

## ABERDEEN CITY COUNCIL

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COMMITTEE	Council
DATE	21 August 2013
DIRECTOR	Ewan Sutherland
TITLE OF REPORT	Reorganisation of Aberdeen City Council Charitable Trusts
REPORT NUMBER:	CG/13/087

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### 1. PURPOSE OF REPORT

The purpose of this report is to put forward proposals for the reorganisation of the charitable trusts managed by the Council. The aim is to:-

- a) Minimise the administrative burden and cost to the Council
- b) Maximise the benefit receivable to the beneficiaries of relevant charities
- c) Comply with the requirements of the Office of the Scottish Charities Regulator (OSCR).

### 2. RECOMMENDATION(S)

It is recommended that the Council

- a) approves the proposed reorganisation of the Charitable Trusts as outlined in the report and at Appendix A;
- b) adopts the constitution shown at Appendix B for the future operation of the Aberdeen Art Gallery Trusts; and
- c) appoints the Head of Legal and Democratic Services as the Secretary and the Head of Finance as the Treasurer of the Aberdeen Art Gallery Trusts.

### 3. FINANCIAL IMPLICATIONS

There are no implications for the Council's financial position. All financial implications for the charitable trusts are dealt with in section five of the report and are intended to maximise the benefit receivable to charitable recipients. It should be noted that there are 39 charitable trusts subject to reorganisation with funds of less than £20K, with 2 trusts having funds of over £20K being affected.

### 4. OTHER IMPLICATIONS

The reorganisation of the charitable trusts secures the continuation of the trust's funds for their original charitable purposes.

## 5. BACKGROUND/MAIN ISSUES

### **Background - Aberdeen City Council Charitable Trusts**

- 5.1 The Council administers 52 Charitable Trusts with a total capital value at 31 March 2013 of £8M. It is proposed to reorganise 39 trusts that have individual capital values of under £20K and a cumulative capital value of £120K and 2 trusts with individual capital values of over £20K and a cumulative capital value of £99K.
- 5.2 A report to the Finance and Resources Committee on 17<sup>th</sup> June 2010, outlined proposals to restructure all the charitable trusts with assets below £20K. This proposal has now been taken forward in consultation with OSCR to identify the most appropriate restructuring outcome for each trust. The process involved a review of obtainable records, relevant guidance and legislation in order to ensure best fit in relation to the charitable purpose of each trust to maximise the benefits receivable for beneficiaries and appropriately justify each proposed change.
- 5.3 Evolving accounting requirements for smaller charitable trusts now require each set of trust accounts to be independently examined by a qualified accountant. This has resulted in a significantly administrative burden on Council staff and cost of the examination that is not cost effective for the trusts to bear.
- 5.4 OSCR are also reinforcing that very small historic trusts should, where possible, be amalgamated to reduce overheads and maximise the income to beneficiaries. Ideally, funds would be incorporated into trusts that are pro-actively supporting current activities for equivalent relevant charitable purposes.
- 5.5 Council officers have met with the officers of OSCR resulting in the attached proposal. This process has in part been advised by OSCR's experience of similar re-organisations with trusts of other Scottish Local Authorities.
- 5.6 If approved the reorganisation would proceed on a phased basis over the year. Relevant documentation would require submission and approval for each trust. OSCR has requested that we stagger the restructuring exercise to meet their resource capabilities. Details of the relevant Trusts and how they would be treated are given in Appendix A, and it is proposed that they be dealt with in the following manner subject to approval by OSCR and the agreement from recipient organisations to accept the transfer of funds and agree use of the funds as approved in the transfer proposal:-

#### **Phase 1 –Gallery & Museum Trusts**

There are 9 charitable trusts with relevant purposes in relation to the Aberdeen Art Gallery and Museum with funds totalling £49K. It is proposed they transfer their remaining funds into one existing trust - Aberdeen Art Gallery Trusts, SC018575, for the purposes of acquiring works of art for the art gallery and museum. Since the Aberdeen Art Gallery Trusts does not have a constitution it would be a requirement under the Charities and Trustee Investment (Scotland) Act 2005 for the reorganisation of that charity by a variation of the constitution of the charity, that a revised constitution be adopted. The attached constitution in Appendix B is proposed for adoption for the future operation of the trust.

