

Property Law Bill Consultation 2022

Submitter: Grounded Community Land Trust Advocacy

Introduction

Grounded is a not-for-profit organisation established to advocate, incubate and accelerate the development of Community Land Trusts in Australia. Community Land Trusts (**CLTs**) are an innovative housing model that enables property ownership and development to meet community need, and embeds affordability, sustainability and environmental stewardship. We describe the CLT model in Part B.

CLTs are a growing part of the housing mix in the United Kingdom and United States but have not yet taken off in Australia due to a range of factors, one of which is a lack of clarity in legislative settings across property, planning and residential tenancy laws. The current review of the Property Law is a timely opportunity to consider how changes to select provisions could reduce some of the legislative and regulatory barriers to the development of alternative models of affordable housing.

We thank you for the opportunity to make a submission on this important bill. This preliminary submission is necessarily high-level and selective, and recommends the following key reforms::

- Recommendation 1: Introduce a statutory definition of CLTs
- Recommendation 2: Amend section 68 to permit the registration of covenants for public interest purposes
- Recommendation 3: Introduce a new Division to Part 9 of the bill to enable CLT leasehold

Reforms are also recommended to the Planning Act and associated planning scheme policies, and Residential Tenancies Act, and these are touched on in Part D.

We would welcome the opportunity to provide further information to the Department on our recommended reforms or on CLTs more broadly.

Part A Context

The Queensland Government has recognised we are in the middle of a housing crisis. The result is seen in the news nearly every day, with caravan parks often the last refuge of low income earners.

Access to land and housing is one of the greatest intergenerational equity crises that we face as a country. One popular theory is that housing remains expensive because the supply of new dwellings in accessible, desirable locations has not kept pace with demand due to planning constraints. The suggested policy intervention is for governments to rezone more land from non-residential to residential uses, and at higher densities, as quickly as possible.

With over 410,000 lots available for development in just South East Queensland,¹ this represents more than 16.6 years worth of land supply. This is sufficiently above the common development objective of 15 years supply. Government have maintained similar supply levels over time.

However, the inability of the development industry to bring land price inflation into line with wage growth suggests market power at work. This has been assisted by the transition from a policy focus away from housing affordability and towards housing accessibility.

Investor demand side fillips such as the indexation of land tax thresholds to median land values have meant that property investors receive incentives to buy up additional land in affordable suburbs the further median prices increase. For urban infill, this ensures a vicious cycle continues where modest home buyers are often outbid by investors.

Cracks in the for-profit development model are appearing. The [Property Occupations Act](#) seeks to ensure that ethical behaviour is encouraged amongst real estate agents. However, there is little oversight of developers in the \$8 trillion land market.

The recent Staged Releases report revealed that drip feeding of sites was commonplace to maximise profits. Queensland's Growth Areas Monitoring Team must be encouraged to monitor such practices as Queensland's developers appear to be the slowest in the nation. Local developers were taking an average 65 years across the three master planned communities studied (Springfield, Aura and Yarrabilba), compared to 25 in Victoria and 20 in NSW. Questions must also be raised of the size of master planned communities, with Springfield (43,500 lots), Aura (20,000 lots) and Yarrabilba (17,000 lots) significantly larger than master planned communities in many other states. Despite the supply at hand, prices

¹ QGSO, [Queensland Residential Development Indicators](#), June 2021

are rarely allowed to fall.² With the lack of supply oversight once rezoning has been granted, it appears that further competition is needed in the housing marketplace from a for-purpose perspective.

Community Land Trusts are a proven alternative to remove housing and community assets from the speculative market and improve the mix of housing and tenure types. The CLT sector in other jurisdictions has grown exponentially following legislative reforms

Part B About Community Land Trusts

What is a CLT

Community Land Trusts describe a means by which local communities can own, develop and manage homes and other assets that are important to their local communities. Whilst the predominant focus of CLTs is on developing and maintaining affordable housing, the model can also be used to safeguard other assets that are valued by the community such as community enterprises, agricultural land, or workspaces.

Whilst there is diversity and innovation in the structures that CLTs adopt, they embody two core commitments:

- **Place-based organisation which facilitates community participation:** A CLT usually takes the form of a not-for-profit place-based organisation which is open to membership and democratic participation by people who live and work in the local community.
- **Securing affordable housing and other community assets:** CLTs seek to remove land assets from market speculation and secure relative affordability through a resale formula that provides a limited return to individual sellers and recycles capital appreciation back into the CLT (hereafter called the **resale-reversion formula**). These can be documented through legal agreements, deeds, covenants and second mortgages.

