

Agenda

Community Focus Scrutiny Committee



Date	Thursday, 13 June 2013 at 6:15 pm
Venue	Town Hall, St Annes
Committee members	<p>Councillor Kiran Mulholland (Chairman) Councillor Christine Akeroyd (Vice-Chairman)</p> <p>Councillors Tim Armit, Julie Brickles, Susanne Cunningham, Tony Ford JP, Gail Goodman JP, Nigel Goodrich, Peter Hardy, Kathleen Harper, Paul Hodgson, Barbara Nash, Linda Nulty, Dawn Prestwich, John Singleton JP, Vivienne M Willder</p>

Public Platform To hear representations from members of the public

Item		Page
1	Declarations of Interest: Any member needing advice on Declarations of Interest should contact the Monitoring Officer before the meeting.	1
2	Confirmation of Minutes: To confirm the minutes of the previous meeting held on 4 April 2013 as a correct record. As attached at the end of the agenda.	1
3	Substitute Members: Details of any substitute members notified in accordance with council procedure rule 24.3.	1
4	Fylde Coast Bathing Waters Update	3 – 4
5	Interim Report – Club Day Support Task and Finish Group	5 – 7
6	Lowther Gardens Trust – Governance Arrangements	8 – 38

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REPORT

REPORT OF	MEETING	DATE	ITEM NO
RESOURCES DIRECTORATE ON BEHALF OF THE CHAIRMAN OF THE COMMUNITY FOCUS SCRUTINY COMMITTEE	COMMUNITY FOCUS SCRUTINY COMMITTEE	13 JUNE 2013	4

FYLDE COAST BATHING WATERS UPDATE

Public Item

This item is for consideration in the public part of the meeting.

Summary

The report updates members on issues raised at previous meetings

Recommendation

1. To consider making any comments or recommendations

Cabinet Portfolio

The item falls within the following Cabinet portfolio:

Environment and Partnerships:

Councillor Tommy Threlfall

Leisure and Culture:

Councillor Sue Fazackerley

Summary of previous decisions

1. Previous meetings of the Community Focus Scrutiny Committee during 2012/13

Report

1. The Committee has considered detailed reports and presentations on the topic of Fylde Coast Bathing Waters at its meetings on 4th October and 29th November 2012.
2. At the November meeting, the Committee sought to pursue the principle of a joint scrutiny with Blackpool Council. At a subsequent meeting of the committee, it was reported that the various authorities were at different stages of the review and as a consequence, there appeared to be very little appetite for a joint scrutiny.
3. Further to the above, work has been done on the Ten Point Action Plan. The latest draft was considered at the last meeting of the Committee in April. In addition, there has been further thinking on a more long term strategic joint approach to monitoring the progress of the key partner organisations in their endeavours to improve bathing water quality in the North West.
4. At the last meeting, the Chairman, was asked to further pursue a joint scrutiny approach with neighbouring authorities and work with the Director of Resources on the models available. Councillor Mulholland will report on progress made at the meeting.

IMPLICATIONS	
Finance	None
Legal	None
Community Safety	None
Human Rights and Equalities	None
Sustainability and Environmental Impact	None
Health & Safety and Risk Management	None

Report Author	Tel	Date	Doc ID
Lyndsey Lacey	(01253) 658504	24 May 2013	

List of Background Papers		
Name of document	Date	Where available for inspection
Previous reports/minutes CFSC		Council website

Attached documents

None

REPORT



REPORT OF	MEETING	DATE	ITEM NO
RESOURCES DIRECTORATE ON BEHALF OF THE CHAIRMAN OF COMMITTEE	COMMUNITY FOCUS SCRUTINY COMMITTEE	13 JUNE 2013	5

INTERIM REPORT – CLUB DAY SUPPORT TASK AND FINISH GROUP

Public Item

This item is for consideration in the public part of the meeting.

Summary

The report presents the interim findings of the Club Day Support Task and Finish Group appointed by committee at its last meeting.

Recommendations

To ask the Scrutiny Committee and Cabinet to note the interim findings of the Task and Finish Group and await the full and final report in due course.

Cabinet Portfolio

The item falls within the following Cabinet portfolio:

Leisure and Culture:

Councillor Sue Fazackerley

Summary of previous decisions

Council Budget meeting 4 March 2013

Continued....

Report

1. At the previous meeting of the Committee (4 April), a Task and Finish Group was appointed to undertake an urgent scrutiny review on Club Day Support. The appointed Group currently comprises: Chairman and Vice-Chairman of Committee and Councillors Barbara Nash, Elizabeth Oades, John Singleton.
2. It was suggested that the review consider two issues: the policing aspects in liaison with the Lancashire Constabulary and a review of the Council's own Club Day provision and support.
3. The first meeting of the Group was held on 17 April 2013 whereby representatives of the Police and Lancashire County Council were invited to attend. At that meeting, the Scoping Document was approved and an overview of the position was given.
4. In summary, due to recent changes in the legislation, the Police had indicated to local Club Day organisers that they were unable to support/marshal future Club Day events. In view of this, there was perceived to be a sustainability issue.
5. The Police have historically supported certain Club Day events (morning and afternoon) in Fylde, but due to other priorities and resource implications, indicated that arrangements for marshalling the procession in the morning could not continue. It was suggested that the resource implications for road closures detracted from resources required elsewhere in the Fylde. The Police had highlighted other priorities such as 'prevention and detection of crime' and 'breach of the peace' etc.
6. Temporary traffic regulation orders can be made by the District council under Section 21 of the Town Police Clauses Act 1847 ("TPCA order") or by the County council under section 16A of the Road Traffic Regulation Act 1984 ("RTRA order").
7. Historically, Club Day organisers in Fylde submitted applications for RTRA orders through the Police Events and Planning team at Blackpool. The Police collated the list and forwarded the applications in bulk to Lancashire County Council. LCC then made the RTRA orders at no cost to the event organisers. This facility was helpful to organisers, but the County council and the Police have indicated that it can no longer continue. Instead, Club Day organisers will have to apply for closures individually and liaise with the appropriate bodies. It appears that the cost of the orders, which can be up to £1000 partly due to the need to publically advertise the closure orders in the press, will be charged to the organising committees.
8. For the 2013 Club Days, Fylde Council has agreed to facilitate road closures through TPCA orders, which do not need to be advertised and have no cost. However, the Police have expressed concern about the fitness for modern purposes of the 1847 legislation.
9. It was suggested that in future, Club Day organisers put appropriate arrangements in place to ensure that a Traffic Management Plan has been set up to enable them to self manage future arrangements.
10. In the absence of any clear policy on the matter, Lancashire County Council were not in a position to offer any specific guidance. The legal team at County is currently investigating the

most appropriate (road closure) legislation to use for future Club Days. This information will not be available in the short term.

11. The Council have been advised by the Police, that the situation cannot continue in the short-term and that future Club Day events would need to be appropriately resourced and supported.
12. The Police confirmed that they will continue to resource Freckle ton Club Day because this is the only event where the procession goes across a dual carriageway. In addition, as a goodwill gesture the Police will continue to support this year's other events across the borough.
13. In conclusion, the Group felt that the urgency had somewhat been removed but acknowledged that further work was needed for future events. The Group will continue with its work which will also include a review of the Council's own Club Day provision and support, with a view to presenting a full and final report to Committee and Cabinet in due course.

