

SURREY WILDLIFE TRUST

Minutes of the Extraordinary General Meeting held at 12.00am on Saturday 9 November 2019 at Denbies Wine Estate, Dorking

Angela Swarbrick, Trustee, introduced herself as the new Chair and thanked Chris Wilkinson, the outgoing Chair, for his outstanding service to the Trust. She explained that the EGM had been called to consider, discuss and vote on a special resolution concerning the Revised Articles of Association, copies of which were sent to Members in October. The key changes would be outlined then questions would be taken from Members. A vote would be taken and the provisional result announced at the end of the EGM.

The Chair set out the purpose of reviewing the Memorandum and Articles of Association being that it was good practice to periodically review the constitution in light of changes to charity and legal governance. The current Memorandum and Articles were 11 years old and Trustees considered this was the right time to revisit them and make updates if deemed necessary. The review was closely supported by Farrers solicitors, who specialise in charity law. The revised version had been based on the Charity Commission model governance rules, with amendments specific to the needs of Surrey Wildlife Trust.

Changes to the Memorandum and Articles were limited and key changes had been set out in the covering note produced by Farrers previously sent to Members.

In summary:

- No changes had been made to the objects of the charity
- The powers of Trustees had been modernised but no significant changes had been made, e.g. Trustees could now rent property and commission research.
- Modest changes had been made to the rules which governed how the charity operated due to legal changes, e.g. managing conflicts of interest, and clarified aspects of old Articles such as Trustees serving in 3 year terms, how notice could be given to members and reducing the threshold required for members to call an EGM.

Chris Wilkinson, outgoing Chair, and Roger Wild had liaised with Farrers and with a member who had expressed interest in being involved in the update process.

The floor was then opened to questions:

Q A piece of paper had been handed out to Members on the way into the meeting with no indication of where it had come from. Please clarify.

A It was confirmed that the Trustees had not produced this document – it had been written and circulated by one of the Members in the room today. He had been part of discussions over the past few months regarding the proposed amendments and updates to the Articles. The discussions with him had been very productive and it was felt by Trustees that the Articles now appropriately reflected what was correct for the organisation. This particular Member felt there was one area where he continued to have concerns and that was the number of Members required to call an Extraordinary General meeting. This Member wanted the Articles to allow for a group of 21 Members to be able to call an EGM. This figure was based on the threshold set in the Articles in 1976. The document proposed two

amendments to the Special Resolution submitted to the meeting.

The existing Articles, approved by members in 2008, required 5% of members (circa 1,200) to approve the calling of an EGM. The 5% threshold is that set by Company Law and is the level adopted by 80% of the Wildlife Trusts and many other similar charities. However, the Trustees felt this was too high. After careful consideration the Trustees proposed a threshold of 1% (circa 240 members) as it is a level that is achievable by members which would demonstrate backing of the wider membership for an EGM. The figure of 1% also followed the spirit of the 1976 Articles which required 21 members which was 1% of the membership at that time.

The Chair was not minded to put forward the two amendments contained in the paper but to move to any other questions and then to the vote. This is because a Special Resolution cannot be amended in an EGM.

The paper is included in the notes at the end of the minutes.

- Q. Martin Walsh, Member, identified himself as the person who had circulated the paper. He thanked the Trustees for asking for his contributions to the new Articles; there had been a number of documents exchanged and discussions had been very productive with a very good set of Articles now having been produced. Mr Walsh explained his concerns regarding the number of Members required to requisition an EGM. He felt a compromise at 35 would be equivalent to the number required for a quorum of the meeting. 1% of a membership of around 24-25,000 members equated to 250 people which he felt was a large number to call on if a very important and time critical topic did arise. There had been an occasion in 2017 when there was a wish by some Members to call an EGM but the Trust had advised them that 5% of Members would be required, so no EGM was convened.

Mr Walsh asked if Trustees were minded to take a vote on his proposed Amendment B to see how many people felt that 35 Members would be appropriate rather than 250. He acknowledged that it would not be a binding vote but could be included in the EGM minutes, e.g. if 35 Members was agreed, this could be added as a post meeting note and it would be an indication of dissent from the wider membership. Finalisation of the minutes could then be delayed by 28 days to allow for responses from members. Mr Walsh felt that flexibility with the process was required as very few people had contributed to the Articles, however he acknowledged that Trustees had been very accommodating to his proposals.

- Q A Member stated that those present were people keen to attend meetings, but felt that the average Member was probably not as well informed about the Trust, e.g. the reorganisation in 2017 was hardly mentioned in the Trust's magazines and they did not recall receiving any correspondence. A requirement of 250 Members did not sound a lot but they felt Mr Walsh's point did have validity.

