



**CHARITY COMMISSION
FOR ENGLAND AND WALES**

1. Introduction

The Lytham Institute (“the Charity”)

Registered charity 1186995

REVIEW OF THE DECISION TO MAKE A SCHEME TO ALTER OR AFFECT THE GOVERNANCE OF THE CHARITY INCLUDING A CHANGE OF PURPOSES.

Decision Review date 5 December 2023.

- 1.1 This is a review of the proposed cy pres Scheme for the registered charity, The Lytham Institute (“the Charity”).
- 1.2 I have conducted the review on behalf of the Commission in accordance with the Charity Commission’s Decision Review Procedure which is set out in the publication [Dissatisfied with one of the Charity Commission's decisions: how can we help you?](#), available on the Charity Commission’s website. I am Kate McGiveron, Senior Case Manager at the Commission. I have not previously been involved in the conduct of the case. This decision represents the final decision of the Commission.
- 1.3 The issue for the review is to whether or not the Commission should proceed to make the draft Scheme.
- 1.4 As well as the legal framework under the Charities Act 2011, in making the Commission’s decision, the public sector Equality Duty, the Human Rights Act 1998 and the Economic Growth Duty have been considered as part of the Commission’s duties as a public authority.
- 1.5 The following has been considered as part of the decision review:
 - the representations made in response to the draft Scheme;
 - the draft cy pres Scheme;
 - other relevant documents from the Commission’s case files including all of the information supplied to the Commission by the trustee and others during the course of the case;
 - the Charity’s governing document (indenture dated 29 September 1917);
 - the Commission’s power to make a cy pres scheme under sections 62, 67 and 69 of the Charities Act 2011;

- the Commission’s Operational Guidance setting out the relevant policy positions, in particular OG 2 Application of Property Cy pres and OG 500 – Schemes;
- the Commission’s external guidance [Changing your charity’s governing document \(CC36\)](#);
- the Commission’s statutory objectives, functions and duties (as outlined in [sections 14 to 16 of the Charities Act 2011](#)); and
- further information and clarification provided during the decision review by both the Charity and those making representations.

2. Factual background

- 2.1 The Charity’s governing document is an Indenture dated 29 September 1917 (‘the governing document’). The Charity was registered with the Commission on 17 December 2019 under charity number 1186995. The Charity’s purposes, as set out in its governing document, are “*to maintain the said premises and the buildings now or hereafter erected thereon for public use under the provisions of the Public Libraries Acts 1892 – 1901 and the Museums and Gymnasiums Act 1981 or any Acts re-enacting or amending the said Acts of any of them*”. The public use permitted by these Acts includes a public library, museum, gymnasium, or similar facility.
- 2.2 The governing document requires the land and buildings (in this document referred to as the ‘Institute Building’) to be used for the Charity’s purposes. The land is therefore designated land also known as functional permanent endowment.
- 2.3 The Charity’s sole trustee is Fylde Council (‘FC’ / ‘the Trustee’). FC was appointed as the trustee in the governing document.
- 2.4 The Charity’s income for the financial year ending 31 March 2022 was £41,027.
- 2.5 The Commission understands that the Institute Building was originally opened as a non-charitable Institute in 1878. It had a library, reading room, billiards room and club room. In 1898 an extension to the building was opened. The Institute Building was given on charitable trust to the Trustee in 1917.
- 2.6 A library was run in the Institute Building for over 100 years, with the library being most recently operated by Lancashire County Council. In 2016, the library service ceased operating from the Institute Building. In 2018, Lancashire County Council moved the library service to another property in Lytham. It was noted by Lancashire County Council that “*the library accommodation [in the Institute Building] was not considered to be a suitable space for the delivery of a modern*

library service, with a particular challenge being the number of individual rooms requiring supervision by staff.”

