

# Considerations on Management of Chambers Institute Trust

**To be read in conjunction with the Community Council review of SBC Options for the Chambers Institute (The “Options”).**

## **1.0 Executive Summary**

It is clear from the brief consideration of the historical background produced in 2.0 below as to what both William Chambers and Andrew Carnegie wanted to achieve. It is also clear that there should be a management committee of 12 trustees, 7 of whom should be from the community.

Since the bequests were originally made there have been major changes to society. Yet, the institute has hardly changed for decades. It has neither modernised, nor do we believe that the fabric of the building been maintained adequately, nor has it kept pace with modern standards and the requirement to be pro-active. This signifies that there is no Vision and where there is no Vision there can be no Mission Statement or a subsequent Business Plan. The “Options” under case “B” identify that there is “no clear business plan or vision for the institution”. Any departmental manager in any organisation is required to produce a business plan. The lack of a business plan appears to be a fundamental failure.

The SBC Options for the Chambers Institute were produced in arrears, after the resignation of the Community (Lay) Trustees. A similar analysis should have been carried out before the expenditure of effort and funds on a scheme that was subsequently scrapped. We have commented previously on the lack of a Vision or Plan going forward but there is more to divine from the document; it states:

- Under the status quo the future development of the building would not occur. The ability to develop the asset may be constrained by “Council thinking.”.
- Institution remains just one of many council buildings without the resources to manage it to its full potential.
- Business plan could provide the catalyst for the re-development of the building addressing issues of condition and suitability and giving the Institution a continued high profile in Peebles as a community asset.
- Development of a vision for the CIT and a new business plan will provide the opportunity to provide a focus for community engagement.
- If council is sole interested party [it] may make the establishment of a shared vision supported by local people more problematic.

These bullets pulled from The Options document identify a failure to produce the most basic management tools of Vision, Mission, and Strategic Plan. They identify a constraint of “council thinking”. They identify a potential lack of resources and that there are issues relating to condition of the trust buildings which have not been addressed.

# Considerations on Management of Chambers Institute Trust

Moving on, we can learn more from an analysis of the trustee meetings. Since March 2016 to the present date, meeting durations have averaged less than 45 minutes, 3 times a year. In 2017 there was only one meeting of 45 minutes duration. Health and Safety appears not to have been discussed in any meeting. Maintenance was only minuted as discussed following publication of an article in Peeblesshire relating to the electrical systems. Evidence that standard management information such as usage, rent, income and expenditure were not discussed until very recently and then not readily available when requested. Only one finance report was produced over the entire period. Further, two meeting minutes (bulleted below) seem to indicate that current trustees may not be fully conversant with trust documents:

- 15.04.19 “Identify relevant sections in the former Trustee Handbook for issue to current Trustees”.
- 20.11.19 “Clarify the purpose and powers of the trust”.

When section 3.0, Responsibilities of Trustees is considered and compared to the information gleaned from the meeting minutes and The Options document, there appears to be gaps that should be addressed.

Understanding the efforts which elected councillors put in for the benefit of the community elsewhere, the picture may be one of a limited number of hard working elected members not having enough time to address the issues required of them to faithfully represent the interests of the community.

Clearly, a solution must be found, and that solution must meet the requirements of the trust deeds and the 1911 Act. The trustees need more resource to back them up and the legal position must be maintained. Consequently, the trust requires to be returned to 12 trustees of whom 7 should be recruited from the community. The new trustees should be tasked with understanding the requirements of the trust, collecting the management information critical to an understanding of any current deficiencies, and then resolving such deficiencies as a matter of urgency. A true current financial position should be identified, and new sources of funding identified including a fresh review of the benefits and disadvantages of charitable status. A Vision Statement should be produced in consultation with the beneficiaries in Tweeddale and this should translate into a Mission Statement and subsequently, a Business Plan.

## 2.0 Historical Background

Dr William Chambers gifted a suite of buildings to Peebles in 1857 to provide an opportunity for the self-education of the poorer members of the community. As well as a library, and reading and study rooms, the institution was to have an art gallery and museum. The hall was to be used for lectures and public meetings. On his death in 1883 William left certain endowments including his birthplace in Biggiesknowe to the institution. However, the income and endowments did not cover the upkeep of the building and part of the premises

## Considerations on Management of Chambers Institute Trust

were let to the town council. In 1909 Andrew Carnegie offered £10,000 (£1.2M today) for an extension to the Institution on the condition that the management be transferred to the council under the Public Libraries Act. At the time of writing, the institute comprises.

- The Burgh Hall
- The Library
- The Museum
- The Gallery
- The Registry Office
- (?) Shops
- (?)

