

Commentary on Proposed new Articles for The Sussex Archaeological Society

1) **The derivation of the document - where we got it from and what alternatives we considered.**

This document is derived from the Charity Commission's ("CC") model articles for charitable companies. The Governance Audit and Risk Committee considered amending its existing Memorandum and Articles ("The 1965 Articles" were amended in 1994) but the changes required to deal with new legislation and changed best practice since that version are so extensive that it was decided it was far simpler to start again. We have lightly amended the CC model and I list the main areas of customisation in sections 3 & 4 below.

The Objects clause in the 1965 model has over 30 paragraphs and this has been completely rewritten to include just three objects in line with those recently endorsed by Council, with the remaining items incorporated in a new section describing the "Powers" of the charity, which is the standard modern approach. We expect it to be acceptable to the CC. The Appendix to this document sets in detail, clause by clause, how the old objects map to the new Objects and Powers, and the changes we have made to meet CC priorities such as the emphasis on public benefit.

2) **What is the process for adopting new Articles?**

Before they become effective, the new Articles have to be adopted by Council, which took place again in September, the new Articles then approved by Special Resolution (75% majority) at a General Meeting and finally before adoption, approved by the CC. The new Objects clause itself cannot come into force until both approvals have been obtained and a cc04 form filed at Companies House. The CC usually focus on the Objects Clause, and given that it is much simplified, based on their own model articles and is consistent with the 1965 Articles, we hope that they will approve without amendment. Note that the existing Memorandum is incorporated within the new Articles and will therefore be entirely replaced.

3) **The changes we have made to the CC model Articles:**

There have been some wording changes such as inserting the word Council rather than Board or Trustees throughout the document, but the more major changes are noted below (N.B. All article references are to the draft new Articles):

- Article 6 & 7– Application of Property and Income – certain clauses in the CC model relating to trustee expenses and financial interests have been shortened as being over-detailed. The clause on benefits to trustees derived from rent (6.2a) has been rephrased. Note that under article 6.3 (b) it will be permitted to pay trustees as lecturers at conferences provided that (as required S185 of the Charities Act 2011) the remuneration is at the rate paid to others, is approved in advance by Council, is according to a contract in writing with the Trustee and is declared on the Trustee's annual conflict of interest declaration.
- Articles 13-15 on General Meetings have been adapted, but the clause in the 1965 Articles requiring an Annual General meeting every 15 months which is no longer required by law has been retained. The quorum of 25 has been retained in Article 17.
- Article 22 – Proxy rights for voting at a General Meeting have been included as required by law.
- Article 24 – The Chairman has been given a casting vote at General Meetings.
- Articles 27 and 28 – The role of the President, Patrons and Vice-Presidents has been included. These clauses are newly written.
- Article 32.2 is also new requiring the Council to elect a Chair after each AGM but this does not prevent a Chair being appointed at other times if the office is vacant.

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- Articles 32,33, 36 and 37 concerning retirements of directors by rotation have been deleted and replaced by new articles 35-38 limiting the Council to 12 elected members (as recommended by the CC Governance Code) and permitting as at present 3 elected terms of 3 years, but then not permitting re-election. A maximum of two co-optees but may serve for two years only before or during, but not after, nine years as an elected trustee. This procedure has been brought in to balance the need to keep experience whilst also not crowding out the new blood that we will inevitably need. Imposing a time limit on long-standing Trustees is seen as an important element of good governance by the Governance Code.
- Article 42(2) sets a numerical rather than a proportional quorum for trustee meetings of 5 directors. We felt that this would avoid Council being controlled by a small number of people (that might include co-opted Trustees) in the event of a decline in the number of Trustees. Should the number of Trustees fall below 5, a General Meeting of Members would need to be called to consider and resolve the situation.
- Article 45 defines the circumstances in which electronic voting is valid on Council. We have opted to allow majority decisions for such votes (to reflect the decision already agreed by Members at the 2019 AGM). This is permitted, but the CC version requires unanimity. As Council is relatively large, we have concluded that this should be acceptable.
- Article 57 on indemnity for trustees has been simplified on the assumption that the Society will necessarily have trustee indemnity insurance.

