

<b>Council Meeting</b>	
<b>Meeting Date</b>	18 February 2015
<b>Report Title</b>	Revised administrative arrangements for the Queenborough Fishery Trust and the Swale Recreation Trust
<b>Cabinet Member</b>	Cllr Bowles, Leader
<b>SMT Lead</b>	Mark Radford Director of Corporate Services
<b>Head of Service</b>	John Scarborough, Head of Legal
<b>Lead Officer</b>	Kate Mayor, Team Leader (Contracts and Commissioning) Mid Kent Legal Services
<b>Key Decision</b>	No
<b>Classification</b>	<b>Open</b>
<b>Forward Plan</b>	<b>Reference number:</b>
<b>Recommendations</b>	<ol style="list-style-type: none"> <li>1. To agree the revised administrative arrangements for the Queenborough Fishery Trust and the Swale Recreation Trust as set out in the attached Resolutions in Appendix I and II</li> <li>2. To note the revised appointment arrangements to these outside body to be effective from the start of the civic year 2015/2016</li> <li>3. To agree the names of the two Trustees to be appointed to the Trusts in connection with the new administrative provisions referred to at 1 above and to enable the Trusts to be linked.</li> </ol>

## **1 Purpose of Report and Executive Summary**

- 1.1 The report sets out proposed common administrative procedures in relation to the Queenborough Fishery Trust (QFT) and the Sittingbourne Recreation Trust (SRT). Both Trusts currently consist entirely of Members of the Council as the Council is the sole trustee of each trust. This arrangement is historic and those current members (trustees) believe that more open, transparent and wider representation would be beneficial in achieving the objectives of the trusts. Any proposals to change arrangements needs to have been approved by the Charity Commission (CC) and the report reflects discussions with the CC.

## **2 Background**

- 2.1 The QFT was effectively established by a declaration of trust made on 19 March 1859 resulting from an Act of Parliament made in 1845 designed to rescue the then poor state of local finances. In 1937 a scheme was approved by the Charity Commission. The scheme was superseded in 1991 but this did not affect the fundamental provisions. The 1991 Scheme was widened to cover the whole of the administrative area of Swale.

- 2.2 The 1994 SRT scheme is currently entirely independent of the QFT scheme and is much more modest in terms of its value.
- 2.3 Both schemes have agreed charitable purposes and there is no intention to change these; it is only the administrative arrangements.

### **3 Proposals**

- 3.1 In consultation and discussion with the Council and the Trustees of both Trusts, it was agreed that the Trusts would approach the CC with a draft scheme. As with most matters relating to charity law and administration the CC are determined to ensure that any proposed changes do not undermine the charitable purposes and objects of the Trust.
- 3.2 Attached as Appendix I and II are the resolutions of the trusts managing trustees setting out the revised administrative arrangements which have been approved by them. These resolutions were also passed to the CC who have assessed them, given advice on them and have confirmed that they are happy with the resolution and administrative procedures.
- 3.3 The proposal will mean that for both Trusts the Council will now only have two nominative trustees out of ten as opposed to the current arrangement where all trustees (seven) are appointed by the Council. There will also be two trustees appointed by Queenborough Town Council and six co-optative trustees. This will ensure both more local and wider community involvement and this is more in keeping with the objects and purposes of the trust. It should be noted though that the Council will no longer control either of these Trusts.
- 3.4 The names of the actual Trustees have yet to be inserted but it is intended and indeed essential that the Trustees of both Trusts are the same particularly in relation to the linking of the Trusts as explained in Paras. 3.5 and 3.6 below.
- 3.5 To further streamline the administrative burden, of these two Trusts, the CC have confirmed that after the resolutions to alter the administrative procedures have been passed, and provided that the Trustees appointed to both Trusts are identical, it is possible via the CC website, to apply to link the two Trusts, so that one becomes in effect a subsidiary of the other.
- 3.6 The subsidiary Trust will lose its current charitable number and will have the same number as the reporting trust with the addition of a 1. This means that one annual return and one set of accounts can be filed for both Trusts, but their objects, constitution and assets remain separate. This will be by separate resolution a copy of which is attached at Appendix III.
- 3.7 It is proposed that the changes in nomination to these outside bodies would take effect at the start of the civic year 2015/2016. The Council will no longer be involved in providing administrative support to the meetings of the Trusts.

