

# **CONSTITUTION OF THORNHILL COMMUNITY TRUST [SCIO]**



**February 2023**

CONTENTS		
<b>GENERAL</b>	type of organisation, Scottish principal office, name, purposes, powers, application of income and property, liability, general structure.	clauses 1 - 13
<b>MEMBERS</b>	categories of members, qualifications for membership, application, minimum number, subscription, arrangements involving the SCIO's website, register of members, withdrawal, transfer, expulsion, termination.	clauses 14 - 37
<b>DECISION-MAKING BY THE MEMBERS</b>	members' meetings, power to request members' meeting, notice, procedure at members' meetings, voting at members' meetings, written resolutions, minutes.	clauses 38 - 70
<b>BOARD (CHARITY TRUSTEES)</b>	categories, number, eligibility, initial charity trustees, election/retiral/re-election (Member Trustees), appointment/re-appointment (Co-opted Trustees), termination of office, register of charity trustees, office bearers, powers, general duties, code of conduct.	clauses 71-107
<b>DECISION-MAKING BY THE CHARITY TRUSTEES</b>	notice, procedure at board meetings, minutes.	clauses 108 - 128
<b>ADMINISTRATION</b>	sub-committees, operation of accounts, secretary, accounting records and annual accounts.	clauses 129 - 141
<b>MISCELLANEOUS</b>	winding up, indemnity, alterations to the constitution, interpretation.	clauses 142 - 148

## **GENERAL**

### **Type of Organisation**

- 1 The organisation will, upon registration, be a Scottish Charitable Incorporated Organisation (SCIO).

### **Scottish Principal Office**

- 2 The principal office of the organisation will be in Scotland (and must remain in Scotland).

### **Name**

- 3 The name of the organisation (referred to below as the “SCIO”) is Thornhill Community Trust.

### **Purposes**

- 4 The SCIO’s purposes are to benefit the community of *Thornhill, Stirling* which comprises the postcode units:

FK8 3AR; FK8 3JA; FK8 3LG; FK8 3PE; FK8 3PF; FK8 3PG;  
FK8 3PH; FK8 3PJ; FK8 3PL; FK8 3PN; FK8 3PP; FK8 3PQ;  
FK8 3PR; FK8 3PS; FK8 3PT; FK8 3PU; FK8 3PW; FK8 3PX;  
FK8 3PY; FK8 3PZ; FK8 3QA; FK8 3QB; FK8 3QD; FK8 3QE;  
FK8 3QF; FK8 3QG; FK8 3QH; FK8 3QJ; FK8 3QL; FK8 3QN;  
FK8 3QQ; FK8 3QR; FK8 3QT; FK8 3QU; FK8 3QW; FK8 3QX;  
FK9 4UZ; FK9 4XA; FK9 4XB; FK9 4XD; FK9 4XE; FK16 6AX .

(“the Community”) with the following objects:

- 4.1 the advancement of community development (including the advancement of rural regeneration) within the Community;
- 4.2 the advancement of environmental protection or improvement within the Community;
- 4.3 The provision of recreational facilities or the organisation of recreational activities within the Community with the object of improving the conditions of life for the persons for whom the facilities or activities are primarily intended.

But only to the extent that the above purposes are consistent with the main purpose of furthering the achievement of sustainable development.

### **Powers**

- 5 The SCIO has power to do anything which is calculated to further its purposes or is conducive or incidental to doing so.

- 6 In particular, (but without limiting the range of powers available under the Charities and Trustee Investment (Scotland) Act 2005) the SCIO has power:

- 6.1 to register any interest in land and to exercise any right to buy under Part 2 of the Land Reform (Scotland) Act 2003;
- 6.2 to exercise any right to buy under Part 3A of the Land Reform (Scotland) Act 2003;

- 6.3 to exercise any right to buy under Part 5 of the Land Reform (Scotland) Act 2016;
- 6.4 to make any participation request under Part 3 of the Community Empowerment (Scotland) Act 2015 and/or any asset transfer request under Part 5 of the Community Empowerment (Scotland) Act 2015, and to take any appropriate steps following upon the making of any such request;
- 6.5 to encourage and develop a spirit of voluntary or other commitment by, or co-operation with, individuals, unincorporated associations, societies, federations, partnerships, corporate bodies, agencies, undertakings, local authorities, unions, co-operatives, trusts and others and any groups or groupings thereof willing to assist the Organisation to achieve the Purposes;
- 6.6 to promote and carry out research, surveys and investigations and to promote, develop and manage initiatives, projects and programmes;
- 6.7 to purchase, take on lease, hire, or otherwise acquire any property suitable for the Organisation;
- 6.8 to construct, convert, improve, develop, conserve, maintain, alter and demolish any buildings or erections whether of a permanent or temporary nature, and manage and operate or arrange for the professional or other appropriate management and operation of the Organisation's Property;
- 6.9 to sell, let, hire, licence, give in exchange and otherwise dispose of all or any part of the Property of the Organisation;
- 6.10 to establish and administer a building fund or funds or guarantee fund or funds or endowment fund or funds;
- 6.11 to employ, contract with, train and pay such staff (whether employed or self-employed) as are considered appropriate for the proper conduct of the activities of the Organisation;
- 6.12 to take such steps as may be deemed appropriate for the purpose of raising funds for the activities of the Organisation;
- 6.13 to accept subscriptions, grants, donations, gifts, legacies and endowments of all kinds, either absolutely or conditionally or in trust;
- 6.14 to establish, manage and/or support any other charity, and to make donations for any charitable purpose falling within the Purposes;
- 6.15 to establish, operate and administer and/or otherwise acquire any separate trading organisation or association, whether charitable or not;
- 6.16 to enter into any arrangement with any organisation, government or authority which may be advantageous for the purposes and/or activities of the Organisation and to enter into any arrangement for

co-operation, mutual assistance, or sharing profit with any charitable organisation;

