

## The Constitution of Brookfield Village Council

As at October 2018

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## GENERAL

### Type of organisation

- 1 The organisation is a Scottish Charitable Incorporated Organisation (SCIO). The organisation is situated at Brookfield Village Hall, 45 Woodside Lane Brookfield PA5 8UB

## NAME

The name of the organisation is Brookfield Village Council (hereinafter referred to as BVC)

## DEFINITIONS

- 2 In this document all references
  - To 'BVC' shall mean Brookfield Village Council
  - To 'the trustees' shall mean those properly elected to BVC as trustees of the charity (see clauses 15 and 18 below).
  - To 'the village' shall mean the residents in the area delineated by the streets named in Appendix 1
  - To 'members' refers to all residents in the delineated area who by virtue of their residency in the village are automatically members of the organisation.
  - To 'BVC assets' shall mean the assets owned by BVC now or in the future.

## PURPOSE

- 3 The organisation's purpose is:

To hold, maintain and preserve all funds, land and property belonging to BVC for the benefit of residents of the village. In particular they will maintain the village hall and environs including the village bowling green, tennis courts and playing field and the field outlined in the attached plan at Appendix 1. These will be managed so that they can serve the interests of all the residents of the village of Brookfield.

Assets already held by the trustees now or in the future shall be conveyed or leased to the Council to be held by them in all time coming for the purpose of physical and mental wellbeing, social, moral and intellectual development. The assets to be used to further these aims without sexual, racial or other discrimination set out in law.

In order to ensure the long term future of the organisation and the sustainability of the various village organisations, the facilities provided primarily for the benefit or residents shall also be available to those in the wider local area.

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## POWERS

- 4 The organisation has power to do anything which is calculated to further its purpose or is conducive or incidental to doing so.
- 5 No part of the income or property of the organisation may be paid or transferred (directly or indirectly) to the 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 purposes.

## LIABILITY OF TRUSTEES

- 6 The trustees of the organisation (in their capacity as members - see clause 10) 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 trustees will not be held responsible.
- 7 The trustees have certain legal duties under the Charities and Trustee Investment (Scotland) Act 2005; and clause 7 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

- 8 The structure of the organisation consists of the Council- who hold regular meetings, and generally control the activities of the organisation; for example, the Council is responsible for monitoring and controlling the financial position of the organisation.
- 9 The Council also appoints trustees to fill vacancies, and the people serving on the Council (in their capacity as members of the organisation - see clauses 10 and 12) have power to make changes to the constitution itself.
- 10 The people serving on the Council are referred to in this constitution as TRUSTEES - and they are *also* the MEMBERS of the organisation for the purposes of the Charities and Trustee Investment (Scotland) Act 2005.
- 11 Under the provisions of this constitution, no-one can be a trustee unless they are also a member of the organisation.
- 12 The Charities and Trustee Investment (Scotland) Act 2005 requires certain decisions to be taken by the trustees in their capacity as members of the organisation.

## COUNCIL

### Number of charity trustees

- 13 The maximum number of trustees is twenty including representatives/co-opted members as defined in clause 14
- 14 The minimum number of charity trustees is nine.

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## ELIGIBILITY

15 A person will not be eligible for election or appointment to the Council if they are: -

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

15.2 cease to be resident in the village

## APPOINTMENT/RETIRAL

16 At the AGM all trustees will automatically retire from office but be eligible for re-election. The names of trustees who have confirmed their willingness to stand for re-election, will be put to the meeting for approval.

17 Trustees approved by the AGM will serve on the Council for one year until the next AGM

18 All Council members should be prepared to serve three years, four in the case of the Chairperson (i.e. one year as an ordinary member, two years in the Chair followed by an ex-officio year to give the Council the benefit of continuity).

## CO-OPTION/ADDITIONAL REPRESENTATIVES

19 Village organisations shall be entitled to appoint one representative to the Council each year (for example Brookfield Bowling Club, Brookfield SWI). The names of the representatives will be notified to the secretary of the Council one month before each AGM. New organisations whose purpose is consistent with the aims of the charity, can ask to have a member on the Council. This request will be ratified at an AGM with at least two thirds of members voting in favour. The nominated representative must be resident in the village.

20 A village organisation that fails to propose a member to the Council or if the organisation lapses, it shall be a decision of the Council how to proceed.

The Council shall be entitled to co-opt a member who, in the Council's opinion has relevant experience to offer. Co-opted members shall retire at the AGM and be eligible to be re-elected.

