

# CONSTITUTION OF THE CALTON HILL CONSERVATION TRUST

adapted from the SCVO Model SCIO Constitution

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## **GENERAL**

### **Interpretation**

1. References in this constitution to the Charities and Trustee Investment (Scotland) Act 2005 should be taken to include:

1.1. any statutory provision which adds to, modifies or replaces that Act; and

1.2. any statutory instrument issued in pursuance of that Act or in pursuance of any statutory provision falling under sub-clause 1.1. above.

2. In this constitution:

2.1. "charity" means a body which is either a "Scottish charity" within the meaning of section 13 of the Charities and Trustee Investment (Scotland) Act 2005 or a "charity" within the meaning of section 1 of the Charities Act 2006, providing (in either case) that its objects are limited to charitable purposes;

2.2. "charitable purpose" means a charitable purpose under section 7 of the Charities and Trustee Investment (Scotland) Act 2005;

2.3 "written notice" and "notice" can be by letter or email or by posting on the group's official website.

### **Type of organisation**

3. The organisation will, upon registration, be a Scottish Charitable Incorporated Organisation (SCIO).

### **Scottish principal office**

4. The principal office of the organisation will be in Scotland (and must remain in Scotland).

### **Name**

5. The name of the organisation is "The Calton Hill Conservation Trust".

### **Purposes**

6. The organisation's purposes are:

6.1. To promote and encourage the conservation, preservation, protection and improvement of the area known as Calton Hill, Edinburgh, (hereinafter referred to as the 'area');

6.2. To inform the public of the significance of the area, its history and environment, and its future sustainability, with the intention of encouraging a responsible attitude towards the area's amenity and attractions;

6.3. To promote and encourage enjoyment and a responsible use of the area by a wide range of people and organisations, including those who live and work in the locality.

## **Powers**

7. The organisation has power to do anything which is calculated to further its purposes or is conducive or incidental to doing so.

8. No part of the income or property of the organisation may be paid or transferred (directly or indirectly) to the members - either in the course of the organisation's existence or on dissolution - except where this is done in direct furtherance of the organisation's charitable purposes.

## **Liability of members**

9. The members of the organisation have no liability to pay any sums to help to meet the debts (or other liabilities) of the organisation if it is wound up; accordingly, if the organisation is unable to meet its debts, the members will not be held responsible.

10. The members and charity trustees have certain legal duties under the Charities and Trustee Investment (Scotland) Act 2005; and clause 9 does not exclude (or limit) any personal liabilities they might incur if they are in breach of those duties or in breach of other legal obligations or duties that apply to them personally.

## **General structure**

11. The structure of the organisation consists of the MEMBERS and the BOARD, who are appointed by the members as set out in the constitution.

12. The people serving on the board are referred to in this constitution as CHARITY TRUSTEES.

## **MEMBERS**

### **Qualifications for membership**

13. Membership is open to any individual regardless of sex, age, disability, ethnicity, nationality, sexual orientation, religion or other beliefs:

13.1. who supports the objects of the organisation;

13.2. who is interested in helping the group to achieve its aim and willing to abide by the rules of the organisation; and

13.3. who continues to pay any membership subscription set in accordance with clause 17.

### **Application for membership**

14. Any person who wishes to become a member must submit an application for membership.

15. The board may, at their discretion, refuse to admit any person to membership but may not discriminate on the basis of sex, age, disability, ethnicity, nationality, sexual orientation, religion or other beliefs.

16. The board must notify each applicant promptly of its decision on whether or not to admit him/her to membership.

### **Membership subscription**

17. Any membership subscription must be paid in advance of the period of membership to which the subscription applies, at a level determined prior to that period by the Annual General Meeting.

### **Register of members**

18. The board must keep a register of members, setting out for each current member:

18.1. his/her full name and address, and if available his/her email address.

19. The board must ensure that the register of members is updated within 28 days of any change which is notified to the organisation.

### **Withdrawal from membership**

20. Any person who wants to withdraw from membership must give notice of withdrawal to the organisation; he/she will cease to be a member as from the time when the notice is received by the organisation.

### **Expulsion from membership**

21. Any person may be expelled from membership by way of a resolution passed by not less than two thirds of those present and voting at a members' meeting, providing the following procedures have been observed:

21.1. at least 21 days' notice of the intention to propose the resolution must be given to the member concerned, specifying the grounds for the proposed expulsion;

21.2. the member is given the opportunity to address the meeting at which the resolution is proposed, prior to the resolution being put to the vote.

### **Transfer of membership**

22. Membership of the organisation may not be transferred by a member.

## **DECISION-MAKING BY THE MEMBERS**

### **Members' meetings**

23. The board must arrange a meeting of members (an annual general meeting or "AGM") in each calendar year.

24. The gap between one AGM and the next must not be longer than 18 months.

25. Notwithstanding clause 23, an AGM does not need to be held during the calendar year in which the organisation is formed; but the first AGM must still be held within 18 months of the date on which the organisation is formed.

