

**The Highland Council**  
**Planning, Development and Infrastructure Committee**

**18 February 2014**

Agenda Item	15
Report No	PDI 12/15

**Development of Tornagrain – Establishment of a Statutory Conservation Body**

**Report by the Director of Development and Infrastructure**

**Summary**

This paper introduces the proposed establishment of a Statutory Conservation Body (The Tornagrain Conservation Trust) to oversee and secure the design principles and qualities envisaged for the future development of Tornagrain. The proposal has been developed by Moray Estates Development Company (MEDCO), which has applied to Scottish Ministers for the establishment of the Conservation Body. While Highland Council is already a statutory conservation body and planning authority, MEDCO seeks Council support for the proposal and partnership in the application now being progressed.

Committee is invited to:

- a) consider the role and supporting statements for the proposed Tornagrain Conservation Trust (appendices 1 and 2 of the report);
- b) agree in principle to support the establishment of The Tornagrain Conservation Trust to oversee the future development of Tornagrain in partnership with the Highland Council and the community at Tornagrain;
- c) remit ongoing support for the proposal to the Director of Development and Infrastructure in consultation with the Committee Chair; and
- d) agree that the Council become a member of The Tornagrain Conservation Trust on the approval of the Conservation Body by Scottish Ministers.

**1. Introduction and background**

- 1.1 A 'Conservation Body' is a legal term for a body created by statute, with powers to enforce conservation burdens. Scottish Ministers may designate a new Conservation Body by Order. Highland Council is already a statutory Conservation Body.
- 1.2 MEDCO wishes to establish the Conservation Body in order that, in time, MEDCO, Tornagrain Community Council, and Tornagrain Community Residents Committee can play a full role in ensuring the appropriate design and development of Tornagrain in partnership with the Highland Council. Articles of Association for Tornagrain Conservation have been drafted by MEDCO and are included at **Appendix 1** to this report.
- 1.3 The process of obtaining Conservation Body status can take up to 12 months, which may mean that interim measures are required as a Conservation Body needs to be in place at the point of first registering the Deed of Conditions. At Chapelton, Aberdeenshire, where a similar Conservation Body exists, Aberdeenshire Council

has assumed this role until it can be reassigned to the new Body once in place. As the Highland Council is already a Conservation Body, MEDCO would like the Council to assume a similar role with regard to Tornagrain Conservation Trust. Once the new Body is in place responsibility would be reassigned allowing MEDCO and the community to play their full role.

- 1.4 In the case proposed for Tornagrain, the Conservation Body would be deemed to have title and interest to enforce burdens. The focus would be ensuring that the design code for Tornagrain is adhered to, conservation burdens enforced and the public realm maintained.

## **2. Structure proposed and supporting statements**

- 2.1 Proposed Articles of Association for The Tornagrain Conservation Trust are attached at **Appendix 1** to this report. These indicate a not for profit charitable organisation:

- with powers to act for charitable purposes only;
- objects to promote and preserve the amenity of Tornagrain for the benefit of the community and visitors and to advance citizenship, community development and heritage by encouraging and promoting social, recreational, educational, cultural, artistic, or other communal activities or enterprises; and
- powers to do anything lawful consistent with the pursuit of the above objects including to borrow or raise funds for investment in Tornagrain.

- 2.2 A supporting statement prepared by MEDCO can be found at **Appendix 2**. The supporting statement addresses a number of questions forming part of the application for Conservation Body status including:

- that the applicant demonstrates that at least one of its objects and functions is the preservation and/or protection of aspects of land or property for the benefit of the public;
- that it would be in the public interest to designate the applicant a Conservation Body;
- that conservation burdens likely to be created would benefit the public;
- that conservation burdens will preserve/protect special characteristics of the land and property;
- that the objectives of the applicant could not be met through existing means;
- listing the benefits which would accrue to the applicant/public on designation; and
- listing the activities the applicant would carry out, and why these cannot be achieved by existing means (e.g. land use planning).

## **3 Benefits of the approach proposed**

- 3.1 Perhaps the primary benefit arising from the creation of The Tornagrain Conservation Trust arises from the direct involvement of the community in managing the public realm. There is therefore a strong community empowerment argument for the establishment of the Trust.

- 3.2 Legally, Conservation Burdens can be created in favour of, and are enforceable by, the named Conservation Body. There are therefore no questions or doubt about legal title or interest, since these aspects are acknowledged within the overall framework.
- 3.3 Similarly, none of the downsides deriving from traditional burdens arise, for example, the willingness of a neighbour or factor to take a party in breach to task, or, having done so, to encounter legal difficulty of actual enforcement, or the downsides deriving from the enforcement of planning conditions.
- 3.4 MEDCO therefore see the proposal as providing at least the best possibility of a more robust regime to ensure implementation of, and ongoing compliance with, their (and our) objectives for the new community at Tornagrain.
- 3.5 For these reasons internal legal advice suggests that the Conservation Trust proposal has merit.
- 3.6 Principal concerns relate to any possible conflict of interest between the Council's role as planning authority generally, and direct involvement in the Conservation Trust in determining future proposals within Tornagrain. On balance however it is difficult at present to identify where such conflicts of interest might arise.

#### **4. Fit with the programme for the Highland Council**

- 4.1 Involvement in The Tornagrain Conservation Trust would contribute towards delivery of the Council Programme commitments 'Empowering Communities' and 'Protecting the Environment'.

#### **5. Fit with the Single Outcome Agreement**

- 5.1 The Tornagrain Conservation Trust will support Community Empowerment and Protection of the Environment.

#### **6. Implications**

##### Gaelic, Climate Change/Carbon Clever

There are no Gaelic, climate change/Carbon Clever implications arising from this report.

##### Resource, Rural and Equalities

There are currently no resource, rural or equalities implications arising from this report. Any significant additional resource implications arising from the partnership with MEDCO will be reported for approval. Longer term the Conservation Trust is likely to help conserve and protect the local environment around Tornagrain.

## **Recommendation**

The Members are invited to:

- a) consider the role and structure of the proposed Tornagrain Conservation Trust (appendices 1 and 2 of the report);
- b) agree in principle to support the establishment of The Tornagrain Conservation Trust to oversee the future development of Tornagrain in partnership with the Highland Council and the community at Tornagrain;
- c) remit ongoing support for the proposal to the Director of Development and Infrastructure in consultation with the Committee Chair; and
- d) agree that the Council become a member of The Tornagrain Conservation Trust on the approval of the Conservation Body by Scottish Ministers.

Designation: Director of Development and Infrastructure

Date: 2 February 2015

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### Background papers

1. Articles of Association of [Tornagrain Conservation] (Company number SC [ ]): MEDCO December 2014.
2. Draft answers to points to be addressed in relation to application for Conservation body Status (M.8000.916): MEDCO December 2014.

