

Bath & North East Somerset Council		
MEETING:	Bath Recreation Ground Trust Board	
MEETING DATE:	Thursday 29 November 2012	EXECUTIVE FORWARD PLAN REFERENCE:
		E 2498
TITLE:	Draft Scheme for the Recreation Ground	
WARD:	All	
AN OPEN PUBLIC ITEM		
<p>List of attachments to this report:</p> <ol style="list-style-type: none"> 1. Draft Scheme issued by the Charity Commission 2. Response to the draft Scheme sent by the Chairman of the trustees 3. Communications Plan to support the publication of the Scheme 4. Text of explanatory leaflet to be made available during the period of the publication of the Scheme 		

1 THE ISSUE

- 1.1 The Charity Commission has issued a draft Scheme which will alter the trusts of the Recreation Ground charity. If confirmed, the Scheme will enable the trustees to resolve the breaches of the existing trusts arising from the lease to Bath Rugby Club and the Leisure Centre being on Trust land.

2 RECOMMENDATION

- 2.1 The Trust Board is asked to:

- (i) Note the provisions of the draft Scheme.
- (ii) Note and endorse the response to the draft Scheme sent by the Chairman of the Trustees.
- (iii) Note and endorse the Communications Plan to support the publication of the Scheme.
- (iv) Note and endorse the text of the explanatory leaflet to be made available during the period of the publication of the Scheme.

3 FINANCIAL IMPLICATIONS

- 3.1 The only financial implication arising directly from this report is the production of an explanatory booklet. The cost of this is provided for in the Trust's budget.
- 3.2 The Charity Commission's Scheme deals only with the legal framework and governance of the Recreation Ground. The powers granted by the Scheme provide the potential for the Trust to put its finances on a sound footing. They open possibilities for the investment in facilities and the further development of recreational opportunities.
- 3.3 However, any transactions under the Scheme will be for the new trustees to decide upon, at a later stage.

4 CORPORATE OBJECTIVES

- 4.1 Not applicable. The objectives of the Trust are limited to those contained in its objects.

5 THE REPORT

- 5.1 In 2002, the High Court decided that the Recreation Ground was a charitable trust. Since then, the Trust has been required to resolve two discrepancies with the objects of the trust. These are that:
- the land leased to Bath Rugby Club is unavailable for charitable uses, and
 - the land occupied by the Leisure Centre is no longer open space.
- 5.2 In addressing this requirement, the Trust carried out a Strategic Review. This concluded that the option to vary the current uses should be pursued.
- 5.3 In June 2011, the Trust consulted on a proposal which allowed the Rugby Club to remain at the Recreation Ground. It would be granted a new lease that would enable it to redevelop its stadium. This would include a temporary east stand and the rugby pitch would be available to the Trust during the summer months. The Club would pass its Lambridge training ground to the Trust as replacement land for the area that it occupied at the Recreation Ground. The consultation exercise showed there was strong support for this proposal.
- 5.4 The Charity Commission has now published a draft Scheme which confers certain powers on the Trust (attachment 1). The Scheme permits the Trust to grant a new lease to the Rugby Club and receive the Lambridge site as replacement land. It also brings indoor recreation on the Leisure Centre land within the objects of the trust.

5.5 The Scheme also requires that the trustees should be reconstituted, as follows:

- two trustees nominated by the Council,
- one trustee nominated by user groups,
- two trustees nominated by independent bodies expert in the operation of recreation grounds, and
- two co-opted trustees.

5.6 It will be for the Leader of the Council to nominate two trustees on the Council's behalf.

5.7 Since the publication of the draft Scheme, Fields in Trust (formerly the National Playing Fields Association) and the Somerset County Playing Fields Association have agreed to be nominating bodies.

5.8 The Council will continue to hold legal title to the Recreation Ground, as the custodian trustee. However, it will cease to be responsible for operating the Trust - this will be the role of the new trustee body. The Council can accept the role of custodian trustee through the Divisional Director (Property Services), acting under delegated powers.

5.9 The draft Scheme has been welcomed by the existing trustees (attachment 2). However, it will be for the new trustee body to take the decisions involved in implementing the proposal. These will include determining the terms of the property transactions with the Rugby Club and agreeing to the details of any new stadium. Any new development will be subject to the planning process, entirely separately from the Trust.

