

MARSHES COMMUNITY BENEFIT FUND CONSTITUTION

Date of constitution (last amended): 18 October 2016

1. NAME

The name of the not-for-profit unincorporated organisation ("the NUO") is Marshes Community Benefit Fund.

2. NATIONAL LOCATION OF PRINCIPAL OFFICE

The NUO must have a principal office in England or Wales. The principal office of the NUO is in England.

3. OBJECT

The objects of the NUO is the distribution of funds for the benefit of the Local Community.

4. POWERS

The NUO has power to do anything which is calculated to further its object or is conducive or incidental to doing so.

5. APPLICATION OF INCOME AND PROPERTY

5.1 The income and property of the NUO must be applied solely towards the promotion of the objects.

- (a) a Panel member is entitled to be reimbursed from the property of the NUO or may pay out of such property reasonable expenses properly incurred by him or her when acting on behalf of the NUO;

5.2 None of the income or property of the NUO may be paid or transferred directly or indirectly by way of dividend, bonus or otherwise by way of profit to any member of the NUO. This does not prevent a member who is not also a Panel member receiving:

- (a) a benefit from the NUO as a beneficiary of the NUO;
- (b) reasonable and proper remuneration for any goods or services supplied to the NUO.

5.3 Nothing in this clause shall prevent a Panel member or connected person receiving any benefit or payment which is authorised by clause 6.

6. BENEFITS AND PAYMENTS TO PANEL MEMBERS AND CONNECTED PERSONS

6.1 General provisions

No Panel member or connected person may:

- (a) Buy or receive any goods or services from the NUO on terms preferential to those applicable to members of the public.
- (b) Sell goods, services, or any interest in land to the NUO.
- (c) Be employed by, or receive any remuneration from, the NUO.
- (d) Receive any other financial benefit from the NUO.

In this clause, a "financial benefit" means a benefit, direct or indirect, which is either money or has a monetary value.

6.2 Scope and powers permitting Panel members' or connected persons' benefits

- (a) A Panel member or connected person may enter into a contract for the supply of services, or of goods that are supplied in connection with the provision of services, to the NUO.
- (b) Subject to clause 6.3 a Panel member or connected person may provide the NUO with goods that are not supplied in connection with services provided to the NUO by the Panel member or connected person.
- (c) A Panel member or connected person may take part in the normal trading and fundraising activities of the NUO on the same terms as members of the public.

6.3 Payment for supply of goods only – controls

The NUO and its Panel members may only rely upon the authority provided by clause 6.2(a) if each of the following conditions is satisfied:

- (a) The amount or maximum amount of the payment for the goods is set out in a written agreement between the NUO and the Panel member or connected person supplying the goods ("the supplier").
- (b) The amount or maximum amount of the payment for the goods does not exceed what is reasonable in the circumstances for the supply of the goods in question.
- (c) The other Panel members are satisfied that it is in the best interests of the NUO to contract with the supplier rather than with someone who is not a Panel member or connected person. In reaching that decision the Panel members must balance the advantage of contracting with a Panel member or connected person against the disadvantages of doing so.
- (d) The supplier is absent from the part of any meeting at which there is discussion of the proposal to enter into a contract or arrangement with him or her or it with regard to the supply of goods to the NUO.
- (e) The supplier does not vote on any such matter and is not to be counted when calculating whether a quorum of Panel members is present at the meeting.

- (f) The reason for their decision is recorded by the Panel members in the minute book.
- (g) A majority of the Panel members then in office are not in receipt of remuneration or payments authorised by clause 6.

6.4 In clause 6.2 and clause 6.3:

- (a) "Connected person" includes any person within the definition set out in clause 21.20 (Interpretation).

7. CONFLICTS OF INTEREST AND CONFLICTS OF LOYALTY

7.1 A Panel member must:

- (a) Declare the nature and extent of any interest, direct or indirect, which he or she has in a proposed transaction or arrangement with the NUO or in any transaction or arrangement entered into by the NUO which has not previously been declared.
- (b) Absent himself or herself from any discussions of the Panel members in which it is possible that a Significant Conflict of interest will arise between his or her duty to act solely in the interests of the NUO and any personal interest (including but not limited to any financial interest).
- (c) In the event that a Panel member does not consider such a conflict to be a Significant Conflict then the remaining members of the Panel shall be entitled to declare that the interest is an Insignificant Conflict by simple majority entitling the Panel Member to continue with discussions and voting in respect of the Insignificant Conflict.