### Phase 2 –Poverty Related Charities

There are 9 charitable trusts with poverty related purposes with funds totalling £23K. It is proposed to transfer the funds to a poverty related charity – Instant Neighbour Aberdeen, SC002223.

### Phase 3 – Various charitable purposes

There are 11 charitable trusts with more unique charitable purposes and funds sufficient to transfer where the review has sought to find an existing charitable organisation which OSCR agrees has aims compatible with the original aims of the trusts. The intention would be that the funds transfer to these organisations for use towards the purposes of the receiving charity.

There is one charitable trust where it is proposed the trust be wound up and that there is not a relevant charitable organisation for transfer and therefore allocating funds to Aberdeen City Council (for the Public Library) is deemed appropriate.

There are 9 charitable trusts that are proposed for winding up due to insufficient funds.

### Phase 4 – Reorganisation of Trusts with funds of over £20K

It is proposed due to the nature of these trusts that they be incorporated into this reorganisation process:

- a) A request has been received from The Aberdeen Seafarers Centre, SC043560, for the transfer of funds from two charities related to Seamen and Fishermen.
- b) The Captain Harvey Loutit Trust was established for a building fund for a regional museum for Aberdeen City. It is proposed the remaining funds in the trust will be used for the first available expenditures on the Aberdeen Art Gallery & Museum extension and when the trust's funds are expended the trust will be wound up.

### **Proposals and Actions**

6. It is proposed that the Council approve the proposed reorganisation of charitable trusts administered by the Council as outlined in the report and at Appendix A.
  - 6.1 Adopt the revised constitution for Aberdeen Art Gallery Trusts, SC018575, detailed in Appendix B.
  - 6.2 Appoint the Head of Legal and Democratic Services as the Secretary and the Head of Finance as the Treasurer of Aberdeen Art Gallery Trusts.

### 7. IMPACT

It is essential that the Trusts are managed efficiently so that they continue to support the purposes for which they were established.

### 8. BACKGROUND PAPERS

None.

9. REPORT AUTHOR DETAILS

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## Appendix A

	CHARITY NAME	CHARITY NUMBER	PURPOSE	FUND AS AT 31 MARCH 2013 (subject to audit)	Subtotal
<b>PHASE 1</b>	<b>ABERDEEN ART GALLERY - Propose transfer of funds to "Aberdeen Art Gallery Trusts", SCO 18575 for purchase of works of art recommended by the Officer responsible for the management of Aberdeen Art Gallery &amp; Museum and wind up the trusts</b> (Purpose- The advancement of the arts, heritage, culture or science.)			£s	
	John Black's Trust	SC018536	Aberdeen Art Gallery & Industrial Museum	6,342	
	Mrs Harvey Loutit	SC018548	For Display Cases in Regional Museum 14 September 1969	9	
	Sir Thomas Jaffrey's Gift	SC018554	Purchase of Works of Art for Aberdeen Art Gallery 30 September 1925	6,211	
	Miss Margaret Cumming Innes	SC018555	Purchase of Etchings for Aberdeen Art Gallery 17 June 1929	3,266	
	Miss Margaret C Hamilton	SC018556	Purchase of Exhibits for Regional Museum 11 September 1942	610	
	Sir Alex Lyon Trust	SC018569	Purchase of Works of Art for Aberdeen Art Gallery 6 June 1927	3,152	
	John Clark	SC018570	Bequest to Art Gallery 22 December 1923	3,938	
	Alexander Webster's Bequest	SC018571	Purchase of Pictures for Aberdeen Art Gallery 15 January 1912	17,795	
	Sir James Murray's Gift	SC018573	Purchase of Works of Art for Aberdeen Art Gallery 18 April 1927	7,475	
			-	<u>48,798</u>	
<b>PHASE 2</b>	<b>Proposed transfer of funds to Poverty Related Charity - INSTANT NEIGHBOUR SCO02223 and wind up trusts</b>				
	Booth Coal Fund	SC018531	Provision of Coal to the Poor in the Parish of Newhills	319	
	Mary Duthie Williams	SC018542	Provision of Blankets for Deserving Poor 19 March 1906	3,676	
	W D Watson's Trust	SC018543	Poor Deserving Female Factory Workers. A preference being given to Former Employees of Patrick Watson & Sons	4,847	
	Catherine Rolland	SC018544	Poor of Aberdeen and Kirk Session of King Edward 9 December 1659	8,404	
	Lady Durriss (The Lady Durriss Trust holds funds for two)	SC018559	Charitable Purposes 15 March 1754	167	
	Lady Durriss (separate purposes)	SC018559	Kirk Session of Durriss and Strachan and Poor Families 15 March 1754	3,324	
	Mollison Fund	SC018546	Upholding Tomb and Poor Widows connected with St Clements Parish Church 4 December 1911	44	
	Jean Guild	SC018557	Widows of Burgesses and Aged Virgins 24 December 1634	420	
	Alexander Forbes of Morkeu	SC018552	To provide a Summer Treat to Inmates of Woodend Home (Glenburn Wing) - (Was Poorhouse) - 16 October 1893	1,558	
					<u>22,759</u>