5.10 The draft Scheme will be published by the Charity Commission for one month, from 30 November. The Trust will support the Charity Commission in publicising the Scheme (attachment 3). It has prepared an explanatory booklet which gives the background to the matter and sets out the proposal for the Recreation Ground and Lambridge (attachment 4). The booklet will be made available in prominent locations and publicised through the media. It will also be available on the Trust's website.

6 RISK MANAGEMENT

6.1 The Scheme will remove the major and long-standing risk facing the Trust, namely the existing breaches of the charitable objects.

7. EQUALITIES

7.1 The Scheme will enable the widening and development of the recreational opportunities offered at the Recreation Ground.

8 RATIONALE

8.1 The Trust is required to resolve the discrepancies with its objects. The Charity Commission's Scheme will enable it to do so.

9 OTHER OPTIONS CONSIDERED

9.1 The Strategic Review examined three options based on; minimal impact uses, variations to the current usage and significant change. Subsequently, options for replacement land were considered.

10 CONSULTATION

10.1 The Strategic Review was subject to public consultation in 2006. The majority of respondents favoured the option to vary the current uses.

10.2 The Trust's proposal for the future of the Rec was subject to public consultation in June 2011. There was strong support for the proposal, with 85% of respondents strongly agreeing or agreeing that it provided a package of benefits that outweighed the detriments caused by the development of the rugby stadium.

11 ISSUES TO CONSIDER IN REACHING THE DECISION

11.1 Legal requirements; the interests of the beneficiaries of the trust; the future finances of the Trust.

12 ADVICE SOUGHT

12.1 Advice has been sought from the Trust's legal and financial advisors. Both have had the opportunity to input to this report and have cleared it for publication.

Contact person	<i>Andrew Pate, Lead Advisor to the Recreation Ground Trust. Tel: 477300.</i>
Sponsoring Trustee	<i>Councillor David Dixon, Chairman of Trustees.</i>
Background papers	<i>The Bath Recreation Ground Trust - A Strategic Review, 6 June 2007 Bath Recreation Ground – Report of Consultation, July 2011.</i>
Please contact the report author if you need to access this report in an alternative format	

THE CHARITY COMMISSION FOR ENGLAND AND WALES

Under the power given in the Charities Act 2011

Orders that from today

this

SCHEME

will alter or affect the existing trusts of the charity

known as

THE RECREATION GROUND BATH (1094519)

at

Bath

in the unitary authority of Bath and North East Somerset

1. Definitions

“the charity” means Bath Recreation Ground

“the Commission” means the Charity Commission for England and Wales

“the 1995 lease” means the lease of land belonging to the charity which was granted to Bath Rugby Club on 23 May 1995

“the existing trusts” means the Conveyance of 1 February 1956 as interpreted by Mr Justice Hart, Judgement 31 July 2002

“user groups” means those organisations using the charity from time to time

2. Administration

The charity is to be administered in accordance with its existing trusts as altered or affected by this scheme.

3. Leisure Centre

The land specified in Part 1 of the schedule to this scheme shall be appropriated and used for the purpose of providing facilities for recreation (including indoor recreation) in the interests of social welfare of the public with the object of improving their conditions of life.

4. Powers

- (1) For the purpose of resolving the issues arising from the continuing occupation by Bath Rugby Club of land belonging to the charity the trustees may exercise all or any of the following powers.
 - (a) To grant a lease (for a term no longer than the unexpired term of the existing lease) of the land described in part 2 of the schedule to this scheme and to receive replacement land suitable for the purpose of the charity instead of, or in addition to, consideration by way of a capital sum.
 - (b) To accept a surrender of the 1995 lease and to grant a fresh lease of the land comprised in that lease for a term not exceeding the unexpired term of the existing lease.
- (2) In exercising the powers conferred by subclause (1) above, the trustees shall:
 - (a) Fully consider all options for the management of the land belonging to the Charity (including the option of making no changes to the current arrangements) and before adopting an option satisfy itself that the option is in the best interests of the charity.
 - (b) Before surrendering a lease satisfy itself that it is doing so on the best terms reasonably available.
 - (c) Be satisfied having undertaken public consultation that any land taken in exchange shall have suitable amenity value for the purpose of a recreation ground and a location that is reasonably accessible, and suitable for the purposes of the Charity.
 - (d) Before entering into any commitment to grant, accept a surrender of or take any interest in land to obtain from a professional valuer a valuation of the land in question. A valuation must take full account of:
 - (i) the special interest of Bath Rugby Club in securing a grant of the additional land and its marriage value with the existing land held under the lease for the purpose of proposed development by Bath Rugby Club.
 - (ii) the valuation of the regrant of the lease shall take account of the other commercial uses which may be made within the current use class and under any planning permission that might reasonably be obtained for the land.