**ARTICLES OF ASSOCIATION**

of

**[TORNAGRAIN CONSERVATION]**

**(Company number SC[            ])**

**THE COMPANIES ACT 2006**

**COMPANY LIMITED BY GUARANTEE**

**ARTICLES of ASSOCIATION**

of

**[TORNAGRAIN CONSERVATION]**

**(Company Number SC[                      ])**

**OBJECTS AND POWERS**

**1. The Company's objects**

- 1.1** This article shall be interpreted as if it incorporated an over-riding qualification limiting the capacity and powers of the Company such that it may carry out any act or transaction (which this article would otherwise permit) only if doing so furthers a purpose which is Charitable.
- 1.2** Subject to article 1.1, the Company's objects are to promote and preserve the amenity of Tornagrain for the benefit of the Community and visitors and to advance citizenship, community development and heritage by encouraging and promoting social, recreational, educational, cultural, artistic or other communal activities or enterprises, in furtherance of which the Company may without limitation:
- 1.2.1** take into ownership or acquire rights with respect to land, buildings, amenities and facilities for common ownership, use, benefit or enjoyment in relation to Tornagrain (such land and others being "the Common Parts");
  - 1.2.2** maintain, or organise the maintenance of the Common Parts to high standards and in a good, neat, tidy and safe condition, and where relevant, in a safe and well maintained operational condition, where necessary renewing, replacing or reinstating the same;
  - 1.2.3** administer and collect, or organise the administration and collection of any charges on owners or lessees of properties within Tornagrain or on others using, enjoying or benefitting from the Common Parts, and, when considered necessary, establish and/or administer or organise the establishment and/or administration of, any scheme or system for such charging on a just and equitable basis;
  - 1.2.4** enforce any codes, conditions or restrictions intended for the benefit of the Community and to object to any proposals which may have any adverse impact on the Community or the benefit of being within the Community; and
  - 1.2.5** use the powers available to the Company to ensure the implementation and future maintenance of the Development in accordance with the Masterplan, preserving and protecting for the Community, and for the benefit of the wider public, the special architectural characteristics of the Development and its design novelty by the

incorporation of local, traditional and historical precedents in a new, planned, township community.

**2. The Company's powers**

- 2.1 The Company may do any lawful thing consistent with the foregoing objects and in particular may borrow or raise and secure the payment of money for any purpose including for the purposes of investment or of raising funds.

**INCOME**

**3. Prohibition of distributions**

- 3.1 The income and property of the Company shall be applied solely in promoting the objects of the Company as set out in these articles.

- 3.2 No part of the income or property of the Company shall be paid or transferred (directly or indirectly) to the members, whether by way of dividend, bonus, or otherwise, except as article 3.4 permits.

- 3.3 No director shall be appointed to any salaried office of the Company and no director shall be entitled to receive any remuneration from the Company or to participate in any manner in the profits of the Company except as article 3.4 permits.

- 3.4 No benefit (whether in money or in kind) shall be given by the Company to any member or director except:-

3.4.1 repayment out of the funds of the Company of all reasonable out-of-pocket expenses to directors, including travelling, hotel and other expenses reasonably incurred by them in connection with their attendance at general meetings, meetings of the directors or meetings of general committees or otherwise in connection with the discharge of their duties as directors; or

3.4.2 reasonable remuneration to any member or director in return for specific services actually rendered to the Company (not being of a management nature normally carried out by a director of a company); or

3.4.3 direct or indirect benefit to one or more members resulting from the application in good faith of the income and property of the Company in promoting the objects of the Company; or

- 3.4.4 the payment of interest at a rate not exceeding the commercial rate on money lent to the Company by any director or member; or
- 3.4.5 the purchase from, or sale to, any director or member of assets at market value; or
- 3.4.6 the payment of rent not exceeding the open market rent for premises let to the Company by any director or member.

## **BECOMING AND CEASING TO BE A MEMBER**

### **4. Who may be a member**

#### **4.1** The members of the Company shall be:

- 4.1.1 The Highland Council and its permitted successors;
- 4.1.2 The Residents' Committee, once it comes into being, but only until Tornagrain Community Council comes into being, at which point the Residents' Committee will cease to be a member;
- 4.1.3 Tornagrain Community Council, once it comes into being, and its permitted successors; and
- 4.1.4 Moray Estates Development Company Limited and its permitted successors.

#### **4.2** It shall be a condition of membership that on admission any member is not bankrupt.

### **5. Formalities of becoming a member**

#### **5.1** Every member of the Company (other than the subscriber(s) to the memorandum) shall either sign a written consent to become a member or sign the register of members on becoming a member.

#### **5.2** The Company shall keep a register of its members in accordance with the Act.

### **6. Cessation of membership**

#### **6.1** Where a permitted successor becomes a member, the permitted successor's predecessor shall automatically cease to be a member.

#### **6.2** The rights and privileges of a member shall cease upon the member's ceasing to exist as a legal person, but no member shall be entitled to resign as a member.



## **MEMBERS' DECISION-MAKING**

### **7. Annual general meetings**

7.1 The Company shall in each year hold a general meeting as its annual general meeting, in addition to any other meetings in that year, and shall specify the meeting as such in the notices calling it. Not more than fifteen months shall elapse between one annual general meeting and the next but the Company need not hold its first annual general meeting in the year of its incorporation or in the following year so long as such meeting is held within eighteen months after incorporation.

7.2 The Company shall hold its annual general meeting at such time and place as the directors shall appoint.

### **8. General meetings generally**

8.1 The directors may, whenever they decide, convene a general meeting of the Company and shall also convene general meetings of the Company on such requisition (or, in default, sufficient members may convene them) as the Act states.

8.2 If at any time there are not within the United Kingdom sufficient directors capable of acting to form a quorum, any director may convene a general meeting of the Company in the same manner as nearly as possible as that in which the directors may convene general meetings of the Company.

### **9. Notice period for general meetings**

9.1 Subject to the following paragraph of this article, the directors shall call an annual general meeting of the Company by twenty one days' notice at least and shall call any other general meeting of the Company other than an annual general meeting of the Company by fourteen days' notice at the least. The notice shall be exclusive of the day on which it is served or deemed to be served and of the day for which it is given.

9.2 This article deems the Company or members to have duly called a general meeting of the Company, notwithstanding that they called it by a shorter notice than the preceding Article specified, if all the members entitled to attend and vote thereat so agree.

