

# Walberswick Common Lands Charity

Founded 1901 - Registered Charity No. 206095

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1 October 2021

Mr Mark Knight  
Clerk  
Walberswick Parish Council  
The Heritage Hut  
The Green  
Walberswick  
IP18 6TT

Dear Mark

## **CONSULTATION – FORMATION OF A CORPORATE TRUSTEE AND CHANGES TO CHARITABLE SCHEME**

At their meeting of 13 January 2020 the Council gave in-principle approval to the Charity changing its structure by appointing a corporate trustee. This was subject to the Charity providing the Council further detail in due course. On behalf of the Trustees I have pleasure in submitting details of the corporate trustee and in addition, changes that are proposed to the Charity's Scheme.

The following documents are attached to this letter:

1. Relevant minute of the Parish Council meeting of 13 January 2020.
2. Briefing document explaining the proposals.
3. Proposed Articles of Association of the corporate trustee (governing document of the trustee company)
4. Proposed changes to the Charity's Scheme (governing document of the Charity)

Please note that the proposed Scheme is a 'mark-up' which shows those parts of the previous Scheme which have been changed. Many of these changes are due to those sections now being in the Articles of Association. The different colours have no significance.

We draw your particular attention to sections 3.1 and 3.2 of the briefing note. The Parish Council currently has the right of appointment over four of the seven trustees. The proposals include changes to the total number of trustee directors and their term of office, which we advise Councillors to consider.

Other than the amendments to trustee directors, it is the view of the Trustees that the proposed changes will have virtually no impact on the work of the Charity. The benefits and efficiencies will be seen in day-to-day administration and operation of the Charity.

The Charity Commission requires the Trustees to consult on the proposed changes. The Commission will require written evidence that the Council has considered the proposed changes and provided the Trustees with feedback.

The Trustees will also be consulting with the Sole Bay Team Ministry which has the right of appointment for one trustee. As far as the wider community is concerned (the Charity's beneficiaries), consultation started at the Annual Parish Meeting on 14 September. It will also include information being posted on the web site, plus drop-in sessions via Zoom and at the Heritage Hut.

Finally, if it was helpful I am available to join the meeting of 11 October via Zoom to provide further explanation and answer any questions.

Best wishes

A handwritten signature in blue ink, appearing to read 'James Darkins', with a large, stylized flourish extending from the end of the name.

**James Darkins**  
Chairman

**483/19-20 To consider an in-principle approval of incorporation of the Walberswick Common Lands Charity.**

Cllr. Bassinette introduced Mr. James Darkins, Chairman of the Trustees of the Walberswick Common Lands Charity who gave a short presentation on the early stages of the corporate trustee process which the charity wishes to implement. Because the Parish Council was a key stakeholder, it was important that it understood the process and be part of early consultations.

It was explained, in line with the presentation that had been circulated prior the meeting, that the WCLC had been founded as a Charitable Trust in 1901 and therefore is not a legal 'person' like a company. The trustees therefore have to act in their own names on behalf of the charity. A more modern structure was thought to be essential so that the Charity could more readily enter into contracts in its own name, such as land and property ownership, banking and investments and employment. The Trustees would also be protected by limited liability, but still personally liable under the Charities Act.

A brief history on endowment land and the existing structure of the organisations and also options for the incorporation were given, namely whether (i) the charity should become a company limited by guarantee, or (ii) a new company be formed to act as the sole Corporate Trustee of the charity (with the existing Trustees becoming directors of that Corporate Trustee). It was explained that the Trustees, on the basis of professional legal and accounting advice, felt that in view of the endowment land, the most appropriate structure for WCLC would be for a Corporate Trustee to be formed. This avoids the more complex structure that would be required if the charity itself were to incorporate, and in addition is relatively simple to implement along with capturing all the benefits of incorporation. It would allow, for example, better management of the numerous property contracts and would also allow the WCLC more readily to borrow in a case of emergency like serious flooding. There would be no change to the Trustee responsibility and accountability, albeit that this burden would be shouldered by individuals as the directors of the new Corporate Trustee.

In response to a question from Cllr Lewis, it was explained that a potential additional cost from the structure would be that there would be some additional administrative work associated with there being a limited company (under the Companies Act), namely the Corporate Trustee, but that this would be minor compared to the benefits. The process was expected to take between 12 to 18 months including community consultation and engagement.

It was then **RESOLVED** in principle that the concept of moving to an incorporated status should be supported, pending further details. All in favour.

Cllr. Bassinette thanked Mr. Darkins for his presentation.

Signed.....

Dated.....9/3/20

## WALBERSWICK COMMON LANDS CHARITY

### Formation of a Corporate Trustee and Amendment of WCLC Charitable Scheme

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#### Abbreviations

SBTM	Sole Bay Team Ministry
WCLC	Walberswick Common Lands Charity
WPC	Walberswick Parish Council
WPCC	Walberswick Parochial Church Council

## 1. Introduction

This memorandum sets out and explains the trustees' proposals relating to:

- 1.1. forming a corporate trustee to act as the sole trustee of Walberswick Common Lands charitable trust. The current individual trustees would become directors and members of this new corporate trustee – see Section 2;
- 1.2. increasing the maximum number of directors (currently trustees) from 7 to 9 – see Section 3.1;
- 1.3. capping a director's term of office to an initial two terms of 4 years each. Thereafter, a director could (in some circumstances) be re-appointed annually – see Section 3.2;
- 1.4. re-casting the *ex-officio* trustee appointment such that in the absence of an ordained minister, the Church Director (the new name for this post) may be someone appointed by WPCC – see Section 3.3; and
- 1.5. amending WCLC's charitable Scheme – see Section 4:
  - to enable the appointment of a single corporate trustee instead of individual trustees with all the consequential amendments to the Scheme that this entails;
  - to specify the original endowment land which WCLC still owns;
  - to refine the ways in which WCLC's funds may be used to support those in need as well as the inhabitants of Walberswick generally; and
  - to correct some clerical errors in the existing Scheme and to introduce modern English.

## 2. Corporate Trustee

WCLC's solicitors, City firm and charity law specialists Bates Wells, have advised that insofar as WCLC owns land which is permanent endowment land (i.e. land which at the time of its donation was meant to be held by WCLC forever), that land must be held on trust (for the benefit of the

community).

In early 2020, Bates Wells reviewed the status of all the large parcels of WCLC land, in particular Walberswick Common, Town Marshes (grazing marshes adjacent to River Blyth), Oldtown Marshes (SE of Dunwich River plus reed beds), Town Salts (land at the Harbour and east of sea wall, including Ferry Road car park) and Cliff Field (including the car park there). Bates Wells concluded that all are functional permanent endowment land. As such land must therefore be held on trust, all of it could be held directly by a corporate trustee.

If WCLC were to become a company itself, either as a Charitable Incorporated Organisation (CIO) like Walberswick Village Hall or as a Company Limited by Guarantee (CLG), all the endowment land would have to be held by the new company indirectly, under a separate trust. That would create an unnecessarily complicated dual structure requiring separate meetings for the trust and the corporate entity.

In the circumstances, a corporate trustee solution is the simpler and more practical solution. This is therefore the solution which Bates Wells have recommended.

It is important to note that WCLC itself would remain as it is, namely an unincorporated charitable trust. The only change would be that the corporate trustee would be the sole trustee of WCLC. The current individual trustees would become both the only directors and only members (akin to shareholders) of the corporate trustee, which would be structured as a company limited by guarantee. In practice, the directors would act in just the same manner as they did when they were trustees, with very similar duties and powers.

There is also a valuable administrative advantage in having a sole corporate trustee. As the corporate trustee is a company, it would hold all WCLC's property and other assets directly; and two of its directors could sign contracts and other documents on WCLC's behalf. At present, as WCLC is not a separate legal entity and there is no corporate trustee, WCLC's land and other property must be held in the names of individual trustees. This creates a real headache when trustees retire or die. For example, in 2019 the Land Registry records were updated in respect of land held by WCLC in Sandy Lane. As the land was still recorded in the names of seven trustees all of whom had since died, death certificates had to be obtained before the land could be recorded in the names of the new trustees. If the land had been owned by a single entity such as a corporate trustee, a change of trustees/directors would not have mattered.

A further advantage of a corporate trustee is that the individual directors would be better protected from liability in the event of any claim against WCLC. This is because the corporate trustee, as a company, would have limited liability. Note however that if, for example, a director acted fraudulently, he/she would still be personally liable.

The rules of operation of the corporate trustee are the so-called Articles. These have been tailored to WCLC's specific needs, as explained below.

### **3. Articles of the Corporate Trustee**

The Articles are the operational rules of the proposed corporate trustee.

At present, the appointment of trustees is set out in the Scheme. The rules for the appointment of the directors of the corporate trustee are set out in the Articles. The principal new features would be:

- to increase the maximum number of directors from 7 to 9, comprising the Church Director

(currently the *ex-officio* trustee), between 3 and 5 Nominated Directors (rather than four at present – nominated by WPC), and between 2 and 3 Co-opted Directors (rather than two at present – appointed by the WCLC directors themselves);

- to introduce annual renewals after a director has served two consecutive terms of 4 years; and
- to re-cast the *ex-officio* trustee appointment such that in the absence of an ordained minister, the Church Director may be someone appointed by WPC.

