

Committee: The City Bridge Trust Committee	Date: 28 November 2013
Subject: The role of the City of London Corporation as Trustee of the Bridge House Estates.	Public
Report of: The Town Clerk, the Chamberlain, the Comptroller and City Solicitor and the Chief Grants Officer	For Information
<u>Summary</u>	
<p>On request from the CBT Committee, the report explains the role of the City of London Corporation as Trustee of the charity, Bridge House Estates. The report clarifies the distinct functions and responsibilities of the committees that carry out business relating to the charity, Bridge House Estates (BHE).</p> <ul style="list-style-type: none"> • BHE assets do not belong to the Corporation. They are held by it on trust for charitable purposes; • The City of London Corporation, acting through the Court of Common Council, is the sole trustee of BHE; • City Bridge Trust is not a separate legal entity in its own right: it is the name given to the grant-giving arm or activities of BHE; • Some of the BHE trustee functions are delegated to City Corporation Committees of which the City Bridge Trust committee is one (the Court of Common Council may alter these delegation arrangements); • Charity trustees must always act in the best interests of the charity of which they are trustee: • When Members of the Court undertake business associated with BHE (in whichever Committee) they act for the City Corporation as trustee and in meeting those trustee obligations must therefore ensure that the best interests of the charity are paramount in taking decisions which impact both upon BHE business and that of other functions of the City Corporation; • All conflicts of interest and loyalty should be managed in line with Charity Commission guidance. <p>Recommendations</p> <ul style="list-style-type: none"> • To note the contents 	

Background to Bridge House Estates

1. Bridge House Estates ('BHE') is a charity (Registered Charity Number 1035628) which has been in existence for more than 700 years, the primary purpose of which is the maintenance and replacement of five bridges that cross the River Thames which allow access to the City of London. The charity is governed by various Royal Charters, Acts of Parliament, statutory instruments, and Scheme and Orders of the Charity Commission.

2. In the period up to 1995, the underlying assets of BHE had been producing an income which was more than enough to carry out its primary purpose and this surplus had been accumulating.
3. To enable the objects of the charity to be widened so that the charity's income could be applied for charitable purposes rather than continue to accumulate, the trusts of the charity were altered by way of a **cy-près** scheme (the Scheme). The Scheme was settled by the Charity Commission and brought into effect through a statutory instrument, an Order made by the Home Secretary. The Scheme was made in 1995 (and amended in 2005 by the Charity Commission).
4. The Scheme provides for BHE income surplus to that required to maintain and replace the five bridges (the primary purposes of the charity) to be applied in one or both of the following ways:
 - (a) in or towards the provision of transport and access to it for elderly or disabled people in the Greater London area; and
 - (b) for other charitable purposes for the general benefit of the inhabitants of Greater London in such ways as the Trustee thinks fit.
5. It is important to note that the funds can be applied for charitable purposes to benefit the public within the geographic area of **Greater London**, not simply the *City of London*. A charitable purpose is defined under the Charities Act 2011 as one which falls within the list of 13 descriptions of purposes (or 'heads of charity') which must be advanced **for the benefit of the public** ('the public benefit requirement'), these being:
 - (a) the prevention or relief of poverty
 - (b) the advancement of education
 - (c) the advancement of religion
 - (d) the advancement of health or the saving of lives
 - (e) the advancement of citizenship or community development
 - (f) the advancement of the arts, culture, heritage or science
 - (g) the advancement of amateur sport
 - (h) the advancement of human rights, conflict resolution or reconciliation or the promotion of religious or racial harmony or equality and diversity
 - (i) the advancement of environmental protection or improvement
 - (j) the relief of those in need, by reason of youth, age ill-health, disability, financial hardship or other disadvantage
 - (k) the advancement of animal welfare
 - (l) the promotion of the efficiency of the armed forces of the Crown, or of the efficiency of the police, fire and rescue services or ambulance services
 - (m) any other purposes recognised as charitable.
6. For a charity to meet the public benefit requirement the charity's purpose/s must, in summary, be beneficial (supported by evidence if necessary) and benefit the public in general or a sufficient section of the public (and not give rise to more than incidental

personal benefit). The Charity Commission's guidance ('Public benefit: running a charity') states that:

'When making decisions about how to carry out your charity's purpose for the public benefit you should:

- *know who can potentially benefit from your charity's purpose*
- *give proper consideration to the full range of ways in which you could carry out your charity's purpose*

When making decisions that affect who can benefit, you may choose to focus on certain beneficiaries. You can do this provided that:

- *you have proper reasons for doing so*
- *you do not exclude the poor from benefit*
- *the smaller group of people you wish to focus on is a sufficient section of the public for your charity's purpose*
- *you make decisions in accordance with the framework for [trustee decision-making](#)*

7. The Charity Commission's framework for trustee decision-making states:

'When you make decisions about your charity, you must:

- *act within your powers*
- *act in good faith, and only in the interests of your charity*
- *make sure you are sufficiently informed, taking any advice you need*
- *take account of all relevant factors*
- *ignore any irrelevant factors*
- *manage [conflicts of interest](#)*
- *make decisions that are within the range of decisions that a reasonable trustee body could make in the circumstances'*

The City of London Corporation as the Corporate Trustee of Bridge House Estates

8. The City of London Corporation, acting through the Court of Common Council, is the sole trustee of BHE ('the Trustee'). Therefore all Members of the Court of Common Council, acting together, perform that role. The functions associated with the Trustee role are managed through existing corporate arrangements such as delegation to committees of specified functions and associated standing orders and financial regulations.
9. The CBT committee fulfils one of the functions of the trustee role (see below). It is important to note 'City Bridge Trust' is not a separate legal entity in its own right: it is the name given to the grant-giving "arm" or activities of BHE.

10. All charity trustees must always act in the best interests of the charity of which they are trustee, and manage any conflicts of interest or loyalty accordingly.
11. When Members of the Court are dealing with business associated with BHE, they must therefore ensure that the best interests of the charity are paramount. This holds for the Court itself and across all committees where BHE business is considered (see below).
12. It is not unusual for a corporate trustee to administer a charity by delegating management of charity business to a number of committees; nor is it unusual for a local authority to be the trustee of a charity. There is some helpful guidance provided by the Charity Commission for Local Authorities acting as a charitable trustee. This is included in the Charity Commission's Local Authorities Charities Guidance <http://www.charitycommission.gov.uk/detailed-guidance/specialist-guidance/local-authorities-as-trustees>; in particular the members' guidance on a Council's Role as Charity Trustee: <http://www.charitycommission.gov.uk/detailed-guidance/specialist-guidance/local-authorities-as-trustees/councillors-guide-to-a-councils-role-as-charity-trustee/#contents4>. A key section is:

'There are similarities between the rules and regulations that apply in discharging the functions of a local authority and those of a charity. While many of those underlying principles of prudence and transparency will apply equally to managing charitable trusts, there are also differences. An understanding of these differences is essential if local authority trustees are to perform this role effectively and with the minimum of risk. A number of councils have encountered problems in this area, most notably because:

- *councils, used to exercising wide discretion in the way they manage their assets, may not have fully recognised and complied with the restrictions on the use of charitable assets;*
- *conflicts can arise between things that would be popular with the electorate and the obligations of the trustee, imposed by the terms of the charity;*
- *where assets were left to the council many years ago, the precise terms of the charity, or even the fact that it is a charity, may have been forgotten or overlooked.' ...*

'Councils and council members should be aware of the following principles:

- *For a body to be a charity, it must be independent, i.e. it must exist and operate solely for charitable purposes, not as a means of carrying out the policies or directions of the local authority.*
- *Where a local authority is a trustee of a charity, it is the corporate body, acting in accordance with its usual procedures, which is the 'the trustee'. ...*
- *The management of the charity should be kept separate, as far as possible, from the business of the local authority. ...'*

13. The Charity Commission's guidance document "Managing Conflicts of Interest; a guide for trustees" (in draft but unlikely to change substantively) states:-

'Trustees have a legal duty to make decisions on behalf of the charities they serve objectively and free from bias. This is so that decision making is focused on the best interests of the charity.'

The law says that trustees must avoid putting themselves in a position where their personal interests or loyalties could conflict with their duty to act only in the best interests of the charity.

