



## AGENDA

### RECORD OF OFFICER DECISION MEETING

Date: Tuesday, 31 July 2018

Time: 10.00 am

Venue: Cabinet Room - Swale House, East Street, Sittingbourne, Kent, ME10 3HT

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1.	Faversham Recreation Ground Heritage Lottery Fund - Acceptance of Standard Terms of Grant	Pages 1 - 10
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Decision taken by the Head of Commissioning and Customer Contact.

**Issued on Thursday, 2 August 2018**

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Chief Executive, Swale Borough Council,  
Swale House, East Street, Sittingbourne, Kent, ME10 3HT

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## RECORD OF OFFICER DECISION

<p>This form must be completed by or on behalf of the relevant Officer immediately after any decision has been made. Please send to the Proper Officer for publication in accordance with the Council's Constitution.</p>	
<b>NAME OF OFFICER MAKING DECISION (INCLUDING JOB TITLE) AND THE DECISION BEING MADE</b>	<p>Martyn Cassell – Head of Commissioning &amp; Customer Contact                  Patricia Narebour – Head of Legal Partnership                  In consultation with Cllr David Simmons, the Cabinet Member for Environmental and Rural Affairs.</p> <p>Authority to agree the terms and conditions of the second round (delivery) Heritage Lottery Fund award for Faversham Recreation Ground Improvement Project.</p>
<b>TITLE OF REPORT</b>	Faversham Recreation Ground Heritage Lottery Fund – Acceptance of Standard Terms of Grant
<b>DATE THE DECISION WAS TAKEN</b>	31 July 2018
<b>SUMMARY OF REASONS FOR DECISION</b>	<p>Swale Borough Council (SBC) successfully bid for funding from the Heritage Lottery Fund (HLF) to carry out Improvements for the restoration and enhancement of Faversham Recreation Ground to the value of £1.602m of a total project value of £1.9m. This was notified in an award letter dated 10 July 2018.</p> <p>As part of the award process, the Council is required to formally accept the HLF Standard Terms of Grant. These have been considered by the respective Officers with delegated authority and it is agreed that these are acceptable to the Council.</p> <p>HLF Standard Terms of Grant annex 1</p>
<b>BACKGROUND</b>	<p>A report was considered by the Cabinet on 14 June 2017 which agreed to the delegations.</p> <p><a href="http://services.swale.gov.uk/meetings/ieListDocuments.aspx?CId=129&amp;MId=1848&amp;Ver=4">http://services.swale.gov.uk/meetings/ieListDocuments.aspx?CId=129&amp;MId=1848&amp;Ver=4</a></p>
<b>DETAILS OF ALTERNATIVE OPTIONS CONSIDERED AND REJECTED</b>	<ul style="list-style-type: none"> <li>• <i>To not continue with the project: this is not recommended given the commitment and funding available to the Council and need for improvement identified both by members of the community and owners of the Recreation Ground, Faversham United Municipal Charities.</i></li> </ul>
<b>DETAILS OF ANY CONSULTATION UNDERTAKEN</b>	<p>Project consultation has included:</p> <ul style="list-style-type: none"> <li>• Stakeholder Consultation Event.</li> <li>• Two Public Consultation Events.</li> <li>• Schools Consultation.</li> <li>• On-line Survey by 10 respondents.</li> <li>• Consultation with Faversham Municipal Charities.</li> </ul>

	<ul style="list-style-type: none"> <li>• Planning Permission sought for required elements of project.</li> </ul>
<b>DETAILS OF ANY CONFLICTS OF INTERESTS</b>	Cllr David Simmons, Cabinet Member for the Environment and Rural Affairs declares an interest as Chairman of Faversham Municipal Charities who are the owners of Faversham Recreation Ground
<b>CONTACT FOR ENQUIRIES/FURTHER INFORMATION</b>	Graeme Tuff – Greenspaces Manager <a href="mailto:graemetuff@swale.gov.uk">graemetuff@swale.gov.uk</a> 01795 417127
A copy of this Notice will be published on the Council’s website ( <a href="http://www.swale.gov.uk">http://www.swale.gov.uk</a> )	

*Please complete this form electronically and forward to the Corporate Services PA (on behalf of the Proper Officer).*

## Parks for People

Grants from £100,000 to £5,000,000

### Standard terms of grant

#### Definitions:

**'we', 'us', 'our'** – the Trustees of the National Heritage Memorial Fund (who administer the Heritage Lottery Fund).

**'you', 'your'** – the organisation(s) awarded the Grant as set out in the Grant Notification Letter.

**Application** – any documents or information you send us to support your request for a grant, or submit to us from your Development Work.

