

SCVO Model SCIO Constitution (two tier)

CONSTITUTION

of

Strathnairn Development Company

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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 is *Strathnairn Development Company*.

Defined terms

4. In this constitution, unless the context otherwise requires :-
 - (a) "Act" means the *Charities and Trustee Investment (Scotland) Act 2005*;
 - (b) "Charity" means a body which is either :-
 - a "Scottish charity" within the meaning of section 13 of the *Act*; 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;
 - (c) "Charitable Purpose" means a charitable purpose under section 7 of the *Act* which is also regarded as a charitable purpose in relation to the application of the Taxes Acts;
 - (d) "Power" means a function defined in this Constitution that may be performed by a *Charity Trustee* in pursuit of the Organisation's objectives.
 - (e) "Operating Area" means the area defined by Schedule A, annexed to this constitution;
 - (f) "Community" means the people, living permanently within the Operating Area.
 - (g) "Property" means any property, assets or rights, heritable or moveable, wherever situated;
 - (h) "Member(s)" means an eligible resident living within the Operating Area who has the right to attend *Members'* meetings (including any annual

general meeting) and has important powers under the constitution; in particular, the *Members* elect *Members* willing to serve on the *Board*, and so take decisions on changes to this constitution;

(i) “*Board*” means the body generally controlling the activities of the Organisation. For example, the *Board* is responsible for monitoring and controlling the financial position of the Organisation. The *Board* holds regular meetings;

(j) “*Charity Trustee(s)*” means an eligible Member who serves on the *Board*.

(k) “*Co-opted Charity Trustee*” means any eligible non-Member of the Organisation, appointed to the *Board* on the basis that they have specialist experience and/or skills which could be of assistance. Co-opted *Charity Trustees* have no voting rights on the *Board*;

(l) “*OSCR*” means the Office of the Scottish Charity Regulator.

Purposes

- 5 The Organisation has been formed for the public benefit of the Community of Strathnairn (“the Community”) as defined by the Highland Council under its Schemes for the Establishment of Community Councils, current in September 2018, of the Strathnairn Community Council (compliant with Section 34 (1A)(a) of the Land Reform (Scotland) Act 2003), with the Purposes listed in Clause 6 below (“the Purposes”), to be exercised following the principles of sustainable development (where sustainable development means development which meets the needs of the present without compromising the ability of future generations to meet their own needs). This is compliant with Section 34 (4) of the Land Reform (Scotland) Act 2003.
- 6 The Organisation’s main purpose is consistent with furthering the achievement of sustainable development. This includes assessing the need for, advocating for, providing advice for, and facilitating with others the execution of plans for, community development.

Powers

- 7 The Organisation shall have the Powers as defined in Schedule B annexed to this Constitution. It may exercise these Powers only where calculated to further the Charitable Purposes defined in Clause 6 or is conducive or incidental to doing so. Community assets created or otherwise acquired as a result of the Organisation’s efforts need not be located within the Operating Area, so long as they provide public benefit for the Community.
- 8 No part of the income or property of the organisation may be paid or transferred (directly or indirectly) to the *Members* - either in the course of the organisation’s existence or on dissolution - except where this is done in direct furtherance of the organisation’s *charitable purposes*. Furthermore,

any surplus funds or assets of the Organisation are to be applied for the benefit of the whole Community.

Liability of members

- 9 The *Members* have no liability to pay any sums to help to meet the debts (or other liabilities) of the organisation if it is wound up; accordingly, if the organisation is unable to meet its debts, the *Members* will not be held responsible.
- 10 The *Members* and *Charity Trustees* have certain legal duties under the *Charities and Trustee Investment (Scotland) Act 2005*; and clause 7 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

- 11 The structure of the organisation consists of:-
 - (a) the *MEMBERS* - who have the right to attend *Members'* meetings (including any annual *Members'* meeting) and have important powers under the constitution; in particular, the *Members* appoint people to serve on the *Board* and take decisions on changes to the constitution itself;
 - (b) the *BOARD* - who hold regular meetings, and generally control the activities of the organisation; for example, the *Board* is responsible for monitoring and controlling the financial position of the organisation.
- 12 The people serving on the *Board* are referred to in this constitution as *CHARITY TRUSTEES*.

MEMBERS

Minimum numbers of *Members*

- 13 The Organisation will have no fewer than 20 *Members*.
- 14 In the event that the number of *Members* falls below the minimum number of *Members* stated in Clause 13 then the Charity Trustees may not take any actions save the approval of new *Members* and the election/re-election of *Charity Trustees* to ensure that those requirements are met once more.

Qualifications for membership

- 15 Membership is open only to any member of the *Community*. That means members of the community are those who are (a) resident in the Community; and (b) entitled to vote at a local government election in a

polling district that includes the Community or part of it; and (c) who support the purposes. By definition, this means that at least three quarters (75%) of the members of the organisation at all times are members of the community.

- 16 Employees of the organisation are not eligible for membership.

