

The Highland Council

19 December 2013

Agenda Item	20
Report No	HC/60/13

Creation of a New Highland Charities Trust

Report by Director of Finance and Depute Chief Executive

Summary

This report details the progress of the project to re-organise a number of small charitable trusts, bequests and funds, which are administered by the Council, into a new Highland wide, Highland Charities Trust, in order to ensure their efficient administration and compliance with the Charities Act and related Regulations and seeks approval of the resolution which is required by the Office of the Scottish Charity Regulator (OSCR) as part of this process.

1. Background

- 1.1 The Council currently administer a number of small charitable trusts which are subject to the Charities and Trustees Investment (Scotland) Act 2005 (“the Charities Act”).
- 1.2 The purposes of the charitable trusts are varied and this has resulted in the beneficiaries for each of the charitable trusts and funds being distributed among diverse social groups and across a wide geographical area within the Highland area. However a large number of trusts have not distributed any funds in recent years. This is due to a number of factors, including, for example, the erosion of the funds over the years making a meaningful disbursement practically impossible or due to social and economic changes, beneficiaries for the trusts are no longer readily identifiable.
- 1.3 The Charities Act has imposed new criteria upon charities most particularly in relation to their administration, accountability and effectiveness. A charity is no longer permitted to remain inactive. The Councillors, as Trustees of the trusts and funds, are therefore under a duty to preserve the trust’s funds and disperse the income to suitable beneficiaries.
- 1.4 New financial reporting and auditing requirements established by OSCR will, in April 2014, require a full external audit on each individual charitable trusts administered by this Council, incurring additional work and auditors costs for each charitable trust.

2. Current Position

- 2.1 On 26 September 2013 The Director of Finance reported to Audit & Scrutiny Committee that officers were looking at options to mitigate the implications of compliance with the Charities Accounts (Scotland) Regulations 2006 including:-
 - (1) options for winding up charities with no or minimum balances; and
 - (2) merging charities which share common trust purposes.
- 2.2 The 24 charitable Trusts which were found to have nil balances (Appendix 1) have

now been wound up and removed from the Scottish Charity Register. Formal acknowledgements have been received from OSCR

- 2.3 A further 46 small charitable Trusts were identified as sharing common trust purposes relating to the welfare or for the relief of poverty, of the inhabitants of various geographical areas within the Highland Area who are in need by reason of age, ill-health, disease, invalidity, disability, infirmity, financial hardship or other disadvantage. Other small charitable trusts have purposes relating to education, health, recreation, citizenship, heritage or culture.
- 2.4 The Head of Legal has drafted a Highland Charities Trust (appendix 3) into which individual charitable trusts could ultimately be transferred. For this to happen, the Highland Charities Trust will require to be submitted to OSCR for acceptance and registration as a charity. OSCR have already commented on the draft and it is anticipated that there will be no difficulty obtaining charitable status for the Trust in the form specified in the draft.
- 2.5 The Head of Legal has advised that the purposes of the Highland Charities Trust should be drafted as follows:-
- (a) For the prevention or relief of poverty
 - (b) To provide relief, financial assistance or Welfare for those inhabitants of the Highland Council area who are in need by reason of age, ill-health, disease, invalidity, disability, infirmity, financial hardship or other disadvantage.
 - (c) Advancement of education
 - (d) Advancement of health
 - (e) Advancement of citizenship or community development
 - (f) Advancement of art, heritage, culture or science
 - (g) The provision of recreational facilities or the organisation of recreational activities with the object of improving the conditions of life for the persons for whom the facilities or activities are primarily intended
 - (h) To assist other charitable organisations with purposes similar to the Trust so as to further their charitable purposes within the Highland Council Area by the provision of financial and/or material assistance

Having a variety of purposes will allow a greater number of small trusts to be amalgamated into the new Highland Charities Trust.

