

Appendix 1: Proposed Governing Document

Governing Document for The Recreation Ground, Bath (excluding the Bath Recreation Ground (Sports and Leisure Centre) Trust)

Purple text is taken from the existing trusts

Red text is taken from Scheme

Blue text is taken from Model Trust Deed (Charitable Trusts)

Green text is FQ wording or other edits.

THIS IS A COMPOSITE DOCUMENT CONTAINING RELEVANT PROVISIONS FROM THE CONVEYANCE DATED 1 FEBRUARY 1956, THE SCHEME OF THE CHARITY COMMISSION DATED 12 June 2013 AND THE RESOLUTION OF THE TRUSTEES DATED [].

1. Administration

- (1) The property of the charity identified in part 1 of the schedule is to be administered in accordance with the provisions of this clause.
- (2) From the date of this scheme, the property identified in part 2 of the schedule will be administered and managed by the trustees constituted by clause 6 of this scheme in accordance with the existing trusts as altered or affected by this scheme.
- (3) Until the Order is made, the property identified in part 3 of the schedule will continue to be administered and managed by the Council in accordance with the existing trusts as altered or affected by this scheme. For the avoidance of confusion, the property will (until the date of the Order) be known as The Bath Recreation Ground (Sports & Leisure Centre) Trust.
- (4) By the Order, the Commission will appoint (if it thinks fit):
 - (a) the trustees constituted by clause 6; or
 - (b) any charitable company or charitable incorporated organisation established by those trusteesas trustee of the property identified in part 3 of the schedule. At that date, the land identified in parts 2 and 3 of the schedule will constitute the property of a single charity.
- (5) The trustees constituted under clause 6 must (with the benefit of such professional advice as necessary):
 - (a) seek to negotiate and enter into binding arrangements with the Council in respect of the Sports and Leisure Centre for its on going

maintenance, including provision for the future demolition when the building is deemed life expired; and

- (b) when or if binding arrangements are validly executed, either:
 - (i) the trustees constituted under clause 6; or
 - (ii) the trustee of The Bath Recreation Ground (Sports & Leisure Centre) Trust,

must apply to the Commission for the Order.

The charity shall be administered by the trustees.

(In this deed, the expression 'the trustees' refers to the individuals who are the trustees of the charity at any given time. It includes the first trustees and their successors. The word 'trustee' is used to refer to any one of the trustees.)

2. Name

The charity shall be called 'The Recreation Ground, Bath'.

3. Objects

The use with or without charge of the whole or any part or parts of the property hereby conveyed for the purpose of or in connection with games and sports of all kinds tournaments fetes shows exhibitions displays amusements entertainments or other activities of a like character and for no other purpose and shall maintain equip or lay out the same for or in connection with the purposes aforesaid as they shall think fit but so nevertheless that the Corporation shall not use the property hereby conveyed otherwise than as an open space and shall so manage let or allow the use of the same for the purposes aforesaid as shall secure its use principally for or in connection with the carrying on of games and sports of all kinds and shall not show any undue preference to or in favour of any particular game or sport or any particular person club body or organisation.

4. Specific Powers

- (1) For the purpose of resolving the issues arising from the continuing occupation by Bath Rugby Club of the land contained in the 1995 lease, and in the event of the surrender of the 1995 lease, the trustees may (subject to sub-clause (2) below) exercise all or any of the powers in this clause.
- (2) Before exercising the powers conferred by this clause, the trustees must 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 any option satisfy themselves that that option is in the best interests of the charity.