Application for membership

- 17 Any person who wishes to become a *Member* must submit a written application for membership by email or hard copy.
- 18 At the first *Board* meeting which is held after receipt of an application, the *Trustees* shall review the application to determine whether the applicant fulfils the qualifications for membership; if, on the basis of that review, the applicant fulfils the qualifications for membership, the *Trustees* shall admit the applicant to membership. The *Board* may refuse to admit any applicant, who does not, in the view of the *Board*, meet the requirements of Clause 15 and 16, to membership.
- 19 The *Board* must notify each applicant promptly (in writing or by e-mail) of its decision on whether or not to admit them to membership.

Membership subscription

- 20 No membership subscription will be payable.

Register of members

- 21 The *Board* must keep a register of members, setting out
- (a) for each current member:
 - (i) their full name and address; and
 - (ii) the date on which they were registered as a member;
 - (b) for each former member - for at least six years from the date on which they ceased to be a member:
 - (i) their name; and
 - (ii) the date on which they ceased to be a member.
- 22 The *Board* must ensure that the register of *Members* is updated within 28 days of any change:

- (a) which arises from a resolution of the *Board* or a resolution passed by the members; or
- (b) which is notified to the organisation.

23 If a member or *Charity Trustee* of the organisation requests a copy of the register of members, the *Board* must ensure that a copy is supplied to them 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.

Withdrawal from membership

24 Any person who wants to withdraw from membership must give a written notice of withdrawal to the organisation, signed by them; they will cease to be a member as from the time when the notice is received by the organisation.

Transfer of membership

25 Membership of the organisation may not be transferred to any other person.

Re-registration of members

26 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 28 days (running from the date of issue of the notice) to provide that confirmation to the *Board*.

27 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 28-day period referred to in clause 26, the *Board* may expel them from membership.

28 A notice under clause 26 will not be valid unless it refers specifically to the consequences (under clause 27) of failing to provide confirmation within the 28-day period.

Expulsion from membership

29 Any Member may be expelled from membership by way of a resolution passed by not less than two thirds of those voting at a *Members'* meeting, providing the following procedures have been observed:-

- (a) 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;

- (b) the member concerned will be entitled to be heard on the resolution at the *Members'* meeting at which the resolution is proposed.

Termination

- 30 Membership of the organisation will terminate when a member moves out of the area defined in Schedule A, becomes an employee or on death.

DECISION-MAKING BY THE MEMBERS

***Members'* meetings**

- 31 The *Board* must arrange a meeting of *Members* (an annual general meeting or "AGM") in each calendar year.
- 32 The gap between one AGM and the next must not be longer than 15 months.
- 33 Notwithstanding clause 32, an AGM does not need to be held during the calendar year in which the organisation is formed; but the first AGM must still be held within 15 months of the date on which the organisation is formed.
- 34 The business of each AGM must include:-
 - (a) a report by the chair on the activities of the organisation;
 - (b) consideration of the annual accounts of the organisation;
 - (c) a declaration of the results of the election, when held of *Charity Trustees*, as referred to in clause 80.
- 35 The *Board* may arrange a special *Members'* meeting at any time.

Power to request the *Board* to arrange a special *Members'* meeting

- 36 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 members) by *Members* who amount to 5% or more of the total membership of the organisation at the time, providing:
 - (a) the notice states the purposes for which the meeting is to be held; and
 - (b) those purposes are not inconsistent with the terms of this constitution, the *Act* or any other statutory provision.

- 37 If the *Board* receive a notice under clause 36, 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

- 38 At least 14 clear days' notice must be given of any AGM or any special *Members'* meeting (or any adjourned *Members'* meeting.).
- 39 The notice calling a *Members'* meeting must specify in general terms what business is to be dealt with at the meeting; and
- (a) in the case of a resolution to alter this constitution, must set out the exact terms of the proposed alteration(s); or
 - (b) in the case of any other resolution falling within the terms of clause 62 (requirement for two-thirds majority) must set out the exact terms of the resolution.
- 40 The reference to "clear days" in clause 38 shall be taken to mean that, in calculating the period of notice,
- (a) the day after the notices are posted (or sent by e-mail) should be excluded; and
 - (b) the day of the meeting itself should also be excluded.
- 41 Notice of every *Members'* meeting must be given to all members, 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.
- 42 Any notice which requires to be given to a *Member* under this constitution must be: -
- (a) sent by post to the *Member*, at the address last notified by them to the organisation; *or*
 - (b) sent by e-mail to the member, at the e-mail address last notified by them to the organisation.
- 43 If *Members* and *Charity Trustees* are to be permitted to participate in a *Members'* meeting by way of audio and/or audio-visual link(s) (see clause 46), the notice (or notes accompanying the notice) must:
- (a) set out details of how to connect and participate via that link or links; and
 - (b) (particularly for the benefit of those *Members* who may have difficulties in using a computer or laptop for this purpose) draw *Members'* attention to the following options:

- (i) participating in the meeting via an audio link accessed by phone, using dial-in details (if that forms part of the arrangements);
- (ii) appointing the chairperson of the meeting as proxy, and directing the chairperson on how they should use that proxy vote in relation to each resolution to be proposed at the meeting];
- (iii) (where attendance in person is to be permitted, either on an open basis or with a restriction on the total number who will be permitted to attend) attending and voting in person at the meeting;
- (iv) (where clause 44 applies) submitting questions and/or comments in advance of the meeting.

