

The Highland Council
Planning, Development and Infrastructure Committee
17 February 2016

Agenda Item	16
Report No	PDI 14/16

Tornagrain Conservation Trust: Appointment of Directors

Report by Director of Development and Infrastructure

Summary

On 18 February 2015 Committee agreed to support the establishment of a proposed Conservation Body (Tornagrain Conservation Trust) to oversee the future development of Tornagrain in partnership with Highland Council and the community at Tornagrain. Committee also agreed that the Council would become a member of the Trust on the approval of the Conservation Body by Scottish Ministers.

At the time the proposal was being developed for submission to the Scottish Government by Moray Estates Development Company (MEDCO). The proposal has now received a positive response from the Scottish Government and MEDCO has been asked to incorporate the company.

In line with the original proposal MEDCO requests the nomination of two Highland Council directors to the board of the Trust. Articles of Association for Tornagrain Conservation Trust are attached for reference at **Appendix 1**.

Committee is invited to nominate two Highland Council directors to the board of Tornagrain Conservation Trust.

1. Background

- 1.1 A 'Conservation Body' is a legal term for a body created by statute, with powers to enforce conservation burdens. Scottish Ministers may designate a new Conservation Body by Order. Highland Council is already a statutory Conservation Body
- 1.2 Moray Estates Development Company (MEDCO) wishes to establish a Conservation Body in order that, in time, MEDCO, Tornagrain Community Council, and Tornagrain Community Residents Committee can play a full role in ensuring the appropriate design and development of Tornagrain in partnership with the Highland Council.
- 1.3 Highland Council supported the proposal to establish the Conservation Body and the Scottish Government has responded positively. MEDCO has now been asked to incorporate the company to be called Tornagrain Conservation Trust.

2. Purpose and benefits of Tornagrain Conservation Trust

2.1 Articles of Association for The Tornagrain Conservation Trust are attached at **Appendix 1** to this report; these indicate a not-for-profit charitable organisation:

- with powers to act for charitable purposes only;
- objects to promote and preserve the amenity of Tornagrain for the benefit of the community and visitors and to advance citizenship, community development and heritage by encouraging and promoting social, recreational, educational, cultural, artistic, or other communal activities or enterprises; and
- powers to do anything lawful consistent with the pursuit of the above objects including to borrow or raise funds for investment in Tornagrain.

2.2 Perhaps the primary benefit arising from the creation of The Tornagrain Conservation Trust arises from the direct involvement of the community in managing the public realm. There is therefore a strong community empowerment argument for the establishment of the Trust.

2.3 Legally, Conservation Burdens can be created in favour of, and are enforceable by, the named Conservation Body. There are therefore no questions or doubt about legal title or interest, since these aspects are acknowledged within the overall framework.

2.4 Similarly, none of the downsides deriving from traditional burdens arise, for example, the willingness of a neighbour or factor to take a party in breach to task, or, having done so, to encounter legal difficulty of actual enforcement, or the downsides deriving from the enforcement of planning conditions.

2.5 MEDCO therefore see the proposal as providing at least the best possibility of a more robust regime to ensure implementation of, and ongoing compliance with, their (and our) objectives for the new community at Tornagrain.

3. Appointment of Directors

3.1 When Committee agreed to support the establishment of the proposed Tornagrain Conservation Trust it also agreed that the Council would become a member of the Trust on the approval of the Conservation Body by Scottish Ministers.

3.2 In line with the above MEDCO has now asked the Council to nominate two Members who would become directors of the Conservation Trust. It is proposed that the Chair of the Planning Development and Infrastructure Committee and one Member from Ward 18 are nominated. Ward 18 Members have been consulted and favour two members from the Ward.

3.3 Committee is therefore invited to consider the request and to agree the nomination of two Members to the board of Tornagrain Conservation Trust.

4. Implications

4.1 Resource

There are no resource implications arising from this paper. Directors of Tornagrain Conservation Trust will be expected to commit a portion of their time to the Trust and will be entitled to normal out of pocket expenses and for any services provided. (Section 3.4 of the Articles of Association).

