

20/11699

Books of Council and Session

Extract Registered 19 Mar 2020

SUPPLEMENTARY DEED OF TRUST

SHETLANDS ARTS DEVELOPMENT
AGENCY

Deed extract



**Registers
of Scotland**

20/11699

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SUPPLEMENTARY DEED OF TRUST

**SHETLANDS ARTS DEVELOPMENT
AGENCY**

**HARPER MACLEOD LLP
DX GW86 GLASGOW**

Registers of Scotland

20/11699

AT EDINBURGH the Nineteenth day of March Two thousand and twenty the Deed hereinafter reproduced was presented for registration in the Books of the Lords of Council and Session for preservation and is registered in the said Books as follows:-

WHEREAS we; **Olive MacLeod**, residing at 4 West Sletts Park, Lerwick, Shetland, ZE1 0QZ, **Robin Nelson Sturrock Sandison**, residing at Lonabrak, Upper Scalloway, Scalloway, Shetland, ZE1 0UP, **Ryan John Stevenson**, residing at Da Noost, Friester, South Nesting, Shetland, ZE2 9PP, **Lynn McHattie**, residing at An Charriag, Barclay, Maybole, South Ayrshire, KA19 7PE, and **Sophie Whitehead**, residing at 20 Cheyne Crescent, Lerwick, Shetland, ZE1 0NS, **Susan Mail**, residing at Shoreside, Bridge of Walls, Walls, Shetland, ZE2 9NP, **Chrjs Gadsby**, residing at Foraness, Sand, Garderhouse, Bixter, Shetland, ZE2 9NQ, being the present **Trustees of Shetland Arts Development Agency** (the "Trust"), acting in terms of the Deed of Declaration of Trust by Shetland Islands Council in favour of Lynsey Anderson & Others dated the Twenty Eighth day of December Two Thousand and Five and registered in the Books of the Council and Session for preservation on the Thirteenth day of January Two Thousand and Six (as amended by the Supplementary Deed of Trust dated the Twenty-Seventh day of April, Tenth and Twenty-Third days of May Two Thousand and Seventeen and registered in the Books of the Council and Session for preservation on the Third day of July Two Thousand and Seventeen (the "**Deed of Declaration of Trust**"), whereas in terms of Clause 7 of the Deed of Declaration of Trust are empowered from time to time by Deed or Deeds revocable or irrevocable to supplement, alter or amend the provisions of the Deed of Declaration of Trust or the Schedule annexed thereto, to the extent (and to such extent only) as may in the opinion of the Trustees be requisite for the purpose of conferring on the Trustees such further or other powers as may be necessary for the better administration and more effectual execution of the Trust, and whereas we have decided by Resolution of the Trustees dated the thirtieth day of January Two Thousand and Twenty, to make certain amendments to the Deed of Declaration of Trust therefore we do hereby declare as follows:

- (One) Clauses 4 to 14 of the Deed of Declaration of Trust shall, with effect on and from the thirtieth day of January Two Thousand and Twenty, be replaced with the provisions of the Schedule annexed and executed as relative hereto (the **Schedule**) so that the Trust shall be governed by, and construed in accordance with, the terms of the Schedule.
- (Two) The Trustees consent to registration of this Supplementary Deed in the Books of Council and Session for preservation.

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(Three) This Supplementary Deed of Trust shall have effect from the date of its execution: **IN WITNESS WHEREOF** these presents together with the Schedule annexed as relative hereto are executed as follows:

Kerry Eunsin
signature of witness

KERRY EUNSON
full name of witness (print)

10 ATLNESS, HANNAOE,
SHETLAND

ZEE AXW
address of witness

[Signature]
signature of Frank John Stevenson

30/01/20
date of signing

LEEWICK
place of signing

Kerry Eunsin
signature of witness

KERRY EUNSON
full name of witness (print)

10 ATLNESS, HANNAOE,
SHETLAND

ZEE AXW
address of witness

Olive MacLeod
signature of Olive MacLeod

27/02/20
date of signing

LEEWICK
place of signing

Kerry Eunsin
signature of witness

KERRY EUNSON
full name of witness (print)

10 ATLNESS, HANNAOE,
SHETLAND

ZEE AXW
address of witness

[Signature]
signature of Robin Nelson Sturrock Sandison

30/01/20
date of signing

LEEWICK
place of signing

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Kerry Ewen

signature of witness

KERRY EWEN

full name of witness (print)

10 ATLASS, HANNAOE,

SHERLAND

ZE2 9XW

address of witness

S Mail

signature of Susan Mail

30/01/20

date of signing

LEWICK

place of signing

Kerry Ewen

signature of witness

KERRY EWEN

full name of witness (print)