44 Where a *Members'* meeting is to involve participation *solely* via audio and/or audio-visual link(s), the notice (or notes accompanying the notice) must include a statement inviting *Members* to submit questions and/or comments in advance of the meeting, which (subject to clause 45) the chairperson of the meeting will be expected to read out, and address, in the course of the meeting.

45 Where clause 44 applies, the chairperson of a *Members'* meeting will not require to read out or address any questions or comments submitted by *Members* in advance of the meeting if and to the extent that the questions or comments are of an unreasonable length (individually or taken together), or contain material which is defamatory, racist or otherwise offensive.

Procedure at *Members'* meetings

46 The *Board* may if they consider appropriate (and must, if this is required under clause 47) make arrangements for *Members* and *Charity Trustees* to participate in *Members'* meetings by way of audio and/or audio-visual link(s) which allow them to hear and contribute to discussions at the meeting, providing:

- (a) the means by which *Members* and *Charity Trustees* can participate via that link or links are not subject to technical complexities, significant costs or other factors which are likely to represent - for all or a significant proportion of the membership - a barrier to participation;
- (b) the notice calling the meeting (or notes accompanying the notice) contains the information required under clause 43; and
- (c) the manner in which the meeting is conducted ensures, so far as reasonably possible, that those *Members* and *Charity Trustees* who

participate via an audio or audio-visual link are not disadvantaged with regard to their ability to contribute to discussions at the meeting, as compared with those *Members* and *Charity Trustees* (if any) who are attending in person (and vice versa).

- 47 If restrictions arising from public health legislation or guidance are likely to mean that attendance in person at a proposed *Members'* meeting would not be possible or advisable for all or a significant proportion of the membership, the *Board* must make arrangements for *Members* and *Charity Trustees* to participate in that *Members'* meeting by way of audio and/or audio-visual link(s) which allow them to hear and contribute to discussions at the meeting; and on the basis that the requirements set out in paragraphs (a) to (c) of clause 46 will apply.
- 48 A *Members'* meeting may involve two or more *Members* or *Charity Trustees* participating via attendance in person while other *Members* and/or *Charity Trustees* participate via audio and/or audio-visual links; or it may involve participation solely via audio and/or audio-visual links.
- 49 No valid decisions can be taken at any *Members'* meeting unless a quorum is present.
- 50 The quorum for a *Members'* meeting is 25% of the total number of members, or 20 members, whichever is the lower. In calculating the number of *Members* present, the number of proxies appointed by *Members* shall be taken into account. *Members* or their proxies may be present in person, or remotely by phone/video link.
- 51 An individual participating in a *Members'* meeting via an audio or audio-visual link which allows them to hear and contribute to discussions at the meeting will be deemed to be present in person.
- 52 If a quorum is not present within 15 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.
- 53 The chairperson of the organisation should act as chairperson of each *Members'* meeting.
- 54 If the chair of the organisation 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 will act as chairperson of that meeting.

Voting at *Members'* meetings

- 55 Every *Member* shall have one vote, which (whether on a show of hands or on a secret ballot) may be given either personally or by proxy. Only those *Members* who are resident in the community and eligible to vote at a local government election can vote at meetings and stand for election to the Board as a Charity Trustee, compliant with Section 34(1)(e) of the Land Reform (Scotland) Act 2003.
- 56 Any *Member* who wishes to appoint a proxy to vote on his/her behalf at any *Members'* meeting (or adjourned *Members'* meeting) shall lodge with the Organisation, a completed instrument of proxy, in such form as the *Charity Trustees* require :-
- (a) at the Organisation's registered office, signed by him/her; or
 - (b) sent by electronic means, to such email address as may have been notified to the *Members* by the Organisation for that purpose; providing (in either case), the instrument of proxy is received by the Organisation at the relevant address not less than 48 hours before the time for holding the *Members'* meeting (or, as the case may be, adjourned *Members'* meeting).
- 57 An instrument of proxy which does not conform with the provisions of Clause 56 shall be invalid.
- 58 A Member shall not be entitled to appoint more than one proxy to attend on the same occasion.
- 59 A proxy appointed to attend and vote at any *Members'* meeting must be a Member of the Organisation.
- 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:
- (a) a resolution amending the constitution;
 - (b) a resolution expelling a person from membership under clause 29;
 - (c) a resolution directing the *Board* to take any particular step (or directing the *Board* not to take any particular step);
 - (d) a resolution approving the amalgamation of the organisation with another SCIO (or approving the constitution of the new SCIO to be constituted as the successor pursuant to that amalgamation);
 - (e) a resolution to the effect that all of the organisation'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);

(f) a resolution for the winding up or dissolution of the organisation.

