

Report for Head of Planning Services

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## **Burpham Neighbourhood Area and Forum Designation Report**

### **Recommendation**

That the Head of Planning Services:

- i) designates the proposed area shown on map attached at Appendix 1 as the neighbourhood area for Burpham
- ii) designates the Burpham Neighbourhood Forum as the neighbourhood forum for the proposed neighbourhood area.

### Reasons for Recommendation:

To comply with the Neighbourhood Planning (General) Regulations 2012 and to reflect the results of the local public consultation and the Council's subsequent analysis of responses and evaluation of the proposals.

## **1. Purpose of Report**

- 1.1 To set out the reasons for the designation of a Neighbourhood Area (NA) and Neighbourhood Forum (NF) in Burpham and to inform the Head of Planning Services of the current situation following public consultation, legal views and consideration by planning officers with a view to successfully completing the designation process.

## **2. Strategic Priorities**

- 2.1 This report has been written to facilitate the delivery of the first example of Neighbourhood Planning in the borough in line with the Government's Localism agenda and the Localism Act 2011.
- 2.2 The recommendations aim to deliver the quickest, smoothest conclusion to the application process by delivering a designation via delegated powers. This accords with the Council's core value of providing timely public services and will help to meet the Council's strategic priority of delivering a sustainable local environment through the designation of an appropriate and effective NA.

## **3. Background**



- 3.1 Neighbourhood planning encompasses a series of powers introduced by the Localism Act 2011. The neighbourhood plans (NP) and Neighbourhood Development Orders created by this legislation enable communities to decide how their neighbourhoods grow and to shape the development they receive, with the caveat that plans and orders must be in compliance with the strategic needs of national and local government. Neighbourhood planning is a community led, democratic process organised by parish councils in their areas and neighbourhood forums in areas not served by a parish council, and takes place within a defined area (the NA).
- 3.2 The application for designation of both a NA and a NF in Burpham was received on 25 July 2012. Officers requested amendments to the application in order to better address legal requirements. An amended application was received on 29 August 2012 and was accepted as valid (Appendix 2).
- 3.3 The dual consultations on the NA and NF proposals ran from 14 September to 26 October 2012. 446 letters and emails were sent and information was posted on the Council's website. 24 responses were received. 23 were in support; nine from Burpham Neighbourhood Forum members, 19 using a standard letter or variation of a standard. A further 34 unique emails in support were received from residents after the consultation closed. Positive responses broadly offered support for the NA boundary and designation of the Burpham Neighbourhood Forum as NF for the area. One objection was received.
- 3.4 The consultation did not demonstrate strong public support for neighbourhood planning in Burpham. However, NF applications in other areas have often met with low responses, sometimes as low as zero (as did several NA consultations in the South Downs National Park). In view of this, we believe that the low response in favour of proposals should not be a consideration against designating the NA and NF as proposed.
- 3.5 During the consultation Barton Willmore, a planning agency acting on behalf of landowner Martin Grant Homes (MGH) whose land falls within the proposed NA, responded with an objection to both the proposed NA and NF. The points of objection were taken into consideration by planning officers and a legal opinion was sought from Ashurst (external solicitors).
- 3.6 Following a period of consideration, on 29 November 2012 planning officers and the Head of Planning Services met with proposed Burpham Neighbourhood Forum members to discuss the issues raised. The issue of the NA boundary was discussed and the representatives of the proposed forum agreed to consider the options presented over the NA boundary.
- 3.7 The proposed Burpham Neighbourhood Forum constitution had retained a clause that gave the management committee the right to refuse membership to prospective forum members. In the opinion of the Council's Legal Services team the constitution was legally ambiguous as the offending clause was superseded by two other clauses that directly contradicted it. The clause was also contrary to the requirement for open membership as set out in the Town and Country Planning Act 1990<sup>[1]</sup>. Opinion obtained from an officer in the Decentralisation and Neighbourhood Planning Team