10 ATLASS, HANNAOE,

SHERLAND

ZE2 9XW

address of witness

C. J. Gadsby

signature of Chris Gadsby

30/01/20

date of signing

LEWICK

place of signing

Graeme Howell

signature of witness

GRAEME HOWELL

full name of witness (print)

17 DALESIDE WYND

DUNDEE

SHERLAND

address of witness

Wynn-Jane McHattie

signature of Wynn-Jane McHattie

5th March 2020

date of signing

Glasgow

place of signing

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Kerry Ginn

signature of witness

KERRY GINSON

full name of witness (print)

10 ADAMSON, HAMMERS

SHETLAND

ZEZ 96W

address of witness

Sophie Whitehead

signature of Sophie Whitehead

27/02/20

date of signing

LEWIS

place of signing

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THIS IS THE SCHEDULE REFERRED TO IN THE FOREGOING SUPPLEMENTARY DEED OF TRUST BY
SHETLAND ARTS DEVELOPMENT AGENCY DATED 30 JANUARY 2020

4 Powers

4.1 In the administration of the Trust, the Trustees shall, in addition to the powers and rights which are conferred by law upon trustees who are acting without remuneration, have the fullest powers with regard to investment, sale, administration and management of the Trust Property as if they were owners. In particular (but without limiting the scope of the powers which they may exercise under the preceding provision), the Trustees shall have the following powers:

- 4.1.1** to promote or concur in the flotation or reconstruction or amalgamation or attempted flotation or reconstruction or amalgamation of any company with limited liability including, but without limitation, any company to take over any business, company or concern carried on by the Trustees or in which they may be interested and to subscribe for and hold the debentures, stocks, shares or other scrip or obligations of such new company or to accept the debentures, stocks, shares, or other scrip or obligations of such reconstructed or amalgamated company in lieu of or in substitution for the debentures, stocks and share or other scrip or other obligations held by the Trustees prior to such reconstructions or amalgamation and to contribute to the expenses of such flotation, reconstruction or amalgamation;
- 4.1.2** to begin or carry on or join or concur in the beginning or carrying on of any business or businesses, including the establishment of any trading company or trading business, where such business or businesses would be in furtherance of the objects of the Trust provided always that no part of the capital or income of the Trust Fund shall be expended in the exercise of this power otherwise than for purposes charitable in law;
- 4.1.3** to take such steps as may be deemed appropriate for the purpose of raising funds;
- 4.1.4** to accept grants, donations and legacies of all kinds (and to accept any reasonable conditions attaching to them);
- 4.1.5** to establish and/or support any other charity, and to make donations for any charitable purpose falling within the Trust Purposes;
- 4.1.6** to purchase, take on lease, hire, or otherwise acquire, any property or rights;
- 4.1.7** to improve, manage, develop, or otherwise deal with, all or any part of the Trust Fund;
- 4.1.8** to sell, let, hire out, license, or otherwise dispose of, all or any part of the Trust Fund;
- 4.1.9** to borrow money, and to give security in support of any such borrowings by the Trust;
- 4.1.10** to employ such staff as are considered appropriate for the proper administration of the Trust or for the proper conduct of the Trust's activities, and to make reasonable provision for the payment of pension and/or other benefits for members of staff, ex-members of staff and their dependants;
- 4.1.11** to engage such consultants and advisers as are considered appropriate from time to time;
- 4.1.12** to effect insurance of all kinds (which may include officers' liability insurance);

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- 4.1.13 to invest any funds which are not immediately required for the administration of the Trust or for the Trust's activities, in such investments as may be considered appropriate (and to dispose of, and vary, such investments);
- 4.1.14 to liaise with other voluntary sector bodies, local authorities, UK or Scottish government departments and agencies, and other bodies, all with a view to furthering the Trust Purposes;
- 4.1.15 to form any company which is a charity with objects which are similar (wholly or in part) to those of the Trust, and, if considered appropriate, to transfer to any such company (without any payment being required from the company) the whole or any part of the Trust Fund;
- 4.1.16 to retain any property comprised in the Trust Fund for such time as the Trustees think proper;
- 4.1.17 to have any part of the Trust Fund registered in the name of a nominee and to pay reasonable fees to such nominee;
- 4.1.18 to grant proxies in favour of any of the Trustees (or any other person) to attend, act and vote for the Trustees at any meetings (whether of the nature of general meetings, class meetings, creditors' meetings or otherwise) relating to any investment held by the Trustees or relating to any claim by the Trustees in any liquidation or sequestration proceedings;
- 4.1.19 to compromise or settle by arbitration all disputed claims by or against the Trust or the Trust Fund;
- 4.1.20 to appoint one or more of the Trustees (or any firm of which any of the Trustees is a partner) to be solicitors to the Trust or agent for the Trustees in any other capacity, and to pay to such solicitors or other agent his/her/their usual charges;
- 4.1.21 to reimburse any of the Trustees out of the Trust Fund, in relation to all expenses reasonably incurred by him/her in the administration of the Trust; and
- 4.1.22 to carry on any other activities and to do anything which may be incidental or conducive to the furtherance of any of the Trust Purposes.