### **4 Alternative Options.**

- 4.1 Options are limited as CC approval is required to any changes. The CC has been clear that they would only be prepared to agree to changes to the administrative procedures.

The proposal reflects this approach and achieves the objective of making the Trusts 'fit for purpose' in terms of them being more at arm's length and more widely representative of the communities which benefit from the charitable purposes.

- 4.2 It would be possible to do nothing and not agree the changes but this is not recommended as both Trusts agree that the revised administrative procedures are more appropriate.

## 5 Consultation Undertaken or Proposed

- 5.1 Extensive discussions and consultation has occurred between the Council, the Trusts and the CC.

## 6 Implications

Issue	Implications
Corporate Plan	The intention of widening community involvement accords with the Council's localism principles.
Financial, Resource and Property	None
Legal and Statutory	The proposed way forward has actively involved the Council's legal team and the CC to ensure that the suggested way forward complies with charity law and CC procedures
Crime and Disorder	None identified at this stage'
Sustainability	None identified at this stage'
Health and Wellbeing	None identified at this stage'
Risk Management and Health and Safety	None identified at this stage'
Equality and Diversity	None identified at this stage'

## 7 Appendices

- 7.1 The following documents are to be published with this report and form part of the report:
- Appendix I: OFT trustees resolution
  - Appendix II SRT trustees resolution
  - Appendix III Resolutions to agree linking of the two trusts

## 8 Background Papers

None

Appendix I

**Resolution of the Trustees of  
The Queenborough Fishery Trust (registered charity number 255136)**

In relation to the reorganisation of The Queenborough Fishery Trust (registered charity number 255136) (“the Charity”) and under the power given by and set out in Section 280 of the Charities Act 2011 it is resolved by Swale Borough Council (as trustee of the Charity) that:

1. The administrative procedures of the Charity shall henceforth be as set out in the schedule to this Resolution.
2. Except as thus varied the Charity Commission Schemes and other governing instruments of the Charity shall remain in full force and effect

This resolution was made by Swale Borough Council on [date]

**Schedule**

**Administrative procedures**

**1. Trustees**

- a. There shall be two categories of trustees: four nominative trustees (two appointed by each of Swale Borough Council and Queenborough Town Council) and six co-optative trustees.
- b. Every trustee (except for those named below) shall be appointed for a period of 4 years. Co-optative trustees shall be appointed by resolution of the trustees passed at a special meeting and in selecting individuals for appointment as co-optative trustees, the trustees must have regard to the skills, knowledge and experience needed for the effective administration of the Charity.
- c. The first such trustees shall hold office for the following periods respectively:

[Name] (appointed by Swale Borough Council) until 31 January 2016.

[Name] (appointed by Swale Borough Council) until 31 January 2018.

[Name] (appointed by Queenborough Town Council) until 31 January 2016.

[Name] (appointed by Queenborough Town Council) until 31 January 2018.

[Name] (appointed a co-optative trustee) until 31 January 2016.

[Name] (appointed a co-optative trustee) until 31 January 2016.

[Name] (appointed a co-optative trustee) until 31 January 2016.

[Name] (appointed a co-optative trustee) until 31 January 2018.

[Name] (appointed a co-optative trustee) until 31 January 2018.

[Name] (appointed a co-optative trustee) until 31 January 2018.

- d. A trustee shall cease to hold office if he or she:
  - i. is disqualified for acting as a trustee by virtue of sections 178 and 179 of the Charities Act 2011 or any statutory re-enactment or modification of that provision;
  - ii. in the written opinion, given to the Charity, or a registered medical practitioner treating that person, has become physically or mentally incapable of acting as a trustee and may remain so for more than three months;
  - iii. is absent without the permission of the trustees from all their meetings held within a period of six months and the trustees resolve that his or her office be vacated; or
  - iv. notifies to the trustees a wish to resign (but only if enough trustees will remain in office when the notice of resignation takes effect to form a quorum for meetings).
- e. If a vacancy occurs the trustees must note the fact in the minutes of their next meeting. Any eligible trustee may be re-appointed. If the number of trustees falls below the quorum in paragraph 2 e below, none of the powers or discretions conferred by this deed or by law on the trustees shall be exercisable by the remaining trustees except the power to appoint new trustees.