### 3.1. The Number of Directors

In addition to increasing the maximum number of trustees from 7 to 9, the trustees propose that rather than having a fixed number of directors (currently 7 trustees), there should be between 6 and 9 directors altogether. The advantage of this is that if a director retired or resigned but a suitable candidate could not be found, the remaining directors could continue without immediately having to appoint another director. This flexibility could be useful.

### 3.2. Nominated & Co-opted Directors' - Term of Office

At the time when this issue was considered in 2020, the then trustees had been in office for periods ranging from 1 to 19 years. The objective of the proposed change is to encourage a flow of new trustees, bringing new experience, skills and energy to WCLC, while at the same time enabling the retention of trustees who continue to add value to the Charity, for example because of expertise or personal development.

Currently trustees are appointed for 4-year terms with no limit on the number of terms a trustee may serve.

For Co-opted Directors (i.e. those appointed by the Charity's directors) it is proposed they serve of up to two terms of four years each (4 + 4 = 8 years), following which a director could only be re-appointed on a yearly basis by a 'super-majority' vote of the directors (i.e. at least 80% or five directors, whichever is the higher).

As to Nominated Directors (i.e. those appointed by WPC) it is proposed that they also serve up to two terms of four years each (4 + 4 = 8 years), following which a Nominated Director could only be re-appointed by WPC annually.

The annual re-appointment process sets a clear expectation of change, other than in exceptional circumstances.

Note: That there is nothing to stop a director being re-appointed in the future, having first taken a break as a director.

There are transitional provisions for the existing trustees (who would become the "First Directors") to ensure that they could all continue during the restructure as well as to make appropriate provision for succession planning. First Directors would retire at the same time they would have retired from their existing trusteeships. Thereafter they could be re-appointed for one four-year term as Co-opted or Nominated Directors before the maximum term in office provisions would apply.

### 3.3. The Church Director

Under the current Scheme, only the Vicar of Walberswick may be appointed as an *ex-officio* trustee. The trustees therefore propose that the scope of the *ex-officio* trustee/Church

Director be extended so that a broader range of candidates qualify for this role. While appearing complicated, the purpose of the cascade below is to provide every opportunity for a Church Director to be appointed:

- 3.3.1. It should no longer be an *ex-officio* (i.e. automatic) role, but instead be expressed as a right for SBTM/WPCC to appoint the Church Director;
- 3.3.2. In the first instance, SBTM could appoint one of their number or any other ordained minister who is licensed to serve in Walberswick, provided that the minister in question has pastoral responsibility for Walberswick;
- 3.3.3. In the second instance, if SBTM did not make an appointment within 30 days of a vacancy, WPCC could appoint any person who was on the electoral roll of St Andrew's Church; and
- 3.3.4. In the unlikely event that no appointment were made by either SBTM or WPCC, the remaining WCLC directors could themselves appoint a further Co-opted Director.

Note that if a Co-Opted Director were appointed, they would have to resign if a Church Director were subsequently appointed by either SBTM or WPCC. Likewise, a WPCC-appointed director would have to resign if SBTM subsequently appointed a Church Director.

#### 4. Amendment of WCLC Charitable Scheme

##### 4.1. Overview

The proposed amendments to WCLC's Scheme fall into four main categories:

- (i) to enable the appointment of a sole corporate trustee (with the operational rules in the current Scheme being transferred to the new Articles) – see Sections 2-3 above;
- (ii) to specify what 'functional permanent endowment land' has long been held by WCLC (as listed in a schedule to the amended Scheme) – see Section 2 above;
- (iii) to refine the ways in which WCLC's funds may be used to support those in need and thereafter the Walberswick community generally – see Sections 4.3 & 4.4 below; and
- (iv) to correct some clerical errors in the existing Scheme and to introduce modern English - see Section 4.5 below.

As to (ii), Bates Wells have advised that all the land held by WCLC since 1901, in particular the Common, Town Marshes, Oldtown Marshes, Town Salts and Cliff Field, is held as functional permanent endowment. The significance of this is explained in section 2 above.

As to (iii), namely the ways in which WCLC's funds may be used, the proposed amendments to the Scheme are relatively minor tweaks. The substantive proposed new text is underlined in the extracts below.

Note that under both the current Scheme and the Scheme as proposed to be amended, WCLC must spend its income in this order:

- (i) administration, routine repairs & maintenance, and extraordinary repairs & improvements;
- (ii) assisting those in need and hardship in Walberswick; and
- (iii) for the general benefit of the Walberswick community.

##### **Clause 15 - Expenses of management**

*The Trustee shall first use the income of the Charity to meet the expenses described below and in the order of priority in which they are listed:*

1. pay the proper costs, charges and expenses of and incidental to the administration and management of the Charity;
2. take out appropriate insurance policies to insure the property of the Charity and take out other insurance policies as are considered necessary by the Trustee to protect the Charity;
3. carry out routine maintenance and repair (including environmental stewardship) to the property of the Charity;
4. pay for extraordinary repairs and improvements (including environmental stewardship) to the Charity's property; and
5. build up a reserve fund to meet the future needs of the Charity

#### **Clause 16 - Application of residual income**

*Subject to the payments set out in paragraph 15, the Trustee shall apply the residual income of the Charity in accordance with the provisions set out below.*

#### **Clause 17 - Relief of need**

*17.1 - The Trustee shall apply such part of the residual income of the Charity as it thinks fit in each year in relieving either generally or individually persons who are permanently resident or have their principal home in Walberswick who are in conditions of need, hardship or distress (the "Beneficiaries") by making grants or loans of money or providing or paying for items, services or facilities calculated to reduce the need, hardship or distress of such persons.*

*17.2 - The Trustee may pay for such items, services or facilities by way of loan, donations or subscriptions to institutions or organisations which provide or which undertake in return to provide such items, services or facilities for such Beneficiaries.*

*17.3 - In exceptional cases the Trustee may grant relief to persons otherwise eligible therefore who are resident outside Walberswick but in the opinion of the Trustee ought nevertheless for sufficient reason to be treated as if they were Beneficiaries.*

#### **Clause 18 - Benefit of inhabitants**

*The Trustee shall apply the residue of the income of the Charity in any year for such charitable purposes for the general benefit of the inhabitants of Walberswick (which shall include those living, working or visiting Walberswick) as the Trustee thinks fit.*

#### **4.2. Use of WCLC Funds: Environmental Stewardship – clauses 15 & 18**

WCLC carries out environmental stewardship work on the Common, the Marshes, Sandy Lane, in Bennett's Copse (sandwiched between The Street and Leveretts Lane) and in Bennett's Drift (near the bird hide). Environmental Stewardship is used here to mean long-term, active management of the countryside, especially the Common and Marshes, for the benefit of both the current community and future generations.

The trustees propose that 'environmental stewardship' be expressly referred to in clause 15 of the Scheme, thereby removing any doubt as to whether WCLC's management expenses

include the costs of maintenance and improvement of the environment.

#### 4.3. Use of WCLC Funds: Relief of Need – clause 17

Over the course of 2016 and 2017 the trustees undertook a wide-ranging review of their ‘charitable objects’. This resulted in the policy document ‘*Charitable Objects – Policies and Interpretations*’ being adopted in April 2017 and communicated at the Annual Parish Meeting in the same month. The policy was subsequently updated by trustees in 2017 and 2021.

It is proposed to amend clause 17(1) of the Scheme to be consistent with this policy. Namely, that WCLC should only provide assistance to individuals in need and hardship who permanently reside or who have their principal home in Walberswick. This is to distinguish such residents from those who have second homes or rental homes in the Village.

Note that WCLC would still be able to support former Walberswick inhabitants who may be in care or nursing homes outside the Village; and the proposed revisions make it easier to support those who have moved into a care/nursing home while retaining their principal home in the village.

In recent years the Charity has occasionally provided loans to individuals who are in need but who do not meet the hardship criteria for a grant. For example, they may own their own home but have insufficient income to meet their needs. It is proposed to formalise this by including loans in clause 17.

All of the proposed changes to clause 17 reflect current practice and are consistent with the guidance for applicants ‘*Here to Help*’ published by the trustees in 2020.

#### 4.4. Use of WCLC Funds: General Benefit of Walberswick Inhabitants – clause 18

Under the current Scheme, the balance of WCLC’s income may be used for “the general benefit of the inhabitants of Walberswick”. The trustees recommend that “inhabitants” is cast more broadly so as to include those living, working or visiting Walberswick (rather than just residents). This would give the trustees scope to carry out work which benefits not only residents, but others too, especially those visiting the beach, the Common and the marshes.