- 2.6 OSCR have advised that they will require any reorganisation scheme to take account of both the trust purposes and the geographical area for distribution of trust funds.
- 2.7 Appendix 2 shows the distribution of trust funds mapped into Ward Areas with the breakdown of revenue and capital funds. It is anticipated that the amalgamation of the small charitable trusts into the Highland Charities Trust will allow more of the funds to be distributed within each specific geographical area, so benefitting a greater number of people in need while not impacting too greatly on the broad area in which the funds are distributed.
- 2.8 The Highland Charities Trust provides for all elected Councillors of the Highland Council to be appointed as Trustees of the new Trust. Due to the small amounts of revenue emanating from each trust currently, it is proposed that authority is delegated to the Corporate Manager to consider applications for funding and, in consultation with relevant Ward members, agree distribution of funds within each ward area up to a maximum of £10,000 per award. Any request for funding in excess of £10,000 or any fund for the benefit of the whole Highland Area or an area covering more than a 4

ward area, will be brought back to Finance Housing & Resources Committee for a decision.

3. Further Procedures

- 3.1 Once the new trust is established and has obtained charitable status, reorganisation schemes for each individual charitable trust will be prepared, detailing the original trust purposes so far as these can be ascertained and justifying the proposed reorganisation into the Highland Charities Trust. The precise nature of each small trust will dictate whether or not it is appropriate to transfer its funds to the Highland Charities Trust. OSCR will also consider and approve each individual reorganisation scheme and will have the final decision on whether a transfer of funds into the new Highland Charities Trust is appropriate or not.
- 3.2 After funds contained within a small trust are transferred to the Highland Charities Trust, the small trust will be wound up and OSCR notified, as required by the Charities Act.
- 3.3 Other trusts and funds may also be transferred into the Highland Charities Trust where appropriate to do so.

4. Conclusion

- 4.1 In order to minimise the additional external audit costs following the new financial reporting and auditing requirements, the Council require to approve the setting up of the Highland Charities Trust and its application to be registered as a charity. Thereafter the transfer any small charitable trust funds into the Highland Charities Trust will be subject to the scrutiny and approval of OSCR.

5. Implications

- 5.1. **Equality, Climate Change/ Carbon Clever or Risk implications:** There should be no Equality, Climate Change/Carbon Clever, or Risk implication arising from this report

Legal implications: The Highland Charities Trust will require to be registered as a charity. Re- organisation schemes for each of the 55 small trusts will require to be approved by OSCR and thereafter the funds of the current 55 small charitable trusts will be transferred into the Highland Charities Trust. The small charitable trusts will then each be wound up and removed for the register of charitable trusts.

Resource implications: The proposals contained within this report are designed to save annual additional work and audit costs arising from the new financial reporting and auditing requirements coming into force on 1 April 2014.

Recommendations

Council are asked to approve ;

- (1) The creation of a new trust to be known as “Highland Charities Trust” in terms of the draft Deed of Trust attached to the papers (Appendix 3), subject to the approval in principle of the Office of the Scottish Charity Regulator to the Trust being eligible to become registered as a Scottish charity.
- (2) In principle the reorganisation and transfer into the new Highland Charities Trust, of the assets of any existing small charitable Trusts administered by the Council, where the purposes equate to the purposes of the Highland Charities Trust, once The Highland Charities Trust is registered as a Scottish Charity, in accordance with the provisions of the Charity and Trustees Investment (Scotland) Act 2005.
- (3) The winding up of any existing small charitable trust once its funds have been transferred to the Highland Charities Trust.
- (4) The administration of the Highland Charities Trust be delegated to the Corporate Manager so far as making grants of under £10,000 is concerned, with grants of over £10,000 or grants covering an area greater than a 4 ward area, being brought back to Finance Housing & Resources Committee for consideration.

Designation: Director of Finance and Depute Chief Executive

Date: 29 November 2013

Author: Margaret Grigor

Background Papers: Appendix 1 – Charities removed from OSCR
Appendix 2 – Current charities
Appendix 3 – Draft “Highland Charities Trust” document

