10. Reduce the risk of liability

It’s extremely rare, but not impossible, for charity trustees to be held personally liable:

- to their charity, for a financial loss caused by them acting improperly
- to a third party that has a legal claim against the charity that the charity can’t meet

Understanding potential liabilities will help you to protect yourself and your charity by taking action to reduce the risk. This includes complying with duties covered in this guidance. It also includes deciding whether your charity should become incorporated.

10.1 Personal liability to the charity

Trustees can be held liable to their charity for any financial loss they cause or help to cause. This applies to any type of charity whatever its legal form.

The law generally protects trustees who have acted honestly and reasonably from personal liability to their charity. The Commission and the courts:

- can relieve trustees from liability if they have acted honestly and reasonably and have not benefited from their actions
- rarely enforce liability on an unpaid trustee who has made an honest mistake
- expect higher standards from trustees who act in a professional capacity or are paid for being trustees

Trustees who receive an unauthorised payment or benefit from their charity have a duty to account for (ie repay) it. The Commission can’t relieve trustees from this duty.

There is no legal protection for trustees who have acted dishonestly, negligently or recklessly. However, there may be financial protection for those trustees who have made an honest mistake and can rely on the indemnity provisions in the charity’s governing document, insurance cover or relief from the Commission or the court.

Find out more:

[Charity Commission policy on restitution and the recovery of charitable funds misappropriated or lost to charity in breach of trust (https://www.gov.uk/government/publications/how-we-ensure-charities-meet-their-legal-requirements/our-policy-on-restitution-and-the-recovery-of-charitable-funds-misappropriated-or-lost-to-charity-in-breach-of-trust)](https://www.gov.uk/government/publications/how-we-ensure-charities-meet-their-legal-requirements/our-policy-on-restitution-and-the-recovery-of-charitable-funds-misappropriated-or-lost-to-charity-in-breach-of-trust)

10.2 Liability to third parties

Charities or their trustees can become liable to a third party who has a claim against the charity such as:

- breaches of an employee’s terms, conditions or rights
- failing to pay for goods or services, or to fulfil the terms of a contract
- a member of the public being injured on the charity’s premises
- liability to any staff pension scheme

If the charity is incorporated, the charity itself will be liable for the claim. Some types of incorporated body (companies, CIOs and Community Benefit Societies) can specifically limit the liability of their trustees and members.

If the charity is unincorporated, the trustees have to sign contracts and other agreements personally, and will have to meet any claim. The charity can normally meet any liabilities that you incur as a trustee provided you have acted honestly and reasonably. (Some charities also have power to indemnify trustees against liability arising from an honest mistake.) But if you incur liabilities that exceed the value of the charity’s assets, you could be liable for any amount that the charity can’t cover.

Find out more about your charity’s legal structure - see section 11 of this guidance.

Find out more:

[Vicarious liability of a charity or its trustees (https://www.gov.uk/government/publications/vicarious-liability-of-a-charity-or-its-trustees)](https://www.gov.uk/government/publications/vicarious-liability-of-a-charity-or-its-trustees)

10.3 Criminal liability

In some cases, the charity or its trustees can become liable for offences committed by the charity’s staff (for example, under the Bribery Act or corporate manslaughter law).

Find out more about the Bribery Act (http://www.transparency.org.uk/our-work/business-integrity/bribery-act/guidance-for-ngos) (Transparency International guidance).

10.4 Reduce the risk of personal liability

To reduce the risk of becoming personally liable, you should:

- ensure trustees understand their responsibilities
- ensure the charity can meet its financial obligations, particularly before agreeing to any contract or substantial borrowing
- ensure the charity can meet any obligations to staff pension schemes
- hold regular trustee meetings and keep proper records of decisions made and the reasons for those decisions
- ensure you prevent conflicts of interest from affecting decisions
- ensure any transactions with and benefits to trustees or connected persons are properly authorised
- take appropriate advice from a suitably qualified person when you need to
- if you delegate any powers, give clear written instructions and make sure the instructions are being followed
- ensure the charity has effective management and financial controls including
  - keep receipts and records of income and expenditure
  - receive regular financial reports
  - file accounts on time
- ensure the charity is complying with other laws that apply to it
- consider whether the charity needs additional insurance or needs to become incorporated

If your charity is unincorporated and employs staff or enters into other contracts, the trustees should seriously consider changing the charity into an incorporated form. You may need to take professional advice about this, particularly in relation to any pension liabilities which could be triggered by incorporation.

Read more about:

How to manage risks in your charity (https://www.gov.uk/how-to-manage-risks-in-your-charity)

Charities and insurance (https://www.gov.uk/government/publications/charities-and-insurance-cc49)

Changing your charity into a company or CIO (https://www.gov.uk/change-your-charity-structure)

Pension rules for charities (https://www.gov.uk/pension-rules-for-charities)

Charity Finance Group guidance about pensions (https://cfg.org.uk/pensions-and-hr)

11. Your charity's legal structure and what it means

It's important to know your charity's legal structure (eg trust, association, CIO, company) because it affects whether:

- the charity itself can enter into contracts or employ staff, or the trustees must do these things personally
- land is held by the charity itself or by the trustees (or someone the trustees appoint for that purpose)
- trustees' liability is limited
- trustees have specific legal duties that go with that legal structure

11.1 Different legal structures for charities

An 'incorporated charity' is one that's set up in a legal form which makes the charity itself a legal entity. This is called 'legal personality', and means the charity can own property or enter into contracts in its own name. Incorporation gives trustees more protection from personal liability. Some incorporated forms can limit trustees' liability to third parties. The law places duties on board members to prevent the abuse of limited liability.

An 'unincorporated charity' doesn't have legal personality, so can't hold property or enter into contracts in its own name. Trustees' personal liability is unlimited.

This table summarises the characteristics of different legal forms and what they mean for trustees.

Legal form or structure	Incorporated (legal personality)	Title to land held by	Contracts/employment in the name of	Liabil third limite
Trust	No	Trustees for the charity	Trustees personally (for the charity)	No
Association	No	Trustees for the charity	Trustees personally (for the charity)	No
Company	Yes	The charity	The charity	Yes
Charitable Incorporated Organisation (CIO)	Yes	The charity	The charity	Yes
Corporation created by Act of Parliament	Yes	The charity	The charity	Yes u exclu the Ac
Royal charter body	Yes	The charity	The charity	Incorp gives protec
Community Benefit Society	Yes	The charity	The charity	Yes

Find out more:

[Charity types: how to choose a structure (https://www.gov.uk/charity-types-how-to-choose-a-structure)](https://www.gov.uk/charity-types-how-to-choose-a-structure)

[Running a limited company: Directors' responsibilities (https://www.gov.uk/running-a-limited-company)](https://www.gov.uk/running-a-limited-company)

Royal Charter charities (https://www.gov.uk/government/publications/royal-charter-charities)

11.2 Unincorporated charities (trusts and unincorporated associations) - holding land

Charities set up by a trust deed, constitution or similar governing document are unincorporated. This means they are not legal bodies in their own right and can't hold property in their own name; it must be held for the charity by trustees.

If the charity trustees do not want to hold legal title for any land or other property themselves, they can appoint a nominee, holding trustees (other individuals) or a custodian trustee (a company or other corporate body that has power to hold property for the charity). The governing document may explain how to do this.

Holding and custodian trustees aren't charity trustees; they can't make decisions about the management of the charity or its property, and must follow the lawful directions of the charity trustees.

You may find it simplest to vest the land in the Official Custodian for Charities. Read about The Official Custodian for Charities' land holding service (https://www.gov.uk/government/publications/the-official-custodian-for-charities-land-holding-service-cc13).

Apply to transfer land or property to the Official Custodian (https://forms.charitycommission.gov.uk/vest-charity-land-in-the-official-custodian/).

12. Charity officers - the chair and treasurer

Some trustees have special roles, such as the chair and the treasurer. They are known as officers. You must comply with any specific provisions for officers in your governing document. Trustees can also nominate a trustee to take the lead on a particular matter.

Charity officers do not automatically have any extra powers or legal duties than their co-trustees, but may carry out specific roles or have specific responsibilities delegated to them. However, all trustees remain jointly responsible for the charity. For example, all trustees share responsibility for finances (not just the treasurer). A chair can only make decisions in accordance with any provision in the governing document or delegated authority agreed by the trustees, and should notify the other trustees of any decisions made.

12.1 The treasurer

The treasurer usually takes the lead at board level on:

- making sure the charity keeps proper accounts
- reviewing the charity's financial performance
- drawing up or reviewing policies for finance and investment
- ensuring that the charity has robust and effective financial controls in place
- liaising with finance staff and with the charity's independent examiner or auditor
- reporting on financial matters to the members, in a membership charity

In larger charities the treasurer may share these responsibilities with a finance committee, and staff may carry out day to day finance functions.

Find out more:

The Honorary Treasurer's Forum (http://www.honorarytreasurers.org.uk/)

12.2 The chair

The role of the chair may vary depending on the charity's circumstances. The chair usually:

- helps plan and run trustee meetings (and in a membership charity, members' meetings)
- takes the lead on ensuring that meetings are properly run and recorded
- takes the lead on ensuring that trustees comply with their duties and the charity is well governed
- might have a second or casting vote if a vote on a trustees' decision is tied, but only if this is specified in the charity's governing document
- may act as a spokesperson for the charity
- acts as a link between trustees and staff

line manages the chief executive on behalf of the trustees

A Chair's Compass - A guide for chairs of charities and non-profit organisations (http://www.associationofchairs.org.uk/ext/chairs-compass).

13. Technical terms used in this guidance

This section explains some legal and technical terms used in this guidance.

'Beneficiary' or 'beneficiaries' means a person or group of people eligible to benefit from a charity. A charity's beneficiary group is usually defined in its governing document. Some charities call their beneficiaries clients or service users.

The 'Charities Act' is the Charities Act 2011. This guidance occasionally refers to specific powers under this Act.

A 'charitable incorporated organisation', or 'CIO', is an incorporated legal form designed specifically for charities. See section 11 of this guidance for more detail.

A 'charity' is any organisation set up under the law of England and Wales for solely charitable purposes.

The 'Commission' means the Charity Commission, the regulator for charities in England and Wales.

A 'community benefit society' is an incorporated legal form in which charities can be set up. It is similar to a limited company. Community benefit societies are registered by the Financial Conduct Authority. Charitable community benefit societies are currently exempt charities.

'Excepted charities' do not have to register with the Commission or submit annual returns. Apart from that, the Commission regulates them and can use any of its powers if it needs to. This only applies to specified churches, Scout and Guide groups and armed forces charities whose income is below £100,000. Read more about excepted charities (https://www.gov.uk/government/publications/excepted-charities/excepted-charities--2).

An 'exempt charity' is exempt from registration and direct regulation by the Commission. Most exempt charities have a different charity regulator (or 'principal regulator'). Trustees of exempt charities have the same basic duties as other charity trustees. Read more about exempt charities (https://www.gov.uk/government/publications/exempt-charities-cc23).

The ‘governing document’ is the legal document that sets out the rules that govern a charity. These include the charity’s objects and, usually, how it must be administered. It’s usually a trust deed, constitution, CIO constitution or articles of association. Some charities have a different type of document such as a conveyance, will, royal charter or Commission scheme. Find out more about governing documents (https://www.gov.uk/how-to-write-your-charitys-governing-document).

‘Have regard to’ does not have a strict legal definition, but generally means ‘take into account’ or ‘consider’, rather than ‘comply with’.

‘In the charity’s best interests’ means what the trustees believe will best enable the charity to carry out its purposes for the public benefit. See section 6 of this guidance for more detail.

An ‘incorporated charity’ means a charity formed as a company, CIO, royal charter body, community benefit society or a corporation created by Act of Parliament. Being incorporated means the charity itself is a legal body. It can own property or enter into contracts in its own name. Incorporation gives trustees more protection from personal liability. See section 11 of this guidance for more detail.

Misconduct includes any act (or failure to act) that the person committing it knew (or ought to have known) was criminal, unlawful or improper.

Mismanagement includes any act (or failure to act) that may cause charitable resources to be misused or the people who benefit from the charity to be put at risk.

A charity’s ‘purpose’ is what it is set up to achieve (for example, relieving poverty or promoting health). A charitable purpose is one that:

- falls within one or more of 13 ‘descriptions of purposes’ listed in the Charities Act
- is for the public benefit (the ‘public benefit requirement’)

A charity’s ‘objects’ are a written statement of its purposes - they must be exclusively charitable.

A ‘registered charity’ is a charity registered with the Commission.

A ‘suitably qualified person or adviser’ is someone who the trustees could reasonably expect to be competent to advise them about a particular matter. This includes professional advisers (such as solicitors, accountants and surveyors). It could also include (for example) a member of the charity’s staff, a suitably qualified trustee or an adviser from another organisation.

‘Trustee’ means a charity trustee. Charity trustees are the people responsible for governing a charity and directing how it is managed and run. The charity’s governing document may call them trustees, the board, the management committee, governors, directors, or something else. The Charities Act defines the people who have ultimate control of a charity as the charity trustees, whatever they are called in the charity’s governing document:

- a ‘custodian trustee’ is a corporation appointed to hold property for a charity; it isn’t a charity trustee and must act on the lawful instructions of the charity trustees
- ‘holding trustees’ are individuals appointed to hold property for a charity; they aren’t charity trustees, they must act on the lawful instructions of the charity trustees and in accordance with any provisions in the governing document

An ‘unincorporated charity’ is a charity set up as a trust or association. Being unincorporated means the charity isn’t a legal body (so it can’t hold property or enter into contracts) in its own right. Trustees’ personal liability isn’t limited. See section 11 of this guidance for more detail.

CHARITY COMMISSION
FOR ENGLAND AND WALES

Charitable Trusts: Model Trust Deed

259

NOVEMBER 2013

New format January 2017

Notes

Charitable Trusts: Model Trust Deed (GD2)

A trust is likely to be appropriate where the charity:

- will not have a membership; and
- is unlikely to employ a significant number of staff or carry on any kind of business.

Guidance to consider before you begin

You may find it helpful to begin by reading the following guidance on our website:

- The comprehensive information under Start up a charity.
- Registering as a Charity (CC21). Its checklist of questions will help you to decide how best to set up the charity.
- Choosing and Preparing a Governing Document (CC22). This gives advice on the practicalities of completing the charity's governing document and on the different provisions which may be needed.
- Our guidance The Essential Trustee - What you need to know (CC3), which sets out the basics that all charity trustees need to know.

Next steps

1. Completing the trust deed

Once you have decided to apply to register a charitable trust, please read the trust deed and its accompanying guidance notes carefully.

Some clauses contain blank spaces that you will need to fill in.

The model is intended to be sufficiently flexible to deal with most eventualities. If you want to include special or complex provisions which are not contained in it you should consider asking a solicitor to help you. Please make clear any changes you make and why they are necessary. This will help us to consider your application as quickly as possible. We cannot guarantee to accept every organisation which uses the model trust deed as charitable. We must consider each case separately.

2. After you have completed the model trust deed, please:

- execute the deed - this involves signing and dating it in the presence of a witness - the notes give more detail about this; and
- check whether the deed needs to be stamped by HM Revenue & Customs (see next page under 'Does the deed need to be stamped?')

3. Applying to register

To register a new charity, apply online. (The online application material includes Application for registration - guidance notes.)

Notes

Please attach a copy of your final executed trust deed and your signed Trustee Declaration to your application. If you cannot attach these documents to your application please proceed to apply online and we will email you instructions about how to send them to us.

If you cannot apply online, please contact us using the link from our website homepage.

4. How long will it take?

We can normally make a decision in 15 working days if an organisation:

- uses our model wording for its objects (as set out in the Example charitable objects on our website);
- shows that its activities are consistent with the objects;
- shows that any private benefit is incidental and is properly managed; and
- uses our model governing document

Other applications will need closer consideration and so will take longer (especially where the charity's purposes are novel and/or at the boundaries of what is charitable).

Does the deed need to be stamped?

Deeds executed before 1 December 2003 require stamping.

Deeds executed on or after 1 December 2003 but before 13 March 2008 only require stamping if the deed declares trusts over stocks and shares.

Deeds executed on or after 13 March 2008 do not require stamping.

If your Deed needs to be stamped then you should send it (or a certified copy of it) to:

HM Revenue & Customs
Birmingham Stamp Office
City Centre House
30 Union Street
Birmingham
B2 4AR

Further information can be found on the HM Revenue & Customs website (**www.hmrc.gov.uk**) or by ringing the Stamp Duty helpline: 0845 603 0135.

Notes

First trustees - Insert full names and addresses. (Clause 9 specifies the minimum number of trustees.) The first trustees should be the same people whose signatures are witnessed at the end of this declaration of trust and whose names appear on the Application for charity registration Trustee Declaration. The charity trustees will be subject to a number of legal duties which are set out in our guidance The Essential Trustee: What you need to know (CC3). All prospective charity trustees should read that guidance before taking up office.

Starting Sum - Insert a description of the money or other property held. A trust cannot exist unless there is some money or property that is subject to it. A token sum of money is sufficient to create a charitable trust, but may not be enough to enable the trust to qualify for registration: see Registering as a Charity (CC21).

Clause 2 - The power in this clause can be exercised whenever the trustees think that the charity's interests will be served by changing its name. In general, the Commission will object to a new name only if it infringes the principles set out in section 42 of the Charities Act 2011 (briefly, if the name is too similar to that of another charity, or is in some other way misleading or misrepresentative, or is offensive).

THIS DECLARATION OF TRUST IS MADE

the............ day of ....20 .... by

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('the first trustees')

The first trustees hold the sum of

£ ....

....

on the trusts declared in this deed and they expect that more money or assets will be acquired by them on the same trusts.

NOW THIS DEED WITNESSES AS FOLLOWS:

1. Administration

The charitable trust created by this deed ('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

....

....

Notes

Clause 3 - Describe here clearly what it is that you intend that your charity should set out to achieve. A charity's object must be expressed in exclusively charitable terms and this can be quite difficult. Guidance is available in our guidance Choosing and Preparing a Governing Document (CC22) and on our website where we have provided some basic model objects. The key elements to include are:

- the purpose itself (eg establishing and running a school);
- the people who can benefit (in our example, school age children); and, if appropriate
- any geographic limits which may be needed to define the area of benefit. This will not always be necessary. If you do include an area of benefit, it is common to define it by reference to a local government area; this has the advantage of clarity and simplicity, but can create problems if the area is subsequently altered or abolished.

If the charity will operate in Scotland and/or Northern Ireland you should include the wording in square brackets to meet the requirements of charity law in that/those countries, deleting as required if the charity works in one of those two countries.

3. Objects

The objects of the charity ('the objects') are:

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[Nothing in this deed shall authorise an application of the property of the charity for purposes which are not charitable in accordance with section 7 of the Charities and Trustee Investment (Scotland) Act 2005 and/or section 2 of the Charities Act (Northern Ireland) 2008.]

Clause 4 - This provision enables the trustees to spend the charity's capital, but doesn't oblige them to do so (it is only the charity's income that must be applied). This makes clear that the charity's capital is not 'permanent endowment' and can be spent as income if required.

4. Application of income and capital

The trustees must apply the income and, at their discretion all or part of the capital, of the charity in furthering the objects.

5. Powers

In addition to any other powers they have, the trustees may exercise any of the following powers in order to further the objects (but not for any other purpose):

(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 buy, take on lease or in exchange, hire or otherwise acquire property and to maintain and equip it for use;

(3) to sell, lease or otherwise dispose of all or any part of the property belonging to the charity. In exercising this power, the trustees must comply as appropriate with sections 117 - 122 of the Charities Act 2011;

(4) 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;

(5) to co-operate with other charities, voluntary bodies and statutory authorities and to exchange information and advice with them;

(6) to establish or support any charitable trusts, associations or institutions formed for any of the charitable purposes included in the objects;

(7) to acquire, merge with or enter into any partnership or joint venture arrangement with any other charity formed for any of the objects;

(8) to create such advisory committees as the trustees think fit;

(9) to employ and remunerate such staff as are necessary for carrying out the work of the charity;

(10) to do any other lawful thing that is necessary or desirable for the achievement of the objects.

6. Statutory powers

Nothing in this deed restricts or excludes the exercise by the trustees of the powers given by the Trustee Act 2000 as regards investment, the acquisition or disposal of land and the employment of agents, nominees and custodians.

Notes

Clause 5 - Include any of the powers from the following sub-clauses which you consider necessary, numbered in sequence. Some powers are implicit in a charity's objects (for example, if the object is to provide a school, the trustees have an implicit power to acquire premises). Other powers are given by statute, often only if specific conditions are met. For example, the Trustee Act 2000 gives trustees power to acquire and dispose of land, to borrow money in many circumstances, to delegate much of the running of the charity and to invest. However, there are some things that can be done only if the charity's governing document provides express power to do them. It is sensible to set out all the powers that the charity is likely to need, for the avoidance of doubt and to remind trustees of the conditions that have to be met when they exercise those powers.

Clause 5(1) - This sub-clause provides a general power to raise funds through a wide variety of methods including inviting and receiving donations and legacies. The only restriction here is that it does not allow the charity to engage in taxable permanent trading for the purpose of raising funds. Although trading on a small scale is allowed: HM Revenue & Customs provides guidance on the tax treatment of different sorts of trading. If your charity is likely to raise funds from trading, our guidance Charities and Trading (CC35) provides detailed advice. This sub-clause does not prevent trading in order to carry out the charity's object - for example, an educational charity can charge fees for the educational services it provides.

Clause 5(2) - This power is helpful if the trustees wish to acquire property either for use as office premises or functionally (such as a playground or school site). Our guidance Acquiring Land (CC33) contains further guidance on the issue. When the trustees acquire land for the charity, the ownership of the land cannot rest with the charity directly as it has no separate legal identity. The trustees will therefore need to ensure that title to the charity's land is held in the name of individuals, or a company, in trust on behalf of the charity. Typically this can be some or all of the trustees, the Official Custodian for Charities (see The Official Custodian for Charities' Land Holding Service - CC13) or a nominee - see clause 6 notes.

Clause 5(3) - This power enables the charity to dispose of its property. Sections 117 - 122 of the Charities Act 2011 apply to most charities and require trustees to comply with certain conditions to ensure that they dispose of the property for the

7. **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.

8. **Duty of care and extent of liability**

(1) When exercising any power (whether given to them by this deed, or by statute, or by any rule of law) in administering or managing the charity, each of the trustees must use the level of care and skill that is reasonable in the circumstances, taking into account any special knowledge or experience that he or she has or claims to have ('the duty of care').

(2) No trustee, and no one exercising powers or responsibilities that have been delegated by the trustees, shall be liable for any act or failure to act unless, in acting or in failing to act, he or she has failed to discharge the duty of care.

9. **Appointment of trustees**

(1) There must be at least [ ] trustees. Apart from the first trustees, every trustee must be appointed [for a term of .... years] by a resolution of the trustees passed at a special meeting called under clause 15 of this deed.

(2) 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.

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

Notes

best price reasonably obtainable. Our guidance Disposing of Charity Land (CC28) provides more information about this.

Clause 5(4) - This provides the trustees with an explicit power to borrow. It also makes clear that if this power to borrow involves securing the loan on assets of the charity the trustees must comply with the requirements of the Charities Act 2011. Briefly, the Act requires that the trustees take advice and provide certain certificates/statements when they are borrowing money by way of mortgage. Our Operational Guidance Borrowing and mortgages on our website provides detailed information on this.

Clause 5(9) - This power cannot be used to employ trustees as staff. See clause 28.

Clause 6 - The trustees will have the wide powers conferred by the Trustee Act 2000, whether or not they are expressly included in this document. The statutory power of investment requires the trustees to take advice and to consider the need to invest in a range of different investments. Our guidance Investment of Charitable Funds: Basic Principles (CC14) provides more information about charity investments. The powers to employ agents, nominees and custodians is of particular use where a charity wishes to use an investment manager or where it owns land and needs a nominee to hold land on its behalf - see note to clause 5(2).

Clause 7 - The trustees are responsible for supervising the activities of their delegates.

Clause 9 - Insert the number of trustees in the square brackets. Unless the charity is to be administered by a company, we recommend that there are at least three trustees. This will help with the quality of decision making and the sharing of the responsibilities and duties that attach to trusteeship. (There must be at least two trustees to give a receipt for capital.) Refer also to clause 12 of the deed about trustee numbers. We would recommend that trustees are appointed for a fixed term and if you choose this option, delete the square brackets and complete the number for the term of years. If the appointment is not to be for a fixed term, delete the text in the square brackets.

Notes

Clause 9(4) - Our guidance Finding New Trustees - What charities need to know (CC30) provides guidance on effective methods of recruiting new trustees. This includes advice on what information to provide new trustees with - in addition to (a) and (b) here, the trustees might wish to provide a copy of the minutes covering the previous year's meetings.

Clause 9(5) - The first trustees are those individuals named at the beginning of this deed. There is no need to include sub-clause (5) if the trustees will continue in post until they retire. There are, however, benefits in including fixed periods of appointment, not least by ensuring that the appointments are regularly reviewed. If this sub-clause is included, we recommend that you 'stagger' the terms of office of the first trustees to ensure that they do not all go out of office at the same time. For example, if there are three trustees, one might be appointed for five years, one for four years and one for three years.

Clause 11(1) - Our guidance Finding New Trustees - What charities need to know (CC30) explains what sections 178 and 179 of this Act covers. In very broad terms, someone who has been convicted of offences involving deception or fraud, or who is an undischarged bankrupt or who has been removed from office as a trustee by us will be disqualified for acting as a trustee.

(4) 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.

(5) The first trustees shall hold office for the following periods respectively:

....

....

....

....

....

....

10. 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.

11. 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) in the written opinion, given to the charity, of a registered medical practitioner treating that person, has become physically or mentally incapable of acting as a trustee and may remain so for more than three months;

(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).

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Clause 13 - We provide guidance on meetings in our guidance Charities and Meetings (CC48).

Clause 14 - Insert the name of one of the first trustees who will call the first meeting. 'Clear days' does not include the day on which the notice would be received by the trustee or the day on which the meeting is held. Section 332 of the Charities Act 2011 sets out how notice may be given by post. In broad terms, the charity may send notice to each trustee at the UK address held in the charity's records: no notice is required for trustees living outside the UK. The notice would be regarded as being received on the day when 'in the ordinary course of post' it is expected to arrive: so a first class letter should be expected to arrive 1 day after posting and that is the day on which the notice would be regarded as being received.

12. Vacancies

If a vacancy occurs the trustees must note the fact in the minutes of their next meeting. Any eligible trustee may be re-appointed. If the number of trustees falls below the quorum in Clause 17(1), 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.

13. Ordinary meetings

The trustees must hold at least two 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 to hear each other.

14. 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. In that case not less than ten days' clear notice must be given to the other trustees. The first meeting of the trustees must be called by .... or, if no meeting has been called within three months after the date of this deed, by any two of the trustees.

15. 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 trusts of this deed, not less than 21 days' notice must be given. A special meeting may be called to take place immediately after or before an ordinary meeting.

16. Chairing of meetings

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.

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.

Notes

17. Quorum

(1) Subject to the following provision of this clause, no business shall be conducted at a meeting of the trustees unless at least one-third of the total number of trustees at the time, or two trustees (whichever is the greater) are present throughout the meeting.

(2) The trustees may make regulations specifying different quorums for meetings dealing with different types of business.

18. 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.

Clause 19 - This reflects good practice on managing conflicts of interests and loyalties.

19. 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 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.

Clause 20 - This reduces the risk of trustees' decisions being declared invalid for purely technical reasons.

20. Saving provisions

(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 interests 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.

Notes

Clause 22(1)(e) - The Electronic Communications Act 2000 and the Electronic Signatures Regulations 2002 permit electronic signatures to be accepted as evidence, subject to certain conditions. This sub-clause summarises those conditions. Regulations are effectively the internal procedures adopted by the trustees for the effective administration of the charity. They cannot be used to change any of the provisions in this deed - clause 31 of this deed sets out the procedure for amending the provisions of this deed.

Clause 23 - Disputes: It is good practice to include provisions for dealing with any disputes that arise between trustees. Litigation can be expensive, and litigation about the internal affairs of a charity would almost certainly constitute 'charity proceedings', which can be taken only with the Commission's authority. We would usually require the parties to a dispute to have tried mediation first.

(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 charity trustees if, but for sub-clause (1), the resolution would have been void, or if the charity trustee has not complied with clause 19 (Conflicts of interests and conflicts of loyalties).

21. 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.

22. General power to make regulations

(1) The trustees may from time to time make regulations for the management of the charity and for the conduct of their business, including

- (a) the calling of meetings;
- (b) methods of making decisions in order to deal with cases or urgency when a meeting is impractical;
- (c) the deposit of money at a bank;
- (d) the custody of documents; and
- (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.

23. 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.

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24. 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.

25. Registered particulars

The trustees must notify the Commission promptly of any changes to the charity's entry on the Central Register of Charities.

26. 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.

27. Application of income and property

(1) The income and property of the charity must be applied solely towards the promotion of the objects.

(a) A charity trustee is entitled to be reimbursed out of the property of the charity or may pay out of such property 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.

(2) Subject to clause 28, none of the income or property of the charity may be paid or transferred directly or indirectly by way of dividend, bonus, or otherwise by way of profit to any charity trustee.

Notes

Clause 24 - Guidance on our website sets out the key accounting requirements for charities. All charities with incomes over £10,000 must send accounts to the Charity Commission within 10 months of the end of the financial year to which the accounts relate.

Clause 24(5) - All charities with annual incomes of over £10,000 must send us their Annual Report within 10 months of the end of their financial year.

Clause 24(6) - All charities with annual incomes of over £10,000 must complete an Annual Return and send it to us within 10 months of the end of their financial year: the return provides a summary of key financial data and is used by us for monitoring purposes to detect issues which might require our attention or guidance.

Clause 25 - A charity's entry includes its name, correspondence address, objects and governing document. The Commission issues to every charity once a year an Annual Update form on which these details can conveniently be supplied. Trustees must provide details of any change in the entry although they do not have to use this form.

Clause 26 - The trustees can make regulations (under clause 22) to allow others associated with the operation of the charity such as employees or volunteers to sign cheques and other orders in relation to the charity's bank accounts so long as these activities are properly managed so as to reduce the risk of fraud. For example, the trustees might allow two senior employees or volunteers to sign cheques up to a defined face value, with a limit on the total value of cheques which they are authorised to sign in any one month. For charities which operate electronic bank accounts, there is guidance on trustee duties and operational best practice in Internal Controls for Charities (CC8) on our website.

Clause 27 - Application of income and property

(1) sets out a trustees' entitlement to reasonable expenses and reflects the provisions in the 1993 Act about a charity trustee's entitlement to benefit from trustee indemnity insurance. It is included in the deed to inform people involved with the charity.

(2) reflects charity law requirements that the income and property of a charity must be applied solely to further its objects and not to benefit the charity

Notes

trustees (except as permitted by the governing document - see clause 28 - or other express power). The trustees have a duty to ensure that the funds are correctly applied in accordance with this principle.

Clause 28 - Benefits and payments to charity trustees and connected persons - Charity trustees may only benefit from their charity if they have express legal authorisation to do so (such as a clause in the trust deed). This restriction extends to people closely connected to a trustee ('connected persons' - this term is defined in Interpretation clause 33). This clause clarifies the restrictions that apply to the charity trustees. Even where trustees are allowed to benefit from the charity, this must only happen where the benefit is in the interests of the charity. Our guidance Trustee expenses and payments (CC11) provides more information about trustee benefits.

This clause permits a minority of the charity trustees or connected persons to receive payments and other benefits in certain instances (such as for goods and services they supply to the charity), subject to the stated controls. The option also allows other types of trustee benefit, subject to the Commission's prior consent.

These powers cannot be adopted by existing charities without the authority of the Charity Commission.

No part of the clause allows trustees to receive payment for acting as a trustee.

Clause 28(2)(a) - If your charity will benefit all local inhabitants in a specific geographical area (eg as a community trust) you may wish to substitute the following wording: 'A trustee or connected person may receive a benefit from the charity as a beneficiary provided that it is available generally to the beneficiaries of the charity.'

Clause 28(2)(d) - The charity should document the amount of, and the terms of, the trustee's or connected person's loan.

28. 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 ('the 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' benefits**

(a) A charity trustee or connected person may receive a benefit from the charity in the capacity of a beneficiary of the charity provided that a majority of the trustees do not benefit in this way.

(b) 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.

(c) Subject to sub-clause (3) of this clause a charity trustee or connected person may provide the charity with goods that are not supplied in connection with services provided to the charity by charity trustee or connected person.

(d) A charity trustee or connected person may receive interest on money lent to the charity at a reasonable and proper rate which must be not more than the Bank of England bank rate (also known as the base rate).

(e) A charity trustee or connected person may receive rent for premises let by the trustee or connected person to the charity. The amount of the rent and the other terms of the lease must be reasonable and proper. The charity trustee concerned must withdraw from any meeting at which such a proposal or the rent or other terms of the lease are under discussion.

Notes

(f) A charity trustee or connected person may take part in the normal trading and fundraising activities of the charity on the same terms as members of the public.

(3) **Payment for the supply of goods only - controls**

The charity and its charity trustees may only rely upon the authority provided by sub-clause (2)(c) of this clause if each of the following conditions is satisfied:

(a) The amount or maximum amount of the payment for the goods is set out in an agreement in writing between the charity and the charity trustee or connected person supplying the goods (‘the supplier’) under which the supplier is to supply the goods in question to or on behalf of the charity.

(b) The amount or maximum of the payment for the goods in question does not exceed what is reasonable in the circumstances for the supply of the goods in question.

(c) The other charity trustees are satisfied that it is in the best interests of the charity to contract with the supplier rather than someone who is not a charity trustee or connected person. In reaching that decision the charity trustees must balance the advantage of contracting with a charity trustee or connected person against the disadvantages of doing so.

(d) The supplier is absent from the part of the meeting at which there is discussion of the proposal to enter into a contract or arrangement with him or her or it with regard to the supply of goods to the charity.

(e) The supplier does not vote on any such matter and is not to be counted when calculating whether a quorum of trustees is present at the meeting.

(f) The reason for their decision is recorded by the charity trustees in the minute book.

(g) A majority of the charity trustees then in office are not in receipt of remuneration or payments authorised by clause 28.

(4) In sub-clauses (2)-(3) of 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.

Notes

Clause 29 - These are the minimum requirements and trustees should consider if any other forms of insurance are needed.

Clause 31(2) - Note that a change of name under clause 2 need only be made by resolution; it does not require to be confirmed by deed.

(b) In sub-clauses (2) and (3) of this clause 'connected person' includes any person within the definition set out in clause 33 (Interpretation).

29. Repair and insurance

The trustees must 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 must also insure suitably in respect of public liability and employer's liability.

30. Expenses

The trustees may use the charity's funds to meet any necessary and reasonable expenses which they incur in the course of carrying out their responsibilities as trustees of the charity.

31. Amendment of trust deed

(1) The trustees may amend the provisions of this deed, provided that:

(a) no amendment may be made to clause 3 (Objects), clause 8 (Duty of care and extent of liability), clause 27 (Application of income and property) and clause 28 (Benefits and payments to charity trustees and connected persons) , clause 32 (Dissolution) or this clause without the prior consent in writing of the Commission; and

(b) no amendment may be made that would have the effect of making the charity cease to be a charity at law.

(c) no amendment may be made to alter the objects if the change would undermine or work against the previous objects of the charity.

(2) Any amendment of this deed must be made by deed following a decision of the trustees made at a special meeting.

(3) The trustees must send to the Commission a copy of the deed effecting any amendment made under this clause within three months of it being made.

32. Dissolution

(1) The trustees may dissolve the charity if they decide that it is necessary or desirable to do so. To be effective, a proposal to dissolve the charity must be passed at a special meeting by a two-thirds' majority of the trustees. Any assets of the charity that are left after the charity's debts have been paid ('the net assets') must be given:

Notes

(a) to another charity (or other charities) with objects that are the same or similar to the charity's own, for the general purposes of the recipient charity (or charities); or

(b) to any charity for use for particular purposes which fall within the charity's objects.

(2) The Commission must be notified promptly that the charity has been dissolved and, if the trustees were obliged to send the charity's accounts to the Commission for the accounting period which ended before its dissolution, they must send the Commission the charity's final accounts.

33. Interpretation

(1) In this deed:

all references to particular legislation are to be understood as references to legislation in force at the date of this deed and also to any subsequent legislation that adds to, modifies or replaces that legislation

(2) 'connected person' means:

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

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

(c) a person carrying on business in partnership with the trustee or with any person falling within sub-clause (a) or (b) above;

(d) an institution which is controlled -

(i) by the trustee or any connected person falling within sub-clause (a), (b), or (c) above; or

(ii) by two or more persons falling within sub-clause (d)(i), when taken together

(e) a body corporate in which -

(i) the charity trustee or any connected person falling within sub-clauses (a) to (c) has a substantial interest; or

(ii) two or more persons falling within sub-clause (e)(i) who, when taken together, have a substantial interest.

(3) Sections 350 - 352 of the Charities Act 2011 apply for the purposes of interpreting the terms used in sub-clause (2) above.

Notes

This is set out to enable up to six trustees to sign and for these signatures to be witnessed so that the document has the formality of a deed. The first trustees named at the beginning of the document should sign. The witness(es) should be independent and not, for example, a close family relation of any of the first trustees. The first trustee should sign at 1(a) and the witness should sign at 1(b) and put his or her name and address where indicated; the next trustee should sign at 2(a) and the witness to that signature should complete 2(b) and so on until all the trustees have signed. If there are more than six trustees, please add further space following the pattern adopted for the first six sets of details.

IN WITNESS of this deed the parties to it have signed below

1. Signed as a deed by:

1(a) ....

on this .... (day) of .... (month) .... (year)

in the presence of:

1(b) ....

Witness's name:

....

Witness's address:

....

....

....

2. Signed as a deed by:

2(a) ....

on this .... (day) of .... (month) .... (year)

in the presence of:

2(b) ....

Witness's name:

....

Witness's address:

....

....

....

3. Signed as a deed by:

3(a) ....

on this .... (day) of .... (month) .... (year)

in the presence of:

3(b) ....

Witness's name:

....

Witness's address:

....

....

.... 275 ......

Notes

4. Signed as a deed by:

4(a) ....

on this .... (day) of .... (month) .... (year)

in the presence of:

4(b) ....

Witness's name:

....

Witness's address:

....

....

....

5. Signed as a deed by:

5(a) ....

on this .... (day) of .... (month) .... (year)

in the presence of:

5(b) ....

Witness's name:

....

Witness's address:

....

....

....

6. Signed as a deed by:

6(a) ....

on this .... (day) of .... (month) .... (year)

in the presence of:

6(b) ....

Witness's name:

....

Witness's address:

....

....

....

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Charity Commission Scheme

Public Consultation Document

Malvern Hills Trust

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Registered charity no. 515804

Bluebells beneath British Camp

Front and Back Cover Image: Sunset over End Hill

Contents

1. Glossary

Ancillary Land	This term applies to any land or buildings acquired: i. Under section 9 of the Malvern Hills Act 1995 (power to provide buildings for use by the conservators); ii. Under section 53 of the Commissioners Clauses Act 1847 (power to provide offices, etc.) or iii. Pursuant to an Order of the Charity Commission for England and Wales. It is land acquired for operational purposes – offices, storage, workshops, land exclusively used as in-bye land etc, which is not public access land.
Board	Board of trustees, who together are responsible for management of the Trust.
Best interest of the charity	That which will best enable the charity to fulfil its purposes for the public benefit. It is not serving the best interests of the trustees, the staff or the organisation itself.
CCA	Commissioners Clauses Act 1847
Charities Act	Charities Act 2011
Connected person	Any trustee's spouse, civil partner, parent, child, brother, sister, grandparent or grandchild (or any spouse or civil partner of any of these people), or a person in a relationship with a trustee which may reasonably be regarded as equivalent to that of a spouse or civil partner.
DCMS	Department of Digital, Culture, Media and Sport
King's Third	King Charles I agreed to give up his right to take deer across the whole of Malvern Chase in return for enclosing one third of the area. The area he enclosed is the King's Third.
Malvern Hills	This is shorthand for all the land under the Trust's jurisdiction, including the Malvern Hills themselves, the commons, verges and woods.
MHT, the Trust	Malvern Hills Trust (this is the registered working name of Malvern Hills Conservators)
Purpose Land	This is the land under the Trust's jurisdiction to which the public normally have access and which is held to fulfil its charitable objectives. It does not include Ancillary Land.
Scheme	A scheme made under s 37 Charities Act 2011.
Special majority	75% or more of those present and voting at a meeting.
Trustee	A trustee of the Malvern Hills Trust (previously referred to as conservators).

2. Introduction

The Trust is governed by 5 Acts of Parliament, the Malvern Hills Acts 1884, 1909, 1924, 1930 and 1995. Some of its administrative provisions are contained in the Commissioners Clauses Act 1847 (CCA). The Trust is a registered charity.

The Trust believes it would be hugely beneficial to rationalise, modernise and consolidate its governing legislation. Back in 2002, the Charity Commission made a review visit. It made the following comment:

"It is recommended that [the Conservators] consider applying to the Commission for a [Parliamentary Scheme]. The Conservators would need to make a case detailing the inadequacies of the current governance documents and the failings of the latest 1995 Act to provide an effective governance framework to run the charity in the most efficient manner."

This was highlighted in the report as a key action point – a legal requirement that the Charity Commission believed that the charity was not meeting.

The Trust's current governing legislation does not reflect or permit modern best practice in relation to charity governance and does not contain all the powers that the trustees need in order to administer the charity in the most effective way and to best achieve its objects. As a statutory charity, the Trust can only act where it has powers to do so. Many organisations, both charities and local councils, now have a general power (the General Power of Competence in the case of councils) to permit them to carry out any lawful action in furtherance of their objectives, and this is something which the Trust would seek to include in the Scheme.

There are some provisions in the Acts that can no longer be applied and others which reflect a legal and cultural context that no longer exists. The Acts also contain clauses reserving rights to individuals that are no longer relevant.

Ivy Scar Rock (1924)

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The Trust embarked on a process to reform the Malvern Hills Acts in 2014 and since then has given very careful consideration to the various problems with the existing legislation, what needs changing and what the alternatives might be.

The Trust's aim, therefore, is to bring its functions, powers, duties and governance into the 21st century. Your views on the initial proposals set out in this consultation will assist the Trust and the Charity Commission in doing this.

In addition to its governing Acts, the Trust is regulated by Charity Law. The Charity Commission has a power under s 73 Charities Act 2011 to settle a scheme to alter the provisions of Acts of Parliament that govern or regulate a charity. The Charity Commission has confirmed that it is prepared to support the Trust in this way and the Trust has had meetings with representatives from the Charity Commission and Department of Digital Culture Media and Sport (DCMS) to agree the content and scope of the proposed Scheme.

Changes to the Acts over the last 130 years have been made on a piecemeal basis and one issue that was clear from the start was that to have another stand-alone piece of legislation to add to the 5 governing Malvern Hills Acts (6 if including the Commissioners Clauses Act 1847) would make navigating the Acts even more difficult than it already is. The Trust's solicitors have planned their drafting on the basis that the Scheme will consolidate the existing Acts, and DCMS has agreed that this would be good practice. However formal confirmation from the DCMS that a s 73 Scheme can be used for this purpose is still awaited. The response will not affect the content of the Scheme but will affect the way it is presented.

The Trust has decided to go ahead with a public consultation to seek the views of everyone with an interest in the Malvern Hills. This will assist in shaping the final proposals which will be submitted to the Charity Commission in due course.

Please note:

1. Whatever changes are made to the governing Acts, everything which the Trust does is subject to the overriding duty to act in the best interests of the charity.

2. Depending on the detail of any changes and when they come into effect, there will have to be transitional provisions to ensure a smooth change-over from the existing governance structure to any new one. It is too early to say what these might be. These will also provide that all things done prior to the commencement of the Scheme will remain valid (including payment of the levy and the byelaws).

3. In this document, text set out upon a green background is proposed wording for inclusion the Scheme. Square brackets [] indicate a number will be inserted.

11. The Levy

The Trust raised 40.7 % of its general income from the levy in the accounting year 2018/9.

Background
The power to raise a levy originated in the 1884 Act. The Trust's original land holding comprised mainly the central/northern Hills and Malvern Common, together with a small area of land at Colwall Green. The powers to levy contained in the 1884, 1909 and 1924 Acts reflect this historic position. The levy is currently paid by:

Parishes:
- Colwall
- Mathon
- Guarlford

Malvern Hills District Council (MHDC) Wards:
- West Malvern
- Wells
- Chase
- Dyson Perrins
- Pickersleigh
- Link
- Priory

Because of various local government reorganisations in the last 135 years, almost all of the references to local authorities in the Acts are out of date.

Worcestershire County Council (WCC) and what is now Herefordshire Council have a separate power contained in s 9 of the 1909 Act to raise a special levy (see next section). They could in principle raise a special levy on the parishes where the Trust has land but which do not pay the levy, so for example, the southern part of the Hills, Castlemorton Common, Old Hills and Newland. We are not aware that they have exercised the power and we suspect they would not consider it politically expedient to do so.

The mechanism for collecting the levy is very similar to the arrangements for Parish Councils. Since 1884 there have been numerous reforms, and the relevant provisions are now the Levying Bodies (General) Regulations 1992, made under the Local Government Finance Act 1988.

Considerations
There were significant changes to the land holding in the 1960s when the Trust acquired Old Hills and Castlemorton Common. Worcestershire County Council (which had been contributing to the cost of their upkeep when they were looked after by the Rural District Council) agreed to contribute towards the Trust's costs in relation to these areas. The contribution has been reduced in relative terms over the years, and is currently £10,400pa.

There is no doubt that the present arrangement whereby some parishes in which the Trust has land pay the precept and others do not is out of date, illogical and unfair. A lot of thought has been given over the years by the board and its advisors about what mechanism could be used to change the precepting arrangements.

However, the DCMS has made it very clear that a Charity Commission Scheme is not a suitable mechanism for changing the levying arrangements and it cannot therefore be included.

Under the package of proposals upon which the Trust is currently consulting, opportunities for people living outside the levy paying area to engage with and financially support the Trust would be opened up. The Trust would ask any parish outside the levy paying area to consider making a voluntary contribution towards the upkeep of Trust land in its area, and from which its residents benefit.

Please also see the sections on Power to set up a membership organisation (section 7) and Contributions from Worcestershire County Council and Herefordshire Council (section 12).

Proposed changes
The Trust proposes no substantive change to the current arrangements. The references in the Acts should be updated to reflect the Local Government reorganisation which has taken place.

It is proposed to include other options within the Scheme to increase fundraising by having a power to set up a trading subsidiary and a membership organisation.

Westminster Bank

Malvern Hills Trust

Charity Commission Scheme Consultation

Report by the Charity Commission Scheme Working Group
January 2020

This report has been prepared to assist Board members in deciding the Trust's response to the public consultation on the proposed changes to its governing Acts. A summary, together with the Working Group's observations on each section and the full response to the public consultation will be available to the public on the Trust's web site.

The Charity Commission Scheme Working Group has considered the results of the public consultation and this report contains their recommendations to the Governance Committee and the Board. The Working Group members are John Raine, Stephen Braim, David Bryer and Cynthia Palmer (Cynthia having been invited to join the group after the MHT elections in November 2019, while the others have served as members of the Charity Commission Scheme Working Group since 2016).

The Consultation Document was lengthy, and the Trust is very grateful to everyone who took the time to read it and complete the questionnaire. 467 respondents did so[1]. MHT also contacted a number of individuals and organisations to invite written responses because of their very specific interests and the Trust received feedback from ten of them. Their feedback has been included in the analysis of responses at the appropriate points.

The Working Group is pleased by the overall level of response, and more particularly by the fact that a clear majority of respondents have taken a positive view of the proposals for change that have been put forward by the Trust.