CHARITY NAME		CHARITY NUMBER	PURPOSE	FUND AS AT 31 MARCH 2013 (subject to audit)	Subtotal
<b>PHASE 3</b>	<b>Various</b>				
<b>MEDICAL - Aberdeen Royal Infirmary - Propose transfer funds to Minnie Cecil Bequest SC012731 (Peterkins Solicitors) and wind up trusts</b>					
	Bedlam Fund	SC018538	Persons Deprived of the Use of Reason	5,090	5,090
<b>EDUCATIONAL - Propose transfer funds to The University of Aberdeen SC013683 and wind up trusts</b>					
	Dr Robert Beveridge	SC018539	Promotion of the Study of Pathology at the Infirmary 18 March 1882 & 19 July 1886	113	113
<b>GORDON HIGHLANDERS - Propose Transfer of funds to Gordon Highlanders Association Trust SC002889 and wind up trust</b>					
	Lieutenant Colonel Charles M. MacQuibban Memorial Fund	SC018547	Comforts for Non-Commissioned Officers and Men of the 1st Battalion, Gordon Highlanders	1,213	1,213
<b>SOCIAL CARE PURPOSES - DISABILITY - Propose transfer of funds to Disabled Persons Housing Service(AberdeenCity) SC034791 and wind up trust</b>					
	Former Health Dept Prize Fund	SC018577	For Bi-Annual Prize to Member of Staff for Best Contribution to Welfare of Handicapped Persons 6 June 1960	2,796	2,796
<b>BENEFIT OF CHILDRENS SERVICES - Propose transfer of funds to Befriend a Child SC005467 and wind up trust.</b>					
	Mrs Henrietta Wood	SC018541	For use of the Boys' Hostel (Westfield) 19 August 1958	4,909	4,909
<b>BENEFIT OF OLDER PEOPLE - Propose Transfer of funds to Aberdeen Care and Repair Group SC015306 and wind up trusts.</b>					
	Miss Eliza Moir	SC018553	Old People's Home at 30 Albyn Place	5,454	5,844
	City of Aberdeen Relay Scheme Charitable Trust	SC021305	Charitable Purposes 4 July 1966	390	
<b>BENEFIT OF S.A. STUDENTS - Propose transfer of funds to Aberdeen University SC013683 and wind up trust.</b>					
	CML Werdmuller	SC018558	For South African Students at Aberdeen University	15,465	15,465
<b>ANIMAL CRUELTY - Propose transfer to Mrs Murray Home for Stray Dogs and Cats SC012708 and wind up trust.</b>					
	Mrs Gibson's Bequest	SC018561	Sermons Against Cruelty to Animals 14 February 1829	80	80



## **Appendix B**

We, Aberdeen City Council, the Local Authority for Aberdeen in terms of the Local Government, etc. (Scotland) Act 1994, and having its principal office at Marischal College, Broad Street, Aberdeen AB10 1AB is the trustee for Aberdeen Art Gallery Trusts (the "Trust"). The trust has existed for some time and the original deed is no longer available. This Trust Deed is a replacement deed, with the trust being reorganised in line with the Charities and Trustee Investment (Scotland) Act 2005, by an application to OSCR for a variation to the constitution.