### **10. Content of notice of general meetings**

10.1 In relation to every notice of every general meeting of the Company, the Company or the

members calling it shall:-

**10.1.1** specify the place, the day and the hour of meeting and the business to be transacted at the meeting; and

**10.1.2** give the notice to:-

9.1.2.1 every member except those members who (having no registered address within the United Kingdom) have not supplied to the Company an address within the United Kingdom for the giving of notices to them;

9.1.2.2 every director; and

9.1.2.3 the auditors.

## **11. Authorised representatives**

**11.1** A corporation or statutory body which is a member may be represented at a general meeting by any of its officers or by any other person authorised for that purpose by resolution of its board of directors or governing body.

**11.2** An unincorporated association which is a member may be represented at a general meeting by any person authorised for that purpose by its governing body.

**11.3** A person representing a member at a general meeting in accordance with this article may exercise all that member's rights as if the member were an individual present in person and this article deems a member so represented to be present in person at such meeting.

## **12. Quorum at general meetings**

**12.1** The Company shall transact no business at any general meeting of the Company unless a quorum of members is present at the time when the meeting proceeds to business.

**12.2** While the Company has only one member, one authorised representative of that member is a quorum. Otherwise, authorised representatives of two members is a quorum.

## **13. Procedure at general meetings**

- 13.1 If, within half an hour from the time appointed for the meeting, a quorum is not present, a general meeting of the Company shall stand adjourned to the same day in the next week, at the same time and place (or to such other day and such other time and place as the directors may decide).
- 13.2 If (at such adjourned meeting) a quorum is not present within half an hour from the time which these articles (or the directors) appointed for holding the meeting, the quorum for any meeting so adjourned shall continue to be as these articles prescribe.
- 13.3 The chairman, if any, of the board of directors shall preside as chairman at every general meeting but, if there is no chairman or the chairman shall have intimated that the chairman shall not be present at any meeting or the chairman shall not be present within fifteen minutes after the time appointed for the holding of the meeting or the chairman shall be unwilling to preside, the directors present shall choose some other of their number to be chairman of the meeting. If (at any general meeting) no director is willing to act as chairman or if no director is present within fifteen minutes after the time appointed for the holding of the meeting, the members present shall choose one of their number to be chairman of the meeting.
- 13.4 With the consent of any meeting at which a quorum is present, the chairman may (and shall, if the meeting so directs) adjourn any general meeting from time to time and from place to place. When the chairman adjourns a meeting for thirty days or more, the Company shall give notice of the adjourned meeting as in the case of an original meeting. Save as aforesaid, the members shall not be entitled to any notice of an adjournment or of the business to be transacted at an adjourned meeting. The Company shall transact no business at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

#### **14. Voting rights of members**

- 14.1 At any general meeting, the meeting shall decide any resolution by poll. The Company shall take the poll in such manner as the chairman of the meeting directs and this article deems the result of the poll to be the resolution of the meeting. The Company shall take any poll forthwith.
- 14.2 A resolution to alter any of the provisions of these articles, to wind up the Company or to remove a director shall not be passed unless all members vote for it. Otherwise, on a poll, members shall have the following numbers of votes:
- 14.2.1 before the Development is Half Built, MEDCo shall have three votes and the other two members shall have one vote each; and

14.2.2 after the Development is Half Built, each member shall have one vote.

**15. Written members' resolutions**

Subject to the provisions of the Act, a resolution in writing which the majority which the Act requires for the passing of that resolution in writing (or one or more persons on behalf of that majority) has signed shall be as valid and effective as if the Company had passed the resolution at a general meeting of the Company duly convened and held and may consist of several documents in the like form each of which one or more of the members (or one or more persons on behalf of the members) has or have signed.

**APPOINTMENT AND TERMINATION OF DIRECTORS**

**16. Appointment of directors**

16.1 Each member, while it shall remain a member, may by notice in writing signed by an authorised officer and left at the registered office appoint not more than one director of the Company and shall be entitled by like notice to remove any director so appointed (or appointed by one of its predecessors as member) at any time and appoint any other person to be a director in the place of the director so removed or in the place of a director vacating office in any way and originally appointed by it (or one of its predecessors as member).

16.2 In respect of the subscribers to the memorandum, the directors respectively appointed under the previous article shall satisfy the entitlement of the subscriber to appoint such director under this article until so removed or vacating office.

16.3 There shall be no directors other than the nominee directors referred to in article 16.1 or their alternates.

**17. Events where directorship terminates**

A director shall vacate office as a director if the director:-

17.1 is removed by the member who appointed that director in accordance with these articles (or a permitted successor of that member who has become a member); or

17.2 resigns his office by notice in writing to the Company; or

17.3 becomes bankrupt or makes any arrangement or composition with his creditors generally; or

- 17.4 ceases to be a director by virtue of any provision of the Acts or becomes prohibited by law from being a director; or
- 17.5 is convicted of any crime (other than minor traffic offences) and the directors resolve that the director vacate that director's office; or
- 17.6 becomes subject to a mental disorder or unable or unfit otherwise to discharge his functions as a director and the directors resolve that the director vacate that director's office.

### **THE POWERS, ETC. OF THE DIRECTORS**

#### **18. The powers and duties of the directors**

- 18.1 The directors shall manage the business of the Company, may pay all expenses incurred in promoting and registering the Company and may exercise all such powers of the Company as the Acts or these articles do not require the Company to exercise by special or ordinary resolution, subject nevertheless to the provisions of the Acts and these articles and to such regulations, being not inconsistent with the aforesaid provisions, as the Company may prescribe by special resolution; but no regulation which the Company makes by special resolution shall invalidate any prior act of the directors which would have been valid if the Company had not made that regulation.
- 18.2 The Company shall sign, draw, accept, endorse or otherwise execute, as the case may be, all cheques, promissory notes, drafts, bills of exchange and other negotiable instruments and all receipts for monies paid to the Company in such manner as the directors shall from time to time decide.
- 18.3 The directors may exercise all the powers of the Company to borrow money and to mortgage or charge its undertaking and property, or any part thereof, and to issue debentures, debenture stock and other securities, whether outright or as security for any debt, liability or obligation of the Company or of any third party.

#### **19. Procedure for directors' meetings**

- 19.1 The directors shall meet together for the despatch of business at least once every three months but may otherwise meet, adjourn and otherwise regulate their meetings, as they decide.
- 19.2 A director may, and the secretary on the requisition of a director shall, at any time summon a meeting of the directors.

**19.3** Notice of any meeting of the directors need not be in writing and the length of such notice shall be as required by the general law.

**19.4** Until the Development is Half Built, the quorum necessary for the transaction of the business of the directors shall be two directors, one of whom is the nominee director appointed by MEDCo. After the Development is Half Built, the quorum necessary for the transaction of the business of the directors shall be any two directors.