## 2. Trustees Meetings

### a. Ordinary meetings

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

### b. Calling meetings

The trustees must arrange at each of their meetings the date, time and place of their next meeting, unless such arrangements have already been made. Ordinary meetings may also be called at any time by the person elected to chair meetings of the trustees or by any two trustees. In that case not less than ten days' clear notice must be given to the other trustees. The first meeting of the trustees must be called by ..... or, if no meeting has been called within three months after the date of this deed, by any two of the trustees.

### c. Special meetings

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

d. Chairing of meetings

The trustees at their first ordinary meeting in each year must elect one of their number to chair their meetings. The person elected shall always be eligible for re-election. If that person is not present within ten minutes after the time appointed for holding a meeting, or if no one has been elected, or if the person elected has ceased to be a trustee, the trustees present must choose one of their number to chair the meeting.

The person elected to chair meetings of the trustees shall have no other additional functions or powers except those conferred by this deed or delegated to him or her by the trustees.

e. Quorum

- i. Subject to the following provision of this paragraph, no business shall be conducted at a meeting of the trustees unless at least [one-third] of the total number of trustees at the time, or [4] trustees (whichever is the greater) are present throughout the meeting.
- ii. The trustees may make regulations specifying different quorums for meetings dealing with different types of business.

f. Voting

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

g. Conflicts of interests and conflicts of loyalties

A trustee must:

- i. declare the nature and extent of any interest, direct or indirect, which he or she has in a proposed transaction or arrangement with the Charity or in any transaction or arrangement entered into by the Charity which has not been previously declared; and
- ii. 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).

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

h. Minutes

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

i. General power to make regulations

- i. The trustees may from time to time make regulations for management of the Charity and for the conduct of their business, including
  1. the calling of meetings;
  2. methods of making decisions in order to deal with cases or urgency when a meeting is impractical;
  3. the deposit of money at a bank;
  4. the custody of documents; and
  5. the keeping and authenticating of records. (If regulations made under the clause permit records of the Charity to be kept in electronic form and requires a trustee to sign the record, the regulations must specify a method of recording the signature that enables it to be properly authenticated.)
- ii. The trustees must not make regulations which are inconsistent with anything in this deed.

j. Disputes

If a dispute arises between the trustees about the validity or propriety of anything done by the trustees under this deed, and the dispute cannot be resolved by agreement, the trustees party to the dispute must first try in good faith to settle the dispute by mediation before resorting to litigation.

**3. Generally in respect of Trustees and their business**

a. Accounts, Annual Report and Annual Return

The trustees must comply with their obligations under the Charities Act 2011 (as from time to time amended or replaced) with regard to:

- i. the keeping of accounting records for the Charity;
- ii. the preparation of annual statements of account for the Charity;
- iii. the auditing or independent examination of the statements of account of the Charity;
- iv. the transmission of the statements of account of the Charity to the Charity Commission;
- v. the preparation of an Annual Report and its transmission to the Charity Commission;
- vi. the preparation of an Annual Return and its transmission to the Charity Commission.

b. Bank account

Any bank or building society account in which any of the funds of the charities are deposited must be operated by the trustees and held in the name of the Charity.

Unless the regulations of the trustees make other provision, all cheques and orders for the payment of money from such an account shall be signed by at least two trustees.

I ..... certify that the foregoing is a true copy and record of the resolution of Swale Borough Council made at its meeting held on the .....

Signed: .....

Office/Position: .....

Date: .....