#### 4.5. Correction of Clerical Errors and Use of Modern English

- 4.5.1. In the 1920’s the Scheme was amended to prohibit leases of greater than 21 years. This was to avoid leaseholders obtaining the right to ‘enfranchisement’, enabling them to acquire a longer lease and in some cases a freehold interest. For some reason in a 1960’s amendment this was changed to 22 years, perhaps by clerical error. It is proposed to correct this error by reverting to the statutory maximum of 21 years. In practice the trustees resolved not to grant such leases some years ago, when the error was realised.
- 4.5.2. Finally, the trustees favour the use of modern English so that the language of the Scheme is more readily understandable by readers. It is therefore proposed to re-name the *ex-officio* trustee as the “Church Director”, and to use the terms “nominated” directors and “co-opted” directors instead of “nominative” and “co-optative” trustees.

**The Companies Act 2006**

**Company Limited by Guarantee and not having a Share Capital**

**Memorandum of Association of WCLC Trustee Limited**

Each subscriber to this Memorandum of Association wishes to form a company under the Companies Act 2006 and agrees to become a member of the company.

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*Name of each subscriber*

*Authentication by each subscriber*

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ADAM COOKE

AMANDA ERLNBACH

HANNAH SUTTON

JAMES DARKINS

KATE GOODCHILD

SIMON PITCHER

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Dated [insert date]

The Companies Act 2006

Company Limited by Guarantee and not having a Share Capital

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**Articles of Association**

**of**

**WCLC Trustee Limited**

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Company No:

**Bates Wells LLP**  
**10 Queen Street Place**  
**London EC4R 1BE**  
**(Telephone: 020 7551 7777)**  
**[www.bateswells.co.uk](http://www.bateswells.co.uk)**

The Companies Act 2006

Company Limited by Guarantee and not having a Share Capital

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## **The Companies Act 2006**

### **Company Limited by Guarantee and not having a Share Capital**

#### **Articles of Association of WCLC Trustee Limited**

#### **INTERPRETATION**

##### **1. Defined terms**

The interpretation of these Articles is governed by the provisions set out in the Schedule at the end of the Articles.

#### **OBJECTS AND POWERS**

##### **2. Objects**

The objects of the Company are to act as trustee of Walberswick Common Lands, a registered charity in England and Wales (206095) (the "Charity").

##### **3. Powers**

The Company has the power to do all such things as are incidental or conducive to the furtherance of its objects, and in particular, but without limitation, may borrow or raise or secure the payment of money for any purpose including for the purposes of investment or of raising funds.

#### **NON-PROFIT STATUS**

##### **4. Limitation on private benefits**

4.1 The income and property of the Company shall be applied solely towards the promotion of its objects.

4.2 The Directors shall serve without compensation but the Company may authorise the payment of all necessary and reasonable expenses of the Directors in attending meetings of the Company and in performing other official duties assigned to them by the Company.

##### ***Permitted benefits to Members, Directors and persons Connected***

4.3 Except as provided below no part of the income and property of the Company may be paid or transferred directly or indirectly by way of dividend, bonus or otherwise by way of profit to any Member, Director or persons Connected. This shall not prevent any payment in good faith by the Company to a Director or persons Connected that is authorised by the Scheme.

4.4 A Director or a person Connected to a Director may be reimbursed by the Company for, or may pay out of the Company's property, reasonable expenses properly incurred by him or her when acting on behalf of the Company.

#### **LIMITATION OF LIABILITY AND INDEMNITY**

##### **5. Liability of Members**

5.1 The liability of each Member is limited to £1, being the amount that each Member undertakes to contribute to the assets of the Company in the event of its being wound up while he, she or it is a Member or within one year after he, she or it ceases to be a Member, for:

- 5.1.1 payment of the Company's debts and liabilities contracted before he, she or it ceases to be a Member;
- 5.1.2 payment of the costs, charges and expenses of winding up; and
- 5.1.3 adjustment of the rights of the contributories among themselves.

## **6. Indemnity**

Without prejudice to any indemnity to which a Director may otherwise be entitled, every Director of the Company shall be indemnified out of the assets of the Company in relation to any liability incurred by him or her in that capacity but only to the extent permitted by the Companies Acts; and every other officer of the Company may be indemnified out of the assets of the Company in relation to any liability incurred by him or her in that capacity, but only to the extent permitted by the Companies Acts.

## **DIRECTORS**

### ***DIRECTORS' POWERS AND RESPONSIBILITIES***

## **7. Directors' general authority**

Subject to the Articles, the Directors are responsible for the management of the Company's business, for which purpose they may exercise all the powers of the Company.

## **8. Chair**

The Directors shall annually appoint one of their number to be the Chair at the first Directors meeting in each calendar year and may at any time remove him or her from that office.

## **9. Directors may delegate**

- 9.1 Subject to the Articles, the Directors may delegate any of their powers or functions to any committee consisting of two or more persons appointed by the Directors but at least one member of every committee must be a Director and all proceedings of committees must be reported promptly to the Directors.
- 9.2 Subject to the Articles, the Directors may delegate the implementation of their decisions or day to day management of the affairs of the Company to any person or committee.
- 9.3 Any delegation by the Directors may be:
  - 9.3.1 by such means;
  - 9.3.2 to such an extent;
  - 9.3.3 in relation to such matters or territories; and
  - 9.3.4 on such terms and conditions;as they think fit.
- 9.4 If the Directors so specify, any such delegation may authorise further delegation of the relevant powers, functions, implementation of decisions or day to day management by any person to whom they are delegated.
- 9.5 The Directors may revoke any delegation in whole or part, or alter its terms and conditions.

9.6 The Directors may by power of attorney or otherwise appoint any person to be the agent of the Company for such purposes and on such conditions as they determine.

## **10. Committees**

10.1 In the case of delegation to committees:

10.1.1 the resolution making the delegation must specify those who shall serve or be asked to serve on the committee (although the resolution may allow the committee to make co-options up to a specified number);

10.1.2 subject to Article 9.1, the composition of any committee shall be entirely in the discretion of the Directors and may comprise such of their number as the resolution may specify;

10.1.3 the deliberations of any committee must be reported regularly to the Directors and any resolution passed or decision taken by any committee must be reported promptly to the Directors and every committee must appoint a secretary for that purpose;

10.1.4 the Directors may make such regulations and impose such terms and conditions and give such mandates to any committee as they may from time to time think fit; and

10.1.5 no committee shall knowingly incur expenditure or liability on behalf of the Company except where authorised by the Directors or in accordance with a budget which has been approved by the Directors.

10.2 The meetings and proceedings of any committee shall be governed by the Articles below which regulate the meetings and proceedings of the Directors so far as they apply and are not superseded by any regulations made by the Directors.

## **11. Delegation of day to day management powers**

11.1 In the case of delegation of the day to day management of the Company to an executive director, clerk, or other manager or managers:

11.1.1 the delegated power shall be to manage the Company by implementing the policy and strategy adopted by and within a budget approved by the Directors and (if applicable) to advise the Directors in relation to such policy, strategy and budget;

11.1.2 the Directors shall provide any manager with a description of his or her role and the extent of his or her authority; and

11.1.3 any manager must report regularly to the Directors on the activities undertaken in managing the Company and provide them regularly with management accounts which are sufficient to explain the results of operation and the financial position of the Company.

### ***DECISION-MAKING BY DIRECTORS***

## **12. Directors to take decisions collectively**

12.1 Any decision of the Directors must be either:

12.1.1 by decision of a majority of the Directors present and voting at a quorate Directors' meeting (subject to Article 17); or

12.1.2 a unanimous decision taken in accordance with Article 18.

### **13. Calling a Directors' meeting**

- 13.1 The Directors shall hold at least four meetings in each year.
- 13.2 Directors' meetings may be arranged by the Directors at their meetings.
- 13.3 The Chair, or any two Directors, may (and the Secretary, if any, must at the request of two Directors) call a Directors' meeting.
- 13.4 Subject to Article 13.5 below, a Directors' meeting must be called by at least ten Clear Days' notice unless either:
- 13.4.1 all the Directors agree; or
- 13.4.2 urgent circumstances require shorter notice and a majority of the Directors agree in Writing to accept a shorter notice period.
- 13.5 Where a Directors' meeting shall appoint a Co-Opted Director or remove any Director, such meeting must be called by at least 21 Clear Days' notice.
- 13.6 Notice of Directors' meetings must be given to each Director.
- 13.7 Every notice calling a Directors' meeting must specify:
- 13.7.1 the place, day and time of the meeting;
- 13.7.2 the general nature of the business to be considered at such meeting; and
- 13.7.3 if it is anticipated that Directors participating in the meeting will not be in the same place, how it is proposed that they should communicate with each other during the meeting.
- 13.8 Notice of Directors' meetings need not be in Writing.
- 13.9 Notice of Directors' meetings may be sent by Electronic Means to an Address provided by the Director for the purpose.

### **14. Participation in Directors' meetings**

- 14.1 Subject to the Articles, Directors participate in a Directors' meeting, or part of a Directors' meeting, when:
- 14.1.1 the meeting has been called and takes place in accordance with the Articles; and
- 14.1.2 they can each communicate simultaneously with all other participants.
- 14.2 In determining whether Directors are participating in a Directors' meeting, it is irrelevant where any Director is or how they communicate with each other. Meetings may be held in person or by telephone, televisual or other electronic or virtual means or any other means agreed by the Directors.
- 14.3 If all the Directors participating in a meeting are not in the same place, they may decide that the meeting is to be treated as taking place wherever any of them is.

