

# STATES OF JERSEY



## JERSEY HERITAGE TRUST: AMENDMENTS TO CONSTITUTION

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Lodged au Greffe on 21st October 2020  
by the Minister for Economic Development, Tourism, Sport and Culture

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STATES GREFFE

## **PROPOSITION**

**THE STATES are asked to decide whether they are of the opinion –**

to refer to their Act dated 25th May 1999 by which they approved a new constitution for the Jersey Heritage Trust (the “Constitution”), and to their Act dated 8th July 2003 in which they agreed that responsibility for the Trust should pass from the Finance and Economics Committee to the Education, Sport and Culture Committee, and to their Act of 19th November 2013 in which they agreed certain further amendments to the Constitution, and as required at Clause 11.2 of the Constitution (as amended), to consent to the Jersey Heritage Trust altering, amending, or varying the Constitution, in the terms of the New Draft Constitution as set out in the Appendix to the report dated 15th October 2020.

**MINISTER FOR ECONOMIC DEVELOPMENT, TOURISM, SPORT AND CULTURE**

Note. For convenience the Jersey Heritage Trust Constitution is set out in Appendix A. The proposed New Draft Constitution is set out in Appendix B.

## REPORT

The Jersey Heritage Trust (**JHT**) is a body corporate established by law registered by the Royal Court on 3rd June 1983. JHT is part-funded by a grant from the Government of Jersey pursuant to various service level agreements and self-generates half of its own funds.

JHT's purpose statement (the "**Purpose Statement**") is:

*"The Bailiwick of Jersey's heritage and culture is special. The purpose of The Jersey Heritage Trust is to care for it, promote wide access to it, act as advocates on its behalf, and bring imagination to telling its stories so that we inspire people to create a better Island for everyone."*

JHT wishes to register as a Jersey registered charity, so as to continue to be able to benefit from tax exemptions only available to registered charities, to access certain grants only available to registered charities, to be able to call itself a charity, and to reflect its commitment to high standards of governance and charitable principles. An estimate of the losses to JHT of not being able to register as a Jersey charity is in the region of some £450,000 (including lost grants, donations and charitable benefits, additional tax liabilities and other expenses).

The [Charities \(Jersey\) Law 2014](#) (the "**Law**") at Article 5(2) prohibits registration where the constitution of the entity expressly permits ministerial/States management or control. Such management and control provisions are found in the JHT Constitution.

Accordingly, in order to achieve registration, the JHT constitution must be amended and this proposition is being lodged seeking the consent of the States Assembly to such amendments.

### **Background**

From incorporation in 1983 to 1999, JHT had no formal constitution, operating under informal governance rules appropriate at that time. In 1999, JHT adopted a formal constitution approved by the States Assembly and at that time, 2 States members were on the board of trustees of JHT (the "Board"), which was considered appropriate for all grant-funded organisations.

In 2013, an updated constitution (the "**2013 Constitution**") was put in place for JHT [see **Appendix A**] and approved by the States Assembly ([P.119/2013](#)). Given the more formal funding and service level agreements entered into with grant-funded bodies, such as JHT, by then, and what was said to be a contradictory position whereby the Minister was scrutinising the actions of himself or his Assistant Minister on the Board, it was considered appropriate to remove the requirement for States Members to be on the Board.

(References to the Minister for Education, Sport and Culture should be read as the Minister for Economic Development, Tourism, Sport and Culture (the "**MEDTSC**") due to a transfer of functions via ([P.46/2015](#)) – Regulation 5 of which effected the transfer of Sport and Culture from the Minister for Education to the MEDTSC).

The 2013 Constitution contains elements of control in 2 key areas:

- (i) the constitution cannot be amended without the consent of the MEDTSC [clause 11.1]; or, in relation to the purposes (Clause 3) and powers (Clause 4) of JHT or the board composition (Clause 5), the consent of the States Assembly [clause 11.2]; and
- (ii) the Chair of the Board of Trustees is nominated by the MEDTSC and appointed by the States Assembly [clause 5.3.1], who can also terminate the appointment for any reason [clause 5.10].

A revised Constitution has been prepared where the requirements for consent are replaced with a requirement for consultation with the MEDTSC (the “**New Draft Constitution**”) [See **Appendix B**] as detailed below:

## **The Key Amendments**

### **(a) Amending the constitution**

Clause 11 of the 2013 Constitution states:

*11.1 The Jersey Heritage Trust may alter, amend or vary any of the provisions of this Constitution other than clauses 3, 4 and 5 hereof with the prior consent of the Education Sport and Culture Committee.*

*11.2 The Jersey Heritage Trust may alter, amend or vary any of the provisions of clauses 3, 4 and 5 of this Constitution with the prior consent of the States of Jersey.*

The new Clause 15 in the New Draft Constitution states instead:-

*Clause 15 - ‘Alterations of the Constitution’*

*15.1. This Constitution shall only be amended by the Board of Trustees provided that no alteration shall be made which may result in JHT ceasing to have exclusively charitable purposes. A resolution to amend the Constitution must be preceded by consultation with the Minister and receive the assent of not less than 75% of the Trustees.*

### **(b) Board appointments**

Clause 5.3 of the 2013 Constitution states:

*5.3 The board of trustees shall comprise -*

*5.3.1 a chairman nominated by the Minister for Education, Sport and Culture after consultation with the Jersey Heritage Trust and appointed by the States of Jersey. The chairman shall be appointed for a period not exceeding four years, and may be re-appointed by the States of Jersey for one further period of four years, giving a maximum period of eight years in which any one individual appointed under this sub-clause can serve as chairman;*

The new Clause 6 in the New Draft Constitution states instead:-

*Clause 6 - The Board of Trustees- appointment, resignation and removal’*

*6.3.1. a Chairperson appointed by the Board of Trustees following consultation with the Minister and subject to any requisite legislation. The Chairperson shall be appointed for a period not exceeding three years and may be re-appointed for up to two further periods of three years by the Board of Trustees, giving a maximum term of nine years in which any one individual appointed under this Sub-clause can serve as Chairperson;*

As part of the charity application process, JHT consulted with the Jersey Charity Commissioner (the “CC”). The CC wrote to the MEDTSC on 12th June 2020 [see **Appendix C**] and confirmed that should the proposed changes be adopted, they would “overcome the constraint upon JHT’s meeting the charity test which is imposed by Art.5(2) of the [Law]...”

**(c) Other amendments**

At the same time as amending these provisions, the JHT Board undertook a detailed review of the 2013 constitution and concluded that further amendments should be made in order to reflect modern standards of corporate governance, such as the introduction of a ‘Code of Conduct’ and provisions as to board diversity. These changes led to the reshaping of the constitution as a whole, and it is considered sensible and appropriate for the entire document to be placed before the Assembly to provide a clear view of the position from which JHT would be working, even though, strictly speaking, it is only certain provisions that require formal States approval.

**JHT and its relationship with Government**

JHT is a strategic partner of the Government of Jersey, providing a broad range of services on its behalf. JHT self-generates half of its total income, with the remainder through grant funding via agreed annual service level agreements for the delivery of certain Government services. These agreements provide a legally binding framework with terms and conditions setting out the purpose of the agreements and the obligations and responsibilities of the parties.

Undoubtedly, JHT has a special role to play in the Island community and in securing and promoting the culture and identity of the Island by illuminating its history. There is a public interest in seeing that JHT carries out its role and it is clear that balances, controls and supervisory mechanisms must be in place to ensure that JHT is carrying out its duties and responsibilities in such a public facing role. Furthermore, there is an obvious public interest in ensuring that public money is properly utilised for maximum benefit. This oversight, by reporting, supervision and control, arises from the various contracts, partnership agreements, statutory provisions, leases, usufructs and other legal documents between the Government and JHT. Further oversight will arise on registration, not least as a registered charity who must file an annual return for review by the CC, setting out how it has complied with its duty to provide public benefit according to its purposes. It is not, therefore, the constitutional provisions that provide meaningful control and oversight.

In terms of the property in the care of JHT, a significant part of JHT’s purpose is to care for and promote wide access to Jersey’s heritage and culture. JHT manages more than 35 sites around the Island, in the main for third parties. It owns the Francis Cook Gallery (under the terms of a bequest) and has the freehold of Jersey Museum. However,

if JHT was to be dissolved, the Museum building would revert back to the Société Jersiaise because of their reversionary interest.

Of the other sites, these are managed through: usufructs with the Government for the 2 castles; a 99 year lease on the Jersey Archive site, again with the Government; La Hougue Bie and La Cotte, de St. Brelade both through 99 year leases (2018 and 2019 respectively) with the Société Jersiaise; Hamptonne through another 99 year lease (2018), with the Société Jersiaise, who are the usufructory with the National Trust for Jersey, and a 9 year lease (taken out in 2015) for the Maritime Museum with Ports of Jersey. For the forts and towers under JHT management, there is a Forts and Towers Management Agreement with the Government that is being replaced by a 99 year lease (details of which are currently with the Law Officers' Department).

With regards to the public collection, there is a 1993 agreement with the Minister for Infrastructure for the guardianship of publicly-owned objects of cultural significance and a 2018 management agreement with the Société Jersiaise (as the Museum collections are nearly all owned by the Société, not the Government). There is also a collections agreement for the National Trust for Jersey collections, and most of the collections in the Archive are owned by and on deposit from the Government.

The terms and conditions with which JHT must comply in respect of each property are set out in the relevant property or contractual documents, including as to termination and the purposes and extent of the grant. These terms and conditions will not be affected by the proposed changes to the constitution.

## **Conclusion**

Charitable status is vital to JHT's ability to raise substantial funds and to obtain tax exemptions and other benefits, all of which contribute to the costs of operating the heritage sector in the Island for the public benefit. These amendments will enable JHT to obtain charitable status.

## **Financial and manpower implications**

There are no financial and manpower implications arising from this proposition.

## APPENDIX A

### JERSEY HERITAGE TRUST CONSTITUTION

This amended version was discussed and agreed by  
the States of Jersey on 19 November 2013  
(relates to previous Acts dated 25 May 1999 and 8 July 2003)

#### 1. Definitions

1.1 In this Constitution -

1.1.1 words importing the masculine gender shall include the female and neuter genders;

1.1.2 words in the singular shall include words in the plural and words in the plural shall include the singular;

1.1.3 the headings and sub-headings to this Constitution are inserted only for reference to the provisions thereof and shall not affect the construction of such provisions;

1.1.4 reference to the Education Sport and Culture Committee shall include such other committee as may succeed it from time to time.

