

CHIPPERFIELD TRUST

Wednesday, 12th September,
2012

at 2.00 pm

PLEASE NOTE TIME

Council Chamber - Civic Centre

Members of the Council

The Mayor – Chair

The Sheriff – Vice-chair

Leader of the Council

Members of the Council (See overleaf)

Contacts

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The agenda and papers are available via the Council's Website

WARD	COUNCILLOR	WARD	COUNCILLOR
Bargate	Bogle Noon Tucker	Millbrook	Furnell Laming Thorpe
Bassett	Hannides B Harris L Harris	Peartree	Keogh Lewzey Dr Paffey
Bevois	Barnes-Andrews Burke Rayment	Portswood	Claisse Norris Vinson
Bitterne	Letts Lloyd Stevens	Redbridge	McEwing Pope Whitbread
Bitterne Park	Baillie Inglis White	Shirley	Chaloner Kaur Mead
Coxford	Morrell Spicer Thomas	Sholing	Mrs Blatchford Jeffery Kolker
Freemantle	Moulton Parnell Shields	Swaythling	Mintoff Turner Vassiliou
Harefield	Daunt Fitzhenry Smith	Woolston	Cunio Payne Dr R Williams

PUBLIC INFORMATION

Role of the Council

The Council comprises all 48 Councillors. The Council normally meets six times a year including the annual meeting, at which the Mayor and the Council Leader are elected and committees and sub-committees are appointed, and the budget meeting, at which the Council Tax is set for the following year.

The Council approves the policy framework, which is a series of plans and strategies recommended by the Executive, which set out the key policies and programmes for the main services provided by the Council.

It receives a summary report of decisions made by the Executive, and reports on specific issues raised by the Overview and Scrutiny Management Committee.

The Council also considers questions and motions submitted by Council Members on matters for which the Council has a responsibility or which affect the City.

Public Involvement

Representations

At the discretion of the Mayor, members of the public may address the Council on any report included on the agenda in which they have a relevant interest.

Petitions

At a meeting of the Council any Member or member of the public may present a petition which is submitted in accordance with the Council's scheme for handling petitions.

Petitions containing more than 1,500 signatures (qualifying) will be debated at a Council meeting. Petitions with less than 1,500 signatories (non-qualifying) shall be presented to the Council meeting and be received without discussion.

Deputations

A deputation of up to three people can apply to address the Council. A deputation may include the presentation of a petition.

Questions

People who live or work in the City may ask questions of the Mayor, Chairs of Committees and Members of the Executive.

Southampton City Council's Seven Priorities

- More jobs for local people
- More local people who are well educated and skilled
- A better and safer place in which to live and invest
- Better protection for children and young people
- Support for the most vulnerable people and families
- Reducing health inequalities
- Reshaping the Council for the future

Smoking policy – The Council operates a no-smoking policy in all civic buildings.

Mobile Telephones – Please turn off your mobile telephone whilst in the meeting.

Fire Procedure – In the event of a fire or other emergency, a continuous alarm will sound and you will be advised by Council officers what action to take.

Access – Access is available for disabled people. Please contact the Council Administrator who will help to make any necessary arrangements.

Dates of Meetings(Municipal Year 2012/13)

2012	2013
16 May	16 January
11 July	13 February (Budget)
12 September	20 March
14 November	15 May

CONDUCT OF MEETING

FUNCTIONS OF THE COUNCIL

The functions of the Council are set out in Article 4 of Part 2 of the Constitution

BUSINESS TO BE DISCUSSED

Only those items listed on the attached agenda may be considered at this meeting.

RULES OF PROCEDURE

The meeting is governed by the Council Procedure Rules as set out in Part 4 of the Constitution.

QUORUM

The minimum number of appointed Members required to be in attendance to hold the meeting is 16.

DISCLOSURE OF INTERESTS

Members are required to disclose, in accordance with the Members' Code of Conduct, **both** the existence **and** nature of any "Disclosable Personal Interest" or "Other Interest" they may have in relation to matters for consideration on this Agenda.

DISCLOSABLE PERSONAL INTERESTS

A Member must regard himself or herself as having a Disclosable Pecuniary Interest in any matter that they or their spouse, partner, a person they are living with as husband or wife, or a person with whom they are living as if they were a civil partner in relation to:

(i) Any employment, office, trade, profession or vocation carried on for profit or gain.

(ii) Sponsorship:

Any payment or provision of any other financial benefit (other than from Southampton City Council) made or provided within the relevant period in respect of any expense incurred by you in carrying out duties as a member, or towards your election expenses. This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992.

(iii) Any contract which is made between you / your spouse etc (or a body in which the you / your spouse etc has a beneficial interest) and Southampton City Council under which goods or services are to be provided or works are to be executed, and which has not been fully discharged.

(iv) Any beneficial interest in land which is within the area of Southampton.

(v) Any license (held alone or jointly with others) to occupy land in the area of Southampton for a month or longer.

(vi) Any tenancy where (to your knowledge) the landlord is Southampton City Council and the tenant is a body in which you / your spouse etc has a beneficial interests.

(vii) Any beneficial interest in securities of a body where that body (to your knowledge) has a place of business or land in the area of Southampton, and either:

- a) the total nominal value for the securities exceeds £25,000 or one hundredth of the total issued share capital of that body, or
- b) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which you / your spouse etc has a beneficial interest that exceeds one hundredth of the total issued share capital of that class.

Other Interests

A Member must regard himself or herself as having a, 'Other Interest' in any membership of, or occupation of a position of general control or management in:

Any body to which they have been appointed or nominated by Southampton City Council

Any public authority or body exercising functions of a public nature

Any body directed to charitable purposes

Any body whose principal purpose includes the influence of public opinion or policy

Principles of Decision Making

All decisions of the Council will be made in accordance with the following principles:-

- proportionality (i.e. the action must be proportionate to the desired outcome);
- due consultation and the taking of professional advice from officers;
- respect for human rights;
- a presumption in favour of openness, accountability and transparency;
- setting out what options have been considered;
- setting out reasons for the decision; and
- clarity of aims and desired outcomes.

