

CONSTITUTION
of
Balvonie Park Association

GENERAL

Type of organisation

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

Scottish principal office

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

Name

- 3 The name of the SCIO is “Balvonie Park Association”, and will be referred to as Balvonie Park Association

Purposes

- 4 The SCIO’s purposes are:
 - 4.1 To provide recreational facilities, and organise recreational activities with such facilities/activities being made available to members of the public at large with the object of improving their conditions of life;

through the provision of services which contribute to advancing well-being (primarily the wellbeing of residents of Balvonie / Milton of Leys and surrounding communities) including (i) the provision of outdoor play facilities and sports pitches (ii) the development and delivery of arts and cultural activities and events, artistic programmes, and educational projects; (iii) the staging of local community events (including arrangements to facilitate access to such facilities by those on lower incomes or having special needs and to encourage wider participation in healthy exercise); (iv) the provision of general outdoor leisure activities; and (v) the delivery of services focused on social renewal and the needs of young people.

Powers

- 5 The SCIO has power to do anything which is calculated to further its purposes or is conducive or incidental to doing so.
- 6 No part of the income or assets of the SCIO may be paid or transferred (directly or indirectly) to the members - either in the course of the SCIO’s existence or on dissolution - except where this is done in direct furtherance of the SCIO’s purposes.

Liability of members

- 7 The members of the SCIO have no liability to pay any sums to help to meet the debts (or other liabilities) of the SCIO if it is wound up;

accordingly, if the SCIO is unable to meet its debts, the members will not be held responsible.

- 8 The members and charity trustees have certain legal duties under the Charities and Trustee Investment (Scotland) Act 2005; and clause 7 does not exclude (or limit) any personal liabilities they might incur if they are in breach of those duties or in breach of other legal obligations or duties that apply to them personally.

General structure

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

MEMBERS

Qualifications for membership

- 11 Membership is open to the following:
 - 11.1 Residents of Balvonie / Milton of Leys
 - 11.2 Residents of Balvonie / Milton of Leys' surrounding communities - defined as resident within the boundaries of the Highland Council ward of Inverness South
- 12 Employees (if any) of the SCIO are not eligible for membership.

Application for membership

- 13 Any body named in clause 11 which wishes to become a member must submit a written application for membership, signed by an appropriate officer of that body; the body will automatically become a member of the SCIO with effect from the time when the application is received by the SCIO.

Membership subscription

- 14 No membership subscription will be payable.

Register of members

- 15 Board must keep a register of members, setting out
 - 15.1 for each current member:
 - 15.1.1 its full name and address; and
 - 15.1.2 the date on which it was registered as a member of the SCIO;
 - 15.2 for each former member - for at least six years from the date on which it ceased to be a member:
 - 15.2.1 its name; and
 - 15.2.2 the date on which it ceased to be a member.
- 16 The committee must ensure that the register of members is updated within 28 days of any change:
 - 16.1 which arises from a resolution of the Board or a resolution passed by the members of the SCIO; or
 - 16.2 which is notified to the SCIO.

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

Withdrawal from membership

- 18 Any body which wants to withdraw from membership must give a written notice of withdrawal to the SCIO, signed on its behalf by an appropriate officer; it will cease to be a member as from the time when the notice is received by the SCIO.

Transfer of membership

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

Re-registration of members

- 20 The board may, at any time, issue notices to the members requiring them to confirm that they wish to remain as members of the organisation, and allowing them a period of 28 days (running from the date of issue of the notice) to provide that confirmation to the board.
- 21 If a member fails to provide confirmation to the board (in writing or by e-mail) that he/she wishes to remain as a member of the organisation before the expiry of the 28-day period referred to in clause 22, the board may expel him/her from membership.
- 22 A notice under clause 22 will not be valid unless it refers specifically to the consequences (under clause 23) of failing to provide confirmation within the 28-day period.

Expulsion from membership

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

DECISION-MAKING BY THE MEMBERS

Members' meetings

- 24 The committee must convene a meeting of members (an annual general meeting or "AGM") in each calendar year.
- 25 The gap between one AGM and the next must not be longer than 15 months.
- 26 Notwithstanding clause 21, an AGM does not need to be held during the calendar year in which the SCIO is formed; but the first AGM must still be held within 15 months of the date on which the SCIO is formed.
- 27 The business of each AGM must include:-
- 27.1 a report by the chair on the activities of the SCIO; and
 - 27.2 consideration of the annual accounts of the SCIO.
- 28 The Board may convene a special members' meeting at any time.

