



## Special Cabinet

**Date** Tuesday 29 August 2023  
**Time** 9.30 am  
**Venue** Council Chamber, County Hall, Durham

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### Business

#### Part A

#### Items which are open to the public and press

1. Declarations of interest
2. Amendments to the Charitable Scheme Brandon Colliery Miners' Welfare Hall - Joint Report of the Corporate Director of Regeneration, Economy and Growth and the Corporate Director of Neighbourhoods and Climate Change (Pages 3 - 16)
3. Such other business as, in the opinion of the Chair of the meeting, is of sufficient urgency to warrant consideration.
4. Any resolution relating to the exclusion of the public during the discussion of items containing exempt information.

#### Part B

#### Items during which it is considered the meeting will not be open to the public (consideration of exempt or confidential information)

5. Such other business as, in the opinion of the Chair of the meeting, is of sufficient urgency to warrant consideration.

**Helen Lynch**

Head of Legal and Democratic Services

County Hall  
Durham  
18 August 2023

To: **The Members of the Cabinet**  
Councillors A Hopgood and R Bell (Leader and Deputy Leader of the Council), Councillors T Henderson, C Hood, S McDonnell, J Rowlandson, E Scott, A Shield, J Shuttleworth and M Wilkes

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**Contact: Michael Turnbull**

**Tel: 03000 269714**

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**Cabinet**

**29 August 2023**

**Amendments to the Charitable Scheme  
Brandon Colliery Miners' Welfare Hall**

**Ordinary Decision**



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**Joint report of Amy Harhoff, Corporate Director of Regeneration and Economic Growth, and Alan Patrickson, Corporate Director of Neighbourhoods and Climate Change**

**Electoral division(s) affected:**

Brandon

**Purpose of the Report**

- 1 To seek approval from Cabinet, acting in its role as Trustee of the Charitable Scheme known as Brandon Colliery Miners' Welfare Hall, to approach the Charity Commission to alter the scheme.
- 2 To seek approval to delegate authority to the Corporate Director of Regeneration and Economic Growth to complete the actions needed to alter the scheme.

**Executive summary**

- 3 Brandon Village Hall (Asset UPRN: 50521S01) which is shown edged red at Appendix 2 is held under a Charitable Scheme (Charity No. 520743) dated 7<sup>th</sup> July 1998 where the County Council is Trustee.
- 4 Under the Scheme, the building is held by the County Council, though it does not have beneficial ownership. This means that the County Council cannot sell or dispose of the hall in the way it can with other County Council assets, so can never make any money from the proceeds of a sale, and, if sold, must abide with what is outlined in the trust document.
- 5 Brandon Community Association (BCA) ['the Association'] currently operate the village hall without a written agreement and as such they do not have security of tenure that will allow them to attract future capital investment for the maintenance of the hall.

- 6 Although the Association has engaged with the County Council in the Asset Transfer process and have developed a sustainable business plan, the County Council is currently unable to grant a lease for the premises as the current Charitable Scheme does not allow this.
- 7 The restrictive nature of the historic Charitable Schemes means that they are now not fit for purpose, particularly as they are not recognised by national and local funding bodies. There are two potential routes available to bring in any significant investment for buildings held under these Schemes:
  - a) For DCC to develop a lease to give security of tenure to their operating organisations.
  - b) For DCC to relinquish its trust status and to transfer this status to any community organisation thereby providing security of tenure to the community organisation.
- 8 In 2016, a report recommended that Cabinet, acting in their capacity as Trustees, apply to the Charity Commission to explore the possibility of the Association taking on the trustee role as a new Community Interest Organisation and subject to no objections from CISWO, for the Council to remove itself as Trustee and transfer the trusteeship to the new CIO. That recommendation was never implemented, largely on the back of objections from CISWO.
- 9 This report seeks the consent of Cabinet, acting in their capacity as Trustees, to revisit the recommendation from the 2016 report with a view to reaching a mutually agreeable conclusion for all parties which will provide BCA with the necessary legal interest in Brandon Village Hall.

## **Recommendation**

- 10 It is recommended that Cabinet, as Trustees of the Brandon Colliery Miners' Welfare Hall Scheme, agree:
  - a) That delegated authority be given to the Corporate Director of Regeneration and Economic Growth, Corporate Director of Resources and relevant Portfolio Holder(s) to take such steps as may be necessary to ensure that Brandon Community Association receive a legal interest in Brandon Village Hall.