- 6.17 to enter into insurance of all kinds (which may include indemnity insurance in respect of Charity Trustees and employees);
- 6.18 to oppose, or object to, any application or proceedings which may prejudice the interests of the Organisation;
- 6.19 to pay the costs of forming the Organisation and its subsequent development;
- 6.20 to prepare, organise, promote and implement training courses, exhibitions, lectures, seminars, conferences, events and workshops, to collect, collate, disseminate and exchange information and to prepare, produce, edit, publish, exhibit and distribute pamphlets, books and other publications, tapes, motion and still pictures, music and drama and other materials, all in any medium;
- 6.21 to borrow or raise money for the Purposes and to give security in support of any such borrowings by the Organisation and/or in support of any obligations undertaken by the Organisation;
- 6.22 to set aside funds not immediately required as a reserve or for specific Purposes.

### **Application of Income and Property**

- 7 The income and property of the SCIO shall be applied solely towards promoting the SCIO's objects (as set out in clause 4) and in particular (but without limiting the generality of that provision) any surplus funds or assets of the SCIO must be applied for the benefit of the Community.
- 8 No part of the income or property of the SCIO may be paid or transferred (directly or indirectly) to the members of the SCIO, whether by way of dividend, bonus or otherwise - either in the course of the SCIO's existence or on dissolution - except where this is done in direct furtherance of the SCIO's charitable purposes.
- 9 No benefit (whether in money or in kind) shall be given by the SCIO to any charity trustee except:
  - (a) repayment of out-of-pocket expenses; or
  - (b) reasonable payment in return for particular services (outwith the ordinary duties of a charity trustee) actually rendered to the SCIO.

## **Liability of Members**

- 10 The members of the SCIO have no liability to pay any sums to help to meet the debts (or other liabilities) of the SCIO if it is wound up; accordingly, if the SCIO is unable to meet its debts, the members will not be held responsible.
- 11 The members and charity trustees have certain legal duties under the Charities and Trustee Investment (Scotland) Act 2005; and clause 10 does not exclude (or limit) any personal liabilities they might incur if they are in breach of those duties or in breach of other legal obligations or duties that apply to them personally.

## **General Structure**

- 12 The structure of the SCIO consists of:-
  - 12.1 the MEMBERS - comprising (i) Ordinary Members (who have the right to attend members' meetings (including any annual general meeting) and have important powers under the constitution; in particular, the Ordinary Members elect people to serve on the board and take decisions on changes to the constitution itself), and (ii) the Junior Members;
  - 12.2 the BOARD - who hold regular meetings during the period between annual general meetings, and generally control and supervise the activities of the SCIO; in particular, the board is responsible for monitoring and controlling the financial position of the SCIO.
- 13 The people serving on the board are referred to in this constitution as CHARITY TRUSTEES.

## **MEMBERS**

### **Categories of Members**

- 14 For the purposes of this constitution:-
  - (a) "Ordinary Member" means a member who fulfils the qualifications set out in clause 17.1; "Ordinary Membership" shall be interpreted accordingly;
  - (b) "Junior Member" means a member admitted under clause 17.2; "Junior Membership" shall be interpreted accordingly
- 15 Junior Members are not eligible to stand for election to the Board nor are they eligible to vote at any members' meeting.

### **Qualifications for Membership**

- 16 The Members of the Organisation shall consist of those Individuals who made the application for registration of the Organisation and such other Individuals or Groups as are admitted to membership under the following Clause 17.
- 17 Membership of the Organisation is open to:

17.1 **Ordinary Members:** those Individuals aged 16 and over who:

- (a) are resident in the Community;
- (b) are entitled to vote at a local government election in a polling district that includes the Community or part of it; and
- (c) support the Purposes.

17.2 **Junior Members:** those Individuals who:

- (a) are aged between 12 and 15 and
- (b) support the Purposes.

17.3 Declaring that, if a Member ceases to comply with any of the criteria of clauses 17.1 & 17.2 they will be obliged to inform the Organisation and will thereafter have their membership terminated and if the Organisation becomes aware of changes itself it will terminate their Membership and notify them accordingly.

18 An individual, once admitted to Ordinary Membership, shall automatically cease to be a member if he/she ceases to fulfil any of the qualifications for Ordinary Membership set out in clause 17.

### **Application for Membership**

- 19 Any individual who wishes to become a member must (subject to clause 27) sign, and lodge with the SCIO, a written application for membership, specifying the category of membership for which he/she is applying.
- 20 The SCIO shall supply a form for applying for membership to any individual on request.
- 21 An individual applying for Ordinary Membership shall, if the SCIO so requests, supply such evidence as the SCIO may reasonably request to demonstrate that he/she fulfils the qualifications set out in clause 17.
- 22 At the first trustees' meeting which is held after receipt of an application, the trustees shall review the application (together with any evidence supplied under clause 27) to determine whether the applicant fulfils the qualifications for membership set out in clauses 17.1 or 17.2 (as the case may be); if, on the basis of that review, the applicant fulfils the qualifications for membership, the trustees shall admit the applicant to membership and, within a reasonable time after the meeting, notify the applicant of the outcome of the application.
- 23 For the avoidance of doubt, in determining whether or not any individual or organisation fulfils the qualifications for membership, the trustees shall adhere to a transparent process which enshrines the principles of equal treatment and non-discrimination.

### **Minimum Number of Members**

- 24 The minimum number of members is 30; and at least three quarters of the members of the Trust must, at all times, be members of the community.