4.2 Risk

There are no risk implications arising for the Council from this paper. Directors of the Trust will have all the responsibilities of a director of a charitable trust and in line with the Company's objectives. (Section 1.0 of the Articles of Association).

4.3 Legal

Earlier legal concerns related to any possible conflict of interest between the Council's role as planning authority generally, and direct involvement in the Conservation Trust in determining future proposals within Tornagrain. On balance however these were discounted as it was considered difficult at the time to identify where such conflicts of interest might arise.

4.4 Equalities/Rural

There are no equality or rural implications arising from this report. The Trust will ensure that equality issues are fully considered in carrying out its role and its objectives focus firmly on the conservation and preservation of the Tornagrain community once established.

4.5 Climate Change/Carbon Clever and Gaelic

There are no climate change/Carbon Clever or Gaelic implications arising from this report. It is anticipated that Tornagrain Conservation Trust will seek to mitigate climate change impacts, reduce carbon emissions arising from the community and to promote the Gaelic language.

Recommendation

Committee is invited to nominate two Highland Council directors to the board of Tornagrain Conservation Trust.

Designation: Director of Development and Infrastructure
Date: 28 January 2016
Author: G Hamilton (Ext 2252)

Background papers

1. Development of Tornagrain – Establishment of a Statutory Conservation Body. PDI paper – 18 Feb 2015.
2. Articles of Association of Tornagrain Conservation – Moray Estates Development Company; October 2015.

ARTICLES OF ASSOCIATION

of

[TORNAGRAIN CONSERVATION]

(Company number SC[])

THE COMPANIES ACT 2006

COMPANY LIMITED BY GUARANTEE

**ARTICLES of ASSOCIATION
of
[TORNAGRAIN CONSERVATION]
(Company Number SC[])**

OBJECTS AND POWERS

1. The Company's objects

- 1.1** This article shall be interpreted as if it incorporated an over-riding qualification limiting the capacity and powers of the Company such that it may carry out any act or transaction (which this article would otherwise permit) only if doing so furthers a purpose which is Charitable.
- 1.2** Subject to article 1.1, the Company's objects are to promote and preserve the amenity of Tornagrain for the benefit of the Community and visitors and to advance citizenship, community development and heritage by encouraging and promoting social, recreational, educational, cultural, artistic or other communal activities or enterprises, in furtherance of which the Company may without limitation:
- 1.2.1** take into ownership or acquire rights with respect to land, buildings, amenities and facilities for common ownership, use, benefit or enjoyment in relation to Tornagrain (such land and others being "the Common Parts");
 - 1.2.2** maintain, or organise the maintenance of the Common Parts to high standards and in a good, neat, tidy and safe condition, and where relevant, in a safe and well maintained operational condition, where necessary renewing, replacing or reinstating the same;
 - 1.2.3** administer and collect, or organise the administration and collection of any charges on owners or lessees of properties within Tornagrain or on others using, enjoying or benefitting from the Common Parts, and, when considered necessary, establish and/or administer or organise the establishment and/or administration of, any scheme or system for such charging on a just and equitable basis;
 - 1.2.4** enforce any codes, conditions or restrictions intended for the benefit of the Community and to object to any proposals which may have any adverse impact on the Community or the benefit of being within the Community; and
 - 1.2.5** use the powers available to the Company to ensure the implementation and future maintenance of the Development in accordance with the Masterplan, preserving and protecting for the Community, and for the benefit of the wider public, the special architectural characteristics of the Development and its design novelty by the

incorporation of local, traditional and historical precedents in a new, planned, township community.

2. The Company's powers

- 2.1** The Company may do any lawful thing consistent with the foregoing objects and in particular may borrow or raise and secure the payment of money for any purpose including for the purposes of investment or of raising funds.

INCOME

3. Prohibition of distributions

- 3.1** The income and property of the Company shall be applied solely in promoting the objects of the Company as set out in these articles.

- 3.2** No part of the income or property of the Company shall be paid or transferred (directly or indirectly) to the members, whether by way of dividend, bonus, or otherwise, except as article 3.4 permits.