## **Current Position**

- 11 Brandon Village Hall (Asset UPRN: 50521S01) which is shown edged red at Appendix 2 is held under a Charitable Scheme (Charity No. 520743) where the County Council is Trustee. Under the Scheme, the building is held by the County Council, though it does not have beneficial ownership. This means that the County Council cannot sell or dispose of the hall in the way it can with other County Council assets, so can never make any money from the proceeds of a sale, and, if sold, must abide with what is outlined in the trust document.
- 12 Brandon Community Association (BCA), a charitable incorporated organisation made up of local volunteers currently manage the Hall on a day to day basis but do so without any written agreement with the Council being in place. As part of this occupation a range of a community activities take place in the hall on a daily basis.
- 13 As Trustee, the County Council does not have any obligations or responsibility to use its own (County Council) funds to pay for the maintenance or repairs of buildings held under these schemes. Under the terms of the Charitable Scheme for the hall, the income earned from activities and services operated from the building must be used to pay for any utilities, maintenance and running costs.
- 14 This method of using income from activities to pay for maintenance of a building, is the same for all leased community buildings held by the County Council, however the difference with Brandon Village Hall is that BCA currently do not have a legal interest in the building. As a result of this restriction, BCA cannot apply for funding for any capital investment in the building or its facilities.
- 15 As part of the due diligence process, officers from the Partnerships Team have been working with BCA to ensure they are sustainable, which includes supporting the development of a business plan which provides clear direction for the future of the building and supporting them in promoting the hall amongst members of the community.

## **Proposed way forward**

- 16 The proposed preferred way forward for this building is for the Council to divest itself of trusteeship of this scheme. A report was brought to Cabinet as Trustee in October 2016, which set out a recommendation to apply to the Charity Commission to explore the possibility of the Association taking on the trustee role as a new Community Interest Organisation and for the Council to remove itself as Trustee and transfer the trusteeship to the new CIO.

- 17 Prior to making an application to the Charity Commission, the Council began discussions with the Coal Industry Social Welfare Organisation (CISWO) regarding its plans. CISWO were historically the Trustee and accordingly, when the Charity Commission are considering the Council's application, they will have regard to any representations made by them.
- 18 Following the approach made to CISWO it is understood that they did not favour the Association taking on the trustee role as a new Community Interest Organisation. CISWO's preference was for the council to remain as trustees. It is not clear why this view was expressed but was likely due to the Council's strong covenant strength with the certainty this brought for the future of the building.
- 19 The views of CISWO were not challenged at the time due to the complexities of the legal arrangements with CISWO with this and other similar buildings. It was determined that due to these complexities a separate strategic project was needed to provide focussed and dedicated resource from both internal staff and to bring in specialist legal advice. Due to other priorities this has not yet been progressed.
- 20 Notwithstanding the views of CISWO in 2016, the transfer of trusteeship remains the preferred option as it allows a direct relationship between the CIO, CISWO and the Charity Commission. In the seven years since the approach was made to CISWO, BCA have a proven track record, they have developed a solid business plan and have clearly demonstrated that they are operating with the best interests of the community and are committed to the continued operation and success of Brandon Village Hall. They have the capability to provide a sustainable future for the building in the interest of the community without the oversight of the Council.
- 21 If it does not prove possible to reach an agreement on this as the way forward, then offering a long fully repairing and insuring lease to BCA remains a viable option.
- 22 A lease will still provide the BCA with a legal interest in the building allowing them to attract external funding for the maintenance and improvement of the building held in trust and will also be in line with the council's strategy of sustainability.
- 23 If this option was taken forward, then the Council would become the Landlord of BCA.
- 24 As trustee, the council has a fiduciary duty to ensure that the best interests of the building, held in trust, are maintained. Either of the approaches outlined above remain in line with the council's approach Community Building's

Strategy, which has been to support a network of sustainable community buildings, this approach aligns to that.

- 25 This is a complex process because it is reliant on third party consent from the Charity Commission and the engagement of CISWO. The timelines for this process are not in DCC's control and it is difficult therefore to provide an assessment of when matters can be brought to a conclusion. However regular engagement will be maintained with all parties during the process.
- 26 Should Cabinet decide to agree to the recommendation, the Corporate Director will:
- a) Consult with both CISWO and BCA on the proposal to have the scheme transferred to BCA;
  - b) Having had regard to the consultation responses, the Corporate Director will either apply to the Charity Commission for the scheme to be transferred, or apply to the Commission for a variation to the scheme to allow the Council to grant a lease to BCA;
  - c) If the proposal is to grant a lease, council officers shall negotiate the terms of such lease with BCA.

