



A document to help Community Councils / community groups
plan for and set up a legal framework to
manage community benefit funds

Making the most of community benefit funds



**The
Highland
Council**
Comhairle na
Gaidhealtachd

SERVING The Highland Community

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This guidance was prepared for The Highland Council by Munro and Noble Solicitors, Inverness, who provided the legal perspective, and Campbell Consulting (Highland) Ltd, who contributed advice on community consultation and development.

These notes are for guidance only and are not a comprehensive statement of the Law. Any person, Community Council or Community Group seeking to take action in relation to matters contained within these notes should obtain independent and specific legal advice. The authors of these notes, including the Council, cannot accept any liability in respect of any Acts of omissions of anyone arising out of anything contained in these notes.

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1 INTRODUCTION

These guidance notes are to be read in conjunction with the Community Renewables Toolkit “*Can your community benefit from renewable energy development*” produced by The Highland Council and Highlands & Islands Enterprise in 2004 to highlight opportunities for communities to benefit from renewable energy production and use.

They are intended to give general guidance and advice on how to plan for and set up a legal framework to manage community benefit funds secured from commercial renewable energy development. Community benefit is a “goodwill” contribution voluntarily donated by a developer for the benefit of communities affected by development where this will have a long-term impact on the environment.

The advice is intended to be an overview and general guidance highlighting community engagement and legal issues, the consideration of those issues, and assistance in reaching conclusions and making decisions on a chosen Legal Entity to receive and manage funds. In addition Community Councils and local Community Groups will need to seek specialist tailored advice for individual projects and individual community circumstances.

2 BACKGROUND

Government incentives to increase renewable energy production have created an unprecedented level of interest in commercial renewable energy development in the Highlands. Intended development varies in size from large-scale wind farms and hydro-schemes proposed by corporate energy companies, to small-scale projects proposed by independent companies specialising in renewable energy production.

To date a majority of renewable energy companies developing projects in the Highlands have been willing to make community benefit contributions. The nature of contributions varies from developer to developer. Most contributions consist of annual or “one-off” cash payments to the community but developers also offer support to develop community-owned energy schemes or acquire a community stake holding in a commercial project, funding for specific community projects and / or benefits in-kind. The Council has no control over how funding is distributed or used, which are matters for agreement between the developer and the community.

Ideally negotiations should take place in parallel with but separate from the determination of the developer’s planning application. The Council’s preferred approach is for communities to take the lead in negotiations but where this is not practical or feasible the Council’s local Area Manager will facilitate the negotiation process. Support is also available from Highland Opportunity Ltd, which is the Council’s arms length local economic development company.

The Council is committed to ensuring separation between the planning process and community benefit negotiations. Community Councils also have a responsibility to safeguard the impartiality of the planning process. Any Community Council Member taking part in the negotiation process must forgo involvement in determining the Community Council’s response to the planning application.

3 COMMUNITY BENEFIT FUNDING – EARLY CONSIDERATIONS

Community benefit negotiations often result in annual cash payments to communities throughout the lifetime of the renewable energy scheme. This offers the community a significant opportunity to plan for and develop community initiatives that could have long term, lasting benefit. It also gives rise, however, to a number of considerations that need to be addressed and resolved at an early stage.

This guidance note is intended to help communities and Community Councils understand the nature and extent of the following issues, and to provide practical guidance to those responsible for making decisions:

- **Establishing a vision for the fund and involving the entire community in decision-making:** How will all sectors of the community be given the opportunity to decide on the way that community benefit funds are used and managed? Some key elements of the fund's purpose, organisation and operation need to be acceptable to the community at large and this should be decided by appropriate community consultation.
- **The choice of a legal entity** – i.e. who actually receives the payment? Is it the Community Council, or a steering group elected by the Local Community? Should it be a specific legal entity, set up to accept payment and carry the responsibility that goes along with owning funds, and ,if so, what type of legal entity should it be ?; and,
- **Managing community benefit funds** – i.e. what happens to the money when it is received? What does this new legal entity do with the money? What are its objectives? Should these objectives be exclusively charitable in nature? What are the tax implications? Can tax be avoided?

4 THE ROLE OF THE COMMUNITY COUNCIL

Community Councils (CCs) play an important role in representing the views of local people and acting to further the interests of their communities. Where a community will be affected by renewable energy development, the CC is responsible for finding out, gathering and presenting the views of the community on planning matters associated with the development. Where a renewable energy developer offers to make a Community Benefit contribution, very often it is the CC that appoints a team to represent the community in the negotiation process and /or keeps the community up to date with progress, while at the same time ensuring separation from the planning process.

A CC can also play an important role in setting up the legal framework to receive and manage Community Benefit Funds. This framework should have the potential to deliver long term lasting benefit across a wide spectrum of the local community. When preparing to set it up, the CC should therefore actively seek the views, opinions and aspirations of the full cross section of the community and be able to demonstrate that appropriate steps have been taken to undertake this consultation and act on its findings.

5 OUTLINE STRATEGY TO PLAN FOR AND SET UP A COMMUNITY BENEFIT FUND

The following table presents an outline strategy to help one or more CCs / community groups plan for and set up a Community Benefit Fund. It aims to provide an overview of the nature and extent of actions to be undertaken. For the sake of clarity this strategy assumes a straightforward scenario - that the Community Benefit Fund has arisen from a single renewable energy development and the geographic distribution of the funding has been decided.

In reality, some CC's or Community Groups will have to deal with more complicated circumstances where, for example:

- Community Benefit Funding is shared across more than one CC area, in which case different CC's or groups may have to work in partnership to set up a single legal framework;
- a CC area receives funding from more than one development, in which case individual developers may require their funding to be ring-fenced for audit purposes.

It is likely therefore that this strategy will have to be adapted to suit the particular circumstances that each Community Council / Community Group finds themselves in.