**19.5** A meeting of the directors at which a quorum is present shall be competent to exercise all the powers, authorities and discretions which the Act or these articles vest in the directors generally or authorise the directors generally to exercise.

**19.6** The continuing directors may act notwithstanding any vacancy in their body but, if and so long as the number of continuing directors is below the number which these articles prescribe as the necessary quorum of directors, the continuing directors or director may act for the purpose of increasing the number of directors to that number or of summoning a general meeting of the Company, but for no other purpose.

**19.7** The directors shall decide any questions arising at any meeting of the directors by a majority of votes and each nominee director shall have one vote, except that:-

**19.7.1** upon any resolution that a director's office be vacated in accordance with these articles, the director to the vacation of whose office any such resolution relates shall have no vote; and

**19.7.2** until the Development is Half Built, the nominee director appointed by MEDCo shall have three votes and each other director shall have one vote each.

**19.8** The chairman shall have no casting vote on any resolution of the directors.

## **20. Alternate directors**

**20.1** Any member may, by writing which that member has signed and deposited at the registered office (or in any other manner which the directors have approved), appoint any other director, or any other person whom the directors have approved by resolution and willing to act, to be that member's nominee director's alternate and may in like manner revoke any such appointment.

**20.2** The directors may, upon the request of the relevant member, appoint any person (whether a director or not) as alternate for such director.

- 20.3** A person may act as an alternate director to represent more than one director.
- 20.4** An alternate director shall be entitled to receive notice of all meetings of the directors (and of all meetings of committees of the directors of which the relevant nominee director is a member), to attend and vote at any such meeting at which the relevant nominee director is not personally present and generally to perform all the functions of the relevant nominee director as a director in the relevant nominee director's absence (including without limitation the signing of written resolutions of the directors).
- 20.5** The Company shall repay to an alternate director such expenses as the Company might properly be liable to repay to the alternate director if the alternate director were a nominee director.
- 20.6** Save as these articles otherwise provide, this article deems an alternate director for all purposes to be a director and alone to be responsible for that alternate director's acts and defaults and this article deems an alternate director not to be the agent of the director appointing the alternate director (or in respect of whom the directors appointed the alternate director).

**21. Chairman**

The nominee director appointed by MEDCo shall chair meetings of the directors until the Development is Half Built, following which the nominee director appointed by the Residents' Committee or Tornagrain Community Council shall chair meetings of the directors. However, if the chairman has intimated that the chairman shall not be present at any meeting of the directors or the chairman is not present within five minutes after the time appointed for holding the same or the chairman shall be unwilling to preside, the directors present shall choose some other of their number to be chairman of the meeting.

**22. Delegation by the directors**

- 22.1** The directors may delegate any of their powers to any committee or sub-committee consisting of one or more directors.
- 22.2** The provisions of these articles regulating the meetings and proceedings of the directors shall (so far as the same are applicable and the directors do not make regulations superseding them) govern the meetings and proceedings of any committee or sub-committee of the directors.
- 22.3** Each such committee or sub-committee shall report back all its acts and proceedings to the directors as soon as possible.

**22.4** The directors may from time to time and at any time by power of attorney appoint any company, firm or person or body of persons, whether the directors have nominated that company or other directly or indirectly, to be the attorney or attorneys of the Company for such purposes and with such powers, authorities and discretions (not exceeding those which these articles vest in the directors or authorise the directors to exercise) and for such period and subject to such conditions as they may decide and any such powers of attorney may contain such provisions for the protection and convenience of persons dealing with any such attorney as the directors may decide and may also authorise any such attorney to delegate all or any of the powers, authorities and discretions which the directors have vested in such attorney.

**23. Directors' interests**

Nothing in these articles invalidates authorisation by the directors of any situation in which a director has, or can have, a direct or indirect interest that conflicts, or may conflict, with the interests of the Company.

**24. Written directors' resolutions**

A resolution in writing which all the directors for the time being entitled to receive notice of a meeting of the directors have signed shall be as valid and effectual as if a meeting of the directors duly convened and held had passed it and may consist of several documents in like form each of which one or more of the directors (or one or more persons on their behalf) have signed.

**25. Appointment, etc. of the secretary**

**25.1** The directors shall appoint the secretary for such term, at such remuneration and upon such conditions as the directors may decide and may remove any secretary so appointed.

**25.2** The directors may also from time to time appoint an assistant or deputy secretary.

**25.3** The secretary or any assistant or deputy secretary may be an individual or two or more individuals or a firm or a corporate body.

**25.4** Where the office of secretary is vacant (or there is for any other reason no secretary capable of acting), an assistant or deputy secretary (if any) or anyone whom the directors have authorised generally or specifically in that behalf (if there is no assistant or deputy secretary or none capable of acting) may do anything which is required or authorised to be done by the secretary and any person may do to an assistant or deputy secretary (if any) or anyone whom the directors have authorised generally or specifically in that behalf (if there is no assistant or



deputy secretary or none capable of acting) anything required or authorised to be done to the secretary.

- 25.5** A provision of the Acts or these articles requiring or authorising a thing to be done by or to a director and the secretary shall not be satisfied by its being done by or to the same person acting both as a director and as, or in place of, the secretary.

## **BUSINESS CONTROL, ACCOUNTING RECORDS, ACCOUNTS, AUDIT AND MINUTES**

### **26. Systems of business control, etc.**

**26.1** The directors shall establish and maintain systems of control of the conduct of the activities of the Company in accordance with law and the decisions of the directors and for the control of the accounting and other records of the activities of the Company.

**26.2** The directors shall establish and maintain systems of inspection on behalf of (and report to) the directors on the operation of the system of control of the activities of the Company and records which this article requires.

**26.3** The systems of inspection and report shall be sufficient to enable the directors to discharge the duties imposed on them by law and the directors shall keep available a detailed statement in writing of the system as in operation for the time being.

### **27. Accounting records**

**27.1** The directors shall cause accounting records to be kept in an orderly manner and sufficiently to show and explain the transactions of the Company and, in particular, disclose with reasonable accuracy and promptness the Company's financial position at any time, to explain its transactions and to permit the directors to discharge the duties which the law imposes on them.

**27.2** The accounting records shall, in particular, contain:-

**27.2.1** entries from day to day of all sums which the Company has received and paid and the matters in respect of which such sums are received or paid;

**27.2.2** entries from day to day of every transaction which the Company has entered into which will (or there is reasonable ground for expecting may) give rise to assets or liabilities of the Company other than insignificant assets or liabilities in respect of the management of the Company; and

**27.2.3** a record of the assets and liabilities of the Company.

**27.3** The directors shall keep the accounting records at the registered office or, subject to section 388 of the Act, at such other place or places as the directors shall decide.

