

The Hastings and St Leonards Foreshore Charitable Trust

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About the trust

Known locally as the Foreshore Trust, this is a charity registered at the Charity Commission under number 1105649. Hastings Borough Council is the trustee of the charity for all purposes and bound by charity law in the same way as any other charity trustee. When making decisions relating to or affecting the Charity, it must act in its best interests.

History of the trust

1588 onwards

Although the Charter of Elizabeth I in 1588 bestowed corporation status on Hastings and also gifted its stone beach to the newly incorporated town, it did not include a plan.

The relationship with the Crown was not always so cordial, however, and in the late 19th century, the Crown sued Hastings Corporation in the High Court in relation to the Foreshore i.e. the area of the beach between high and low water which generally belongs to the Crown.

The High Court litigation was settled and on 8 September 1893 the Crown sold the Foreshore between Rock-a-Nore and Grosvenor Gardens to Hastings Corporation for the sum of £400. However, unlike the Charter, the conveyance of the Foreshore to Hastings Corporation was on trust to hold the land for the “common use, benefit and enjoyment of Her Majesty’s subjects and the public generally for ever”. The conveyance was also subject to certain restrictive covenants which were released some time later.

Later in 1925, 1933 and 1934 the Crown sold further areas to Hastings Corporation on the same charitable trusts so that it held the whole of the Foreshore between the town’s eastern and western boundaries.

Hastings Corporation and its successors Hastings County Borough Council and, today, Hastings Borough Council held and continue to hold the land on those charitable trusts.

In 1987 Hastings Borough Council promoted a bill which became the Hastings Borough Council Act 1988. The Act had a number of provisions affecting Hastings, some of which related to the Foreshore. The effect of the Act was to vary the original charitable trusts so certain areas of the Foreshore could be used

for car parking and other purposes, including leisure. The Act empowered the Council to charge for services provided and to permit others to provide services at a charge. The car parks at Rock a Nore and Pelham are operated under the 1988 Act as was the former car and coach and lorry park at the Stade. The Act also enabled the development of the Stade amusements, boating lake, crazy golf and so on.

2004 onwards

Between 2002 and 2004 Hastings Borough Council was considering regeneration of the Foreshore at the Stade and at Pelham. The proposals raised questions about what sort of development could take place on the Foreshore. These were not just questions of planning control but went to the fundamental basis on which the Council was holding the land i.e. on charitable trusts.

Legal advice was taken at this time as well as from the Charity Commission. It became evident in the course of this advice that the Council had been acting unlawfully for some years in the way it was dealing with income received from the charity's land, in that it was not keeping this income separate from the Council's common fund and keeping Charities Statement of Recommended Practice (SORP) compliant accounts. The separate fund should have been held in a separate bank account. The charity should also have been registered as a charity with the Charity Commission, and subject to the system of annual reporting.

The result was that the Council's Borough Solicitor and Monitoring Officer took a report to Council in July 2004 drawing the Council's attention to the illegalities, in accordance with the statutory duty which requires the Monitoring Officer to report any past, present or proposed illegality to the Council.

Immediate action was taken to attempt to right the wrongs and this commenced with registration of the charity as Hastings and St Leonards Foreshore Charitable Trust in August 2004. In addition Council officers met with the Charity Commission to identify the way forward.

A major concern for the Charity Commission was the conflict of interest the Council experienced as charitable trustee, where its duty was to act in the best interests of the charity, and as local authority with economic development powers seeking to maximize economic benefit to its area.

Legal advice received suggested that the problem of conflict of interest could be overcome by the appointment of independent managing trustees. This was discussed with the Charity Commission and they consulted on a draft scheme providing for the appointment of 4 independent trustees and 2 Council nominated trustees.

Before final approval of the Scheme in March 2006, the Council identified 4 suitably experienced and qualified individuals who might be appointed to the positions of independent trustees under the Scheme. Pending approval of the Scheme, the Council consulted with the 4 trustees “in waiting” on proposals affecting the charity.

2006 onwards

The 2006 Scheme appointed the four independent trustees and two Council nominated trustees and the Council as custodian trustee. As custodian trustee the Council held the land but all management decisions made in relation to the land, including any disposal, were the responsibility of the trustees appointed under the Scheme.