25 In the event that either or both of the requirements under clause 24 cease to be met through a reduction in the number of members or a reduction in the proportion of Ordinary Members included within the membership, the board may not conduct any business other than to ensure the admission of sufficient members (or, as the case may be, Ordinary Members) to ensure that those requirements are met once more.

### **Membership Subscription**

26 No membership subscription will be payable.

### **Arrangements Involving the SCIO's Website**

27 The charity trustees may, if they consider appropriate, introduce arrangements under which an individual can apply for membership by accessing the SCIO's website (and, where applicable, links from the SCIO's website), and completing and submitting forms electronically; the charity trustees shall ensure that any such arrangements incorporate appropriate security measures and reserve the right for the SCIO to request signed hard copy documentation and/or evidence of eligibility in any case where the charity trustees consider that to be appropriate.

### **Register of Members**

28 The board must keep a register of members, setting out

28.1 for each current member:

28.1.1 his/her full name and address;

28.1.2 the date on which he/she was registered as a member of the SCIO; and

28.1.3 the category of membership into which he/she falls.

28.2 for each former member - for at least six years from the date on he/she ceased to be a member:

28.2.1 his/her name; and

28.2.2 the date on which he/she ceased to be a member.

29 The board must ensure that the register of members is updated within 28 days of any change:

29.1 which arises from a resolution of the board or a resolution passed by the members of the SCIO; or

29.2 which is notified to the SCIO.

30 If a member or charity trustee of the SCIO requests a copy of the register of members, the board must ensure that a copy is supplied to him/her within 28 days, providing the request is reasonable; if the request is made by a member (rather than a charity trustee), the board may provide a copy which has the addresses blanked out.

## **Re-registration of Members**

- 31 The Board may, at any time, issue notices to the Members requiring them to confirm that they wish to remain as Members of the organisation and allowing them a period of 6 weeks (running from the date of issue of the notice) to provide that confirmation to the Board.
- 32 If a Member fails to provide confirmation to the Board (in writing or by e-mail) that they wish to remain as a Member of the Organisation before the expiry of the 6 week period referred to in clause 31, the membership will lapse.
- 33 A notice under clause 31 will not be valid unless it refers specifically to the consequences (under clause 32) of failing to provide confirmation within the 6 week period.

## **Withdrawal from Membership**

- 34 Any individual who wants to withdraw from membership must give a written notice of withdrawal to the SCIO, signed by him/her; he/she will cease to be a member as from the time when the notice is received by the SCIO.

## **Transfer of Membership**

- 35 Membership of the SCIO may not be transferred by a member.

## **Expulsion from Membership**

- 36 Any individual may be expelled from membership by way of a resolution passed by not less than two thirds of those present and voting at a members' meeting, providing the following procedures have been observed:
  - 36.1 at least 21 days' notice of the intention to propose the resolution must be given to the member concerned, specifying the grounds for the proposed expulsion;
  - 36.2 the member concerned will be entitled to be heard on the resolution at the members' meeting at which the resolution is proposed.

## **Termination of Membership**

- 37 Membership shall cease:
  - (a) in the case of an individual, on death;
  - (b) failure to comply with the code of conduct for Trustees which would result in the cessation of both Trustee and membership;
  - (c) failure to respond to any re-registration request under Clauses 31-33; or
  - (d) cease to meet the membership criteria (as defined in Clauses 4, 17 and 18).

## **DECISION-MAKING BY THE MEMBERS**

### **Members' Meetings**

- 38 The board must arrange a meeting of members (an annual general meeting or "AGM") in each calendar year. Such meetings may be entirely virtual meetings or hybrid meetings as the circumstances allow.
- 39 The gap between one AGM and the next must not be longer than 15 months.
- 40 The business of each AGM must include:
  - 40.1 a report by the chair on the activities of the SCIO;
  - 40.2 consideration of the annual accounts of the SCIO;
  - 40.3 the election/re-election of charity trustees, as referred to in clauses 78 to 83.
- 41 The board may arrange a special members' meeting at any time.

### **Power to Request the Board to Arrange a Special Members' Meeting**

- 42 The board must arrange a special members' meeting if they are requested to do so by a notice (which may take the form of two or more documents in the same terms, each signed by one or more Ordinary Members) by Ordinary Members who amount to 5% or more of the total membership of the SCIO at the time, providing:
  - 42.1 the notice states the purposes for which the meeting is to be held; and
  - 42.2 those purposes are not inconsistent with the terms of this constitution, the Charities and Trustee Investment (Scotland) Act 2005 or any other statutory provision.
- 43 If the board receives a notice under clause 42, the date for the meeting which they arrange in accordance with the notice must not be later than 28 days from the date on which they received the notice.

### **Notice of Members' Meetings**

- 44 At least 14 clear days' notice must be given of any AGM or any special members' meeting.
- 45 The notice calling a members' meeting must specify in general terms what business is to be dealt with at the meeting; and
  - 45.1 in the case of a resolution to alter the constitution, must set out the exact terms of the proposed alteration(s); or
  - 45.2 in the case of any other resolution falling within clause 61 (requirement for two-thirds majority) must set out the exact terms of the resolution.

- 46 The reference to “clear days” in clause 44 shall be taken to mean that, in calculating the period of notice,
- 46.1 the day after the notices are posted (or sent by email) should be excluded; and
  - 46.2 the day of the meeting itself should also be excluded.
- 47 Notice of every members' meeting must be given to all the members of the SCIO, and to all the charity trustees; but the accidental omission to give notice to one or more members will not invalidate the proceedings at the meeting.
- 48 Any notice which requires to be given to a member under this constitution must be:
- 48.1 sent by post to the member, at the address last notified by him/her to the SCIO; *or*
  - 48.2 sent by e-mail to the member, at the e-mail address last notified by him/her to the SCIO; and
  - 48.3 include details of the means by which a person may attend the meeting virtually, for a meeting to be held virtually or as a hybrid meeting.