Analysis of the pattern of responses by geographical area has revealed some significant variances (please see map appendix 1).

In particular, a significantly higher number of responses were received from postcodes clustered around the Hall Green and Guarlford area, than from any other locality. The cluster here accounted for some 17.5 % of all the responses received and, in addition, there were consistently lower levels of agreement with the proposals (generally of the order of at least 20%) when compared with all other responses. In seeking to understand this pattern of variance, it may be of relevance to note that the Trust dealt with a contentious application for an easement in this area in March 2019. To allow for comparison between the responses from the cluster and all other responses, and to demonstrate the effect of this variance, footnotes and a table of the data (appendix 3) have been included.

In contrast, analysis of the data set for respondents from the Herefordshire area revealed somewhat higher rates of agreement with the proposals. In response to nine out of ten of the questions, more than 70% of Herefordshire respondents indicated agreement with the

[1] This figure includes 12 respondents who did not give their name or full postcode, so it has been impossible to validate whether or not these included multiple responses from any one individual.

proposals, and for more than half of the questions, the level of agreement among respondents exceeded 80%.

Whilst the consultation was going on, it was noted that a significant amount of partial information was made available on social media, and several “group E-mails” were circulated, urging people to respond to the consultation in negative terms. One of these referred recipients to an independent website on which a number of suggested responses were provided. The Working Group also noted that several of the free text comments were identically scripted.

Whilst a clear majority of respondents agreed with almost all the proposals, most of the follow-up comments (as is often the way with consultations of this nature) were from those who disagreed with the proposals and who wanted to explain or emphasise their stance. Those in agreement, in the main, have little or nothing further to add.

The Working Group’s original intention had been to provide a response to each of the comments. However, their volume and the degree of repetition has made this impractical. Instead, the Group has provided a set of more generalised responses to the key themes in each section (with references back to the relevant pages in the Consultation Document where information appears to have been overlooked or misunderstood).

Responses to themes arising in multiple sections

The textual comments contained certain general themes and to avoid repetition elsewhere, these points are addressed below. A few of the responses also contained content which was not relevant to the consultation and in such instances, the Working Group has made no specific response, although where pertinent to management issues, the comments have been forwarded to the relevant staff.

MHT’s status

MHT is unusually constituted, although not unique. It is governed by its own private Acts of Parliament and by those other public Acts of Parliament which apply to it (and which are applicable more widely and not specifically to MHT).

MHT is also a charity and, as a consequence of that, it is subject to charity law. Any institution with charitable purposes and which exists for the public benefit will qualify as a charity for the purposes of charity law. This brings with it a statutory obligation to apply to register with the Charity Commission, which is the principal regulator of registered charities in England and Wales. MHT was first registered with the Charity Commission on 20 November 1984 (although it was a charity before its registration).

Other similar organisations are also registered charities: Epping Forest (registered in 1964), Wimbledon and Putney Common Conservators (registered in 1972) and Cleeve Common Trust (registered in 1989).

Registered charities are accountable to the Charity Commission which has a statutory objective to increase public trust and confidence in charities. Charity trustees also have a range of duties and responsibilities, some of which are imposed by statute and others by charity law more generally.

If the MHT Scheme is brought into law, the organisation's accountability to the Charity Commission, and the duties and responsibilities of its trustees, will remain the same after the making of the Scheme as they were before.

Some consultees have referred to MHT as a "public body". MHT is a public body, but only to the extent that its functions have the necessary public element to mean that decisions taken by its trustees in relation to such "public functions" may be subject to judicial review (including e.g. a decision to grant an easement over land which is open to the public).

There are other examples of registered charities which exercise public functions, especially where the institution is regulated by an Act of Parliament (including e.g. the National Trust).

The present position (as made clear in the Consultation Document on page 13) is that charity trustees have to act solely and exclusively in the best interests of the charity at all times, and not in the interests of those who appointed them. The Scheme will not change this.

Concerns have also been expressed about trustees exercising powers incorporated in the Scheme in ways which would not support the Trust's objectives. However, an effective safeguard in relation to all matters is the requirement for all decisions of the trustees to be made in the best interests of delivering the Trust's charitable objectives for the public benefit. Accordingly decisions cannot be taken on the basis that they just benefit the charity as an entity.

The Malvern Hills

A number of the respondents have misunderstood what was meant in the Consultation Document by "the Malvern Hills." This was explained in the Glossary as being all the land under the Trust's jurisdiction.

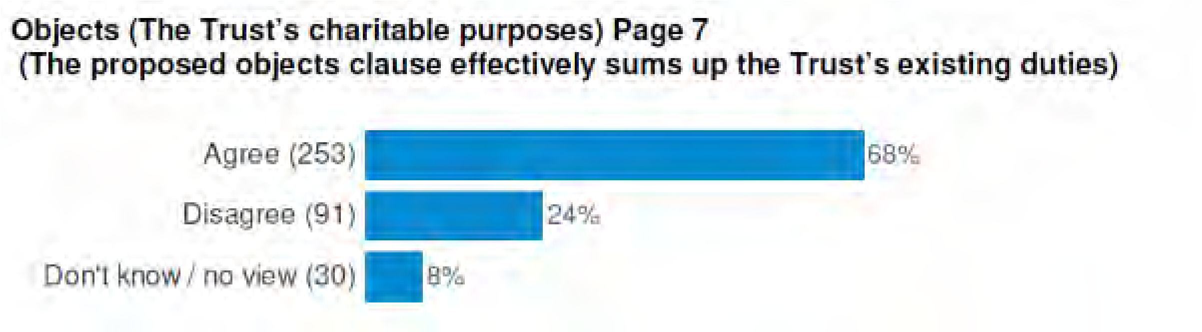
Footnotes to the sections

In the footnotes to each section, "n" refers to the total number of respondents to a particular question.

"Data Cluster" refers to the data from the post codes listed in Appendix 2

Responses to questions 2 and 3

Objects



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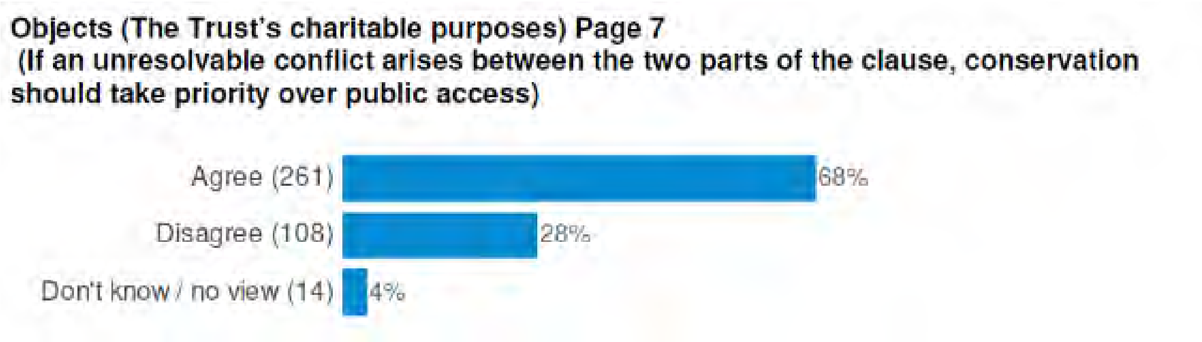

3

Working Group response

The Consultation revealed a high level of agreement that the proposed objects clause reflects the Trust's current duties. However several key points were made upon which the Trust needs to reflect. The Working Group agrees that the land under MHT's jurisdiction is a dynamic landscape and the objects clause should not be open to an interpretation that the landscapes should be frozen at a particular point in time.

Points to note in response to specific comments

'Conserve' and 'preserve' are not the same thing.
The Working Group also points out that the proposed changes will not make any previous decisions "irrelevant".

Cultural landscape

The World Heritage Committee definition of "cultural landscape" was set out in the Consultation Document (page 8):

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[2] Data Cluster 51% agree (n=71),
Remainder of respondents 72% agree (n=303)

[3] Data Cluster 50% agree (n=72),
Remainder of respondents 72% agree (n=311)

"cultural properties [that] represent the combined works of nature and of man"
The words were included in the draft clause because one of the key features of the Malvern Hills is the way in which parts of the landscape have been shaped by the mosaic of smallholdings and the exercise of rights of common associated with them. It is one of the features of the area that makes it particularly distinctive and forms part of its character. "Cultural landscape" is different from "landscape character" but the view of the Area of Outstanding Natural Beauty (AONB), confirmed in subsequent discussions, is that "cultural landscape" in practice forms a component of "landscape character".

The Charity Commission would require more information from MHT to ascertain whether the "cultural landscape" element, by itself, could be brought within the definition of charitable purposes. MHT will work closely with the Charity Commission in relation to the final wording of an objects clause, but the view of the Working Group is that the words "cultural landscape" could be removed from the clause without losing its intended meaning.

This section elicited a number of comments about road building, but it has not been made clear how this could arise from the proposed re-statement of the Trust's objects.

Natural aspect

While the meaning of "natural aspect" may be considered by many to be obvious, the key issue is its legal meaning under the Acts.

There is no definition of these words in the Acts themselves, but they were considered by the Court as part of a restrictive covenant in the case of The National Trust for Places of Historic Interest or Natural Beauty v Midlands Electricity Board and another [1952] Ch 380. This case involved the erection of electricity poles on common land and the Court was asked to consider a deed that contained restrictive covenants for the benefit of the particular land. The restrictive covenants included "…no act or thing shall be done or placed or permitted to remain upon the land which shall injure prejudice affect or destroy the natural aspect and condition of the land".

The Court held that the restrictive covenant was "void for uncertainty". Vaisey J commented "What does "aspect" mean? - presumably the appearance, but from what point?" and that "it would be difficult to find wider, vaguer and more indeterminate words than those…it is so vague that it is really impossible of apprehension or construction…".

The proposed objects are intended to reflect the existing position. The Trust has always considered wildlife (the native flora and fauna of a region that are neither human nor domesticated/feral) to be a part of the "natural aspect". The Trust might reflect further on whether the words proposed do or should encompass concepts such as 'ecosystem' and 'biodiversity', but also whether use of these expressions would be straying outside the Trust's current remit.

The Working Group concludes that the wording proposed gives a more clearly defined basis for protecting the landscape, and notes that the recent Glover review of National Parks and

AONBs contains a similar proposal to adopt an expanded and more precise definition of their remit – currently “conserve and enhance natural beauty” (see below).

Enclosure

The omission of the word “unenclosed” from the draft clause was intentional. As some respondents have pointed out, at the time of the passing of the first Acts, there was concern that local landowners were seeking to enclose the commons and bring the land into individual ownership. According to Pamela Hurle’s 1984 book “The Malvern Hills – a hundred years of conservation,” the landowners were securing the necessary private Acts of Parliament to achieve this. Squatters were also setting themselves up, and there were more subtle gradual extensions of people’s boundaries. The Working Group are of the view that the word “enclosure” is no longer needed so long as the Trust is required to continue to prevent encroachment.

Denying public access

As a landowner, the Trust has statutory responsibilities in relation to certain designated areas – the SSSIs and the Scheduled monuments. The Trust may at times need to prioritise their protection and it is important, in the last resort, to be able to protect for future generations the features which make the Malvern Hills special. The Working Group acknowledges the concerns of those who fear the second part of the proposed object clause could lead to “closing the Hills”. However it is hard to imagine circumstances so extreme that the only option, after all others had been exhausted, would be large scale closure of the Hills. It would be possible to include a separate requirement to keep under review any compromise that resulted in denial of public access.

Commoners’ rights

A number of comments have been made in the responses about commoners’ rights, which are dealt with on page 67 of the Consultation Document. MHT has no duties expressed in its Acts in relation to commoners’ rights. These rights are protected by law, and the Scheme will re-state that, except as otherwise provided, the rights of commoners will not be prejudiced by the Acts.

AONBs and the Glover Report

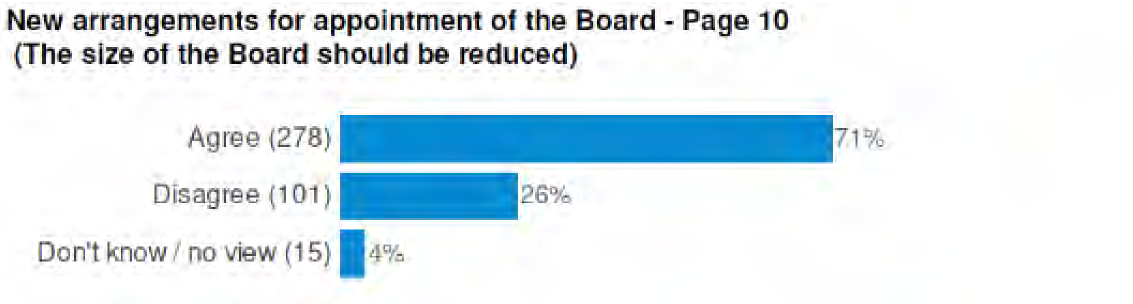
The AONB Joint Advisory Committee is (as the name implies) an advisory body and does not have “powers”. AONBs were formed out of legislation passed in 1949 – 65 years after MHT was founded. There is a parallel in that both organisations are required (in general terms) to manage the landscape for conservation and access. However, MHT’s functions as a landowner are totally different from those of the AONB. AONBs are not charities and their remit is over a much wider geographical area than the land under the Trust’s jurisdiction (although some of the Trust’s land is outside the AONB).

An interesting point is made by the Malvern Hills AONB (comment 3 on page 7). The AONB refers to the phrase suggested in the Glover report to strengthen the purposes of the bodies that protect “National Landscapes“ -'recover, conserve and enhance natural beauty, biodiversity and natural capital and cultural heritage’. The Working Group suggests that this phrase is worth further consideration, although all of the elements may not fit the definition of a charitable objective.

Recommendation

- Further consider the phrase cited from the Glover Report and whether the current draft objects encompass or should encompass concepts such as ecosystem and biodiversity.
- Subject to the above, the objects clause, as drafted, should remain part of the Scheme, except for removal of the phrase “cultural landscape”.
- Include a clause that, where any area is closed to public access, the decision should be subject to annual review.

Responses to Questions 4 and 5
New arrangement for appointment of the Board



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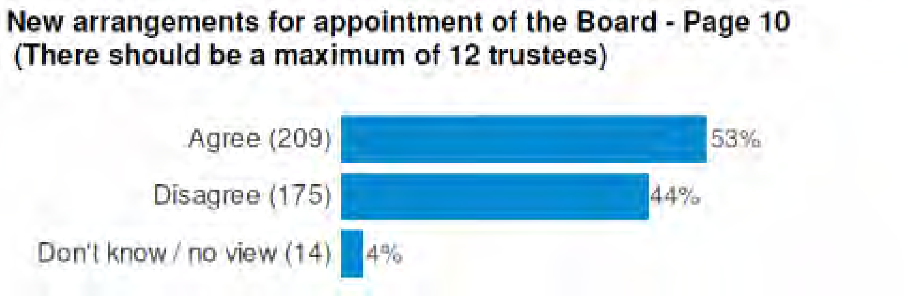

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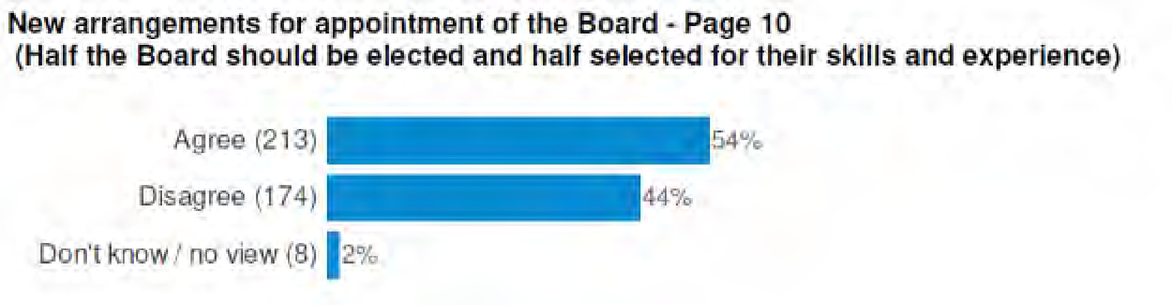

[6]

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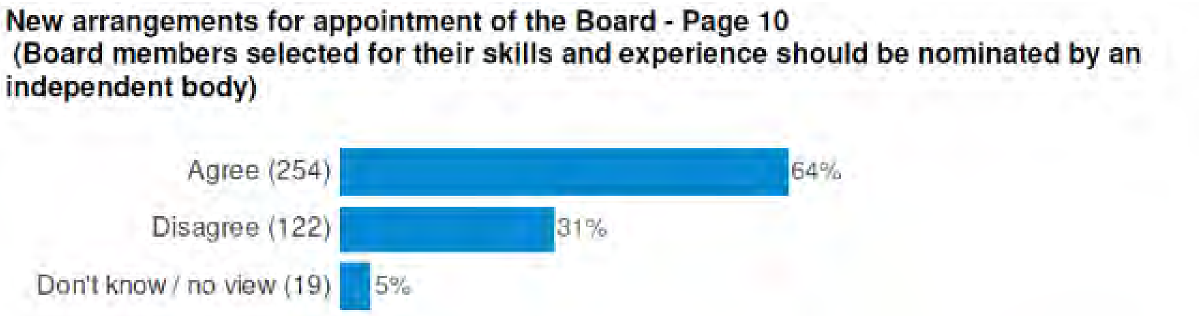
[4] **Data Cluster 33% agree (n=78)**
Remainder of respondents 80% agree (n=316)

[5] **Data Cluster 13% agree (n=78)**
Remainder of respondents 62% agree (n=320)

[6] **Data Cluster 14% agree (n=78)**
Remainder of respondents 64% agree (n=317)



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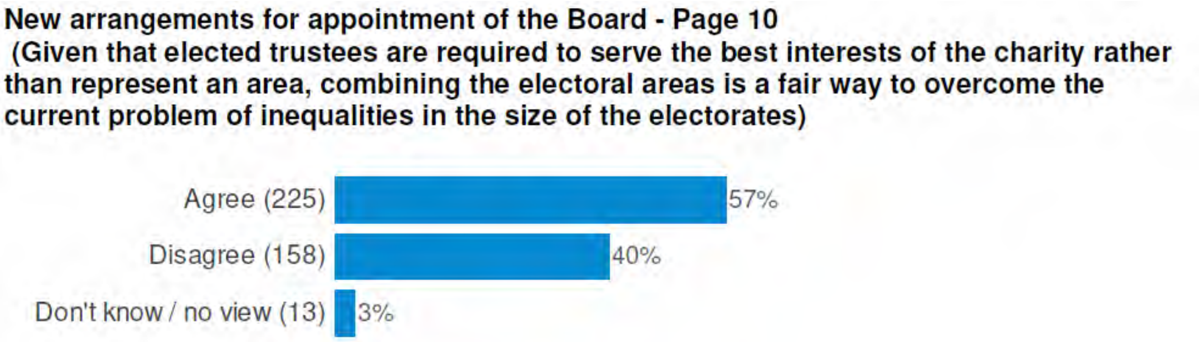

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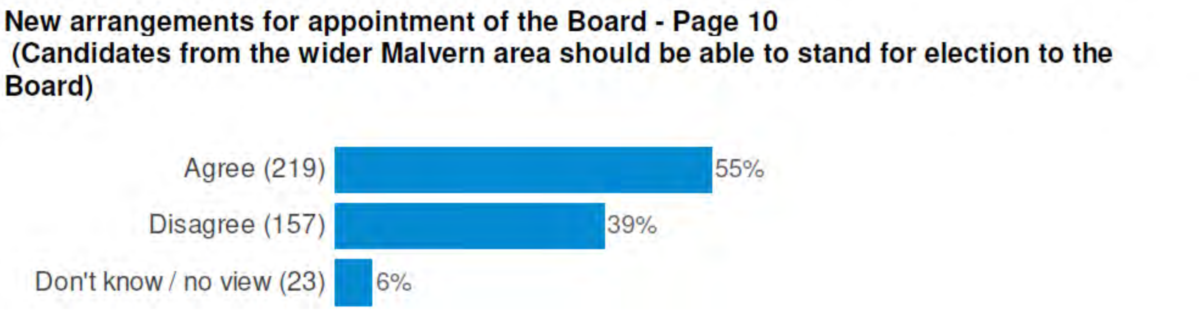

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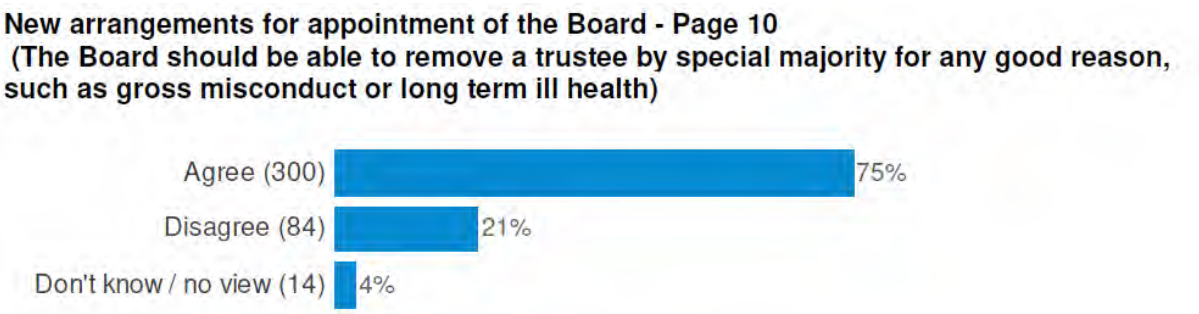

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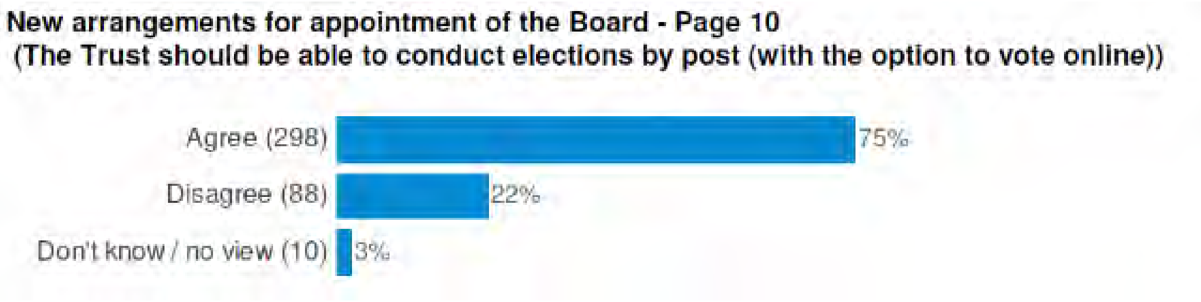
[7] **Data Cluster 34% agree (n=77)**
Remainder of respondents 72% agree (n=318)

[8] **Data Cluster 21% agree (n=78)**
Remainder of respondents 66% agree (n=318)

[9] **Data Cluster 22% agree (n=77)**
Remainder of respondents 63% agree (n=322)

[10]



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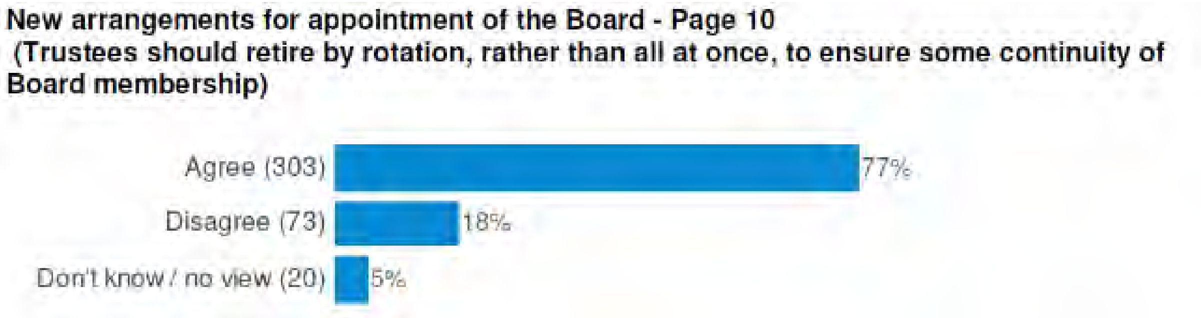

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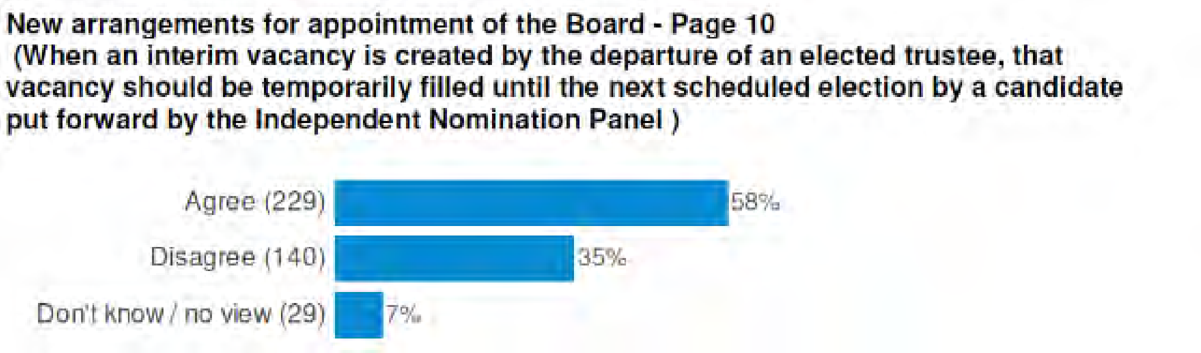

[13]

Working Group response

"The bottom line is good governance is no longer an optional extra"
Sally Atkinson, Director of Planning Policy and Communications, Charity Commission.

A large majority of respondents are in favour of reducing the size of the board, having trustees who are appointed by an independent body for their skills and experience, being

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[10] **Data Cluster 50% agree (n=78), Remainder of respondents 82% agree (n=320)**

[11] **Data Cluster 54% agree (n=78)**
Remainder of respondents 81% agree (n=318)

[12] **Data Cluster 55% agree (n=78)**
Remainder of respondents 82% agree (n=318)

[13] **Data Cluster 31% agree (n=78)**
Remainder of respondents 64% agree (n=320)

able to remove a trustee for good reasons, introducing retirement by rotation (instead of all at once) and being able to conduct elections by post/on-line.

A number of respondents in this section made suggestions that had already been considered by the MHT board, but which were eventually dismissed for the reasons set out in the Consultation Document (pages 11 to 23). Some of the responses reflected misunderstandings about the legal requirements that govern the way in which charities must work, and perhaps the Trust needs to undertake further PR/communication work in the future to ensure that the public are better informed about how the Trust is required to operate. Some comments are inconsistent with the Trust's obligation to fulfil the statutory purposes for which it was established, rather than the wider interests of local residents. Other respondents are concerned that the Trust may want to develop business interests. However, like all charities, the Trust exists for its charitable purposes, not to generate income or capital for their own sake.

Points to note in response to specific comments

The board of the National Trust is appointed by the Council of the Trust, not by nominated organisations.

Whilst accepting that MHT is different to most other charities in that it has a power to raise a levy, payment of money to a charity should not allow a donor to influence how it is run.

Board size

A number of respondents expressed their views on retaining a larger board, whilst others were in favour of a board of less than 12. The range of views on the size of the board varied between 4 and 29. Given the considerable quantity of independent research indicating the optimum size of decision making bodies to be in single figures, the Working Group still favours a board of no more than 12 – to set the maximum size below that number is considered too large a change from the current size of 29. Several respondents suggested that it would be better not to have an even number of trustees to avoid the risk of equality of votes, but in practice it makes little difference whether there is an even or odd number because absences may change the numerical balance.

Appointment of trustees

The Working Group considers it to be key that the trustees who are appointed are suitably experienced and the best available candidates for the role. The proposal to create a single electoral area does not depart from the principle of MHT being governed by trustees who are in part elected by the residents of Malvern and the three nearby parishes who pay a levy. The proposal is that half of the trustees be elected by the levy payers - compared with just over one third at present. In summary:

- all of the levy paying area will continue to have the opportunity to elect trustees
- such trustees will remain accountable and, should they stand again, it will be the electorate who will decide whether or not they retain their positions as trustees

- the position with regard to “representation” is unchanged
- the proposals provide for a higher proportion of directly elected trustees than under the current arrangements.

A majority of respondents to the Consultation favoured a split between elected and appointed trustees. (This was one of the questions where the overall percentage in agreement was significantly skewed by a very negative response from the Data Cluster – 14% indicating agreement with the premise as against 64% of the remainder of the respondents). The Working Group remains of the view that the proposed 50:50 split is the best way forward. An all elected board, aside from the problem of ensuring the right skills mix, is potentially open to domination by pressure groups, a risk that is mitigated by having appointed trustees as well. The proposals are primarily based on the need to ensure a board with the right mix of skills and experience but should also result in a more diverse composition. For example, the current arrangements have produced a board whose average age is 69 and 75% of whom are male (of the elected trustees, 90% are male), and which provides a very weak reflection of the social and demographic composition of the Malvern population.

The Consultation Document also proposes that trustees would be assigned to undertake a liaison role with the town and the parish councils around the Hills, thus ensuring effective communication with local residents.

The non levy paying areas.

The Working Group is of the view that the non-levy paying areas should not become part of the electoral area although non-levy paying parishes will be able to put candidates forward for consideration by the INP (see below).

A postal vote

As highlighted in the Consultation Document (pages 19-20), a postal voting system would be significantly less expensive than the traditional ballot box method. Online voting would also be an option and can be considered sufficiently secure for those who wish to use such an approach.

The Working Group has noted the comment that, were there to be multiple vacancies amongst the elected trustees at one time, then this could trigger a by-election, rather than the vacancies being filled by the INP (see below). A provision for by-elections in special circumstances could be included within the Scheme.

Independent Nominations Panel (INP)

Appointed trustees are currently nominated by Councils and by the Church Commissioners, but this approach does not provide the desired level of diversity, experience and skills. To avoid the risk of cronyism, the Scheme provides for an Independent Nominations Panel to put forward candidates for appointment to the board (rather than them being selected by the trustees themselves). The suggestion that the first INP might be selected by a working group comprising some board members and some independent individuals has merit –

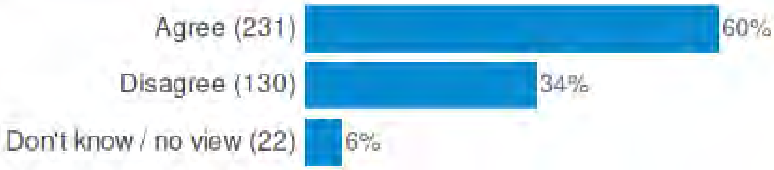
although the Charity Commission would not become involved with such a process as it is not within their remit. The CEO would be a valuable 'resource' for the INP rather than a decision maker. It is difficult to see how the INP could function without input from someone with a good working knowledge of the Trust. Despite several respondents to the consultation expressing concern about difficulties in attracting membership of an INP, the Working Group remains confident that willing and appropriately experienced individuals could be identified to perform this important role of finding and recommending new trustees.

Recommendations

- Add a provision that, in the event of multiple elected trustee positions becoming vacant at one time, then a by-election should be held, (subject to there being more than 6 months before the next scheduled elections). However, single vacancies should be temporarily filled by the INP until the date of the next scheduled election.
- Further consideration be given to the establishment of an 'INP selection working group' for identifying/appointing the initial membership of the INP (who would thereafter appoint their own successors).

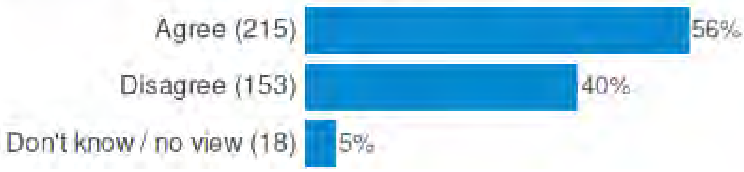
Responses to Questions 6 and 7
Modernising the Board's Administration

Modernising the Board's administration - Page 24
(A limited number of trustees should be able to take part in meetings remotely by televisual or other electronic means whereby all participants may communicate simultaneously)



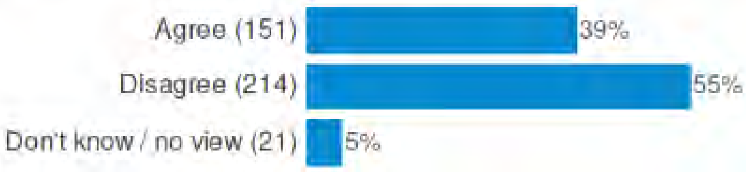
[14]

Modernising the Board's administration - Page 24
(The trustees should be able to make urgent decisions by unanimous written agreement without the need for a meeting)



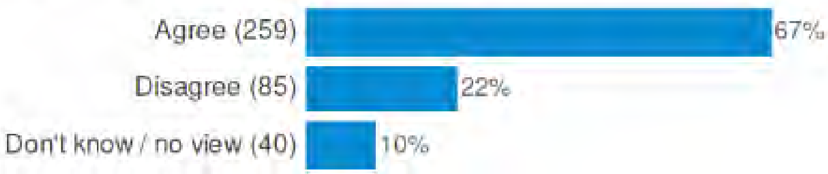
[15]

Modernising the Board's administration - Page 24
(The Trust should not be required to admit the public to Committee meetings, but any decisions made should be reported at the next Board meeting)



[16]

Modernising the Board's administration - Page 24
(The Board should appoint the Trust's auditors)



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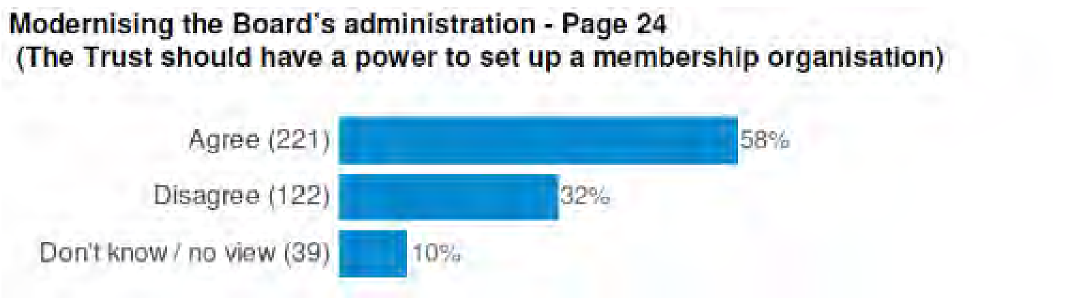
[14]**Data Cluster 26% agree (n=73)**
Remainder of respondents 68% agree (n=310)

[15]**Data Cluster 18% agree (n=73)**
Remainder of respondents 65% agree (n=313)

[16]**Data Cluster 8% agree (n=73)**
Remainder of respondents 46% agree (n=313)

[17]



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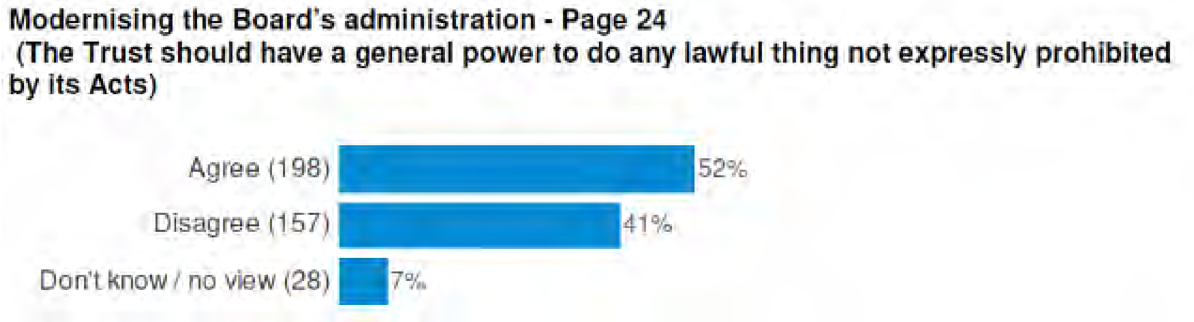

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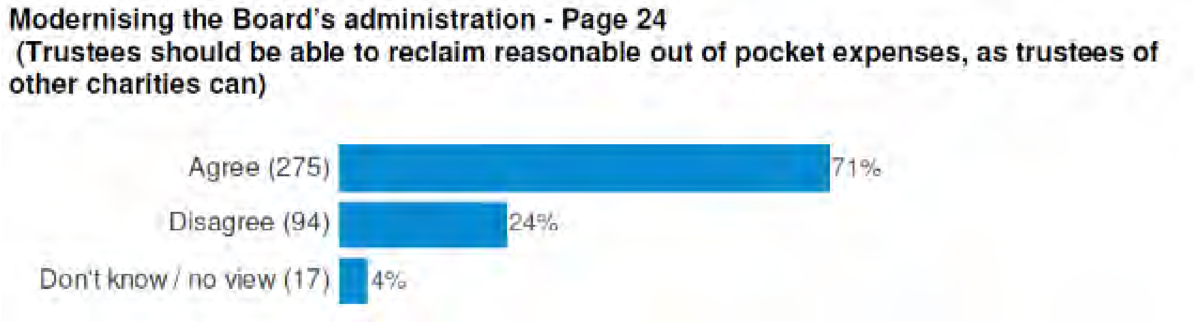

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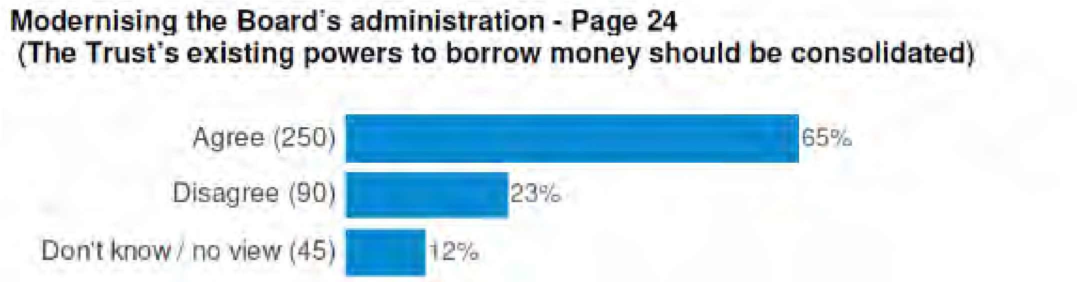

[21]

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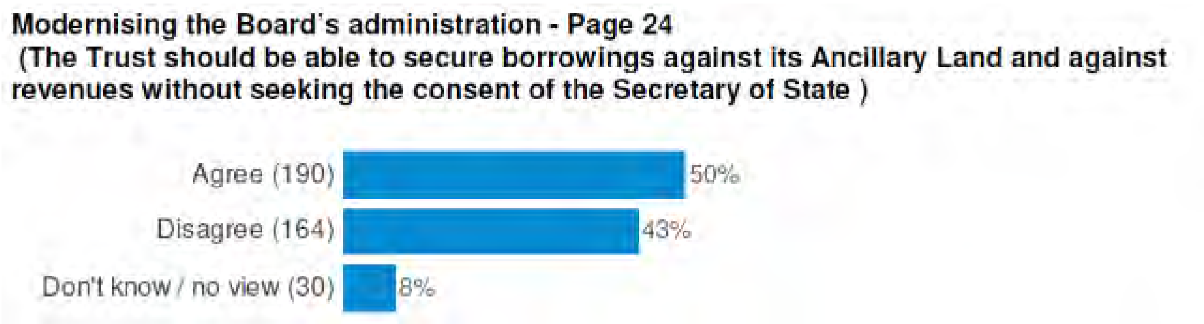
[17] Data Cluster 49% agree (n=73), Remainder of respondents 72% agree (n=311)

[18] Data Cluster 31% agree (n=71)
Remainder of respondents 64% agree (n=311)

[19] Data Cluster 22% agree (n=73)
Remainder of respondents 59% agree (n=310)

[20] 63% agree (n=73)
Remainder of respondents 73% agree (n=313)

[21] Data Cluster 44% agree (n=72)



[22]

Working Group response

Taking part in meetings by electronic means and making urgent decisions by written agreement

A number of responses expressed the view that it would be acceptable for more than 25% of the trustees to take part in meetings electronically. It was also pointed out that, as currently worded, if a single trustee failed to respond to a request for an urgent decision, one could not be made without calling a meeting. The Working Group considers that there is some logic in relaxing these requirements (perhaps to permit the written agreement of 75% of all trustees for written decisions). The Working Group also noted the suggestion that, instead of the Scheme being prescriptive, it could be made more flexible by permitting decision making in accordance with Charity Commission guidelines.

The Working Group agrees that an individual trustee should not be able to participate in meeting by electronic means on a regular basis. It is important that all the trustees meet together in order that they work effectively as a group. It is suggested that standing orders should include a limit on the number of times a trustee can take part in meetings remotely.

The Working Group notes the comments that "urgent" is not defined and will take advice on whether a definition should be included in the relevant section.

Committee meetings

The Working Group was not entirely surprised that this proposal has attracted limited support (less than 40% overall). Charities do not usually hold their trustee meetings in public, including other charities which are statutory bodies eg The National Trust, PDSA. MHT is an exception in this respect. If the board size were to be reduced in accordance with the proposals, it is likely that most of the business would be discussed by all trustees together at board meetings rather than, as now, in committees. There would therefore be reduced need for committees.

Remainder of respondents 70% agree (n=313)

[22]Data Cluster 19% agree (n=73)
Remainder of respondents 57% agree (n=311)

Even if committee meetings were not held in public, the resulting minutes would still be published (unless a confidential matter under Schedule 12A Local Government Act 1972 was being discussed). All board meetings would continue to be conducted in public (except for confidential items under Schedule 12A). At present, committees have only very limited delegated powers, so almost all decisions are by way of recommendations to the board (and are approved or otherwise at a subsequent board meeting). The Working Group propose a compromise whereby committee meetings would be open to the public if the agenda included items where the committee would make a decision under delegated powers.

The Trust already follows the Nolan Principles and all trustees are requested to sign the organisation's Code of Conduct that specifically includes agreement to uphold them.

General Power

The Working Group considers this power is very important and most of the negative comments do not take into account that the exercise of such a power would be limited to being in furtherance of the Trust's objects.

Trustee expenses and payments

It is stated on page 32 of the Consultation Document that any such payments would have to be disclosed in the charity's accounts and, as with all payments, could only be made if in the best interests of the charity. It is envisaged that rules would be drawn up to make clear to trustees what expenses could be paid (and ceilings on the amounts).

The Working Group will re-examine the proposed exceptions to the presumption against making payments to trustees as set out on page 33 of the Consultation Document.

Borrowing powers

It should be noted that, at present, the board can borrow money for the purposes of acquiring land under the 1884 Act on security of the precept and on any land already belonging to the Trust (but without a power of sale). The proposed provisions do not materially widen the existing borrowing powers.

Membership

No details will be worked up in relation to the proposed membership organisation until it is clear that the Trust can proceed with the idea. That said, it is not envisaged that membership will confer any rights in relation to the appointment of trustees although the membership could put forward candidates for consideration by the INP. The Working Group would want to ensure that any membership organisation would not conflict with the operation of the Wildlife Trusts - hopefully the organisations would be separate but mutually supportive.

The Working Group has noted the comment that some precept payers feel they should be entitled to any benefits that are conferred on members.

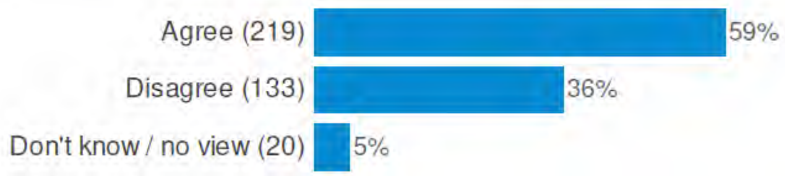
Recommendations

- Review whether the requirements in relation to the proportion of trustees who can take part in a meeting electronically might helpfully be relaxed
- Review whether urgent decisions might be made in writing, with the agreement of less than all appointed trustees, (for example agreement by 75% or more of trustees)
- Review whether the word ‘urgent’ needs to be defined in this context
- Amend the draft so that committee meetings are open to the public if they will make decisions under delegated powers
- Review the provisions for exceptions to the rule that Trustees can receive no payments.

Responses to questions 8 and 9
Securing the commons, temporary fencing and livestock

Securing the commons, temporary fencing and livestock - Page 40

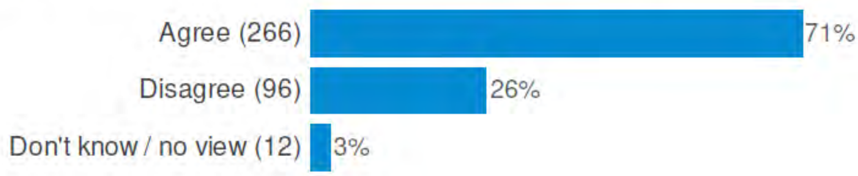
In all cases set out below, the public would continue to have access to the areas in question (The Trust should be able to secure the perimeter of a common, to make it stock proof, subject to the consent of the Secretary of State and any other necessary permissions)



[23]

Securing the commons, temporary fencing and livestock - Page 40

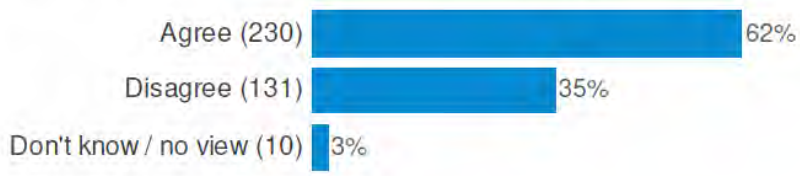
In all cases set out below, the public would continue to have access to the areas in question (The Trust should have a power to set up temporary grazing compartments for up to 60 days)



[24]

Securing the commons, temporary fencing and livestock - Page 40

In all cases set out below, the public would continue to have access to the areas in question (The Trust should have a power (subject to a requirement to consult) to put up temporary fences on the common for up to 12 months in the interests of animal health)



[25]

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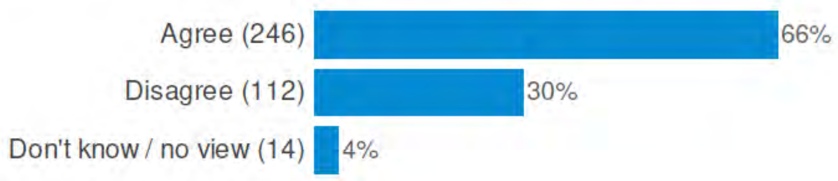
[23] Data Cluster 50% agree (n=70)
Remainder of respondents 61% agree (n=302)

[24] Data Cluster 66% agree (n=70)
Remainder of respondents 72% agree (n=304)

[25] Data Cluster 55% agree (n=69)
Remainder of respondents 64% agree (n=302)

Securing the commons, temporary fencing and livestock - Page 40

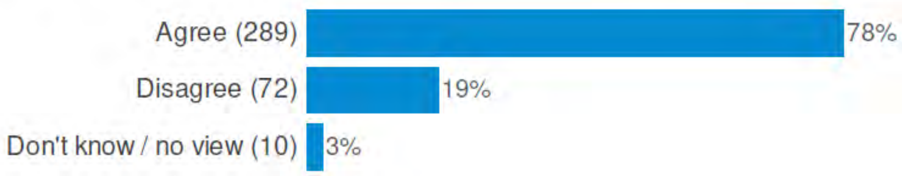
In all cases set out below, the public would continue to have access to the areas in question (The Trust should have a power to own and manage livestock)



[26]

Securing the commons, temporary fencing and livestock - Page 40

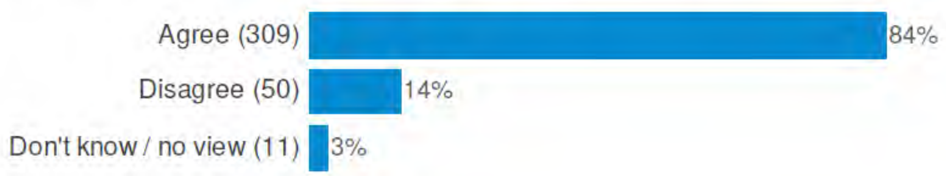
In all cases set out below, the public would continue to have access to the areas in question (The Trust should have a power to install sensitively placed watering points on its land)



[27]

Securing the commons, temporary fencing and livestock - Page 40

In all cases set out below, the public would continue to have access to the areas in question (The Trust should have a power to deal with injured or ailing animals which are on the Malvern Hills in breach of the byelaws)



[28]

Working Group response

Public consultation in relation to the exercise of fencing powers

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[26] **Data Cluster 39% agree (n=70)**
Remainder of respondents 73% agree (n=302)

[27] **Data Cluster 73% agree (n=70)**
Remainder of respondents 79% agree (n=301)

[28] **Data Cluster 63% agree (n=70)**
Remainder of respondents 88% agree (n=300)

The provisions contained in the Consultation Document seek to clarify the Trust's position in relation to fencing and to some extent to put the Trust on a similar footing to other landowners. Some of the responses refer to the DEFRA guidelines but these cannot apply to the Trust if it does not have the *power* to fence in the first place. Other landowners can erect permanent fencing subject to the consent of the Secretary of State (which would entail consulting the public as part of the process).
The Consultation Document states that the exercise of the proposed power to allow temporary fencing for up to 12 months for animal health reasons will also be subject to public consultation. The public will therefore have every opportunity to engage with the Trust on how these powers are to be exercised and, importantly, any fencing for animal health reasons would have to be undertaken with the agreement of those exercising their rights to graze.