CharityNumber Legal Name

Appendix 1
removed by
OSCR
confirmation
received

Trusts now removed by OSCR

SC001768	Beatrice Oilfield Trust - Nairn	17.9.13
SC004447	John Robert Campbell Bequest For The Poor Of Parish Of Lairg	17.9.13
SC011444	James Asher's Charitable Trust	17.9.13
SC012300	William Murray Morgan Caithness Villages Amenities Fund	17.9.13
SC016486	Hugh Wilson Trust	17.9.13
SC018286	Inverness & District Benevolent Fund	17.9.13
SC018287	Miss Magdalene Duff Fraser Mortification	17.9.13
SC018296	Jonathan Anderson Mortification For Poor	17.9.13
SC018298	Robert Fraser Mortification	17.9.13
SC018299	Thomas Fraser Mortification	17.9.13
SC018300	Evan Baillie Mortification	19.9.13
SC018301	John Burnett Mortification	19.9.13
SC018302	Mrs Isabella Gollan Mortification	19.9.13
SC018303	Mrs Martha Gibson Mortification	19.9.13
SC018305	Robert Smith Mortification	18.9.13
SC018307	Dr John Mackintosh Bequest	18.9.13
SC018308	William Macgregor Bequest	18.9.13
SC018310	William Galloway Macdonald Bequest	17.9.13
SC018311	George Melvin Bequest	18.9.13
SC018312	Louis Ormond Fyvie Bequest	17.9.13
SC018313	George Wilson Barron Bequest	17.9.13
SC018740	John Miller Bequest	17.9.13
SC019571	Senior Citizens Christmas Fund	17.9.13
SC019697	Earl Of Seafield Bequest For Poor In Inverallan & Advie Portions Of Cromdale Parish	17.9.13

APPENDIX 2

Active Trusts listed with OSCR

Ward	Revenue	Capital	Total
1	-8.38	86.00	77.62
2			0.00
3	19,567.33	28,437.64	48,004.97
4	359.64	1,964.33	2,323.97
5	163.43	2,235.24	2,398.67
6	7651.89	0	7651.89
7	219.38	1,638.97	1,858.35
8	119.52	4044.37	4163.89
9	37.79	440	477.79
10	36.49	2680.4	2716.89
11	235	155	390
12	3644	944	4588
13	1859	706	2566
13 & 16	1396	595	1991
14,15,16,17	55	589	644
18,19	888.04	1923	2811.04
19	7651.28	9282	16933.28
20			0
21	30130.96	3224.52	33355.48
22	575.54	90	665.54
Total	74582.83	59035.09	133617.92

% of fund per ward

1	-0.01	0.15	0.06
2	0.00	0.00	0.00
3	26.24	48.17	35.93
4	0.48	3.33	1.74
5	0.22	3.79	1.80
6	10.26	0.00	5.73
7	0.29	2.78	1.39
8	0.16	6.85	3.12
9	0.05	0.75	0.36
10	0.05	4.54	2.03
11	0.32	0.26	0.29
12	4.89	1.60	3.43
13	2.49	1.20	1.92
13 & 16	1.87	1.01	1.49
14,15,16,17	0.07	1.00	0.48
18,19	1.19	3.26	2.10
19	10.26	15.72	12.67
20	0.00	0.00	0.00
21	40.40	5.46	24.96
22	0.77	0.15	0.50
Total	100	100	100