- 3.3** No director shall be appointed to any salaried office of the Company and no director shall be entitled to receive any remuneration from the Company or to participate in any manner in the profits of the Company except as article 3.4 permits.

- 3.4** No benefit (whether in money or in kind) shall be given by the Company to any member or director except:-

3.4.1 repayment out of the funds of the Company of all reasonable out-of-pocket expenses to directors, including travelling, hotel and other expenses reasonably incurred by them in connection with their attendance at general meetings, meetings of the directors or meetings of general committees or otherwise in connection with the discharge of their duties as directors; or

3.4.2 reasonable remuneration to any member or director in return for specific services actually rendered to the Company (not being of a management nature normally carried out by a director of a company); or

3.4.3 direct or indirect benefit to one or more members resulting from the application in good faith of the income and property of the Company in promoting the objects of the Company; or

- 3.4.4 the payment of interest at a rate not exceeding the commercial rate on money lent to the Company by any director or member; or
- 3.4.5 the purchase from, or sale to, any director or member of assets at market value; or
- 3.4.6 the payment of rent not exceeding the open market rent for premises let to the Company by any director or member.

BECOMING AND CEASING TO BE A MEMBER

4. Who may be a member

4.1 The members of the Company shall be:

- 4.1.1 The Highland Council and its permitted successors;
- 4.1.2 The Residents' Committee, once it comes into being, but only until Tornagrain Community Council comes into being, at which point the Residents' Committee will cease to be a member;
- 4.1.3 Tornagrain Community Council, once it comes into being, and its permitted successors; and
- 4.1.4 Moray Estates Development Company Limited and its permitted successors.

4.2 It shall be a condition of membership that on admission any member is not bankrupt.

5. Formalities of becoming a member

5.1 Every member of the Company (other than the subscriber(s) to the memorandum) shall either sign a written consent to become a member or sign the register of members on becoming a member.

5.2 The Company shall keep a register of its members in accordance with the Act.

6. Cessation of membership

6.1 Where a permitted successor becomes a member, the permitted successor's predecessor shall automatically cease to be a member.

6.2 The rights and privileges of a member shall cease upon the member's ceasing to exist as a legal person, but no member shall be entitled to resign as a member.

MEMBERS' DECISION-MAKING

7. Annual general meetings

7.1 The Company shall in each year hold a general meeting as its annual general meeting, in addition to any other meetings in that year, and shall specify the meeting as such in the notices calling it. Not more than fifteen months shall elapse between one annual general meeting and the next but the Company need not hold its first annual general meeting in the year of its incorporation or in the following year so long as such meeting is held within eighteen months after incorporation.

7.2 The Company shall hold its annual general meeting at such time and place as the directors shall appoint.

8. General meetings generally

8.1 The directors may, whenever they decide, convene a general meeting of the Company and shall also convene general meetings of the Company on such requisition (or, in default, sufficient members may convene them) as the Act states.

8.2 If at any time there are not within the United Kingdom sufficient directors capable of acting to form a quorum, any director may convene a general meeting of the Company in the same manner as nearly as possible as that in which the directors may convene general meetings of the Company.

9. Notice period for general meetings

9.1 Subject to the following paragraph of this article, the directors shall call an annual general meeting of the Company by twenty one days' notice at least and shall call any other general meeting of the Company other than an annual general meeting of the Company by fourteen days' notice at the least. The notice shall be exclusive of the day on which it is served or deemed to be served and of the day for which it is given.

9.2 This article deems the Company or members to have duly called a general meeting of the Company, notwithstanding that they called it by a shorter notice than the preceding Article specified, if all the members entitled to attend and vote thereat so agree.

10. Content of notice of general meetings

10.1 In relation to every notice of every general meeting of the Company, the Company or the members calling it shall:-

10.1.1 specify the place, the day and the hour of meeting and the business to be transacted

at the meeting; and

10.1.2 give the notice to:-

9.1.2.1 every member except those members who (having no registered address within the United Kingdom) have not supplied to the Company an address within the United Kingdom for the giving of notices to them;

9.1.2.2 every director; and

9.1.2.3 the auditors.

