

Agenda Item	22
Report No	HC/37/17

HIGHLAND COUNCIL

Committee: Highland Council

Date: 7 September 2017

Report Title: **High Life Highland – Amendment to Articles of Association**

Report By: **Depute Chief Executive/Director of Corporate Development**

1. Purpose/Executive Summary

1.1 This report outlines a request from the Board of High Life Highland to amend the company's Articles of Association in regard to the retiral of Independent Directors on the Board and to the membership of its Finance and Audit Committee and to make the necessary resolution.

1.2 The Highland Council is the sole Member of High Life Highland (a company limited by Guarantee).

2. Recommendations

Members are asked to agree to amend Articles 61 and 112.1 respectively of the Company's Memorandum and Articles as follows:-

- At the conclusion of *every second* annual general meeting, two of the Independent Directors shall retire from office, but shall then be eligible for re-appointment under article 56. *For the avoidance of doubt, references to the Annual General Meeting in article 61 relates to the biennial Annual General Meeting.*
- the chief executive of the company, the principal finance officer *and the head of performance* of the company

3. Background

- 3.1 In terms of the Company's Memorandum and Articles of Association, the question of which Independent Directors are to retire requires to be determined six months or more in advance of the anticipated date of the Annual General Meeting (AGM).
- 3.2 In addition, the Company's Head of Resources transferred over to deal with the development of Inverness Castle. In terms of the Memorandum and Articles of Association this post-holder was a member of the Finance and Audit Committee.

4. Proposed Amendments

- 4.1 At its meeting on 22 August 2017 the Board considered the issue and agreed to request that the following amendments now be made to the company's Memorandum and Articles of Association.

4.1.1 Article 61

- 4.1.2 Article 61 states that if no Independent Director puts himself/herself forward for retiral at the forthcoming annual general meeting, the Independent Directors who are to retire at that annual general meeting shall be the two Independent Directors who have been longest in office since they were last appointed/re-appointed; and on the basis that as between individuals who were last appointed/re-appointed on the same date, the question of which of them is to retire shall be determined by some random method conducted at the board meeting.

- 4.1.3 Consequently, at the Autumn meeting of the Board, Directors would have needed to intimate whether or not they were willing to be re-appointed with effect from the conclusion of the AGM with any such declaration being final and conclusive. For the avoidance of doubt, any Director wishing to return after reaching the end of their term still has to re-apply and be considered against any new applicants.

- 4.1.3 However, at their Board meeting held in September 2016 discussion took place about the merits of extending the terms of Independent Directors so recruitment would take place every 2 years instead of annually, as at present.

- 4.1.4 With the Council entering the next phase of its Redesign process, the view was taken that the time is now right to seek to have the Memorandum and Articles of Association revised by Highland Council on 7 September 2017 to appoint independent Directors for a longer period of time. This would in no way prevent any Independent Director from resigning mid term should they so wish.

- 4.1.5 Extending the terms would provide additional stability and continuity and would compare more fairly with the terms of office of Council Directors.

- 4.1.6 The proposed amendment would therefore be:-

Article 61 At the conclusion of *every second* annual general meeting, two of the Independent Directors shall retire from office, but shall then be eligible for

re-appointment under article 56.

4.2 Article 112.1

4.2.1 Articles 111-113 of the Memorandum and Articles of Association deals with the Company's Finance and Audit Committee. In particular, Article 112 refers to the membership of the Committee and Article 112.1 states that "the chief executive of the company, the principal finance officer of the company and the head of resources of the company" are members of the Committee.

4.2.2 The Company's Head of Resources is acting as project manager for the Inverness Castle regeneration project and it is therefore proposed that reference to this post is deleted from Article 112.1 and that the head of performance be added in its place.

4.2.3 The amended Article would therefore read as follows:-

Article 112.1 the chief executive of the company, the principal finance officer *and the head of performance* of the company;

5. To effect the proposed amendments to the Memorandum and Articles of Association, a formal Special Resolution will be required by the Highland Council as the Member of the company. The special resolution is attached for approval at **Appendix 1**.

5. Implications

5.1 Resource – there are no new resource implications arising from the recommendations of this report.

Legal – there are no new legal implications arising from the recommendations of this report.

Community (Equality, Poverty and Rural) – there are no new legal implications arising from the recommendations of this report.

Climate Change/Carbon Clever – there are no new legal implications arising from the recommendations of this report.

Risk – there are no new legal implications arising from the recommendations of this report.

Gaelic – there are no new legal implications arising from the recommendations of this report.

Designation: **Depute Chief Executive/Director of Corporate Development**

Date: 25 August 2017

Author: Jane Maclennan

Companies Act
MEMBER'S WRITTEN SPECIAL RESOLUTION
OF
HIGH LIFE HIGHLAND ("the Company")
(Company Number SC407011)

Circulation Date:- 7 September 2017

In accordance with sections 288 to 300 of the Companies Act 2006, we, being the sole member of the Company and representing 100% of the voting rights in respect of the following resolutions on the circulation date (as set out above), agree to the following resolution, which is proposed as a special resolution of the Company:

That the provisions of the articles of association of the Company be altered by:

1. Amend article 61 with the insertion of the following:

"61 At the conclusion of *every second* annual general meeting, two of the Independent Directors shall retire from office, but shall then be eligible for re-appointment under article 56. *For the avoidance of doubt, references to the Annual General Meeting in article 61 relates to the biennial Annual General Meeting.*

2. Amend article 112.1 with the insertion of the following:

"112.1 the chief executive of the company, the principal finance officer *and the head of performance* of the company."

For and on behalf of High Life Highland

Date

Scottish Charity Number SC407011