7.2 Any Panel member absenting himself or herself from any discussions in accordance with clause 7.1 (b) must not vote or be counted as part of the quorum in any decision of the Panel members on the matter.

8. LIABILITY OF MEMBERS TO CONTRIBUTE TO THE ASSETS OF THE NUO IF IT IS WOUND UP

If the NUO is wound up, the members of the NUO have no liability to contribute to its assets and no personal responsibility for settling its debts and liabilities.

9. MEMBERSHIP OF THE NUO

9.1 **Admission of new Panel members**

(a) **Eligibility**

Membership of the NUO is open to anyone who is interested in furthering its purposes, and who, by applying for membership, has indicated his, her or its agreement to become a member and acceptance of the duty of members set out in clause 9.4.

A member may be an individual only, a body corporate may not operate as a Panel member.

(b) **Admission procedure**

The Panel members:

- (i) May require applications for membership to be made in any reasonable way that they decide.
- (ii) Shall, if they approve an application for membership, notify the applicant of their decision within 28 days.
- (iii) May refuse an application for membership if they believe that it is in the best interests of the NUO for them to do so.

9.2 **Duration of membership**

- a) Panel members, except for Helsby High School Representatives, shall be appointed for a term of three years.
- b) Individuals, except for Helsby High School Representatives, can apply for successive memberships indefinitely.
- c) Helsby High School shall be able to nominate two representatives to sit as special Panel members. Helsby High School Representatives will have the same rights and obligations as ordinary Panel members but shall be appointed for a term of two years only and cannot apply for successive membership.
- d) An individual who has previously been appointed as a Helsby High School representative but is no longer a student of Helsby High School may apply for appointment as an ordinary Panel Member in accordance with clause 9.1.

9.3 **Transfer of membership**

Membership of the NUO cannot be transferred to anyone else.

9.4 **Duty of members**

It is the duty of each member of the NUO to exercise his or her powers as a member of the NUO in the way he or she decides in good faith would be most likely to further the purposes of the NUO.

9.5 **Number of Panel members**

- (a) There must be at least seven Panel members. If the number falls below this minimum, the remaining Panel members may act only to call a meeting of the Panel members, or appoint a new Panel member.

- (b) The maximum number of Panel members is 13. The Panel members may not appoint any Panel member if as a result the number of Panel members would exceed the maximum.

9.6 **First Panel members**

The first Panel members of the NUO are:

Layla Caroline Barke-Jones

Lynsey Cottle

Dianne Walker

William Cook

Michael Garvey

Andrew Chappell

Susan Slivijc

Jack Watson

HHS representative 1

HHS representative 2

10. APPOINTMENT OF PANEL MEMBERS

- (a) At every annual general meeting of the members of the NUO, one-third of the elected Panel members shall retire from office. If the number of elected Panel members is not three or a multiple of three, then the number nearest to one-third shall retire from office.
- (b) The Panel members to retire by rotation shall be those who have been longest in office since their last appointment or reappointment. If any Panel members were last appointed or reappointed on the same day those to retire shall (unless they otherwise agree among themselves) be determined by lot.
- (c) The vacancies so arising may be filled by the decision of the members at the annual general meeting; any vacancies not filled at the annual general meeting may be filled at a general meeting.
- (d) The members or the Panel members may at any time decide to appoint a new Panel member, whether in place of a Panel member who has retired or been removed in accordance with clause 10.2 (Retirement and removal of Panel members), or as an additional Panel member, provided that the limit specified in clause 9.5 on the number of Panel members would not as a result be exceeded.

- (e) The Panel members will consider the appointment of any retired Panel Member that wishes to seek successive reappointment following retirement in accordance with clause 9.1.

