

URN: 22-178

Subject: **Changes to Governance of Great Yarmouth Preservation Trust and Norfolk Conservation Limited : The Local Authorities (Companies) Order 1995 – the Trust’s Proposal**

Report to: **Council - 13 October 2022**

Report by: **Monitoring Officer**

SUBJECT MATTER

In July 2021, in a report entitled “Governance of Great Yarmouth Preservation Trust and Norfolk Conservation Limited : The Local Authorities (Companies) Order 1995” (for full reference see “Background Papers”) it was recommended to members to take actions which sought to regularise the position with regard to Council appointments to the Trust, in order that the Trust could rectify certain anomalies with its own governance and modernise its company Articles. Members resolved to approve all recommendations. However the Trust did not accept the proposal put forward by the Council and has now made a counter proposal, which is outlined in this report.

RECOMMENDATIONS

That Council

- 1) make the following adjustments to its appointments to the Trust:
 - the existing Councillor appointments of company members (Cllrs Price, Fairhead, Williamson, Freeman and Wells) will remain in place only until the Trust resolves to adopt new company Articles, at which point Cllrs Williamson, Freeman and Wells will become both members and Directors of the Trust, while the appointments of Cllrs Price and Fairhead will end altogether
 - Sheila Oxtoby, Iain Richardson and Kate Blakemore will cease to be members at the point of adoption by the Trust of its new company Articles
 - Kate Blakemore will not become a Director of the Trust
- 2) note the changes to the Trust’s Articles of Association
- 3) note that the implication of changes to the Articles and the related adjustment to the Council’s appointments is that the Trust will become a Local Authority Influenced Company, rather than a Local Authority Controlled Company, which it has been to date.
- 4) Agree to terminate the Partner Agreement between the Council and the Trust as of 1 April 2023.

1. Introduction & Background

1.1 Under the Local Government and Housing Act 1989 and the Local Authorities (Companies) Order 1995 there are two types of local authority company both known as “regulated” companies. They are categorised according to the extent of local authority ownership and/or control of the Board of Directors. Those regulated companies under the greatest degree of control are known as “controlled companies” while a lesser degree of control gives rise to an “influenced” company. The legislation requires that regulated companies and the local authorities to which they are connected comply with certain governance and accounting measures. The Trust is a local authority “controlled” company within the meaning of the legislation, because of the number of appointments the Council is currently entitled to make to the Trust. The Trust’s trading company, Norfolk Conservation Limited, is also a “controlled company” for reasons explained in section 3 of this report.

1.2 There is a disparity between the method of appointment set down in the Trust’s current company Articles and the arrangements currently practised, in that the Trust’s Articles, since its incorporation in 1980, have required that Directors (both Council appointed and otherwise) should only be appointed from a pool of Trust “members”. However, this system of a pool of members from which Directors are chosen, seems to have lapsed (or was never observed) and Directors began to be appointed directly by GYBC and the other participant organisations. More information about the original system of appointments can be found in Appendix 2 to the 2021 report.

1.3 The current Articles of GYPT are no longer practical and need to be modernised to allow for more effective governance. Additionally, GYPT wishes to have the power to appoint another community representative to its Board. Before such changes can be made, the position must be regularised, by aligning the appointments with the requirements of the Articles, in order that the necessary resolution to revise the Articles may be correctly made. This must be done by first appointing the requisite number of company “members” in accordance with the existing Articles. The Council proposed 8 members as set out in the following paragraph.

1.4 Under the previous report, the Council resolved to make the following appointments:

- appointing the existing appointed directors of GYPT (Cllrs Williamson, Fairhead, Freeman, Hacon and Wells) as “members” of GYPT (note that they will remain Directors); [NB – Cllr Hacon was replaced by Cllr Price at the Council meeting of 28/09/2021]
- appointing Iain Robertson, Major Projects & Development Director, and Sheila Oxtoby, Chief Executive, as additional members of GYPT until such time as the new Articles of Association are formally adopted; and
- appointing Kate Blakemore, the Council’s Strategic Director, as an additional member of GYPT (it was formerly proposed that Kate should remain a member after

the new Articles of Association were formally adopted, at which time she would also become a Director of GYPT).

- 1.5 Not all of the proposed appointments above were accepted by the Trust. Their counter-proposal is set out at section 3 below.

