

REPORT TO: East Lothian Council

MEETING DATE: 25 February 2025

BY: Executive Director for Place

SUBJECT: East Lothian Council/Queen Margaret University
Joint Venture Agreement: Proposal to Amend Articles
of Association

1 PURPOSE

- 1.1 The purpose of this report is to provide a report on an amendment to (1) Article 5 of the Articles of Association of the JV Co and (2) consent to a variation to the Joint Venture Agreement between East Lothian Council and Queen Margaret University.

2 RECOMMENDATIONS

- 2.1 To ratify the amendment to Article 5 of the Articles of Association and consent to the variation of the Joint Venture Agreement between East Lothian Council and Queen Margaret University.

3 BACKGROUND

- 3.1 In April 2022 East Lothian Council (“ELC”) and Queen Margaret University (“QMU”) concluded the legal documents to enable the delivery of the Joint Venture Structure, including a Joint Venture Agreement.
- 3.2 The Joint Venture provides for a 50/50 representation from ELC and QMU by way of the appointment of four directors. Two directors represent ELC’s interest and two represent QMU’s interest. The Joint Venture Agreement and the Joint Venture Company Articles both provide that the number of directors shall not be less than, and no more than, four. Where the number of directors is below four the directors may not act.
- 3.3 In February 2025, one of the JV directors representing QMU’s interest intimated the intention to resign from the Board (due to personal circumstances). After seeking appropriate legal advice, it was agreed that

the JV would proceed in the following manner at the Board meeting on 6 February.

- 3.4 The directors resolved to issue a written resolution (attached) to the shareholders seeking shareholder approval to amend the Article 5. The written resolution to amend the articles, did not change the requirement of four directors (made up of an equal number of A Directors and B Directors). Rather, the amendment provided that if there is a vacancy or imbalance in their number, the continuing directors may act for all purposes provided they are capable of constituting a quorum.
- 3.5 The Joint Venture Agreement provides that the quorum for a meeting of the directors is two directors. One shall be a director representing ELC, the other a director representing QMU. Each director has the capability of exercising two votes on behalf of the absentee director – this arrangement will then allow continuity of business.
- 3.6 In addition, the JV Agreement has some legacy wording that states that *"To the extent that there are fewer than four directors appointed as at the Completion Date, the parties respectively undertake to ensure they have each appointed two directors no later than 6 months after the Completion Date."* That is now obsolete, and the Board agreed to address this by way of a variation to the JV agreement (attached) that stated:

"If at any time a party has less than two appointed directors, it shall use reasonable endeavours to appoint additional directors such that it has two appointed directors in office as soon as reasonably practicable (but allowing for its internal governance processes relating to the appointment of directors)."

The purpose of the above is to (1) align with the provision in the articles and (2) reduce the likelihood of a breach under the JV Agreement if a party has appointed less than two directors and to allow a party reasonable time to make further appointments.

The last item of business was a minuting of the QMU's formal resignation which will be intimated post the date of the Council meeting.

4 POLICY IMPLICATIONS

- 4.1 None

5 INTEGRATED IMPACT ASSESSMENT

- 5.1 The subject of this report does not affect the wellbeing of the community or have a significant impact on equality, the environment or economy.

6 RESOURCE IMPLICATIONS

- 6.1 Financial - East Lothian Council's £10M contribution is reflected in the approved capital plan.
- 6.2 Personnel - None
- 6.3 Other - None

7 BACKGROUND PAPERS

- 7.1 Council Report (Private) - Commercial Heads of Terms between ELC and QMU for the Delivery of the Food and Drink Innovation Hub and Park – 27 October 2020.
- 7.2 Council Report (Private) - Commercial Heads of Terms between East Lothian Council and Queen Margaret University for the Delivery of the Food and Drink Innovation Hub and Park – 15 December 2020.
- 7.3 Council Report (Private) ELC/QMU Commercial Heads of Terms. – 27 April 2021.
- 7.4 Council Report (Private) East Lothian Council / Queen Margaret University Legal Update – 16 November 2021
- 7.5 Council Report (Private) East Lothian Council / Queen Margaret University Joint Venture – February 2022.
- 7.6 Council Report (Private) East Lothian Council / Queen Margaret University Joint Venture – March 2022.
- 7.7 Members Library Report – June 2022
- 7.8 Members Library Report – February 23
- 7.9 Members Library Report – October 23
- 7.10 Members Library Report – October 24

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DATE	7 February 2025

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Company number SC725216

PRIVATE COMPANY LIMITED BY SHARES

WRITTEN RESOLUTIONS of EDINBURGH INNOVATION PARK JOINT VENTURE COMPANY LIMITED
(**Company**)

[] February 2025 (**Circulation Date**)

Pursuant to Chapter 2 of Part 13 of the Companies Act 2006, the directors of the Company propose that the Resolution below is passed as a special resolution (**Resolution**).

SPECIAL RESOLUTION

THAT the articles of association of the Company be amended by deleting the present Article 5 and by adopting the following as new Article 5 namely:

"The number of directors shall not be less than and no more than four, made up of an equal number of A Directors and B Directors, provided that the continuing directors may act for all purposes notwithstanding any vacancies or imbalance in their number provided they are capable of constituting a quorum. No shareholding qualification for directors shall be required."