#### 2. Incorporation

2.1 The Jersey Heritage Trust was incorporated by the “Loi accordant un Acte d’Incorporation à l’Association dite ‘The Jersey Heritage Trust’ ”, which was registered in the Royal Court on 3rd June 1983.

#### 3. Statement of purpose (objects)

3.1 Jersey’s heritage is special. The purpose of the Jersey Heritage Trust is to care for it, promote wide access to it, act as advocates on its behalf, and bring imagination to telling its stories so as to inspire people to create a better Island for everyone.

3.2 In order to accomplish this, the Jersey Heritage Trust shall, in addition to any other method that may seem appropriate to it from time to time -

3.2.1 collect, document, and preserve unique collections of artefacts, works of art, archival material, specimens and information relating to the history, culture and environment of the Bailiwick of Jersey. These collections define the Island, hold the evidence for its historical development and act as the community’s memory;

3.2.2 make these collections widely accessible and promote learning through museums, galleries, the archives centre, exhibitions and events in a range of venues, publications and the Internet;

3.2.3 acquire, maintain, open and develop significant historic sites, museums and galleries, including Mont Orgueil, Elizabeth Castle, Hamptonne, La Hougue Bie, the Jersey Museum, No. 9 Pier Road, the Jersey Archives Centre and the Sir Francis Cook Gallery;

3.2.4 provide comprehensive information, education and outreach services to a wide audience;

3.2.5 provide outstanding, memorable and inspirational experiences for the visiting public;

3.2.6 work with other organisations in and outside the Island, and in particular the Société Jersiaise, to deliver these aims;

3.2.7 promote an inclusive sense of belonging and pride in the Island, advance the cause of its heritage and support its cultural identity.

#### **4. Powers of the Jersey Heritage Trust**

4.1 The Jersey Heritage Trust has the powers granted to it under its Act of Incorporation, namely (in translation) -

4.1.1 the power to have and to use a special seal to certify all acts, contracts, agreements and undertakings;

4.1.2 the power to take, acquire, hold and possess all kinds of moveable and immovable property and to receive, hold and possess all kinds of gifts and legacies of moveable and immovable property which may be made to it;

4.1.3 the power to appear before all courts and tribunals through its officers or other persons authorised by it;

and by implication all other powers necessary to achieve its purposes.

4.2 To enable it to carry out its purposes, the Jersey Heritage Trust may borrow such amounts as it shall consider necessary from time to time, but it shall not secure any such borrowing upon any real property it may own or upon any collections it may own or hold without the prior written consent of the Minister for Education, Sport and Culture.

#### **5. Board of trustees**

5.1 The Jersey Heritage Trust shall consist of and be governed by a board of trustees appointed in the manner set out below.

5.2 The powers of the Jersey Heritage Trust shall be exercised by the board of trustees.

5.3 The board of trustees shall comprise -

5.3.1 a chairman nominated by the Minister for Education, Sport and Culture after consultation with the Jersey Heritage Trust and appointed by the States of



Jersey. The chairman shall be appointed for a period not exceeding four years, and may be re-appointed by the States of Jersey for one further period of four years, giving a maximum period of eight years in which any one individual appointed under this sub-clause can serve as chairman;

5.3.2 the President for the time being of the Société Jersiaise;

(Clause 5.3.3 deleted when Constitution amended)

5.3.4 a trustee appointed by the Jersey Heritage Trust at its discretion but on the recommendation of the Société Jersiaise. This trustee shall be appointed for a period not exceeding three years and may be re-appointed by the Jersey Heritage Trust for one further period of three years, giving a maximum period of six years in which any one individual appointed under this sub-clause can serve as a trustee;

5.3.5 no fewer than five and no more than nine further trustees appointed by the Jersey Heritage Trust for the skills, experience and influence they can bring and the contribution they can make to the Jersey Heritage Trust. These trustees shall be appointed for a period not exceeding three years and may be re-appointed by the Jersey Heritage Trust for one further period of three years giving a maximum period of six years in which any one individual appointed under this sub-clause can serve as a trustee;

5.3.6 In exercising its powers of appointment under sub-clause 5.3.5 above, the Jersey Heritage Trust shall use its best endeavours to ensure that the board of trustees shall be a diverse and balanced group of people in terms of gender, age, experience, skills, track record and attitudes, who share a commitment to the Jersey Heritage Trust;

5.3.7 nothing shall prevent a trustee appointed under one of the above sub-clauses and whose term has expired for whatever reason from being appointed a trustee under any of the other above sub-clauses, save that -

5.3.7.1 a chairman appointed under 5.3.1 above cannot be re-appointed under any of the other above sub-clauses unless a year has expired pursuant to the provisions of sub-clause 5.3.8 below;

5.3.7.2 a trustee appointed under sub-clause 5.3.4 above cannot be re-appointed a trustee under sub-clause 5.3.5 above and vice versa unless a year has expired pursuant to the provisions of sub-clause 5.3.8 below;

5.3.8 for the purposes of this clause, a person who has not been a trustee of the Jersey Heritage Trust for one year shall be eligible for re-appointment under any of the above provisions as if he had never before been a trustee of the Jersey Heritage Trust.

5.4 The minimum number of trustees shall be eight and the maximum number of trustees shall be twelve.

5.5 If the number of trustees falls below eight, then it shall be lawful for the remaining trustees to act as trustees for the purpose of filling up vacancies but not for any other purpose.

