

Draft of 10 April 2019

Registered charity number 287315

The Burnham Overy Harbour and Commons Trust (formerly The Burnham Overy Harbour Trust)

**CONSTITUTION (as amended by a resolution of the members passed
on _____ 2019):-**

1. The Name of the Trust is “The Burnham Overy Harbour and Commons Trust” (Herein after referred to as “The Trust”)
2. The Trustees of The Trust shall comprise one representative nominated by each of Burnham Overy Parish Council (to be a parishioner), Scolt Head and District Common Rights Holders Association, The Landowners (as defined in clause 4 below) and one person elected to the position by a majority vote at the Annual General Meeting of the Trust.
3. The objects of the Trust are:
 - a) To manage the harbour area and the adjacent marshes in the parishes of Burnham Overy and Burnham Norton, being part of the land comprising CL65 on the register of common land maintained by Norfolk County Council (“the Common”), for the benefit of all lawful users in a manner consistent with its status as registered common land;
 - b) To maintain and improve the Common, which incorporates the creek and harbour, and to control and regulate access to the creek for those purposes having regard to the NNR, AONB, SAC, SSSI and other environmental designations and protections, which from time to time may change or be applied.
4. Membership of the Trust shall be open to the owner of any land within the Common (“a Landowner”), any Commoner as defined below¹, any ratepayer in respect of property in the parishes of Burnham Overy or Burnham Norton and their immediate family members over the age of 18 years, and persons over the age of 18 who can demonstrate strong local ties as determined by the Management Committee. Associate Membership will be open to any regular harbour user.

For the purposes of this Constitution, a Commoner is defined as any person who is registered as a Rightholder on the Commons Register identified as CL 65 and maintained by

Norfolk County Council. Rights are those Rights defined in the CL65 Commons Register and more particularly described in the Appendix hereto.

5. The annual subscription for members shall be determined and varied by the Management Committee. from time to time. However Commoners shall be exempt from any membership fee.
6. Any member may determine his or her membership status at any time by a request in writing to the Honorary Secretary.
7. Membership
 - a) The Management Committee may, by a simple majority, cancel the membership of any member of the Trust whose subscription (if applicable) is six months or more in arrears.
 - b) Save in respect of a Landowner or Commoner, the Trust, following a recommendation of the Management Committee, may by a simple majority at a general meeting, discontinue the membership of any member of the Trust for any other reason at the absolute discretion of the Trust, provided that prior to making any such recommendation, such person or persons shall have the right to attend and be heard by the Management Committee (save in those cases where the membership subscription is six months in arrears).
 - c) If the Management Committee believes that a Commoner is over-exercising his or her Right, or acting unlawfully, or not acting with due consideration to other legal users of the Common, it shall report this matter to The Scolt Head & District Common Rightholders Association (SH&DCRA) for due consideration, which, if the view is supported, shall undertake all necessary measures as to comply with the law relating commons, through the agency of the Common Reeves. When such requests are made it is expected that any enforcements decided by SH&DCRA will be supported fully by the Trust.
 - d) If the SH&DCRHA believes that a member of the Trust is wilfully inhibiting any Common Right Holder from exercising their lawful Right the SH&DCHA and the Trust will work together in order to prevent such member from unlawfully infringing such Right.
8. Management of the Trust shall be delegated to the Management Committee which shall meet quarterly and shall consist of the Chairman, Vice Chairman, Honorary Treasurer and

Honorary Secretary elected bi-annually at the AGM, and further committee members who shall be appointed bi-annually by the following bodies, who will notify the Management Committee of their appointees in writing 14 days prior to the AGM: -

Scot Head and District Common Rights Holders Association x 4
Landowner's representative x 1
Kings Lynn and West Norfolk District Council x 1
Burnham Norton Parish Meeting x 1 *
Burnham Overy Parish Council x 1 *

Burnham Overy Parish Council and Burnham Norton Parish Meeting shall, where possible, ensure that at least one of them appoints a Rightholder.

Unless it considers that any meeting or part of a meeting shall be confidential, the Management Committee shall invite representatives from each of the following organisations to attend its meetings in a non-voting capacity, to act in an advisory position: -

Working Boats & Professional Fishermen at Burnham Overy Burnham Overy & Norton x 1
Wildfowlers Association x 1
Holkham National Nature Reserve Manager x 1
Burnham Overy Boathouse Ltd x 1
Burnham Overy Staithe Sailing Club x 1

9. At a general meeting of the Trust and at a meeting of the Management Committee, in the event that voting is tied the Chairman shall have a casting vote in addition to his/her own vote.
10. The Management Committee is empowered to set up a Fairways sub-committee with the responsibility to advise on and manage moorings and mooring placement. The Management Committee shall determine the terms of reference of the Fairways sub-committee. The responsibilities of the subcommittee will include collection of fees for moorings from non-common Rightholders if directed by the Management Committee to do so. The sub-committee, with the agreement of the Management Committee, can appoint a paid moorings adviser if this is deemed necessary to protect the fairway and maintain its navigability.