From the start, the Trustees realised the scale of the task they had taken on and that the Council was already equipped and staffed to administer the trust estate as it had been for many years. So while the Trustees made all decisions in relation to how the foreshore was used, it was the Council that was engaged in the day to day running and maintenance of the busy foreshore.

In late 2006 the Trustees made a claim against the Council for breach of trust and held the Council to account for monies due to the Charity. This claim was settled finally in February 2008 with the approval of the Charity Commission with a payment to the Trustees of £1.35 million plus interest. It had been intended to rationalise the boundaries of the Charity’s land by transfers of land held by the Council to the Trust and this would reduce the cash payment to the Trust.

However, this did not happen as in 2008 the Trustees mounted a second claim against the Council, this time for land and back income from the land. This claim was settled. Part of the proposed settlement provides that the re-drawn boundaries of the Trust estate are to form the basis of a new registered title at the Land Registry. That application for registration is currently being considered by the Land Registry and once completed the plan showing the boundaries of the Trust estate will be displayed on this webpage.

2011 onwards

From an early stage the Foreshore Trustees came to a conclusion, following advice from their financial advisors, that it was more beneficial to the Charity for it to be managed by the Council, as sole trustee, rather than by independent trustees. This included the economies of scale the Council could achieve which the Trustees could not. They, therefore, approached the Charity Commission requesting a Scheme to return the trusteeship to the Council.

In late 2009 the Charity Commission published such a Scheme proposing that the trusteeship be returned to the Council and seeking public responses to the proposal. The Commission draft Scheme provided for a Protector, a qualified accountant, to act as watchdog and whistle blower on any matters where the Council, as trustee, might be seen to be acting in the interests of the Council rather than in the best interests of the charity. Another valuable aspect of the Scheme was to broaden the powers of the Trustee to distribute any surpluses, after expenditure on and maintenance of the trust estate, for any charitable purpose within the Borough.

As a result of the public responses to consultation on the draft Scheme, the Commission, following further consultation with the Foreshore Trustees and the Council, decided to make an amended Scheme. The Scheme was made on 13 January 2011.

The main provisions of the amended Scheme were:-

- Hastings Borough Council as trustee for all purposes (unchanged from consultation draft)
- additional object of charitable purposes within the Borough (unchanged except that the Scheme emphasises that the costs of maintenance and repair of the Foreshore is to be the first charge on the income of the Charity)
- the position of Protector (unchanged)
- the requirement for consultation with a Coastal Advisory Group on matters and policies affecting the maintenance, use and disposal of the Foreshore (new). The Trustee is required to have regard to the recommendations of the Group. This was introduced to meet concerns that there would be insufficient external input to Trustee decisions. The Scheme provides that the existing Coastal Users' Group should fulfill this role. The Group has its own constitution and has a wide membership.
- the requirement for a Grants Advisory Panel (new). Again this was a response from the Commission to public response to consultation. The Grants Advisory Panel is a group of 4 – 6 members who are appointed on the basis of their knowledge and experience of the voluntary and charitable sector and in particular their knowledge of the voluntary and charitable sector in the area of the Borough of Hastings. The Trustee is required to consult with the Panel in relation to the criteria and process for grant making as well as to individual grant applications and to have regard to the views of the Panel when reaching its decisions.
- Annual Public Meeting (unchanged). The Scheme requires an annual public meeting to be held within 6 months of the end of the Charity's financial year ie by 30 September in each year. Not less than 28 days notice in a newspaper circulating in the area must be given which must also state the business to be transacted. One item of business which

must be considered is the Annual Report of the Trustees and Accounts for the year, which have to be filed at the Charity Commission. The Trustee has to make a summary of the Trustees' governance arrangements and conflicts of interest policy available at the meeting.

How the Council operates as sole charitable trustee

Under the 2011 Scheme the Council is the sole trustee of the Charity. The Council adopted executive governance arrangements of Leader and Cabinet in 2002. Under these arrangements the function of the administration of charities falls to Cabinet.

One of the concerns for the Charity Commission in 2006 and again when considering the draft Scheme to return the trusteeship to the Council was how the Council would manage conflict of interest between the Charity and the Council.

The Council has learned from past mistakes and it has the benefit of detailed Guidance on Governance prepared by the Independent Trustees' advisors. A full copy of this can be seen at – [provide link to Governance Guidance](#).