2. Key Information

2.1 GYPT is a company registered at Companies House under reference 01492613, incorporated in 1980. It is also a charitable company registered with the Charity Commission. The company is limited by guarantee without share capital. There are no shares in the company and therefore no shareholders, but there were original subscribers to the company known as ‘members’. Members are loosely similar to shareholders in the sense that they may be involved in certain company decisions, but in the case of GYPT they do not have ownership of the company in the same way as shareholders, there being no shares issued. They may (dependent on a company’s Articles of Association) retain an element of control over the company, separate to and in some cases overriding the controls exercised by the company directors. The method of appointment of directors to GYPT is perhaps unusual, in that the Articles prescribe that Directors may only be appointed from the pool of company members.

2.2 Under Article 5 of GYPT’s current Articles of Association (adopted on 28th August 2010) GYBC is entitled to nominate up to 12 Members of the company (NB – company members rather than Directors). The Archaeological Society may nominate up to 6 members and there may be 1 Member who is a community representative. There is scope for other Members to be admitted, but non-Council Members may not exceed the number of Council Members. This gives the Council over 50% of control in terms of any **Member** voting rights.

2.3 Under Article 34, there are required to be 9 Directors, 5 from amongst the Council’s company members, 3 from the Archaeological Society’s company members and 1 who is a community representative company member. This gives the Council over 50% control in terms of **Director** voting rights.

The current Directors of GYPT are:

Director	Appointed by
Cllr Bernard Williamson	GYBC
Dr Paul Davies	Archaeological Society
Cllr Marlene Fairhead	GYBC
Andrew Fakes	Archaeological Society
Cllr Geoffrey Freeman	GYBC
Cllr Sue Hacon	GYBC
Paul Patterson	Community Representative
Michael Taylor	Archaeological Society
Cllr Paul Wells	GYBC

The original members from the 1980 incorporation documents are no longer with the Trust but no replacement members appear ever to have been nominated. The Articles provide for these members to be replaced as they stepped down, but this does not ever appear to have happened. This means that to date, Directors have been appointed incorrectly, as they have not been appointed from a pool of company members.

2.6 The Trust is currently a local authority “controlled company” (this is technical/nominal and not actual control – a charity must be independent of state control). A **controlled company** (per section 68 of the 1989 act) is either a subsidiary of the authority (per section 1159 of the Companies Act 2006), or where the authority controls the majority of the votes at the company’s general meeting, or where the authority has power to appoint or remove a majority of the company Directors. And, a company is also controlled if it is under the control of another controlled company. This means that the Trust’s wholly owned company, Norfolk Conservation Limited is also a local authority “controlled company”. The Council’s proposal for the Trust’s articles would have meant that the Trust continued to be a local authority “controlled company”. However, the Trust did not accept this. Instead, it has proposed Article which would make the Trust a local authority “influenced company”, by virtue of the number of directors. An **influenced company** (under section 69 of the 1989 act) is where a business relationship exists between authority and company. This is where the authority provides more than 50% of funds or value to the company and either at least: 20% of voting rights are held by those associated with the authority, 20% of the company’s Directors are so associated, or 20% of total voting rights at directors’ meetings are held by people so associated. Associated persons are specified in section 69(6).

3. The Trust’s Counter Proposal

3.1 While the 8 company member appointments were validly made by the Council, the Trust did not accept the proposal that an officer of the Council should become a director of the company. The Trust wanted to become a local authority influenced company and to do so, needed to have fewer Council appointees. The Trust has proposed that Council appointments be restricted to three individuals, who will become both members of the company and Directors of the company. At the point at which the new company Articles are adopted by the Trust, the appointments of Sheila Oxtoby, Iain Robertson, Kate Blakemore, and Cllrs Hacon and Fairhead will cease.

4. The Partner Agreement

4.1 There is currently a Partner Agreement between the Council and GYPT. The Partner Agreement governs the basis on which personnel support is provided to GYPT by the Council (two days per week of the Council’s Culture, Design & Heritage Manager’s time is given to the Trust to work as its Project Director). The Agreement also outlines how the Trust’s activities align with certain of the Council’s corporate priorities. It is proposed that following the Trust’s decision to become an influenced and not a controlled company, the Partner Agreement

will be terminated. This requires three months' notice to be served on the Trust by the Council. At that point, the Culture, Design & Heritage Manager will cease to undertake the Project Director role for the Trust and the two days per week currently spent on work for the Trust by him will cease. A restriction will be placed on the Culture, Design & Heritage Manager being able to undertake any formal role for the Trust and Norfolk Conservation Limited (including in his personal capacity) for as long as he remains employed by the Council (unless otherwise agreed in advance and in writing by the Council) in order to avoid any conflict of interest between Council and Trust business.