Legal Name	Charitable cause	Ward	Revenue	Total Capital
Mcculloch Bequest For The Poor Of Durness	The purpose of the Trust is for the benefit of the poor of Durness	1	-8.38	86.00
Alexander Wares Bequest For Poor	The purpose of the Trust is for the benefit of the aged-indigenous poor of the former Burgh of Wick.	3	1,110.85	8,252.56
George Swanson Trust	The purpose of the Trust is for the benefit of the aged-indigenous poor of the former Burgh of Wick.	3	2,491.85	11,100.25
James Cormack Bequest	The purpose of the Trust is for the benefit of the aged-indigenous poor of the former Burgh of Wick	3	574.67	1,002.51
Jane Cormack Bequest	The purpose of the Trust is for the benefit of the Poor of Wick Parish.	3	2.88	50.00
John Jacobus Harper Trust	The purpose of the Trust is for the benefit of the aged-indigenous poor of the former Burgh of Wick.	3	85.98	250.00
John Sutherland (Fish Curer) Poor Fund	The purpose of the Trust is for the benefit of the 3 named poor of Wick Parish for life.	3	-139.72	350.00
John Sutherland Poor Cooper's Fund	The purpose of the Trust is for the benefit of 5 retired coopers resident in the former Burgh of Wick.	3	368.39	449.50
Miss Adeleine Florence Henderson Bequests	The purpose of the Trust is for the benefit of the aged-indigenous poor of the former Burgh of Wick, Maintenance of family grave in Wick cemetery and costs of lighting Wick town clock.	3	1,356.50	1,500.00
Sir Josiah H Symon Poor Fund	The purpose of the Trust is to benefit the aged-indigenous poor of the former Burgh of Wick.	3	659.04	1,350.00
Thomas L Rettie Bequest For Poor	The purpose of the Trust is for the benefit of the aged-indigenous poor of the former Burgh of Wick.	3	61.37	100.00
William Davidson Bequest	The purpose of the Trust is for the benefit of the aged-indigenous poor of the former Burgh of Wick.	3	250.98	625.00
William Murray Bequest For Poor Of Wick	The purpose of the Trust is for the benefit of the aged-indigenous poor of the former Burgh of Wick.	3	365.32	800.00
William Murray Bequest For Wick Library	The purpose of the Trust is for the benefit of Wick Library.	3	12,379.22	2,607.82
Davidson - Cumming Bequest	The purpose of the Trust is for the benefit of the poor (other than paupers) and pensioners of Latheron Parish.	4	55.33	1,050.00
Murray (Olig) Bequest	The purpose of the Trust is for the provision of coals to the poor of Olig Parish.	4	167.56	450.00
Oswald (Bower) Mortification	The purpose of the Trust is to benefit the poor of Bower Parish.	4	119.69	105.26
Oswald (Dunnet) Bequest	The purpose of the Trust is to benefit the poor of Dunnet Parish.	4	17.06	359.07
John Couper Bequest For Poor Of Helmsdale	The purpose of the Trust is for the poor of Helmsdale	5	11.44	730.31
John Rutherford Trust For Poor Of Kildonan	Poor of Kildonan	5	8.75	913.89
Mccrone Bequest	For poor of parish	5	115.37	43.61
Ross Bequest	For comforts for deserving poor	5	27.87	547.43
West Coast Of Ross-Shire (Mainland) Distress Fund	The purpose of the Trust is for the alleviation of hardship in the Parishes of Gairloch, Lochbroom and Lochcarron. The payments made in particular but without prejudice to generality 1stly Payments of grants and loans top crofters, 2ndly provision of comforts for the aged, sick and infirm resident in the parishes, 3rdly Provision of comforts for patients in hospitals situated in or serving the parishes, 4thly Grants for advancement of education to those in the parishes and 5thly payment of loans or grants for any charitable purposes for the benefit of the parishes.	6	7,651.89	0.00
John Martin Trust To Give Christmas Dinner To The Poor Of Invergordon	The purpose of the Trust is for the Christmas dinner for the poor of Invergordon at Christmas.	7	6.61	106.35
Kynoch Bequest - Invergordon	To purchase coals for needy poor of Parish of Rosskeen	7	174.36	725.64
Miss M A Ross Fund - Invergordon	For Christmas dinner annually to poor of Invergordon	7	8.98	200.00
Mrs Jane Masson Bequest	The purpose of the Trust is for old and indigent men and women of Invergordon.	7	20.48	504.98
R G Fraser MacKenzie Bequest - Saltburn	For benefit of deserving poor of Saltburn Village and hymn books for Sunday School	7	8.95	102.00
Alex Ross Fund - Tain	Christmas Fund	8	28.9	500.00