- 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) ask for a secret ballot.
- 64 Where *Members* are participating in a meeting via an audio or audio-visual link, they may cast their votes on any resolution orally, or by way of some form of visual indication, or by use of a voting button or similar, or by way of a message sent electronically - and providing the *Board* have no reasonable grounds for suspicion as regards authenticity, any such action shall be deemed to be a vote cast personally via a show of hands.
- 65 The chairperson will decide how any secret ballot is to be conducted, and they will declare the result of the ballot at the meeting.
- 66 Where *Members* are participating in a meeting via audio and/or audio-visual links, the chairperson's directions regarding how a secret ballot is to be conducted may allow those *Members* to cast their votes on the secret ballot via any or all of the methods referred to in clause 64, providing reasonable steps are taken to preserve anonymity (while at the same time, addressing any risk of irregularities in the process).
- 67 The principles set out in clauses 64 and 66 shall also apply in relation to the casting of votes by an individual in their capacity as proxy for a member.

Technical objections to remote participation in *Members'* meetings

- 68 This constitution imposes certain requirements regarding the use of audio and/or audio-visual links as a means of participation and voting at *Members'* meetings; providing the arrangements made by the *Board* in relation to a given *Members'* meeting (and the manner in which the meeting is conducted) are consistent with those requirements:
- (a) a member cannot insist on participating in the *Members'* meeting, or voting at the *Members'* meeting, by any particular means;
 - (b) the *Members'* meeting need not be held in any particular place;
 - (c) the *Members'* meeting may be held without any particular number of those participating in the meeting being present in person at the same place (but, notwithstanding that, the quorum requirements -

taking account of those participating via audio and/or audio-visual links - must still be met);

- (d) the *Members'* meeting may be held by any means which permits those participating in the meeting to hear and contribute to discussions at the meeting;
- (e) a *Member* will be able to exercise the right to vote at the *Members'* meeting (including where a secret ballot is to be held) by such means as is determined by the chairperson of the meeting (consistent with the arrangements made by the *Board*) and which permits that member's vote to be taken into account in determining whether or not a resolution is passed.

Written resolutions by members

- 69 A resolution agreed to in writing (or by e-mail) 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

- 70 The *Board* must ensure that proper minutes are kept in relation to all *Members'* meetings.
- 71 Minutes of *Members'* meetings must include the names of those present; and (so far as possible) should be signed by the chairperson of the meeting.
- 72 The *Board* shall make available copies of the minutes referred to in clause 70 to any member of the public requesting them within 28 days; but on the basis that the *Board* may exclude confidential material to the extent permitted under clause 132.

BOARD

Number of *Charity Trustees*

- 73 The maximum number of *Charity Trustees* is 12; out of that:
- (a) no more than 12 shall be *Charity Trustees* who were elected/appointed under clauses 80 and 83 (or deemed to have been appointed under clause 79); and
 - (b) no more than 4 shall be *Charity Trustees* who were co-opted under the provisions of clauses 86 and 87.
 - (c) At all times *Charity Trustees* who were elected under clause 80 must form the majority of the total number of *Charity Trustees*.

74 The minimum number of *Charity Trustees* is 6.

Eligibility

75 A person shall not be eligible for election/appointment to the *Board* under clauses 80 and 83 unless they are a member of the organisation; a person appointed to the *Board* under clause 86 should not, however, be a member of the organisation.

76 A person will not be eligible for election or appointment to the *Board* if they are: -

- (a) disqualified from being a *Charity Trustee* under the Act; or
- (b) an employee of the organisation;
- (c) have irresolvable conflicts of interest, as identified in Clauses 123-124.

77 A *Member* will not be eligible for election or appointment to the *Board* while they are the subject of a resolution to expel them from the Organisation under Clause 29.

78 A *Member* will not be eligible for election to the *Board* if they have served in the capacity of a *Charity Trustee* for a continuous period of two consecutive terms of 3 years, and less than one year has elapsed since their final retiral.

Initial *Charity Trustees*

79 The individuals who signed the *Charity Trustee* declaration forms which accompanied the application for incorporation of the organisation shall be deemed to have been appointed by the *Members* as *Charity Trustees* with effect from the date of incorporation of the organisation.

Election, retiral, re-election

80 Through the election process, described in Clause 82, held prior to an AGM, the *Members* may elect any *Member*, who is eligible under Clauses 75-78, to be a *Charity Trustee*.

81 The term of office for *Charity Trustees* elected under Clause 80 will be for a continuous period of three years.

82 Prior to the commencement of any AGM, The *Board* will establish the election process under the terms in Schedule C. The number of vacancies on the *Board* to be filled by election will be the difference between the maximum number of *Charity Trustees* (12) and those still within their three-year term on the *Board*.