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<sup>[1]</sup> s61 F (5) "A local planning authority may designate an organisation or body as a neighbourhood forum if the authority are satisfied that it meets the following conditions... (b) its membership is open to – (i) individuals who live in the neighbourhood area concerned, (ii) individuals who work there (whether for businesses carried on there or otherwise), and (c) individuals who are elected members of a county council, district council or London borough council any of whose area falls within the neighbourhood area concerned,"



at the Department for Communities and Local Government agreed that a clause that excludes prospective members is not appropriate. The proposed Burpham Neighbourhood Forum agreed to make this amendment and a constitution reflecting this change was received 14 January 2013. A further meeting was scheduled for 12 December 2012 to discuss the legal advice.

- 3.8 On 18 December 2012 planning officers asked the forum to improve the application based on the following points:
- the constitution should be amended to include an express purpose of furthering the economic well-being of the area
  - background documents demonstrating the diversity of the forum, beyond those included in the application, should be supplied
  - if the NA is to include the Gosden Hill Farm proposed development site the forum should try to engage with the landowner in order to gain a forum member with a background as a developer
  - the forum should provide background documents that supported the contention that Gosden Hill Farm was part of the community (the argument relied upon in the original application).
- 3.9 Background documents demonstrating diversity within forum membership in line with the composition of the community could not be supplied as 2011 census data at Lower super Output Area level had not yet been released for categories other than age, gender and home ownership. Data showing forum membership in these categories had already been supplied. A map demonstrating geographical diversity had also already been supplied.
- 3.10 On 11 January 2013 planning officers received a representation from Ashley Bowes Associates, a planning agent representing the Burpham Neighbourhood Forum, petitioning against our request to contact the landowner and in favour of the currently proposed NF and NA. The Head of Planning Services forwarded this to the Council's Legal Services the same day with a request for a legal opinion. Legal Services advised that a further opinion should be sought with Ashurst. The document was sent to Ashurst on 17 January 2013 and a reply received on 25 January 2013.

#### Objection from MGH

- 3.11 Martin Grant Homes, the landowner of Gosden Hill Farm, objected to the proposals as part of the farm falls within the proposed NA boundary (see Appendix 1). The objection was raised on four grounds:
- 1) ***Non-compliance with National Planning Policy Framework (NPPF)***. The site has previously been identified as a suitable site for housing in the Surrey Structure Plan 2004, the South East Plan 2009 and supporting technical documents. Including it in the NA would not be appropriate as the proposed NP could interfere with the development of the Local Plan housing strategy. Therefore designating the NA as proposed would not be in compliance with the National Planning Policy Framework.

#### Officer Response

Refusing to designate a NF or NA because forum members may produce a plan that the LPA disagrees with would be contrary to the spirit of localism.

Officers believe that a NP is no threat to delivery of housing on the site, despite the absence of an up-to-date local plan, because:



- NPs must comply with the NPPF and the presumption in favour of sustainable development
- NPs must be positively prepared
- NPs must be in compliance with the strategic needs of the Local Plan if the Local Plan is adopted after the NP and is in conflict with the NP, the Local Plan will take precedence as the most recently adopted Development Plan Document (s38 (5) of the Planning and Compulsory Purchase Act 2004<sup>[2]</sup>)

We believe that the strategic priority of housing delivery through the Local Plan is not threatened by the designation of the NA as proposed. Consideration that the boundary may be unsound in planning terms because it will split a potential future development site is also not sustainable.

- 2) ***Insufficient justification for use of ward boundary as the Burpham Neighbourhood Area.*** The administrative ward boundary of Burpham is not the appropriate area for the forum because it includes land outside of an existing residential area and within the current extent of the Green Belt. In addition, the application has not set out why this area should be included, a requirement under regulation 5(b) of the Neighbourhood Planning (General) Regulations 2012. MGH are requesting that the boundary be redrawn to follow the edge of the built up area, excluding the wooded common land and Gosden Hill Farm.

#### Officer Response

The NA application includes a statement that meets the requirement of regulation 5(b) of the Neighbourhood Planning (General) Regulations 2012.