- 2.7 FC had sought a Counsel's Opinion in 2012 as to whether the Institute Building was held subject to a charitable trust or by FC under its statutory duties as a local authority. Based on this advice, FC understood that the Institute Building was not held on a charitable trust and did not require registration with the Commission.
- 2.8 In February 2019, Counsel (instructed by Lytham St Anne's Civic Society ('the Civic Society')) advised that the governing document meant that the Institute Building was held on trust for exclusively charitable purposes for the benefit of the public. Counsel concluded that FC ought to register the charitable trust with the Commission.
- 2.9 The Civic Society raised this matter with FC and FC then sought further legal advice. This further advice agreed that the Institute Building was held on charitable trust. On 8 August 2019, FC, acting as charity trustee, applied to the Commission to register the Charity.
- 2.10 During the registration process, the Commission identified that a change of charitable purpose would be required, to be achieved by a cy pres scheme. This is because the Charity is no longer providing a library and is instead being used by the Civic Society and a local heritage group along with space being hired out on a sessional basis for private use. These uses are not consistent with the Charity's purposes as set out in the governing document. In December 2019, the Charity was registered as a charity with the purposes set out in the governing document.
- 2.11 In November 2021, FC applied to the Commission for a cy pres Scheme to change the Charity's purpose. Before applying for the Scheme, FC had undertaken a public consultation exercise which it had begun in Spring 2020. Unfortunately, the consultation period was extended by the covid pandemic and FC's resources were largely directed towards dealing with the effects of the pandemic, including lockdowns. This understandably delayed the application for the Scheme.
- 2.12 On 17 March 2022, the Commission wrote to FC providing a draft Scheme. The Commission informed FC that a month's public notice of the draft Scheme was required in accordance with section 88 of the Charities Act 2011.
- 2.13 The public notice period was between 11 April and 11 May 2022. The Commission received 107 representations about the draft Scheme.

2.14 During the period of this decision review, a scheme involving similar issues was subject to a challenge at the First Tier Tribunal¹. The Commission's view was that although Tribunal decisions are not precedent setting, it was important to understand whether any findings in this Tribunal case would be relevant to the consideration of the scheme for the Charity. The Tribunal hearing was over three days in February 2023 and the Tribunal's decision was issued on 21 September 2023. Unfortunately, this led to a delay in concluding the decision review.

3. Cy pres occasion

3.1 A cy pres scheme is a scheme that the Commission or the court can make to alter a charity's purpose. 'Cy près' means 'as near as possible' and a cy pres scheme is a legal arrangement that allows charitable property to be applied for purposes which are close to the original purposes.

3.2 To make a cy pres scheme to alter a charity's purpose, the Commission must be satisfied that at least one of the criteria set out in section 62 of the Charities Act 2011 have been met. These criteria are known as 'cy près occasions'. Section 61 of the Charities Act 2011 also places trustees of charitable trusts under a duty to apply for a cy pres Scheme if a cy pres occasion has arisen.

3.3 FC has made the case that section 62(1)(e)(i) of the Charities Act 2011 applies: "*where the original purposes, in whole or in part, have, since they were laid down been adequately provided for by other means.*" The Commission agrees.

3.4 FC has explained to the Commission that, in the past, the Institute Building was used as a library but this is no longer possible. The function of providing a public library is now carried out, in another property, by Lancashire County Council (the statutory library authority for the area in which the Institute Building is situated).

3.5 The Charity's purposes set out in the governing document do not solely relate to the provision of a library – the Institute Building could also be used for the provision of a "*museum, gymnasium or other facility.*" FC has explained that there is also not "*any need for or prospect of the Institute building being used for a 'school for science' or 'school for art'. There are no colleges or universities in the local geographic area who might be able to operate in the building and nothing in the extensive public debate about the future of the building has suggested that there is a potential for that kind of use. As to 'gymnasiums', YMCA (which is a registered charity) operate two fully equipped indoor sports facilities, including gyms, in the town, one of which is within a mile of the building. There is also plenty of private provision of fitness centres in the area..*"

¹ Tony Miller and Will French v Charity Commission for England & Wales (CA/2021/0009)