- 83 The *Board* may at any time appoint any member (unless they are debarred from membership under clause 76) to be a *Charity Trustee*.
- 84 At each AGM, all of the *Charity Trustees* elected/appointed under clauses 80 and 83 (and, in the case of the first AGM, those deemed to have been appointed under clause 79) who have completed their three year term as a *Charity Trustee* shall retire from office – but shall then be eligible for re-election under clause 80 (subject to being eligible under Clause 78).
- 85 A *Charity Trustee* retiring at an AGM will be deemed to have been re-elected unless: -
- (a) they advise the *Board* prior to the conclusion of the AGM that they do not wish to be re-appointed as a charity trustee; or
 - (b) an election process was held at the AGM and they were not among those elected/re-elected through that process; or
 - (c) a resolution for the re-election of that *Charity Trustee* was put to the AGM and was not carried.

Appointment/re-appointment of co-opted *Charity Trustees*

- 86 In addition to their powers under clause 83, the *Board* may at any time appoint any non-member of the organisation to be a *Charity Trustee* (subject to clause 73, and providing they are not debarred from membership under clause 76) either on the basis that they have been nominated by a body with which the organisation has close contact in the course of its activities or on the basis that they have specialist experience and/or skills which could be of assistance to the *Board*.
- 87 At each AGM, all of the *Co-opted Charity Trustees* appointed under clause 86 shall retire from office – but shall then be eligible for re-appointment under that clause.

Termination of office

- 88 A *Charity Trustee* will automatically cease to hold office if: -
- (a) they become disqualified from being a *Charity Trustee* under the Act;
 - (b) they become incapable for medical reasons of carrying out their duties as a *Charity Trustee* - but only if that has continued (or is expected to continue) for a period of more than six months;
 - (c) (in the case of a *Charity Trustee* elected/appointed under clauses 80 to 85) they cease to be a member of the organisation;
 - (d) they become an employee of the organisation;

- (e) they give the organisation a notice of resignation, signed by them;
- (f) they are 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 them from office;
- (g) they are removed from office by resolution of the *Board* on the grounds that they are considered to have committed a material breach of the code of conduct for *Charity Trustees* (as referred to in clause 105 and 106);
- (h) they are removed from office by resolution of the *Board* on the grounds that they are considered to have irresolvable conflicts of interest (as referred to in Clauses 123-124);
- (i) they are removed from office by resolution of the *Board* on the grounds that they are considered to have been in serious or persistent breach of their duties under Section 66(1) or (2) of the Act;
- (j) they are removed from office by a resolution of the *Members* passed at a *Members'* meeting, in accordance with Clause 60;
- (k) as a resident they move out of the area defined in Schedule A.

89 A resolution under paragraph 88 (g), (h), (j) or (j) shall be valid only if: -

- (a) the *Charity Trustee* who is the subject of the resolution is given reasonable prior written notice of the grounds upon which the resolution for their removal is to be proposed; and
- (b) 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
- (c) in the case of a resolution under paragraph (g), (h) or (i) 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*

90 The *Board* must keep a register of *Charity Trustees*, setting out:-

- (a) for each current charity trustee:
 - (i) their full name and address;
 - (ii) the date on which they were appointed as a charity trustee; and

- (iii) any office held by them in the organisation;
 - (b) for each former *Charity Trustee* - for at least 6 years from the date on which they ceased to be a charity trustee:
 - (i) the name of the charity trustee;
 - (ii) any office held by them in the organisation; and
 - (iii) the date on which they ceased to be a charity trustee.
- 91 The *Board* must ensure that the register of *Charity Trustees* is updated within 28 days of any change:-
- (a) which arises from a resolution of the *Board* or a resolution passed by the *Members* of the organisation; or
 - (b) which is notified to the organisation.
- 92 If any person requests a copy of the register of *Charity Trustees*, the *Board* must ensure that a copy is supplied to them within 28 days, providing the request is reasonable; if the request is made by a person who is not a *Charity Trustee* of the organisation, 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

- 93 The *Charity Trustees* must elect (from among themselves) a Chair, a Treasurer and a Secretary.
- 94 In addition to the office-bearers required under clause 93, the *Charity Trustees* may elect (from among themselves) further office-bearers if they consider that appropriate.
- 95 All of the office-bearers will cease to hold office at the conclusion of each AGM, but may then be re-elected under clauses 93 and 94.
- 96 A person elected to any office will automatically cease to hold that office: -
- (a) if they cease to be a charity trustee; *or*
 - (b) if they give to the organisation a notice of resignation from that office, signed by them; or
 - (c) if the *Board* resolves to remove them from their office.

Powers of Board

- 97 Except where this constitution states otherwise, the organisation (and its assets and operations) will be managed by the *Board*; and the *Board* may exercise all the powers of the organisation.
- 98 A meeting of the *Board* at which a quorum is present may exercise all powers exercisable by the *Board*.
- 99 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