Regulations make provision for NAs to cross ward boundaries or cover only part of a ward and if a Local Planning Authority considers that the specified area is not an appropriate area to be designated as a NA they must designate a smaller area. Gosden Hill Farm has a rural character and is agricultural land while the rest of the Burpham ward is suburban and primarily residential. Planning Advisory Service (PAS) guidelines advise that land use and coherency of the physical environment should be considered when deciding a proposed NA boundary. Initially, officers gave the guidelines weight in the consideration. However, officers now feel this was incorrect as the guidelines themselves do not constitute statutory guidance. Officers now feel that whilst coherency of the NA is still a consideration, in light of other factors and additional evidence gathering, such as the ongoing Green Infrastructure Survey, the separation between the urban boundary and the Farm site is considered to be less distinct than previously thought. Additionally, Burpham residents have confirmed that the site is considered to be a part of their community. Therefore officers believe that there is insufficient justification to exclude the Gosden Hill Site on these grounds.

Officers believe there is no planning reason why a neighbourhood should be confined to a purely residential area because green spaces are often integral to communities. The wooded areas at Merrow Common and Copse Edge are in community use. These wooded areas extend across Merrow Lane into the Green Belt land beyond. This demonstrates that the area is not purely residential and may be considered to have a mixed residential and semi-rural feel. Many local residents refer to the

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<sup>[2]</sup> s38 (5) If to any extent a policy contained in a development plan for an area conflicts with another policy in the development plan the conflict must be resolved in favour of the policy which is contained in the last document to be adopted, approved or published (as the case may be).



proposed NA as Burpham village. Officers feel these considerations tie the urban area to the Gosden Hill Farm site in character terms. In addition, the ward boundary partially follows an existing road, a border easily understood by local people.

- 3) **Constitution.** The Burpham Neighbourhood Forum constitution does not state the objectives of promoting or improving the social, economic and environmental wellbeing of the area as required by section 61F (5)(a) of the Town and Country Planning Act 1990 (the Act) as it omits a reference to economic issues.

#### Officer Response

Burpham Neighbourhood Forum has provided an amended constitution that includes the statement "The express purpose of promoting or improving the social, economic and environmental well being of the proposed Neighbourhood Area". Therefore, this objection has now been resolved.

- 4) **Forum Membership.** Membership of the Forum is not drawn from different sections of the community as required by Section 61F (7) (a)(ii) of the Act because the membership is disproportionately represented by older people.

#### Officer Response

s61F(7) of the Town and Country Planning Act 1990<sup>[3]</sup> requires the Council to take the diversity of a proposed forum's membership into consideration. The Council is not required to refuse to designate a proposed forum where it fails to meet this condition.

Officers have been informed that the Burpham Neighbourhood Forum took a number of steps to secure a diversity of membership including leafleting, holding a public meeting and consultation with the Burpham Community Association. The age demographic is not representative of the population of the area with 61 per cent of the membership being over 60 years old; however, this could be because this demographic has more time and resources to start neighbourhood planning activities. The Burpham Neighbourhood Forum has been able to demonstrate a good level of geographic diversity and the gender balance is only slightly skewed towards males. The forum has stated in their application that the demographic will change as the group matures, and officers believe that this is a reasonable assumption.

Therefore, whilst the membership may be disproportionately drawn from the older demographic, officers believe that reasonable steps have been taken to attempt to secure diversity.

#### Other considerations

- 3.12 Forums are required by regulation to have a purpose that reflects (in general terms) the character of that area. Officers believe that the inclusion of an express purpose of promoting or improving the social, economic and environmental well being of the proposed NA meets this requirement. Additionally, the proposed NA is mostly residential in character which is reflected in the forum membership. Officers believe

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<sup>[3]</sup> s61 F (7) A local planning authority— (a) must, in determining under subsection (5) whether to designate an organisation or body as a neighbourhood forum for a neighbourhood area, have regard to the desirability of designating an organisation or body—... (ii) whose membership is drawn from different places in the neighbourhood area concerned and from different sections of the community in that area



it is reasonable to assume that the composition of the membership will have a strong influence on the purpose of the forum and therefore the purpose reflects the character of the area.