Securing the common

Any changes to speed limits across the commons, or improved warning signage is the responsibility of the County Council. There are already signs along the B4208 warning of grazing animals but these do not prevent stock from straying off the common, nor do they ensure that drivers are sufficiently careful to avoid hitting animals.

Page 43 of the Consultation Document, section 4, specifically states that the purpose of fencing is to prevent stock from straying from common land. Most of the B roads on CL9 (Castlemorton, Coombe Green, Shadybank and Hollybed Commons) are part of the common and could not be fenced under this power. The commons that are not grazed would not be fenced.

Although part of CL9, Coombe Green does not belong to, nor is it managed by, the Trust.

The Trust would seek to use the most appropriate form of barrier for each particular location. Ditches are likely to be most acceptable from the point of view of being almost invisible in the landscape, but would probably not be safe if adjacent to a road where they could be a hazard to traffic.

The Working Group agrees that there should be a restriction to prevent temporary fencing for animal health reasons being removed for a short period and then re-erected, in effect extending the 12 months period.

The location of any boundary structure such as cattle grids would involve public consultation and careful design to minimise any risk to animals, including horses and ponies. The requirement to obtain the consent of the Secretary of State (and the accompanying public consultation) would mitigate against any unreasonable change to public access.

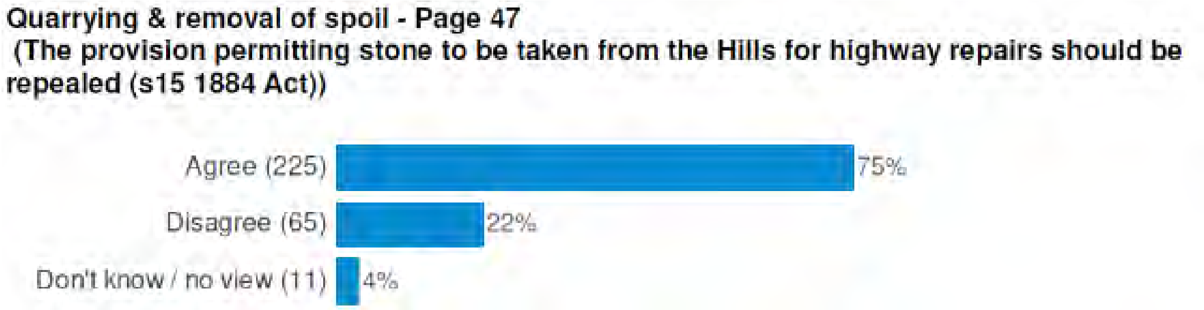
The Trust as landowner can take surplus grass so long as sufficient is left for those exercising their common grazing rights. Grazed animals "as a business" would not be fulfilling the Trust's charitable objectives.

The Open Spaces Society has proposed that MHT include an additional sub-paragraph in section 4 of the fencing provisions to ensure that there is no derogation from the duty on any person to fence against the common and the Working Group accepts this proposal.

Recommendations

- Reassessment of the wording in relation to “securing the common”.
- The inclusion of a “break” period of 6 months to prevent temporary fencing for animal health reasons from being taken down for a few days and then replaced.
- The addition in a rider to section 4 of the fencing clause to state that nothing in the section should be taken to derogate from the duty on any person to fence against the common.

Comments on Questions 10 and 11
Quarrying and removal of spoil



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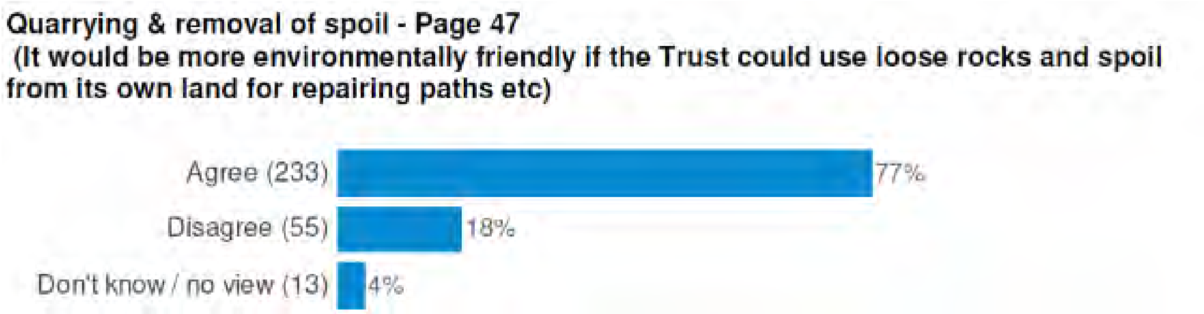
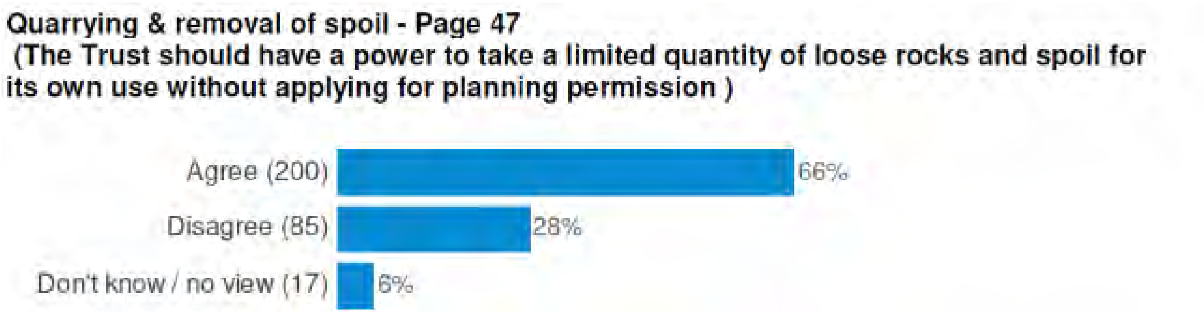


[30]



[31]

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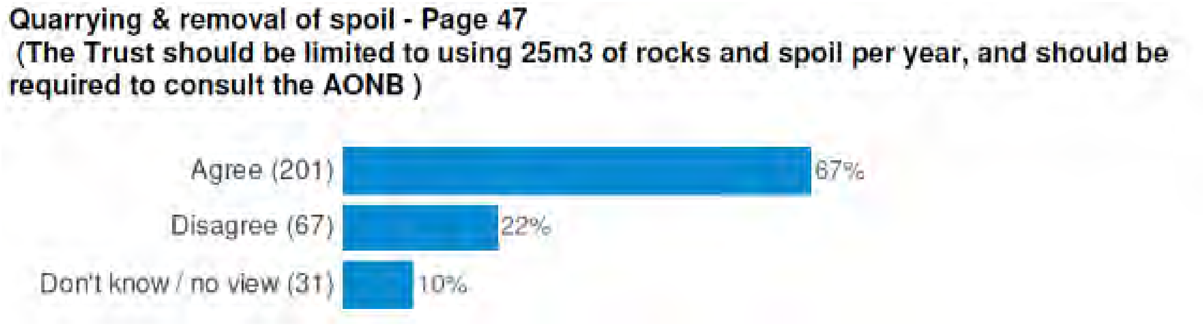
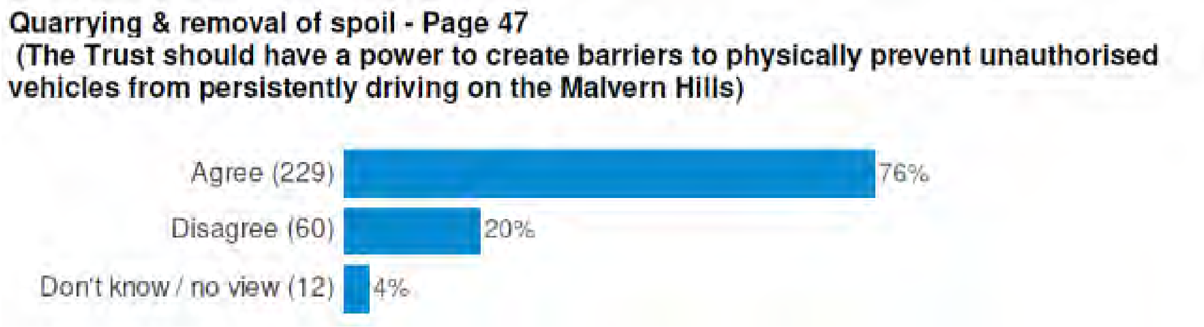
[29] Data Cluster 56% agree (n=57)
Remainder of respondents 79% agree (n=244)

[30] Data Cluster 60% agree (n=57)
Remainder of respondents 82% agree (n=244)

[31] Data Cluster 39% agree (n=57)
Remainder of respondents 73% agree (n=245)



[32]



[33]

Working Group response

The consultation revealed a high level of agreement to all of the questions in this section, particularly in relation to repealing s15 1884 Act, creating physical barriers to prevent driving on the commons and being more environmentally friendly by using a limited quantity of rocks and spoil for path repair etc each year.

Commercial exploitation

It was made clear in the Consultation Document (page 48) that use of rocks and spoil would be solely for the Trust's own use and so it is not apparent why some respondents should conclude that the proposals in this section might lead to some sort of "business" activity. There was a line of comment suggesting that thought might be given to use of some loose rocks for heritage building restoration. However, this would not align with the Trust's charitable objectives.

Cyclists

A number of comments were made relating to cyclists. From a practical point of view, it would be difficult to create barriers for cyclists that would not also impede access for mobility vehicles, horse riders and pedestrians. The Working Group's view is that this is an issue which needs to be managed, rather than covered by legislation.

Consent to taking 25m^3 of spoil or rock each year for the Trust's own use

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[32] **Data Cluster 46% agree (n=57)**
Remainder of respondents 72% agree (n=242)

[33] **Data Cluster 60% agree (n=57)**
Remainder of respondents 80% agree (n=244)

The AONB do not believe that they are an appropriate consultee in connection with the exercise of the proposed power to take up to 25m^3 of rock and spoil each year. The Worcestershire Earth Heritage Trust, however, has suggested consulting to establish the importance and relevance of the geology and the Working Group suggests that further enquiries be made to establish a more appropriate consultee in relation to this and to the possible importance of any deposits to wildlife.

Repeal of s15 1884 Act

The Open Spaces Society [34](OSS) has raised an important point in connection with the repeal of s15. Under s45 of Highways Act 1980, the highway authority has the power to take materials from any waste or common land. OSS commented that, although the power appears to be obsolete, in practice s15 limits its use on the Hills, and they have suggested that the section should be updated rather than repealed. The Working Group agrees that updating may be preferable if their submission is correct.

Barriers to prevent vehicular access

The Worcestershire Local Access Forum has suggested the wording on page 50 might be changed from "do not prevent access by pedestrians and horse riders" to "….by all authorised users". The Working Group will consider this suggestion.

Recommendations

- Making further enquiries to establish a more appropriate consultee in relation to the taking of rock and spoil, including the possible importance of any deposits to wildlife.
- s15 1884 Act should not be repealed, but updated.
- Further consideration of the suggested change of wording on page 50 from "do not prevent access by pedestrians and horse riders" to "by all authorised users".

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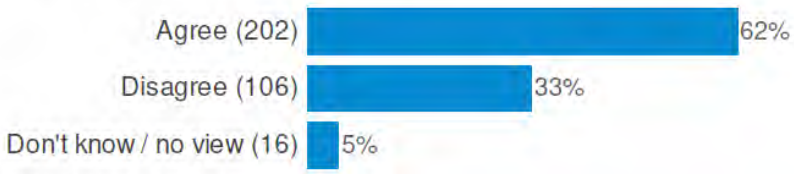
[34] Quarrying (Q.10) OSS comment:

Under s.45(2) of the Highways Act 1980, the highway authority retains an ancient power to dig for road-making materials on common land. This power appears to be obsolete. However, s.15 of the 1884 Act restricts the exercise of the power in relation to the Hills. Therefore, we suggest either that the restriction in s.15 is retained (with appropriate modifications), or if there is no objection from the relevant highway authorities, that the power in s.45 of the 1980 Act is disapplied in relation to the Hills. To repeal s.15 would be to raise the possibility (at least theoretically) that powers to dig for materials in the Hills might be revived.

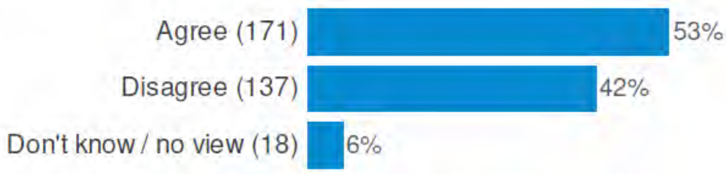
Comments on Questions 12 and 13
Ancillary land and buildings, leases and licences

Ancillary Land and buildings, leases and licences - Page 51
(The Trust should have a power to acquire land and buildings for the care of livestock)



[35]

Ancillary Land and buildings, leases and licences - Page 51
(Subject to obtaining planning permission, the Trust should have a power to build premises on land which does not form part of the commons for the following purposes: offices, storage, information centres, sale of refreshments, sale of goods, housing livestock and for occupation by employees)



[36]

Ancillary Land and buildings, leases and licences - Page 51
(The Trust should have a power to grant licences of land (subject to existing public rights of access) and buildings)

[37]

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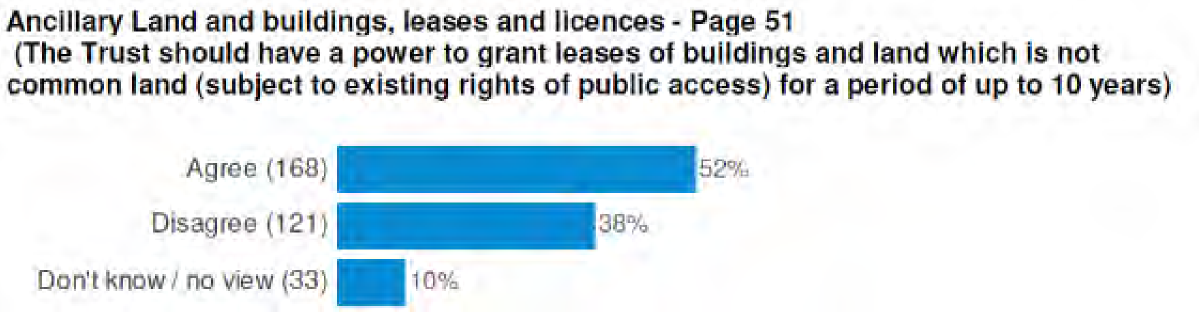
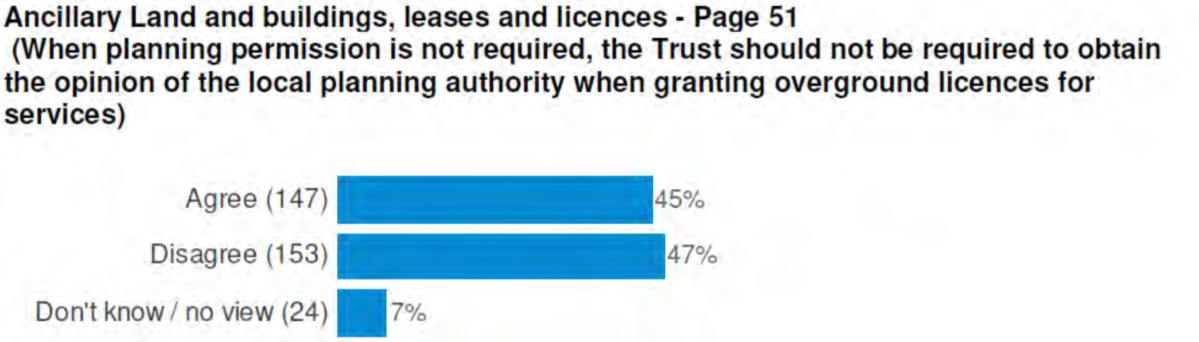
[35] **Data Cluster 34% agree (n=67)**
Remainder of respondents 70% agree (n=257)

[36] **Data Cluster 25% agree (n=67)**
Remainder of respondents 60% agree (n=259)

[37] **Data Cluster 21% agree (n=66)**
Remainder of respondents 59% agree (n=258)



[38]



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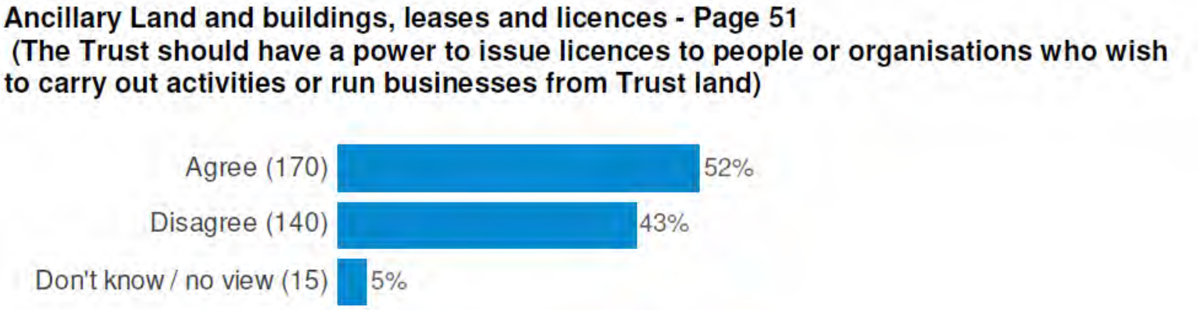
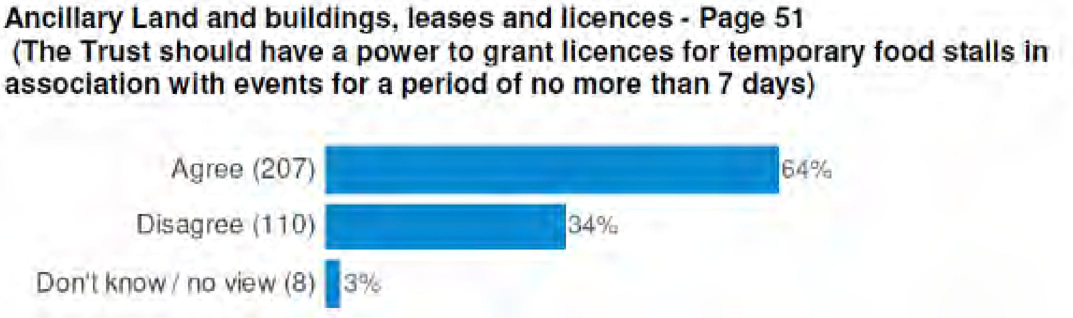


[40]



[41]

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[38] **Data Cluster 24% agree (n=66)**
Remainder of respondents 59% agree (n=256)

[39] **Data Cluster 16% agree (n=67)**
Remainder of respondents 53% agree (n=257)

[40] **Data Cluster 29% agree (n=65)**
Remainder of respondents 58% agree (n=260)

[41] **Data Cluster 49% agree (n=67)**

Working Group response

A somewhat lower level of agreement with the proposals in this section has emerged from the consultation. This surprised the Working Group, as they did not view the proposals as particularly controversial. There would appear, from the comments, to be a misunderstanding about the reasons for the proposals and their scope and perhaps they were not explained with sufficient clarity.

Ancillary land

The provisions on pages 52 and 53 of the Consultation Document apply only to:
Land which the Trust **currently** owns and which was acquired for administrative purposes or land **specifically acquired** in the future for administrative purposes, as set out in the draft clause. It does not therefore include any of the Trust's existing pubic access land, including the commons.

The proposed clause is, in large part, the same as the existing statutory provision and only adds

- an explicit power to acquire land to manage and house livestock or provide refreshments
- an expanded power in relation to sale of goods
- a power to build, which the Trust does not currently have (except in relation to lavatories and buildings for storage).

It is limited to "any use which is ancillary to its objects" and therefore the comments which appear to suggest that MHT might have ambitions to become a property developer are without foundation.

Licences

Many of the respondents appear not to have understood that the Trust could not grant licences for commercial purposes, but only in the exercise of the Trust's charitable objectives. Some helpful comments were made concerning the terms of licences but these would be a management issues and are not appropriate for inclusion as part of the Scheme.

Licensing events

The rationale for licencing events was explained in the Consultation Document. There is a need is for a clear power to manage events and activities which the Trust is already being asked to permit on its land. It is not intended to make money but to ensure that the management and monitoring of activities taking place on the Hills is not a drain on funds (partly provided by the levy payers) that might otherwise be used for looking after the Hills.

Requirement to consult the local planning authority about overground licences for services.

Remainder of respondents 67% agree (n=258)

Notwithstanding the lack of support from those who completed the questionnaire, Malvern Hills District Council has confirmed that it agrees that the Planning Department should no longer be required to give an opinion on the provision of overground services if planning permission is not required. Given that an overground licences for services can ONLY be granted to domestic properties built before 1995, which fulfil other conditions, the Working Group feels in the light of the consent of MHDC, that the proposal should remain as it is. Herefordshire Council has not responded to the consultation.

Easements generally

The Open Spaces Society has asked that it be made clear that authority given under s8 MHA 1995 should not constitute a power for the purpose of s.38(6)(a) Commons Act 2006[42]. The Trust has always assumed that s38 applies to any works to which it gives consent, and indeed it is a standard requirement of MHT that the grantee should obtain the necessary consents under s38. The Working Group note the point and will seek advice. Amendment of s8 MHA 1995 will be included in the Scheme if MHT is so advised.

Temporary food stalls associated with events

The Working Group would not be averse to a reduction in the maximum number of days for which a licence can be granted and suggests a reduction from 7 to 4. The lack of this provision would affect events such as sponsored walks where the organisers want to be able to raise money by providing tea and cakes for the finishing participants.

Lavatories

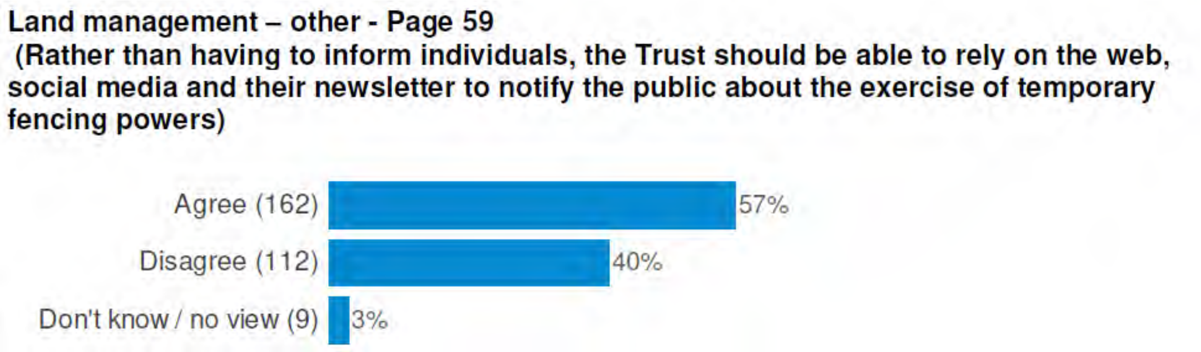
The Trust already has a power to permit temporary lavatories, and for this reasons the issue has not been included in the consultation.

Recommendations

- To seek advice on whether to amend s 8 1995 Act to make it clear that any consent to works by the Trust does not constitute a power for the purposes of s38(6)(a) Commons Act 2006.
- The number of days for which licences can be granted to temporary food stalls be reduced from 7 to 4

[42] S38 Commons Act 2006 requires anyone carrying out certain works on a common to seek (in England) the consent of the Secretary of State. S38(6) is an exemption from this requirement in cases where the works are carried out under any statutory power.

Comments on Questions 14 and 15
Land Management



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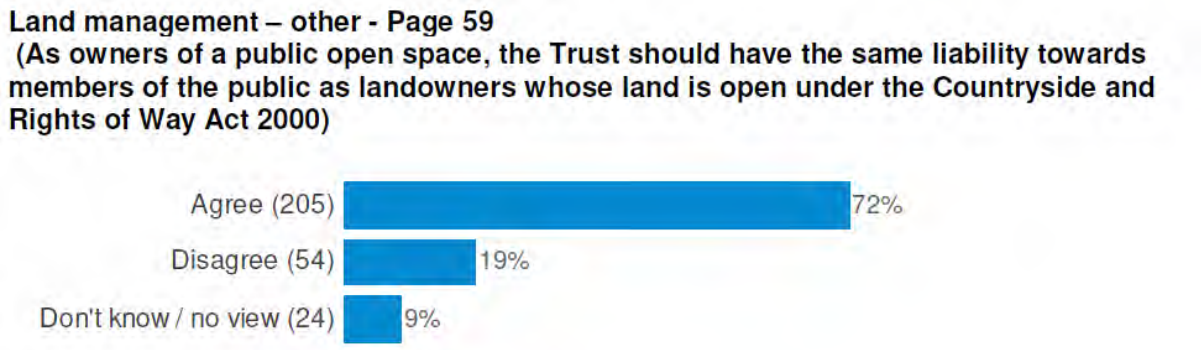

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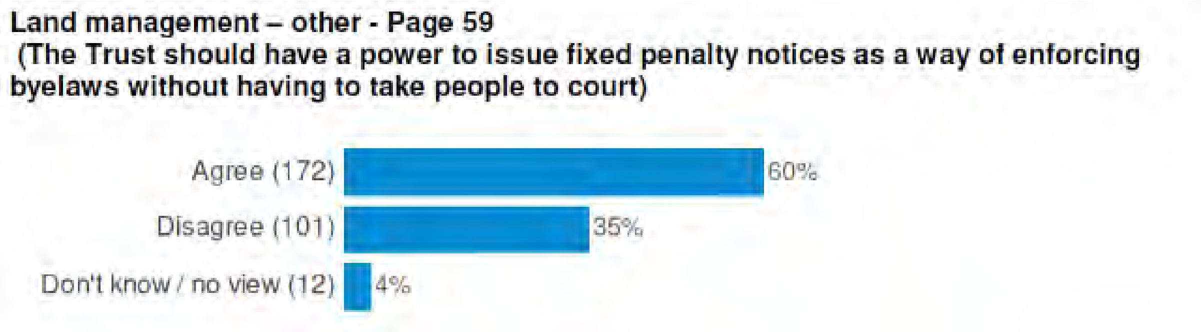

[45]

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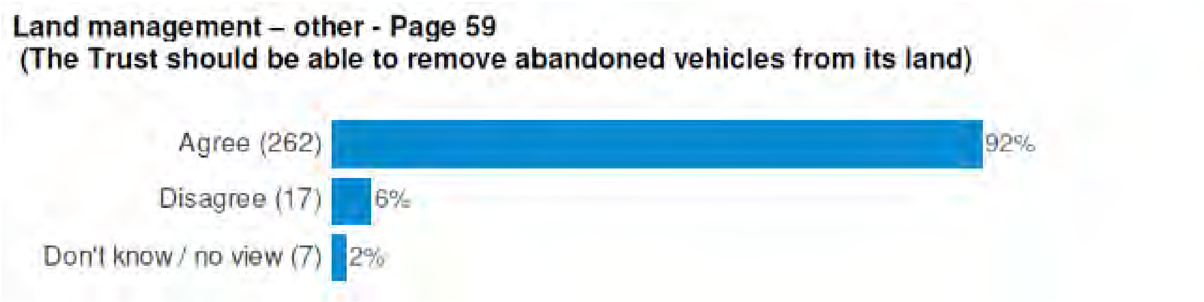
[43] Data Cluster 33% agree (n=63)
Remainder of respondents 64% agree (n=220)

[44] Data Cluster 57% agree (n=62)
Remainder of respondents 77% agree (n=221)

[45] Data Cluster 44% agree (n=62)
Remainder of respondents 65% agree (n=223)



[46]

Working Group response

Responses showed a very high level of agreement that the Trust should be able to remove all types of abandoned vehicles from its land and that its liability towards the public should be the same as for landowners whose land is open under the CROW Act.

Prevention of access under s15 MHA 1995

The Open Spaces Society (OSS) commented that they did not agree to the removal of the requirement under s15 MHT 1995(3)(a) and (d) to consult Historic England and obtain the consent of Natural England respectively. The Working Group still believes it is important in the short term for the Trust to be able to act quickly when necessary but accepts the retention of the consultation requirement in relation to fencing for a period greater than 28 days. In relation to removal of the requirement for the Trust to notify individuals if temporary fencing is to be erected for more than 28 days, several respondents commented that the Trust should advertise in the newspaper. As stated in the Consultation Document, (page 60) the Trust is already required to advertise in a local newspaper, and this will remain the case. Nor is there any change proposed to the requirement to put up notices on site or to consult relevant local bodies.

The OSS also suggest adding an additional requirement to consult bodies representing the interests of walkers and horse riders. Whilst consultation with the former might be practical, there is no local body which represents horse riders. Given the existing requirement to advertise, the Working Group does not consider that any additional consultation obligations are necessary. The Trust would consult on a voluntary basis were the works likely to have a significant impact on either of these groups.

Fixed penalty notices

Whilst the Working Group appreciates some of the concerns expressed regarding Warden safety in relation to the issuing of fixed penalty notices, the fact remains that the Trust does not have a straightforward, cost effective method for enforcing the byelaws. Personal safety issues would have to be addressed by careful management. It is recognised that Fixed Penalty Notices would still be difficult to enforce but the Working Group considers that MHT should have a power to issue them in appropriate circumstances.

[46] **Data Cluster 81% agree (n=63)**
Remainder of respondents 95% agree (n=223)

Malvern Hills District Council have commented that they would support MHT being able to enforce its byelaws by use of fixed penalty notices.

Liability to people on the Hills

This proposal was widely supported. However, the OSS commented “We do not think that para 5 of the proposed liability clause functions correctly, because guidance under s.20 of the Countryside and Rights of Way Act 2000 cannot be 'relevant': such guidance is for 'the guidance of persons exercising the right conferred by (the 2000 Act) and of persons interested in access land', and persons using the Hills for recreation are not exercising that right, nor is it access land.

“You should also consider whether the clause is capable of influencing the duty owned by the trustees under the 1984 Act other than as an occupier (*i.e*. if the trustees in any circumstances are not an occupier, they cannot owe any liability under the 1984 Act, and therefore nothing in the clause can be relevant to the trustees' liability)”. The Working Group proposes to seek advice on this point.

The comment from the horse rider is addressed in the appropriate section.

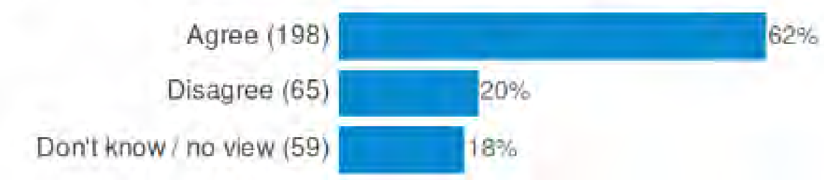
Recommendations:

- To reinstate the requirement to consult Historic England under s15(3)(a) MHA 1995 for fencing for longer than 28 days
- To reinstate the requirement to act on the advice of Natural England under s15(3)(d) MHA 1995 for fencing for longer than 28 days
- To seek advice on the OSS comment on adopting the duty of care under the CROW Act.

Comments on Questions 16, 17, 18 and 19
Third Party Rights and Miscellaneous

Question 16

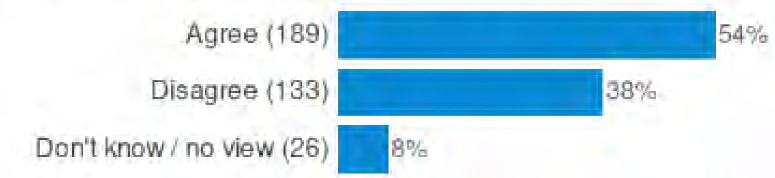
Third Party Rights - Page 67 (The Trust should no longer have a power to enforce commoners' rights over land which is not under its jurisdiction)



[47]

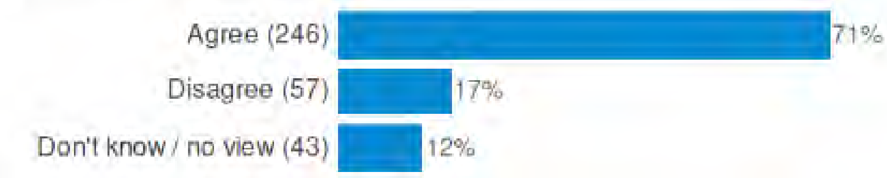
Question 17

Miscellaneous - Page 77
(The Trust should change its name in the Acts to Malvern Hills Trust)



[48]

Miscellaneous - Page 77
(The references in the Acts to Great Malvern Abbey should be changed to Great Malvern Priory)



[49]

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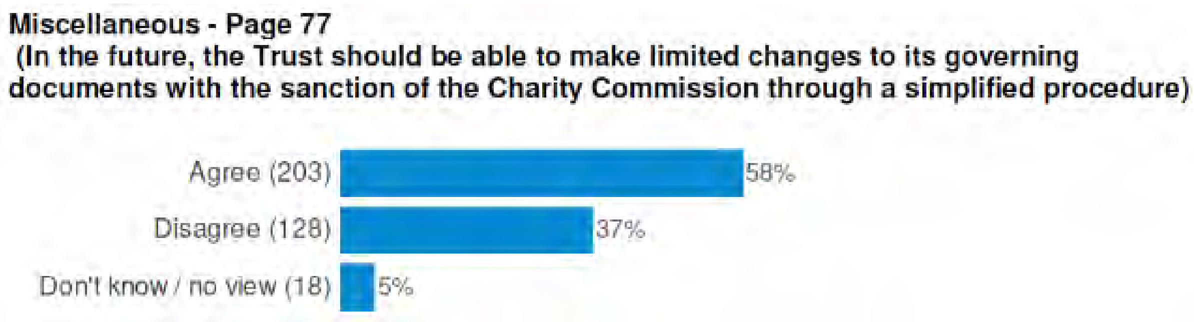
[47] Cluster 26% agree (n=66)
Remainder of respondents 71% agree (n=256)

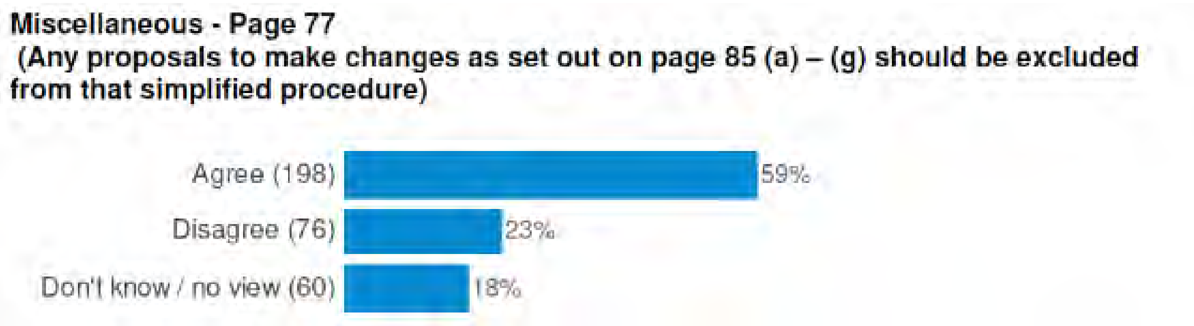
[48] Cluster 15% agree (n=66)
Remainder of respondents 64% agree (n=282)

[49] Cluster 49% agree (n=65)
Remainder of respondents 76% agree (n=281)

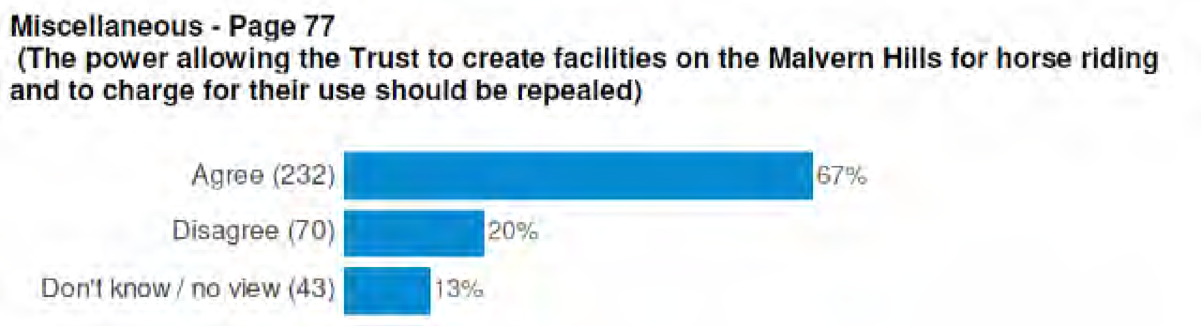
50



51



52



53

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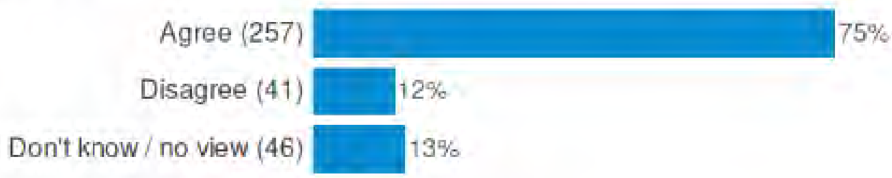
[50]Cluster 39% agree (n=64)
Remainder of respondents 75% agree (n=279)

[51]Cluster 18% agree (n=67)
Remainder of respondents 68% agree (n=282)

[52]Cluster 23% agree (n=61)
Remainder of respondents 67% agree (n=273)

[53]Cluster 41% agree (n=64)

Miscellaneous - Page 77
(The levy paying wards and parishes should be exempt from paying any special levy (Page 38))



[54]

Question 18

In s9 1909 Act, in the event that the County Council wishes to raise a special levy, it has to seek the consent of Malvern Urban District Council. Who should now give consent? (Page 38)

Malvern District Council

Malvern Town Council, Malvern Wells Parish Council and West Malvern Parish Council

[55]

Working Group response

For clarification, Thirds Wood was purchased by Malvern Hills Conservators – it was not "gifted".

Change of name

Changing the name of the organisation through the Scheme to Malvern Hills Trust will not add to the cost of the Scheme and for clarification, there was very little additional cost associated with renewing signage when the Trust adopted its working name. In anticipation of the rebranding, the Trust had for some years been putting off renewal of branded signs which were due for replacement.

Commoners' rights

(Some of the comments are contained in other sections)
The Working Group note the suggestion (although not directly relevant to the Scheme) that it would help to clarify matters in relation to estovers if the Trust produced a schedule of trees which it had planted.

Remainder of respondents 73% agree (n=281)
[54]**Cluster 80% agree (n=65)**
Remainder of respondents 74% agree (n=279)

[55] **Cluster 33% Malvern Hills DC, 67% MTC and the parishes**
Remainder of respondents 52% MHDC, 48% MTC and the parishes

Future changes to the Acts

Should the provision permitting the Charity Commission to sanction limited changes to the Acts in future come into force, the Charity Commission would require a public consultation as part of the process before giving approval.

Changes to the levying arrangements

The reasons why a change in the levying arrangements could not be included in the Scheme were set out in the Consultation Document (page 36). The Open Spaces Society has helpfully pointed out that powers once vested in the Land Commissioners would in their opinion now be vested in the Secretary of State. Even if that is the case it seems unlikely that the Secretary of State would exercise the powers in s31 1884 Act and because of the way the levy operates, it would be of no financial advantage to the Trust were they minded to do so.

Consent to raising a special levy

It should be noted that Malvern Hills District Council believe the Town and Parish Councils would be in a better position to give consent as any special levy would affect only their specific areas and not the whole of the district.

National Parks

National Park status is a landscape designation which protects landscapes of national importance. The National Park Authorities have a remit defined by statute which in many cases includes being the planning authority for the area. National Park status has no effect on land ownership.

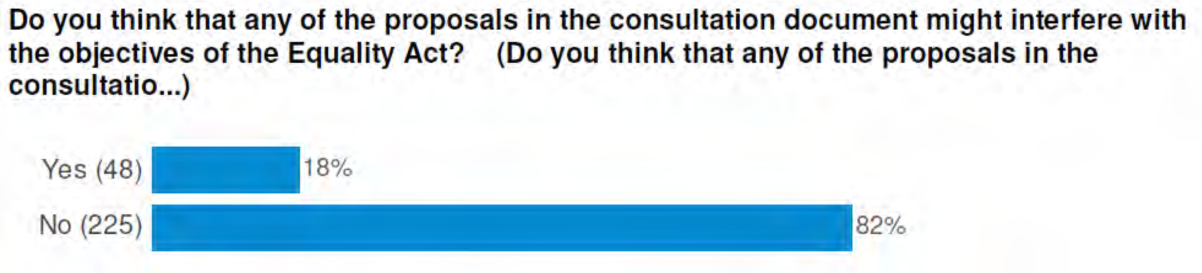
Other

Please see the Trust's position statement on trees.
https://www.malvernhills.org.uk/media/1988/mht-tree-planting-position.pdf

Please also note that horse riders are allowed on all parts of the Hills except where they have been specifically excluded.

Recommendation
No change.

Responses to questions 20 and 20a
Equality Act



[56]

Working Group response

There were a number of the comments in this section which are not pertinent to the Equality Act.

Fencing

The need for fencing was outlined at some length in the Consultation Document. Fencing will mean that access to the Trust's land will be through defined points. This will affect all users to some extent but it is recognised that it has the potential to have more impact on those with limited mobility. The Working Group is grateful for the input from the Disabled Ramblers, both on-line and at the public consultation sessions. Their point about the unsuitability of "stiles" is accepted. There will be a full public consultation as part of the proposals for any permanent fencing. The point made in another section about poaching of the ground (i.e. creating muddy areas) at "pinch points" is well made and will need to be addressed by careful design and management.

Recommendation

No change.

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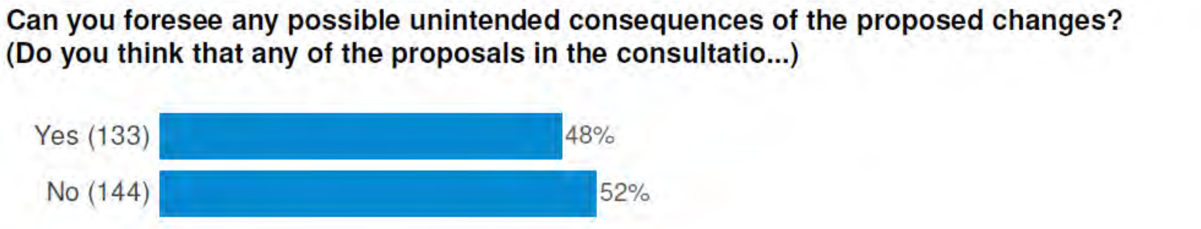
[56] **Data Cluster 44% yes (n=54)**
Remainder of respondents 11% yes (n=219)

Responses to questions 21, 22 and 22a
Unforeseen Consequences



[57]

Working Group response

Whilst a significant number of respondents expressed a view that there might be unintended consequences resulting from the proposals, very few specific issues were identified. In the main, the comments in response to question 22a were general expressions of dissatisfaction with certain elements of the Scheme and have been addressed in other sections.

The board

A board of 12 or less has become the norm for thousands of other charities. The Working Group is alert to the risks, which are not new, that an elected board in particular, is vulnerable to pressure groups taking control. Selection of half the trustees by an independent body should provide a protection against such an occurrence as well as ensuring an appropriate balance of skills and overall diversity.

Full text

Several respondents express a concern that a full text of the proposed Scheme was not made available. The reasons for this were explained in the Consultation Document (pages 80 and 81) and the full text will be made available in due course.

Ancillary Land

The wording of the clause relating to Ancillary Land (page 52) would not permit common land currently under the Trust's jurisdiction to become "Ancillary Land" except in so far as this is permitted under the Trust's existing powers (MHA 1930 s4(d)). In any event, it is highly unlikely that the necessary permissions (either under the Commons Act or planning laws) would be granted.

[57] **Data Cluster 79% yes (n=58)**
Remainder of respondents 40% yes (n=219)

General

The Working Group is acutely aware of the need to ensure that there are no “loopholes” to be exploited were an unscrupulous group of trustees to take charge of the charity and vigilance will be maintained to avoid such possible consequences. The requirement, as a charity, for the trustees to act solely and exclusively in the best interests of the charity at all times is itself a protection. Failure to act in this way would open up the trustees to challenge and, in the last resort, possibly to personal liability.

Recommendation

No change.

Summary of recommendations

Objects

- Further consider the phrase cited from the Glover Report and whether the current draft objects encompass or should encompass concepts such as ecosystem and biodiversity.
- Subject to the above, the objects clause, as drafted, should remain part of the Scheme, except for removal of the words ”cultural landscape”.
- Include a clause that, where any area is closed to public access, the decision should be subject to annual review.

New arrangements for appointment of the board

- Add a provision that, in the event of multiple elected trustee positions becoming vacant at one time, then a by-election should be held, (subject to there being more than 6 months before the next scheduled elections). However, single vacancies should be temporarily filled by the INP until the date of the next scheduled election.
- Further consideration be given to the establishment of an ‘INP selection working group’ for identifying/appointing the initial membership of the INP (who would thereafter appoint their own successors).

Modernising the board’s administration

- Review whether the requirements in relation to the proportion of trustees who can take part in a meeting electronically might helpfully be relaxed
- Review whether urgent decisions might be made in writing, with the agreement of less than all appointed trustees, (for example agreement by 75% of members)
- Review whether the word ‘urgent’ needs to be defined in this context
- Amend the draft so that committee meetings are open to the public if they will make decisions under delegated powers
- Review the provisions for exceptions to the rule that trustees can receive no payments.

Securing the commons and livestock

- Reassessment of the wording in relation to “securing the common”.
- The inclusion of a “break” period of 6 months to prevent temporary fencing for animal health reasons from being taken down for a few days and then replaced.
- The addition in a rider to section 4 of the fencing clause to state that nothing in the section should be taken to derogate from the duty on any person to fence against the common.