- 3.6 No information has been provided by FC specifically about the possibility of the building being utilised as a museum. It seems likely financial constraints would be an issue, but this has not been explained to the Commission. The comments in the public consultation did not indicate that the wider community considers that there is a current need for a museum. One representation out of the 107 representations mentioned ‘museum’ as a possible use for the Institute Building and suggested that the locality lacked such a facility. This response’s overall key point, however, was that the Institute Building should be retained for the community rather than any particular use.
- 3.7 The representations did not dispute that a cy pres occasion had occurred.
- 3.8 Failure is not required for s.62(1)(e)(i) - just that the purposes had ‘adequately’ been provided for by other means. On the basis of the information that has been provided, the Commission’s made a reasonable decision² when it concluded that a cy pres occasion had arisen under s.62(1)(e)(i) in that the original purposes, in whole or in part, since they were laid down have been adequately provided for by other means.

4. The application of property cy pres

- 4.1 If at least one cy pres occasion exists, the Commission can make a cy pres scheme to provide new purposes which are close to the original purposes. When deciding on the new purposes, the Commission must have regard to the matters set out in [subsection 67\(3\) of the 2011 Act](#). These are:
- the spirit of the original gift;
 - the desirability of providing new purposes that are close to the original; and
 - the necessity for the new purposes to be suitable and effective in light of current social and economic circumstances.
- 4.2 The Trustee’s proposed new purposes were based on the Commission’s example objects for a charitable community centre. FC explained to the Commission the rationale for proposing these purposes: “*The present, original, objects refer to statutes whose focus was the public provision of libraries, gymnasiums and museums. In the context of the late nineteenth and early twentieth century (the period during which those statutes were enacted and the present objects were set out) the provision of libraries, museums and gymnasiums could be regarded as benefitting the public through providing educational facilities (libraries, museums), facilities for physical exercise*”

² As recorded in the Case Manager’s decision note date 17 May 2022.

(gymnasiums) and facilities for social intercourse (reading rooms, which were provided alongside libraries, and particularly at the Institute)...”

- 4.3 The purposes proposed by the Trustee were amended³ slightly by the Commission to more closely reflect standard wording used by the Commission in cy pres schemes. The Commission suggested:

“To further or benefit the residents of Lytham and the neighbourhood, without distinction of sex, sexual orientation, race or of political, religious, or other opinions by providing facilities in the interests of social welfare for education, recreation, and leisure time occupation, including cultural and art exhibitions, with the objective of improving the conditions of life for the residents.

In furtherance of these objects but not otherwise, the trustees shall have power to maintain or manage or co-operate with any statutory authority in the maintenance and management of the Lytham Institute building or other appropriate premises for activities promoted by the charity in furtherance of the above objects.”

- 4.4 The Commission’s draft cy pres Scheme also included the following clause:

“Subject to the provisions of clause 4 (Power to dispose of and replace purpose property), the land identified in part 1 of the schedule to this scheme must be retained by the trustee for use for the objects of the charity.”

The purpose of this clause is to make clear that the Institute Building is designated land⁴.

- 4.5 The draft cy pres Scheme also included provisions setting out the Trustee’s powers in relation to the disposal of the Institute Building:

“4. Power to dispose of and replace purpose property

- (1) This clause is subject to the requirements of part 7 of the Charities Act 2011.*
- (2) The trustee may dispose of all or any part of the land identified in part 1 of the schedule to this scheme.*
- (3) The trustees must replace the land disposed of with equivalent land to be used for the object of the charity.”*

- 4.6 This clause is a standard clause for designated land. It provides the Trustee with a power to dispose and replace the functional permanent endowment with equivalent land which must also be used for the Charity’s purposes. This is

³ The word ‘learning’ was replaced by ‘education.’

⁴ Also known as functional permanent endowment. This is land which is legally required to be used for the purposes of the charity.

consistent with the statutory power in section 6 of [the Trusts of Land and Appointment of Trustees Act 1996](#) and the implied power as considered in the case of *Oldham Borough Council v Attorney General* [1992].