- 3.13 To pass inspection NPs must be justified and fully supported by evidence. It is assumed that the Burpham NP will draw upon Office for National Statistics data to develop an evidence base. In view of this, officers feel designating the NA along the ward boundary will assist the Burpham Neighbourhood Forum in the production of evidence for the Burpham NP as government statistics are typically produced to match administrative boundaries.
- 3.14 The Council's housing strategy is currently under development and at present there are no plans in place concerning Gosden Hill Farm. However, given the limited number of options for meeting housing need in the borough, the location, and the ownership of the site, it must be considered that the site has good potential for residential development. Should residential development be brought forward residents in the new dwellings will fall within the catchment of existing services in Burpham, for example the shopping parade on London Road. Additionally any infrastructure brought forward at the site will be expected to integrate with the existing neighbourhood. Therefore officers believe that any development at the site will become an extension of the existing Burpham neighbourhood and the likelihood of development means that it is entirely appropriate to include the site within the Burpham NA.
- 3.15 The government vision for neighbourhood planning is for residents, local businesses and developers to work together to improve their area and bring forward development that all groups can benefit from. By excluding the Farm site from the NA the council would prevent this vision from being realised and prevent the Burpham community from sharing in some of the benefits of development, should the site be developed.
- 3.16 Central Government has suggested that developers and businesses may fund the neighbourhood planning process. Given the limited opportunities for development within the urban area, and given the potential for development at Gosden Hill Farm, excluding the site will remove one of the few potential sources of funding for neighbourhood planning activities and therefore reduce the quality of any subsequent neighbourhood plan. By excluding the area, the Council feels any resulting neighbourhood plan would be very limited in scope due to lack of funding and therefore that the quality of planning in the area would be reduced.
- 3.17 Recent government statements have suggested that by producing a local plan NAs may see an increase in their share of CIL payments from 15 to 25 per cent. By excluding this land the Burpham community would be both prevented from having a greater say in how this money is spent and would miss out on the opportunity of increasing the amount available. CIL payments may also be used to fund improvements identified by the neighbourhood plan. Without the potential for funding improvements through CIL, neighbourhood plan policies would have to be significantly limited in scope to remain effective. Whilst officers recognise the importance of funding in achieving the aim of better planning at a neighbourhood level, we do not give significant weight to this as a planning consideration.
- 3.18 Therefore officers do not feel the points of objection raised by Barton Willmore carry significant weight such that the application should be refused or the proposed NA amended. Officers also feel that the forum has met the requirements for designation,



that there are no significant barriers to including the Gosden Hill Farm site in the NA and that including it will produce the best outcome in planning terms.

#### **4. Financial Implications**

- 4.1 The cost of inspection for a completed NP is estimated at £7-12,000. This cost must be borne by the Council.
- 4.2 Officer time supporting the NP process carries a cost that is not yet quantified. However, the planning policy team has a specific officer in place to assist the neighbourhood planning process.
- 4.3 The process of creating a NP also carries a significant financial and time cost for the volunteers involved. The cost of carrying a plan to completion is estimated by the Department for Communities and Local Government to be between £17,000 and £80,000 and may take up to two years.
- 4.4 A grant of £30,000 is payable to the Council in instalments should a neighbourhood plan be taken to completion. An initial payment of £5,000 is available upon designation as long as designations are made before 15 March 2013. Claims may be submitted before 22 March. A further £5000 is available at the consultation stage prior to examination and the remainder is paid if examination ends with a recommendation to proceed to referendum. If the NF and NA are designated there is no guarantee that a Neighbourhood Plan will be completed successfully so the second and third instalments may not be received.
- 4.5 This money is not ring fenced but it is expected that the costs to Planning Services in officer time and consultation, examination and referendum expenses will be greater than the value of this grant. Additionally, this payment may be withdrawn in future so Council resources may be required to support future neighbourhood planning processes.