Quarrying and Removal of Spoil

- Make further enquiries to establish a more appropriate consultee in relation to taking rock and spoil including the possible importance of any deposits to wildlife.

- s15 1884 Act should not be repealed, but updated.
- Further consideration of the suggested change of wording on page 50 from “do not prevent access by pedestrians and horse riders” to “by all authorised users”.

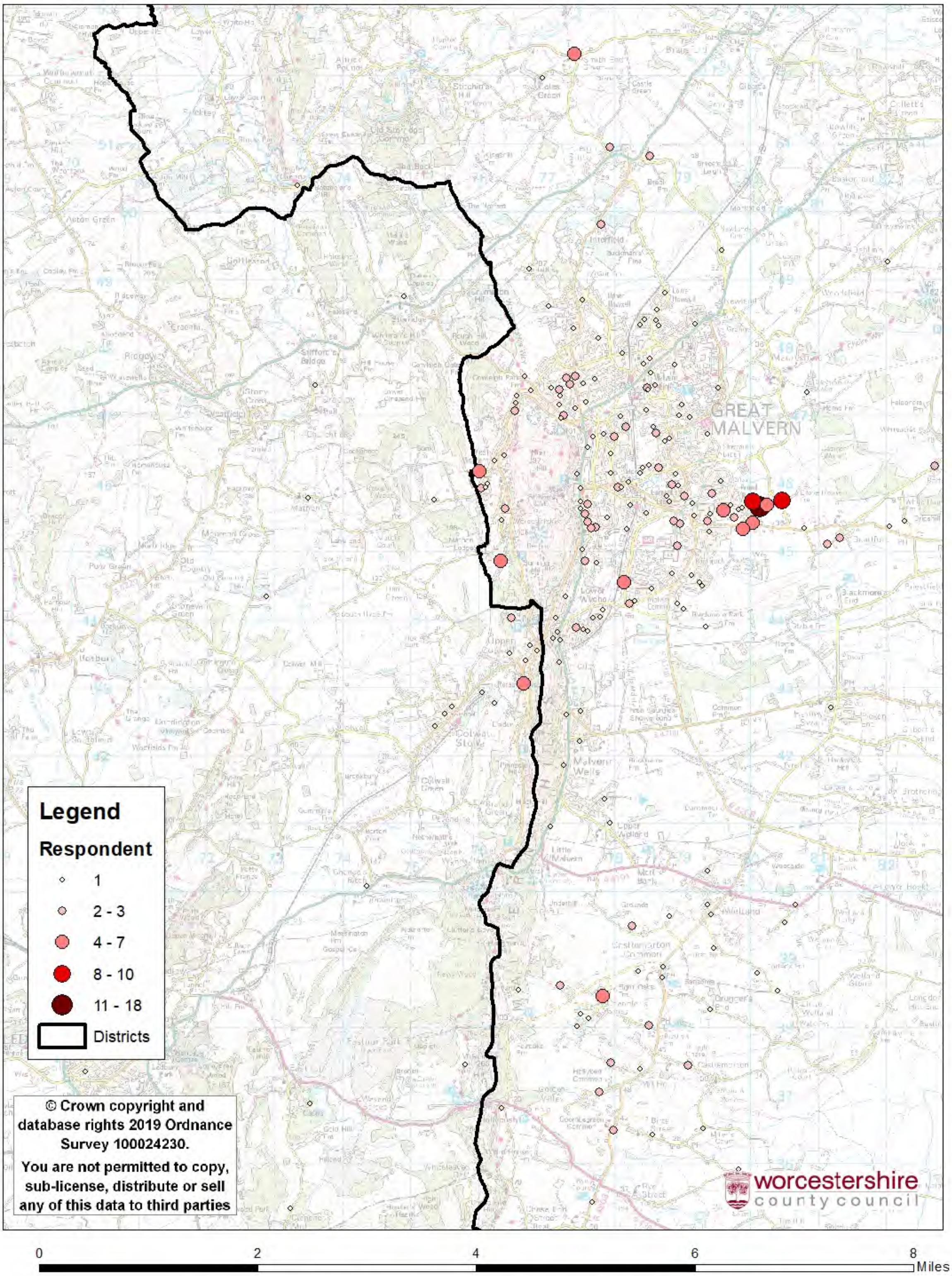
Ancillary land and buildings, leases and licences

- To seek advice on whether to amend s 8 1995 Act to make it clear that any consent to works by the Trust does not constitute a power for the purposes of s38(6)(a) Commons Act 2006.
- The number of days for which licences can be granted to temporary food stall s be reduced from 7 to 4

Land Management Other

- To reinstate the requirement to consult Historic England under s15(3)(a) MHA 1995 for fencing for longer than 28 days
- To reinstate the requirement to act on the advice of Natural England under s15(3)(d) MHA 1995 for fencing for longer than 28 days
- To seek advice on the OSS comment on adopting the duty of care under the CROW Act.

Appendix 1



Map showing postcodes of respondents in the Malvern area to the Malvern Hills Trust consultation

Produced by the Research Unit, October 2019

Appendix 2

Data Cluster postcodes

WR13 6NT
WR13 6NY
WR13 6NZ
WR13 6PA
WR13 6PF
WR13 6NS
WR14 2DF
WR14 2PG
WR14 2SP
WR14 2SS
WR14 2SY
WR14 2XA
WR14 2XD
WR14 2XE
WR14 3QR
WR14 3QT
WR14 3QU
WR14 3QW
WR14 3QX
WR14 3QY
WR14 3QZ
WR14 3RZ

Appendix 3

This table sets out the percentages of responses that “agree” with the proposals in the Consultation Document from the full data set, and the responses with the Data Cluster excluded.

Question	Agree - Full data set	Agree - Cluster removed	Difference
2	68	72	-4
3	68	72	-4
4.1	71	80	-9
4.2	53	62	-9
4.3	54	64	-10
4.4	64	72	-8
4.5	57	66	-9
4.6	55	63	-8
4.7	75	82	-7
4.8	75	81	-6
4.9	77	82	-5
4.10	58	64	-6
6.1	60	68	-8
6.2	56	65	-9
6.3	39	46	-7
6.4	67	72	-5
6.5	58	64	-6
6.6	52	59	-7
6.7	71	73	-2
6.8	65	70	-5
6.9	50	57	-7
8.1	59	61	-2
8.2	71	72	-1
8.3	62	64	-2
8.4	66	73	-7
8.5	78	79	-1
8.6	84	88	-4

Question	Agree - Full data set	Agree - Cluster removed	Difference
10.1	75	79	-4
10.2	77	82	-5
10.3	66	73	-7
10.4	67	72	-5
10.5	76	80	-4
12.1	62	70	-8
12.2	53	60	-7
12.3	51	59	-8
12.4	52	59	-7
12.5	45	53	-8
12.6	52	58	-6
12.7	64	67	-3
14.1	57	64	-7
14.2	72	77	-5
14.3	60	65	-5
14.4	92	95	-3
16	62	71	-9
17.1	54	64	-10
17.2	71	76	-5
17.3	68	75	-7
17.4	58	68	-10
17.5	59	67	-8
17.6	67	73	-6
17.7	75	74	+1

Public statement provided by Charity Commission 11 March 2020

"The Commission met with Malvern Hills Conservators (MHC) in late 2016 in relation to changes the charity were considering making to improve their governance arrangements and modernise the charity. These changes related to the five acts of parliament that govern the charity, which have been in operation since 1884.

At the time, and with the agreement of the Department for Digital, Media, Culture and Sport (DCMS) the Commission advised the charity to apply for a parliamentary scheme, to become effective via an Order by the Secretary of State for DCMS. MHC complied with this advice, preparing all relevant material for the scheme and, as advised, undertaking a public consultation, which took place between 2 September 2019 and 13 October 2019.

The amount of public interest the consultation generated was significant, particularly from precept payers of the charity, many of whom expressed concern about the proposed changes. It's therefore been agreed by DCMS and the Commission, that these changes to the charity's governing documents would now be best handled via a private bill, allowing greater scope for public scrutiny and debate than under a parliamentary scheme procedure. The charity has only recently been informed about the change in advice.

We understand this delay may be frustrating for people at the charity and others invested in the process, who want to see this issue resolved as quickly and as efficiently as possible. However, the significant amount of work undertaken by the charity in preparing for a parliamentary scheme will be relevant for preparing a private bill.

This charity manages a hugely significant and well-loved open space for the UK so it's important to ensure that changes are made in the right way. The Commission and DCMS will therefore be supporting the charity as needed, as they pursue the next steps of this process.

Charity Commission for England and Wales
11 March 2020"

Malvern Hills Trust
Ordinary Meeting of the Board
The Council Chamber, Avenue Road, Malvern WR14 3AF
Thursday 18 January 2024 at 7 pm

Present: Mrs C Palmer (Chair), Mr D Baldwin, Mr R Bartholomew, Mr R Berry, Mr P Clayburn, Mr D Core, Mr A Cottam, Mr M Driscoll, Mr D Fellows, Mr R Fowler, Mrs L Hodgson, Mr J Michael, Mr C Penn, Prof J Raine, Mrs F Robinson, Mr C Rouse, Mr J Stock, Mrs M Turner, and Mr M Wilkinson.

In attendance: Interim CEO, Secretary to the Board, outgoing Secretary to the Board, Conservation Manager, Finance Assistant, ten members of the public.

Absent: Mrs M Alexander

1. **Apologies for absence**
   Mr J Owenson, Mrs F Victory, Mr M Victory, Prof D Westbury, and Mrs S Wren.

2. **Chair's announcements**
   Mrs Palmer invited Trustees to contribute to the leaving present collection for the Administrative Assistant.

3. **Declarations of interest**
   There were none.

4. **Public Comments**
   See schedule 1.

5. **Minutes of the Board Meetings held on 16 and 30 November 2023**
   Two amendments were proposed to the draft minutes of 16 November.
   - Under minute 7 Public Comments, in the answer to question one, the last three words were changed from 'as at present' to 'in the current elections'.
   - Six references to 'Charit*ies* Commission' were corrected to 'Charit*y* Commission'.

   On the proposal of Mr Driscoll, seconded by Mr Bartholomew, it was **RESOLVED** with four abstentions, to approve the minutes of the Board meeting held on 16 November 2023 as amended.

On the proposal of Mr Bartholomew, seconded by Mr Clayburn, it was **RESOLVED**, with one against and two abstentions, to approve the minutes of the Board meeting held on 30 November 2023.

6. Matters Arising

There were none.

7. Appointment to Finance, Administration & Resources Committee

On the proposal of Mr Core, seconded by Mr Penn it was **RESOLVED** unanimously to appoint Mrs Turner to the Finance, Administration & Resources Committee.

8. Land Management Committee

Mr Michael gave a verbal report of the meeting of the committee held on 7 December 2024. This had included a presentation by the Wardens on their day-to-day work, a review of the Winter Works programme, and consideration of the draft Land Management Budgets. A programme of outdoor visits was due to be arranged for 2024 and Trustees were strongly encouraged to attend.

9. Finance, Administration & Resources (FAR) Committee

9.1 **Accuracy of the Minutes of the meeting held on 14 December 2023**

The Secretary to the Board reported that the following amendments had been proposed to the draft minutes, which had been circulated:

- Under item 6, Public Comments (recorded in Schedule 1), the answer to the second question was 'Nothing has been spent'.
- Under item 7, the sentence 'There was a discussion on the performance of the portfolios' was added at the beginning of the second paragraph.
- Under item 10.1, in the section on Costs of work on a new Malvern Hills Act, the phrase 'and a risk assessment prepared' was added to the end of the second paragraph.
- In the confidential section item 14, the phrase 'to prevent the debt crystallising' was added at the end of the third sentence.

On the proposal of Mrs Hodgson, seconded by Mr Core, it was **RESOLVED** by members of the FAR Committee, with six in favour and one against, to approve the minutes of the meeting held on 14 December 2023 as amended.

9.2 Updates and Questions

Questions on the minutes were invited from Board members, but there were none.

9.3 Adoption of minutes and resolutions
On the proposal of Mrs Hodgson, seconded by Mr Fellows, it was **RESOLVED** with 17 in favour, one against, and one abstention, to adopt the minutes of the meeting of Finance, Administration & Resources Committee held on 14 December 2023.

On the proposal of Mr Bartholomew, seconded by Mr Driscoll, it was **RESOLVED**, with 18 in favour and one abstention, to approve as currently drawn up the Investment Policies for the Parliamentary & Land Maintenance Fund, and for the Land Purchase (1992) Fund.

10. Budget Approval and Levy Setting 2024
The Board received the draft budget for 2024 and a paper of recommendations from the Interim CEO. The Interim CEO went through the paper. She stressed the need for the Board to be able to respond to the concerns raised by staff in their letter of 29 November 2023 regarding high staff turnover. A working group had been set up by Staffing Committee to hold informal discussions with staff and make recommendations for discussion by the Committee and thence to the Board. Although it was too soon for a full analysis, it was already clear that there were issues with capacity and the Interim CEO was therefore asking that a contingency of £30k be included in the staff salary budget in order to give the new CEP flexibility to respond to the recommendations of the Staff Working Group. It was also proposed to retain the Finance Assistant as a full-time post in order to give better support to the Finance & Administration Manager (FAM), and in turn to allow the FAM to provide more effective support to the CEO.

The proposed increase to the staffing budget was likely to be a be year on year expenditure, which meant that it would not be appropriate to use reserves. The Interim CEO therefore proposed that the Levy for 2024 should be raised to at least £730k. The Interim CEO confirmed that the incoming CEO was fully supportive of her proposals.

The Interim CEO reported that the Trust had been expecting the taxbase to increase, but since she had prepared the figures quoted in her paper, the Trust had learned that the taxbase in Malvern had in fact fallen, with the average number of Band D properties in the Levy paying area reducing from 13,284.03 to 12,381.30. This meant that if the Levy were set at £697,070 the average Band D percentage increase would be 11.84 equating to a rise of £5.37 or 10.3p per week. If the Levy were increased to £730k, the average Band D percentage increase would be 17.1%, equating to a rise of £7.76 or 14.9p per week.

There was a robust discussion, with Trustees expressing concern about increasing hardship for local families and acknowledging the risk of potential exposure to public criticism if the Levy were raised above the rate of inflation, set against the need to support, and invest in, the Trust's staff. The Chair of FAR Committee reminded the meeting that if the Levy were increased it would be in perpetuity, whilst if reserves were used, this would be one-off expenditure and the question would come back for the next budget. Mr Berry said that the reserves balance had been £433k at the end of October 2023.

On the proposal of Mr Penn, seconded by Mrs Turner**,** it was **RESOLVED**, with 18 in favour and 1 abstention, to retain the Finance Assistant as a full-time post.

On the proposal of Mr Bartholomew, seconded by Mrs Hodgson, it was **RESOLVED**, with 13 in favour, five against and one abstention, to include a contingency sum of £30k in the staff salary budget to provide flexibility to respond to the recommendations of the Staff Working Group. It was considered that the approval of the General Fund budget was implicit in this resolution.[1]

It was proposed by Mr Driscoll and seconded by Mrs Hodgson that the levy be set at £730,000. There were eight in favour, nine against and one abstention; therefore, the proposal was defeated.

On the proposal of Mr Fellows, seconded by Mr Penn, it was **RESOLVED**, with 14 in favour, one against and five abstentions, to set the Levy at £697,070.

A proposal to consider a sum between these two percentages was not debated.

On the proposal of Mrs Hodgson, seconded by Mr Core, it was **RESOLVED**, with 18 in favour and 1 abstention, to approve the Designated Funds budget for 2024-25.

On the proposal of Mrs Hodgson, seconded by Mr Berry, it was **RESOLVED** unanimously to approve the Restricted Funds budget for 2024-25.

11. Car Park Income to December 2023

It was noted that car park meter takings were £485 over budget and parking charge payments also over budget by £2468. However, takings for resident passes were £6184 and annual passes £1004 *under* budget. Overall, car park takings were under budget by £4235.

On the proposal of Mrs Hodgson, seconded by Mr Fellows, it was **RESOLVED** unanimously that daytime car park meter prices at main car parks should be increased

[1] For the avoidance of doubt, approval of the General Fund Budget will be brought to the next Board meeting on 7 March 2024.

from £5.25 to £5.50 per day from 1 April 2024 and that evening rate parking charges should be increased from £3 to £3.20 per day from 1 April 2024.

On the proposal of Mrs Hodgson, seconded by Mr Bartholomew, it was **RESOLVED**, with 18 in favour and one against, that residents' car parking permits should be increased to £7.50 per annum from 1 June 2024.

On the proposal of Mrs Hodgson, seconded by Mr Bartholomew, it was **RESOLVED**, with 16 in favour and three against, to increase annual car park pass prices to £52.50 per annum, plus £26.75 per annum for a second car at the same address, from 1 April 2024.

12. Governance Committee

Prof Raine gave a verbal report of the meeting of Governance Committee held on 4 January 2024. The open meeting had been a short session to elect the Chair and Vice-Chair, and to receive an update on Trustee training.

13. Staffing Committee

Mr Penn gave a verbal report of the meeting of Staffing Committee held on 4 January 2024. The Committee had discussed health & safety issues, proposed updates to the Equality & Diversity Policy, a paper on current staff structure and issues, and the establishment of a working group to respond to the issues raised in that paper and in the staff letter to Trustees of 29 November 2023. Staff interviews, conducted by Mr Penn and Mrs Wren, were almost complete and a report would then be prepared. Mr Penn recorded his thanks to Mrs Wren in her absence for all her work. Mrs Turner recorded her thanks to the Committee for their prompt action.

14. Staff at confidential meetings Policy Review

The Board received a paper from the Conservation Manager recommending minor amendments to the current policy. It was noted that the Policy was routinely reviewed at the start of every new board. On the proposal of Mr Michael, seconded by Mr Clayburn, it was **RESOLVED** unanimously to adopt the revised policy.

15. Private Bill

The Board received a paper prepared by the Interim CEO and outgoing Secretary to the Board, together with an Addendum summarising the outcomes from the Trustee Workshop held on 8 January 2024.

The outgoing Secretary to the Board reported that induction sessions had been held to ensure that Trustees were fully appraised of the problems with the existing Malvern Hills Acts and the proposals to update them. There had been an opportunity to ask any questions of with the Parliamentary Agent (PA). Mr Clayburn asked why the section 74 application documents remained confidential. The outgoing Secretary explained that this was due to the inclusion of cost estimates that had been supplied on a confidential basis, but the other content would be moved into the public domain in due course. There was a simple summary on the public area of the web site of the proposals and what would not change.

In relation to the public consultation, the outgoing Secretary to the Board confirmed that as in 2019, the consultation document would be written in plain English and would put forward all the different elements of the proposed changes.

In relation to the recommendations contained in the paper, Mr Fowler said that the Bill would be a consolidating Bill *with amendments* and would change the law. The outgoing Secretary to the Board confirmed that this was the case and that this was what both the Department for Culture, Media & Sport and the Charity Commission were expecting.

Mr Berry said that there was a clear need to understanding what the risks of taking forward a Private Bill would be and advocated undertaking some consultation at an early stage. He reminded the Board of a request from FAR for a risk assessment and a document summarising costs on an on-going basis. The outgoing Secretary to the Board confirmed that the Trust was in the process of preparing a risk assessment, which would then be sent to the PA for his comments and additions. Mr Michael said that the PA would advise upon where there were potential problems within the proposals put forward by the Trust and that the Board should rely on his expertise.

Mr Berry asked for confirmation that the £306k figure approved by the Charity Commission for legal costs was still current. The outgoing Secretary to the Board confirmed that these were the 2023 figures. He then asked what would happen if costs were going to exceed this figure. The outgoing Secretary to the Board confirmed that the Trust would have to go back to the Charity Commission, but pointed out that if there were a danger of this happening, it should become apparent well in advance. In answer to a question, Mr Core stressed the importance of having a plan and monitoring expenditure against that. A progress report and costs update would be presented to every Board meeting.

On the proposal of Mr Bartholomew, seconded by Mrs Hodgson, it was **RESOLVED**, with 14 in favour, four against and one abstention, that the Trust should seek a Private Bill to update its governance with a view to lodging the Bill in November 2024, and that the new Act would consolidate the existing five Malvern Hills Acts.

On the proposal of Mr Bartholomew, seconded by Mr Clayburn, it was **RESOLVED** with 13 in favour, two against and three abstentions, that all the provisions marked on Paper C Addendum in green were ready to be passed to the PA for him to commence work.

On the proposal of Mr Fellows, seconded by Mr Wilkinson, it was **RESOLVED** unanimously to charge Governance Committee to consider how best to ascertain the views of Trustees and resolve any outstanding issues on those provisions marked on Paper C Addendum in brown.

On the proposal of Mr Bartholomew, seconded by Mr Penn, it was **RESOLVED**, with 16 in favour, two against and one abstention, that, once confirmation was received from the Charity Commission that the Trust might make a loan from the Land Purchase Fund to fund the preparation and promotion of the Bill,

i. the provisions approved by the Board as ready should be passed to the PA for him to begin work; and
ii. that he should be asked to consider and advise as appropriate on the action points arising from the 2019 consultation.

The outgoing Secretary to the Board provided a verbal update on costs so far incurred, reporting that there had been no change since the last meeting, with the exception that there had been a mistake on the invoice from Sharpe Pritchard and that this had now been reduced from £13k to £11,756.90.

16. Dealing with the absence of the CEO

The Board received a paper from the Interim CEO regarding the current arrangements for covering CEO functions and duties in the short-term absence of the CEO. On the proposal of Mr Core, seconded by Mr Bartholomew, it was **RESOLVED** unanimously that the outgoing Secretary to the Board would cease to hold the role of Deputy CEO from 1 February 2024, and that the Interim CEO should decide who might be delegated to take on this role in the future.

17. Proposal of new format for Board agenda

The Board received a proposal from the Interim CEO to reorganise Board agenda . Under this proposal, committee meeting minutes would be approved electronically in advance of Board meetings, and substantive issues such as the Budget and Levy would be placed ahead of minutes and less substantive resolutions on Board agenda. On the proposal of Mr Stock, seconded by Prof Raine, it was **RESOLVED** unanimously to adopt the new format as detailed in the proposal.

18. Urgent Business

There was none.

19. Date of next meeting

7 March 2024.

20. Confidential items

On the proposal of Mr Core, seconded by Mr Bartholomew it was **RESOLVED** unanimously to exclude the public for discussion of an item of urgent business on the agenda on the grounds that publicity would be prejudicial to the public interest by reason of the exempt or confidential nature of the business to be transacted (personnel matters).

The meeting closed at 10.10 pm

Minutes approved by: .... Date: ....

Schedule 1

Public Comments

1. Graeme Crisp

It was refreshing to hear the newly elected board member for Dyson Perrins Ward at meeting of the Board held on 16th November 2023 describe himself as the representative for the ward where he was elected. It is a pity that this is not recorded in the minutes. I hope that he will support his levy payers by opposing the proposal to inflate the levy well beyond the cost and prices index for the relevant period and beyond the increases sought on the other elements of the Council Tax Bill. That the Board has the power to ask for so much does not mean that the proposed increase is justified. If the Board approves the proposal contained in paper A then I and many others will conclude that MHT abuses the power which it presently has, and that it cannot be trusted with the increased powers that the board are seeking.

2. Katharine Harris

1. On the Minutes of the Finance Meeting 14 Dec 2023 p.21 Qu 2, no answer is printed.

Yet when I asked that question (for those who weren't there- Of the £306,000 designated funds, how much has been spent and on what?)
At the Meeting I was told,
'Oh That's easy, Nothing. Absolutely nothing'

Later in the same Meeting it came to light that in fact £13 000 had actually been spent.

I would like to know why these answers not shown in the Minutes

2. On the Addendum section it is proposed that a substantial number of provisions concerning the Private Bill are going to be passed to the Parliamentary Agent 'for him to commence work'-yet there has been no Public Consultation on these issues.
A Public consultation should be carried out first **BEFORE** any provisions are presented to the Parliamentary Agent, not after. As a Public Body MHT should adhere to the Public Consultation guidelines applicable to any Public Body, that is, a Consultation should be done when proposals are at a sufficiently formative stage in the process for responses to be able to have some influence on the policies proposed, with adequate time given to allow proper and informed responses, not after decisions have been taken, especially when it is the Precept payers who are expected to foot the Bill.

3. At the Finance Meeting on 14 Dec 2023, a 5% increase in the levy was discussed; it was clear from the debate that followed, that a number of Trustees felt that this figure was too high given a predicted rate of inflation at 3.5%.
I was therefore shocked to see that it is now proposed by the Interim CEO to double the 5% figure, based on zero factual evidence.

MHT declare that their precept increases 'reflect inflation' but the current proposal is approx. 5x the (2.1 %) rate of inflation forecast for April 2024.

If such an increase is voted through, this would be the second consecutive year of such a substantial increase and is likely to be the largest % increase of any component in the Council Tax, as indeed it was last year. It will certainly be unpopular and is likely to damage the reputation of MHT in the locality as noted in your 2023 Business plan.

This states:

Large increases in the level of precept charged would be unpopular with precept payers and potentially could bring MHT into disrepute, unless such increases are for specific reasons which are effectively communicated and…. shown to deliver major tangible benefits'

I cannot see how MHT has 'effectively communicated' the need for such an increase in the precept with the precept payers or shown that such an increase would deliver 'major tangible benefits'.

The only reason MHT give is 'to alleviate pressure on our financial reserves'. That hardly constitutes 'major tangible benefits'! What about alleviating pressure on hard pressed working households!!

Where are the facts and figures in the Meeting papers which clearly demonstrate the need for such an increase? Such decisions should be open and transparent. Since 2018, MHT have accumulated a surplus of funds each year: in 2023 this surplus was in excess of £40 000, as noted by the outgoing chair in his last report to the Board, so there is clearly no need for such a huge increase in the precept.

It would seem therefore, that the true reason is to accumulate surpluses that can be used to cover the past and future cost of a Private Bill, and then cover the 6% interest rate on a loan from the Land Purchase fund which is to help fund the Private Bill.

I would like to ask how the initially proposed 5%, and the soon to be discussed proposal of 10% translate to actual increases to Malvern Households. My understanding is that due to the increase in local rate rebates, such figures could work out as being considerably more on our bills in April.

This kind of increase feels more like an unjustified raid on people's goodwill and their pockets and demonstrates a total lack of consideration for the Precept payers of Malvern, many who will already be counting every last penny. MHT is a public body and as such is duty bound to consider the impact on the local community instead of viewing it as a limitless source of funding.

This statement exceeded the maximum time allowed by two minutes but was allowed by the Chair.

3. Malcolm McCrae

Under what auspices does the Board propose to submit the Private Bill? Is it from the Public Body that is the Malvern Hills Conservators whose governance mandate is set out in the existing Malvern Hills Acts or is it the unincorporated charity that is the Malvern Hills Trust, which has no legal status.

4. Michael Huskinson

My name is Michael Huskinson a resident of Guarlford for 35 years. I address you on behalf of Malvern Environment Protection Group comprising a large number of residents living between Barnards Green and the village of Guarlford, adjacent or near to the B4211 public highway

Like so many people I am sure that the work MHT does to preserve and enhance the Hills is greatly valued and we always look to MHT to protect the Hills.

I am aware of the perceived need for consolidation of the 5 Acts of Parliament which govern the Trust. I have reviewed salient parts of the Public Consultation Document produced by the Trust in 2019—I am aware that it is now proposed that such consolidation is to proceed by way a Private Bill in Parliament rather than under the Charities Acts.

Such Private Bills bring together a number of Acts of Parliament on the same subject into a single Act of Parliament **without changing the law in any way**. They are used as a way of tidying up areas of statute law that have become fragmented over time.

The Trust is a statutory charitable body existing for public purposes and must in all its dealings act in accordance with its charitable objects and in the best interests of the charity – this will not change if the proposed Private Consolidating Bill becomes law.

I stress that consolidation cannot and must not involve any change in the law. The objects/purposes of the Trust currently include an obligation to preserve as far as possible the natural aspect of the Malvern Hills and to keep the Hills unenclosed and unbuilt on as open spaces for the recreation and enjoyment of the public. In your Public Consultation document you stated that the phrase "the natural aspect" was Victorian language which had no clear meaning in the present day and you proposed a revised form of words namely an obligation (a) to protect, conserve and maintain the **landscape character**, habitats, wildlife, geology, archaeology and **cultural landscape** of the Hills and (b) to keep the Hills unbuilt upon as open space for the recreation and enjoyment of the public.

The Trustees' view would appear to be that the proposed revised wording involves no amendment of the current objects clause of the Trust and that therefore consolidation by means of a Private Bill is entirely appropriate and can proceed. Others (including Malvern Environment Protection Group) are entitled to and do hold a different view which is that the proposed revised wording of the objects of the Trust involves potentially radical changes in the way the Trust can operate in the future and that simple consolidation is not permissible or appropriate. This is effectively a Consolidation Bill with substantial amendments – a brand new Bill which could change the face of Malvern The 1884-1995 Malvern Hills Acts have served the Malvern area well over the last 100 years plus and this will be placed in jeopardy should the revised wording of the objects clause be amended in the way proposed by the Trust.

Thank you.

Malvern Hills Trust

Special Meeting of the Board
Council Chamber, Avenue Road, WR14 3AF
Thursday 19 September 2024 7pm

Present: John Michael (Chair), David Baldwin, Richard Bartholomew, Robert Berry, David Core, Mark Driscoll, David Fellows, Richard Fowler, Lucy Hodgson, Charles Penn, John Raine, Felicity Robinson, Chris Rouse, John Stock, Mary Turner, Malcolm Victory, Mike Wilkinson.

In attendance: CEO, Secretary to the Board, Governance Change Officer, Conservation Manager, *Newsquest* staff member, 24 members of the public.

1. **Apologies for absence**
   Allan Cottam, Frances Victory, Duncan Westbury, Sheila Wren.

2. **Chair's announcements**
   2.1 John Michael thanked the Staffing Committee for reviewing how a Trustee might raise a complaint about bullying and harassment and for recommending that a statement be made at the start of each Board meeting to state the Trust's policy of zero tolerance of any bullying and harassment. Any abusive language or calling into question the integrity of Trust staff or trustees would not be tolerated, and anyone behaving in this way would be asked to leave.
   2.2 John Michael confirmed that the Trust would always try to respond to Public Comments at the earliest opportunity, answering any legitimate questions and rebutting any misleading information.
   2.3 John Michael reported that a video called *Songs of Malvern Hills* had been produced by a local musician who was inviting viewers to make a donation via JustGiving towards the Trust's Ash Dieback fund.
   2.4 John Michael referred to Richard Fowler's query under Matters Arising at the 12 September Board meeting, concerning the percentage of the Trust's income made up by the Levy. The Trust had looked into the figures and had updated the web site. John Michael confirmed that the Levy covered 60% of the costs of managing the land under the Trust's jurisdiction, which was *not* the same as the Levy making up 60% of the Trust's income. Over the past seven years, the Levy had averaged 45% of the Trust's income. The Trust accepted that the management accounts for April to June 2024 showed the Levy providing 65% of the income, but it was stressed that these were internal accounts only and it was not reasonable to compare them with end of year final accounts.

3. **Declarations of interest**
David Core suggested that David Fellows had a conflict of loyalty, due to his being a member of Guarlford Parish Council, which had strongly opposed all the Trust's proposals for governance change in their response to the Consultation. David Fellows said that he had taken no part in those discussions and did not feel that he had any conflict. He agreed to remain in the meeting and participate in the discussions, but not to vote.

4. **Public Comments**
There were none. John Watts had asked to speak but withdrew on account of the Trust not allowing one of his questions.

5. **Discussion of Consultation Responses and proposals for a Private Bill**
The Board received a paper prepared by the Governance Change Officer (GCO) on the results of the consultation. The GCO went through the paper, thanking all those who had responded and assuring the meeting that all feedback had been carefully considered. John Michael recorded the Board's thanks to the GCO and the working group trustees for the many hours of work they had put in to analysing the responses and forming them into different categories.

5.1. Land Management
The GCO reported that feedback on the Trust's land management proposals had been broadly supportive. There had however been some misunderstanding and confusion, for example regarding the Trust's proposals to fence grazed commons. It was not the case that the Trust would, for example, fence along the B4208. The road was part of the common. The GCO assured the meeting that the proposals did not apply to ungrazed commons and in fact related to a very small area of the Trust's land. She confirmed that public access gates would be included in any fencing scheme. The Conservation Manager (CM) reported that, in order to make the Bill robust for the future, it would be necessary to avoid stating that fencing would have to be on the perimeter only, because there would be instances where this was impossible. The CM referenced other similar sites, such as Epping Forest, where some fencing and infrastructure had had be sited away from the exact perimeter in order to deliver a successful safe scheme. The GCO added that it was clear in the Constitution document that any fencing would be subject to s38 Commons Act 2006, in that it would require the permission of the Secretary of State; the Trust was not seeking to bypass this.

Questions were invited from Trustees. In answer to a question as to how the scheme had worked in Epping Forest, the CM confirmed that it had been successful in that it had achieved what it was designed to do. In answer to a question about commoners' access rights and risk to animals, the CM stated that this was not an exercise in making every animal safe – this was impossible given that there was a highway running through the Common – but rather to ensure that livestock grazing could continue on the Commons. The Trust was seeking a level playing field with every other common owner in the country, and graziers should benefit from this. Mike Wilkinson pointed out that the Trust was only seeking a power and that in his opinion the Trust would not propose a scheme if it didn't have the backing of the commoners.

On the proposal of Lucy Hodgson, seconded by Malcolm Victory, it was *RESOLVED* with 14 in favour, two against and one abstention, to ask the Parliamentary Agent to amend the clause relating to securing the grazed commons to take account of Officer concerns that the most appropriate site for fencing would not always be on the exact perimeter of the common.

On the proposal of Richard Bartholomew, seconded by John Stock, it was *RESOLVED* with 14 in favour, two against and one abstention, to include a requirement that there should be a minimum break of six months following fencing to regulate grazing before the same area could be fenced again, but with a de minimis exception to enable up to 1 ha to be fenced again for the control of unwanted vegetation.

On the proposal of Mark Driscoll, seconded by John Raine, it was *RESOLVED* with 15 in favour, one against and one abstention, that the proposal to be able to fence for animal health reasons be removed.

5.2. **Leases and Licences of Land**

The GCO reported that the Trust as a landowner needed to be able to grant leases and licences; it had done so for years, and the Bill was an opportunity to formalise the arrangements. There was no question of leases or licences being granted for commercial purposes. The Trust's land needed active management beyond what the Trust's resources could deliver and so licences were granted to others for coppicing, hay making and conservation grazing. The CM added that three quarters of the Trust's estate was under some licence or other and that this was essential for effective land management.

The GCO reported that there were a small number of buildings licensed to individuals, with Malvern Hills National Landscape team licensed to share use of Manor House. The Trust also granted farm business tenancies in fields on the lower slopes of the Hills, through which the Trust could ensure that the land was managed in a nature friendly way and that public access was maintained.

The GCO said that the proposals had not been supported by a majority of respondents, but that there had been nothing in the comments to explain why. It appeared that the

Trust needed to engage further with the public to explain the background to these proposals. There had been concerns in the comments about commercialisation and footfall; the Trust needed the power so that it could make sure that events didn't clash and that the land wouldn't be impacted. The GCO stressed that the Trust couldn't and wouldn't grant licences that went against the Objects of the Charity.

It was a requirement of the Trust's insurers that the Trust ensure that groups using the Hills for their activities should have their own public liability insurance. Otherwise the Trust risked being sued in the event of an accident. Concern was expressed that this might make events unviable for small organisations, but it was noted that in practice it was normally possible for a small group to be covered by the insurance of an umbrella organisation. The GCO confirmed that there would be policies to underpin the power to lease and license, and it was suggested that it would be helpful for these to be developed alongside the new Bill.

The GCO confirmed that the working group had recommended leaving the proposals unaltered. It was noted that the Trust would be required to consult Malvern Hills National Landscapes, rather than Malvern Hills District Council, regarding applications to run services overground; in practice the Trust had very limited powers to authorise such applications, which had to be in respect of buildings constructed before 1995.

On the proposal of Lucy Hodgson, seconded by Mike Wilkinson, it was *RESOLVED* with 14 in favour, two against and one abstention, to make no change to the Trust's proposals in relation to leases and licences of land (including buildings).

On the proposal of Lucy Hodgson, seconded by Mary Turner, it was *RESOLVED* with 16 in favour and one abstention, to make no changes to the proposals outlined in the Consultation Document in relation to licences for activities on Trust land (but to ask the Parliamentary Agent whether some of the concerns expressed might be addressed in the drafting).

On the proposal of John Stock, seconded by Richard Bartholomew, it was *RESOLVED* with 14 in favour and three abstentions, to make no change to the Trust's proposal to change the consultee in relation to licences for overground services.

5.3. **Modernisation of the Trust's Administration**

Online meetings

The GCO reported that the Trust wished to have the flexibility to make decisions online where necessary, although it was recognised that face-to-face meetings were easier. Lucy Hodgson queried whether the Trust could make this change, observing that in local government all decision-making meetings had to be in person. The GCO said that charities were permitted to make decisions virtually and so the Trust could choose to do this.

On the proposal of John Raine, seconded by Malcolm Victory, it was *RESOLVED* with 13 in favour, two against and two abstentions, to make no change to the Trust's proposals to be able to hold hybrid or online meetings.

Supporters' organisation

Concerning the power to set up a membership organisation, the GCO reported that the working group had recommended substituting 'supporters' for 'membership'. The term 'membership' appeared to have carried implications that were not intended. There was no suggestion that a supporters' group would be part of the governance structure, nor that it would have any direct influence on decision making. Rather the hope had been to engage people from outside the Levy-paying area. John Michael confirmed that the drafting of the Bill would make it clear that the Supporters' Group was completely separate from the governance structure.

It was suggested that the term 'Friends' be used rather than 'Supporters'. Mike Wilkinson responded that 'Friend' was a slightly dated term, observing that the Trust might want to have more than one kind of supporters' group at some point in the future. Charles Penn advised that there had previously been a 'Friends' group that had been troublesome to the running of the Charity.

On the proposal of Lucy Hodgson, seconded by Felicity Robinson, it was *RESOLVED* with 14 in favour, one against and two abstentions, to retain the provision to permit the Trust to set up a supporters' organisation, but to adopt the term 'supporters' instead of 'members'.

General Power

The GCO reported that there the proposal to include a general power had prompted much concern and suspicion that it would enable the Trust to do things that were against its Objects. She stressed that this could not happen and neither could the Trust run a commercial enterprise. It was not unusual for a charity to have a general power to do things in the interest of its Objects; this was not a way to get round restrictions. The Trust did not want to have to approach Parliament every time a new issue came up that was not covered by the Acts.

On the proposal of Richard Bartholomew, seconded by John Raine, it was *RESOLVED* with 13 in favour, two against and two abstentions, to make no change to the Trust's proposal to include a restricted general power in the Bill.

Power to Borrow
The GCO reported that much concern had been expressed about the Trust's power to borrow. She pointed out that the Trust already had three different powers to borrow, secured against revenue or land. The Trust wanted one power to borrow rather than three but didn't want to put itself in a worse position. The Trust needed the power to borrow in order to run its affairs. Due to capital reserves it hadn't previously needed to borrow, but should a large piece of land become available, the Trust would want to be able to do so in order to secure it for the public. The Trust would seek the views of the Secretary of State and Charity Commission as to whether Secretary of State approval would be required for the borrowing. The GCO reminded Trustees that they must act responsibly; they needed to be sure that they could service any borrowing and that such borrowing was in the best interests of the Charity. In answer to a concern about pressure on the Levy, it was noted that the Conservation Manager set out how land would be maintained and where it would be paid from every time he proposed a land purchase. The Bill would give more flexibility for the Trust to fundraise, reducing pressure on the Levy.

Robert Berry asked whether there was any restriction against buying buildings for commercial enterprise. The GCO said this was not allowed. David Core said that, under the new powers, the Trust could set up a trading company, for example to run a visitor centre. The company would be a separate legal entity to protect the Trust against any losses it might incur. The company could buy or lease buildings, possibly from the Trust.

On the proposal of Malcolm Victory, seconded by Lucy Hodgson, it was *RESOLVED* with 12 in favour, three against and two abstentions, to restate the current power to borrow within the provisions of the Bill

- **Powers to borrow in furtherance of its purposes**
- **Powers to secure borrowing against land and revenues, but without any power of sale or to cut and sell timber in relation to its current purpose land.**
- **Powers to secure borrowings against ancillary land (e.g. office space) without third party consent, and any such loan agreement can include a power of sale; and**
- **To establish the view of the relevant Government department and the Charity Commission on any requirement for third party consent to secure borrowings against existing purpose land or new purpose land.**

Change of Statutory Name
The GCO reported that the percentages for and against the change were similar. Comments from those against including the suggestions that it was a tax dodge and a waste of money; in fact there would be no cost. The GCO referred Trustees to a paper written by the Community & Conservation Officer in 2017, which had explained the

reasons for the original rebrand. At the time, the Trust was struggling to get its message across; there was confusion about its status and misunderstanding of the meaning of 'conservator'. Malvern Hills Trust was now a well-established brand and was the name most people now used.

The CEO said that she understood the strength of feeling locally. She wanted to stress that the contribution of conservators in the past had not been and would not be forgotten; indeed, there was more the Trust could do to highlight its history.

Richard Fowler asked whether the Trust had any evidence that the change of working name had helped to get its message across. The GCO said that some large legacies had been received, and the CM noted that Cleeve Common Conservators had observed how MHT had benefited from the change and decided to change its name to Cleeve Common Trust. Robert Berry countered that it would be a shame to lose the name, saying that he had found 14 out of 17 bodies called 'conservators' had opted to keep the name. David Fellows thought 'Trust and Conservators' might be an acceptable middle way.

On the proposal of Mike Wilkinson, seconded by Felicity Robinson, it was *RESOLVED* with 12 in favour, three against and two abstentions, to proceed with the change of the Charity's statutory name to Malvern Hills Trust.

5.4. **Objects**

The GCO noted that those Trustees who had attended the workshop with the Parliamentary Agent on the evening prior to this meeting had had the advantage of discussing these points with him directly. There had been a number of public comments in this section, from which the working group had picked out a number of points for consideration:

- The omission of the word *unenclosed* and the reasons for that
- Changing *maintain* to *enhance*
- Using the term *biodiversity* instead of *flora and fauna*
- Change from the term *natural aspect*

Very helpful responses to the Consultation had been received from Open Spaces Society and the Trust was most grateful for the trouble taken. The advice from both Trust Officers and the Trust's solicitors on their suggestions regarding the Objects, would *change* the Objects and the GCO advised that these suggestions should therefore be resisted. What was appropriate for National Parks was not appropriate for the Trust, which already had the power to fence off areas to protect SSSIs and flora/fauna as necessary. The clause prioritising conservation ahead of public access was only intended as a last resort, but the working group felt it was important that it should stay in.

There had been queries about the removal of the word 'unenclosed', originally used to stop landowners fencing off land. The Parliamentary Agent had advised that setting out the Trust's obligations in this respect as a Duty was stronger than including it in the Objects. The Trust intended to include the following text from the 1930 Act in the new Bill:
Except as in the Malvern Hills Acts otherwise provided they shall at times keep the Malvern Hills, unclosed and unbuilt on as open spaces for the recreation and enjoyment of the public.

Although not itemised for discussion by the working group, members had reflected on comments about the term 'unbuilt on' and had asked Sharpe Pritchard to consider whether those concerns could be reflected in the drafting. Mary Turner commented that Trustees had asked the Parliamentary Agent at the online meeting what he could do to make it clearer, and she was confident that he absolutely understood the issue.

The GCO said that there had been much concern from respondents about dropping the term 'natural aspect'. It had been used regularly in Victorian times but was not used now in legislation. The working group had recommended that the Board keep the proposed wording of Object 1 (a) as: 'to protect conserve and maintain the landscape, *natural appearance*, habitats, flora and fauna, geology and archaeology of the Malvern Hills'. She confirmed that the Trust's lawyers agreed that the idea of 'natural aspect' *was* covered in this sentence.

There had been a few comments suggesting that 'biodiversity' replace the term 'flora and fauna'. However, biodiversity encompassed the genetic diversity of domesticated animals and plants as well as wild. For the Trust's purposes, the working group considered 'flora and fauna' to be more appropriate and better understood.

There had been a few comments recommending the inclusion of the word 'enhanced', better to allow for changes in management in the future, for example in response to climate change. However, Sharpe Pritchard had advised that the inclusion of this word in s85 of the Countryside and Rights of Way Act 2000 had caused all sorts of problems. VWV advised that it was implicit in the phrase 'conserve and maintain' that the Trust could respond to climate change.

In summary, Sharpe Pritchard had advised the Trust to keep the wording of the draft Objects.

On the proposal of Malcolm Victory, seconded by John Stock, it was *RESOLVED* with 14 in favour, two against and one abstention, to make no change to the Objects as currently drafted.

6. Dates of next meetings

Friday 27 September at 6 pm – Trustee Zoom meeting with the Parliamentary Agent
Thursday 10 October 2024 at 7 pm – Special Board Meeting

7. Confidential

On the proposal of Lucy Hodgson, seconded by John Stock, it was **RESOLVED** unanimously to exclude the public for the discussion of an item of urgent business on the grounds that publicity would be prejudicial to the public interest by reason of the exempt or confidential nature of the business to be transacted (matters relating to individuals).

Robert Berry, the Conservation Manager and all members of the public left the meeting at 9.10 pm. John Michael thanked members of the public for attending.

The meeting closed at 9.23 pm

Malvern Hills Trust

Special Meeting of the Board
Council Chamber, Avenue Road, WR14 3AF
Thursday 10 October 2024 7pm

Present: John Michael (Chair), Richard Bartholomew, Paul Bennett, Robert Berry, David Core, Allan Cottam, Richard Fowler, Charles Penn, Felicity Robinson, Chris Rouse, John Stock, Mary Turner, Frances Victory, Malcolm Victory, Duncan Westbury, Mike Wilkinson, Sheila Wren.

In attendance: CEO, Secretary to the Board, Governance Change Officer, Conservation Manager, *Newsquest* staff member, 24 members of the public.

Absent: John Raine.

1. **Apologies for absence**
   David Baldwin, Mark Driscoll, David Fellows, Lucy Hodgson.

2. **Public Comments**
   Richard Fowler asked why public comments had not been included on the agenda for this meeting. The Chair agreed to suspend Standing Orders to take a vote on whether to accept public comments on this occasion. There were seven votes in favour of accepting public comments at this meeting and nine against; therefore the motion was not carried.

3. **Chair's announcements**
   3.1 John Michael welcomed Paul Bennett as a new trustee nominated by MHDC.
   3.2 John Michael reported that Trust representatives had met with Dame Harriett Baldwin MP on 27 September to brief her on progress with the Bill public consultation.
   3.3 John Michael reported Trust representatives had recently met with some of those expressing concern about governance changes.
   3.4 John Michael recorded his thanks to staff for manning a stand with other local organisations at the Malvern Autumn Show and for collecting memories associated with the Hills and Commons.
   3.5 John Michael had been delighted to present medals following a charity walk on the Hills in aid of Help the Heroes, which had raised £7,500.
   3.6 John Michael announced that at the Board meeting on 17 October, he would allocate 30 minutes to hear public comments on the main agenda item, which would be the Board's decision on whether to submit a Parliamentary Bill by 27 November.

4. Declarations of interest
There were none.

5. Discussion of Consultation Responses and proposals for a Private Bill.
The Board received a further paper prepared by the Governance Change Officer (GCO) on the results of the consultation.

Paul Bennett asked whether trustees had seen the raw data from the consultation, and this was confirmed.