The 1859 Deed of Trust states: “Third: - the government and management of the affairs of the said Institution shall be vested in and conducted by a Board of Directors consisting of the Provost of Peebles for the time being the Vice-Lieutenant for the time being; the Convenor of the County for the time being; the Member of Parliament for the County of Peebles for the time being, the Sheriff Substitute, the Sheriff Clerk and Procurator Fiscal all of the County of Peebles for the time being and of at least five Directors connected with the town or neighbourhood”, one of whom shall be elected each year at the annual meeting....” That is seven “official” nominees and five (5) householders.

The Chamber Institution Peebles Order Confirmation Act 1911 extended membership of the management committee beyond the Royal Burgh and its neighbourhood. Clause 6 states: “The corporation shall choose as members of the committee two members from among the householders in the county of Peebles out with the burgh and the number of householders of the burgh other than magistrates and council to be chosen by the corporation shall always be reduced by two accordingly”. Therefore the “official” committee members, the provost, sheriff etc are reduced by two and the householders now number seven (7).

Clause 5 of the 1911 Act states: “The Institution shall from the commencement of this order be administered by the committee. The provisions contained in the said disposition and mortification by the founder and in the subsequent deed by the founder shall be observed by the committee except in so far as contrary or inconsistent with the provisions of the Public Libraries Consolidation (Scotland) Act 1887”.

In conclusion, considering all these clauses together shows that the Institution should be governed and managed by a committee consisting of five members appointed by virtue of their public positions and seven householders. The committee holds an annual meeting at which “householders” [community trustees] are elected by members or

## Considerations on Management of Chambers Institute Trust

“subscribers”; and that these should be “at least” five householders from Peebles and two from “out with Peebles and its neighbourhood”. This makes a committee, or management trust committee of 12.

### 3.0 Responsibilities of Trustees

Trustees have no responsibility for any action or inaction prior to their appointment as trustees. However, they should ensure that there are no outstanding breaches by existing trustees. Failure to do so and to take remedial action may render the new trustee liable severally for the breach themselves.

- 3.1 There should be no conflict of interest between a trustee and a beneficiary.
- 3.2 A trustee should thoroughly familiarise themselves with the trust and in particular:
  - 3.2.1 Read and understand the trust documents.
  - 3.2.2 Consider if any beneficial interests may have changed or been assigned.
  - 3.2.3 Identify trust property and ensure that it has been transferred to the trustee.
- 3.3 Observe the terms of the trust.
- 3.4 To act impartially.
- 3.5 To exercise reasonable care (In effect to act as thought the enterprise was their own). A statutory duty of care.
- 3.6 To act personally.
- 3.7 To exercise trustee powers unanimously unless the trust deeds permit a majority decision.
- 3.8 Remuneration – Not allowed for a lay trustee although a professional may charge for their services.
- 3.9 A trustee may not profit from the trust either directly or indirectly.
- 3.10 To provide information – A beneficiary is entitled to inspect any trust documents (e.g., accounts) and to be given information in relation to the administration of the trust.
- 3.11 To ensure correct distribution of assets.
- 3.12 Where the trust holds land, to consult any beneficiary entitled to an interest in possession in the land. The trust deed may exclude this duty but accountability to the beneficiary remains.
- 3.13 Powers – All powers must be exercised:
  - 3.13.1 In the best interest of all beneficiaries
  - 3.13.2 Only for the beneficiaries and not third parties
  - 3.13.3 Not on their own behalf
  - 3.13.4 Not in any way to derogate or defeat the terms of the trust.
  - 3.13.5 In compliance with any terms imposed on the powers contained in the trust
  - 3.13.6

# Considerations on Management of Chambers Institute Trust

## 4.0 Responsibilities of Property Trustees

4.1 For trustees who hold property, it is important to consider any potential risk factors, the trustees' obligations and the health and wellbeing of the beneficiaries being paramount. Although there is no specific duty to ensure health and safety, it is best practice and sensible to act as though a landlord and tenant relationship exists to minimise the risks. It would therefore be important to consider the standards commonly exercised by landlords to ensure that the property is maintained to a good standard. Issues to consider are:

- 4.1.1 Gas and electrical safety – A trustee should implement legislation relating to landlords. Recommendations are for a gas safety survey annually, Portable Appliance Testing (PAT) annually and an electrical safety inspection (EICR) every 5 years.
- 4.1.2 Smoke and carbon monoxide alarms installed and tested where relevant.
- 4.1.3 Fire Safety – Removal of any item of furniture that does not conform to fire retardant standards. Carry out an annual fire risk assessment. Although the beneficiary may have the responsibility for carrying out the work, the trustee should be satisfied that it is carried out.
- 4.1.4 Repair and maintenance – Beneficiaries should report issues to the trustees. However, trustees should make themselves aware of any defects and ensure they are rectified. Trustees cannot ignore defects as this may lead to injury and subsequent negligence claims.
- 4.1.5 Trustees should err on the side of caution.
- 4.1.6 Insurance – Trustees should ensure that properties are properly insured.