The changes to the Objects in the 1965 Memorandum are detailed in the Appendix. Everything has been re-worded in modern English, and many of the old Objects are no longer necessary because they are now permitted by legislation. A major substantive change apart from the objects themselves is the condition for taking property sales to a General meeting (Article 5.6).

4) Why do we need to do this? And why now?

The major impetus for the change came when it was recognised that we had to make changes to our Articles to allow electronic voting at Council meetings (on which the 1965 Articles were silent), and to permit proxy voting at General Meetings, which the 1965 Articles prohibits but the law now mandates. The Large Charity Governance code (published in 2015) now strongly suggests we should reduce the number of trustees from 14 to 12. And of course, for many years the complexity of our Objects clauses has been controversial and unhelpful. A motion adopting very similar new objects was passed by Council as long ago as 2 November 2018.

The Governance Audit and Risk Committee feels that the exceedingly difficult situation created by the current Covid-19 crisis has made it all the more important that a robust legal and Governance framework is adopted. That is why this major change is suggested now.

5) What is the consequence of not voting for the document at this time.

Postponing the decision on this topic will probably delay any change far into the future, which will become much more uncertain. That may not be disastrous but is likely to make the work of the Chair and CEO even harder.

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6) When the document should be reviewed and how it meshes with the rest of the Governance structure

The new Articles form the backbone of a new Governance structure represented by the whole suite of documents recently adopted by Council. This is the keystone in the arch of modernisation, and without it many of the other changes we have sought to adopt will not be effective.

Peter Vos

Chair of Governance Audit and Risk Committee

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Appendix – Comparison of old Objects Clause with new Objects (Article 4) and Powers (Article 5)

1965 Memorandum		New Articles – Objects and Powers (Some clauses are repeated as there is no direct equivalence to the 1965 Memorandum)	Comments and Explanation
<p>The object for which the Society is established is to promote, encourage and foster the study of archaeology and history in all their branches (with special reference to the Counties of East and West Sussex) and in furtherance of such object:-</p> <p>(a) To promote such study by all lawful means and in particular:-</p> <p style="padding-left: 40px;">(i) By acquiring by any lawful means and either as absolute owner or as Trustee or custodian, building and places of historical or archaeological interest and any other real or personal property.</p> <p style="padding-left: 40px;">(ii) By locating securing or endeavouring to secure the preservation of all objects, records, buildings, earthworks, open spaces and places of historical or archaeological interest or value or of natural beauty or public resort and all other antiquities and by providing so far as may be lawful or expedient for ready access to them by the public and where appropriate by providing for their exhibition in museums.</p>		<p>The charity's objects ('Objects') are specifically restricted to the following, in Article 4:</p> <p>For the public benefit:</p> <ol style="list-style-type: none"> 1. to promote, encourage, foster and enable all people from local and wider communities to participate in, engage, study and research the archaeology and history of East and West Sussex; and/or 2. For the benefit of all people, to manage and maintain, purchase, lease or accept as a gift or legacy and make accessible museums and historic sites, monuments, collections and properties in the counties of East and West Sussex; and/or. 3. For the benefit of all people, to provide and advance suitable educational and life-long opportunities for children and adults in archaeology and history, both at the Society's properties and elsewhere. 	<p>These objects are derived from those adopted by Council in 2018 (See point 4 above). The Charity Commission has made explicit that Objects clauses should be as short and clear as possible. We have reworded into modern English and adopted language which should to give flexibility to the Society in the future. We have emphasized in each Object the charitable public benefit nature of our endeavour to meet Charity Commission priorities.</p>