#### **5. Legal Implications**

- 5.1 The Localism Act 2011 places a duty on the Council to either designate, refuse to designate or designate with amendments a valid application after consultation is complete. There is no statutory timeframe for completing this.
- 5.2 The Council may designate either through delegated powers or by Full Council decision.
- 5.3 There is a risk that Barton Willmore will take legal action in the form of judicial review over the boundary on behalf of MGH. However, this is not a consideration that can be taken into account when deciding upon this application.

#### **6. Human Resource Implications**

- 6.1 After designation the Burpham Neighbourhood Forum intends to create a NP. Councils have a statutory obligation to support the process, which will require officer time. As the new Local Plan will not be in place before the Burpham Neighbourhood Forum start their Neighbourhood Plan, officers and Burpham Neighbourhood Forum volunteers will need to keep in regular contact to ensure Burpham Neighbourhood Forum policies can accord with emerging Local Plan policies where required.

**7. Conclusion**

- 7.1 There are no barriers to designating the Burpham Neighbourhood Forum. Officers are satisfied that all requirements have been met.
- 7.2 There are no significant barriers that prevent the designation of the NA along ward boundaries as proposed.

**8. Background Papers**

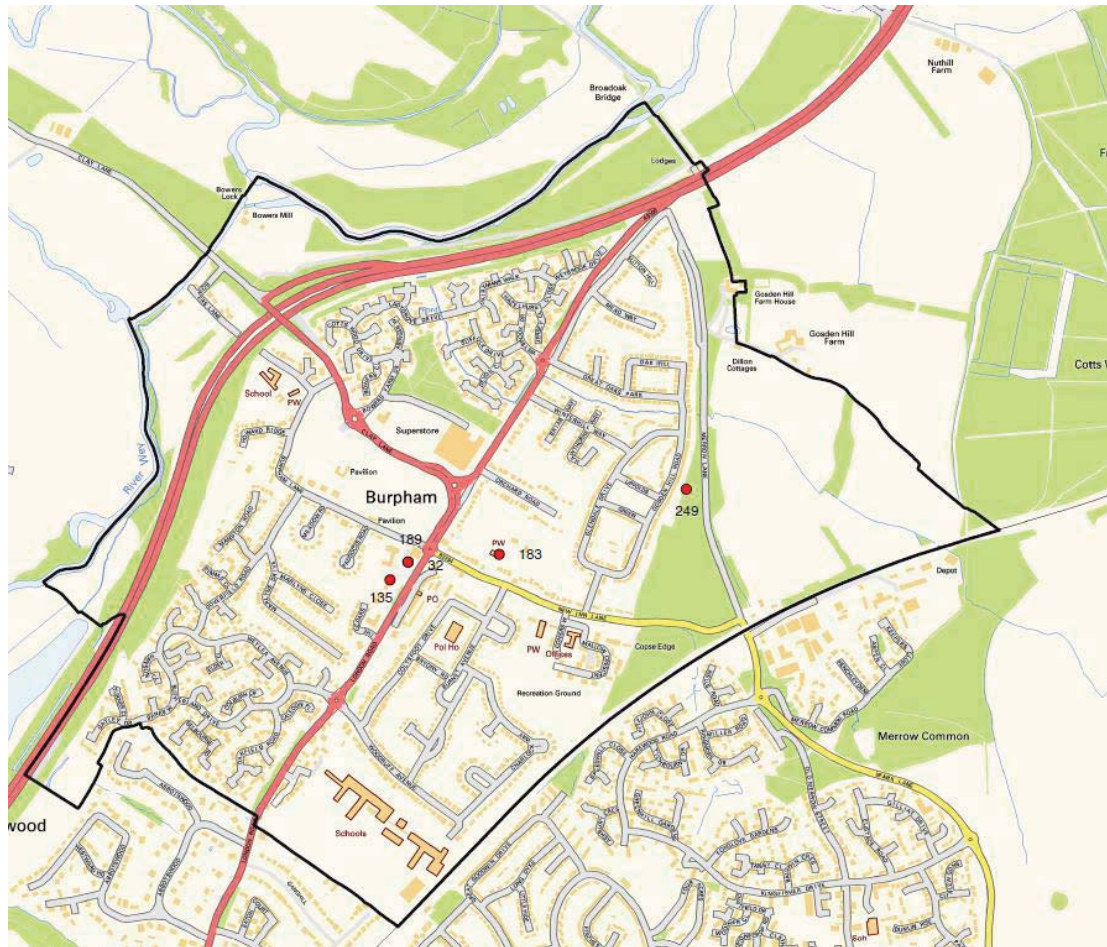
The Burpham Neighbourhood Forum and Neighbourhood Area Applications  
<http://www.guildford.gov.uk/CHttpHandler.ashx?id=12997&p=0>