- A The Chair stated that all Trustees and the Management Team were keen to engage with Members and believe that an EGM should be a last resort after other routes and discussions had been taken. It was important to have an environment where there was a good relationship between Management, Trustees and Members, where Members could feel comfortable to bring issues forward and find satisfactory resolutions. It was important that the Articles had a mechanism to deal with issues that required an EGM but that needed to have a threshold that demonstrated the wider support of the membership. The Trust would prefer to adopt the revised Articles as presented and ensure more engagement with its Members.

The Chair was not prepared to put the amendment resolution proposed by Mr Walsh to the

meeting as only the resolution put to the members in the notice of the meeting can be voted on under Company law.

Q A Member felt that the best way forward was to create a very positive relationship between the Trust and its Membership but that it was always wise to have a safety net in case the two parties wished to go in opposing directions. They agreed with Mr Walsh's wish to change to 35 Members and felt those present should be presented with an opportunity to present their views on the amendment so a show of hands should be requested. In addition, they felt that pulling 250 Members together in a timely manner could be a challenge, especially in view of data protection laws which made it difficult to contact others. As a special provision, could the Trustees allow involvement of a small number of Members who could prompt an urgent consultation and then communicate to the membership?

A The Chair agreed that, where Members had concerns, it was important to have a process to bring those concerns to the Trustees and also to be able to communicate the issues to other members. Roger Wild advised that Members had the right to access the Members register for an authorised purpose, e.g. calling an EGM. It would be possible for Members to view the register and contact the membership with a proposal if that proposal was linked to the authorised purpose. The Companies Act provision for this process would override the GDPR legislation.

Q Where was the 1% requirement stated in the Articles?

A Article 13.10.

Q A Member stated that, when he saw the 1% figure, he thought that was too low. He felt that, over the past few years, there had been a great increase in small minority groups taking over issues because they felt they were able. If only 35 people were required to demand an EGM to be called that could waste people's time, money and effort. In addition, the same group could continue to request EGMs in the future. He felt a reduction to 35 Members could be a dangerous step and an increase to 1% of Members was essential.

A The Chair stated the importance of recognising the need for balance, and decisions could never be right for everyone. The Trust could have used the legal requirement of 5% but it wished to work with Members more closely. That was the reason it had moved down to 1% and this felt the correct level.

Q A Member questioned whether, if 1% was accepted, would there be a mechanism available for Members to contact Members through the Trust's own systems?

A Roger Wild replied that, should that circumstance arise, the Trustees would need to decide if it was an appropriate use of the Trust's charitable funds to spend the substantial money required to hold an EGM. An EGM costs around £15,000 to hold, not including the substantial amount of staff time required to manage the communication with members, the event and other matters.

Q If 1% was agreed, could the Trust confirm the trigger number to give those members the right to hold an EGM?

A If circa 240 Members supported an EGM they could requisition the Trust to enact that and an EGM would take place.

- Q In order for 240 Members to be achieved, those requesting an EGM would need to communicate to the wider Trust's membership to make people aware of the situation. Would the Trust be willing to assist in that?
- A Roger Wild replied that Trustees would assess the request and make a decision after considering the implications of the matter and would make a fair and reasonable decision. It was important to note that, if the request was vexatious, Trustees may not want to support their call for the EGM as it would not be in the best interests of the mission.
- Q There would not be a wish to disrupt, just a wish to ensure there was a robust mechanism.
- A The Chair advised that any request would be reviewed on a case by case basis whilst recognising the issues Members might have. It was not possible to confirm that the Trust would always be willing to spend money on assisting a small number of Members which might be to the possible detriment of others.
- Q A Member felt the assumption should be made that Members were responsible and well-meaning and that leaving the decision to call an EGM to a case by case basis did not give the assurance that was being requested from Mr. Walsh's initiative.
- A The Chair replied that the Board of Trustees were reasonable, all were members and recognised issues and would deal with them in a constructive manner. Communications and discussions with Members were welcomed.
- Q Mr Walsh stated that any member of the public could request the Members register as part of a legal process. If problems arose due to the lower number of 35 Members, a one line adjustment could be made to the Articles. He felt the proposal could easily be changed to 1% up from 35 but an amendment the other way around would be difficult. This was a once in 11 years opportunity to put some level of control and access back into the hands of Members and he felt an indicative vote should be held in the room.
- A The Chair stated that the only vote that can be held would be on the revised Articles as a whole which had been sent to Members in October. If the revised Articles were not accepted as presented then the existing Memorandum and Articles would remain in place.
- Q A member agreed with Mr Walsh's intent but also understood the figure of 35 people could allow Members to have a negative impact on the Trust. The reorganisation that took place in 2017 had broken the trust between the core membership and Surrey Wildlife Trust, but he had complete faith in Sarah Jane Chimbwandira's ability and intention to re-establish that trust. He stated his support to reduce the number of Members to 35 as this could be seen as supporting the rebuilding of that lost trust and, if someone did use the low number as an attempt to take over the Trust, then the Article could be reversed and 1% or 5% imposed.