Notice of members' meetings

- 29 At least 14 clear days' notice must be given of any AGM or any special members' meeting.
- 30 The notice calling a members' meeting must specify in general terms what business is to be dealt with at the meeting; and
- 30.1 in the case of a resolution to alter the constitution, must set out the exact terms of the proposed alteration(s); or
 - 30.2 in the case of any other resolution (requirement for two-thirds majority) must set out the exact terms of the resolution.
- 31 The reference to "clear days" in clause 25 shall be taken to mean that, in calculating the period of notice,
- 31.1 the day after the notices are posted (or sent by e-mail) should be excluded; and
 - 31.2 the day of the meeting itself should also be excluded.
- 32 Notice of every members' meeting must be given to all the members of the SCIO, and to all the charity trustees; but the accidental omission to give notice to one or more members will not invalidate the proceedings at the meeting.

- 33 Any notice which requires to be given to a member under this constitution must be: -
- 33.1 sent by post to the member, at the address last notified by it to the SCIO; *or*
 - 33.2 sent by e-mail to the member, at the e-mail address last intimated by it to the SCIO.

Procedure at members' meetings

- 34 No valid decisions can be taken at any members' meeting unless a quorum is present.
- 35 The quorum for a members' meeting is four members, present in person (in the case of a member which is a corporate body, present via its duly authorised representative) or represented by proxy.
- 36 If a quorum is not present within 15 minutes after the time at which a members' meeting was due to start - or if a quorum ceases to be present during a members' meeting - the meeting cannot proceed; and fresh notices of meeting will require to be sent out, to deal with the business (or remaining business) which was intended to be conducted.
- 37 The chair of the SCIO should act as chairperson of each members' meeting.
- 38 If the chair of the SCIO is not present within 15 minutes after the time at which the meeting was due to start (or is not willing to act as chairperson), the vice chair should act as chairperson.
- 39 If neither the chair nor the vice chair of the SCIO is present within 15 minutes after the time at which the meeting was due to start - or if neither of them is willing to act as chairperson - the charity trustees present at the meeting must elect (from among themselves) the person who will act as chairperson of that meeting.

Voting at members' meetings

- 40 In relation to each members' resolution:
- 40.1 Each member shall have one vote
 - 40.2 The chairperson shall have a casting vote in the event of a tied vote.
- 41 A member's vote(s) may be given *either* personally (in the case of a member which is a corporate body, via its authorised representative present at the meeting) *or* by proxy.

42 A member which wishes to appoint a proxy to vote on its behalf at any members' meeting:-

42.1 must give to the SCIO a proxy form (in such terms as the committee requires), signed by an appropriate officer of the member; or

42.2 must send by electronic means to the SCIO at such electronic address as may have been notified to the members for that purpose, a proxy form (in such terms as the committee requires)

providing (in either case) the proxy form is received by the SCIO at the relevant address not less than 48 hours before the time for holding the meeting (or, as the case may be, adjourned meeting).

43 In calculating the 48-hour period referred to in clause 38, no account shall be taken of any part of a day that is not a working day

44 An instrument of proxy which does not comply with the provisions of clause 38, or which is not lodged or given in accordance with such provisions, shall be invalid.

45 A member shall not be entitled to appoint more than one proxy to attend on the same occasion.

46 A proxy appointed to attend and vote at any members' meeting instead of a member shall have the same right as the member which appointed him/her to speak at the meeting; and need not be a member of the SCIO.

47 All decisions at members' meetings will be made by majority vote - with the exception of the types of resolution listed in clause 44.

48 The following resolutions will be valid only if passed by not less than two thirds of those voting on the resolution at a members' meeting (or if passed by way of a written resolution under clause 47):

48.1 a resolution amending the constitution;

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

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

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

- 49 If there is an equal number of votes for and against any resolution at a members' meeting, the chairperson of the meeting will not be entitled to a second (casting) vote.
- 50 A resolution put to the vote at a members' meeting will be decided on a show of hands.

Written resolutions by members

- 51 A resolution agreed to in writing (or by e-mail) by all the members will be as valid as if it had been passed at a members' meeting; the date of the resolution will be taken to be the date on which the last member agreed to it.
- 52 A resolution agreed to in writing (or by e-mail) by a member or members holding a majority of the votes of all members shall be as valid as if it had been passed at a members' meeting.

Minutes

- 53 The committee must ensure that proper minutes are kept in relation to all members' meetings.
- 54 Minutes of members' meetings must include the names of those present; and (so far as possible) should be signed by the chairperson of the meeting.