5.1 **Appointment of Board Members**
The GCO reported that the majority of individual and organisational respondents were in favour of there being a maximum number of 12 trustees, defining voter areas by parish, using one single voting area and extending the area from which candidates could stand for election. There were however a significant number of comments against the amalgamation of voting areas reflecting views that the electorate wanted someone to represent their interests. The GCO emphasised that, as a matter of law, trustees must act always in the best interests of the Charity. There had also been some comments in favour of more than half the trustees being elected. However, there was also a comment pointing out the risk of a 'take-over' by a pressure group standing for election. The current proposal increased the percentage of elected trustees to 50% and to increase it further would not reflect the proportion of levy income received by the Trust.

The Working Group's recommendation was to make **no changes to the current proposals** for the maximum number of trustees, the balance of nominated and elected trustees, and extending the area from which candidates could stand for election.

Comments and questions were invited from trustees. In discussion, it was noted that whatever the proportion of elected and nominated representatives, there was always the possibility of pressure groups forming, as had indeed been the case previously. It was a mistake to see either group as having supremacy; all trustees had the same duties and responsibilities and if they did not fulfil them, they would break the Code of Conduct. It was highlighted that it was planned to stagger elections and appointments (except for the first election) and this would be a safeguard against any risk of 'take-over' by a pressure group, as well as having the broader advantage of not losing a lot of experience at the same time.

5.2 **Use of the same definition for the electoral area and the levy paying area**
The Working Group recommended no change to the current proposal, which had been supported by the majority of respondents and was the only logical choice.

However, there were about 200 respondents who objected to the idea of a single electoral area. Trustees had considered options for dividing it. The GCO went through the pros and cons of each option as explained in the paper. It was hoped to run an entirely postal vote system in the future, provided Parliament agreed. The GCO referred trustees to ballpark figures for election costs quoted in the paper, reminding them that cost of elections would directly affect the levy. A postal election over a single electoral area would be cheaper than over divisions, and significantly cheaper than the current conventional election arrangement.

The Trust recognised the concerns expressed about 'representation' and proposed to address them by allocating a trustee to areas to act as *liaison*. This provision could probably be incorporated into the legislation.

Comments and questions were invited from trustees. Paul Bennett was concerned that, with a single electoral area, candidates might all come from the same part, and he thought that divisions would be better. However, it was pointed out that candidates could already stand in any ward; they didn't have to live there. Paul Bennett remained concerned about accountability to the electorate. David Core acknowledged that there was some degree of accountability for those who had been elected to the Board but pointed out that only nine trustees on the current Board had been elected in a contested election (six in MHDC elections and three in Trust elections). Most candidates in Trust elections were elected unopposed. There was also difficulty filling all the nominated trustee positions. MHDC had not appointed their full allocation of eight trustees for a number of years and none of those now nominated by the county councils were county councillors; Malcolm Victory confirmed that Worcestershire County Council were not concerned about a withdrawal of the right to appoint trustees.

5.3 **Independent Nomination Committee**

The GCO explained that selection and appointment of trustees was ultimately a Board responsibility. Although the idea of an independent nomination committee had been supported as a concept by the Board and in the consultation, how to constitute it had never been satisfactorily resolved. Therefore, VWV Solicitors had been asked for their advice and their proposal had been scrutinised by trustees at a workshop on 4 October. There would be a requirement to have a nomination committee as a standing committee with two trustee and two external members, with the CEO or other staff members present in an advisory, non-voting capacity.

Comments and questions were invited from trustees. Sheila Wren said she was reassured that there would be external input on the nomination committee; this was an important safeguard. David Core noted that the establishment of the Committee would act as a direct mechanism for the Board to acquire the skills it needed.

5.4 **Resolutions on the Constitution of the Trust**

5.4.1 On the proposal of Richard Bartholomew, seconded by Sheila Wren, it was **RESOLVED,** with 13 in favour and four against, to retain the proposal to have a maximum of 12 trustees.

5.4.2 On the proposal of Frances Victory, seconded by Charles Penn, it was **RESOLVED,** with 13 in favour and four against, to make no change to the proposed balanced (50:50) of elected and selected trustees.

5.4.3 On the proposal of Malcolm Victory, seconded by John Stock, it was **RESOLVED,** with 13 in favour and four against, to retain the proposal to extend the area from which candidates might stand for election.

5.4.4 On the proposal of Sheila Wren, seconded by Charles Penn, it was **RESOLVED,** with 13 in favour, three against and one abstention, to retain the proposal that the electoral area should be defined by parish and linked to the levy-paying area.

5.4.5 On the proposal of Richard Bartholomew, seconded by Malcolm Victory, it was **RESOLVED,** with 13 in favour and four against, to retain the proposal for a single electoral area, but to include a provision in the Bill to allocate trustees to act as a point of contact between the Trust and the different areas; both elected and selected trustees might be allocated.

5.4.6 On the proposal of Mary Turner, seconded by Felicity Robinson, it was **RESOLVED,** with 13 in favour and four against, to adopt the proposal to establish a Nominations Committee as an MHT Standing Committee, having a fixed composition of two trustees and two external members, with the CEO or other staff members included in an advisory, non-voting capacity.

5.5 **Miscellaneous**

5.5.1 **Public Access to Meetings**

The GCO reported that a significant majority of respondents had been in favour of retaining public access to Board meetings. The present proposal was that if a committee was only to make recommendations to the Board at its meeting, that it might be closed to the public in order to facilitate discussion. Richard Fowler suggested that there was no definition of 'binding decisions'. David Core said he shared some of Richard Fowler's concerns about the Trust's engagement with the public but thought the Board could use Standing Orders to look at how to improve engagement and give more opportunities for people to speak. The Governance Committee would discuss this at its next meeting in November.

5.5.2 **Fixed Penalty Notices**

The proposal to retain a provision to allow the Trust to used Fixed Penalty Notices had been discussed with the Wardens. It had been agreed to retain it, but it was recognised that there must be appropriate training and policies in place. Numerous respondents to the consultation had expressed concern about the safety of employees when issuing these notices. The Trust was very aware of the need to safeguard staff, and the CEO said she was heartened by the comments of concerned members of the public.

5.5.3 **Power to build on ancillary land**

The GCO advised that this was very much a provision for the future; there were no current plans to exercise the new power. The Trust already had the power to buy offices and build sheds. It was confirmed that 'ancillary land' referred to land that was not open to the public for the purposes of the Charity. David Core noted that there were some concerns regarding the 'power to build' linked to the general power but confirmed that this proposed power related *only* to ancillary land, the general power would not change that, and it was an appropriate provision for the future.

5.5.4 **Resolutions**

On the proposal of Mike Wilkinson, seconded by Richard Bartholomew, it was **RESOLVED**, with 13 in favour and four against, to retain the current proposal to open all Board meetings to the public (except where exempt business was to be discussed) but only to open committee meetings to the public where a decision binding on the Trust was being made under delegated authority.

On the proposal of Sheila Wren, seconded by Allan Cottam, it was **RESOLVED**, with 13 in favour and four abstentions, to retain the provision to permit the issue of Fixed Penalty Notices.

On the proposal of Charles Penn, seconded by John Stock, it was **RESOLVED**, with 13 in favour and four against, to add the power to allow the Trust to build on ancillary land for the purposes set out in the consultation document.

Trustees were requested not to comment on how other trustees were voting.

4. Dates of next meetings

Thursday 17 October 2024 at 7 pm – Special Board Meeting
Thursday 14 November 2024 at 7 pm – Annual General Meeting

5. Confidential

On the proposal of David Core, seconded by Malcolm Victory, it was **RESOLVED,** with 16 in favour, to exclude the public for the discussion of an item of urgent business on the grounds that publicity would be prejudicial to the public interest by reason of the exempt or confidential nature of the business to be transacted (legal advice).

Paul Bennett and all members of the public left the meeting at 8.37 pm.

The meeting closed at 8.55 pm

Malvern Hills Trust

Special Meeting of the Board
Council Chamber, Avenue Road, WR14 3AF
Thursday 17 October 2024 7pm

Present: John Michael (Chair), David Baldwin, Richard Bartholomew, Paul Bennett, Robert Berry, David Core, Allan Cottam, Mark Driscoll, Lucy Hodgson, Charles Penn, John Raine, Felicity Robinson, John Stock, Mary Turner, Frances Victory, Malcolm Victory, Duncan Westbury, Mike Wilkinson, Sheila Wren.

In attendance: CEO, Secretary to the Board, Finance and Administration Manager, *Newsquest* staff member (arrived 7.25), 40 members of the public.

Absent: Richard Fowler.

1. **Apologies for absence**
   David Fellows, Chris Rouse, Governance Change Officer.

2. **Chair's announcements**
   2.1 John Michael drew the meeting's attention to the serious side of what Trust staff had to deal with on a daily basis on the Hills and Commons**:**
      2.1.1 He warned that the Trust had heard of illegal metal detecting at British Camp. He advised anyone witnessing this not to approach the thieves but to report it directly to the police.
      2.1.2 He reported that the Wardens had observed three men in black clothing driving electric motorbikes over the Worcestershire Beacon, along the east side of Sugarloaf and down towards West Malvern. This was not allowed and was very damaging.
      2.1.3 He reported that local people had been angry about agricultural vehicles harvesting a crop on land adjacent to one of the commons. Much damage had been caused and local people had barricaded a route the tractors were using across Trust land. Police and Highways had attended the scene. There were at least two places where agricultural vehicles had driven off the access road to a farm onto the commons causing damage.

   2.2 John Michael was pleased to report that he had received a letter from the organisers of the charity event in aid of Help the Heroes, reported on at the last meeting, to say that donations had now reached £16,000 and were still coming in. The organisers had been most grateful for the advice and support received from Trust staff and John Michael recorded his thanks to them. He added that the Trust would also be receiving a donation from the event.

3. **Declarations of interest**

There were none.

4. **Public Comments**

11 comments were received from members of the public and these are attached at Schedule 1. John Michael thanked all the speakers for their contributions.

4. **Resolutions required to proceed to deposit the Private Bill on 27 November 2024**

4.1. **Background Summary**

At John Michael's invitation, David Core summarised the 10 year journey the Board had taken to reach this point, observing that there had been two public consultations at the formative stage, preceded by discussions at meetings of the Governance Committee and the Board, all held in public. Following the latest consultation, the Board had highlighted five specific topics which trustees felt needed more detailed consideration. A working group had been set up to address these, and there had been a series of workshops followed by Special Board Meetings where the decisions had been taken. There had been some significant changes, such as the proposals around a six month fencing break and boundary issues, and also decisions made to continue with existing proposals following robust exploration of alternatives, such as the single electoral area.

The Trust was now in the process of drafting the Bill. The Parliamentary Agent had explained to trustees that the bulk of the text would be the transposition of the existing clauses in the Acts that remained relevant. There would be further opportunities for trustees to discuss detailed drafting issues.

It was essential that all trustees were satisfied that they had sufficient information to make an informed decision; David Core had spoken personally to nearly every trustee and a clear majority had confirmed that they did feel sufficiently well-briefed to make the important decision required at this meeting.

The Parliamentary Agent had advised that the process in Parliament was likely to take two to three years. This gave the Trust the opportunity to engage with those who wished to comment on the specific details of the Bill; there would be an opportunity to do that in early 2025. The Trust hoped that any issues remaining concerning drafting points might be resolved outside the Parliamentary process; this would be in the best interests of the Trust and of levy payers, since it would minimise costs.

4.2. **Comments from Trustees**

4.2.1. **Resolution 1**

10 trustees spoke *in favour* of submitting the Bill on 27 November 2024. The following points were made:

- Many people had devoted much time, effort and hard work to preparing for the Bill over a number of years. Following the St Ann's Well report, it had been essential for the Trust to improve and modernise its governance. Trustees recorded particular thanks to John Raine for the huge contribution he had made in considering how governance might be reformed;

- Three trustees with professional backgrounds in land management and the environment considered that the proposals would improve the Trust's ability to care for the Hills and Commons;
- The public's request for improved communications was understood. Trustees *were* listening and this was an on-going dialogue; and
- This was a democratic process. The Bill would be debated in Parliament and Parliamentarians would decide whether or not to pass it.

Two trustees spoke *against* submitting the Bill on 27 November 2024. The following points were made:

- The levy paying area was out of date and should be readdressed;
- Trustees needed to be properly informed. Work on unintended consequences had not been done;
- There was a concern about reduced accountability; and
- It was better to delay submission and make sure that the Trust got what it needed.

4.2.2. Resolutions 2-4

- There was a query as to whether the Trust had taken Counsel's opinion on the legalities of the proposal to delegate to the individuals holding the posts of Chair, Vice-Chair, Chief Executive Officer and Governance Change Officer of the Trust (together the 'Delegates') the power to to enact any additional, supplemental and consequential provisions that might be necessary or convenient. It was confirmed that the wording for the resolution had been provided by the Parliamentary Agent and reviewed by legal advisers. It was further confirmed that the Delegates would be required to report back to the Board; trustees' attention was drawn to the Next Steps section of the paper which listed plans for further workshops and if necessary, another Special Board meeting to approve any final changes. The arrangement was only to cover the period leading up to the submission of the Bill in November and was intended to simplify the mechanics to get necessary things done.

4.3. **Resolutions**

On the proposal of David Core, seconded by Richard Bartholomew, it was RESOLVED, with 17 in favour and two against, as follows:

That, having considered all of the factors set out in in the consultation document and all of their previous deliberations on this matter, the trustees (the "Trustees") of the Malvern Hills Trust (the "Trust") resolve that it is expedient in the best interests of the Trust (and its charitable objects) to promote a Bill in November 2024 repealing the existing local legislation relating to Malvern Hills Conservators (the "Conservators") and replacing it with a single enactment written in modern terms, including (but not restricted to) provisions effecting all or some of the purposes mentioned below and that such a bill be promoted accordingly. The relevant purposes are:

(a) renaming the Conservators as the "Malvern Hills Trust", defining the charitable objects of the Trust and the area within which it may exercise its powers, making provision about its constitution, including arrangements for elections and appointment of Trustees, conflicts of interest, benefits for Trustees and limitation of liability and insurance;

(b) making provision about finance, including continuing the power to levy, provision about use of capital and income, powers to borrow and mortgage, continuing provisions for contributions by local authorities to the Trust and requiring annual audits and publication of annual reports and accounts;

(c) making provision about rights of public access to the Malvern Hills, continuing the duty to keep the Hills unenclosed, subject to powers for the Trust to regulate access for specified reasons (including by fencing); continuing the general power to regulate and manage the Malvern Hills, provide for the prevention of unauthorised access by vehicles, regulate horse riding, prevent nuisances and regulate public order, make provision about access roads, trees, drainage and turf, parking places, sheds and other facilities on the Hills, regulation of games and other activities, licensing of stalls and other commercial activities, and removal of items from the Hills, including vehicles;

(d) the making and confirmation of byelaws and their enforcement, including power to serve fixed penalty notices;

(e) making provision about land, including the power to dispose of land and grant leases and licences and easements for utilities;

(f) providing for a general power for the Trust to do anything in pursuance of its charitable objects (subject to appropriate limitations in such areas as fencing of the Hills, the acquisition or disposal of land or interests in land, or borrowing or raising money) but subject to any duties or obligations owed under general charity law and without overriding the requirement for Secretary of State consent to works on common land;

(g) making provision for a number of general powers which would normally be enjoyed by charities including but not limited to fund raising, employing and delegating functions to staff, powers of investment and to make loans, operating bank accounts, insuring property, limited powers to trade and power to conduct and defend legal proceedings;

(h) making general provisions, including about public access to meetings, local inquiries, repeals and consequential amendments, and continuing the application of savings and protections for certain individuals and bodies that are contained in the existing legislation;

(i) making provision about the administration of the Trust, including provisions about meetings of the Trustees, quorum, decision making, committees and powers to make regulations about procedure; and

(j) to enact any additional, supplemental and consequential provisions that may appear to the Delegates (as defined below) to be necessary or convenient.

On the proposal of David Core, seconded by Lucy Hodgson, it was RESOLVED, with 17 in favour, one against and one abstention, to delegate to the individuals holding the posts of Chair, Vice-Chair, Chief Executive Officer and Governance Change Officer of the Trust (together the 'Delegates') the power and discretion to take all such steps as they consider necessary or desirable to give effect to the first resolution above, including reference to the Board as necessary, up to the date of submission of the Bill.

It was further **RESOLVED** that the Delegates should provide a report to the Trustees on the steps taken in the exercise of the power and discretion to them at each meeting of the Trustees and, between each such meeting, by way of a report sent via email to the Trustees at least once every fortnight in relation to such steps as the Delegates shall consider to be significant.

It was further **RESOLVED** that the Common Seal of the Trust be affixed to the Petition for the Bill in the presence of the Chair and Vice-Chair, and hereby to authorise the Chair and Vice-Chair to seal or sign any other documents that they consider necessary or desirable in order to give effect to the resolutions above.

5. Urgent Business

There was an item to be discussed in the confidential section of the meeting**.**

6. Date of next meeting

Thursday 14 November 2024 at 7 pm – Annual Meeting

7. Confidential

On the proposal of Sheila Wren, seconded by Lucy Hodgson, it was **RESOLVED,** with 18 in favour, to exclude the public for the discussion of an item of urgent business on the grounds that publicity would be prejudicial to the public interest by reason of the exempt or confidential nature of the business to be transacted (legal advice).

Paul Bennett, Robert Berry, and all members of the public left the meeting at 8.20 pm.

The meeting closed at 8.45 pm

Schedule 1

Public Comments

1. **Katharine Harris**

I speak on behalf of Malvern Environment Protection Group, whose petition ran a while ago. The petition, as a reminder, said:

We the undersigned are opposed to the Private Bill as currently proposed by Malvern Hills Trust (Conservators) because:

a) Of the subjugation of Public Body status and the protection/conservation of the 'natural aspect';
b) Insufficient timeframe for meaningful public consultation and debate;
c) Lack of transparency in respect of the process to date and the implications of the additional powers sought.
d) The additional powers sought are beyond the remit of what the Conservators were set up for and publicly funded by a levy to achieve;
e) The proposals deviate from the four fundamental objectives (ie purposes as to why the Conservators were set up in the first place, as in the existing Acts) and are not in the best interests of the Trust and contrary to current legislation.

We therefore request that any further progress with the Private Bill is halted forthwith, and proper engagement with stakeholders ensues. Plans to submit a Bill to Parliament for 27 November 2024 should cease forthwith.

That was the petition. And in response to that, online there were 2500 signatures, plus 176 signatures on hard copies. In total, 75% of people who signed the petition were local (ie from Worcestershire, Gloucestershire and Herefordshire). Of the remaining 25%, many were from adult children who have been brought up in Malvern and have a keen interest in the area. Others were friends and family of people living in Malvern. In short, 75% of local population (online and hard copy petition) are against the Private Bill pending full and proper scrutiny. The total figure of 2676 responses to the petition dwarfs the 600 responses received by MHT to the consultation by 4.5 times.

I would like to make it clear to the Board, as I did to your Chair and CEO last week, that MEPG are not against a Bill per se, but we don't think the current proposals as they stand are the right ones.

The local populous seriously question the justification for pushing ahead with the Bill in the face of such opposition, especially in the light of the proposals in the Bill which fail to address the levy paying area issue, and the Governance proposals which are so ill thought through.

The proposals allow for considerable development endangering what makes Malvern so special. Already developments are being allowed which should not be permitted, thereby chipping away at what we value. In the process what makes the area special will be lost. Malven as we know it will be consigned to the history books. Is this really what we want?

2676 people said no, and we therefore call upon Board members to very carefully consider their positions this evening and press the pause button, to allow for meaningful dialogue and consultation. What is proposed is not in the best interest of the Hills and Commons. Thank you.

Katharine Harris presented a transcript of the above statement to the Chair, John Michael. The transcript did not include any names or signatures and was undated.

John Michael said in response:

The timing of this petition is hard to understand, given there was a public consultation only a few months ago where concerns could have been raised.

The Trust has been transparent in its process and in the powers we are seeking. The consultation period followed good practice. There is no 'subjugation of public body status'; indeed, a recent Parliamentary question confirmed the Trust is not considered to be a public body.

I'm pleased that Katharine Harris, and some colleagues finally accepted to meet with us and discuss their concerns last week. I wish this had happened months ago. The Trust has been seeking a dialogue with them since the beginning of this year. We all agree that public access to the Malvern Hills and Commons is fundamental.

We want to do justice to the nearly 500 people who gave us their views. What we really value is the many well-considered responses in which people shared their feelings and thoughts on unintended consequences.

Some comments received in the public consultation were uncomfortable reading for staff and trustees and I know we must communicate about our work more effectively. That is, to care for the iconic landscape that is the Malvern Hills and Commons. What we are proposing is an important step in the Trust's history and would make it fit for the 21st century and for those who come after us.

2. David Smallwood

The Countryside and Rights of Way Act (the CRoW Act), applies to over 2 million acres of common land and access land throughout the country. It guarantees that any person can go onto common land for the purpose of recreation. It has no regulations whatsoever covering groups of people, it only refers to individuals. It simply requires that **anyone** on common land should respect the Byelaws in the CRoW Act, and these are virtually the same as those of the Trust.

The CRoW Act exempts the Malvern Hills, because they are already covered by their own Acts, which guarantee the public the right to be on the Trust's land for recreation and enjoyment.

I asked Deborah Fox where you get the power to insist that groups over 15 people running an activity or sponsored walk on the hills are **required** by the Trust to have the Trust's permission. She replied that the Trust relies on Byelaw 21, which is very broadly worded.

So I wrote to her again explaining that I was considering organising a birthday picnic for 20 to 30 people by the Millpond and I asked if I really needed permission to hold the event, and she referred me to her previous reply.

Clearly, if someone wants to use the common for commercial purposes or wishes to do something that would breach the byelaws, then they do need to ask for permission.

But it seems to me to be an abuse of the Trust's power to **insist** that group of 30 people, peacefully picnicking, should have to apply for permission and to be forced by the Trust to purchase £5million public liability insurance, because this is what it says on your web site, and that would cost about £170.

The Trust is now seeking a stronger and specific power to regulate access to common land, not only by groups, but by i**ndividuals**.

You are very sensibly already planning to adopt part of the CRoW Act, to absolve yourselves from the legal duty of care towards visitors to your land, and I support that.

As Trustees, you have the power to bring your access policy into line with the CRoW Act and to prevent this Bill from being used to interfere with the rights of individuals and groups who simply wish to enjoy the hills for recreation, whilst respecting the byelaws and the Countryside Code.

Please take the time to consider this carefully and make the right decision.

3. Anthony Madigan

A casual observer would think that the most pressing issues facing the Malvern Hills right now include the definition of a charity, whether the levy is a tax, and what size the Malvern Hills parliament needs to be to give everyone a voice.

Of course, they aren't the issues. Climate change, visitor numbers and their behaviour, encroachment, access, habitat protection, collapsing insect populations. These are the issues, for us and actually all the other nationally important landscapes in this country.

Change like the change we are talking about today always brings some opposition – it's absolutely understandable. And it's right that fears get an airing. But the idea that this is the people vs the Trust just isn't true, and I'm here to support the proposals, with one caveat.

There are three areas of the proposals to highlight:

First: There are too many Trustees at the moment: as decision-making groups get bigger, they split into factions. And that is exactly what's happening. It's getting in the way of good discussion and decision-making. The Hills need better. In this country twelve people can put a person in prison for life. Twelve Trustees is plenty.

Second: We've heard some Trustees talking about constituents and representation. We are not your constituents. Levy payers who have the future of the Hills at heart want trustees who are focused on the Hills and understand the compromises involved in doing that where people live. Electing half of the Trustees, in line with our 40-50% contribution to the Trust's funding, is a healthy balance.

Last but not least: The Trust has to be able to deal with everything the world is throwing at the Hills. That means putting in place the clearer ways of working set out in the proposals, the ability to do the right things at the right time, all wrapped in a protective Trustee wrapper where key decisions are talked through openly and maturely.

Which brings me to my caveat:

The Hills are at risk if the quality of conversation around here does not improve.

The conversations between trustees for starters – the Hills are more important than all of us, who are just passing through in our brief lives, and it should feel like that. The Malvern Hills is an ecosystem, not an egosystem.

And the conversations between the Trust and residents, both directions. This is the great opportunity: to build a watchful, knowledgeable, collaborative partnership between all of us. A protection powerhouse, you might say.

And Trustees have a vital role to play here – helping those informed conversations to happen.

And let's not misuse the platforms we have – we all deserve better and can do better in the way we share opinions, however strongly we hold them.

So, let's make the most of the unique situation we have here. The battle we have in front of us is the Hills, the Trust and all of us together against everything that would degrade the Hills.

I hope we can unite around that. We should not delay getting the Trust in shape. Thank you.

4. **Malcolm McCrae**

The Board is being asked at this meeting to approve the continuation of your organisation's headlong dash to try and convert itself into the only UK charity that will be almost exclusively funded by taxation based public funds ie: funds collected under the threat of criminal prosecution and with additional powers that will insulate trustees from having to account for any actions they take provided they do not break the law.

MHC's current status is that of a public body with a statutory mandate and is almost exclusively publicly funded to fulfil it. However, you are currently operating with an internally approved governance code which is in clear breach of the Nolan Principles by which public officials such as yourselves should operate; your recent HR processes appear not to comply with standard public sector practice; you have failed to maintain the accountability processes for the public funds you receive that are built into your Board structure and your levy is currently set at almost 5X the maximum that you have been able to substantiate legal authority to charge.

You are now being recommended to ignore the demand made by some 2,700 members of the public, the majority of which are likely to be levy payers, to pause your private bill process, in favour of allowing just two members of the Board to sign it off, as set out in Paper A which is littered with errors and unsubstantiated assertions. This simply will not do.

Forging ahead with your private bill submission at the end of November 2024 against this background of dysfunctionality whilst simultaneously spreading erroneous and unsubstantiated misinformation in the media is likely to make Board members and senior officers open to possible criminal prosecution for maladministration in public office.

5. **Graeme Crisp**

It appears that paper A was deliberately withheld from public view on the MHT website until after the deadline for applications to make a statement had expired. Paper A is dated 14/10/2024 but was not made available until after midday on 15/10/2024. Trustees might well ask whether they can be as fully informed as they might have been had today's meeting been prepared properly and the public given a full opportunity to comment on paper A. If you consider that you could have been better informed, then your duty as trustees is to postpone today's decision.

There are other good reasons not to endorse paper A. Paper A hands a blank cheque to two trustees and two officers. There are no constraints in the proposed resolution limiting what may be included in the bill which will be submitted in your name as Trustees. Further all decisions about what will be submitted will, if the resolution passes, be in the hands of only 2 Trustees and 2 Officers. I question if Trustees have the power to or ought to delegate fundamental decisions of this kind to employees who do not share the Board's obligations under charity law.

There is no formal framework in place to regulate how delegates will operate and reach decisions. For example, how would an impasse be resolved if 2 delegates are opposed to a provision supported by the other two delegates. The resolution does not ensure that any account will be taken by the delegates of any matters raised by the board during the reviews. The proposed appointment of delegates is not how Charities are intended to operate and is certainly not in the spirit of collective decision making.

The proposed resolution is half baked and has clearly been thrown together in a desperate attempt to meet an unrealistic timetable. Paper A sets out two choices: approve the resolution or postpone submitting the bill until 2025. I urge you to play safe and postpone. This will allow time for the bill's drafting to be completed under the control of the whole board and allow time for a full consultation on the drafted bill clause by clause including those provisions which were not included in the most recent consultation.

6. **Mick Davies**

Good evening, trustees….

It is almost a year since my term as a trustee came to an end after eight years of fulfilling engagement. If I was looking for other adjectives to describe the experience I guess 'frustrating' would be one, particularly in the lack of progress we made towards a new Malvern Hills Act. The reform process had preceded my involvement by several years and I was delighted to participate in the months and years of study and consultations solely aimed at making the Trust properly fit for purpose.

The Trust has been told that reform is necessary since at least 1995. Told by Parliamentarians, by Government Ministries, by the Charity Commission and by many other wise people who can see that the present governance situation is a 'dogs' breakfast'. Anyone who spends a couple of hours studying the Malvern Hills Acts and looking at the consultation documents will see that the case for governance reform is self-evident and compelling. Now is the opportunity to keep that reform process moving by committing to the next stage in November. This Board can do something which its predecessors sadly failed to deliver.

For more than a decade, the proposals for updating the Acts have been drafted, published, explained, debated and rewritten in response to hundreds of representations from the public, advice from other bodies and hours and hours of deliberations by the trustees supported by the staff. As recently published papers demonstrate, the consultations and amendments continue today and will no doubt continue for years through the parliamentary process.

It is also evident from the published papers that a huge amount of progress has been made in the last year. The range and depth of detail, the rigour of research and thought and the clarity of the draft proposals is remarkable and is a credit to you all, trustees and officers, who have worked so hard to get this far. You should all be proud of your achievement and confident that decisions you make today are as soundly based and well informed as they can be.

Everyone who lives and works in sight of the Hills and many from further afield share a passion for our cherished, publicly owned space and we all put our trust in you, Trustees, to make the right decisions for us about its future conservation. That's your job.

Not all your decisions will be applauded by everyone, but your well-informed wisdom, careful judgement and progressive thinking demonstrate that you have done a great job, acting in the best interests of the Trust for the benefit of the public as a whole.

Thank you!

7. Helen Stace

For those who don't know me, I want to introduce myself as a former elected Trustee of the Malvern Hills Trust, serving from 2007-2023 and as Chair from 2012 to 2015.

Malvern Hills Trust is a charity. Trustees of MHT are obliged, by law, to act solely and exclusively in the best interests of achieving the objects of the Trust. This is not an obligation to be taken lightly, given that MHT has an income over £1m pa and manages 1,200 ha of nationally important land on the hills and commons.

Our charity is governed by statue, but a review in 2013 concluded that our 5 Acts of Parliaments, and the Commissioners Clauses Act of 1847 were out of date, difficult to interpret, sometime contradictory and failed to cover all current eventualities, making it difficult to manage the hills and commons effectively. It soon became clear that we could only resolve this through changes to the legislation. The Charity Commission approved this move and agreed to place a Section 73 order before Parliament to move this forward.

Over the last 10 years we have worked hard to analyse the old Acts, identify shortcoming, omissions and conflicts and work up new proposals. These have been subject to copious review via working groups of Trustees, with external advice and through extensive discussion in Trustee workshops. MHT had been open and transparent throughout this process, with public consultations in 2019 and 2023 and decisions taken solely at Board and Committee meetings open to the public.

Initially, this attracted very little attention, but following consideration of major proposed easements, local pressure groups started to foster public concern about the proposals. These groups have spread much misinformation to the public at large, which even now MHT has to rebut in their 'myth busting' pages on the website. You will doubtless hear some of this from the other speakers.

It is my belief that the proposals brought forward by MHT have been carefully scoped and considered. I believe it is the best interests of the charity, for the effective management of the hills and commons, and for local people, to progress the bill without delay. This has dragged on for 10 years and prevarication would only lose momentum and be likely to increase the costs and staff time. I urge Trustees present to do their duty and act in the best interests of the Charity by resolving to proceed without delay to lodge the Bill in 2024.

Finally, I would like to thank all those, staff and Trustees, who have worked on this, doggedly, persistently and sometimes in the face of great opposition, for their dedication to achieving our objects.

8. Simon Baggaley

I am making this statement as a member of the public, a resident of Colwall, and a levy payer.

Firstly, I want to express my thanks for to the staff of the Malvern Hills Trust, and the Trustees, for everything you do to manage and preserve the Malvern Hills and the Commons so that us members of the public can enjoy it. I regularly walk on the hills throughout the year in all weather and it is plain to see the paths, grazing areas, car parks, woodlands and other areas are being actively managed to preserve the natural beauty of the area for both present and future generations.

The reason I feel compelled to make this statement is that I have seen a lot of negative and misleading comments on social media about the Malvern Hills Trust relating to the Consultation about the private member's bill. In fact, one of these social media posts requesting that Malvern residents sign a petition to stop the Private Members Bill made me curious; I am never one to sign something without understanding the background first. So, I read the Consultation document in full. This document took me hours to read and digest the issues, and my response also took hours to complete.

For me, the need to modernise the governance of the Malvern Hills Trust makes good sense, and I am in broad agreement with the direction that seems to be being taken since the Consultation, including that of reducing the number of Trustees to a maximum of twelve, and the split of elected and selected Trustees. Being able to attend a drop-in session at Colwall Library and to have the chance to discuss the changes with a member of staff and one of the Trustees in person further supported my feeling that the changes are necessary and positive for the area, and the feeling that that the process is open and democratic, and I feel I had the chance to ask questions and engage. Since the Consultation closed, I have been able to review the Board Meeting Minutes to see the public feedback and the votes taken by the Trustees on each issue – so that seems transparent to me.

I have heard it said, but only on social media, that the whole process is secretive, non-democratic, and with a hidden agenda. I would like to categorically state that those views are not shared by this member of the public, and nor are they shared by anyone I know. After spending much time looking into it, my conclusion might be that those signing the petition have not done the same as I have in researching the issues and have just clicked through and signed without understanding fully. To summarise, I do not think the opposition groups represent the majority of local public opinion, which in my circle at least is supportive of the changes, and I would like to encourage the staff, and those Trustees who are working hard to improve the governance, to continue with their efforts despite the completely unnecessary barrage of negativity and criticism.

9. **Suzanne Savage**
This statement was read in the absence of the writer and at her request by Simon Baggaley

I've been a resident of West Malvern for 22 years. I currently serve on the Board of Directors of a small Third Sector organisation, and I have worked in charity, volunteer and education environments, so I speak with experience of governance in this sector. I want to publicly speak out in broad support of the new governance proposals from the MHT. The manner by which the former "Conservators" were established is convoluted and out of date. We should not need to seek Acts of Parliament to make these kinds of changes, but we have to work with what we've inherited.

I agree with the Trust that no board can function effectively with so many members, and the proposal to retain 6 elected members maintains the democratic link which the community clearly wants. Allocating the other seats to people with specific skills is an excellent plan to ensure the Trust can draw upon a wealth of appropriate knowledge. Your indecision on how to nominate these 6 is somewhat disappointing. My husband has served on multiple NHS Boards and could suggest a transparent process on nominating and approving Trustees. I also agree that a process for removing Trustees is practical and necessary. Plans to offer online meetings and voting are part of the modernisation which is vital in the 21st Century.

I lament the fact that a tiny portion of the Malvern community have reacted so poorly to these proposals. I do not believe these people represent the majority of residents, but their scaremongering creates a storm on social media and makes it appear they have more support than they do. I am unclear why they have undertaken this campaign of mudslinging and misinformation, and I offer my personal sympathies to those Trustees who have been on the receiving end of their bile. It is wholly inappropriate.

I want to conclude by clearly reiterating my support for the governance proposals. I also want to make a plea to current Trustees. Just as you have seen and acted on the need to modernise your governance, so too must you modernise your view of how to care for these Hills. While the Trust's nature recovery proposals pay lip service to the climate and nature emergency, in practice they do not recognise the immediate need to take much more visionary action NOW. Each and every person sitting here must start engaging with newer ecological management principles. Whilst you leave behind Victorian views of governance, so too must you jettison your outdated approach to nature management. We owe it to our children and grandchildren to do a better job restoring nature and safeguarding their inheritance of the natural world.

10. Cynthia Palmer

Good evening. Most of you will remember me resigning in July as Chair because I had been bullied and belittled by certain trustees and staff for telling the truth. It has now been 32 weeks since the bullying began and I am still waiting for answers for questions so that my appeal can be heard and for someone, anyone, to speak to me. In fact, in the Malvern Gazette later in July, it was reported that the CEO takes issues of bullying very seriously. Yet so seriously she hasn't even spoken to me. She did say hello to me tonight, that's the first time she's spoken to me. I also pointed out in my resignation speech that the Trust should take a step back to engage with the public before going forward with the Bill. We are not against you and would like to work with you, so that we can end up with a Bill for us all. However, currently you are just wasting our money.

I have been interviewed by the Charity Commission and various other leading people, so that they can get to the bottom of what is going on at the Trust, and they agree that the speed at which the Bill is proceeding has got to stop. I know of at least six groups and bodies who will challenge the Bill when it goes to Parliament. Surely it would be more appropriate to least try to resolve some of the issues here before this reaches Westminster, because once it goes to Westminster, costs start to spiral.

This will be the last opportunity for me to speak, so please I would like the trustees to seriously consider the reputation of the Trust and the part you will play, because you are all personally and financially involved, and responsible. If you have the slightest doubt about the proposals in this Bill, you should clearly say no at the meeting tonight. Thank you.

Response from Malvern Hills Trust
18 October 2024

John Michael, Chair said:

"The Trust has been in frequent contact with Mrs. Palmer by email since her resignation in mid-July, seeking to establish the basis of her allegations and a mutually acceptable way to investigate them. The CEO has offered to meet Mrs. Palmer to discuss the allegations.

"Mrs. Palmer sought to impose conditions on the handling of the matter.
Following legal advice the Board concluded that the investigation should be put into the hands of an independent person. Consequently the matter is now out of staff hands.

"One of the reasons for pursuing a Parliamentary Bill is to provide the opportunity for full public scrutiny through the Parliamentary process. We are not aware of which groups Mrs. Palmer was referring to and I urge them to come and meet us, so that we may address their concerns."

11. Kevin White and Alison Allden

This statement was read in the absence of the writers and at their request by John Stock, in his capacity as a member of the public.

We the undersigned, of Old Church Road, Colwall, are grateful for the opportunity to make the following public statement to the Malvern Hills Trust meeting on 17th October 2024.

We have read in detail the consultation documents and the Trust's careful consideration of the responses to the consultation. We support the proposed responses to the consultation and the arguments made for them. We believe that the existing governance arrangements are cumbersome, do not support good governance, and are at risk of confusing specific local issues (however important they are) with the obligation upon the Trustees to govern in accordance with the legal requirements placed upon the Trust (i.e. "to act solely and exclusively in the best interests of the Charity's Objects and that there is a requirement for the charity to ensure no decision making should involve trustees with conflicts of interest").

In particular, the advantages of the proposals are that:

- A Board composition of 12 members is appropriate for an organisation of this size and the balance of elected and appointed trustees better enables the necessary expertise to be recruited to support the Trust's work
- The single election area offers a fairer (equal) voting outcome for all electors and reinforces the point that all those who serve on the trust are there to support the Trust's work overall in protecting the totality of this wonderful local amenity, rather than to pursue specific interests
- A standing Nominations Committee is important to ensure the appointment of the best candidates (ie those who best match the declared criteria) and ensure a robust open appointment process. The proposed mix of Trustees and Externals with the Executive attending would be helpful (perhaps with an External as Chair). The Externals might be identified through open competition and thereafter the Nominations Committee would be responsible for all succession planning and open recruitment.

We also agree with the proposals before the Board on the questions of retaining the ability to hold restricted discussions in private, the use of fixed penalty notices and use of trust land for building purposes.

Malvern Hills Trust

Special Meeting of the Board
Welland Parish Hall, Marlbank Road, Malvern WR13 6NE
Wednesday 20 November 2024 at 7pm

Present: John Michael (Chair), David Baldwin, Richard Bartholomew, Robert Berry, David Core, Allan Cottam, Richard Fowler, Lucy Hodgson, Felicity Robinson, John Stock, Mary Turner, Frances Victory, Malcolm Victory (arrived 7.10 pm), Mike Wilkinson, Sheila Wren.

In attendance: CEO, Secretary to the Board, Governance Change Officer, two members of the public.

John Michael welcomed everyone to the meeting, thanking them for coming out on a cold night.

1. **Apologies for absence**
   Paul Bennett, Mark Driscoll, David Fellows, Charles Penn, John Raine, Chris Rouse. John Michael noted that a number of trustees were unable to attend due to a council planning meeting.

2. **Chair's announcements**
   2.1 John Michael expressed his thanks to the Wardens who had helped a member of the public who had suffered a fall at British Camp.
   2.2 John Michael noted with concern that the Ledbury Hunt had strayed onto Trust land at its last meeting and confirming that trail hunting was not permitted on Trust land.
   2.3 John Michael was sorry to report that Duncan Westbury had resigned from the Board. He had a new position as Dean of Property and Land Management at the Royal Agricultural University and felt unable to commit sufficient time to the Trust.
   2.4 John Michael reminded trustees of the forthcoming training event on Thursday 28 November at 1 pm at the Malvern Hills Hotel, followed by a social gathering with staff.

3. **Declarations of interest**
   There were none.

4. **Private Bill**
   The Trustees received a summary of the remaining decisions required on the Private Bill. The Governance Change Officer (GCO) recorded her thanks to trustees for the significant amount of work they had done and meetings they had attended to get the Trust to this point.

4.1 **Compliance with the European Convention on Human Rights (ECHR)**
Before the Bill could be approved, trustees had to be satisfied that it was compliant with the ECHR. Counsel's advice had now been received and circulated to trustees; the GCO noted that the advice was unequivocally positive.

The following points were made:

- Thanks were recorded to Counsel for the clear manner in which his advice had been expressed, which had helped to make a complicated issue much simpler.
- The GCO was asked for her thoughts on the Court of Appeal's decision mentioned in the opinion. The GCO said she had no views; this was Counsel's opinion and she herself did not profess to be an expert on human rights law. She believed that all trustees had read and understood the points Counsel had made and his recommendation.
- A trustee asserted that Counsel was not an expert in the ECHR and although the opinion seemed reasonable, it had specifically failed to address one or two issues regarding the rights of third parties. The trustee believed that an additional piece of advice was required and that the process had been unnecessarily rushed. The GCO said that the decision needed to be made at this meeting and the Chair pointed out that he had given trustees an extra week to read the advice and the draft Bill. The Trust had to abide by expert opinion and that opinion was that the Bill was compliant.
- A trustee asserted that the possible denial of access to all land designated as common was not explicitly covered in advice. The GCO responded that applications to erect fencing would be made to the Planning Inspectorate, who would take everything into account, including the rights of commoners and everyone else who had access to the Trust's land; this was required by public legislation. It was pointed out that the issue had been raised previously and the question had been effectively answered at that time and was not germane to the ECHR opinion.
- Trustees had been able to study the draft Bill over the previous three months; they had not been asked to read the Bill text for the first time in the last week. The purpose of this meeting was for trustees to decide if they were content with Counsel's opinion that the Bill was ECHR compliant and content that the text of the Bill was appropriate for the Trust to submit. Trustees had had the opportunity to raise their concerns prior to this meeting.

On the proposal of David Core, seconded by Richard Bartholomew, it was *RESOLVED* with 13 in favour and two against, to agree that the provisions

of the Malvern Hills Bill are compliant with ECHR rights. Robert Berry and Richard Fowler asked for their votes against to be recorded.

4.2 **Approval of the Draft Bill**

The GCO said that the drafting of the Bill had been a cumulative process and confirmed that the Parliamentary Agent (PA) had worked from proposals set out in the Consultation Document. He was the specialist employed by the Trust to do this; the GCO said she hoped trustees felt that they had had sufficient opportunity to read the drafts and comment upon them in advance of this meeting.

- Several trustees said that they had read and understood what was in the Bill.
- It was noted that in the explanatory memorandum' there was a refence to schedule 5 and to "solar energy". This had been changed to "renewable energy". The GCO agreed that this needed to be amended.
- Thanks were recorded to all involved, especially the GCO, and for the time and effort that trustees made reviewing draft the Bill.
- The CEO recorded her thanks to trustees for the hours of work they had put in, especially the members of the Consultation Working Group. She said they had made it easy for staff to support them in making their decisions.
- Thanks were recorded to Alastair Lewis at Sharpe Pritchard and Con Alexander at VWV, who had both put in a great deal of effort.
- The GCO was asked about the mechanism for sharing concerns once the Bill was published. She said that there would be public notices in the Malvern Gazette on 29 November and 6 December, which would set out the process. The Bill would be on the web site from 3 December and paper copies available in the Trust Office from 4th. Once members of the public had seen the Bill, if they still had concerns, the Trust's door would be open for them to come in to discuss them. The office would be open from 9-5 from 4 December all over the Christmas period (except bank holidays and weekends). If appropriate amendments could be made as the Bill went through Parliament.

On the proposal of Malcolm Victory, seconded by Mary Turner, it was *RESOLVED* with 13 in favour and two against, to approve the text of the Malvern Hills Bill. Robert Berry and Richard Fowler asked for their votes against to be recorded. Richard Fowler read out a statement of his reasons for voting against:

Insufficient time has been provided for trustees to understand and consider the Bill and any unintended consequences. This is evidenced by numerous short notice meetings called, including one for a Monday called after midday on Sunday.

The GCO asked for it to be made clear for the benefit of members of the public that the latter event was a workshop on Zoom and not a meeting.

Robert Berry asked for his reasons for voting against to be recorded. He stated that these were that he had come to the meeting to discuss the contents of the Bill and had not been able to. He did not wish to be admonished by the Chair or any other trustees and he would not inconvenience them by remaining in the meeting.

5. Urgent Business

None

6. Date of Next Meeting

Thursday 13 January 2025

7. Confidential

On the proposal of David Core, seconded by John Stock, it was RESOLVED unanimously to exclude the public for discussions of item 8 on the agenda on the grounds that publicity would be prejudicial to the public interest by reason of the exempt or confidential nature of the business to be transacted (matters relating to individuals).

Robert Berry and the members of the public left the meeting at 7.25 pm

Paul Bennett arrived at the meeting at 7.30 pm but did not join it.

The meeting closed at 7.45 pm

Malvern Hills Trust
Special Meeting of the Board
Consultation outcomes and whether any changes should be made to the Trust's proposals for a Private Bill in response.
19 September 2024

Background

Trustees are aware of the reasons why the Trust needs to update its governing Acts and the work which has been put into shaping its proposals over the last 10 years.

The Trust consulted on proposals in 2019 but because of changes in response to that first consultation and lapse of time, it was felt better to consult again this year on all the main proposals which are intended for inclusion in its Private Bill.

The public consultation was carried out over a period of over 8 weeks by 56 Degree Insight, an experienced Market Research Company. There were 483 validated responses which was in excess of those from 2019. A full explanation of the consultation process is set out in main the report.

The consultation closed on 22 July and responses were circulated to trustees between 29 July and 5 August. This included 9 organisations who responded direct to the Trust.

A working group was set up at the Board meeting on 8 August and to date they have reviewed 4 of the 5 key topic areas (land management, licences and leases, administrative provisions and the objects – with the Trust's constitution still to consider) which had been identified by the Board as having attracted the most significant comments. The working group considered the background to the current proposals, sought additional input where needed and prepared reports setting out their recommendations which were discussed in 2 workshops on 4th and 10th September, giving trustees the opportunity to consider the recommendations and request any additional information in advance of this meeting.

Consultation responses

The Trust thanks everyone who took the time and trouble to respond to the consultation. Trustees have read the quantative outcomes and 100 A4 pages of text comments, some setting out thoughtful arguments and passionately held views. All responses have been considered most carefully.

Whilst not detracting from the value placed on each opinion shared, misinformation was being circulated before and during the consultation. Just one example is a website stating "The Malvern Hills Trust Private Bill will mean loss of our green spaces, more building and loss of control by local people. Preserving Natures Beauty for future generations will no longer be paramount". In addition, that website set out how to respond to the Trust's consultation questionnaire in 4 minutes, on order to submit an entirely negative response without reading the Trust's consultation document. 56

Degree Insight confirmed that 12% of the validated responses conformed to this template.

It was also asserted in a number of places that the Trust was a public body. The Trust has always made it clear that it is a charity governed by statute. This has been a long running issue on which the Trust has taken legal advice to ensure trustees are clear about the position. There is no definition of "public body" for all purposes and trustees will now have seen that Lord Attlee asked a Parliamentary question about this topic and the response from Baroness Haycock, Parliamentary Undersecretary at the DEFRA was that the Trust was not considered to be a public body.