### **15. Quorum for Directors' meetings**

- 15.1 At a Directors' meeting, unless a quorum is participating, no proposal is to be voted on, except a proposal to call another meeting.

- 15.2 The quorum for Directors' meetings shall be four Directors.
- 15.3 If the total number of Directors for the time being is below five, the Directors must not take any decision other than a decision to appoint further Directors.

#### **16. Chairing of Directors' meetings**

The Chair (if any) shall preside at each meeting of the Directors. In his or her absence, another Director elected by the Directors present at the meeting shall preside.

#### **17. Casting Vote**

- 17.1 If the numbers of votes for and against a proposal at a Directors' meeting are equal, the chair of the meeting has a casting vote in addition to any other vote he or she may have but no other Director in any circumstances shall have more than one vote.
- 17.2 Article 17.1 does not apply if, in accordance with the Articles, the chair of the meeting is not to be counted as participating in the decision-making process for quorum or voting purposes.

#### **18. Unanimous decisions without a meeting**

- 18.1 A decision is taken in accordance with this Article when all of the Directors indicate to each other by any means (including without limitation by Electronic Means, such as by e-mail or telephone) that they share a common view on a matter. The Directors cannot rely on this Article to make a decision if one or more of the Directors has a conflict of interest or duty which, under Article 19, results in them not being entitled to vote.
- 18.2 Such a decision may, but need not, take the form of a resolution in Writing, copies of which have been signed by each Director or to which each Director has otherwise indicated agreement in Writing. A resolution in Writing may be contained in more than one document and will be treated as passed on the date of the last signature.

#### **19. Conflicts of interest**

##### ***Declaration of interests***

- 19.1 Unless Article 19.2 applies, a Director must declare the nature and extent of:
- 19.1.1 any direct or indirect interest which he or she, or a person Connected with him or her, has in a proposed transaction or arrangement with the Company or Charity; and
- 19.1.2 any duty or any direct or indirect interest which he or she has which conflicts or may conflict with the interests of the Company or Charity or his or her duties to the Company or Charity.
- 19.2 There is no need to declare any interest or duty of which the other Directors are, or ought reasonably to be, already aware, but, for the avoidance of doubt, any such interest or duty must be recorded on the Register of Directors' Interests in accordance with Article 20.

##### ***Participation in decision-making***

- 19.3 The provisions of the Scheme shall apply to the Directors in relation to decision making and managing conflicts of interest or conflicts of duties in respect of the Company or the Charity.

##### ***Continuing duties to the Company***

- 19.4 Where a Director has a conflict of interest or conflict of duties and the Director has complied with his or her obligations under these Articles in respect of that conflict:

19.4.1 the Director shall not be in breach of his or her duties to the Company by withholding confidential information from the Company if to disclose it would result in a breach of any other duty or obligation of confidence owed by him or her; and

19.4.2 the Director shall not be accountable to the Company for any benefit expressly permitted under these Articles which he or she or any person Connected with him or her derives from any matter or from any office, employment or position.

**20. Register of Directors' interests**

The Directors must ensure a register of Directors' interests is kept. A Director must declare the nature and extent of any interest, direct or indirect, which he or she has in a proposed transaction or arrangement with the Company or in any transaction or arrangement entered into by the Company which has not previously been declared.

**21. Validity of Director actions**

All acts done by a person acting as a Director shall, even if afterwards discovered that there was a defect in his or her appointment or that he or she was disqualified from holding office or had vacated office, be as valid as if such person had been duly appointed, was qualified and had continued to be a Director. For the avoidance of doubt, such a Director shall be entitled to an indemnity under Article 6.

***APPOINTMENT AND RETIREMENT OF DIRECTORS***

**22. Number of Directors**

22.1 Directors shall be appointed in accordance with Article 23 and shall comprise:

22.1.1 One Church Director;

22.1.2 No fewer than three but no more than five Nominated Directors; and

22.1.3 No fewer than two but no more than three Co-Opted Directors.

22.2 The Directors may act notwithstanding a vacancy in their number provided that if the number falls below five they may only act to appoint further Directors.

**23. Appointment and Retirement of Directors**

23.1 Those persons notified to the Registrar of Companies as the first directors of the Company shall be known as the First Directors.

23.2 With the exception of the First Directors and any Church Director, and subject to:

23.2.1 Article 23.12 (replacement Nominated Director); and

23.2.2 Article 23.16 (replacement Co-Opted Director);

all other Director appointments shall take effect from 31 December in the relevant year.

***Church Director***

23.3 The Sole Bay Team Ministry may, by providing written notice to the Company, appoint as Church Director for an unlimited term any member of, or any ordained minister who is licensed to serve within, the Sole Bay Team Ministry who in either case has pastoral responsibility for the Parish of Walberswick.

- 23.4 In the event of a vacancy arising in the role of Church Director and the Sole Bay Team Ministry have not made an appointment within 30 days of such vacancy arising, Walberswick PCC may appoint a Church Director provided that:
- 23.4.1 the person appointed is on the electoral roll of St Andrew's Church, Walberswick at the time of their appointment; and
- 23.4.2 such appointment is for a term of up to four years with the option for Walberswick PCC to reappoint for further terms of up to four years each;
- 23.4.3 a Church Director appointed by Walberswick PCC will be automatically removed from office in the event that Sole Bay Team Ministry appoints a Church Director in accordance with Article 23.3.
- 23.5 In the event of a vacancy arising in the role of Church Director and neither Sole Bay Team Ministry nor Walberswick PCC have not made an appointment in accordance with Articles 23.3 or 23.4, the Directors may (after having provided notice to Sole Bay Team Ministry and Walberswick PCC of their intention to do so) appoint a Church Director provided that:
- 23.5.1 such appointment is for a term of up to four years with the option for the Directors to reappoint for further terms of up to four years each; and
- 23.5.2 a Church Director appointed by the Directors will be automatically removed from office in the event that either:
- (a) Sole Bay Team Ministry appoints a Church Director in accordance with Article 23.3; or
- (b) Walberswick PCC appoints a Church Director in accordance with Article 23.4.3.

***Nominated Directors***

- 23.6 The Nominated Directors shall be appointed by Walberswick Parish Council at a meeting convened by Walberswick Parish Council.
- 23.7 A Nominated Director may be, but need not be, a member of Walberswick Parish Council.
- 23.8 Walberswick Parish Council shall endeavour to appoint Nominated Directors that fit into the skills matrix adopted by the Directors from time to time following consultation with the Parish Council.
- 23.9 Walberswick Parish Council shall have the right from time to time by written notice delivered to the Company to remove any Nominated Director and to appoint a replacement Nominated Director in accordance with Article 23.12.
- 23.10 The appointment of a Nominated Director will be effective from:
- 23.10.1 31 December of that year; or
- 23.10.2 (if appointed in accordance with Article 23.12 below) the later of:
- (a) the date of the vacancy; and
- (b) the date on which the Company receives written notification of the appointment from Walberswick Parish Council.
- 23.11 The Directors or the Secretary, if any, must promptly report any vacancy in the office of Nominated Director to Walberswick Parish Council.

- 23.12 If a Nominated Director ceases to hold office before the end of his or her term, a replacement Nominated Director may be appointed by Walberswick Parish Council provided that the replacement will only hold office until the end of their predecessor's original term. Any competent Director may be re-appointed.

### ***Co-Opted Directors***

- 23.13 Subject to Article 23.2, any person may be appointed to be a Co-Opted Director by a decision of the Directors, passed in accordance with Article 23.14, who:

23.13.1 through residence, occupation, employment or otherwise has special knowledge of Walberswick;

23.13.2 is willing to act as a Director; and

23.13.3 who would not be disqualified from acting under the provisions of Article 24.

- 23.14 A Co-Opted Director shall be appointed by a resolution of the Directors passed at an Annual Directors' Appointment and Retirement Meeting.

- 23.15 In appointing Co-Opted Directors, the Directors shall endeavour to appoint Co-Opted Directors that fit the skill matrix adopted by the Directors in consultation with Walberswick Parish Council.

- 23.16 If a Co-Opted Director ceases to hold office before the end of his or her term, a replacement Co-Opted Director may be appointed by the Directors provided that the replacement will only hold office until the end of their predecessor's original term. Any competent Director may be re-appointed.

### ***Terms of office***

- 23.17 Save for the First Directors, and subject to Article 23.19, each appointment of a Nominated Director or a Co-Opted Director shall be for a term of up to four years, such term to expire on 31 December of the relevant year.

- 23.18 To ensure that all of the First Directors are not required to retire at the same time, the First Directors shall retire on such date(s) as they would have retired had they continued to be trustees of the Charity. Thereafter, the term of office of a re-appointed First Director who is a Co-Opted or Nominated Director shall be up to four years, such term to expire on 31 December in the relevant year.

- 23.19 Subject to Article 23.18, Article 23.20 and Article 23.21, a Nominated Director or Co-Opted Director (including a First Director who has been re-appointed as a Co-Opted Director or Nominated Director) who has served for eight or more consecutive years (including any time served as a trustee of the Charity) must take a break from office and may not be reappointed until the anniversary of the commencement of his or her break from office.