## 5.0 Review of Trustee meetings 2016 to date

| Date of meeting | Opened | Closed | Duration (Mins) | Notes                                                                                                                                                                                                                                                                                                                                                                                                                     |
|-----------------|--------|--------|-----------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 02.03.16        | 16:15  | 16:50  | 35              | Presentation of consultation process and agreement on way ahead only. Feedback from consultation (381 persons) identified that more investment for maintenance was required. Decisions: <ul style="list-style-type: none"><li>To adopt the recommended updated vision for the building</li><li>To undertake a reordering exercise including the appointment of a design team. The final scheme would be costed.</li></ul> |

## Considerations on Management of Chambers Institute Trust

|                  |       |       |    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
|------------------|-------|-------|----|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 25.05.16         | 16:15 | 16:45 | 30 | Update on appointment of design team and requirement for a viability appraisal. A requirement for a further community consultation over the options. Decisions: <ul style="list-style-type: none"> <li>• Approved the draft report on community consultation.</li> <li>• Approved outline timetable for completion of community consultations.</li> <li>• Agreed to delegate powers to the CFO to appoint the design team in line with advice received by SBC.</li> </ul>                                                                                                                                                                                   |
| 23.11.16         | 16:10 | 16:20 | 10 | Discussed a briefing paper prepared by the services director. Report noted.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| 29.11.17         | 16:00 | 16:45 | 45 | Councillor Chapman appointed as Chair. Architects presented three options to Trustee – Decision: <ul style="list-style-type: none"> <li>• Options 2 &amp; 3 to be used as the basis for a public consultation.</li> <li>• That at the next meeting appropriate officers would advise on how a budget for the required works may be provided.</li> </ul>                                                                                                                                                                                                                                                                                                     |
| 12.06.18         | 16:00 | 16:30 | 30 | Briefing paper by CFO considered – Decisions: <ul style="list-style-type: none"> <li>• That a business plan be prepared including a funding strategy – <b>This implies no existing business plan.</b></li> <li>• That a meeting be arranged for <b>September</b> to consider this</li> <li>• New urgent business raised to consider the state of the building following a report on the flagpoles by the British Legion</li> </ul> <p><b>NOTE: 28.11.18 refers to a “private minute”</b></p>                                                                                                                                                                |
| <b>September</b> |       |       |    | No meeting – <b>Further, the business plan identified at the June 2018 as being necessary appears to be still outstanding.</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| 25.10.18         | 11:30 | 11:40 | 10 | Solely on the war memorial, the Tommy outlines and the Boer war memorial plaque.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| 28.11.18         | 16:00 | 17:50 | 25 | The meeting had an adjournment hence the time disparity. SFO report not available. <b>Reference to private meeting to be held 11.12.18.</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| 15.04.19         | 14:00 | 14:55 | 55 | Discussion on location of the two Tommys, Visit Scotland vacating the premises and the <b>Page and Park Report? Decisions:</b> <ul style="list-style-type: none"> <li>• Two on the Tommys</li> <li>• Two on leases re-visit Scotland and Citizens Advice</li> <li>• Identify relevant sections in the former Trustee Handbook for issue to current Trustees.</li> <li>• Arrange a facilitated session to agree a vision and phasing of works and subsequent costing.</li> <li>• Contact Live borders to ascertain their plans for the building.</li> <li>• Next meeting to be held at the building so that a tour of the building could be held.</li> </ul> |

## Considerations on Management of Chambers Institute Trust

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|--------------------------------------|-------|-------|----|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 21.08.19                             | 15:00 | 16:35 | 95 | <p>Discussed the state of the building with the Property Officer. Maintenance costs being met by the council rather than the trust. The CFO's report was finally considered.</p> <ul style="list-style-type: none"> <li>• Decision to obtain current usage figures from Live Borders</li> <li>• Agreed to note the figures in the CFO's report</li> <li>• Agreed to have a full rents review</li> <li>• Agreed to prepare an outline business case for a phased approach to the works</li> <li>• Communications officer be invited to the next meeting to discuss how to communicate to the public.</li> </ul> |
| 20.11.19                             | 15:00 | 16:20 | 80 | <p>See Copy below. Decisions:<br/><b>Separate private minute produced.</b></p> <ul style="list-style-type: none"> <li>• Obtain usage figures for Borough Hall.</li> <li>• Arrange repair of the electrics and provide a proposal for the replacement of the stage curtains, whilst ascertaining who is financially responsible.</li> <li>• To proceed with formal rent reviews</li> <li>• Clarify the purpose and powers of the trust</li> <li>• Position of leases for the Tweed Valley Tourism BID and CAB to be reported at next meeting</li> </ul>                                                         |
| 06.02.20                             | 14:00 | 14:45 | 45 | <p>Agreement to hold four meetings per annum.<br/>Agreement to put clarification in writing on the legal status of the Trust and Trustees.<br/>Discussed merging Library and Museum.<br/>Mentions sourcing a recent fire risk assessment.</p>                                                                                                                                                                                                                                                                                                                                                                  |
| Further scheduled meetings cancelled |       |       |    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |

### From chambers Trustee Meeting 20/11/19

#### MATTERS ARISING

2.1 With reference to paragraph 3 of the Minute of 21 August 2019, copies of the usage figures provided by Live Borders for the Museum and Library were circulated. Figures for the Burgh hall were not available. The Chairman advised that he contact the Chief Executive to see if these could be obtained.

2.2 With reference to paragraph 3 of the Minute of 21 August 2019, **Councillor Tatler commented on an article which had appeared in the Peeblesshire News regarding the poor state of the electrics in the Burgh Hall which was going to impact on concerts in the hall and that this had not been mentioned as part of the tour held at the last meeting. The Estates Manager advised he was aware of the problem, which was the responsibility of Live Borders, and it was as serious as indicated in the newspaper article.** He undertook to make sure the matter was rectified. The conditions of the curtains was also mentioned, and it was not clear from the agreement with Live Borders who was responsible for their replacement. Members asked for a proposal to replace the curtains. 2.3 With reference to paragraph 5.5 of the Minute of 21 August 2019, it was reported that unfortunately due to late notification no member of the Communications team had been available to attend.

# Considerations on Management of Chambers Institute Trust

## 3. EXISTING RENTS AND LEASES

With reference to paragraph 5.1 of the Minute of 21 August 2019, there had been circulated copies of a joint report by the Service Directors Regulatory Services and Assets & Infrastructure providing an overview of existing rents and leases. It was proposed that a rent review be carried out and the service charge also be reviewed. **With regard to the area occupied by Scottish Borders Council, the Chief Financial Officer advised that when the Trust was brought back into Council control in 2015 the leasing agreement ceased on the basis that the Council would be responsible for the maintenance of the building.** In response to questions on matters such as whether the Trust could have a lease with the Council and the purpose of the Trust, Ms Moir undertook to ascertain the exact powers of the Trust in terms of its relationship with the Council and would report back at the next meeting. With regard to the unlet spaces, it was noted that following the success of the Tweed Valley Tourism BID they would occupy the space previously let to VisitScotland. The Estates Manager would confirm what charge would be made. The validity of the existing sub-lease with the CAB would also be checked in light of the Chief Financial Officer's comments about the head lease having ceased to operate.

### To note from meetings:

- Appear reactive and not proactive in all aspects of management.
- Seemingly only acting following reports in Peeblesshire to the electrical question.
- One finance report over entire period
- No reference to electrical inspections, PAT testing or electrical safety (Landlord has a duty of care for the structural wiring, poor wiring is a fire and electrical shock risk. A landlord should ensure tenants operate safely)
- Statement that electrical system will be upgraded and made safe. No evidence in the minutes to suggest that this has ever been done.

## 6.0 NOTES:

- NOTE 1:** The minute of the meeting of 20 November 2019 confirms that the Burgh Hall electrical system is "as serious as indicated in the newspaper article". The High School fire was one week later, 28 November and shortly afterwards the hall was used as overspill by the school for some weeks. Questions arising:
- a) What inspections have taken place historically relating to essential maintenance and Health & Safety?
  - b) What repairs have been done to rectify the defects in the electrical system?
  - c) When were the defects rectified?
  - d) Was a full HSE inspection carried out prior to the Burgh Hall being used for overspill?

## Considerations on Management of Chambers Institute Trust

**NOTE2:** The minute of the meeting of 20 November 2019 identifies that SBC has not paid rent on the areas of the trust that are occupied by SBC services. This ostensibly because of their being responsible for the maintenance of the building. However, at least some of the responsibility for maintenance is the responsibility of Live borders and not SBC and little maintenance is evidenced at the time of writing to have been carried out by either party. There is a question resulting from this as to:

- a) What calculation exists to identify the value of the rental waived?
- b) Exactly who is responsible for what maintenance?
- c) What sums over the period since 2015 would have been remitted to the Chambers Institute under a standard rental agreement?
- d) What has been spent on maintenance over the same period?