



# THE WHITCHURCH WATERWAY TRUST

A Company Limited by Guarantee with No Share Capital Charity Number 701050 Company Number 02280683

## **Notice of Extraordinary General Meeting**

Notice is hereby given that an Extraordinary General Meeting of The Whitchurch Waterway Trust will be held in the Chester Suite at the Dodington Lodge Hotel, Dodington, Whitchurch SY13 1EN on Tue 12Nov2019 at 1930. If you will be attending the meeting, please bring a copy of the agenda with you.

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# THE WHITCHURCH WATERWAY TRUST

A Company Limited by Guarantee, Charity Number 701050, Company Number 02280683  
www.whitchurchwaterway.uk



The Extraordinary General Meeting of The Whitchurch Waterway Trust at the Chester Suite, The Dodington Lodge Hotel, Dodington, Whitchurch SY13 1EN on Tuesday 12th November 2019 at 1930

## 1 Agenda for Extraordinary General Meeting

### 1.1 Apologies for Absence

### 1.2 Conversion to CIO - Background

At the Annual General Meeting on 17th April 2019, it was resolved to convert The Whitchurch Waterway Trust (WWT) from a charitable company to a Charitable Incorporated Organisation (CIO), and to adopt the proposed CIO Constitution. On application to the Charity Commission to progress the conversion, it transpired that the Charity Commission regard the Trustee Benefits detailed in the proposed CIO Constitution as a widening of Trustee Benefits compared with those detailed in our current Memorandum and Articles of Association and as such this is a Regulated Amendment which needs the consent of The Charity Commission and must also be approved by the members prior to conversion. The clauses which are regarded as a widening of benefits are 6(1)(a) to 6(1)(d) and 6(2)(a) to 6(2)(f) (see Special Resolution 2019/3 Option A below). These clauses are derived from a model constitution published by the Charity Commission. The Charity Commission have given their approval for this Regulated Amendment on 21st August 2019 (Ref. 1613796 Consent to Trustee Benefit Clause Change CRM:0001802).

The Management Committee recommend keeping these clauses in (ie Special Resolution 2019/3 Option A) because they make what is and what isn't permitted more explicit, retain the benefit of having a standard constitution, are easier to understand, and are fairly tightly controlled anyway. It is worth noting that these clauses also cover payments to "Connected Persons" (eg a Trustee's spouse) which our current constitution does not. The Charity Commission themselves say in the notes to their model constitution "*we suggest you may find it simpler to keep to the model wording*". A key driver for converting to a CIO was to have a more up-to-date and understandable constitution. Alternatively, these clauses could be removed as in Special Resolution 2019/3 Option B below.

For ease of reference, the clauses of our current Memorandum and Articles of Association relating to Trustee Benefits are shown in Appendix A and those relating to Trustee Benefits in the proposed CIO Constitution are shown in Appendix B. The full current WWT Memorandum and Articles of Association (24 pages) and the full proposed CIO Constitution (13 pages) as approved at the April 2019 AGM can be found at <http://www.whitchurchwaterway.uk/about>, or can be obtained by application to the Secretary.

The model constitution published by the Charity Commission can be found at [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/778241/Association\\_Model\\_Constitution.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/778241/Association_Model_Constitution.pdf).

Special Resolution 2019/4 is to remove words which were included in error in the proposed CIO Constitution and represent an inconsistency.

### 1.3 Special Resolution 2019/3 PLEASE VOTE FOR EITHER OPTION A OR OPTION B

#### 1.3.1 Special Resolution 2019/3 Option A

To adopt the widening of Trustee Benefits detailed under 6. Benefits and Payments to Charity Trustees and Connected Persons, 6(1)(a) to 6(1)(d) and 6(2)(a) to 6(2)(f) in the Proposed CIO Constitution as approved at the Annual General Meeting on 17th April 2019

#### 1.3.2 Special Resolution 2019/3 Option B

To delete clause 6. Benefits and Payments to Charity Trustees and Connected Persons, references to clause 6 (4.4 and 5.3), and the definition of "connected persons" from clause 30 in the Proposed CIO Constitution as approved at the Annual General Meeting on 17th April 2019

### 1.4 Special Resolution 2019/4

To remove the words "or by proxy" from clause 11 (6) (b) of the proposed CIO Constitution (this was included in error as the Constitution does not provide for proxy voting)

### 1.5 Close the EGM

## 2 Discussion on Long Term Aims and Canal Extension and Committee Meeting

The formal EGM will be followed by tea and coffee and a discussion about the long term aims of the Trust and to explore support for re-establishing the canal as far as Sherrymill Hill (the old gas works site).