The effective functioning of a CLT requires the ability to appropriately and perpetually allocate rights and responsibilities between the resident and the CLT.

CLTs often include income thresholds to ensure low income households are prioritised.

The core characteristics of the 'CLT classic' model are described in chapter 2 of the Australian Community Land Trust Manual,³ which is extracted in Appendix A.

² K Fitzgerald, [Staged Releases report](#), Prosper Australia, 2022

³ Crabtree et al, 2013, [The Australian Community Land Trust Manual](#), University of Western Sydney.

Demonstrated benefits

Research indicates that CLTs:

- **Deliver value for money:** whilst not all CLTs and community-led homes receive public investment of land or capital, those that do have been shown to deliver \$1.8 of benefit for ever \$1 invested, rising to \$2.7 when health, wellbeing and income distribution benefits are factored in, increasing to \$3.1 over 30 years.⁴
- **Have been built to high environmental standards:** CLTs embrace modern methods of construction to create the high quality homes that communities need. An independent review of CLT building plans estimated reductions in CO2 emissions between 15-50% and estimated savings in annual household energy costs of between \$260 and \$1300 when measured against a typical dwelling house.⁵
- **Are more resilient to downturns in the housing market:** the foreclosure rate for CLT homeowners in the United States was one-tenth the national average in 2010, and during the COVID-19 crisis, homeowners with market-based loans were over 8 times more likely to face delinquency and foreclosure than CLT homeowners. Several CLTs sought to bring homes into the CLT portfolio and keep struggling homeowners in their homes by curing delinquencies.⁶
- **Reduce planning risk by countering Nimbyism:** CLTs can often gain local support for new development where private developers fail.⁷

Development of CLTs in other jurisdictions

United States

The first CLT was created in 1970, but flourished in the 1990s thanks to a favourable policy environment and shared learnings amongst CLTs. CLTs are now a well-known delivery model for providing permanent affordable housing. There are over 260 CLTs in the United States,⁸ and the largest CLT, Champlain Housing Trust in Burlington Vermont, owns over 3,000 homes and over 12,000m² of commercial and community facilities.

⁴ Colquhoun, G, '[Housing by the community, for the community: an assessment of the value for money of community led housing in England](#)' (Sept 2020), Capital Economics, p 8

⁵ Report '[Leading to Net Zero: Evidence review of communities pioneering low carbon standards](#)', (Nov 2021), Community Land Trust Network.

⁶ Georgetown Climate Center, '[Community Land = Community Resilience: How Community Land Trusts Can Support Urban Affordable Housing and Climate Initiatives](#)' (Jan 2021), p 12

⁷ National CLT Network, '[State of the Sector 2020](#)', p 13.

⁸ Country Health and Roadmaps, '[Community Land Trusts](#)

United Kingdom

The CLT movement in the US served as an inspiration for a number of academics and housing and community development professionals in the early 2000s. The 2004 London Olympic Village became a catalyst for CLT development in its afterlife.⁹ The momentum continued from 2006 to 2008 with a National CLT Demonstration programme. This was led by Community Finance Solutions, with support from Carnegie UK Trust and Tudor Trust, to support a number of pilot projects.

In 2008 the Housing and Regeneration Act 2008 passed which included a national definition of CLTs (see Appendix B).

In 2010 the Community Land Trust Network (then called the National CLT Network) was established to support the growing CLT movement and advocate on behalf of CLTs.

In 2011, Community Finance Solutions published a Proof of Concept for CLTs,¹⁰ which concluded that the early pilot CLT projects had demonstrated that communities can work together to create viable organisations that build affordable housing.

The 12 years from 2008 saw a tenfold increase in the number of CLT homes and there are now over 500 CLTs across all parts of England and Wales. To date there are 548 CLT groups in England and Wales with 1,100 completed homes and a further 7,100 homes in the pipeline. 80% of homes in the development pipeline are planned to be for rent at below-market rates

The rapid growth of CLTs in the UK can be attributed to bipartisan support for CLTs and community-led housing.¹¹

The Community Land Trust Network is a peak body for CLTs that drives to remove barriers to CLTs becoming part of the mainstream housing mix, by:

- building the market infrastructure and capacity of the sector through enabler hubs
- working with industry bodies, including landowners, housing associations, developers, local authorities and financial institutions to support access to land and finance and promote best practice
- developing and advocating for public policy change.