- 23.20 A Co-Opted Director (including a First Director who has been re-appointed as a Co-Opted Director in accordance with Article 23.18) who has served eight or more consecutive years (including, if a First Director, any time served as a trustee of the Charity) may be re-appointed by the Directors on an annual basis provided that:

23.20.1 such re-appointment shall expire on the following 31 December; and

23.20.2 at least 80% or five Directors (whichever is higher) consent to such re-appointment.

- 23.21 A Nominated Director (including a First Director who has been re-appointed a Nominated Director in accordance with Article 23.18) who has served eight or more consecutive years (including, if a First Director, any time served as a trustee of the Charity) may be re-appointed

on an annual basis by Walberswick Parish Council, provided that such re-appointment shall expire on the following 31 December.

### **General**

- 23.22 If the retirement of a Director in accordance with Article 23 means that the number of Directors shall be less than the quorum, the retiring Director shall remain in office until a new appointment is made.
- 23.23 A Director may not appoint an alternate director or anyone to act on his or her behalf at meetings of the Directors.
- 23.24 A technical defect in the appointment of a Director of which the Directors are unaware at the time does not invalidate decisions made by the Directors.

## **24. Termination of Director's appointment**

- 24.1 A person ceases to be a Director as soon as:
- 24.1.1 that person ceases to be a director by virtue of any provision of the Companies Act 2006, or is prohibited from being a director by law, or is disqualified from acting as a trustee by virtue of section 178 of the Charities Act 2011;
  - 24.1.2 a bankruptcy order is made against that person, or an order is made against that person in individual insolvency proceedings in a jurisdiction other than England and Wales or Northern Ireland which have an effect similar to that of bankruptcy;
  - 24.1.3 a composition is made with that person's creditors generally in satisfaction of that person's debts;
  - 24.1.4 the Directors reasonably believe he or she is suffering from mental disorder and incapable of acting and they resolve that he or she be removed from office;
  - 24.1.5 written notification is received by the Company from the Director that the Director is resigning from office (but only if at least two Directors will remain in office when such resignation has taken effect);
  - 24.1.6 in respect of a Nominated Director, the Company receives written notification that he or she has been removed by Walberswick Parish Council;
  - 24.1.7 he or she fails to attend (without the permission of the Directors) three consecutive meetings of the Directors and the Directors resolve that he or she be removed from office for this reason;
  - 24.1.8 at a meeting of the Directors at which at least four other Directors are present, a resolution is passed that he or she be removed from office. Such a resolution shall not be passed unless the Director has been given at least 21 days' notice in Writing that the resolution is to be proposed, specifying the circumstances alleged to justify the removal from office, and has been afforded a reasonable opportunity of being heard by or of making written representations to the Directors; or
  - 24.1.9 he or she ceases to be a Member of the Company.

## **MEMBERS**

### ***BECOMING AND CEASING TO BE A MEMBER***

## **25. Directors as Members**

- 25.1 The Directors from time to time shall be the only Members of the Company.
- 25.2 A Director shall become a Member on becoming a Director. All new Directors are treated as having agreed to become Members of the Company.
- 25.3 The names of the Members of the Company must be entered in the register of Members.

**26. Termination of membership**

- 26.1 A Member shall cease to be a member if he or she ceases to be a Director.
- 26.2 Membership is not transferable and shall cease on death.

**DECISION-MAKING BY MEMBERS**

**27. Members' Meetings**

Members' meetings shall be held in accordance with the provisions regarding such meetings in the Companies Acts.

**28. Quorum**

The quorum at Members' meetings shall be the same as the quorum at Directors' meetings.

**29. General meetings**

The Chair or any two Directors may call a general meeting of the Members at any time.

**30. Written Resolutions**

The Members may pass a resolution by way of a written resolution in accordance with the provisions regarding such resolutions in the Companies Acts.

**31. Amending the Articles**

The Directors shall consult with Walberswick Parish Council no less than six months prior to making any amendments to the appointment of Directors or provisions that relate to Walberswick Parish Council's rights to appoint and remove Nominated Directors.

**ADMINISTRATIVE ARRANGEMENTS AND MISCELLANEOUS**

**32. Communications by the Company**

***Methods of communication***

- 32.1 Subject to the Articles and the Companies Acts, any Document or information (including any notice, report or accounts) sent or supplied by the Company under the Articles or the Companies Acts may be sent or supplied in any way in which the Companies Act 2006 provides for Documents or information which are authorised or required by any provision of that Act to be sent or supplied by the Company, including without limitation:
- 32.1.1 in Hard Copy Form;
  - 32.1.2 in Electronic Form; or
  - 32.1.3 by making it available on a website.
- 32.2 A Document or information may only be sent or supplied in Electronic Form or by making it available on a website if the recipient has agreed that it may be sent or supplied in that form

or manner or is deemed to have so agreed under the Companies Acts (and has not revoked that agreement).

- 32.3 Subject to the Articles, any notice or Document to be sent or supplied to Directors in connection with the taking of decisions by Directors may also be sent or supplied by the means which that Director has asked to be sent or supplied with such notices or Documents for the time being.

***Deemed delivery***

- 32.4 A Member present in person or by proxy at a meeting of the Company shall be deemed to have received notice of the meeting and the purposes for which it was called.

- 32.5 Where any Document or information is sent or supplied by the Company to the Members:

32.5.1 where it is sent by post it is deemed to have been received 48 hours (including Saturdays, Sundays, and Public Holidays) after it was posted;

32.5.2 where it is sent or supplied by Electronic Means, it is deemed to have been received on the same day that it was sent;

32.5.3 where it is sent or supplied by means of a website, it is deemed to have been received:

- (a) when the material was first made available on the website; or
- (b) if later, when the recipient received (or is deemed to have received) notice of the fact that the material was available on the website.

Subject to the Companies Acts, a Director or any other person may agree with the Company that notices or Documents sent to that person in a particular way are deemed to have been received within a specified time, and for the specified time to be less than 48 hours.

***Failed delivery***

- 32.6 Where any Document or information has been sent or supplied by the Company by Electronic Means and the Company receives notice that the message is undeliverable:

32.6.1 if the Document or information has been sent to a Member and is notice of a general meeting of the Company, the Company is under no obligation to send a Hard Copy of the Document or information to the Member's postal address as shown in the Company's register of Members, but may in its discretion choose to do so;

32.6.2 in all other cases, the Company shall send a Hard Copy of the Document or information to the Member's postal address as shown in the Company's register of Members (if any), or in the case of a recipient who is not a Member, to the last known postal address for that person (if any); and

32.6.3 the date of service or delivery of the Documents or information shall be the date on which the original electronic communication was sent, notwithstanding the subsequent sending of Hard Copies.

***Exceptions***

- 32.7 Copies of the Company's annual accounts and reports need not be sent to a person for whom the Company does not have a current Address.

- 32.8 Notices of general meetings need not be sent to a Member who does not register an Address with the Company, or who registers only a postal address outside the United Kingdom, or to a Member for whom the Company does not have a current Address.

### **33. Communications to the Company**

The provisions of the Companies Acts shall apply to communications to the Company.

### **34. Secretary**

- 34.1 A Secretary may be appointed by the Directors for such term, at such remuneration and upon such conditions as they may think fit, and may be removed by them.

- 34.2 If there is no Secretary:

34.2.1 anything authorised or required to be given or sent to, or served on, the Company by being sent to its Secretary may be given or sent to, or served on, the Company itself, and if addressed to the Secretary shall be treated as addressed to the Company; and

34.2.2 anything else required or authorised to be done by or to the Secretary of the Company may be done by or to a Director, or a person authorised generally or specifically in that behalf by the Directors.

### **35. Minutes**

- 35.1 The Directors must cause minutes to be made:

35.1.1 of all appointments of officers made by the Directors;

35.1.2 of all resolutions of the Company and of the Directors (including, without limitation, decisions of the Directors made without a meeting); and

35.1.3 of all proceedings at meetings of the Company and of the Directors, and of committees of Directors, including the names of the Directors present at each such meeting.

- 35.2 Any such minute, if purported to be signed (or in the case of minutes of Directors' meetings, signed or authenticated) by the chair of the meeting at which the proceedings were had, or by the chair of the next succeeding meeting, shall, as against any Member or Director of the Company, be sufficient evidence of the proceedings.

### **36. Irregularities**

The proceedings at any meeting or on the taking of any poll or the passing of a written resolution or the making of any decision shall not be invalidated by reason of any accidental informality or irregularity (including any accidental omission to give or any non-receipt of notice) or any want of qualification in any of the persons present or voting or by reason of any business being considered which is not specified in the notice.

### **37. Records and accounts**

The Directors shall comply with the requirements of the Companies Acts as to maintaining a Members' register, keeping financial records, the audit of accounts and the preparation and transmission to the Registrar of Companies of annual accounts and annual returns.

### **38. Exclusion of model articles**

The relevant model articles for a company limited by guarantee are hereby expressly excluded.