After the discussion, there will be a Committee Meeting, which members are welcome to stay for.

3 Appendix A Clauses Relating to Trustee Benefits in the current WWT Memorandum and Articles of Association

4. The income and property of the Association shall be applied solely towards the promotion of its objects as set forth in this Memorandum of Association and no portion thereof shall be paid or transferred, directly or indirectly, by way of dividend, bonus or otherwise howsoever by way of profit, to members of the Association, and no member of its Council of Management or Governing Body shall be appointed to any office of the Association paid by salary or fees, or receive any remuneration or other benefit in money or money's worth from the Association.

Provided that nothing herein shall prevent any payment in good faith by the Association:-

(A) of reasonable and proper remuneration to any member, officer or servant of the Association (not being a member of its Council of Management or Governing Body) for any services rendered to the Association;

(B) of interest on money lent by any member of the Association or of its Council of Management or Governing Body at a reasonable and proper rate per annum not exceeding 2 per cent less than the published base lending rate of a clearing bank to be selected by the Council of Management or Governing Body;

(C) to any member of its Council of Management or Governing Body of reasonable out-of-pocket expenses;

(D) to a company of which a member of the Association or of its Council of Management or Governing Body may be a member holding not more than one hundredth part of the capital of such company.

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#### INDEMNITY

72. Subject to the provisions of the Act the Association, the Committee and any sub-committee thereof and any member of any such body as aforesaid and any officer of the Association shall not be liable for any act or omission of any officer, official servant or agent thereof unless the act is expressly authorised in writing by or on behalf of the Committee and every member of the Association or other Officer or auditor of the Association shall be indemnified out of the assets of the Association against any liability incurred by him in defending any proceedings whether civil or criminal in which judgment is given in his favour or in which he is acquitted or in connection with any application in which relief is granted to him by the Court from liability for negligence, default, breach of duty or breach of trust in relation to the affairs of the Association.

73. Subject to the provisions of the Act, these Articles and of Clause 4 of the Memorandum of Association every member of the Committee, sub-body, Auditor, Secretary or other officer of the Trust, shall be entitled to be indemnified by the Trust against all costs, charges, losses, expenses and liabilities incurred by him in the execution and discharge of his duties or in relation thereto.

## 4 Appendix B Clauses Relating to Trustee Benefits in the proposed CIO Constitution

### 4. Powers

The CIO has power to do anything which is calculated to further its objects or is conducive or incidental to doing so. In particular, the CIO's powers include power to:

- (1) borrow money and to charge the whole or any part of its property as security for the repayment of the money borrowed. The CIO must comply as appropriate with sections 124 and 125 of the Charities Act 2011 if it wishes to mortgage land;
- (2) buy, take on lease or in exchange, hire or otherwise acquire any property and to maintain and equip it for use;
- (3) sell, lease or otherwise dispose of all or any part of the property belonging to the CIO. In exercising this power, the CIO must comply as appropriate with sections 117 and 119-123 of the Charities Act 2011;
- (4) employ and remunerate such staff as are necessary for carrying out the work of the CIO. The CIO may employ or remunerate a charity trustee only to the extent that it is permitted to do so by clause 6 (Benefits and payments to charity trustees and connected persons) and provided it complies with the conditions of those clauses;
- (5) deposit or invest funds, employ a professional fund-manager, and arrange for the investments or other property of the CIO to be held in the name of a nominee, in the same manner and subject to the same conditions as the trustees of a trust are permitted to do by the Trustee Act 2000;

### 5. Application of Income and Property

*(1) The income and property of the CIO must be applied solely towards the promotion of the objects.*

*(a) A charity trustee is entitled to be reimbursed from the property of the CIO or may pay out of such property reasonable expenses properly incurred by him or her when acting on behalf of the CIO.*

*(b) A charity trustee may benefit from trustee indemnity insurance cover purchased at the CIO's expense in accordance with, and subject to the conditions in, section 189 of the Charities Act 2011*