26. The business of each AGM must include:

26.1. a report by the chair on the activities of the organisation;

26.2. consideration of the annual accounts of the organisation;

26.3. the election/re-election of charity trustees, as referred to in clauses 50 to 53.

27. The board may arrange a special members' meeting at any time.

### **Power to request the board to arrange a special members' meeting**

28. The board must arrange a special members' meeting if they are requested to do so by a written notice (which may take the form of two or more notices in the same terms, each from one or more members) by members who amount to 10% or more of the total membership of the organisation at the time, providing:

28.1. the notice states the purposes for which the meeting is to be held; and

28.2. those purposes are not inconsistent with the terms of this constitution, the Charities and Trustee (Investment) Scotland Act 2005 or any other statutory provision.

29. If the board receive a notice under clause 28, the date for the meeting which they arrange in accordance with the notice must not be later than 28 days from the date on which they received the notice.

### **Notice of members' meetings**

30. At least 14 clear days' written notice must be given of any AGM or any special members' meeting.

31. The notice calling a members' meeting must specify in general terms what business is to be dealt with at the meeting; and

31.1. in the case of a resolution to alter the constitution, must set out the exact terms of the proposed alteration(s); or

31.2. in the case of any other resolution falling within clause 40 (requirement for a two-thirds majority) must set out the exact terms of the resolution.

32. The reference to "clear days" in clause 30 shall be taken to mean that, in calculating the period of notice,

32.1. the day after the notices are posted (or sent by email) should be excluded; and

32.2. the day of the meeting itself should also be excluded.

33. Written notice of every members' meeting must be given to all the members of the organisation, and to all the charity trustees; but the accidental omission to give notice to one or more members will not invalidate the proceedings at the meeting.

### **Procedure at members' meetings**

34. No valid decisions can be taken at any members' meeting unless a quorum is present.

35. The quorum for a members' meeting is 10 members, present in person or participating online.

36. The chair, or in his or her absence the vice-chair, of the organisation should act as chairperson of each members' meeting.

37. If the chair of the organisation, or in his or her absence the vice-chair, is not present within 15 minutes after the time at which the meeting was due to start (or is not willing to act as chairperson), the person who will act as chairperson of that meeting must be elected by the charity trustees present, failing which a two-thirds majority of the members present may elect a chairperson.

## **Voting at members' meetings**

38. Every member has one vote, which must be given personally.

39. All decisions at members' meetings will be made by majority vote - with the exception of the types of resolution listed in clause 40.

40. The following resolutions will be valid only if passed by not less than two thirds of those voting on the resolution at a members' meeting:

40.1. a resolution amending the constitution;

40.2. a resolution for the winding up or dissolution of the organisation.

41. If there is an equal number of votes for and against any resolution, the chairperson of the meeting will be entitled to a second (casting) vote.

## **Minutes**

42. The board must ensure that proper minutes are kept in relation to all members' meetings.

43. Minutes of members' meetings must include the names of those present; and (so far as possible) the accuracy of the minute of the meeting should be subject to the approval of at least two of those present and this approval should be recorded at the next members' meeting.

44. The board shall make available copies of the minutes referred to in clause 42 to any member of the public requesting them.

## **BOARD (CHARITY TRUSTEES)**

### **Number of charity trustees**

45. The maximum number of charity trustees is 12.

46. The minimum number of charity trustees is three.

### **Eligibility**

47. A person will not be eligible for election or appointment to the board unless he/she is a member of the organisation.

48. A person will not be eligible for election or appointment to the board if he/she is:



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

48.2. an employee of the organisation; or

48.3. under 16 years old.

### **Initial charity trustees**

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

### **Election, retiral, re-election**

50. At each AGM at least one-third of the trustees, being those whose most recent appointment or election to the board was longest ago, shall retire. For purposes of this article trustees appointed or elected on the same day will be deemed to have been appointed in alphabetical order of their surnames. They shall be eligible for re-election under clause 48 or appointment under clause 49.

51. A charity trustee retiring at an AGM will be deemed to have been re-elected unless:

51.1. he/she advises the board prior to the conclusion of the AGM that he/she does not wish to be re-appointed as a charity trustee; or

51.2. an election process was held at the AGM and he/she was not among those elected/re-elected through that process; or

51.3 a resolution for the re-election of that charity trustee was put to the AGM and was not carried.

52. At each AGM, the members may elect any member (unless he/she is debarred from membership under clause 47 or 48) to be a charity trustee.

53. The board may at any time appoint any member (unless he/she is debarred from membership under clause 47 or 48) to be a charity trustee.