### **Background papers**

- Amendments to the CISWO Trust Arrangements – report to Cabinet 19 October 2016

### **Other useful documents**

- Appendix 2: Plan(s)
- Appendix 3: Charitable Scheme

### **Author(s)**

Clare Marshall, Interim Strategic Manager, Partnerships and Consultation

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## **Appendix 1: Implications**

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### **Legal Implications**

Cabinet act as Trustee where there are Charitable Schemes and therefore are required to make the decision as to whether to apply for an amendment to the Charitable Scheme. Subject to that application, Cabinet can delegate authority to the Head of Corporate Property and Land to negotiate and enter into a lease with the Community Association.

To alter the Charitable Scheme and to develop a lease between the County Council and the Community Association.

### **Finance**

If the building is leased to BCA rather than the scheme transferred to them the proposed rent will be £1/One Peppercorn per annum exclusive as per the Community Buildings programme approach on a full repairing and insurance basis.

### **Consultation**

Local Councillors Paul Taylor and Jonathan Elmer have been involved in meetings with the Community Association including a recent meeting with the Leader of the Council, Councillor Amanda Hopgood and Councillor Mark Wilkes as Portfolio Holder for Neighbourhoods and Climate Change. Councillor James Rowlandson as Portfolio Holder for Resources, Investments and Assets consulted.

### **Equality and Diversity / Public Sector Equality Duty**

N/A

### **Climate Change**

The funds held for the property will improve the environmental sustainability of the premises.

### **Human Rights**

N/A

### **Crime and Disorder**

Current services from the hall have had a positive effect on the reduction of anti-social behaviour working in partnership with the local police.