11. Authorised representatives

11.1 A corporation or statutory body which is a member may be represented at a general meeting by any of its officers or by any other person authorised for that purpose by resolution of its board of directors or governing body.

11.2 An unincorporated association which is a member may be represented at a general meeting by any person authorised for that purpose by its governing body.

11.3 A person representing a member at a general meeting in accordance with this article may exercise all that member's rights as if the member were an individual present in person and this article deems a member so represented to be present in person at such meeting.

12. Quorum at general meetings

12.1 The Company shall transact no business at any general meeting of the Company unless a quorum of members is present at the time when the meeting proceeds to business.

12.2 While the Company has only one member, one authorised representative of that member is a quorum. Otherwise, authorised representatives of two members is a quorum.

13. Procedure at general meetings

13.1 If, within half an hour from the time appointed for the meeting, a quorum is not present, a general meeting of the Company shall stand adjourned to the same day in the next week, at the same time and place (or to such other day and such other time and place as the directors may decide).

- 13.2** If (at such adjourned meeting) a quorum is not present within half an hour from the time which these articles (or the directors) appointed for holding the meeting, the quorum for any meeting so adjourned shall continue to be as these articles prescribe.
- 13.3** The chairman, if any, of the board of directors shall preside as chairman at every general meeting but, if there is no chairman or the chairman shall have intimated that the chairman shall not be present at any meeting or the chairman shall not be present within fifteen minutes after the time appointed for the holding of the meeting or the chairman shall be unwilling to preside, the directors present shall choose some other of their number to be chairman of the meeting. If (at any general meeting) no director is willing to act as chairman or if no director is present within fifteen minutes after the time appointed for the holding of the meeting, the members present shall choose one of their number to be chairman of the meeting.
- 13.4** With the consent of any meeting at which a quorum is present, the chairman may (and shall, if the meeting so directs) adjourn any general meeting from time to time and from place to place. When the chairman adjourns a meeting for thirty days or more, the Company shall give notice of the adjourned meeting as in the case of an original meeting. Save as aforesaid, the members shall not be entitled to any notice of an adjournment or of the business to be transacted at an adjourned meeting. The Company shall transact no business at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

14. Voting rights of members

- 14.1** At any general meeting, the meeting shall decide any resolution by poll. The Company shall take the poll in such manner as the chairman of the meeting directs and this article deems the result of the poll to be the resolution of the meeting. The Company shall take any poll forthwith.
- 14.2** A resolution to alter any of the provisions of these articles, to wind up the Company or to remove a director shall not be passed unless all members vote for it. Otherwise, on a poll, members shall have the following numbers of votes:
- 14.2.1** before the Development is Half Built, MEDCo shall have three votes and the other two members shall have one vote each; and
- 14.2.2** after the Development is Half Built, each member shall have one vote.

15. Written members' resolutions

Subject to the provisions of the Act, a resolution in writing which the majority which the Act requires for the passing of that resolution in writing (or one or more persons on behalf of that majority) has signed shall be as valid and effective as if the Company had passed the resolution at a general meeting of the Company duly convened and held and may consist of several documents in the like form each of which one or more of the members (or one or more persons on behalf of the members) has or have signed.

APPOINTMENT AND TERMINATION OF DIRECTORS

16. Appointment of directors

16.1 Each member, while it shall remain a member, may by notice in writing signed by an authorised officer and left at the registered office appoint not more than two directors of the Company and shall be entitled by like notice to remove any director so appointed (or appointed by one of its predecessors as member) at any time and appoint any other person to be a director in the place of the director so removed or in the place of a director vacating office in any way and originally appointed by it (or one of its predecessors as member).

16.2 In respect of the subscribers to the memorandum, the directors respectively appointed under the previous article shall satisfy the entitlement of the subscriber to appoint such director under this article until so removed or vacating office.

16.3 There shall be no directors other than the nominee directors referred to in article 16.1.

17. Events where directorship terminates

A director shall vacate office as a director if the director:-

17.1 is removed by the member who appointed that director in accordance with these articles (or a permitted successor of that member who has become a member); or

17.2 resigns his office by notice in writing to the Company; or

17.3 becomes bankrupt or makes any arrangement or composition with his creditors generally; or

17.4 ceases to be a director by virtue of any provision of the Acts or becomes prohibited by law from being a director; or

17.5 is convicted of any crime (other than minor traffic offences) and the directors resolve that the director vacate that director's office; or

- 17.6** becomes subject to a mental disorder or unable or unfit otherwise to discharge his functions as a director and the directors resolve that the director vacate that director's office.

