



CABINET AS TRUSTEES OF BLACKWOOD MINERS INSTITUTE - 27TH JULY 2016

SUBJECT: CHARITABLE STATUS OF BLACKWOOD MINERS' INSTITUTE

REPORT BY: CORPORATE DIRECTOR COMMUNITIES

1. PURPOSE OF REPORT

- 1.1 To advise Members of the statutory requirements relating to the charitable status of Blackwood Miners' Institute.
- 1.2 To seek approval to implement new measures to ensure compliance with charity law in relation to the submission of the accounts.
- 1.3 To consider and set out recommendations regarding the ongoing management of the Blackwood Miners' Institute and the council's responsibilities as Trustee.

2. SUMMARY

- 2.1 Blackwood Miners' Institute was conveyed as a charitable trust to Islwyn Borough Council (and subsequently to Caerphilly County Borough Council) and was registered as a charity on 13th November 1990.
- 2.2 The local authority, acting as sole corporate trustee, has a legal duty to operate the charity in accordance with the governing document and has a legal obligation to account for the charity's finances in accordance with the Charity Act 2011.
- 2.3 The Charity Commission has recently indicated that the Council as sole trustee is not accounting and reporting on the charity separately in accordance with the requirements of the Charity Act 2011.
- 2.4 New measures are required in order to clarify the local authority's relationship to the charity and in order to satisfy to the Charity Commission that council is fulfilling its responsibility in accordance to charity law.

3. LINKS TO STRATEGY

- 3.1 The purpose of this report is to act as trustee of the Blackwood Miners' Institute and in that capacity to consider all matters in connection with the management, use and development of the Institute in accordance with the provisions of the Trust Deed.
- 3.2 Arts Council for Wales' vision is of a 'Creative Wales' where the Arts are central to the life of a nation.

- 3.3 Culture, Leisure and the Arts are key elements in the Regeneration Strategy under the Regenerating Communities and Raising Aspirations theme.
- 3.4 Increasing visitor numbers to the County Borough is an objective in the Council's Single Integrated Plan's vision for a Prosperous Caerphilly.

4. THE REPORT

- 4.1 Blackwood Miners' Institute was conveyed as a charitable trust to Islwyn Borough Council, and (subsequently to Caerphilly County Borough Council) in 1990. The objects of the charity are set out in the Trust Deed dated 15th October 1990, an extract of which is attached to this report at Appendix 1.
- 4.2 The objectives of the charity set out in the Trust Deed include the following:
- To promote, improve, develop, maintain and advance public awareness and participation in, and encourage an appreciation of the art and science of, music, dance, drama, literature and the visual arts.
 - To promote, through appropriate activities, the education and training, mental and spiritual capacities of people who are unemployed, young people and pre-school children.
 - To educate the public in the geography, history and architecture of the area and sets out the Institute's responsibility in safeguarding against drug and alcohol abuse.
- 4.3 The current emphasis of the charity is to be the leading theatre within the South East Valleys, creating and presenting the highest quality professional and community arts, creating enriching, cultural experiences for a diverse range of audiences and participants.
- 4.4 Blackwood Miners' Institute was registered as a charity with the Charity Commission (registered as Blackwood Arts Centre) on 13th November 1990.
- 4.5 Local authorities are empowered by Section 139 of the Local Government Act 1972 to receive and hold gifts on charitable trusts. The local authority is currently the sole corporate trustee for this charity.
- 4.6 The Council as trustee has a legal duty to operate the charity in accordance with the charity's Trust Deed and strictly in furtherance of its stated objects. The Council as trustee also has a legal obligation to account for and report on the charity separately and in accordance of the Charities Act 2011. All charities must produce annual statements of accounts under charity law.
- 4.7 As part of its regulatory role the Charity Commission regularly review accounts submitted to them each year. The purpose of this is to assess whether the accounts were of an acceptable quality. The Charity Commission has recently indicated that the accounts submitted for Blackwood Miners' Institute for the years ended 31/03/12, 31/03/13, and 31/03/14 were non-compliant with the format required under the Charities Statement of Recommended Practice (SORP) 2005.
- 4.8 The Charity Commission has advised that the local authority must now take action to submit annual returns which are compliant with the Charities SORP. This will involve preparing and filing accounts in accordance with the applicable SORP. The SORP to follow will depend upon the charity's financial year i.e. 2015/16. They contain a balance sheet, a statement of financial activities and explanatory notes. Charities with gross income of more than £25,000 in their financial year are required to have their accounts independently examined or audited. In addition a Trustee's annual report must be submitted, including a review of the significant or main activities undertaken by the charity to further its charitable purposes for the public benefit.