### **Staffing**

N/A



## **Accommodation**

N/A

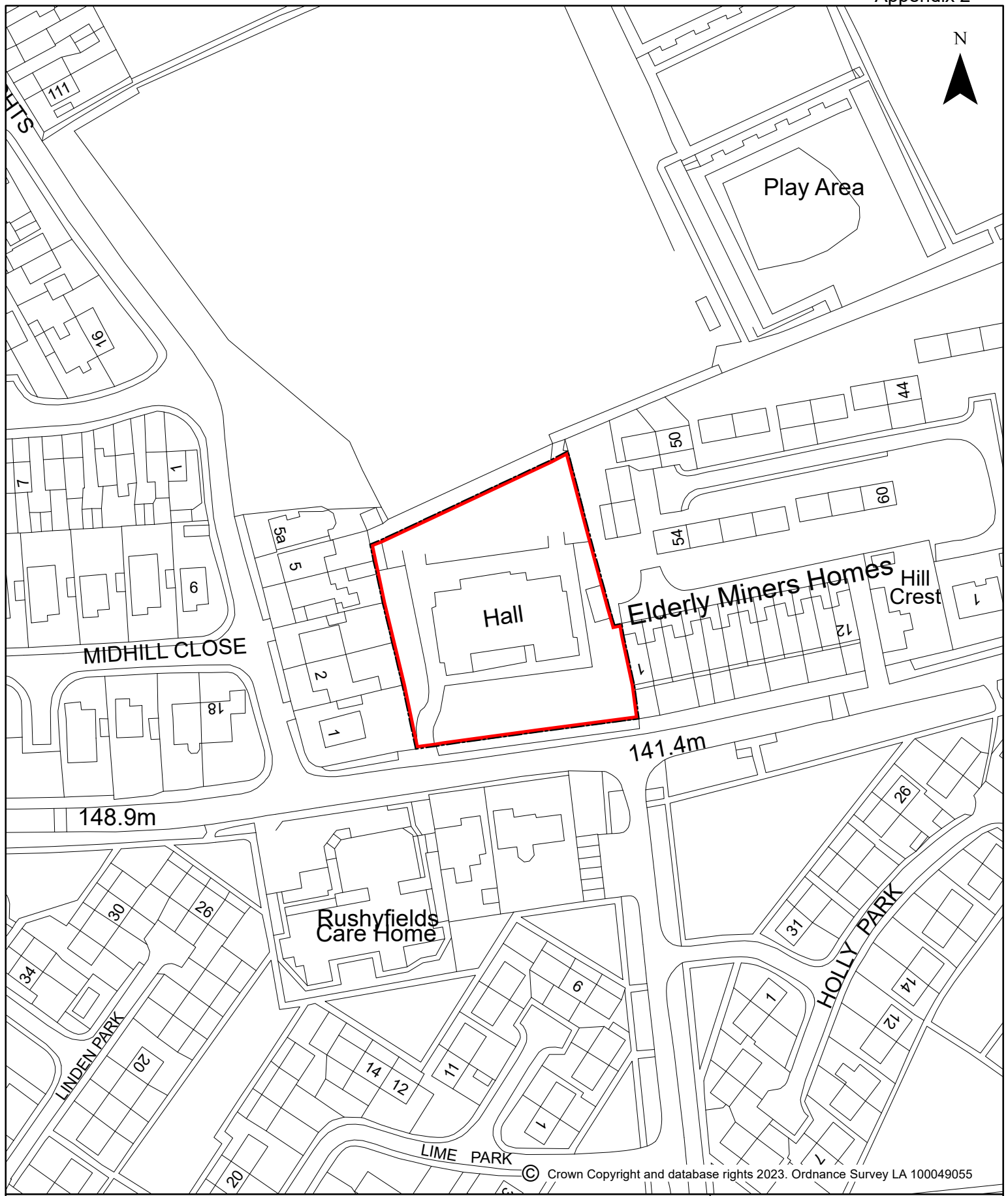
## **Risk**

A resolution to the current arrangements are needed to allow BCA to access funding to support them. Without this there is a risk that the venue will not be financially viable and place the sustainability of the venue at risk.

## **Procurement**

N/A

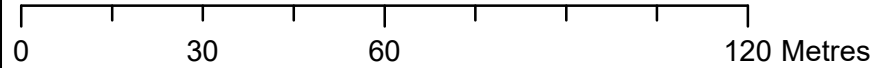
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Brandon Colliery Miner's Welfare Hall  
 Plan Ref: ARC-23-334. Paper Size: A4. Scale: 1:1,250  
 Total Area Coloured Red: 3438.93 m<sup>2</sup>, 0.85 Acres or thereabouts.  
 Based Upon O.S Map: NZ2340. Date: 03/07/2023.

UPRN : 50521S01



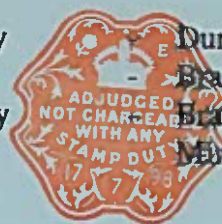
AMY HARHOFF  
 REGENERATION, ECONOMY AND  
 GROWTH  
 DURHAM COUNTY COUNCIL  
 TEL 03000 260 000  
 CORPORATE PROPERTY AND LAND

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Sealed 7th July 1998

N 233(S)  
98

County Durham  
Place Brandon  
Charity Brandon Colliery  
Miners' Welfare Hall



CS(Liv)  
520,743

Adjudged not chargeable  
with stamp duty

Scheme including appointment of  
Trustees and vesting.

### CHARITY COMMISSION

In the matter of the Charity known as Brandon Colliery Miners' Welfare Hall, at Brandon, in the County of Durham, comprised in conveyances dated the 3rd January 1959; and  
In the matter of the Charities Act 1993.

THE CHARITY COMMISSIONERS FOR ENGLAND AND WALES HEREBY ORDER that the following Scheme be approved and established as the Scheme for the regulation of the above-mentioned Charity:-

### S C H E M E

1. Administration of Charity. (1) The above-mentioned Charity and the property thereof shall be administered and managed in conformity with the provisions of this Scheme by the Trustee hereinafter appointed.

(2) The name of the Charity shall be the Brandon Community Centre or such other name as the Trustee from time to time by resolution may decide with the prior approval of the Charity Commissioners.

2. Discharge of Official Custodian. The Official Custodian for Charities is whom the land specified in the schedule hereto and belonging to the Charity is vested is hereby discharged from his trusteeship as respects the said land.

3. Trustees and vesting. (1) Durham City Council shall be the Trustee of the Charity.

(2) The land with the building thereon specified in the said schedule is hereby vested in the said council for all the estate and interest therein belonging to or held in trust for the Charity.

4. Object of Charity. (1) the object of the Charity shall be the provision and maintenance of a community centre for the use of the inhabitants of Brandon and the neighbourhood thereof (hereinafter called "the area of benefit") without distinction of political, religious or other opinions, including use for meetings, lectures and classes, and for other forms of recreation and leisure-time occupation, with the object of improving the conditions of life for the said inhabitants.

(2) The said land and building shall be held upon trust for the purposes of a community centre as aforesaid.