The Chair thanked Members for the wide range of views stated which were welcome and helpful to other Members to decide their voting intention. She reiterated that the views of Trustees were that the revised Articles circulated were appropriate.

A member called a point of order to the chair, stating the proceedings were not procedurally sound and requesting the opportunity to put forward the motion to reduce to 35 Members. Angela Swarbrick responded that the purpose of the meeting was to take a vote on accepting the proposed

Articles as circulated or to reject them. This had been discussed and Members informed and the meeting was now moving to the vote.

Roger Wild explained the voting process – each Member had a yellow voting card on which to mark their vote. He confirmed that the two members with proxy votes had sufficient voting cards. The yellow card stated the resolution which was a vote to adopt the Articles which had been distributed and tabled at the meeting. There was the option to tick the boxes for for or against or to abstain by not completing the card. Members should remain seated and Trust staff would provide pens to each row and envelopes in which the completed cards would be placed for collection. Votes would be counted at the back of the room and a provisional result announced. The final number of votes would be checked by the scrutineer from the Trust’s auditors, Menzies and published in the Minutes next week.

Following a short break, the Chair announced the provisional results and confirmed that the independent scrutineer would do the full and final count.

Votes in the room:

For the motion: 95
Against the motion: 18

This result meant that 84% of Members present were in favour of adopting the revised Articles which is above the level, which is 75% required to pass a special resolution.

Proxy votes:

For the motion: 1266
Against the motion: 3

This meant that the total provisional votes cast totalled 1361 (98%) for the motion and 21 (2%) against. The revised Articles were thereby adopted.

The Chair thanked Members for attending the meeting and confirmed the EGM was now formally closed.

Note: the vote results above were confirmed by the scrutineer after the meeting had closed.

Paper provided to members at the meeting by Mr. Walsh:

Point of order for the EGM Chair: Trustees decided not to invite all Members, as the sovereign body of the charity and owners of the governing articles, to participate in the update; and presented new articles at this EGM under a Trustees Special Resolution. Member resolutions presented at EGM, as their first chance to propose amendments among peers, must be voted on at this EGM and the Trustees Special Resolution temporarily set aside. If The Chair is unable to agree process at EGM to amend the Special Resolution, and to pass the articles if so amended, the meeting must be adjourned before the Special Resolution vote. All members must then be provided with this point of order, all member resolutions and all the supporting information provided to EGM attendees, for a resumed EGM and a new Special Resolution on the amended articles. The Trustees must advise all members of the informed decision from the EGM. Vote on a clean Special Resolution could then be taken at resumption of the adjourned meeting.

Process proposal

Notwithstanding any valid proxy votes, that are explicit only on Resolution 1, The Chair is invited to ask the meeting to first pass Amendment A or B and any other amendments, then take a vote on the existing Special Resolution, and declare the articles if so modified are provisionally adopted. A full membership poll may be called on all votes at 13 (1). **To be cost neutral at £0 additional cost**, notification to members can be delivered by the draft meeting minutes being made available. Adoption of the modified articles under the Special Resolution can then be confirmed as a post meeting note on closure of the minutes if that is acceptable. This could be made subject to no member rejections being received that would breach the need for 75% of votes cast to approve a special resolution. A post-paid reply slip, or e-mail, can be used to ensure those members not present at EGM are able to register for or against within 28 days of notification.

Response of the Chair:

It is the Trustees responsibility to review the Articles of Association and to update them in line with charity law and good practice taking appropriate advice in the process. The Trustees have involved charity specialist solicitors and Mr Walsh. The Trustees have proposed the Articles to the members for consideration and approval or rejection under a special resolution.

The process proposal is not valid because under Company Law only the Special Resolution notified to members can be voted on. No amendments can be made to that resolution at the meeting.

Amendment Resolution proposed by Mr Walsh:

EGM – Members Resolution - To be voted on before any vote on the Trustees Special Resolution

Members Resolution: Over one-thousand two-hundred members are needed to call a meeting, and members require restoration to **twenty-one or more members**, as was always the case from 1959 to 2008, by passing a vote at this EGM on Amendment A. A second vote to compromise on thirty-five or more members, at Amendment B shall only be taken if Amendment A is not passed.