**27.4** The accounting records:-

**27.4.1** shall always be open to the inspection of the directors; and

**27.4.2** subject to any reasonable conditions or regulations as to the time and manner of inspection that the Company by ordinary resolution may from time to time impose, shall be open to the inspection of the members at all reasonable times during business hours.

**28. Annual accounts and audit**

**28.1** Not less than twenty-one days before the date of each annual general meeting of the Company, the directors shall send to the auditors and to all other persons entitled to receive notices of general meetings of the Company in the manner in which the Company is to serve notices in accordance with these articles to such address as the addressee may for the time being have notified to the Company for that purpose:-

**28.1.1** a proper income and expenditure account (framed in accordance with any statutory requirement for the time being in force) for the period since the last-preceding account;

**28.1.2** a proper balance sheet (framed as aforesaid) made up to the same date as the date to which the income and expenditure account is made up;

**28.1.3** proper reports of the directors and (to the extent required by law) of the auditors (all of which shall be framed as aforesaid); and

**28.1.4** any other documents required by law to be annexed or attached thereto or to be sent with the same.

**28.2** At the annual general meeting of the Company in every year, the directors shall lay before the Company copies of such account, balance sheet and reports.

**28.3** Subject to any exemptions which the Acts make available to the Company from time to time, the Company shall appoint the auditors to the extent which the Acts require and regulate their duties in accordance with the Acts.

## **29. Minutes**

- 29.1** The directors shall record minutes in books which the directors provide for the purpose of recording:-
- 29.1.1** all appointments of officers which the directors make;
  - 29.1.2** the names of the directors present at each meeting of the directors (and of any committee or sub-committee of the directors);
  - 29.1.3** all resolutions and proceedings at all general meetings and all meetings of the directors (and of committees or sub-committees of the directors); and
  - 29.1.4** the transactions, resolutions and proceedings of any advisory council or committee.
- 29.2** The directors shall keep any such minutes for the period which section 248(2) of the Act prescribes in relation to minutes of proceedings at meetings of the directors.

## **INDEMNITY**

### **30. Indemnity by the Company to the directors**

- 30.1** The Company may not directly or indirectly exempt (to any extent) any director from any liability that would otherwise attach to that director in connection with any negligence, default, breach of duty or breach of trust by that director in relation to the Company however the Company may provide for a director any one or more of the insurances which section 233 of the Act permits, a qualifying third party indemnity which section 234 of the Act permits or a qualifying pension scheme indemnity which section 235 of the Act permits.
- 30.2** Subject to the same limitation, no director or other officer of the Company shall be liable for the acts, receipts, neglects or default of any other director or officer, or for joining in any receipt or other act for conformity or for any loss or expense happening to the Company through the insufficiency or deficiency of title to any property which the Company (or someone on behalf of the Company) acquired by order of the directors or for the insufficiency or deficiency of any security in or upon which the Company (or someone on behalf of the Company) shall have invested any monies or for any loss or damage arising from the bankruptcy, insolvency or wrongful act of any person with whom the Company (or someone on behalf of the Company) shall have deposited any monies, securities or effects or for any other loss, damage or misfortune which shall happen in the execution of the duties of the office of a director or in relation thereto.

## **LIQUIDATION AND ITS CONSEQUENCES**

### **31. Liability of past and present members on winding up**

**31.1** The liability of each member is limited to £1.00, being the amount which each member undertakes to contribute to the assets of the Company in the event of its being wound up while he is a member or within one year after he ceases to be a member, for:-

**31.1.1** payment of the Company's debts and liabilities contracted before he ceases to be a member;

**31.1.2** payments of the costs, charges and expenses of winding up; and

**31.1.3** adjustment of the rights of the contributories among themselves.

### **32. Application of surplus on winding up**

If upon the winding up or dissolution of the Company there remains, after satisfaction of all its debts and liabilities, any assets or property whatsoever, the same shall not be paid to or distributed among the members, but shall be transferred to such other organisation, as the directors may determine, having objects similar to the objects of the Company and to be used only for purposes which are Charitable.

### **33. No statutory regulations apply**

No regulations set out in any statute, or in any statutory instrument or other subordinate legislation made under any statute, concerning companies shall apply as the regulations or articles of association of the Company.

## **DEFINITIONS AND INTERPRETATION**

### **34. Definitions and interpretation**

In these articles of association:-

**34.1** the following words and expressions shall have the following meanings:-

<b>the Act</b>	the Companies Act 2006;
<b>the Acts</b>	the Act and every other statute for the time being in force concerning companies and affecting the Company;
<b>these articles</b>	these articles of association as from time to time in force (and references

	to an “article” shall be construed accordingly);
<b>the auditors</b>	the auditors for the time being of the Company or (in relation to annual accounts, where the Company has exempted itself from the requirement of the Act that the Company have its annual accounts audited but is obliged to have an accountant prepare a report on the annual accounts) the reporting accountant;
<b>the auditors’ report</b>	such report (if any) as the Act obliges the Company to obtain from the auditors;
<b>bankruptcy</b>	includes the sequestration of the estate of a person, a person’s estate being the subject of a protected trust deed (within the meaning of the Bankruptcy (Scotland) Act 1985 and a person’s being in winding-up or subject to an administration order;
<b>Charitable</b>	charitable in terms of the Charities and Trustee Investment Act (Scotland) 2005 as amended by the Public Services Reform (Scotland) Act 2010 and the legislation which grants tax reliefs to charitable bodies, including relief from corporation tax;
<b>Community</b>	those living in Tornagrain;
<b>Company</b>	[Tornagrain Conservation Body];
<b>Development</b>	construction of Tornagrain;
<b>director</b>	one of the board of directors of the Company;
<b>the directors</b>	the directors of the Company from time to time;
<b>Group</b>	in relation to a company, that company, any subsidiary or any holding company from time to time of that company, and any subsidiary from time to time of a holding company of that company;
<b>Half Built</b>	completion of sale for occupation of more than half of the planned number of dwellings in terms of the Masterplan;
<b>local government legislation</b>	the Local Government (Scotland) Act 1973 and the Local Government etc. (Scotland) Act 1994;
<b>Masterplan</b>	[the masterplan for the Development];
<b>MEDCo</b>	Moray Estates Development Company Limited (Co. no. SC012762) or its permitted successor;
<b>member</b>	a member of the Company from time to time;
<b>memorandum</b>	the memorandum of association of the Company;
<b>mental disorder</b>	is (or may be) suffering from any mental disorder (within the meaning of section 328 of The Mental Health (Care and Treatment) (Scotland) Act 2003, where the person is subject to that Act, or the corresponding standard, where the person is subject to a non-Scottish counterpart of that legislation) and either is admitted to hospital in pursuance of an application for admission for treatment under such legislation or an order

is made by a court having jurisdiction (whether in the United Kingdom or elsewhere) in matters concerning mental disorder for that person's detention or for the appointment of a curator bonis or other person to exercise powers with respect to that person's property or affairs;