In exercising discretion, the decision maker must:

- understand the law that regulates the decision making power and gives effect to it. The decision-maker must direct itself properly in law;
- take into account all relevant matters (those matters which the law requires the authority as a matter of legal obligation to take into account);
- leave out of account irrelevant considerations;
- act for a proper purpose, exercising its powers for the public good;
- not reach a decision which no authority acting reasonably could reach, (also known as the "rationality" or "taking leave of your senses" principle);
- comply with the rule that local government finance is to be conducted on an annual basis. Save to the extent authorised by Parliament, 'live now, pay later' and forward funding are unlawful; and
- act with procedural propriety in accordance with the rules of fairness.

Director of Corporate Services
M R HEATH
Civic Centre, Southampton, SO14 7LY

Date Not Specified

TO: ALL MEMBERS OF THE SOUTHAMPTON CITY COUNCIL

You are hereby summoned to attend a meeting of the CHIPPERFIELD TRUST to be held on WEDNESDAY, 12TH SEPTEMBER, 2012 in the COUNCIL CHAMBER - CIVIC CENTRE at 2.00 pm when the following business is proposed to be transacted:-

1 APOLOGIES

To receive any apologies.

2 CHIPPERFIELD TRUST GOVERNANCE

Report of the Head of Legal, HR and Democratic Services seeking approval for changes the governance of the Chipperfield Trust, attached.



M R HEATH
Director of Corporate Services

Agenda Item 2

DECISION-MAKER:	TRUSTEES OF THE CHIPPERFIELD TRUST COUNCIL
SUBJECT:	CHIPPERFIELD TRUST GOVERNANCE
DATE OF DECISION:	12 SEPTEMBER 2012
REPORT OF:	HEAD OF LEGAL, HR AND DEMOCRATIC SERVICES
STATEMENT OF CONFIDENTIALITY	
None	

BRIEF SUMMARY

Robert Chipperfield bequeathed money for the setting up and maintenance of an art gallery, together with his own art collection, as well as establishing a fund to further build the collection. The administration of the bequest was set down in a scheme in 1916, which was incorporated in 1930 and registered as a charity in the 1960s. There have been no changes to the scheme throughout this time. The scheme nominates the Council as Trustee, and sets out how the Chipperfield Trust should be administered by the Council in that capacity.

The Chipperfield Trust now needs to be updated to reflect current demands and needs. The existing scheme gives no direction on separation of roles or how to deal with conflicts of interest. Any decisions in regard to the Chipperfield Trust must be made by Full Council, as trustees of the charity.

RECOMMENDATIONS:

TRUSTEES OF THE CHIPPERFIELD TRUST:

- (i) That the Trustees approve a new governance model for the Chipperfield Trust incorporating an Advisory Committee to Council to advise on matters defined within their terms of reference, and that such arrangements take effect from the Advisory Committee's inaugural meeting to be held in October 2012;
- (ii) That the Trustees approve a change to the National Advisor to the Chipperfield Trust from the National Gallery to the Tate; and
- (iii) That the Trustees approve a series of general updates to the Chipperfield Trust Scheme as set out at Appendix 1 to this report.

COUNCIL:

- (i) That Council establish a Chipperfield Trust Advisory Committee pursuant to s102(4) of the Local Government Act 1972, consisting of 5 independent members and subject to the terms of reference and Conflict of Interest Policy set out at Appendices 2 and 3 to this report;
- (ii) That Council delegate authority to the Director of Corporate Services to undertake a recruitment process to recruit 5 independent members to the Chipperfield Trust Advisory Committee as set out in this report, with appointment following consultation with the Mayor and Group Leaders; and

- (iii) That Council delegate authority to the Senior Manager of Leisure to undertake day to day business of the Trust, including applying for and receiving any external grant funding on behalf of the Trust, and dealing with general management and administrative matters insofar as such matters fall outside the remit of the Advisory Committee.

REASONS FOR REPORT RECOMMENDATIONS

1. Maintaining the status quo does not afford adequate legal protection to the Council's involvement with the Trust, particularly if the Council as trustee wishes to exercise some of the more controversial powers allowed for in the scheme. An alternative governance model is needed to resolve the conflict of interest issue that the Council will, from time to time, have as sole trustee and meet the complex requirements of local government legislation and those of the Charity Commission.

DETAIL (Including consultation carried out)

Background

2. The City Council has an internationally renowned art gallery forming part of the Civic Centre complex in the City of Southampton. The Council's art collection comprises items acquired in a variety of ways. Over the years, the Council has funded the purchase of items itself, received donated items and items of bequest, and purchased further items from bequest and grant monies.
3. The Council's largest and first bequest is known as the Chipperfield bequest. This bequest enabled the art gallery to be established in the 1930's. The bequest was registered as a charity in the 1960's, as the 'Chipperfield Art Gallery and School of Art', registered number 307096. The trustees of the charity were originally the Mayor, Alderman and Burgesses of the Borough of Southampton and now the successor body of the Council itself. The governance arrangements relating to the charity have not been changed since its establishment.
4. In terms of housing the proposed Art Gallery, the Trust Scheme provided funding for the Trustees to *'erect or acquire fit up and complete ready for use a suitable building or buildings in the town of Southampton... and the same may be built either in conjunction with or as an annex to the new proposed Municipal Buildings or Town Hall...'* The Scheme goes on to say that the Council may *'for the purposes aforesaid either make use of any land or buildings now belonging to the Council or may acquire other land or buildings by purchase'* provided that the specified funding limit was not exceeded.
5. In exercise of this power, the Council made provision for the Art Gallery during the construction of the North Block of the Civic Centre in the 1930s, allocating an area of 2925.5m² for this purpose. At that time, the Council decided that the Chipperfield Bequest monies should be applied to the fitment of the building for the Gallery and not the building itself.

