



Berry Burn Community Fund

Constitution

1. Name

- a. The name of the organisation is the Berry Burn Community Fund ("the Fund").

2. Administration

- a. Subject to the matters set out below, the Fund and its finances and property shall be administered and managed in accordance with this constitution by members of the Fund, constituted by Clause 5 of this Constitution.

3. Objectives

- a. The Fund's objectives are to fairly and reasonably disburse funds resulting from the receipt of the "Annual Grant". The Annual Grant takes the form of an annual payment to the Fund from Berry Burn Wind Farm Limited, company number 04511914 ("BBWFL"), which payment shall be £166,750 and which payment shall increase (but not decrease) annually in line with the RPI and which payment shall be for the general benefit of the public living within the community council boundaries of Forres, East Nairnshire, Grantown on Spey, Cromdale & Advie, Speyside, Heldon, Findhorn and Kinloss, Finderne and Dyke Landward (the "Zone", as further described in Appendix 1), to be disbursed by the Fund as the Fund sees fit.
- b. To maximize the amount of funding allocated in each financial year of the Fund and not build up large cash reserves, unless previously agreed in writing with BBWFL.

4. Powers

In furtherance of the objectives as set out in Clause 3, but not otherwise, the Fund may exercise the following powers:

- i. To fund activities that help to create a vibrant community including those with a focus on environmental, education, health & welfare and community improvement projects, including indoor and outdoor activities as well as educational, sporting or cultural advancement by individuals.

Jett

- ii. To assist in financing small local businesses with capital equipment or business start-ups which focus on environmental, education, health & welfare and community improvement s and outdoor activities.
- iii. To encourage applicants to explore and access other sources of funding to maximise the impact of the Annual Grant.
- iv. To re-evaluate the Fund boundary (with written agreement from BBWFL) should further wind farms and community benefit funds be developed in close proximity to the Berry Burn Wind Farm.
- v. To engage with an Administrator (who shall not be a member of the Fund) and pay an honorarium to ensure the efficient management of the Fund. Administration costs shall be set and reviewed annually by Members at the AGM, and shall not exceed 7.5% in any given year of the annual donation. For the avoidance of doubt, the administration fee includes **all** costs associated with the effective management and distribution of the funds, including any direct expenses of Members attending meetings or other out of pocket expenses.
- vi. To utilise the Berry Burn Wind Farm website to promote its work and to fully investigate using other community website and newsletters for the promotion of the Fund for funding applications.
- vii. To co-operate with other trusts, charities, voluntary bodies and statutory authorities in furtherance of the objectives of the Fund and to exchange information and advice with them.
- viii. To appoint and constitute such advisory bodies or sub committees as the Fund may think appropriate.
- ix. To undertake all other lawful activities as are necessary for the achievement of the objectives of the Fund.
- i. To effect insurance of all kinds, including without limitation, a policy of insurance to cover any and all liabilities that may be incurred by the members, Office bearers and/or employees of the Fund.

5. **Membership**

- a. Membership of the Fund shall be open to up to eleven residents within the funding zone. Appendix 2 sets out the methodology of how members will be selected.
- b. Each member shall have one vote.
- c. The Fund may unanimously and for good reason terminate the membership of any individual provided that the individual concerned shall have the right to be heard by the Fund, accompanied by a second party, before a final decision is made.
- d. At the Annual General Meeting of the Fund, the members shall elect from amongst themselves a Chairperson, Vice Chairperson and Treasurer who will each hold office from the conclusion of that Meeting.
- e. Office bearers will hold office for one year and be eligible for re-election for a maximum of three years, after which they must stand down for at least a year.

Jet

- f. Members can serve a maximum of 9 years on the Fund, after which they will be expected to resign. Extended periods of service will only be considered if, following appropriate local advertising, there are no suitable candidates available to replace them.
- f. The roles of Chairperson, Vice Chairperson and Treasurer cannot be delegated to any other person.
- g. After the Fund's first two years of operation, three members shall stand down but will be eligible for re-nomination at the Fund's discretion. Thereafter, three members shall stand down each year in rotation, also being eligible for re-nomination. The proceedings of the Fund shall not be invalidated by any vacancy among their number or by any failure to appoint or any defect in the appointment or qualification of a member.
- h. Nobody shall be appointed as a Fund member who is aged under 18 or who would, if appointed be disqualified under the provisions of Clause 6.
- i. No person shall be entitled to act as a member of the Fund whether on a first or any subsequent entry into office until a declaration of their acceptance of membership of the Fund, which will include a statement that they are willing to act in the interests of the Fund and uphold its objectives as defined in this Constitution, has been made in the minutes of the Fund.
- j. No Member of the Fund shall commit or purport to commit the Fund to any contract, expense or other liability of any nature without the consent of the Fund, properly obtained by decision of the Fund at general meeting. Further, no member of the Fund shall be entitled to make any representation to, or disclose any information concerning the Fund to, any third party without the consent of the Fund, properly obtained by decision of the Fund at general meeting.
- k. The Chairperson and Vice-Chairperson shall be the only Fund members empowered to speak with or give information to the media on the subject of the Fund's affairs and policies. These two Office-bearers shall also be the only Fund members empowered to instruct the Administrator to issue such information, including minutes and lists of assisted applicants, to the media, the Berry Burn Fund website and other public information sources.
- l. All payments made by the Fund, and funding agreements and all other contracts concerning the Fund, must be authorised by (1) either of the Chairperson and Vice-Chairperson, together with (2) the Treasurer.