### **Procedure at Members' Meetings**

- 49 No valid decisions can be taken at any members' meeting unless a quorum is present.
- 50 The quorum for a members meeting shall be the greater of (a) 10 Ordinary Members or (b) 10% of the Ordinary Members, in person. No business shall be dealt with at any meeting unless a quorum is present.
- 51 A quorum shall not be deemed to be present at any members' meeting unless the Ordinary Members present at the meeting form a majority of the members present.
- 52 For the avoidance of doubt, Junior Members shall not be counted in determining whether a quorum is present at any members' meeting.
- 53 If a quorum is not present within 30 minutes after the time at which a members' meeting was due to start - or if a quorum ceases to be present during a members' meeting - the meeting cannot proceed; and fresh notices of meeting will require to be sent out, to deal with the business (or remaining business) which was intended to be conducted.
- 54 The chair of the SCIO should act as chairperson of each members' meeting.
- 55 If the chair of the SCIO is not present within 15 minutes after the time at which the meeting was due to start (or is not willing to act as chairperson), the charity trustees present at the meeting must elect (from among themselves) the person, who must be an elected charity trustee, of the Organisation who will act as chairperson of that meeting.

56 The chairperson of a members' meeting may, with the consent of the meeting, adjourn the meeting to such date, time and place as the chairperson may determine.

### **Voting at Members' Meetings**

57 Every Ordinary Member has one vote, which may be given (whether on a show of hands or on a secret ballot) which must be given personally.

58 For the avoidance of doubt, Junior Members shall have no power to vote at members' meetings.

59 There shall be no ability for proxy voting.

60 All decisions at members' meetings will be made by majority vote - with the exception of the types of resolution listed in clause 61.

61 The following resolutions will be valid only if passed by not less than two thirds of those voting on the resolution at a members' meeting (or if passed by way of a written resolution under clause 66) providing proper notice of the meeting and of the intention to propose the resolution has been given in accordance with clauses 44 to 48:

61.1 a resolution amending the constitution (subject to clause 65);

61.2 a resolution expelling an individual from membership under clause 36;

61.3 a resolution directing the board to take any particular step (or directing the board not to take any particular step);

61.4 a resolution approving the amalgamation of the SCIO with another SCIO (or approving the constitution of the new SCIO to be constituted as the successor pursuant to that amalgamation);

61.5 a resolution to the effect that all of the SCIO's property, rights and liabilities should be transferred to another SCIO (or agreeing to the transfer from another SCIO of all of its property, rights and liabilities);

61.6 a resolution for the winding up or dissolution of the SCIO.

62 If there is an equal number of votes for and against any resolution, the chairperson of the meeting will be entitled to a second (casting) vote.

63 A resolution put to the vote at a members' meeting will be decided on a show of hands - unless the chairperson (or at least two other members present at the meeting and entitled to vote, ask for a secret ballot; a secret ballot may be demanded either before the show of hands takes place, or immediately after the result of the show of hands is declared.

64 If a secret ballot is demanded, it shall be taken at the meeting and shall be conducted in such manner as the chairperson may direct; the result of the ballot shall be declared at the meeting at which the ballot was demanded.

65 Amendments to the purposes of the SCIO (as set out in clause 4) will require the prior approval of OSCR.

### **Written Resolutions by Members**

66 A resolution agreed to in writing (or by email) by all the members will be as valid as if it had been passed at a members' meeting; the date of the resolution will be taken to be the date on which the last member agreed to it.

### **Minutes**

67 The board must ensure that proper minutes are kept in relation to all members' meetings.

68 Minutes of members' meetings must include the names of those present and all business transacted at such meetings; and (so far as possible) should be signed by the chairperson of the meeting.

69 Any person may request a copy of the minutes of members' meetings and, provided that the request is reasonable, the SCIO must, subject to clause 70, provide a copy of the minutes to that person within 28 days of the request.

70 Where a request for a copy of minutes is made under clause 69, the SCIO may withhold information contained in the minutes provided that the person requesting a copy of the minutes is informed of the reasons for doing so.

## **BOARD**

### **Categories of Charity Trustee**

71 In this constitution:

71.1 "Member Trustee" means a charity trustee (drawn from the ordinary membership of the SCIO) elected/appointed under clauses 78 to 83;

71.2 "Co-opted Trustee" means a (non-member) charity trustee appointed by the board under clauses 84 and 85.

### **Number of Charity Trustees**

72 The maximum number of charity trustees is 13; out of that number:

72.1 no more than 11 shall be Member Trustees

72.2 no more than 2 shall be Co-opted Trustees.

73 At any given time, charity trustees who are also Ordinary Members must form a majority of the total number of charity trustees in office.

74 The minimum number of charity trustees shall be 7, of whom a majority must be Member Trustees.

### **Eligibility**

- 75 A person shall not be eligible for election/appointment as a Member Trustee unless he/she is an ordinary member of the SCIO; a person appointed as a Co-opted Trustee need not, however, be an ordinary member of the SCIO.
- 76 A person will not be eligible for election or appointment as a charity trustee if he/she is:
- 76.1 disqualified from being a charity trustee under the Charities and Trustee Investment (Scotland) Act 2005; or
  - 76.2 an employee of the SCIO.

### **Initial Charity Trustees**

- 77 The individuals who signed the charity trustee declaration forms which accompanied the application for incorporation of the SCIO shall be deemed to have been appointed by the members as charity trustees (within the category of "Member Trustees") with effect from the date of incorporation of the SCIO.

