

ST JOHN'S PARK CHARITABLE TRUST, BURGESS HILL, WEST SUSSEX - CHARITY NO: 305189 - PROPOSED LEASE DISPOSAL – PAVILION KIOSK

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:-

Councillor Margaret Belsey (Chairman)
Councillor Phillip Coote (Vice-Chairman)

Councillors:	Ian Gibson
Graham Allan	Sue Hatton
Jonathan Ash-Edwards	Janice Henwood
Richard Bates	Simon Hicks
John Belsey	Stephen Hillier
Alison Bennett	Tofojjul Hussain
Liz Bennett	Rodney Jackson
Anne Boutrup	Jim Knight
Pete Bradbury	Clive Laband
Paul Brown	Andrew Lea
Heidi Brunsdon	Anthea Lea
Roger Cartwright	Judy Llewellyn-Burke
Peter Chapman	Gary Marsh
Rod Clarke	Julie Mockford
Emma Coe-Gunnell White	Adam Peacock
Matthew Cornish	Christopher Phillips
Rachel Cromie	Michael Pulfer
John Dabell	Robert Salisbury
Ruth de Mierre	Samantha Smith
Benedict Dempsey	Alexander Sparasci
Jenny Edwards	Linda Stockwell
Robert Eggleston	Dick Sweatman
Sandy Ellis	Colin Trumble
Anne Eves	Neville Walker
Bruce Forbes	Roger Webb
Lee Gibbs	Norman Webster
	Rex Whittaker

- 1.4 The Charity's property comprises only the eastern half of St John's Park. The Charity was constituted by a Conveyance dated 24th April 1891 when the eastern half of the

Park was gifted to the Council's predecessors, the Burgess Hill Local Board, upon charitable trust.

- 1.5 The object of the Charity is the provision of a Public Park and Pleasure Ground for the benefit of the inhabitants and visitors to St John's Common. The Council's powers of management are restricted to using the property for charitable purposes within the meaning of Section 5 of the Charities Act 2011, which replaced the relevant provisions of the Recreational Charity Act 1958.
- 1.6 The grounds of the well-used venue are regularly maintained by the Council's grounds maintenance contractor. Income is generated from the pitch hire and the pavilion hire and these hire charges contribute towards the grounds maintenance and upkeep of the Charity's Property.

2.0 PURPOSE OF REPORT

2.1 The purpose of this report is to:

- (a) update the Charity Trustees on the position since the last report on 29 September 2021;
- (b) consider any objections and representations received in response to the statutory advertisements placed in the Mid Sussex Times on 7th and 14th April 2022 by the Charity Trustees pursuant to the statutory requirements of Section 123 of the Local Government Act 1972 and Section 121 of the Charities Act 2011; and
- (c) seek Charity Trustees authority for the Charity's solicitor to grant a lease of that part of the Pavilion ("the Premises") edged in red on the plan attached to this report at Appendix A.1 titled "Site Location Plan – Floor Plan ("the Lease Plan"), together with the grant of ancillary rights to place tables and chairs shown on the land coloured in blue at on Lease Plan 2 to Inner Values Community Projects Limited ("the prospective tenant") on the terms set out in this report and recommended in the Independent Surveyor's Report to enable the prospective tenant to continue to operate as a hot and cold beverage vendor in the Park.

3.0 BACKGROUND

- 3.1 At the meeting of the Charity Trustees held on 29 September 2021, the Charity Trustees received a report that the Kiosk area of the Pavilion in St John's Park has been operated by a third-party trading as 'Kiosk in the Park' under the terms of the Council's standard conditions of hire. The report explained that trading operations had continued since May 2021, and that the Council had been approached for a lease of the kiosk. The report sought the Charity Trustees' approval in principle, following which the Charity Trustees resolved to grant a lease of the Kiosk to the incumbent operator.
- 3.2 Following this resolution, officers have taken the opportunity to agree heads of terms, with the incumbent operator – Inner Values Community Projects Limited, trading as Kiosk in the Park. The proposed main lease terms are as follows:
 - a. Premises: those parts of the Pavilion shown edged in red on the Lease Plan;
 - b. Lease Term: 5 years from the lease commencement date;
 - c. Rent: £3,500 per annum exclusive of VAT and paid quarterly in advance.