Councillors are accustomed to dealing with wearing two hats and managing conflicts of interest and the Council's operating procedures are designed to ensure, so far as is reasonably practicable, that the position of the Charity is not harmed by conflict of interest with that of the Council itself.

Cabinet has decided, therefore, to delegate its decision-making powers on the Foreshore Trust to a committee, the Charity Committee. Whilst the law requires that only executive (Cabinet) members can sit on a committee of the Cabinet, Cabinet has sought ways to protect the Charity from any conflict of interest arising and to ensure transparency:-

1. For this purpose it has agreed, and this is included in the Constitution, that its intention is that the Charity Committee will make all member decisions relating to the Charity, including delegation to officers. Council officers/staff are responsible for the day to day running of the Foreshore under the direction of the Charity Committee eg decisions on requests for events on the Foreshore are made by officers within the criteria agreed by Charity Committee.
2. The Committee has four programmed public meetings in the year, including the Annual Meeting, and the Chair can convene additional meetings if required or cancel meetings if there is no business. At the Annual Meeting, of which 28 days' notice has to be given in a local

newspaper, the Committee will consider the Trustees' annual report and audited accounts for submission to the Charity Commission.

3. The Committee consists of 3 executive councillors either without portfolio responsibility or with a portfolio responsibility that is unlikely to give rise to conflict. The current members are Councillors Paul Barlow (<http://www.hastings.gov.uk/wards/castle.aspx#barlow>) , Jay Kramer (<http://www.hastings.gov.uk/wards/tressell.aspx#kramer>) and Robert Cooke (<http://www.hastings.gov.uk/wards/ashdown.aspx#cooke>) . Councillor Paul Barlow is the Chair of the Committee.
4. The Committee meets in public and is subject to the usual rules on access to information so that 5 clear days' notice is given of meetings and publication of the agenda and reports from officers. The Committee has the benefit of a wide range of advice from Council officers including financial, legal, marketing and human resource advice and services.
5. Matters coming forward for decision at Charity Commission are included in the Forward Plan (http://www.hastings.gov.uk/key_decisions/default.aspx) , so that the public are able to see what is coming up and raise questions with the Council or the Protector.
6. The Committee consults with the Coastal Users' Group on matters affecting the Foreshore. The Scheme provides that the Trustee consults with the Group on the following:-
 - (1) The standards or specifications for the maintenance of the charity's land
 - (2) The charity's policy relating to the activities and events arranged or permitted on the charity's land; and the arrangement or permitting of any activity or event on the charity's land which is outside the charity's policy.
 - (3) The charity's policy relating to the exercise of any power under the Hastings Borough Council Act 1988 or otherwise to manage, let sell or otherwise dispose of the charity's property.
 - (4) The exercise, other than in accordance with its established policies, of any power under the Hastings Borough Council Act 1988 or otherwise to manage, let sell or otherwise dispose of the charity's property.
7. For example, if the Committee is to consider tendering a contract for street cleaning, it will consult the Group on the proposed specification. The Committee itself makes the decision on the tender and on the award of contract in due course, ensuring that the award is in the best interests of the Charity. Generally, it will be in the interests of the Charity that the Foreshore requirements are tendered along with the Council requirements for services, as there will be economies of scale which will benefit the

Charity. However, it may be that one tender is better for the Charity and another is better for the Council. In these circumstances, it is for the Charity Committee to decide on which is better for the Charity. In reaching its decision it is to have regard to the recommendations of the Coastal Users' Group.

8. The Group also acts as a conduit to the Council, as Trustee, for issues arising on the Foreshore. Some matters will be referred to the Committee but many will be resolved by officers after discussion in the Group. The Resort Services Manager attends meetings of the Group and is the first point of contact in the Council on matters affecting the Foreshore.
9. The 2011 Scheme widened the Trustee's powers to enable the distribution of surplus income, after any capital works and maintenance required on the Foreshore, for any charitable purposes within the Borough. When there are surpluses the Committee will decide upon how the money is to be distributed. When reaching this decision, the Charity Committee will have regard to the recommendations of the Grant Advisory Panel. Consultation and recommendation extends to all of the following:-
 - (a) the criteria for making grants which the trustee adopts from time to time;
 - (b) the content and format of grant application forms;
 - (c) the advertisement of availability of assistance by way of grant from the charity;
 - (d) individual applications for grants and proposals of the trustee for making grants
10. The current membership of the Grants Advisory Panel will be published here when agreed.
11. The agreed criteria for grant making is currently being decided upon.
12. Members of the Charity Committee are governed by the Code of Conduct in the same way as other members of the Council and they are bound not to take part in decision-making where they have a Code of Conduct prejudicial interest. There is special provision in the Code for the members of Charity Committee when they are sitting as members of Cabinet. They are not able to take part in a decision where the matter, which is financial in nature, relates to or affects the Charity to such an