OUTLINE STRATEGY TO PLAN FOR AND SET UP A COMMUNITY BENEFIT FUND

	ACTION & KEY DECISIONS	WHO SHOULD BE INVOLVED	OPTIONS & POINTS TO CONSIDER
GETTING STARTED	<p>CC appoints a small group to lead the process of setting up the fund (the Lead Group)</p>	<p>Community Council member(s) and, where available, community volunteers</p>	<ul style="list-style-type: none"> • Ideally preparations for setting up a Community Benefit Fund should take place in parallel with the Community Benefit negotiation process. Where this is not practical they should commence as soon as negotiations are completed; • This group should be inclusive – ie, it should include members of the community who for instance, represent a key sector in the community, have relevant experience in community consultation / community planning, have knowledge of relevant legal and / or financial issues. • An open public meeting, with good prior publicity, is a useful way of informing the community of the intended process.
DECIDING ON HOW THE FUNDING WILL BE USED	<p>Track down relevant background information that could inform the development of the community's vision for the fund</p>	<p>The Lead Group, assisted by the Community Council and, where relevant, public sector agencies engaged in community consultation</p>	<ul style="list-style-type: none"> • The CC should be aware of relevant Community Planning or Local Development Plan exercises that have already taken place, which might inform the community's vision for the fund. This could include a simple action plan that has already received community support, or similar initiatives progressed by a local development officer. If available, these can be used as a building block for further consultation and planning to avoid repetition and consultation fatigue. If you are uncertain about what plans exist, contact the Council's Local Area Manager. • Request local groups to come forward with relevant information they may hold. • Ask public sector agencies to check for relevant reports and data they may hold.
	<p>Plan and carry out a community consultation to establish a long term vision and priorities for the Fund</p>	<p>The Lead Group The whole community</p>	<ul style="list-style-type: none"> • Bear in mind that most renewable energy developers set conditions in their Community Benefit agreements that stipulate, in very broad terms, what Community Benefit Funding should and should not be used for. Where these conditions exist, it is important that they are drawn to the attention of the community at the outset of any consultation. • Refer to Section 6 of this guidance note for more detailed advice on establishing a vision and involving the community; • Ensure all the identified stakeholders groups are informed and included. • Encourage people to identify what they think will make the biggest difference to the community. • Record and analyse the findings of the consultation; feed back findings to the community and let people know the next steps.
	<p>Use the consultation and vision results to draft an operational statement for the fund</p>	<p>Lead Group prepares a draft for comment by the wider community</p>	<ul style="list-style-type: none"> • For advice on drafting an operational statement, contact: <ul style="list-style-type: none"> - The Local Enterprise Company - The Council's local Area Development Manager • This does not need to be a lengthy document; it should combine the community's priority for projects and investment with practical operational guidelines for management of the funds i.e. how the fund will work with regard to applications and assessment of proposals.

OUTLINE STRATEGY TO PLAN FOR AND SET UP A COMMUNITY BENEFIT FUND

	ACTION & KEY DECISIONS	WHO SHOULD BE INVOLVED	OPTIONS & POINTS TO CONSIDER
CHOOSING A LEGAL ENTITY	Decide what type of legal framework to put in place	The Lead Group with input from key stakeholders in the community and legal adviser	<ul style="list-style-type: none"> • Refer to Sections 7 and 8 of this guidance note for more detailed advice on choosing a Legal Entity and the advantages and disadvantages of the entity being incorporated under the Companies Act; • Identify who should take part in this decision, which should be considered by a wider group than the CC; • The chosen legal framework should maximise open-ness and accountability to the community at the start up and in the future; • The core objectives of the legal entity should be informed by the earlier consultation.
	Decide whether the Legal Entity should have charitable status	The Lead Group with input from key stakeholders in the community and legal adviser	<ul style="list-style-type: none"> • Refer to Section 8 of this guidance note for more detailed advice on charitable status; • To qualify for charitable status, the objectives of the Legal Entity must fall within the categories of a charitable purpose, listed in APPENDIX 1; • Charitable status has advantages in terms of tax exemption, donations and public confidence in the legal framework;
DECIDING HOW THE FUND WILL BE MANAGED	Decide how Directors or Trustees of the Legal Entity will be appointed now and in the future	The Lead Group endorsed by the whole community, with advice from the legal adviser	<ul style="list-style-type: none"> • Appointment and succession differs according to whether or not the Legal Entity is incorporated under the Companies Act. Refer to Section 7.3 of this guidance; • Ensure that the appointment of Directors / Trustees is democratic and representative of key stakeholder groups in the community; • Agree an acceptable formula to define the representation required on the governing body of the Legal Entity. For example, decide if representatives from specific geographic locations and/or from named stakeholder groups are always required; • Structure the rules of the Legal Entity to ensure turnover in the Directors / Trustees, encouraging succession and participation by different community members / stakeholder groups.

6 ESTABLISHING THE VISION AND INVOLVING THE COMMUNITY

6.1 THE NEED FOR A STRATEGIC OVERVIEW

The establishment of a Community Benefit Fund is about far more than making grant funds available for local use. It presents an opportunity for the community to play a significant part in meeting its needs in a way that delivers long term, lasting benefit.

Creating a vision for the community provides a focus and direction for what can be achieved through the Fund. This involves finding out about residents' needs and ideas and getting agreement from across the community on priorities for investment. The vision can initially be written as a short, simple development plan based on immediate and long-term aims that are achievable and tailored to suit the needs of the community.

6.2 THE PURPOSE OF INVOLVING THE COMMUNITY

The Community Benefit Fund will be a resource for the use and benefit of the entire community. Therefore it is essential that, from the outset, all sectors or stakeholders in the community are given the opportunity to input to planning and decisions about how the Fund will work, for the following reasons:-

- **To define the Community Benefit Fund's purpose in the eyes of the community** and to decide how to manage investment in a way which is open and accountable to the community the Fund is serving.
- **To allow engagement and buy-in from all sections of the community** in establishing community needs and vision; the Community Council is just one stakeholder and must share decision making. Allowing everyone to have their say, and contribute different ideas, helps to avoid conflict.
- **To raise awareness and understanding** of the responsibilities and complexities being taken on as a community; everyone must be informed of the proposal and comfortable with its fairness.

6.3 WHO ARE THE STAKEHOLDERS?

Stakeholders, or interest groups, are those people who will be affected by the outcome of the proposal. In a typical rural Highland community these will usually include some or all of the following social and economic categories, although this list is not exhaustive:-

- Community Council, Community Association or Community Company
- Community Centre or Hall Association
- School Board or Parent's Association
- Age-related groups e.g. young people, young mums, elderly, toddlers
- Housing or Tenants' Association
- Local Clubs and Societies (e.g. sports, indoor activities, history, environmental)
- Support groups for specific users e.g. special needs, unemployed, disability
- Churches and local charity representatives
- Small Business Federation
- Local Tourism, Trades or Economic Associations e.g. Fishermen's Association, Crofters/farmers groups.

6.4 WHAT THE COMMUNITY SHOULD BE CONSULTED ON

Two broad areas of information and views need to be collected and discussed:-

The Community Vision

The whole community must be offered an opportunity to determine:-

- What changes are most important, and what will make the most difference, to the community in both the short and the long term?
- Where does the community feel that funds should be targeted? e.g. whether big strategic local projects are most needed or many smaller projects.

The New Legal Entity and its operation

The structure that is chosen for the new organisation needs to reflect the principles and values of the organisation e.g. if the organisation wants to involve all the people who live and work in an area, it is likely to want an open membership base that reflects this, and to which the organisation is democratically accountable.