5 Number of Trustees

- 5.1 The number of Trustees shall not be less than seven nor more than 13.
- 5.2 A majority of the Trustees at any time shall be permanently resident in the United Kingdom.

6 Appointment/removal/resignation

- 6.1 The Trustees shall be entitled, by way of a resolution passed by majority vote at a meeting of the Trustees, to appoint any individual as a Trustee.
- 6.2 The Trustees shall have power to remove any individual as a Trustee, by way of a resolution passed at a meeting of the Trustees by a majority of two thirds or more of the Trustees then in office.
- 6.3 An individual holding office as a Trustee may retire by giving notice in writing to that effect to the secretary to the Trust.
- 6.4 Trustees shall be appointed for a fixed term of office of three years and shall be eligible for re-appointment for a further term of office of three years. Where any Trustee has served for a total of six years, that Trustee shall not be eligible for re-appointment until the expiry of five years following the date on which they were removed as a Trustee.

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- 6.5 A person cannot become or remain as and shall immediately cease to be a Trustee if:
- 6.5.1 he/she is or becomes disqualified from being a charity trustee pursuant to section 69 of the Charities and Trustee Investment (Scotland) Act 2005 or has been suspended or removed as a charity trustee pursuant to section 34 of the Charities and Trustee Investment (Scotland) Act 2005;
 - 6.5.2 he/she is found to be or have been in serious or persistent breach of any duties imposed on charity trustees pursuant to section 66 of the Charities and Trustee Investment (Scotland) Act 2005;
 - 6.5.3 he/she fails to attend three consecutive meetings of the Trustees without the consent of the other Trustees and the Trustees resolve to remove him/her from office;
 - 6.5.4 a registered medical practitioner who is treating that person gives a written opinion stating that the person has become physically or mentally incapable of acting as a Trustee and may remain so for more than three months; or
 - 6.5.5 he/she is declared bankrupt under the Bankruptcy (Scotland) Act 1965, is otherwise insolvent or involved in a formal arrangement with his/her creditors.
- 7 **Procedure at Trustees' meetings**
- 7.1 Subject to the provisions of this Clause 7, the Trustees may regulate their proceedings as they think fit.
 - 7.2 A meeting of the Trustees shall be held at least once in each year.
 - 7.3 Any Trustee may call a meeting of the Trustees, or request the secretary to the Trust to call a meeting of the Trustees.
 - 7.4 No notice of a meeting of the Trustees need be given to any Trustee who is absent from the United Kingdom.
 - 7.5 Questions arising at a meeting of the Trustees shall be decided by a majority of votes. Where there is an equality of votes, the chairperson of the meeting shall have a casting vote.
 - 7.6 No business shall be dealt with at a meeting of the Trustees unless a quorum is present. The quorum for meetings of the Trustees shall be four.
 - 7.7 If at any time the number of Trustees in office falls below the number fixed as the quorum, the remaining Trustee or Trustees may act only for the purpose of appointing an additional Trustee or Trustees.
 - 7.8 The Trustees shall appoint one of the Trustees to be chair, and may at any time remove the person so appointed from that office.
 - 7.9 Unless he/she is unwilling to do so the Trustee serving as chair shall preside as chairperson at every meeting of the Trustees at which he/she is present. If the chair is unwilling to act as chairperson or is not present within 15 minutes after the time when the meeting was due to commence, the Trustees present may elect from among themselves the person who will act as chairperson of the meeting.
 - 7.10 All acts *bona fide* done by any meeting of the Trustees, by a committee of the Trustees or by a person acting as a Trustee, shall, notwithstanding that it is afterwards discovered that there was a defect in the appointment of any Trustee or that any of them had ceased to hold office or was not entitled to vote, be as valid as if every such person had been duly appointed and had continued to be a Trustee and had been entitled to vote.

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- 7.11 A resolution in writing signed by all the persons holding office as Trustees at the time shall be as valid and effective as if it had been passed at a meeting of the Trustees duly convened and held. A resolution of that kind may take the form of a number of copies containing the text of the resolution, with each copy being signed by one or more Trustees.