### **Election, Retiral, Re-election: Member Trustees**

- 78 At each AGM, the Ordinary Members may (subject to clauses 72 and 76) elect any ordinary member (providing he/she is willing to act) to be a charity trustee (a "Member Trustee").
- 79 The board may (subject to clauses 72 and 76) between AGMs appoint any ordinary member (providing he/she is willing to act) to be a charity trustee (a "Member Trustee") so as to ensure a spread of skills and experience within the board; as follows:
- 79.1 an appointed Member Trustee shall serve until the next AGM after his or her appointment;
  - 79.2 for the avoidance of doubt, an appointed Member Trustee is eligible for election at such next AGM;
  - 79.3 an appointed Member Trustee can be removed from office at any time by a simple majority of the charity trustees; and
  - 79.4 for the avoidance of doubt, an appointed Member Trustee may participate fully in all board meetings which they attend and is eligible to vote at them.
- 80 At the first AGM, one third (to the nearest round number) of the Member Trustees shall retire from office; the question of which of them is to retire shall be determined by some random method.
- 81 At each AGM (other than the first)
- 81.1 any Member Trustee appointed under clause 79 during the period since the preceding AGM shall retire from office;
  - 81.2 out of the remaining Member Trustees, one third (to the nearest round number) shall retire from office.

- 82 The charity trustees to retire under paragraph 81.2 shall be those who have been longest in office since they were last elected or re-elected; as between persons who were last elected/re-elected on the same date, the question of which of them is to retire shall be determined by some random method.
- 83 A charity trustee who retires from office under clause 80 or 81 shall be eligible for re-election as follows:
- 83.1 a retiring elected Member Trustee shall be eligible for re-election after one term of office (3 full years), but no charity trustee can serve more than two consecutive terms of office, without at least one year out of office before being eligible again;
  - 83.2 if no other elected Member Trustee(s) has or have decided or agreed to retire, the elected Member Trustee to retire at each AGM shall be those who have been longest in office since their last election but, as between persons who were elected or last re-elected Member Trustee on the same day, the one or ones to retire shall (unless they otherwise agree amongst themselves) be determined by lot;
  - 83.3 nomination of any elected Member Trustee, who shall himself or herself be (or be eligible to become) an Ordinary Member, shall be in writing by at least one Ordinary Member delivered to the principal office not less than 7 days prior to the date of the AGM in question and wherein the nominee shall confirm his or her willingness to act as an elected Member Trustee if elected;
  - 83.4 if insufficient nominees are received 7 days prior to the AGM in question there will be the option for nominations to be received at the AGM wherein the nominee shall confirm his or her willingness to act as a Member Trustee if elected; and
  - 83.5 election of any Member Trustee shall be by vote of the Ordinary Members, each Ordinary Member having one vote for each vacancy in the elected Member Trustees on the Board;
  - 83.6 a retiring elected Member Trustee shall retain office until the close or adjournment of the meeting.

### **Appointment/Re-appointment: Co-opted Trustees**

- 84 In addition to their powers under clause 79, the board **may** (subject to clauses 72 and 76) at any time appoint any non-member of the SCIO (providing he/she is willing to act) to be a charity trustee (a "Co-opted Trustee") either on the basis that he/she has been nominated by **Thornhill and Blairdrummond Community Council** a body with which the SCIO has close contact in the course of its activities or on the basis that he/she has specialist experience and/or skills which could be of assistance to the board.
- 84.1 on receipt of the notice for each AGM of the Organisation held after incorporation, the said Thornhill and Blairdrummond Community Council (or its successors) shall intimate the Charity Trustee being appointed by it at the AGM, by written notice delivered to the principal office not less than 2 days before the start of the meeting,

- failing which any Charity Trustee previously appointed by it shall remain in office; and
- 84.2 Thornhill and Blairdrummond Community Council (or its successors) may appoint or remove its Co-opted Charity Trustee at any time, by written notice to that effect delivered to the principal office not less than 2 days before the change is to take effect.
- 84.3 For the avoidance of doubt, a Co-opted Charity Trustee may participate fully in all Board meetings which they attend and is eligible to vote at them.
- 85 At the conclusion of each AGM, all of the Co-opted Trustees shall retire from office – but shall then (subject to clauses 72 and 76) be eligible for re-appointment under clause 84.
- Termination of Office**
- 86 A charity trustee will automatically cease to hold office if: -
- 86.1 he/she becomes disqualified from being a charity trustee under the Charities and Trustee Investment (Scotland) Act 2005;
- 86.2 he/she becomes incapable for medical reasons of carrying out his/her duties as a charity trustee - but only if that has continued (or is expected to continue) for a period of more than six months;
- 86.3 (in the case of a Member Trustee) he/she ceases to be a member of the SCIO;
- 86.4 he/she becomes an employee of the SCIO;
- 86.5 he/she gives the SCIO a notice of resignation, signed by him/her;
- 86.6 he/she is absent (without good reason, in the opinion of the board) from more than three consecutive meetings of the board - but only if the board resolves to remove him/her from office;
- 86.7 he/she is removed from office by resolution of the board on the grounds that he/she is considered to have committed a serious breach of the code of conduct for charity trustees (as referred to in clause 106);
- 86.8 he/she is removed from office by resolution of the board on the grounds that he/she is considered to have been in serious or persistent breach of his/her duties under section 66(1) or (2) of the Charities and Trustee Investment (Scotland) Act 2005; or
- 86.9 he/she is removed from office by a resolution of the members passed at a members' meeting.
- 87 A resolution under paragraph 86.7, 86.8 or 86.9 shall be valid only if:

- 87.1 the charity trustee who is the subject of the resolution is given reasonable prior written notice of the grounds upon which the resolution for his/her removal is to be proposed;
- 87.2 the charity trustee concerned is given the opportunity to address the meeting at which the resolution is proposed, prior to the resolution being put to the vote; and
- 87.3 (in the case of a resolution under paragraph 86.7 or 86.8) at least two thirds (to the nearest round number) of the charity trustees then in office vote in favour of the resolution.