⁹ E Howard, [Could Community Land Trusts offer a solution to the UK's housing crisis?](#), June 2014

¹⁰ Paterson, B, Dayson K, ['Proof of Concept - Community Land Trusts'](#) (Nov 2011) Community Finance Solutions, University of Salford.

¹¹ Parliamentary Library, UK House of Commons, [Research Briefing - Community Land Trusts](#), 2017

Enabling CLTs in Australia

Grounded believes that we can learn and build upon established precedents and adapt CLT and community-led housing models to the Australian context. Grounded is the first formalised CLT advocacy organisation in Australia and has received philanthropic seed funding to establish itself as an incubator and accelerator of CLT projects and policies. It has already attracted interest from impact investors keen to support suitable demonstration projects.

Australia's housing market currently presents little by way of options between social rental housing and market-rate ownership, except for some state-based government low income home ownership schemes operating in a number of the smaller state jurisdictions. There are few affordable housing schemes in Australia that provide the stability of owning or the potential for equity gains to the resident, while maintaining affordability over time.¹²

Leading Australian academics and practitioners have invested significant work into modelling the ways in which CLTs could be realised in the Australian legal context, identifying the constraining and enabling factors across legislation, tax policy and finance.¹³ The two viable options identified are modified shared equity schemes and long term leases. These are covered in Recommendations 2 and 3.

Current Australian CLT-like schemes

There are instances of CLT-like schemes operating in Australia that might be drawn on to develop applicable models.

One example is the **ACT Land Rent Scheme**, which is a form of public land trust.¹⁴ A special purpose vehicle leases land on behalf of the government to new homeowners, who then may build a house on the land. Buyers are required to pay annual rent for the land to the ACT Government, set at two per cent of the land value per annum.¹⁵ Stamp duties are also charged on the land rent lease grant.¹⁶ This scheme is underpinned by the ACT's 99-year leasehold system, as the ACT Government owns all land in the ACT.

This model allows residential ownership of the house: the resident has a long-term lease to the land, with a typical mortgage required to build the house. . Unlike a CLT however, there

¹² Crabtree et al, 2013, op cit. 3, p 26.

¹³ See Crabtree et al, 2013, op cit. 3, and Crabtree et al, 2019, *Enabling Community Land Trusts in Australia*, Arena Publications.

¹⁴ J Spicer et al, [Oranges are not the only fruit: The publicly owned variety of Community Land Trusts](#), Journal of Planning, Education and Research, 2022

¹⁵ Suburban Land Agency, [The ACT Land Rent model](#)

¹⁶ ACT Revenue Office, [Land rent scheme](#)

is no restriction on the resale of the leasehold, and the premises can be sold as a land rent block, or the purchaser can choose to buy the land under a fee simple contract. Some have criticised this model for allowing too much land rent to be capitalised by first movers.¹⁷

A CLT could obviously emulate this model with tighter means-testing and restrictions on resale of leaseholds written into the lease.

To test and develop this model in Queensland, the Government could either establish their own public land trust model or lease government-owned land to a not-for-profit CLT (or a community housing provider as auspisor or partner). This entity would be responsible for developing the land. Amendments to the Residential Tenancies and Rooming Accommodation Act would be required to facilitate the making of modifications and improvements, responsibility for payment of certain fees and charges and to account for accrual of equity by individual CLT tenants.

Another example is the various **shared equity schemes** governments run to assist people into home ownership. However, Australian governments have yet to apply any form of resale restrictions to their shared equity schemes as normal practice, apart from requiring the equity to be sold back to Government. Without a resale formula, such a model allows for housing accessibility, but the benefits are lost upon sale.

A CLT could also adopt this model, with an accompanying agreement limiting the resale value of the resident's equity portion. Crabtree et al identify this as one of the preferred options for development of CLTs in Australia.

