

## **Report on the Transfer of Engagements process, 2021, for The Old Ship Inn Cawsand Ltd and The Peninsula Trust Ltd**

### ***Introduction***

This report describes the reasoning, process and results of a Transfer of Engagements carried out in 2021 between the Old Ship Inn Cawsand Ltd (“the Ship”) and The Peninsula Trust Ltd (“the Trust”). The two organisations are Community Benefit Societies, with regulation of the transfer governed by the Cooperative and Community Benefit Societies Act 2014.

The proposal on the Transfer of Engagements (“the Transfer”) was discussed by the Boards of both organisations and explained to the investor members of both by email and at the required member meetings. There was overwhelming support for the change, with just over 110 responses from the Old Ship investors, congratulating the Ship Board on the work. There was also a series of complaints by one investor, which taken together allege a number of shortcomings or errors in the process. The Peninsula Trust Board has decided to invest staff time and professional fee expense in confirming fully that the process was, in fact, carried out correctly – this report is the result.

The rest of this report gives the background, the processes and the results; a full set of evidence documents accompany this report and are listed in the Index.

### ***The purpose of the Transfer of Engagements***

The Transfer of Engagements (the Transfer”) was undertaken to improve the opportunities available to the Old Ship Inn as a community asset for Cawsand and the Rame Peninsula:

- The crucial reason was access to Government housing grants. These grants require “Registered Provider” status from the Registrar of Social Housing; achieving the status is an onerous task involving a very large investment in staff time and cost, over two years. The Peninsula Trust has that status, but the Old Ship Inn Cawsand does not; the Transfer was the vital step required to permit applications for the funding to enable the core objective of creating housing at the site.
- A secondary reason for the Transfer was to simplify the administrative processes and costs of running two separate organisations, with two sets of annual accounts, registrar reports and fees. The two organisations were run from the start by a small central staff resource based at The Peninsula Trust.

There are no negative effects from the Transfer on the rights and conditions of the investor members. The ownership of all the assets remains in the hands of local people through membership of the Peninsula Trust; the rights and opportunities of the Old Ship Inn Cawsand and Trust investors are fully maintained with no change; the close links between Cawsand village, local residents and the Ship continue to grow well, with no alteration.

The Transfer strengthens the ability for investors in the Old Ship Inn Cawsand to realise the original objectives in securing the long term sustainable development of the site for community benefit.



### ***The Transfer process and responses***

The whole process, from initial discussion to final registration of the change, was carried out in full compliance with the relevant legislation and the official guidance for the operation. That process is described in detail below. In particular, the investor members were fully informed of the proposals in accordance with the legislation and guidelines; the required meetings were held following the correct notice periods, the meetings were quorate and the votes were overwhelmingly in favour of the proposal.

The report identifies the required process and timing for all actions, including the submissions to the Registrar and the communication with the investor/members. Each point is followed by detail on the work actually undertaken to meet the requirement.

### ***Checking and confirmation***

The report was checked by a nationally recognised expert in Community Benefit Societies and Community Shares, Mr Dave Boyle of the Community Shares Company, Brighton. He has confirmed in writing that the process was completed correctly; his letter is attached as Item 2.

### ***Conclusion***

On the basis of this detailed piece of work and the confirmations from the Community Shares Company, the Board of Directors is now fully assured that the Transfer was carried out correctly and in entire accordance with the required processes. We will publish the report on our website and refer any further complaints or enquiries to it.

Debbie Patterson,

Chair, The Peninsula Trust. March 2022

## **The background**

### ***The Peninsula Trust and its work***

Founded in 2014, the Peninsula Trust is a successful and well-respected community organisation, working to support the people of the Rame Peninsula, SE Cornwall. The Trust is owned by its investor members, and is constituted as a Community Benefit Society, registered with the Financial Conduct Authority (“the FCA”). The Trust has “exempt charity” status, approved by HMRC, but is not a charity and is not listed on the Charity Commission website. The Trust’s constitution is attached as Item 3.

The Trust owns a number of properties on the Peninsula, including our core community hub, the Rame Centre, in Millbrook village; on the same site we have two flats, let at secure low rentals to local people, and a group of six small work units, let to local businesses and start-ups. The Trust also owns three ex-Council houses (the Coastguard Cottages) in Cawsand village – these are also let to local people on secure, low-cost rentals.

The Trust runs a Local Support service for residents who need one-to-one help with welfare, benefits, housing, debt, loneliness and crisis. We also run a Community Kitchen, providing fresh and dried food and frozen meals for those in crisis.

The Trust has a very large community membership, with just over 680 local people currently signed up as members; more people join each month.

### ***Taking on the Old Ship***

In 2017, the Peninsula Trust decided to attempt the purchase of a derelict pub in Cawsand, The Old Ship Inn, for refurbishment as a community pub/café facility on the ground floor and four flats above - as always, the flats to be let to local people on secure, low-cost rentals.