This structure must be considered and chosen by a wider grouping than the Community Council, and should include input from key stakeholder representatives, to determine:-

- The appropriate legal framework for the Community Benefit Fund;
- Boundaries and membership definition of the Community Benefit Fund organisation;
- The role and appointment procedure of Directors/Trustees with regard to future control and management of the organisation and its finances.

6.5 THE CONSULTATION PROCESS

Plan all practical aspects at the outset to ensure feedback is received on all of the issues and information required. Consulting with the community in a participatory and meaningful way is likely to take at least two months, allowing for planning, carrying it out and analysing the results. Consideration should be given to input by a range of people, including:-

- Seeking external agency advice and support;
- Dividing elements of the consultation between working group members;
- Providing training or guidance for volunteers if appropriate;
- Hiring facilitators, enumerators or consultants for specific tasks.

Actively seek views using a number of ways, places and formats to ensure a cross-section of the community is reached. A wide range of methods has been tried and tested for informing communities, seeking local views and developing a common vision. Some suggestions are given below. Further details of these methods and how and when to use them, can be found in the references in Section 8.

Ways

- Ideas competition - ideas board or box placed in a public place
- Planning for Real – using a map or model with public access to invite comments
- Open public meeting
- Discussion & debate at existing group meetings (Associations, committees and clubs)
- Written questionnaire to all residents
- Telephone interviews with selected stakeholders
- Drop-in consultation and questions surgery
- Ranking or scoring to prioritise a list of options
- SWOT (Strengths, Weaknesses, Opportunities and Threats) exercise

Places

- Post office, shop, hotel, library, surgery, Highland Council Service Point, school, halls
- Presence at existing community events such as the annual gala or Christmas Fair

Formats

- Newsletter, e-mail or website with a feedback or suggestions form
- Local radio or newspaper
- Open exhibition of ideas and proposals with stalls for different stakeholder groups
- Posters

Publicise the consultation well before you start to ensure that the whole community is informed and to maximise the response rate. The consultation process should aim to be open and clear in both its purpose and the process. Use all local communication channels and consider a household mailing depending on the size of your community. In particular, ensure wide distribution of:-

- the background information to the Community Benefit Fund and any current proposals
- an invitation and specific opportunities for residents to contribute to the consultation.

Record and analyse the feedback from the consultation identifying the range of suggestions, majority and minority views, and the level of priority attached by the community to different proposals. This information should form the basis of a community vision or plan. Use the consultation results to inform decisions about the structure of the Community Benefit Fund and the way it will best operate in the interests of the community.

Feedback the findings to the community of the collective ideas and views gathered during the consultation, the conclusions drawn and let people know the next steps.

7 THE LEGAL ENTITY

7.1 THE NEED FOR IT

Developers need to know who they are dealing with. They want to know that the Local Community has come together to consider the issue of who shall represent their interests. They need to know that there is a properly constituted legal body, with capacity to enter into a legally binding contract with them.

In order to prepare therefore for negotiation with developers, the local Community needs, in a democratic way, to consider what sort of Legal Entity they want to take responsibility for negotiating the deal with the Developer, entering into a legally binding contract on that deal with the Developer, and receiving and administering the benefits coming to the Local Community from that contract.

7.2 THE CHOICES

The usual forum for initial consideration of the opportunity for Community Benefit from renewable energy development is likely to be the local Community Council, which of course is a legal entity in its own right. It is created by statute and is the body appointed to represent its local community and further their interests. On first reflection therefore it would seem to be the obvious choice. There are a number of important barriers however to the choice of the CC itself as the recipient and administrator of the benefit funds. These are:-

- The CC has a wide remit in relation to all matters relating to the Local Community area, not least of which is its involvement in the Planning Process. The Council recommends that Community Councils should ensure separation between their obligations in relation to the Planning Process and negotiation of Community Benefit from renewable energy development.
- The key role of a CC is to represent the views of the community to public bodies, particularly in relation to planning applications, and to act to further the interest of the community. It does not have statutory duties or powers and is essentially a voluntary body established within a statutory framework. It is less well adapted to the day to day operation of administration of, receipt, management, and distribution of community benefit funds. This requires a more focused approach.
- Occasionally a CC can stop operating temporarily or even cease to exist.
- The Inland Revenue have determined that because of the CC's statutory role and wide remit in terms of its enabling statute, they should not be recognised as charities, and cannot therefore be awarded charitable status.

In light of the above, whilst CCs will probably be the instigating force behind the creation of a new Legal Entity, they will not themselves be the Legal Entity involved in negotiating, and entering into a contract with a developer. As a result there needs to be consideration of the options. i.e. what form should the new Legal Entity take.

Two possible models for a Legal Entity are presented here, which for the time being are those most commonly considered for the administration of community benefit funds:

- **A Company incorporated under the Companies Acts** with limited liability, where the limitation as to liability is by a Guarantee, and where the Members of the Company each undertake to pay on a specified date, or on the happening of a specified event (usually the winding up of the Company), such an amount up to a fixed sum (usually £1) as may be required to settle any outstanding debts of the Company, such Guarantee Companies being commonly, although not invariably, used for charitable purposes.
- **A Local Community Trust** set up by the Local Community the purpose of which is to receive, administer, and distribute funds on behalf of the Community through Trustees appointed by the Community.

Confusion can sometimes arise as both models are commonly referred to as “trusts”, although only the second model is a Trust in the true legal sense. Despite having separate legal status to a Trust, communities adopting the Company Limited by Guarantee model often name the organisation “[LOCAL] Community Trust” – hence the common confusion.

Other Legal Entity models include a Community Development Trust and Co-operative Organisation, which are not addressed in this guidance.

7.3 ADVANTAGES AND DISADVANTAGES OF INCORPORATION UNDER THE COMPANIES ACTS.

A body incorporated under the Companies Acts, such as Company Limited by Guarantee, is a legal entity in its own right that has a number of key advantages over a Local Community Trust for the purpose of administering community benefit funds. Community Councils are therefore advised to give careful consideration to the following factors when choosing an appropriate Legal Entity:

- **Democratic control** – a Company Limited by Guarantee is owned by its members and the Memorandum and Articles of Association specify that the company must be subject to the *democratic* control of its members. The membership can be defined to suit the geographical area covered. The Articles of Association, among other things, define:
 - Membership – who is eligible to become a member
 - Number, election and rotation of Directors
 - Requirements and procedures for general and Directors’ meetings.