It is acknowledged that the Trust is an unusually constituted organisation and it is not surprising that there is a degree of confusion about its status. However it appears that some respondents were not clear that the Trust's duties are to act in accordance with the Malvern Hills Acts to care for the Malvern Hills and preserve the land under its jurisdiction as an open space for the enjoyment of everyone, and not conduct its affairs for the benefit of any particular section of the public.

Analysis of the results

That having been said, the working group has very carefully considered all responses and made recommendations on the topics agreed by the Board at the meeting held on 8 August together with a few additional issues they consider merit further thought.

General points

Trustees should be mindful that the Charity Commission have asked to be informed of any changes to the proposals which the Trust set out in its s74 application. These were the proposals that formed the basis of the Trust's public consultation.

The budgeted legal costs for the Bill were based on the proposals in the s74 application. Any significant changes in response to the consultation will incur additional costs.

It *may* be advisable to run a further short consultation if there are any significant changes to the proposals in the consultation document – the Parliamentary Agent will advise.

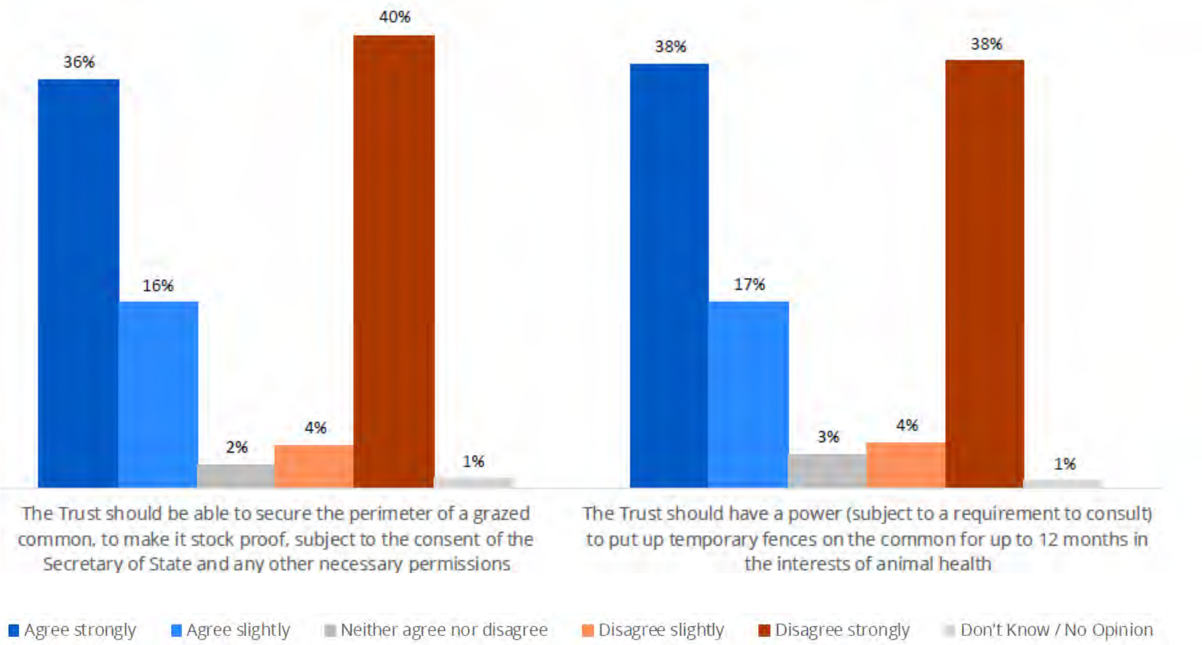
Significant numbers of people made the point that they could not comment definitively until they had seen the draft Bill. Unfortunately, this is not currently possible as drafting is still a work in progress but these comments are noted and understood.

Trustees will recall that in addition to some proposals needing to be revisited by trustees following the consultation, there were numerous other comments that need (a) to be referred for possible drafting amendments, (b) further public communications to help increase understanding of the Trust's proposals, or (c) to be considered for possible operational action. The communications and management points will be dealt with separately.

Although this may mean some hard choices, when considering and responding to the consultation trustees must act solely and exclusively in the best interests of achieving the Trust's objects.

Land management.

Working group report



Background

Land Management is what the Trust is about. The changes and the conflicts which now exist would be unrecognisable to someone living in 1884. The cars, the level of public access, cycling on the Hills and the lack of people exercising rights of common all create very different management challenges today and in the future. The Trust needs a different set of "tools" to keep the Hills open for public access and to cope with the pressures on their important features and special qualities.

The critical importance of using grazing livestock to manage the Hills was fully explained in the consultation document.

Public and organisation comments

Some of the comments indicate that not everyone had read the consultation document and there was some level of confusion about the proposals. For example, the Trust's proposals would not result in fencing along the B4208 across Castlemorton Common or the Gullet Road, or on any of the ungrazed commons.

There was general support for the proposal to secure the commons. Some respondents did not want to see the perimeter of the common fenced, saying that it would restrict access but these comments were countered by those agreeing that it was a good idea. Others were concerns about losing the open character of the common.

The County Council noted that if fencing crosses a public right of way, the Trust would need to consult them (as it always does) and there were a number of other comments about gates needing to be to an appropriate standard to facilitate public access.

There were a small number of comments from people opposed to livestock grazing more generally on moral or environmental grounds and from people who did not like the Trust's use of temporary fencing to target grazing.

Castlemorton Common Association (CCA) did not support the proposal for fencing for animal health reasons, although the Open Spaces Society (OSS) did.

The OSS proposed that there should be a 6 month break period following fencing to regulate grazing but in discussions accepted there should be a *de minimis* exception to provide that the Trust can re-fence an area of up to 1ha to enable hard grazing for the control of unwanted vegetation/species (eg Yorkshire Fog, a coarse and dominating grass).

Officer input

It should be noted that 92% of Castlemorton Common is already fenced by adjoining landowners.

Since the consultation document was prepared, the Conservation Manager has raised the issue of "hard cases" where it would make no sense to fence along the perimeter of the common (for example where fencing could be hidden by vegetation or topography not far from the perimeter or where another feature could be used as part of the fencing – for example the churchyard wall at Hollybush). There is also the instance of Old Hills where the common is divided by a busy road with poor sightlines and one side of the road is suitable for grazing but the other is mature woodland which is not. The Conservation Manager also referenced other similar sites which have secured their open commons, such as Epping Forest. Some of the fencing/infrastructure has had to be sited away from the exact perimeter of the common to deliver a successful, safe scheme. Landowners (with the exception of those with a statutory power) always need approval of the Secretary of State under s38 Commons Act 2006 to put up fencing.

The current draft makes it quite clear that the Trust would have to secure Secretary of State consent to undertake works on common land to prevent stock straying from the common. The Conservation Manager has suggested that rather than the Bill trying to define exactly where the Trust could fence, the provision for securing the commons should be amended to say that the Trust could put up fences, or make other arrangements to keep stock on the common provided the Secretary of State's consent was obtained under s38 Commons Act. The Trust's Parliamentary Agent advises that he can draft the provision in such a way that the power can only be exercised to prevent stock from straying off the common whilst also meeting the Conservation Manager's concerns. Therefore, the decision whether fencing (or other methods) is appropriate or not would be made on a case by case basis with full public input. S38 applications are made to the Planning Inspectorate on behalf of the Secretary of State and the process includes pubic consultation so that all views can be considered. Complex cases are determined by way of a hearing or public enquiry. This amendment was supported by Open Spaces Society and by representatives of CCA. S39 Commons Act outlines the factors which may be taken into account and this includes public access:

https://www.legislation.gov.uk/ukpga/2006/26/section/39

The Trust's Parliamentary Agent has pointed out that keeping the requirement to obtain s38 consent means that fencing which the Trust request will not necessarily be permitted but this seems to be a compromise which enables a full public debate where everyone's issues and concerns can be addressed on a case by case basis.

Working Group recommendations

Securing the grazed commons

If grazing is to continue in the long term, the Trust has to have the power to secure stock on the commons. Access would be maintained and the public would not be excluded as a result of any of the new proposals to fence. Very few other grazed commons have no infrastructure to prevent the stock leaving the common.

Only the grazed commons would need to be secured.

The points raised about using gates of an appropriate standard to enable everyone to exercise their right of access are noted, agreed in principle and have been referred to the Parliamentary Agent to be reflected in the drafting.
The working group understands that the Trust's Parliamentary Agent is proposing to re-word the provision to meet the Conservation Manager's concerns. **The working group proposes that the Board agrees that the provision be amended as set out above but that it remains subject to it obtaining the consent of Secretary of State under s 38 Commons Act.**

Regulating grazing

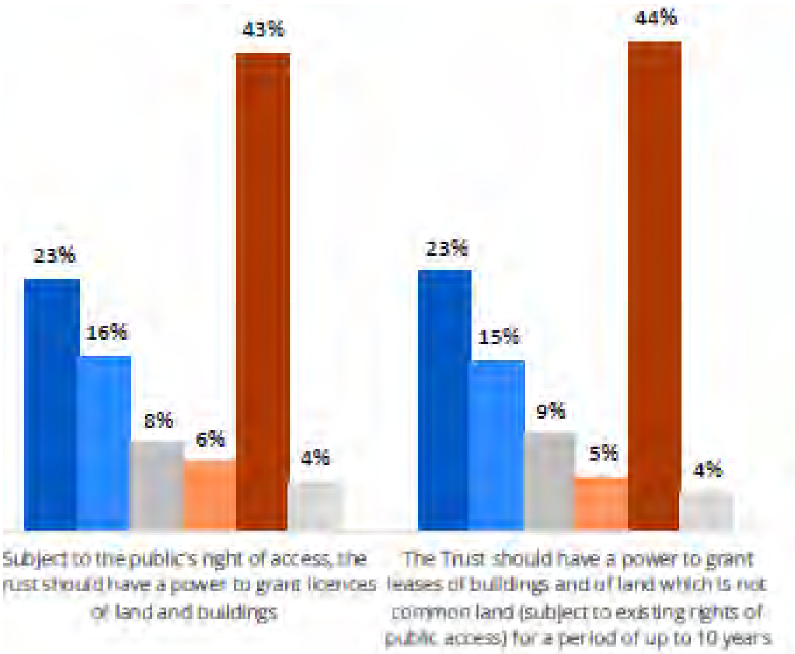
The working group recommend to the Board that a provision for a 6 month break following fencing to regulate grazing before the same area can be fenced again should be included in the Bill, with a *de minimis* exception to enable up to 1ha to be fenced again for the control of unwanted vegetation.

Temporary fencing for animal health reasons

Given the lack of support from the commoners for fencing for animal health purposes, and notwithstanding the support of the OSS, the working group recommends that the Board consider abandoning this proposal.

Leases and Licences of Land

Working group report



Background

The Trust needs to be able to grant leases and licences for the proper management of the land under its jurisdiction and has been doing so for years on the basis that this is an implicit of the Trust as a landowner. The new Act would be an opportunity for these powers to be made clear. Like everything the Trust does, the making of such arrangements has to be in the best interests of fulfilling the Trust's charitable objectives.

<u>Licences for land management</u>

The landscape of the Malvern Hills and commons has been shaped by human activities for thousands of years. This including coppicing, making hay, collecting bracken, and livestock grazing.

In order to conserve its important features and special qualities, the Trust's land needs active management as detailed in the Trust's adopted Land Management Plan. With an area of around 3000 acres, this active management is beyond what the Trust's resources can deliver and so licencing provides a means to gain extra effort and expertise.

Presently, licences are issued to deliver woodland coppicing, hay-making, and conservation grazing with livestock.

Grazing the commons is no longer an attractive proposition for livestock owners. Without the support of Countryside Stewardship grants, grazing would be unviable in most places on the Hills. Graziers are faced with unenclosed commons, high levels of public access, worrying of livestock by dogs and busy roads bisecting the commons on which there are a number of stock fatalities every year.

Much of the Trust's land is SSSI and grazing is the method of management recommended by Natural England and in some instances is the only practical method. Grazing is therefore essential and whilst those with rights of common are legally entitled to graze, the Trust as landowner is entitled to graze any surplus. In order to ensure grazing continues, the Trust operates a system of tendering for licences to graze the land in a sensitive and appropriate fashion, supported by the Countryside Stewardship grants. It is a condition of the licences that grazing by licensees is subservient to those with rights of common.

Licences – buildings

The Trust has a small number of buildings which it licences to individuals and grants a licence to the Malvern Hills National Landscape team to share the use of Manor House.

Leases

The Trust has a small number of fields on the lower slopes of the Hills, which enhance the setting of the Hills and are part of the Trust's public access land. There is a second purpose, in most instances, which is providing in-bye land to support the grazing of stock on the Hills. The Trust has to arrange for this land to be cared for and managed and this is done in some instances by way of a farm business tenancy, containing conditions that the land to be managed in a nature friendly way and ensuring that the obligation to allow public access is fulfilled. This gives both the Trust and the tenant the security to enable proper medium term planning for the use of the land.

St Ann's Well

The power to lease this building is governed by separate provisions in the existing Acts which will be re-enacted.

Public comments

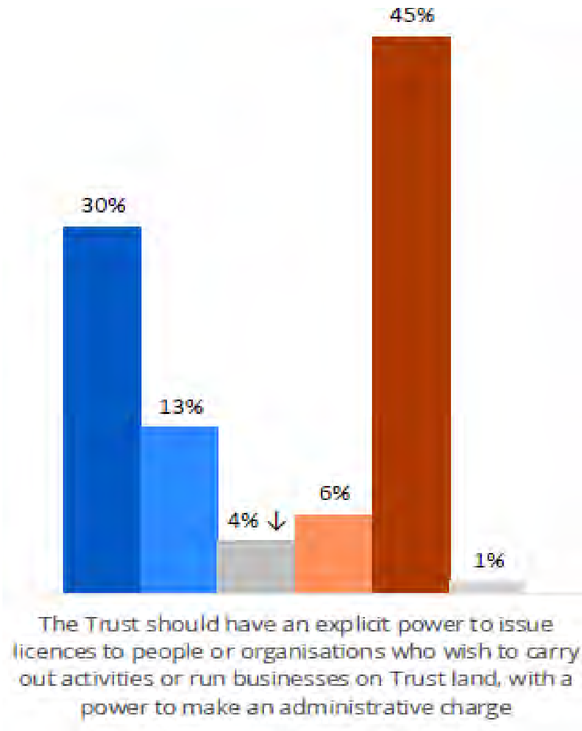
These proposals were not supported by a majority of respondents but there were no comments explaining the opposition to the granting of leases or licences for Trust's current land management purposes. However, some respondents expressed concern that this power would cause MHT's ethos to shift from conservation towards commercialism.

There were suggestions on Social Media that the new proposals would enable the Hills to be used for developing solar farms and wind turbines and whilst clearly not something the Trust could do because of its charitable objectives and the legal designations which apply to much of the land, this misinformation was picked up by respondents' comments.

Working Group recommendations

These provisions seek to bring clarity to the way licenses and leases are already used by the Trust. It is difficult to understand what reasoned objection there could be to the continuation of the current arrangements, which are a way of managing the Trust's land and not a revenue raising exercise. The Trust does not have the resources to undertake these activities using Trust staff.
Looking more broadly at the provisions, the Trust could only exercise them in furtherance of its objects and cannot operate for commercial gain.
The Working Group concluded that the percentage against the proposal was as a result of the Trust failing to get its points across and suggest the Board considers making no change to the Trust's current proposals, but that further communication and engagement is undertaken to explain the Trust's intentions and reassure the public

Licencing activities



Background

See paper on the members section of the website.
https://www.malvernhills.org.uk/media/3581/20171012paperfsponsoredwalks.pdf

This paper sets out the multiple reasons why the Trust needs to know what events are being organised on its land and to make sure events do not clash or impact on sensitive and important habitat. It also sets out (as at 2017) the charging regime of other similar bodies.

Public comments

Comments were many and various. The main concern expressed was that issuing licences might lead to the commercialisation of the Hills, greater footfall and consequent adverse impacts on their tranquillity and the natural environment.

There were also comments from people worried that the issuing of licences would affect free access to the Hills, eg were people going to be charged for meeting up with families or friends for a walk or picnic.

A number of respondents felt that charity/not-for-profit/community events should not attract an administrative charge.

Other comments included:

- Admin charges should be reasonable
- Business activities should be compatible with the purpose of the Trust and not interfere with public access
- Too many licences should not be granted
- There were comments for and against having a licencing system for professional dog walkers (licencing was supported by some professional dog walkers)
- Concerns about litter from temporary food stalls
- How would licences be policed?
- Possible impact of events on other users of the Hills

Working Group recommendations

The Trust's proposal is that the Bill will confirm the power to licence activities on its land, something the Trust already does and needs to do. Underlying that power will be a policy or policies which will set out the requirements for those using Trust land for organised activities and business purposes, for example which types of event are compatible with the Trust's purposes, where a charge will be made and what the level of charge will be.

The Trust as a charity cannot operate for commercial gain.

Any regime to licence organised events or business activities will not affect individuals or family groups accessing Trust land pursuant to the Trust's objects. The composite question did not differentiate between events run by schools/charities and other non-profit organisations (some but not all of which might attract an administration fee), and commercial activities which would attract a charge (eg filming/fashion shoots etc). With the existing exception of Link Common, activities which excluded public access would not be compatible with the Trust's objects.

There is no change proposed to the existing power to licence up to 6 temporary food stalls, or the provisions which cover events on Link Common.

The Working Group recommend that the Board considers leaving the proposal unaltered but to see whether some of the concerns expressed can be addressed in the detailed drafting.

Licences to run services

There was a small majority in favour of the proposal to change the consultee in any instance where the Trust grants a licence to run overground service. This is an existing power although the working group is not aware whether it has ever been exercised. The current consultee is the local planning authority. This makes little sense if planning permission is not required and Malvern Hills District Council have indicated they are happy no longer to be consulted if the power is exercised (with Malvern Hills National Landscape as a consultee in its place).

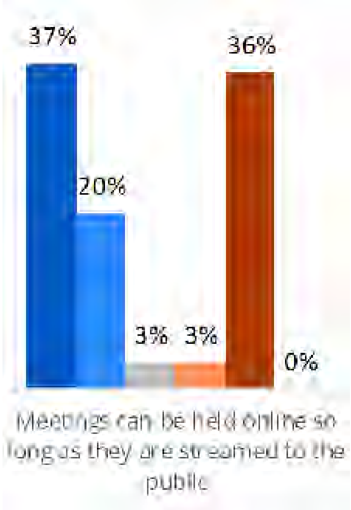
Working Group recommendations

That the Board makes no change to the proposal.

Modernisation of the Trust's Administration

Working group report

What constitutes a meeting?



Public comments

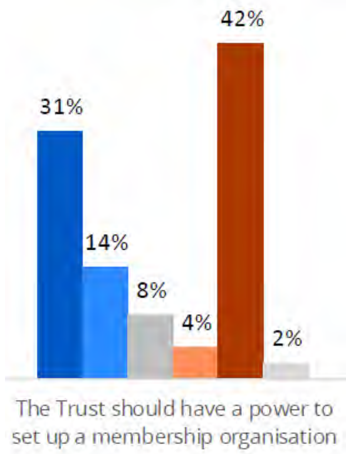
Comments on this topic were limited. Some favoured having the option of holding meetings online, some commented that this should be the exception rather than the default position and also that not everyone has online access

Working Group recommendations

The proposal to be able to hold online or hybrid meetings was included in the Trust's 2019 consultation. The technology to hold such meetings has now become commonplace. Covid 19 brought home the importance of being able to meet virtually. This power has to be included in the Trust's governance in order for such meetings to take place. Having this option for meetings provides a degree of additional flexibility for example if a trustee is on holiday but still wished to attend. It was noted that more members of the public logged into the Trust's online meetings during Covid that attended the meetings when they were face-to-face. The group felt face to face meetings remained the most satisfactory option and did not envisage that online meetings would become "the norm". Meetings which are open to the public and which are held online must be streamed. The group noted that not everyone has access to the internet but felt the Trust could ensure that there was a facility at its office for those without internet access to view online meeting.

The working group recommends the Board retain the proposal to be able to hold virtual or hybrid meetings.

Power to set up a membership organisation



Public comments

This provoked a number of comments. Some were supportive, seeing it as a way for those not already contributing through the levy to provide a degree of financial support but others expressed concerns:

- Would the membership organisation be part of the Trust's system of governance, and enable pressure groups to influence decision making?
- Would people from outside the Malvern area be able to drive changes to the management of the Hills and Commons, to the detriment of local people?
- Would it create a 2-tier system where members got privileged access to the Hills and Commons?
- Would a membership organisation be costly and burdensome to administer?

A number of comments sought greater clarity on what a membership organisation would mean in practice.

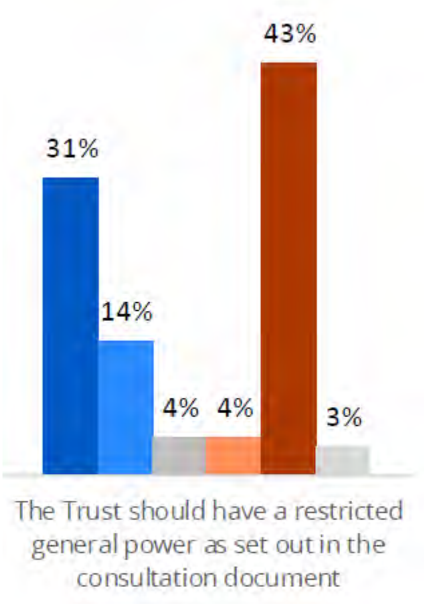
Working Group recommendations

The choice of the term "membership" was unfortunate as seems to have carried implications which were not intended.

Any supporters' group would not be part of the Trust's governance structure, nor have a direct influence on the Trust's decision making. The intention would be to provide people who have an interest in the Hills, wherever they might live, with the opportunity to learn more about them and to get involved with their care. A supporters' group might also be a fundraising source and facilitate more volunteering. The Trust would like to have the option to create a supporters' group but as yet no details have been worked up.

The Working Group suggests the Board adopt the word "supporters" instead of members.

General power



Public comments

The proposal to include a general power has prompted a significant number of comments about potential misuse. These centre around concerns that it provides the opportunity for the Trust to do anything it wished without constraint. Regrettably, this is an area where there has been misinformation circulating on social media during the consultation period, suggesting the power could be used to facilitate solar farms, shops, business or residential development on the Hills, or that it would allow the Trust to sell off land.

Some comments supported the power but advocated constraints such as linking the power to the objects (it fact it could only be used in furtherance of the objects), not being able to carry out activities prohibited by the Acts, supervision of the use of the power by the levy payers or a requirement that the exercise of the power require a special majority.

Comments from organisations

The Open Spaces Society gave a very detailed and considered response to the Trust's proposals. They supported a general power but raised some questions about its interrelationship with other specific powers. These comments were welcomed and further drafting work should overcome the points they raised.

Who else has a general power?

Many other bodies have a general power – parish councils have the general power of competence, the National Trust has a general power and the Charity Commission's own model trust deed contains a general power - "to do any other lawful thing that is necessary or desirable for the achievement of the objects". These clauses are far wider than the one proposed by the Trust.

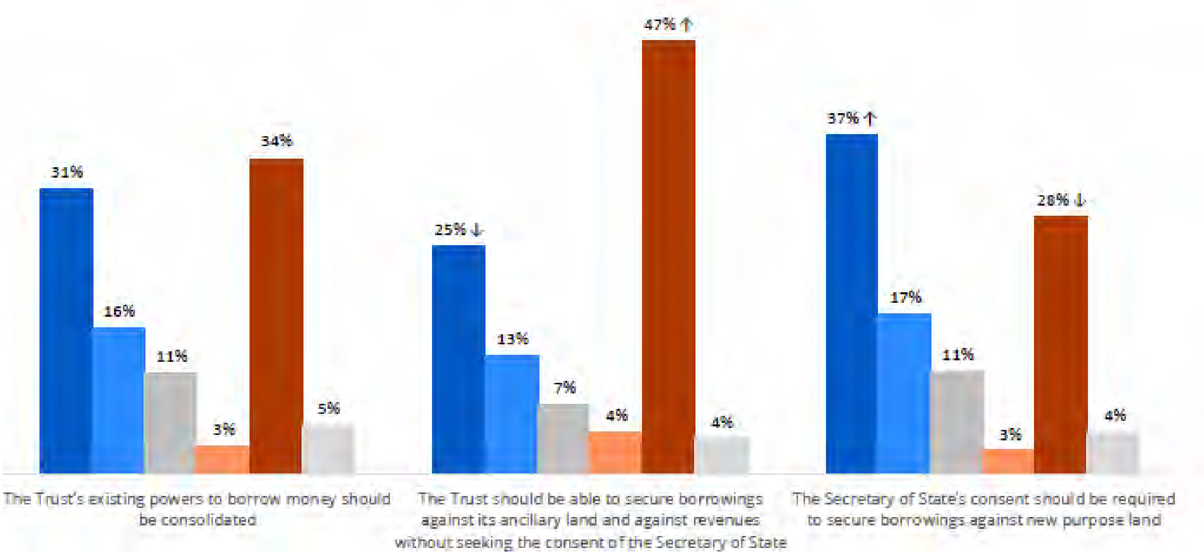
Working Group recommendations

As a charity governed by statute, MHT only has the powers that are set out in its Acts. Frequently, it is not clear whether the Acts cover a particular situation or not and the Trust has to seek costly legal advice (which does not always provide a solution). If the Trust needs to do something outside the scope of the Acts, as a one off, it can apply for a s105 Charities Act 2011 Order in certain circumstances. This is time consuming and expensive but otherwise the only option is to amend the Trust's governing legislation. Everyone is aware that this is a massive drain on the charity's resources. It is impossible to cover every eventuality in the Bill because it is impossible to predict what challenge the future may bring, and how they will affect the Trust. A general power would enable the Trust to be as responsive and flexible as possible in meeting such challenges and dealing with unexpected circumstances. The power is already drafted to exclude its use where there are specific powers available and amendments are proposed to address the points raised by the OSS.

The power can only be used in furtherance of the Trust objects so there is no possibility of engaging in some of the sorts of activities which have been suggested, such as putting up solar panels on the Hills, which would directly contradict the requirement to keep the Hills as an open space for public access and be contrary to the designations (eg SSSI) to which the landscape is subject.

The working group recommends retaining this provision.

Power to borrow



Background

The Trust has 3 different powers to borrow. All can be secured against revenues or land but since 1995 if borrowings are secured against purpose land, the agreement cannot contain a power of sale or a right to sell timber.

The powers are:

- Without consent to borrow for the purposes of the 1884 and 1909 Acts (1909 Act)
- With Secretary of State consent for the purposes of 1884, 1909 and 1924 Acts.
- With Secretary of State consent for the purposes of 1930 and 1995 Acts.

Current proposals

We are taking advice to see what constraints (if any) are imposed on other charities. At the very least, the present position in relation to borrowing should be preserved. The Trust can secure borrowings against land and revenue streams. In rationalizing the current provisions it might be appropriate to adopt the requirements in the 1995 and 1924 Acts to obtain Secretary of State consent (subject to the views of the relevant department) if the loan was to be secured against purpose land (with no power of sale nor power to take timber from the land as now).

In relation to ancillary land, the Trust should be allowed to secure borrowings against it without a requirement for external consent and there could be a power of sale in the event of default.

The new proposal is that the Trust should be able to offer up land which it is in the process of buying as security, with a power of sale. The reason for this, as per the consultation document, is that should the opportunity arise to purchase one of the sizeable land holdings on the Hills which the Trust does not own, it would be unable to offer sufficient security for any loan. The Trust will seek the views of the Secretary of State and the Charity Commission as to whether this should require Secretary of State consent.

Public comments

Some comments evidence an anxiety about borrowing by the Trust although they did not seem reflect the existing position, which is admittedly complex. A number felt there was a need to ensure some controls to make sure the Trust did not borrow too much and some objected in principle to the Trust being able to secure borrowings against land.

Organisations

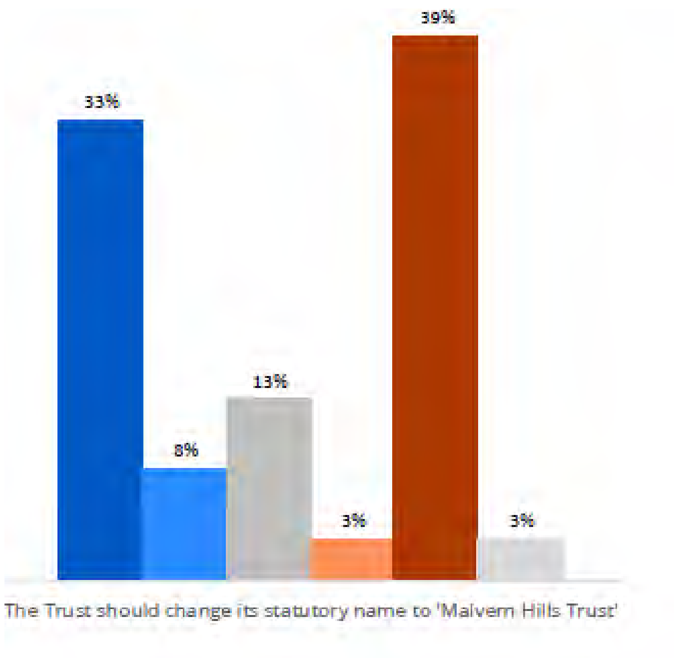
The Open Spaces Society ask whether the Secretary of State will wish to continue in the current role of having to give consenting to borrow.

Working Group recommendations

> The Trust is taking advice on the position of other charities, in relation to securing borrowings and Trust's Parliamentary Agent will enquire whether the Secretary of

State wishes to continue to consent to some borrowing and also seek the view of the Charity Commission. These provisions cannot be finalised until then.
Because the Trust has been in the fortunate provision of having sufficient reserves available to purchase land, the powers to borrow have not been used for at least the last 30 years. (Until the recent requirement to make provision for an internal loan to spread the cost of the Private Bill) However, the Trust needs to be in a position to borrow if funds are required in pursuance of fulfilling its Objects.
If the Trust needs to borrow to purchase an important piece of the Hills it may need to be able to proceed quickly, for example if land is for sale by auction. The new Bill should not place the Trust in a significantly less favourable position than it is currently in.
The Trustees are under an obligation to act responsibly, in the best interest of the Trust and within their powers. This would include ensuring that any repayments could be serviced by the Trust.
The existing powers (see page 32 of the consultation document for details) need to be restated in a provision which covers all requirements.
The Working Group recommends that the Board maintain the status quo including the power to secure borrowings against ancillary land without the need for Secretary of State consent.

Change of name



Public comments

Whilst the percentages for and against the name change were more or less the same, a number of comments made reflect the views of those not in favour of the change. Some comments did not flow from the facts – for example that the name change was a tax dodge or that it would be a waste of money – in fact it would incur no additional cost.

Organisation comments

The Open Spaces Society supported the name change.

Working Group recommendations

The Trust adopted the working name Malvern Hills Trust in 2017. Please see the papers on the members section of the website which set out the process and the rationale for the rebrand.

The name changed flowed from work on the Trust "brand" as it had become clear the Trust was struggling to get its key messages across including an understanding of its charitable status and the work which it carried out. This was evident from research carried out both with residents and visitors.

The rebrand and the name change was driven by the need to secure a number of operational benefits:

- to reduce confusion in the minds of the public about the Trusts status and that it was not linked with local government
- the need to give a strong professional first impression when making grant applications
- to increase opportunities for partnership working
- securing an increase in donation and legacies which were felt to suffer as result of a lack of awareness of the Trusts chartable status.

The change would reflect the Trust's well established brand and the name most people now use.

The Working Group recommends the Board proceeds with the proposal to change the statutory name to Malvern Hills Trust.

Objects

Working group report

The objects were revised slightly following the s74 application and were referred back to the Charity Commission who confirmed the revised draft was acceptable. The Charity Commission will have to be consulted on any further changes to the objects as they have a regulatory interest and this was also a specific matter set out in the s74 consent.

Current draft cause

(1) The objects of the Trust are, for the benefit of the public—

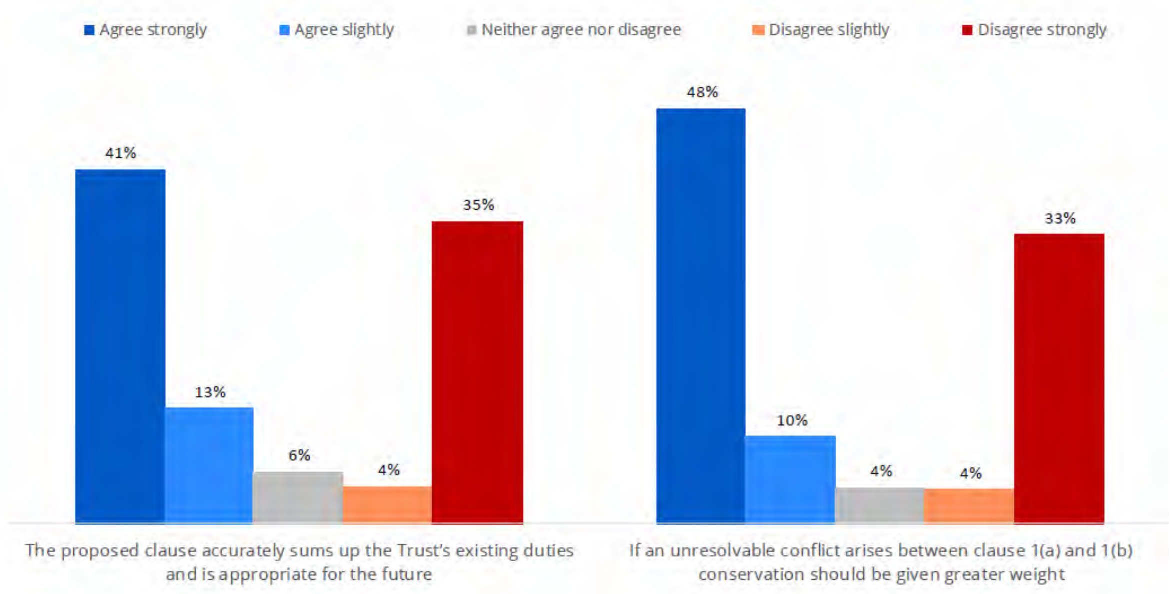
(a) to protect, conserve and maintain the landscape, natural appearance, habitats, flora and fauna, geology and archaeology of the Malvern Hills; and

(b) to keep the Malvern Hills unbuilt on as open space for recreation and enjoyment of the public.

(2) If in exercising its functions, it appears to the Trust that there is a conflict between the object specified in subsection (1)(a) and the object specified in subsection (1)(b), and the conflict cannot be resolved by the Trust, the Trust must attach greater weight to the object specified in subsection (1)(a).

(3) Subsection (2) is subject to consideration by the Trust of the health and safety of persons.

(4) In subsection (1), “unbuilt on” means unbuilt on except for any buildings that existed at the date on which this Act was passed and any buildings which replace them.



Public comments

As illustrated above, a majority of respondents agreed that the redrafted objects reflect the Trust's current objects and the incorporation of s1(2) reflecting the Sandford Principle was supported as guide to decision making in the last resort when objects 1(a) and (b) could not be reconciled by careful management.

A number of points were picked out from the public comments in the online consultation for consideration by the working group.

- the omission of the word "**unenclosed**" and the reasons for that (6 comments on the drafting issue, but a number of related comments expressing concerns about public access and losing the open landscape of the commons)
- changing "maintain" to "**enhance**" (4 comments) -
- using the term "**biodiversity**" instead of flora and fauna. (2 comments)
- Change from the term "**natural aspect**." (3 saying the term should be retained, 7 broader comments)

Organisation comments

Open Spaces Society (OSS).

1. Clause 1(1)(a) should also include the object of protecting, conserving, and maintaining the **cultural heritage** of the Malvern Hills. This would include its traditions, as well as commoning
2. Clause 1(1)(b) should refer also to the objects including to **promote public understanding** of the Malvern Hills, as well as public access.
3. Clause 1(2)
   We propose that [the] **objects should be of equal standing**, and the trustees should continue to rely on specific powers to manage or restrict public access where this is necessary for defined purposes, and subject to existing controls. In

effect, the trustees will continue to act to fulfil all of these objects, and to reconcile any conflicts in accordance with their existing statutory powers. The new subsection is pretentious and unnecessary.

Commentary on points raised by OSS

<u>Legal advice</u>
Please see comments in the confidential legal advices from VWV and Sharpe Pritchard, circulated 3 September and 1 September.

<u>Officers' response</u>

Points raised in discussions with OSS

1. Cultural heritage
    - We were not planning to change the objects, just re-state them in modern language.
    - One of CC's conditions of going ahead was that we consulted them if there was to be any change to the objects.
    - We included "cultural landscape" in a previous draft and CC said that was not acceptable to them.
    - Cultural heritage (of the common) was not readily capable of definition and could potentially include outdated or damaging practices. If you are talking about preserving the cultural heritage, at what point in time? People once wanted to drain the commons?
    - Cultural heritage is mentioned in National Parks legislation but Trust isn't a National Park or a public body.
    - Looking after the private rights of commoners isn't a charitable object.
    - The Trust does in practice support commoning where it aligns with the Trust objects. The OSS cited well dressing as an example of cultural heritage (although they were not aware that it was currently practiced. Well dressing in the area had lapsed and was reintroduced in the 1990s). The Trust facilitates well dressing on its land. It is not strictly relevant to preservation of the landscape or access by the public.

2. Education work is undertaken pursuant to the existing legislation and it is intended to continue this. Educating the public about the Hills and their special features is one way the Trust works to deliver its objects and is ancillary to them. Landscape scale education falls to Malvern Hills National Landscape not to the Trust.

3. The objects are a mission statement –the detail of how they can be implemented is set out in the Bill. The Trust needs to be able, where necessary, to prioritise the things which need preserving for the future public's enjoyment.

The Trust needs to try to mitigate public access pressures. Subclause 2 does not mean that whenever access causes a problem we should defer to conservation but is a guide to trustees when as a last resort the conflict between 1(a) and (b) cannot be resolved by skilful management. OSS referred to the Sandford Committee report where it states [the National Landscape body] should "develop capacity in suitable areas to absorb greater numbers". The Trust manages a very small part of the National Landscape. It will not always be possible for the Trust to develop capacity elsewhere in a landscape on this scale where most people want to go to the same areas, normally on the ridge. It is accepted that full expression of the Sandford principle goes beyond what is set out in clause 1(2) but this nevertheless provides a guide to trustee decision making. All decisions of this sort would be in a meeting open to the public.

Working Group recommendations

The working group is very grateful to the Open Spaces Society for their detailed and expert input to the Trust's consultation.

Additional objects

The working group was mindful of the advice that the inclusion of the suggested objects would go beyond the Trust's current purposes. The Trust carries out a number of activities aimed at educating the public about the special features of the Malvern Hills, because this is a very important way of fulfilling the Trust's objects by ensuring that visitors understand, respect and care for the landscape. The Trust considered the introduction of an educational object at an earlier stage, and was advised by Bates Wells that this was unnecessary as the activities it carries can be done as part of fulfilling its existing objects.

Subclause (2)

The working group do not believe that the inclusion of subclause (2) means that conservation will always take priority. One of the key roles of the Conservation Department is to manage the land to avoid the Trust's dual purposes conflicting. This subclause will come into play on the rare occasions when this proves impossible. The Trust already makes this judgement to an extent by using the powers in s15(3) 1995 Act to fence off certain areas for the purposes specified. The objects are a mission statement, the methods the Trust can use to implement them are set out in the other parts of the Bill. The underlying principle is that the Trust should not allow the features of the Hills which make them special to be degraded and deprive future generations of the opportunity to experience them. **The working group therefore recommends that the Board to consider making no change in response to the points raised about the Trust's proposed objects by the OSS.**

Points raised in online comments

"Unenclosed"

There were a limited number of comments about the removal of "unenclosed" from the objects (including from Castlemorton Common Association) but a greater number raising concerns about associated issues - loss of the open appearance of the commons (including concerns that the Trust might fence along the sides of the roads crossing the commons) and using fencing to deny public access.

<u>Background</u>

The preamble to the 1884 Act refers to enclosures and encroachments having been made upon the common and one of the purposes of the Act was to prevent such enclosures. In this context the term is used to mean fencing off land for private use.

S10 of the Act declares that "no enclosure shall be made or building erected on the lands subject to the Act" and gives the Conservators a power to keep the said lands as open space free from enclosure.

Unenclosed is a term used in s3(a) of the 1930 Act in a slightly different way.

Except as in the Malvern Hills Acts otherwise provided they shall at all times keep the Malvern Hills unenclosed and unbuilt on as open spaces for the recreation and enjoyment of the public;

The Trust had no powers to fence in the 1884 Act but powers were introduced in the 1909 Act to protect trees and in the 1930 Act to fence dangerous places. It was not until the 1995 Act that wider powers to temporarily fence for specific purposes were introduced.

Advice from Parliamentary Agent

This has been circulated. A clause had already been prepared and had it been included in the consultation document, might have allayed some of the concerns:

Draft clause: Duty to keep the Malvern Hills unenclosed

Except as otherwise provided in this Act, the Trust must—

(a) at all times keep the Malvern Hills unenclosed and unbuilt on as open space for the recreation and enjoyment of the public; and

(b) by all lawful means prevent, resist and abate—

(i) all enclosures and encroachments upon and all attempts to enclose or encroach upon the Malvern Hills or any part of the Malvern Hills; and

(ii) any attempt to appropriate or use the Malvern Hills or the timber on the Malvern Hills for any purpose inconsistent with this Act.

A meeting for trustees with the Parliamentary Agent has been arranged for next Wednesday to how this issue is best addressed in the drafting.

Working Group recommendations (prepared before the issue of Sharpe Pritchard's advice)

The open aspect of the Malvern Hills and commons is one of the outstanding features of the landscape and it is clear that is treasured by many of those who commented. Although there were limited comments specifically about the omission of the word "unenclosed", there were a significant number of others in several different sections of the responses, reflecting the importance of maintaining the open landscape and expressing concern about whether access would be in some way restricted. Whilst there was some misinformation circulating suggesting the Bill could result in land being shut off by the Trust and access prevented, there is no doubt about the genuine nature of these concerns. The working group and no doubt all trustees would wish to see the open nature of the landscape maintained and access to it be fully available to all wishing to exercise their rights under the Acts.

Although not itemised for consideration by the working group, they also reflected on the comments about how the term "unbuilt on" was defined and have suggested these are passed back to Sharpe Pritchard to consider whether the concerns can be reflected in the drafting.

The working group recommends to the Board (subject to the advice of Sharp Pritchard) that they consider whether the word "unenclosed" should be introduced back into the object. Sharpe Pritchard should also be asked to consider whether any other reassurance that the open landscape will be maintained can be offered through the drafting of other provisions in the Bill.

Natural aspect

The Bill is an opportunity to clarify the term Natural Aspect.

Comments reflected the degree of ambiguity in relation to "natural" and "aspect"! Some supported the Trust's proposal on the basis it incorporated the various elements which were intrinsic to the appearance of the Hills. A number of people put forward their own views on what the terms meant. One commented that it should include the outlook from the Hills (which is beyond the Trust's control) whilst others pointed out that in fact the landscape of the Malvern Hills and commons has been shaped by humans and is in reality a managed landscape.

Legal advice

Please see comments from VWV and Sharpe Pritchard

There has been a limited consideration in case law of the term, notably **National Trust for Places of Historic Interest or Natural Beauty v Midlands Electricity Board** where there was a discussion about the meaning of the words in relation to their use in a deed of covenant. Vaisey J said, "the omission of any criterion by which these vague and uncertain words can be brought under some control is fatal to the validity of the restriction". He found the term in that instance to be void for uncertainty.

Working Group recommendations

The working group noted the value that some respondents placed on the term "natural aspect" but there were a variety of views on what it meant. Other commentators felt that a more definitive and readily understandable term was needed.

The working group considered that "natural appearance" captured what was meant by 'natural aspect' 140 years ago but was more readily understandable by a modern audience. They therefore suggest the Board should consider making no change, ie that the proposed wording of 1(a) should remain as 'to protect,

conserve and maintain the landscape, natural appearance, habitats, flora and fauna, geology and archaeology of the Malvern Hills;'

Enhance and Biodiversity

Legal advice

Please see comments from VWV and Sharpe Pritchard

Enhance

There were a limited number of reasoned comments expressing the view that the word 'enhance' should be included as this would better allow for changes in management in the future, eg in response to climate change.

Working Group recommendations

Enhance
This is a nuanced point. The working group understands the view that including the word enhance might enable to Trust better to respond to climate change. However, they noted Sharpe Pritchard's comments about the scope for debate provoked by the amendments to s85 of Countryside and Rights of Way Act 2000 to include this word.

The working group recommend that the Board adhere to "conserve and maintain", because implicit in 'maintain' is the requirement to respond to changing pressures in the external environment.

Biodiversity

Although the term biodiversity can be seen as broadly equivalent, it goes beyond flora and fauna as it encompasses the genetic diversity of domesticated animals and plants as well as undomesticated. For MHT's purposes, the term flora and fauna is felt to be more appropriate and is likely to be better understood and the **working group recommend that the Board make no change**.

Recommendations

Land Management

That the Board resolves to:

1. Request the Parliamentary Agent amends the clause relating to securing the grazed commons to take into account Officer concerns that the most appropriate site for fencing will not always be on the exact perimeter of the common
2. Include a requirement that there should be a minimum of 6 month break following fencing to regulate grazing before the same area can be fenced again, but with a *de minimis* exception to enable up to 1ha to be fenced again for the control of unwanted vegetation.
3. The proposal to be able to fence for animal health reasons be removed.

Licences and Leases

That the Board resolves:

4. To make no change to the Trust's proposals in relation to leases and licences of land (including buildings).
5. To make no changes to the proposals outlined in the consultation document in relation to licences for activities on Trust land (but to ask the Parliamentary Agent whether some of the concerns expressed can be addressed in the drafting).
6. To make no change to the Trust's proposal to change the consultee in relation to licences for overground services.

Modernisation of the Trust's Administration

The Board resolves:

7. To make no change to the Trust's proposal to be able to hold hybrid or online meetings
8. To retain the provision to permit the Trust to set up a supporters organisation but adopt the term "supporters" instead of "members".
9. To make no change to the Trust's proposal to include a restricted general power in the Bill.
10. To restate the current power to borrow within the provisions of the Bill
    - powers to borrow in furtherance of its purposes,
    - powers to secure borrowing against land and revenues, but without any power of sale or to cut and sell timber in relation to its current purpose land.
    - powers to secure borrowings against ancillary land without third party consent, and any such loan agreement can include a power of sale

To establish the view of the relevant Government department and the Charity Commission on any requirement for third party consent to secure borrowings against existing purpose land or new purpose land.

11. To proceed with the change of the charity’s statutory name to Malvern Hills Trust.

Objects

The advice from Sharpe Pritchard was circulated after the working group report was prepared. The group’s recommendation was to make no change to the objects as currently drafted, save for consideration of whether to introduce the word “unenclosed”.

David Core, John Michael, Mike Wilkinson, Sheila Wren
Working Group

Susan Satchell
Governance Change Officer
15 September 2024

Malvern Hills Trust

Special Meeting of the Board

Consultation outcomes and whether any changes should be made to the Trust's proposals for a Private Bill in response.
10 October 2024

Background

Trustees are aware of the reasons why the Trust needs to update its governing Acts and the work which has been put into shaping its proposals over the last 10 years. The background to the Trust's two public consultations is set out in Paper A for the meeting held on 19 September 2024 ("Paper A").

At the end of the consultation period, a working group was set up at the Board meeting on 8 August 2024 and the group have reviewed all the key topic areas (land management, licences and leases, administrative provisions, constitution of the Trust and its objects) which had been identified by the Board as having attracted the most significant comments. The working group considered the background to the current proposals, sought additional input where needed and prepared reports setting out their recommendations. The first tranche of recommendations were considered at the Board meeting on 19 September. Since then there have been further reports and two further workshops on 20 September and 3 October. These have given trustees the opportunity to consider the remaining issues with the working group's recommendations and to request any additional information in advance of this meeting.

