

## City of London Corporation – Bridge House Estates

### CONFLICTS OF INTEREST POLICY

#### BACKGROUND

Charity trustees owe a duty of “single-minded loyalty” to further their charity’s purposes, except to the extent that the charity’s governing documents permit them, expressly or by implication, to consider other factors.

The City Corporation (acting by the Court of Common Council) (**the City Corporation**) is the corporate charity trustee of Bridge House Estates (**BHE** or the **Charity**).

It also has many other functions and duties (including as a local authority) and also acts in its general corporate capacity. There is therefore a mechanism (set out in the 2023 Supplemental Charter regulating BHE) which expressly allows the City Corporation to manage conflicts of interest and duty, in a way which complies with good governance standards, demonstrates that decisions taken in its capacity as corporate trustee of BHE have been properly and impartially taken for BHE’s benefit and is consistent with the established workings of the City Corporation. The mechanism requires that:

- Where the City Corporation has an actual or potential conflict of interest or loyalty, it takes steps to ensure that any such decision taken in its capacity as corporate trustee of BHE is taken in the interests of BHE; and
- The City Corporation must maintain a policy in place setting out appropriate steps to manage particular conflict situations. This is that policy.

In line with the governing documents, and to carry out day-to-day management of the Charity (with appropriate oversight), the Court of Common Council (the **Court**) has constituted a Committee (the **BHE Board**). The BHE Board is charged with single-mindedly considering the interests of BHE. Certain BHE matters are reserved (or may otherwise be referred) to the Court, which retains oversight of BHE functions on behalf of City Corporation in its capacity as Trustee.

For more information about the unique history and structure of BHE, please see the Bridge House Estates Handbook.

## 1. Introduction

- 1.1 This Policy explains how actual and potential conflicts of interest and loyalty should be managed when decisions are taken by the City Corporation as trustee of BHE in discharging its fiduciary duty to further the Charity's purposes.
- 1.2 Specifically, it applies to:
- (a) Conflicts of interest or loyalty for the City Corporation, which in practice are characterised as conflicts between its duty to BHE and its duty to the City Corporation acting in a different capacity ("**City Corporation Conflicts**"); and
  - (b) Conflicts between an individual's duty to BHE and a personal interest, or loyalty to another organisation when participating in decision-making ("**Individual Conflicts**").
- 1.3 The overriding principle is that decisions made on behalf of the City Corporation as trustee of BHE must be taken in the best interests of BHE. This means that any conflicts should be properly identified and managed in order to ensure that they do not affect the ability to make decisions in the best interests of the Charity. Decision-makers should actively consider what steps can be taken to ensure that decisions comply with this principle.
- 1.4 This policy is supplemental to, and complements, the City Corporation's existing corporate governance framework, including:
- (a) The Members' Code of Conduct;
  - (b) The Employee Conflicts of Interest Policy (and appendices);
  - (c) Standing Orders, Financial Regulations, Procurement Code and Regulations, and project procedures.

## 2. City Corporation Conflicts

### General position

- 2.1 This section applies where decision-makers are:
- (a) Considering a matter in which the City Corporation itself has an actual or potential **conflict of interest**. This means a direct or indirect financial interest (of money or monetary value which is more than de minimis)<sup>1</sup> in

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<sup>1</sup> This would include a situation where a payment by BHE relieves the City Corporation of a financial liability that it would otherwise have (for example, a statutory or on-going contractual obligation to provide funding to another body).

relation to a proposed arrangement or transaction between the City Corporation as trustee, and the City Corporation in its corporate capacity.<sup>2</sup>

- (b) Considering a matter in which the City Corporation itself has an actual or potential **conflict of loyalty**. This includes a situation in which the City Corporation has conflicting legal duties, and for the purposes of this policy may also include similar circumstances where furthering its objectives in its corporate capacity may conflict with its ability to single-mindedly promote the purposes of BHE.<sup>3</sup>

2.2 In the case of a conflict of interest (as set out in paragraph 2.1(a) above) the City Corporation can only take the relevant action (in its capacity as trustee of BHE) if any benefit to be received by the City Corporation (in its corporate capacity) is authorised by BHE's governing documents or the law.<sup>4</sup>

2.3 In relation to a conflict of interest (as set out in paragraph 2.1(a) above) which is authorised by BHE's governing documents or the law, or in relation to a conflict of loyalty (as set out in paragraph 2.2(b) above):

- (a) The matter can proceed but decision-makers should ensure that the decision taken in the City Corporation's capacity as trustee of BHE is taken in the best interests of BHE; and
- (b) In relation to who should take the decision, the matter should be discretely considered by the BHE Board (or a Committee of the BHE Board), acting only in the interests of BHE.
  - (i) If it is within the remit of the BHE Board (as set out in its Terms of Reference) a decision may be made about the relevant matter notwithstanding the potential conflict between BHE and the City Corporation in its corporate capacity, as the BHE Board has been constituted to take decisions independently for the Charity (under the oversight of the Court as set out above).