- (3) Sub-clause (4) applies only to the land:
 - (a) currently subject to the 1995 lease; and
 - (b) described in part 4 of the schedule to this scheme.
- (4) Subject to sub-clause (2) above and the conditions, the trustees may grant a lease or leases of the land and receive replacement land instead of, or in addition to, consideration by way of a capital sum and by way of further consideration. The conditions are:
 - (a) the term of any lease(s) must not exceed the unexpired term of the 1995 lease; and
 - (b) any replacement land must be suitable for the purpose of the charity.
- (5) In so far as any lease extends to the land described in part 4 of the schedule:
 - (a) no lease must be granted unless and until all necessary formalities (including the elapse of time if appropriate) have been properly performed and recorded to exclude sections 24 to 28 of the Landlord and Tenant Act 1954 in relation to that lease; and
 - (b) the lease must not permit the tenant use otherwise than as a site for a temporary stand (usually referred to as 'the east stand') or playing pitch or access areas and must require the site to be available as open space for use for the purposes of the charity for at least three months in each year.
- (6) In exercising the powers conferred by this clause, the trustees must:
 - (a) before accepting a surrender of the 1995 lease, satisfy themselves that they are doing so on the best terms reasonably available;
 - (b) satisfy themselves (having undertaken public consultation) that any land taken in exchange will:
 - (i) have suitable amenity value for the purpose of a recreation ground; and
 - (ii) be in a location that is reasonably accessible and suitable for the purposes of the Charity;
 - (c) before entering into any commitment to grant, accept a surrender of the 1995 lease or take any interest in land 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 land in part 4 of the schedule and its marriage value with the existing land held under the 1995 lease for the purpose of proposed development by Bath Rugby Club; and
 - (ii) (in valuing any regrant of the 1995 lease) 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.
- (d) in granting any new lease of the land comprised in the 1995 lease:
- (i) ensure that the lease is non assignable, except to subsequent owners of Bath Rugby Club;
 - (ii) ensure that the lease contains a right of pre-emption should Bath Rugby Club cease to use the property as its principal site for professional rugby football;
 - (iii) require Bath Rugby Club to minimise disruption to local residents and to the users of the charity's land; and
 - (iv) give public notice in accordance with the provisions of s121 Charities Act 2011 (whether or not this would otherwise be required).
- (7) In exercising the above powers (and in administering and managing the charity), the trustees must:
- (a) act only in the best interests of the charity to further the charity's objects for the public benefit;
 - (b) act in good faith (meaning acting in a way that the trustees honestly believe to be in the best interests of the charity);
 - (c) take into account all relevant factors and disregard any irrelevant factors; and
 - (d) adequately inform themselves, including having regard to the views of those who have an interest in the charity.

5. Further Powers

The Trustees shall also have the following powers exercisable in the administration of the charity in furthering its objects:

- (1) To raise funds. In exercising this power, the trustees must not undertake any taxable permanent trading activity and must comply with any relevant statutory regulations.
- (2) To borrow money and to charge the whole or any part of the property belonging to the charity as security for repayment of the money borrowed. The trustees must comply as appropriate with sections 124 – 126 of the Charities Act 2011 if they wish to mortgage land owned by the charity.
- (3) To co-operate with other charities, voluntary bodies and statutory authorities and to exchange information and advice with them.
- (4) To establish or support any charitable trusts, associations or institutions formed for any of the charitable purposes included in the objects.
- (5) To employ and remunerate such staff as are necessary or desirable for carrying out the work of the charity.

6. Delegation

- (1) In addition to their statutory powers, the trustees may delegate any of their powers or functions to a committee of two or more trustees. A committee must act in accordance with any directions given by the trustees. It must report its decisions and activities fully and promptly to the trustees. It must not incur expenditure on behalf of the charity except in accordance with a budget previously agreed by the trustees.
- (2) The trustees must exercise their powers jointly at properly convened meetings except where they have;
 - (a) delegated the exercise of the powers (either under this provision or under any statutory provision), or
 - (b) made some other arrangements, by regulations under clause 22.
- (3) The trustees must consider from time to time whether the powers or functions which they have delegated should continue to be delegated.

5. Custodian Trustee

- (1) The Council will be the custodian trustee of the charity.
- (2) The Official Custodian for Charities is discharged in respect of the land identified in part 2 of the schedule. From this date, the land is vested in the Council as custodian trustee of the charity.

6. Trustees

- (1) When complete, the trustee body comprises:
 - 2 trustees nominated by Bath and North East Somerset Council
 - 1 trustee nominated by Fields in Trust
 - 1 trustee nominated by Somerset County Playing Fields Association
 - Not less than 3 co-opted trustees.
- (2) Except as provided for the first trustees, each appointment must be for a period of three years.

