

3. **BROOKLANDS PARK CHARITABLE TRUST, EAST GRINSTEAD, WEST SUSSEX PROPOSED LAND SWAP - UPDATE**

1.0 **INTRODUCTION**

- 1.1 The Council being a trust corporation, by virtue of the Local Government Acts, is the Trustee of any land gifted to the Council upon charitable trust and is appointed the Trustee pursuant to Section 210 of the Local Government Act 1972 by virtue of being the statutory successor to the Cuckfield Urban District Council, the Cuckfield Rural District Council, the Burgess Hill Urban District Council and the East Grinstead Urban District Council.
- 1.2 The Council as Trustee comprises all the Members of the Council, who by virtue of their office as Members of the Council are the managing trustees of the Charities vested in the Council. Members of the Council receive specific training on their roles and responsibilities as Charity Trustees as part of their Member training.
- 1.3 The names of members of the Council who currently serve as a Charity Trustee are set out in the table below:

Mrs Jane Keel (Chairman)
Mrs Sophia Harrison* (Vice-Chairman)

Jonathan Ash-Edwards	Bernard Gillbard	Mike Livesey
Mrs Margaret Baker	Mrs Jean Glynn	Andrew MacNaughton
Mrs Irene Balls	Brian Hall	Gordon Marples
Mrs Eileen Balsdon	Mrs Dorothy Hatswell	Gary Marsh
Stephen Barnett	Mrs Susan Hatton	Peter Martin
Andrew Barrett-Miles	Paddy Henry	Edward Matthews
Richard Bates	Mrs Janice Henwood	Mrs Pru Moore
John Belsey	Christopher Hersey	Ian Pearce
Mrs Liz Bennett	Mrs Margaret Hersey	Peter Reed
Mrs Brenda Binge	Chris Jerrey	Mrs Heather Ross
Andrew Brock	Mrs Anne Jones	Mrs Susan Seward
Mrs Heidi Brunsdon	Jim Joyce-Nelson	Christopher Snowling
Clive Chapman	Mrs Susanna Kemp	James Temple-Smithson
Jack Callaghan	Edward King	Mrs Mandy Thomas-Atkin
Patrick Cutler	Graham Knight	Julian Thorpe
Ian Dixon	Mrs Jacqui Landriani	Garry Wall
Mrs Kathleen Dumbovic	Andrew Lea	Mike Watts
Mrs Gina Field		

- 1.4 At the meeting of the Charity Trustees held on 11th March 2009, the Charity Trustees authorised the Charity's Solicitor to enter into discussions with the Charity Commission concerning the status of that part of Brooklands Park edged in blue on the attached plan (the minutes of the meeting of the Charity Trustees of 11th March 2009 refer).
- 1.5 The purpose of this report is to update the Charity Trustees on the outcome of those discussions; and to seek authority for the Charity's Solicitor to (a) register the Charity with the Charity Commission, (b) instruct an independent valuer to advise the Charity Trustees on whether or not it is in the best interests of the Charity to exchange that part of the Charity's land hatched on blue on the plan (the Lido Site) for all or part of the Council's land edged in red on the attached plan; and (c) subject to the independent valuer's advice that it would be in the best interests of the Charity to

exchange the land to advertise and otherwise comply with the Charity Trustees' obligations under the Charities Act, 1993 prior to reporting back to the Charity Trustees.

2.0 BACKGROUND

- 2.1 At the meeting of the Charity Trustees held on 11th March 2009, the Charity Trustees considered a report from the Charity's Solicitor concerning the status of Brooklands Park, East Grinstead. The report set out the background to the East Grinstead Urban District Council's acquisition of Brooklands Park, which was acquired in several parts between 1906 and 1920, and informed the Charity Trustees that the part of Brooklands Park edged in blue on the attached plan is held upon charitable trust for the benefit of the inhabitants of East Grinstead and the part of Brooklands Park edged in red on the attached plan is owned beneficially by the Council.
- 2.2 The report highlighted the general condition, at that time, of the Lido Site; informed the Charity Trustees of significant operational issues affecting the amenity of the Lido Site and advised that some small scale development would greatly improve that area of the Park.
- 2.3 The report set out the Charity Trustees powers and legal duties in relation to the land; offered a potential solution to the Charity Trustees that would enhance the amenity of the Park held upon charitable trust and sought authority for the Charity's Solicitor to enter into negotiations with the Charity Commission and the Council for the exchange of the Lido Site for all or part of the Council's land edged in red on the attached plan.