5. Norfolk Conservation Limited (“NC Ltd”)

5.1 NC Ltd is a private company registered at Companies House under number 09516279 and wholly owned by GYPT. It is not a charitable company. It is important to note that a company is also a local authority “controlled company” if it is under the control of another controlled company. NC Ltd is therefore a currently a local authority “controlled company” under the 1995 Order, until such time as GYPT ceases to be a controlled company.

5.2 To date NC Ltd has had two directors, Bernard Williamson and Darren Barker who have undertaken these roles in their personal capacity and not under appointment by GYBC.

5.3 NC Ltd’s website states: “Norfolk Conservation Ltd. is owned by Great Yarmouth Preservation Trust and all profits are used to support the work of the Great Yarmouth Preservation Trust (Charity Number: 280628)”. This is also referenced in an ‘Initial Business Plan’ which was submitted to Companies House at the time of the company’s incorporation. However this document is not binding on the company, and it would be preferable that this were the case.

5.4 If the Trust changes, as per its own proposal, to become a local authority “influenced company”, then NC Ltd will also become a local authority “influenced company”.

6. Risk Implications

The Council, GYPT and NC Ltd need to be compliant with the requirements of the Local Authorities (Companies) Order 1995, as set out in Appendix 1 to this report.

7. Conclusion

A review of governance has identified an issue with appointments to GYPT which needs to be rectified. The unusual concept around the appointment of members from which Directors were then selected does not seem ever to have been observed. This means that GYPT has long been non-compliant with its own rules. Additionally, it was not openly understood or acknowledged that GYPT had become (with a change in legislation) a local authority regulated company. The creation of NC Ltd does not appear to have been led by the Council and that company had accordingly not been acknowledged as a local authority controlled company.

These issues can now be addressed, and the recommendations of this report seek to regularise the position with regard to appointments, allowing GYPT to move forward with the modernisation of its Articles. The Council had formerly made a proposal which would have retained the status of the Trust and Norfolk Conservation Limited as local authority “controlled” companies. This has been rejected by the Trust, which instead proposes that adjustments to the number of Directors be made so that both companies will become local authority “influenced” companies. It is recommended that this counter proposal is accepted. In the first instance the company “members” previously appointed by Council in July 2021 will remain company members until such time as the Trust passes a special resolution to adopt new articles. At this point Cllrs Price and Fairhead and officers Sheila Oxtoby, Iain Robertson and Kate Blakemore will cease to be members, and all remaining company members (including Cllrs Williamson, Wells and Freeman) will become Directors of the Trust in its new status as a local authority influenced company. From that point forward, the Trust’s members and Directors will be the same, i.e. all company members will be Directors, thus resolving the anomaly in governance.

Appendix 1 – GYPT Articles of Association – proposed by the Trust

Background Papers:

- 1) Report to Council of July 2021 URN 21-064 - Governance of Great Yarmouth Preservation Trust and Norfolk Conservation Limited : The Local Authorities (Companies) Order 1995
- 2) Current Memorandum and Articles of Association of Great Yarmouth Preservation Trust, August 2010 accessible at Companies House: <https://find-and-update.company-information.service.gov.uk/company/01492613/filing-history?page=3>

Areas of consideration: e.g. does this report raise any of the following issues and if so how have these been considered/mitigated against?

Area for consideration	Comment
Monitoring Officer Consultation:	Yes
Section 151 Officer Consultation:	Yes
Existing Council Policies:	None
Financial Implications (including VAT and tax):	None
Legal Implications (including human rights):	Addressed in the report
Risk Implications:	Addressed in the report
Equality Issues/EQIA assessment:	N/A
Crime & Disorder:	N/A
Every Child Matters:	N/A

THE COMPANIES ACT 2006
PRIVATE COMPANY LIMITED BY GUARANTEE

Charity Number 280628
Company Number 01492613
Incorporated 22 April 1980

ARTICLES OF ASSOCIATION OF
GREAT YARMOUTH PRESERVATION TRUST

The Companies Act 2006
Company Limited by Guarantee

**ARTICLE OF ASSOCIATION OF
GREAT YARMOUTH PRESERVATION TRUST**

1. Name

The name of the **Charity** is Great Yarmouth Preservation Trust.