In practice this means that trustees must eliminate conflict of interest or manage it. This is so that the existence of conflict does not undermine their ability to make decisions only in the best interests of the charity Even the appearance of conflict of interest can be damaging. If challenged about apparent conflict, trustees must be ready and able to demonstrate that they have acted properly'

14. The CBT Committee asked for clarification of the meaning of CBT and BHE being 'independent of the Corporation'. This description reflects the Members' duty when acting as BHE trustee to act in the best interests of the charity, as opposed to acting in the best interests of the City Corporation acting in other capacities, and is essential to the proper management of conflict referred to above. It also reflects the fact that BHE's assets do not belong to the City Corporation. They are held by it on trust for charitable purposes.
15. BHE is independent of the City Corporation in so far as the assets and other resources of the charity must be governed by its various governing documents, including the **Cy-Près** Scheme, as articulated above. Of course, given the current strategy of the Corporation with its aims to provide benefits to London as a whole, there are likely to be areas when work in pursuit of the charitable objectives of BHE converge with the City Corporation's work in pursuit of its corporate strategy.
16. An actual example of how the City Corporation has undertaken its role as corporate trustee of BHE is set out below:
17. The Corporation, acting through the Court of Common Council, is required under the Scheme (and a subsequent Order of the Charity Commission dated 10 July 1997) to settle a policy for the application of BHE surplus income (the charity's income surplus to that required to maintain and replace the five bridges referred to above).
18. It is important to note that there may only be one policy to determine the expenditure of the BHE surplus income to achieve the charitable purposes set out in the Scheme for the benefit of the inhabitants of Greater London.
19. Since the making of the Scheme, each such policy has been consulted on: considering the needs of London, for example through commissioned research and consultation with external stakeholders. The findings of which have then informed

the writing of the policy, having a focus on specific programmes and charitable activities. The policy has then been agreed by the City Corporation, acting through the Court of Common Council, as Trustee of BHE. A regular pattern of 5 yearly review and consultation has more recently been established.

20. The consultation and research has been used as evidence to the Charity Commission of the fact that the City Corporation, acting through the Court of Common Council, has been fulfilling its obligations as Trustee of BHE in a proper and appropriate manner: ensuring that due consideration is given to the needs of Londoners, in line with the Scheme.
21. Each successive policy to-date has determined that BHE's surplus income be distributed for the benefit of the inhabitants of Greater London by way of grants. The application of BHE surplus for charitable purpose by way of grants alone may be varied by decision of the Court.

The Committee Functions and Responsibilities

22. The Corporation, acting through the Court of Common Council, as the Trustee of BHE, has delegated some of the functions for the management and administration of the charity to different Committees, in accordance with their terms of reference. For example:
 - (a) Responsibility for grant decisions has been delegated to a dedicated committee of its Members, the CBT Committee, with grants over £500,000 reserved to the Court;
 - (b) Responsibility for setting the annual budget for the operation of the City Bridge Trust grants programme, both the budget to be applied under the grants policy and that for administration and management of the CBT's work, has been delegated to the Resource Allocation Sub-Committee of the Policy & Resources Committee.
23. Details of the committees relevant to BHE and are set out below (in alphabetical order); their terms of reference and delegated functions may be varied by decision of the Court.

Audit & Risk Management Committee

24. The Audit and Risk Management Committee has responsibility for audit and risk management functions relating to the charity. Specifically regarding audit of the charity functions and accounts, it is responsible for: considering and approving the annual audit plans; receiving reports from the Chief Internal Auditor on internal controls; appointing an Independent Audit Panel to make recommendations to the Court of Common Council on the appointment of external auditors; meeting with external auditors prior to the presentation of the Accounts to the Court; receiving and considering the external auditors reports and recommendations; considering the

audited annual accounts; and making recommendations relating to the approval of the accounts to the Finance Committee.

25. Insofar as risk management is concerned, the Committee is responsible for: monitoring and overseeing risk management strategies and the assurance framework for the charity, including where relevant considering inspection reports relating to those Departments responsible for BHE functions and assets and ensuring appropriate action has been taken on those reports; and reporting back to the Court of any risks relating to all governance issues.

Culture, Heritage & Libraries Committee

26. The Culture, Heritage and Libraries Committee is responsible for: the management of all BHE archives; for all activities, services, strategies and policies in the fields of culture, heritage and tourism as they relate to BHE, reporting to the Court of Common Council as appropriate; making recommendations to the Court, following consultation with Policy & Resources Committee, regarding the Cultural Strategy, the Visitor Strategy and other relevant strategies (which will encompass the history and functions of the charity); and has responsibility for the management and maintenance of the tourist and events elements of Tower Bridge.