6. Determination of Membership and Office Bearers of the Fund.

A Member of the Fund will cease to hold office if he or she:-

- a. Becomes incapable through illness or injury of managing or administering their affairs;
- b. Does not attend at least 50% of the meetings of the Fund in any calendar year and the Fund resolve that their membership be vacated;
- c. Notifies the Fund that they wish to resign (But only if at least 6 members of the Fund remain in office when the Notice of Resignation is to take effect);
- d. Ceases to be a resident of the Zone.
- e. An Office-bearer will cease to be an Office-bearer if he or she:-

- i. Ceases to be a member of the Fund
- ii. Notifies the Fund that he or she wishes to resign as Office-bearer (the person may still continue as a member if desired, and if the Fund members agree).
- iii. Any vacant Office-bearer posts can be filled, between AGMs, by vote at the next general meeting of the Fund and the Vice-Chairperson will assume the role of Chairperson if the Chairperson resigns as Chairperson.

7. Fund Members' Personal Interests.

- a. Any member having a financial, membership or other material interest in an organisation or other entity applying for assistance from the Fund shall immediately declare such interest, withdraw from the meeting room during all related discussions, and be ineligible to vote on the application concerned. At the Fund's discretion, a representative of the application may attend a Fund meeting to discuss any complex issues.
- b. No member of the Fund shall acquire any interest in property belonging to the Fund (other than as a Fund member) or receive remuneration or shall be interested (otherwise than as a member of the Fund) in any non-assistance contract entered into by the Fund.
- c. Any member who holds professional qualifications or operates any business may charge and be paid for the usual fees associated with their business when instructed by a majority of the other members to act in a business capacity on behalf of the Fund. This is provided that at no time shall a majority of the members of the Fund benefit under this provision and that the member of the Fund has withdrawn from any meetings at which their or their business's instructions and remunerations are being discussed.

8. Meetings and Proceedings of the Fund

- a. General meetings (also called meetings) of the Fund shall be ordinary meetings, the Annual General Meeting ("AGM") and any Extraordinary General Meeting ("EGM"). Proxy votes are not permitted at any meeting of the Fund and members must be physically present at meetings of the Fund to be counted in the quorum or for their votes to be counted.
- b. The Fund shall hold at least four ordinary meetings each year.
- c. An ordinary meeting of the Fund shall be called by the Administrator on instruction of the Fund. The dates and times of the ordinary meetings to be held each year shall be determined at the first ordinary meeting of the Fund held further to the adoption of this Constitution or the anniversary of the adoption of this Constitution as the case may be. The Administrator shall give 14 days' notice of an ordinary meeting of the Fund and shall include as part of such notice an agenda and other relevant papers.
- d. The Chairperson shall act as chairperson at meetings of the Fund.
- e. If the Chairperson is absent from any meeting, the Vice-Chairperson will act as chairperson for the duration of the meeting.
- f. If both the Chairperson and Vice-Chairperson are absent, then members of the Fund present shall choose one of their number to be chairperson of the meeting before any other business is transacted.

JG+H

- g. There shall be a quorum when at least two thirds of the members of the Fund or six members of the Fund are present, whichever is the greater.
- h. Every matter shall be determined by a majority of votes of the members of the Fund present and voting on the question but in the case of equality of votes the Chairperson of the meeting shall have a second or casting vote.
- i. The Fund shall keep minutes of the proceedings at meetings of the Fund and any sub-committee. The minutes shall include as an annex a list of the applications for funding discussed at the meeting and the decision of the meeting as to whether the application has been approved, denied, or held over for further information to be gathered before a final decision is made. The minutes of each meeting, and the annex thereto denoting decisions made on funding, will be signed as agreed by the Chairperson or Vice Chairperson and one other member of the fund. Following on from the agreement of the minutes, the Fund will write to each of the applicants setting out the decision of the meeting and the conditions agreed for funding. The funding offer should be signed by (1) either of the Chairperson and Vice-Chairperson, together with (2) the Treasurer.
- j. The Fund may from time to time make and alter rules for the conduct of their business, the summoning and conduct of their meetings and the custody of documents. No rule may be made which is inconsistent with this Constitution.
- k. The Fund may appoint one or more sub-committees consisting of three or more members of the Fund for the purpose of making any enquiry or supervising or performing any function or duty which in the opinion of the Fund would be more conveniently undertaken or carried out by a sub-committee: provided that all acts and proceedings of any such sub-committees shall be fully and promptly reported to the Fund.
- l. All decisions of the Fund will be taken with full consent of the Fund, (at full meetings of the Fund or by email confirmation by all Fund members). There will be no Management Committee or other Committee to which decision-making is delegated without full consent of the Fund, and approval by Statkraft.