THE POWERS, ETC. OF THE DIRECTORS

18. The powers and duties of the directors

- 18.1** The directors shall manage the business of the Company, may pay all expenses incurred in promoting and registering the Company and may exercise all such powers of the Company as the Acts or these articles do not require the Company to exercise by special or ordinary resolution, subject nevertheless to the provisions of the Acts and these articles and to such regulations, being not inconsistent with the aforesaid provisions, as the Company may prescribe by special resolution; but no regulation which the Company makes by special resolution shall invalidate any prior act of the directors which would have been valid if the Company had not made that regulation.
- 18.2** The Company shall sign, draw, accept, endorse or otherwise execute, as the case may be, all cheques, promissory notes, drafts, bills of exchange and other negotiable instruments and all receipts for monies paid to the Company in such manner as the directors shall from time to time decide.
- 18.3** The directors may exercise all the powers of the Company to borrow money and to mortgage or charge its undertaking and property, or any part thereof, and to issue debentures, debenture stock and other securities, whether outright or as security for any debt, liability or obligation of the Company or of any third party.

19. Procedure for directors' meetings

- 19.1** The directors shall meet together for the despatch of business at least once every three months but may otherwise meet, adjourn and otherwise regulate their meetings, as they decide.
- 19.2** A director may, and the secretary on the requisition of a director shall, at any time summon a meeting of the directors.
- 19.3** Notice of any meeting of the directors need not be in writing and the length of such notice shall be as required by the general law.
- 19.4** Until the Development is Half Built, the quorum necessary for the transaction of the business of the directors shall be two directors, each being the nominee director of a different member,

and one of whom is the nominee director appointed by MEDCo. After the Development is Half Built, the quorum necessary for the transaction of the business of the directors shall be any two directors provided each is the nominee director of a different member.

19.5 A meeting of the directors at which a quorum is present shall be competent to exercise all the powers, authorities and discretions which the Act or these articles vest in the directors generally or authorise the directors generally to exercise.

19.6 The continuing directors may act notwithstanding any vacancy in their body but, if and so long as the number of continuing directors is below the number which these articles prescribe as the necessary quorum of directors, the continuing directors or director may act for the purpose of increasing the number of directors to that number or of summoning a general meeting of the Company, but for no other purpose.

19.7 The directors shall decide any questions arising at any meeting of the directors by a majority of votes and each nominee director shall have one vote, except that:-

19.7.1 upon any resolution that a director's office be vacated in accordance with these articles, the director to the vacation of whose office any such resolution relates shall have no vote;

19.7.2 until the Development is Half Built, the nominee directors appointed by MEDCo shall have three votes each and each other director shall have one vote each; and

19.7.3 if one of the two directors a member is entitled to appoint under Article 16.1 is not present or not appointed, the director appointed by that member under Article 16.1 who is present shall be entitled to exercise the vote(s) of both the directors appointed or eligible to be appointed by that member under Article 16.1.

19.8 The chairman shall have no casting vote on any resolution of the directors.

20. Chairman

One of the nominee directors appointed by MEDCo shall chair meetings of the directors until the Development is Half Built, following which one of the nominee directors appointed by the Residents' Committee or Tornagrain Community Council shall chair meetings of the directors. However, if the chairman has intimated that the chairman shall not be present at any meeting of the directors or the chairman is not present within five minutes after the time appointed for holding the same or the chairman shall be unwilling to preside, the directors present shall choose some other of their number to be chairman of the meeting.

