

URN: 21-064

Subject: Governance of Great Yarmouth Preservation Trust and Norfolk Conservation Limited : The Local Authorities (Companies) Order 1995

Report to: Council

Report by: Monitoring Officer

SUBJECT MATTER

The purpose of this report is to explain the historical and current governance arrangements of Great Yarmouth Preservation Trust (GYPT) and its trading company Norfolk Conservation Limited (NC Ltd). The recommendations seek to regularise the position with regard to Council appointments to GYPT, in order that GYPT will be in a position to modernise its Articles.

RECOMMENDATIONS

That Council

- 1) appoint the existing appointed directors of GYPT (Cllrs Williamson, Fairhead, Freeman, Hacon and Wells) as “members” of GYPT (note that they will remain directors);
- 2) approve the new form of Articles of Association then to be adopted by GYPT, set out at Appendix 3;
- 3) appoint Iain Robertson, the Council’s Major Projects & Development Director, and Sheila Oxtoby, the Chief Executive, as additional members of GYPT until such time as the new Articles of Association are formally adopted; and
- 4) appoint Kate Blakemore, the Council’s Strategic Director, as an additional member of GYPT, to remain a member after the new Articles of Association are formally adopted, at which time she will also become a director of GYPT.

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 (see Appendix 1 for further detail). Those regulated companies under the greatest 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. GYPT is a local authority “controlled” company within the meaning of the legislation, because of the number of appointments the Council is entitled to make to GYPT. GYPT’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 GYPT’s current Articles and the arrangements currently practised, in that the Articles of GYPT since its incorporation in 1980 have required that directors (both GYBC and external) should only be appointed from a pool of Trust “members”. However, this system of a pool of members 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 this 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 process for this is set out in more detail in Appendix 2 – ‘Next Steps’.

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.

2.4 Via both the original members and the directors, it would appear that at its inception, GYBC was intended to have some control over the Trust. However, the Council as a body, has not strategically steered or operationally controlled the business of the Trust. As a decision-making body, the Trust is independent, and this is consistent with GYPT's charitable status. The Council itself is not, and is not proposed to become, a member of the Trust. Moreover, as set out below, the Trust, as a charity, must not have its business controlled by the Council.

2.5 Charity Commission publications make it clear that, as a registered charity, the Trust must, as a matter of law, be "independent of the state" (state meaning national and local government). This independence requirement does not prevent the Council from having a right to appoint a majority of members or directors (as per the current status and as proposed going forward) but, under Charity Commission guidance and charity law, it does mean that:

- i) The charity must exist to carry out its charitable purposes alone. It cannot exist for the purpose of implementing the policies of a local authority and cannot carry out directions of a local authority.
- ii) Anyone who exercises power in relation to the governance of the charity must act solely in the interests of the charity. Therefore, Trustees appointed by a local authority must act solely in the interests of the charity and not as delegates of the local authority that appoints them and must respect and maintain the confidentiality of Trustee Board meetings and the charity's information.

- iii) Any local authority given powers within the governing document of a charity (such as a power to appoint Trustees) must exercise those powers solely in the best interests of the charity not for its own benefit.
- iv) Trustees must ensure that conflicts of interest that arise from being a councillor or employee of a local authority that has dealings with the charity must declare those interests and they must be managed appropriately (including withdrawing from discussions and decisions regarding those dealings).
- v) Funding arrangements between a local authority and a charity must not contravene this principle of independence from the state and so must not require the charity simply to implement the local authority's policies, nor fetter the discretion of the Trustees to make decisions in the best interests of the charity (including to decide who the charity's beneficiaries will be).

For more on the independent status of charitable companies, members may wish to refer to Charity Commission Guidance RR7 'Independence of Charities from the State'. A link is provided at the end of this report.