*WCH phm*  
*4th February 2013*



# Appendix 1

## The proposed Burpham Neighbourhood Area





## Appendix 2



### **BURPHAM NEIGHBOURHOOD FORUM CONSTITUTION**

#### 1) NAME

The name of the group shall be the BURPHAM NEIGHBOURHOOD FORUM, hereafter referred to as the Group.

#### 2) OBJECTS

The objects of the Group shall be:

- (i) To produce a neighbourhood plan in accordance with the Localism Act 2012, hereafter referred to as NP for the purpose of this document;
- (ii) The NP will be subject to extensive Consultation and examination;
- (iii) To improve the area known as Burpham identified in Appendix A Map 1 of this document for the benefit of the inhabitants of the immediate vicinity;
- (iv) The Group will remain an independent forum to that of the Burpham Community Association (BCA), but will consult with them on all aspects of their proposals;
- (iii) To encourage the goodwill and involvement of the wider community;
- (iv) To foster community spirit and encourage public Cohesion

#### 3) AREA

The area is as shown in Appendix A Map 1. The area includes all the major sites and streets that, in combination and in a coordinated programme, are both needed for and have the potential to promote and improve the social economic and environmental well being of the neighbourhood, namely Burpham along with any alternative identified areas outlined on the attached sit plan

#### 4) POWERS

In furtherance of the objects, but not otherwise, the Management Committee may exercise the power to:

- (i) Promote the health and wellbeing of the residents of the area and to work together as residents irrespective of age, sex, ethnicity, ability, religion or political view;





- (ii) Promote environmental improvement and conservation by educating, encouraging and assisting the local population in environmental practice, working in partnership with similar groups and organisations;
- (iii) Invite and receive contributions and raise funds where appropriate, to finance the work of the Group, and to open a bank account to manage such funds;
- (iv) Publicise and promote the work of the Group and organise meetings, training courses, events or seminars etc;
- (v) Work with groups of a similar nature and exchange information, advice and knowledge with them, including cooperation with other voluntary bodies, charities, statutory and non-statutory organisations;
- (vi) Employ staff and volunteers (who shall not be members of the Management Committee) as are necessary to conduct activities to meet the objects;
- (vii) Take any form of action that is lawful, which is necessary to achieve the objects of the Group.

## 5) MEMBERSHIP

- (i) Membership shall be open to anyone who has an interest in assisting the Group to achieve its aim and is willing to adhere to the rules of the Group;
- (ii) Where it is considered membership would be detrimental to the aims and activities of the Group, the Management Committee shall have the power to refuse membership, or may terminate or suspend the membership of any member by resolution passed at a meeting;
- (iii) Members shall have the right to appeal via an independent adjudicator determined by mutual agreement of the management committee;
- (iv) *Any member of the association may resign his/her membership by providing the Secretary with written notice;*

*Membership of the Forum is open to individuals:*

- (a) who live in the Neighbourhood Area*
- (b) who work in the Neighbourhood Area*
- (c) who are elected members of the county council or borough council of whose area falls within the neighbourhood area.*

*a. Membership is voluntary.*

*b. The number of members shall be not less than 21.*





For the avoidance of doubt, no person who qualifies under paragraph 5(i) above shall be refused membership from the Forum.