extent that a member of the public would reasonably conclude that the member's judgment of the public interest was likely to be prejudiced. The Code of Conduct also protects against decisions in breach of trust by Cabinet, any such a decision being one which would bring the office of councillor or executive councilor into disrepute in breach of the Code.

13. The Code of Conduct governs all councillors, but the members of the Charity Committee have particular considerations and they have adopted their own Conflicts of Interest Policy.
14. The Council's Monitoring Officer advises the Charity Committee and is mindful of the Monitoring Officer's duty in relation to actual or proposed illegality such as breach of trust by the Council as trustee. The Monitoring Officer provides a further check on the way the Council conducts the business of the Charity. The Code of Conduct adds weight to the authority of the Monitoring Officer by providing that councillors have a duty to have regard to the advice of the Monitoring Officer when exercising his/her statutory function.
15. The 2011 Charity Scheme provides for the appointment of a Protector to the Charity. Essentially, the Protector who is a chartered accountant acts as whistleblower and watchdog against the Council acting in breach of trust and to guard against situations where a conflict of interest is not being managed properly. As a chartered accountant he is equipped to scrutinize the Council's charity accounts. The Protector can report matters of serious concern to the Charity Commission itself.
16. The Council keeps the Protector informed on matters coming forward for decision so that he can form a view of whether there are any issues of concern. He can attend the Charity Committee and address the Committee at ordinary meetings and at the Annual Meeting.

How can a member of the public raise a concern or seek to influence the operation of the Charity?

Much of what has gone before is designed to protect the Charity from breach of trust. However, whilst these occasions can occur and there have to be mechanisms to identify and deal with them, generally there is no difficulty and the interests of the beneficiaries of the Charity and the local resident are very similar if not identical. The Council is committed to providing a good quality service to the public and has done this for many years.

Who to contact

On day to day matters or general enquiries you should contact Nick Sangster, Resort Services Manager, tel. 01424 451138 or e-mail nsangster@hastings.gov.uk.

If you have concerns regarding how the Charity is being operated you should contact the Borough Solicitor and Monitoring Officer in the first instance. The Borough Solicitor may be able to allay your concerns or investigate your concerns further and raise them with the appropriate officer/s and/or councillors. Contact Jayne Butters, Borough Solicitor and Monitoring Officer, tel. 01424 451733 or e-mail jbutters@hastings.gov.uk.

If you want the Committee to do something or agree a course of action you can use the existing facilities under the Council's Constitution (<http://www.hastings.gov.uk/constitution/default.aspx>):-

- the petition system (<http://www.hastings.gov.uk/consultation/petitions.aspx>). A petition signed by 10 people who live, work or study in the town means your spokesperson could address the Charity Committee for 5 minutes on a matter affecting the Charity.
- the motion system can be used by your councillor (<http://www.hastings.gov.uk/representation/councillors.aspx#members>) to bring an issue to the attention of the Committee.
- At Full Council, you can submit a written question to the Chair of Charity Committee relating to the Charity and ask a supplementary question or a councillor might be able to ask a question in oral question time for you.

As the Trustee is a local authority it is bound by the Freedom of Information Act 2000 (<http://www.hastings.gov.uk/foi/default.aspx>) and you can request information held by the Council concerning the Charity.

If you have a complaint regarding an individual councillor which might amount to a breach of the Code of Conduct, then you should contact the Borough Solicitor and Monitoring Officer who, if the matter cannot be resolved simply, will take your complaint to the Assessment Sub-Committee of the Standards Committee (http://www.hastings.gov.uk/council_structure/standards.aspx).

The Charity has its own public liability insurance and if you suffer an accident which you consider to be due to the fault of the Charity you should address your claim to the Head of Financial Services (Foreshore Trust Insurance) Christopher Harrison, Corporate Accountant tel. 01424 451514 or e-mail charrison@hastings.gov.uk.