Spirit of the Original Gift:

4.7 The ‘spirit of the gift’ means the basic intention underlying the original gift as a whole: *Re Lepton’s Charity* [1972] Ch 276. The intention may be clear from the terms of the governing document of the charity: if not, records available at the time the charity was established, or even the way in which the charity has been administered and managed over the years, may be relevant.

4.8 The Commission’s decision note dated 17 May 2022 recorded that: “*The spirit of the gift does seem to be about providing a facility for public use and benefit with a focus on education and recreation.*”

This was based on the wording of the governing document and information about the history of the Institute Building.

4.9 The view expressed in Counsel’s opinion from March 2022 (for the Civic Society) was that maintaining the Institute Building, which was described as a ‘handsome building’, is part of the spirit of the gift. Counsel advised:

*“I would refer to the case of *Oldham Borough Council v HM Attorney General (1992) CA*, in which a distinction was drawn between a charity to provide recreational facilities for the inhabitants of an area and a charity which was established to maintain a particular piece of land for use for such purposes. The distinction is a fine one in this case, but it seems to me that the second interpretation is correct, and that there is at present no justification for relaxing the requirement to maintain the premises so as to justify their disposal.”*

4.10 Many of the representations received were of the view that the Institute Building is a building worthy of preservation in and of itself due to its historic and aesthetic value and was part of the spirit of the gift.

4.11 Whether or not the land is in the category of designated land known as specie⁵ land is an important factor when determining the spirit of the gift and we agree with Counsel that it can be a fine distinction. Therefore, as part of the decision review, the Civic Society was asked if it would like to provide further explanation to support Counsel’s view that the maintenance of the Institute Building is part of the Charity’s original purpose, including which parts of the governing document supported this interpretation.

⁵ Specie land is a special kind of designated land and it is where only the specific piece of land in question can be used and it cannot be replaced. Examples of this are a trust to retain for the public benefit a particular house once owned by a particular historical figure or a particular area of land of outstanding natural beauty.

- 4.12 In response, the Civic Society obtained a note from Counsel dated 29 September 2022 which was helpful to the Commission's consideration of cy pres. Counsel considered the Oldham Borough Council case but distinguished it from the Institute Building noting "*Whereas in the Oldham case the land in question had no special features other, presumably, than being suitable for use as local playing fields, in the present case there was a long history which is summarised in the extract entitled 'The Charitable Misses Hewitt' from 'Victorian Lytham'... It is not hard to see that by 1917, by which time the original building had been extended, there was a good reason to impose a specific obligation on the Council to maintain the rather special building to which so many people had contributed and which was well used by the community.*"
- 4.13 The wording in the governing document has been considered by the Commission. In the Oldham Borough Council case, the gift to the Council was on the following terms: "*The donees hereby declare that they will hold the said land upon trust to preserve and manage the same at all times hereafter as playing fields to be known as 'the Clayton Playing Fields' for the benefit and enjoyment of the inhabitants of Oldham, Chadderton and Royton aforesaid.*" In this case it was held that the recreational ground could be sold and replaced with equivalent land.
- 4.14 This is similar language to that used in the Charity's governing document which states that the land is held "*upon trust to maintain the said premises and the buildings now or hereafter erected for public use...*"
- 4.15 The Commission has found the following passage from the Oldham Borough Council case to be helpful: "*There are of course some cases where the qualities of the property which is the subject matter of the gift are themselves the factors which make the purposes of the gift charitable - e.g. where there is a trust to retain for the public benefit a particular house once owned by a particular historical figure or a particular building for its architectural merit or a particular area of land of outstanding natural beauty. ...But that is far away from cases such as the present, where the charitable purposes - playing fields for the benefit and enjoyment of the inhabitants of the districts of the original donees, or it might equally be a museum, school or clinic in a particular town - can be carried out on other land.*"
- 4.16 The Commission has also noted the First Tier Tribunal's decision given on 21 September 2023. The Victoria Hall Trust is a charity which, similar to the Lytham Institute, operates a community building and has a local authority as its sole trustee. The Tribunal considered an appeal against the Commission's decision to make a scheme for the administration of the charity on the basis that a cy-pres occasion had arisen. As part of the appeal, the appellants submitted to the Tribunal that the preservation of the existing property of the charity was part of