10.2 **Termination of membership**

- (a) Membership of the NUO comes to an end if:
 - (i) the member dies; or
 - (ii) the membership term expires and the member does not wish to apply for further membership; or
 - (iii) the member sends a notice of resignation to the Panel members; or
 - (iv) the Panel members decide that it is in the best interests of the NUO that the member in question should be removed from membership, and pass a unanimous resolution to that effect.
- (b) Before the Panel members take any decision to remove someone from membership of the NUO they must:
 - (i) inform the member of the reasons why it is proposed to remove him, her or it from membership;
 - (ii) give the member at least 21 clear days notice in which to make representations to the Panel members as to why he, she or it should not be removed from membership;
 - (iii) at a duly constituted meeting of the Panel members, consider whether or not the member should be removed from membership;
 - (iv) consider at that meeting any representations which the member makes as to why the member should not be removed; and
 - (v) allow the member, or the member's representative, to make those representations in person at that meeting, if the member so chooses.

11. **MEMBERS' DECISIONS**

11.1 **General provisions**

Except for those decisions that must be taken in a particular way as indicated in clause 11.4, decisions of the members of the NUO may be taken either by vote at a general meeting as provided in clause 11.2 or by written resolution as provided in clause 11.3.

11.2 **Taking ordinary decisions by vote**

Subject to clause 11.4, any decision of the members of the NUO may be taken by means of a resolution at a general meeting. Such a resolution may be passed by a majority of 2/3rds votes cast at the meeting (including votes cast by postal or email ballot votes).

11.3 Taking ordinary decisions by written resolution without a general meeting

- (a) Subject to clause 11.4, a resolution in writing agreed by a simple majority of all the members who would have been entitled to vote upon it had it been proposed at a general meeting shall be effective, provided that:
 - (i) a copy of the proposed resolution has been sent to all the members eligible to vote; and
 - (ii) a simple majority of members has signified its agreement to the resolution in a document or documents which are received at the principal office within the period of 28 days beginning with the circulation date. The document signifying a member's agreement must be authenticated by their signature (or in the case of an organisation which is a member, by execution according to its usual procedure), by a statement of their identity accompanying the document, or in such other manner as the NUO has specified.
- (b) The resolution in writing may comprise several copies to which one or more members has signified their agreement.
- (c) Eligibility to vote on the resolution is limited to members who are members of the NUO on the date when the proposal is first circulated.
- (d) Not less than 30% of the members of the NUO may request the Panel members to make a proposal for decision by the members.
- (e) The Panel members must within 21 days of receiving such a request comply with it if:
 - (i) the proposal is not frivolous or vexatious, and does not involve the publication of defamatory material;
 - (ii) the proposal is stated with sufficient clarity to enable effect to be given to it if it is agreed by the members; and
 - (iii) effect can lawfully be given to the proposal if it is so agreed.
- (f) Clause 11.3(a), clause 11.3(b) and clause 11.3(c) apply to a proposal made at the request of members.

11.4 Decisions that must be taken in a particular way

- (a) Any decision to remove a Panel member must be taken in accordance with clause 10.2.
- (b) Any decision to amend this constitution must be taken in accordance with clause 18 of this constitution (Amendment of Constitution).
- (c) Any decision to wind up or dissolve the NUO must be taken in accordance with clause 19 of this constitution (Voluntary winding up or dissolution).

12. GENERAL MEETINGS OF MEMBERS

12.1 Types of general meeting

There must be an annual general meeting (AGM) of the members of the NUO. The first AGM must be held within 12 months of the formation of the NUO, and subsequent AGMs must be held at intervals of not more than 15 months. The AGM must receive the annual statement of accounts, and must elect Panel members as required under clause 10.

Other general meetings of the members of the NUO may be held at any time, there must be at least one general meeting every 15 months.

All general meetings must be held in accordance with the following provisions.

12.2 Calling general meetings

- (a) Any Panel member may call a meeting of the Panel members.
- (b) Subject to that, the Panel members shall decide how their meetings are to be called, and what notice is required.

12.3 Chairing of general meetings

The person nominated as chair by the Panel members shall, if present at the general meeting and willing to act, preside as chair of the meeting. Subject to that, the members of the NUO who are present at a general meeting shall elect a chair to preside at the meeting.

12.4 Quorum at general meetings

- (a) No business may be transacted at any general meeting of the members of the NUO unless a quorum is present when the meeting starts.
- (b) Subject to the following provisions, the quorum for general meetings shall be the greater of 30% or three members.
- (c) If at any time during the meeting a quorum ceases to be present, the meeting may discuss issues and make recommendations to the Panel members but may not make any decisions. If decisions are required which must be made by a meeting of the members, the meeting must be adjourned.

