

Agenda Item No:

Report to: Charity Committee

Date of Meeting: 25 January 2011

Report Title: HASTINGS AND ST LEONARDS FORESHORE CHARITABLE TRUST - CHARITY COMMISSION SCHEME 2011

Report By: Jayne Butters
Borough Solicitor

Purpose of Report

To advise the Charity Committee of the making of the Charity Commission Scheme (the Scheme) on 13 January 2011 and of the provisions of the Scheme and recommending to the Committee the adoption of certain documents required under the Scheme.

Recommendation(s)

1. That Charity Committee:-

1. welcomes the Scheme making the Council trustee for all purposes and extends its gratitude to the retiring Foreshore Trustees for their resolute commitment to the charity from their appointment in March 2006 to their retirement earlier this month;
2. notes and commits itself to the provisions of the Scheme including the original trusts of the conveyance of 8 September 1893;
3. notes and adopts the Governance Guidance to the Trustee and the Guidance to the Protector;
4. adopts and commits itself to the provisions of the Summary of Governance Arrangements;
5. adopts and commits itself to the provisions of the Conflicts of Interest Policy;
6. agrees the Constitution and membership of the Coastal Users' Group as the Coastal Advisory Group under the Scheme;
7. agrees the Constitution of the Grant Advisory Panel and instructs the Borough Solicitor to proceed with the recruitment of members of the Panel as set out in the report;

Reasons for Recommendations

The making of the Scheme achieves a long-held objective of the Council, that it should again be the Trustee of the Charity for all purposes. The Scheme sets out certain requirements for the future management of the Charity and it is necessary for the Committee to adopt all of the documents set out in the appendices to the report and named in the recommendations, in order to ensure the transparency, public accountability and probity required by the Scheme.

BACKGROUND

1. The history of the Hastings and St Leonards Foreshore Charitable Trust, which was registered as a charity in August 2004, is well known to members of the Council. For those less familiar with the history, the proposed webpage discussed elsewhere on this agenda sets this out in summary.
2. It has been the Council's wish, since the 2006 Scheme which appointed independent trustees, that the Trusteeship would in due course again rest with the Council. This was a reflection of the strongly held view that the Council was in the best position to act as Trustee of the Charity. However, before that could come about there had to be an account given by the Council for failure to treat the Charity's income and expenditure as separate from that of the Council and to define the boundaries of the Charity's land holding.
3. It is more than a year since the Charity Commission's consultation on the draft scheme concluded and this interlude reflects the Commission's concerns that the issues raised in the consultation should be addressed through the Scheme and that all outstanding issues between the Foreshore Trust and the Council should be resolved.
4. The Scheme was finally made on 13 January 2011.

The 2011 Scheme

5. The full Scheme is set out in Appendix A.
6. The main provisions of the Scheme are:-

The Objects of the Charity

The objects of the Charity are to hold and maintain the Charity's land for the common use, benefit and enjoyment of all Her Majesty's subjects and the public for the time being for ever; and, subject to that, such charitable purposes within the area of the Borough of Hastings as the Trustee thinks fit. The extension of the objects to include charitable purposes within the Borough is new under the Scheme.

The Trustee

The Council is the Trustee for all purposes of the Charity.

Coastal Advisory Group.

The Trustee must consult the Coastal Advisory Group on and have regard to the recommendations of the Group on the following matters:-

- a. standards or specifications for the maintenance of the Charity's land;
- b. its policy for events and activities permitted on the Charity's land and on any events or activities proposed outside of that policy.
- c. 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.
- d. any proposal outside policies established under c.

The Commission has stipulated that the Coastal Users' Group shall be the first Coastal Advisory Group.

Grant Advisory Panel.

The Trustee must appoint a Grant Advisory Panel of 4 – 8 members on the basis of their knowledge and experience of the voluntary and charitable sector and in particular of those sectors in the Borough of Hastings. The Panel must consider and make recommendations in respect of:

- a. grant- making criteria adopted by the Trustee from time to time;
- b. the content and format of grant application forms;
- c. the advertisement of availability of grants from the Charity;
- d. individual applications for grants and Trustee proposals for making grants.

The Trustee is to have regard to the recommendations of the Panel when making decisions on a-d above.

Annual Public Meeting

The Trustee is required to hold this meeting within 6 months of the end of the Charity's financial year ie by 30 September and the main purpose of the meeting is to present the Trustee annual report and accounts for the previous financial year. The Scheme provides for the notice to be given and that the summary of governance arrangements and conflicts of interest policy are to be available at the meeting.

Minutes of meetings are to be kept and approved, including reasons for decisions where appropriate. This is an existing statutory requirement for a committee of Cabinet.

Accounts, Annual Report and Annual Return

The Scheme makes express reference to the statutory duty of the Trustee under the Charities Act 1993 to keep accounting records, prepare annual statements of account audited by independent auditors, sending the annual statement of accounts and the annual report to the Charity Commission.