the ‘*spirit*’ of the gift. The Tribunal accepted the Commission’s submissions that it was not one of the charity’s purposes to preserve the Victoria Hall. It found “*that ‘preservation’ was neither mentioned in the Charity’s governing document, nor part of the spirit of the gift. The underlying charitable purpose was not to provide income for ‘preserving’ charity property but to apply income from the charity property for the beneficiaries of the charity.*” This supports the Commission’s approach to the spirit of gift for the Institute Building which also does not mention preservation in its governing document.

4.17 The Commission considers that the wording from the governing document “*the buildings now or hereafter erected*” means that the current Institute Building was not intended to be part of the purposes because the governing document expressly allows other buildings to be built on the land. Counsel’s opinion does not address this specific wording.

4.18 We have read the extract from ‘*The Charitable Misses Hewitt (from ‘Victorian Lytham)*’ kindly provided by the Civic Society. We agree with Counsel that there is a long history to the Institute Building and many people contributed to it being built and extended. In our view, these factors support that the spirit of the gift was about the activities that happened within the building rather than the Institute Building itself. The extract reports that the trustees decided to economise on the architects’ fees both for the original building and the extension. Reports at the time noted that it was built of brick, “*mainly the dull red commonly used in Lytham*”. It is now considered a ‘handsome building’ and is Grade 2 listed but, at the time it was built, it was not considered to be ‘special’. What was important about the Institute Building is that it allowed the required recreational activities to take place. This same extract reports that:

“social intercourse, recreation and mutual improvement...the poor old Institute in Bath Street failed to fulfil its object. It is true that there was room for recreation and social intercourse, but there was not a proper place for mutual improvement, and there was not an opportunity to for the men to attend classes or lectures.”

The Institute Building was built to enable these activities to take place and it was the activities that were important. These activities could be undertaken in other equivalent buildings and this is recognised with the specific wording of the governing document.

4.19 One representation provided the view that: “*It is noteworthy that the 1917 Deed [the governing document] which established the charity does not give the Council [FC] a power of sale. This is clearly because the charitable objects could only be performed from the purpose-designed Institute.*” It is in the Commission’s experience not unusual for governing documents for charities with designated land not to include a power of sale. As explained, following the reasoning in the

Oldham Borough Council case, this does not mean that preserving the Institute Building is part of the spirit of the gift.

4.20 The Commission cannot definitively interpret governing documents, but we need to reach a view when exercising our powers. It is our view that it has not been demonstrated to the Commission that the Institute Building is specie land and that maintaining this property is part of the spirit of the original gift. The spirit of the original gift seems to be about a gift for the public connected with recreation and education.

The desirability of securing that the property is applied for charitable purposes which are close to the original purposes:

4.21 The First Tier Tribunal gave guidance on this test in its decision for Dunsfold Church of England School Trust⁶. This suggested that *“all things being equal, one should start with the closest purpose and then expand the permitted uses outwards, although this is clearly not an express statutory requirement.”*

4.22 The Commission’s decision note in the original scheme case noted:

- *“Given the above spirit of the gift, then model community centre objects (as amended) are close to the original – they focus on providing educational and recreational facilities for the public benefit in the interests of social welfare and improve conditions of life. Explicit reference to cultural and art exhibitions has been included as they original purpose did allow for museum and art galleries etc and the charity does have capacity to further this purpose through the art collection held by the trustee.”*
- *“The trustee has explained that there is a need for a community centre type facility and so this would meet that need.”*

4.23 None of the representations suggested that a community centre would not be close to the original purposes. Several representations indicated opposition to the idea of the building being utilised for shops or restaurants.