2. Registered Office

The registered office of the Charity is to be situated in England.

3. Objects

The **Objects** for which the Charity is established is as follows:

To preserve for the benefit of the inhabitants of the Borough of Great Yarmouth in the County of Norfolk and of the nation at large, whatever of the historical, architectural and constructional heritage may exist in and around the Borough of Great Yarmouth in the form of:

- a) buildings (including any building as defined in Section 290(1) of the Town and Country Planning Act (1971) of particular beauty or historical, architectural and constructional interest; or
- b) land of particular beauty or historical interest; or
- c) fixed machinery of historical interest.

4. Powers

The Charity has the following powers, which may be exercised only in promoting the Objects:

- 4.1. to promote or carry out research.
- 4.2. to provide advice.
- 4.3. to publish or distribute information.
- 4.4. to co-operate with other bodies.
- 4.5. to support, administer or set up other charities.
- 4.6. to raise funds (but not by means of **taxable trading**).
- 4.7. to borrow money and give security for loans (but only in accordance with the restrictions imposed by the **Charities Act**).

- 4.8. to acquire or hire property of any kind.
- 4.9. to let or dispose of property of any kind (but only in accordance with the restrictions imposed by the Charities Act).
- 4.10. to make grants or loans of money and to give guarantees.
- 4.11. to set aside funds for special purposes or as reserves against future expenditure.
- 4.12. to deposit or invest in funds in any manner (but to invest only after obtaining such advice from a **financial expert** as the Trustees consider necessary and having regard to the suitability of investments and the need for diversification).
- 4.13. to delegate the management of investments to a financial expert, but only on terms that:
 - 4.13.1. the investment policy is set down **in writing** for the financial expert by the Trustees;
 - 4.13.2. every transaction is reported promptly to the Trustees;
 - 4.13.3. the performance of the investments is reviewed regularly with the Trustees;
 - 4.13.4. the Trustees are entitled to cancel the delegation arrangement at any time;
 - 4.13.5. the investment policy and the delegation arrangement are reviewed at least once a **year**;
 - 4.13.6. all payments due to the financial expert are on a scale or at a level which is agreed in advance and are notified promptly to the Trustees on receipt; and
 - 4.13.7. the financial expert must not do anything outside the powers of the Trustees.
- 4.14. to arrange for investments or other property of the Charity to be held in the name of a **nominee company** acting under the control of the Trustees or of a financial expert acting under their instructions, and to pay any reasonable fee required.
- 4.15. to deposit documents and physical assets with any company registered or having a place of business in England and Wales as **custodian**, and to pay any reasonable fee required.
- 4.16. to insure the property of the Charity against any foreseeable risk and take out other insurance policies to protect the Charity when required.
- 4.17. to pay for **indemnity insurance** for the Trustees.
- 4.18. subject to Article 5, to employ paid or unpaid agents, staff or advisers.

- 4.19. to enter into contracts to provide services to or on behalf of other bodies.
- 4.20. to establish or acquire subsidiary companies to assist or act as agents for the Charity.
- 4.21. To acquire or merge with any other charity the objects of which are the same as or similar to the Objects whether by way of the acquisition of assets or otherwise.
- 4.22. to pay the costs of forming the Charity.
- 4.23. to do anything else within the law which promotes or helps to promote the Objects.

5. Benefits to Members and Trustees

- 5.1. The property and funds of the Charity must be used only for promoting the Objects and do not belong to the **Members** but:
 - 5.1.1. Members who are not Trustees may be employed by or enter into contracts with the Charity and receive reasonable payment for goods or services supplied;
 - 5.1.2. Members may be paid interest at a reasonable rate on money lent to the Charity;
 - 5.1.3. Members may be paid a reasonable rent or hiring fee for property or equipment let or hired to the Charity; and
 - 5.1.4. Individual Members (including Trustees) who are also beneficiaries may receive charitable benefits in that capacity provided that a majority of the Trustees do not benefit in this way.
- 5.2. A Trustee must not receive any payment of money or other **material benefit** (whether directly or indirectly) from the Charity except:
 - 5.2.1. as mentioned in Articles 4.17 (indemnity insurance), 5.1.2 (interest), 5.1.3 (rent) or 5.4 (contractual payments);
 - 5.2.2. reimbursement of reasonable out-of-pocket expenses (including hotel and travel costs) actually incurred in the administration of the Charity;
 - 5.2.3. an indemnity in respect of any liabilities properly incurred in running the Charity (including the costs of a successful defence to criminal proceedings);
 - 5.2.4. payment to any company in which a Trustee has no more than a 1 per cent shareholding; and
 - 5.2.5. in exceptional cases, other payments or benefits (but only with the written approval of the Commission in advance).