21. Delegation by the directors

- 21.1** The directors may delegate any of their powers to any committee or sub-committee consisting of one or more directors.
- 21.2** The provisions of these articles regulating the meetings and proceedings of the directors shall (so far as the same are applicable and the directors do not make regulations superseding them) govern the meetings and proceedings of any committee or sub-committee of the directors.
- 21.3** Each such committee or sub-committee shall report back all its acts and proceedings to the directors as soon as possible.
- 21.4** The directors may from time to time and at any time by power of attorney appoint any company, firm or person or body of persons, whether the directors have nominated that company or other directly or indirectly, to be the attorney or attorneys of the Company for such purposes and with such powers, authorities and discretions (not exceeding those which these articles vest in the directors or authorise the directors to exercise) and for such period and subject to such conditions as they may decide and any such powers of attorney may contain such provisions for the protection and convenience of persons dealing with any such attorney as the directors may decide and may also authorise any such attorney to delegate all or any of the powers, authorities and discretions which the directors have vested in such attorney.

22. Directors' interests

Nothing in these articles invalidates authorisation by the directors of any situation in which a director has, or can have, a direct or indirect interest that conflicts, or may conflict, with the interests of the Company.

23. Written directors' resolutions

A resolution in writing which all the directors for the time being entitled to receive notice of a meeting of the directors have signed shall be as valid and effectual as if a meeting of the directors duly convened and held had passed it and may consist of several documents in like form each of which one or more of the directors (or one or more persons on their behalf) have signed.

24. Appointment, etc. of the secretary

- 24.1** The directors shall appoint the secretary for such term, at such remuneration and upon such conditions as the directors may decide and may remove any secretary so appointed.

- 24.2** The directors may also from time to time appoint an assistant or deputy secretary.
- 24.3** The secretary or any assistant or deputy secretary may be an individual or two or more individuals or a firm or a corporate body.
- 24.4** Where the office of secretary is vacant (or there is for any other reason no secretary capable of acting), an assistant or deputy secretary (if any) or anyone whom the directors have authorised generally or specifically in that behalf (if there is no assistant or deputy secretary or none capable of acting) may do anything which is required or authorised to be done by the secretary and any person may do to an assistant or deputy secretary (if any) or anyone whom the directors have authorised generally or specifically in that behalf (if there is no assistant or deputy secretary or none capable of acting) anything required or authorised to be done to the secretary.
- 24.5** A provision of the Acts or these articles requiring or authorising a thing to be done by or to a director and the secretary shall not be satisfied by its being done by or to the same person acting both as a director and as, or in place of, the secretary.

BUSINESS CONTROL, ACCOUNTING RECORDS, ACCOUNTS, AUDIT AND MINUTES

25. Systems of business control, etc.

- 25.1** The directors shall establish and maintain systems of control of the conduct of the activities of the Company in accordance with law and the decisions of the directors and for the control of the accounting and other records of the activities of the Company.
- 25.2** The directors shall establish and maintain systems of inspection on behalf of (and report to) the directors on the operation of the system of control of the activities of the Company and records which this article requires.
- 25.3** The systems of inspection and report shall be sufficient to enable the directors to discharge the duties imposed on them by law and the directors shall keep available a detailed statement in writing of the system as in operation for the time being.

26. Accounting records

- 26.1** The directors shall cause accounting records to be kept in an orderly manner and sufficiently to show and explain the transactions of the Company and, in particular, disclose with reasonable accuracy and promptness the Company's financial position at any time, to explain its transactions and to permit the directors to discharge the duties which the law imposes on them.

26.2 The accounting records shall, in particular, contain:-

26.2.1 entries from day to day of all sums which the Company has received and paid and the matters in respect of which such sums are received or paid;

26.2.2 entries from day to day of every transaction which the Company has entered into which will (or there is reasonable ground for expecting may) give rise to assets or liabilities of the Company other than insignificant assets or liabilities in respect of the management of the Company; and

26.2.3 a record of the assets and liabilities of the Company.

26.3 The directors shall keep the accounting records at the registered office or, subject to section 388 of the Act, at such other place or places as the directors shall decide.

26.4 The accounting records:-

26.4.1 shall always be open to the inspection of the directors; and

26.4.2 subject to any reasonable conditions or regulations as to the time and manner of inspection that the Company by ordinary resolution may from time to time impose, shall be open to the inspection of the members at all reasonable times during business hours.