Amendment A

At section 13.10 delete all the existing text and replace with:

“A general meeting may be called on a written request to the Trustees from at least 21 Members”

Amendment B

At section 13.10 delete all the existing text and replace with:

“A general meeting may be called on a written request to the Trustees from at least 35 Members”

Members are asked to support Amendment A – Please see information below and overleaf:

EGM – Members Resolution - support information

1) Members are asked to support restoration of the explicit right for **21 or more members** to call for a meeting, as was always the case from 1959 to 2008, **by voting for Amendment A.**

2) The current 2008 articles are not explicit on how many members may call for a meeting, allowing Trustees to require over **One-thousand and two-hundred members**, under the optional provision in The Companies Act 2006 for 5% of the membership.

3) It may be that removal of **21 or more members** was an error, if the change was not scrutinised in 2008 and if members did not knowingly wish to pass greater authority to The Trustees.

4) The possibility of member rights having been removed in 2008 without informed consent, is supported by other parts of the draft articles already being amended prior to circulation, where Trustees stated “This was an oversight in the 2008 drafting”. Whether by accident or intent, consequences of change to the articles in 2008 are devastating for members wishing to call a meeting on urgent business or at times of crisis.

5) In effort to call an urgent meeting in 2017, support of 21 members was sought in January while contacting Trustees. Four months later in May, already beyond the date at which any requested meeting could have been effective, trustees advised they required “5% or more of our members (currently around 27,000 in number)” i.e. **1,350 members**, making it practically impossible as members typically have limited contact details for each other.

6) In July 2019 reversion to 21 members was requested but Trustees continued to require over 1,200 members (5%) at 13.10, but when pressed moved to 2.5% in August, finally moving to 1% on 10th October. Compromise for 35 was offered to The Trustees 10th October.

7) 1% is some 250 members and this is still too high, at over ten times the original requirement and remains unacceptable to many members. Members are asked to support **Amendment A** as their first choice to Return to the original and wise 1959 to 2008 provision for accountability, under the safeguard of 21 or more members. /continued overleaf/.....

Mr Walsh: Member questions & comment for EGM - on the new draft Articles and on the “Notes on the draft Articles of Association”

1) The notes 1.2: Why were members, as the sovereign body of the charity and owners of the articles, not invited to review the draft and given time to consider and propose updates before copy was sent to EGM, as was expected at 2018 AGM Q&A’s and requested by e-mail in July 2019?

A: Answer as above: It is the Trustees responsibility to review the Articles of Association and to update them in line with charity law and good practice taking appropriate advice in the process. The Trustees have involved charity specialist solicitors and Mr Walsh. The Trustees have proposed the Articles to the members for consideration and approval or rejection under a special resolution. The Chair was clear at the AGM that amended Articles would be brought for approval to the 2019 AGM.

2) The notes 1.3: Members should be aware some of these “relatively modest” changes may be interpreted as significant substantive changes and transfer of powers to The Trustees.

A. All of the substantive changes were clearly set out in the covering notes to the Articles drafted by Farrers sent to members. It is not clear what Mr Walsh is suggesting by ‘significant transfer of power to Trustees’, but there is nothing that Mr Walsh has brought to the attention of Trustees in discussions prior to the EGM.

3) The notes 2.2: Why is there a **significant substantive change** to the quorum and potentially transfer of power to the trustees at 13.5, that is not brought to the attention of members in the notes at 2.3? Under the current articles at 9(2) the quorum is 35 members present at the meeting 9(1). Under the new articles, any proxy votes held by The Chair will now count towards the quorum of 35. The Trustees could transact all business on holding a minimum of **20 proxy votes** assuming all 15 trustees to be attending. In extreme, just 3 Trustees can transact all business with *no members entitled to vote* needing to be present at a meeting. This is not the same as “*The authorised representative of a member organisation shall be counted in the quorum.*” at 9(3). **Members may wish to consider if they want to propose reversion to 35 members entitled to vote being present.**

A. The quorum remains at 35 people present at the meeting. The 35 people can comprise:

- 1) Members with the right to vote*
- 2) Authorised representatives of corporate members or groups (of which there is only one per company or group)*
- 3) Non-members who have been appointed as proxies by members*
- 4) Proxy forms held by any member present in the meeting.*

That proxy forms count towards the quorum is a legal requirement under Company Law. The Trustees do not have a choice in this matter and the suggestion above is wrong.