9. Receipts and Expenditure

- a. The funds of the Fund, including all donations, contributions and bequests shall be paid into an account operated by the Fund in the name of the Fund at such a bank or other institution as the Members shall from time to time decide. All cheques drawn on the account or electronic transfers made from the account must be signed or authorised by (1) either of the Chairperson and the Vice-Chairperson, together with (2) the Treasurer. The Fund will not hold a credit or debit card on its account.
- b. The funds belonging to the Fund shall be applied only in furthering the objectives as set out in Clause 3.
- c. Members may be paid travelling expenses from within the Zone only at the rate of 45p per mile incurred by them in connection with their attendance at meetings or in connection with the carrying out of their duties as Members.
- d. The financial year of the Fund shall be from January 1 to December 31.

JGA

10. Accounts I Reporting

- a. In managing the Fund's accounts, the Fund shall comply with the following obligations:
 - i. The keeping of accounting records for the Fund.
 - ii. The preparation of annual statements of accounts for the Fund.
 - iii. The auditing or independent examination of the statements of account of the Fund.
 - iv. The production of an annual report for submission to BBWFL.

11. Duty of Care and Extent of Liability

- a. When exercising any power (whether given to them by this Constitution, or by statute or by any rule of law) in administering or managing the Fund, each member must use the level of care and skill that is reasonable in the circumstances ("the duty of care").
- b. No member of the Fund, and no one exercising powers or responsibilities that have been delegated by the Fund, shall be liable for any act or failure to act unless, in acting or in failing to act, he or she has failed to discharge the duty of care.

12. Annual General Meeting

- a. There shall be an annual general meeting of the Fund which shall be held in the month of March or as soon as practicable thereafter.
- b. Every annual general meeting shall be called by the Administrator, on the instruction of the Fund. The Administrator shall give at least 21 days' notice of the annual general meeting to all the members of the Fund. All the members of the Fund shall be entitled to attend and vote at the meeting.
- c. Before any other business is transacted, at the first annual general meeting, the persons present shall appoint a chairperson of the meeting.
- d. The Fund shall present to each annual general meeting the annual report and audited accounts of the Fund for the preceding year.

13. Extraordinary General Meetings

- a. Any 3 members may call an EGM of the Fund at any time but must state the business to be considered at such meetings and at least 21 days' notice of an EGM must be given.

14. Procedure at General Meetings

- a. The Administrator or other person specially appointed by the Fund shall keep a full record of proceedings at every general meeting of the Fund.
- b. There shall be a quorum when at least two thirds of the members of the Fund or six members of the Fund are present, whichever is greater.

JGH

15. Notices

- a. Any notice to be served on any member of the Fund shall be in writing and shall be served either personally or by sending it through the post in a pre-paid letter addressed to such member at his or her last known address in the United Kingdom, and any letter so sent shall be deemed to have been received within 7 days of posting.

16. Alterations to the Constitution

- a. Subject to the following provisions of this clause the constitution may be altered by a resolution passed by not less than two thirds of the members present and voting at a general meeting. The notice of the general meeting must include notice of the resolution, setting out the terms of the alteration proposed.
- b. The Fund shall promptly advise BBWFL of any amendment made under this clause.

17. Dissolution.

- a. If the Fund decides that it is necessary or advisable to dissolve the Fund it shall call a meeting of all members, of which not less than 21 days' notice (stating the terms of the resolution to be proposed) shall be given.
- b. If the proposal is confirmed by a two-thirds majority of those present and voting the Fund shall have the power to realise any assets held by or on behalf of the Fund.
- c. Any assets remaining after the satisfaction of any proper debts and liabilities shall be given or transferred to such other institution or institutions having objectives similar to the objectives of the Fund as the members of the Fund may determine or failing that shall be applied for some other charitable purpose.

18. Governing law and jurisdiction

- a. This Constitution shall be governed by Scots law and the Scottish courts shall have exclusive jurisdiction in respect of any dispute arising in relation to it.