**Approved Purposes** – the purposes for which you applied for a grant and how you intend to carry out those purposes as set out in your Application, but taking account of any changes we and you agree in writing, or that are required by us at any time before we release any of the Grant. These purposes include you getting and using partnership funding as set out in your Application.

**Approved Usage** – how you said you would use the Property in your Application (allowing for any changes that we may have agreed up to the release of any of the Grant).

**Development Work** – the work involved in progressing your project to your second-round Application, including the production of designs, plans, and other documents.

**Digital Outputs** – all material with heritage content created in or copied into a digital format by or for you in connection with the Project.

**Evaluation Report** – the report you must send us before we pay the last 10% of the Grant telling the story of your Project, its achievements and lessons learned.

**First-Round Pass Letter** - our letter confirming that you can proceed to the second-round Application. This will identify any Development Work you need to do before you send in a second-round Application.

**Grant** – the amount set out in the Grant Notification Letter.

**Grant Expiry Date** – the date by which you must achieve the Approved Purposes as set out in the Grant Notification Letter and by which you will make the final drawdown of the Grant.

**Grant Notification Letter** – our letter confirming our Grant award to you after a second-round Application.

**How to acknowledge your grant** – the booklet that explains how we require you to acknowledge the Grant and which gives details of the acknowledgement materials we will provide.

**Photography of HLF-funded projects: A guide for grantees** – guidance on how to submit images to us, how we use these, and how to source consents.

**Project** – the project referred to in your Application that consists of, or includes, the Approved Purposes.

**Project Completion Date** – the date that we make our final payment and are satisfied that the Approved Purposes of the Grant have been met.

**Programme Application guidance** – the document setting out the scope of the programme and how to apply.

**Property** – any property that you buy, create, receive or restore, or property that is otherwise funded by the Grant including Digital properties, intellectual property rights and any documents that you produce or order as part of the Approved Purposes.

**Receiving a grant** – the guidance we publish to explain how we will pay the Grant, monitor your Project and agree changes to the Grant.

## **Achieving the Approved Purposes**

1. You must use the Grant only for the Approved Purposes, unless you get our approval beforehand.
2. You must not start work to achieve the Approved Purposes without our approval beforehand.
3. You must achieve the Approved Purposes and make your final Grant drawdown by the Grant Expiry Date.
4. You must use the Property, or allow it to be used, only for the Approved Usage.
5. As well as these terms of grant, you must follow the conditions (if any) set out in the First-Round Pass Letter and Grant Notification Letter, address any issues we identify in the course of monitoring, and meet the requirements set out in the Programme Application guidance, *Receiving a grant*, the *How to acknowledge your grant* guidance, and *Photography of HLF-funded projects: A guide for grantees*.
6. You must carry out the Approved Purposes in line with current best practice in your area of heritage and to a standard that is appropriate to a project of importance to the national heritage. You must follow all legislation and regulations that apply.

## **Project development**

7. The First-Round Pass Letter may offer to provide you with funding for Development Work. If it does these terms of grant will also apply to that funding but with the following changes:
  - a. when they refer to “Approved Purposes” this means your Development Work.
  - b. when they refer to “Approved Usage” this means you using the product of the Development work to further the Project.
  - c. when they refer to a “Grant Expiry Date” this is the date set out in the First-Round Pass Letter by which you must complete the Development Work.
  - d. when they refer to “Grant” this means the amount of funding for the Development Work set out in the First-Round Pass Letter.
  - e. when paragraphs 5, 24 and 38 refer to the “Grant Notification Letter” this means the First-Round Pass Letter.
  - f. paragraphs 9a, 9c, 16 17 and 18 will not apply.

## **Project monitoring**

8. You must give us any financial or other information and records we may need from time to time on the Grant, the Property, the Approved Purposes (and achieving them) and the Approved Usage.
9. You must allow us (or anyone we authorise) to have any access we may need to:
  - a. inspect the Property and any work to it;
  - b. monitor the conduct and progress of the Approved Purposes; and
  - c. monitor the Approved Usage.

In these cases we will give you notice. You will report on the progress of your Project at times agreed with us.

10. We may ask you to provide proof that you have taken action to reduce the risk of fraud. We may ask you to let us examine your accounting processes and procedures to check the effectiveness of anti-fraud measures.
11. We will monitor the progress of your Project and will carry out checks at and after the end of the Project to confirm that it is delivering the outcomes expected. If we (or anyone we authorise) make any recommendations on the matters set out in paragraph 9, you must take those recommendations into account when meeting your obligations to us.
12. You must take appropriate steps to monitor your own success in achieving the Approved Purposes and in using the Property for the Approved Usage. On completing the Project, you must submit your Evaluation Report before we will release the final Grant payment.