The Ship had been empty and deteriorating for some years, and then caught fire in October 2013. The internal fabric of the building was entirely destroyed, leaving a mass of half-burnt timbers and rubble, with just the front wall remaining. The properties on either side were badly damaged, and there were fears that the steep cliff face at the rear had been compromised by the intense heat. A number of commercial developers looked at the site but rejected it on the grounds of poor profitability: very high clearance costs, poor access leading to high construction costs, no sea views, parking or gardens leading to a relatively low sale value. The site was eventually bought by a private purchaser, who paid for the clearance but then found it very difficult to progress the project – they therefore decided to sell to the Trust for community use, if we could raise the funds.

### ***Creation of the new organisation: the Old Ship Inn Cawsand (a Community Benefit Society)***

The Peninsula Trust was very aware that the condition of the Ship’s derelict remains made this a high-risk project, that in the worst case could have led to great strain on the rest of the organisation’s finances and resources. The Board of Directors therefore decided that this highly worthwhile project should be run as a separate entity, to allow full activity while safeguarding the Peninsula Trust’s existing assets.

A new Community Benefit Society (The Old Ship Inn Cawsand Ltd) was therefore created, using exactly the same registration procedure and rules (Constitution) as the Trust itself. Three directors were found, all from Cawsand village; a management agreement was created so that Trust staff could run the day-to-day work of operating the Ship and its development. The constitution for the Ship is attached as Item 4, with an FCA correction to their naming error at Item 5.



The Ship was launched to the public and a Community Shares campaign was started, to raise private investment into the Ship for the purchase. The campaign was very successful, with 320 people investing a total of £137,500. The Community Share offer is attached as Item 6 and the related Business Plan as Item 7. These documents provide full explanations on the nature of the community shares, the limitations on them and the substantial differences between these shares and commercial shares from private companies.

### ***The work and the decision on Transfer***

The purchase of the Old Ship inn site was completed in 2018 and work started immediately on the refurbishment. The Ship was an immediate success, with very strong community support, leading to the establishment of a range of activities and events. Substantial grant aid was found to reinforce the cliff face and make the walls safe; further grants were raised to build a kitchen block and a temporary roof, creating the community café which is running very successfully.

Over time, it became clear to the two Boards of Directors that the existence of two separate legal structures was inefficient and an unnecessary and costly distraction; furthermore, once the Trust had entered into the very complex application for Registered Provider, it became very clear that a Transfer, bringing the two organisations together, was the best way to enable the housing at the Ship to go ahead.

Specific proposals on a Transfer of Engagements were discussed by the two separate Boards of Directors over several meetings in 2020. The proposals were agreed by both Boards and work then started on the detail.

### **The full Transfer process**

The complete set of actions required by the legislation is specified in Clauses 110 and 111 of the Cooperative and Community Benefit Societies Act 2014; the complete Act can be found at

[Co-operative and Community Benefit Societies Act 2014 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

The two relevant clauses are given in full below. The requirements raised by each point are then described, and our actual action taken on each is then provided.

#### ***Clause 110 - Transfer of engagements between societies***

- (1) A registered society (society A) may by special resolution transfer its engagements to any other registered society which undertakes to fulfil those engagements (society B).*
- (2) If the resolution approves the transfer of all or part of society A's property to society B, the property vests in society B without any conveyance or assignment (or, in Scotland, assignation).*
- (3) Section 111 contains provisions about special resolutions under this section.*
- (4) The transfer of engagements does not prejudice any right of a creditor of either society.*

#### ***Clause 111 - Special resolutions under section 109 or 110***

- (1) This section supplements sections 109 and 110.*
- (2) A resolution is a "special resolution" if—*

- (a) the resolution is passed at a general meeting by at least two-thirds of the eligible members who vote,*
  - (b) notice of this meeting (“the first meeting”), specifying the intention to propose the resolution, is duly given in accordance with the society's rules,*
  - (c) the resolution is confirmed at a subsequent general meeting by over half of the eligible members who vote,*
  - (d) notice of this meeting (“the second meeting”) is duly given, and*
  - (e) the second meeting is held at least 14 days, and no more than one month, from the day of the first meeting.*
- (3) In subsection (2)—*
- (a) “eligible member” means a member entitled under the society's rules to vote;*
  - (b) references to voting are to voting in person or, where the rules allow proxies, by proxy.*
- (4) At a general meeting such as is mentioned in subsection (2), a declaration by the chair that the resolution has been carried is conclusive evidence of that fact.*
- (5) Within 14 days from the day the special resolution is confirmed at the second meeting, the society must send the FCA a copy of it—*
- (a) signed by the chair of the second meeting, and*
  - (b) countersigned by the society's secretary.*
- (6) The FCA must register the copy of the special resolution received under subsection (5).*
- (7) The special resolution does not take effect until the copy of it has been registered.*
- (8) Nothing in subsection (5) invalidates registration after the end of the 14 days mentioned there.*
- (9) If one or more of the societies is a PRA-authorized person, the FCA must send a copy of the special resolution to the PRA.*

### ***Decision by The Old Ship Inn Board***

The Old Ship Inn Board met on 23<sup>rd</sup> August 2021 and discussed the Transfer proposal; it was agreed unanimously.