6. It was intended by the Scheme that *‘the repair maintenance upkeep and insurance of the Art Gallery and its contents and the payment of such salaries wages and fees...’* should be funded by the income earned from a further amount bequeathed to the Trust. As time has passed, it has proved not to be practical or sustainable to fund these expenses in this way, and the Council has met all or most of these expenses itself under its statutory powers to do so.

Governance and potential conflicts of interest

7. During a wider review of the arrangements in place to manage the Chipperfield Bequest it became apparent that the current governance structure was no longer adequate. Concerns arose particularly in relation to actual or potential conflicts of interest that may arise given that the Council acts both as Trustee and also under its own statutory duties as a local authority. The Charities Commission have also identified this particular issue amongst others in their earlier correspondence with the Council.
8. Any new governance arrangement needs to address the following issues:
 - a) Conflicts of interest arising by virtue of the Council’s dual role as Trustee and also acting under its own statutory duties as a local authority;
 - b) Clarity as to when Councillors are acting as Trustees or Councillors;
 - c) Clarity as to which decisions are decisions taken by the Trustees in relation to the Trust in order to combat the impression that the Council itself is acting (e.g. the Trust acquiring art work at a time of financial constraint by the Council).
9. The Council has been exploring alternative options and a number of different governance arrangements have been identified. The favoured approach has been for officers to continue to administer the day to day running of the charity but for matters where there is a conflict or potential conflict of interest to be referred to a newly convened Chipperfield Bequest Committee.
10. The newly established Committee’s aim was intended to identify, manage and resolve any conflict of interest (or perceived conflict of interest) involving the Council’s dual role as corporate body and charity trustee. This separate decision making body would also address a current lack of distinction between charity and statutory assets.
11. It was agreed that further legal clarification would be sought in relation to the feasibility of the abovementioned preferred new governance model, with a further update to be brought to Group Leaders and then Full Council in due course. This work has now been done, and it has been established that the preferred model is feasible with minor alterations and would be a practical way to address the shortcomings associated with the current governance model.
12. Full details of the preferred model are set out below at paragraph 13. In arriving at this point, various other models have also been considered. For convenience, the alternative models considered are set out below at paragraphs 38 through 48.

Preferred model – Council Advisory Committee of Experts

13. Under this model, the operation of the Trust will be divided into 2 key areas:
 - a) Routine day-to-day decision making which would be delegated to officers, with prescribed and regular reporting to Council (as Trustee);
 - b) Matters meeting certain criteria specified in its terms of reference to be referred to an advisory committee, which would provide advice to Full Council (acting as Trustee) to enable a determination to be made. Proposed Terms of Reference for the Committee are attached as Appendix 2 to this report.
14. The Advisory Committee would be established under s102(4) Local Government Act 1972, and members would have voting rights. The Committee would consist solely of co-opted independent experts/representatives selected through a recruitment-like process similar to that used to appoint independent members to the Council's Governance Committee.
15. Members would ideally be drawn from educational, community, commercial, and industry groups, and would be identified through appropriate publicity in relevant industry specific publications and on the Council's website. Suitable Committee members should possess sufficient knowledge, awareness and appreciation of British art in order for the group to best meet its objectives. The recruitment process would involve a written application and interview, with appointments being made following consultation with the Mayor and Group Leaders.
16. The Committee would be advised by the National Advisor (see paragraph 33 below) who will also be invited to participate in any meetings of the Committee at the National Advisors discretion as an ex-officio member. The Committee will further be advised by the Council's Arts and Heritage Manager and Gallery Curator as necessary, and will be able to avail itself of administrative assistance and minute taking provided by Council officers.
17. It is anticipated that there will be 5 members in total, in addition to the National Advisor attending in an ex-officio capacity. Any larger number would lead to practical difficulties in convening meetings and delays in dealing with Trust business. Substitution of absent members would not be appropriate given the recruitment process undertaken to appoint members to the Committee.
18. All members of the Committee will be subject to a Conflict of Interest Policy which aims to assist them in identifying any conflicts of interest or potential conflicts of interest that they may personally have when dealing with Committee business. Members will further be required to declare any such interests for the purposes of Committee minutes and in a Register of Interests established for the Committee. The proposed conflict of interest policy is attached as Appendix 3.
19. The Committee can rely on legal support from Council employed solicitors when dealing with matters which arise in the ordinary course of its duties, but for matters involving any conflict, the Committee would need to secure

its own independent legal advice (such matters to be defined in the terms of reference and conflict of interest policy). Democratic Services support for the two scheduled meetings of the Advisory Committee will be covered by relevant council officers although a charge will be made to the Trust for this.

20. Under this arrangement, the Council would remain the Trustee of the property and the charity trustee. Elected Members would each be trustees by default, and would act in that capacity when such matters are referred to Full Council. In order to ensure there is a distinction between Council business and Trust business, it would be necessary for a completely separate meeting to be convened at which councillors would act in their capacity as Trustees, usually after a scheduled Council meeting has been closed.
21. The Council would remain responsible for contracting in connection with the Trust, and for the purpose of buying, selling and insuring the Trust property.
22. As mentioned above, the Advisory Committee's terms of reference and conflict of interest policy would identify situations when the Advisory Committee would have involvement, including questions as to:
 - (i) determining which of those items acquired since the Art Gallery was established belong to the Charity or to the Council corporately;
 - (ii) whether any particular potential acquisition should be acquired by the Council or the Charity assuming that the Council is sometimes interested in making acquisitions of its own, rather than merely as trustee;
 - (iii) the apportionment of expenses of running, insuring and repairing the Art Gallery between the Council and the Charity (if not entirely funded by the Council);
 - (iv) the use of any admission fees charged for access to special exhibitions;
 - (v) the ownership and exploitation of any intellectual property rights arising out of any publications associated with the Art Gallery or its collection;
 - (vi) questions as to whether the Charity should (for example) seek a scheme removing any of its existing obligations.
23. Once the Advisory Committee makes a finding on an issue, having taken or arranged any additional advice as may be necessary, the matter would be referred to Full Council. Full Council (acting as Trustee) would be obliged to consider the Committee's findings and would need to justify any decision taken that is incompatible with those findings.
24. Should Council (acting as Trustee) decide not to follow a recommendation of the Advisory Committee, the decision taken would need to be reasonable and justified in all the circumstances. Should the basis for the decision not be substantiated in this way, the decision would be susceptible to Judicial Review.
25. Other day-to-day matters are to be delegated to the Senior Manager of Leisure in the first instance. This delegation is to include applying for and

receiving any external grant funding on behalf of the Trust, and dealing with general management and administrative matters that fall outside the remit of the Committee.