5.6 The trustees shall appoint a vice-chairman from among their number.

5.7 For the duration of his appointment each trustee shall be an officer of the Jersey Heritage Trust and shall have the following duties -

5.7.1 to hold the purposes and values of the Jersey Heritage Trust;

5.7.2 to promote the purposes, objects and interests of the Jersey Heritage Trust;

5.7.3 to act bona fide in the best interests of the Jersey Heritage Trust.

5.8 A trustee may at any time resign his trusteeship by giving not less than one month's notice in writing.

5.9 The board of trustees may, by majority vote, terminate the appointment of any trustee appointed under sub-clauses 5.3.4 and 5.3.5 for any reason.

5.10 The States of Jersey may terminate the appointment of the chairman for any reason.

5.11 The board of trustees may, by majority vote, terminate the appointment of any trustee upon the happening of any of the following events, namely that the trustee -

5.1.1 has been absent from three consecutive meetings of the Jersey Heritage Trust without the permission of the Jersey Heritage Trust;

5.1.2 has become bankrupt;

5.1.3 is incapacitated by physical or mental illness.

5.12 A trustee shall retire on reaching the age of 75 years.

## **6. Proceedings of the board of trustees**

6.1 At a meeting of the board of trustees of Jersey Heritage Trust -

6.1.1 the majority of the trustees shall form a quorum;

6.1.2 the chairman or vice-chairman shall preside;

6.1.3 each trustee shall have one vote on each matter for deliberation;

and

6.1.4 in the event of an equality in the votes, the chairman of the meeting shall have a casting vote in addition to his own vote.

6.2 A resolution is a valid resolution of the Jersey Heritage Trust even though it was not passed at a meeting of the board of trustees if -

6.2.1 it is signed or assented to by a majority of the trustees; and

6.2.2 proper notice of the proposed resolution was given to all the trustees.

6.3 The trustees shall keep proper minutes of their proceedings including minutes of any business transacted in accordance with paragraph 6.2 above.

6.4 Any two or more trustees shall have the right to convene meetings of the board of trustees.

6.5 Subject to the provisions of this Constitution, the Jersey Heritage Trust may regulate its own proceedings and pursuant thereto may adopt, alter, amend or vary rules for that purpose.

## **7. Expenses of trustees**

7.1 The Jersey Heritage Trust shall pay to its trustees all reasonable out-of-pocket or other expenses occasioned in the course of carrying out their duties, but subject thereto no trustee who is not otherwise an employee of the Jersey Heritage Trust or any company owned by it shall be remunerated.

## **8. Appointment and remuneration of staff**

8.1 The Jersey Heritage Trust may appoint such officers and agents as it considers necessary for carrying out its purposes.

8.2 The Jersey Heritage Trust may -

8.2.1 make appointments on such terms as to remuneration, expenses, pensions and other conditions as it thinks fit; and

8.2.2 may establish and maintain such schemes or make such arrangements as it thinks fit for the payment of pensions and other benefits in respect of its staff.

## **9. Accounts**

9.1 The Jersey Heritage Trust shall keep accounts in such form as shall be acceptable to the Education Sport and Culture Committee.

## **10. Accountability to the States of Jersey**

10.1 In recognition of the funds voted annually by the States of Jersey to the Jersey Heritage Trust to enable the Trust to carry out its purpose and recognising the agreements between the States of Jersey and the Jersey Heritage Trust in respect of the castles and the collections owned by the States of Jersey, the board of trustees shall present annually to the Education Sport and Culture Committee a business plan, a report of the activities and achievements during the previous year and the audited accounts for the previous year of the Jersey Heritage Trust.

## **11. Alteration of Constitution**

11.1 The Jersey Heritage Trust may alter, amend or vary any of the provisions of this Constitution other than clauses 3, 4 and 5 hereof with the prior consent of the Education Sport and Culture Committee.

11.2 The Jersey Heritage Trust may alter, amend or vary any of the provisions of clauses 3, 4 and 5 of this Constitution with the prior consent of the States of Jersey.

## APPENDIX B

### JERSEY HERITAGE TRUST NEW DRAFT CONSTITUTION

#### 1. Name

- 1.1. The name of the entity is The Jersey Heritage Trust (**JHT**).

#### 2. Introduction

- 2.1. JHT is a body corporate established by the “Loi accordant un Acte d’Incorporation à L’Association dite ‘The Jersey Heritage Trust’”, which was registered before the Royal Court of Jersey on 3rd June 1983.

#### 3. Definitions

- 3.1. In this Constitution:

3.1.1. words importing the masculine gender shall include the female and neuter genders;

3.1.2. words in the singular shall include words in the plural and words in the plural shall include the singular;

3.1.3. the headings and sub-headings to this Constitution are inserted only for reference to the provisions thereof and shall not affect the construction of such provision.

- 3.2. In this Constitution, unless the context otherwise requires, the following defined terms in the left hand column below shall have the meaning set out opposite such term in the right hand column below.

- 3.3.

