

# Constitution of the Swandro – Orkney Coastal Archaeology Trust

## General

### 1 Type of organisation

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

### 2 Scottish principal office

2.1 The principal office of the organisation will be in Bayview, Birsay, Orkney, KW17 2LR

2.2 The principal office must remain in Scotland.

### 3 Name

The name of the organisation is “The Swandro – Orkney Coastal Archaeology Trust”.

### 4 Purposes

The organisation’s purposes are to advance education, heritage and culture for people of all ages, backgrounds and levels of capability from anywhere in the world through the pursuit of archaeological activities, in the widest possible ways, at Swandro and its environs by:

- 4.1.1 encouraging and providing opportunities to learn about the heritage and archaeology of Swandro and its environs;
- 4.1.2 encouraging and providing opportunities to become involved in archaeological activities at Swandro and its environs;
- 4.1.3 offering a range of activities, including without limitation: public lectures; exhibitions; tours; visits; summer schools and work experience opportunities and public participation, in a volunteer capacity, in the widest possible range of archaeological techniques and tasks, all in pursuit of the widest possible understanding of, interest in and development of the archaeological work at Swandro and its environs;
- 4.1.4 facilitating the publication of the results of and the maintenance of the records of archaeological activities carried out in relation to Swandro and its environs;
- 4.1.5 facilitating the promotion of the preservation of and public display of the collections of archaeological artefacts and ecofacts, obtained from Swandro and its environs;
- 4.1.6 working with other organisations and individuals, including schools and universities, to further the aims of the organisation; and
- 4.1.7 serving Swandro and its environs by an active involvement in its future

excavation and presentation.

## **5 Powers**

- 5.1 The organisation has power to do anything which is calculated to further its purposes or is conducive or incidental to doing so.
- 5.2 No part of the income or property of the organisation may be paid or transferred (directly or indirectly) to the members/Charity Trustees - 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.

## **6 General structure**

The structure of the organisation consists of the Charity Trustees who are also the organisation's only members and comprise the organisation's Board.

## **7 Liability of Charity Trustees (members)**

- 7.1 The Charity Trustees (the only 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 Charity Trustees will not be held responsible.
- 7.2 The Charity Trustees have certain legal duties under the 2005 Act; and clause 7.1 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.

## **Board**

### **8 Qualifications for Charity Trusteeship**

- 8.1 Charity Trusteeship is open to any individual aged 16 or over and any individual nominated by an unincorporated association, provided that the individual and organisation subscribe to the purposes of the organisation and wish to see them fulfilled.
- 8.2 Individuals disqualified from being a Charity Trustee under the 2005 Act are not eligible for membership.

### **9 Application for Charity Trusteeship**

- 9.1 Any person or body who/which wishes to become a Charity Trustee must sign a written application for Charity Trusteeship; and for a corporate body, that application must be signed by an appropriately authorised officer of that body who will remain as the representative of that corporate body until such time as the corporate body informs the Board otherwise.
- 9.2 The application will then be considered by the Board at its next Board meeting.
- 9.3 The Board may, at its discretion, refuse to admit any person, or corporate body, or veto the proposed authorised officer acting as a representative of a corporate body, to Charity Trusteeship.

9.4 The Board must notify each applicant promptly (in writing, which includes by e-mail) of its decision on whether or not to admit him/her/it to Charity Trusteeship.

9.5 Any corporate body admitted to Charity Trusteeship shall be referred to in this constitution as a "Corporate Trustee". Where the context so admits, reference in this constitution to "Charity Trustee" shall include reference to those representative authorised officers, from time to time, of any Corporate Trustee(s).

## **10 Subscription to the organisation**

No subscription will be payable.

## **11 Number of Charity Trustees**

11.1 The maximum number of Charity Trustees is twelve (12).

11.2 The minimum number of Charity Trustees is eight (8).

## **12 Initial Charity Trustees**

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 as Charity Trustees with effect from the date of incorporation of the organisation and its entry on the Scottish Charity Register.

## **13 Annual General and Special Members' Meetings**

13.1 The Board must arrange a meeting of the Charity Trustees (an annual general meeting or "AGM") in each calendar year, reporting on the immediately preceding financial year of the organisation.

13.2 The gap between one AGM and the next must not be longer than 15 months.

13.3 Notwithstanding clause 13.1, 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 15 months of the date on which the organisation is incorporated and entered on the Scottish Charity Register.

13.4 The business of each AGM must include:

13.4.1 a report by the chair on the activities of the organisation, and

13.4.2 consideration of the annual statement of account of the organisation, as prepared under Section 44 of the 2005 Act.

