

NORTH LANARKSHIRE COUNCIL

REPORT

To: ALEOs and EXTERNAL BODIES MONITORING COMMITTEE	Subject: NL Leisure Ltd Proposed revision to Articles of Association	
From: STRATEGIC ADVISER (EXTERNAL ORGANISATIONS)		
Date: 15 July 2016	Ref: KH/JL	

1. Purpose of the Report

- 1.1 The purpose of this report is to seek member approval of the revisions proposed to NL Leisure Ltd's (the Board) existing Articles of Association.

2. Background

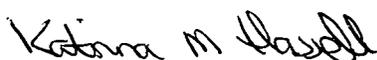
- 2.1 NL Leisure's existing Articles of Association have been operational since 2009, having been revised at that time to fully reflect North Lanarkshire Council as the sole member.
- 2.2 During the period April to June 2016, NL Leisure Ltd had an insufficient number of Independent Directors available to achieve the quorum needed, per the existing Articles, to transact its business. To enable the Board to meet and consider key business items such as approval of 2016-17 budget, appointment of replacement Independent Directors and homologation of replacement General Manager, the Council invoked article 26, temporarily suspending article 87 (quorum).
- 2.3 At its meeting of 28 June 2016, the Board, now operating with an adequate number of Directors, approved a number of amendments to the existing Articles of Association, and now requires the Council to consider these revisions to facilitate further discussion with the Office of the Scottish Charity Regulator (OSCR).

3. Proposed Amendments

- 3.1 The revisions approved by the NL Leisure Board are detailed within Appendix One and aim to provide more flexibility for the Company, and the Council as its sole member, going forward.
- 3.2 Members will wish to note that revisions proposed to Articles 22, 23, 64, 67, 91 and 103 focus primarily on recognising an office of Vice-Chair, and provide for this office to be held by an Independent Director only. Both revisions are in line with OSCR's recommended practice, and would strengthen the company's ability to maintain its charitable status going forward.

4. Recommendations

- 4.1 The ALEOs and External Bodies' Monitoring Committee is requested to:
- i) Consider the amendments which NL Leisure Ltd is recommending in respect of its Articles of Association, as attached in Appendix 1;
 - ii) Recommend acceptance of these amendments to the Policy & Resources Committee;
 - iii) Authorise the Managing Director of NL Leisure Ltd to liaise with OSCR regarding any amendments before implementing any changes to the current Articles.



Strategic Adviser (External Organisations)

NL Leisure Ltd
Proposed Amendments to Articles of Associations

Current Article	Proposed Amendment and new wording for Article	Rationale for Change
<p>108. The Nominations Committee shall comprise the Chair of the company and five individuals (two being Partner Directors and three being Independent Directors) appointed by the board of directors</p>	<p>108. The Nominations Committee shall comprise the Chair of the Company and three Directors (one being a Partner Director and two being Independent Directors) appointed by the board of directors</p>	<p>This proposal reduces the overall number of members, therefore making it more practicable to convene a meeting, without jeopardising OSCR's requirement for the Board to operate independent of Partner Director control.</p>
<p>86. The quorum for the transaction of the business of the directors shall (subject to article 87) be four.</p> <p>87. A quorum shall not be deemed to be constituted at any meeting of the directors if a majority of the directors present at the meeting are Partner Directors</p>	<p><i>Proposal 1:</i></p> <p>Delete article 87 in its entirety. A quorum shall then be any four directors pursuant to article 86.</p> <p><i>Proposal 2:</i></p> <p>87. A quorum shall not be deemed to be constituted at any meeting of the directors unless at least three of the directors present include Independent Directors, the Employee Director and/or the Trades Union Director.</p>	<p>Recognising OSCR will not accept revised articles which facilitate Partner Directors being able to have de facto control of the Board in circumstances where they regularly hold the majority at convened meetings, proposal 2 is more likely to be acceptable to OSCR, as this would ensure at least three non-Partner directors were present at Board Meetings.</p> <p>Any changes to the existing article 87 will require particular discussion with OSCR to allow the company to retain its charitable status.</p>
<p>52. North Lanarkshire Council shall be guided by the Nominations Committee (as defined in article 107) in relation to the selection of appropriate individuals for appointment as Independent Directors.</p> <p>110.4 The Nominations Committee should maintain a register of suitable candidates for future reference</p>	<p>52. North Lanarkshire Council shall be guided by the Nominations Committee (as defined in article 107) and may have reference to the Register of Candidates in relation to the selection of appropriate individuals for appointment as Independent Directors.</p> <p>110.4 The Nominations Committee shall maintain a register of candidates which are evaluated by the Nominations Committee and considered to be suitable candidates for appointment as Independent Directors [and approved by North Lanarkshire Council] ("Register of Candidates"). The Nominations Committee shall review the Register of Candidates annually.</p>	<p>The existing Articles recommend but do not require NL Leisure to maintain a register of suitable candidates, therefore the company did not maintain such.</p> <p>Through making such a register a requirement going forward, details of suitable candidates (following a robust recruitment process via the Nominations Committee and approved by the Council) can be maintained and therefore available to the Council for reference when they need to appoint Independent Directors.</p>