IMPLICATIONS	
Finance	Any financial implications arising from the recommendations will be contained within the final report on this subject in the near future.
Legal	Any legal implications arising from the recommendations will be contained within the final report on this subject in the near future.
Community Safety	None
Human Rights and Equalities	None
Sustainability and Environmental Impact	Already considered in the report
Health & Safety and Risk Management	Already considered in the report

Report Author	Tel	Date	Doc ID
Lyndsey Lacey	(01253) 658504	24 May 2013	

List of Background Papers		
Name of document	Date	Where available for inspection
Council budget March 2013		Council website

Attached documents

None

REPORT

REPORT OF	MEETING	DATE	ITEM NO
DIRECTOR COMMUNITY SERVICES	COMMUNITY FOCUS SCRUTINY COMMITTEE	13 JUNE 2013	6

LOWTHER GARDENS TRUST - GOVERNANCE ARRANGEMENTS

Public Item

This item is for consideration in the public part of the meeting.

Summary

Lowther Gardens Trust is supported by the Council in accordance with the Service Level Agreement for the sustainable management of the Pavilion. Members have requested a review of the governance arrangements of the Trust, as per the appended report.

During discussions the trustees have asked the Council to transfer title to the gardens to the Official Custodian for Charities. Legally the Council is bound by the lawful directions of the trust and Members are requested to agree to the transfer of title.

The report also identifies the current arrangements for grounds maintenance, and requests Members support the formalisation of these arrangements through the development of a further Service Level Agreement in this respect.

Recommendations

Members are requested:

1. To consider the Governance Report appended.
2. To recognise the commitment of the Trust in developing governance processes further.
3. To invite a representative of the Trust to a subsequent meeting to discuss progress and present the annual report.
4. To endorse the transfer of title to Lowther Gardens (including the Pavilion) to the Official Custodian for Charities.

Continued....

5. To endorse execution of any other documents (for example, an intermediate transfer to the trustees or an application for first registration of the title) which are necessary or expeditious to facilitate the transfer to the Official Custodian.
6. To endorse the arrangements by which the Council maintains the grounds and manages the associated leisure activities through the development of a further Service Level Agreement between the Council and the Lowther Gardens Trust.

Cabinet Portfolio

The item falls within the following Cabinet portfolio:

Leisure & Culture

Councillor Susan Fazackerley

Summary of previous decisions

Cabinet 23 May 2012

In reaching its decision, Cabinet considered the details set out in the report before it and at the meeting and resolved:

1. To approve the release of the following revenue budget provision to the Lowther Gardens Trust to support the management of the Pavilion, in line with the business plan / financial forecast previously provided, whilst recognising the financial implications identified in the report:

2012/13 - £71,417; 2013/14 - £59,617; 2014/15 - £50,667; 2015/16 - £38,667;

2016/17 - £31,667.

2. To delegate to the Leader in consultation with the Director of Community Services and the Council's Section 151 Officer, agreement of the final terms of the Service Level Agreement.

3. To pass on Cabinet's thanks and appreciation to the Working Group for their work on the matter.

Report

Governance Matters

1. Lowther Gardens Trust receives financial support from Fylde Borough Council as agreed by Cabinet and identified above, in accordance with the relevant service level agreement. The Trust is a registered charity, with 9 trustees:

Dan Creasey, Philip Hargreaves, Tim Lince, Teresa Mallabone, Barry Scott, David Winston, Gillian Winward, Rosemary Withers and Fylde Borough Council. The Council's representative on the Trust is Cllr Susan Fazackerley.

The trustees have wide ranging and relevant skills, knowledge and experience appropriate to the roles they fulfil.

2. The scheme, agreed and made by the Charity Commission in June 2009, and amended in January 2011, is the governing document of the Trust, and requires the trustees to retain Lowther Gardens for the object of the charity (Appendix 1). The primary object is:

“to promote for the benefit of the inhabitants of Lytham and the surrounding area the provision of facilities for recreation or other leisure time occupation of individuals who have need of such facilities by reason of their youth, age, infirmities or disablement, financial hardship or social and economic circumstances or for the public at large in the interests of social welfare and with the object of improving the conditions of life of the said inhabitants”.

3. The trustees’ principal obligations are to manage the charity for the purposes of the trust and to comply with the rules and legislation that apply to charitable trusts and their trustees. Trustees have an overriding fiduciary duty to the trust. No trustee (including the council) can use trust property (including the Gardens or Pavilion) for their own purposes where these do not coincide with the object of the trust.
4. The Trust has a trading company, Lowther Gardens (Lytham) Management Ltd, which was established in February 2011 to manage the day to day operation of Lowther Pavilion. Subsequently management of the Pavilion was handed over from Fylde Borough Council to the Trust on 1 June 2012.
5. The service level agreement (Appendix 2) covers a 5 year period until 31 March 2017. Clause 23 of the agreement is relevant to governance issues:

“The Provider will ensure that there are appropriate internal procedures in place to manage risks and ensure good governance practice. The Provider will provide to the Council such evidence as the Council reasonably requires that risk management measures are being undertaken to mitigate threats to the future operation of the Services and that good governance practice is operational. Performance on risk management and governance measures will form a part of the quarterly monitoring meetings, including details of any changes to the register of interests maintained by the Trust.”

6. Members have requested information about the governance arrangements implemented by the Trust, resulting in a documentary review by the Council’s Head of Internal Audit (Appendix 3).
7. The trustee with specific responsibility for governance issues is Gillian Winward who has recently been appointed to the Trust. Gillian has significant knowledge and experience of governance matters, working as a governance advisor and consultant in the public sector, and with a background in HR, having worked in both the public and private sectors at a senior level.
8. Council officers have met with Gillian to agree a way forward in developing the governance processes with the Trust, to improve the assurance around management arrangements for trustees, conflicts of interest, procurement and financial procedures in particular.
9. It is anticipated that a further report will be presented to the Community Focus Scrutiny Committee outlining how the proposed governance changes have been implemented, together with the annual performance report.

Transfer of Title

10. During discussions about the governance of Lowther Gardens Trust, the issue of the freehold title to the gardens has been raised. The Council holds the legal title to Lowther Gardens, including the Pavilion. However, it is obliged to act in relation to the title in accordance with the lawful directions of the trustees. Effectively, the Council acts as a holding trustee of the title.
11. Trust property must be held either by a holding trustee, by up to four trustees, by a company controlled by the trust, or be vested in the Official Custodian for Charities. In any of these circumstances, the persons or body holding the title must act in accordance with the lawful directions of the trustees.
12. The trustees have requested that the council transfer the title to Lowther Gardens, including the pavilion, to the Official Custodian for Charities. The following text is from Charity Commission guidance¹:

“The Official Custodian is a corporation created by statute to hold land on behalf of charities; in practice he/she is a member of the Charity Commission's staff who is appointed to this role. If land is to be held by the Official Custodian it has to be 'vested' in him/her.

Charities which are unincorporated, such as trusts or associations, do not have legal identity and cannot hold property (including land) in their own name. Instead it must be held on behalf of the charity by nominated individuals (known as holding trustees, and often in practice one or more of the charity trustees) or a corporate body... In the case of individuals, from time to time these individuals will change (e.g. due to retirement or death), and new deeds will be required to transfer the property to their successor. However, vesting charity land in the Official Custodian removes this need. This has two advantages:

- the charity is saved the expense of making the new deeds required when its holding trustees change;
- there is no risk that the charity land will remain vested in people who are no longer involved with the charity and who may be difficult to trace.”

13. Members are therefore requested to endorse the transfer the title of Lowther Gardens, including the pavilion, to the Official Custodian for Charities.
14. The Charity Commission normally requires land to be vested in the charity immediately before the transfer to the Official Custodian. The recommendation therefore also covers the execution of any documents that need to be executed to facilitate the transfer to the Official Custodian.