A Trust, on the other hand, is a one tier organisation i.e. the people taking the management decisions (the Trustees) are not answerable to any wider body of people or membership. For example, it is inappropriate for a Trust Deed (the constitution of a Trust) to make provisions for an Annual General Meeting or election of Trustees. After the Trust is created, the Trustees themselves appoint new Trustees. Essentially a Trust is a non-democratic type of structure and the absence of a democratic structure may be a source of concern to the community. It is possible for the Trust Deed to provide a reserved place among the Trustees for a representative of a specified outside body e.g. by stating that a post-holder (such as the minister of the local church or the Chair of the Community Council) will automatically be one of the Trustees. This can provide a link between a single Trustee position and particular posts and thus can create, to a limited extent, a built-in connection with the local community.

- **Limited Liability** – the legal entity chosen will enter into substantial contracts. It will provide services and other assistance to the general public. It may take on premises. It will handle substantial sums of money. All of these operations give rise to the potential for personal

liability to fall on those entrusted with the task, the Directors in the case of the Company, and the Trustees in the case of the Trust.

It is unreasonable to expect people acting on what is often a voluntary basis to accept the possibility of this personal liability.

In the case of a Limited Company Board Members have substantial protection under the Companies Acts from personal liability. The same protection is not provided to unincorporated bodies.

- **Flexibility** – in the case of a Trust, the objectives of the Trust are not easily changed. These objectives must be followed by the Trustees. Any change would require an application through the Courts. The objectives in the case of a Company Limited by Guarantee are however capable of being changed at the will of the Members of the Company through the procedure of a Special Resolution as described above.
- **Ease of Administration** – the Company is a legal entity in its own right. It owns its own assets which can include heritable assets and it owns them in its own name. In the case of a Trust the assets are held in the name of the Trustees for and on behalf of the Trust. Technically therefore when Trustees change, documents of title should also change if there is to be complete transparency in respect of ownership of assets. In the case of a Company however, a change in Directors does not affect the title to assets which remains with the Company.
- **Credibility** - funders and partners are familiar with the structure of a Company Limited by Guarantee and generally recognise it as a democratic, stable and well-organised structure.
- **Transacting with Third Parties:** Developers always like to know who they are dealing with. On the whole they are happier dealing with a Company Limited by Guarantee rather than a Trust. The reasons are principally transparency. They are able to obtain full details from Companies House of the current Directors. They can obtain copies of the Company's Memorandum and Articles of Association and its accounts and annual returns from Companies House. In short they are able to monitor all important aspects of a Company. In the case of a Trust, whilst they will no doubt obtain a copy of the Trust Deed, this will only show them the objectives and the original Trustees appointed. It will not tell them who the current Trustees are, nor provide them with any other information regarding the structure and administration of the Trust.

Whilst it is possibly going too far to say that Developers will not contract with unincorporated bodies, it is probably true to say that they have a preference for incorporation.

Are there any disadvantages? Yes there are, and these are:-

- The expense of setting up and running a Company Limited by Guarantee is probably greater than that of a Trust. If charitable status is obtained however, the accounting requirements render this disadvantage more marginal.
- There is a need to comply with the requirements of the Companies Acts in relation to registration of appropriate Company Returns, including the Annual Return and Audited Accounts. There is no such obligation on the Local Community Trust although records have to be kept of the same sort of information for the purposes of clarity in relation to current Trustees and title, etc.

Consideration of the above may well result in the choice of a Company Limited by Guarantee. A model set of Memorandum and Articles of Association is included in APPENDIX 2. This model is based on the statutory Table C and Table A Articles, and is adapted to suit a Company wishing to seek Charitable Status. They are provided as a guide only and are not intended to be comprehensive. Specific legal advice should be requested in individual situations.

7.4 COMPANY LIMITED BY GUARANTEE.

A Company Limited by Guarantee is a body incorporated under the Companies Acts. Once incorporated, it is a legal entity in its own right that is flexible and able to adapt to changing times, situations, and personalities. As such it lends itself well to an organisation which has a representative, and public responsibility role.

A Company Limited by Guarantee has a "Creator". It has "Members". It has "Directors". It has a structure and a purpose (its Memorandum and Articles of Association). In the current context these are:-

- **Creator** – the Creator is its subscribing Member. This is the person who instructs preparation of and submits the incorporation documentation to Companies House with an application for incorporation. Registration of its incorporation by Companies House is the birth of the Company. A Certificate of Incorporation is issued.

In the current context it is probable that the subscribing Member will be the local Community Council. They are likely to be the organisation that takes the initiative and instructs the preparation of the incorporation documentation. Whilst there is no limit to the number of subscribing Members, it is normal, for ease of administration, to restrict that to one. Thereafter the membership may be increased to allow participation by the Community as a whole, either by individuals, or by properly constituted Community Groups. Members may come and go through a process of application followed by registration as Members, and resignation from membership followed by removal from the Register of Members. The Register of Members must be kept with the Company's Statutory Books.

- **The Members of the Company** – They are the owners of the company. They have ultimate control on all issues of major policy. They have ultimate control of the Board of Directors.

Membership of Community Companies is commonly qualified as open to "any individual aged 18 or over who are ordinarily resident in the community (as defined in the Memorandum of Association); and are entitled to vote at a local government election in a polling district that includes the community or part of it; and who support the Objects."¹ The Membership, and associated rules and procedures, will be defined in the Memorandum and Articles of Association, together with a separate definition of the community, by geographical boundaries and post code. These will be determined by the community, with guidance from a solicitor, when the Company is formed. Details will include who is allowed to be a Member and how to join or terminate membership.

The liability of Members is limited by a Guarantee which they give. The Guarantee is detailed in the Company's Memorandum and Articles of Association. Normally the Guarantee will be limited to £1 per Member. The effect of this Guarantee is that in the event that the Company ceases to trade through insolvency, each Member will be liable to make a contribution towards the funds of the Company available to meet its debts, to the extent of £1 but no more.

- **Directors** –the initial Directors are appointed on incorporation by the Creator (i.e. the subscribing Member). Thereafter the Board of Directors can change by appointment of new Directors, and by resignation, or by removal by the Members. Any changes must be registered with Companies House.

In a Community Company, it is common practice for the initial Directors to be drawn from the steering group responsible for setting up the company, who have usually been identified at an earlier stage through a process of community nomination and endorsement at a public meeting. Thereafter the Board of Directors will change by election or appointment of new Directors following retiral, resignation, or removal of Directors by the Members. Any of these changes must be carried out in accordance with the procedures, and arrangements intended to ensure democratic accountability, that are laid out in the Articles of Association, referred to below.

¹ DTAS (2005) Start-Up Toolkit:- Establishing an effective structure for a successful development trust

There is normally a maximum and minimum number of Directors who may constitute the Board of Directors specified in the Memorandum and Articles of Association. Within those mathematical limits there may be further limits to ensure that there is appropriate representation of all Member groups on the Board of Directors.