27. Annual accounts and audit

27.1 Not less than twenty-one days before the date of each annual general meeting of the Company, the directors shall send to the auditors and to all other persons entitled to receive notices of general meetings of the Company in the manner in which the Company is to serve notices in accordance with these articles to such address as the addressee may for the time being have notified to the Company for that purpose:-

27.1.1 a proper income and expenditure account (framed in accordance with any statutory requirement for the time being in force) for the period since the last-preceding account;

27.1.2 a proper balance sheet (framed as aforesaid) made up to the same date as the date to which the income and expenditure account is made up;

27.1.3 proper reports of the directors and (to the extent required by law) of the auditors (all

of which shall be framed as aforesaid); and

27.1.4 any other documents required by law to be annexed or attached thereto or to be sent with the same.

27.2 At the annual general meeting of the Company in every year, the directors shall lay before the Company copies of such account, balance sheet and reports.

27.3 Subject to any exemptions which the Acts make available to the Company from time to time, the Company shall appoint the auditors to the extent which the Acts require and regulate their duties in accordance with the Acts.

28. Minutes

28.1 The directors shall record minutes in books which the directors provide for the purpose of recording:-

28.1.1 all appointments of officers which the directors make;

28.1.2 the names of the directors present at each meeting of the directors (and of any committee or sub-committee of the directors);

28.1.3 all resolutions and proceedings at all general meetings and all meetings of the directors (and of committees or sub-committees of the directors); and

28.1.4 the transactions, resolutions and proceedings of any advisory council or committee.

28.2 The directors shall keep any such minutes for the period which section 248(2) of the Act prescribes in relation to minutes of proceedings at meetings of the directors.

INDEMNITY

29. Indemnity by the Company to the directors

29.1 The Company may not directly or indirectly exempt (to any extent) any director from any liability that would otherwise attach to that director in connection with any negligence, default, breach of duty or breach of trust by that director in relation to the Company however the Company may provide for a director any one or more of the insurances which section 233 of the Act permits, a qualifying third party indemnity which section 234 of the Act permits or a qualifying pension scheme indemnity which section 235 of the Act permits.

29.2 Subject to the same limitation, no director or other officer of the Company shall be liable for the acts, receipts, neglects or default of any other director or officer, or for joining in any receipt or other act for conformity or for any loss or expense happening to the Company through the insufficiency or deficiency of title to any property which the Company (or someone on behalf of the Company) acquired by order of the directors or for the insufficiency or deficiency of any security in or upon which the Company (or someone on behalf of the Company) shall have invested any monies or for any loss or damage arising from the bankruptcy, insolvency or wrongful act of any person with whom the Company (or someone on behalf of the Company) shall have deposited any monies, securities or effects or for any other loss, damage or misfortune which shall happen in the execution of the duties of the office of a director or in relation thereto.

LIQUIDATION AND ITS CONSEQUENCES

30. Liability of past and present members on winding up

30.1 The liability of each member is limited to £1.00, being the amount which each member undertakes to contribute to the assets of the Company in the event of its being wound up while he is a member or within one year after he ceases to be a member, for:-

30.1.1 payment of the Company's debts and liabilities contracted before he ceases to be a member;

30.1.2 payments of the costs, charges and expenses of winding up; and

30.1.3 adjustment of the rights of the contributories among themselves.

31. Application of surplus on winding up

If upon the winding up or dissolution of the Company there remains, after satisfaction of all its debts and liabilities, any assets or property whatsoever, the same shall not be paid to or distributed among the members, but shall be transferred to such other organisation, as the directors may determine, having objects similar to the objects of the Company and to be used only for purposes which are Charitable.

32. No statutory regulations apply

No regulations set out in any statute, or in any statutory instrument or other subordinate legislation made under any statute, concerning companies shall apply as the regulations or articles of association of the Company.