IN WITNESS WHEREOF, this Constitution consisting of this and the preceding 6 pages and the two appendices attached hereto is hereby adopted by the consent of all 10 Fund Members present at the AGM of the Fund on 08/03/21:

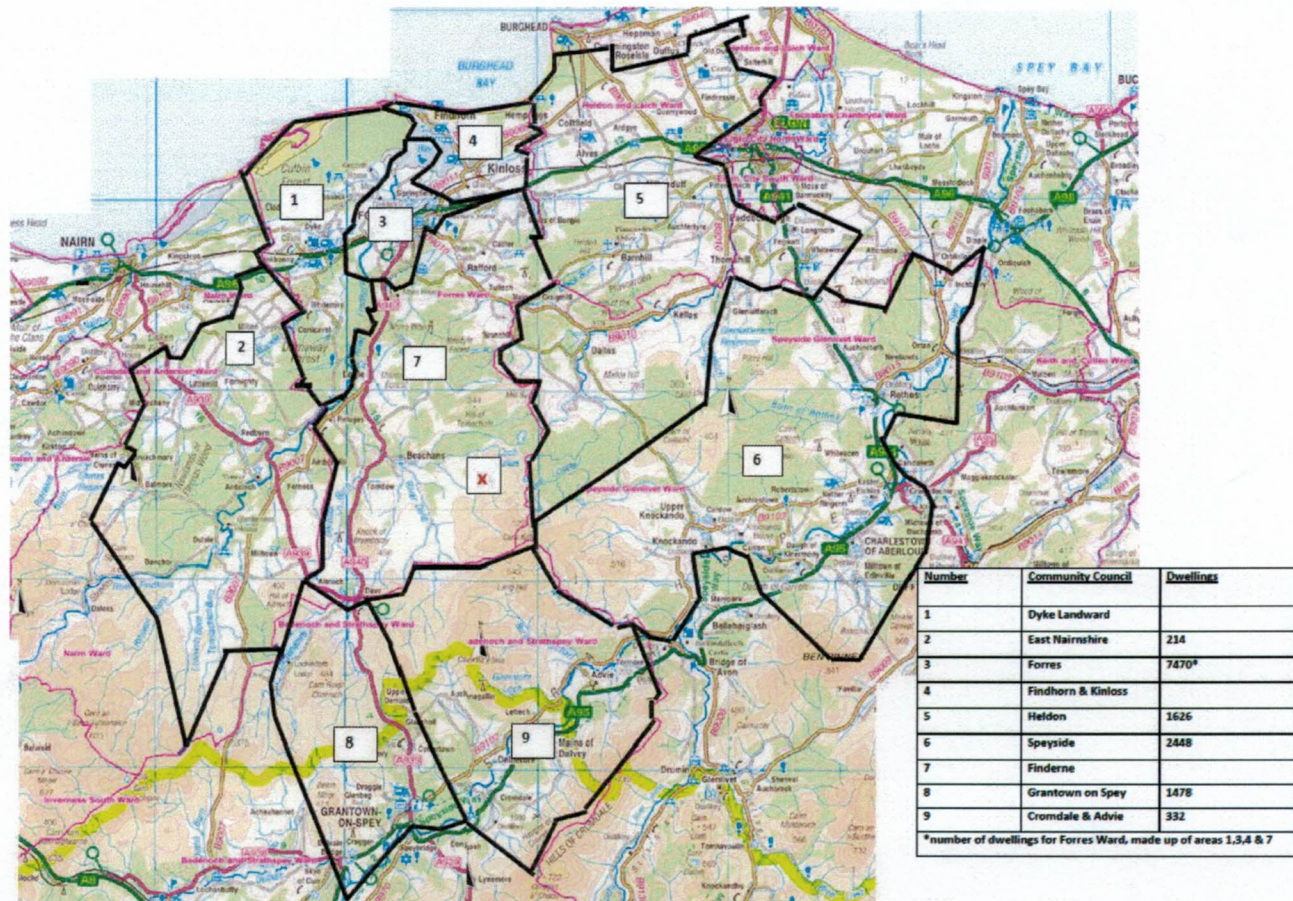
Jana Hutt, David Swan, Harvey Morton, Sally Gingell, Graham Hilditch, Graham Murdoch, Alec Laing, Jim Beveridge, Douglas Cowie, Peter Scullion

And signed for on behalf of the Fund by the Fund Chair, Jana Hutt:

Jana Hutt

Date 22 March 2021

APPENDIX 1 – Area of Benefit



APPENDIX 2 - Methodology for election of Members

After two years of the Fund's operation, three members will be appointed every year and will be based on the following methodology;

Source of Nomination	Method of Nomination	Number of Members
Individual residents living within the current community council boundaries of Forres, East Nairnshire, Grantown on Spey, Cromdale & Advie, Speyside, Heldon, Findorn & Kinloss, Finnerne and Dyke Landward.	Individual residents are invited to submit an application form and supporting statement as to their suitability to serve as a member in terms of experience, skills and vision.	11
	Total	11