The Board of Directors deal with the day to day running of the Company and its affairs. They have the responsibility of ensuring that the Company's objectives are properly carried out. They are accountable to the Members, but have a considerable degree of autonomy through the Memorandum and Articles of Association, and through the Companies Acts. This autonomy allows them to transact with third parties and to administer and distribute funds as they see fit, provided always that they operate within the Company's objectives as laid down in its Memorandum and Articles of Association.

- The **Structure and Purpose** – these are determined by the Company's "Memorandum and Articles of Association". This document forms part of the incorporation documentation submitted for registration and sets out:-
 - the basic structure and principal objectives – the Memorandum; and
 - the rules of operation – the Articles of Association.

The drafting of the Memorandum and Articles of Association is an important task and one which should be carried out by a Solicitor with suitable experience. That Solicitor will draw heavily on the statutory models provided in the Companies Acts, but will tailor these to the individual needs of the proposed new Company. For a model memorandum and Articles of Association of a Company Limited by Guarantee, see Appendix 2.

The Memorandum and Articles of Association once registered become the operating model for the Company. The Companies Acts however provide a degree of flexibility and allows both the Memorandum and the Articles of Association to be changed by the will of the Members. Because the Memorandum and Articles of Association are fundamental to the Company's being, the Companies Acts require that a special procedure is carried out to change them. Special notice (21 days) of a Special Resolution must be served on all members, the purpose of which is to convene an Extraordinary General Meeting (EGM), and, at that meeting, a 75% majority vote of the Members attending and voting in favour of the Special Resolution is required to pass it. If however there is genuine consensus amongst the Members wanting change, then this is not a difficult process.

7.5 LOCAL COMMUNITY TRUST

Once created a Trust is a legal entity, capable of transacting in its own right through its Trustees. A "Trust" has a "Creator", "Trustees" and "Beneficiaries", and it is created for a "Purpose", all in a "Trust Deed". Assuming that the local Community Council is taking the lead in setting up the Legal Entity, these would be:-

- The **Creator** – the Local Community Council.
- The **Trustees** – those persons who are deemed to be suitable for administration of the trust funds in accordance with its Purpose. The initial Trustees will be chosen by the Creator, rather than being elected by a membership. A Trust does not have a membership, but rather beneficiaries. Trustees may of course change with time. New Trustees may be assumed. Trustees may resign. Trustees may die. All such changes should be documented and the documents retained with the principal Trust Deed.

A majority of the Trustees can bind the Trust and it is important therefore to consider carefully the number of Trustees to be appointed. There should be enough to give a wide representation of the Beneficiaries. Care should be taken to consider the interests of the Community, and any groups within the Community, to ensure that in so far as it is practical and possible, there is sufficient representation for them to have a voice in relation to the Trust's affairs. There is however also a need to consider the requirement for efficient and

effective administration of the Trust through the Trustees. To that end there is a need to keep to a minimum the number of Trustees involved, so as to make agreement on issues, and execution of documents, not too cumbersome to deal with. There is a clear requirement therefore to consider both of these aspects carefully, and to come to a sensible balance between the two opposing requirements.

- The **Beneficiaries** – the Local Community.
- The **Purpose** – the objectives of the Trust expressed in distinct but fairly wide terms, which allow the Trustees to operate, use, and distribute Trust Funds without fear of challenge that they are operating in breach of trust. Coupled with these expressed objectives will be powers and discretion conferred on the Trustees to enable them to use judgement in their administration of the Trust.
- **The Trust Deed** - The drafting of the terms of a Trust Deed is a specialised task, and should be carried out by a Solicitor with suitable experience. It is important to ensure that the terms are appropriate, as once the Trust Deed is agreed and signed, the Trust is created. It has a life of its own, but its existence and its purpose is governed entirely by the terms of the Trust Deed. The Trustees may change from time to time, but the Purpose and the Beneficiaries may not without application to the Court to sanction any such change. The ability to diversify beyond the originally expressed Trust Purposes is therefore cumbersome and costly.

8 CHARITABLE STATUS

8.1 WHAT IS CHARITABLE STATUS

A Charity is an organisation established for exclusively charitable purposes. To obtain charitable status the organisation must be able to show that its objectives (or Purposes) are exclusively charitable in nature. What constitutes a charitable purpose is at present determined by an analysis of decisions of the Inland Revenue, and the Courts, on purposes which have been considered and accepted in the past as being charitable in nature.

The Charities and Trustee Investment (Scotland) Act 2005 which comes into force on 1 April 2006 will codify and expand the list of categories of charitable purpose. These categories are listed in Appendix 1.

An organisation whose objectives fall exclusively within the categories listed in Appendix 1, and which wishes to have the benefits of Charitable Status, can currently make an application to the Inland Revenue, who will analyse the applicant, and the objectives of the applicant, and determine whether or not charitable status is to be granted. If the decision is to grant Charitable Status then the Inland Revenue will register the organisation as a charity and will issue it with a charity number.

8.2 IS CHARITABLE STATUS DESIRABLE?

Where there is likely to be substantial revenue income, and the proposed use of that income is for the benefit of the public in a geographical local community area, then it is possible to structure the objectives of the legal entity chosen so that these purposes fall within the requirement of a charity, namely that they are restricted to exclusively charitable purposes. It is not essential to obtain Charitable Status, but it is wise to consider its desirability. The advantages and disadvantages are discussed below:-

8.2.1 Advantages of charitable status

- **Tax Exemption:** Exemption is given from Income Tax, which is relevant in the case of a Local Community Trust, and Corporation Tax, which is relevant in the case of Company Limited by Guarantee. There is also relief from certain other taxes, eg. Capital Gains Tax. Additionally charitable organisations are generally speaking eligible for exemption in some areas of Value Added Tax.
- **Local Authority rates:** If the organisation owns, or leases any heritable property there is relief available in respect of Local Authority Rates. Currently this is up to 80% of standard rates.
- **Charitable Donations:** As a charity the organisation can receive charitable donations from individuals or organisations. This has tax advantages for both the donor, and the recipient charitable organisation.
- **Public Image:** Charitable organisations in Scotland are known by the public to be subject to regulation and supervision by the Office of the Scottish Charity Regulator (OSCR). There is a degree of public confidence therefore in charitable organisations, and this is good for the public image of the organisation.

8.2.2 Disadvantages of charitable status

- The counter to the tax benefits is that there is a requirement to adhere to Accounting Regulations and Statements of Recommended Practice which are specific to charities, and which are more onerous than might be applied in the case of a non-charitable organisation.
- Charitable organisations must always be conscious of the need to operate within their stated objectives so that every purpose for which money is distributed must be truly a charitable purpose. There is a constant need therefore to be watchful and to take advice.
- The counter to the public image benefit coming from supervision by OSCR is the requirement to provide information on request to both OSCR and the Inland Revenue to enable the supervision function to be carried out. In certain circumstances information must be given to the public on request.