Grounds Maintenance

15. Historically the Council has maintained Lowther Gardens on the same basis as other open space assets owned by Fylde Borough Council. Given the proposed transfer of title, it is considered prudent to formalise this arrangement through the development of a service

¹ The Official Custodian for Charities' Land Holding Service (CC13)

level agreement, on a similar basis to arrangements where the Council carries out grounds maintenance operations for others. The support provided to Lowther Gardens Trust in the form of a subsidy to manage the Pavilion and the cost of grounds maintenance and leisure provision, have been clearly shown in the Council's approved budget for a number of years. The maintenance of the Lowther Gardens site and the provision of leisure activities are considered beneficial to both residents of, and visitors to, the Borough and it is anticipated that they will be funded by the Council from the currently approved revenue budgets.

IMPLICATIONS	
Finance	The Council's financial obligations to Lowther Gardens Trust in respect of the management of Lowther Pavilion were detailed within the cabinet report of 23 May 2012 and are contained within the 'summary of previous decisions' section of this report. The maintenance of the Lowther Gardens site and the provision of leisure activities will be met from the approved revenue budgets for these purposes. No additional funding is required.
Legal	The council is a trustee of the gardens and is not entitled to use them for any purpose other than the purposes of the trust. Members are therefore asked to endorse the transfer of title to Lowther Gardens Trust, recognising that under rule 2.1 of the Land Transaction Procedure Rules, rules 3 and 7 will not apply to the disposal.
Community Safety	Attractive and accessible parks, open spaces and cultural opportunities are important in providing diversionary activities and improving health and wellbeing.
Human Rights and Equalities	None arising from this report.
Sustainability and Environmental Impact	Sustainable and environmentally sensitive parks and open spaces are important facilities for resident and visitor communities.
Health & Safety and Risk Management	Risk management is addressed through the terms of the service level agreement.

Report Author	Tel	Date	Doc ID
Darren Bell / Ian Curtis	(01253) 658465	13 June 2013	13.06.13 Lowther Governance

List of Background Papers		
Name of document	Date	Where available for inspection
Charity Commission guidance note CC13 (The Official Custodian for Charities' Land Holding Service)	Accessed 20 May 2013	www.charitycommission.gov.uk/publications/cc13.aspx

Attached documents

1. Appendix 1 Scheme to Govern Lowther Gardens Lytham
2. Appendix 2 Service Level Agreement
3. Appendix 3 Governance Review Report

Scheme to govern Lowther Gardens, Lytham

1. Definitions

In this scheme:

“the charity” means the charity identified at the beginning of this scheme.

“the trustees” means the trustees of the charity acting under this scheme

Administration

2. Administration

The charity is to be administered in accordance with this scheme. This scheme replaces the former trusts of the charity.

3. Name of the charity

The name of the charity is Lowther Gardens, Lytham

Object

4. Object of the charity

- (1) The object of the charity is to promote for the benefit of the inhabitants of Lytham and the surrounding area the provision of facilities for recreation or other leisure time occupation of individuals who have need of such facilities by reason of their youth, age, infirmities or disablement, financial hardship or social and economic circumstances or for the public at large in the interests of social welfare and with the object of improving the conditions of life of the said inhabitants.
- (2) The land identified in part 1 of the schedule to this scheme must be retained by the trustees for use for the object of the charity.
- (3) The trustees may appropriate and use the land identified in part 2 of the schedule to this scheme for a pavilion building to be used for the object of the charity.

Powers of the trustees

5. Powers of the trustees

In addition to any other powers which it has, the trustees may exercise the following powers in furtherance of the objects of the charity:

- (1) Power to lease part of the pavilion, subject to the prior written consent of the Commission, for purposes ancillary to the enjoyment of the gardens. The trustees must comply with the restrictions on disposal imposed by section 36 of the Charities Act 1993, unless the lease is excepted from these restrictions by section 36(9)(b) or (c) or section 36(10) of that act.
- (2) Power to charge such reasonable sums as the trustees shall determine for use of the pavilion and for car parking.
- (3) Power to make rules and regulations consistent with this scheme for the management of the charity.

Trustees

6. Trustees

The trustees of the charity are Fylde Borough Council and such other persons (if any) as have been appointed using the powers in this scheme.

7. Appointment of trustees

- (1) At any time when Fylde Borough Council is the only trustee, it may appoint additional trustees.
- (2) Apart from Fylde Borough Council and trustees appointed by Fylde Borough Council under paragraph (1) above, every trustee must be appointed by a resolution of the trustees passed at a special meeting called under clause 12 of this scheme,
- (3) 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.
- (4) The trustees must make available to each new trustee, on his or her first appointment:
 - a. a copy of this scheme and any amendments made to it;
 - b. a copy of the charity's latest report and statement of accounts.

8. Eligibility for trusteeship

(1) No-one shall be appointed as a trustee:

- a. If he or she is under the age of 18 years; or
- b. If he or she would at once be disqualified from office under the provisions of clause 9 of this scheme.

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

9. Termination of trusteeship

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

- (1) is disqualified from acting as a trustee by virtue of section 72 of the Charities Act 1993 or any statutory re-enactment or modification of that provision;
- (2) becomes incapable by reason of mental disorder, illness or injury of managing his or her own affairs; or
- (3) is absent without 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.

10. 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 to see and hear each other.

11. 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 or by any two trustees. In that case, not less than ten days' clear notice must be given to the other trustees.

12. 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 this scheme, not less than 21 days' clear notice must be given. A special meeting may be called to take place immediately after or before an ordinary meeting.

13. Fylde Borough Council representative

- (1) Fylde Borough Council may nominate any of its members or officers as its representative at meetings of the trustees and may change its nomination at any time.
- (2) The nominated representative of Fylde Borough Council may vote at meetings of the trustees and do any other thing that other trustees could do. Attendance by the nominated representative at any meeting will be counted as attendance by Fylde Borough Council.

14. Chairing of meetings

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

15. Quorum

No business shall be conducted at a meeting of the trustees at any time when at least one third of the total number of trustees at the time, or two trustees (whichever is greater) is not present.

16. Voting

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

17. Conflict of interest

A trustee must absent himself or herself from any discussions of the 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 and including, in the case of Fylde Borough Council, any such interest of either Fylde Borough Council or of its nominated representative).

18. Minutes

The trustees must keep minutes, in books kept for the purpose or by such other means as the trustees decide, of proceedings at their meetings. In the minutes, the trustees must record their decisions and, where appropriate, the reasons for those decisions.

Charity property

19. Charity property

The trustees must not erect any additional buildings or extend the existing pavilion.

20. Use of income and capital

(1) The trustees must first apply:

- a. The charity's income; and
- b. If the trustees think fit, the expendable endowment

in meeting the proper costs of administering the charity and of managing its assets (including the repair and insurance of its buildings).

- (2) After payment of these costs, the trustees must apply the remaining income in furthering the object of the charity.
- (3) The trustees may also apply expendable endowment for the object of the charity.

Power of amendment

21. Power of amendment

- (1) The trustees (subject to the provisions of this clause) may from time to time amend the trusts if it is satisfied that it is expedient in the interests of the charity to do so.
- (2) The trustees must not make any amendment which would have the effect directly or indirectly of:
 - a. Altering or extending the purposes of the charity;
 - b. Authorising the trustees to do anything which is expressly prohibited by the trusts of the charity;
 - c. Causing the charity to cease to be a charity at law;
 - d. altering or extending the power of amendment that is conferred by this clause.
- (3) The trustees must obtain the prior approval of the Commission before making any amendment which would have the effect directly or indirectly of:
 - a. Enabling it to spend permanent endowment or to capitalise income of the charity
 - b. Conferring a benefit of any kind on the trustees (or on members of the governing body) or on its successors;
 - c. Restricting the existing right of any person (other than the trustees) to appoint or remove the trustees, or to intervene in the administration of the charity, without the consent of that person;
 - d. Varying the name of the charity.
- (4) The trustees must:

- a. Prepare a written memorandum of each amendment that it makes;
- b. Send to the Commission a certified copy of the memorandum within three months of making the amendment; and
- c. Retain the memorandum as part of the governing document.