- 100 Each of the *Charity Trustees* has a duty, in exercising functions as a charity trustee, to act in the interests of the organisation; and, in particular, must:-
- (a) seek, in good faith, to ensure that the organisation acts in a manner which is in accordance with its purposes;
 - (b) act with the care and diligence which it is reasonable to expect of a person who is managing the affairs of another person;
 - (c) in circumstances giving rise to the possibility of a conflict of interest between the organisation and any other party:
 - (i) put the interests of the organisation before that of the other party; or
 - (ii) where any other duty prevents them from doing so, disclose the conflicting interest to the organisation and refrain from participating in any deliberation or decision of the other *Charity Trustees* with regard to the matter in question;
 - (d) ensure that the organisation complies with any direction, requirement, notice or duty imposed under or by virtue of the Act.
- 101 In addition to the duties outlined in clause 100, all of the *Charity Trustees* must take such steps as are reasonably practicable for the purpose of ensuring: -
- (a) that any breach of any of those duties by a *Charity Trustee* is corrected by the *Charity Trustee* concerned and not repeated; and
 - (b) that any trustee who has been in serious or persistent breach of those duties is removed as a trustee.
- 102 Provided they have declared their interest - and have not voted on the question of whether or not the organisation should enter into the arrangement - a *Charity Trustee* will not be debarred from entering into an

arrangement with the organisation in which they have a personal interest; and (subject to clause 103 and to the provisions relating to remuneration for services contained in the Act), they may retain any personal benefit which arises from that arrangement.

- 103 No *Charity Trustee* may serve as an employee (full time or part time) of the organisation; and no *Charity Trustee* may be given any remuneration by the organisation for carrying out their duties as a charity trustee.
- 104 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*

- 105 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.
- 106 The code of conduct referred to in clause 105 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 Act; 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

- 107 Any *Charity Trustee* may call a meeting of the *Board* or ask the secretary to call a meeting of the *Board*.
- 108 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.
- 109 If *Charity Trustees* are to be permitted to participate in a *Board* meeting by way of audio and/or audio-visual link(s), the *Charity Trustees* must, in advance of the meeting, be provided with details of how to connect and participate via that link or links; and (particularly for the benefit of those *Charity Trustees* who may have difficulties in using a computer or laptop for this purpose) the *Charity Trustees'* attention should be drawn to the following options:
- (a) participating in the meeting via an audio link accessed by phone, using dial-in details (if that forms part of the arrangements);

- (b) (where attendance in person is to be permitted, either on an open basis or subject to a restriction on the total number who will be permitted to attend) the ability to attend the meeting in person.

Procedure at *Board* meetings

- 110 No valid decisions can be taken at a *Board* meeting unless a quorum is present.
- (a) The quorum for *Board* meetings is half of all voting *Charity Trustees*, rounded up to the nearest integer, who are attending the meeting.
 - (b) A quorum is only present if the majority of the *Charity Trustees* present are members of the organisation.
- 111 An individual participating in a *Board* meeting via an audio or audio-visual link which allows them to hear and contribute to discussions at the meeting will be deemed to be present in person (or, if they are not a charity trustee, will be deemed to be in attendance) at the meeting.
- 112 If at any time the number of *Charity Trustees* in office falls below the number stated as the quorum in clause 110, the remaining charity trustee(s) will have power to fill the vacancies or call a *Members'* meeting - but will not be able to take any other valid decisions.
- 113 The chair of the organisation should act as chairperson of each *Board* meeting.
- 114 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 will act as chairperson of that meeting.
- 115 Every *Charity Trustee* has one vote, which must be given personally (subject to clause 123).
- 116 All decisions at *Board* meetings will be made by majority vote.
- 117 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.
- 118 The *Board* may if they consider appropriate (and must, if this is required under article 119), allow *Charity Trustees* to participate in *Board* meetings by way of an audio and/or audio-visual link or links which allow them to hear and contribute to discussions at the meeting, providing:
- (a) the means by which *Charity Trustees* can participate via that link or links are not subject to technical complexities, significant costs or

other factors which are likely to represent - for all, or a significant proportion, of the *Charity Trustees* - a barrier to participation; and

- (b) the manner in which the meeting is conducted ensures, so far as reasonably possible, that those *Charity Trustees* who participate via an audio or audio-visual link are not disadvantaged with regard to their ability to contribute to discussions at the meeting, as compared with those *Charity Trustees* (if any) who are attending in person (and vice versa).

119 If restrictions arising from public health legislation, directions or guidance are likely to mean that attendance in person at a proposed *Board* meeting would not be possible or advisable for one or more of the *Charity Trustees*, the *Board* must make arrangements for *Charity Trustees* to participate in that *Board* meeting by way of audio and/or audio-visual link(s); and on the basis that:

- (a) the requirements set out in paragraphs (a) and (b) of clause 118 will apply; and
- (b) the *Board* must use all reasonable endeavours to ensure that all *Charity Trustees* have access to one or more means by which they may hear and contribute to discussions at the meeting.

120 A *Board* meeting may involve two or more *Charity Trustees* participating via attendance in person while other *Charity Trustees* participate via audio and/or audio-visual links; or it may involve participation solely via audio and/or audio-visual links.

121 Where a *Charity Trustee* or *Charity Trustees* are participating in a *Board* meeting via an audio or audio-visual link, they may cast their vote on any resolution orally, or by way of some form of visual indication, or by use of a voting button or similar, or by way of a message sent electronically.

122 The *Board* may, at its discretion, allow any person to attend (whether in person or by way of an audio or audio-visual link) and to speak at a *Board* meeting notwithstanding that they are not a *Charity Trustee* - but on the basis that they must not participate in decision-making.