(One) appoint as trustee ourselves (who and whose successors are referred to as "the Trustee")

### **Trust purposes**

1. The Trustee shall hold and apply any such other funds and assets as may from time to time be comprised in the Trust Property, in trust to provide for the purchase of works of art for the collection of Aberdeen Art Gallery & Museum.
2. The expenses of creating and administering the Trust, and any tax payable in relation to the Trust, shall be met in priority to all other payments and transfers of assets out of the Trust Property.

### **Powers**

3. In the administration of the Trust, the Trustee shall, in addition to the powers and rights which are conferred by law upon trustees who are acting without remuneration, have the fullest powers with regard to investment, sale, administration and management of the Trust Property as if it was owner; in particular (but without limiting the scope of the powers which it may exercise under the preceding provision), the Trustee shall have the following powers:-

- (a) To expend the whole assets of the Trust for the Trust Purposes.
- (b) To carry on any other activities which further any of the Trust Purposes.
- (c) To take such steps as may be deemed appropriate for the purpose of raising funds.
- (d) To accept grants, donations and legacies of all kinds (and to accept any reasonable conditions attaching to them).
- (e) To establish and/or support any other charity, and to make donations for any charitable purpose falling within the Trust's Purposes.
- (f) To purchase, take on lease, hire, or otherwise acquire, any property or rights.
- (g) To improve, manage, develop, or otherwise deal with, all or any part of the Trust Property.
- (h) To sell, let, hire out, license, or otherwise dispose of, all or any part of the Trust Property.
- (i) To borrow money, and to give security in support of any such borrowings by the Trust.
- (j) To employ such staff as are considered appropriate for the proper administration of the Trust or for the proper conduct of the Trust's activities, and to make reasonable provision for the payment of pension and/or other benefits for members of staff, ex-members of staff and their dependants.
- (k) To engage such consultants and advisers as are considered appropriate from time to time.
- (l) To effect insurance of all kinds (which may include officers' liability insurance).

(m) To invest any funds which are not immediately required for the administration of the Trust or for the Trust's activities, in such investments as may be considered appropriate (and to dispose of, and vary, such investments).

(n) To liaise with other voluntary sector bodies, local authorities, UK or Scottish government departments and agencies, and other bodies, all with a view to furthering the Trust Purposes.

(o) To form any company which is a charity with objects which are similar (wholly or in part) to those of the Trust, and, if considered appropriate, to transfer to any such company (without any payment being required from the company) the whole or any part of the Trust Property.

(p) To retain any property comprised in the Trust Property for such time as the Trustee thinks proper.

(q) To have any part of the Trust Property registered in the name of a nominee and to pay reasonable fees to such nominee.

(r) To compromise or settle by arbitration all disputed claims by or against the Trust or the Trust Property.

(s) To appoint solicitors to the Trust or agent for the Trustee in any other capacity, and to pay to such solicitors or other agent his/her/their usual charges.

(t) To reimburse the Trustee out of the Trust Property, in relation to all expenses reasonably incurred by him/her in the administration of the Trust.

(u) To wind up the Trust.

(v) To do anything which may be incidental or conducive to the furtherance of any of the Trust Purposes.

### **Procedure at Trustee's meetings**

4. Subject to the provisions of the following paragraphs, the Trustee may regulate the proceedings as it thinks fit.

### **Delegation**

5. The Trustee may delegate any of its powers to any committee consisting of one or more representatives of the Trustee; any such delegation of powers may be made subject to such conditions as the Trustee may impose, and may be revoked or altered.

### **Remuneration**

6. No Trustee may serve as an employee (full-time or part-time) of the Trust, and the Trustee shall not be given any remuneration by the Trust for carrying out its duties as a trustee.

### **Secretary**

7. The Trustee shall appoint a secretary to the Trust for such term, at such remuneration (if any), and on such conditions, as the Trustee may think fit; and any secretary so appointed may be removed by them.

8. The Trustee shall ensure that the secretary:

(a) keeps proper minutes of all proceedings at any meetings of the Trustee (and at meetings of committees of the Trustee) including the names of the committee members present at each such meeting

(b) keeps proper records and documents in relation to all other matters connected with the administration and management of the Trust.