### **Register of Charity Trustees**

- 88 The board must keep a register of charity trustees, setting out
  - 88.1 for each current charity trustee:
    - 88.1.1 his/her full name and address;
    - 88.1.2 the date on which he/she was appointed as a charity trustee;
    - 88.1.3 any office held by him/her in the SCIO; and
    - 88.1.4 type of Trustee (Member or Co-opted).
  - 88.2 for each former charity trustee - for at least 6 years from the date on which he/she ceased to be a charity trustee:
    - 88.2.1 the name of the charity trustee;
    - 88.2.2 any office held by him/her in the SCIO;
    - 88.2.3 the date on which he/she ceased to be a charity trustee; and
    - 88.2.4 type of trustee (Ordinary Member or Co-opted).
- 89 The board must ensure that the register of charity trustees is updated within 28 days of any change:
  - 89.1 which arises from a resolution of the board or a resolution passed by the members of the SCIO; or
  - 89.2 which is notified to the SCIO.
- 90 If any person requests a copy of the register of charity trustees, the board must ensure that a copy is supplied to him/her within 28 days, providing the request is reasonable; if the request is made by a person who is not a charity trustee of the SCIO, the board may provide a copy which has the addresses blanked out - if the SCIO is satisfied that including that information is likely to jeopardise the safety or security of any person or premises.

### **Office-Bearers**

- 91 The charity trustees must elect (from among themselves) a chair and a treasurer.

- 92 In addition to the office-bearers required under clause 91, the charity trustees may elect (from among themselves) further office-bearers if they consider that appropriate.
- 93 All of the office-bearers will cease to hold office at the conclusion of each AGM, but may then be re-elected under clause 91 or 92.
- 94 A person elected to any office will automatically cease to hold that office:
- 94.1 if he/she ceases to be a charity trustee; or
  - 94.2 if he/she gives to the SCIO a notice of resignation from that office, signed by him/her.

### **Powers of the Board**

- 95 Except where this constitution states otherwise, the SCIO (and its assets and operations) will be managed by the board; and the board may exercise all the powers of the SCIO.
- 96 A meeting of the board at which a quorum is present may exercise all powers exercisable by the board.
- 97 The members may, by way of a resolution passed in compliance with clause 61 (requirement for two-thirds majority), direct the board to take any particular step or direct the board not to take any particular step; and the board shall give effect to any such direction accordingly.

### **Charity Trustees - General Duties**

- 98 Each of the charity trustees has a duty, in exercising functions as a charity trustee, to act in the interests of the SCIO; and, in particular, must:
- 98.1 seek, in good faith, to ensure that the SCIO acts in a manner which is in accordance with its purposes (as set out clause 4);
  - 98.2 act with the care and diligence which it is reasonable to expect of a person who is managing the affairs of another person;
  - 98.3 in circumstances giving rise to the possibility of a conflict of interest between the SCIO and any other party:
    - 98.3.1 put the interests of the SCIO before that of the other party;
    - 98.3.2 where any other duty prevents him/her from doing so, disclose the conflicting interest to the SCIO and refrain from participating in any deliberation or decision of the other charity trustees with regard to the matter in question;
  - 98.4 ensure that the SCIO complies with any direction, requirement, notice or duty imposed under or by virtue of the Charities and Trustee Investment (Scotland) Act 2005.
- 99 In addition to the duties outlined in clause 98, all of the charity trustees must take such steps as are reasonably practicable for the purpose of ensuring:

- 99.1 that any breach of any of those duties by a charity trustee is corrected by the charity trustee concerned and not repeated; and
  - 99.2 that any trustee who has been in serious and persistent breach of those duties is removed as a trustee.
- 100 A charity trustee who has a personal interest in any transaction or other arrangement which the SCIO is proposing to enter into, must declare that interest at a board meeting; he/she will be debarred (under clause 121) from voting on the question of whether or not the SCIO should enter into that arrangement.
- 101 For the purposes of the preceding clause, a charity trustee shall be deemed to have a personal interest in an arrangement if any partner or other close relative of his/hers or any firm of which he/she is a partner or any limited company of which he/she is a substantial shareholder or director or any limited liability partnership of which he/she is a member (or any other party who/which is deemed to be connected with him/her), has a personal interest in that arrangement.
- 102 Provided he/she has declared his/her interest - and has not voted on the question of whether or not the SCIO should enter into the arrangement - a charity trustee will not be debarred from entering into an arrangement with the SCIO in which he/she has a personal interest; and (subject to clause 104 and to the provisions relating to remuneration for services contained in the Charities and Trustee Investment (Scotland) Act 2005), he/she may retain any personal benefit which arises from that arrangement.
- 103 Where a charity trustee provides services to the SCIO or might benefit from any remuneration paid to a connected party for such services, then:
- (a) the maximum amount of the remuneration must be specified in a written agreement and must be reasonable;
  - (b) the charity trustees must be satisfied that it would be in the interests of the SCIO to enter into the arrangement (taking account of that maximum amount); and
  - (c) less than half of the charity trustees must be receiving remuneration from the SCIO (or benefit from remuneration of that nature).
- 104 No charity trustee may serve as an employee (full time or part time) of the SCIO; and no charity trustee may be given any remuneration by the SCIO for carrying out his/her duties as a charity trustee.
- 105 The charity trustees may be paid all travelling and other expenses reasonably incurred by them in connection with carrying out their duties; this may include expenses relating to their attendance at meetings.