**Advisory Board:** any advisory board or panel appointed by the Board of Trustees under the provisions of Clause 11 and governed by the relevant Terms of Reference;

**Adviser:** any adviser appointed by the Board of Trustees under the provisions of Clause 11;

the **Board of Trustees** or **Board:** the board of trustees of JHT from time to time (by whatever name so called) acting as a Board;

**the Chairperson:** the person appointed to such position by the Board of Trustees from time to time;

the **Chief Executive:** the person appointed to such position by the Board of Trustees from time to time;

the **Code of Conduct**: the Code of Conduct for JHT as approved, adopted and amended by the Board of Trustees from time to time in accordance with Clause 9;

the **Finance Director**: the person appointed to such position by the Board of Trustees from time to time;

the **Honorary Financial Adviser**: any person (who may or may not be a Trustee) who may be appointed and hold such position from time to time in accordance with Clause 11;

the **Majority**: the majority of the appointed Trustees from time to time;

the **Minister**: the Minister of the States of Jersey appointed from time to time to have overall responsibility for the relationship between the States of Jersey and JHT and shall include any States of Jersey employee operating under delegated authority from the Minister;

the **Purpose**: JHT's purpose as set out in Clause 4;

the **Scheme of Delegation**: the Scheme of Delegation setting out the delegated powers authorised by the Board of Trustees from time to time in accordance with Clause 8;

the **Senior Management Team**: the Senior Management Team comprising the Chief Executive and the Finance Director and such other senior staff member as shall be appointed to the Senior Management Team from time to time;

the **Société Jersiaise**: an association incorporated by Act of the States of Jersey on 11th August 1879 and confirmed by Order of Council dated 15th December 1879;

**Sub-Committee**: any sub-committee of Trustees appointed by the Board of Trustees under the provisions of Clause 11 and governed by the relevant Terms of Reference;

**Terms of Reference**: the terms and conditions governing the powers, duties and obligations of any Sub-Committee, Advisory Board or Adviser as approved by the Board of Trustees and as may be amended from time to time by the Board of Trustees;

**Trustee**: any person appointed to such position by the Board of Trustees from time to time and Trustees shall be construed accordingly.

#### **4. Statement of Purpose**

The Bailiwick of Jersey's heritage and culture is special. The purpose of JHT is to care for it, promote wide access to it, act as advocates on its behalf, and bring imagination to telling its stories so that we inspire people to create a better Island for everyone.

## 5. Functions and Powers derived from the Purpose

5.1 JHT shall, in the fulfilment of its Purpose, perform the following functions and have the following additional powers, in addition to any other method that may seem appropriate to it from time to time:

- 5.1.1. collect tangible and intangible heritage relating to the Bailiwick of Jersey (the **Collections**);
- 5.1.2. preserve and conserve the Collections to appropriate standards;
- 5.1.3. make the Collections widely accessible through the operation of museums and online resources;
- 5.1.4. realise, enhance and promote the public value of heritage;
- 5.1.5. provide advice to or on behalf of the public and other persons wishing to study and carry out research on heritage matters;
- 5.1.6. advise on public records and collect, receive and hold on deposit archival public records and other archival material;
- 5.1.7. promote and provide access to records and archives to a wide audience;
- 5.1.8. provide advice to or on behalf of the public on the retention and preservation of records and archives;
- 5.1.9. research the historic environment and the Island heritage;
- 5.1.10. acquire, hold and conserve heritage assets relating to the Bailiwick of Jersey; and
- 5.1.11. promote public understanding of the value of the historic environment.

5.2. JHT also has the powers granted to it under its Act of Incorporation, namely (in translation):-

- 5.2.1. to have and to use a special seal to certify all acts, contracts, agreements and undertakings;
- 5.2.2. to take, acquire, hold and possess all kinds of movable and immovable property and to receive, hold and possess all kinds of gifts and legacies of movable and immovable property which may be made to it; and
- 5.2.3. to appear before all courts and tribunals through its officers or other persons authorised by it.

5.3. In addition, JHT may:-

- 5.3.1. purchase, take on lease or in exchange, hire or otherwise acquire any immovable or movable property and any rights or privileges which JHT may think necessary or convenient for the promotion of its Purpose and to construct, maintain, refurbish, valorise, refurbish and alter any buildings or erections or land necessary or convenient for the work of JHT in compliance with any lease or other contractual obligations;
- 5.3.2. accept any gifts, donations, grants, funding, legacies and bequests or devises of land, monies, securities or other immovable or movable property which may be useful or available to JHT for the Purpose and to utilise or employ the same for such Purpose;
- 5.3.3. impose or charge subscriptions, membership fees, charges, rents and other fees for any of its services and buy, sell and resell goods, the whole in furtherance of its Purpose;
- 5.3.4. take such lawful steps by appeals, public meetings or otherwise as may from time to time be deemed expedient for the purpose of procuring contributions to the funds of JHT in the shape of donations, sponsorship or otherwise;
- 5.3.5. to print and publish, or procure to be printed and published and to circulate or procure to be circulated (whether gratuitously or not) any newspapers, periodicals, magazines, books, pamphlets, or other documents that may be deemed desirable for the promotion of the Purpose;
- 5.3.6. to subscribe to, become a member of, or work with any organisation, institution, society or body (whether incorporated or not and whether in the Bailiwick of Jersey or elsewhere) whose objects are wholly or in part similar to or compatible with those of JHT or which progresses its Purpose including the Société Jersiaise;
- 5.3.7. to sell, manage, lease, mortgage, dispose of (with or without valuable consideration) or otherwise deal with all or any part of the property or assets owned or let by JHT as may be deemed expedient with a view to the promotion of its Purpose;
- 5.3.8. to borrow and raise money in such manner and on such security as JHT may think fit, including, but not limited to mortgages on its immovable property or hire purchase agreements, leasing of and security interest agreements over movable assets;
- 5.3.9. to invest the monies of JHT not immediately required for its Purpose in or upon such investments, securities or property as may be thought fit, subject nevertheless to such conditions (if any) and such consents (if any) as may for the time being be imposed or required by law or a contractual commitment and subject also as hereinafter provided.