There are also two legal mechanisms to enact the reversionary resale mechanism that have already been developed and tested in the UK. CLTs generally fix the resale value as a percentage of the open market value. Alternative formulas can include a fixed percentage increase, or indexation to the Consumer Price Index, Wage Price Index or Area Median Income, or a combination of these indices and market value. The reversionary resale formula can be achieved in one of two ways:

1. transfer of part of registered title to the householder with an agreement to resell back to the CLT at an agreed percentage of market value written into a Deed.
2. freehold sale with a resale covenant, which ensures that the disposal requirements cannot be breached, plus the added assurance of a pre-emption agreement which gives the CLT a 'first refusal' to reacquire or nominate a purchaser for a dwelling when it is sold.

Covenants are further discussed under Part C, Recommendation 3.

¹⁷ S Anderson, [Land Rent scheme barriers hit needy](#), Canberra Times, April 18, 2018.

Part C Recommendations

The review of the Property Law Act presents an opportunity to consider how our property laws could enable CLTs to provide further housing competition.

Recommendation 1: A Statutory Definition of CLTs

A statutory definition is important to enable the legitimacy of CLTs. Both the US and UK have included statutory definitions for this form of property ownership.¹⁸

These definitions are extracted in Appendix B.

A definition following the UK model is preferred as it is less prescriptive and will enable flexibility and innovation in community land trusts. It also reflects the Torrens system of land, where, unlike in the US, land and fixtures cannot be separately leased or conveyed.

We recommend a definition that recognises community land trusts as a body corporate which fulfils the following conditions:

- the body corporate allows individuals who live or work in the local community to have the opportunity to become members of the body (whether or not others can also become members) and is controlled by its members;
- the objects of the body corporate include as a primary purpose, the ownership of land and other assets in order to preserve perpetual affordability and other benefits to the local community;
- the body corporate ensures that assets are not sold or developed except in a manner which the body corporate's members think benefits the local community;
- is established as a not-for-profit or otherwise ensures that any profits from its activities will be used to benefit the local community (other than by being paid directly to members); and
- has in its objects the requirement to expand the base for affordable housing.

Recommendation 2: Amend section 68 to permit the registration of covenants for public interest purposes

We recommend that amendments to section 68 of the PLA are considered to allow restrictive covenants to be registered for specific purposes:

¹⁸ Crabtree et al, 2013, op cit. 3.

- to preserve affordability of real property benefiting a CLT (as defined in the PLA), or a registered community housing provider (as defined in the Housing Act 2003), for example through a resale-reversion formula
- to preserve community assets and land use values of real property, for example, to protect agricultural land

CLTs in the UK use covenants in the following way. The CLT acquires the fee simple title and by means of a covenant, restricts the sale price of the fee simple title. The CLT then transfers that fee simple title to the resident for as long as lease conditions are met. The covenant is said to prevent that resident from selling the fee simple title at a later time for a price greater than that specified in the covenant.

Allowing a covenant which can be registered on title would be a preferred option: it has stronger legal standing than a Deed, and does not rely on the CLT retaining a legal interest in the land as co-owner. If the CLT organisation is altered or wound up, the rights attaching to the covenant could be transferred to another CLT or community housing provider, or even the Department of Housing to preserve affordability.

Recommendation 3: Introduce a new Division to Part 9 of the bill to enable CLT leasehold

Crabtree et al recommended long-term leasehold as a second mechanism to deliver CLT housing options in Australia. The authors describe the long-term CLT lease model as follows:

Where a long term lease (usually 99 years) is used for a CLT, the CLT is registered owner of the premises (house and land) and grants a long term lease to an eligible Resident who will become the CLT lessee. The Resident pays a Premium (lump sum) for the grant of the lease and is the owner of the lease which gives the Resident rights to use the land and house and any fixtures on the land for a specified period of time – the term of the lease. The long term lease would be registered under the land titles legislation.¹⁹

Currently leases granting a right to occupy residential premises are regulated under the Residential Tenancies and Rooming Accommodation Act; leases in retail shopping centres by the Retail Shop Leases Act 1994. All other leases are governed by the common law, but subject to the provisions of Part 8 of the Property Law Act.