12.5 Voting at general meetings

- (a) Any decision other than one falling within clause 11.4 (decisions that must be taken in a particular way) shall be taken by a 2/3rds majority of votes cast at the meeting (including postal votes). Every member has one vote.
- (b) A resolution put to the vote of a meeting shall be decided on a show of hands, unless (before or on the declaration of the result of the show of hands) a poll is duly demanded. A poll may be demanded by the chair or by at least 10% of the members present in person at the meeting.
- (c) A poll demanded on the election of a person to chair the meeting or on a question of adjournment must be taken immediately. A poll on any other matter shall be taken, and the result of the poll shall be announced, in such

manner as the chair of the meeting shall decide, provided that the poll must be taken, and the result of the poll announced, within 30 days of the demand for the poll.

- (d) A poll may be taken:
 - (i) at the meeting at which it was demanded; or
 - (ii) at some other time and place specified by the chair; or
 - (iii) through the use of postal or electronic communications.
- (e) Any objection to the qualification of any voter must be raised at the meeting at which the vote is cast and the decision of the chair of the meeting shall be final.

12.6 **Postal Voting**

- (a) The NUO may, if the Panel members so decide, allow the members to vote by post or electronic mail ("email") to elect Panel members or to make a decision on any matter that is being decided at a general meeting of the members.
- (b) If postal and/or email voting is to be allowed on a matter, the NUO must send to members of the NUO not less than 21 days before the deadline for receipt of votes cast in this way:
 - (i) A notice by email, if the member has agreed to receive notices in this way under clause 15 (Use of electronic communications), including an explanation of the purpose of the vote and the voting procedure to be followed by the member, and a voting form capable of being returned by email or post to the NUO, containing details of the resolution being put to a vote, or of the candidates for election, as applicable.
 - (ii) A notice by post to all other members, including a written explanation of the purpose of the postal vote and the voting procedure to be followed by the member; and a postal voting form containing details of the resolution being put to a vote, or of the candidates for election, as applicable.
- (c) The voting procedure for votes cast by email must require the member's name to be at the top of the email, and the email must be authenticated in the manner specified in the voting procedure.
- (d) Email votes must be returned to an email address used only for this purpose and must be accessed only by a scrutineer.
- (e) The voting procedure must specify the closing date and time for receipt of votes, and must state that any votes received after the closing date or not complying with the voting procedure will be invalid and not be counted.
- (f) The chair must not disclose the result of the postal/email ballot until after votes taken by hand or by poll at the meeting, or by poll after the meeting,

have been counted. Only at this point shall the chair declare the result of the valid votes received, and these votes shall be included in the declaration of the result of the vote.

12.7 Adjournment of meetings

The chair may with the consent of a meeting at which a quorum is present (and shall if so directed by the meeting) adjourn the meeting to another time and/or place. No business may be transacted at an adjourned meeting except business which could properly have been transacted at the original meeting.

13. SAVING PROVISIONS

13.1 Subject to clause 13.2, all decisions of the Panel members, or of a committee of Panel members, shall be valid notwithstanding the participation in any vote of a Panel member:

- (a) Who was disqualified from holding office;
- (b) Who had previously retired or who had been obliged by the constitution to vacate office.
- (c) Who was not entitled to vote on the matter, whether by reason of a conflict of interest or otherwise.

If, without the vote of that Panel member and that Panel member being counted in the quorum, the decision has been made by a majority of the Panel members at a quorate meeting.

13.2 Clause 13.1 does not permit a Panel member to keep any benefit that may be conferred upon him or her by a resolution of the Panel members or of a committee of Panel members if, but for Clause 13.1, the resolution would have been void, or if the Panel member has not complied with clause 7 (Conflicts of interest).

14. EXECUTION OF DOCUMENTS

14.1 The NUO shall execute documents by signature.

14.2 A document is validly executed by signature if it is signed by at least two of the Panel members.

15. USE OF ELECTRONIC COMMUNICATIONS

15.1 General

The NUO will provide within 21 days to any member on request a hard copy of any document or information sent to the member otherwise than in hard copy form.