8.3 APPLICATION FOR CHARITABLE STATUS

At present in Scotland all applications for recognition as a charity are made to the Inland Revenue Charities Section at Meldrum House, 15 Drumsheugh Gardens, Edinburgh, EH3 7UL.

To enable the Inland Revenue to consider a body for recognition as a charity for tax purposes, that body should supply the following information:-

- A copy of its establishing document, i.e. the Trust deed in the case of a Local Community Trust, and its Memorandum and Articles of Association in the case of a Company Limited by Guarantee. The Inland Revenue issue their own guidance notes in relation to application for charitable status and in those notes they recommend that it is preferable for a draft to be supplied to them before the body is formally set up.
- Details of the proposed activities with copies of any literature that explains the work and objectives of the proposed new charity. Commonly the Inland Revenue are now asking for copies of any literature (brochures, publicity leaflets), or business plan that explains how the charity will achieve its charitable objects as expressed in its establishing document.

On receipt of the above, the Inland Revenue will review the establishing document and supporting literature and will give their observations on the applicability of charitable status on the basis of the documents submitted. If they are not entirely happy with what is submitted, they will often suggest

changes which would allow approval. If a positive response is obtained, then the legal entity should be set up in exactly the form submitted to the Inland Revenue, and approved by them, and once set up, a copy of the final document together with application form CY12 should be submitted to the Inland Revenue.

8.4 THE OFFICE OF THE SCOTTISH CHARITY REGULATOR (OSCR)

The Charities and Trustee Investment (Scotland) Act 2005 received Royal Assent on 14 July 2005. This Act established the Office of the Scottish Charity Regulator and created the legal personality known as the Scottish Charity Regulator. This body and the holder of the office have commonly become known as OSCR (commonly pronounced Oscar). The Act also sets out the general functions of OSCR which are:-

- To determine charitable status.
- To keep a Public Register of Charities.
- To encourage, facilitate and monitor compliance with Charity Regulations.
- To investigate misconduct and take remedial or protective action if necessary.
- To advise or make proposals to the Scottish Ministers on matters relating to its functions.

It is clear therefore that in future OSCR will have a pivotal role in Scotland in relation to all matters relating to Charity Law. Organisations seeking to obtain charitable status and operate as charities will therefore will require to familiarise themselves with the legislation, and the functions and powers of OSCR.

8.5 THE TRADING ARM OF A REGISTERED CHARITY

It is often the case that Registered Charities, for fund raising or other purposes, may wish to set up a trading entity which is under their control to trade with members of the public. Such an entity may have a requirement to employ staff, may lease property, may ingather and sell goods though a shop, and may generally trade in a way which is designed to produce income. The intention with such an entity is to provide funds for the Registered Charity for use by the Registered Charity in meeting its charitable purposes.

Such an entity is commonly created as a trading arm of the Registered Charity with the following principles applying:-

- The entity will be an incorporated Company Limited by Shares or by Guarantee.
- The sole shareholder or member will be the Registered Charity.
- The Memorandum and Articles of Association of the entity will be tailored as a Trading Company and will thus contain objects which are not exclusively charitable purposes.
- The entity, as a result, cannot be a Charity in its own right.
- The Memorandum and Articles of Association will contain within them a covenant which will ensure that all income which is surplus to the requirements of the Company to meet its own obligations and debts, will be paid to the Registered Charity as a charitable donation, not as a dividend, such that in each financial year the trading entity runs on a non-profit making basis.

The effect of the above is that the Registered Charity is able, through it's trading arm, to run an income making subsidiary the purpose of which is to provide a source of funds for the registered charity to enable it to fulfil its charitable purposes.

9 SOURCES OF FURTHER ADVICE

ESTABLISHING A VISION AND INVOLVING THE COMMUNITY

A number of useful guides are available for volunteer groups involved in community planning and representing the views and interests of community organisations and individuals. Most of them provide information on practical techniques for community involvement, reference to other useful publications and case studies on community involvement.

Community Engagement How to... Guide. Scottish Centre for Regeneration, **Communities Scotland.** Tel: 0131 313 0044

Free online at www.communities.scotland.gov.uk

Accessed under 'Find out about what works' then 'How to Guides'. The site also contains the Scottish Executive's National standards for Community Engagement.

Re:source book: planning for your community. Alan Caldewell.

Available free online, or as CD or hand book, at

www.alancaldwellassociates.co.uk/publications.htm

The Community Engagement Toolkit. Dundee City Council, 2004

Free online www.dundee.gov.uk/ce/toolkit.pdf

The Community Consultation Handbook. Fife Council, 2002

Free online at www.fife.gov.uk/uploadfiles/Publications

Start-Up Toolkit:- Establishing an effective structure for a successful development trust.

Prepared for Development Trust Association Scotland by Burness Solicitors and Alan Caldwell Associates. This start-up toolkit is designed to help communities set up their own development trust.

For further information on how to purchase a pack contact aileen@dtascot.org.uk ; Tel. 0131 220 2456 <http://www.dtascot.org.uk/howtojoin.cfm>

An overview of community planning tools is provided at www.communityplanning.net

CHOOSING A LEGAL ENTITY

Legislation – available on the Office of Public Sector Information (OPSI) website - www.opsi.gov.uk.

The Companies Acts 1985 and 1989.

The Charities and Trustee Investment (Scotland) Act 2005.

Companies House website – www.companieshouse.gov.uk

Inland Revenue website – www.inlandrevenue.gov.uk

The Office of the Charity Regulator (OSCR) website – www.oscr.org.uk

Setting Up a Trading Subsidiary is a guidance note produced by the Development Trust Association Scotland for development trusts that are registered charities and are planning to become involved in trading activities that are non-charitable. Written by Stephen Phillips, a specialist in charity law, the guide is designed to take a development trust through each step of the set-up process and thus avoid the costs of engaging a solicitor. If you would like to obtain a hard copy contact aileen@dtascot.org.uk; <http://www.dtascot.org.uk/filestore/trading%20subsidiary%20final.pdf>; Tel. 0131 220 2456

Demystifying Trusts is a guidance note for communities, currently in preparation, which will be freely available early in 2006 from Highlands and Islands Enterprise and the Development Trust Association Scotland. <http://www.dtascot.org.uk/contactus.cfm> ; Tel. 0131 220 2456

DEFINITION OF A CHARITABLE PURPOSE

The Charities and Trustee Investment (Scotland) Act 2005 which comes into force on 1 April 2006 will contain sixteen different categories of charitable purpose. These are as follows:-

- (a) the prevention or relief of poverty,
- (b) the advancement of education,
- (c) the advancement of religion,
- (d) the advancement of health,
- (e) the saving of lives,
- (f) the advancement of citizenship or community development,
- (g) the advancement of the arts, heritage, culture or science,
- (h) the advancement of public participation in sport,
- (i) the provision of recreational facilities, or the organisation of recreational activities, with the object of improving the conditions of life for the persons for whom the facilities or activities are primarily intended,
- (j) the advancement of human rights, conflict resolution or reconciliation,
- (k) the promotion of religious or racial harmony,
- (l) the promotion of equality and diversity,
- (m) the advancement of environmental protection or improvement,
- (n) the relief of those in need by reason of age, ill-health, disability, financial hardship or other disadvantage,
- (o) the advancement of animal welfare,
- (p) any other purpose that may reasonably be regarded as analogous to any of the preceding purposes.