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<sup>2</sup> References to the City Corporation in its corporate capacity, are for the purposes of this policy and the 2023 Supplemental Charter, references to the City Corporation acting in all capacities other than as trustee of BHE.

<sup>3</sup> This could include a situation where the City Corporation makes a payment on a discretionary basis (i.e. without any legal obligation to do so, including a contractual or statutory obligation) and the arrangements are changed so this payment begins to be met out of BHE's funds instead of e.g. City's Cash. This would not *generally* be a conflict of interest (under paragraph 2.1(a)) but you should consider whether it constitutes a conflict of loyalty (under paragraph 2.1(b)). While this is a general rule, the matter should be considered on a case-by-case basis. There are some cases where e.g. relief of a *moral* obligation on a person has been held to be a benefit. Alternatively, where a payment has been made by the City Corporation for a period as a matter of custom and practice, consideration should be given to whether the City Corporation has assumed an obligation to make those payments and consequently would be being relieved of a financial liability if the payment was routed through BHE (meaning the matter would be a conflict of interest issue under paragraph 2.1(a)).

<sup>4</sup> See the Appendix for a summary.

- (ii) If it is a matter reserved to the Court, the BHE Board will make a recommendation to the Court, which will then be able to decide about the relevant matter notwithstanding the potential conflict, with that decision still being required to be taken in the best interests of BHE.

2.4 In general terms, Members of the Court may serve on multiple committees (or sub-committees) of the Court. This approach is considered to give rise to significant benefits for BHE (including efficiencies for BHE deriving from a consistency of approach across the City Corporation, and the promotion of efficient sharing of information, knowledge, skills and experience). However:

- (a) When a Member is called upon to consider business (on behalf of the BHE Board) which is also relevant to / subject to consideration by another committee, in the interests of transparency they should declare the position before the commencement of the relevant business (see also paragraph 3);
- (b) Any relevant requirements imposed by the City Corporation's corporate governance framework in relation to participation in the other committee must be adhered to;<sup>5</sup> and
- (c) The Member should consider whether, in exceptional circumstances, it would be appropriate to recuse themselves from the quorum and voting in relation to the relevant business in the BHE Board and/or the other committee, having regard to:
  - (i) The duty for the City Corporation to ensure discrete consideration of a matter in BHE's best interests;
  - (ii) The size / risk of the proposed action; and
  - (iii) Potential reputational considerations for BHE.
- (d) In the event that a Member does not so recuse themselves, the other members of the BHE Board may by majority decision require that Member

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<sup>5</sup> For instance, and at the date of the adoption of this Policy this remains the only identified exception, where a person sits on both the BHE Board and the Planning & Transportation Committee, and the Planning & Transportation Committee for the City Corporation as local planning authority is considering whether to grant planning permission to a proposal promoted by the BHE Board, a person must recuse themselves from all decision-making about that BHE-related matter in the Planning & Transportation committee. "Promotion" of a proposal relates to decision-making regarding the planning application, and does not extend to decision of wider policy or land portfolio management matters, nor to decisions regarding funding allocation for projects. The restriction does not apply to applications for Listed Building Consent promoted by the BHE Board which are subject to separate external scrutiny. Further details are provided for Planning & Transportation Committee members in the Planning Protocol.

to absent themselves from decision-making and voting on the relevant item at the BHE Board.<sup>6</sup>

### ***Specific transactions***

2.5 The governing documents of BHE authorise the City Corporation to enter into specific transactions<sup>7</sup> in which it (acting in its corporate capacity) has an interest. The guidance under “general transactions” should still be followed, and the following additional safeguards are in place to manage conflicts of interest in relation to each of them, are set out below.

#### **(a) Transfers of property and leases etc.**

The City Corporation may (directly or indirectly e.g. through a nominee):

- (i) transfer land or other property; or
- (ii) grant a lease, licence or other interest

between it (in its capacity as trustee of BHE) and it (acting in its corporate capacity), if:

- (iii) an independent valuer is appointed jointly by the two sides (which share the cost of the valuation evenly); and
- (iv) the valuer confirms that the proposed transfer or grant is on the best terms that can reasonably be obtained for BHE.