BOARD

Number of charity trustees

55 The maximum number of charity trustees is 13.

56 The minimum number of charity trustees is 5.

Composition of the Board

57 Subject to any vacancies which may exist from time to time, the Board shall consist of:

57.1 A minimum of 5 charity trustees who are neither elected members nor officers of the Council.

57.2 The Board may as it sees fit, invite observers from time to time, who may include elected members or officers of the council. Such observers have no voting rights at the Board.

Initial charity trustees

58 The individuals who signed the charity trustee declaration forms which accompanied the application for incorporation of the SCIO shall be deemed to have been appointed by the members as charity trustees with effect from the date of incorporation of the SCIO.

Eligibility

59 A person will not be eligible for appointment to the committee if he/she is: -

59.1 disqualified from being a charity trustee under the Charities and Trustee Investment (Scotland) Act 2005; or

59.2 an employee of the SCIO.

Appointment of charity trustees

60 The Board shall exercise its powers of appointment and removal in such a way as to reflect the intended composition of the committee.

61 The Board shall determine the suitability of its trustees in accordance with the regulations governing these.

Retiral/re-appointment of independent charity trustees

62 At the conclusion of each AGM, 2 out of the 10 charity trustees appointed by shall retire from office, but may then be re-appointed.

63 The charity trustees to retire shall consist of those who have been longest in office since they were last appointed or re-appointed; as between charity trustees who were last appointed/re-appointed on the

same date, the question of which of them is to retire shall be determined by some random method.

- 64 The Board may, by way of a resolution passed by majority vote at a Board meeting, waive the provisions of clause 59 in relation to a particular charity trustee if they consider that exceptional considerations make that appropriate.
- 65 For the purposes of clause 59:
- 65.1 the period between the date on which an individual was appointed as a charity trustee and the annual general meeting which next follows shall be deemed to be a period of one year, unless it is of less than six months' duration (in which case it shall be disregarded);
 - 65.2 the period between one annual general meeting and the next shall be deemed to be a period of one year;
 - 65.3 if an individual ceases to hold office as a charity trustee and is re-appointed as a charity trustee within a period of six months, he/she shall be deemed to have held office as a charity trustee continuously.

Termination of office

- 66 A charity trustee will automatically cease to hold office if: -
- 66.1 he/she becomes disqualified from being a charity trustee under the Charities and Trustee Investment (Scotland) Act 2005;
 - 66.2 he/she becomes incapable for medical reasons of carrying out his/her duties as a charity trustee - but only if that has continued (or is expected to continue) for a period of more than six months;
 - 66.3 he/she becomes an employee of the SCIO;
 - 66.4 he/she gives the SCIO a notice of resignation, signed by him/her;
 - 66.5 he/she is absent (without good reason, in the opinion of the committee) from more than three consecutive meetings of the committee - but only if the committee resolves to remove him/her from office;
 - 66.6 he/she is removed from office by resolution of the committee on the grounds that he/she is considered to have committed a material breach of the code of conduct for charity trustees.
 - 66.7 he/she is removed from office by resolution of the Board on the grounds that he/she is considered to have been in serious or

persistent breach of his/her duties under section 66(1) or (2) of the Charities and Trustee Investment (Scotland) Act 2005; or

66.8 he/she is removed from office by a resolution of the members passed at a members' meeting.

67 A resolution shall be valid only if: -

67.1 the charity trustee who is the subject of the resolution is given reasonable prior written notice of the grounds upon which the resolution for his/her removal is to be proposed;

67.2 the charity trustee concerned is given the opportunity to address the meeting at which the resolution is proposed, prior to the resolution being put to the vote; and

67.3 at least two thirds (to the nearest round number) of the charity trustees then in office vote in favour of the resolution.

Register of charity trustees

68 The Board must keep a register of charity trustees, setting out

68.1 for each current charity trustee:

68.1.1 his/her full name and address;

68.1.2 the date on which he/she was appointed as a charity trustee;

68.1.3 any office held by him/her in the SCIO;

68.2 for each former charity trustee - for at least 6 years from the date on which he/she ceased to be a charity trustee:

68.2.1 the name of the charity trustee;

68.2.2 any office held by him/her in the SCIO; and

68.2.3 the date on which he/she ceased to be a charity trustee.

69 The Board must ensure that the register of charity trustees is updated within 28 days of any change:

69.1 which arises from a resolution of the Board or a resolution passed by the members of the SCIO; or

69.2 which is notified to the SCIO.

70 If any person requests a copy of the register of charity trustees, the committee must ensure that a copy is supplied to him/her within 28 days, providing the request is reasonable; if the request is made by a person who is not a charity trustee of the SCIO, the Board may

provide a copy which has the addresses blanked out - if the SCIO is satisfied that including that information is likely to jeopardise the safety or security of any person or premises.