5. Trustees

(1) There shall be:

2 trustees nominated by Bath and North East Somerset Council

1 trustee nominated by the charity user groups

2 trustees nominated by # #

2 co-opted trustees

and, save as provided in subclause 2 below, a trustee shall hold office for 3 years.

(2) The first nominated trustees are the persons listed in part 4 of the schedule to this scheme, who shall each hold office for the period specified against his or her name.

6. Quorum

No business may be transacted at a meeting unless at least 3 trustees are present.

7. Custodian Trustee

The title to the land described in part 3 in the schedule to this scheme is transferred by this scheme to Bath and North East Somerset Council in trust for the charity.

8. Questions relating to this Scheme

The Commission may decide any question put to it concerning:

(1) the interpretation of this scheme; or

(2) the propriety or validity of anything done or intended to be done under it.

Authorised Officer

SCHEDULE

Part 1 – Leisure Centre

Land containing 11,120 square metres or thereabouts being part of the land described in Part 3 below with the leisure centre and car park thereon.

Part 2 – Additional land

Land containing 1136 square metres or thereabouts being part of the land described in Part 3 below

Part 3 – The Recreation Ground

Freehold land in the City of Bath described in a conveyance of 1 February 1956 which was made between The Bath and County Recreation Ground Company Limited of the one part and the Mayor Alderman and the Citizens of the City of Bath of the other part, a part of which is subject to a 75 year lease, and other parts of which are subject to subsisting leases dated 25 March 1996, 22 July 2000 and 21 November 2001.

Part 4 – Trustees

First Nominated trustees;

From Bath and North East Somerset Council

X for a period of 3 years

X for a period of 2 years

From the “user groups”

X for a period of 2 years

From local recreational bodies

X for a period of 3 years

X for a period of 2 years

Attachment 2: Response to the draft Scheme sent by the Chairman of the trustees

The Recreation Ground, Bath

(Registered Charity No. 1094519)

David Dixon
Chairman of the Trustees
The Guildhall
High Street
Bath
BA1 5AW

Date: 6 November 2012
Our ref:
Your ref:
Direct line:
E Mail: david_dixon@bathnes.gov.uk

Mr R Black
Compliance Unit
Charity Commission Direct
PO Box 1227
Liverpool
L69 3UG

Dear Richard,

The Recreation Ground, Bath – 1094519 CC:02160404

Thank you for sending through the revised draft Scheme with your email of 24 October. I am writing to provide the response of the trustees.

The trustees welcome the powers to be given to grant a new lease at the Recreation Ground to Bath Rugby Club and to accept replacement land at Lambridge. This will enable the principal and most intractable breach of the Trust's objects to be resolved in a way that brings substantial net gain to the beneficiaries.

The trustees acknowledge the requirements to be followed in exercising the powers conferred and confirm that they will be undertaken.

The trustees are disappointed that the Scheme does not provide for the leasing of the Leisure Centre to the Council. The Leisure Centre is a large and complex facility, needing specialised management to operate it. We do not believe that direct management by the Trust is either realistic or in the best interests of the beneficiaries. A lease to the Council would provide a practical and suitable vehicle to secure the operation of this major facility, whilst retaining responsibility for, and control of, the range of recreational activities provided there.

Nevertheless, we accept that the new trustees could return to this matter with the Commission at a later date. We also note your view that it would be open to the trustees to appoint an agent to operate the Leisure Centre on their behalf.