PROVIDED ALWAYS that the income and property of JHT howsoever derived shall be applied solely towards the promotion of the Purpose;

- 5.3.10. to subscribe to any Jersey registered charities and permitted foreign charities and to grant donations for any charitable purpose as deemed appropriate and consistent with the Purpose; and
- 5.3.11. to do all such other charitable lawful things as are incidental or conducive to the attainment of the Purpose;

and by implication all other powers necessary to achieve its Purpose.

## **6. The Board of Trustees - appointment, resignation and removal**

- 6.1. JHT shall consist of and be governed by a Board of Trustees appointed in the manner set out below.
- 6.2. The powers of JHT shall be exercised by the Board of Trustees and, under the Scheme of Delegation described in Clause 8, employees of JHT and any Sub-Committee, Advisory Board or Adviser authorised or appointed this Constitution, a Scheme of Delegation or Terms of Reference or otherwise from time to time.
- 6.3. The Board of Trustees shall comprise:
  - 6.3.1. a Chairperson appointed by the Board of Trustees following consultation with the Minister and subject to any requisite legislation. The Chairperson shall be appointed for a period not exceeding three years and may be re-appointed for up to two further periods of three years by the Board of Trustees, giving a maximum term of nine years in which any one individual appointed under this Sub-clause can serve as Chairperson;
  - 6.3.2. subject as hereinafter provided, the president or vice-president for the time being of the Société Jersiaise (if such president or vice-president is so nominated by the Société Jersiaise) and if such appointment is approved by the Board of Trustees; IT BEING PROVIDED always that (1) if the Société Jersiaise's president or vice-president does not wish to take up the position of a Trustee on the Board of Trustees, the Board shall be properly constituted without such person; and (2) such person so appointed may continue (subject to the provisions of Sub-clause 6.10 and 6.11) as a Trustee while they remain President or Vice President of the Société Jersiaise;
  - 6.3.3. subject as hereinafter provided, a further Trustee nominated by the Société Jersiaise and appointed by the Board of Trustees. This Trustee shall be appointed for a period not exceeding three years and may be re-appointed by the Board of Trustees for up to two further periods of three years by the Board of Trustees, giving a maximum term of nine years in which any one individual appointed under this Sub-clause can serve as

Trustee; IT BEING PROVIDED always that if the Société Jersiaise does not recommend a Trustee for nomination, the Board shall be properly constituted without such nominee; and

- 6.3.4. no fewer than five and no more than nine further Trustees appointed by the Board of Trustees. Such Trustees shall be appointed specifically for the skills, experience and influence they can bring to the Board of Trustees and the contribution they can make to JHT. These Trustees shall be appointed for a period not exceeding three years and may be re-appointed by the Board for up to two further periods of three years giving a maximum term of nine years in which any one individual appointed under this Sub-clause can serve as a Trustee.
- 6.4. In exercising its powers of appointment and removal of Trustees under Clause 6.3 above, the Trustees must use their best endeavours to ensure that the Board of Trustees shall be a diverse and balanced group of people, including in terms of gender, age, disability, experience, skills, track record and attitude and who all share a commitment to the Purpose and to JHT.
- 6.5. Any person appointed on to the Board of Trustees pursuant to the provisions of Sub-clause 6.3.3 shall, once appointed, remain in the Board in the same manner as any other Trustee (subject to the provisions of Clause 6.10) and may not be replaced by the Société Jersiaise during their term of office as Trustee.
- 6.6. The minimum number of Trustees shall be eight and the maximum number of Trustees shall be twelve.
- 6.7. If the number of Trustees falls below eight, then it shall be lawful for the remaining Trustees to continue to operate as a Board to ensure the ongoing functioning of JHT, provided that they seek diligently to bring the Trustees up to the required minimum number as soon as reasonably possible.
- 6.8. The Board of Trustees may appoint a vice-chairperson from among their number.
- 6.9. A Trustee may at any time resign their post by giving not less than three months' notice in writing to the Chairperson or in the case of the Chairperson, to the Chief Executive.
- 6.10. The Board of Trustees may, by Majority vote, terminate the appointment of any Trustee appointed under any of Sub-clauses 6.3.1, 6.3.3 and 6.3.4 for any reason. The Board of Trustees may, by Majority vote, terminate the appointment of any Trustee appointed under Sub-clause 6.3.2 in the event that the Board of Trustees considers that such Trustee has committed a material breach of the terms of this Constitution or the Code of Conduct. Any Trustee whose appointment is terminated by the Board of Trustees shall have the right to make written representations in advance of the meeting called to consider this matter and may also appear at such meeting to make verbal representation (but shall not be entitled to be present when the vote is taken as to whether to end their

appointment). The Board in making a decision to terminate any Trustee appointment shall be obliged to behave fairly and in the best interests of JHT.