Legal Name	Charitable cause	Ward	Revenue	Total Capital
Alex Thomson Bequest For Poor	The purpose of the Trust is for the benefit of the poor of Tain with suggestion that distribution be made in form of tea, sugar and bread.	8	-33.74	400.00
D Fraser Bequest - Tain	Poor of Tain	8	17.36	193.00
David Thomson Bequest For Ex-Seaforth Highlanders	The purpose of the Trust is to provide assistance for ex servicemen of the 4th Seaforth Highlanders resident in the district of Easter Ross deserving of and in need of financial assistance. If the annual income is not required for this purpose, it is to be distributed to the deserving poor of Tain.	8	-21.68	250.00
David Thomson Bequest For Poor	The purpose of the Trust is for the benefit of the poor of Tain with suggestion that distribution be made through supply of coal.	8	-33.74	400.00
Donald Duff Bequest for poor of Tain	Poor of Tain	8		0.00
G Murray Westfield Fund - Tain	Poor of Tain	8	20.66	335.00
George Macleod Bequest	The purpose of the Trust is for the relief of distress amongst local ex servicemen in Tain as necessary and thereafter for benefit of poor of Tain.	8	-15.21	200.00
George Murray Senr Coal Fund	The purpose of the Trust is for the benefit of the poor in Tain.	8	-9.40	142.00
Hugh Leslie Bequest	The purpose of the Trust is to benefit the poor in Tain.	8	7.74	183.96
J Ross Bequest - Tain	Poor of Tain	8	18.5	101.00
Miss I Munro Bequest - Tain	Poor of Tain	8	6.99	0.00
Miss MacLeod Bequest - Fearn & Seaboard	For sick and aged poor of Parish of Tarbat	8	5.16	100.00
Ronald Ross Gift	The purpose of the Trust is for the benefit of the poor in Tain.	8	-3.24	111.00
Tain War Memorial Fund	The purpose of the Trust is for the maintenance of Tain War Memorial.	8	131.85	169.00
Viscount Tarbat Barley Trust - Fearn & Seaboard	For poor on estate of Cadbole	8	-7.17	846.66
Wm Murray Bequest - Tain	Poor of Tain	8	6.54	112.75
G Urquhart Bequest - Conon Bridge	Poor of Conon Village	9	42.07	260.00
W Simpson Bequest - Dingwall	Poor of Dingwall	9	-4.28	180.00
Alex MacLean's Trust - Cromarty	For deserving poor of Parish of Cromarty	10	21.11	200.00
Coull Mortification		10	-3.90	671.50
F W Grant Bequest	The purpose of the Trust is to benefit the poor of Fortrose The purpose of the Trust is to benefit the poor of Cromarty.	10	-22.25	1,008.90
John Fraser Bequest	The purpose of the Trust is for the benefit of Poor in Fortrose.	10	15.79	300.00
Miss E Kemp Bequest For Poor Of Rosemarkie	Poor of Rosemarkie	10	25.74	500.00
A M Macdonald Trust Fund	For the poor of Portree	11	235.08	155.00
Donald Cameron Of Erracht Bequest For Poor Of Kilmallie	The purpose of the Trust is for the benefit of the poor in a certain portion of Parish of Kilmallie.	12	3,643.77	944.20
Knockie Trust Fund	The purpose of the Trust is for the benefit of the poor in Parish of Dores.	13	1,859.39	706.19
Duncan Macbean Bequest	The purpose of the Trust is for the benefit of poor in Parish of Moy and Dalcrossie & for purchase of tea and sugar to be given out to the deserving of the United parish of Daviot & Dunlichity.	13,16	434.71	94.73
Macbean Bequest Daviot & Dunn	Poor of united parish of Daviot and Dunlichity	13,16	961.55	500.00
Frederick Klein Mortification	The purpose of the Trust is for the distribution among the poor of Inverness, in money, clothing or fuel in the month of January.	14,15,16,17	55.42	588.50
Grigor Bequest For Poor Of Parish Of Cawdor		18,19	888.04	1,923.00
Grigor Bequest For Confirmed Invalids	The purpose of the Trust is for the benefit of the poor of the Parishes of Cawdor, Nairn, Auldearn, Croy and Arclach.	19	235.81	362.00
John Rose Troup Charitable Trust	The purpose of the Trust is for confirmed invalids preferably young persons resident in and native to Nairn. The purpose of the Trust is to benefit the Poor of Nairn and Auldearn	19	347.78	1,920.00

Legal Name	Charitable cause	Ward	Revenue	Total Capital
Miss Emma M Fraser Bequest For The Poor Of Nairn	The purpose of the Trust is a bequest for the poor of Nairn.	19	6,721.17	6,000.00
Nairnshire Boot Fund	The purpose of the Trust is a Police fund established for the provision of boots for necessitous children.	19	40.18	800.00
Thomson Bequest Fund	Poor of Nairn	19	306.34	200.00
Burnside Bequest Cromdale Poor		21	46.41	92.00
Dr A A C Grant Bequest		21	116.67	90.00
Dr Donald Grant Legacy	The purpose of the Trust is for the benefit of poor and infirm persons of the ancient Parish of Cromdale.	21	1,380.93	500.00
Duncan Cameron Trust For Poor Of Abernethy	The purpose of the Trust is for the benefit of poor in Parish of Abernethy.	21	1,725.87	716.52
George Harvey Trust	The purpose of the Trust is for the benefit of the Poor of Grantown on Spey.	21	297.39	200.00
Grantown War Memorial Fund	Maintenance of Grantown War Memorial.	21	726.71	155.00
Miss L E M Rose Bequest	The purpose of the Trust is for the benefit of the Poor of Grantown on Spey.	21	498.11	300.00
Miss Margaret Charlotte Stuart Legacy	The purpose of the Trust is to benefit the poor of Grantown on Spey.	21	25,338.87	1,171.00
Kennedy Trust For Poor	The purpose of the Trust is for the Annual Proceeds for division among 12 people of Fort William.	22	575.54	90.00
	Total Fund		<u>74,582.83</u>	<u>59,035.09</u>