NL Leisure Ltd
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<p>22. The Chair shall (if present and willing to act) preside as chairperson of the meeting; if the Chair is not present and willing to act as chairperson of the meeting within 15 minutes after the time appointed for holding the meeting, the directors present shall elect one of their number to act as chairperson of the meeting.</p> <p>23. If the Chair is not present and willing to act as chairperson of the meeting within 15 minutes after the time appointed for holding the meeting and there is only one director present and willing to act, he/she shall be chairperson of the meeting</p>	<p>22. The Chair shall (if present and willing to act) preside as chairperson of the meeting; if the Chair is not present nor willing to act as chairperson of the meeting within 15 minutes after the time appointed for holding the meeting, the Vice-Chair shall act as chairperson of the meeting.</p> <p>If the Vice-Chair is not present nor willing to act as chairperson of the meeting within 15 minutes after the time appointed for holding the meeting, the directors present shall elect one of their number to act as chairperson of the meeting</p> <p>23. If the Chair and the Vice-Chair are each not present nor willing to act as chairperson of the meeting within 15 minutes after the time appointed for holding the meeting and there is only one director present and willing to act, he/she shall be chairperson of the meeting.</p>	<p>This amendment expressly permits the directors to appoint a Vice-Chair and is in line with OSCR's good practice recommendations. Article 64 of the existing articles (see below) implies this power by referencing 'such other offices as the directors consider appropriate'.</p>
<p>64. Directors shall be appointed to hold the office of Chair and such other offices (which shall include the chair of the Audit Committee (as defined in article 111)) as the directors consider appropriate.</p> <p>67. The office of Chair shall be held until the conclusion of the third annual general meeting which follows his/her appointment as Chair.</p> <p>91. Unless he/she is unwilling to do so, the Chair shall preside as chairperson at every meeting of directors at which he/she is</p>	<p>64a. Subject to article 64b, the Directors shall be appointed to hold the office of Chair, Vice-Chair and such other offices (which shall include the chair of the Audit Committee (as defined in article 111)) as the directors consider appropriate.</p> <p>64b. The position of Vice-Chair shall be held by an Independent Director.</p> <p>67. The office of Chair and Vice-Chair shall be held until the conclusion of the third annual general meeting which follows his/her appointment as Chair or Vice-Chair (as the case may be).</p> <p>91. Unless he/she is unwilling to do so, the Chair shall preside as chairperson at every meeting of directors at which he/she is</p>	<p>These amendments primarily adjust the existing Articles to recognise the office of Vice-Chair, with the Vice Chair (through the proposed new article 103b) acting as chairperson of any meeting at which the Chair is not present or is unwilling to act.</p> <p>Article 64 is proposed as 64a and 64b going forward, with 64b providing that the office of Vice-Chair will be held by an Independent Director only. This revision is in line with OSCR's recommended practice.</p>

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<p>present; if the Chair is unwilling to act as chairperson of a meeting of directors or is not present within 15 minutes after the time appointed for the meeting, the directors present shall appoint one of their number to be chairperson of the meeting.</p> <p>103. The directors may delegate any of their powers to any committee consisting of two or more directors; they may also delegate to the Chair or a director holding any other office such of their powers as they consider appropriate</p>	<p>present; if the Chair is unwilling to act as chairperson of a meeting of directors or is not present within 15 minutes after the time appointed for the meeting, <i>the Vice-Chair shall preside as chairperson over the meeting. If the Vice-Chair is unwilling to act as chairperson of a meeting of directors or is not present within 15 minutes after the time appointed for the meeting,</i> the directors present shall appoint one of their number to be chairperson of the meeting.</p> <p>103a. The directors may delegate any of their powers to any committee consisting of two or more directors; they may also delegate to the Chair or a director holding any other office such of their powers as they consider appropriate.</p> <p>103b. <i>Without prejudice to the generality of article 103a, the directors may delegate the powers of the Chair to the Vice-Chair for so long as the office of Chair is vacant or the Chair is unwilling or unable to act.</i></p>	