It is important to bear in mind that most renewable energy developers set conditions in their Community Benefit agreements which stipulate, in very broad terms, what Community Benefit Funding should and should not be used for. For example, a number of developers operating in the Highlands request that funding is not used for religious or political purposes, or for a purpose that solely benefits one individual. Purposes (c) and (k) above would therefore be excluded by these conditions. Where applicable, a developer's wishes must be factored into the community's choice of charitable purpose.

MODEL MEMORANDUM AND ARTICLES OF ASSOCIATION OF A COMPANY LIMITED BY GUARANTEE

After consideration of this guidance note it is possible that communities who are hopeful of receiving community benefit from renewable energy development in their local area, will elect to establish a Company Limited by Guarantee and make application for Charitable Status to enable them to fulfil the objectives of contracting with a Developer, receiving funds, and administering and distributing funds in the interests of the local community. The following is one suggested model of Memorandum and Articles of Association to be used as an initial draft for tailoring purposes, and provide a basis for initial submissions to the Inland Revenue for Charitable Status.

The Objectives included in the model are within the list of charitable purposes approved by the Inland Revenue, and are within the purposes listed in the Charities and Trustee Investment (Scotland) Act.

COMPANIES ACTS 1985 AND 1989
A COMPANY LIMITED BY GUARANTEE AND NOT HAVING A SHARE CAPITAL
MEMORANDUM OF ASSOCIATION
OF

1. The company's name is ".....".
2. The company's registered office is to be situated in Scotland.
3. The company's objects are:
 - (a) The promotion, for the benefit of the public, of urban or rural regeneration in areas of social and economic deprivation and in particular in the area by all or any of the following means:-
 - (i) the relief of poverty in such ways as may be thought fit;
 - (ii) the relief of unemployment in such ways as may be thought fit including assistance to find employment;
 - (iii) the advancement of education, training or retraining particularly among unemployed people and providing unemployed people with work experience;
 - (iv) the creation of training and unemployment opportunities by provision of work space, buildings and/or land for use on favourable terms;
 - (v) the maintenance improvement or provision of public amenities;
 - (vi) the preservation of buildings or sites of historical or architectural importance;
 - (vii) the provision or assistance in the provision of recreational facilities for the public at large and/or those who by reasons of their youth, age, infirmity or disablement, poverty or social economic circumstances have need of such facilities;
 - (viii) the protection or conservation of the environment;
 - (ix) the promotion of public safety and prevention of crime;
 - (x) such other means as may from time to time be determined subject to the prior written consent of the Inland Revenue Charities Department or any successor body.

- (b) To promote the conservation, protection and improvement of the physical and natural environment in particular to conserve and manage for the public benefit community land and related assets in area as an important part of the protection of Scotland's natural environment.
 - (c) To carry out any other charitable purpose for the benefit of the public with the prior consent of Inland Revenues Charities Department or any successor body.
4. In furtherance of the above objects, but not otherwise, the company may exercise any or all of the following powers:-
- (a) to carry on any other charitable object which can be advantageously or conveniently carried on by the company by way of an extension of or in association with the objects stated in clause 3 hereof or which may be calculated directly or indirectly to advance the objects stated in the said last mentioned clause;
 - (b) to borrow and raise money for the furtherance of the objects of the company all in such a manner and on such security as the company may think fit;
 - (c) to raise funds and to invite and receive contributions from any person or persons whatsoever by way of subscription, donation or otherwise, and whether absolutely conditionally or in trust provided that the company shall not undertake any permanent trading activities in raising funds for the above mentioned charitable objects;
 - (d) to invest the monies of the company not immediately required for the furtherance of its objects in or upon such investments, securities or property as may be thought fit, subject nevertheless to such conditions (if any) and such consents (if any) as may for the time being be imposed or required by law;
 - (e) to purchase, take on lease or in exchange, hire or otherwise acquire or deal with any real or personal property, whether heritable or moveable, and any rights or privileges and to construct, maintain and alter any buildings or erections which the company may think necessary for the promotion of its objects;
 - (f) to sell, let, mortgage, dispose of or turn to account all or any of the property or assets of the company with a view to the furtherance of its objects;
 - (g) subject to clause 5 hereof to employ and pay such architects, surveyors, solicitors and other professional persons, workmen, clerks and other staff as are necessary for the furtherance of the objects of the company.
 - (h) to make all reasonable and necessary provision for the payment of pensions and superannuation to or on behalf of employees and their widows and other dependants;
 - (i) to subscribe to, become a member of, or amalgamate or co-operate with any other charitable organisation, institution, society or body not formed or established for purposes of profit (whether incorporated or not and whether in Great Britain or Northern Ireland) whose objects are wholly or in part similar to those of the company and which by its constitution prohibits the distribution of its income and property (including profits, if any) amongst its members to an extent at least as great as is imposed on the company under or by virtue of clause 5 hereof and to purchase or otherwise acquire and undertake all or part of the property, assets, liabilities and engagements as may lawfully be acquired or undertaken by the company of any such charitable organisation, institution, society or body;
 - (j) to establish and support or aid the establishment and support of any charitable trusts, associations or institutions and to subscribe or guarantee money for charitable purposes in any way connected with or calculated to further any of the objects of the company;

- (k) to pay all or any expenses incurred in connection with the promotion, formation and incorporation of the company;
- (l) to print, publish and distribute any newspapers, periodicals, books, papers, reports, circulars, leaflets or other forms of publication, to produce and distribute any films, records, tapes, compact discs or other audio or visual aids and arrange and provide for or join in arranging and providing for the holding of exhibitions, meetings, lectures, classes, seminars and training courses that the company may think desirable for the promotion of its objects;
- (m) to do all or any of the things hereinbefore authorised either alone or in conjunction with any other charitable organisation, institution, society or body with which this company is authorised to amalgamate.
- (n) to do all such other lawful things as are necessary for the attainment of the above objects or any of them; provided that:-
 - (i) in case the company shall take or hold any property which may be subject to any trusts, the company shall only deal with or invest the same in such manner as allowed by law, having regard to such trusts;
 - (ii) the company shall not support with its funds any object, or endeavour to impose on or procure to be observed by its members or others any regulation, restriction or condition which, if an object of the company, would make it a trade union;
 - (iii) in relation to any property which may come into the hands of the company as trustees under any trust (whether established by any trust deed or any scheme of court or made in pursuance of any enactment relating to educational endorsements or war charities or otherwise). Nothing herein shall authorise the company to deal therewith otherwise than in accordance with the terms of the trust and with any law relevant thereto, nor shall the incorporation of the company affect the liability as an individual of any director who may be a party to such dealings.