- 5.3. A **connected person** must not receive any payment of money or other material benefit (whether directly or indirectly) from the Charity except:
- 5.3.1. as mentioned in Articles 5.1.2 (interest), 5.1.3 (rent), 5.1.4 (charitable benefits) or 5.4 (contractual payments);
 - 5.3.2. payment to any company in which a connected person has no more than a 1 per cent shareholding; and
 - 5.3.3. in exceptional cases, other payments or benefits (but only with the written approval of the Commission in advance).
- 5.4. A Trustee may not be an employee of the Charity, but a Trustee or a **connected person** may enter into a contract with the Charity to supply goods or services in return for a payment or other material benefit if:
- 5.4.1. the goods or services are actually required by the Charity;
 - 5.4.2. the nature and level of the benefit is no more than reasonable in relation to the value of the goods or services and is set at a meeting of the Trustees in accordance with the procedure in this Article 5.4 and Article 6; and
 - 5.4.3. no more than half of the Trustees are interested in such a contract in any **financial year**; and
 - 5.4.4. the Charity enters into a written contract with the relevant Trustee or connected person setting out the amount or maximum amount of remuneration to be paid under the contract.
- 5.5. This Article 5 may not be amended without the written consent of the Commission in advance.

6. Conflicts of Interest and Conflicts of Loyalty

- 6.1. Whenever a Trustee has a personal interest in a matter to be discussed at a meeting of the Trustees or a committee, the unconflicted Trustees may authorise such a conflict of interest where the following conditions apply:
- 6.1.1. the conflicted Trustee declares an interest before the meeting or at the meeting before discussion begins on the matter; and
 - 6.1.2. the conflicted Trustee is absent from the meeting for that item unless expressly invited to remain in order to provide information; and
 - 6.1.3. the conflicted Trustee is not to be counted in the quorum for that part of the meeting; and
 - 6.1.4. the conflicted Trustee is absent during the vote and has no vote on the matter; and

- 6.1.5. the unconflicted Trustees consider it is in the interest of the Charity to authorise the conflict of interest in the circumstances applying.
- 6.2. If a conflict of interest arises for a Trustee because of a duty of loyalty owed to another organisation or person and the conflict is not authorised by virtue of any other provision in the Articles, the unconflicted Trustees may authorise such a conflict of interest where the following conditions apply:
 - 6.2.1. the conflicted Trustee declares an interest before the meeting or at the meeting before discussion begins on the matter; and
 - 6.2.2. the conflicted Trustee is absent from the meeting for that item unless expressly invited to remain in order to provide information; and
 - 6.2.3. the conflicted Trustee is not counted in quorum for that part of the meeting; and
 - 6.2.4. the conflicted Trustee is absent during the vote and has no vote on the matter; and
 - 6.2.5. the unconflicted Trustees consider it is in the interests of the Charity to authorise the conflict of interest in the circumstances applying.

7. Limited Liability

The liability of Members is limited.

8. Guarantee

Every Member promises, if the Charity is dissolved while he or she remains a Member or within 12 months afterwards, to pay up to £1 towards the costs of dissolution and the liabilities incurred by the Charity while he or she was a Member.

9. Dissolution

- 9.1. If the Charity is dissolved, the assets (if any) remaining after provision has been made for all its liabilities must be applied in one or more of the following ways:
 - 9.1.1. by transfer to 1 or more other bodies established for exclusively charitable purposes with, the same as or similar to the Objects;
 - 9.1.2. directly for the Objects or for charitable purposes which are within or similar to the Objects; or
 - 9.1.3. in such other manner consistent with charitable status as the Commission shall approve in writing in advance.
- 9.2. A final report and statement of account must be sent to the Commission.

10. Membership

- 10.1. The Charity must maintain a register of Members.