3.0 THE CHARITY COMMISSION'S VIEWS

- 3.1 The Charity Commission have stated that the Charity Trustees need to consider whether they should apply to register the charitable trust with the Charity Commission. The Charity's Solicitor considers that the Indenture dated 4th July 1906 does create a valid charitable trust and that it would be appropriate to register the charitable trust with the Charity Commission.
- 3.2 The Charity Commission have advised that:

"If the Council, as trustee, wishes to dispose of the land hatched blue on the plan by way of a swap with the land edged in red on the plan, they will need to comply with the requirements of Section 36 of the Charities Act, 1993.

The trustee will also need to consider whether the land to be exchanged represents the best available terms. They must take into account the financial value of the land to be exchanged and would need an appropriate valuation to be satisfied that it represents equal or better usefulness for the purposes of the charity.

Even where the terms are considered to be the best available, the trustees must consider the question of whether, when the best terms have been ascertained, it is in the best interests of the charity to dispose of the blue land in this way."

- 3.3 The Charity Trustees' powers and obligations under the Charities Act, 1993 are set out in Section 3 of the report to the Charity Trustees of 11th March 2009. In order to fulfil the general principles and obligations set out in paragraph 3.2 of this report it will be necessary for the Charity Trustees to obtain a valuation report from an

independent surveyor, engaged exclusively by the Charity Trustees to advise them on whether it would be in the best interests of the Charity to exchange the Lido Site for the land edged red on the attached plan.

- 3.4 The Charity Commission have confirmed that the Charity Trustees have the necessary powers of disposal under the Trusts of Land and Appointment of Trustees Act, 1996, but have reminded the Charity Trustees that those powers must be exercised consistently with the trusts of the Charity.
- 3.5 The Charity Commission have further advised that: *“It is generally consistent with the charitable purposes of specie trusts to exercise the power of sale in order to buy replacement land to be held on the same trusts. In this case there would only be a problem if the replacement land was unsuitable for the current objects. As the replacement land is adjacent to the land to be disposed of and laid out as a park this is unlikely to be an issue. We would not, therefore, need to make a scheme in this case”*.
- 3.6 The Charity Commission’s advice would seem to concur with the Charity’s Solicitor’s advice to the Charity Trustees set out in Section 3 of the report to the Charity Trustees of 11th March 2009, although the Charity’s Solicitor is surprised that a scheme is not necessary and the Charity’s Solicitor is seeking further confirmation on that point from the Charity Commission, but whether or not a scheme is necessary the next stage is the same.
- 3.7 As the Charity does not have any income generating capacity and no other financial resources it will only be possible for the Charity Trustees to proceed with the recommendation if the Council agrees to bear all costs associated with this report including the costs of appointing an independent surveyor to advise the Charity Trustees on any land exchange.
- 3.8 The Charity Trustees need to be aware that, in view of their dual roles as Charity Trustees and Members of the Council, there is the potential for a conflict of interest. The Charity Commission is fully aware of this potential and has issued guidance, which says that local authority Charity Trustees have an overriding duty to act in the best interests of the Charity when dealing with property vested in local authorities as Trustee. If there is a conflict between the interests of the Charity and the interests of the Council they must disregard the interests of the Council and make their decisions as Charity Trustees in the best interests of the Charity even if that will be inconvenient to detrimental to the interest of the Council.
- 3.7 The Charity Trustees will be aware from Section 3 of the report to the Charity Trustees of 11th March 2009 that land set out as a public park or recreation ground constitutes open space and that it will be necessary to advertise the proposed exchange of land for two consecutive weeks in a local newspaper circulating in the area in which the land is situated and then to consider any objections received in response to those advertisements carefully and should only authorise the proposed exchange if those objections are insubstantial and it is in the public interest to disregard them.

4.0 FINANCIAL IMPLICATIONS

- 4.1 There are none.