- d. Break Option: either party has the opportunity to break after giving 12 months' prior written notice
 - e. Utilities: the rent is exclusive of services (utilities e.g. electricity, water, gas and sewerage charges), for which the tenant will reimburse the Charity for a percentage of the gross utility costs for the Pavilion;
 - f. Rent Review: the rent shall be reviewed annually and shall be an upwards only review in line with the uplift in Retail Prices Index (all items).
 - g. Repairs and Decoration:
 - the landlord (the Charity) shall be responsible for the main structure of the Pavilion including all maintenance and repair, and external decoration of the main structure, together with the maintenance, repair and decoration of the common shared space within the Pavilion hatched in yellow on the Lease Plan; and
 - the tenant (Inner Values Community Projects Limited) shall be responsible for the maintenance, repair and decoration of the internal parts of the Premises.
 - h. Service Charge: the tenant shall reimburse the Charity for a proportion (4%) of the costs of maintaining and repairing the Pavilion.
 - i. Buildings Insurance: the landlord will be responsible for insuring the Pavilion against the usual risks and the tenant shall reimburse the Charity for a proportion of the costs of insuring the Pavilion, based on their occupational floor area.
 - j. Contents Insurance etc.: the tenant will be responsible for insuring their own property and their own contents used on the Premises
 - k. Third party public liability: the tenant will be responsible for maintaining public liability insurance in respect of their trading operation and use of the Premises, the Common Shared Space and the Park;
 - l. Landlord and Tenant Act: the Lease is to be excluded from the statutory protection afforded to tenants under sections 24 to 28 of the Landlord and Tenant Act 1954; and
 - m. Costs: The Charity's Solicitor and the Charity's Surveyor have standard charges that apply to property transactions such as this. The tenant will meet these costs which are set to be a minimum of £500 for Surveyors' fees and £750 for Legal Fees. The cost associated with the Section 123 advertisement costs will also be covered by the tenant.
- 3.3 The heads of terms, which form the agreed principal terms of the agreement between the Charity and the prospective tenant have been agreed by both parties, and are not annexed to this report, but will be available to the Charity Trustees at the meeting of the Charity Trustees.

4.0 LEGAL ADVICE TO THE CHARITY TRUSTEES

- 4.1 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 to local authority Charity Trustees reminding them of their fiduciary duty as Charity Trustees. The guidance 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 interest 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 or detrimental to the interest of the Council. These rules also apply to

any Charity Trustee who is also a member of another local authority such as a Town or Parish Council.

- 4.2 Charity Trustees have general powers under the Trusts in Land and Appointment of Trustees Act 1996 to sell or grant leases of land owned by or held in trust for a charity. However, those powers cannot be exercised in breach of trust. Furthermore, Charity Trustees powers of disposal are permissive and therefore, must be exercised strictly in accordance with any limitations or restrictions imposed by statute. In *Sheffield Corporation v Tranter* [1957] the Court of Appeal held that: “a part of a Public Park or Pleasure Ground may be let as a refreshment pavilion, provided that the use of the pavilion is ancillary to the use of the park and a necessary amenity”. The provision of facilities to vend hot or cold beverages to members of the public from within part of the Pavilion is therefore within the trusts of the Charity, provided that doing so does not unduly restrict or prevent use of the Park by members of the public at large.
- 4.3 The fact that the land is charity land does not prevent all or part of the land from being leased out by the Charity. Subject to the Charity Trustees complying with the provisions of Section 119 of the Charities Act 2011 they can, upon the recommendation of an Independent Surveyor engaged exclusively by the Charity Trustees to advise them, decide to lease part of the Charity’s land. In doing so that Charity Trustees would have to conclude the land was surplus to the requirements of the Charity, and that it is in the best interest of the Charity to lease out the land.
- 4.4 Section 121 of the Charities Act 2011 requires that where land is held by or in trust for a charity, and the trusts on which it is held so stipulate that it is to be used for the purposes, or any particular purposes of the charity: the land must not be sold, leased or otherwise disposed of unless the charity trustees have first given public notice of the proposed disposition, inviting representations to be made to them within a specified notice period. That notice period must not be less than one month from the date of the notice, and the trustees must then take into consideration any representations made to them about the proposed disposition.
- 4.5 Land which is set out as a public park or recreation ground formally constitutes open space. Owing to the Council’s dual roles as a Local Authority and as a Trust Corporation, it is necessary for the Council (as custodian Charity Trustee) to comply with the statutory requirements for Local Authorities disposing of open space which are set out in s.123 Local Government Act 1972. Section 13 stipulates that a Local Authority may not either sell any land or grant a lease of any land consisting of or forming part of an open space without first advertising the proposed sale or lease for two consecutive weeks in a local newspaper circulating in the area in which the land is situated and then consider any objections received in response to those advertisements. If there are objections to the proposed sale or lease the Council must consider those objections carefully and should only authorise the proposed sale or lease if those objections are insubstantial and it is in the public interest to disregard them.
- 4.6 In order to comply with the requirements of Section 119 of the Charities Act 2011, the Charity Trustees must obtain valuation advice from a suitably qualified surveyor, who must prepare a report for the Charity Trustees in accordance with the requirements of the Charities (Qualified Surveyors Reports) Regulations 1992.