**39. Winding Up**

If any property remains after the Company has been wound up or dissolved and the debts and liabilities have been satisfied it may not be paid to or distributed among the Members of the Company, but must be given to some charitable institution or institutions as may be chosen by resolution of the Directors at or before the time of winding up or dissolution.

## Schedule 1

### Interpretation – Defined Terms

1. In the Articles, unless the context requires otherwise, the following terms shall have the following meanings:

	<b>Term</b>	<b>Meaning</b>
1.1	<b>“Address”</b>	includes a number or address used for the purposes of sending or receiving documents by Electronic Means;
1.2	<b>“Annual Directors’ Appointment and Retirement Meeting”</b>	means a Directors’ meeting held in December of each year;
1.3	<b>“Articles”</b>	the Company’s articles of association;
1.4	<b>“Chair”</b>	has the meaning given in Article 8;
1.5	<b>“Charity”</b>	has the meaning given in Article 2;
1.6	<b>“Charity Commission”</b>	the Charity Commission of England and Wales or any other replacement regulatory body;
1.7	<b>“Church Director”</b>	a person appointed as a Director in accordance with Article 23.3 or Article 23.4;
1.8	<b>“Clear Days”</b>	in relation to the period of a notice, that period excluding the day when the notice is given or deemed to be given and the day for which it is given or on which it is to take effect;
1.9	<b>“Co-Opted Director”</b>	A person appointed as a Director in accordance with Articles 23.13 to 23.16;
1.10	<b>“Company”</b>	WCLC Trustee Limited;
1.11	<b>“Companies Acts”</b>	means the Companies Acts (as defined in Section 2 of the Companies Act 2006), in so far as they apply to the Company;
1.12	<b>“Connected”</b>	in relation to a Director means any person falling within one of the categories set out in section 188 Charities Act 2011;
1.13	<b>“Director”</b>	a director of the Company, and includes any person occupying the position of director, by whatever name called;
1.14	<b>“Document”</b>	includes, unless otherwise specified, any document sent or supplied in Electronic Form;
1.15	<b>“Electronic Form” and</b>	have the meanings respectively given to them in

- |      |   |  |
|------|---|--|
|      | <b>“Electronic Means”</b>               | Section 1168 of the Companies Act 2006;  |
| 1.16 |   |  |
| 1.17 | <b>“First Director”</b>                 | a person who is appointed as one of the first Directors as set out in Article 23.1;  |
| 1.18 | <b>“Hard Copy” and “Hard Copy Form”</b> | have the meanings respectively given to them in the Companies Act 2006;  |
| 1.19 | <b>“Member”</b>                         | the members of the Company as defined under the Companies Act and as further defined in Article 25.1;  |
| 1.20 | <b>“Nominated Director”</b>             | a person appointed as a Director by Walberswick Parish Council in accordance with Articles 23.6 to 23.12;  |
| 1.21 | <b>“Scheme”</b>                         | the scheme issued by the Charity Commission on 7 September 2009 which governs the Charity, as amended, supplemented and/or replaced from time to time;   |
| 1.22 | <b>“Secretary”</b>                      | the secretary of the Company (if any);   |
| 1.23 | <b>“Sole Bay Team Ministry”</b>         | the Church of England ministry responsible for the parish of Walberswick or any successor body;  |
| 1.24 | <b>“Walberswick PCC”</b>                | the Parochial Church Council of St Andrew’s, Walberswick, a body corporate and excepted charity governed by the Parochial Church Councils (Powers) Measure 1956;                               |
| 1.25 | <b>“Writing”</b>                        | the representation or reproduction of words, symbols or other information in a visible form by any method or combination of methods, whether sent or supplied in Electronic Form or otherwise. |
2. Subject to paragraph 3 of this Schedule, any reference in the Articles to an enactment includes a reference to that enactment as re-enacted or amended from time to time and to any subordinate legislation made under it.
3. Unless the context otherwise requires, words or expressions contained in the Articles which are not defined in paragraph 1 above bear the same meaning as in the Companies Act 2006 as in force on the date when the Articles became binding on the Company.

**Proposed Amended Scheme**  
**~~Draft 27 August 2009~~**

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In the matter of the Charity called the Walberswick Common Lands, in the Parish of Walberswick, in the County of Suffolk, regulated by a Scheme of the Charity Commissioners of the 22<sup>nd</sup> May 1925 as varied by a Scheme of the Commissioners of the 18<sup>th</sup> September 1963, 4<sup>th</sup> July 1985 and 2 December 1986 and by Order of 27 March 2003 [and by Scheme on 7 September 2009 and by resolution dated 1 November 2018 and \[XXX\] 2021.](#)

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THE CHARITY COMMISSIONERS FOR ENGLAND AND WALES HEREBY ORDER that the following Scheme be approved and established as the Scheme for the regulation of the above mentioned Charity:-

**SCHEME**

**1. Administration of Charity**

The above-mentioned Charity and all of the Charity shall be administered and managed in accordance with the provisions of this Scheme by the Trustees as set out below.

**2. Vesting**

The land held by the Charity may be vested in the Official Custodian for Charities or be held in trust for the Charity [by the Trustee.](#)

**3. Investments and cash**

- (1) The Trustees may arrange for any investments belonging to the Charity to be held in the name of a nominee (being a corporate body registered or having an established place of business in England and Wales) acting under the control of the Trustees or under the control of an individual, company or firm authorised to give investment advice under the Financial Services and Markets Act 2000 or any statutory modification or re-enactment (“Financial Expert”) acting under the Trustees’s instructions and to pay any reasonable fee required;

- (2) The Trustees may open and operate bank accounts and other facilities for banking and to draw, accept, endorse, issue or execute promissory notes, bills of exchange, cheques and other instruments

## TRUSTEES

### 4. Trustees

The sole corporate Trustee of the Charity shall be [WCLC Trustee Limited (company number xxxx)].

~~body of Trustees shall consist when complete of seven competent persons being:~~

~~One Ex officio Trustee;~~

~~Four Nominative Trustees; and~~

~~Two Co-optative Trustees~~

~~The Trustees of the Charity on the date this Scheme is sealed are listed in Schedule 1 together with the date on which their term in office expires.~~

### ~~5. Ex officio Trustee~~

~~The Ex officio Trustee shall be the Vicar for the time being of the Sole Bay Team Ministry who has pastoral responsibility for the Parish of Walberswick. In the event of the Vicar being unable or unwilling to take up the position of Trustee it shall be filled with an additional Co-optative Trustee, providing that such Co-optative Trustee shall retire if the Vicar wishes to take up the position of Trustee.~~

### ~~6. Nominative Trustees~~

~~Future Nominative Trustees shall be appointed by the Walberswick Parish Council. Each appointment shall be made for a term of four years at a meeting convened and held according to the ordinary practice of the council. The chairman of the meeting shall cause the name of each person appointed to be notified forthwith to the Trustees or their clerk. The person appointed may be but need not be a member of the council. The Parish Council shall endeavour to find Nominative Trustees that fit into the skills matrix adopted by the Trustees from time to time following consultation with the Parish Council.~~

### ~~7. Co-optative Trustees~~

~~The future Co-optative Trustees shall be persons who through residence, occupation or employment, or otherwise have special knowledge of Walberswick.~~

~~Every future Co-optative Trustee shall be appointed for a term of four years by a resolution of the Trustees passed at a special meeting of which not less than 21 days' notice has been given and may be so appointed not more than one month before the term of an existing Co-optative Trustee expires with effect from the date of expiry but so that the latter shall not vote on the matter. In appointing Co-optative Trustees, the~~

~~Trustees shall endeavour to find Trustees that fit the skills matrix adopted by the Trustees in consultation with the Parish Council.~~

### **~~Declaration by Trustees~~**

~~No person shall be entitled to act as a Trustee whether on a first or on any subsequent entry into office until after signing in the minute book of the Trustees a declaration of acceptance and of willingness to act in the trusts of this Scheme.~~

### **~~Determination of trusteeship~~**

~~A Trustee shall cease to hold office if he or she:~~

~~is disqualified under the Act from acting as a Trustee;~~

~~becomes incapable by reason of mental disorder, illness or injury of managing and administering his or her own affairs;~~

~~resigns by written notice to the Trustees (but only if at least two Trustees will remain in office when the notice of resignation is to take effect); or~~

~~fails to attend three consecutive meetings of the Trustees and the Trustees resolve that he or she be removed for this reason; or~~

~~is removed by a resolution passed at a meeting of the Trustees at which at least four other Trustees are present. Such a resolution shall not be passed unless the Trustee has been given at least 21 days' notice in writing that the resolution is to be proposed, specifying the circumstances alleged to justify removal from office, and has been afforded a reasonable opportunity of being heard by or of making written representations to the Trustees.~~

~~If a Trustee ceases to hold office pursuant to clause 9 the Trustees may by resolution passed at a Trustees' meeting discharge such person from the trusts of the Charity.~~

~~A Trustee ceasing to hold office is entitled on written request to an indemnity from the continuing Trustees at the expense of the Charity in respect of any liabilities properly incurred during his or her trusteeship.~~