13.5 The Board may arrange a Charity Trustees' meeting at any time.

## **14 Termination of office**

14.1 A Charity Trustee will automatically cease to hold office if:

14.1.1 he/she/it becomes disqualified from being a Charity Trustee under the 2005 Act;

- 14.1.2 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 6 months;
  - 14.1.3 he/she becomes an employee of the organisation (subject to the provisions of clause 18);
  - 14.1.4 he/she/it gives the organisation a notice of resignation, signed by him/her/its authorised representative;
  - 14.1.5 he/she/it is absent (without good reason, in the opinion of the Board acting reasonably) from more than 3 consecutive meetings of the Board - but only if the Board resolves to remove him/her from office;
  - 14.1.6 he/she/it is removed from office by resolution of the Board on the grounds that he/she/it is considered to have committed a material breach of the code of conduct for Charity Trustees (as referred to in clause 19.1);
  - 14.1.7 he/she/it is removed from office by resolution of the Board on the grounds that he/she/it is considered to have been in serious or persistent breach of his/her/its duties under section 66(1) or (2) of the 2005 Act; or
  - 14.1.8 he/she/it is removed from office for any other reason by resolution of the Board.
- 14.2 A resolution under sub-clauses 14.1.5, 14.1.6, 14.1.7 or 14.1.8 shall be valid only if:
- 14.2.1 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/its removal is to be proposed;
  - 14.2.2 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
  - 14.2.3 at least two thirds (to the nearest round number) of the Charity Trustees then in office vote in favour of the resolution.

## **15 Register of Charity Trustees**

- 15.1 The Board must keep a register of Charity Trustees, setting out,
- 15.1.1 for each current Charity Trustee:
    - 15.1.1.1 his/her/its full name and address/registered office;
    - 15.1.1.2 the date on which he/she/it was appointed as a Charity Trustee; and
    - 15.1.1.3 any office held by him/her/it in the organisation;
  - 15.1.2 for each former Charity Trustee - for at least 6 years from the date on which he/she ceased to be a Charity Trustee:
    - 15.1.2.1 the name of the Charity Trustee;

15.1.2.2 any office held by him/her/it in the organisation; and

15.1.2.3 the date on which he/she/it ceased to be a Charity Trustee.

15.2 The Board must ensure that the register of Charity Trustees is updated within 28 days of any change:

15.2.1 which arises from a resolution of the Board; or

15.2.2 which is notified to the organisation.

15.3 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 blanked out - if the Board is satisfied that including that information is likely to jeopardise the safety or security of any person or premises.

## **16 Office-bearers**

16.1 The Charity Trustees must elect (from among themselves) a chair, a treasurer and a secretary.

16.2 In addition to the office-bearers required under clause 16.1, the Charity Trustees may elect (from among themselves) further office-bearers if they consider that appropriate.

16.3 All of the office-bearers will cease to hold office at the conclusion of each AGM, but may then be re-elected under clause 16.1 or 16.2.

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

16.4.1 if he/she/it ceases to be a Charity Trustee (or ceases to act as the representative of a Corporate Trustee); or

16.4.2 if he/she/it gives to the organisation a notice of resignation from that office, signed by him/her.

## **17 Powers of Board**

17.1 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.

17.2 A meeting of the Board at which a quorum is present may exercise all powers exercisable by the organisation.

## **18 Charity Trustees - general duties**

18.1 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:

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

- 18.1.2 act with the care and diligence which it is reasonable to expect of a person who is managing the affairs of another person; and
- 18.1.3 in circumstances giving rise to the possibility of a conflict of interest between the organisation and any other party:
  - 18.1.3.1 put the interests of the organisation before that of the other party;
  - 18.1.3.2 where any other duty prevents him/her from doing so, 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
  - 18.1.3.3 ensure that the organisation complies with any direction, requirement, notice or duty imposed under or by virtue of the 2005 Act.
- 18.2 In addition to the duties outlined in clause 18.1, all of the Charity Trustees must take such steps as are reasonably practicable for the purpose of ensuring:
  - 18.2.1 that any breach of any of those duties by a Charity Trustee is corrected by the Charity Trustee concerned and not repeated; and
  - 18.2.2 that any Charity Trustee who has been in serious and persistent breach of those duties is removed as a Charity Trustee.
- 18.3 Provided he/she/it has declared his/her/its interest - and has not voted on the question of whether or not the organisation should enter into the arrangement - a Charity Trustee will not be debarred from entering into an arrangement with the organisation in which he/she/it has a personal interest; and (subject to clause 18.4 and to the provisions relating to remuneration for services contained in the 2005 Act), he/she/it may retain any personal benefit which arises from that arrangement.
- 18.4 No Charity Trustee may serve as an employee (full time or part time) of the organisation; and, subject to clauses 18.5 and 18.6, no Charity Trustee may be given any remuneration by the organisation for carrying out his/her duties as a Charity Trustee.
- 18.5 Where a Charity Trustee provides services to the organisation then:
  - 18.5.1 the maximum amount of the remuneration must be specified in a written agreement and must be reasonable;
  - 18.5.2 the Charity Trustees must be satisfied that it would be in the interests of the organisation to enter into the arrangement (taking account of that maximum amount); and
  - 18.5.3 less than half of the Charity Trustees must be receiving remuneration from the organisation or benefit from remuneration of that nature.
- 18.6 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.