We agree with you that this aspect should not delay the publication of the Scheme and the resolution of the breaches of the objects. The trustees would therefore welcome the publication of the draft Scheme by 30 November.

Having consulted with our legal advisor, we would request some minor amendments to the draft Scheme, which are attached.

We would also seek two points of clarification. Firstly, section 4(1) still reads as if two separate leases to the Rugby Club are envisaged. It would be helpful if it was clear that one lease, dealing with points (a) and (b) was permitted. You agreed in our meeting of 19 September that this was the intention.

Secondly, is it the case that the new trustees are required to co-opt two further trustees, or is this discretionary? We feel that the discretionary option would be appropriate.

Regarding the nomination of trustees, we believe that Fields in Trust (formerly the National Playing Fields Association) would be an ideal body to nominate one or both of the unspecified trustees. We have contacted them and are seeking their agreement to this role.

As we have previously discussed, the Trust wishes to work with the Commission in support of its publication process. We are planning to produce a booklet which will explain the background to the issues and set out the details of the proposals for the Recreation Ground. The booklet will be distributed widely and also made available, together with other relevant information, on the Trust's website.

We hope you are able to agree to the points raised in this letter and we look forward to the publication of the Scheme at the end of the month.

Yours sincerely,

Councillor David Dixon
Chairman of the Trustees

(Attachment overleaf)

Proposed minor amendments to draft Scheme:

Heading

I would say 'in the area of the unitary authority...'

Clause 1

In the definition of 'the existing trusts' I would omit the first 'e' in 'judgement'.
In the definition of 'user groups' I would say 'using the charity's facilities' not 'using the charity'.

Clause 2

To be consistent with the definition in clause 1 this should read '...the existing trusts...' not '...its existing trusts...'

Clause 3

It would be helpful if Richard Black or Tony George would confirm that this wording allows part of the site to continue to be used as a car park for both the Leisure Centre and the Recreation Ground.

Clause 4(2)(a)

In the third line I would say '...any option...' and in the fourth line I would say '...that option...'

Clause 7

As I understand it the freehold title to the land is already vested in BANES so it is inappropriate that it should be transferred to it. I think this clause should read as follows:

'Bath and North East Somerset Council, in which the title to the land described in Part 3 of the schedule to this scheme is vested, shall be the Custodian Trustee of the charity and shall hold such title as such Custodian Trustee.'

The Recreation Ground, Bath

Publication of Scheme to alter the trusts of the charity

Communications Plan

Objectives

To communicate to the B&NES area and beyond:

- The publication of the Scheme by the Charity Commission
- The Trust's proposals for the Rec
- The background to and reasoning for the proposal
- How to obtain further information
- How to make representations
- To facilitate a wide and representative response to the Charity Commission.

Timing

To accompany the Charity Commission's publication period of one month.

Programmed for 30 November to 31 December 2012.

Elements

1 Leaflet

Informative, concise, user friendly.

Signpost more detailed information on Trust website

Format – A5 stapled booklet. Include QR code

Good quality design and production

Stocks to be available at prominent locations, including;

All libraries, One Stop Shops (Bath, Keynsham, Norton Radstock) Leisure Centres / Swimming Pools, Guildhall, other Council buildings.

Leaflet dispenser and poster to accompany.

2 Website (www.recreationgroundtrust.org.uk)

Reproduce leaflet

More detailed / technical information

Supporting text – how to enquire, how to make representations.

FAQs – on the proposal - on the Scheme

3 Social Media

Twitter and Facebook presence by Rec Trust to;
Monitor reaction and comments,
Direct interested persons to website
Answer questions, provide information
Enable and encourage representation.

4 Launch

Provide information to Chronicle
Press release for launch

5 Links with Council

Exercise must be associated with the Trust, not the Council.
Council website - reference and link only.
TV advert in Leisure Centre (Connect TV)

6 Other stakeholders

To be kept informed and involved

Attachment 4: Text of explanatory leaflet to be made available during the period of the publication of the Scheme

**The Recreation Ground, Bath
The Future for the Rec**

In summary:

The Recreation Ground Trust is proposing changes to how the Rec is used. The reason for doing this is to allow the Trust to meet fully its charitable objectives. The changes will resolve the issues caused by the lease to Bath Rugby Club and the Leisure Centre being on Trust land.