*(2) None of the income or property of the CIO may be paid or transferred directly or indirectly by way of dividend, bonus or otherwise by way of profit to any member of the CIO. This does not prevent a member who is not also a charity trustee receiving:*

*(a) a benefit from the CIO as a beneficiary of the CIO;*

*(b) reasonable and proper remuneration for any goods or services supplied to the CIO*

*(3) Nothing in this clause shall prevent a charity trustee or connected person receiving any benefit or payment which is authorised by Clause 6.*

### 6. Benefits and Payments to Charity Trustees and Connected Persons

#### *(1) General provisions*

*No charity trustee or connected person may:*

*(a) buy or receive any goods or services from the CIO on terms preferential to those applicable to members of the public;*

*(b) sell goods, services, or any interest in land to the CIO;*

*(c) be employed by, or receive any remuneration from, the CIO;*

*(d) receive any other financial benefit from the CIO; unless the payment or benefit is permitted by sub-clause (2) of this clause, or authorised by the court or the prior written consent of the Charity Commission ("the Commission") has been obtained. In this clause, a "financial benefit" means a benefit, direct or indirect, which is either money or has a monetary value.*

#### *(2) Scope and powers permitting trustees' or connected persons' benefits*

*(a) A charity trustee or connected person may receive a benefit from the CIO as a beneficiary of the CIO provided that it is available generally to the beneficiaries of the CIO.*

*(b) A charity trustee 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 CIO where that is permitted in accordance with, and subject to the conditions in, section 185 to 188 of the Charities Act 2011.*

*(c) Subject to sub-clause (3) of this clause a charity trustee or connected person may provide the CIO with goods that are not supplied in connection with services provided to the CIO by the charity trustee or connected person.*

*(d) A charity trustee or connected person may receive interest on money lent to the CIO at a reasonable and proper rate which must be not more than the Bank of England bank rate (also known as the base rate). The CIO must document the amount of, and the terms of, the trustee's or connected person's loan.*

*(e) A charity trustee or connected person may receive rent for premises let by the trustee or connected person to the CIO. The amount of the rent and the other terms of the lease must be reasonable and proper. The charity trustee concerned must withdraw from any meeting at which such a proposal or the rent or other terms of the lease are under discussion.*

*(f) A charity trustee or connected person may take part in the normal trading and fundraising activities of the CIO on the same terms as members of the public.*

#### *(3) Payment for supply of goods only – controls*

*The CIO and its charity trustees may only rely upon the authority provided by sub-clause (2)(c) of this clause 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 CIO and the charity trustee 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 charity trustees are satisfied that it is in the best interests of the CIO to contract with the supplier rather than with someone who is not a charity trustee or connected person. In reaching that decision the charity trustees must balance the advantage of contracting with a charity trustee 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 CIO.
- (e) The supplier does not vote on any such matter and is not to be counted when calculating whether a quorum of charity trustees is present at the meeting.
- (f) The reason for their decision is recorded by the charity trustees in the minute book.
- (g) A majority of the charity trustees then in office are not in receipt of remuneration or payments authorised by clause 6.
- (4) In sub-clauses (2) and (3) of this clause:
  - (a) "the CIO" includes any company in which the CIO:
    - (i) holds more than 50% of the shares; or
    - (ii) controls more than 50% of the voting rights attached to the shares; or
    - (iii) has the right to appoint one or more directors to the board of the company;
  - (b) "connected person" includes any person within the definition set out in clause 30 (Interpretation)

(The definition of "Connected Person" in clause 30) :

"connected person" means:

- (a) a child, parent, grandchild, grandparent, brother or sister of the charity trustee;
- (b) the spouse or civil partner of the charity trustee or of any person falling within sub-clause (a) above;
- (c) a person carrying on business in partnership with the charity trustee or with any person falling within sub-clause (a) or (b) above;
- (d) an institution which is controlled –
  - (i) by the charity trustee or any connected person falling within sub-clause (a), (b), or (c) above; or
  - (ii) by two or more persons falling within sub-clause (d)(i), when taken together
- (e) a body corporate in which –
  - (i) the charity trustee or any connected person falling within sub-clauses (a) to (c) has a substantial interest; or
  - (ii) two or more persons falling within sub-clause (e)(i) who, when taken together, have a substantial interest. Section 118 of the Charities Act 2011 apply for the purposes of interpreting the terms used in this constitution.