- 10.2. The Trustees from time to time shall be the only **Members** of the Charity.
- 10.3. A Trustee shall become a Member on becoming a Trustee. In agreeing to become a Trustee, each new Trustee is also agreeing to become a Member.
- 10.4. Membership is terminated if the Member concerned ceases to be a Trustee
- 10.5. Membership of the Charity is not transferable.
- 10.6. The maximum number of Members at any time shall be 11.

11. General Meetings

- 11.1. General meetings are the meetings of the Members, consisting of the AGM and the special general meetings (if any).
- 11.2. A general meeting may be held either in person or by suitable electronic means agreed by the Trustees in which all participants may communicate with all the other participants.
- 11.3. Members are entitled to attend general meetings personally or by proxy. Proxy forms must be delivered to the **Secretary** at least 24 hours before the meeting.
- 11.4. There is a quorum at a general meeting if the number of Members personally present in person or by proxy is at least 5 of the Members.
- 11.5. A general meeting may be held either in person or by suitable electronic means agreed by the Members in which all participants may communicate with all the other participants.
- 11.6. The **Chair** or (if the Chair is unable or unwilling to do so) some other Member elected by those present presides at a general meeting.
- 11.7. Except where otherwise provided by the **Articles** or the **Companies Act**, every issue is decided by a majority of the votes cast.
- 11.8. Every Member present in person or by proxy has 1 vote on each issue. IN the case of an equality of votes the Chair of the meeting shall have a second or casting vote.
- 11.9. Where a written resolution is approved by the appropriate majority required for the resolution in question of those entitled to vote at a general meeting, or where approval of the resolutions is given electronically by the appropriate majority of those entitled to vote at a general meeting, then that resolution shall be as valid as a resolution actually passed at a general meeting. For this purpose, a written resolution may be:
 - 11.9.1. set out in more than 1 document (in which case it will be treated as passed on the date of the last signature); or

- 11.9.2. sent out and/or returned in hard copy or electronic format (and if sent back electronically, then the resolution will be treated as passed at the time and on the date of the last response to be received).
- 11.10. The Charity must hold an **AGM** in every year.
- 11.11. At an AGM the Members:
 - 11.11.1. receive the accounts of the Charity for the previous **financial year**;
 - 11.11.2. receive the Trustees' report on the Charity's activities since the previous AGM;
 - 11.11.3. appoint auditors for the Charity;
 - 11.11.4. may confer on any individual (with his or her consent) the honorary title of Patron, President or Vice-President of the Charity; and
 - 11.11.5. may discuss and determine any issues of policy or deal with any other business put before them by the Trustees.
- 11.12. Any general meeting which is not an AGM is a special general meeting.
- 11.13. A special general meeting may be called at any time by the Trustees and must be called on a written request from at least 5% of the Members.
- 11.14. The Members may adopt rules relating to the circulation of agendas or notices of resolutions, the conduct of meetings and the circulation of resolutions consistent with the Companies Act as they think fit.

12. Notice of General Meetings

- 12.1. Any general meeting must be called on at least 14 and not more than 28 clear days' written notice indicating the business to be discussed, and if a special resolution is to be proposed, at least 28 clear days' written notice setting out the terms of the proposed special resolution.
- 12.2. A general meeting may be called on shorter notice if it is so agreed by all Members entitled to attend and vote.
- 12.3. If the general meeting is to be an AGM, the notice must say so.
- 12.4. The notice must be given to all Members.

13. The Trustees

- 13.1. The Trustees as **charity trustees** have control of the Charity and its property and funds.
- 13.2. The number of Trustees when complete shall consist of nine individuals, all of whom must be Members, and who shall as far as practicable consist of the following:

- 13.2.1. three Trustees appointed by Great Yarmouth Borough Council;
 - 13.2.2. three Trustees appointed by the Great Yarmouth Local History and Archaeological Society; and
 - 13.2.3. three other persons who may be appointed by the Trustees from time to time in accordance with any policies and procedures adopted by the Trustees (under Article 14) and having regard to any relevant guidance issued by the Commission.
- 13.3. A technical defect in the appointment of a Trustee of which the Trustees are unaware at the time does not invalidate decisions taken at a meeting.
- 13.4. Every Trustee after appointment or reappointment must sign a declaration of willingness to act as a charity trustee of the Charity before he or she may vote at any meeting of the Trustees.
- 13.5. A Trustee's office shall be vacated automatically if he or she:
- 13.5.1. is disqualified under the Charities Act from acting as a charity trustee;
 - 13.5.2. is the subject of a decision by HMRC that they are not a fit and proper person as that term is defined by the Finance Act 2010;
 - 13.5.3. dies;
 - 13.5.4. is incapable, whether mentally or physically, of managing his or her own affairs;
 - 13.5.5. ceases to be a Member;
 - 13.5.6. resigns by written notice to the Trustees (but only if at least two Trustees will remain in office); or
 - 13.5.7. is removed by resolution of the Members present and voting at a general meeting on the ground that in their reasonable opinion the Trustee continuing in office would be harmful to the Charity. The Members may only pass such a resolution after notifying the Trustee in writing not less than 14 clear days before such a general meeting and considering the matter in the light of:
 - i. any views expressed by the Trustee concerned at the general meeting; or
 - ii. any written representations which the Trustee concerned puts forward to the Trustees before the general meeting.
- 13.6. The Trustees may at any time co-opt any individual to act as an advisor to the Trustees. A co-opted adviser shall be invited to attend meetings of the Trustees as an observer to advise the Trustees but shall have no voting rights on the issues to be determined by the Trustees.

14. Trustees' proceedings

- 14.1. A quorum at a meeting of the Trustees is three Trustees.
- 14.2. A meeting of the Trustees may be held either in person or by suitable electronic means agreed by the Trustees in which all participants may communicate with all the other participants.
- 14.3. The Chair or (if the Chair is unable or unwilling to do so) some other Trustee chosen by the Trustees present presides at each meeting.
- 14.4. Every issue may be determined by a simple majority of the votes cast at a meeting, but a written resolution signed by all the Trustees is as valid as a resolution passed at a meeting. For this purpose the resolution may be contained in more than 1 document and will be treated as passed on the date of the last signature.
- 14.5. Except for the Chair of the meeting, who has a second or casting vote, every Trustee has 1 vote on each issue.
- 14.6. A procedural defect of which the Trustees are unaware at the time does not invalidate decisions taken at a meeting.
- 14.7. The Trustees may adopt rules relating to the circulation of agendas or notices of resolutions, the conduct of meetings, and the circulation of resolutions for confirmation as they think fit which shall apply until revoked or amended by resolution of the Trustees.

15. Trustees' powers

The Trustees have the following powers in the administration of the Charity:

- 15.1. to appoint (and remove) any Member (who may be a Trustee) to act as Secretary in accordance with the Companies Act;
- 15.2. to appoint a Chair, Treasurer and other honorary officers from among their number;
- 15.3. to delegate any of their functions to committees consisting of 2 or more individuals appointed by them. At least 1 member of every committee must be a Trustee and all proceedings of committees must be reported promptly to the Trustees;
- 15.4. to make standing orders consistent with the Articles and the Companies Act to govern proceedings at general meetings and to prescribe a form of proxy;
- 15.5. to make rules consistent with the Articles and the Companies Act to govern their proceedings and proceedings of committees;
- 15.6. to make regulations consistent with the Articles and the Companies Act to govern the administration of the Charity and the use of its seal (if any);

- 15.7. to establish procedures to assist the resolution of disputes or differences within the Charity; and
- 15.8. to exercise any powers of the Charity which are not reserved to a general meeting.

16. Records and Accounts

- 16.1. The Trustees must comply with the requirements of the Companies Act and of the Charities Act as to keeping financial records, the audit of accounts and the preparation and transmission to the Registrar of Companies and the **Commission** of:
 - 16.1.1. annual returns;
 - 16.1.2. annual reports; and
 - 16.1.3. annual statements of account.
- 16.2. The Trustees must keep proper records of:
 - 16.2.1. all proceedings at general meetings;
 - 16.2.2. all proceedings at meetings of the Trustees;
 - 16.2.3. all reports of committees; and
 - 16.2.4. all professional advice obtained.
- 16.3. Accounting records relating to the Charity must be made available for inspection by any Trustee at any time during normal office hours
- 16.4. A copy of the Charity's latest available statement of account must be supplied on request to any Trustee or Member. A copy must also be supplied, within 2 months, to any other person who makes a written request and pays the Charity's reasonable costs.