2.6 There is currently a Partner Agreement between the Council and GYPT. The Agreement is currently under review and the updated version will go to Policy & Resources Committee for approval. The Partner Agreement governs the basis on which personnel support is provided to GYPT by the Council and outlines how the Trust's activities align with certain of the Council's corporate priorities. It also sets out some reporting requirements. It should be noted that although the Project Manager of the GYPT is a Council officer whose services are provided to GYPT under the Partner Agreement, he does not carry out that role under corporate direction from the Council; and although five GYBC members are currently appointed as Directors of GYPT there is no corporate direction or strategic steer from the Council applied through them. However, because of the close partnership, the funding and support from time to time provided by the Council to GYPT, and the status of GYPT and NC Ltd as a statutory "controlled companies" it is important that the two companies are, as far as possible, open and transparent with the Council about their activities and are accountable in so far as this will assure the Council of their sound governance and financial practices and demonstrate how their activities broadly support the Council's priorities.

3. Norfolk Conservation Limited

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 controlled if it is under the control of another controlled company. NC Ltd is therefore a controlled company, under the 1995 Order, until such time as GYPT ceases to be a controlled company.

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.

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.

4. 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. The Council retains a technical connection with these two companies, over which it does not exercise any strategic or operational control in practice, despite their statutory status as "controlled" companies. In the case of NC Ltd, to date there has been no report to the Council at all. To limit risk (and notwithstanding the independent decision-making status of GYPT) it is advised that clear lines of reporting from both companies to the Council are maintained to acknowledge the statutory connection, and to provide assurance to the Council with regard to any risk.

5. 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. 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 steps necessary to make the changes to the appointments and articles are set out in Appendix 2 to this report.

Appendix 1 – Legal implications

Appendix 2 – Next steps

Appendix 3 – New Articles of Association for the Trust

Background Papers:

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>

Charity Commission Guidance RR7 – Independence of Charities from the State
<https://www.gov.uk/government/publications/independence-of-charities-from-the-state-rr7>

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:	-
Financial Implications (including VAT and tax):	-
Legal Implications (including human rights):	Addressed in the report
Risk Implications:	Addressed in the report
Equality Issues/EQIA assessment:	-
Crime & Disorder:	-
Every Child Matters:	-

Appendix 1 – Legal Implications

1. Implications of GYBC Majority Voting Rights in GYPT

Some of the issues regarding the governance of GYPT may have arisen because the incorporation of the Trust predated the legislation which now governs it. In the 1980s the government decided to bring local authority related corporations under stricter statutory control. It created Part V of the Local Government and Housing Act 1989 and through the Act the Local Authorities (Companies) Order 1995. These (among other things) regulate companies controlled by, or under the influence of, local authorities.

For the purposes of the 1995 order, a **‘regulated company’** is a company **controlled by, or under the influence of**, a local authority and where, during any financial year, the authority exerts a ‘dominant influence’ over the company (in a company law sense). Alternatively (or in addition), if it were a company the authority would be required to prepare group accounts in respect of the company in question.

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.

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).

Part II of the 1995 order sets out the requirements for regulated companies. These include mentioning the regulated status on notepaper and other relevant documents, restrictions on director remuneration, and provision of information to the authority’s members and auditor.

2. Governance and Legal Requirements

It is advised that as local authority “controlled” companies, GYPT and NC Ltd should report regularly to the Council. The position on reporting has improved with the completion of the Partner Agreement which introduced a requirement for GYPT to report an annual business plan. The revised Partner Agreement strengthens reporting requirements.

With regard to formal legal requirements, Part II of the 1995 order sets out six specific requirements for both “controlled” and “influenced” companies. These are:

- i. **Mentioning the regulated status on notepaper and other relevant documents.**

This means GYPT and NC Ltd naming GYBC (in full) on relevant documents and stating that they are companies controlled by GYBC within the meaning of Part V or the 1995 Order); “*relevant documents*” means business letters, notices and other documents of the company.