#### **(b) Acquisition of property jointly / in common and borrowing**

- (i) The City Corporation may acquire (i) land; or (ii) investments; in both its capacity as trustee of BHE and its corporate capacity (either jointly or with each capacity having a different interest), as long as the City Corporation is reasonably satisfied that the proposed action is in the best interests of BHE.
- (ii) Where, following the process above, property and/or funds are invested in cash deposits jointly (between the City Corporation as

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<sup>6</sup> For the avoidance of doubt, abstention would not be required in most cases where an individual was a member of more than one City Corporation committee (or sub-committee) : for example where it is proposed for BHE to award grant funding to another charity for which the City Corporation is trustee (unless the grant is particularly high-value and/or controversial and/or likely to warrant scrutiny which might make abstention appropriate), or where decisions are to be taken in pursuit of strategies which are intended to be common to the City Corporation for itself and as trustee of BHE, or in taking decisions affecting the City Corporation's corporate or employee resources which might be made available to BHE (and those costs recovered from the Charity), etc.

<sup>7</sup> I.e. certain situations where benefits are to be received which may constitute a conflict of interests (see paragraph 2.1(a)).

trustee and it in its corporate capacity), each side can borrow from the other, as long as:

- (A) all borrowed funds are reconciled to the “lending” side by the end of the financial year in which the funds are borrowed, together with any interest that would have accrued on those funds had they not been borrowed; and
- (B) the City Corporation is reasonably satisfied that the proposed action is in the best interests of BHE.

2.6 In respect of other benefits<sup>8</sup> listed in the Schedule, there may be additional steps that need to be taken to ensure that the decision is in the best interests of BHE. For instance, the payment of expenses is only permitted where those expenses are “properly incurred”; indemnity insurance must comply with the requirements in clause 12.25 of the Supplemental Charter; and the powers in sections 9 and 13 of the City of London (Various Powers) Act 1949 must be exercised in accordance with the limitations / processes in those sections.

### 3. **Individual Conflicts**

3.1 Any actual or potential conflicts of interest or loyalty of individual Members arising in relation to a proposed arrangement or transaction for BHE must be dealt with in accordance with the Code of Conduct for Members, which includes requirements:

- (a) To notify the City Corporation of certain pecuniary and non-pecuniary interests (e.g. trusteeships, membership of professional associations and so on), and then keep the register up-to-date on an ongoing basis<sup>9</sup>.
- (b) If an interest has not been entered onto the City Corporation’s Register of Interests, disclose the interest at a BHE Board meeting, where the Member has a disclosable interest in any matter being considered and where the matter is not a ‘sensitive interest’ (as defined in the Members’ Code of Conduct). (We would recommend, as a matter of good practice, that whenever a Member has a personal interest in a matter to be discussed at a meeting, and whenever a Member has an interest in another organisation whose interests are reasonably likely to conflict with those of BHE in relation to a matter to be discussed at a meeting, that they should declare

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<sup>8</sup> This includes a direct financial benefit and also indirect benefits such as the relief of a financial liability – see footnote 1.

<sup>9</sup> See Tables 1 and 2 in Appendix B to the Members’ Code of Conduct.

an interest before discussion on the matter begins, regardless of whether or not the interest has been disclosed on the Register.)

- (c) Not participate in any discussion of, vote on, or discharge any function related to any matter in which they have a pecuniary interest (as defined in the Code of Conduct<sup>10</sup>).
  - (d) In relation to other interests, which will be considered on a case-by-case basis, Members should exclude themselves from speaking or voting in exceptional circumstances, where there is a real danger of bias.
- 3.2 Additionally, the Members<sup>11</sup> (and in some cases people connected to them) cannot receive any benefits except for those authorised (or listed) in clause 15 of the 2022 Supplemental Charter as set out in the **Appendix**.
- 3.3 In summary, if a involved in a decision has an individual conflict in relation to a matter being discussed by the Court, BHE Board or sub-committee taking decisions on behalf of the City Corporation as trustee of BHE, they should consult the Code of Conduct and follow the notification and disclosure rules; consider whether any benefit to be received is authorised, including as set out in this Policy; and consider whether they need to recuse themselves from decision-making on that matter.
- 3.4 While this policy does not directly apply to the activities of officers / employees of City Corporation (rather it applies to the City Corporation itself and (in sections 2.4 and 3) the Members individually), the BHE Board has responsibility for the oversight of activities carried out by officers and employees for BHE and should ensure decisions are taken in best interests of BHE. In accordance with this, the BHE Board must identify whether there are potential conflicts at officer / employee level and how to address this in setting the City Corporation's corporate governance framework which will require engaging with the City Corporation in its corporate capacity.

