



MINUTES

**Special Shetland Charitable Trust
Council Chamber, Town Hall, Lerwick
Wednesday 21 September 2011 at 3.00pm**

Present:

W H Manson	L Angus
A J Cluness	A T J Cooper
A T Doull	A G L Duncan
E L Fullerton	F B Grains
R S Henderson	J H Henry
A J Hughson	C H J Miller
R C Nickerson	V Nicolson
F A Robertson	G Robinson
J H Scott	J G Simpson
C L Smith	

Apologies:

I J Hawkins	J W G Wills
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In Attendance (Officers):

A Black, General Manager - SCT
M Anderson, Principal Officer - SCT
L Geddes, Committee Officer - SIC

Chairman:

W H Manson, Chairman of the Trust, presided.

Circular:

The circular calling the meeting was held as read.

Declarations of Interest:

None

62/11

Future Governance Arrangements of Shetland Charitable Trust

The Trust considered a report by the General Manager (Appendix 1).

The Chairman introduced the report, commenting that it was potentially a very important day in the history of Shetland Charitable Trust, and that it was incumbent on Trustees to make the right decision for the future of the Trust. In response to queries, he confirmed that Trustees had all received the latest letter from Turcan Connell relating to whether Councillors were appointed or invited. With regard to the responses received from Community Councils that they would like more time to consider the proposals, the Chairman

advised that it was not a consultation exercise. Papers had been issued early, and had been advertised, in order that individuals or organisations that wished to make comments could do so. Should the Trust agree to the proposals, OSCR would carry out a consultation exercise on the proposals as part of its consideration of them.

Trustees paid tribute to the work carried out by past and present Trustees and staff of the Trust, and thanked the Governance Review Group for their work in coming up with the proposals.

Mr A J Cluness referred to the fact that the Trust had been created by the SIC in order that an independent body could undertake a number of works on behalf of the community and, over the years, a number of assets had been transferred from the SIC to SCT to help ensure this. He advised that he had been a trustee on a number of trusts over the years, and that it was usually the owner of the 'property' that appointed trustees. He had no experience of a trust that decided to get rid of its existing trustees to appoint others. In the past it had been accepted and understood by the general public that those elected as Councillors were entitled to be Trustees, and he felt that had it not been for Viking Energy, the Office of the Scottish Charity Regulator (OSCR) would have paid little attention to the Trust. He went on to say that the Standards Commission had decided that there was no case to answer in relation to complaints made, and he did not believe that the Trust had a mandate from the community to make changes to the Trust. In order that the 'owners of the property' could have the opportunity to express their views, he accordingly moved that the Trust should have a referendum in which the public can have their say whether they wish the existing system to continue; or whether there should be an independent Trust; or whether the Trust should go down the route of the proposals in the report.

Mr L Angus seconded.

Mr W H Manson pointed out that the Trust had been considering this issue for over two years, and that OSCR required that changes were made. Whilst the Trust was originally a Council creation, disturbance fund payments mandated to the Trust had ceased in 2000, and the Trust had become increasingly separate from the Council. Since then, the Charities and Trustees Investment (Scotland) Act 2005 had come into force, and it was clear that changes in the governance of the Trust were required and the Viking Energy issue had only hastened OSCR's review of the Trust. He therefore moved, as an amendment, that the discussion around the proposals in the report continue, and that the Trust proceed to make a decision on its future at this meeting.

Mrs C H J Miller seconded.

Mr R C Nickerson gave notice of further amendment and called for a roll call vote. Trustees voted unanimously in favour of a roll call vote.

During the discussion that followed, Trustees speaking in support of the motion commented that it had never been evidenced that there was a conflict of interest, only a perception that this may be so, and that the Trust could fully demonstrate that it had acted in accordance with the law over the years. It was pointed out that Trustees, with the exception of the two independent Trustees, chose whether or not to accept an invitation to become a Trustee, and that the public understood that this was part of the public servant role. It was suggested that the question of how Councillors become Trustees and whether this constituted a conflict of interest was fundamental, with legal advice received that suggested that the point had not been tested in the courts, and that the Trust should take a cautious approach.

It was felt that it was fundamentally important that the Shetland community, including young people aged sixteen plus, had a say in how its funds were looked after and the future governance of the Trust. It was noted that OSCR had highlighted that the present governance arrangements were considered to be high risk in relation to conflicts of interest, and that OSCR did not have the power to formally require a change to be made to the constitution. It was suggested that the level of risk had reduced significantly with the dismissal of two complaints against Trustees by OSCR and, more recently, with the dismissal of the complaint against Councillors on issues surrounding Viking Energy.

It was pointed out that Trust meetings were held in public, papers were available to the public, and that the Trust was therefore a transparent organisation that had brought immense benefits to the Shetland community. It was argued that its current governance met the elected representative and accountability criteria put forward, with the Trust already fulfilling a number of the recommendations put forward to demonstrate independence from the Council. It was pointed out that there were powers under the Trust Deed to take up any number of additional Trustees to act alongside existing Trustees, and that the Trust had operated with additional Trustees in the past.

Trustees speaking in support of the amendment pointed out that the Governance Review Group had spent over two years considering all the evidence and information available, and had come to the conclusion that the status quo was not an option. It was pointed out that it would be difficult to ensure that the public had all the evidence and information available to Trustees should a referendum take place, and that there was a risk that the public would be asked to vote on something that was outwith the law.

Whilst no-one was disputing that the Trust had not acted within the law, there had been legislative changes and both OSCR and the legal advice (jointly commissioned by the SIC and the Trust at the request of Mr Cluness, and provided by Mr Roy Martin QC) had stated that change was required. The legal advice also expanded upon the dangers inherent in not making appropriate changes. It was incumbent on Trustees to act on this advice, and to avoid making a decision by voting in favour of a referendum would be

avoiding Trustees' responsibilities to make sure that the Trust stays within the law and operates in an efficient and proper manner for the people of Shetland. It was questioned if the public were fully aware that they were electing a Trustee when electing a Councillor, and noted that the legal advice received had indicated that there were conflicts of interest if Trustees were chosen in this way.

It was suggested that as well as a legal obligation, there was a moral obligation to serve the Shetland community by making these changes, and concern was expressed at what could be imposed on the Trust should these changes not occur. It was pointed out that whilst the Viking Energy issue had perhaps hastened a decision on this matter, OSCR had been quite clear that the outcome would have been the same regardless.

After summing up, voting took place by roll call and the result was as follows:

Motion (Mr A J Cluness)	Amendment (Mr W H Manson)	Abstain
Mr A J Cluness	Mrs E L Fullerton	Mrs L F Baisley
Mr A T J Cooper	Mr J H Henry	
Mr A T Doull	Mr W H Manson	
Mr A G L Duncan	Mrs C H J Miller	
Mrs F B Grains	Ms V Nicolson	
Mr R S Henderson	Mr F A Robertson	
Mr A J Hughson	Sir J Scott	
Mr R C Nickerson	Mr J G Simpson	
Mr G Robinson	Mr J Budge	
Mr C L Smith		
Mr L Angus		
11	9	1

Mr R C Nickerson withdrew his notice of further amendment.

The meeting concluded at 3.50pm.

CHAIRMAN