17. Notices

- 17.1. Notices under the Articles may be sent by hand, by post or by suitable electronic means or (where applicable to Members generally) may be published in any suitable journal or newspaper circulating in the Borough of Great Yarmouth or any journal distributed by the Charity.
- 17.2. The only address at which a Member is entitled to receive notices sent by post is an address in the UK shown in the register of Members.
- 17.3. Any notice given in accordance with these Articles is to be treated for all purposes as having been received:

- 17.3.1. 24 hours after being sent by electronic means or delivered by hand to the relevant address;
 - 17.3.2. 2 clear days after being sent by first class post to that address;
 - 17.3.3. 3 clear days after being sent by second class or overseas post to that address;
 - 17.3.4. on the date of publication of a newspaper containing the notice;
 - 17.3.5. on being handed to the Member personally; or, if earlier,
 - 17.3.6. as soon as the Member acknowledges actual receipt.
- 17.4. A technical defect in the giving of notice of which the Trustees are unaware at the time does not invalidate decisions taken at a meeting.

18. Means of Communication

- 18.1. Subject to the Articles, anything sent or supplied by or to the Charity under the Articles may be sent or supplied in any way in which the Companies Act provides for documents or information which are authorised or required by any provision of the Companies Act to be sent or supplied by or to the Charity.
- 18.2. Subject to the Articles, any notice or document to be sent or supplied to a Trustee in connection with the taking of decisions by Trustees may also be sent or supplied by the means by which that Trustee has asked to be sent or supplied with such notices or documents for the time being.

19. Disputes

If a dispute arises between the Members about the validity or propriety of anything done by the Members under the Articles, and the dispute cannot be resolved by agreement, the parties to the dispute must first try in good faith to settle the dispute by mediation before resorting to litigation.

20. Interpretation

- 20.1. In the Articles, unless the context indicates another meaning:

‘**AGM**’ means an annual general meeting of the Charity;

‘the **Articles**’ means the Charity’s articles of association;

‘**Chair**’ means the Chair of the Trustees or the Members (as appropriate);

‘the **Charity**’ means the company governed by the Articles;

‘the **Charities Act**’ means (as applicable) the Charities Act 1993, the Charities Act 2006 and the Charities Act 2011;

‘**charity trustee**’ has the meaning prescribed by section 97(1) of the Charities Act;

‘**clear day**’ means 24 hours from midnight following the relevant event;

‘the **Commission**’ means the Charity Commissioners for England and Wales;

‘the **Companies Act**’ means the Companies Act 2006;

‘**connected person**’ means any spouse, partner, parent, child, brother, sister, grandparent or grandchild of a Trustee, any **firm** of which a Trustee is a member or employee, and any company of which a Trustee is a director, employee or shareholder having a beneficial interest in more than 1 per cent of the share capital;

‘**custodian**’ means a person or body who undertakes safe custody of assets or of documents or records relating to them;

‘**financial expert**’ means an individual, company or firm who is authorised to give investment advice under the Financial Services and Markets Act 2000;

‘**financial year**’ means the Charity’s financial year;

‘**firm**’ includes a limited liability partnership;

‘**indemnity insurance**’ means insurance against personal liability incurred by any Trustee for an act or omission which is or is alleged to be a breach of trust or breach of duty, unless the Trustee concerned knew that, or was reckless whether, the act or omission was a breach of trust or breach of duty;

‘**informal membership**’ refers to a supporter who may be called a ‘member’ but is not a company Member of the Charity;

‘**material benefit**’ means a benefit which may not be financial but has a monetary value;

‘**Member**’ and ‘**membership**’ refer to company membership of the Charity;

‘**month**’ means calendar month;

‘**nominee company**’ means a corporate body registered or having an established place of business in England and Wales;

‘**the Objects**’ means the Objects of the Charity as defined in Article 3;

‘**Secretary**’ means the company secretary of the Charity or such other person designated by the Trustees as the secretary;

‘**taxable trading**’ means carrying on a trade or business for the principal purpose of raising funds and not for the purpose of actually carrying out the Objects, the profits of which are subject to corporation tax;

‘**Trustee**’ means a director of the Charity and ‘**Trustees**’ means the directors.

'written' or **'in writing'** refers to a legible document on paper including a fax message or email; and

'year' means calendar year.

- 20.2. Expressions defined in the Companies Act have the same meaning.
- 20.3. References to an Act of Parliament are to that Act as amended or re-enacted from time to time and to any subordinate legislation made under it.