<b>nominee</b>	a director whom a member has appointed in terms of these articles;
<b>director</b>	
<b>permitted</b>	(a) in respect of any local authority established by virtue of local government legislation, any body which following any reorganisation of that local authority performs the functions (or substantially all of the function) which that local authority formerly performed;
<b>successor</b>	(b) in respect of any community council, any body which following any reorganisation of that community council performs the functions (or substantially all of the function) which that community council formerly performed; and (c) in respect of MEDCo, a member of MEDCo's Group;
<b>Residents'</b>	a body established by and comprising residents of Tornagrain for the purpose of (or for purposes which include) communicating the Community's views to the Company and permitting the Community to participate in the Company;
<b>Committee</b>	
<b>Secretary</b>	includes any person whom the Company appoints to perform the duties of the secretary of the Company (and, where the Company appoints two or more persons as joint secretaries, includes any one of those persons);
<b>Tornagrain</b>	the new town to be constructed at Tornagrain,
<b>Tornagrain</b>	a community council established under the Local Government (Scotland)
<b>Community</b>	Act 1973 for an area the majority of whose residents live in Tornagrain;
<b>Council</b>	

**34.2** unless the context otherwise requires, words importing the singular number only shall include the plural number and vice versa;

**34.3** unless the context requires otherwise, words importing any gender shall include any other gender;

**34.4** unless the context otherwise requires, words importing persons shall include corporations;

**34.5** the index to and headings in these articles are for convenience only and shall not affect the interpretation hereof;

**34.6** reference to any statute or statutory provision shall include any statute or statutory provision

which amends, extends, consolidates or replaces the same or which the same has amended, extended, consolidated or replaced and shall include any order, regulation, instrument or other subordinate legislation made under the relevant statute or statutory instrument; and

**34.7** subject as aforesaid, any words or expressions defined in the Act shall, if not inconsistent with the subject or context, bear the same meanings in these Articles.

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<u>Name of each subscriber</u>	<u>Authentication by each subscriber</u>
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Moray Estates Development Company Limited  
(Co. no. SC012762)

For and on behalf of  
Moray Estates Development  
Company Limited

Director

[The Highland Council]

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Dated

2014

**DRAFT ANSWERS TO POINTS TO BE ADDRESSED IN RELATION TO APPLICATION FOR  
CONSERVATION BODY STATUS  
(M.8000.916)**

**1. CHARACTERISTICS OF APPLICANT AND PROPOSED BURDENS:**

- 1.1. *The applicant must have as at least one of its objects and functions the preservation and/or protection of aspects of land (architectural, historical or other characteristic as detailed above) for the benefit of the public;***

[4.3.1.1] The Tornagrain new town has been designed according to the principles of “new urbanism”;; the design process has distilled the principles of traditional Scottish architectural and urban design and applied it to create that sense of place, identity, physical and social wellbeing which will allow the formation of a new and sustainable community. The design will also incorporate community facilities and social housing in an organic way, to promote social cohesion and that sense of community. Although it will be a new town, it is intended that Tornagrain will offer the benefits of a historic environment combined with the best aspects of modern developments including emphasis on sustainability and that, in due course, this combination will lead to Tornagrain becoming a sustainable historic environment in its own right. The Scottish Government recognises that our historic environment encourages the creation of “a sense of place, identity and physical and social wellbeing” which, in turn leads to sustainable communities (Our Place in Time). It also acknowledges that these benefits need to be protected for future generations.

The Tornagrain new town will benefit from its location and in turn deliver such benefits to its residents and the wider public. The town will be readily accessible due to existing and enhanced efficient road, air and rail transport links. It will have employment opportunities nearby in addition to opportunities for local businesses within the town boundary. Crucially, the new town will also assist in unlocking the economic potential of the A96 corridor which will greatly benefit the local community and beyond, both now and in the future, by offering, amongst other benefits, the opportunity for and support of sustainable economic growth.

Tornagrain has been planned to create a unique town identity and deliver a ‘walkable’ and self-sufficient new town where people can live, work and shop and which can support everyday life and encourages social cohesion. Integral to this will be the incorporation of the existing natural landscape, blind integration of affordable housing and the creation of a community that will provide a good quality of life and standard of living for residents and an attractive, interesting and personable town to visit or aspire to become part of. In order for these intentions to be



realised a mechanism is required to ensure that the benefits brought to the residents, the local area and all visitors to the area by the quality and unique nature of the new town can be maintained in perpetuity. This should be achieved not simply by relying on neighbours holding each other to a standard on a neighbour to neighbour basis, which experience shows neighbours are often reluctant to do, but by the creation and empowerment of a body set up specifically to ensure that this is done for the benefit for all who will have the opportunity to enjoy the new town, not just in the short term but for generations to come. The [Tornagrain Conservation Trust] was created to preserve and protect the unique characteristics and qualities envisaged and promised for the Tornagrain new town and to deliver such benefits for the residents of the new town and the wider public.

A copy of the constitution and the articles of association for the Trust are attached for your information

1.2. ***It would be in the public policy interest to so designate the applicant;***

[4.3.1.2] The [only] purpose of the [Tornagrain Conservation Trust] is to preserve and protect the unique characteristics and qualities envisaged and promised for the Tornagrain new town not for its own benefit but for the benefit of the public. The Trust itself is not an owner of a residence in the vicinity or forming part of Tornagrain nor is it intended that it will take ownership of any such property. This is integral to the Trust properly fulfilling its purpose by placing it in a position so that it can enforce conservation burdens not as an entity advancing or protecting its own property interests but rather as a body set up to enforce such burdens for the benefit of others. Accordingly the Trust does not have, nor does it require, the necessary title and interest to enforce burdens in a private capacity.

The Conservation Burdens will restrict the manner in which an individual can deal with their property and the Trust has been created to be entrusted to act on behalf of the public in enforcing these burdens by ensuring individuals behave in such a way as to preserve and protect the new town. Accordingly, it would be in the public policy interest to designate the Trust as a Conservation Body to enable the Trust to fulfil its intended role of ensuring that the unique nature, characteristics, appearance and facilities of the new town and the benefits these bring are maintained for the wider benefit and good rather than relying on private interests doing so.

Generally, in the decision whether a power sought should be granted where the result will be to restrict individual rights such power is only granted where the benefit to the public will outweigh and so justify the restriction on the individual. In this case, the imposition of conservation burdens which will restrict the manner in which an individual can deal with their property will be

a restriction on that individual's rights. The benefit to the public as a result of this will be the protection of the special characteristics of the new town and the promotion of a revitalised area with a positive community, good quality of life and with sustainable growth and investment benefits for the residents, wider community and visitors. The burdens will only be imposed to restrict or compel an individual's actions where to continue to enforce a particular burden is deemed to be for the benefit of the public in the opinion of the Trust.