General provisions

22. Questions relating to the scheme

The Commission may decide any question put to it concerning:

- (1) The interpretation of this scheme; or
- (2) The propriety or validity of anything done or intended to be done under it.

Schedule

Part 1

Lowther Gardens, Lytham. The land is described in an indenture dated 16 February 1905 which was made between John Talbot Clifton of the first part and the Urban District Council of Lytham of the second part.

Part 2

Land with the building thereon known as Lowther Pavilion being part of the land described in part 1 of the schedule to this scheme.

Service Level Agreement for Grant-Funded Services

Date:

Parties

- (1) Fylde Borough Council ("the Council")
- (2) Lowther Gardens (Lytham) Management Ltd. ("the Provider") as the operating company of Lowther Gardens Trust

Interpretation

In this agreement the following words have the following meanings:

Default Notice	A notice fulfilling the requirements of clause 29 and a Default Notice is "unresolved" at any time that the concerns raised in it have not been addressed to the reasonable satisfaction of the Council
Grant	The Initial Grant and any Subsequent Grant
Grant Period	The Initial Grant Period and any Subsequent Grant Period
Initial Grant	£71,417
Initial Grant Period	1 April 2012 to 31 March 2013
Performance Measures	The performance measures set out in the Second Schedule
Poster Sites	The advertising poster sites listed in the third schedule including, where the context permits, part of such a site.
Scheme	The scheme governing the charity known as Lowther Gardens, Lytham dated 3 June 2009, as amended 17 January 2011 (or any subsequent amendment)
Services	The services provided at Lowther Pavilion set out in the First Schedule
Subsequent Grant	Any grant paid by the Council to the Provider in respect of the Subsequent Grant Periods, the amount of which is to be decided by the Council in its discretion but subject to the matters set out in this Agreement, but which is not to exceed: 2013/14 - £59,167 2014/15 - £50,667

	2015/16 - £38,667 2016/17 - £31,667
Subsequent Grant Periods	Any of the following periods in respect of which a Subsequent Grant is to be paid: 1 April 2013 to 31 March 2014; 1 April 2014 to 31 March 2015; 1 April 2015 to 31 March 2016; 1 April 2016 to 31 March 2017.
TUPE	The Transfer of Undertakings (Protection of Employment) Regulations 2006

Status of Agreement

1. The Council has agreed to pay a grant to the Provider to enable it to provide the Services at Lowther Pavilion. The Council is satisfied that paying a grant for these purposes is likely to achieve the promotion or improvement of the economic, social or environmental well being of the Council's area. The Services provided by the Provider contribute towards delivery of the Council's strategic themes.
2. This Agreement sets out what the Provider is to do, how its performance will be measured and what happens if the Services are not provided as required by this Agreement.
3. This Agreement is not intended to constitute a contract between the Council and the Provider and the Council shall not be legally bound to pay the Grant.

The Grant and the Grant Period

4. The Council will (subject to as hereinafter provided) pay the Initial Grant to the Provider to enable the Provider to deliver the Services during the Initial Grant Period.
5. The Initial Grant will be paid in the following instalments:

Date	Amount
1 June 2012	£35,709
1 October 2012	£17,854
1 January 2013	£17,854

6. The Council may pay the Subsequent Grant to the Provider to enable the Provider to deliver the Services during the Subsequent Grant Periods. Any

Subsequent Grant will be paid in quarterly instalments on 1 April, 1 July, 1 October and 1 January each year.

7. In deciding whether to pay a Subsequent Grant and the amount of any Subsequent Grant, the Council shall have regard to the financial position of the Provider, as evidenced by the accounting information required to be provided, and to the principle of limiting the amount of Subsequent Grant to that required to fulfil its obligations under this agreement, taking into account the need for the Trust to build a reserve of Working Capital and future development funding.
8. In each Subsequent Grant Period, and at least three months prior to 1 April of the relevant period, the parties to this Agreement shall make best endeavours to negotiate a level of Service provision that reflects the Subsequent Grant which the Council (acting reasonably) will pay. In the unlikely event the parties to this Agreement are unable to reach mutually acceptable terms on the provision of the Services this Agreement shall terminate on 31 March in that current Grant Period.
9. The Provider must comply with the Performance Measures and any specific guidance issued by the Council in deciding how it will spend the Grant.
10. In addition to a Grant, the Council may (at its discretion) pay a termination payment of up to the equivalent of one instalment of that Grant for any Grant Period to the Provider on the last day of the Grant Period, if and to the extent that:
 - The Council does not propose to pay a Grant in respect of the year immediately following the end of the Grant Period;
 - The Provider does not intend to provide the Services or services similar to the Services during that year; and
 - The Provider demonstrates to the Council's satisfaction that the termination payment is needed to facilitate a reasonably justifiable winding-down of its service

The Services

11. The Provider will deliver the Services at the times and in the manner set out in this Agreement and in accordance with the Performance Measures.
12. The Provider will supply such information as the Council may reasonably demand from time to time about its provision of the Services to enable the Council to assess the Provider's compliance with the Performance Measures.

Lead Officers

13. Each party has nominated an officer to be the primary point of contact and an address for service on all matters concerning the Grant, this agreement or the Services. The nominated officers are:

Council: Director Community Services, Town Hall, Lytham St Annes, Lancashire FY8 1LW

Provider: Chairman, Lowther Gardens Trust, Lowther Pavilion, West Beach, Lytham St Annes, Lancashire FY8 5QQ

Ancillary Provisions

14. The Provider will be wholly responsible for the day-to-day financial and accounting functions in relation to the delivery of the Services from within its own resources. It must ensure that there are proper financial management arrangements in place in accordance with the UK Generally Accepted Accounting Practice (GAAP). These will include the following:
- A financial audit trail from allocation of spend to activity or service delivery
 - Records of spending decisions
 - Evidence of spend and payments made
 - Evidence of activity undertaken
 - Records of income generated
 - Records of all other funding secured
 - Professionally audited annual accounts
 - Quarterly management accounts
 - Evidence of contracting and procurement procedures carried out for significant items of expenditure, to ascertain value for money
15. The Provider will keep accurate financial records in accordance with GAAP and will make them available to the Council on request, including access to all relevant receipts and invoices. The records must in particular provide a clear audit trail of how any Grant has been used.
16. The Provider will supply to the Council a copy of its pre-audited accounts 3 months after the end of the Initial Grant Period and each Subsequent Grant Period and a copy of the professionally audited accounts within 6 months of the end of those periods.
17. The Provider will supply a copy of its annual budget to the Council one month in advance of the commencement of each Grant Period, which must reflect the Initial Grant or any Subsequent Grant payable by the Council for the provision of the Services.
18. The Provider will supply quarterly management accounts to the Council showing details of expenditure and income in the period and accumulated figures against budget for the year to date. Where the financial statements are inconsistent with the reasonable expectations of the Council the

Provider will clarify and give reasons for the situation, explaining how the agreed budget will be achieved.