This booklet sets out the proposal prepared by the Trust. A major public consultation in early summer 2011 showed there was substantial support for the proposal.

The Trust has now submitted its proposal to the Charity Commission. The Commission has published a legal order, known as a Scheme, which will enable the Trust to carry out its proposal.

The Commission will consider representations from the public before it decides on the Scheme. So it is important that as many people as possible make their views known to them.

How did we get here?

The Recreation Ground Trust manages the Rec for the benefit of the people of Bath and the surrounding areas. The Council is the sole trustee and manages the Trust's affairs through a Board of councillors. The Board acts in the interests of the beneficiaries of the Trust and not of the Council.

The objectives of the Trust can be summarised as;

- to use the Rec for games and sports of all kinds, tournaments, fetes, shows, exhibitions, displays, amusements, entertainments, and other similar activities,
- to maintain and let the land as an open space, and
- to carry this out without preference to any particular sport or organisation.

The land currently held by the Trust is shown on Plan 1.

In 1995, Bath Rugby Club secured a 75 year lease at the Rec. This has resulted in some parts of the Rec being unavailable for charitable activities.

The Leisure Centre was erected by Bath City Council in 1975. The Centre does provide for 'games and sports of all kinds' but indoors, rather than on an open space.

Why does there need to be a change?

In 2002, the High Court decided that the Rec was a charitable trust. This meant there were two discrepancies with the objectives of the Trust:

- Bath Rugby is a commercial organisation and the land leased to it cannot be used for charitable purposes.
- The Leisure Centre provides for indoor sport and recreation and the land that it occupies is no longer an open space.

The Charity Commission is responsible for ensuring that charity law is followed. It has ruled that the Trust must rectify these discrepancies.

Bath Rugby Club has said that, to remain viable on the Rec, it requires some additional land to increase its stadium capacity. If it cannot do this, Premiership Rugby will leave the Rec and the charity will lose most of its annual income. This would mean the Trust would not be able to cover its running costs.

Even if Premiership Rugby did relocate, the Club would still hold a valid lease at the Rec which it would occupy for the remainder of its term. The discrepancy with the charitable objective would remain unresolved and there would be no gain for the beneficiaries.

The Leisure Centre provides a wide range of sport and recreational activities for Bath and beyond which complement the outdoor activities provided by the open space at the Rec. The Scheme widens the objectives of the charity so that indoor activities are included.

What options have been looked at?

In 2006, the Trust Board carried out a Strategic Review to consider how the discrepancies with the objectives could be resolved. The review examined three options based on; minimal impact uses, variations to the current usage, and significant change.

The results of the Review were published in 2007 and consultation revealed that a majority of respondents favoured the option to vary the current usage.

The Charity Commission accepted that it could be possible for the Rugby Club to remain at the Rec. However, there needed to be additional benefits in order to outweigh the effects of the Club staying.

The most direct and desirable way of creating additional benefits is for the Trust to gain access to additional land which will serve its charitable objectives. This is not possible at the Rec so the Trust looked for other possibilities in the vicinity.

So, what is the Proposal?

The Rugby Club has offered the Trust its Lambridge sports ground as compensation for the open space that it would occupy at the Rec. The site provides over 4.5 hectares of level grassed land, suitable for Trust activities. The area of Lambridge is more than twice the area the Club would need for its larger stadium.

With the addition of Lambridge, the total amount of land held by the Trust would rise from 6.3 hectares to 10.8 hectares, an increase of 73%.

The new stadium would have stands on three sides, as at present. A temporary east stand would be erected for the playing season. At the end of the season, this would be dismantled and the grass re-instated. The temporary stand area and the pitch would be available for trust uses during the summer.

The increase in the area of land available for trust uses, in summer and winter, is shown below:

<i>Areas in hectares</i>	Trust today (Recreation Ground)	Proposal (Recreation Ground plus Lambridge)	Increase
Open space available in Summer	4.8	9.1	+88%
Open space available in Winter	3.7	7.6	+105%

By including indoor sports within the Trust's objectives, the area of land providing for qualifying activities all year round rises from 3.7 hectares to 8.5 hectares, an increase of 130%.