26. Caution must be exercised when any significant amount of responsibility is delegated to an officer, as that individual may become a 'charity trustee' in the statutory sense, i.e. having general control and management of the administration of the Trust. To avoid this, the delegated officer must report regularly to both Council and the Advisory Committee on the general management and administrative duties undertaken on behalf of the Trust, as well as any more significant decisions taken.
27. For the purposes of clarity, the Committee's remit extends only to that property included within the initial Chipperfield Bequest, and any further property that has been acquired on behalf of the Trust. This remit would include the Trust's financial interest in the fitment of the building currently housing the Art Gallery, and any proposal to alter this arrangement in any way.
28. Initially consideration was given to a structure that increased elected and non-elected member involvement, most likely by way of a committee that was either politically proportionate or had a Member from each of the main political parties, with a balance of independents. Establishing a committee in this way is possible under s101 of the Local Government Act 1972, but not desirable for 3 main reasons:
 - a) the independent members would be prevented from voting pursuant to s13(1) of the Local Government and Housing Act 1989. This would result in the committee being ineffective in its intended purpose.
 - b) any elected Members sitting on the proposed committee would most likely be conflicted when any business of the committee came to be considered by the trustees at Full Council.
 - c) the committee would not have the benefit of impartial expert advisors sourced from the local art industry and community, who also serve to further aid perceptions of a truly independent advisor for Council acting as Trustee.
29. By establishing the committee under s102(4) Local Government Act 1972, the committee takes a purely advisory role to Council, is completely independent but its members retain the right to vote and reach decisions on matters referred to it.
30. Meetings of the Advisory Committee will be scheduled each May and October, with additional meetings to be convened if and when required. All meetings of the Committee will be open to the public unless the matter to be considered falls within the provisions of the Council's Constitution pertaining to exempt and confidential information. In all other cases, members of the public and Members are encouraged to attend.
31. The preferred model described above has been presented to the Charities Commission for comment. An initial response from the Commission set out some additional requirements in relation to the accounting methodology currently utilised by the Council in administering the Trust's affairs. Further information was provided to the Commission, and their subsequent response is included at Appendix 5.

32. The Chipperfield Bequest Scheme also made provision for the establishment and operation of a School of Art to benefit the inhabitants of Southampton. This function has for some considerable time been provided through the integrated provision of art instruction across various educational establishments in the area, and will continue to be administered in this way.

Change to the nominated national advisor

33. The Chipperfield Trust scheme specifies that in certain circumstances, the Council must take expert advice prior to taking decisions that affect the scheme and works held by it. The scheme appoints the Director of the National Gallery to this role of National Advisor.
34. The Tate has been identified as a suitable successor to the role of National Advisor due to their particular expertise in modern 20th Century British art and the relevance of this expertise to the collection held under the scheme. The Tate has been acting as a de-facto National Advisor for some years due to this specialist knowledge, and it would be desirable to formalise this arrangement.
35. In addition to the functions expressly included within the Scheme, it is envisaged that the Tate as National Advisor would undertake the following functions:
- Advise on the selection and purchase of new works (contemporary art acquisitions)
 - Advise on the selection of additions to the collection through gift bequest or transfer of same
 - Advise where the Tate does not want to be directly involved or where reporting is preferred (e.g. agree works on art lease)
 - Advise on the transfer of works
 - In the event of a decision to sell or dispose of works, to subsequently advise on which items are appropriate or suitable for disposal in terms of the collection as a whole
 - Agree where standard policies (like accreditation) can replace part of scheme but still meet spirit of Chipperfield.
 - Professional support for the Gallery curator
36. In order to effect this change, the Council must obtain formal written consent from the National Gallery and from the Tate, following which the Council as Trustee may use the statutory power under section 280 of the Charities Act 2011 to make the necessary amendments. All necessary consents have now been obtained, leaving only approval by Trustees required to finalise this arrangement. The Charities Commission will need to be informed of this change once effected, along with the further changes outlined in the remainder of this report.

Further updates to the scheme

37. Following discussions with the Charity Commission, various additional clauses of the Scheme need to be updated to ensure fitness for purpose for the present day. The Commission advises that it does not have a regulatory interest as the Charities Act 2011 grants the trustee the power to

amend the administrative provisions of the Scheme. Such amendments seek to simplify acquisitions, exhibitions and loan arrangements (including collection management, charging for access to some exhibitions, and exhibition content). The full range of changes required to the scheme are detailed in Appendix 1.

ALTERNATIVE OPTIONS CONSIDERED AND REJECTED

Alternative model 1 – Committee of the Council comprising elected Members

38. Under this arrangement, a committee of the Council is appointed (comprised solely of elected Members) which administers the day to day running of the charity with major decisions to be determined by the Council's executive. If Council is conflicted then it acts on advice from an independent advisory group.
39. The advantages of this approach are that for day to day decisions, independence is demonstrated to a degree by appointing a committee of the Council and the obligation for the trustee to act on the advice of an independent advisory group for any conflicts arising.
40. The potential disadvantage is that for administering day to day decisions, such an arrangement is likely to be bureaucratically challenging and will delay and impede the smooth running of the charity. The independent advisory group may advise a course of action contrary to the wishes of the trustee but the trustee will still be obliged to act on its advice. The main problem however, is that the elected Members sitting on the proposed committee would most likely be conflicted when any business of the committee came to be considered by Full Council.