### **Code of Conduct for Charity Trustees**

- 106 Each of the charity trustees shall comply with the code of conduct (incorporating detailed rules on conflict of interest) prescribed by the board from time to time.

- 107 The code of conduct referred to in clause 106 shall be supplemental to the provisions relating to the conduct of charity trustees contained in this constitution and the duties imposed on charity trustees under the Charities and Trustee Investment (Scotland) Act 2005; and all relevant provisions of this constitution shall be interpreted and applied in accordance with the provisions of the code of conduct in force from time to time.

## **DECISION-MAKING BY THE CHARITY TRUSTEES**

### **Notice of Board Meetings**

- 108 Any charity trustee may call a meeting of the board or ask the secretary to call a meeting of the board.
- 109 At least 7 days' notice must be given of each board meeting, unless (in the opinion of the person calling the meeting) there is a degree of urgency which makes that inappropriate.

### **Procedure at Board Meetings**

- 110 The quorum for board meetings shall be not less than 50% of all the trustees, provided that the elected charity trustees are always in the majority at any board meeting. No business shall be dealt with at a board meeting unless such a quorum is present.
- 111 A quorum shall not be deemed to be constituted at any board meeting unless the Member Trustees who are also Ordinary Members form a majority of the total number of charity trustees present at the meeting.
- 112 A charity trustee may participate in a board meeting by means of a conference telephone, video conferencing facility or similar communications equipment whereby all the charity trustees participating in the meeting can hear each other; a charity trustee participating in a meeting in this manner shall be deemed to be present in person at the meeting.
- 113 If at any time the number of charity trustees in office falls below the minimum number stated in clause 74, the remaining charity trustees may not conduct any business other than to appoint sufficient charity trustees to match or exceed that minimum.
- 114 The chair of the SCIO should act as chairperson of each board meeting.
- 115 If the chair is not present within 15 minutes after the time at which the meeting was due to start (or is not willing to act as chairperson), the charity trustees present at the meeting must elect (from among themselves) the person (who must be an elected charity trustee, of the Organisation) who will act as chairperson of that meeting.
- 116 Every charity trustee has one vote, which must be given personally.
- 117 All decisions at board meetings will be made by majority vote.
- 118 If there is an equal number of votes for and against any resolution, the chairperson of the meeting will (subject to clause 119) be entitled to a second (casting) vote.

- 119 A chairperson who is not an Ordinary Member shall not be entitled to a casting vote.
- 120 The board may, at its discretion, allow any person to attend and speak at a board meeting notwithstanding that he/she is not a charity trustee - but on the basis that he/she must not participate in decision-making.
- 121 A charity trustee must not vote at a board meeting (or at a meeting of a sub-committee) on any resolution which relates to a matter in which he/she has a personal interest or duty which conflicts (or may conflict) with the interests of the SCIO; he/she must withdraw from the meeting while an item of that nature is being dealt with.
- 122 For the purposes of clause 121: -
  - 122.1 an interest held by an individual who is “connected” with the charity trustee under section 68(2) of the Charities and Trustee Investment (Scotland) Act 2005 (husband/wife, partner, child, parent, brother/sister etc) shall be deemed to be held by that charity trustee;
  - 122.2 a charity trustee will be deemed to have a personal interest in relation to a particular matter if a body in relation to which he/she is an employee, director, member of the management committee, officer or elected representative has an interest in that matter.
- 123 A charity trustee shall not be counted in the quorum present at a meeting in relation to a resolution on which he/she is not entitled to vote.
- 124 The SCIO may, by majority vote, suspend or relax to any extent – either generally or in relation to any particular matter – the provisions of clauses 121 to 123.

### **Minutes**

- 125 The board must ensure that proper minutes are kept in relation to all board meetings and meetings of sub-committees.
- 126 The minutes to be kept under clause 125 must include the names of those present and all business transacted at such meetings; and (so far as possible) should be signed by the chairperson of the meeting.
- 127 Any person may request a copy of the minutes of meetings of the charity trustees of the SCIO and, provided that the request is reasonable, the SCIO must, subject to clause 128, provide a copy of the minutes to that person within 28 days of the request.
- 128 Where a request for a copy of minutes is made under clause 127, the SCIO may withhold information contained in the minutes provided that the person requesting a copy of the minutes is informed of the reasons for doing so.

## **ADMINISTRATION**

### **Delegation to Sub-Committees**

- 129 The board may delegate any of their powers to sub-committees; a sub-committee must include at least one charity trustee, but other members of a sub-committee need not be charity trustees.
- 130 The board may also delegate to the chair of the SCIO (or the holder of any other post) such of their powers as they may consider appropriate.
- 131 When delegating powers under clause 129 or 130, the board must set out appropriate conditions (which must include an obligation to report regularly to the board).
- 132 Any delegation of powers under clause 129 or 130, may be revoked or altered by the board at any time.
- 133 The rules of procedure for each sub-committee, and the provisions relating to membership of each sub-committee, shall be set by the board.

### **Operation of Accounts**

- 134 Subject to clause 135, the signatures of two out of three signatories appointed by the board will be required in relation to all operations (other than the lodging of funds) on the bank and building society accounts held by the SCIO; at least one out of the two signatures must be the signature of a charity trustee.
- 135 Where the SCIO uses electronic facilities for the operation of any bank or building society account, the authorisations required for operations on that account must be consistent with the approach reflected in clause 134.

### **Secretary**

- 136 The board shall appoint a secretary, and on the basis that the term of the appointment, the remuneration (if any) payable to the secretary, and the such conditions of appointment shall be as determined by the board; the secretary may be removed by them at any time.