## CASUAL VACANCIES

21 The Council shall have the power to appoint a member to fill a vacancy arising during the course of the year. Any person so appointed shall hold office until the next AGM and then shall be eligible for re-election.

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## TERMINATION OF OFFICE

- 22 A trustee will automatically cease to hold office if: -
- 22.1 they become disqualified from being a charity trustee under the Charities and Trustee Investment (Scotland) Act 2005;
  - 22.2 they cease to reside in the village
  - 22.3 they give the organisation a notice of resignation, signed by them;
  - 22.4 they are absent (without good reason, in the opinion of the Council) from more than four consecutive meetings of the Council AND if the Council resolves to remove them from office;
  - 22.5 they are removed from office by resolution of the Council on the grounds that they are considered to have committed a material breach of the code of conduct for charity trustees (as referred to in clause 38);
  - 22.6 they are removed from office by resolution of the board on the grounds that they are considered to have been in serious or persistent breach of their duties under section 66(1) or (2) of the Charities and Trustee Investment (Scotland) Act 2005; or
- 23 A resolution under paragraph 22.5 or 22.6 shall be valid only if: -
- 23.1 the trustee who is the subject of the resolution is given reasonable prior written notice of the grounds upon which the resolution for their removal is to be proposed;
  - 23.2 the 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
  - 23.3 at least two thirds (to the nearest round number) of the trustees then in office vote in favour of the resolution.

## REGISTER OF TRUSTEES

- 24 The Council must keep a register of trustees, setting out
- 24.1 for each current charity trustee:
    - 24.1.1 their full name and address;
    - 24.1.2 the date on which they were appointed as a charity trustee; and
    - 24.1.3 any office held by them in the organisation;
  - 24.2 for each former trustee - for at least 6 years from the date on which they ceased to be a trustee:

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24.2.1 the name of the trustee;

24.2.2 any office held by them in the organisation; and

24.2.3 the date on which they ceased to be a trustee.

25 The Council must ensure that the register of trustees is updated within 28 days of any change:

25.1 which arises from a resolution of the Council; or

25.2 which is notified to the organisation.

26 If any person requests a copy of the register of charity trustees, the board must ensure that a copy is supplied to them within 28 days, providing the request is reasonable; if the request is made by a person who is not a trustee of the organisation, the Council may provide a copy which has the addresses blanked out if the Council is satisfied that including that information is likely to jeopardise the safety or security of any person or premises.

### OFFICE -BEARERS

27 The trustees must elect (from among themselves) a chair, a treasurer and a secretary.

28 In addition to the office-bearers required under clause 27, the trustees may elect (from among themselves) further office-bearers if they consider that appropriate.

29 All of the office-bearers will cease to hold office at the conclusion of each AGM, but may then be re-elected under clause 27 or 28.

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

30.1 if they cease to be a trustee; *or*

30.2 if they give to the organisation a notice of resignation from that office, signed by them.

### POWERS OF COUNCIL

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

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

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## TRUSTEES - GENERAL DUTIES

- 33 Each of the trustees has a duty, in exercising functions as a trustee, to act in the interests of the organisation; and, in particular, must:-
- 33.1 seek, in good faith, to ensure that the organisation acts in a manner which is in accordance with its purposes;
  - 33.2 act with the care and diligence which it is reasonable to expect of a person who is managing the affairs of another person;
  - 33.3 in circumstances giving rise to the possibility of a conflict of interest between the organisation and any other party: -
    - 33.3.1 put the interests of the organisation before that of the other party;
    - 33.3.2 where any other duty prevents them from doing so, disclose the conflicting interest to the organisation and refrain from participating in any deliberation or decision of the other trustees with regard to the matter in question;
  - 33.4 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.
- 34 In addition to the duties outlined in clause 33, all of the trustees must take such steps as are reasonably practicable for the purpose of ensuring: -
- 34.1 that any breach of any of those duties by a trustee is corrected by the trustee concerned and not repeated; and
  - 34.2 that any trustee who has been in serious and persistent breach of those duties is removed as a trustee.
- 35 Provided they have declared their interest - and have not voted on the question of whether or not the organisation should enter into the arrangement - a trustee will not be debarred from entering into an arrangement with the organisation in which they have a personal interest; and (subject to clause 36 and to the provisions relating to remuneration for services contained in the Charities and Trustee Investment (Scotland) Act 2005) they may retain any personal benefit which arises from that arrangement.
- 36 No trustee may serve as an employee (full time or part time) of the organisation; and no trustee may be given any remuneration by the organisation for carrying out their duties as a trustee.
- 37 The trustees may be paid all expenses reasonably incurred by them in connection with carrying out their duties.