HIGHLAND CHARITIES TRUST

established by The Highland Council, a body corporate under the Local Government Etc. (Scotland) Act 1994 having its principal place of business at Glenurquhart Road, Inverness IV3 5NX

WHEREAS WE the said The Highland Council for itself and its successors (“the Council”) has resolved to establish the Highland Charities Trust (“the Trust”) in order to hold the assets of any existing public funds to be transferred into it and all further donations, legacies and other monies and property heritable and moveable, real and personal wherever situated and of whatever kind which may hereinafter accrue, be paid, transferred or issued to or acquired by either the Council or the Trust (the “Trust Fund”) for the Trust Purposes after-mentioned: THEREFORE WE DO HEREBY DECLARE that the Trust Fund shall be held by the Trustees in trust for the following purposes and subject to and with the benefit of the following powers and provisions:

TRUST PURPOSES

(ONE) The purposes of the Trust (“the Trust Purposes”) shall be as follows:-

- (a) For the prevention or relief of poverty
- (b) To provide relief, financial assistance or Welfare for those inhabitants of the Highland Council area who are in need by reason of age, ill-health, disease, invalidity, disability, infirmity, financial hardship or other disadvantage.
- (c) Advancement of education
- (d) Advancement of health
- (e) Advancement of citizenship or community development
- (f) Advancement of art, heritage, culture or science
- (g) The provision of recreational facilities or the organisation of recreational activities with the object of improving the conditions of life for the persons for whom the facilities or activities are primarily intended
- (h) To assist other charitable organisations with purposes similar to the Trust so as to further their charitable purposes within the Highland Council Area by the provision of financial and/or material assistance

TRUSTEES

(TWO) The Trustees shall be the elected members of The Highland Council, subject to the power of the Council to remove or replace such Trustees as it sees fit, declaring that:

- (a) the Trustees require to be current Councillors of The Highland Council;
- (b) any appointment or removal of a Trustee by the Council must be notified in writing both to the Trust and to the Trustee concerned and will take effect only upon receipt of such written notification;
- (c) any Trustee must, in exercising his or her functions as a Trustee, act in the interests of the Trust and must, in circumstances capable of giving rise to a conflict of interest between the Trust and the Council, put the interest of the Trust before those of the Council;

(d) generally, any Trustee has an obligation to notify any potential or real conflicts of interest to the other Trustees, as they arise and, at the least, may take no part in the discussion and decision relative to any matter causing such potential or real conflict;

(e) the Trustees may, if they wish, appoint one of their number to be Chairman of the Trust, who whenever available will act as chairman of any meeting of the Trustees; and

(f) a Trustee shall be required to resign, or be deemed to have resigned, as a Trustee in any of the following circumstances:

(i) if by notice in writing to the Trust he or she resigns his or her office as Councillor; or

(ii) if he or she is employed by the Trust or receives any payment for holding the office of Trustee (other than reimbursement of out-of-pocket expenses or, if a professional person, his or her normal professional charges for any professional work carried out for the Charity, subject always to the terms of section 67 of the Charities and Trustee (Investment) Scotland Act 2005, as may be amended or re-enacted from time to time); or

(iii) if he or she becomes a bankrupt person, or insolvent or apparently insolvent or makes any arrangement or composition with his or her creditors generally; or

(iv) if he or she becomes incapable for medical reasons of fulfilling the duties of his or her office and such incapacity as certified by two medical practitioners is expected to continue for a period of more than six months from the date or later date of such certification; or

(v) if he or she is not permitted to be a Charity Trustee in terms of Section 69 of the Charities and Trustee Investment (Scotland) Act 2005 (as may be amended or re-enacted from time to time); or

(vi) if, in terms of section 66(5) of the Charities and Trustee Investment (Scotland) Act 2005 (as may be amended or re-enacted from time to time), he or she is considered by the other Trustees to have been in serious or persistent breach of either or both of the duties listed in sections 66(1) and 66(2) of the said Act (as may be amended or re-enacted from time to time), such Trustee being entitled to be heard prior to the other Trustees taking a decision.