Members rights are protected by:

- 1) legal requirements for giving notice of general and extraordinary meetings: notice must be given to all members in accordance with the Articles, this includes notifying the business to be discussed at the meeting. Therefore, all members will have time to consider attending the meeting in person or appointing a proxy to act for them.*

2) any member can appoint any other member or non-member as a proxy. Therefore the ability to form a quorum applies to all members not just the chair.

4) The notes 2.3.3: Amended text was requested at 8.6 to make it clear that members can, by ordinary resolution at 7.2, increase the number of Trustees so that a ballot is not required if members wish to appoint any of their number that would otherwise be disallowed by the nominal fixed number of trustees.

A. This is correct. The option exists to increase the number of Trustees or to operate a ballot if the proposed election of Trustees would take the number above 15.

5) The notes 2.3.6: General meetings are also an important way for members to engage with Trustees and to call on them to explain their actions, not just to “to consider particular resolutions”. The Charity Commission guideline document CC48 states “The members can use an EGM to seek explanations from the charity trustees for a course of action, or encourage fuller discussion on an issue”. This was tried in 2017 without success due to Trustees imposition of the 5% optional figure. **Amendment of Article 13 by member resolution will improve accessibility, accountability and trust.**

A. Reducing the Threshold for calling an EGM to 21 is not appropriate because:

1) An EGM should be called by a sufficient number of members that would suggest wide backing of the membership for the EGM. 21 members is 0.01% of the membership. The Trustees believe the 1% they proposed is an achievable threshold and if achieved suggests broad backing of the membership.

2) Cost: running an EGM costs approximately £15,000 excluding the substantial staff time required to support and organise it and communicate with members. The risk of 21 members being able to call an EGM is that they small groups of members with a narrow interest can divert the Trust from its mission and waste significant amounts of charitable funds in the process – that would otherwise benefit the mission.

6) The notes 2.3.7: Are the proxy vote forms circulated for this EGM valid, as they are not provided for under the current articles and do not bear the limited company number?

A: The absence of the company number does not invalidate the proxy form. It is absolutely clear that it is a proxy form for SWT.

Previous enquiries asked if any new rules have been made, the reply by e-mail was as “no rules or bye-laws have been made under clause 55 that require notification to members under clause 55.4”. **So as a point of order the proxy votes are thought to be voided** by failure to give notice as is required under 55 (4), of a new voting rule, made under 55 (1) & 55 (2) d) as overriding 13 (1). This is also against 55(5) as any new rule must not affect or repeal 13(1), and a show of hands and option to call for a poll is currently the only authorised voting method in the 2008 articles. Completed proxy forms are of course welcome as an expression of opinion, but must be set aside if this point of order is correct.

Members should be aware this is a **significant substantive change** potentially transferring rights to any Chair to exercise a block vote on business at meetings, beyond that explicitly listed on the form (see note 7). This is being written into the new articles at 15.4.1. Members may wish to exercise great caution in delegating such powers via the proxy form, as potentially any member resolution or business put before a meeting may be put at risk of being defeated (or passed), before proxy voting members get to consider it. It may be hoped any Chair would abstain from exercising a block proxy vote to overturn members votes expressed at the EGM, on anything other than defined business on the proxy form. Rights are currently protected by the option for any two members to call for a poll on any vote at 13(1), and if referral back to the full membership is considered appropriate this can be achieved at 13(5) but 16.9 may prevent that option in the future. **Members may wish to consider if they want to propose change to note 7 on the proxy form and deletion of 15.4.1**

A. 1) The right to vote by proxy is enshrined in Company Law. It is absolutely right and democratic that all members have the right to vote on resolutions proposed at general and extraordinary meetings whether they can attend the meeting in person or not.

The Articles include the provisions of company law regarding proxy forms. The right to appoint a proxy is still valid for the EGM as it is required by Company law.

2) Re 15.4.1- A proxy form is a mechanism by which a member may instruct a proxy to vote for / against or abstain from a resolution. Under company law ‘ordinary resolutions’ may be amended in general meetings – as long as those amendments are not significant. Article 15.4.1 allows the proxy (who need not be a member or

the chair) to exercise their vote on the amendment. This clause protects members who have appointed proxies from losing their vote on that resolution altogether. If 15.4.1 did not exist the proxy could not vote on the amendment at all even if it was minor – and the member would lose their vote on that resolution. One would expect proxies to use that discretion responsibly and as they think the member who has appointed them would vote.

3) 16.9 protects members because it requires the chair to take a poll immediately if it one is called for.

DRAFT