Bank Account

The Trustee must operate a bank/building society account in the name of the Charity to hold the Charity's funds.

Charity Land

The Trustee must use its best endeavours to register the charity's land with the Land Registry, and once registered, the Trustee must publish in a reasonably accessible way such detail as to enable the public to identify it.

Joint application with the Foreshore Trustees has been made to the Land Registry for registration of the Charity's land as a separate title.

Use of income and capital

The Scheme requires that income and, if the Trustee thinks fit, its expendable endowment and, if appropriate, its permanent endowment, in meeting the proper costs of administering the charity and of managing its assets including repair and insurance of land and buildings. After meeting these costs, the Trustee must apply remaining income in furthering the objects of the Charity.

This makes clear that the first priority for the Trustee is meeting the cost of administration and maintenance and repair of the Trust estate, before it can consider further distribution of income under the new object. This does not mean that all income is to be distributed since the Trustee has a responsibility to maintain reasonable reserves.

The Protector

The Trustee must appoint a protector whose fiduciary duty will be to ensure the integrity of the administration of the charity, and who must report to the Commission any matter which he/she has reasonable cause to believe is likely to be relevant for the purposes of the exercise by the Commission of any of its functions. The Protector has to prepare a statement of his/her activities and findings for publication in the Trustee Annual Report. Clause 13 of the Scheme sets out the qualifications for and term of office and remuneration of the position as protector. Part 2 of the Schedule to the Scheme sets out the Protector's powers and entitlements, namely the right to sufficient notice and accompanying papers relating to meetings of the Trustee and the Annual Public Meeting; the right to attend and speak at such meetings and to table items for discussion but not vote; the right to call for information from the Trustee; and to seek professional or other advice to enable the Protector to carry out his or her duties. It is the Trustee's intention that the Protector will, where reasonably practicable, consult the Protector in advance of the publication of reports for Charity Committee so that his comments can be included in the covering officer report. This does not prevent the Protector from addressing the meeting where his comments are already included but does obviate unnecessary attendance at meetings where the Protector has no concerns or particular comment that he would want to address in person. Questions relating to the Scheme. This is a general provision that the Charity Commission may decide any question put to it concerning the interpretation of the Scheme and the propriety or validity of anything done or intended to be done under it.

Documents and matters for adoption by the Committee on behalf of the Council as Trustee

Governance Guidance and Guidance to the Protector

7. One of the conditions of the Foreshore Trustees' approach to the Charity Commission to pass the trusteeship back to the Council was the adoption by the Council of certain guidance on the duties and responsibilities of being a trustee which had been prepared by the Trustees' legal advisors. Further guidance was drafted regarding the powers of the Protector.

These documents were published with the draft Scheme when the Commission undertook their public consultation.

The Guidance documents, in particular the Governance Guidance, give a full exposition of the law relating to the responsibilities of charity trustees.

The outgoing Foreshore Trustees have consulted the Protector, Christopher May, in relation to the these documents.

The documents have been amended to take account of events including the provisions of the 2011 Scheme and they are attached at Appendix B to this report. The Committee is requested to formally adopt the guidance documents included in Appendix B.

Summary of Governance Arrangements

8. The Scheme requires that at the Annual Public Meeting two documents should be available to members of the public. The first of these is the Summary of Governance Arrangements. It is hoped that there will be little room for error in the public's understanding of how the Charity is governed with the documents that are adopted at this meeting, including the proposed webpage. However, a separate document has been drafted which serves this purpose and it is based upon Charity Commission guidance which sets out the hallmarks of good governance for a charity. The Protector has been consulted in relation to this document and his comments have been taken into account in the document recommended for approval. The proposed document is attached at Appendix C and Committee is requested to formally adopt the document.

Conflicts of Interest Policy

9. The second document required by the Scheme is the Conflicts of Interest Policy. This policy is required in addition to the existing Member Code of Conduct because it deals with the particular conflict of interest arising out of the fact that members of the Committee are not only councillors but also executive councillors. The Protector has been consulted and he has commented fully in relation to the draft policy. His view is that the main area for concern for the Charity Committee is the conflict of interest between the Council's position as local authority and charity trustee. The draft document has been amended to take account of his comments. Committee is requested to formally adopt the Conflicts of Interest Policy attached at Appendix D.