Alternative model 2 – Committee of the Executive including independents

41. Under this arrangement, a committee of the Executive is established, comprising Council Members and independent members, which would manage day to day running of the scheme. As with alternative model 1 above, a separate committee is established but in this case, there is further independence from the Council as it co-opts lay members, who are independent of the Council.
42. If decisions on day to day matters are included within the committee's remit rather than just matters of conflict, again the ability to respond quickly to and make decisions might prove practically challenging. It may also prove difficult to co-opt lay members with the right level of knowledge and experience.
43. Counsel's advice has confirmed that a committee of the Executive could be established in this way, and that the committee could include voting members who are not themselves members of the Authority. However, a practical difficulty exists in that if the proposed committee will include elected Members, they may find themselves in a position of conflict at each meeting. There may also be implications for elected Members in terms of personal/prejudicial interests under the applicable Members Code of Conduct which restrict involvement in any related matters coming before Full Council.

Alternative model 3 – Independent Advisory Committee and Scrutineer

44. Under this arrangement, an independent scrutineer is appointed and an independent advisory committee is set up that deals with day to day management, and advises the Council if it is in a conflicted position. The Council continues as sole trustee but provides robust governance arrangements and appoints an independent scrutineer to oversee the management of the charity. This model would not relieve the Council of its duties as trustee.
45. Independence is introduced by way of establishing an independent scrutineer and advisory committee but the control of decisions still ultimately rests with the Council as trustee. The independent scrutineer could be a specialist from the arts world and therefore be able to hold the confidence of the committee and steer a reasonable approach to matters put before them.
46. A significant challenge is that professional arts bodies may be reluctant to undertake the role of independent scrutineer and therefore it may be difficult to appoint an individual or body with the relevant knowledge and expertise who is not tainted and not restrained by any professional body opinion on controversial matters. Even though the Council as trustee remains the decision maker, if the scrutineer and advisory committee recommend a course of action, it will be difficult for the Council as trustee to justify making a decision contrary to that advice. Any such decision is likely to be challengeable.

Alternative model 4 – Delegation to officers and major decisions by Cabinet

47. Under this arrangement, delegation of day to day management would be made to nominated officers, with major decisions referred to the executive – but there is no provision for management of conflict. This is the current model and not recommended for the reasons outlined earlier in this report.
48. While this model enables the smooth day to day running of the charity and immediate or timely responses to be made where necessary, it does not address the issue of conflict when it arises and leaves the trustee vulnerable in terms of decision making. As with a recent attempt to sell works, the Charity Commission will take a judgement of any proposal where the conflict between the Council as trustee and the Council as corporate body has not been adequately managed and is likely to veto any such proposal. However, a procedure could be added for the management of conflicts of interest, with the most viable choice being the establishment of an independent advisory group.

Consultation

49. The Chipperfield Trust governance arrangements have been the subject of ongoing consultation during development. In addition to discussions with the relevant portfolio holder, two briefing papers have been taken to Group Leaders meetings for comment, the most recent largely reflecting the content of this report.

50. Representations have been received from Councillor Vinson both in a meeting and via email, which are set out at Appendix 4 to this report. Some of these representations have resulted in changes to the scheme, whereas further representations have not been incorporated for the reasons set out in this report.

RESOURCE IMPLICATIONS

Capital/Revenue

51. The establishment of an Advisory Committee will result in a small additional expenditure associated with the initial administration of the Committee and the appointment of members. General legal support will be provided by the Council, but where this is not possible for example in the event of a conflict of interest, the Trust would need to fund external advice as necessary. Democratic Services support for the Committee's two scheduled meetings will be provided by the Council, although the Trust will need to fund this as necessary.
52. Historically the Council has met all or most of the expenses relating to the repair, maintenance, upkeep and insurance of the Art Gallery and it is intended that this will continue as the Trust is not in a position to be self-supporting in this respect.

Property/Other

53. There are no direct property implications arising from this report.

LEGAL IMPLICATIONS

Statutory Power to undertake the proposals in the report:

54. In terms of the current legal position, maintaining the status quo is no longer desirable, particularly if the trustee wishes to exercise some of the more controversial powers allowed for in the scheme. An alternative governance model is needed to resolve the conflict of interest issue that the Council will, from time to time, have as sole trustee and meet the complex requirements of local government legislation and those of the Charity Commission. Such changes can be achieved under section 280 of the Charities Act 2011 and by resolution of the trustees at Full Council.
55. The National Advisor (The Tate) will continue to provide advice on acquisition, transfer and exchange of art which is binding on the trustee, as is necessary under the terms of the scheme. In other areas of activity, The Tate's input will be advisory and a decision is the responsibility of the trustee alone.

Other Legal Implications:

56. None.

POLICY FRAMEWORK IMPLICATIONS

57. None.

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SUPPORTING DOCUMENTATION

Non-confidential appendices are in the Members' Rooms and can be accessed on-line

Appendices

1	Updates to the Chipperfield Scheme
2	Chipperfield Trust Advisory Committee Terms of Reference
3	Chipperfield Trust Advisory Committee Conflict of Interest Policy
4	Representations received from Cllr Vinson
5	Correspondence from the Charities Commission

Documents In Members' Rooms

1.	None
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Integrated Impact Assessment

Do the implications/subject/recommendations in the report require an Integrated Impact Assessment to be carried out.	No
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Other Background Documents

Title of Background Paper(s)	Relevant Paragraph of the Access to Information Procedure Rules / Schedule 12A allowing document to be Exempt/Confidential (if applicable)
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Integrated Impact Assessment and Other Background documents available for inspection at:

WARDS/COMMUNITIES AFFECTED:	All
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Appendix A – Updates to the Chipperfield Scheme

The following table sets out the proposed changes to the Chipperfield Scheme (which has not been updated since 1930). Some changes can be addressed under the Charities Act 2011 s 280 – others need to be agreed with the external adviser. All s 280 changes will need to be agreed with the National Adviser and formal written consent given by the National Adviser

Area	Existing	Proposed change	Authority	Note	Involvement of National Adviser
Title Clause 1	Chipperfield Art Gallery and School of Art	Chipperfield Bequest (Art Gallery)	s.280		Yes
Governance	No direction on splitting role of councillors when they act as trustees within scheme	Address need for clear distinction between councillors as councillors and as trustees- procedures need to be put in place to manage conflict of interest between council's corporate objectives and that of charity trustee	SCC but liaise with Charity Commission (CC)	Options for preferred governance model to be considered by trustees	National Advisor would like to be kept updated
Admin provisions Clause 5	Scheme precludes charging	Ability to charge for access to exhibitions including those including Chipperfield works	s.280	Chipperfield had thought the bequest would cover expenses such as repair, maintenance and insurance but is not sufficient.	No
3 rd party rights	Scheme appointed Director of National Gallery as external adviser	SCC seek to appoint Tate as national adviser – this can only be amended with written consent of Director of National Gallery	NG formal consent and then s.280	CC would remove NG after receipt of formal consent and appoint the Tate instead	Yes

Display of works Clauses 7, 10(i)	NG – approval for selection of works for display and approval for removing works from display	Remove this role completely or advise Tate rather than seek approval	Consent under s.280		Tate could agree this charge to scheme. This is theoretical and not a procedure followed now
Acquisition by all means 10 (ii)	No work to be acquired by purchase, exchange, loan or to be lent without NG advice	-Continue to proceed with advise of Tate for acquisitions but not loans -temporary loans to gallery– remove need for Tate advice -temporary loans out – no advice needed for loans to other galleries for exhibition -loans out on art lease – either no advice from Tate required or notify Tate of works available for this scheme on an annual basis	Consent under s.280		Yes. Could be a two tier system higher tier for purchase and lower tier for other means of acquisition. Loans out situation (for non accredited galleries) and procedure for art lease.
Payment of adviser 10 (iii)	£50 to pay NG p.a. if needed	Generally no payment but in exceptional cases (perhaps where Tate itself needed to incur costs) do so but with Trustees prior approval for the sum required	Consent under s.280	Up to say £1000 – thereafter with consent of trustees	Tate suggest travel expenses and other out of pocket expenses could be picked up by trust funds. Continue payment (to a higher thresh hold) for additional external advice.

Managing the collection – acquisition and disposal 9(a)	NG – national adviser advice to purchase and otherwise acquire work and legacies to augment the charity	Tate – same role, but in relation to acquisition discuss with Tate the degree to which they wish to be involved i.e. just new contemporary work or all works offered to the collection	Consent under s.280		A core role - Again a 2 tier approach higher tier all acquisitions by purchase and lower tier acquisition through non purchase
9(b) sell or exchange works	National adviser gives expert advice re same	Tate - same	Consent under s.280		No policy decision i.e. to sell but advise on selection
Seek other expert opinion 9(c)	External advice re queries re exhibition, preservation, restoration taken as report to trustees	Same but ability to pay for same from Trust funds	Consent under s.280		No
Potential Disputes Clauses 10	The scheme directs advice of national adviser be sought	No direction currently on where that advice is offered but where trustees may not wish to follow it			Tate all policy decisions are trustees of Chipperfield; Tate interested to see model; Tate’s main role around acquisitions

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TERMS OF REFERENCE FOR CHIPPERFIELD ADVISORY COMMITTEE

GENERAL

- a. This Committee is an advisory committee to the Council appointed by the Council under s102(4) of the Local Government Act 1972.
- b. The Committee comprises 5 members, with a quorum of 3, appointed by Council for a period of 4 years. Additionally, the National Advisor to the Gallery may attend Committee meetings in an ex-officio capacity at his/her discretion.
- c. The Committee shall meet in May and October of every year and on any further occasion as may be necessary to carry out the business of the Committee.
- d. Where a function or matter within the Committee's competence has been delegated to an officer, the Committee may exercise that function/matter concurrently with the officer to whom it has been delegated.
- e. The exercise of any function or matter within the Committee's competence is always subject to any relevant requirement of the Council's Constitution including any Special Procedure and Protocol drawn up and approved by the Head of Legal, HR and Democratic Services in pursuance of Council Procedure Rules.

TERMS OF REFERENCE

1. To identify, manage and resolve any conflicts of interest (or perceived conflicts of interest) occurring as a result of the Council's dual role as a corporate body and Trustee to the Chipperfield Bequest, with recommendations to Council as to an appropriate course of action in the circumstances.
2. Conflicts of interest are matters including but not limited to:
 - a. determining which of those items acquired since the gallery was established belong to the Charity or to the Council corporately;
 - b. determining whether any particular potential acquisition should be acquired by the Council or the Charity assuming that the Council is sometimes interested in making acquisitions of its own, rather than merely as trustee;
 - c. the apportionment of expenses of running, insuring and repairing the Art Gallery between the Council and the Charity (if not entirely funded by the Council);
 - d. the use of any admission fees charged for access to special exhibitions;
 - e. the ownership and exploitation of any intellectual property rights arising out of any publications associated with the Art Gallery or its collection;
 - f. questions as to whether the Charity should (for example) seek a scheme removing its existing obligations.
3. To conduct any investigation or enquiry necessary in furtherance of its functions under these Terms of Reference, and make recommendations to Council as to an appropriate course of action in the circumstances.

