

ABERDEEN CITY COUNCIL

COMMITTEE	Council
DATE	17 August 2016
INTERIM DIRECTOR	Richard Ellis
TITLE OF REPORT	Governance Review – Bridge of Don Trust and Other Trust Reorganisations.
REPORT NUMBER	CG/16/095
CHECKLIST COMPLETED	Yes

1. PURPOSE OF REPORT

The purpose of this report is to put forward proposals for the reorganisation of the Bridge of Don Trust (SCO18551) managed by the Council within a charitable trust, propose a grant from this trust towards Thomas Glover House and to provide information on the ongoing charity reorganisation. The aim is to:-

- a) Maximise the funds available for expenditure on charitable purposes;
- b) Comply with the requirements of the Office of the Scottish Charities Regulator (OSCR) ; and
- c) Advise on any areas management action.

2. RECOMMENDATION(S)

It is recommended that the Council :-

- a) Adopt the constitution shown at Appendix A for the future operation of the Bridge of Don Trust.
- b) As trustee of The Bridge of Don Trust agree to make a grant of £150,000 from Trust funds to Thomas Glover House.
- c) Confirm the appointment of the Head of Finance as treasurer and the Head of Legal and Democratic Services as secretary to the Bridge of Don Trust.
- d) Instruct that officers continue to work with the Office of the Scottish Charity Regulator (OSCR) on the reorganisation of the charitable trusts.

3. FINANCIAL IMPLICATIONS

The Bridge of Don Trust has accumulated surplus cash. This report recommends that £150k of these trust funds be used for a grant towards the renovation and redevelopment of Thomas Glover House in line with the new charitable purpose of the advancement of heritage.

Draft 2015-16 accounts for all charities which have Aberdeen City Council as the sole trustee were reported to the Audit, Risk and Scrutiny Committee of 27 June 2016.

4. OTHER IMPLICATIONS

4.1 Every charity has to be managed within existing charity legislation to maximize funds available for expenditure on charitable purposes. This report is part of that management framework and has been produced to provide an overview of the current and planned position of creating a governance environment that will maximize funds available for charitable purposes.

4.2 Council will be aware that a wider Governance Review is underway to assess our arrangements against CIPFA's 7 principles of good governance. A review of trusts supported by the Council is included in the review, which will be supported by CIPFA. Further reports will be brought to Council as this stream of work develops.

5. BACKGROUND/MAIN ISSUES

5.1 The Bridge of Don Trust was established in the 16th century to fund and maintain a bridge across the River Don. When this trust was established the maintenance of bridges was a charitable purpose. The Charities and Trustee Investment (Scotland) Act 2005 (the "2005 Act") does not recognise bridge maintenance as a charitable purpose. Under the Roads (Scotland) Act 1984 the maintenance of bridges is the duty of the local council or in the case of bridges forming part of trunk roads, Transport Scotland has that duty.

5.2 OSCR have taken the view that within the 2005 Act, the advancement of heritage best reflects the original trust purposes of the Bridge of Don Fund given the passage of time that the trust has existed and the changes to charity legislation. OSCR have agreed that the advancement of heritage can be applied to the whole City of Aberdeen as the Bridge of Don was for the benefit of the entire city.

5.3 The Bridge of Don Trust does not currently have a governing document that both reflects recent charity legislation and the modern charitable purpose of the advancement of heritage. OSCR has given approval to the draft constitution shown in Appendix A.

- 5.4 Thomas Glover House in Bridge of Don was the family home of the Glover family. Thomas Glover is recognized as a major influence on the industrialisation of Japan. Glover House is currently managed by the Grampian Japan Trust and the trust plans to renovate and redevelop the house which will include a heritage centre focusing on the history of Thomas Glover and his links with Japan.
- 5.5 Work is ongoing with the charity re-organisation. The Bridge of Dee Trust will be subject to the next re-organisation application to OSCR requesting that the trusts fund be transferred to the Bridge of Don Trust to be used for the same charitable purpose – the advancement of heritage. Work is ongoing on drafting a revised constitution for the Guildry and the Educational Endowment Investment Fund.
6. IMPACT

Improving Customer Experience –

Active management of the Council’s trusts will maximise funds available for expenditure on trust purposes.

Improving Staff Experience –

Management initiatives, such as trust reorganisation, have been successful in minimising the administrative burden of the charitable trusts.

Improving our use of Resources –

As a public sector organisation, the Council has a legal duty to be open, transparent and accountable for spending public funds. Trust funds must be spent on specific purposes and the ongoing trust reorganisation aims to maximise available funds to be expended on trust purposes.

Corporate -

Aberdeen the Smarter City:

Smarter Governance (Participation)

The ongoing charity reorganisation contributes to the process of Smarter Governance.

Smarter Living (Quality of Life)

Trust fund expenditure contributes towards the quality of life in Aberdeen.

Public –

The Council has a duty to ensure that best value is considered in all of its operations and this report helps to inform that process.

7. MANAGEMENT OF RISK

None.

8. BACKGROUND PAPERS

None.

9. REPORT AUTHOR DETAILS

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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 of the Bridge of Don Fund (the "Trust").

The Trust (constituted and defined by a Charter of Mortification (an endowment) in 1605 by Sir Alexander Hay of Whitburgh and amended by an Act of Parliament passed in 1825) is registered with OSCR with charity reference number SC018551.

This Trust Deed is a replacement and restatement deed, in order that the trust be 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 successors are referred to as "the Trustee")

Trust purposes

- 1 The Trustee shall hold and apply any such funds and assets as may from time to time be comprised in the Trust Property, in trust to advance heritage.
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 a Signatory 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, or the Trust purposes have been fulfilled, 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 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 (if applicable) 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” 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” ;

“Signatory” means an employee of the Finance department of the Trustee authorised to sign on behalf of the Trustee by the Treasurer of his delegate;

“Treasurer” means the Head of Finance of the Trustee;

“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 5 preceding pages, is executed as follows:-

SIGNED by the said Aberdeen City Council

At Aberdeen on

in the presence of