123 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 they have a personal interest or duty which conflicts (or may conflict) with the interests of the organisation; they must withdraw from the meeting while an item of that nature is being dealt with.

124 For the purposes of clause 123: -

- (a) an interest held by an individual who is “connected” with the *Charity Trustee* under section 68(2) of the Act (husband/wife, partner, child,

parent, brother/sister etc) shall be deemed to be held by that charity trustee;

- (b) a *Charity Trustee* will be deemed to have a personal interest in relation to a particular matter if a body in relation to which they are an employee, director, member of the management committee, officer or elected representative has an interest in that matter.

- 125 The principles set out in clause 68 (technical objections to remote participation) shall apply in relation to remote participation and voting at *Board* meetings, as if each reference in that clause to a member were a reference to a *Charity Trustee* and each reference in that clause to a *Members'* meeting were a reference to a *Board* meeting.
- 126 A resolution agreed to in writing (or by e-mail) by a majority of the *Charity Trustees* then in office shall (subject to clauses 127 and 128) be as valid as if duly passed at a *Board* meeting.
- 127 A resolution under clause 126 shall not be valid unless a copy of the resolution was circulated to all of the *Charity Trustees*, along with a cut-off time (which must be reasonable in the circumstances) for notifications under clause 128.
- 128 If a resolution is circulated to the *Charity Trustees* under clause 127, any one or more *Charity Trustees* may, following receipt of a copy of the resolution, notify the secretary that they consider that a *Board* meeting should be held to discuss the matter which is the subject of the resolution; and if any such notification is received by the secretary prior to the cut-off time:
- (a) the secretary must convene a *Board* meeting accordingly, and on the basis that it will take place as soon as reasonably possible;
 - (b) the resolution cannot be treated as valid under clause 126 unless and until that *Board* meeting has taken place;
 - (c) the *Board* may (if they consider appropriate, on the basis of the discussions at the meeting) resolve at that *Board* meeting that the resolution should be treated as invalid, notwithstanding that it had previously been agreed to in writing (or by e-mail) by a majority of the *Charity Trustees* then in office.

Minutes

- 129 The *Board* must ensure that proper minutes are kept in relation to all *Board* meetings and meetings of sub-committees.
- 130 The minutes to be kept under clause 129 must include the names of those present; and (so far as possible) should be signed by the chairperson of the meeting.

- 131 The *Board* shall (subject to clause 132) make available copies of the minutes referred to in clause 129 to any member of the public requesting them.
- 132 The *Board* may exclude from any copy minutes made available to a member of the public under clause 131 any material which the *Board* considers ought properly to be kept confidential - on the grounds that allowing access to such material could cause significant prejudice to the interests of the organisation or on the basis that the material contains reference to employee or other matters which it would be inappropriate to divulge.

ADMINISTRATION

Delegation to sub-committees

- 133 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*.
- 134 The *Board* may also delegate to the chair of the organisation (or the holder of any other post) such of their powers as they may consider appropriate.
- 135 When delegating powers under clause 133 or 134, the *Board* must set out appropriate conditions (which must include an obligation to report regularly to the *Board*).
- 136 Any delegation of powers under clause 133 or 134 may be revoked or altered by the *Board* at any time.
- 137 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

- 138 Subject to clause 139, 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 organisation; at least one out of the two signatures must be the signature of a charity trustee.
- 139 Where the organisation 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 138.

Accounting records and annual accounts

- 140 The *Board* must ensure that proper accounting records are kept, in accordance with all applicable statutory requirements.

- 141 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* consider 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.

MISCELLANEOUS

Winding-up

- 142 If the organisation 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 Act.
- 143 Any surplus assets available to the organisation immediately preceding its winding up or dissolution must be used for purposes which are the same as - or which closely resemble - the purposes of the organisation as set out in this constitution.

Alterations to the constitution

- 144 This constitution may (subject to clause 145) 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*.
- 145 The *Charities and Trustee Investment (Scotland) Act 2005* prohibits taking certain steps (e.g. change of name, an alteration to the purposes, amalgamation, winding-up) without the consent of the Office of the Scottish Charity Regulator (OSCR).
- 146 Where the Constitution is altered, Strathnairn Development Company should notify Scottish Ministers of that change.

Interpretation

- 147 References in this constitution to the *Charities and Trustee Investment (Scotland) Act 2005* should be taken to include: -
- (a) any statutory provision which adds to, modifies or replaces that Act; and
 - (b) any statutory instrument issued in pursuance of that Act or in pursuance of any statutory provision falling under paragraph (a) above.

Indemnity

- 148 Every Charity Trustee, Co-opted Charity Trustee, officer, auditor, secretary, or employee of the Organisation shall be indemnified out of the assets of

the Organisation against any loss or liability which they may sustain or incur in connection with the execution of the duties of their office, to the extent permitted by the *Act*.