15.2 Use of electronic communications

(a) **To the NUO**

Any Panel member of the NUO may communicate electronically with the NUO to an address specified by the NUO for the purpose, so long as the communication is authenticated in a manner which is satisfactory to the NUO.

(b) **By the NUO**

(i) Any member or Panel member of the NUO, by providing the NUO with his or her email address or similar, is taken to have agreed to receive communications from the NUO in electronic form at that address, unless the member has indicated to the NUO his or her unwillingness to receive such communications in that form.

(c) The Panel members must:

(i) Send any such notice or proposal in hard copy form to any member or Panel member who has not consented to receive communications in electronic form.

16. MINUTES

The Panel members must keep minutes of all:

- (a) Appointments of officers made by the Panel members.
- (b) Proceedings at general meetings of the NUO.
- (c) Meetings of the Panel members and committees of Panel members including:
 - (i) the names of the Panel members present at the meeting;
 - (ii) the decisions made at the meetings; and
 - (iii) where appropriate the reasons for the decisions.
- (d) Decisions made by the Panel members otherwise than in meetings

17. DISPUTES

- (a) If a dispute arises between members of the NUO about the validity or propriety of anything done by the members under this constitution, and the dispute cannot be resolved by agreement, the parties to the dispute must first try in good faith to settle the dispute by mediation before resorting to litigation.
- (b) If a dispute occurs between a member of the public, public body or organisation in relation to service received or a decision taken by the NUO then the public, public body or organisation may put the complaint in writing to the Chair of the NUO. The Members will aim to respond to any complaint within 2 months. In the event that the public, public body or organisation wishes to appeal the outcome of the complaint then any appeal will be independently investigated by Cheshire Community Action.

18. AMENDMENT OF CONSTITUTION

- (a) This constitution can only be amended:
 - (i) by resolution agreed in writing by all members of the NUO; or
 - (ii) by a resolution passed by a 75% majority of votes cast at a general meeting of the members of the NUO.

19. VOLUNTARY WINDING UP OR DISSOLUTION

19.1 The NUO may be dissolved by resolution of its members. Any decision by the members to wind up or dissolve the NUO can only be made:

- (a) At a general meeting of the members of the NUO called in accordance with clause 12 (General meetings of members), of which not less than 14 days' notice has been given to those eligible to attend and vote:
 - (i) by a resolution passed by a 75% majority of those voting, or
 - (ii) by a resolution passed by decision taken without a vote and without any expression of dissent in response to the question put to the general meeting; or
- (b) By a resolution agreed in writing by all members of the NUO.

19.2 Subject to the payment of all the NUO's debts:

- (a) Any resolution for the winding up of the NUO, or for the dissolution of the NUO without winding up, may contain a provision directing how any remaining assets of the NUO shall be applied.
- (b) If the resolution does not contain such a provision, the remaining assets must be returned to Frodsham Wind Farm Limited.

20. ACCOUNTING RECORDS, ACCOUNTS, ANNUAL REPORTS AND RETURNS

- (a) The NUO will produce annual statements of accounts and report. The statements of accounts and report will be produced 7 months of the financial year end.

21. IN THIS CONSTITUTION:

"Chair of the NUO" means the person so named on NUO website.

"Connected person" means:

- (a) a child, parent, grandchild, grandparent, brother or sister of the Panel member;
- (b) the spouse or civil partner of the Panel member;

- (c) a person carrying on business in partnership with the Panel member;
- (d) an institution which is controlled by the Panel member;
- (e) a body corporate in which the Panel member has a substantial interest;

"Helsby High School Representative" means an individual appointed by Helsby High School to act as a Panel member of the NUO in accordance with Clause 9.

"Insignificant Interest" means an interest which is trivial or inconsequential and does not give rise to the Panel member being able to act impartially.

"Local Community" means the area defined on the map attached at Annex A.

"Panel member" means a Panel member of the NUO.

A **"Poll"** means a counted vote or ballot, usually (but not necessarily) in writing.

"Significant Interest" means a situation that has the potential to undermine the impartiality of a person because of the possibility of a clash between the person's self-interest and the interest of the NUO, examples include paid or active membership of an organisation applying to the NUO, having the potential for direct benefit from any funds awarded save where the same is due to being a member of the local community.