### **~~Vacancies~~**

~~If a Nominative or Co-optative Trustee ceases to hold office before the end of his or her term a replacement Trustee may be appointed by the Parish Council (in the case of a Nominative Trustee) and by the Trustees (in the case of a Co-optative Trustee); provided that the replacement will only hold office until the end of their predecessors' original term. Any competent Trustee may be re-appointed.~~

~~A technical defect in the appointment of a Trustee of which the Trustees are unaware at the time does not invalidate decisions made by the Trustees.~~

## MEETINGS AND PROCEEDINGS OF TRUSTEES

### **8.5. Meetings**

Meetings of the Trustees shall be conducted in accordance with the Articles of Association of the Trustee. ~~hold at least three meetings in each year.~~

### **9. Meetings shall be called as follows:**

- (1) ~~Meetings may be arranged by the Trustees at their meetings.~~
- (2) ~~The chair of the Trustees or any two Trustees may call a meeting at any time upon not less than 10 days' notice being given to the other Trustees save that a meeting to appoint a Co-optative Trustee or for removal of a Trustee must be called on not less than 21 days' notice.~~
- (3) ~~Notwithstanding clause 14(2), the Trustees may by unanimous agreement waive the requirement to give advance notice of a meeting, in relation to a particular meeting where the matters to be discussed do not include the appointment of a Co-optative Trustee or removal of a Trustee.~~

~~Meetings of the Trustees shall be held either in person or by telephone, televisual or other electronic or virtual means agreed by the Trustees in which all participants may communicate simultaneously with all other participants. Minutes must be kept of all meetings regardless of how they are held.~~

### **10. Chairman**

~~The Trustees shall annually appoint one of their number to be the chair of the Trustees at the first Trustees meeting in each calendar year and may at any time remove him or her from that office. The chair, if any, of the Trustees or in his or her absence another Trustee nominated by the Trustees present shall preside as chair of each meeting.~~

### **11. Quorum**

~~There shall be a quorum when four Trustees are present at a meeting.~~

### **12. Voting**

~~Every matter shall be determined by the majority of votes of the Trustees present and voting on the question. In case of equality of votes the chairman of the meeting shall have a casting vote whether he or she has not voted previously on the same question but no Trustee in any other circumstances shall give more than one vote.~~

### **13. Procedural Defects**

~~A procedural defect of which the Trustees are unaware at the time does not invalidate decisions taken at a meeting of the Trustees.~~

### **14.6. Written Resolutions Trustee Decisions**

- (1) ~~A written resolution signed by all the Trustees shall be as valid and effectual as if it had been passed at a meeting of the Trustees duly convened and held. A written resolution may be contained in more than one document and will be treated as passed on the date of the last signature.~~The Trustee shall take decisions as set out in its Articles of Association.
- (2) All powers of the Trustee may be exercisable by way of written resolution signed on behalf of the Trustee by a person duly authorised to sign on its behalf, without a meeting.
- (3) All deeds shall be executed by or on behalf of the Trustee in accordance with its Articles.

## 7. Powers

- (1) In furtherance of the objects of the Charity but not otherwise the Trustee may exercise any of the following powers contained within this clause or elsewhere in this Scheme:
- (1) to make grants to any individual, group, organisation or institution;
  - (2) to borrow money and give securities for loans (but only in accordance with the restrictions imposed by the Charities Act 2011 as amended or updated from time to time) and to give guarantees;
  - ~~(1)~~(3) to buy, take on lease or in exchange, hire or otherwise acquire property and to maintain and equip it for use, including for the avoidance of doubt acquiring land to be held as endowment or on special trusts;
  - (4) subject to clause 20, to employ paid or unpaid agents, staff or advisers;
  - (5) to provide indemnity insurance (in accordance with the provisions of the Charities Act 2011 as amended or updated from time to time) to cover the liability of the directors of the Trustee which by virtue of any rule of law would otherwise attach to them in respect of any negligence, default, breach of trust or breach of duty of which they may be guilty in relation to the Charity, provided that any such insurance shall not extend to the provision of any indemnity for a person in respect of:
    - i. any act or omission which he or she knew to be a breach of trust or breach of duty or which was committed by him or her in reckless disregard as to whether it was a breach of trust or breach of duty or not; or
    - ii. any liability incurred by him or her in defending any criminal proceedings in which he or she is convicted of an offence arising out of any fraud or dishonesty, or wilful or reckless misconduct by him or her; or
    - iii. any liability incurred by him or her to pay a fine imposed in criminal proceedings or a sum payable to a regulatory authority by way of a penalty in respect of non-compliance with any requirement of a regulatory nature (however arising);

- (6) to enter into contracts to provide services to or on behalf of other bodies;
- (7) to accept (or disclaim) gifts of money and any other property;
- (8) to support, administer or set up other charities;
- (9) to trade in the course of carrying out the objects and carry on any other trade which is not expected to give rise to taxable profits;
- (10) to incorporate subsidiary companies to carry on any trade or to assist or act as agents for the Charity; and
- (11) to do all such other lawful things as shall further the objects of the Charity.

#### **15.8. Minutes**

The Trustees shall keep minutes, ~~in books kept for the purpose,~~ of the proceedings at ~~their~~its meetings.

#### **16.9. Records and Accounts**

The Trustees shall comply with ~~their~~its statutory obligations with regard to keeping financial records, the audit or examination of accounts and the preparation and transmission to the Charity Commissioners of:

- (1) annual reports;
- (2) annual returns;
- (3) annual statements of account.

#### **17.10. General power to make regulations**

Within the limits prescribed by this Scheme the Trustees shall have full power from time to time to make regulations for the management of the Charity and for the conduct of ~~their~~its business including the summoning of meetings, the appointment of a clerk, the deposit of money at a proper bank and the custody of documents.

#### **18.11. Power to Delegate**

The Trustees may delegate any of ~~their~~its powers or functions to committees consisting of two or more persons appointed by ~~them~~it ~~but at least one member of every committee must be a Trustee~~ and all proceedings of committees must be reported promptly to the Trustees. The Trustees also may delegate day to day management of the affairs of the Charity to any person.

**19.12.** The Trustees may delegate the management of investments to a Financial Expert provided that:

- (1) the investment policy is set down in writing for the Financial Expert by the Trustees;
- (2) every transaction is reported promptly to the Trustees;

- (3) the performance of the investments is reviewed regularly by the Trustees;
- (4) the Trustees ~~are~~ is entitled to cancel the delegation arrangement at any time;
- (5) the investment policy and the delegation arrangements are reviewed at least once a year;
- (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 ~~s~~ on receipt; and
- (7) the Financial Expert may not do anything outside the powers of the Trustees ~~s~~.

## PROPERTY

### 20.13. Use of property

- (1) Rights of pasturage (if any) over the property of the Charity or any part thereof, which existed prior to the 4<sup>th</sup> February 1901, shall not be prejudicially affected by this Scheme, and nothing shall be done or permitted by the Trustees ~~s~~ by which any part of the land known as Walberswick Common and Original Land and described in Schedule 12 shall be or become enclosed, or cease to be an open space accessible to the inhabitants of Walberswick to the same extent as it was prior to the 4<sup>th</sup> February 1901.
- (2) For the avoidance of doubt, the Trustees ~~s~~ may but has no obligation to:
  - (i) use the Charity's land to provide or allow for the provision of facilities for the benefit of local inhabitants such as sports or recreational facilities and
  - (ii) ~~may~~ temporarily enclose parts of the Charity's land to maintain or conserve the environment in accordance with a reasonable land management plan provided that no more than 25% of Walberswick Common and Original Land is subject to such temporary enclosure and the period of enclosure does not exceed 12 months.

### 21.14. Disposal of Property

Subject to the consents required by law (including complying as appropriate with those set out in ~~S38~~ sections 117-122 of the Charities Act ~~1993-2011~~ as amended or updated from time to time) and the provisions of clause 1426, the Trustees ~~s~~ may dispose of or deal with all or any part of the Property of the Charity with or without payment and subject to such conditions as the Trustees ~~s~~ thinks fit, provided that ∴

~~no lease may be granted for a term of more than 212 years; and.~~

## APPLICATION OF INCOME

### 22.15. Expenses of management

The Trustees shall first use the income of the Charity to meet the expenses described below and in the order of priority in which they are listed:

- (1) Pay the proper costs, charges and expenses of and incidental to the administration and management of the Charity;
- (2) take out appropriate insurance policies to insure the property of the Charity and take out other insurance policies as are considered necessary by the Trustees to protect the Charity;
- (3) carry out routine maintenance and repair (including environmental stewardship) to the property of the Charity;
- (4) pay for extraordinary repairs and improvements (including environmental stewardship) to the Charity's property; and
- (5) build up a reserve fund to meet the future needs of the Charity

#### **23.16. Application of residual income**

Subject to the payments set out in ~~paragraph clause 27-15~~ the Trustees shall apply the residual income of the Charity ~~for relief of need and for the benefit of the inhabitants of Walberswick~~ in accordance with the provisions set out below.