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## CODE OF CONDUCT FOR TRUSTEES

- 38 Each of the trustees shall comply with the code of conduct (incorporating detailed rules on conflict of interest) prescribed by the Council from time to time.
- 39 The code of conduct referred to in clause 33 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 Charities and Trustee Investment (Scotland) Act 2005; 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 TRUSTEES

### NOTICE OF COUNCIL MEETINGS

- 40 At least 7 days' notice must be given of each Council meeting, unless (in the opinion of the person calling the meeting) there is a degree of urgency which makes that inappropriate.

### PROCEDURE AT COUNCIL MEETINGS

- 41 No valid decisions can be taken at a Council meeting unless a quorum is present; the quorum for Council meetings is two thirds of current trustees.
- 42 If at any time the number of trustees in office falls below the number stated as the quorum in clause 41, the remaining trustee(s) will have power to fill the vacancies or call a members' meeting - but will not be able to take any other valid decisions.
- 43 If the chair of the Council is not present for a scheduled meeting, the trustees present at the meeting must elect (from among themselves) the person who will act as chairperson of that meeting.
- 44 Every trustee has one vote, which must be given personally.
- 45 All decisions at Council meetings will be made by majority vote.
- 46 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.
- 47 The Council may, at its discretion, allow any person to attend and speak at a Council meeting notwithstanding that they are not a trustee - but on the basis that they must not participate in decision-making.
- 48 A trustee must not vote at a Council meeting (or at a meeting of a sub-committee) on any resolution which relates to a matter in which they have a personal interest or duty which conflicts (or may conflict) with the interests of the organisation; they must withdraw from the meeting while an item of that nature is being dealt with.

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49 For the purposes of clause 48: -

49.1 an interest held by an individual who is “connected” with the trustee under section 68(2) of the Charities and Trustee Investment (Scotland) Act 2005 (husband/wife, partner, child, parent, brother/sister etc) shall be deemed to be held by that trustee;

49.2 a trustee will be deemed to have a personal interest in relation to a particular matter if a body in relation to which they are an employee, director, member of the management committee, officer or elected representative has an interest in that matter.

### MINUTES

50 The council must ensure that proper minutes are kept in relation to all Council meetings and meetings of sub-committees.

The minutes to be kept under clause 50 must include the names of those present; and (so far as possible) should be approved by the chairperson of the meeting. The council shall make available copies of the minutes at the request of a member. The council may exclude from any copy minutes made available any material which the council considers ought properly to be kept confidential - on the grounds that allowing access to such material could cause significant prejudice to the interests of the organisation or on the basis that the material contains reference to matters which it would be inappropriate to divulge.

### DECISION-MAKING BY THE TRUSTEES - IN THEIR CAPACITY AS MEMBERS

51 For certain purposes of the Charities and Trustee Investment (Scotland) Act 2005, the trustees make decisions in their capacity as *members* of the organisation, rather than as a council; the provisions of clauses 52 to 66 relate to those situations.

### ANNUAL GENERAL MEETING (MEMBERS' MEETING)

52 The Council must convene a meeting of the members in each calendar year; that meeting will be called an annual general meeting or "AGM". At the AGM or any other general meeting 25 members shall form a quorum.

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

53 The business of each AGM must include:-

53.1 To receive and approve the Report and Accounts of the Council

53.2 To elect members under clause 16

53.3 To appoint or re-appoint a reporting accountant or auditor in compliance with legislation in relating to charities in Scotland at that time; and

53.4 consideration of the future strategy for the organisation, including a review of key risks and opportunities.

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- 54 The Council may convene any other meeting of the of members of the organisation at any time (normally referred to as an Extraordinary General Meeting).

### NOTICE OF MEMBERS' MEETING

- 55 At least 14 clear days' notice must be given of any AGM or any other members' meeting.
- 56 The notice calling a members' meeting must specify in general terms what business is to be dealt with at the meeting; and, in the case of a resolution to alter the constitution, must set out the exact terms of the proposed alteration(s).
- 57 Notice of the AGM must be given to all the members; but the accidental omission to give notice to one or more member will not invalidate the proceedings at the meeting.
- 58 Any notice of a members' meeting which requires to be given to a charity trustee - in their capacity as a member of the organisation - under this constitution must be: -
- 58.1 sent by post to the charity trustee, at the address last notified by them to the organisation; *or*
- 58.2 sent by e-mail to the charity trustee, at the e-mail address last notified by them to the organisation.