Comments in the representations included:

- *“The Institute should remain as it has always been, a community asset serving the local people by providing space for all manner of activities.”*
- *“I think the building should be preserved for posterity for the residents of Lytham and put to use as a community service such as crafts , book clubs exercise groups and so forth.”*

4.24 It is therefore reasonable to conclude that charitable community centre purposes are close to the original purposes.

⁶ http://charity.decisions.tribunals.gov.uk/documents/decisions/Ground_final_6Dec2011_no_sig.pdf

The need for the relevant charity to have purposes which are suitable and effective in the light of current social and economic circumstances:

- 4.25 The Commission's policy⁷ is that "*the purpose of making a cy-près Scheme is to enable a charity to continue being effective, useful and relevant to its beneficiaries' needs in modern society, where without our intervention it would not be.*"
- 4.26 The Trustee has advised us that there is a need for a community centre type facility in the area. The report compiled by the Trustee following its public consultation demonstrates support for a community centre type facility amongst the local community as do the representations.
- 4.27 Many representations were supportive of the Institute Building being used as a charitable community centre. Some of the representations suggested uses for the building, for example as a location for sports, music or arts/crafts activities, that would be allowed under the draft purposes and could be undertaken at a community centre.
- 4.28 However, concerns were raised about whether the Trustee has the necessary vision and commitment to ensure that a community centre would be financially viable and that the Institute Building would be satisfactorily maintained. Therefore, as part of the decision review, the Commission asked the Trustee for more details about its plans for the Charity including to ensure that the proposed community centre would be economically viable. The Commission takes the view that practical as well as legal considerations inform its cy pres decision making and it is not appropriate to provide new purposes if these cannot be achieved for practical reasons.
- 4.29 The Trustee has advised that it has not carried out any form of business planning but does intend to carry out further consultation with community groups and other interested parties to discuss how to use the Institute Building for the new purpose. We understand that currently there are a number of groups that use the building on a weekly or ad-hoc basis. The Trustee also indicated that, potentially, part of the building could be used in the future to exhibit artwork, which is owned by the Council in its statutory capacity and is not currently on public display.
- 4.30 Both the representations and the Trustee's public consultation indicate local support for the proposed use of the building as a community centre and that such a facility would be welcomed. If the cy pres Scheme was not made, it is unclear

⁷ As set out in [OG2 Application of Property Cy pres](#) Section 3.2

what an alternative way forward for the Charity could be. The cy pres Scheme would appear to be the best prospect for securing the Charity's future.

5. Consideration of the representations

- 5.1 As part of the Decision Review process, all of the 107 representations received (including those submitted outside of the notice period) were read and taken into account. The Commission is grateful to those who have taken the time to contribute as these representations have informed our decision making. To further inform the review, additional information was requested from the Trustee and some of those who submitted representations.
- 5.2 Whilst the majority of representations received raised concerns about the draft Scheme, we did receive a number of representations that were positive about potential benefits the cy pres Scheme could bring, particularly in relation to it allowing for the operation of a community centre.
- 5.3 A majority of the representations (over 70) raised a similar concern about the potential sale of the current Institute Building. This concern has three components: (i) that the current Institute Building is, of itself, important and that the preservation of the building is part of the spirit of the original gift (ii) that the location of the current Institute Building is ideal and other locations would not be as suitable (iii) that the Institute Building might be sold by the Trustee and not replaced with another property.
- 5.4 As noted in section 4 above, whether the preservation of the Institute Building was part of the spirit of the original gift has been carefully considered.
- 5.5 The concerns about the potential sale of the Institute Building appear to have been heightened due to the draft Scheme including the standard wording: "*the trustee shall have power to maintain or manage or co-operate with any statutory authority in the maintenance and management of the Lytham Institute building or other appropriate premises.*" This clause or the phrase "*other appropriate premises*" was cited by half of the representations.
- 5.6 This drafting is included to reflect the legal position that there is no legal bar to a charity co-operating with a statutory authority when furthering its charitable purpose. It is not a charitable purpose but a discretionary power which can be exercised by the Trustee to further the purposes. The Charity would have this power and the power to sell land to purchase a replacement whether or not this wording is included in the Scheme.
- 5.7 To provide a new purpose in the Scheme that was more restrictive and required the Institute Building never to be sold would not be consistent with the spirit of the gift or the purpose of cy pres.