## Appendix II

### **Resolution of the Trustees of The Swale Recreation Trust (registered charity number 802439)**

In relation to the reorganisation of The Swale Recreation Trust (registered charity number 802439) (together “the charities”) and under the power given by and set out in Section 280 of the Charities Act 2011 it is resolved by Swale Borough Council (as trustee of the above charity) that:

3. The administrative procedures of the Charity shall henceforth be as are set out in the schedule to this Resolution.
4. Except as thus varied the Charity Commission Schemes and other governing instruments of the Charity shall remain in full force and effect

This resolution was made by Swale Borough Council on [date]

#### **Schedule**

##### **Administrative procedures**

#### **4. Trustees**

- a. There shall be two categories of trustees: four nominative trustees (two appointed by each of Swale Borough Council and Queenborough Town Council) and six co-optative trustees.
- b. Every trustee (except for those named below) shall be appointed for a period of 4 years. Co-optative trustees shall be appointed by resolution of the trustees passed at a special meeting and in selecting individuals for appointment as co-optative trustees, the trustees must have regard to the skills, knowledge and experience needed for the effective administration of the Charity.
- c. The first such trustees shall hold office for the following periods respectively:

[Name] (appointed by Swale Borough Council) until 31 January 2016.

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[Name] (appointed by Queenborough Town Council) until 31 January 2018.

[Name] (appointed a co-optative trustee) until 31 January 2016.

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[Name] (appointed a co-optative trustee) until 31 January 2018.

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[Name] (appointed a co-optative trustee) until 31 January 2018.

- d. A trustee shall cease to hold office if he or she:
- i. is disqualified for acting as a trustee by virtue of sections 178 and 179 of the Charities Act 2011 or any statutory re-enactment or modification of that provision;
  - ii. in the written opinion, given to the Charity, or a registered medical practitioner treating that person, has become physically or mentally incapable of acting as a trustee and may remain so for more than three months;
  - iii. is absent without the permission of the trustees from all their meetings held within a period of six months and the trustees resolve that his or her office be vacated; or
  - iv. notifies to the trustees a wish to resign (but only if enough trustees will remain in office when the notice of resignation takes effect to form a quorum for meetings).
- e. If a vacancy occurs the trustees must note the fact in the minutes of their next meeting. Any eligible trustee may be re-appointed. If the number of trustees falls below the quorum in paragraph 2 e below, none of the powers or discretions conferred by this deed or by law on the trustees shall be exercisable by the remaining trustees except the power to appoint new trustees.

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

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- ii. 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).

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- iii. the auditing or independent examination of the statements of account of the Charity;
- iv. the transmission of the statements of account of the Charity to the Charity Commission;
- v. the preparation of an Annual Report and its transmission to the Charity Commission;
- vi. the preparation of an Annual Return and its transmission to the Charity Commission.

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Any bank or building society account in which any of the funds of the charities are deposited must be operated by the trustees and held in the name of the Charity.

Unless the regulations of the trustees make other provision, all cheques and orders for the payment of money from such an account shall be signed by at least two trustees.

I ..... certify that the foregoing is a true copy and record of the resolution of Swale Borough Council made at its meeting held on the .....

Signed: .....

Office/Position: .....

Date: .....

**Resolution of the Trustees of  
The Queenborough Fishery Trust (registered charity number 255136)**

In relation to the reorganisation of The Swale Recreation Trust (registered charity number 802439) and the Queenborough Fishery Trust (registered charity number 255136) (together “the charities”) and under the power given by and set out in Section 12 of the Charities Act 2011 it is resolved that:

1. The charities become linked charities with common trustees and administrative procedures under the powers conferred by section 12 of the Charities Act 2011; and
2. Queenborough Fishery Trust will become the reporting charity.

I ..... certify that the foregoing is a true copy and record of the resolution of the Trustees of the Queenborough Fishery Trust made at its meeting held on the .....

Signed: .....

Office/Position: .....

Date: .....

**Resolution of the Trustees of  
The Swale Recreation Trust (registered charity number 802439)**

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2. Queenborough Fishery Trust will become the reporting charity.

I ..... certify that the foregoing is a true copy and record of the resolution of the Trustees of the Swale Recreation Trust made at its meeting held on the .....

Signed: .....

Office/Position: .....

Date: .....