5.0 RECOMMENDATIONS

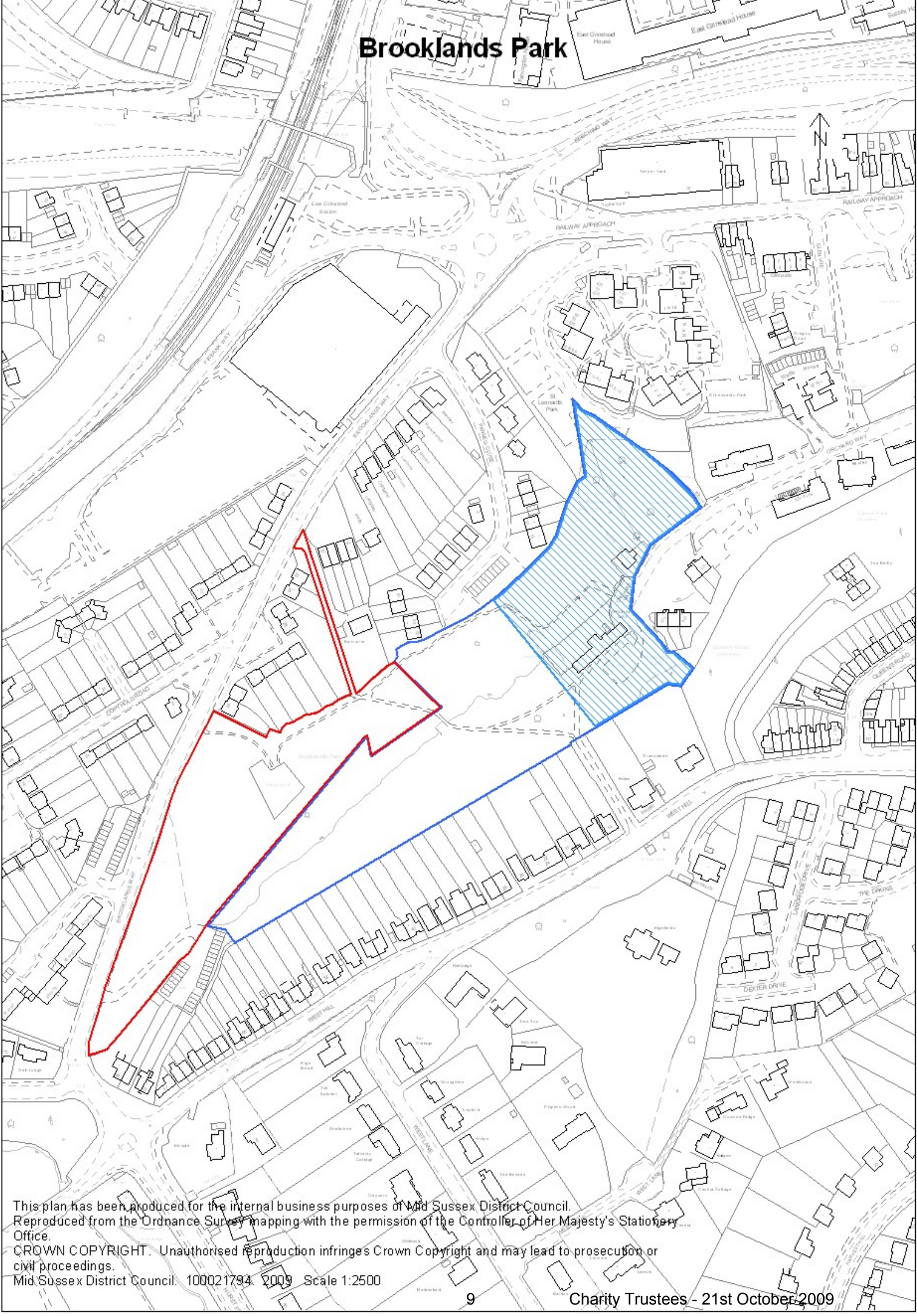
The Charity Trustees are recommended to:

- 5.1 Note the contents of the report.**
 - 5.2 If they consider it in the best interests of the Charity to do so, authorise the Charity's Solicitor to (a) register the Charity with the Charity Commission, (b) instruct an independent valuer to advise the Charity Trustees on whether or not it is in the best interests of the Charity to exchange that part of the Charity's land hatched on blue on the plan (the Lido Site) for all or part of the Council's land edged in red on the attached plan; and (c) subject to the independent valuer's advice that it would be in the best interests of the Charity to exchange the land to advertise and otherwise comply with the Charity Trustees' obligations under the Charities Act, 1993 prior to reporting back to the Charity Trustees for a final decision on the recommended terms of the exchange.**
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Background Papers

The Council's legal file and Deeds relating to the Lido Site.

Brooklands Park



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