- ii. **Restricting director's remuneration**, in that GYPT and NC Ltd shall not:
 - (a) in respect of the carrying out of any relevant duty, pay to a regulated director remuneration in excess of the maximum amount;
 - (b) in respect of expenditure on travelling or subsistence in connection with the carrying out of a relevant duty, pay to a regulated director an allowance, or reimburse expenses, in excess of the maximum amount;
 - (c) or publish any material which the relevant authority would be prohibited from publishing by section 2 of the Local Government Act 1986

iii. **Providing information to the authority's auditors.**

GYPT and NC Ltd shall provide, and authorise or instruct its auditors to provide:-

- (a) to the person who is for the time being the auditor in relation to the accounts of the relevant authority, such information and explanation about the affairs of the company as that person may require for the purposes of the audit of the local authority's accounts; and
- (b) to any person authorised by the Audit Commission, such information as that person or the Commission may require for the discharge of any function under Part III of the Local Government Finance Act 1982.

iv. **Providing information to members of a local authority.**

GYPT and NC Ltd shall provide to a member of GYBC such information about the affairs of the company as the member reasonably requires for the proper discharge of his duties (although nothing in that article of the 1995 order requires a company to provide information in breach of any enactment, or of an obligation owed to any person).

v. **Providing financial information to a local authority.**

GYPT and NC Ltd shall, on the request of GYBC, provide to that authority, within such reasonable time as may be specified by the authority, such information about the affairs of the company as that authority may require for the purposes of any order for the time being in force under section 39 (revenue accounts and capital finance) of the 1989 Act, in such form as the relevant authority may reasonably require.

vi. **Comply with the requirements when appointing an auditor**

GYPT and NC Ltd should, before they first appointed any person as auditor of the company, have obtained the Audit Commission's consent to the appointment of that person.

Appendix 2 – Next Steps

1. Starting Point

The currently prescribed system of separate members and directors is impractical, and additionally, the Trust wish to adjust the make-up of their Board of Directors to include at least one additional director with relevant expertise as a second community representative. However in order to the update and adjust the governance system it is first necessary to make the appointments consistent with the requirements of the current articles. Only then can a resolution be correctly made to adjust the company's articles going forward. In order to understand the next steps, it is important to understand how GYPT was originally intended to operate (in terms of appointments and membership) and how it has operated in practice.

2. How Appointments should have been made

The tables below set out how the current GYPT Articles require a) members and b) directors to be appointed and replaced

a) Appointment of trust members

The Council either applies as a member in its own right, or nominates individual members. The total of council members (which may include GYBC itself as a "member") cannot exceed 11 (article 5)	1-11
Great Yarmouth and District Archaeological Society, nominates up to 6 members but the number cannot equal or exceed council membership (article 6.1)	6
The Directors (not members) shall admit at least 1 person from the community, who has an interest in the environment of GYBC (article 6.2)	1
The Directors (not members) can also admit other persons, but any the total number of non-council members cannot equal or exceed council members (article 6.3)	-

b) Appointment of trust directors

The power to appoint Directors is reserved to the Directors in accordance with clause 43.

The Management of the business and control of the Trust shall be vested in the Directors, who, in addition to the powers and authorities conferred upon them, may exercise all such powers and do all such acts and things as may be exercised or done by the Trust and are not hereby or by the Act expressly directed or required to be exercised or done by the Trust in General Meeting At meetings of the Directors, each Director shall have one vote only, except that in the case of equality of votes, the Chairman shall, in addition have a second or casting vote.

Under Article 34, there can be a maximum of nine Directors, as follows:

i)	members of the Trust who are representatives of the Council:	5
ii)	GYDAS members:	3
iii)	community members	1
Total		9

The Council's directors were supposed to be appointed (by the original directors) from the pool of Council appointed members of the Trust. Clearly this did not happen, and the participating organisations, including the Council, have operated as if they have a right directly to appoint Directors.

Replacement of Members and Directors – According to the Current Articles

c) Members

Members leave by resignation, death or otherwise ceasing to be members. If a member is a representative of either GYBC or GYDAS and ceases to be a member of either, then GYBC or GYDAS may nominate another person. That person can include GYBC as a body itself. (clause 9).

d) Directors

Subject to Article 34, Directors could at any time appoint any other person to be a Director to fill a casual vacancy, or in addition to the existing Directors, but never more than the 9 allowed. (Article 45). A Vacancy could arise from the death or resignation of an existing Director.

