

Minutes of the Extraordinary General Meeting of Westray Development Trust held Thursday 28th August 2014 at 7pm in the Westray Parish Kirk

Present: Ann Beechey, Bryan Beechey, Philip Bews, George Costie, Corinne Curtis, Elizabeth Drever, George Drever, Danny Harcus, Margaret Hutchison, Caroline Kent, Iain MacDonald, Jo MacDonald, Alasdair McVicar, Angela Muir, Peter Needham, Janice Rendall, Colin Risbridger, Nancy Scott, Ailsa Seatter, David Seatter, Nigel Spurgeon, William Stevenson, Michael Stokes, Christine Turnbull, William Turnbull, Andy Makin, Meghan McEwen VAO, Steven Phillips Burness Paull LLP

Apologies: Anne Cooper, Edith Costie, Alistair Harcus, June Harcus, Annie Harcus, James Harcus

Danny Harcus (DH) welcomed everyone to the meeting and explained that this meeting was to vote on the adoption of the proposed Articles of Association. He introduced Steven Philips (SP) of Burness Paull who was attending to give the legal aspect of the new format constitution. DH explained that the meeting would be given an explanation on the new format and it would then be put to a vote. If it passed (with 75% of the votes cast at the meeting) it will become effective immediately and Companies House and OSCR will be notified.

DH ran through the present charitable objectives of WDT and stated that the Board are proposing to add in two more which will give more flexibility in what WDT can do for the community. These objectives are:

- To advance the arts, heritage, culture and science;
- To relieve those in need by reason of age, ill-health, disability, financial hardship or other disadvantage (includes relief given by the provision of accommodation and care);

He also stated that the Board are proposing to change the length of service for Directors. The current M&As of the Company require Directors to resign after three years service at which time they may stand for re-election and serve a further three years before retirement. The new document states that the longest serving third or three (whichever is the greatest) Directors must resign from office at the AGM. These Directors can be available for re-election provided they meet the criteria for Directorship. They can serve again provided they receive the required number of votes in the ballot.

DH explained the reason for this proposal was that at present, the Board is at risk of not being quorate as five of the current Directors would have to retire at the same time.

DH then explained there were a few typing mistakes in the proposed document:

Clause # 57 should read 'At each annual general meeting....'

Clause # 60 should read 'At each annual general meeting....'

Clause # 60 (b) should read '.....or 3, whichever is the greatest....'

DH then handed over to Steven Philips. He gave a background to his involvement with Development Trusts and the Development Trust Association Scotland (DTAS). He had worked with Alan Caldwell on the first template of M&As for Development trusts and he had been involved again with redrafting the new format that came in after the new Companies Act 2006. Although there is no legal requirement to adopt the new format document, it makes sense and is considered best practice.

SP then ran through the changes of substance within the new document:

-Clause # 15: current M&As state main residence whereas the new document states ordinarily resident. During the Q&A session at the end, it was explained that the main residence could be Westray but that the property could be empty for most of the year; whereas ordinarily resident means that Westray is where you live even if you happen to work away from the island for some of the year.

-Clause # 17: membership for employees: this isn't normally something that would be included but WDT has added in that employees can't vote on matters directly affecting their employment.

-The new Articles don't have a requirement for a Vice –Chairperson.

-The Chairperson doesn't have a casting vote at general meetings.

- The change of length of service for Directors – this is in line with best practice and SP would recommend that the requirement for Directors to retire after six years is removed. It could be that there is a really good Director that has to retire when it would be beneficial to WDT that they remain on the Board for a longer period. The membership has the power to vote to reappoint or remove Directors.
- The current M&As state that a Director can be removed if they miss four consecutive Board meetings with no reason; the new Articles reduce this to three meetings.
- Office bearers: the requirement for a vice-chair has been removed and the length of service for office bearers has also been removed.
- Under Directors meetings, the requirement for a meeting to be called within 14 days of a request being made to the secretary has been removed as has the requirement for a minimum of four meetings per year. There used to be a requirement that one of the quorum at the meeting should be an office bearer, this requirement has been removed. The Board can invite anyone to attend meetings (without a vote) whereas under the current M&As, specialist advisers would have been appointed to the Board.
- In terms of Directors interest, clause # 85 used to be special resolution but has now been changed to ordinary resolution. If this requires, the matter can be taken to a general meeting.
- Clause # 86 – code of conduct for Directors is a new clause.

SP then opened it up to the floor for questions.

Object # 9 is not one of the seventeen charitable objects but it is what the legal profession call a ‘sweeper’ meaning that if the project doesn’t meet one of the stated charitable objects but is still charitable and can be done by the company, then WDT can put it under that clause.

The age of membership is still 18 years or older. There is no legal reason that it could not be lowered to 16 however WDT may get more input from a youth forum/youth development trust.

The code of conduct for Directors; even if this was not included in the constitution; Directors would still be bound by it. SP would recommend developing a more detailed code of conduct as policy. It would be more flexible if it was not included in the constitution of the company.

A comment was made that these changes are considerably different to what was sent out after the AGM and the assurance of the board was sought that these changes are in line with special resolution one as stated. SP explained that he had highlighted all changes of substance but to go through the whole document, word for word would take hours.

SP explained that the special resolutions as notified in the notice of the EGM are seen as an explanation of the changes and that the official resolution (and the one on which the vote will be cast) is the one on the front page of the notice:

To consider and, if thought fit, pass the following resolution, which will be proposed as a special resolution of the Company:

“That the regulations set out in the document tabled at the meeting and (for the purpose of identification) signed by the chairperson of the meeting, be adopted as the Company’s articles of association in substitution for, and to the exclusion of, the existing articles of association (including, for the avoidance of doubt, those provisions of the Company’s memorandum of association which are treated, under the Companies Act 2006, as provisions of the Company’s existing articles of association).”

The question was then asked if all changes were necessary under law. SP replied that not all required to meet law but he had taken the meeting through all the changes of substance. Resolution 1 as stated in the notice of the EGM is not a resolution in terms of company law; it is intended as an explanation.

Clause # 98: No member has the right to inspect any records of the company. This was raised and it was felt that it was over prescriptive. SP explained that Freedom of Information doesn’t apply to a company like WDT and that there is a need for a degree of confidentiality. The members have the opportunity to raise questions on the final accounts at the AGM and it is the Board’s responsibility to ensure that proper accounting records are kept. To remove this clause completely would mean that members would have absolutely no access to any records of the company.

It was also raised that there is no right of appeal for those refused membership of the company. It was noted that another organisation had problems obtaining funding due to this clause not being included in its constitution. SP explained that funders have differing opinions on best/good practice when it comes to membership. It was suggested that the right of appeal could be put into policy rather than included in the constitution.

A question was then raised on the charitable objects and how a project would fit under them. It was explained that the Board consider the project and decide which object, if any, it fits under. It was stressed that the charitable objects give the company the power to do things; it does not mean they have to fulfil each object.

Clause # 5: the word 'particularly'. This was raised and questioned why this word was included. It was felt that it was Board policy to include this word as WDT is primarily set up to help the residents of Westray. It could be that by helping people in Westray it indirectly helps others not normally resident on the island.

The resolution was then put to the vote. SP explained that it was a simple Yes/NO vote to accept the Articles of Association as presented.

Those for the resolution 22

Those against 4

Motion passed and the new document is effective immediately. Companies House and OSCR will be notified.

It was stated that the issues raised throughout the meeting could be taken to the Board for discussion.

DH thanked SP for his assistance and thanked everybody for coming and taking part.

The meeting was closed at 8.40pm.