## **19 Code of conduct for Charity Trustees**

- 19.1 Each of the Charity Trustees shall comply with the code of conduct (incorporating detailed rules on conflict of interest) prescribed by the Board from time to time.
- 19.2 The code of conduct referred to in clause 19.1 shall be supplemental to the provisions relating to the conduct of Charity Trustees contained in this constitution and the duties imposed on Charity Trustees under the 2005 Act; and all relevant provisions of this constitution shall be interpreted and applied in accordance with the provisions of the code of conduct in force from time to time.

## **Decision-making by the Charity Trustees**

### **20 Notice of Board meetings**

- 20.1 Any Charity Trustee may call a meeting of the Board or ask the secretary to call a meeting of the Board.
- 20.2 At least 14 clear days' notice must be given of the AGM, or of a Board meeting at which the business of the meeting includes consideration of any resolution.
- 20.3 At least 7 clear days' notice must be given for other Board meetings, unless (in the opinion of the chair) there is a degree of urgency which makes that inappropriate.
- 20.4 The notice calling an AGM or a Board meeting at which the business of the meeting includes consideration of any resolution, must:
- 20.4.1 specify in general terms what business is to be dealt with at the meeting (and include any supporting documentation for consideration); and
  - 20.4.2 in the case of any other resolution falling within clause 22.4 (requirement for two-thirds majority) must set out the exact terms of the resolution.
- 20.5 The reference to "clear days" in clauses 20.2 and 20.3 shall be taken to mean that, in calculating the period of notice,
- 20.5.1 the day after the notices are posted (or sent by e-mail) should be excluded; and
  - 20.5.2 the day of the meeting itself should also be excluded.
- 20.6 Notice of the AGM and Board meetings must be given to all the Charity Trustees; but the accidental omission to give notice to one or more Charity Trustees will not invalidate the proceedings at the meeting.
- 20.7 Any notice which requires to be given to a Charity Trustee under this constitution must be:
- 20.7.1 sent by post to the Charity Trustee, at the address last notified by him/her to the organisation and on the register of Charity Trustees as described in clause 15.1; and/or
  - 20.7.2 sent by e-mail to the Charity Trustee, at the e-mail address last notified by him/her to the organisation. It is the responsibility of each Charity Trustee to

keep their personal email details up to date.

## **21 Procedure at Board meetings**

- 21.1 No valid decisions can be taken at a Board meeting unless a quorum is present; the quorum for Board meetings is four (4) Charity Trustees, present in person, or by other means as set out in clause 21.2
- 21.2 Subject to the clauses of this Constitution and the 2006 Act, and to any direction given by special resolution of the Company, the Board may regulate its proceedings as it thinks fit. Without prejudice to that generality, a meeting of the Board may consist of a conference between Board Members who are not all in the one place but who can communicate with each other simultaneously by telephone or video conference facilities or any other form of electronic communication, and the word “meeting” in this Constitution shall be construed accordingly.
- 21.3 If at any time the number of Charity Trustees in office falls below the number stated as the quorum in clause 21.1, the remaining Charity Trustee(s) will have power to fill the vacancies - but will not be able to take any other valid decisions.
- 21.4 The chair of the organisation should act as chairperson of each Board meeting.
- 21.5 If the 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.
- 21.6 Every Charity Trustee has one vote, which must be given personally, except in the case of a vote with regard to a resolution under clauses 22.1 and 22.2.
- 21.7 All decisions at Board meetings will be made by majority vote.
- 21.8 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.
- 21.9 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.
- 21.10 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.
- 21.11 For the purposes of clause 21.10:
- 21.11.1 an interest held by an individual who is “connected” with the Charity Trustee under section 68(2) of the 2005 Act (husband/wife, partner, child, parent, brother/sister etc) shall be deemed to be held by that Charity Trustee; and
- 21.11.2 a Charity Trustee will be deemed to have a personal interest in relation to a particular matter if a body in relation to which he/she is an employee, director, member of the management committee, officer or elected representative has an interest in that matter.