TRUST FUND

(THREE) The Trust Fund and shall be administered by the Trustees and/or by any agents appointed by them in the best interest of the Trust and exclusively for the Trust Purposes and the following shall apply:

(a) The Trustees shall open and maintain such bank, building society and other accounts and investments as they reasonably require from time to time.

(b) All cheques and orders for payment shall be signed in such manner and subject to such limits as the Trustees may decide from time to time.

(c) The Trustees shall have the power to make payments from income or capital of the Trust Fund at such time or times or of such amount or amounts as they in their sole discretion may determine

for the Trust Purposes and the Trustees need not pay out the whole of the income of any particular year but may carry forward part or the whole thereof into the succeeding year or years provided always that such income shall be paid or applied for the Trust Purposes, in so far as not accumulated with capital.

POWERS OF TRUSTEES

(FOUR) The Trustees shall have the same full and unrestricted administrative powers of dealing with the Income and Capital of the Trust Fund in all respects as if they were beneficially entitled thereto and, without prejudice to the foregoing generality, they shall have all powers set out in Section 4 of the Trust (Scotland) Act 1921 as amended and may in their sole discretion:-

- (a) promote and carry out research, surveys and investigations and develop initiatives, projects and programmes and carry on any other activities which further any of the Trust Purposes;
- (b) accept, purchase, acquire, lease, hire, retain, develop, improve, manage, transfer, dispose of or sell any property or assets, heritable or moveable, real and personal, of any and every description and whether situated throughout the world, whether or not producing income, whether or not quoted on any recognised Stock Exchange throughout the world and whether or not comprised by the word "investments" as ordinarily understood, provided such investments are appropriate for the Trust Purposes;
- (c) take such steps as may be deemed appropriate for the purpose of raising funds;
- (d) accept grants, donations and legacies of all kinds (and to accept any reasonable conditions attaching to them);
- (e) establish and/or support any other charitable body, and to make donations or provide grants (and to impose any reasonable conditions attaching thereto) for any charitable purpose which falls within the Trust Purposes;
- (f) appropriate any part or parts of the Trust Fund in its actual state of investment in or towards the beneficial interest of any person having regard always to the Trust Purposes;
- (g) set aside funds not immediately required as a reserve or for specific purposes;
- (h) to employ as a professional investment manager any person who is entitled to carry on investment business under the supervision of the Financial Services Authority (or its successors) and to delegate to any such manager the exercise of all or any of its powers or investment or such terms and at such reasonable remuneration as the Trustees think fit, and to enable investments to be held for the Trust by nominees, but subject always to the provisions of section 4 of the Trust (Scotland) Act 1921 as amended;
- (i) borrow money and give security in support of any such borrowings by the Trust;
- (j) employ such staff as they consider 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) engage such consultants and advisors as are considered appropriate from time to time;
- (l) effect insurance of all kinds, including where appropriate indemnity insurance for the benefit of the Trustees in their acting as Trustees of the Trust;
- (m) form any charitable company 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 Fund;
- (n) grant proxies in favour of any of the Trustees (or any other person) to attend, act and vote for the Trustees at any meetings (whether of the nature of general meetings, creditors' meetings or otherwise) relating to any investment held by the Trustees or relating to any claim by the Trustees in any liquidation or sequestration proceedings;
- (o) compromise or settle by arbitration all disputed claims by or against the Trust;
- (p) appoint solicitors to the Trust and to pay to such solicitors or other agents their usual charges;
- (q) reimburse any of the Trustees out of the Trust Fund, in relation to all expenses reasonably incurred by him or her in the creation and administration of the Trust;
- (r) do anything which may be incidental or conducive to the furtherance of any of the Trust Purposes;