11. The Management Committee shall instruct the Fairways sub-committee to maintain a register of fees received. The fees so collected shall be applied for the maintenance and improvement of the Common in accordance with the objects of the Trust. The Management Committee or the Fairways sub-committee shall collect fees on behalf of the Commoners, but the Commoners will retain 15% of any fees collected for such objects, with this sum paid annually to the Commoners.
12. The Annual General Meeting of the Trust shall be held every year. Twenty one days' notice shall be given to members. At every second AGM there shall be elected a Chairman, Vice Chairman, Honorary Secretary and Honorary Treasurer for the ensuing two years. They and other members of the Management Committee shall take office at the end of the meeting at which they are elected and shall hold office until the end of the next-but-one Annual General Meeting. The Chairman, or failing him the Vice Chairman, for the time being of the Management Committee shall also be the chairman of any general meeting. Members of the Management Committee may be re-elected for further terms of office. If the Chairman and Vice Chairman are not present at a meeting of the Management Committee or at a general meeting, then the Management Committee shall elect a chairman to conduct the business of that meeting from among those Management Committee members present.
13. The Honorary Treasurer shall keep accounts of all monies received and expended on behalf of the Trust and shall present such accounts at the Annual General Meeting of the Trust. Such accounts must be independently examined or audited as required by law and approved by and signed on behalf of the Management Committee. The Honorary Treasurer shall maintain a bank account in the name of the Trust and all cheques and withdrawals from such account shall require the signatures of two members of the Management Committee.
14. The Financial Year of the Trust shall end on 31st December in each year and a General Meeting of the Members and Associate Members shall be convened by the Honorary Secretary within six months thereafter for the purpose of receiving the annual report of the Management Committee and the financial accounts, for electing the Chairman, Vice Chairman, Honorary Secretary and Honorary Treasurer, to appoint an independent examiner or auditor for the coming year and for considering any other business as may be necessary. Twenty one days' notice of such meeting shall be sent to all Members and Associate Members. Fifteen Members present in person shall constitute a quorum at a general meeting. In the event of a quorum not being present the meeting shall be adjourned

to such a place, date and time within the ensuing fourteen days as the Chairman shall decide and the Members present at such an adjourned meeting shall constitute a quorum.

15. Unless deemed confidential by the Management Committee, all its meetings shall be open to members of the general public, who may attend and speak. Dates of all meetings will be posted on the parish notice boards of parishes within the area of the Common, in the parish magazines and on the Trust website, should one exist, or in any other readily available media as deemed suitable by the Management Committee.
16. An Extraordinary General Meeting may be convened at any time by a resolution of the Management Committee or on the requisition of at least ten Members of the Trust such resolution or requisition stating the purpose of the meeting. A meeting held on such requisition shall be held within thirty days of the receipt of such requisition by the Honorary Secretary who shall give the Members and Associate Members of the Trust twenty one days' notice of such meeting stating the purpose of such meeting. Only business on the published agenda shall be discussed.
17. Associate Members of the Trust shall have no power to vote in any Trust meeting.
18. All matters not hereinbefore provided for and not involving an amendment to this Constitution shall be dealt with by the Management Committee.
19. The Trust at a general meeting by a resolution proposed by the Management Committee and agreed by not less than three-quarters of Members present and voting, may amend this Constitution save that there shall be no power to amend the objects in Clause 3 or the represented bodies in Clause 7 and provided that no alteration shall be made which would have the effect of causing the Trust to cease to be a charity at law or be detrimental to any Commoners' ability to exercise their Rights of Common. Consideration of the terms of the constitution of the Trust shall be an item for the AGM every fifth year.
20. Save in respect of any Landowner or Commoner, the Management Committee shall be allowed to charge for registration and licensing of craft for the purposes of mooring (under control of the Fairways sub-committee - see clause 10 above)), parking and launching of boats, where income so derived and any donations shall be applied for the objects of the Trust.

21. Any Commoner's vessels, working boats supporting the longshore / local economy, or any safety or emergency craft not subject to fees (as defined in para 20 above) must be demonstrated to be in proportion and reasonable. Rights of common are to be exercised within the law related to commons, and such craft are encouraged to be registered and to display identify stickers to show fee exemption, and minimise confusion.
22. In considering whether to exercise its powers under clause 7(b) above, the Management Committee shall be empowered to communicate with owners of boats if the owners fail to comply with the requirements of the Management Committee, and seek their response, subject to the law relating to Commons and all Commons Acts and all other relevant Acts and Bye-laws.
23. The Management Committee may invite special representatives to attend its meetings and/or establish other sub-committees for delegation of powers and duties for specific matters as and when it so requires, provided that all undertakings, deeds and proceedings of any such sub-committee shall be fully reported back to the Management Committee as soon as possible.
24. The Trust may be dissolved by a resolution passed by a three-quarters majority of the Members present and voting at an Extraordinary General Meeting convened for the purpose, of which 21 days' notice shall have been given to the Members and Associate Members. Such resolution may give instructions for the disposal of any assets held by or in the name of the Trust provided that if any property remains after the satisfaction of all debts and liabilities such property shall not be paid to or distributed among the members of the Trust but shall be given or transferred to such other charitable institutions having objectives similar to some or all of the objectives of the Trust as the meeting may determine, subject to any necessary approval of the Charity Commissioners or other authority having charitable jurisdiction.
25. If the Trust fails or is disbanded at any point in the future, the management of the Common will revert to the Commoners and Landowners.

Appendix I

Rights of common over Norfolk County Council Commons Register unit CL65

By virtue of sections 3 and 16 of the Commons Act 2006 the identity of those holding rights of common over the registered unit CL65 is exclusively and conclusively recorded in the Rights Section of the Commons Register.

The nature of the rights held by the various Rightholders is conclusively recorded in the Rights Section of the Register. The rights are variously to take:-

Herbage

Estovers

Samphire

Reeds

Soil

Fish

Shellfish

Bait

Wildfowl

Game

Sand

Shingle

Sea Lavender

Tangle

To graze defined numbers of geese and cattle

The entitlement of the Rightholders, in that capacity, is the exercise of such of the above rights as are recorded for their benefit, together with such ancillary rights as are reasonably necessary for the exercise of those rights.

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