7. First trustees

- (1) The first nominated trustees are the persons listed in part 5 of the schedule to this scheme. They will hold office for the periods shown in the schedule.
- (2) The trustee to be nominated by Fields in Trust should be appointed as soon as possible after the date of this scheme.
- (3) At least three of the first co-opted trustees should be appointed as soon as possible after the first meeting in accordance with clause 8 below.

8. Co-opted trustees

- (1) When appointing co-opted trustees, the trustees must:
 - (a) identify the needs of the charity regarding skills or knowledge of its trustees; and
 - (b) consider the extent to which appointees demonstrate the skills or knowledge; and
 - (c) not appoint members of the Council.
- (2) Of the co-opted trustees, the trustees must appoint at least one whose skills and knowledge include an ability to represent those groups of beneficiaries that use the recreation ground, other than Bath Rugby Club.
- (3) In appointing co-opted trustees, the trustees must have regard to the desirability of advertising in the local and/or specialist press or using trustee brokerage services. Candidates must be asked to consider and declare any existing or potential conflicts of interest before appointment.
- (4) The appointment of a co-opted trustee must be made by the trustees at a meeting of which not less than 21 days' notice has been given.

- (5) An appointment may, but need not, be made before the date on which the term of office of an existing co-opted trustee comes to an end, to take effect on that date. In these circumstances:
 - (a) the appointment may not be made more than 3 months before the date on which the existing co-opted trustee's term of office is due to end; and
 - (b) any co-opted trustee whose term of office is about to come to an end must not vote in favour of their own re-appointment.

- (3) Apart from those Trustees who are named in the scheme of 12 June 2013 January 2013, every trustee is to be appointed by resolution passed by a majority of the trustees in office. In the case of nominated trustees, the person nominated shall be appointed. In the case of co-opted trustees or in the event that no candidate is nominated by the nominating body within three months of its being notified of the vacancy, the person appointed shall be selected by the trustees.

- (4) In selecting individuals for appointment as trustees, the trustees must have regard to the skills, knowledge and experience needed for the effective administration of the charity.

- (5) The trustees must keep a record of the name and address and the dates of appointment, re-appointment and retirement of each trustee.

- (6) The trustees must make available to each new trustee, on his or her first appointment
 - (a) a copy of this deed and any amendments made to it:
 - (b) a copy of the charity's latest report and statement of accounts

8. Eligibility for Trusteeship

- (1) No one shall be appointed as a trustee:
 - (a) if he or she is under the age of 18 years; or
 - (b) if he or she would at once be disqualified from office under the provisions of clause 11 of this deed.

- (2) No one shall be entitled to act as a trustee whether on appointment or on any re-appointment as trustee until he or she has expressly acknowledged, in whatever way the trustees decide, his or her acceptance of the office of trustee of the charity.

9. Termination of Trusteeship

A trustee shall cease to hold office if he or she;

- (1) is disqualified for acting as a trustee by virtue of sections 178 and 179 of the Charities Act 2011 or any statutory re-enactment or modification of that provision;
- (2) becomes incapable by reason of mental disorder, illness or injury of managing his or her own affairs;
- (3) is absent without the permission of the trustees from all their meetings held within a period of six months and the trustees resolve that his or her office be vacated; or
- (4) notifies to the trustees a wish to resign (but only if enough trustees will remain in office when the notice of resignation takes effect to form a quorum for meetings).

10. Vacancies

- (1) If a vacancy occurs, the trustees must note the fact in the minutes of their next meeting. **If the vacancy is for a nominated trustee, the trustees must notify the relevant nominating body as soon as possible and invite it to make a fresh nomination.**
- (2) Any eligible trustee may be re-appointed. If the number of trustees falls below the quorum, none of the powers or discretions conferred by this deed or by law on the trustees shall be exercisable by the remaining trustees except the power to appoint new trustees.

11. Ordinary Meetings

The trustees must hold at least **four** ordinary meetings each year. One such meeting in each year must involve the physical presence of those trustees who attend the meeting. Other meetings may take such form, including videoconferencing, as the trustees decide, provided that the form chosen enables the trustees both to see and hear each other.