8 Delegation

- 8.1 The Trustees may delegate any of their powers to any committee consisting of one or more Trustees.
- 8.2 The Trustees may also delegate any of their powers to any employee of the Trust.
- 8.3 Any such delegation of powers under Clause 8.1 or 8.2 may be made subject to such conditions as the Trustees may impose, and may be revoked or altered.
- 8.4 Subject to any condition imposed in pursuance of the preceding clause, the proceedings of a committee consisting of two or more Trustees shall be governed by the provisions of Clause 7 so far as they are capable of applying.
- 8.5 The Trustees may, at a duly constituted meeting of the Trustees at which a quorum is present, appoint any three Trustees as authorised signatories to execute documentation on behalf of the Trustees. Such authorisation shall be subject to such terms and conditions as the Trustees may from time to time determine. The Trustees may, at any time, revoke such authorisation and any authorisation under this Clause 8.5 shall automatically be revoked in the event that an authorised signatory ceases to be a Trustee.

9 Remuneration

No Trustee may serve as an employee or worker of the Trust, and no Trustee may be given any remuneration by the Trust for carrying out his/her duties as a trustee.

10 Secretary

- 10.1 The Trustees shall appoint a secretary to the Trust for such term, at such remuneration (if any), and on such conditions, as the Trustees may think fit and any secretary so appointed may be removed by them.
- 10.2 The Trustees shall ensure that the secretary:
- 10.2.1 keeps proper minutes of all proceedings at meetings of the Trustees (and at meetings of committees of the Trustees) including the names of the Trustees present at each such meeting
 - 10.2.2 keeps proper records and documents in relation to all other matters connected with the administration and management of the Trust.

11 Accounts

- 11.1 The Trustees shall ensure that proper accounting records are maintained, in accordance with all applicable statutory requirements.
- 11.2 The Trustees shall prepare annual accounts, complying with all relevant statutory requirements. If an audit is required under any statutory provisions or if the Trustees otherwise think fit, the Trustees shall ensure that an audit of such accounts is carried out by a qualified auditor.
- 11.3 An accountant engaged in an audit of the Trust's accounts shall be entitled to have access to all accounting records and other documents relating to the Trust.

12 Operation of bank accounts

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The signature of one Trustee shall be required in relation to all cheques issued by the Trust which exceed the amount of Five Thousand Pounds (£5,000) Sterling and the signature of two Trustees shall be required in relation to all other operations (excluding lodgement of funds) on the bank and building society accounts held by the Trust.

13 Payments to charities etc.

The receipt of the treasurer or other appropriate officer for any funds or other assets paid or transferred by the Trustees to any charity shall represent sufficient discharge to the Trustees.

14 Limitations on liability

The Trustees shall not be liable for loss or depreciation of the value of investments retained or made by them, nor for omissions, nor for neglect in management, nor for insolvency of debtors, nor for the acts, omissions, neglect or default of one another or of any banker, solicitor, factor or other agent employed by them.

15 Conduct of Trustees

15.1 Each of the Trustees shall, in exercising his/her functions as a trustee of the Trust, act in the interests of the Trust and, in particular, must:

15.1.1 seek, in good faith, to ensure that the Trust acts in a manner which is in accordance with its objects (as set out in this trust deed);

15.1.2 act with the care and diligence which it is reasonable to expect of a person who is managing the affairs of another person;

15.1.3 in circumstances giving rise to the possibility of a conflict of interest of interest between the Trust and any other party;

15.1.3.1 put the interests of the Trust before that of the other party, in taking decisions as a Trustee; and

15.1.3.2 where any other duty prevents him/her from doing so, disclose the conflicting interest to the Trust and refrain from participating in any discussions or decisions involving the other Trustees with regard to the matter in question, and

15.1.4 ensure that the Trust complies with any direction, requirement, notice or duty imposed on it by the Charities and Trustee Investment (Scotland) Act 2005.

16 Amendment of trust deed/winding-up

16.1 This Trust Deed may (subject to Clause 16.3) be altered by a deed of declaration signed by the then Trustees approved by resolution of the Trustees passed at a duly constituted meeting of the Trustees at which a quorum is present or by way of written resolution (as described in Clause 7.11), subject to achieving a two-third majority of the Trustees voting in favour of the alterations.

16.2 If in the opinion of the Trustees any change in circumstances or alteration in the law has made or is likely to make execution of the Trust Purposes impossible or impracticable, or if in the opinion of the Trustees the administration of the Trust could be improved, or the Trust Purposes be advanced in a more appropriate manner, the Trustees may in their discretion wind up the Trust and transfer the Trust Property (after settlement of all debts and liabilities) to some other charity or charities having similar objects to those of the Trust.

16.3 The Charities and Trustee Investment (Scotland) Act 2005 requires that consent is sought from the Office of the Scottish Charity Regulator (OSCR) to action the following changes: change of name, an alteration to the Trust Purposes, amalgamation and/or winding up.

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