AGREEMENT

Please read the notes at the end of this document before signifying your agreement to the Resolution.

The undersigned, a person entitled to vote on the Resolution on the Circulation Date, hereby irrevocably agrees to the Resolution:

Signed by

Signature of Authorised Signatory	
Print Name	
For and on behalf of Queen Margaret University, Edinburgh	
Date	

Signed

Signature of Authorised Signatory	
Print Name	
For and on behalf of East Lothian Council	
Date	

NOTES

1. If you agree to the Resolution, please indicate your agreement by signing and dating this document where indicated above and returning it to the Company using one of the following methods:

- **By hand or post:** delivering the signed copy to **Brodies LLP, 58 Morrison Street, Edinburgh EH3 8BP**, United Kingdom (marked for the attention of Malcolm Holmes).
- **By e-mail:** by attaching a scanned copy of the signed document to an e-mail and sending it to malcolm.holmes@brodies.com. Please enter "Written resolution dated [CIRCULATION DATE]" in the e-mail subject box.
- **DocuSign:** by clicking "finish" which returns the signed document to Brodies LLP.

If you do not agree to the Resolution, you do not need to do anything. You will not be deemed to agree if you fail to reply.

2. Once you have indicated your agreement to the Resolution, you may not revoke your agreement.
3. Unless, by 28 days from the Circulation Date, sufficient agreement has been received for the Resolutions to pass, they will lapse. If you agree to the Resolution, please ensure that your agreement reaches us before or during this date.

AGREEMENT

BETWEEN

QUEEN MARGARET UNIVERSITY, EDINBURGH

AND

EAST LoTHIAN COUNCIL

THIS DOCUMENT HAS BEEN PREPARED BY BRODIES LLP ON BEHALF OF QUEEN MARGARET UNIVERSITY, EDINBURGH. YOUR SIGNATURE ON THIS DOCUMENT MAY HAVE CERTAIN LEGAL CONSEQUENCES AND YOU SHOULD SEEK INDEPENDENT LEGAL ADVICE BEFORE SIGNING THIS DOCUMENT.



ENLIGHTENED THINKING

Date of delivery: February 2025

AGREEMENT

BETWEEN

PARTIES

- (1) **Queen Margaret University, Edinburgh**, a company limited by guarantee registered in Scotland with company number SC007335 and having its registered office at Queen Margaret University Drive, Musselburgh, East Lothian, EH21 6UU ("**QMU**"); and
- (2) **East Lothian Council**, constituted in terms of Local Government etc. (Scotland) Act 1994 and having their Principal Offices at John Muir House, Brewery Park, Haddington EH41 3HA ("**ELC**").

QMU and ELC are referred to together as the "**Parties**" in this Agreement.

BACKGROUND

- (A) The parties entered into a joint venture agreement dated 12 April 2022 (the "**JV Agreement**") relating to Edinburgh Innovation Park Joint Venture Company Limited (company number SC725216).
- (B) The parties have agreed to vary the JV Agreement.

AGREED TERMS

1 Interpretation

- 1.1 Unless otherwise defined in this Agreement, capitalised terms shall have the meanings set out in the JV Agreement.
- 1.2 The rules of interpretation set out in the JV Agreement shall apply to this Agreement.

2 Variation of the JV Agreement

- 2.1 Clause 4.2 of the JV Agreement shall be deleted, and the following shall be substituted as a new clause 4.2 in place thereof:

"4.1 There shall be a minimum number of four directors and no more than four directors on the Board made up of an equal number of A Directors and B Directors, provided that the continuing directors may act for all purposes notwithstanding any vacancies or imbalance in their number provided they are capable of constituting a quorum. If at any time a party has less than two appointed directors, it shall use reasonable endeavours to appoint additional directors such that it has two appointed directors in office as soon as reasonably practicable (but allowing for its internal governance processes relating to the appointment of directors).

3 Status of agreement

- 3.1 This Agreement is supplemental to the JV Agreement. Except as set out in this Agreement, the JV Agreement shall continue in full force and effect.

4 Third party rights

- 4.1 This Agreement does not confer on any person other than the parties any right to enforce or otherwise invoke any term of this Agreement under the Contract (Third Party Rights) (Scotland) Act 2017).

5 Counterparts

- 5.1 This Agreement may be executed in any number of counterparts, each of which is an original and which together have the same effect as if each Party had signed the same document.

6 Governing law and jurisdiction

- 6.1 This Agreement and any disputes or claims arising out of or in connection with its subject matter or formation (including non-contractual disputes or claims) are governed by and construed in accordance with the law of Scotland.
- 6.2 The parties irrevocably agree that the courts of Scotland have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

This Agreement is executed as follows and, if executed in counterpart in terms of the Legal Writings (Counterparts and Delivery) (Scotland) Act 2015, is delivered for the purposes of that Act on the date set out on page 1 of this Agreement:

For **QUEEN MARGARET UNIVERSITY, EDINBURGH**

.....
signature of witness

.....
signature of authorised signatory

.....
full name of above (print)

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full name of above (print)

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.....

.....
date of signing

.....
address of witness

.....
place of signing

For **EAST LOTHIAN COUNCIL**

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signature of witness

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signature of authorised signatory

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full name of above (print)

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full name of above (print)

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date of signing

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address of witness

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place of signing