3 How GYPT members and directors have actually been appointed and replaced

Members

In the absence of any replacement nominations recorded by GYPT under clause 9, the current membership of GYPT would have remained as per the original Articles filed in 1980. Technically they would be the following members (but they are not known to those presently operating the Trust and have not been traced):

Name	Background
(signature illegible)	Retired (of 29 Crown Road, GY)
Mr Richard Ogden	Local govt officer
Mr Godfred Girling	Farm Director
(signature Illegible)	Retired
Mr Glenwood Harris	Architect

KR Milligan	Retired
Percy Trett	Engineer

It is not clear how, or indeed whether any company “members” have been nominated since 1980. No records have been located

Directors

Directors are covered by a process of "rotation" (see below). Resignation or death of Directors are covered by the standard provisions of the Companies Act 2006.

Rotation

On Incorporation in 1980, the Directors were:

Name	Background
Mr Godfred Girling	Farm Director
Mr Richard Ogden	Local govt officer
Percy Trett	Engineer
Mr Patrick Page	Local govt officer (and also Company Secretary)
Mr Glenwood Harris	Architect
Mr Henry Davies	Local govt officer

These original Directors should have retired at the first AGM held by the company members, and replaced. At the second and subsequent AGM, it was the intention that one third of the directors would retire and be replaced. As explained above, this did not occur.

4. Next steps – options and implications – adoption of new model articles

Presently, according to Companies House records, there are 9 directors, of whom 5 were ‘appointed’ by GYBC, giving GYBC control. But no Trust members have been appointed which means that the appointments of existing directors are technically incorrect.

GYPT have been advised that they should first rectify the “membership” of the company, to ensure compliance with the current articles of association. This will ensure that going forward, resolutions are correctly made and the articles can be revised and updated. To do this, the following process is advised.

1. The Council gives agreement for GYPT to proceed with adopting the new articles (subject to necessary regulatory consents).
2. The Trust applies to the Charity Commission for permission to amend the Articles
3. Ensure the membership of GYPT comprises 6 members appointed by the Archaeological Society, 1 Community Representative and at least 8 GYBC members (the Members do not need to be appointed as directors but if some of them already are that is fine. The 8 representatives are to be the 5 existing directors plus Kate Blakemore, Iain Robertson and

Sheila Oxtoby, with Kate to be appointed as the Council's 6th director following the adoption of the new articles.

4. Once Charity Commission consent is obtained, the members of the Trust (either by written resolution, or in a properly convened General Meeting) need to pass a special resolution adopting the new articles (75% majority required).
5. Once the special resolution is passed it must be filed at Companies House along with a Change of Objects form and a copy of the new articles, to be lodged by the Trust's solicitor.
6. Once accepted at Companies House the new articles need to be filed at the Charity Commission (to be done by the Trust's specialist adviser, Julian Lomas).
7. The new articles will automatically remove the non-Trustee members (Sheila and Iain) from membership and then the existing the Trustees can appoint Kate as the Council's 6th director and would be free to appoint a second community representative.

Future Articles

Once GYPT have made the balance of appointed company members as it should be, under the Articles (as described above), the directors and company members will be one and the same. With 9 members and 9 directors, it will then be a process of agreeing to amend the Articles going forward to modernise and improve the governance of the Trust.

The ratio of member/directors proposed by GYPT is:

6 GYBC appointed member/directors

3 GYLHAS appointed member/directors

2 community/other member/directors appointed by the existing directors

GYPT have proposed a modern form of Articles of Association which would need approval from the Board of Directors. These include the above that going forward there should be 11 directors, 6 appointed by GYBC, 3 appointed by GYLHAS and 2 other persons appointed by the Directors. This formula maintains local authority "controlled" status. It provides that company members and directors are the same, i.e. by accepting a director appointment, that individual also agrees to be a member.

Going forward, if the Trust seeks greater independence from the Council, changes might be considered to the ratio of Council appointed member-directors, but it is proposed that any such changes in the formula should be subject to the Council's consent.

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; or
- d) ships, boats or any other water borne vessels, property or equipment 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
- 5.2. 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 11 individuals, all of whom must be Members, and who shall as far as practicable consist of the following:

- 13.2.1. six 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. two 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.