### **Procurement**

13. Before you start any phase of the work needed to achieve the Approved Purposes, you must put in place all necessary contracts with appropriately qualified contractors and professional advisers to allow you to finish that phase of the work. Building contracts must contain a clause which allows you to retain part of the contractors' fees on practical completion of the works. If you want any contracts to be on different terms, you must get our approval beforehand.
14. If the Approved Purposes involve buying goods or services or getting work done, you must carry out a tendering exercise in line with the requirements set out in the Programme Application guidance.

### **Property**

15. You must continue to own the Property and keep exclusive control over what happens to it. Other than as permitted under paragraph 24, you must not sell, let or otherwise part with it or any interest in it, or give any rights over it to anyone else (or take any steps to do so) without our approval beforehand. If we give you our approval, it may depend on any of the following requirements.
  - a. that you pay us a share of the net proceeds of selling or letting the Property within one month of parting with the assets or other goods;
  - b. that you sell or let the Property at its full market value;
  - c. any other conditions we think fit.

We may claim from you an amount in the same proportion to the sale prices as the Grant is to the original cost of the Approved Purposes, or the portion of the Grant spent on the assets or goods concerned, whichever is the greater. You must pay whatever we decide is appropriate in the circumstances. We may decide not to ask you to repay the Grant (or any part of it as we think fit) for any reason but it is for us to decide that.

16.
  - a. Following completion of the capital works needed to achieve the Approved Purposes, you must maintain the Property in good repair and condition.



- b. You must apply for a Green Flag Award for the Property in the year immediately following completion of the capital works needed to achieve the Approved Purposes.

After that you must take all steps necessary to retain the Green Flag Award for at least the next six years.

- c. When requested, you must send us written confirmation of the Green Flag Award relating to the Property for the then current year.
17. You must insure the Property to the standard set out in (and use any proceeds of the insurance in line with) the Programme Application guidance.
  18. You must keep any objects or fixtures that form part of the Property in a physically secure and appropriate environment.
  19. You must tell us, in writing, within five working days about any significant loss or damage to the Property.
  20. You must arrange for the general public to have appropriate access to the Property. You must make sure that no person is unreasonably denied access to the Property.

### **Publicity and acknowledgement**

21. We may make the purpose and amount of the Grant public in whatever way we think fit.
22. Once we have announced the Grant, you must acknowledge the Grant publicly in line with the requirements set out in our *How to acknowledge your grant* booklet. You must meet any other acknowledgement or publicity requirements we may tell you about from time to time. Before we make any public announcement of the Grant, you must not issue any public statement, press release or other publicity in relation to the Grant or which refers to us, other than in a form we have approved beforehand.
23. You must also provide us with digital images in electronic format of your Project – or hard-copy photographs or transparencies. You give us the right to use those you provide us with at any time, including putting them into a digital format and altering them. You must get all the permissions required for you and us to make use of them before you use them or send them to us. See *Photography of HLF-funded projects: A guide for grantees* for more information.

### **Digital outputs**

24. You agree to:
  - a. hereby grant to us an irrevocable, perpetual and royalty-free licence to use, copy, keep and disseminate the Digital Outputs as we see fit and to grant sub-licences of the same kind;
  - b. obtain and maintain in force all authorisations of any kind required for you to use, copy, keep and disseminate the Digital Outputs and to grant such licence to us;
  - c. contract to the effect that any creation by you or on your behalf of material which forms Digital Outputs is undertaken on terms that either the copyright in the digital material is assigned to you or that the copyright owner may not commercially exploit it;
  - d. ensure that the Digital Outputs are kept up-to-date, function as intended and do not become obsolescent before the fifth anniversary of the Project Completion Date;

- e. comply with these terms of grant in relation to the digital files that make up the Digital Outputs for the period agreed in the Grant Notification Letter. For the avoidance of doubt, this includes ensuring that the digital files are held securely and are available on request to the public and to us;
- f. grant licences in respect of the Digital Outputs under the Creative Commons model licence Attribution Non-Commercial but not on other terms without our prior written consent;
- g. not otherwise exploit the Digital Outputs commercially without our prior written consent.