#### **24.17. Relief of need**

- (1) The Trustees shall apply such part of the residual income of the Charity as ~~they~~ it thinks fit in each year in relieving either generally or individually persons who are permanently resident or have their principal home in Walberswick who are in conditions of need, hardship or distress (the "Beneficiaries") by making grants or loans of money or providing or paying for items, services or facilities calculated to reduce the need, hardship or distress of such persons.
- (2) The Trustees may pay for such items, services or facilities by way of loan, donations or subscriptions to institutions or organisations which provide or which undertake in return to provide such items, services or facilities for such ~~persons~~ Beneficiaries.
- (3) In exceptional cases the Trustees may grant relief to persons otherwise eligible therefore who are resident outside Walberswick but in the opinion of the Trustees ought nevertheless for sufficient reason to be treated as if ~~resident therein or who are located for the time being within Walberswick~~ they were Beneficiaries.

#### **25.18. Benefit of inhabitants**

The Trustees shall apply the residue of the income of the Charity in any year for such charitable purposes for the general benefit of the inhabitants of Walberswick (which shall include those living, working or visiting Walberswick) as the Trustees think fit.

#### **26.19. Charity not to relieve public funds**

The Trustees shall not apply income of the Charity directly in relief of rates, taxes or other public goods but may apply income in supplementing relief or assistance provided out of public funds.

### **GENERAL PROVISIONS**

#### **27.20. Benefits to the Trustee or Directors of the Trustees**

The property and income of the Charity shall be applied solely towards the promotion of the objects set out above and (except as provided below) no Trustee or director of the Trustee may receive any remuneration or other benefit in money or money's worth from the Charity. This shall not prevent any payment in good faith by the Charity of:

- (1) any payments made to any director of the Trustee or Connected Person in their capacity as a beneficiary of the Charity;
- (2) interest on money lent by any director of the Trustee or Connected Person at a reasonable and proper rate;
- (3) any reasonable and proper rent for premises let by any director of the Trustee or Connected Person;
- (4) fees, remuneration or other benefits in money or money's worth to a company of which a director of the Trustee or Connected Person holds less than 1% of the capital;
- (5) reasonable and proper out-of-pocket expenses of the Trustee or a director of the Trustees;
- (6) reasonable and proper premiums in respect of trustee indemnity insurance effected in accordance with the provision of the Charities Act 2011 as amended or updated from time to time~~06~~;
- (7) reasonable and proper remuneration to any person (not being a director of the Trustee) for any goods or services supplied to the Charity (including services performed under a contract of employment) provided that:
  - i. if such person is a Connected Person the procedure described in clause ~~332122~~ must be followed by the relevant director of the Trustee in relation to any decisions regarding such Connected Person; and
  - ii. this provision together with clause ~~3220(8)~~(8) may not apply to more than half of the directors of the Trustees in any financial year (and for

these purposes such provisions shall be treated as applying to a director of the Trustee if they apply to a person who is a Connected Person in relation to that ~~Trustee~~director);

- (8) reasonable and proper remuneration to any director of the Trustee for any goods or services supplied to the Charity on the instructions of the Trustees (excluding the service of acting as a director of the Trustee and services performed under a contract of employment with the Charity) provided that:
- i. the procedure described in clause ~~2133~~ 20(7) must be followed in considering the appointment of the director of the Trustee and in relation to any other decisions regarding the remuneration authorised by this provision; and
  - ii. this provision together with clause ~~32(7)~~20(7) may not apply to more than half of the directors of the Trustees in any financial year (and for these purposes such provisions shall be treated as applying to a director of the Trustee if they apply to a person who is a Connected Person in relation to that ~~Trustee~~director).

For the purposes of clauses ~~32(7)~~20 and ~~2133~~ a Connected ~~Person~~ Person has the meaning as set out in section 188 Charities Act 2011 (as amended or updated from time to time) in relation to ~~is any spouse, parent, child, brother, sister, grandparent or grandchild of a director of a Trustee; or (b) any other person in a relationship with a Trustee which may reasonably be regarded as equivalent to such a relationship; or (c) any company or firm of which a Trustee is a paid director, partner or employee, or shareholder holding more than 1% of the capital~~

## 21. Managing conflicts of interest

- (1) If an interest or duty of a director of the Trustee cannot reasonably be regarded as likely to give rise to a conflict of interest or a conflict of duties with or in respect of the Trustee or Charity, he or she is entitled to participate in the decision-making process, to be counted in the quorum and to vote in relation to the matter. Any uncertainty about whether an interest or duty of a director of the Trustee is likely to give rise to a conflict shall be determined by a majority decision of the other directors of the Trustee taking part in the decision-making process.
- (2) If the interest or duty of a director of the Trustee gives rise (or could reasonably be regarded as likely to give rise) to a conflict of interest or a conflict of duties with or in respect of the Trustee or Charity, he or she may participate in the decision-making process and may be counted in the quorum and vote unless:
- i. the decision could result in the director of the Trustee or any Connected Person with him or her receiving a benefit other than:
    - (a) any benefit received in his, her or its capacity as a beneficiary of the Charity and which is permitted by the

trusts of the Charity and is available generally to the beneficiaries of the Charity; or

(b) payments in accordance with clause 20; or

(c) payment under the indemnity set out in clause 20(6) or the Articles of Association of the Trustee;

ii. a majority of the other directors of the Trustee participating in the decision-making process decide to the contrary;

in which case he or she must comply with clause 21(3).

(3) If a director of the Trustee with a conflict of interest or conflict of duties is required to comply with this clause 21(3), he or she must:

i. take part in the decision-making process only to such extent as in the view of the other directors of the Trustee is necessary to inform the debate;

ii. not be counted in the quorum for that part of the process; and

iii. withdraw during the vote and have no vote on the matter.

~~28. Whenever a Trustee has a personal interest themselves or via a Connected Person in a matter to be discussed at a meeting, and whenever a Trustee has an interest in another organisation whose interests are reasonably likely to conflict with those of the Charity in relation to a matter to be discussed at a meeting, he or she must:~~

~~29. declare an interest before discussion on the matter begins;~~

~~30. withdraw from that part of the meeting unless expressly invited to remain;~~

~~31. in the case of personal interests not be counted in the quorum for that part of the meeting; and~~

~~32. in the case of personal interests withdraw during the vote and have no vote on the matter.~~

### ~~33.~~22. Trustees' Indemnity

- (1) Without prejudice to any indemnity to which a Trustee (which for the purposes of this clause 22 shall include an individual who was a former trustee of the Charity) may otherwise be entitled, every Trustee shall be indemnified out of the funds of the Charity in respect of all claims made against them in respect of any liability arising from or in respect of the Charity, provided that the right of a Trustee to an indemnity under this clause shall not extend to any claim arising from wilful fraud or wrongdoing or wrongful omission on his~~, or~~ her or its part.
- (2) No Trustee shall be liable for any loss to the Charity except in relation to loss caused by his ~~or~~ her or its wilful and individual fraud, wrongdoing or wrongful omission.
- (3) The individual trustees of the Charity who ceased to hold office on the appointment of the Trustee are entitled on written request to an indemnity from the Trustee at the expense of the Charity in respect of any liabilities properly incurred during his or her trusteeship.

### **34.23. Questions under the Scheme**

Any question as to the construction of this Scheme or as to the regularity or the validity of any acts done or about to be done under this Scheme shall be determined by the Charity Commissioners upon such application made to them for the purpose as they think sufficient.

**Schedule 1**

<p><del>First Nominative Trustees</del>  <del>Name</del>  <del>Term of office</del>  <del>(1) Mr. David Charles Brian Webb</del>  <del>To retire January 2011</del>  <del>(2) Mr. Nigel John Hunt</del></p>	<p><del>To retire May 2011</del></p>
<p><del>(3) Mr. James Nicholas Barnard Darkins</del></p>	<p><del>To retire December 2010</del></p>
<p><del>(3) Mr. Keith Graham Webb</del></p>	<p><del>To retire October 2009</del></p>

**First Co-optative Trustees**

<p><del>Name</del>  <del>Term of office</del>  <del>(1) Mrs. Catherine Mary Kate Goodchild</del>  <del>To retire December 2010</del>  <del>(2) Miss Barbara Ann Priestman</del></p>	<p><del>To retire June 2012</del></p>
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## SCHEDULE 12

~~Land containing 82.23 acres or thereabouts known as Walberswick Common being the land numbered 0006 (part) and 8700 on the 1976 map and the land numbered 76, 77 and 122 on the 1904 map together with the land with Church Lane thereon being the land numbered 3874 (part) on the 1976 map and the land numbered 121 on the 1904 map the land with Palmers Lane being further part of the land numbered 0006 and 3874 on the 1976 map and the land numbered 118 on the 1904 map and land with the pathway thereon numbered 4793 (part) on the 1976 map.~~

### **Schedule 1**

#### Walberswick Common and Original Land

The freehold land as set out below which is held as functional permanent endowment subject to its existing trusts and restrictions

<u>Title number</u>	<u>Description</u>
<a href="#">SK 224840</a>	<a href="#">Walberswick Common</a>
<a href="#">SK 224838</a>	<a href="#">Town marshes, Ferry Road &amp; Cliff Field car parks, Corporation marshes, retail premises adjoining The Green</a>
<a href="#">SK 224839</a>	<a href="#">Oldtown marshes</a>