*Where it is considered the actions of a member are detrimental to the spirit and objectives of the forum. A full meeting of the Forum will be called to discuss the detrimental actions and consider if that persons continued membership of the forum still remains within the legal requirements of the forum as a statutory qualifying body or if their personal actions could result in the removal of the Forum from the Qualifying body listing under Schedule 9 Part 1 (9). At this stage. The person will be requested to stand down to prevent dissolution of the Forum.*

- (v) The membership consist of a minimum of 21 people who are residents of the area/work in the area and/or are elected to the Local Authority as Councillors for Burpham;
- (vi) Appendix B Map 2 shows the geographic spread of current member's home addresses;
- (vii) A list of all members is be attached in Appendix C

#### 6) MANAGEMENT COMMITTEE

- (i) The Group shall be administered by a management committee of no less than three (3) people and no more than fifteen (15), who must be at least 18 years of age. Members will be elected for a period of up to one year, but may be re-elected at the Group's AGM.

#### 7) OFFICERS

- (i) The Group shall have a committee consisting of:

The Chairperson  
The Treasurer  
The Secretary

to be elected annually at an AGM and any additional officers the Group deems necessary at the meeting required to carry out the required activities.

#### 8) MEETINGS

- (i) The committee shall meet at least three times a year. Meetings shall enable the Group to discuss actions and monitor progress to date, and to consider future developments;



- (ii) All members shall be given at least Seven (7) days' notice of when a meeting is due to take place, unless it is deemed as an emergency;
- (iii) Two-thirds of committee members must be present in order for a meeting to take place;
- (iv) It shall be the responsibility of the Chairperson to chair all meetings or a designated deputy in his/her absence. All meetings must be minuted and accessible to interested parties;
- (v) The AGM shall take place no later than three months after the end of the financial year. At least fourteen (14) days' notice must be given before the meeting takes place;
- (vi) All members are entitled to vote at the AGM. Voting shall be made by a show of hands on a majority basis. In the case of a tied vote, the Chairperson or an appointed deputy shall make the final decision;
- (vii) Reporting Officers unable to attend shall submit a written report to the Chair prior to the meeting;
- (viii) The Association may affiliate with other organisations upon agreement with the AGM.

## 9) FINANCE

- (i) Any money acquired by the Group, including donations, contributions and bequests, shall be paid into an account operated by the Management Committee in the name of the Group. All funds must be applied to the objects of the Group and for no other purpose.
- (ii) Bank accounts shall be opened in the name of the Group. Any deeds, cheques etc relating to the Group's bank account shall be signed by at least one (1) of the following committee members: Chairperson; Treasurer; Secretary.
- (iii) Any income/expenditure shall be the responsibility of the Treasurer who will be accountable to ensure funds are utilised effectively and that the Group stays within budget. Official accounts shall be maintained, and will be examined annually by an independent examiner who is not a member of the Group. An annual financial report shall be presented at the AGM. The Group's accounting year shall run from 01 April to 31 March.

## 10) ALTERATION OF THE CONSTITUTION





- (i) Any changes to this constitution must be agreed by a majority vote at a special general meeting.
- (ii) Amendments to this constitution or dissolution of the Group must be conveyed to the Secretary formally in writing. The Secretary and other officers shall then decide on the date of a special general meeting to discuss such proposals, giving members at least four weeks (28 days) notice.

#### 11) DISSOLUTION

- (i) The Group may be dissolved if deemed necessary by the members in a majority vote at a special meeting. Any assets or remaining funds after debts have been paid shall be returned to their providers or transferred to local charities or similar groups at the discretion of the Management Committee.

**This constitution was adopted on the ...29th.....day of...August.....2012**

Signed:  (Chairperson)

Signed:  (Coordinator)