## **22 Voting on Resolutions**

- 22.1 Every Charity Trustee has one vote with regard to voting on resolutions, which (whether on a show of hands or on a secret ballot as described in clauses 22.5 and 22.6) may be given either personally, or by proxy given to a fellow Charity Trustee.
- 22.2 A member who wishes to appoint a fellow Charity Trustee as their proxy to vote on his/her/its behalf with regard to (and only with regard to) resolutions, must lodge with the chair or chairperson of that meeting (in the circumstances described in clause 21.5), prior to the time when the meeting commences, a written proxy authorisation form, signed by him/her/its authorised representative.
- 22.3 All decisions on resolutions will be made by majority vote - with the exception of the types of resolution listed in clause 22.4.
- 22.4 The following resolutions will be valid only if passed by not less than two thirds of those voting (either in person or by proxy as described in clauses 22.1 and 22.2) on the resolution at an AGM or at a Board meeting (or if passed unanimously by way of a written resolution under clause 23) and will also be subject, (with the exception of clauses 22.4.2 and 22.4.3) to clause 29.2:
- 22.4.1 a resolution amending the constitution (including changing the name of the organisation); or
  - 22.4.2 a resolution expelling a person from Charity Trusteeship under clauses 14.1.5, 14.1.6, 14.1.7 or 14.1.8; or
  - 22.4.3 a resolution directing the Board to take any particular action (or directing the Board not to take any particular action); or
  - 22.4.4 a resolution approving the amalgamation of the organisation with another SCIO (or approving the constitution of the new SCIO to be constituted as the successor pursuant to that amalgamation); or
  - 22.4.5 a resolution to the effect that all of the organisation's property, rights and liabilities should be transferred to another SCIO (or agreeing to the transfer from another SCIO of all of its property, rights and liabilities); or
  - 22.4.6 a resolution for the winding-up of the organisation.
- 22.5 A resolution put to the vote at an AGM or Board meeting will be decided on a show of hands - unless the Convenor or chairperson of the meeting (or at least two other Charity Trustees present at the meeting, whether voting personally or as proxies), ask for a secret ballot.
- 22.6 The chair or chairperson of the meeting will decide how any secret ballot is to be conducted, and he/she will declare the result of the ballot at the meeting.

## **23 Written resolutions by Charity Trustees**

A resolution agreed to in writing (including by e-mail) by all the Charity Trustees will be as valid as if it had been passed at an AGM or Board meeting; the date of the resolution will be taken to be the date on which the last member agreed to it and it must

be unanimous.

## **24 Minutes**

- 24.1 The Board must ensure that proper minutes are kept in relation to all Board meetings and meetings of sub-committees.
- 24.2 The minutes to be kept under clause 24.1 must include the names of those present; and (so far as possible) should be signed by the chairperson of the meeting.
- 24.3 Minutes of all Board meetings must be issued to Charity Trustees within 28 days of all Board meetings (including by electronic means).
- 24.4 With due reference to all applicable statutory requirements, it is wholly at the discretion of the Board as to whether or not the minute of a meeting, or any excerpt from the minute of a meeting, is to be made available to members of the public or any body.

## **Administration**

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

- 25.1 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.
- 25.2 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.
- 25.3 When delegating powers under clause 25.1 or 25.2, the Board must set out appropriate conditions (which must include an obligation to report regularly to the Board).
- 25.4 Any delegation of powers under clause 25.1 or 25.2 may be revoked or altered by the Board at any time.
- 25.5 The rules of procedure for each sub-committee, and the provisions relating to membership of each sub-committee, shall be set by the Board.

### **26 Operation of accounts**

- 26.1 Subject to clause 26.2, the signatures of two 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 and not by an employee of the organisation.
- 26.2 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 26.1.

### **27 Accounting records and annual accounts**

- 27.1 The Board must ensure that proper accounting records are kept, in accordance with all applicable statutory requirements.
- 27.2 The Board must prepare annual accounts, complying with all relevant statutory

requirements; if an audit is required under any statutory provisions (or if the Board consider that an audit would be appropriate for some other reason), the Board should ensure that an audit of the accounts is carried out by a qualified auditor.

## **Miscellaneous**

### **28 Winding-up**

- 28.1 If the organisation is to be wound up or dissolved, the winding-up or dissolution process will be carried out in accordance with the procedures set out under the 2005 Act.
- 28.2 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.

### **29 Alterations to the constitution**

- 29.1 This constitution may (subject to clause 29.2) be altered by resolution of the Charity Trustees passed at an AGM or Board meeting (subject to achieving the two thirds majority referred to in clause 22.4) or by way of a unanimous written resolution of the members (as described in clause 23).
- 29.2 The 2005 Act requires that consent is sought from the Office of the Scottish Charity Regulator (OSCR) to action the following changes: change of name, an alteration to the purposes, amalgamation and/or winding-up.

### **30 Interpretation**

In this constitution:

- 30.1 “Taxes Act” means the Income and Corporation Taxes Act 1988 as amended from time to time; and
- 30.2 “2005 Act” means the Charities and Trustee Investment (Scotland) Act 2005 as amended from time to time.
- 30.3 “2006 Act” means the Companies Act 2006 as amended from time to time.
- 30.4 “Environs” means the wider coastal archaeological heritage of the Orkney archipelago.