5. Rules. Within the limits prescribed by this Scheme the Trustee may from time to time make and alter rules for the conduct of their business and for the summoning and conduct of their business and for the summoning and conduct of their meetings and in particular with reference to -

- (1) the terms and conditions upon which the said building may be used for the purposes specified in this Scheme by persons or bodies other than the Trustee and the sum (if any) to be paid for such use;
- (2) the appointment of an auditor, treasurer and such other unpaid officers as the Trustee may consider necessary and the fixing of their respective terms of office;
- (3) the engagement and dismissal of such paid officers and servants as the Trustee may consider necessary.

#### SALE

6. Sale. If the said land and buildings is no longer required for use for the object of the Charity then the Trustee may sell the same or any part thereof and may do and execute all acts and assurances for carrying any such sale into effect subject nevertheless to complying with the restrictions on disposition imposed by Section 36 of the Charities Act 1993, unless the sale is excepted from such restrictions under Section 36(9)(b) or (c) or Section 36(10) of that Act.

7. Proceeds of sale. The Trustee shall pay over the clear proceeds of any such sale to the Coal Industry Social Welfare Organisation or its nominees for application for charitable purposes within the objects of the said organisation.

8. Letting. (1) Subject to the provisions of this clause, the Trustee may let any part of the land belonging to the Charity which is not required for use for the object of the Charity.

(2) The letting must not unduly interfere with the use of the remaining land for the object of the Charity.

(3) The Trustee must comply with the restrictions on disposal imposed by Section 36 of the Charities Act 1993, unless the disposal is excepted from these restrictions by Section 36(9)(b) or (c) or Section 36(10) of that Act.



9. Insurance. The Trustee shall insure the said building and the furniture and effects therein to the full value thereof against fire and other usual risks and shall suitably insure against risks arising out of the ownership of property and the employment of persons.

#### APPLICATION OF INCOME

10. Receipts and expenditure. (1) The income of the Charity including all payments for the use of the said building and all donations for the benefit thereof shall be paid into a trust account at such bank as the Trustee shall from time to time prescribe.

(2) The moneys standing to the credit of the said account shall be applied as the Trustee shall decide in insuring as aforesaid, in maintaining and repairing the said building and the furniture and effects therein and in paying all rent (if any), rates, taxes, salaries of paid officers and servants and other outgoings and in otherwise furthering the object of the Charity.

11. Surplus cash. Sums of cash at any time belonging to the Charity and not needed for immediate working purposes shall be invested in trust for the Charity.

12. Donations. The Trustee may accept any donations or property for the general purposes of the Charity and they may also accept donations or property for any special objects connected with the Charity not inconsistent with the provisions of this Scheme.

13. Power of Amendment. (1) Subject to the provisions of this clause, the Trustee may amend the provisions of this Scheme.

(2) Any amendment must be made under the authority of a resolution passed at a special meeting of the Trustee.

(3) The Trustee must not make any amendment which would:

- (a) vary this clause;
- (b) vary clauses 4, 6, 7 and 8 of this Scheme (objects clause and clauses conferring powers of letting and sale);
- (c) confer a power to dissolve the Charity.

(4) The Trustee must obtain the prior written approval of the Commissioners to any amendment which would vary the Trustees' power of investment.

(5) The Trustee must:

- (i) promptly send to the Commissioners a copy of any amendment made under this clause; and
- (ii) keep a copy of any such amendment with this Scheme.

14. Questions under Scheme. Any question as to the construction of this Scheme or as to the regularity or the validity of any acts done or about to be done under this Scheme shall be determined by the Commissioners upon such application made to them for the purpose as they think sufficient.

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SCHEDULE

The following adjoining land in the County of Durham:-

1. Land containing 940 square yards or thereabouts situate at Brandon Colliery subject to certain exceptions and reservations being the land comprised in a conveyance made the 3rd January 1959 between John Dowdle and three others of the one part and David Hopkins and three others of the other part and recorded in the books of the Charity Commissioners on the 27th February 1959 pursuant to Section 29(4) of the Settled Land Act 1925.
2. Land containing 0.684 acres or thereabouts having a frontage to Brandon Lane being part of the land numbered 739 on the Ordnance Survey map (1939 edition) subject to certain exceptions and reservations being the land comprised in a conveyance made the 3rd January 1959 between George Kershaw Ridley and another of the one part and David Hopkins and three others of the other part and recorded as aforesaid on the 27th February 1959 and a deed of surrender made the 3rd January 1959 between The National Coal Board of the one part and the said David Hopkins and three others of the other part and recorded as aforesaid on the 27th February 1959.

Sealed by Order of the Commissioners this 7th day of June 1998.



*R. Daves*

**ASSISTANT COMMISSIONER**