12. Calling Meetings

The trustees must arrange at each of their meetings the date, time and place of their next meeting, unless such arrangements have already been made. Ordinary meetings may also be called at any time by the person elected to chair meetings of the trustees or by any two trustees **or by the clerk to the trustees**. In that case, not less than ten days clear notice must be given to the other trustees.

13. Special Meetings

A special meeting may be called at any time by the person elected to chair meetings of the trustees or by any two trustees. Not less than four days clear notice must be given to the other trustees of the matters to be discussed at the meeting. However, if those matters include the appointment of a trustee or a proposal to amend any of the **provisions of the trusts of the charity pursuant to s 280 of the Charities Act 2011**, not less than 21 day's notice must be given. A special meeting may be called to take place immediately after or before an ordinary meeting.

14. Chairing of Meetings

- (1) The trustees at their first ordinary meeting in each year must elect one of their number to chair their meetings. The person elected shall always be eligible for re-election. If that person is not present within ten minutes after the time appointed for holding a meeting, or if no one has been elected, or if the person elected has ceased to be a trustee, the trustees present must choose one of their number to chair the meeting.
- (2) The person elected to chair meetings of the trustees shall have no other additional functions or powers except those conferred by this deed or delegated to him or her by the trustees.

15. Quorum

- (1) **Except as provided in sub-clause (2) below, no business may be transacted at a meeting unless at least 3 trustees are present.**
- (2) **At least 5 trustees must be present at a meeting before any decision can be taken to exercise a power contained in clause 4 above.**

16. Voting

At meetings, decisions must be made by a majority of the trustees present and voting on the question. The person chairing the meeting shall have a casting vote whether or not he or she has voted previously on the same question but no trustee in any other circumstances shall have more than one vote.

17. Independence

The trustees must:

- (1) exercise their own independent judgement solely in the best interests of the charity;
- (2) ensure that the charity is independent and exists to pursue its own purposes and not to carry out the policies or directions of the Council or of any other body;
- (3) at their first meeting (or as soon as possible thereafter), adopt a conflicts of interest policy (taking account of the guidance issued by the Commission) and adequately manage any conflicts of interest in accordance with that policy.

17 Conflicts of Interests and Conflicts of Loyalties

A charity trustee must:

- (1) declare the nature and extent of any interest, direct or indirect, which he or she has in a proposed transaction or arrangement with the charity or in any transaction or arrangement entered into by the charity which has not been previously declared; and
- (2) absent himself or herself from any discussions of the charity trustees in which it is possible that a conflict will arise between his or her duty to act solely in the interests of the charity and any personal or representative interest (including but not limited to any personal financial interest).

Any charity trustee absenting himself or herself from any discussions in accordance with this clause must not vote or be counted as part of the quorum in any decision of the charity trustees on the matter.

18. Errors and Informalities

- (1) Subject to sub-clause (2) of this clause, all decisions of the charity trustees, or of a committee of the charity trustees, shall be valid notwithstanding the participation in any vote of a charity trustee:
 - (a) who is disqualified from holding office;
 - (b) who had previously retired or who had been obliged by this deed to vacate office;
 - (c) who was not entitled to vote on the matter, whether by reason of a conflict of interest or otherwise

if, without the vote of that charity trustee and that charity trustee being counted in the quorum, the decision has been made by a majority of the

charity trustees at a quorate meeting.

- (2) Sub- clause (1) of this clause does not permit a charity trustee to keep any benefit that may be conferred upon him or her by a resolution of the charity trustees or of a committee of the charity trustees if, but for sub-clause (1), the resolution would have been void, or if the charity trustee has not complied with clause 17 (Conflicts of interests and conflicts of loyalties).

19. Minutes

The trustees must keep minutes, in books kept for the purpose or by such other means as the trustees decide, of the proceedings at their meetings. In the minutes, the trustees must record their decisions and, where appropriate, the reasons for those decisions. The trustees must approve the minutes in accordance with the procedures, laid down in regulations made under clause 22 of this deed.