[The final consideration when contemplating a restriction on individual rights would generally be the provision of some sort of compensation for the existing rights that will be lost. In contrast, the burdens that are sought to be placed on activities throughout the new town in order to preserve both the new layout, historic landscape, and town ambience will be in place prior to the first resident of the new town arriving and will in fact be promoted as benefits for those who will live in, near, work in or visit the new town].

The Trust will be an independent overarching body made up of representatives carefully considered so as to ensure that the appropriate entities are included that will bring knowledge, expertise and genuine interest in preserving the special characteristics of the new town in the public interest. The Highland Council are included as the local authority, MEDCo are included as the initial creators of the new town responsible for the initial vision of a new town bringing unique quality and benefits for all. In addition, there is provision for the Tornagrain community itself, once in existence, to be the third member of the Trust via a community council. There are no effective alternative options available to ensure the preservation of the benefits delivered to the public by the creation and preservation of the new town, as further discussed at [1.5] below. More detail in relation to the structure of the trust can be seen in the copy articles and constitution attached.

1.3. ***The conservation burdens likely to be created in favour of the applicant would benefit the public;***

[4.3.1.3] The conservation burdens likely to be created in favour of the [Tornagrain Conservation Trust] will be for the benefit of the public. The architectural and landscape design of the Tornagrain new town will be of the highest quality, recognising that many of Scotland's historic towns are characterised by attractive landscapes and public realm as well as buildings. The design has been informed by the public from the outset utilising the Charrette process in order to ensure those elements important to the public have been identified and will be delivered in a workable way and it has been awarded "exemplar" status under the Scottish Sustainable Communities Initiative by the Scottish Government in recognition of its potential importance for future community development in Scotland. The result is that a final town plan has been put

together that includes details that ensure the envisaged ambience, positive atmosphere and community feel is achieved, both for those living in and nearby the new town and for members of the visiting public. The Design Code to be put in place will encapsulate this and seek to balance ensuring appropriate delivery of the new town vision with some flexibility for the delivery of architectural variety and excellence at the individual building level. The development of the new town in this manner and thereafter the preservation and protection of the design is expected to raise the profile and the appearance of the local area and bring significant income into the locality and beyond.

The Tornagrain master-plan is an overarching town plan that incorporates numerous features that will benefit the public, for example:

- Tornagrain envisages a socially diverse community with 25% affordable housing to be fully integrated on a tenure blind basis and all necessary civic and social facilities to create a resilient and socially sustainable community. The maintenance and protection of all areas of the new town will ensure that this continues to be the case which will be advantageous to all.
- The creation of a self-sufficient and sustainable town with small local independent shops where ready-made large chain supermarket branches would not be encouraged unless willing to fit with the new town principles, thus allowing the opportunity for small local business to flourish and the provision of community facilities integrated with and utilising the surrounding landscape encouraging community involvement and pride and motivating use and maintenance of such good quality, safe and unique facilities for now and future generations;
- The creation of a 'walk-able' town designed with an emphasis on civic space and public realm with pedestrian and cyclist favoured street networks and streets designed for character rather than capacity, with appropriate positioning of buildings in relation to the area of the town where they are located. These aspects encourage the formation of a town with a real centre that is designed for a community to live and spend their lives in rather than a network of streets to drive through quickly without stopping paying little attention to the local facilities and shops available resulting in minimal community interaction or investment in the future prospects of the town.
- A design layout that respects the original landscape character and topography of the locality and existing built and environmental features, which will preserve the existing positive features while maximising the potential of the location and accommodating for

ongoing population growth in the area. The design provides for up to 4,960 houses, 5 schools, retail, business, other commercial units and healthcare provision, to provide a well connected and easily accessible town with plentiful employment opportunities, good local facilities and quality housing.

- From a wider public perspective, the new town is located directly adjacent to the Inverness Airport Business Park and adjacent to the Inverness to Aberdeen railway line (and the expected new railway station) and as such protecting and preserving the unique characteristics of the town will directly contribute to the attractiveness and appeal of the area to local and inward investors and generally to visitors to the area. This, of course, is in addition to the benefit to the local population in having efficient and effective transportation connections serving the town.

The burdens intended to be created in favour of the Tornagrain Conservation Trust will have as their main objective sustaining and protecting these and other features of the new town that together will create a town that encourages community pride, identity and interaction which in turn leads to greater value being placed upon community spirit, welcoming visitors, attracting sound investment and quality businesses and ensuring that the unique environmental aspects of the locality are preserved in perpetuity for the benefit of current and future generations of residents, neighbours and visitors.

**1.4. *The conservation burdens likely to be created in favour of the applicant would preserve or protect the architectural, historical or any other special characteristic of the land;***

[4.3.1.4] The conservation burdens to be created will be designed specifically with the intention of protecting and preserving the special characteristics of the new town, ensuring valuable built and landscape assets are protected and perhaps as a result enhanced over time. The burdens in favour of the applicant are planned to prohibit actions that are detrimental to maintaining the unique characteristics of the new town including the layout, the architecture, the landscape and as a result the positive and community centred style and feel of the town achieved by having a compact, well designed, sustainable and attractive settlement. The burdens will also oblige the necessary upkeep or contribution towards upkeep required to prevent loss of the unique qualities of the new town as a result of damage, deterioration or neglect.

From an architectural point of view, the new town has been carefully designed to ensure that as far as possible the development retains and emphasizes the historic nature of the environment, the existing topography and landscape character of the new town location and utilises and incorporates specific landscape features into the new town design. The detail of the

development down to and including the colours and materials selected are key in delivering the complete town feel, quality of facilities, enhancement of local surroundings and integration of different types of housing that will bring all of the benefits detailed within this application. As such, the creation of burdens to preserve and protect these features is of paramount importance in preserving the unique characteristics of the new town and the benefits which they confer.

Conversely, if the conservation burdens are not created and the coherence of the design and implementation of the new town development is prevented or disturbed, not only will the immediate area around the violation of the code be affected but the precedent set may amplify that potential damage over time. Residents and other supporters of the new town will and have already recognised the value of the collective vision of Tornagrain which should contribute to the more rapid development and long term maintenance of a sense of community and an acceptance of and expectation that burdens will be in place to protect this. Damaging the physical manifestation of the new town community may in fact damage the community itself and result in the gradual decline of the special characteristics and the inherent benefits.