- 6.11. No person appointed under any of the Sub-clauses in this Clause 6 may hold office as a Trustee for more than nine years in total (whether continuous or not).

## **7. The Board of Trustees- duties and proceedings**

### **Duties**

- 7.1. For the duration of their appointment each Trustee shall be a governor of JHT and shall have the following duties:
- 7.1.1. to uphold the Purpose and values of JHT;
  - 7.1.2. to promote the Purpose, objects and interests of JHT;
  - 7.1.3. to act *bona fide* in the best interests of JHT; and
  - 7.1.4. to comply with the Code of Conduct.

### **Meetings**

- 7.2. Written notice (with agenda and all board papers under discussion) shall be sent to all Trustees at least three days in advance of any meeting of the Board of Trustees. The notice (and receipt of some or all the of the board papers in advance) may be waived or shortened with the agreement of all the Trustees or by a Majority in the case of urgent business.
- 7.3. Any two or more Trustees shall have the right to convene a meeting of the Board of Trustees.
- 7.4. At each meeting of the Board of Trustees:
- 7.4.1. the Majority shall form a quorum;
  - 7.4.2. the Chairperson or vice-chairperson or any other Trustee appointed by the Board of Trustees for that purpose, shall preside;
  - 7.4.3. each Trustee shall have one vote on each matter for deliberation; and
  - 7.4.4. in the event of an equality in the votes, the Chairperson (or vice-chairperson or any other Trustee appointed by the Board of Trustees to preside) shall have a casting vote in addition to their own vote, save where otherwise expressly stated in this Constitution.
- 7.5. Any matter under this Constitution stated as being a matter for determination by the Board of Trustees or requiring the approval, consent or agreement of the Board of Trustees shall, unless otherwise stated in this Constitution, be dealt with

at a meeting, by written resolution in accordance with the provisions of Clause 7.10 or as otherwise stated in the Scheme of Delegation.

- 7.6. The Board of Trustees shall meet at least four times in each calendar year.
- 7.7. The Chief Executive will be in attendance at all of the Board meetings unless prevented from doing so by holiday, sickness, injury or other permitted absence or if there is a conflict of interest in such attendance. The Chief Executive will not have a vote at any Board Meeting. The Finance Director, any other member of the Senior Management Team and the Honorary Financial Adviser (if not a Trustee) may be called to attend any Board meetings by the Chairperson.
- 7.8. The Board of Trustees may invite persons not being Trustees to attend any meeting, including where it requires external professional guidance or expertise.
- 7.9. The Chairperson (or vice-chairperson or other Trustee presiding) may exclude any Trustee either from attending a Board meeting or from voting at a Board meeting where it is considered by the Chairperson (or vice-chairperson or other Trustee presiding) that there is a conflict of interest in such attendance or vote.

#### **Written Resolutions**

- 7.10. A resolution is a valid resolution of the Board of Trustees even though it was not passed at a meeting of the Board of Trustees if:
  - 7.10.1. it is signed or assented to by the Majority (or such other number of Trustees as may be required for such resolution under the terms of this Constitution); and
  - 7.10.2. proper notice (under Clause 7.2) of the proposed resolution was given to (or waived by) all of the Trustees or by a Majority in case of urgent business; or
  - 7.10.3. it has been passed otherwise in accordance with any provision of the Scheme of Delegation.

#### **Minutes**

- 7.11. The Trustees shall keep proper minutes of their proceedings including a record of any business transacted in accordance with Clause 7.10.

#### **General**

- 7.12. Subject to the provisions of this Constitution, the Board of Trustees may regulate its own proceedings and pursuant thereto may adopt, alter, amend or vary rules for that purpose, including under any Scheme of Delegation.

## **Expenses**

- 7.13. JHT shall pay to its Trustees all reasonable out-of-pocket or other expenses incurred in the course of carrying out their duties, but subject thereto no Trustee, who is not also an employee of JHT or any company owned by it or otherwise engaged by JHT, shall be remunerated.

## **8. Scheme of Delegation**

In the fulfilment of the Purpose, the Board of Trustees may from time to time approve, adopt and amend a Scheme of Delegation which delegates certain powers and functions of JHT to employees of JHT (and of any company owned by JHT) and as appropriate and relevant to any other person otherwise engaged by JHT.

## **9. Code of Conduct**

In the fulfilment of the Purpose, the Board of Trustees may from time to time approve, adopt and amend a Code of Conduct regulating the conduct of the Trustees and members of any Sub-Committee, Advisory Board or Adviser.

## **10. Appointment, remuneration and removal of employees and other persons**

- 10.1. The Board of Trustees may engage or appoint such officers, employees, agents and consultants (at such remuneration as it considers appropriate) carry out any of JHT's activities in compliance with the Purpose and may delegate such functions of engagement or appointment under the Scheme of Delegation to any employee of JHT or to any Sub-Committee, Advisory Board or Adviser.
- 10.2. The Board of Trustees may terminate the engagement or appointment of any officer, employee, agent or consultant of JHT and may delegate such the function of termination under the Scheme of Delegation to any employee of JHT or to any Sub-Committee, Advisory Board or Adviser.

