new company. This should give us a seamless transition to the new incorporated LGA.

#### **15. What if we decide not to go ahead?**

If an insufficient number of councils apply for membership of the new company, the LGA will continue in its current form. This will mean that the two properties remain in the ownership of the property companies, and we will have to pay tax on all our commercial property income.

#### **16. What happens if I miss the 31 March deadline?**

Your 2018/19 subscription gives you membership of the both the current and the new LGA. As soon as we receive your completed application you will be admitted as a member of the new company.

#### **17. What happens to the LGA's staff?**

All LGA employees will transfer to the new entity once the final decision is taken to dissolve the existing LGA. We will need to ensure that we comply with all employment law requirements as we manage the transfer.