19. All spending decisions of the Provider must be within the known resources available to the Provider at the time of making the decision.
20. Any costs, allowances or expenses incurred by the Provider as a result of providing financial information, documents or records to the Council or for attendance at any meetings with Council representatives will be the responsibility of the Provider.
21. The Provider will supply the Council with a schedule of dates when any external audit or accreditation inspection of the Services will be undertaken and provide the Council with a copy of any resulting report.
22. The Provider will, both in providing the Services and generally, comply with all relevant statutory requirements, including those related to health and safety and equalities. The Provider acknowledges that such compliance is the sole responsibility of the Provider and agrees to indemnify the Council against all costs, claims, demands, proceedings and liabilities whatsoever arising out of the performance of the Services. The Council does not, either by the payment of any Grant, by entering into this agreement or otherwise take, accept or assume any responsibility for any non-compliance by the Provider.
23. The Provider will ensure that there are appropriate internal procedures in place to manage risks and ensure good governance practice. The Provider will provide to the Council such evidence as the Council reasonably requires that risk management measures are being undertaken to mitigate threats to the future operation of the Services and that good governance practice is operational. Performance on risk management and governance measures will form a part of the quarterly monitoring meetings, including details of any changes to the register of interests maintained by the Trust.
24. The Provider provides the Services in its own right and not as agent or partner of the Council. The Council will not indemnify the Provider for negligence or any other breach of duty other than for death or personal injury caused by the negligence of the Council or its servants or agents.
25. The Provider will maintain adequate insurance to cover any liabilities arising from the performance of the Services. It will allow the Council to inspect its policies on request and submit copies of such policies to the Council's Lead Officer on an annual basis.
26. Throughout the Grant Period, the Provider will prominently acknowledge the funding the Council provides on official stationery, all main promotional material and publications of the Provider, incorporating the logo of the Council where space allows. Where relevant, all publicity and PR undertaken by the Provider must also clearly acknowledge and make reference to the Council as a funder.

27. Any approaches to the press with respect to any matter relating specifically to the terms of this Agreement should be jointly agreed through consultation between the Provider and the Council.
28. The Council agrees to reserve the Poster Sites for the use of the Provider, subject to the Provider complying with the following conditions:
- At any given time, at least 50% of the Poster Sites (not including those in the Lowther Grounds) are to be available for use by community groups or other non-commercial organisations (within a reasonable period of advertising).
 - Not to charge any community group or other non-commercial organisation a rate for using any Poster Site which could be deemed unreasonable in relation to the costs involved in displaying the poster, administration and its eventual removal.
 - Any bookings made with the Council for use of a Poster Site before the date of this agreement will be honoured.
 - The Provider will maintain the Poster Sites at its own expense in a safe and fit condition, including removing fly posting and graffiti.
 - The Provider will remove out-of-date advertising.
 - The Provider acknowledges that the Council may, in its discretion, remove a Poster Site after consulting the Provider.
 - The Provider acknowledges that upgrading of the Poster Sites will be subject to the usual planning process and require the approval of the Council.
 - The Provider co-operates with Lancashire County Council concerning the use of the Poster Site at St Anne's library.

Default in Performance

29. In the event that the Provider ceases to provide the Services the Council:
- will cease to be under any obligation to pay any further instalment of any Grant ;and;
 - may, at its absolute discretion (but subject to clause 33), require the Provider to repay any or all of the most recent instalment of any Grant that has been paid to the Provider
30. If, having regard to the Performance Measures, and having previously provided written adequate notification of its concerns to the Provider, the Council considers that the performance of the Services unacceptably below the standard the Council reasonably requires pursuant to this Agreement, the Council may, notwithstanding anything else in this agreement, withhold the payment of any instalment of a Grant until it considers that the performance of the Services have returned to an acceptable standard.
31. If, having, withheld three or more instalments of a Grant pursuant to clause 31 of this agreement, the Council considers that there is no reasonable likelihood that the performance of the Services will return to an acceptable

standard within eight weeks, it may give notice to that effect to the Provider and the Provider will then, for the purposes of clause 29, be deemed to have ceased to provide the Services.

32. For the purposes of clause 30 the Council will only be deemed to have provided adequate notification of its concerns if the notification:

- was made in writing to the Provider's representative named in clause 14; and
- contained (in the opinion of the Council) sufficient detail about the Council's concerns to have given a reasonable organisation in the place of the Provider an adequate opportunity to address them to the reasonable satisfaction of the Council

33. In deciding what proportionate part of the Grant it considers appropriate to require the Provider to repay under clause 29, the Council will have regard to the following principles:

- If the Provider informs the Council, that it will cease to operate (but not if the Provider has already ceased to provide the Services), the need for the Provider to be able to bring about an orderly closure of the Services including but not limited to the termination of employment contracts and any statutory redundancy payments
- The Council will only require the Provider to repay sums in respect of Grant that was paid in respect of the current financial year of a Grant Period.

34. The Provider may bid to the Council for capital funding to support any major redevelopment of Lowther Pavilion. This will be considered alongside other demands on the Council's capital resources.

35. The Provider acknowledges that the Grant is not consideration for any taxable supply for VAT purposes to the Council by the Provider.

36. The Provider accepts that the Council may share information about the Grant with any parties of the Council's choice as well as those making requests for information under the Freedom of Information Act 2000.

37. The Provider may not assign any of their rights under this Agreement to any successor or other body.

38. The Provider may not transfer any part of the Grant or this Agreement to another organisation or individual.

39. It is agreed between the parties that the purpose of Grant is to fund any potential operating deficit in the Provider's resources in respect of the reasonable performance of the Services by the Provider during the Grant Period, taking into account the need for the Trust to build a reserve of Working Capital and future development funding. If during the course of

this Agreement it becomes reasonably apparent to the Council that the Grant is no longer required and the Provider is no longer operating at a loss, the Council (at its entire discretion) shall be at liberty (in consultation with the Provider) to withhold payment (in whole or part) of the Subsequent Grant for such time or periods as it shall deem appropriate. This clause shall not be invoked if the provider is successful in securing revenue and/or capital grants which require specific performance measures beyond those specified in this agreement.

Dispute Resolution

40. For the purposes of this clause:

- 'Dispute' means a dispute issue difference question or claim as between Fylde Borough Council and Lowther Gardens (Lytham) Management Ltd relating to or arising at any time out of this agreement;
- 'Party' means a party to the Dispute;
- 'Specialist' means a person qualified to act as an independent expert in relation to the Dispute having experience in the profession in which he practises for the period of at least 10 years immediately preceding the date of referral.

41. Either party may give to the other notice (a 'Dispute Notice') requiring a dispute to be referred to a Specialist and proposing an appropriate Specialist.

42. The Party served will be deemed to accept the proposals made in the Dispute Notice unless that Party within 10 Working Days of service of the Dispute Notice gives notice rejecting one or more of the proposals or unless each Party serves a Dispute Notice on the other contemporaneously.

43. Unless the Parties agree or are deemed to agree the appropriate Specialist:

- if the Parties do not agree which type of Specialist is appropriate to resolve the Dispute either Party may refer that question to the President or next most senior available officer of the Institute of Chartered Accountants England and Wales ('the Institute') who will (with the right to take such further advice as he may require) determine that question and nominate or arrange to have nominated the appropriate Specialist;
- 4.2 if the Parties do agree the appropriate type of Specialist but do not agree the identity of the Specialist he will be nominated on the application of either party by the President or other most senior available officer of the organisation generally recognised as being responsible for the relevant type of Specialist but if no such

organisation exists then by the President or next most senior available officer of the Institute.

44. The fees and expenses of the Specialist, including the cost of his appointment, shall be borne as he shall direct and in default of direction are to be borne equally between the parties.
45. The Specialist must afford the Parties an opportunity to make written representations to him and an opportunity to make written counter-representations on any representations made to him by the other Party but is not in any way limited or fettered by such representations and counter-representations and is to be entitled to rely on his own judgment and opinion.
46. If a Specialist dies or refuses to act or becomes incapable of acting either Party may apply to the President or next available most senior officer to discharge him and appoint another in his place.
47. The Parties agree that the decision of the Specialist shall be final and binding upon them.