Declaring that this clause and the whole memorandum and articles of association of the company shall be read and interpreted as if there were embodied therein an overriding qualification to the effect that no expenditure of income by the company shall be permitted for the purpose of carrying out any activities which are not wholly charitable within the meaning of section 505 of the Income and Corporation Taxes Act 1988 or of any statutory modification or amendment thereof (which meaning shall be ascribed to the word charitable wherever used in this memorandum) and that in all cases in which activities permitted by the objects of the company are in their nature capable of being exercised for purposes which are not charitable or only partially so, as well as for purposes which are wholly charitable, the powers contained in the objects of the company shall be held to limit such activities to those which will not prejudice the charitable status of the company within the statutory meaning before mentioned.

5. The income and property (including profits, if any) of the company shall be applied solely towards the promotion of its objects as set forth in this memorandum of association and no portion thereof shall be paid or transferred, directly or indirectly, by ways of dividend, bonus or otherwise howsoever by way of profit, to members of the company, and no director shall be appointed to any office of the company paid by salary or fees or receive any remuneration or other benefit in money or money's worth from the company.

Provided that nothing herein shall prevent any payment in good faith by the company:-

- (i) of reasonable and proper remuneration to any member, officer or servant of the company (not being a director) for any services rendered to the company;
- (ii) of interest on money lent by any member, director or employee of the company at a reasonable and proper rate per annum;

(iii) of reasonable and proper rent for premises let to the company by any member, director or employee of the company;

(iv) of reasonable and property consideration for the purchase by the company of any property, asset or interest therein from any member, director or employee of the company;

and

(v) to any director of reasonable out-of-pocket expenses.

6. The liability of the members is limited.

7. Every member of the company undertakes to contribute such amount as may be required (not exceeding £1.00) to the company's assets if it should be wound up while he is a member or within one year after he ceases to be a member, for payment of the company's debts and liabilities contracted before he ceases to be a member, and of the costs, charges and expenses of winding up, and for the adjustment of the rights of the contributories among themselves.

8. If upon the winding up of the company there remains, after the satisfaction of all its debts and liabilities, any property whatsoever, the same shall not be paid to or distributed among the members of the company, but shall be given or transferred to some other charitable institution or institutions (whether or not such institution or institutions is or are a member or members of the company) having objects similar to the objects of the company which shall prohibit the distribution of its or their income and property (including profits, if any) to an extent at least as great as is imposed on the company under or by virtue of clause 5 hereof, such institution or institutions to be determined by the members of the company at or before the time of dissolution.

We, the subscribers to this Memorandum of Association, wish to be formed into a company pursuant to this memorandum.

Names and addresses of subscribers

.....

.....

..... Community Council

Witness

.....
Name

.....
Address

.....
.....
..... Date

COMPANIES ACTS 1985 AND 1989
A COMPANY LIMITED BY GUARANTEE AND NOT HAVING A SHARE CAPITAL

ARTICLES OF ASSOCIATION
OF

1. *Preliminary*

Regulations 2 to 35 inclusive, 54, 55, 57, 59, 82, 84, 87, 101 to 108 inclusive, 110, 114, 116 and 117 of Table A specified in Statutory Instrument 1985 No. 805 as amended by Statutory Instrument 1985 No. 1052 (“Table A”), shall not apply to the company but the articles hereinafter contained and, subject to the modifications hereinafter expressed, the remaining regulations of Table A shall constitute the articles of association of the company.

2. *Interpretation*

In regulation 1 of Table A, the definitions of “the Holder” and “the seal” shall be omitted.

3. *Members*

The subscribers to the memorandum of association of the company and such other persons as are admitted to membership in accordance with the articles shall be members of the company. No person shall be admitted a member of the company unless he is approved by the directors. Every person who wishes to become a member shall deliver to the company an application for membership in such form as the directors require executed by him.

4. A member may at any time withdraw from the company by giving at least seven clear days’ notice to the company. Membership shall not be transferable and shall cease on death.

5. *Notice of general meetings*

In regulation 38 of Table A -

- (a) in paragraph (b) the words “of the total voting rights at the meeting of all the members” shall be substituted for “in nominal value of the shares giving that right” and
- (b) the words “The notice shall be given to all the members and to the directors and auditors” shall be substituted for the last sentence.

6. *Proceedings at general meetings*

The words “and at any separate meeting of the holders of any class of shares in the company” shall be omitted from regulation 44 of Table A.

7. Paragraph (d) of regulation 46 of Table A shall be omitted.

8. Regulation 40 of Table A shall be delete and replaced with, “No business shall be transacted at any meeting unless a quorum is present One fifth or 20% of the members entitled to vote upon the business to be transacted, all being members or proxies of members, or being duly authorised representatives of a corporation, shall be a quorum.”

9. In regulation 64 of Table A the word “four” shall be substituted for the word “two.”

10. *Votes of members*

On a show of hands every member being an individual present in person and every member being a corporation being present by duly authorised representative shall have one vote. On a

poll every member present in person or by proxy or by duly authorised representative shall have one vote.

11. *Directors' expenses*

The words "of any class of shares or" shall be omitted from regulation 83 of Table A.

12. *Appointment and Retiral of Directors*

Notwithstanding the provisions of regulations 73-80 of Table A it shall not be lawful for the Company to appoint directors who have been nominated by _____ where that appointment would result in the number of directors who have been appointed following nomination by _____ being greater than a minority of the total number of directors appointed to the Board at any given time.

13. *Proceedings of directors*

In paragraph (c) of regulation 94 of Table A the word "debentures" shall be substituted for the words "shares, debentures or other securities" in both places where they occur.

14. *Minutes*

The words "of the holders of any class of shares in the company" shall be omitted from regulation 100 of Table A.

15. *Notices*

The second sentence of regulation 112 of table A shall be omitted.

16. The words "of the holders of any class of shares in the company" shall be omitted from regulation 113 of Table A. Names and addresses of subscribers

.....
----- Community Council Witness

..... Name

..... Address

..... Date