Office-bearers

- 71 The charity trustees must elect (from among themselves) a chair, a vice chair and a secretary.
- 72 Office-bearers may elect (from among themselves) further office-bearers if they consider that appropriate.
- 73 All of the office-bearers will cease to hold office at the conclusion of each AGM, but may then be re-elected.
- 74 A person elected to any office will automatically cease to hold that office: -
- 74.1 if he/she ceases to be a charity trustee; *or*
- 74.2 if he/she gives to the SCIO a notice of resignation from that office, signed by him/her.

Powers of the Board

- 75 Except where this constitution states otherwise, the SCIO (and its assets and operations) will be managed by the committee; and the committee may exercise all the powers of the SCIO.
- 76 A meeting of the Board at which a quorum is present may exercise all powers exercisable by the Board.
- 77 The members may, by way of a resolution passed by majority vote (either at a members' meeting or via a written resolution), direct the committee to take any particular step or direct the Board not to take any particular step; and the Board shall give effect to any such direction accordingly.
- 78 The members shall, in exercising their powers, comply with the duties imposed on members of a SCIO by section 51 of the Charities and Trustee Investment (Scotland) Act 2005.

Charity trustees - general duties

- 79 Each of the charity trustees has a duty, in exercising functions as a charity trustee, to act in the interests of the SCIO; and, in particular, must:-
- 79.1 seek, in good faith, to ensure that the SCIO acts in a manner which is in accordance with its purposes;

- 79.2 act with the care and diligence which it is reasonable to expect of a person who is managing the affairs of another person;
 - 79.3 in circumstances giving rise to the possibility of a conflict of interest between the SCIO and any other party:
 - 79.3.1 put the interests of the SCIO before that of the other party;
 - 79.3.2 where any other duty prevents him/her from doing so, disclose the conflicting interest to the SCIO and refrain from participating in any deliberation or decision of the other charity trustees with regard to the matter in question;
 - 79.4 ensure that the SCIO complies with any direction, requirement, notice or duty imposed under or by virtue of the Charities and Trustee Investment (Scotland) Act 2005.
- 80 In addition all of the charity trustees must take such steps as are reasonably practicable for the purpose of ensuring: -
- 80.1 that any breach of any of those duties by a charity trustee is corrected by the charity trustee concerned and not repeated; and
 - 80.2 that any trustee who has been in serious and persistent breach of those duties is removed as a trustee.
- 81 Provided he/she has declared his/her interest - and has not voted on the question of whether or not the SCIO should enter into the arrangement - a charity trustee will not be debarred from entering into an arrangement with the SCIO in which he/she has a personal interest; and (subject to clause 82 and to the provisions relating to remuneration for services contained in the Charities and Trustee Investment (Scotland) Act 2005) he/she may retain any personal benefit which arises from that arrangement.
- 82 No charity trustee may serve as an employee (full time or part time) of the SCIO; and no charity trustee may be given any remuneration by the SCIO for carrying out his/her duties as a charity trustee.
- 83 The charity trustees may be paid all travelling and other expenses reasonably incurred by them in connection with carrying out their duties; this may include expenses relating to their attendance at meetings.

Code of conduct for charity trustees

- 84 Each of the charity trustees shall comply with the code of conduct (incorporating detailed rules on conflict of interest) prescribed by the Board from time to time.
- 85 The code of conduct shall be supplemental to the provisions relating to the conduct of charity trustees contained in this constitution and the duties imposed on charity trustees under the Charities and Trustee Investment (Scotland) Act 2005; and all relevant provisions of this constitution shall be interpreted and applied in accordance with the provisions of the code of conduct in force from time to time

DECISION-MAKING BY THE CHARITY TRUSTEES

Notice of Board meetings

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

Procedure at Board meetings

- 88 No valid decisions can be taken at a Board meeting unless a quorum is present, the quorum for Board meetings shall be 4 charity trustees, present in person.
- 89 If at any time the number of charity trustees in office falls below the number required at the time to form a quorum, the remaining charity trustee(s) will have power to fill the vacancies or call a members' meeting - but will not be able to take any other valid decisions.
- 90 A charity trustee may participate in a Board meeting by means of a conference telephone, video conferencing facility or similar communications equipment whereby all the charity trustees participating in the meeting can hear each other; a charity trustee participating in a meeting in this manner shall be deemed to be present in person at the meeting
- 91 The chair of the SCIO should act as chairperson of each Board meeting.
- 92 If the chair of the SCIO is not present within 15 minutes after the time at which the meeting was due to start (or is not willing to act as chairperson), the vice chair should act as chairperson.
- 93 If the chair of the SCIO considers that he/she has a significant conflict of interest in relation to a particular item to be discussed at a Board meeting, he/she shall allow the vice chair to take over from him/her as chairperson of the meeting while that item is being dealt with.