The focus of residential tenancies legislation is to provide a range of consumer protections to tenants in residential housing, generally under short, fixed-term leases of 6 or 12

¹⁹ Crabtree et al, 2013, p 64.

months. They are ill-suited to the types of rights and obligations of tenants in a CLT, which include the right to accrue equity, responsibility to contribute to rates, body corporate fees and other costs, right to transfer the leasehold interest to family members and to beneficiaries under a will. Crabtree et al considered that a residential tenancies lease was not appropriate for use by a CLT if the CLT aims to offer the core features of home ownership.²⁰

We recommend introducing a new division to Part 9 of the Property Law Bill which include provisions for the following features of CLT leasehold:

- allowing the imposition of such duties as duties to repair, pay rates, etc. (positive covenants);
- binding subsequent owners of the freehold and subsequent tenants under the lease (covenants run with the land);
- retaining the housing stock within the CLT whilst providing affordable housing;
- providing a Resident lessee with a sense of ownership, with the ability to improve the property;
- compensating a Resident lessee for improvements at the end of the lease or on its earlier surrender;
- imposing conditions relating to eligibility, resale, transmission to beneficiaries;
- allowing the removal of (or payment of value for) fixtures erected or improved by the Resident;
- making provision for surrender and re-grant where the Resident wishes to leave the unexpired portion of the lease to family under a will; and,
- making provision for subleasing or transfer of the remaining period under a lease.

Part D Other reforms

This section touches on reforms to other laws, regulations and policies which would reduce the barriers to the development of CLTs in Australia. Understandably these would need to be considered separately, either through scheduled reviews of associated legislation, or, preferably, through a new amending act for affordable community led housing, which could advance a holistic reform package.

- Reform to planning laws to allow multiple occupancies - New South Wales planning regulations facilitate multiple occupancies
- Reforms to residential tenancies legislation to allow long-term leases and accrual of shared equity by tenants in CLTs operating on a rental model

²⁰ *Ibid*, p 66.

We would be pleased to provide further information and submissions on these associated reforms as part of this consultation, or to government more generally.

Appendices

Appendix A

Extract from the Australian Community Land Trust Manual, vol 1

2.1 What are Community Land Trusts?

A community land trust (CLT) is an organisation that provides ongoing affordable housing and other community benefits, usually set up as a private non-profit community organisation. That definition places CLTs in the broader family of community housing providers. What makes them unique is their focus on community involvement in or ownership of the organisation, and their focus on balancing the rights of the household with the rights of the broader community or society. This is often referred to as unpacking the bundle of rights that are tied up in housing tenure; in doing so, CLTs aim to ensure that neither the household nor wider society benefits at the expense of the other. CLTs provide a range of affordable housing that includes resale-restricted home ownership, rental housing and housing cooperatives, as well as other commercial and/or community spaces. In the US, CLTs refer to themselves as “the developers who don’t go away” – meaning they not only provide the housing, but also stand by their residents, helping people remain in their homes despite changes in their life.

CLTs are specifically designed to achieve these benefits under legal, financing, pricing and regulatory arrangements that improve affordability for residents, while also protecting the long-term affordability of the housing that is held for future generations. Those CLTs that provide home ownership provide an affordable ownership model for people who are unable to afford conventional home ownership.

In the “classic” CLT model in the US, the CLT achieves this as home owners buy the dwelling only (bricks and mortar) but not the underlying land, which is held by the CLT. Dwelling prices are controlled from excessive capital gain or rent levels through affordability formulas set by each CLT and contained in a ground lease that conveys full land usage rights to the home owner. When the owner sells their home, the resale price is limited, delivering modest equity gains to the seller while locking in the benefit of subsidies or donations to the CLTs for the next buyer.

While the Classic is perhaps the most well known version of CLTs, the US and UK sectors show great diversity due to the flexibility of the model. While most CLTs in the US separate land ownership from ownership of the home, there are jurisdictions in which that is not legally possible. In those instances, CLTs do not convey the ownership of the house but either keep it all as one leasehold or utilise modified shared equity models. In the UK the land-building separation is not legally possible. CLTs in the UK mainly use shared equity or

freehold sale with covenants but do not always maintain the same house in CLT ownership over the long term. Likewise in Australia, the land-building separation is not possible (see Chapter 4), so long-term leasehold (ideally, 99-years) and shared equity of the entire house and land are the two main options.

CLTs range in size, can be rural or urban, and provide a variety of housing types from boarding houses, through apartments, to single-household housing, as well as community or commercial facilities, including workspaces, energy generation, community food spaces, farming and others, according to local need and aspiration. A CLT can provide a range of tenure types, from rental, through cooperative models, to resale-restricted home ownership.