20. General Power to make Regulations

- (1) The trustees may make rules and regulations for the administration and management of the charity, which must be consistent with the provisions of the existing trusts and this scheme. These may include:
 - (a) the calling of meetings
 - (b) methods of making decisions in order to deal with cases of urgency when a meeting is impractical
 - (c) the deposit of money at a bank
 - (d) the custody of documents
 - (e) the keeping and authenticating of records. (If regulations made under this clause permit records of the charity to be kept in electronic form and requires a trustee to sign the record, the regulations must specify a method of recording the signature that enables it to be properly authenticated).
- (2) The trustees must not make regulations which are inconsistent with anything in this deed.

21. Disputes

If a dispute arises between the trustees about the validity or propriety of anything done by the charity trustees under this deed, and the dispute cannot

be resolved by agreement, the trustees party to the dispute must first try in good faith to settle the dispute by mediation before resorting to litigation.

22. Accounts, Annual Report and Annual Return

The trustees must comply with their obligations under the Charities Act 2011 with regard to:

- (1) the keeping of accounting records for the charity;
- (2) the preparation of annual statements of account for the charity;
- (3) the auditing or independent examination of the statements of account of the charity
- (4) the transmission of the statements of account of the charity to the Commission;
- (5) the preparation of an Annual Report and its transmission to the Commission;
- (6) the preparation of an Annual Return and its transmission to the Commission.

24. Bank Account

Any bank or building society account in which any of the funds of the charity are deposited must be operated by the trustees and held in the name of the charity. Unless the regulations of the trustees make other provision, all cheques and orders for the payment of money from such an account shall be signed by at least two trustees.

25. Benefits and Payments to Charity Trustees and Connected Persons

- (1) General provisions

No charity trustee or connected person may:

- (a) buy or receive any goods or services from the charity on terms preferential to those applicable to members of the public;
- (b) sell goods, services or any interest in land to the charity;
- (c) be employed by, or receive any remuneration from, the charity;
- (d) receive any other financial benefit from the charity;

unless the payment or benefit is permitted by sub-clause (2) of this clause or authorised by the court or the Charity Commission. In this clause, a 'financial benefit' means a benefit, direct or indirect, which is either money or has a monetary value.

(2) Scope and powers permitting trustees' or connected persons' charitable benefits

(a) A charity trustee is entitled to be reimbursed out of the funds of the charity or may pay out of such funds reasonable expenses properly incurred by him or her when acting on behalf of the charity.

(b) A charity trustee may benefit from trustee indemnity insurance cover purchased at the charity's expense in accordance with, and subject to the conditions in, section 189 of the Charities Act 2011.

(c) A charity trustee or connected person may receive a benefit from the charity or take part in its normal trading or fundraising activities in the same manner and on the same terms as a member of the public.

(d) A charity trustee or connected person may enter into a contract for the supply of services, or of goods that are supplied in connection with the provision of services, to the charity where that is permitted in accordance with, and subject to, the conditions in section 185 of the Charities Act 2011.

(3) In this clause:

(a) 'charity' shall include any company in which the charity:

(i) holds more than 50% of the shares; or

(ii) controls more than 50% of the voting rights attached to the shares; or

(iii) has the right to appoint one or more trustees to the board of the company.

(b) 'connected person' means:

(i) a child, parent, grandchild, grandparent, brother or sister of the trustee;

(ii) the spouse or civil partner of the trustee or of any person falling within sub-clause (a) above;

- (iii) a person carrying on business in partnership with the trustee or with any person falling within sub-clause (a) or (b) above;
- (iv) an institution which is controlled -
 - by the trustee or any connected person falling within sub-clause (a), (b) or (c) above; or
 - by two or more persons falling within sub-clause (d)(i), when taken together
- (v) a body corporate in which -
 - the charity trustee or any connected person falling within sub-clauses (a) to (c) has a substantial interest; or
 - two or more persons falling within sub-clause (e)(i) who, when taken together, have a substantial interest.

26. Repair and Insurance

The trustees **should consider what steps are necessary to** keep in repair and insure to their full value against fire and other usual risks all the buildings of the charity (except those buildings that are required to be kept in repair and insured by a tenant). They should also consider taking out suitable insurance in respect of public liability and employer's liability.