

**HAUT DE LA GARENNE: INCORPORATION OF TRUST, APPOINTMENT OF ORIGINAL TRUSTEES, AND
LEASE OF PROPERTY TO THE TRUST (P.147/2002) - AMENDMENT**

**Lodged au Greffe on 24th September 2002
by the Planning and Environment Committee**



STATES OF JERSEY

STATES GREFFE

150

2002

P.147 Amd.

Price code: B

HAUT DE LA GARENNE: INCORPORATION OF TRUST, APPOINTMENT OF ORIGINAL TRUSTEES, AND LEASE
OF PROPERTY TO THE TRUST (P.147/2002) - AMENDMENT

In paragraph (a) for the words 'Appendix A' substitute the words 'the revised Appendix A'.

PLANNING AND ENVIRONMENT COMMITTEE

Note. The revised Appendix A is set out in the Appendix to this amendment.

Report

When the Planning and Environment Committee appointed the Haut de la Garenne Steering Group in 2000 there were nine members. The sad loss of Brian Le Feuvre, who died last year, and the resignation of Simon Cross for personal reasons, has resulted in the nomination of only seven of the original members as proposed Trustees of Haut de la Garenne.

The Committee recognises that the members of the Steering Group have worked well together and provided an extremely valuable contribution to the design process. Their individual skills are finely balanced and in carrying on their future roles with the Board of Trustees it is important that the Trust is able to select replacement members who can provide the further skills that are required to operate successfully in the future.

With the advice of Her Majesty's Solicitor General the Committee is proposing four amendments to paragraphs 5.3, 5.4, 5.11 and 5.14 of the draft constitution (the revised Appendix A to the proposition which is set out in this amendment) which allow for the Board of Trustees to appoint additional or replacement trustees as it sees fit. The Board will not have less than seven members or more than nine at any one time.

There are no additional financial or manpower implications arising out of this amendment.

REVISED APPENDIX A
PROPOSED CONSTITUTION
HAUT DE LA GARENNE TRUST

1. Definition.
2. Incorporation.
3. Objects.
4. Powers of the Trust.
5. Board of Trustees.
6. Proceedings of the Board of Trustees.
7. Expenses of Trustees.
8. Appointment and Remuneration of Staff.
9. Accounts.
10. Accountability to the States of Jersey.
11. Alteration of Constitution.

-

1. Definition

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 Finance and Economics Committee and the Planning and Environment Committee shall include such other committees, persons or bodies as may be designated by the States to succeed them respectively from time to time.
- 1.1.5 "The centre" means the accommodation and activity centre which is to be located at the property known as Haut de la Garenne in the parish of St. Martin in pursuance of clause 3.1 below.

2. Incorporation

- 2.1 The Haut de la Garenne Trust is to be incorporated by an Act of the States.

3. Objects

- 3.1 The objects of the trust are to manage and administer the property known as Haut de la Garenne in the parish of St. Martin as an accommodation and activity centre for all or any of the uses set out in Schedule 1 hereto.

4. Powers of the Trust

- 4.1 The trust shall have the following powers -

- 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 whether in perpetuity or on lease 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;
- 4.1.4 the power to make such charge for the use of the centre as appears to the trustees to be necessary or desirable for the purpose of ensuring as far as possible that the centre operates on a self-financing basis;

4.1.5 the power to borrow such amounts as the board of trustees may from time to time consider necessary or desirable, provided that -

- (a) the trust shall not borrow an amount which exceeds, or which will cause the total indebtedness of the trust to exceed, the sum of five thousand pounds [£5,000] without the prior written consent of the Finance and Economics Committee;
- (b) the trust shall not borrow an amount which exceeds, or which will cause the total indebtedness of the trust to exceed, the sum of five hundred pounds [£500] but does not exceed five thousand pounds [£5,000] without the prior written consent of the Treasurer of the States.

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

5. Board of trustees

5.1 The 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 trust shall be exercised by the board of trustees.

5.3 The board of trustees shall comprise not less than seven nor more than nine members. Upon incorporation, the trustees shall be those persons whom the States may by Act designate (hereinafter called "the original trustees"). If the number of original trustees is less than nine, the trustees shall have power to appoint further trustees, provided always that the number of trustees so appointed shall not cause the total number of trustees to exceed nine.

5.4. The terms of office of the original trustees (which expression shall for the purposes of this clause include any trustee appointed to increase the number of trustees in accordance with clause 5.3 above or to fill a casual vacancy in accordance with clause 5.11 below during the first four years from the date upon which the original trustees were appointed), shall be as follows -

5.4.1 one third (or as near as may be if the total number is not divisible by three) of the original trustees shall hold office for an initial term of three years, one third (as or as near as may be if the total number is not divisible by three) of the original trustees shall hold office for an initial term of four years, and one third (as or as near as may be if the total number is not divisible by three) of the original trustees shall hold office for an initial term of five years;

5.4.2 not later than one month prior to the expiry of the period of three years from the date upon which the original trustees took office the trustees shall decide which three trustees shall cease to hold office at the expiry of the period of three years;

5.4.3 not later than one month prior to the expiry of the period of four years from the date upon which the original trustees took office the trustees shall decide which three trustees (not being the three trustees who were appointed or reappointed as the case may be at the expiry of the initial period of three years) shall cease to hold office at the expiry of the period of four years.