### ***Decision by the Peninsula Trust Board***

The Trust Board met on 16<sup>th</sup> September 2021 and discussed the Transfer proposal; it was agreed unanimously.

### ***Information for the investor members***

A full briefing was sent to the investor members on 14<sup>th</sup> September 2021. A copy of the briefing is attached, Item 8.

### **Presentation of the proposal to a first meeting for Ship investors**

The Ship constitution required 14 days' notice of meetings:

#### *Notices – Clause 40*

*The Directors shall call the annual general meeting giving 14 Clear Days' notice to all Members. All other general meetings shall be convened with at least 14 Clear Days' notice but may be held at shorter notice if so agreed in Writing by 90% of the Members.*

The options on communication methods for meeting notices is given in Clause 41 of the Constitution:

*Notices of meetings shall either be given to Members personally or sent to them at their Address or alternatively, if so agreed by the Society in general meeting, notices of general meetings may be displayed conspicuously at the registered office and in all other places of business of the Society to which Members have access. Notices shall specify the date, time and place at which the meeting is to be held, and the business which is to be transacted at that meeting. A general meeting shall not transact any business other than that specified in the notices calling the meeting*

The Ship Board had a policy to alert members through the display of posters at the building and also around the villages in the area. The posters for this AGM went out around the area on 4<sup>th</sup> September 2021 (attached as Item 9) which ensured that the 14-day requirement was met. A follow-up email notice was delayed due to staff absence from Covid and was sent on 8<sup>th</sup> September 2021. The email notice is attached as Item 10.

### **Discussion and voting on the Transfer resolution**

The Old Ship Inn Cawsand AGM on 20<sup>th</sup> September 2021 was attended by 16 members in person and a further 2 members remotely; 5 proxy votes were declared. This number of members constituted a quorum under the rules, and the meeting was able to proceed. After the usual business of the AGM had been transacted, the transfer proposal was presented to the members for discussion.

The legislation on a Transfer sets out the following requirements, Clause 113:

*AMALGAMATION, TRANSFER OF ENGAGEMENTS AND CONVERSION. The Society may, by special resolution passed in the way required by section 111 of the Act, amalgamate with, or transfer its engagements to another registered society subject to at least the same degree of restriction on the distribution of profits and assets as imposed on this Society by virtue of these Rules. The Society may also accept a transfer of engagements and assets by a resolution of the Board or by general meeting.*

Section 111 of the Act is quoted in full above. Given that the meeting was quorate, the proposal could be presented: it was passed by 22 votes in favour, no votes against and one abstention.

The minutes of the meeting are attached as Item 11; a full recording of the meeting exists thanks to the online component on the day, and the minutes have been checked against that recording.



### ***Presentation of the proposal to the Trust members***

There is no requirement in law for a proposal to, or vote by, the members of The Peninsula Trust. However, the Board took the view that the membership should be fully consulted on the Transfer and their approval sought. This was done at the Trust AGM of 30<sup>th</sup> September 2021.

The Trust AGM was attended by 18 members; the proposal was put to a vote and passed unanimously, no votes against or abstentions.

### ***Presentation of the proposal to a second meeting for Ship investors***

The proposal was presented for the required second time at a specially convened members meeting held on 4<sup>th</sup> October 2021. Notice for this meeting went out at the same time as the AGM notice, 8<sup>th</sup> September 2021, see Item 10 above.

The meeting was attended by 14 members in person and a further 9 members remotely or by proxy; this number of members constituted a quorum under the rules, and the meeting was able to proceed. The transfer proposal was presented to the members for discussion and was passed by 23 votes in favour, no votes against and no abstentions.

The minutes of this meeting are attached as Item 12.

### ***Application to the Financial Conduct Authority***

Following the approval of the Transfer proposal, the relevant records and forms were sent to the Financial Conduct Authority ("the FCA") for registration of the change. The Trust submitted the required documentation within the COVID-19 extended timeframe. The Special Resolution confirmation, the key document, is attached here at Item 13.

The FCA certificate was received on 1<sup>st</sup> December 2021 to confirm that the Transfer of Engagement process to join the two organisations was complete. A copy of the certificate is attached as Item 14.