### PROCEDURE AT MEMBERS' MEETING

- 59 The provisions of clauses 52 -66 (AGM) and 41 and 43 (quorum and chairperson) shall apply in relation to all meetings of the trustees in their capacity as members of the organisation.

### VOTING AT MEMBERS' MEETING

- 60 All residents of Brookfield over the age of sixteen shall be entitled to attend and vote.
- 61 All decisions at members' meetings will be made by majority vote - with the exception of the types of resolution listed in clause 62.
- 62 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 :
- 62.1 a resolution amending the constitution;
- 62.2 a resolution approving the amalgamation of the organisation with another
- 62.3 a resolution to the effect that all of the organisation's property, rights and liabilities should be transferred to another Scottish Charitable

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Independent Organisation (SCIO) or agreeing to the transfer from another SCIO of all of its property, rights and liabilities;

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

63 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.

64 A resolution put to the vote at a members' meeting will be decided on a show of hands - unless the chairperson (or at least two other members present at the meeting) ask for a secret ballot.

The chairperson will decide how any secret ballot is to be conducted, and they will declare the result of the ballot at the meeting.

### **MINUTES**

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

66 Minutes of members' meetings must include the names of those present. The council shall make available copies of the minutes referred to in clause 65 to any member requesting them; but on the basis that the council may exclude confidential material to the extent permitted under clause 50.

### **ADMINISTRATION**

#### **DELEGATION TO SUB-COMMITTEES**

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

68 The Council 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.

69 When delegating powers under clause 67 or 68, the council must set out appropriate conditions (which must include an obligation to report regularly to the board).

#### **OPERATION OF ACCOUNTS**

70 Subject to clause 71, the signatures of one out of two signatories appointed by the Council will be required in relation to all operations (other than the lodging of funds) on the bank accounts held by the organisation; at least one out of the two signatures must be the signature of a trustee.

71 Where the organisation uses electronic facilities for the operation of any bank account, the authorisations required for operations on that account must be consistent with the approach reflected in clause 70.

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- 72 All funds presently held by the Council shall be invested in a lawful manner and shall not be exposed to any risk. The funds shall be held for the benefits of the residents of the village. The funds shall be used to maintain the Council's assets or at the trustees' discretion to any other purpose connected with the Council's assets.

### **ACCOUNTING RECORDS AND ANNUAL ACCOUNTS**

- 73 The Council must ensure that proper accounting records are kept, in accordance with all applicable statutory requirements.
- 74 The Council must prepare annual accounts, complying with all relevant statutory requirements. An Annual Report and Accounts to 31<sup>st</sup> December will be prepared each year and will be inspected, approved and signed by the reporting accountant/auditor. If an audit is required under any statutory provisions (or if the Council consider that an audit would be appropriate for some other reason), the Council should ensure that an audit of the accounts is carried out by a qualified auditor.
- 75 The Treasurer will present the signed Accounts to allow questions and to have the accounts adopted at the AGM.

### **MISCELLANEOUS**

#### **WINDING-UP**

- 76 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 Charities and Trustee Investment (Scotland) Act 2005.
- 77 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**

- 78 A proposal to alter the constitution shall be approved by three fourths majority of the Council or be supported in writing by not less than fifty members. In the latter case the proposed change must be delivered to the secretary of the Council not less than 28 days before the date it is due to be considered.
- 79 This constitution may be altered by resolution at a members' meeting (subject to achieving the two thirds majority referred to in clause 64).
- 80 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).

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## INTERPRETATION

- 81 References in this constitution to the Charities and Trustee Investment (Scotland) Act 2005 should be taken to include: -
- 81.1 any statutory provision which adds to, modifies or replaces that Act; and
  - 81.2 any statutory instrument issued in pursuance of that Act or in pursuance of any statutory provision falling under paragraph 81.1 above.
- 82 In this constitution: -
- 82.1 “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 2011, providing (in either case) that its objects are limited to charitable purposes;
  - 82.2 “charitable purpose” means a charitable purpose under section 7 of the Charities and Trustee Investment (Scotland) Act 2005 which is also regarded as a charitable purpose in relation to the application of the Taxes Acts.

**Members of the organisation are defined as residents living in any of the below mentioned streets**

Victoria Rd

Woodside Rd & Lane

Albert Rd

Bridge of Weir Rd (between Victoria Rd and Sandholes Rd)

Stanley Drive and Lane

Darluith Park

Chuckie Lane

Burnside Avenue

Sandholes Rd (from Bridge of Weir Rd up to the railway bridge)

The Beeches