#### 4. **Record keeping**

All discussions and decisions about a conflict of interest or loyalty must be recorded and reported in the minutes of the meeting of the Court, BHE Board or its Committees. The report and associated minute should record:

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<sup>10</sup> Id. See Table 1 – unless a dispensation has been granted by the City Corporation in circumstances where it is considered that the grant of the dispensation would not prevent the City Corporation from discharging its duty to ensure that any decision as charity trustee is taken in the best interests of BHE and is consistent with any statutory requirements (e.g. per para. 2.6 of the Policy).

<sup>11</sup> Lord Mayor, Alderman or Commoner of the City of London, as defined in that Supplemental Charter. However, as a matter of policy all co-opted members appointed to the BHE Board or its Committees are subject to these requirements too as provided in the BHE Board Co-option Protocol, and the Members' Code of Conduct.

- 4.1 any relevant interests of the Member;
- 4.2 any conflicts of interest and/or loyalty, including any decisions made as to whether the individual did or did not have a conflict of interest and/or loyalty;
- 4.3 the actions taken to manage the conflict in accordance with the Charity's governing documents;
- 4.4 why the decision is considered to be in the best interests of BHE;
- 4.5 the names of persons present for discussion; and
- 4.6 any other relevant information.

## 5. **Policy Review**

This Policy shall be reviewed as and when the Trustee determines.

Adopted by the Court of Common Council on this █ █ day of █ █ 20█ █

All members of the Court or the BHE Board (or its sub-committees) shall receive a copy of this Policy and shall be deemed to have accepted it.



## **Appendix – Permitted Benefits<sup>12</sup>**

### **1. Expenses**

The City Corporation and its Members (including co-opted members appointed to the Board or one of its committees) may receive reasonable expenses, which have been properly incurred by them acting on behalf of BHE;<sup>13</sup>

### **2. Payment for goods and services**

The City Corporation may receive reasonable and proper remuneration for any goods or services supplied to BHE;

### **3. Interest**

The City Corporation may receive interest at a reasonable and proper rate on money lent to BHE;

### **4. Rent / similar payment**

The City Corporation may receive reasonable and proper rent (or an equivalent payment) for premises let or lent to BHE;

### **5. Benefit as a beneficiary**

A Member or connected person<sup>14</sup> may receive a benefit from BHE as its beneficiary if that benefit is also shared with the public, or a section of the public;

### **6. Benefit receivable by entities linked to Members / connected persons**

A company, partnership or firm in which a Member or connected person is a paid director, member, partner or employee, or a shareholder with a stake of more than 1%, may receive:

- (a) reasonable and proper remuneration for any goods or services supplied to BHE;
- (b) interest at a reasonable and proper rate on money lent to BHE; and/or

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<sup>12</sup> Refer paragraph 2.2 and 3.2 of the Policy.

<sup>13</sup> For the avoidance of doubt, this provision does not permit Members to be remunerated for services (or goods) rendered to the City Corporation in its capacity as trustee of BHE. More generally, City Corporation Members may not be remunerated from Bridge House Estates' funds unless expressly authorised in the Charity's governing documents as set out in paragraph 3.2 of this Policy.

<sup>14</sup> Any spouse, civil partner, parent, child, sibling, grandparent or grandchild of a Member or the spouse or person in an equivalent relationship to any such person.

- (c) reasonable and proper rent (or equivalent payment) for premises let or lent to BHE

**7. Benefits authorised by governing documents or the law**

The City Corporation and its Members may receive any other benefits expressly or impliedly authorised by the governing documents applying to BHE, or the law. This includes:

- (a) Benefit received in connection with the specific transactions listed in paragraph 2.5 of this policy;<sup>15</sup>
- (b) Benefit received under Section 9 of the City of London (Various Powers) Act 1962 (which expressly permits the City Corporation to transfer the beneficial interest in any property owned by it to BHE for fair value (and the mechanism for ensuring fair value is enshrined in that section)).
- (c) Benefit received under section 13 of the City of London (Various Powers) Act 1949 (which permits transfers from BHE to the City Corporation for fair value).

**8. Trustee indemnity insurance**

The City Corporation may pay reasonable and proper premiums in respect of indemnity insurance effected in accordance with the power in the 2023 Supplemental Charter.

**9. Charity Commission authority**

The City Corporation and its Members can receive remuneration / other financial benefit if this is authorised in writing by the Charity Commission.

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<sup>15</sup> Refer Clause 16 of the 2023 Supplemental Charter.