Consultation responses

The Trust again thanks those who responded to the consultation. The working group carefully considered all the responses.

As stated in Paper A, the consultation responses evidenced a degree of confusion about the Trust's status. The Trust is a charity and the trustees' duty is to act in accordance with the Malvern Hills Acts to care for the Malvern Hills and preserve the land under its jurisdiction as an open space for the enjoyment of everyone, and not to conduct its affairs for the benefit of any particular section of the public. Although this may mean some hard choices, when considering and responding to the consultation, trustees must act solely and exclusively in the best interests of achieving the Trust's objects.

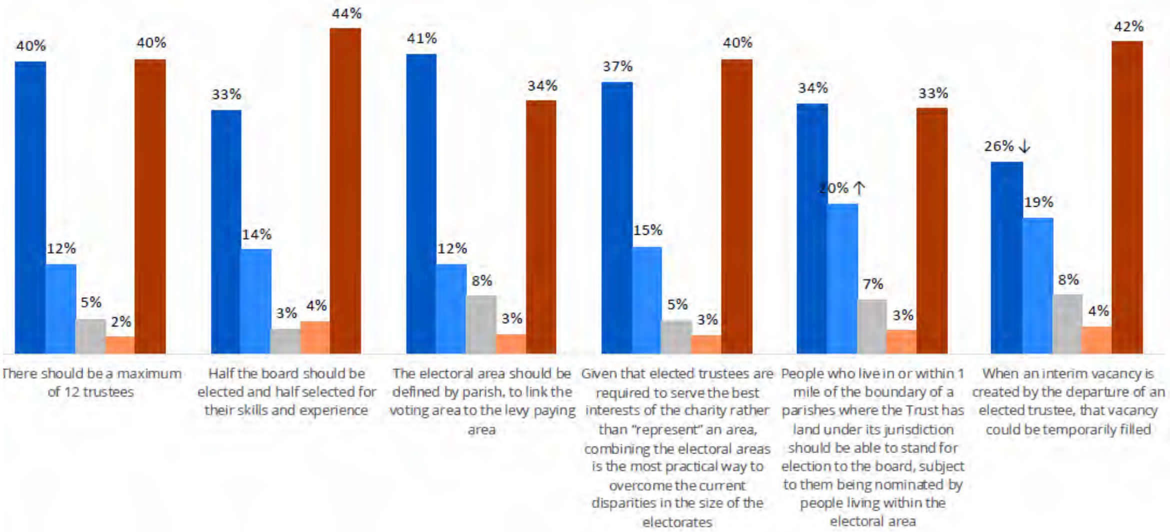
General points

Trustees are reminded that the Charity Commission have asked to be informed of any changes to the proposals which the Trust set out in its s74 application and which formed the basis of the Trust's public consultation.

The budgeted legal costs for the Bill were based on the proposals in the s74 application. Any significant changes in response to the consultation will incur additional costs.

Appointment of Board members

Consultation outcomes



Background

Trustees are well aware of the current process for appointing trustees and how this contrasts with what is considered good practice for a charity board. That the Trust is different from most charities because of its power to raise a levy means that special considerations must apply. At present there are 11 elected trustees, who make up 38% of the Board. The reality is that few of these seats are contested in Trust elections (three in the 2023 elections and four in the 2019 elections). This means that most levy payers do not have the chance to vote and anyone who wants to stand has a good chance of getting on the Board, which is not a satisfactory method of appointing trustees by any criteria. Low turnout also means that a trustee can be elected by a very small number of the total electorate.

The Trust is in a position where a number of the bodies who have the opportunity to appoint trustees do not do so and none has a legal obligation to consider whether the trustees they do appoint have any skills or experience relevant to the running of a charity caring for a nationally important landscape with an income in excess of £1million per year. Most of the appointing bodies rely on finding volunteers and again this is not a good sole criterion for appointment. The Trust needs a board of trustees who are motivated by their obligation to put the interests of care of the Malvern Hills first and are equipped with the right skills and knowledge to do so.

Working Group

The working group was tasked with revisiting the following topics:

- The mix of elected and selected trustees and the number of trustees
- The electoral area
- The process for appointing selected trustees and the criteria for selection that need to be outlined in the Bill (a majority of consultees were in favour of an independent selection process).

The background to the present proposals on appointment of trustees is:

- More time was spend developing these proposals than any other area of the reforms.

- It was agreed at an early stage that there needed to be a different way of appointing trustees in order to meet the Charity Commission recommendation that trustees should be appointed for their relevant background, skills and knowledge. At the moment the Trust gets the trustees it is given. Originally the proposed number of elected trustees was the same percentage as now – around 40%.

- The original plan was a Council and Board model similar to the National Trust. The Council would have a fixed composition, possibly with some members appointed by the bodies who currently appoint trustees but with a much wider membership including people with a conservation and land management background. The Council would appoint the Board (who would not have to be Council members).

- Whilst there was a range of views, as now, 12 has always been the number of trustees that a majority felt was right.

- A working group led by Prof John Raine interviewed trustees and staff and produced a report in October 2017. This formed the basis of the current model of six elected and six selected trustees, with the selected trustees being appointed by an independent panel, and one quarter of trustees retiring annually in rotation.

- Prof Raine also tried to find a model which might produce six separate voter areas using local government boundaries, but the Board's conclusion was it was not achievable to produce six areas with geographic links and something approaching similar voter numbers. The single voter area with a single list was preferred, particularly as elected trustees are not representatives of the area that elects them, but have to act solely in the best interests of the charity's objects. This, combined with widening the area from which people could stand for election, also reduces the risk of candidates being elected unopposed.

- There have been some refinements since then but this basic model was the basis for the consultation.

Consultation outcomes

From the numerical data, a majority of individual and organizational responses were in favour of a maximum of 12 trustees, defining the voter areas by parish, using one single voting area and extending the area from which people can stand for election.

The majority of organisations agreed that half the Board should be elected, and half selected, and that interim vacancies should be temporarily filled by the Nomination Panel. A 1% majority of individual respondents disagreed with these two proposals.

Online consultation comments

Not all the comments reflected an understanding that the Trust is a charity, that trustees once appointed have to act solely and exclusively in the best interests of the charity's Objects and that there is a requirement for the charity to ensure no decision making should involve trustees with conflicts of interest.

There was a significant number of comments against the amalgamation of wards/parishes into a single voter area, which centred around levy payers wishing to appoint someone who was "accountable" to them and who would represent their interests (which as a matter of law they cannot). There were also a number of comments suggesting more than half trustees should be elected.

There was a recognition that having selected trustees opened up the opportunity to bring in skilled and knowledgeable people from outside the levy paying area, particularly as Malvern Hills and Commons are of national importance for nature conservation and as a recreational amenity. Others were of the view that all Trustees, including those appointed, should come from the Malvern area or be levy payers.

There were a few comments suggesting there should be places for "special interest groups" on the Board. (eg someone from Castlemorton or someone with "appropriate ecological expertise" or an environmental non-governmental organisation)

There were a number of suggestions about the composition of the Nominations Panel but no clear solution emerged.

Other comments

The Trust has been in contact with a number of people with an interest in its proposals to introduce a Private Bill and one has written to the CEO commenting:

"*Suppose there is a single-issue pressure group generally opposed to any development, and particularly the granting of easements. They put forward only six candidates and they make it quite clear that they are in the group which is opposed to development. I already think that you will experience low turnout, but many of those who do vote might just look for the six who are opposed to developments. Once they are trustees and with a mandate, the six will have a majority if any one of the other appointed trustees is absent or not appointed."*

Trustees should take due note of this significant risk which would also apply to other pressure groups eg those for and against the cable car proposed a few years ago or an "anti-cycling" group. This risk would be greatest during the transition phase when all six seats will be contested at once. In subsequent rounds usually a maximum of three seats would be contested, reducing the risk of a complete takeover from a pressure group.

The mix of elected and selected trustees and the number of trustees

The current proposals already increase the number of elected trustees from 38% to 50%. A further increase would not reflect either the current percentage of elected trustees or the financial contribution – generally around 40 to 45% of MHT's income - made by the levy payers (although it is acknowledged that this is substantial in monetary terms and the levy payers have no option but to make the payment).

In its response to the consultation, Malvern Hills District Council (MHDC) stated that it had seen "no compelling evidence" to limit the number of elected trustees to six, suggesting that it thought a higher number might be appropriate. However, they also acknowledged that trustees with relevant skills and experience would help the work of the Trust.

<u>Working Group recommendations</u>
There have been no compelling reasons advanced for changing the number of trustees from 12.

Twelve is the maximum number recommended by the Charity Commission for efficient decision making. This has been discussed by the Board on very many occasions and although there are differing views on the margins in favour of more or fewer trustees, the decision has always been that 12 is the optimal number and this was supported by the majority of consultation respondents.

The working group recommends no change to the current proposals

There was a 1% majority against equal numbers of elected and selected trustees. This did not differentiate between those who thought there should be fewer elected trustees and more selected for their skills and background or vice versa. There is a real risk to the Trust of a single issue pressure group influencing the composition of the board through the election process by having equal numbers of elected and selected trustees. It would be difficult now to seek to reduce the proposed number of elected trustees. Given that good practice is for a charity to select trustees for their skills and background **the working group recommends making no change to the balance of elected and selected trustees**

Extending the area from which candidates can stand for election

<u>Working Group recommendation</u>

This was supported by a majority of respondents and the working group recommends no change to the current proposal

Using the same definition for the electoral area and the levy paying area

Working group recommendations

This was supported by the majority of respondents and is the only logical choice. **The working group recommends no change to this proposal**

Single electoral area

This proposal was supported by a majority of respondents.

Dividing the voter area using local government boundaries runs the risk of voting districts being wrecked by future local government boundary changes. The vulnerability of trying to subdivide the area in this way is highlighted by the fact that the warding arrangements within Malvern Town were changed both in the review of the District Council electoral area and again in the review of Country Council divisions. The Trust understands that the proposal to make Worcestershire a unitary authority may be revived in the foreseeable future. Having a single electoral area future proofs the provisions of the Bill.

Having noted the comments in the consultation responses from individuals opposed to a single electoral area, in the workshops, the trustees considered three possible options for dividing the electoral area:

a) By parish and parish ward to form six divisions, each appointing one trustee. The downside, as identified, is changes to local government boundaries, as the Trust has learnt to its cost.
b) To have groups of parishes electing a trustee and then a single list within Malvern, eg Colwall and Mathon elect one trustee, West Malvern, Wells and Guarlford elect one trustee. Malvern elects four trustees from a single list. This carries less risk.
c) Dividing the area by map. An option identified at the first workshop was to divide the electoral area by use of a map. This could make use of existing local government boundaries where possible to simplify the creation of the Trust's unique voter lists, but the divisions would not be affected if local government boundaries changed. It would also allow for by-elections should a trustee leave during their term. The downside would be the cost of creating the Trust's bespoke electoral lists and reviewing them against the electoral roll every time there was an election. It would also increase the overall cost of the first elections.

Points to consider: one electoral area vs division of the area

This is not an exhaustive list.

Against splitting the electoral area:

1. Divisions defined by map or "former" parish areas would mean there may be no chance of the District Council running conventional elections in the event of future boundary changes, if the proposal for an entirely postal vote system did

not find favour in Parliament. The District Council could run conventional elections for a single area as long as the parishes still existed.

2. In terms of consultation responses, those against a single electoral area were in the minority (around 200 people opposed). To make a change would be against the balance of the views of consultees. Making the change to separate divisions' would affect perhaps 14,000 levy paying households on the basis of a response from 200 people, which is something the Trust should weigh very carefully.
3. Having divisions would increase the risk of getting areas where no candidates stand for election, or where someone is elected unopposed.
4. Having divisions would increase the risk of getting several good candidates in one division, (all but one of whom would be knocked out, to the detriment of the Trust). Hopefully with a single list, the Trust would get the best six candidates.
5. People (particularly those from outside the division) will be uncertain where to stand.
6. Having divisions would re-enforce the idea that electors have a "representative". The Trust has noted the concerns raised on this topic and has said that post-election/appointment, it would allocate a trustee to areas to act as liaison. This provision could probably be incorporated into the legislation.

Points with both benefits and disadvantages

1. The cost of running the elections directly affects the amount the Trust needs to raise by way of a levy. The table below sets out the cost of running an election over a single electoral area compared with the cost of running elections over six different divisions. Two companies have given "ball park" figures for the cost of running elections by post /online.

	Running an election over a single electoral area
	Running an election by division

	£	£
Malvern Hills District cost of conventional election over a single electoral area	87,972	
Postal elections	Company A	Company B

Cost of running an election over a single electoral area	29,000	38,000
Cost of setting up bespoke electoral lists. One company gave no time estimate, the other said two days	1,000 per day	950 per day
Running a ballot per constituency (about 5,000 electors)	6,750	8,000
Simultaneous election over all 6 divisions (ignoring cost of setting up the electoral lists)	40,500	48,000

It must be stressed that these figures are very much a best guess.

2. Dividing the electoral area would accommodate the comments from some respondents that smaller electoral areas would allow people to feel they had their own trustee. However, this would increase the risk of conflict of interest eg where there was an easement application, request for play equipment, signage on Trust land etc. Having the single list mitigates this to a large extent.

In favour of divisions

This would open up the possibility of holding by-elections if someone died/stood down, getting rid of the perceived problem of having a nominated trustee in the interim period before the next scheduled elections.

Working group recommendation

The working group makes no recommendation, save that if the proposal for a single electoral area is retained, the Parliamentary Agent should be asked to advise on including a provision in the Bill to require the Trust to appoint trustees to liaise with particular local areas.

Independent Nomination Committee

Whilst this was supported as a concept by the Board and in the consultation, the matter of how to constitute a nomination committee or panel was never satisfactorily resolved.

Selection and appointment of trustees is ultimately a board responsibility.

The Trust's lead charity law adviser (Con Alexander from VWV) has been asked for his views and the benefit of his wide experience. He commented as follows:

A large number of charities select new trustees by using a Selection Committee comprising trustees who carry out the selection process. Some other charities do have some independent input on trustee selection.

He could not see a way of setting up a completely independent trustee selection panel in a fool proof way. If external bodies are specified to appoint to a nomination committee, they may fail to act or there is a risk the body may in future be abolished.

The National Trust governance requires the nomination committee to have on it at least one member who is external to the charity and similarly, universities normally have a requirement for the committee nominating board members to have external members.

He suggests the Trust might set out a requirement to have a nomination committee as a standing committee, with a fixed composition of say two trustees and two external members with the CEO or other staff member included in an advisory but not voting capacity. The Act would need to define what was meant by "external", and might include criteria such as relevant expertise.

Bodies would advertise for their external committee/panel members, who might then serve for a set term. This would then leave the Trust in control of the appointment process but retaining a level of independence that would fetter the ability of trustees to appoint just from their associates or friends.

Trustees have seen a "worked up" proposal at the workshop on 4 October.

Working group recommendation

The working group recommends adoption of this proposal for appointment of selected trustees.

Electoral rules

Note: This was not a matter on which the Trust consulted but if the Trust was to set up its own electoral arrangements, there will need to be some provision for the Trust to set up regulations under the statutory framework. Comment was made in the course of the consultation process that there would need to be a cap on candidate's election expenses.

Conclusion

There is no perfect model for appointment of trustees. It is a case of finding an optimal arrangement that will work, which will minimise the chance of trustees being conflicted, and give the Trust the ability to recruit trustees with the right knowledge and skills to serve the interests of the charity. These factors need to be balanced with a recognition that those who pay the levy should have an appropriate say in the appointment of trustees.

Trustees have spent years considering the options. The present proposal balances those considerations although it does increase the proportion of elected trustees from 38% to 50% with attendant risks. All trustees are under a legal obligation to act in the best interests of the charity but this does not mean that all trustees necessarily will.

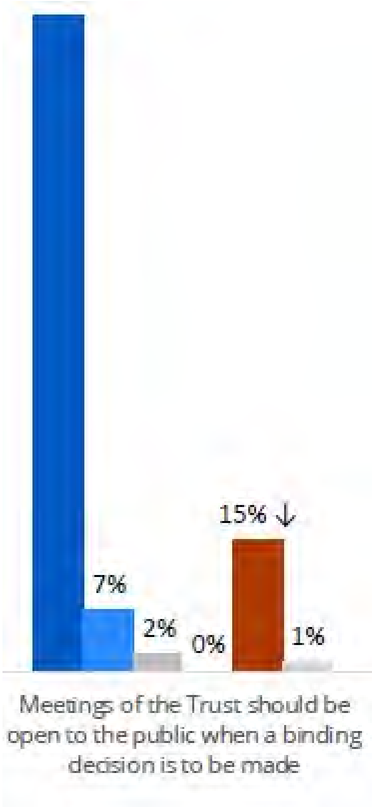
The single electoral area overcomes the problem of future boundary changes throwing the provisions in the Act into disarray.

If trustees wish to make any significant change to the arrangements they will need to work on them quickly, to leave time for drafting and for the changes to be put to the Charity Commission if the Bill is to be lodged in November 2024.

Miscellaneous

The working group identified a small number of topics which were not included on the schedules referred to at the meeting on 8 August, on which they felt they should comment. These were: public attendance at meetings, fixed penalty notices and a power to build.

Public access to meetings



Public comments

There were a number of comments expressing the view that all meetings of the Trust should be open to the public whether a decision is being made or not, and including in some cases where confidential matters were being discussed.

Present position

MHT meetings are open to the public under 1995 Act which incorporated the provisions of Part VA and Schedule 12A of the Local Government Act 1972. This includes all committee and sub-committee meetings. Trustee meetings at other charities are not normally open to the public. The present requirement to hold public meetings reflects the unusual position of the Trust, as a levying body and the Trust is content to be transparent in its decision making processes except where it involves legal, personnel or commercially sensitive matters, which must be discussed in the absence of the public.

The purpose of the committee system is to enable smaller and hopefully more specialist groups of trustees to work through issues surrounding a particular topic and make recommendations to the Board. The Board can then instigate a further discussion and a decision is made. With very limited exceptions, no decisions binding on the Trust are made in committee meetings. Meetings are closed to the public when exempt business is discussed (legal, personnel and commercial matters where confidentiality is essential).

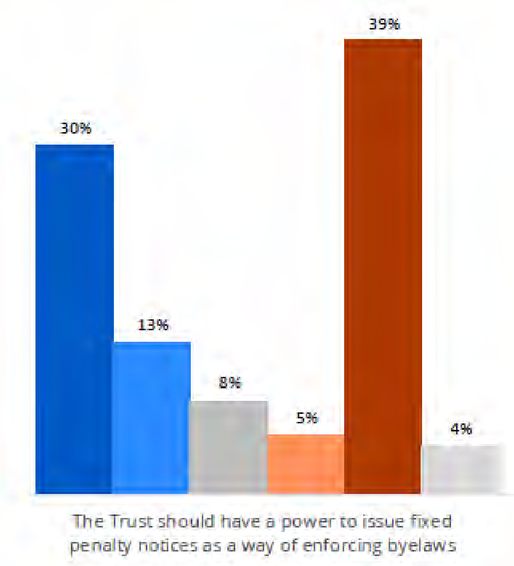
Current proposal

With a smaller Board it will be easier to have more effective discussion and decision making, so there should be less need to use committees. However, there will on occasions be a need for a committee to give detailed scrutiny to a particular topic (eg preliminary discussions on a budget or when a particular task is being planned). It is proposed that meetings where no binding decision is made should be closed to the public to enable trustees to have a frank and open debate. Because a committee's remit is limited to making recommendations, further discussion and the decision will be made in a Board meeting which is open to the public and the process will remain transparent. –

The proposal is also to have an express power to close meetings if the normal conduct of the meeting is being disrupted by members of the public.

Working group recommendation
The working group recommends retaining the current proposal to have meetings in public only where a binding decision is being made. (With a power to close meetings to the public where the conduct of the meeting is being disrupted).

Fixed Penalty Notices



Public comments

There were a number of supportive comments but also numerous comments expressing concern about the safety of employees issuing fixed penalty notices. There were also comments about the difficulty of observing and evidencing byelaws breaches and a small number of comments suggesting that this power would be used as a money making exercise or that this was the job of the police to enforce the byelaws.

Officer comments

The only option available to the Trust for enforcing byelaws (other than in relation to failure to display a parking pass or ticket in the car parks) is to take offenders to court. This is a cumbersome and extremely expensive process. The police have always declined to prosecute under the byelaws (although they can).

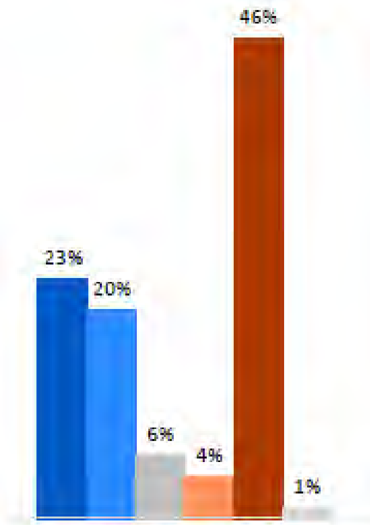
This power will never be a substitute for giving advice and an explanation why certain behaviours are not permitted. In reality, the power will only be used in limited circumstances – eg where there is a repeat offender known to the Trust

The Trust is fully aware of its responsibilities to its employees and should it be permitted to use fixed penalty notices, would need to put procedures and training in place for employee protection.

Working group recommendation

The working group recommend retaining a provision to allow the Trust to use Fixed Penalty Notices

Power to build



Subject to obtaining planning and other necessary permissions, the Trust should have a power to build in furtherance of its objects, on land which does not form part of the commons for the purposes as set out on page 50 of the consultation document

Public comments

The main concerns expressed were centered on this power potentially leading to buildings being used for commercial purposes. There was a query in the responses about current ancillary land and this is Lidiards, a field at Hollybed Common and the Trust's offices at Manor House.

Officer comments

The Trust clearly needs to have premises from which it can run its operations. At the moment the Trust operates from two sites, the office in Malvern Town centre and Top Shed at the Wyche. The Trust does not have a space big enough to host a board meeting, a full staff meeting, a training workshop for volunteers or a public information event. The Trust may in future want a facility for volunteers, to welcome and provide information for visitors and facilitate educational talks etc.

From an operational point of view, and to support a team ethos - the field staff and office staff have very limited contact with each other - it would be helpful to work from one site. The chances of finding a site with the right range of facilities is slim and the Trust's existing powers to acquire land need to be supplemented with a power to build on land acquired for operational purposes.

The Trust can already buy offices and build sheds. This is a minor extension to this existing power. For the avoidance of doubt the Trust has a power to sell, exchange or otherwise dispose of ancillary land and this power should be retained.

Like so many of the other proposed provisions, no plans have been worked up for any such project and it would need to be included in the business plan if the power is granted.

Working group recommendation

The working group recommends no change to the current proposal to include a power for the Trust to build on ancillary land.

Recommendations

Constitution of the trust
That the Board resolves to make no change to::

1. the proposal to have a maximum of 12 trustees
2. the balance of elected and selected trustees
3. the proposed area from which trustees can stand in Trust elections
4. to the proposal that the levy paying area and the voting area for the Trust are defined by the same criteria, namely the parishes of Malvern, West Malvern, Malvern Wells, Guarlford, Mathon and Colwall

And the Board resolves:

5. [decision on whether to retain a single electoral area], and if the proposal for a single area is retained, trustees should be assigned to act as liaison between the Trust and local areas..
6. To adopt the proposal for a nominations Committee as outlined in the paper.

Miscellaneous

That the Board resolves:

7. To retain the current proposal to open all Board meetings to the public (except where exempt business is to be discussed) but only to open committee meetings to the public where a decision binding on the Trust is being made under delegated authority.
8. To retain the provision to permit the issue of Fixed Penalty Notices.
9. To add the power to allow the Trust to build on ancillary land for the purposes set out in the consultation document.

David Core, John Michael, Mike Wilkinson, Sheila Wren
Working Group

Susan Satchell
Governance Change Officer
7 October 2024

Paper A
For decision

Special meeting of the Board
Title: Private Parliamentary Bill
Date: 14/10/2024

BACKGROUND

The Trust has been working on proposals to modernise its governance arrangements since 2014. A public consultation was held in September-October 2019 which received over 400 responses, an excellent result for a long and technical consultation. Although the Trust's proposals were widely supported a number of modifications were made to them following detailed analysis of the consultation responses.

The Trust originally planned to implement the changes using a s73 Charities Act 2011 Scheme, with the support and co-operation of the Charity Commission (CC) and the Department for Culture, Media and Sport (DCMS, the Government Department with responsibility for the charity sector). However, in the light of the strong public interest generated by the consultation, the CC and DCMS agreed "*that these changes to the charity's governing documents would now be best handled via a private bill, allowing greater scope for public scrutiny and debate than under a parliamentary scheme procedure*"[1].

PREPARATION

There followed a delay mainly as a result of external factors including Covid and Local Government boundary changes. Work started in 2023 on an application to the Charity Commission for s 74 Charities Act 2011 consent to proceed with a Private Bill. A series of workshops and briefings was held allowing both new and existing trustees to understand the proposals and consider whether they were necessary and appropriate.

A further public consultation on the revised proposals was conducted by a professional market research agency in May-July 2024. A number of written submissions were also received. The Trust's public engagement linked to this consultation included delivery of 14,000 leaflets to households in the area, meetings with local councils and other groups, drop-in sessions attended by over 300 people, writing to over 60 different organisations and charities, and publicity on the Trust's website and social media accounts. Almost 500 consultation responses were received.

A working group was established to review and analyse consultation feedback and develop proposals in response to key concerns. The Board has had the opportunity to debate these through a series of workshops and special Board meetings to agree any changes. That process completed on 10 October 2024.

Before taking the decision whether to submit the Bill to Parliament, trustees need to be confident that they have been properly informed and that the Trust has followed a robust process to ensure this.

DECISION

The Board now has a choice between two options; either to proceed with the submission of the Private Bill this November, or to postpone doing so until November

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[1] Charity Commission statement 11 March 2020

2025. That would mean a delay of a full year before the Bill would enter the Parliamentary process.

Once the Bill has been submitted, it follows the full Parliamentary process[2]. The Bill as submitted should include all the powers that the Trust believes it needs since once submitted it is not easy to extend its scope. However, the Trust will be free to introduce amendments at certain points of the Parliamentary process.

The Parliamentary Agent (PA) is content that the scope of the Bill is appropriate, and that there is sufficient time to complete the work required to meet the November deadline. He has been encouraged by the constructive responses received so far from the relevant Government Departments that have been consulted.

The pros and cons of the options are set out in the table below.

Option	Pros	Cons
Proceed	Maintains momentum following stakeholder engagement The Trust will still be free to engage with stakeholders who wish to make points, particularly drafting points on the text of the Bill, and to modify the text of the Bill as a result Builds on positive responses with Government Departments and the CC Increases the chance of the Bill receiving Royal Assent before the next Trust elections	Potentially increases likelihood of petitions to Parliament The public and stakeholders will not have an opportunity to comment on the draft Bill ahead of submission
Delay	Allows time for further public engagement including consultation on the text of the draft Bill Provides the Board with more time to reflect on proposals and implications, including costs Provides an opportunity to rescope resource requirements for the Bill process and plan accordingly	Risks reputational damage Drains Trust resources from primary activities Distracts from review of the Land Management and Business Plans Uncertain that any significant improvements or changes to the Bill would be made, potentially losing a year for no benefit Risks difficulties in running the elections following the Local Government Boundary changes which mean that the current District Council wards do not conform to the levy paying area.

[2] The process was described in a briefing note for trustees from the PA

Option	Pros	Cons
		Delays having powers that are needed to improve the Trust's ability to manage the land under its control. Delays having powers to improve the Trust's ability to raise funds. Risks loss of critical skills and knowledge Increases costs

RESOLUTION

1 That, having considered all of the factors set out in in the consultation document and all of their previous deliberations on this matter, the trustees (the "**Trustees**") of the Malvern Hills Trust (the "**Trust**") **resolve** that it is expedient in the best interests of the Trust (and its charitable objects) to promote a Bill in November 2024 repealing the existing local legislation relating to Malvern Hills Conservators (the "**Conservators**") and replacing it with a single enactment written in modern terms, including (but not restricted to) provisions effecting all or some of the purposes mentioned below and that such a bill be promoted accordingly. The relevant purposes are:

(a) renaming the Conservators as the "Malvern Hills Trust", defining the charitable objects of the Trust and the area within which it may exercise its powers, making provision about its constitution, including arrangements for elections and appointment of Trustees, conflicts of interest, benefits for Trustees and limitation of liability and insurance;

(b) making provision about finance, including continuing the power to levy, provision about use of capital and income, powers to borrow and mortgage, continuing provisions for contributions by local authorities to the Trust and requiring annual audits and publication of annual reports and accounts;

(c) making provision about rights of public access to the Malvern Hills, continuing the duty to keep the Hills unenclosed, subject to powers for the Trust to regulate access for specified reasons (including by fencing); continuing the general power to regulate and manage the Malvern Hills, provide for the prevention of unauthorised access by vehicles, regulate horse riding, prevent nuisances and regulate public order, make provision about access roads, trees, drainage and turf, parking places, sheds and other facilities on the Hills, regulation of games and other activities, licensing of stalls and other commercial activities, and removal of items from the Hills, including vehicles;

(d) the making and confirmation of byelaws and their enforcement, including power to serve fixed penalty notices;

(e) making provision about land, including the power to dispose of land and grant leases and licences and easements for utilities;

(f) providing for a general power for the Trust to do anything in pursuance of its charitable objects (subject to appropriate limitations in such areas as fencing of the Hills, the acquisition or disposal of land or interests in land, or borrowing or raising money) but subject to any duties or obligations owed under general charity law and without overriding the requirement for Secretary of State consent to works on common land;

(g) making provision for a number of general powers which would normally be enjoyed by charities including but not limited to fund raising, employing and delegating functions to staff, powers of investment and to make loans, operating bank accounts, insuring property, limited powers to trade and power to conduct and defend legal proceedings;

(h) making general provisions, including about public access to meetings, local inquiries, repeals and consequential amendments, and continuing the application of savings and protections for certain individuals and bodies that are contained in the existing legislation;

(i) making provision about the administration of the Trust, including provisions about meetings of the Trustees, quorum, decision making, committees and powers to make regulations about procedure; and

(j) to enact any additional, supplemental and consequential provisions that may appear to the Delegates (as defined below) to be necessary or convenient.

2 That the Trustees also **resolve** to delegate to the individuals holding the posts of Chair, Vice Chair, Chief Executive Officer and Governance Change Officer of the Trust (together the "**Delegates**") the power and discretion to take all such steps as they consider to be necessary or desirable to give effect to the resolution referred to above.

3 That the Trustees also **resolve** that the Delegates should provide a report for the Trustees on the steps taken in exercise of the power and discretion delegated to them at each meeting of the Trustees and, between each such meeting, by way of a report sent via email to the Trustees at least once every fortnight in relation to such steps as the Delegates shall consider to be significant.

4 That the Trustees also **resolve** that the Common Seal of the Trust be affixed to the Petition for the Bill in the presence of the Chair and Vice Chair of the Trust and the Chair and Vice Chair are hereby authorised to seal or sign any other documents on behalf of the Trust which they consider to be necessary or desirable in order to give effect to the resolutions referred to above.

NEXT STEPS

Trustees have received a draft of the Explanatory Memorandum which will accompany the Bill. Sections of the Bill will be circulated to trustees for comment as they become available. Two review workshops will be held on 24 October and 8 November to review the drafts. Should the Board decide to proceed with submission in November 2024 a final review meeting could be held in the week commencing 11 November to resolve any outstanding issues from the review process.

Should the Board decide not to proceed then the CEO should be asked to develop a timetable for activities leading up to submission on 27 November 2025, including cost implications.

David Core
Chair, Governance Committee

Malvern Hills Trust

Special Meeting of the Board
Colwall Park Hotel, Colwall, Malvern, WR13 6QG
Thursday 9 October 2025 at 6 pm

Present: John Michael (Chair), Simon Baggaley, David Baldwin, Paul Bennett, Robert Berry, Jenny Burford, David Core, Allan Cottam, David Fellows, Richard Fowler, Lucy Hodgson, Andrew Myatt, Cynthia Palmer, Felicity Robinson, Chris Rouse, John Stock, Frances Victory, Malcolm Victory, Sheila Wren.

In attendance: CEO, Secretary to the Board, Governance Change Officer, 30+ members of the public.

Absent: Andrew Willmott.

1. **Welcome**
   The Chair welcomed all those present and read out the Trust's zero tolerance policy on rudeness to staff and volunteers.

2. **Apologies for absence**
   Richard Bartholomew, Mark Driscoll, Chris McSweeny, David Mead, John Raine, David Reynolds, Mike Wilkinson.

3. **Chair's Announcements**
   The Chair announced that there would be a drop-in session in Pickersleigh, at Malvern Evangelical Church, on Tuesday 14 October from 3.30-5.30 pm.

4. **Declarations of interest**

   4.1 **General Declarations**
   None

   A trustee raised a point of order regarding the next item on Conflicts of Interest, asking for confirmation that the case for each trustee would be treated separately. This was confirmed.

   4.2 **Trustee Conflicts of Interest relating to the Malvern Hills Bill**
   It was confirmed that the Board had already resolved that Paul Bennett, Robert Berry, David Fellows, Richard Fowler, David Mead, Cynthia Palmer and Andrew Willmott had a conflict of interest relating to the Malvern Hills Bill. These trustees be asked to leave the meeting when it moved into confidential session.

   The Chair announced that the Board would now consider the potential conflicts of interest of two new trustees and invited David Core as Chair of Governance Committee to introduce the item. It was confirmed that the above-named trustees would not be allowed to vote, given that the conflict of interest was the same.

The Chair of Governance Committee reminded the meeting of the Trust's legal obligation to manage conflicts of interest. He stated that the Trust had acknowledged for many years that there was a need to modernise and update the Malvern Hills Acts and that the Board had resolved to lodge a private bill in order to achieve this. A number of trustees had exercised their right as individuals and as groups to petition against the Bill. This put them into a conflict of interest situation with the Trust, because it was the settled view of the Board that the Bill should be put before Parliament. As part of the Parliamentary process following the second reading, a Select Committee was being set up to consider those petitions. The individuals who had petitioned had effectively positioned themselves on the opposite side of the debate from the Trust as promoters of the Bill. The two recently elected trustees, Jenny Burford and Andrew Myatt, had also petitioned, Mrs Burford as a parish councillor on West Malvern Parish Council, and Mr Myatt personally; both petitions had requested specific changes to the Bill. Therefore, under the Trust's Conflicts of Interest Policy, the Board needed to consider whether they too had a conflict of interest in relation to the Bill **only**; they were free to participate fully in all other Board business.

A trustee asked why Andrew Willmott was conflicted. The Chair of Governance confirmed that this was because Jeremy Owenson had lodged a petition as leader of the Conservative Group on Malvern Hills District Council (MHDC), of which Mr Willmott was a member. The trustee asked why this did not apply to other councillors. The Chair of Governance said that this was because Worcestershire County Council and MHDC had made drafting points only. In both cases section 3 *(What do you want done in response?)* had been left blank.

At this point, a trustee complained that there was standing room only in the meeting room and that there were members of the public outside who were unable to enter. It was confirmed that the room was already at capacity for health and safety reasons, as advised by the hotel.[1] The room normally used by the Trust was closed for refurbishment.

A trustee asked the Chair of Governance to quote the reference in law inferred by conflicts of interest; where was the power? The Chair of Governance stated that the Trust was a charity and as a charity was required to deal with conflicts of interest.

[1] The Trust's policy for public attendance at meetings is available on the web site. Members of the public are advised to book in advance in order to ensure that space is available. Two members of the public had booked on this occasion.

The Chair invited Jenny Burford and then Andrew Myatt to address the meeting. They requested that Mr Myatt should speak first. His statement is attached at Schedule 1.

A trustee raised a point of order, namely that the Conflicts of Interest Policy directed that one trustee at a time would present their case, leave the room and be voted on. It was pointed out that it had already been confirmed that the cases were different and would be considered separately. It was clarified that both trustees would speak first and then be asked to withdraw for the discussion.

The Chair then invited Jenny Burford to speak. Her statement is also attached at Schedule 1.

The Chair of Governance stated that the Trust had worked with Earl Attlee to ensure that concerns raised about the Bill were reflected in the instructions put to the Select Committee, in order to ensure that they were considered in the Parliamentary process. A trustee said this was irrelevant to the conflict of interest issue. Another trustee alleged that the Trust had not engaged with petitioners in any way and suggested that it could engage now and present redrafted proposals to the Select Committee. It was pointed out that the Trust had held drop-in sessions to engage with the public. A trustee alleged that the County Council had voted unanimously to continue with its petition and that no negotiation had taken place or changes made. When the Chair and Vice-Chair countered that this was not true, the trustee accused them of lying.

At this point, trustee Paul Bennett was warned for his behaviour by the Chair and told he would be asked to leave the meeting if it continued.

Questions to the new trustees were invited from unconflicted trustees .

Q	The Code of Conduct would require you to act in the best interests of the charity. If any confidential information came your way, would you maintain it completely confidential?
A (AM)	Yes, 100%.
Q	I'd like to ask Jenny Burford if she stands by everything that was in her election flyer.
A (JB)	No, probably not everything. Most of it.
Q	Why don't you recognise the Charity Commission's statements over conflicts of interest?
A (AM)	I am utterly focussed on the best interests of the charity. I set out my view in the election. The electors agreed with my perspective and voted for me. However, my view could change. I am not representing the electors. They are supporting my perspective. My first and foremost priority is the best interests of the Trust.

There was a discussion on access to information. Andrew Myatt said he had asked officers for 14 years of records since the last time he was on the Board. A trustee queried whether he thought that was reasonable stress to put on staff (*there was laughter in the audience*). Andrew Myatt said he thought it was due diligence; he didn't have access to all the advice and closed meetings, so did not have the full picture, which was what he was asking for. He wanted it clarified in the meeting what information he would receive. The Chair of Governance accepted that this was a reasonable point, but stated that this was not the place to discuss it; there would be further discussions outside the meeting.

Here a trustee raised a point of order, saying that the CEO was shaking her head. The CEO said this was because she was hearing jeering from the audience and was finding the behaviour intimidating.

Q I wanted to thank the two new members of the trust for their very eloquent and well-argued statements. This is a really difficult decision. Do the candidates feel it would be unfair to treat you differently from other trustees if we are using the same reasons? But I was a bit shocked when Jenny said you didn't believe, or you didn't stand by everything that was in your candidate's statement. So, I'd just be interested to know what you mean by that.

A (JB) Not totally *(no further response).*

A trustee deemed conflicted on the Bill wanted to ask if the legal process for elected trustees had been properly examined by the Trust. The question was not allowed by the Chair, since it was not relevant to the conflicts of interest issue.

A trustee raised a point of order, asking officers 'not to be so open with their opinions at Board meetings, because they should be impartial'.

The Chair asked the new trustees to leave the meeting while a discussion took place. It was noted that trustees deemed conflicted on the Bill should also be required to leave, but in discussion it was agreed that they might stay but not participate in the discussion or vote.

The new trustees left the meeting. David Fellows stated that he was leaving the meeting on a point of principle and left the meeting at 6.50 pm.

There was a discussion amongst the unconflicted trustees. Whilst it was felt that it was important to be consistent in the decision, in fairness to the other conflicted trustees, it was noted that Andrew Myatt had made a valid point about access to information. It was noted that the Secretary to the Board had already sought legal advice on the matter and trustees would be kept informed.

Resolutions

On the proposal of Lucy Hodgson, seconded by Frances Victory, it was RESOLVED unanimously by all those eligible to vote that *Andrew Myatt* has a conflict of interest and a conflict of loyalty in relation to the Malvern Hills Bill, due to his having lodged a personal petition against it.

On the proposal of John Stock, seconded by Malcolm Victory , it was RESOLVED unanimously by all those eligible to vote that *Jenny Burford* has a conflict of interest and a conflict of loyalty in relation to the Malvern Hills Bill, due to her being a Parish Councillor for West Malvern Parish Council, which has petitioned against the Bill.

On the proposal of John Stock, seconded by Felicity Robinson , it was RESOLVED unanimously by all those eligible to vote to confirm the CEO's decision to withhold papers, advice, letters, emails or other documents relating to the Malvern Hills Bill (other than those in the public domain) from new trustees Andrew Myatt and Jenny Burford.

The new trustees returned to the meeting at 7 pm.

Trustee Paul Bennett announced that he believed illegal activity was taking place and gave notice that trustees would be held personally liable. Mr Bennett was warned that he had already broken the Code of Conduct and that his remarks were not relevant to the meeting.

Andrew Myatt asked about the mechanism for sharing information. The Chair of Governance said he would be happy to meet with him to talk about governance and confirmed that the Trust would seek advice on access to information and share this with **all** trustees. Mr Myatt suggested that the Trust would be wise to get independent legal advice on withholding papers. Another trustee proposed that the Chair and Vice-Chair of the Board should present a motion to reconsider whether the current direction of travel was really in the best interests of the charity and that this should be done before further discussion in Parliament. The Chair noted the comments.

5. **Date of Next Meeting**
   Annual Meeting – 13 November 2025 at 7 pm at Colwall Park Hotel.

6. **Confidential**
   On the proposal of Lucy Hodgson, seconded by David Core, it was RESOLVED, with 11 in favour to exclude the public for discussions of items 7-9 on the agenda on the grounds that publicity would be prejudicial to the public interest by reason of the exempt or confidential nature of the business to be transacted (matters relating subject to legal privilege).

There was an interruption from a member of the public and general dissent in the audience.

The remaining trustees deemed to have a conflict of interest on the Malvern Hills Bill and members of the public left the meeting at 7.10 pm. There was then a break in proceedings before moving to confidential session, during which Allan Cottam and the Secretary to the Board left the meeting.

The meeting closed at 8.30 pm.

Schedule 1

Statement to the Board from Mr Andrew Myatt

It has been over fourteen years since I last addressed this Board, and it is in many ways a very different organisation. I recognise that the CEO and officers have a difficult job, particularly in steering clear of partisanship. That is why I am disappointed that this resolution was brought forward without any prior conversation.

I hope you realise the significance of this moment. You are being asked to agree a resolution to exclude me from papers and debate, a trustee elected only last month with seventy-five per cent of the vote, for an opinion set out openly in a personal petition to Parliament — a petition submitted before being elected to this Board. Does some form of retrospective collective responsibility now trump the electorate?

My views may differ from those of the majority, but you have had the benefit of all the papers and advice that are currently being kept from me. Perhaps, with the same information and debate, I too might come to see things differently — and if so, I would have no hesitation in saying so. After all, I have no conflict of interest. I have no conflict of loyalty.

I hope that all trustees' minds are equally open, and particularly open to listening to the voice of the levy payers.

This resolution prevents me from hearing the same information as you, from weighing the same evidence, and from fulfilling the duty that the public elected me to perform. It is disproportionate, and it runs against Charity Commission guidance, the Acts, and natural justice.

With respect to the Chair, you will no doubt soon refer to the fact that my petition is at odds with the Trust's "settled position". We are not here to be settled. We are here to exercise independent judgment. And we should not pre-judge.

I recognise there may be a narrow circumstance where I might need to step back if you are considering legal advice relating solely and uniquely to my own petition. But a blanket exclusion from all Bill papers and discussions is neither fair nor lawful, and I think would be seen by the levy payers as vindictive. If indeed you have received legal opinion on this resolution, I formally ask to have it in writing — both the questions asked and any response. This resolution does not protect the Trust — it harms it. Therefore, I respectfully ask that trustees vote against it.

Statement to the Board from Mrs Jenny Burford

I'm here today to give reasons why being a name on the West Malvern Parish Council petition against the Malvern Hills Bill does not constitute a conflict of either interest or loyalty to the trust, and therefore, I should not be excluded from all information regarding the Malvern Hills Bill. The West Malvern Parish Council petition is a collective work to which all councillors contributed in the best interests of West Malvern residents, not the West ward, just West Malvern Consequently, not all councillors were in agreement with all the points included. But we are a democratic body and therefore went with the majority. I therefore put it to you that the petition cannot be considered conflicting as the content is not necessarily mine and definitely not solely mine. It appears that you deem differences of opinion as conflict, which is most certainly not so. Surely even some of you are not excluded, must have concerns regarding some parts of the bill? Or have you all been brainwashed by a tiny, tiny cohort following the overwhelming majority received by myself and Andrew in the recent elections? You must know the strength of the concerns and feelings [people] have about the bill, but you appear to disregard them, even though it is they, the compulsory levy payers, who in the main fund the trust and incidentally pay the salaried employees.

The Governance Handbook states staff, trustees and volunteers feel valued and respected, that different perspectives are celebrated and valued, value that the environment is free from harassment, victimisation and discrimination. How can democratically elected trustees feel any of the above? When a percentage and in all probability I will be included in this, are excluded from what is an incredibly important piece of legislation in that it lays down the criteria for the management of the hills by the trust for many years to come. As a trustee, my only aim is to commit to the best interests of the trust, to maintain our wonderful hills for us and future generations in the way that was intended when the Hills Conservators was first formed, I believe I have proved genuine, provided genuine and valid reasons why you should not exclude me from discussion regarding the bill. I rest my case. Thank you, thank you.

[redacted]@charitycommission.gov.uk>
Sent: 18 December 2025 13:57
To: CEO <CEO@malvernhills.org.uk>
Subject: 20251218 -Malvern Hills Trust - 515804 CRM25:035200482

Dear Deborah Fox,

MALVERN HILLS CONSERVATORS : 515804

Further to my email of 5 December 2025, below is a copy of an email issued to all trustees individually today.

We have requested a collective response from the trustees by **12 January 2026**.

If the trustees require an extension to this deadline please let me know.

Yours sincerely

[redacted]
Assessment Team

Dear Trustees,

MALVERN HILLS CONSERVATORS : 515804

The Charity Commission ('the Commission') has recently received complaints that two new trustees appointed to the charity on 18 September 2025 are excluded from receiving information and from voting on any decision regarding the Malvern Hills Bill.

The charity has informed the Commission that the decision to

exclude the two new trustees was made at a special board meeting held on 9 October. It has been explained to the Commission that the basis of the 'unconflicted trustees' decision was to 'manage conflicts of interests' and because of concern about the 'disregard for upholding collective responsibility on the Malvern Hills Bill'. This decision follows on from the trustees' decision earlier this year to exclude those trustees who have petitioned against the Bill from decisions about the Malvern Hills Bill.

This correspondence has been sent to all trustees individually.

When a concern is raised with the Commission about a charity, we assess all of the information available to decide what steps to take in line with our complaints' guidance. Following our assessment, we have decided the proportionate response is to provide advice and guidance to the trustees under s.15(2) Charities Act 2011. I note the Commission has previously provided the trustees with s.15(2) advice and guidance on trustee duties on 8 July 2022, to assist the trustees in complying with their duties, and this advice was brought to the trustees' attention again on 22 November 2023.

Newly appointed trustees

When a new trustee is appointed to a charity, they should understand the legal responsibilities that all charity trustees have. These legal duties are explained in our guidance CC3 – The essential trustee. The Commission also has guidance specifically for new trustees which can be found at the following link:
Charity trustee welcome pack – GOV.UK
As explained in the Commission's guidance, once appointed to a charity, new trustees must act together with the existing trustees and understand that:

- trustees are responsible together for all decisions for their charity;
- trustees do not act on behalf of a person or organisation that nominated or elected them. These trustees must, like all trustees, act only in the best interests of the charity.

To act in accordance with their legal duties, the new trustees will need to understand key decisions previously made by the charity's trustees and the policies of the charity.