### **Grant payment and repayment**

25. We will, up to the Grant Expiry Date, pay you the Grant or any instalment of it in line with these terms of grant and the procedures explained in *Receiving a grant* as long as:
- a. the National Lottery continues to operate under the National Lottery etc. Act 1993 (as amended from time to time), and enough funds are made available to us under the Act; and
  - b. we are satisfied that you are achieving (and will continue to achieve) or have achieved the Approved Purposes in line with these terms of grant and that you are spending the Grant in proportion to any other funds you receive from other sources for the Approved Purposes.
26. You acknowledge that the Grant is the total amount of funds we will provide and will not be increased as the result of you overspending or for any other reason.
27. You must repay to us immediately any Grant that we have paid you (and we will stop any future instalments of the Grant) if:
- a. you no longer operate, or you are declared bankrupt or placed into receivership or liquidation;
  - b. you have, in our opinion, given us fraudulent, incorrect or misleading information;
  - c. you have acted negligently in any significant matter or fraudulently in connection with the Approved Purposes or the Approved Usage;
  - d. any competent authority directs the repayment of the Grant;
  - e. there is a significant change in your status;
  - f. you knowingly withhold information that is relevant to the content of your Application; or
  - g. you fail to keep to any of these terms of grant.
28. If you achieve the Approved Purposes without spending the full amount of the Grant, you must pay back the part of the Grant you have not spent. We will treat you as spending the Grant in proportion to other funds you were due to receive from other sources for the Approved Purposes.
29. If you sell or otherwise part with all or part of the Property without our permission under paragraph 15, or you receive money in some other way as a result of you not following these terms of grant, you may have to pay us immediately a share of the net proceeds if that share is more than the amount we would otherwise be entitled to under paragraph 27.

## Local Authority Grantees

### This paragraph is only applicable if you are a local authority

30.

- a. Within 28 days of the date of the Grant Notification Letter, you must send us a certified copy (signed to confirm it is a true copy) of the document recording your decision (or the decision of the relevant properly constituted committee, executive or authorised officer) authorising you to accept these terms of grant, together with a statement containing the information set out in paragraph b below.
- b. The statement must include the following information.
  - The power (statutory or otherwise) you have and which you have used to accept these terms of grant.
  - An extract of that part of your policy framework under which you have accepted these terms of grant
  - The executive arrangements under which your decision to accept these terms of grant was made.
  - The considerations that you took into account in using the powers and the procedure under which any consultation took place and the decision was made.
  - The authority under which the Declaration forming part of the Application has been signed on your behalf.
- c. Without affecting paragraph 32 you must (if we think it is necessary) confirm your decision in whatever way we direct. Within seven days of confirming, you must send us evidence of this.
- d. We may withdraw the Grant (after considering the matters referred to in paragraphs 30a and 30b) if we are not satisfied that these terms of grant are valid and binding on you.
- e. Within 21 days of sending us the document and information needed under paragraph 30a (or evidence of the confirmation of the decision in line with paragraph 30c), we may ask that you get the written opinion of a barrister, in a form satisfactory to us, asking for his or her opinion on whether:
  - the powers you are relying on in accepting these terms of grant do allow you to enter into these arrangements
  - you have followed correctly all procedural requirements in using those powers and have acted in a reasonable and proper way; and
  - you have taken account of only, and all, relevant considerations in using those powers.

You must send us the barrister's opinion and make sure that it is addressed to us as well as to you. You must also make sure that the barrister confirms we may rely on his or her opinion for our own purposes.
- f. You acknowledge that neither any documents or information that you send us, nor the fact that we may then have paid you part of the Grant, will affect our right to rely on the promise in paragraph g below.
- g. You promise that:

- you have the authority to accept these terms of grant;
- in using that authority you have acted in good faith, in a reasonable and proper way, for a proper purpose, without breaking any procedural requirement and in considering only (and all) relevant considerations; and
- your decision to accept these terms of grant is one that any reasonable local authority (applying the laws that are relevant to it) could have reached.

### **General terms**

31. You may not, and must not claim to, transfer the Grant or any rights under these terms of grant.
32. You must take all steps and sign and date any documents as may be necessary to carry out your obligations under these terms of grant and to give us the rights granted to us under them.
33. If there is more than one of you, any liability under these terms of grant will apply to you all together and separately.
34. We may rely on any of our rights under these terms of grant at any time, even if we do not always choose to do so immediately. If we decide not to rely on one right, we may still rely on any of our other rights under these terms of grant.
35. If you need our approval for anything, you must write to us to ask for it. You may only rely on any approval needed under these terms of grant if we (or anyone we authorise) give it to you in writing.
36. Any notice, request or other document we or you send to each other under these terms of grant can be delivered or sent by any effective means.
37. Any documents you need to send us under these terms of grant are for our own purposes only. If we approve or accept any documents, this does not mean that we have approved or accepted them for any other purpose.
38. These terms of grant will last for the period set out in the Grant Notification Letter.
39. These terms of grant cannot be enforced by anybody other than you or us.