### **Termination of office**

54. A charity trustee will automatically cease to hold office if:

54.1. he/she becomes disqualified from being a charity trustee under the Charities and Trustee Investment (Scotland) Act 2005;

54.2. he/she becomes incapable for medical reasons of carrying out his/her duties as a charity trustee - but only if that has continued (or is expected to continue) for a period of more than six months;

54.3. he/she ceases to be a member of the organisation;

54.4. he/she becomes an employee of the organisation;

54.5. he/she gives the organisation a written notice of resignation;

54.6. he/she is absent (without good reason, in the opinion of the board) from more than three consecutive meetings of the board - but only if the board resolve to remove him/her from office;

54.7. he/she is removed from office by resolution of the board on the grounds that he/she is considered to have committed a material breach of the Code of Conduct for Charity Trustees;

54.8. he/she is removed from office by resolution of the board on the grounds that he/she is considered to have been in serious or persistent breach of his/her duties under section 66(1) or (2) of the Charities and Trustee Investment (Scotland) Act 2005; or

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

55. A resolution under sub-clauses 54.7, 54.8 or 54.9 shall be valid only if:

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

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

55.3. (in the case of a resolution under sub-clauses 54.7 or 54.8) at least two thirds (to the nearest round number) of the charity trustees then in office vote in favour of the resolution.

### **Register of charity trustees**

56. The board must keep a register of charity trustees, setting out for each current charity trustee:

56.1. his/her full name and address and if available his/her email address;

56.2. the date on which he/she was appointed as a charity trustee; and

56.3. any office held by him/her in the organisation.

57. The board must ensure that the register of charity trustees is updated within 28 days of any change:

57.1. which arises from a resolution of the board or a resolution passed by the members of the organisation; or

57.2. which is notified to the organisation.

58. If any person requests a copy of the register of charity trustees, the board must ensure that a copy is supplied to him/her within 28 days, providing the request is reasonable; if the request is made by a person who is not a charity trustee of the organisation, the board may provide a copy which has the addresses and email addresses blanked out - if the organisation is satisfied that including that information is likely to jeopardise the safety, security or legal rights or protections of any person or premises.

### **Office bearers**

59. The charity trustees must elect (from among themselves) the following office bearers: a chair, a vice-chair, a treasurer and a secretary.

60. In addition to the office-bearers required under clause 59, the charity trustees may elect (from among themselves) further office-bearers if they consider that appropriate.

61. All of the office-bearers, referred to in clause 60, will cease to hold office at the conclusion of each AGM, but may then be re-elected as office bearers under clause 59 or 60.

62. A person elected to any office will automatically cease to hold that office:

62.1. if he/she ceases to be a charity trustee; or

62.2. if he/she gives to the organisation a written notice of resignation from that office.

### **Powers of the board**

63. Except where this constitution states otherwise, the organisation (and its assets and operations) will be managed by the board; and the board may exercise all the powers of the organisation.

64. A meeting of the board at which a quorum is present may exercise all powers exercisable by the board.

## **Charity trustees - general duties and avoidance of conflict of interest**

65. Each of the charity trustees has a duty, in exercising functions as a charity trustee, to act in the interests of the organisation and, in particular, must:

65.1. seek, in good faith, to ensure that the organisation acts in a manner which is in accordance with its purposes;

65.2. act with the care and diligence which it is reasonable to expect of a person who is managing the affairs of another person;

65.3. ensure that the organisation complies with any direction, requirement, notice or duty imposed under or by virtue of the Charities and Trustee Investment (Scotland) Act 2005.

66. Each of the charity trustees must make a written declaration to be included in a Register of Interests for all trustees, of any personal interests, or those of a partner or close relative, that may be related to or influence his or her conduct as a trustee and to update this within 28 days of any change; and

66.1. in circumstances giving rise to the possibility of a conflict of interest between the organisation and any other party in which/whom the trustee has a personal interest, disclose or re-disclose the conflicting interest to the organisation, and refrain from participating in any deliberation or decision of the other charity trustees with regard to the matter in question; and

66.2. for the purposes of this clause, a trustee, partner or relative shall be deemed to have a personal interest in relation to another organisation if he or she is employed by it, owes duties to it, has a stake in its success or failure or has influence on its decisions as a trustee, director, participant in the management or as an established adviser; and

66.3. the board must keep a Register of Interests setting out for each charity trustee all declarations of interest made by them during their period as a trustee.

67. In addition to the duties outlined in clause 65 and 66, all of the charity trustees must take such steps as are reasonably practicable for the purpose of ensuring:

67.1. that any breach of any of those duties by a charity trustee is corrected by the charity trustee concerned and not repeated; and

67.2. that any trustee who has been in serious breach of those duties is removed as a trustee.

