

## ABERDEEN CITY COUNCIL

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| COMMITTEE       | Council   |
| DATE            | 5 March 2014  |
| DIRECTOR        | Angela Scott  |
| TITLE OF REPORT | Reorganisation of Aberdeen City Council Charitable Trusts |
| REPORT NUMBER:  | CG/14/025   |

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### 1. PURPOSE OF REPORT

The purpose of this report is to put forward further 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 income available for charitable purposes; and
- c) Comply with the requirements of the Office of the Scottish Charities Regulator (OSCR).

### 2. RECOMMENDATION(S)

It is recommended that the Council:-

- a) adopts the revised constitution shown at Appendix A for the future operation 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 income available for charitable purposes.

### 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 administered 52 Charitable Trusts with a total capital value at 31 March 2013 of £8M. The Council, at its meeting on 21<sup>st</sup> August 2013 agreed to reorganise 41 charitable trusts largely by transfer of trust funds to another registered charity with the same charitable purpose or in a number of cases to remove the trust from the register of charities as the trust had no longer any funds.
- 5.2 The reorganisation includes a replacement constitution for Aberdeen Art Gallery Trusts. Further to the final stages of the reorganisation application process, OSCR

requested some minor revisions to the proposed replacement constitution and propose the constitution shown in Appendix A be adopted in its place.

5.3 All other aspects of the reorganisation covered by that report are progressing as anticipated. Of the 41 charitable trusts proposed for reorganisation in the report to Council in August 2013:

- 1 is now removed from the Register of Scottish Charities;
- 31 are approved by OSCR pending receipt of the invoice for the independent examination of the 2012/13 accounts to finalise the amount to be transferred to recipient charities; and
- 9 are pending the approval of the revised constitution for Aberdeen Art Gallery trusts.

5.5 Also at it's meeting on December 2013, The Council agreed a report to reorganise a further 27 trusts within the registered charity, Aberdeen City Council Charitable Trusts SCO25063. Of these trusts in the report:

- 8 reorganisation proposals have been approves by OSCR;
- 14 trusts reorganisations require input from Legal Services prior to submission of the reorganisation applications to OSCR; and
- 5 trust reorganisations have been submitted to OSCR and await approval.

5.4 The ongoing reorganisation of trusts supports the OSCR principles that historic trusts should, where possible maximise the income available for charitable purposes and reduce overheads. Ideally, funds would be incorporated into trusts that are proactively supporting current activities for equivalent relevant charitable purposes.

5.5 Council officers have been working 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.

### **Proposals and Actions**

5.6 It is proposed that the Council adopt the revised constitution for Aberdeen Art Gallery Trusts, SC018575, detailed in Appendix A.

## 6. IMPACT

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

## 7. BACKGROUND PAPERS

None.

## 8. REPORT AUTHOR DETAILS

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## **Appendix A**

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 Section 39 of 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 statutory 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 for the advancement of the arts by providing for the purchase of works of art for the collection of Aberdeen Art Gallery & Museum.
2. All expenses, costs and fees of creating and administering the Trust (including with prejudice to the generality of the foregoing the costs of any insurance premiums required by the Trust such as Trustee Indemnity Insurance), 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 the trustee 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 and/or accountants to the Trust or agent for the Trustee in any other capacity, and to pay to such solicitors, accountant or other agent his/her/their usual charges.
- (t) To indemnify and reimburse the Trustee out of the Trust Property, in relation to all expenses and liabilities reasonably incurred by them in the administration of the Trust and in the performance or exercise of their duties and powers hereunder.
- (u) To wind up the Trust.
- (v) To establish and operate both current accounts and deposit accounts with banks in the name of the Trust;
- (w) To enter into such contracts with any person, persons or bodies as the Trustee considers necessary for the management and maintenance of the Trust and the provision of any goods or services to be provided by or to the Trust;
- (x) To make payments from the income of the Trust for the Trust Purposes, at such time or times and of such amount or amounts as it in their sole discretion may determine. Declaring that the Trustee need not pay the whole income of any particular year, but may either carry forward part or the whole thereof into the succeeding year or years, provided always that such income shall be paid or applied within a reasonable time for the Trust Purposes or such one or more of them, as they in their sole discretion may determine.
- (y) To do anything which may be incidental or conducive to the furtherance of any of the Trust Purposes.

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

4., The Trustee may regulate its 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.

## **Secretary**

6. 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.

7. 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**

8. 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.

9. 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.

10. 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**

11. 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**

12. 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**

13. The Trustee shall not be liable for loss or depreciation of the value of investments retained or made by it., nor for insolvency of debtors. The Trustee shall not be liable for the acts, omissions, neglect or default of any external agents or third parties appointed by them.

## **Conduct of Trustee**

14. 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 and

put the interests of the Trust before that of the other party, in taking decisions as a Trustee

(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**

15. 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 16 in their discretion,

(a) supplement or amend the provisions of this Trust Deed or any deed supplemental to this trust deed provided always that such supplement or amendment to the purposes is consistent with the spirit of 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 Trust Purposes to those of the Trust.

### **Charitable Purpose**

167 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” shall mean a body on the Scottish Charity Register which is also regarded as a charity in relation to the application of the Taxes Acts;

“charitable purpose” shall mean 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 the Taxes Acts”;

“the Trust Deed” means this trust deed (including any supplementation or amendment effected in accordance with the provisions of clause 15);

“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.

### **Proper Law**

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. This deed shall be construed and the Trust shall be administered in accordance with the Law of Scotland.

IN WITNESS WHEREOF this Trust Deed, consisting of this and the [4] preceding pages, is executed as follows:-

SUBSCRIBED for and on behalf of the said Aberdeen City Council

at Aberdeen

Date of signing.....

by

Print name..... Signature.....

An authorised signatory in the presence of:-

Print name..... Witness signature.....

Address.....

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