### **Accounting Records and Annual Accounts**

- 137 The board must ensure that proper accounting records are kept, in accordance with all applicable statutory requirements.
- 138 The accounting records shall be maintained by the treasurer and overseen by the chair, or otherwise by, or as determined by, the board; such records shall be kept at such place or places as the board thinks fit and shall always be available for inspection by the board.
- 139 The board must prepare annual accounts, complying with all relevant statutory requirements; if an audit is required under any statutory provisions (or if the board considers that an audit would be appropriate for some other reason), the board should ensure that an audit of the accounts is carried out by a qualified auditor.
- 140 No member shall (unless he/she is a charity trustee) have any right of inspecting any accounting or other records, or any document of the SCIO, except as conferred by statute or authorised by a resolution passed at a meeting of the members of the SCIO.

- 141 The Organisation must use and apply its Property in furtherance of its Purposes and in accordance with its constitution.

## MISCELLANEOUS

### **Winding-Up**

- 142 If the SCIO is to be wound up or dissolved, the winding-up or dissolution process will be carried out in accordance with the procedures set out under the Charities and Trustee Investment (Scotland) Act 2005.
- 143 Any surplus Property or assets (including any land acquired by the SCIO under Part 2 or Part 3A of the Land Reform (Scotland) Act 2003 or Part 5 of the Land Reform (Scotland) Act 2016) available to the SCIO immediately preceding its winding up or dissolution must be applied for the benefit of the Community to be used for purposes which are the same as - or which closely resemble - the purposes of the SCIO as set out in this constitution.

### **Indemnity**

- 144 Subject to the terms of the 2005 Act and without prejudice to any other indemnity, the Charity Trustees, or Member of any sub-committee, the Organisation office bearers and all employees of the Organisation shall be indemnified out of the funds of the Organisation against any loss or liability (including the costs of defending successfully any court proceedings) which he, she or they may respectively incur or sustain, in connection with or on behalf of the Organisation and each of them shall be chargeable only for so much money as they may actually receive and they shall not be answerable for the acts, receipts, neglects or defaults of each other, but each of them for his or her own acts, receipts, neglects or defaults only.

### **Alterations to the Constitution**

- 145 This constitution may (subject to clause 146) be altered by resolution of the members passed at a members' meeting (subject to achieving the two thirds majority referred to in clause 61) or by way of a written resolution of the members.
- 146 The Charities and Trustee Investment (Scotland) Act 2005 prohibits taking certain steps (eg change of name, an alteration to the purposes, amalgamation, winding-up) without the consent of OSCR. If:
- (a) the company is a community body (as defined in article 147.3 and (i) it has registered a community interest in land under Part 2 of the Land Reform (Scotland) Act 2003 and remains so registered, or (ii) has bought land under Part 2 of the Land Reform (Scotland) Act 2003 any part of which remains in its ownership; or
  - (b) the company is a Part 3A community body or Part 5 community body (in each case, as defined in article 147.5) and has bought land under Part 3A of the Land Reform (Scotland) Act 2003 or Part 5 of the Land Reform (Scotland) 2016 any part of which remains in its ownership.

The organisation must give written notice to the Scottish Ministers of any amendments to the constitution of the SCIO as soon as possible after such amendments take effect; and that requirement shall also apply in the context of any application to Scottish Ministers (where a determination has not yet been made by Scottish Ministers) under any of the legislation referred to above, if amendments are made to the version of the constitution which was previously submitted to Scottish Ministers in connection with that application.

### **Interpretation**

- 147 References in this constitution to the Charities and Trustee Investment (Scotland) Act 2005 should be taken to include:
- 147.1 any statutory provision which adds to, modifies or replaces that Act; and
  - 147.2 any statutory instrument issued in pursuance of that Act or in pursuance of any statutory provision falling under paragraph 146.1 above.
- 148 In this constitution: -
- 148.1 “charity” means a body which is either a “Scottish charity” within the meaning of section 13 of the Charities and Trustee Investment (Scotland) Act 2005 or a “charity” within the meaning of section 1 of the Charities Act 2011, providing (in either case) that its objects are limited to charitable purposes;
  - 148.2 “charitable purpose” means a charitable purpose under section 7 of the Charities and Trustee Investment (Scotland) Act 2005 which is also regarded as a charitable purpose in relation to the application of the Taxes Acts;
  - 148.3 “community body” means a community body within the meaning of section 34 of the Land Reform (Scotland) Act 2003 (as amended by section 37 of the Community Empowerment (Scotland) Act 2015);
  - 148.4 “OSCR” means the Office of the Scottish Charity Regulator;
  - 148.5 “Part 3A community body” means a Part 3A community body with the meaning of section 97D of the Land Reform (Scotland) Act 2003 (as inserted by section 74 of the Community Empowerment (Scotland) Act 2015);
  - 148.6 “Part 5 community body” means a Part 5 community body within the meaning of section 49 of the Land Reform (Scotland) Act 2016;
  - 148.7 “sustainable development” means development which meets the needs of the present without compromising the ability of future generations to meet their own needs;
  - 148.8 “Virtual meeting”: a meeting of members of the charity or a meeting of the board of trustees where arrangements have been made in advance to allow participants to attend the meeting by means of a conference telephone, video link or similar means of electronic

communication at which all participants can be heard and can hear each other without the need for them to be physically present at the same location. A person participating in a meeting by such means shall be deemed to be attending virtually

- 148.9 “Hybrid meeting”: a meeting of members of the charity or a meeting of the board of trustees at which some participants are attending the meeting in person and others are attending virtually.
- 148.10 A person attending a meeting virtually shall have the same rights to receive notice, speak, vote and otherwise participate in the meeting as he or she would have if attending the meeting in person.