68. Provided he/she has declared his/her interest - and has not deliberated or voted on the question of whether or not the organisation should take a view or enter into an arrangement - a charity trustee will not be debarred from entering into an arrangement with the organisation in which he/she has a personal interest; and (subject to the provisions relating to remuneration for services contained in the Charities and Trustee Investment (Scotland) Act 2005), he/she may retain any personal benefit which arises from that arrangement.

69. No charity trustee may serve as an employee (full time or part time) of the organisation; and no charity trustee may be given any remuneration by the organisation for carrying out his/her duties as a charity trustee.

70. The charity trustees may be paid all travelling and other expenses reasonably incurred by them in connection with carrying out their duties; this may include expenses relating to their attendance at meetings.

## **DECISION-MAKING BY THE CHARITY TRUSTEES**

### **Notice of board meetings**

71. Any charity trustee may call a meeting of the board or ask the secretary to call a meeting of the board.

### **Procedure at board meetings**

72. No valid decisions can be taken at a board meeting unless a quorum is present; the quorum for board meetings is 3 charity trustees, present in person or participating online.

73. If at any time the number of charity trustees in office falls below the number stated as the quorum in clause 72, the remaining charity trustee(s) will have power to fill the vacancies or call a members' meeting.

74. The chair of the organisation, or in his or her absence the vice-chair, should act as chairperson of each board meeting.

75. If the chair, or in his or her absence the vice-chair, is not present within 15 minutes after the time at which the meeting was due to start (or is not willing to act as chairperson), the charity trustees present at the meeting must elect (from among themselves) the person who will act as chairperson of that meeting.

76. Every charity trustee has one vote, which must be given personally.

77. All decisions at board meetings will be made by majority vote except where otherwise stated in this constitution.

78. If there is an equal number of votes for and against any resolution, the chairperson of the meeting will be entitled to a second (casting) vote.

79. The board may, at its discretion, allow any person to attend and speak at a board meeting notwithstanding that he/she is not a charity trustee - but on the basis that he/she must not participate in decision-making.

80. A charity trustee must not vote at a board meeting (or at a meeting of a sub-committee) on any resolution which relates to a matter in which he/she has a personal interest or duty which conflicts (or may conflict) with the interests of the organisation; he/she must withdraw from the meeting while an item of that nature is being dealt with.

81. Records of meetings and decisions must be kept.

## **ADMINISTRATION**

### **Delegation to sub-committees**

82. The board may delegate any of their powers to sub-committees; a sub-committee must include at least one charity trustee, but other members of a sub-committee need not be charity trustees.

83. The board may also delegate to the chair of the organisation (or the holder of any other post) such of their powers as they may consider appropriate.

84. When delegating powers under clause 82 or 83, the board must set out appropriate conditions (which must include an obligation to report regularly to the board).

85. Any delegation of powers under clause 82 or 83 may be revoked or altered by the board at any time.

86. The rules of procedure for each sub-committee, and the provisions relating to membership of each sub-committee, shall be set by the board.

### **Operation of accounts**

87. The signatures of two out of three signatories appointed by the board will be required in relation to all operations (other than the lodging of funds) on the bank and building society accounts held by the organisation; at least one out of the two signatures must be the signature of a charity trustee.

88. Where the organisation uses electronic facilities for the operation of any bank or building society account, the authorisations required for operations on that account must be consistent with the approach reflected in clause 87.

## **Accounting records and annual accounts**

89. The board must ensure that proper accounting records are kept, in accordance with all applicable statutory requirements.

90. The board must prepare annual accounts, complying with all relevant statutory requirements, including at least receipts and payments accounts, statement of balances, Trustees' Annual Report and an Independent Examiner's report.

## **MISCELLANEOUS**

### **Winding-up**

91. If the organisation is to be wound up or dissolved, the winding-up or dissolution process must be carried out in accordance with the procedures set out under the Charities and Trustee Investment (Scotland) Act 2005.

92. Any surplus assets available to the organisation immediately preceding its winding up or dissolution must be used for purposes which are the same as - or which closely resemble - the purposes of the organisation as set out in this constitution.

### **Alterations to the constitution**

93. This constitution may (subject to clause 94) be altered by resolution of the members passed at a members' meeting or by way of a written resolution of the members (in either case subject to achieving the two thirds majority referred to in clause 40).

94. The Charities and Trustee Investment (Scotland) Act 2005 prohibits taking certain steps (eg change of name, an alteration to the purposes, amalgamation, winding-up) without the consent of the Office of the Scottish Charity Regulator (OSCR).

### **Standing Orders**

95. The board may adopt standing orders for the conduct of its business. Any such standing orders may be approved, altered or deleted at any meeting of the members and subsequently put into effect by the board. At least one week's notice shall be given of any proposed changes.

Adopted at the Annual General Meeting on 18 May 2024

Chair: Simon Holledge

Treasurer: Hartley Millar