1.5. ***The objectives of the applicant could not be met through existing means (e.g. the land-use planning system);***

The planning system has informed the initial layout of the new town and imposed standard conditions but does not provide a solution to maintaining those aspects of the new town that require conservation burdens to be put in place in order to preserve the characteristics of the new town now and for the future. From the outset those involved have sought to have the statutory planning process assert as much control as possible over the quality of the town, both in terms of design and creation of the town. They are content that this collaboration will continue for the foreseeable future and that the present system supports their objectives. However, it is important that the unique characteristics of the new town are protected in the longer term. It is impossible to say exactly what form the planning system will take in fifty or a hundred years time or what may or may not be acceptable to it at that time. There are also characteristics of the new town that will be protected by the creation and if necessary enforcement of Conservation Burdens that are not dealt with by the planning system. The planning system is, therefore, only an effective safeguard up to a point and will not extend sufficiently to protect those characteristics that will distinguish Tornagrain from other developments and bring the benefits envisaged to the public.

As discussed at clause [1.2] above, it is not considered that relying on members of the town enforcing burdens against neighbouring proprietors will be sufficient to adequately protect and preserve the new town and the benefits that it delivers. Accordingly, the imposition of standard

burdens enforceable at the discretion of individual proprietors with title and interest would not adequately or reliably ensure that the objectives of the Trust are met, particularly as any entity enforcing would by definition be acting out of self-interest rather than in the public interest and could be reluctant or over zealous in their approach to such enforcement. [The same arguments can be advanced against the option of using a Development Management Scheme.]

It will be possible to enforce the design and other requirements against the developers on a contractual basis. However, once the developers sell individual properties to their purchasers, there will be no necessary contractual connection between the purchaser and anyone with a necessary interest in enforcing conditions. Even if it were possible to oblige purchasers to enter into such contracts, for example with a factor company set up to serve the new town, it would be very cumbersome to administer and with no guarantee that everyone living in Tornagrain would agree to enter into that contract. In addition, there is an inherent risk that contracts are changed or require to be negotiated with the effect of losing the collective approach and consistency of conditions imposed on all for the benefit of all. This results in a lack of transparency as, unlike where using Conservation Burdens, there is no one set of conditions imposed on all, known to all and enforced for a common purpose. Dealing with breaches of contractual terms would be complex and costly and possibly ineffective. Accordingly, such a system would be less effective, less efficient and less transparent even if capable of delivering the Trusts' objectives, which would be far from certain particularly in the long term.

A structure that is commonly used for developments in England is to set up a company of which each resident within the development is a shareholder and give each shareholder rights and obligations. This has also been considered as an option for achieving the objectives of the Trust but it is anticipated that such a structure would be considered complex and unappealing to incoming residents and would be difficult and costly to administer. Crucially, there is an inherent difficulty in ensuring that shares in such a company are transferred between the seller and incoming purchaser when ownership of properties within the community change and there is no sure way to secure an incoming resident accepting a share. Accordingly such a structure is not guaranteed to deliver adequate protection as there is a risk that the incorrect parties are bound following sales of units in the future.

Looking to the future, the conservation burdens would be intended to be put in place and thereafter remain in perpetuity and thus ensure universal applicability and continuity of enforcement of the burdens to preserve and protect the benefits delivered by the new town for all time coming, in such a way as cannot currently be done under the planning system or other mechanisms considered above.

2. **INFORMATION THAT SHOULD ACCOMPANY THE APPLICATION:**

2.1. ***what benefits would accrue to the applicant as result of it being designated as a Conservation Body;***

[4.3.2.1] The Tornagrain Conservation Trust, if designated a Conservation Body, will be enabled to fulfil its sole purpose by actively ensuring that the unique nature of the Tornagrain new town is preserved and protected for all, in perpetuity. The intention is that the Conservation Body will operate as a not for profit organisation.

2.2. ***what benefits would accrue to the public as a result of the applicant being designated as a Conservation Body;***

A body independent from the individual proprietors within the township and acting in the interests of the public, rather than with the intention of making profit for itself, will as a result of its designation have the standing to ensure that the new town is protected and preserved for all time coming.

If it is accepted that the public will benefit from the creation and enforcement of conservation burdens, it would be possible for those burdens to be enforced by an existing conservation body. However, there is no existing Conservation Body that the envisaged conservation burdens should appropriately be created in favour of. The majority of the existing Conservation Bodies that have been prescribed by the Scottish Ministers to date are not appropriate due to their location, specific areas of expertise or interest. The Highland Council is an existing Conservation body and would be capable of enforcing the new conservation burdens. However, although the expertise and interest that the Highland Council has in the new town is recognised it is felt that the Council does not have the resources necessary to monitor and enforce these new burdens; indeed, it is thought that it would be unfair to ask them to do so. The new Trust will have the benefit of the Council's experience and breadth of view; Highland Council is one of the members of the [Tornagrain Conservation Trust.]

It is, therefore thought that the best option will be to create a body which will have representatives from various interested bodies and which will operate on a democratic basis but which is independent from both the original vision and the individual proprietors within the township and which will act in the interests of the public rather than with the intention of making profit or deriving other benefits for itself. As a result of its designation, it will have the standing to ensure that the new town is protected and preserved on a long term basis.

2.3. ***what activities the applicant would intend to carry out as a consequence of being designated a Conservation Body;***

The applicant would actively protect and preserve the Tornagrain new town by meeting regularly or as often as required and reviewing the condition of the new town and by being accessible to members of the public including residents of the new town for reporting of concerns and feedback. Where appropriate and in the public interest the applicant will take such steps as necessary to ensure compliance with the relevant conservation burdens so that the unique characteristics of the new town are not lost to the public. It is envisaged that the body will also review design proposals for any future re-development or alterations to confirm that such proposals do not conflict with the terms of the conservation burdens, ensuring that future inappropriate development does not result in loss of benefits to the public.

2.4. ***why the outcomes sought cannot be achieved by a different means (e.g. the land-use planning system).***

[4.3.2.4] The aim of preserving the unique quality and nature of the Tornagrain new town can not be achieved via the planning system, contractually or by using other types of burdens for the reasons set out at 5.1 above. Although the planning system will of course regulate the development of the new town, the planning system does not recognise nor is it charged with utilising its resources to enforce maintenance of the unique quality and nature of the new town which are the characteristics key in achieving the benefits anticipated in connection with the development.

2.5. ***A copy of the applicant body's constitution and/or memorandum or articles (to demonstrate that this includes the appropriate objectives or functions.)***

[4.3.2.5] Covered above.

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**Possible Members of the Conservation Body:**

- MEDCo;
- Highland Council;

[Tornagrain Community Council - once in existence and meeting various criteria e.g. valid and democratic constitution in place and complied with.]

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