Transfer of Staff

48. The Council agrees that:

(i) in so far as this agreement effects the transfer of an undertaking operated by the Council, and that the TUPE applies to such a transfer, it has and will comply with its obligations under the TUPE

(ii) it will support an application by the Provider or the Lowther Gardens Trust to join the Lancashire County Pension Fund as an admissible body, and will, if requested by the Provider or the Lowther Gardens Trust, act as guarantor for that body's admission to the scheme in relation only to such persons who transfer to the employment of that body as a result of TUPE and who were, before such transfer, members of that fund.

(iii) it shall retain any pension liabilities it may have for the transferred employees and those pensioners previously employed at Lowther Gardens up to 1 June 2012, under the Lancashire Local Government Pensions Scheme.

(iv) it shall retain any redundancy liabilities it may have accrued for the transferred employees up to 1 June 2012.

(v) In the event of any claim being made against the Council, it shall immediately notify the Provider and no agreement or settlement shall be reached or entered into by the Council, without the prior consent of the Provider, (which shall not be unreasonably withheld or delayed).

49. The Provider agrees that:

(i) in so far as this agreement effects the transfer of an undertaking operated by the Council, and that the TUPE applies to such a transfer, it has and will comply with its obligations under the TUPE

(ii) it accepts that the following four persons presently employed by the Council for the purposes of the undertaking to be transferred will, by virtue of TUPE, be transferred to the employment of the Provider on the 1 June 2012:

- Peter Bradley
- David Dugdale
- Christine Painter
- Calum Robinson

The First Schedule

The Services

- (i) The maintenance and development of Lowther Pavilion as a cultural community facility, for the benefit of residents of and visitors to the Borough.
- (ii) The provision of a balanced and diverse programme of performing arts and entertainment, including dance, drama, music, musical theatre, variety and comedy; encouraging innovation through the use of new technology and the support of new writing and performing talent.
- (iii) The development of new audiences and encouragement of existing audiences to visit more frequently, building participation in the arts locally; accessible to all sectors of the community through programming, marketing and community engagement work.
- (iv) The promotion of the performing arts in Fylde, supporting and developing local amateur groups, volunteers and the wider community. The pavilion shall be available for hire by local community/amateur groups for a minimum of 120 sessions per year.
- (v) The free use by the Council of Lowther Pavilion and its facilities for up to 10 Council meetings per year and the annual Mayor

making ceremony on dates to be provided to the Provider in advance by the Council as soon as reasonably practicable. Dates of meetings for 2012/13 as follows –

- 30th July 2012 , from 19:00
- 24th September 2012 from 19:00
- 3rd December 2012 from 19:00
- 28th January 2013 from 19:00
- 4th March 2013 from 19:00
- 25th March 2013 from 19:00
- 15th May 2013 from 2pm

- (vi) The Provider shall make best endeavours to make available the Pavilion for use in the event of a civil emergency as a rest centre or similar facility.
- (vii) The development of service provision may change over time to reflect the current nature of standard business practice in the entertainment industry. All development will encompass the core values as presented in the Trust's artistic policy.

The Second Schedule

The Performance Measures

Quarterly meetings will be held between representatives of the Provider and the Council, where the information required by this agreement will be reviewed.

If requested to do so, the Provider will make an annual presentation to the Council's Community Focus Scrutiny Committee (or other such appropriate elected member group) at the conclusion (or as near to as possible) of each year of the operation of the Service Level Agreement summarising its performance and service during the year, including financial performance – annual outturn against the budget.

Quantitative

- The Services to be provided within the operating budget, provided in accordance with clause 18.
- A breakdown of the number of complaints received from service users and how they have been resolved.
- Number of sessions utilised by local amateur groups, volunteers and the wider community.

- Number and percentage of self-promoted shows which breakeven and/or make a profit

Qualitative

- The Trust will provide evidence that it is meeting art council and theatre management association industry standards in relation to customer satisfaction, audience profiling and quality of opportunity both for the visitor, local population and visiting companies. Income generation to develop the service offered and development work to encourage greater community use of the facilities. The Trust and the Council will work together to develop a greater understanding of all creative activities across the Borough.

The Third Schedule

The Poster Sites

Twelve double-crown boards at the Crescent, St Annes

Two double-crown boards at St Annes Library

Four double-crown boards at St Pauls Avenue, St Annes

Four double-crown boards at the entrance to Fairhaven Lake

Signatures

Fylde Borough Council

Date

Lowther Gardens (Lytham) Management Ltd
(as operating company of Lowther Gardens Trust)

Date

HEAD OF INTERNAL AUDIT'S REPORT TO THE DIRECTOR OF COMMUNITY SERVICES

1 Background

1.1 Members have requested assurance about the governance arrangements of the Lowther Gardens Charitable Trust. It was agreed in January 2013 that the Council and the Trust should review and develop the Trust's governance systems to ensure transparency and accountability. The Head of Internal Audit was asked to undertake this work from the Council's perspective.

1.2 The Trust's governing document is derived from the Model Trust Deed for Charitable Trusts available from the Charity Commission's website. This model was chosen as the most appropriate for the Trust when it was initially established and it incorporates some specific provisions to reflect the individual circumstances of the organisation prior to registration, for example to take account of the Council's permanent trusteeship.

1.3 Consequently the Trust has in place a governing document that is consistent with the administrative provisions and standards endorsed by the Commission. Reference will be made to this document in considering the governance framework in place. This report in particular looks at the governing document in light of the relevant guidance. Independently the trustees have also recognised that the document should be revised and updated to improve assurance in terms of accountability and transparency.

1.4 In addition to the Trust's governing document there is a significant body of guidance available from the Charity Commission's website to help in the development of a robust governance framework. Some elements of the advice refer to legal or regulatory requirements that must be complied with regardless of whether they are referred to in the Trust's governing document.

1.5 The other principal document in relation to governance is the Service Level Agreement between the Council and the Trust. This agreement does not refer in detail to the internal governance of the organisation but is essentially restricted to the Trust's financial relationship with the Council covering the following areas:

- Payment of Grant
- Maintenance of financial records to acceptable standards
- Access to and provision of financial statements by the Trust to the Council
- Treatment of Poster sites
- Performance Default
- Dispute Resolution
- Arrangements for Transfer of Staff
- Performance Measures – quantitative & qualitative

1.6 However, the Service Level Agreement does require the Trust to provide evidence to quarterly monitoring meetings held between representatives of the Trust and the Council that "good governance is operational".

2 Issues to be Addressed

2.1 Certain specific governance areas have been the subject of discussion, in particular:

- Trustees
- Conflicts of Interest
- Procurement Arrangements

2.2 By reference to the Trust's governing document this report will consider whether good governance arrangements are both in place and transparent. All the following advice is available on the Charity Commission website and would constitute good practice in the administration of a charitable organisation. However, even where good practice is incorporated, it is not possible to determine whether such arrangements are complied with.

2.3 In addition, as previously stated, some governance arrangements are legal or regulatory requirements that must be complied with regardless of whether they are referred to in the Trust's governing document.

2.4 It must be remembered that the Trust is an independent body not subject to the Council's authority and may decide not to embrace the suggestions made in this report, or to address them in a different way. However, both the Council and the Trust will remain bound by the terms of the Service Level Agreement.

3 Trustees

Terms of Appointment

3.1 The Commission recommends that the governing document of a charity should make clear how many trustees there will be, how they are to be appointed and how long they may remain in office. It recommends between 3 and 9 trustees as a general guide and appointments for between 1 and 5 years.