Establishment Committee

27. Has responsibility for all relevant employment matters relating to City Corporation employees who are tasked with the charity's work as officers of the City.

Finance Committee

28. Finance Committee is responsible for ensuring effective arrangements are made for the proper administration of the City Corporation's financial affairs including budget setting; monitoring performance against departmental business plans; making recommendations to the Court regarding audited accounts and the annual budget; and determining annually with the Resource Allocation's sub-committee the appropriate performance return benchmarks for BHE.

Investment Committee

29. The Investment Committee has responsibility for the strategic oversight of BHE investments, and monitoring of the performance of those investments, in accordance with the investment strategy determined by the Policy and Resources Committee. This business is achieved through the appointment of various sub-committees, including the Social Investment Board which has responsibility for the investment of a £20m allocation from BHE capital which is invested in the social investment market as part of a balanced portfolio of investments to achieve a suitable financial return. The Investment Committee is also responsible for providing the Policy & Resources Resource Allocation Sub-Committee with the recommended proportions between property and non-property assets as part of the resource allocation process with the final decision remaining with the Resource Allocation Sub-Committee (see below).

Planning & Transportation Committee

30. The Planning and Transportation Committee is responsible for all functions relating to the control, maintenance and repair of the five BHE river bridges insofar as matters are not within the purview of another Committee.

Policy & Resources Committee

31. Policy and Resources is responsible *inter alia* for corporate oversight of policy and governance, resource allocation with reference to strategic policies; and scrutiny and oversight of major projects and work programmes. One of its sub-committees is the Resource Allocation Sub-Committee, the terms of reference of which are:
- to recommend to the Grand Committee an appropriate allocation of financial resources in respect of the City Corporation's capital and revenue expenditure;
 - to meet with Chairmen of Service Committees to advise on the status of the City Corporation's budgets and the recommended allocation of financial resources overall and discuss any emerging issues;
 - following advice from the Corporate Asset Sub Committee, to have power to determine the City Corporation's programme for repairs, maintenance and cyclical replacement of plant & equipment in respect of all operational and non-investment properties, including the prioritisation of the various schemes and projects;
 - to determine the appropriate investment proportions between property and non-property assets;
 - to recommend to the Grand Committee the extent of properties held by the City of London Corporation for strategic purposes, including within the City of London itself; and
 - to consider and make recommendations in respect of matters referred to it by the Grand Committee including matters of policy and strategy.

Standards Committee

32. Standards Committee is responsible for keeping under review the City Corporation's Members' Code of Conduct, promoting high standards of conduct and investigating complaints made against members under the Code which will include their conduct when acting on behalf of the City of London Corporation as trustee of the Bridge House Estates charity.

The City Bridge Trust Committee

33. The City Bridge Trust Committee is responsible for consulting with interested parties in the course of settling the policy for the application of Bridge House Estates income surplus to that required to maintain and replace the five bridges, the primary object of the charity. Pursuant to a **Cy-Près** Scheme approved by the Charity Commission, this "surplus income" is permitted to be applied towards the provision of transport and access to it for elderly or disabled people in Greater London, and for other charitable purposes for the general benefit of the inhabitants of Greater London.
34. The Committee also has responsibility for determining all applications for grant funding in accordance with the **Cy-Près** Scheme and the agreed policy; for making recommendations to the Court of Common Council for changes to the criteria as to

the eligibility and treatment of applications for funding (the policy); for determining conditions and other requirements to be imposed in connection with grants that are approved; and for reviewing the amounts, nature and spread of grants approved or refused and the operation of administrative arrangements for the **Cy-Près** Scheme.

Conclusion

35. In conclusion:

- BHE assets do not belong to the Corporation. They are held by it on trust for charitable purposes;
- The City of London Corporation, acting through the Court of Common Council, is the sole trustee of the charity BHE;
- City Bridge Trust is not a separate legal entity in its own right: it is the name given to the grant-giving arm or activities of BHE;
- Some of the BHE trustee functions are delegated to City Corporation Committees of which the CBT Committee is one (these delegation arrangements may be altered by decision of the Court of Common Council);
- Charity trustees must always act in the best interests of the charity of which they are trustee:
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- All conflicts of interest and loyalty should be managed in line with Charity Commission guidance.

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