## **11. Sub-Committees, Advisory Boards and Advisers**

- 11.1. The Board of Trustees may constitute, form, appoint or engage such Sub-Committees, Advisory Boards and Advisers (including an Honorary Financial Adviser) as it may from time to time determine for providing detailed scrutiny of specific and specialist areas and advising upon JHT's activities in compliance with the Purpose and may delegate such constitution, formation, appointment or engagement under the Scheme of Delegation to any employee of JHT or to any Sub-Committee, Advisory Board or Adviser.
- 11.2. The Board shall approve Terms of Reference of each Sub-Committee, Advisory Board or Adviser appointed pursuant to Sub-clause 11.1.
- 11.3. The Board of Trustees may terminate the appointment or engagement of or vary the terms of any Sub-Committee, Advisory Board or Adviser appointed pursuant to Sub-clause 11.1 and may delegate such the function of termination or variation

under the Scheme of Delegation to any employee of JHT or to any Sub-Committee, Advisory Board or Adviser.

## **12. Financial Affairs**

- 12.1. JHT's financial year shall end on the 31<sup>st</sup> day of December each year or such other date as approved by the Board of Trustees.
- 12.2. The Finance Director shall be responsible for the day to day operation of the financial affairs of JHT under the supervision of any relevant Sub-Committee constituted by the Board for such purpose.
- 12.3. The Finance Director shall cause proper books of account to be kept with respect to:
  - 12.3.1. all sums of money received and expended by JHT and the matters in respect of which such receipts and expenditure take place;
  - 12.3.2. all sales and purchases of goods by JHT; and
  - 12.3.3. the assets and liabilities of JHT.
- 12.4. Proper books shall be kept to give a true and fair view of the affairs of JHT and to explain the transactions and shall be audited by external auditors.
- 12.5. Any Honorary Financial Adviser appointed from time to time under the provisions of Sub-clause 11.1, shall provide scrutiny and advice to JHT on its financial affairs.

## **13. Indemnity**

The Board of Trustees, any Sub-Committee, Advisory Board or Adviser and all employees of JHT shall be indemnified by JHT for any liabilities incurred by them acting in good faith in performing their functions on behalf of JHT.

## **14. Winding up**

- 14.1. JHT may only be wound up by the Board of Trustees and any requisite legislation. A resolution to wind up JHT must receive the assent of not less than 75% of the Trustees.
- 14.2. The Chairperson (or vice-chairperson or other Trustee presiding) shall not have a second or casting vote for a resolution passed under Clause 14.1.
- 14.3. If upon the winding up of JHT, there remains after the settlement of all its debts and liabilities and other contractual commitments, any property whatsoever, this shall be gifted to another entity registered as a Jersey Charity under the Charities (Jersey) Law 2014 with substantially similar objectives and purposes as JHT or

objectives and purposes which the Board of Trustees considers compatible with those of JHT.

**15. Alterations to the Constitution**

15.1. This Constitution shall only be amended by the Board of Trustees provided that no alteration shall be made which may result in JHT ceasing to have exclusively charitable purposes. A resolution to amend the Constitution must be preceded by consultation with the Minister and must receive the assent of not less than 75% of the Trustees.

15.2. The Chairperson (or vice-chairperson or other Trustee presiding) shall not have a second or casting vote when amending the Constitution.

## APPENDIX C - Letter from the Jersey Charity Commissioner to the Minister for Economic Development, Tourism, Sport and Culture



**JERSEY CHARITY  
COMMISSIONER**

The Jersey Charity Commissioner  
Lincoln Chambers  
Front Office, 1<sup>st</sup> Floor  
31 Broad Street  
St. Helier  
Jersey  
JE2 3RR

12<sup>th</sup> June 2020

Dear Minister,

### **JERSEY HERITAGE TRUST (JHT)**

I have been advised by your officials that it is your intention to seek the approval of the legislature to certain changes in the constitution of JHT.

One of these proposed changes would remove from the constitution provisions requiring appointment of the chairman of the board of trustees to be appointed by you in your capacity as the Minister responsible. The appointment would henceforth fall to the trustees themselves following consultation with you. Another would remove the requirement currently obtaining for the Minister, that is to say, you, to approve any change in the constitution that may be proposed by the board of trustees.

These two changes would overcome the constraint upon JHT's meeting the charity test which is imposed by Art.5(2) of the Charities (Jersey) Law 2014, whereby an entity that meets the test nevertheless does not meet it if its constitution expressly permits its activities to be directed or otherwise controlled by, or any of its governors to be, either a Minister or member of the States Assembly, acting in that capacity.

I indicated last year to the former chairman of JHT that were these changes to the constitution to be made I should be in a position to determine JHT's application to become a Jersey registered charity without delay. This followed extensive, constructive, discussions I had had with him and his Board, and their advisers, about both the application for registration which JHT had made and the 'modernising' amendments to its constitution that the Board was intending to recommend to you, endorsement of which you are now aiming to seek from the State Assembly.

As you will know, upon registration, not only would there then fall upon the trustees a public benefit duty as governors of a registered charity but also they would be only ever able to change JHT's objects in its constitution, after any consultation with the Minister and with the Charity Commissioner's assent.

Such new arrangements as these would have no impact on the business relationship that JHT needs must have, and continue to have, with the ministry, and other statutory duties that fall or may fall to it to implement.

Yours truly,

John Mills  
Jersey Charity Commissioner

Lyndon Farnham Esq  
Minister for Economic Development



Tel: 01534 760811



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