3.2 The Trust's governing document does not:

- State how many trustees there should be, or
- Specify the term of their appointment

Recruitment

3.3 Existing trustees are legally responsible for the recruitment of new trustees. The Commission suggests that advertising for new trustees is an effective way of reaching a wider group of potentially interested people. It points out that this can be done cheaply via websites and notice boards.

3.4 There is extensive advice on the Commission's website about how appointments should be made. There would be nothing to prevent the Trust from adopting such detailed good practice guidance as part of its wider governance regime, although it is recognised that in practice the Trust has historically advertised trustee vacancies openly through various websites to encourage applications.

Non-attendance

3.5 Another perceived issue concerning trustees is the unauthorised non-attendance of trustees at meetings of the Trust. The Commission suggests that a trustee should cease to hold office if he or she is absent without the permission of the trustees from all their meetings for a period of six consecutive months and the trustees so resolve.

3.6 This provision does form part of the Trust Deed and trustees could employ this course of action to address such concerns, where deemed appropriate.

4 Conflicts of Interest

Trustee Payments

4.1 The Charity Commission makes the point that it is a well established legal principle that a charity trustee should not be placed in a position where any personal interest might conflict with his or her duties as a trustee. Therefore, in general terms, a charity trustee should not benefit personally from carrying out the role. It is recognised that trustees have not been paid for their services as trustees.

4.2 However, a charity can pay a trustee for the supply of any services over and above normal trustee duties. The Trust's governing document does not have a prohibition against payment for services but neither does it set out the process for approving such payments.

4.3 The Charity Commission does not prohibit trustees from being paid for services and provides guidance in terms of the conditions that must be met before such payment, including:

- A written agreement between the charity and trustee
- Prior agreement of the exact or maximum amount to be paid
- Removal of the trustee concerned from decisions made by the trustee board concerning the service provided

4.4 At a meeting held on 10th January between Council representative and the Trust Chairman it was reported that the Trust had also sought the authority of the Charity Commission concerning a trustee acting as manager of the Trust. It was reported that the Commission had agreed to this. Furthermore, the individual was not paid by salary but invoiced the Trust for his services.

4.5 It is important that the Trust's approach and processes regarding trustee payments accords with the advice from the Charity Commission. For example, the Commission suggests that trustees with dual roles might simply attend meetings of the Trust in a non-voting capacity in order to contribute to discussions.

Declarations of Interest

4.6 The Commission states that a charity trustee must declare the nature and extent of any interest, direct or indirect in a proposed transaction with the charity, and absent himself or herself from any discussions in which it is possible such a conflict may arise. In such case the trustee must not vote or be counted as part of the quorum in any decision on the matter.

4.7 The Trust's governing document does not:

- Require trustees to make declarations of interest, or
- Preclude the trustee from voting or from being counted as part of the quorum

4.8 There is detailed guidance on the Commission's website concerning conflicts of interest for charity trustees. For the sake of transparency, it would be helpful if clear arrangements for declarations of interest were included as part of the Trust's governance regime. It is recognised that in practice when potential conflicts of interest have historically been recognised, the relevant trustee has withdrawn from the meeting.

5 Procurement

5.1 Charity trustees have a legal duty to take all necessary steps to protect their charity's funds and assets from misuse. The starting point is to ensure that the governance framework includes good, robust financial controls including levels of authorisation and segregation of duties.

5.2 There are no specific provisions in the Model Trust Deed in relation to procurement and likewise the Lowther governing document is also silent on the matter. However, the Commission's fraud and financial crime compliance toolkit suggests the following controls that would be appropriate:

- Segregation of Duties
- Regular bank reconciliations by two persons
- Multiple signatories/approvals for all bank account activity including new direct debits and online banking
- Reconciliation of supplier invoices to payments by two persons
- Establishment of authority thresholds for approval of orders and payment of suppliers
- All payments to trustees should be formally approved at a properly convened meeting of the Trust

- Requiring new suppliers to declare any business or personal connections to trustees

5.3 While there is no prescriptive guidance concerning procurement in governing documents, there would be nothing to prevent the Trust from adopting such detailed good practice guidance as part of its wider governance regime.

5.4 Specific arrangements for procurement should incorporate a step-by-step guide to purchasing goods, services or works that applies to all contracts. Areas to consider would include seeking and opening of quotations, evaluation of quotations and selection of contractors.

6 Other matters

6.1 There are several other good practice areas included in the Model Trust Deed which are either not reflected at all in the Lowther governing document or only in part. These are as follows:

- There are no provisions for trustees wishing to resign, or for trustees to be removed from the board.
- There are no arrangements for minuting trustee vacancies or the effect if the number of trustees falls below the quorum
- There are no 'saving provisions' included – these are technical provisions to ensure decisions of the Trust remain valid in the event of any vote by a trustee who is disqualified from holding office, had resigned or vacated office or who was not entitled to vote
- There is nothing about the process for resolving Disputes among the trustees about the validity or propriety of anything done by the trustees
- There is no reference to the accounts, annual report or return – although these are obligations under the Charities Act, so such provisions may not need to be separately included
- There is nothing about the Trust's Bank Accounts, for example how they should be named and operated
- There is nothing about Benefits and Payments to charity trustees, except for the need for the Trust to obtain the prior approval of the Commission before incurring a benefit of any kind on trustees
- There is no mention about Repairs and Insurance, for example the requirement to insure assets to their full value against building risks
- There is nothing about the payment of reasonable expenses to trustees
- There is nothing about Dissolution of the Trust – this may not be necessary by virtue of Council's permanent trusteeship

7 Enhancements to the Governance Regime

The Council may wish to suggest the following enhancements to the governance regime for the consideration of the Trust. Implementation would be at the Trust's discretion.

7.1 The Trust's governing document could be amended to:

- State how many trustees there should be, and
- Specify the term of their appointment

7.2 The Trust should consider adopting the good practice guidance on the appointment of trustees as part of its wider governance regime

7.3 The Trust should consider including provisions within the governing document concerning the circumstances and processes surrounding the payment of trustees in accordance with the advice of the Charity Commission

7.4 The Trust should consider adopting the Commission's suggestion that trustees with dual roles including employee/supplier might simply attend meetings of the Trust in a non-voting capacity in order to contribute to discussions

7.5 Suitable arrangements for trustees to make declarations of interest and for these to be recorded should be included as part of the Trust's governance regime

7.6 The Trust should consider adopting a detailed good practice framework in relation to procurement that incorporates both the suggestions included in the Commission's fraud and financial crime compliance toolkit and specific arrangements for purchasing and procurement

7.7 The Trust should consider those governance good practice areas included in the Model Trust Deed that are either not reflected at all in the Lowther governing document or only in part in particular:

- provisions for trustees wishing to resign, or be removed
- arrangements for minuting trustee vacancies and the effect if the number of trustees falls below the quorum
- adoption of 'saving provisions' to ensure decisions of the Trust remain valid in the event of any vote by a trustee who is disqualified from holding office, had resigned or vacated office or who was not entitled to vote
- process for resolving disputes among the trustees about the validity or propriety of anything done by the trustees
- the naming and operation of the Trust's Bank Accounts
- specific provision about Benefits and Payments to charity trustees
- provisions governing the repair and insurance of assets
- payment of reasonable expenses to trustees
- dissolution of the Trust