4. To take advice from council officers as necessary and have recourse to any Council facilities or resources necessary for the performance of its duties, other than in cases where a conflict of interest or other reason exists that renders use of such resources inappropriate whereupon the Committee will be entitled to seek its own independent advice.
5. To recommend the expenditure of Trust funds in relation to the acquisition of works of art, in consultation with the National Advisor.
6. To make recommendations to Council (as Trustees), as appropriate, in relation to the insurance of the collection, charging, re-investment should any assets be disposed of, fundraising and sponsorship.
7. To provide reports to Council (as Trustees) as necessary and at least annually in relation to the use of the Trust's collection, patronage, use of works loaned to other organisations, details of purchases made, and work of the academy.
8. To have sight of the Trust's accounts at least annually and make any recommendations deemed appropriate to Council.
9. To consider and recommend to Council an Arts and Heritage Collections Policy in relation to acquisitions on its renewal every 3 years.
10. To contribute where necessary to the accreditation of venues process.

**SOUTHAMPTON CITY COUNCIL
CHIPPERFIELD TRUST ADVISORY COMMITTEE
CONFLICTS OF INTEREST POLICY**

1. Aims and objectives

- 1.1 This Policy applies to all members of the Chipperfield Trust Advisory Committee.
- 1.2 The aim of this Policy is to assist the Committee to act with integrity and openness, with a view to identifying situations where their duties to the charities administered by the Committee, might be in conflict with their duties to Council, the Cabinet or other bodies.
- 1.3 This Policy is intended to assist the Committee in identifying conflicts, to avoid conflicts arising at all and where conflicts do arise, this Policy is intended to assist the Committee to manage those conflicts in order to avoid perceived and actual problems occurring.
- 1.4 This Policy supplements the guidance and advice set out in the Council's ethical governance framework and Constitution.

2. Responsibilities

- 2.1 The guiding principle for Committee members is that their primary duty is to act in the best interests of the charities administered by the Committee and those who are beneficiaries of those charities, when they make and implement decisions. That duty takes priority over any duty that might be owed to Council, the Cabinet or other bodies.
- 2.2 Committee members must exercise reasonable care in the manner in which they make decisions. Members must make decisions independently of any influence from Council, the Cabinet or other bodies. Members must ensure that decisions are made to further the purpose of the charities and those who are beneficiaries of those charities and not to further other purposes.
- 2.3 Committee members are not charity trustees and do not have the responsibilities and liabilities of a trustee. This does not mean that they do not owe duties to the charities administered by the Committee.
- 2.4 It is the personal responsibility of each individual Committee member (under guidance of the Monitoring Officer if necessary), to determine whether they feel a matter represents a potential or actual conflict of interest or the perception of such a conflict and should therefore be declared.

3. Identifying conflicts

- 3.1 Committee members must be alert to the possibility that conflicts of interest may arise. When they carry out the business of the Committee, Committee members must avoid conflicts of interest as far as possible.

The Charity Commission's guidance¹ notes that 'the issue is not the integrity of the trustee concerned, but the management of any potential to profit from a person's position as trustee, or for a trustee to be influenced by conflicting loyalties. Even the appearance of a conflict of interest can damage the charity's reputation, so conflicts need to be managed carefully'.

- 3.2 A conflict of interest arises in any situation where duties are owed by Committee members to a body other than the charities administered by the Committee, if those duties clash with the duties owed to one or more of the charities. If it is not possible to do both at the same time, there is a conflict of interest.
- 3.3 Where specific decisions have to be made, a decision might be advantageous to Council, the Cabinet or to another body, but may not be the best decision to make for a charity that is administered by the Committee. In that situation, there may be a conflict of interest specific to that decision.
- 3.4 Where a Committee member has already participated in the business of Council, the Cabinet or some other body that is likely to affect a charity administered by the Committee, that member is likely to have a conflict of interest, if that business has subsequently to be considered by the Committee.
- 3.5 Relevant interests may be financial or non-financial; direct or indirect.

Direct financial benefits or interests include for example employment by the charity of a Committee member as a consultant or advisor, or a company of which a Committee member is a director or shareholder may be considered for a contract by the charity. Other matters of financial interest include the sale of land or the use of a Committee member's property by the charity, or granting of loans by a Committee member to the charity. Such financial benefits require authorisation, usually by the Commission.

- 3.6 Indirect financial interests may arise where potential financial benefits accrue to a close member of a Committee member's family, or even a friend, business partner or colleague, where their finances are interdependent (e.g. joint bank accounts, mortgages or property held in joint names, one party financially dependent on the other, employer/employee/contractual relationship) or where it could otherwise be perceived that such benefits could lead to a conflict of interest, i.e. by influencing the Committee member's decision other than in the best interest of the charity.
- 3.7 Non financial interests, direct or indirect, may arise where a Committee member is also a user of the charity's services, particularly if the Committee member is benefiting from those services in a manner which is exceptional.
- 3.8 Conflict of loyalty interests may arise where an association of a Committee member or of a relative or friend with another body or organisation etc may be perceived as influencing the member in making decisions which may not be in the best interest of the charity.

¹ A Guide to Conflicts of Interests for Charities

- 3.9 If a Committee member is unsure whether they are or might find themselves in a position of conflict, that member must err on the side of caution by making the situation known to the Committee as a whole and if necessary, seek the advice of the Monitoring Officer.

4. Avoiding conflicts

- 4.1 In conducting the business of some other body, Committee members must consider whether participating in that business might prevent them from participating in any aspect of the business of the Committee.
- 4.2 If it is likely that by participating in the business of Council, the Cabinet or another body, a conflict of interest might arise in future with the business of the Committee, a member of the Committee should not participate in the business of Council, the Cabinet or other body. Instead, Committee members should give priority to the business of the Committee.