The key features of the Proposal are as follows:

The trustees:

The trustees will comprise;

- two trustees nominated by Bath and North East Somerset Council,
- two trustees nominated by independent organisations, expert in the operation of recreation grounds,
- one trustee nominated by the groups who use the Rec, and
- two co-opted trustees.

Decisions on using the powers in the Scheme will be for this new trustee body. The Council will continue to hold legal title to the Rec land, in trust for the charity.

Leisure Centre:

- Indoor recreational activities as provided by the Leisure Centre will be brought within the objectives of the Trust.
- The new trustees would consider whether any changes in the existing management arrangements of the Leisure Centre were needed.
- This could continue to be by the Council on behalf of the Trust, through a specialist leisure operator if appropriate.
- The Trust will be able to invest in the Leisure Centre to further its charitable objectives.

Bath Rugby Club

- The Club will surrender its existing lease and the Trust will grant it a new lease for the land shown on plan 2, for the unexpired term of the existing lease.
- The Club will lease the Lambridge sports ground to the Trust, at a nominal rent, for the same period as its new lease.
- The Trust will agree to the Club developing a new arena within the footprint of the new lease.
- The arena will have a capacity of between 17,000 and 18,000 spectators.
- The arena will include a temporary stand on the east side of the ground. This will be removed at the end of each season and the grass re-instated.
- There will be public access to the rugby pitch during the summer months.
- The arena will include some retail space under the west, north and south stands.
- The Club will provide a scheme of community benefits including the provision of services and improved drainage to the eastern side of the Rec, and the provision of event facilities.
- The Club will pay an annual base rent to the Trust, with stepped increases over the first five years.
- The Club will pay commercial rent to the Trust, based on the rent received from the retail spaces and the turnover from other commercial activities on non-match days.

What did people think of the Proposal?

The Trust held a major consultation exercise on the proposal in June 2011. Nearly 4,000 consultation booklets and questionnaires were distributed locally and copies of both were available on the Trust's website. The trustees put forward their view that the proposal provided benefits to the beneficiaries that outweighed the detriment that would be caused by a new rugby stadium. 85% of respondents strongly agreed or agreed with this view.

	Postal	On-line	Total	
			no.	%
Strongly Agree	252	3243	3495	77%
Agree	23	358	381	8%
Neither Disagree or Agree	4	44	48	1%
Disagree	10	41	51	1%
Strongly Disagree	138	402	540	12%
Total	427	4088	4515	

The trustees considered carefully all the comments received through the consultation. With such a large level of support, they decided to proceed with presenting the proposal to the Charity Commission.

What now?

The Charity Commission has published a draft Scheme which will amend the purposes of the charitable trust and reconstitute the trustee body. The Scheme will enable the Trust to grant a new lease to the Rugby Club and to receive, as replacement land, the Lambridge sports ground.

The draft Scheme is published for one month so that members of the public have the opportunity to comment on it. In deciding whether to confirm the Scheme, the Charity Commission will take into account all representations that it receives during that period, both for and against.

The Trust is encouraging all those with an interest in the Rec and its future to tell the Charity Commission their views on the proposal. How to do this is shown opposite:

How to respond to the Charity Commission:

On line

Responses can be made on the Charity Commission's website at:

www.charitycommission.gov.uk/our_regulatory_activity/compliance_work/schemes/

(click on 'see a complete list of all Schemes and Orders currently open for representation')

In writing

Representations can be sent to:

Charity Commission

PO Box 1227

Liverpool, L69 3UG

And then?

If the Charity Commission authorises the Scheme, the next step will be to hand over to the new trustee body so it can manage the charity and decide on taking forward the proposal. It will be for the new Board to agree the details of the transactions with the Rugby Club.

Plans for any new rugby stadium would need the approval of the new trustees. Separately from this, the Rugby Club would also need to apply for planning permission, in the normal way.

With the legal issues settled and an income stream secured, the Board would be able to invest in the facilities at the Rec and Lambridge. It could develop a management plan to maximise the recreational opportunities available from its land, for the benefit of the people of Bath and the surrounding areas.

A copy of this booklet, and further information about the Rec, is available at:
www.recreationgroundtrust.org.uk