### **Accounts**

9. The Trustee shall appoint a treasurer to the Trust for such term, at such remuneration (if any), and on such conditions, as the Trustee may think fit; and any treasurer so appointed may be removed by them.

10. The Trustee shall ensure that the treasurer:

(a) maintains proper accounting records, in accordance with all applicable statutory requirements.

(b) shall prepare annual accounts, complying with all relevant statutory requirements; if an audit is required under any statutory provisions or if the Trustee otherwise think fit, the treasurer shall ensure that an audit of such accounts is carried out by a qualified auditor.

11. An accountant engaged in an audit of the Trust's accounts shall be entitled to have access to all accounting records and other documents relating to the Trust.

### **Operation of bank accounts**

12. The signature of an authorised signatory of the Treasurer is required in relation to all cheques issued by the Trust and all other operations (excluding lodgement of funds) on the bank and building society accounts held by the Trust.

### **Payments to charities etc**

13. The receipt of the treasurer or other appropriate officer for any funds or other assets paid or transferred by the Trustee to any charity shall represent sufficient discharge to the Trustee.

### **Limitations on liability**

14. The Trustee shall not be liable for loss or depreciation of the value of investments retained or made by it, nor for omissions, nor for neglect in management, nor for insolvency of debtors, nor for the acts, omissions, neglect or default of one another or of any banker, solicitor, factor or other agent employed by them.

### **Conduct of Trustee**

15. The Trustee shall, in exercising its functions as a trustee of the Trust, act in the interests of the Trust; and, in particular, must

(a) seek, in good faith, to ensure that the Trust acts in a manner which is in accordance with its objects (as set out in this Trust Deed)

(b) act with the care and diligence which it is reasonable to expect of a person who is managing the affairs of another person

(c) in circumstances giving rise to the possibility of a conflict of interest of interest between the Trust and any other party

- (i) put the interests of the Trust before that of the other party, in taking decisions as a Trustee
- (ii) where any other duty prevents it from doing so, disclose the conflicting interest to the Trust and refrain from participating in any discussions or decisions involving any other Trustees with regard to the matter in question
- (d) ensure that the Trust complies with any direction, requirement, notice or duty imposed on it by the Charities and Trustee Investment (Scotland) Act 2005.

### **Amendment of Trust Deed/winding-up**

16. If in the opinion of the Trustee any change in circumstances or alteration in the law has made or is likely to make execution of the Trust Purposes impossible or impracticable, or if in the opinion of the Trustee the administration of the Trust could be improved, or the Trust Purposes be advanced in a more appropriate manner, the Trustee may (subject to clauses 17 and 19) in their discretion,

(a) supplement or amend the provisions of this Trust Deed or any deed supplemental to this Trust Deed; or

(b) wind up the Trust and transfer the Trust Property (after settlement of all debts and liabilities) to some other charity or charities having similar objects to those of the Trust.

17. In no circumstances is the Trust Property to be held or applied for any purpose which is not an exclusively charitable purpose.

### **Interpretation**

18. In this Trust Deed

“charity” means a body which is either a “Scottish charity” within the meaning of section 13 of the Charities and Trustee Investment (Scotland) Act 2005 or a “charity” within the meaning of section 96 of the Charities Act 1993

“charitable purpose” means a charitable purpose under section 7 of the Charities and Trustee Investment (Scotland) Act 2005 which is also regarded as a charitable purpose in relation to the application of sections 505 and 506 of the Income and Corporation Taxes Act 1988;

“the Trust Deed” means this trust deed (including any supplementation or amendment effected in accordance with the provisions of clauses 30 and 31);

“the Trust Property” means any such funds and assets as may from time to time be received by the Trustee as trustee under the Trust Deed (from us or any other person), and the assets in which any funds so received may from time to time be invested.

“the Trust Purposes” means the purposes specified in clause 1.

19. Any reference in this Trust Deed to a provision of any legislation shall include any statutory modification or re-enactment of that provision in force from time to time.

We declare that the Trust shall be irrevocable.

This Trust Deed, consisting of this and the 3 preceding pages, is executed as follows:-

SIGNED by the said Aberdeen City Council

At Aberdeen on

in the presence of