PROCEDURE AT TRUSTEES' MEETINGS

- (FIVE) (a) The Trustees shall meet as often as expedient for the convenient dispatch of the business of the Trust. A Trustee may at any time summon a meeting of the Trustees by notice served upon all Trustees, to take place at a reasonably convenient time and date.
- (b) Meetings of the Trustees may take place in person or by telephone conference call, video conference call or by any other collective electronic means approved unanimously from time to time by them.
- (c) No business shall be dealt with at a meeting of the Trustees unless a quorum is present; the quorum for meetings of the Trustees shall be more than fifteen elected members of The Highland Council at any time.
- (d) The Chairman will endeavour to achieve consensus on all matters pertaining to the Trust, but where consensus is not possible, the matter shall be put to the vote. In case of an equality of votes, the Chairman, or the chairman of that meeting, shall have a second or casting vote.
- (e) The Trustees may delegate any of their powers to one or more individuals, or to sub-committees consisting of not less than one Trustee and such other person or persons as the Trustees think fit. Any individual so delegated to or any sub-committee so formed shall, in the exercise of the powers so delegated, conform to any remit and regulations imposed by the Trustees. Any such sub-committee shall regularly and promptly circulate the minutes of its meetings to all Trustees.

(f) All acts *bona fide* done by any meeting of the Trustees, by a committee of the Trustees or by a person acting as a Trustee, shall, notwithstanding that it is afterwards discovered that there was a defect in the appointment of any Trustee or that any of them had ceased to hold office or was not entitled to vote, be as valid as if every such person had been duly appointed and had continued to be a Trustee and had been entitled to vote.

(g) The Trustees may invite or allow any person to attend and speak, but not to vote, at any of its meetings or of its sub-committees.

(h) A resolution in writing signed by all the Trustees at the time shall be as valid and effective as if it had been passed at a meeting of the Trustees duly convened and held; a resolution of that kind may take the form of a number of copies containing the text of the resolution, with each copy being signed by one or more Trustees.

(i) The business of the Trust and all its correspondence with and notification to or from Trustees may be conducted equally validly and effectively as by post if transmitted by fax or e-mail or otherwise if publicised on the Trust's website where the Trust has advised each Trustee of this.

ACCOUNTS

(SIX) (a) The Trustees shall ensure that proper accounting records are maintained, in accordance with all applicable statutory requirements.

(b) The Trustees shall prepare annual accounts, complying with all relevant statutory requirements.

(c) The Trustees shall arrange for an independent financial examination of the accounts and shall provide such examiner with access to all accounting records and other documents relating to the Trust.

PAYMENTS TO BENEFICIARIES

(SEVEN) (a) A written receipt from the beneficiary of a payment or the receipt of the treasurer or other appropriate officer for any funds or other assets paid or transferred by the Trustees to any such beneficiary or any charitable body shall represent sufficient discharge to the Trustee.

(b) In no circumstances is the Trust Fund to be held or applied for any purpose which is not an exclusively charitable purpose which falls within the Trust Purposes.

(c) For the avoidance of doubt, no payment may be made to any Trustee of the Trust, except for reimbursement of reasonable out-of-pocket expenses as may be approved by the Trustees.

LIMITATIONS ON LIABILITY

(EIGHT) The Trustees shall not be liable for loss or depreciation of the value of investments retained or made by them, 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.

AMENDMENT OF TRUST DEED OR WINDING-UP OF THE TRUST

(NINE) If in the opinion of the Trustees any change in circumstances or alterations 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 Trustees the administration of the Trust could be improved, or the Trust Purposes be advanced in a more appropriate manner, the Trustees may 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 Fund (after settlement of all debts and liabilities) to some other charitable body or bodies having similar objects to those of the Trust.

GOVERNING LAW

(TEN) The trust hereby established shall be governed by, subject to and conducted always in accordance with the Law of Scotland:

INTERPRETATION

(Eleven) In this trust deed

“charitable” shall be interpreted as being charitable within the meaning of the Charities and Trustee Investment (Scotland) Act 2005 (including any statutory amendment or re-enactment for the time being in force) and in relation to the application of the Taxes Acts;

“the Trust Deed” means this trust deed (including any addition or amendment effected in accordance with the provisions of Clause NINE;

“the Trust Fund” means such other funds and assets as may from time to time be received by the Trustees as Trustees under the Trust Deed 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 ONE.

“Highland Council Area” means the Highland Council area in terms of the Local Government Etc. (Scotland) Act 1994 and in the event of any repeal or any amendment of that Act the Trustees shall be entitled to substitute such definition as the Trustees see fit.

IN WITNESS WHEREOF