5. Managing conflicts

- 5.1 Where a conflict of interest or a potential conflict of interest is identified, it must be recorded in the minutes of the Committee and the Committee's Register of Interests and reported to the Governance Standards Committee in accordance with the Council's constitutional arrangements. Keeping a record of the business of Council, the Cabinet and other bodies that is likely to affect the business of the Committee will help members to recognise when they should not participate in decisions.
- 5.2 If a conflict of interest has arisen, the Committee member concerned must not participate in the discussions or decisions of the Committee that are affected by that conflict. That member should not influence the views of any other Committee member. If the member is able to contribute to the discussion and/or provide information that might be relevant to the discussion or the decision, the Committee may, on a simple majority vote, recorded in the minutes, ask the member to contribute to the discussion and/or provide the information. The member should not contribute to the discussion and/or provide the information without the prior agreement of the Committee.
- 5.3 Where a general duty to Council, the Cabinet or another body conflicts with a duty to a charity administered by the Committee, the member concerned should have regard only to the duty owed to the charity. The member concerned should have no regard to the duty owed to Council, the Cabinet or that other body.
- 5.4 Where there is a likelihood of a conflict or where a conflict has been identified, the Committee should consider whether any other Committee members might be in positions of conflict.

6. Seeking advice

- 6.1 The Committee should bear in mind that in any case of doubt, advice is available from the Monitoring Officer and that it is preferable to seek advice at an early stage, before any decision is made.

7. Recruitment of Members

- 7.1 Applicants must not within the period of five years, have been a councillor, co-opted member or employee of Southampton City Council or be a relative or close friend² of an elected councillor, employee or co-opted member of the Council.
- 7.2 Applicants must demonstrate a commitment to good governance and sound financial management and act solely in the best interests of the charities administered by the Committee and work with and alongside elected Councillors in managing the charities, for the people of Southampton.
- 7.3 Unless a member resigns or becomes disqualified in accordance with the Council's Standing Orders, the term of office for members appointed to the Chipperfield Trust Advisory Committee, will not exceed a period of 4 years.

² A closer relationship is implied than mere acquaintance (Standards for England Case Review 2007 (Paragraph 8))

Agenda Item 2

Appendix D
Appendix 4

I feel strongly that the proposed Committee should have a wider remit than just addressing 'conflict of interest' situations, but should be an advisory body with regard to all aspects the Chipperfield Bequest (and perhaps in due course the Gallery as a whole), with powers to make binding decisions in the case of 'conflict of interest' situations as per Kidd/Dartford (and in particular any de-accessioning issues). This is implicit in the list of matters for the Committee to consider recommended by counsel, but should be extended to include insurance of the collection, charging, re-investment should any assets be disposed of, fund-raising & sponsorship..... The responsibility should be to safeguard the whole collection, not just contemporary British art.

I feel the process for selection of the members should be more fully spelt out and transparent. It must be clear that consultation is widespread in the arts community, and that selection is absolutely secure against any possibility of 'packing' by e.g. a political party to secure a desired outcome on any issue. I would suggest the following should have a guaranteed place (with rights to nominate a substitute where necessary): Tate Gallery, John Hansard Gallery, Southampton Solent University (successor to the Millais; Fine Art degrees); University of Southampton/Winchester School of Art; Schools & Colleges; ?FOSMAG; ?Aspace. There should be powers of co-option. The Curator and Head of Leisure/Senior Arts Officer should be in attendance.

Why would councillor members – say Cabinet Member plus one per Group – be 'conflicted' and thus debarred from speaking/voting in Council if they if were entitled to attendance but not to vote or speak on issues of conflict of interest as determined by the independent majority?

The Constitution, Terms of Reference of the Committee etc. must explicitly be in conformity with the Charity Commission letter which I passed to you, a Conflict of Interest Policy on the Dartford Model, and relevant policies of the Museums and Galleries Association.

I think it would be worth considering having a place on the Chipperfield Committee for a former Gallery curator (there are several around, in particular Geoffrey Worsdale who is now Director of the Baltic in Gateshead). We also need to clarify the roles and representation of the Museums and Libraries Association (not Museums and Galleries Association as in my previous email) and Arts Council England.

Also, sight of the Chipperfield accounts should be added to the list of functions/responsibilities in view of the Charity Commission's concerns about their past form (as in the letter I passed to you).

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Thank you for your letter and attachments from earlier this month. My apologies for the delay in getting back to you.

In this email I have addressed the proposed governance changes and the matters relating to the keeping of accounts. Please let me know if there is anything you would like to discuss.

1. Governance changes

With regard to the proposed changes, I have gone back to consider your earlier email and letter of 29 May, along with the attached documents. I have also looked at the previous advice offered by my colleagues Stuart Clarke and Diane Mensah-Bonsu in respect of the governance changes.

We have no specific comments to make about the changes - the administration of the charity is for the trustees to decide, having taken appropriate advice where necessary, so it is not for us to approve a proposed governance model. Having considered the specific proposed amendments to the Scheme, as set out in 'Appendix A – Updates to the Chipperfield Scheme', I cannot identify anything that would appear to need our consent. Instead, the changes look to be ones which the trustees could bring about through the statutory powers available (These powers were under s 74D Charities Act 1993; now s 280 Charities Act 2011).

2. Accounts

a) Preparing charity accounts

Thank you for your comments about preparing an annual report. With regard to the keeping of accounts, we do expect trustees to maintain separate accounts and would like to see this done in future – please see our [published guidance](#) which was drafted especially for charity's where the trustees are a council.

b) Income of the charity

I have noted the council's advice that there have been instances where the income for the charity has not been properly recorded, and that the council acknowledges its oversight. I appreciate the advice that the council has taken steps to ensure that this will not happen in the future.

c) Chipperfield Art Gallery Endowment Fund

We do not appear to have any record of the Fund being merged with the Chipperfield Trust. As it is, the Fund still appears as a linked charity on the Register of Charities. We have a duty to maintain an accurate register, so this will need to be amended if incorrect. Before that stage though, if you could please advise me when the merger was to have taken place, how this was done, and what assets were moved, I can then look at this in more detail.

Moving forward

I trust that this information enables the charity to move on with their governance plans. I look forward to hearing from you in relation to the other matters and hope we can find a quick resolution.

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