- 4.9 The Charity Commission also advises that the local authority must take action to ensure that it fulfils its responsibility in accordance with charity law. Members should be aware of the following principles of charity law, relating to local authority authorities as sole trustees:
- 4.9.1 “A Charity is an organisation established exclusively for purposes which are capable of being charitable and which are for the public benefit.”
- 4.9.2 “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.”
- 4.9.3 “Where the local authority is a trustee of a charity, it is the corporate body, acting in accordance with its usual procedures, which is ‘the trustee’. While ongoing management may be delegated to officers, responsibility for decision making and oversight rests with the councillors.”
- 4.9.4 “The management of the charity should be kept separate, as far as possible, from the business of the local authority. Depending on the size and circumstances of the charity, it may make sense for a committee of councillors to be allocated this task.”
- 4.9.5 “Equally, the finances of the trust must be kept separate from those of the Council.”
- 4.10 With regards to latter point of the finances being separate from those of the Council, it is recommended that as Blackwood Miners’ Institutes’ finances are already channelled through discrete cost centres, that it is deemed that the finances are, as far as possible, accounted for separately, within the current limitations of being managed by the local authority. It is necessary to prepare the annual statement of accounts and to report on the charity’s finances to the Charity Commission in a format which complies with the SORP. This includes getting the accounts independently examined or audited and submitting a Trustee’s report which outlines a review of the charitable activities undertaken.
- 4.11 With regard to the submission of the accounts, in order to satisfy the requirements of the Charity Commission, Cabinet as Trustee is asked to consider delegating the preparation and submission of the annual statements of accounts in a format which complies with the SORP to the Head of Corporate Finance. This will include arranging for the accounts to be independently examined or audited. (A draft example Trustee report and accounts, which are subject to independent examination, can be found in Appendix 2).
- 4.12 In order to comply with the SORP, it is proposed to submit the accounts for the latest year, 2015/16, for the year 2014/15 and all future accounts in the new format.
- 4.13 In relation to the management of the BMI, the Trust Deed provides for the “delegation of powers of management to be conducted within the Council’s general management guidelines as laid down by the Local Government Act 1972 or to those matters contained within the Council’s standing orders which shall exist from time to time provided that all proceedings of such a Committee are reported in due course to the Council”. In this regard the Council’s practice of dealing with matters of Trust is for Cabinet to meet in its separate capacity as Trustee.
- 4.14 In addition the Trust Deed provides for the appointment of a clerk and the employment of staff for the proper administration of the charity. The day to day operations of the BMI are managed by the Theatre and Arts Service Manager and associated staff employed by the Council. The Theatre Manager currently reports to the Interim Head of Regeneration through the Destination and Events Manager.
- 4.15 In order for the charity to be fully managed as a separate entity to the local authority, any strategic issues relating to the management of the BMI rests with Cabinet as Trustee, this includes overseeing the decision-making, scrutiny and management of the charity and to ensure that the charity delivers the charitable outcomes for the public benefit for which it has

been set up. In the longer term Cabinet as Trustee may wish to consider taking a greater involvement in the Charity with forward planning and decision making being considered forming part of future regular reports detailing the charity's activities.

5. EQUALITIES IMPLICATIONS

- 5.1 An EIA screening has been completed in accordance with the Council's Strategic Equality Plan and supplementary guidance. No potential for unlawful discrimination and / or low level or minor negative impact has been identified; therefore, a full EIA has not been carried out.

6. FINANCIAL IMPLICATIONS

- 6.1 There may be financial implications if the Trustee fails to meet the legal requirement to submit compliant accounts and the Charity Commission may take further action, in particular, regarding the preparation of an annual statement of accounts and to report on the charity's finances. It should be noted that Blackwood Miners' Institute benefits from its charitable status (for example receiving the full discretionary relief on non-domestic rates).
- 6.2 The core budget subsidy which has been paid by the Council to the Charity has been reducing over three of the past four years and it is anticipated that this trend will continue. The budget subsidy in 2013/2014 was £365,279; in 2014/2015 it was £306,196; in 2015/2016 it was £296,449 and in 2016/2017 it is £302,768. BMI have achieved a year on year reduction of over 17%.
- 6.3 Cabinet as Trustee is advised that a list of draft savings proposals for the MTFP agreed by Cabinet on the 14th October 2015 included a plan to "Evaluate options to reduce the deficit at Blackwood Miners Institute - A review of the operating model for Blackwood Miners Institute will be undertaken". This is, however, not a matter for consideration under this report but will be subject to a further report on the findings and recommendations of the Improving Service Programme (ISP 5) which will be presented to the Trustee upon completion.

7. PERSONNEL IMPLICATIONS

- 7.1 There are no personnel implications associated with this report.

8. CONSULTATIONS

- 8.1 Comments from the consultees are included within the report.

9. RECOMMENDATIONS

- 9.1 It is recommended that:
- 9.1.1 The Cabinet continues to act as Trustee.
 - 9.1.2 Note the day to day management of the BMI operates under the Theatre Manager, overseen by the Interim Head of Regeneration with the proposal that periodic reports are presented to Cabinet as Trustee.
 - 9.1.3 Endorse the proposal that the preparation and submission of the annual statements of accounts and the report on the BMI's finances to the Charity Commission in a format which complies with SORP (including independent examination or audit of the accounts) be delegated to the Head of Corporate Finance.

- 9.1.4 Meetings with the Cabinet as Trustee will be arranged to discuss the strategic management of the BMI which will include consideration of the outcomes of the Business Improvement Project as outlined in paragraph 6.3 of the report.

10. REASONS FOR THE RECOMMENDATIONS

- 10.1 In order for the local authority to account and report on the charity in accordance with the requirements of the Charity Act 2011.

11. STATUTORY POWER

- 11.1 Charities Act 2011.

- 11.2 Local Government Act 1972.

Author: Paul Hudson, Destination and Events Manager
Consultees: Cllr Ken James, Cabinet Member for Regeneration, Planning & Sustainable Development
Christina Harray, Corporate Director Communities
Sharon Casey, Theatre & Arts Service Manager
Dave Whetter, Interim Head of Regeneration
Steve Harris, Interim Head of Corporate Finance
Michael Eedy, Finance Manager
Veronica Simmonds, Finance Technician
David Thomas, Senior Policy Officer (Equalities & Welsh Language)
Lisa Lane, Corporate Solicitor
Richard Crane, Senior Solicitor

Appendices:
Appendix 1 Blackwood Miners' Institute Trust Deed (dated 15th October 1990)
Appendix 2 An example of the Trustee's annual report and statement of accounts