Community Focus Scrutiny Committee

Date:	Thursday, 4 April 2013
Venue:	Town Hall, St Annes
Committee members:	<p>Councillor Kiran Mulholland (Chairman)</p> <p>Councillor Christine Akeroyd (Vice-Chairman)</p> <p>Councillors Fabian Craig- Wilson, Susanne Cunningham, Tony Ford JP, Gail Goodman JP, Kathleen Harper, Paul Hodgson, Angela Jacques, Barbara Nash, Elizabeth Oades, Dawn Prestwich, John Singleton JP, Vivienne M Willder</p>
Other Members:	<p>Councillor Dr Trevor Fiddler (Portfolio Holder for Planning and Development)</p> <p>Councillor Cheryl Little (Portfolio Holder for Social Well Being)</p> <p>Councillor Susan Fazackerley (Portfolio Holder for Leisure and Culture)</p> <p>Councillor Ben Aitken (Chairman of Development Management Committee)</p> <p>Councillor Kevin Eastham (Vice- Chairman of Development Management Committee)</p>
Officers:	Allan Oldfield, Paul Walker, Mark Evans, Andrew Dickson, Paul Rossington, Lyndsey Lacey
Members of the public:	one member of the public was present

1. Declarations of interest

Members were reminded that any disclosable pecuniary interests should be declared as required by the Localism Act 2011 and that any other interests should be declared as required by the Council's Code of Conduct. There were no declarations of interest.

2. Confirmation of minutes

RESOLVED: To approve the minutes of the Community Focus Scrutiny Committee held on 7 March 2013 as a correct record for signature by the Chairman.

3. Substitute members

The following substitutions were reported under council procedure rule 22.3:

Councillor Elizabeth Oades for Councillor Linda Nulty

Councillor Angela Jacques for Councillor Nigel Goodrich

Councillor Fabian Craig-Wilson for Councillor Tim Armit

4. Blackpool Teaching Hospitals NHS Trust

By way of introduction the Chairman, Councillor Kiran Mulholland made reference to the report submitted to the last meeting. In doing so, he asked the committee to consider appointing a Task and Finish Group to undertake some initial work of examining the circumstances relating to the recent failings of the Blackpool Teaching Hospitals NHS trust.

Councillor Mulholland referred to an initial outline of activity that could be undertaken by the appointed Group with a view to the interim findings being reported to a future meeting of the committee.

Following consideration of this matter it was RESOLVED to appoint a Task and Finish Group to carry out the review and that the group comprise: Chairman and Vice-Chairman of Committee, councillors Kathleen Harper and Dawn Prestwich.

5. Club Day Support

The Committee was asked to consider a request received from Councillor Elizabeth Oades for an urgent scrutiny review to be undertaken on Club Day Support.

Councillor Oades was invited to comment on the matter. In doing so, she made reference to the matter discussed at the Council's budget meeting regarding the likely police resources available to support these events going forward.

It was felt that this subject is worthy of scrutiny as it is an area that could have a wide impact and is believed to be a concern to a wide proportion of councillors.

It was suggested that the review consider two issues: the policing aspects in liaison with the Lancashire Constabulary and a review of the Council's own Club Day provision and support.

The Committee RESOLVED:

1. To undertake an urgent review on Club Day Support.
2. To appoint a Task and Finish Group to carry out the review comprising: Chairman and Vice-Chairman of committee, councillors Barbara Nash, Elizabeth Oades and John Singleton.

6. Supported Events Review

The Committee was asked to consider a request received from Councillor Elizabeth Oades to consider including in its work plan a scrutiny review on supported events with particular reference to how events come forward for financial support, how they are assessed and then reviewed subsequently.

It was felt that this subject is worthy of scrutiny as it is an area that could have a wide impact and is believed to be of interest to a wide proportion of councillors.

The Committee RESOLVED:

1. To include a review on Supported Events within the scrutiny committee's work plan
2. To appoint a Task and Finish Group comprising: Chairman and Vice-Chairman of committee, councillors Barbara Nash, Elizabeth Oades and Dawn Prestwich.

7. Planning Improvement Plan

The Chairman invited Paul Walker (Director of Development Services) and Mark Evans (Head of Planning and Regeneration) to present the findings and recommendations of the recent planning peer review.

The Committee was advised that between the 15th and 17th August 2012, an LGA facilitated Planning Peer Review took place involving a team of 6 members. The team included both officer and member peers. The team was led by Councillor Neil Clarke, Leader of Rushcliffe Borough Council. It was further reported that interviews and workshops were held with a variety of stakeholders during the visit. Some of the team also attended a meeting of the Council's Development Management Committee on the 15th August.

The report outlined the background, scope and aims of the peer review. It also included an Executive Summary and 13 recommendations. The remainder of the document included the detailed findings which support the recommendations and the notes of the Action Planning Day held on 11 October.

Councillor Trevor Fiddler (Portfolio Holder for Planning and Development) was invited to the table to comment on the content of the report. In doing so, he drew the committee's attention to paragraph 2 of the Executive Summary and paragraphs 9 and 19 of the detailed findings.

Councillor Fiddler went on to say that at times, the Development Management Committee members are not always strategic in their approach to development, resulting in an obvious urban/rural divide and parochialism which he added was detrimental to the process.

Councillor Fiddler further stated that whilst he accepted the report needed to be analysed for scrutiny purposes, some of the key elements contained within the report were not articulated and reflected within the 13 recommendations. He went on to say that whilst he was happy to discourage repetitious debate at meetings, as Portfolio Holder, he could not support a reduction in the size of the Development Management Committee.

Councillor Fiddler also drew the committee's attention to the section of the report relating to the make up of the Local Plan Steering Group which was factually incorrect.

Various members of the committee commented on the content of the report. A number of members were unhappy with the report and found it unhelpful. Some members expressed concern that the report was written with a bias towards the central government growth agenda in planning and failed to reflect some local priorities. The validity of some of the recommendations was questioned along with the source material for the report and the recommendations.

Members then went on to consider each of the 13 recommendations in turn and supported each proposed action.

Following detailed consideration of this matter IT WAS RESOLVED to recommend to Cabinet:

1. To support the 13 recommendations which had resulted from the Planning Peer Review.
2. To support the four recommendations already action planned (1, 4 7 and 13)
3. To request that key stages of progression be reported to future meetings of the Community Focus Scrutiny Committee.
4. To support the Portfolio Holder in seeking to discourage repetitious debate at meetings of the Development Management Committee.
5. To support the retention of the existing numbers on the Development Management Committee.

8. Fylde Coast Bathing Waters

The Committee considered an updated report on the Fylde Coast Bathing Waters.

The Chairman, Councillor Mulholland explained that since the last meeting of the committee, a further meeting of the Bathing Water Scrutiny Panel had been held at Blackpool Council. Councillor Akeroyd represented the borough

council at the meeting. Councillor Mulholland suggested that the Panel had not operated as a joint scrutiny and it was felt that there was further merit in taking a joint scrutiny approach forward.

The Chairman then invited Paul Walker (Director of Development Services) and Andrew Dickson (Head of Technical Services) to expand on the subject. Mr Walker explained that since the last meeting, further work had been done on the Ten Point Action Plan. The latest draft was attached to the report and members were invited to comment on each section of the Plan.

Mr Walker further reported that it is intended that the Plan be finalised and launched at the Fylde Peninsular Water Management Group Workshop (to which key members of the borough council had been invited) on Monday, 22 April 2013.

Councillor John Singleton asked officers whether more low level plans to address flooding matters within his ward were likely to be made available in the near future. Mr Walker addressed this point.

Following detailed consideration of this matter the committee RESOLVED:

1. To note the updated report.
2. To ask the Chairman, Councillor Kiran Mulholland to further pursue a joint scrutiny approach with neighbouring authorities and work with the Director of Resources on the models available.
3. To present an updated report to a future meeting of the committee.

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