5.5 Save as aforesaid, and save for any trustee appointed to fill a casual vacancy, the term of office of a trustee shall be three years.

5.6 A trustee shall be eligible for reappointment on the expiry of his term of office.

5.7 A trustee may resign by giving not less than one month's notice in writing to the chairman of the trustees or to such other person as the trustees may from time to time designate for the receipt of notices of resignation.

5.8 A trustee whose term of office is ending shall be entitled to vote on the appointment of a replacement trustee, provided that no trustee who has ceased to hold office by virtue of the provisions of clause 5.9 or been removed from office by virtue of the provisions of clause 5.10 shall be entitled to vote on the appointment of a replacement trustee.

5.9 A trustee shall cease to hold office if -

- (a) he becomes insolvent as defined by the Interpretation (Jersey) Law 1954;

- (b) a curator is appointed to administer his property and affairs;
- (c) he appoints an attorney without whom he may not act in matters real and personal;
- (d) he is sentenced to a term of imprisonment by a court of competent jurisdiction;
- (e) he ceases to be ordinarily resident in the Island.

5.10 A trustee may be removed by the unanimous vote of the other members of the board present and voting if -

- (a) he fails in the opinion of the board to discharge the duties of trustee with due diligence or to an acceptable standard;
- (b) he is convicted of or pleads guilty to any offence which in the opinion of the board makes him unfit to be a trustee or which may bring the Trust into disrepute;
- (c) he acts in any way which in the opinion of the board makes him unfit to be a trustee or which may bring the trust into disrepute;
- (d) the board considers that it is not in the best interest of the trust that he should continue to be a trustee.

5.11 On the expiry of the term of office of a trustee or on his ceasing to hold office, a replacement trustee shall be appointed by the board of trustees; provided that a trustee who has ceased to hold office in accordance with the provisions of clause 5.9 or has been removed by the board in accordance with the provision of 5.10 shall not be entitled to vote upon the appointment of a replacement trustee.

5.12 In exercising their powers of appointment, the trustees shall use their best endeavours to ensure that the board of trustees shall be a diverse and balanced group of people in terms of gender, age, experience and skills, and who share a commitment to the promotion of the proposed uses of Haut de la Garenne for the benefit of the community.

5.13 If the number of trustees falls below seven, it shall be lawful for the remaining trustees to act as trustees for the purpose of appointing replacement trustees but not for any other purpose.

Provided that if the number of trustees has fallen below seven, and the board of trustees has, despite its best endeavours, failed to find sufficient persons suitable and willing to act as trustees to bring the number to a minimum of seven, the trustees shall be entitled to require the Planning and Environment Committee to provide a suitable person to act as a temporary trustee until such time as a person can be found to accept the office of trustee, and if the Planning and Environment Committee fails to make available a suitable person to act as a temporary trustee it shall be lawful for the remaining trustees to act as trustees for all purposes.

5.14 A person who is appointed in accordance with clause 5.3 to increase the number of trustees shall hold office until the expiry of the term of office of such of the original trustees as the Board of Trustees shall determine. A person who is appointed to replace a trustee who ceases to hold office other than on the expiry of his term of office shall hold office only for the balance of the period of the term of office of the trustee whom he is appointed to replace.

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

5.16 For the duration of his appointment each trustee shall be an officer of the trust and shall have the following duties -

5.16.1 to promote the purposes, objects and interests of the trust;

5.16.2 to act bona fide in the best interests of the trust.

6. Proceedings of the board of trustees

6.1 At a meeting of the board of trustees of the trust -

6.1.1 the majority of the trustees shall form a quorum;

6.1.2 the chairman or vice-chairman, or in their absence such other trustee present at the meeting as the trustees

present may elect, 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 shall be a valid resolution of the 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 The board of trustees shall meet as follows -

6.4.1 The board of trustees shall meet not less than once every three months and otherwise as convened by the chairman.

6.4.2 The chairman may convene a meeting of his own motion and shall convene a meeting if requested to do so by notice in writing signed by not less than one third of the trustees (or the nearest number thereto if the number of trustees at the material time is not divisible by three).

6.5 Subject to the provisions of this Constitution, the trust may regulate its own proceedings including the period of notice to be given of any meeting, which shall however not be less than twenty-four hours, and may adopt, alter, amend or vary rules for that purpose.

7. Expenses of trustees

7.1 The 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 trust or any company owned by it shall be remunerated.

8. Appointment and remuneration of staff

8.1 The trust may employ such staff and appoint such agents as it considers necessary for carrying out its objects.

8.2 The 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 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 trust shall keep accounts in such form as shall be acceptable to the Finance and Economics Committee.

10. Accountability to the States of Jersey

10.1 In recognition of the financial assistance given by the States of Jersey to the trust to enable the trust to carry out its purpose the board of trustees shall present annually to the Planning and Environment Committee a business plan, a report of the activities and the achievements during the previous year and the audited accounts for the previous year.

11. Alteration of Constitution

11.1 The 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 Planning and Environment Committee.

- 11.2 The 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.
- 11.3 A copy of every amendment to the Constitution made under 11.1 above, certified by the Chairman or Vice-Chairman of the trust and accompanied by the Act recording the consent of the Planning and Environment Committee shall be lodged with the Greffier of the States and a copy thereof shall be furnished to the Attorney General.