DEFINITIONS AND INTERPRETATION

33. Definitions and interpretation

In these articles of association:-

33.1 the following words and expressions shall have the following meanings:-

the Act	the Companies Act 2006;
the Acts	the Act and every other statute for the time being in force concerning companies and affecting the Company;
these articles	these articles of association as from time to time in force (and references to an "article" shall be construed accordingly);
the auditors	the auditors for the time being of the Company or (in relation to annual accounts, where the Company has exempted itself from the requirement of the Act that the Company have its annual accounts audited but is obliged to have an accountant prepare a report on the annual accounts) the reporting accountant;
the auditors' report	such report (if any) as the Act obliges the Company to obtain from the auditors;
bankruptcy	includes the sequestration of the estate of a person, a person's estate being the subject of a protected trust deed (within the meaning of the Bankruptcy (Scotland) Act 1985 and a person's being in winding-up or subject to an administration order;
Charitable	charitable in terms of the Charities and Trustee Investment Act (Scotland) 2005 as amended by the Public Services Reform (Scotland) Act 2010 and the legislation which grants tax reliefs to charitable bodies, including relief from corporation tax;
Community Company	those living in Tornagrain; [Tornagrain Conservation Body];
Development	construction of Tornagrain;
director	one of the board of directors of the Company;
the directors	the directors of the Company from time to time;
Group	in relation to a company, that company, any subsidiary or any holding company from time to time of that company, and any subsidiary from time to time of a holding company of that company;
Half Built	completion of sale for occupation of more than half of the planned number of dwellings in terms of the Masterplan;
local government legislation	the Local Government (Scotland) Act 1973 and the Local Government etc. (Scotland) Act 1994;

Masterplan	[the masterplan for the Development];
MEDCo	Moray Estates Development Company Limited (Co. no. SC012762) or its permitted successor;
member	a member of the Company from time to time;
memorandum	the memorandum of association of the Company;
mental disorder	is (or may be) suffering from any mental disorder (within the meaning of section 328 of The Mental Health (Care and Treatment) (Scotland) Act 2003, where the person is subject to that Act, or the corresponding standard, where the person is subject to a non-Scottish counterpart of that legislation) and either is admitted to hospital in pursuance of an application for admission for treatment under such legislation or an order is made by a court having jurisdiction (whether in the United Kingdom or elsewhere) in matters concerning mental disorder for that person's detention or for the appointment of a <u>curator bonis</u> or other person to exercise powers with respect to that person's property or affairs;
nominee director	a director whom a member has appointed in terms of these articles;
permitted successor	(a) in respect of any local authority established by virtue of local government legislation, any body which following any reorganisation of that local authority performs the functions (or substantially all of the function) which that local authority formerly performed; (b) in respect of any community council, any body which following any reorganisation of that community council performs the functions (or substantially all of the function) which that community council formerly performed; and (c) in respect of MEDCo, a member of MEDCo's Group;
Residents' Committee	a body established by and comprising residents of Tornagrain for the purpose of (or for purposes which include) communicating the Community's views to the Company and permitting the Community to participate in the Company;
Secretary	includes any person whom the Company appoints to perform the duties of the secretary of the Company (and, where the Company appoints two or more persons as joint secretaries, includes any one of those persons);
Tornagrain Community Council	the new town to be constructed at Tornagrain, a community council established under the Local Government (Scotland) Act 1973 for an area the majority of whose residents live in Tornagrain;

33.2 unless the context otherwise requires, words importing the singular number only shall include the plural number and vice versa;

- 33.3** unless the context requires otherwise, words importing any gender shall include any other gender;
- 33.4** unless the context otherwise requires, words importing persons shall include corporations;
- 33.5** the index to and headings in these articles are for convenience only and shall not affect the interpretation hereof;
- 33.6** reference to any statute or statutory provision shall include any statute or statutory provision which amends, extends, consolidates or replaces the same or which the same has amended, extended, consolidated or replaced and shall include any order, regulation, instrument or other subordinate legislation made under the relevant statute or statutory instrument; and
- 33.7** subject as aforesaid, any words or expressions defined in the Act shall, if not inconsistent with the subject or context, bear the same meanings in these Articles.

Name of each subscriber

Authentication by each subscriber

Moray Estates Development Company Limited
(Co. no. SC012762)

For and on behalf of
Moray Estates Development
Company Limited

Director

[The Highland Council]

Dated

2014