A CLT's stock does not have to all be on one parcel of land – most service a core area within a city or town, while some span a region. Nearly all tend to salt and pepper their housing and other developments throughout their service area. CLTs take a variety of legal forms, although in Australia, a Company Limited by Guarantee or a Trading Co-operative appear the most appropriate forms (see Chapter 5). Many CLTs overseas seek charitable status and the equivalent of Deductible Gift Recipient status, as their prime purpose is to provide affordable housing options for a benevolent purpose. This allows tax concessions and for donors and sponsors to a CLT to receive a tax deduction, but might place constraints on CLT activities (see Chapter 6).

CLTs have widespread potential in Australia to: address affordable housing concerns (especially affordable home ownership concerns); increase the range of housing tenure options available; foster community development and social capital; and, maintain a stock of perpetually affordable housing. Various models of CLTs have succeeded overseas, especially flourishing in the United States of America (US) where there are over 245 CLTs currently in operation. These provide affordable rental housing, cooperative housing and resale-restricted home ownership. More recently, CLTs have been growing in the UK and most recently, are under development in Australia.

Appendix B

Statutory definitions of CLTs from other jurisdictions

United States

Source: Housing and Community Development Act 1992 as amended by the “Cranston-Gonzales” National Affordable Housing Act 42 USC 12773

Section 233 of the Cranston-Gonzales National Affordable Housing Act (42 U.S.C 12773) is amended –

(1) in subsection (a)(2) by inserting “community land trusts” after “organizations”;

(2) in subsection (b), by adding at the end the following:

(6) COMMUNITY LAND TRUSTS. Organizational support, technical assistance, education, training, and community support under this subsection may be available to community land trusts (as such term is defined in subsection (f) and to community groups for the establishment of community land trusts”; and

(3) by adding at the end of the following: (f) DEFINITION OF COMMUNITY LAND TRUST. For the purposes of this section, the term “community land trust” means a community housing development organization (except that the requirements under subparagraphs (C) and (D) of section 104(6) shall not apply for the purposes of this subsection)—

(1) that is not sponsored by a for-profit organization

(2) that is established to carry out the activities under paragraph (3)

(3) that—

(A) acquires parcels of land, held in perpetuity, primarily for conveyance under long-term ground leases;

(B) transfers ownership of any structural improvements located on such leased parcels to the lessees; and

(C) retains a pre-emptive option to purchase any such structural improvement at a price determined by formula that is designed to ensure that the improvement remains affordable to low- and moderate income families in perpetuity;

(4) whose corporate membership that is open to any adult resident of a particular geographic area specified in the bylaws of the organization; and

(5) whose board of directors---

(A) includes a majority of members who are elected by the corporate membership; and

(B) is comprised of equal numbers of (i) lessees pursuant to paragraph (3)(B), (ii) corporate members who are not lessees, and (iii) any other category of persons described in the bylaws of the organization."

United Kingdom

The following is the definition of a Community Land Trust, as found in the *Housing and Regeneration Act 2008*:

59 Purpose

The purpose of this Part is to regulate the provision of social housing (as defined in sections 68 to 77) (below market rate rental and ownership) by English bodies (as defined in section 79).

79 English bodies

a) In this Part "English body" means—

(a) registered charity whose address for the purposes of registration by the Charity Commission is in England,

(b) an industrial and provident society whose registered office for the purposes of the Industrial and Provident Societies Act 1965 (c. 12) is in England,

(c) a registered company which has its registered office in England,

(d) a community land trust which owns land in England, and

(e) any other person (whether or not a body corporate registered under the law of the United Kingdom) which—

(i) is not a Welsh body within the meaning of section 1A of the Housing Act 1996 (c. 52), and

(ii) makes available, or intends to make available, accommodation in England.

b) In subsection (1)(d) "community land trust" means a body corporate which satisfies the conditions below.

c) In those conditions "local community" means the individuals who live or work, or want to live or work, in a specified area.

d) Condition 1 is that the body is established for the express purpose of furthering the social, economic and environmental interests of a local community by acquiring and managing land and other assets in order—

(a) to provide a benefit to the local community, and

(b) to ensure that the assets are not sold or developed except in a manner which the trust's members think benefits the local community.

e) Condition 2 is that the body is established under arrangements which are expressly designed to ensure that—

(a) any profits from its activities will be used to benefit the local community (otherwise than by being paid directly to members),

(b) individuals who live or work in the specified area have the opportunity to become members of the trust (whether or not others can also become members), and

(c) the members of the trust control it.