Making Decisions

As explained in the essential trustee guidance CC3, collective decision making is one of the most important parts of the trustee role and paragraph 6.3 of this guidance explains this further. This guidance also explains that trustees must:

- do what you and your co-trustees (and no one else) decide will best enable the charity to carry out its purposes
- with your co-trustees, make balanced and adequately informed decisions, thinking about the long term as well as the short term
- avoid putting yourself in a position where your duty to your charity conflicts with your personal interests or loyalty to any other person or body

The trustees should also continue to take legal and other advice to ensure that legal duties are complied with.

Other guidance you may find helps you to understand your trustee duties in this regard includes:

Managing conflicts of interest in a charity – 5 minute guide
CC29 – Conflicts of interest: a guide for charity trustees
CC27 – It's your decision: charity trustees and decision making

Reputation of the charity

As is also explained in the essential trustee guidance CC3, trustees have a duty to manage the charity's resources responsibly. As part of this duty, the trustees must avoid exposing the charity's assets, beneficiaries or reputation to undue risk. The complaints made to the Commission raise concerns there is risk to the charity's reputation from (i) how decision making within the charity is being

communicated to the charity's beneficiaries and more widely and (ii) the perception that the trustees are not open to different views being expressed including from beneficiaries. We would therefore expect the trustees to review whether any different or further steps could be taken to mitigate this risk.

We request that the trustees collectively confirm in writing that:

- The Commission's published guidance as referenced in this letter has been read and considered by each trustee; and

- That the risk to reputation has been reviewed by the trustees and consideration given as to whether and steps could be taken to mitigate this risk.

Please provide this confirmation by 12 January 2026.

We look forward to receiving your response.

Yours faithfully

[redacted]

Assessment Team

Charity Commission for England and Wales

Malvern Hills Trust

30 January 2026

[redacted]
Assessment Team
Charity Commission for England and Wales

By email only to: [redacted]

[illegible] [redacted]

Malvern Hills Conservators : 515804 (MHT)

Thank you for your email dated 18 December 2025 and for a subsequent email of 23 December 2025 agreeing an extension for providing a response to 30 January 2026.

We note that the Charity Commission has provided advice and guidance in accordance with s.15(2) Charities Act 2011.

The Charity Commission has asked the trustees to collectively confirm in writing that:

> the Commission's published guidance as referenced in the letter of the 18 December has been read and considered by each trustee; and
>
> that the risk to MHT's reputation has been reviewed by the trustees and consideration given as to whether any steps could be taken to mitigate this risk.

This response was considered at a Special Board Meeting held on 26 January 2025, attended by 21 members of the current Board of 25 trustees. Unfortunately, it was not possible for the Board to agree on a collective response and this letter was passed by a majority of 12 votes to nine. There was also a unanimous resolution that the covering letter, which accompanies this, should list the names of those trustees who agree to the contents of this letter and of those who do not. It is signed by the Chair [illegible] on behalf of those trustees who agree to its conditions.

The Commission's guidance
The trustees confirm that they all have read and considered:

> [CC3 - The essential trustee](); and

[Charity trustee welcome pack - GOV.UK]

In particular the trustees understand and acknowledge that:

all trustees are responsible together for all decisions for MHT; and

the trustees do not act on behalf of a person or organisations that nominated or elected them and that the nominated and elected trustees must, like all trustees, only act in the best interests of MHT.

The trustees have also carefully considered the guidance in CC3 regarding collective decision making, and in particular paragraph 6.3. The trustees confirm that they understand and acknowledge that:

they must make decisions solely in MHT's interests, and so they shouldn't allow their judgement to be swayed by personal prejudices or dominant personalities;

they must act collectively (jointly) and that part of their role is critically and objectively to review proposals and challenge assumptions in making decisions and that no one should be able to direct the trustees or drive decisions through without sufficient consideration;

decisions do not have to be unanimous but, once the trustees have made a decision, they must all comply with it, including any who disagree. If a trustee strongly disagrees with their fellow trustees' decision, they can ask for their disagreement to be recorded in the minutes of the meeting. If they think that their fellow trustees are acting in breach of their duty, they should discuss the matter with the Chair or their fellow trustees. If they are still concerned, they may contact the Commission. Ultimately, a trustee may feel that they have to resign in order to distance themselves from the decision; and

the Commission can only advise or intervene in relation to trustee' legal duties; it can't arbitrate in disputes between trustees.

The Trustees further acknowledge and understand that they must:

do what they and their co-trustees (and no-one else) decide will best enable MHT to carry out its purposes;

with their co-trustees, make balanced and adequately informed decisions, thinking about the long term as well as the short term; and

avoiding putting themselves in a position where their duty to MHT conflicts with their personal interests or loyalty to any other person or body.

The trustees confirm that they have also read, considered and understood:

Managing conflicts of interest in a charity - 5 minute guide
CC29 - Conflicts of interest: a guide for charity trustees
CC27 - It's your decision: charity trustees and decision making

The trustees also confirm that they understand that they should continue to take legal and other advice to ensure that legal duties are complied with.

Reputation of the charity
The trustees acknowledge and understand that they have a duty to manage MHT's resources responsibly and that as part of this duty, they must avoid exposing MHT's assets, beneficiaries or reputation to undue risk.

The Trustees acknowledge that there is a risk to MHT's reputation from how decision making within MHT is being communicated to MHT's beneficiaries (including communications by MHT and by individual trustees about MHT, whether in meetings open to the public, via social media or otherwise).

The trustees further acknowledge that there is risk to MHT's reputation from the perception that the trustees are not open to different views being expressed including from beneficiaries.

The trustees confirm that they have reviewed the risk to reputation and that consideration has been given as to whether any steps could be taken to mitigate this risk.

The trustees further confirm that they will take following steps to mitigate the risk to MHT's reputation:

trustees have acknowledged their duty to act collectively when making decisions and their duty to avoid exposing MHT's reputation to undue risk;

Malvern Hills Trust

trustees also acknowledge the duty of confidentiality they owe to MHT (such that communications by individual trustees about MHT or its trustees must be authorised by the trustees as a board);

trustees also acknowledge the duty they owe to MHT to avoid conflicts of interest;

trustees have sought (and will continue to seek where appropriate) professional advice in respect of managing communications with beneficiaries and the wider public;

consultation has been undertaken (and will continue to be undertaken where appropriate) with beneficiaries; and

subject to their duty to avoid conflicts of interest, all trustees are encouraged to take part in discussions prior to any decisions being made.

Should the Commission have any queries in relation to the action being taken by MHT we would be pleased to provide further information.

Yours sincerely the undersigned trustees, signed on their behalf by the Chair of the Board,

Mr Simon Baggaley, Mr David Baldwin, Mr Richard Bartholomew, Mr David Core, Mr Allan Cottam, Mr Mark Driscoll, Mrs Lucy Hodgson, Mr John Michael, Prof John Raine, Mrs Felicity Robinson, Mr John Stock, Mrs Frances Victory and Mr Malcolm Victory

Text of covering email from CEO of Malvern Hills Trust to Charity Commission 30 January 2026

From: CEO <[redacted]>

Sent: 30 January 2026 10:42

To: Assessment2 <[redacted]>

Cc: CEO <[redacted]>

Subject: RE: 20251218 - Malvern Hills Trust - 515804 CRM25:035200482

Importance: High

Dear [redacted],

On behalf of John Michael, Chair of the Board, please find attached, a letter from the trustees of Malvern Hills Trust in response to your individual letters to them of 18 December 2025. Our thanks to you for allowing an extension to 5pm on 30 January.

A Special Meeting was held on Monday 26 January to discuss the content of the enclosed and to attempt to reach a consensus, but unfortunately a significant proportion of the Board did not accept the commitments stated in the letter and would not sign it. A vote to send the letter as drafted was passed by 12 votes to nine. It was also agreed to offer the four trustees not present at the meeting the opportunity to append their name to the letter if they wished to do so. Trustees voted unanimously in favour of listing in this covering note the names of those who agreed to the letter and of those who did not.

It is possible that you will receive a separate communication, or indeed multiple letters, from the trustees who did not agree, but I must be clear that the enclosed letter only represents the Trust's position. We can of course send the Commission the minutes of the meeting, once they are approved, if this would be helpful.

The names of the signatories of the letter are as follows: Simon Baggaley, David Baldwin, Richard Bartholomew, David Core, Allan Cottam, Mark Driscoll, Lucy Hodgson, John Michael, Prof. John Raine, Felicity Robinson, John Stock, Frances Victory and Malcolm Victory.

The following do not agree to the contents of the letter: Paul Bennett, Robert Berry, Jenny Burford, David Fellows, Richard Fowler, David Mead, Andrew Myatt, Cynthia Palmer, David Reynolds, Chris Rouse and Andrew Willmott.

The following who was not present at the meeting was contacted for his decision and chose to abstain: Chris McSweeny.

I want to assure you that there is significant work in progress at the Trust to mitigate the risk to its reputation and we shall be writing separately to the Commission with further details about this. In brief, it has included:

- The commissioning of a reputational audit by Alder UK, which led to the adoption of a new communications strategy for implementation from 2025 onwards.
- The provision of a new £25,000 budget in 2025/26 for communications support. This has secured expert reputational advice and communications outputs to deliver the communications strategy.

Monitoring of metrics on media coverage sentiment for mentions of 'Malvern Hills Trust' has remained consistently around 65-69% since September 2024. A June to December 2025 comparisons report, produced by Alder UK, put the Trust on a par with a county wildlife trust in the area, in terms of levels of positive/negative coverage and share of voice in the media.

Warm regards,

Deborah Fox

Chief Executive Officer

Sent by email to
[redacted]

Charity Commission
PO Box 211
Bootle
L20 7YX

Date: 08 August 2023

Dear Susan Satchell

Re: MHC re s.74 application

Malvern Hills Conservators (RCN 515804) – s.74 Charities Act 2011– Request to incur expenditure to prepare and promote a Parliamentary Bill

I write further to MHC's s.74 application received on 31 May 2023 and MHC's subsequent correspondence with the Commission in relation to it.

1. Decision

1.1 Pursuant to section 74 of the Charities Act 2011, the Commission hereby consents to the Malvern Hills Conservators (**MHC**) defraying out of money applicable for the purposes of MHC expenditure of **up to £306,000** in preparing and promoting a Parliamentary Bill to change and consolidate the legislation governing MHC as proposed in the application received by the Commission on 31 May 2023 and MHC's response to the Commission's further queries on 20 July 2023 (together **the Application**).

1.2 This consent is subject to:

(a) the cap on expenditure of £306,000 as explained below;

(b) the limitation set out in section 2 of this letter; and

(c) the condition set out in section 3 of this letter.

1.3 The consent is capped at the sum of £306,000, comprising:

(a) £286,000 on Parliamentary Agents' fees (including counsel's fees, House fees and disbursements etc); and

(b) £20,000 on other legal advice from charity lawyers relating to the preparation and promotion of the Bill.

1.4 If MHC expects its costs to exceed this cap, MHC must seek further consent from the Commission under s.74 before incurring any additional costs.

1.5 In the Application, MHC requested s.74 consent for the following other costs for which consent has not been provided for the reasons set out below.

1.5.1 The sums requested relating to staff costs and consultation costs do not require s.74 consent to be incurred by MHC as they are internal administrative costs of the charity and so are a matter for the trustees and management of the charity.

1.5.2 Consent has not been provided for the sum requested for contingency costs because it is not known what such contingency costs may cover and so the Commission cannot consider whether it would be in the best interests of MHC to provide the requested consent.

1.6 The provision of consent as set out in this letter does not imply the Commission's approval of the proposals set out in the Application.

1.7 The Commission's reasons for providing the consent as set out in this letter are:

1.7.1 The changes proposed could not be made by a scheme of the Commission given effect under s.73 of the Charities Act 2011 and so promoting a Parliamentary Bill is the only way in which MHC can make the changes proposed in its Application.

1.7.2 The Commission considers that MHC's Application provides sufficient cogent reasons for seeking a Parliamentary Bill to make the changes proposed in the Application such that MHC's decision to prepare and promote a Parliamentary Bill appears to be a reasonable decision to have been made by the trustees in the best interests of MHC.

2. Limitation on the s.74 consent

2.1 The sum for which s.74 consent is provided must not be spent on incurring any costs relating to proposals to extend or materially change MHC's power to levy. The reason for this limitation is that MHC explains in its Application that, whilst MHC considers it would be fairer to extend the levy for the reasons set out in its Application, it is likely to prove acutely controversial. In addition, if the levy paying area is extended, the electoral area would likewise need to be extended, raising further complexities and controversy.

2.2 However, the reason for excluding any proposals to extend or materially change MHC's power to levy from the consent is not simply that any extension or material change to MHC's power to levy is controversial. The extent of the controversy and irreconcilable views on this issue are likely to mean that, if any such proposals were included in the private Bill, it would not progress, to the detriment of the other changes proposed.

2.3 MHC has now confirmed it does not propose to make any substantive changes to the current levy arrangements. However, MHC is expecting to seek advice on the advantages and risks of repealing and replacing the existing powers to levy, which are found in a number of places in its governing legislation, with one provision (subject to appropriate application of the Local Government Finance Act 1988 and subsequent legislation under which the levy is now raised).

2.4 It is agreed that it would be appropriate, as part of the consolidation exercise, for MHC to seek advice on the advantages and risks of repealing the current underlying powers to levy and replacing them with one provision when preparing the Bill, provided that the replacement provision does not extend or make any material or substantive changes to MHC's power to levy.

2.5 Therefore, this limitation on incurring any costs relating to proposals to extend or materially change MHC's power to levy does not preclude MHC from seeking advice on the advantages and risks of repealing the current underlying powers to levy and replacing them with a new consolidated power in the private Bill, provided that the proposed new clause does not extend or make any material or substantive changes to MHC's power to levy.

3. Condition

It is understood from the Application that MHC proposes to fund the private Bill by way of a loan from the Land Purchase (1992) Fund (the **Fund**). MHC has confirmed it needs to take advice on whether it requires the Commission's authority to borrow from the Fund as proposed. Therefore, this consent is subject to the condition that, before any funds are borrowed from the Fund, MHC confirms to the Commission in writing that either:

3.1 MHC has taken professional advice which confirms it has the power to borrow from the Fund and the trustees have approved a repayment plan; or

3.2 MHC does not have the power to borrow from the Fund without the Commission's authority and that MHC has either:

(a) obtained the Commission's authority to borrow from the Fund with an approved repayment plan; or

(b) has an alternative source of funding that it has the power to use for these purposes (and about which MHC must provide details to the Commission).

4. Issues on which MHC is to keep the Commission updated

There are a number of issues identified in the Application on which the Commission has regulatory interest and so MHC is required to update the Commission in relation to the following areas:

4.1 any change to the restated objects from the wording proposed in the Application;

4.2 the provisions in the draft Bill relating to the management or approval of conflicts of interest and/or trustee benefits;

4.3 any material comments from DCMS when consulted on the proposals, including whether DCMS confirms it will support MHC to use the private Bill to make the required amendment to the Representation of the People Regulations 2001 (2001/341);

4.4 any material comments from DEFRA when consulted on the proposals;

4.5 any material comments from Natural England when consulted on the revised proposals.

Yours sincerely

[redacted]

Director, Legal and Accountancy Services

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CHARITY COMMISSION
FOR ENGLAND AND WALES

Susan Satchell
[redacted]
CC
[redacted]

Charity Commission
PO Box 211
Bootle
L20 7YX

Our ref: C-129622

Date: 16 October 2025

Dear Susan Satchell

Malvern Hills Conservators (515804) (MHC)

Variation of the section s.74 consent dated 8 August 2023

Thank you for the application from MHC's trustees to vary one of the limitations to the original section 74 consent of 8 August 2023 (the s.74 Consent). The limitations in the s.74 consent included that the sum for which s.74 consent is provided must not be spent on incurring any costs relating to proposals to extend or materially change MHC's power to levy ('the power to levy limitation').

The Commission, in its letter dated 22 July 2025, explained that it was satisfied, based on the case made by the trustees, that it was expedient in the interests of the charity to amend the power to levy limitation to allow MHC to incur costs responding to both the instructions accepted by the House of Lords and the petitions made against the Bill about the levy. We suggested draft wording varying the power to levy limitation.

MHC told the Commission that it was concerned that that the drafting suggested by the Commission unnecessarily required MHC to refer back to the Commission whatever changes to the levy provisions are proposed and however minor they may be. MHC made suggested changes to the draft variation proposed by the Commission.

The Commission notes:

- The original power to levy limitation, and variation suggested on 22 July, refer to 'material changes' and 'extending' and not to 'any' change.
- The drafting suggested by MHC goes further than allowing MHC to agree to minor changes. It permits MHC to incur costs for material changes to the power to levy which do not extend the levy provision as recommended by the Select Committee and which do not incur significant additional expenditure or jeopardise the continuing promotion of the private bill.

The test for expediency under section 74 is not limited to consideration about expenditure. As MHC has previously been advised by the Commission, whether it is expedient to expend costs is related to the relevant change that the costs are going to be expended on. This means that MHC needs to demonstrate that it is in expedient in the interests of the charity to incur costs promoting a particular change.

No case has been made by MHC, either originally or in the application to vary, to demonstrate that it would be in the interests of the charity to incur any costs materially changing the power to levy. The Commission notes that the power to levy limitation in the s.74 consent reflected the fact that MHC considered that it was not in the best interests of the charity to do so. MHC explained that this was due to reasons which included the likely controversy. Concerns have been raised with the Commission about the drafting of the levy provisions, so the Commission agrees that any material change is likely to be controversial. MHC has also previously told the Commission that it cannot at this stage assess the expediency of a material change until it is known what that change may be.

In the Commission's view therefore, MHC has not demonstrated the expediency of the variation to the power to levy limitation as proposed by MHC to the Commission.

The Commission now provides the following variation to the s.74 consent:

The sum for which s.74 consent is provided may be spent on:

(a) responding to petitions against the Bill in the House of Lords (which may include proposals to extend or materially change MHC's power to levy) and

(b) assisting the Select Committee in the House of Lords to comply with instructions given to it which relate to the power to levy.

Subject thereto, the sum for which s.74 consent is provided must not be spent on incurring any other costs relating to or proposing changes to the Bill which would extend or materially change MHC's power to levy for the reasons set out in the s.74 consent of 8 August 2023.

For the avoidance of doubt, if the Select Committee recommends that MHC's power to levy as drafted in the Bill should be materially changed or extended, the sum for which s.74 consent is provided must not be spent in relation to such recommendations by the promotion of amendments to the Bill by way of additional provision. In these circumstances, MHC will need to determine whether it is expedient in the interests of the charity to continue to promote the Bill. If MHC considers it is expedient, a further application for variation of this s.74 consent should be made to the Commission.

Yours sincerely,

[redacted]

Interim Director, Legal and Accountancy Services

Malvern Hills District Council
Revenues and Benefits
PO Box 11
Pershore
WR10 1PU

www.malvernhills.gov.uk

Date Issued: 10/03/2025

[redacted]
Malvern
Worcs

[redacted]

Property charge relates to:
[redacted]
Malvern
Worcs

Property Valuation Band: D

Reason for Bill:
New Year Billing

Council Tax Bill 2025/2026

Account Reference: 220869675

The amount you need to pay: £2,319.64

Thank you for paying by Direct Debit. Your payments will be collected as follows:

01/04/2025	£240.64	01/08/2025	£231.00	01/12/2025	£231.00
01/05/2025	£231.00	01/09/2025	£231.00	01/01/2026	£231.00
01/06/2025	£231.00	01/10/2025	£231.00		
01/07/2025	£231.00	01/11/2025	£231.00		

		% Change
Council Tax for your property's valuation band.		
Malvern Hills District Council	£182.60	0.0%
Worcestershire County Council	£1,615.71	5.0%
West Mercia Police & Crime Commissioner	£291.50	5.0%
Hereford & Worcester Fire Authority	£102.22	5.1%
Malvern Town Council	£77.52	3.9%
Malvern Hills Trust	£50.09	5.5%
From 2025/2026, the adult social care precept is included within Worcestershire County Council precept as a single figure and percentage change		
Annual charge for property :	**£2,319.64**	**4.6%**

Council Tax for period 01/04/25 to 31/03/26	**£2,319.64**
The amount you need to pay:	**£2,319.64**

MALVERN HILLS BILL

PROPOSED CONSTITUTIONAL CHANGES

NOTE

Changes to the Board

1. Under the existing Malvern Hills Acts, there are currently 29 Conservators (trustees) of MHT. Of those:

    (a) 11 are directly elected by:

    (i) those on the electoral roll for the parishes of Colwall (2 conservators), Guarlford (1 conservator) and Mathon (1 conservator); and

    (ii) the local government electors for the Urban District of Malvern (1 conservator for each of the 7 wards of the district)

    (b) 8 are nominated by Malvern Hills District Council (who have to be district councillors);

    (c) 2 are nominated by Herefordshire Council;

    (d) 2 are nominated by Worcestershire County Council;

    (e) 3 are nominated by Worcestershire County Council (for the parishes of Castlemorton, Newland and Powick, although this is not a prescribed requirement);

    (f) 1 is nominated by Colwall Parish Council;

    (g) 1 is nominated by Mathon Parish Council; and

    (h) 1 is nominated by the Church Commissioners.

2. Those arrangements are contained in the Malvern Hills Act 1924, as amended. They are not consistent with modern best practice and do not reflect the various local government reorganisations which have taken place over the past 100 years. There is also a significant disparity between the population sizes of the parish/electoral areas set out above. By way of example, as at 2025, the parish of Mathon, which has 2 conservators (1 elected, 1 nominated) had 241 on the electoral roll, whereas the West ward within Malvern District, with 1 elected conservator, had 3196 on the electoral role.

3. The Bill would alter the existing arrangements, to reduce the number of trustees (formerly conservators) to 12, of whom 6 would be directly elected by those on the electoral roll in each of the parishes/wards which are currently able to vote for a directly elected conservator, and 6 would be appointed by the board of trustees, following recommendation by a dedicated Nominations Committee.

4. The reduction of the number of trustees to 12 accords with current best practice and Charity Commission guidance.

5. In providing for the board to be comprised of both elected and appointed trustees, MHT considers that this arrangement would enable it to ensure that the board has the necessary mix of skills and experience for it to function effectively in carrying out its objects, whilst also respecting and maintaining the historic link between the MHT and the residents of the parishes/wards who contribute to its work through payment of the levy (clause 8(6) of the Bill would require MHT to designate one or more of the trustees to act as point of contact between MHT and the inhabitants of any of the parishes comprised in MHT's electoral area). It is important to stress in that regard that the trustees, once elected or nominated (under the current arrangements) are required to act solely and exclusively in the interests of MHT: the elected trustees are not the 'representatives' of those who elect them in the way that (for example) MPs or district councillors are. MHT has considered a number of potential solutions, and decided that the proposal in the Bill was the most appropriate.

6. The proposal that the board be comprised equally of elected and appointed members would in fact increase the proportion of directly elected trustees from the current 38% to 50%. Further, in providing for the 6 elected trustees to be elected across the levy paying area, this addresses the current discrepancy between the population of the parishes/electoral areas and the number of conservators who are associated with a particular parish/electoral area.

Further provisions relating to Trustees

Term limits

7. There is currently no maximum term for which a conservator (trustee) can serve on the Board. The Bill proposes a maximum two term limit of four years for both elected and appointed trustees (clause 9). This is in line with the Charity Governance Code1 which recommends that trustees do not serve more than nine years, unless there is "evidence of exceptional reasons". Clause 9 of the Bill would not prevent a former trustee standing for reappointment in future (either as an elected or appointed trustee) but would preclude them from doing so without at least a year between periods of service (clause 9(3)).

Geographical connection

8. Candidates for election as conservators currently have to live in the levy paying area and be eligible under the same criteria as applies for electing district councillors (section 9 of the Malvern Hills Act 1924). Clause 18 of the Bill would extend eligibility for election to individuals living within one mile of the boundary of

[1] https://www.charitygovernancecode.org/

any parish or former parish area within which any part of the Malvern Hills is located, with all candidates for election having to be nominated by two persons on the electoral roll within the MHT electoral area.

9. The Bill does not prescribe a particular geographical requirement for appointed trustees. This will ensure the potential for a wide pool of candidates who may have the skills and expertise that would be beneficial to the MHT (as set out in clause 14(6)), and that that pool is not unnecessarily constrained by a geographical restriction.

10. That does not mean, however, that a candidate's connection to the Malvern Hills would not be a relevant consideration. Candidates would be recommended for appointment on merit and in accordance with a published recruitment policy (clause 14(2)). It would be open to MHT to decide, as part of any such recruitment policy, that where there were two equally qualified candidates for the role, that a candidate's geographical or other connection to the Malvern Hills could provide a basis for preferring that candidate.

The Nominations Committee

11. The Bill proposes that appointed members would be appointed by the Board of Trustees on recommendation from a newly constituted Nominations Committee (clause 14). That Committee would comprise two trustees (either elected or appointed), two independent members appointed by MHT, and the Chief Executive or other employee of MHT with senior responsibilities as the trustees think fit (clause 15). Independent members could not be trustees, former trustees, trustees elect, a current employee or officer of MHT or a person who would be entitled to vote for an elected trustee. There is no requirement for such person to have a particular connection to the Malvern Hills but that is a matter which the trustees may take into account in deciding whether to appoint an independent member (clause 15(4) and (5)).

Elections

12. At present, MHT is required to run elections under the procedure for electing district councillors (section 9 of the Malvern Hills Act 1924). The Trust seeks to address the large disparity between the size of the electoral areas and to make everyone's vote of equal value. MHT considers that moving to an electoral system of postal or postal and electronic voting (clause 24(1) of the Bill) could not only reduce the costs associated with running elections (and thus reducing the call on funds which could otherwise be used for furthering the statutory objects) but also has the potential to increase participation in the elections (there is generally a low turnout at polling stations) as well as ensuring all persons eligible to vote can directly receive candidate information, included with the postal voting packs.

13. Elections would be held every 2 years with 3 trustees to be elected on each occasion (clause 20 of the Bill).

Casual vacancies: interim appointments

14. Clauses 21 and 22 make provision for the situation where one or more elected trustee offices become vacant during their terms of office. Clause 21 addresses the situation where there is only one vacant office (and no other elected office is filled by an interim appointment). Clause 22 addresses the situation where there is more than one vacant office or an interim appointment in place in respect of an earlier vacancy. An interim appointment can only be made under clause 21 where there is only one vacancy, and where an election is not due to be held within the next 9 months in any event.

Administration arrangements and access to meetings

15. At the present time, the legislation governing MHT's meetings does not provide for meeting to be held other than in person. The Bill would enable – but not require – meetings to be held electronically, or in a hybrid form (see Schedule 1 Part 3 paragraph 14). The provision in Para 14(2) for at least two meetings to involve only the physical presence of the trustees in attendance is in effect a safeguard which means that at least two meetings each year can only be held with the physical attendance of the relevant trustees. It does not prescribe that only two meetings could or should be held in this way.

16. The Bill would therefore provide the ability for MHT to hold its meetings other than in person in the event, for example, of another situation like the Covid 19 pandemic arising, or to allow trustees who are unable to attend a particular meeting in person (for example, due to illness) to be able to attend and participate in the meeting by virtual means.

17. Any meeting where a decision is to be taken which would be binding on MHT is to be open to the public, subject to the power for the Board to sit in private where it is considering a matter which is confidential, or to close a meeting to the public if normal business is being disrupted (see clause 7(12) and Schedule 2, which reflect the existing position under section 26 of and Schedule 1 to the Malvern Hills Act 1995).

MALVERN HILLS BILL

FINANCIAL PROVISIONS

NOTE

The Levy

1. In the 2024/25 accounting year, the Malvern Hills Conservators (MHT) raised around 42.59% of its income from the levy.

2. The power to raise a levy originated in the Malvern Hills Act 1884. At that time, a levy (precept) was payable by the parishes of Colwall, Mathon and Great Malvern out of the poor rate of the parishes (section 19 of the Malvern Hills Act 1884). This was amended by section 4 of the Malvern Hills Act 1909 to provide for payment by the parishes of Great Malvern, Malvern Link, Malvern Wells, West Malvern, Guarlford, Colwall and Mathon. A further power to levy was created by section 33 of the Malvern Hills Act 1924 which provided for a precept to be payable by those parishes, apportioned in accordance with the provisions of section 33(a), and subject to a maximum amount as specified in section 34(1) or as increased by order of the Minister of Health under section 34(2).

3. Because of various local government reorganisations, many references to the local authorities in the Malvern Hills Acts are now out of date. The levy is currently paid by the parishes of Malvern Town, Malvern Wells, West Malvern, Guarlford, Colwall and Mathon. The Bill makes clear what would happen if there is a future change to those parishes - see clause 33(6) to (7) - and maintains the existing geographical limits within which the levy is payable.

4. The Bill also provides the power for the Secretary of State to, by order, amend the levy paying area to include any parish which does not currently have land within the ownership of MHT if MHT subsequently acquires common land or waste land by agreement with the lord of the manor of which the land forms part (clause 71). This reflects the position currently provided for in section 31 of the Malvern Hills Act 1931

5. Section 9 of the Malvern Hills Act 1909 also provides that Worcestershire County Council and Herefordshire County Council might make such contribution as they might fix by resolution and either treat such expenses, in whole or in part, as general county expense or as special county expenses to be levied on such parishes as the county council thinks fit, subject to the proviso that no such rate might be levied on the Urban District of Malvern or the parishes of Guarlford, Mathon or Colwall save with the consent of a resolution of the respective councils for those areas. Whilst MHT currently receives an annual

contribution from Worcestershire County Council, it is not aware of either Council having exercised its power to raise a special levy on the parishes within their areas.

6. That provision is unchanged in the Bill, save to update the references to Worcestershire County Council and Herefordshire County, and to impose an absolute prohibition on either Council from raising a rate, levy or charge of any nature towards such contribution from the parishes which are subject to the levy in clause 33 of the Bill (see clause 36 of the Bill).

7. As a body established by statute which conferred a power to issue a levy, MHT is subject to the Levying Bodies (General) Regulations 1992.[1] This is expressly recorded in clause 33(13) to (19) of the Bill. The Regulations provide (among other things) for:

   (a) The calculation of the maximum amount that may be raised by levy in any given financial year, where such limitation appears in the relevant Act which conferred the power to levy on the levying body (reg.5); and

   (b) The calculation of the amount to be charged to each relevant authority where the relevant Act which conferred the power to levy on the levying body provided for apportionment of the levies, precepts or expense of the levying body to be borne by more than one authority (reg.6).

8. Contrary to concerns raised by some petitioners, therefore, MHT does not have the ability to raise the levy to whatever amount it pleases. Nor could it resolve that the levy should be paid by only those of the parishes who are liable to pay or to apportion the levy between the parishes as it may see fit; for example, by resolving that the residents of one parish should be exempting from paying the levy.

9. No changes are proposed to the levy in the Bill. It would continue to be paid by the residents of those parishes or wards who pay it under the existing Malvern Hills Acts. It would be calculated and apportioned as it is today. It will remain subject to the legislative cap on the amount which may be charged in any given year set out in 1992 Regulations (or any variation or successor thereof).

10. MHT has previously given consideration as to whether – and if so what – arrangements could be substituted for the existing arrangements that would provide a workable and equitable alternative, but was unable to identify one simple rule that would be fair in all cases .

11. Any changes to the levy paying area (which would also be likely to involve, or at least to lead to calls for changes to the areas entitled to vote in elections for directly elected trustees) were also considered likely to be acutely controversial and to give rise to irreconcilable views as to what any such changes should be.

[1] These Regulations were made under the powers conferred by (among others) s.74 of the Local Government Finance Act 1988. The 1988 Act (among other things) changed the basis on which local levies (including the Malvern Hills levy) were to be collected.

It was for similar reasons that no proposed changes to the levy arrangements were taken forward in the bill that became the Malvern Hills Act 1995.

12. In granting consent to MHT to expend monies on the promotion of the Bill, the Charity Commission stipulated that those monies could not be spent on any costs incurred in relation to proposals to extend or to materially alter the levy.

Power to borrow

13. MHT currently has the power to borrow:

(a) Upon the security of the contributions authorised to be raised under the levy and upon the security of any property belonging to the MHT for the purposes of the Malvern Hills Act 1884 and the Malvern Hills Act 1909 (section 11 of the Malvern Hills Act 1909);

(b) Upon the same security with the consent of the Secretary of State for the purposes of the Malvern Hills Act 1884, the Malvern Hills Act 1909, and the Malvern Hills Act 1924 (section 32 of the Malvern Hills Act 1924); and

(c) Upon the same security with the consent of the Secretary of State for the purposes of the Malvern Hills Act 1930 and Malvern Hills Act 1995 with the express provision that where money is borrowed on such security MHT may mortgage revenues or property, but on the basis that the mortgagee shall not have a power of sale over "relevant land".

14. Clause 35 of the Bill would bring these powers together into a single provision, permitting MHT to borrow on the security of revenues and property, with the ability to mortgage land but, in respect of "existing relevant land" (which is any part of the Malvern Hills owned by MHT at the date of the Bill, with some exceptions) MHT could only mortgage or charge that land or revenues with the consent of the Secretary of State. MHT would also, separately, have to comply with any applicable requirements under the Charities Act 2011.

MALVERN HILLS BILL

CLAUSE 83: GENERAL POWER

NOTE

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1. Clause 83 of the Malvern Hills Bill contains a new 'general power' which would enable the Malvern Hills Trust ("MHT") to "do any lawful thing (whether or not involving the expenditure of money) to further the objects, including anything which is calculated to facilitate, or is conducive or incidental to, the furtherance of the objects" (clause 83(1)).

2. That power is subject to a number of restrictions and qualifications.

3. Firstly, MHT cannot exercise that general power if it can exercise a power contained in another provision of the Bill or any other enactment to do the thing in question (clause 83(2)).

4. Secondly, the general power expressly does not include within it a power to:

   (i) acquire or dispose of land, or grant any interest in land;

   (ii) borrow or raise money;

   (iii) erect any building, fencing or other type of enclosure on the Malvern Hills

   see clause 83(3).[1]

5. Thirdly, the power can only be exercised to further MHT's objects and is "subject to the provisions of this Act and any other enactment passed before or after this Act" (clause 83(1)).

6. As a body established by statute, MHT only has such powers as are "*expressly conferred or derived by reasonable implication*" from the provisions of its legislation.[2]

7. It has, however, long been recognised at common law that a statutory corporation may also do such things as are reasonable incidental to the things for which it is given express or implied authority.[3] That common law position was given a statutory footing for local authorities through section 111 of the Local Government Act 1972. The Government has also recently proposed extending the general power of competence in section 1 of the Localism Act 2011 - which is broader in its terms than section 111 of the Local Government Act 1972 – to English National Park Authorities and the Broads Authorities.[4]

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[1] An amendment to this clause is being proposed to make it explicit that the power cannot be used to raise a levy or precept.

[2] *Baroness Wenlock v River Dee Co* (1885) 10 App.Cas.354 per Lord Watson at pg.362.

[3] See, for example, *Att-Gen v Great Eastern Rly Co* (1880) 5 App.Cas 473 per Lord Selborne at pg.478.

[4] Clauses 73 of and Schedule 30 to the English Devolution and Community Empowerment Bill : HL Bill 150 (as brought from the Commons)

8. Similarly, the model governing document templates which have been produced by the Charity Commission for use by persons looking to establish new charities or charitable trusts,[5] also include a general power of the sort referred to above.

9. Clause 83 would, in effect, make the same provision for the MHT - in more restrictive terms that any of those other examples.

10. Concerns have been expressed by some petitioners that the general power would allow for an increased "commercialisation" of the Malvern Hills or result in common land being 'lost' through the granting of easements or access roads. MHT would not be able to exercise the general power for either of those matters.

11. Firstly, as highlighted above, MHT would only be able to use the general power in respect of matters where it did not enjoy a specific power under the Bill (or other enactment). Thus, in respect of matters such as licences for commercial activities, MHT would have to look to the powers in clauses 62 or 63 or in Schedule 4 (specifically, paragraph 23) of the Bill. In respect of easements or access roads, MHT would have to rely on the power in clause 55 of the Bill.

12. Secondly, MHT is expressly precluded by clause 83(3)(a) and (c) from relying on the general power in clause 83 to grant any interests in land or to erect any building or other type of enclosure on the Malvern Hills. It could not, for example, rely on the general power to enable the construction of a supermarket or a solar farm on the Hills, or to grant new easements or access rights over common land.

13. Thirdly, the general power could only be used to further the objects in clause 6 of the Bill. It could not use the power for purposes which would contradict those objects.

14. Whilst MHT has endeavoured to identify the powers and situations for which it may require powers going forward and which are not currently expressly provided for in the Malvern Hills Acts – see Schedule 4 to the Bill – the general power would ensure that it can be flexible and responsive in meeting future needs of the Malvern Hills or dealing with situations which simply cannot be envisaged at present, without the need to come back and seek further powers from Parliament as it has had to do in the past.[6] It also removes the risks and costs (in particular, of having to seek legal advice) to MHT , which have arisen in the past where there is uncertainty as to whether something MHT wishes to do, and which is clearly

https://bills.parliament.uk/bills/4002

[5] https://www.gov.uk/government/publications/setting-up-a-charity-model-governing-documents: see for example clause 5(10) in the model trust deed for a charitable trust

[6] For example, in seeking powers through what became the Malvern Hills Act 1930 for the provision of parking places.

aligned with its objectives, is something it has the power to do where not expressly captured by any of the provisions of the existing legislation.

MALVERN HILLS BILL

NOTE ON CHARITY LAW MATTERS

Registration as a charity

1. Section 4 of the Charities Act 1960 introduced a new requirement for the Charity Commissioners (now replaced by the Charity Commission) to establish a register of charities (s.4(1)) and for every charity not excepted by s.4(4) to be entered on that register (s.4(2)). The Malvern Hills Conservators was not an excepted charity.

2. Those requirements are now found in ss.29 and 30 of the Charities Act 2011.

3. By s.37(1) of the Charities Act 2011 *"[a]n institution is, for all purposes other than rectification of the register, conclusively presumed to be or to have been a charity at any time when it is or was on the register."*

What is a charity for the purposes of the Charities Acts?

4. "Charity" was defined for the purposes of the Charities Act 1960 as meaning "*any institution, corporate or not, which is established for charitable purposes and is subject to the control of the High Court in the exercise of the court's jurisdiction with respect to charities*" (s.45(1)).

5. The current definition of a "charity", set out in s.1(1) of the Charities Act 2011, is "*an institution which – (a) is established for charitable purposes only, and (b) falls to be subject to the control of the High Court in the exercise of its jurisdiction with respect to charities*".

6. "Charitable purpose" is defined in s.2(1) of the Charities Act 2011. For the purposes of the law of England and Wales it is a purpose which falls within s.3(1) of the Act and is for the public benefit. The list of purposes in s.3(1) includes:

    a. "the advancement of environmental protection or improvement" (s.3(1)(h); and
    b. "any other purposes—

1. that are not within paragraphs (a) to (l) but are recognised as charitable purposes by virtue of section 5 (recreational and similar trusts, etc.) or under the old law,
2. that may reasonably be regarded as analogous to, or within the spirit of, any purposes falling within any of paragraphs (a) to (l) or sub-paragraph (i), or
3. that may reasonably be regarded as analogous to, or within the spirit of, any purposes which have been recognised, under the law relating to charities in England and Wales, as falling within sub-paragraph (ii) or this sub-paragraph." (s.3(1)(m))

7. By s.4(3), the "public benefit" requirement means that:

    a. The purpose of the body, being a purpose within s.2(1)), must be for the public benefit if it is to be a charitable purpose;
    b. In deciding whether that requirement is satisfied in respect of any body with a purpose falling within s.3(1), there is no presumption that a purpose of a particular description is for the public benefit; and
    c. For the purposes of Chapter 1 of the Act, "*any reference to the public benefit is a reference to the public benefit as that term is understood for the purposes of the law relating to charities in England and Wales*".

The position pre- Charities Act 2006

8. The statutory definitions of "charity" and "charitable purpose" in the form now found in Chapter 1 of the Charities Act 2011 were first introduced by the Charities Act 2006 with effect from 1 April 2008. Prior to that, as set out in Tudor on Charities (11 Edn, 2023) at 1-011:

    "*… the general non-statutory legal meanings of "charity" and "charitable purposes" were the meanings which had been defined and refined by the courts over the years. These meanings are generally referred to as the "common law" meanings, though the courts which contributed to the definitions were more often than not the courts of equity. At common law (including equity) "charitable purposes" meant purposes which: (1) were within the spirit and intendment* *of the Preamble to the Statute of Elizabeth I,*[1] *such spirit and intendment being assessed by reference to the Preamble itself and to the decided cases; and (2) were for the benefit of the public or the community or appropriate sections of them. A charity was an institution whose purposes were exclusively charitable….*"

9. In *Re Verrall* [1916] 1 Ch 100, Astbury J confirmed at pp115-6 that the objects of the National Trust were charitable. Those objects, as stated in s.4(1) of the National Trust Act 1907, were as follows:

   "*The National Trust shall be established for the purposes of promoting the permanent preservation for the benefit of the nation of lands and tenements (including buildings) of beauty or historic interest and as regards lands for the preservation (so far as practicable) of their natural aspect features and animal and plant life*"

10. There are also a number of cases in which trusts of common land (or over monies paid as compensation or otherwise arising from such land) have been considered to be charitable trusts: see, for example, *Re Christchurch Inclosure Act* (1888) 38 Ch.D 520, *Peggs v Lamb* [1994] Ch 172, and *Attorney-General v Hyde* [2002] WTLR 1419.

Bodies established by statute and status as registered charities

11. There is no inconsistency between a body such as the Malvern Hills Conservators being a body established and governed by statute and it being a registered charity. There are a number of bodies which are both established by statute and a registered charity.[2] These include the National Trust (registered charity no 205846) and the Wimbledon and Putney Conservators (registered charity number 303167), the latter being also funded by levy in a similar manner to the Malvern Hills Conservators.

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[1] Footnote in original text: "Charitable Uses Act 1601, 43 Eliz. 1, c.4".

[2] See also and generally Tudor on Charities (11th Edn, 2023) at 6-099 "*A charitable corporation may be established directly by Royal Charter, or by Royal Charter granting the holder of an office the right to create corporations indefinitely, or by a private individual acting under Royal licence. In addition, a charitable corporation may be created by an Act of Parliament*". The examples given of corporations created by Act of Parliament are the Church Commissioners (ss.1-2 of the Church Commissioners Measures 1947) and the Construction Industry Training Board (established by statutory instrument under the Industrial Training Act 1964) and considered by the Court of Appeal in *Construction Industry Training Board v Attorney-General* [1973] Ch 173.

12. The Charities Act 1960 expressly recognised that some charities might be bodies which were governed by Royal Charter or by statute, making specific provision in respect of certain types of charities of that nature in, for example, ss.15 and 19 of the Act.

13. Similar provisions are now contained in Part 6 of the Charities Act 2011. S.73 empower the Charity Commission to make schemes for administration of a charity altering provisions made by an Act establishing or regulating such charity, subject to an order being made by the Secretary of State giving effect to the scheme:

"**73 Powers to make schemes altering provision made by Acts, etc.**

(1) If it appears to the Commission that a scheme should be established for the administration of a charity, but also—

(a) that it is necessary or desirable for the scheme—

(i) to alter the provision made by an Act establishing or regulating the charity, or

(ii) to make any other provision which goes or might go beyond the powers exercisable by the Commission apart from this section, or

(b) that it is for any reason proper for the scheme to be subject to parliamentary review,

the Commission may (subject to subsection (7)) settle a scheme accordingly with a view to its being given effect under this section.

(2) A scheme settled by the Commission under this section may be given effect by order of the Secretary of State.

[…]"

14. In addition to regulation by the Charity Commission, charities established by statute are subject to control by the High Court. Per Russell L.J. in *Construction Industry Training Board v Attorney-General* [1973] Ch 173 (dissenting on the outcome of the appeal but not on this point) at p.181:

"*Every charitable institution is in general subject to the control of the High Court in the sense that, even if regulated by statute or charter, the court will at the instance of an appropriate person - and in particular of the Attorney-General intervene to prevent disobedience to the statute or charter*."

15. The status of a body or institution as a charity also does not preclude it from being treated as exercising public functions, or as/as if a public authority, for certain purposes. For example, the Canal and River Trust is a public authority for the purpose of the Freedom of Information Act 2000 in respect of information held in connection with certain of its functions.[3] In *Ex parte Scott* [1998] 1 WLR 226 (a claim seeking judicial review of the National Trust's decision to end deer hunting with hounds on Trust land and to not renew licences for hunting deer), it appears that the Court may have been prepared to entertain a claim in judicial review had it not lacked jurisdiction to do so, the requisite consent not having been obtained from the Charity Commission or High Court.[4] Per Tucker J at pp.227:

"*[p.227]…. I regard the matter as being of sufficient concern to the public and as being arguably taken by a statutory body exercising public functions, so as to justify the engagement of public law remedies. If I had jurisdiction to entertain the application, I would be minded to grant leave, on the basis that the applicants have shown an arguable case that the decision was flawed by the National Trust's failure to give the applicants an opportunity to make representations on their own behalf before a final decision was taken. Moreover, it is arguable that the applicants had a legitimate expectation, engendered by past practice, that the licences would be renewed, until and unless, deer hunting was outlawed."*[5]

16. As to the obligations on the Conservators, s.177 of the Charities Act 2011 provides that the term "charity trustees" for the purposes of the Act means "*the persons having the general control and management of the administration of a charity*". The Explanatory Memorandum to the Charities Act 2022[6] identifies that this "*would include, for example the directors of a charitable company, the trustees of a charitable trust, and the members of the management committee of an unincorporated association*". For example, in *Re French Protestant Hospital* [1951] Ch 567, it was held that the directors of the hospital (a charitable corporation incorporated by Royal Charter) whilst not 'technically' trustees of the trust property (it being

[3] As specified in Schedule 1 Part VI.
[4] The requirement for consent from the Charity Commission or a Judge of the High Court attached to the Chancery Division prior to commencement of "charity proceedings" (i.e. proceedings in any court in England or Wales brought under the court's jurisdiction with respect to charities, or brought under the court's jurisdiction with respect to trusts in relation to the administration of a trust for charitable purposes) was previously found in s.33 of the Charities Act 1993. It is now set out in s.115 of the Charities Act 2011. See also Part 64 of the Civil Procedure Rules.
[5] Consent was subsequently declined by the Chancery Division: *Scott v National Trust for Places of Historic Interest or Natural Beauty* [1998] 2 All ER 705.
[6] See Tudor on Charities (11th Edn, 2023) at 17-001.

vested in and held by the corporation) were "*as much in a fiduciary position as trustees in regard to any acts which are done respecting the corporation and its property*" (Danckwerts J (as he then was) at p.570).

17. In a similar vein, a local authority holding land for the benefit of the public which is subject to a statutory trust under s.164 of the Public Health Act 1875 or s.10 of the Open Spaces Act 1906 is subject to various obligations and restrictions in respect of such land and required to ensure that activities carried on at the land by or on behalf of the authority are consistent with the status of the land as public trust land (see, for example, *R (Wilkinson) v Enfield London Borough Council* [2024] PTSR 1532 at [239]-[248]).

The Bill

18. The Bill does not and does not purport to alter the status, functions or duties of the statutory corporation currently known as the Malvern Hills Conservators.

19. Clause 8(3), which provides that the trustees (being persons fulfilling the same role as the conservators under the previous legislation) are the charity trustees of the Trust simply reflects the current position: that the Conservators, the persons having the control and management of the administration of the Malvern Hills Trust are thus also (and will continue to be) its "charity trustees" for the purpose of the Charities Act 2011.

JACQUELINE LEAN

2 February 2026