- 94 If neither the chair nor the vice chair is present within 15 minutes after the time at which the meeting was due to start - or if neither of them is willing to act as chairperson - the charity trustees present at the meeting must elect (from among themselves) the person who will act as chairperson of that meeting.
- 95 Every charity trustee has one vote, which must be given personally.
- 96 All decisions at committee meetings will be made by majority vote.
- 97 If there are an equal number of votes for and against any resolution, the chairperson of the meeting will be entitled to a second (casting) vote.
- 98 The Board may, at its discretion, allow any person to attend and speak at a committee meeting notwithstanding that he/she is not a charity trustee - but on the basis that he/she must not participate in decision-making.
- 99 A charity trustee must not vote at a Board meeting (or at a meeting of a sub-committee) on any resolution which relates to a matter in which he/she has a personal interest or duty which conflicts (or may conflict) with the interests of the SCIO; he/she must withdraw from the meeting while an item of that nature is being dealt with.
- 99.1 an interest held by an individual who is “connected” with the charity trustee under section 68(2) of the Charities and Trustee Investment (Scotland) Act 2005 (husband/wife, partner, child, parent, brother/sister etc) shall be deemed to be held by that charity trustee;
- 99.2 a charity trustee will be deemed to have a personal interest in relation to a particular matter if a body in relation to which he/she is an employee, director, member of the management committee, officer or elected representative has an interest in that matter.

Minutes

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

ADMINISTRATION

Delegation to sub-committees

- 102 The Board may delegate any of their powers to sub-committees; a sub-committee must include at least three charity trustees, but other members of a sub-committee need not be charity trustees.
- 103 The Board may also delegate to the chair of the SCIO (or the holder of any other post) such of their powers as they may consider appropriate.
- 104 When delegating powers, the Board must set out appropriate conditions (which must include an obligation to report regularly to the Board).
- 105 Any delegation of powers may be revoked or altered by the Board at any time.
- 106 The rules of procedure for each sub-committee, and the provisions relating to membership of each sub-committee, shall be set by the Board.

Operation of accounts

- 107 The signatures of two out of three signatories appointed by the Board will be required in relation to all operations (other than the lodging of funds) on the bank and building society accounts held by the SCIO.

Accounting records and annual accounts

- 108 The committee must ensure that proper accounting records are kept, in accordance with all applicable statutory requirements.
- 109 The committee must prepare annual accounts, complying with all relevant statutory requirements; if an independent examination or audit is required under any statutory provisions (or if the Board consider that an audit would be appropriate for some other reason), the Board should ensure that this independent examination or audit of the accounts is carried out by a suitably qualified or experienced individual.

MISCELLANEOUS

Winding-up

- 110 If the SCIO is to be wound up or dissolved, the winding-up or dissolution process will be carried out in accordance with the procedures set out under the Charities and Trustee Investment (Scotland) Act 2005.
- 111 Any surplus assets available to the SCIO immediately preceding its winding up or dissolution must be used for purposes which are the

same as - or which closely resemble - the purposes of the SCIO, as set out in this constitution.

Alterations to the constitution

- 112 This constitution may be altered by resolution of the members passed at a members' meeting subject to achieving the two thirds majority, or by way of a written resolution of the members.
- 113 The Charities and Trustee Investment (Scotland) Act 2005 prohibits taking certain steps (eg change of name, an alteration to the purposes, amalgamation, winding-up) without the consent of the Office of the Scottish Charity Regulator (OSCR).

Interpretation

- 114 References in this constitution to the Charities and Trustee Investment (Scotland) Act 2005 should be taken to include: -
- 114.1 any statutory provision which adds to, modifies or replaces that Act; and
- 114.2 any statutory instrument issued in pursuance of that Act or in pursuance of any statutory provision falling under paragraph 114.1 above.
- 115 In this constitution: -
- 115.1 "charity" means a body which is either a "Scottish charity" within the meaning of section 13 of the Charities and Trustee Investment (Scotland) Act 2005 or a "charity" within the meaning of section 1 of the Charities Act 2006, providing (in either case) that its objects are limited to charitable purposes;
- 115.2 "charitable purpose" means a charitable purpose under section 7 of the Charities and Trustee Investment (Scotland) Act 2005 which is also regarded as a charitable purpose in relation to the application of the Taxes Acts.

This is the proposed constitution referred to in the accompanying form, applying for a SCIO to be constituted with the name set out in clause 3 above.