- 149 The Organisation shall be entitled (subject to the provisions of section 68A of the *Act*) to purchase and maintain for any *Charity Trustee* insurance against any loss or liability which any *Charity Trustee* or officer of the Organisation may sustain or incur in connection with the execution of the duties of their office.

SCHEDULE A

OPERATING AREA

The Operating Area of the Organisation is hereby defined as the area enclosed by the boundary, as defined by the Highland Council under its Schemes for the Establishment of Community Councils, current in September 2018, of the Strathnairn Community Council.

SCHEDULE B

POWERS AVAILABLE TO THE ORGANISATION

The Organisation shall have the Powers defined below, but may only use them to further its Charitable Purposes defined in Clause 4 of this constitution. It is hereby declared that the order in which these Powers are listed is of no significance in terms of their respective priority, which shall be deemed to be equal.

A. General

1. 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 Charitable Purposes.
2. To promote and carry out research, surveys and investigations and to promote, develop and manage initiatives, projects and programmes;
3. To provide advice, consultancy, training, tuition, expertise and assistance.
4. 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 articles, pamphlets, books and other publications, tapes, motion and still pictures, music and drama and other materials, all in any medium.
5. To make any participation request under Part 3 of the *Community Empowerment (Scotland) Act 2015*, and to take any appropriate steps following the making of any such request.

B. Property

1. To register an interest in land and to exercise the right to buy under Part 2 of the *Land Reform (Scotland) Act 2003* including any statutory amendment or re-enactment thereof for the time being in force.
2. To register an interest in respect of Abandoned, Neglected or Detrimental Land, and to exercise the right to buy under Part 3A of the *Land Reform (Scotland) Act 2003* including any statutory amendment or re-enactment thereof for the time being in force.
3. To register a right to buy under Part 5 of the *Land Reform (Scotland) Act 2016* including any statutory amendment or re-enactment thereof for the time being in force.

4. To request any asset transfer under Part 5 of the *Community Empowerment (Scotland) Act 2015*, and to take any appropriate steps following the making of any such request.

5. To purchase, take on lease, hire, or otherwise acquire any property suitable for the Organisation and 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. To sell, let, hire, license, give in exchange and otherwise dispose of all or any part of the Property of the Organisation.

7. To establish and administer a building fund or funds or guarantee fund or funds or endowment fund or funds.

8. To manage community land and associated assets.

C. Employment

1. 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.

D. Funding and Financial

1. To take such steps as may be deemed appropriate for the purpose of raising funds for the activities of the Organisation.

2. To accept subscriptions, grants, donations, gifts, legacies and endowments of all kinds, either absolutely or conditionally or in trust.

3. 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.

4. To set aside funds not immediately required as a reserve or for specific purposes.

5. To invest any funds which are not immediately required for the activities of the Organisation in such investments as may be considered appropriate, which may be held in the name of a nominee company under the instructions of the *Board*, and to dispose of, and vary, such investments.

6. To make grants or loans of money and to give guarantees.

7. To establish, manage and/or support any other charitable organisation, and to make donations for any charitable purpose falling within the Purposes.

8. To establish, operate and administer and/or otherwise acquire any separate trading company or association, whether charitable or not.

9. To enter into any arrangement with any organisation, government or authority which may be advantageous for the purposes of the activities of the Organisation and to enter into any arrangement for co-operation, mutual assistance, or sharing profit with any charitable organisation.

10. To enter into contracts to provide services to or on behalf of others.

E. Insurance and Protection

1. To effect insurance of all kinds (which may include indemnity insurance in respect of Trustees and employees).

2. To oppose, or object to, any application or proceedings which may prejudice the interests of the Organisation.

F. Ancillary

1. To carry out the Charitable Purposes as principal, agent, contractor, trustee or in any other capacity.

2. To do anything which may be incidental or conducive to the Charitable Purposes so long as they are charitable.

SCHEDULE C

ELECTION OF TRUSTEES

Nominations

Members eligible to stand for election shall complete a Nomination Form. These must be submitted to the Organisation's Secretary by the date and time set by the *Board*, which should be at least 28 days before the AGM. No Nomination Forms submitted after that date and time will be accepted.

Election Process

At the close of the nomination period, if there are more candidates than vacancies there will be a ballot. Candidates will have the option of publishing a 250-word statement on the Organisation's website.

Elections will be carried out by means of a postal ballot or by secure electronic means having first confirmed that each candidate nominated :-

- (a) has no irresolvable conflicts of interest as described in Clauses 124 and 125 of the Constitution;
- (b) is still willing to do so;
- (c) is a Member and otherwise is eligible to stand given Clauses 76-79.

Each *Member* shall be entitled to vote for all those *Members* standing. No proxies may be appointed.

Elected

As the number of vacancies on the Board to be filled by election will be the difference between the maximum number of Charity Trustees (12) and those still within their three-year term on the Board, the candidates will be ranked according to the number of votes they receive with the highest elected first, second highest next, and so on until all vacancies are filled.

Ballot

The Organisation's Secretary shall distribute ballot papers.

Counting of ballot papers and determination of the election results will be carried out by the Organisation's Secretary.