Coastal Users' Group

10. The Charity Commission's decision to make the Scheme was influenced by the need for public input into the Charity's decision-making. Having received the Council's legal advice that it was not possible in law to have non-elected persons on the Committee as a decision-making executive committee, they looked to other means of ensuring the introduction of this input by other means. As part of these discussions, the Council drew attention to the good working relationship it has with the Coastal Users' Group and the Commission then incorporated the Group into the draft Scheme as the first embodiment of the Scheme's Coastal Advisory Group. To date the Group, which has been an internal group working under the chairing of the Lead Member with the leisure portfolio, has worked without a formal terms of reference and constitution. With this new function, it was considered that a constitution was needed and a draft constitution is set out in Appendix E together with membership of the Group. Consultation with the Group has been undertaken on the draft constitution and their comments have been taken into account in amendments made to the draft constitution. The chair of the meeting has hitherto been the Lead Member with responsibility for leisure. In order to avoid any perception of the Lead Member exerting undue influence

at meetings, the proposed constitution provides that the meeting shall be chaired by the designated Council officer. The Group were content with this provision

The Protector has commented on the draft constitution and most of his comments have been taken into account in the draft recommended for approval. However, his view on the chairing of the meeting is that the chair should be appointed by the Group as for the Grant Advisory Group. He considers that the public perception might be that an officer chair "might very probably be seen strengthening the perception of attempting to achieve something beneficial to the Council rather than the Charity. For this reason I would suggest this proposed changed be reviewed – the issue is how it looks to the general public."

As it is an internal group, it is reasonable that it should be chaired by an officer, particularly as it now has a very specific function in relation to the Charity and the importance of feed back to the Committee. The officer need not be from the area of the Council with responsibility for the Foreshore. The distinction between the Coastal Advisory Group and the Grant Advisory Panel in this respect is probably that one is an existing internal group and the other is a creature of the draft Scheme. The Commission would have been aware of the nature of the Group and the membership of it when they decided to name the Group as the Coastal Advisory Group in the Scheme. The size and diversity of membership of the CUG is part of the reason we believe that an officer chair would be appropriate. We would also want to encourage the existing character of the Group as a consultative body rather than a lobbying body.

The Grant Advisory Panel, on the other hand, is entirely new and there is to be no officer or councillor member on the Panel. The Protector has raised the question of the Council providing administrative services to the Panel. It may be that the Group would wish to undertake their own administration but until the Panel is formed we cannot ascertain this and this might be a question they raise with the Committee once established or in the course of establishment.

The Panel will be much smaller than the Group and I anticipate much easier to administer. During discussion with the Coastal Users Group membership of the Group was considered with a view to reduction in numbers to a more manageable size with groupings of special interests eg leisure or commercial with a single representative. The decision was to form a sub-group who would make recommendations to the Charity Committee at a later meeting.

It is to be noted that the Group continues with its former function of consultee for the Council and this relates to its own land holdings as opposed to those of the Charity.

Committee is requested to consider the question of chairing of the meeting and to make a decision on this. It is to be noted that the Protector is one " who has a fiduciary duty which will be to ensure the integrity of the administration of the Charity, and who must report to the Commission any matter which he has reasonable cause to believe is likely to be relevant for the purposes of the exercise by the Commission of any of its functions." The Guidance to the Protector reinforces this.

Clearly, the Protector's concerns about public perception are entirely valid concerns and the Committee should consider them carefully. Members may wish to consult further with the Group on this.

Subject to its decision on this point, Committee is requested to formally agree the Group's constitution and membership attached at Appendix E.

The Grant Advisory Panel

11. The Grant Advisory Panel is another requirement of the Scheme and formalises input from the voluntary and charitable sector into decisions by the Committee concerning grant making out of surplus income.

The membership of the Panel is to be appointed the Charity Committee and the Scheme itself sets out the qualifications and disqualifications. The requirement that the members should be appointed on the basis of their knowledge and experience of the voluntary and charitable sector, in particular in the Borough, means that, at times, there are likely to be conflicts of interest for members who are themselves connected to particular organisations seeking funding. The draft Constitution attached at Appendix F includes provision for conflict of interest.

In order that the composition and appointment of the Panel is as transparent as possible, a public invitation has been placed in the newspaper and on to the Council's website, with a view to an open recruitment process culminating in formal appointment at the next meeting of the Committee in March.

Once the Panel has been appointed, consultation can commence on the criteria for grant making.

The Protector's comments regarding administrative assistance to the Panel are discussed earlier in the report. It is suggested that this be raised with the Panel once established.

Committee is requested to formally adopt the Constitution of the Grant Advisory Panel at Appendix F,

Wards Affected

Castle, Central St. Leonards, Old Hastings, West St. Leonards

Area(s) Affected

None

Policy Implications

Please identify if this report contains any implications for the following:

Equalities and Community Cohesiveness	No
Crime and Fear of Crime (Section 17)	No
Risk Management	No
Environmental Issues	No
Economic/Financial Implications	Yes
Human Rights Act	No
Organisational Consequences	Yes

Background Information

Appendix A - the 2011 Charity Commission Scheme
Appendix B - Guidance on Governance to the Trustee and Guidance to the Protector
Appendix C - Summary of Governance Arrangements
Appendix D - Conflicts of Interest Policy
Appendix E - Coastal Users' Group Constitution and Membership
Appendix F - Grants Advisory Panel Constitution

Officer to Contact

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Appendix A cannot be published on the Council's website. A copy may be obtained from Elaine Wood, Principal Committee Administrator, email ewood@hastings.gov.uk or tel. 01424 451717.