- 5.8 Whether the power to sell and replace the land is ever used is a decision for the Trustee, not the Commission. We could only intervene if the Trustee failed to comply with its legal duties when making such a decision. The Trustee has not given any indication to the Commission that it intends to sell the current Charity property or discontinue the operation of the Charity.
- 5.9 The Trustee does not have the power to sell if it does not intend to replace the land. This would currently require a further cy pres scheme.
- 5.10 One of the main concerns raised in the representations was the Charity having a sole Trustee. There are advantages to a charity having a local authority as sole trustee. One of the disadvantages, however, is that a serious conflict of interest can arise for specific decisions when the local authority is acting as a charity trustee and the local authority is also acting in its statutory capacity. Some of the representations suggested that additional trustees, representing various interested parties from the community, should be appointed. Although this is outside the consideration of cy pres, the Commission notes that this was a consistent theme in the representations. FC was appointed as a trustee when the Charity was established, and this authorises FC to act in the general management and administration of the Charity. All decisions made by the Trustee must be in the best interests of the charity.
- 5.11 Having taken into account the concerns raised about FC's dual role as sole trustee and the local authority, we have taken the decision to make additions to the scheme. The Commission considers that, rather than requiring additional trustees to be appointed immediately, it is more proportionate to require that additional trustees who are independent of FC must be appointed before any decision can be taken about (i) disposing of any or all of the Charity's property; (ii) seeking to amend the Charity's purposes; and / or (iii) to cease the operation of the Charity. These decisions are where the potential for a conflict of interest is most acute. However, the scheme does provide FC with another option to manage these decisions. Instead, FC can decide to establish a committee of the executive to exercise the function of trustee of the charity provided that this committee includes a majority of people independent to the FC.
- 5.12 This additional safeguard has been included so that any decision about the sale of the Institute Building, or a change of purpose for the Charity or the closure of the Charity is made solely in the interests of the Charity, which addresses the concerns raised in the representations. As noted above, even with independent people involved in the decision making, the Charity does not have the power to sell the Institute Building and not replace it. This would require the further consent of the Commission. Also, as noted above, it is understood that there are no plans to sell the Institute Building or close the Charity.
- 5.13 Outside the sale of the property, change of purpose or closure of the Charity, it will be for the Trustee to consider whether it would be in the best interests of the

Charity to appoint any additional independent trustees or operate a committee of the executive with the involvement of independent persons. The Trustee has indicated that it would be willing to appoint additional trustees. It should take independent advice to ensure lawfulness under the complex legal framework governing local authorities or whether other models, such as the appointment of a committee to manage any conflicts of interest, would be more appropriate. FC should also take advice about the practical implications of appointing additional trustees or committees to ensure that the governance of the Charity is practical and effective.

5.14 The Commission's policy is that before applying for a scheme, we usually expect the trustees to have carried out a genuine and appropriate consultation exercise to take into account the views of the charity's stakeholders about the proposals. This is not a legal obligation on the trustee, but it is about ensuring that the trustee can take into account all relevant factors in its decision making.

5.15 Some representations raised concerns about the suitability of the consultation process undertaken by the Trustee, in particular whether it was sufficiently publicised. The Trustee has provided the Commission with details of the consultation that was carried out and the responses that were received. The information provided to us indicates the consultation enabled the Trustee to take into account the views of the local community as a relevant factor in its decision making.

6. Conclusion

6.1 It is concluded that the Scheme can be made with some amendments to the published draft which have been explained in this Decision Note.

6.2 The Scheme may be challenged in the First Tier Charity Tribunal, provided certain criteria is met. More information is available in the Commission's guidance [Dissatisfied with one of the Charity Commission's decisions](#) and on the [First tier tribunal's website](#).

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