5.0 SECTION 121 AND 123 ADVERTISEMENTS AND OBJECTIONS

- 5.1 The proposed lease of part of the Pavilion and the proposed ancillary outdoor seating was advertised in the Mid Sussex Times on 7th and 14th April 2022, in accordance with the requirements of Section 121 of the Charities Act 2011 and Section 123 of the Local Government Act 1972, and members of the public had until 6th May 2022 to lodge their objections and representations. No objections or representations were received and therefore, the Charity Trustees have none to consider.

6.0 INDEPENDENT SURVEYORS' REPORT

- 6.1 An Independent Surveyors' report has been commissioned as of March 2022 and completed by Flude Group Limited on 18 May 2022, at the expense of the Council, but solely for the benefit of the Charity Trustees. The relevant sections of the report are set out below. Copies of the full report are not annexed to this report but will be available to the Charity Trustees at the meeting of the Charity Trustees.
- 6.2 The Independent Surveyor confirms that, in her opinion, the market rent for the Premises is £3,500 per annum (exclusive of services and buildings insurance). It is therefore, reasonable for the Charity Trustees to conclude that the proposed lease of the Premises to the prospective tenant represents the best consideration that can be reasonably obtained, and that granting the proposed lease is in the best interests of the Charity.

7.0 OTHER OPTIONS CONSIDERED

- 7.1 The prospective tenant could continue to hire the Kiosk section of the Pavilion under the terms of the Council's casual and regular hire arrangements, but that could inadvertently create rights in the Charity's property that are not in the best interests of the Charity.
- 7.2 The prospective tenant could cease to hire the Kiosk section of the Pavilion, but that would interrupt the provision of hot and cold beverages in the Park, and ultimately the loss of income to the Charity.

8.0 FINANCIAL IMPLICATIONS

- 8.1 The proposed lease provides an additional income to the Charity of £3,500 per annum, with potential to increase each year when the rent is to be reviewed. Utilities are currently included in the hire costs that the prospective tenant pays to the Charity via the Council's hire agreement. Under the terms of the proposed lease, the prospective tenant will reimburse the Council for a proportion of Utilities consumed at the Pavilion. The Council's professional fees in drafting and putting in place a lease will be met by the prospective tenant.

9.0 RISK MANAGEMENT IMPLICATIONS

- 9.1 Failing to regularise the prospective tenant's occupation of the Kiosk at the Pavilion, through the grant of a lease excluded from the provisions of sections 24 to 28 of the Landlord and Tenant Act 1954, could result in the prospective tenant acquiring rights over the Charity's land that are not intended or desirable given the nature of the Pavilion, its location, and the purpose of the Charity.

- 9.2 The proposed lease is to contain an option for either party to break after serving 12 months' notice. This will afford sufficient flexibility to enable any future proposals or schemes to be effected.

10.0 EQUALITY AND CUSTOMER SERVICE IMPLICATIONS

- 10.1 The recommendations contained in this report do not have an adverse or negative impact on Equality and Customer Service.

11.0 RECOMMENDATIONS

The Charity Trustees are recommended to:

- 11.1** *Note the absence of any responses to the statutory advertisements placed in the Mid Sussex Times on 7th and 14th April 2022 giving notice of the Charity Trustees' intention to grant the proposed lease; and note and consider the proposal set out in paragraph 3.2 of this report, and the Independent Surveyor's Report; and*
- 11.2** *If, having considered this report and the Independent Surveyor's Report the Charity Trustees' consider that it is in the best interests of the Charity to grant the proposed lease to the prospective tenant: to authorise the Charity Trustees' Solicitor to grant the lease on the terms set out in this report and the Independent Surveyor's Report and on such other terms as the Charity Trustees' Solicitor recommends or considers appropriate.*

Background Papers

Valuation report undertaken by Rebecca Lewis of Flude Group Limited
The Council's legal file and Deeds relating to the Charity