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(iii) By forming and carrying on a permanent or temporary safe depository for Deeds, Court Rolls, Printed Books, Historical Papers, Registers, Maps, Manuscripts, Prints and other Pictures, Photographs and other similar objects and records generally.		Art. 5(3) to secure the preservation of objects, records, buildings, earthworks, antiquities and places of historical or archaeological interest including those of natural beauty or general public interest. To provide as may be lawful or practical for access to them by the public or where appropriate by providing for their exhibition in a museum;	The new sub-clause 3 in the Powers is much wider than the property related clauses in the 1965 version.
(iv) By co-operation in any lawful way with any other association or body having similar charitable objects.		Art. 5(10) to establish or support any charitable trusts, associations or institutions formed for any of the charitable purposes included in the Objects; Art. 5(11) to acquire, merge with or to enter into any partnership or joint venture arrangement with any other charity;	
(v) By entering into friendly relations with other societies whether within or without the United Kingdom, so far as their objects are similar to the objects of this Society.		Art. 5(9) to co-operate with other charities, voluntary bodies and statutory authorities and to exchange information and advice with them;	
(vi) By rendering assistance to archaeologists, historians and others whether within or without the United Kingdom in connection with archaeological or historical research.		Art. 5(9) As above	

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(b) To purchase, take on lease, hire, take by devise, legacy or gift, or otherwise acquire any real or personal property and any rights and privileges necessary or convenient for the purposes of the Society.		<p>Art. 5(2) to buy, take on lease or in exchange, hire or otherwise acquire any property and to maintain and equip it for use;</p> <p>Art. 5(3) to secure the preservation of objects, records, buildings, earthworks, antiquities and places of historical or archaeological interest including those of natural beauty or general public interest. To provide as may be lawful or practical for access to them by the public or where appropriate by providing for their exhibition in museums;</p>	
(c) To accept, take and hold, whether as bare trustee or otherwise, any property (whether real or personal) which may from time to time be conveyed, transferred, assigned or otherwise vested in the Society upon any charitable trust or trusts, in any manner calculated to promote the object of the Society; provided that the Society shall not be bound in any way to accept any property or any trusts unless it deem it expedient so to do, and may lawfully do so.		Art. 5(3) as above	
(d) To perform any duty, function or act (whether ministerial or otherwise) in compliance with and to carry into effect any directions or instructions relating to any property held by the Society on charitable trusts, which may be given to the Society by any duly constituted body entitled to give such directions or instruction.		Art. 5(3) as above	

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(e) To administer, manage and conduct as trustee or agent, in accordance with any trusts (expressed or implied) affecting the same, any trust property vested in the Society held on charitable trusts, and the exercise of any rights of ownership or any rights or powers (discretionary or otherwise) relating to the administration, management, and conduct of or in any manner to any such trust property.		Art. 5(3) as above	
(f) To maintain and manage buildings, open spaces and places of historical or archaeological interest or of natural beauty or public resort, as places of resort for recreation, education and instruction with power to make charges for the inspection of and admission to any such buildings or places.		Art. 5(5) to erect, maintain, manage and alter any buildings upon any land held by or belonging to the charity;	
(g) To erect, maintain, and alter any buildings upon any land held by or belonging to the Society for any estate or interest and to provide the same and any buildings or rooms in the occupation of the Society with all proper and necessary fixtures, furniture, apparatus, appliances, conveniences and accommodation.		Art. 5(5) as above	
(h) In connection with any land vested in the Society in any capacity to excavate for, open out, and lay bare remains if any of an historical or antiquarian interest and to do all things necessary to preserve the same.		Art. 5(5) as above	No direct power to excavate required as permission is now governed by Historic England (formerly English Heritage.)
(i) To take such steps as may from time to time be deemed expedient for the purpose of procuring contributions to the funds of the Society in the shape of, and to accept donations, subscriptions, or otherwise and to apply the same either generally for the charitable purposes of the Society or for any specific charitable purpose.		Art. 5(1) to raise funds. In doing so, the charity must not undertake any taxable permanent trading activity and must comply with any relevant statutory regulations;	

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<p>(j) To borrow or raise or secure the payment or repayment of money at interest or otherwise on the issue of or upon bonds, debentures, mortgages, charges, promissory notes or other securities of the Society either secured or not secured on all any of the property of the Society and to repay any money so borrowed or received.</p>		<p>Art. 5(7) to borrow money and to charge the whole or any part of the property belonging to the charity as security for repayment of the money borrowed or as security for a grant or the discharge of an obligation. The charity must comply as appropriate with sections 124 – 126 of the Charities Act 2011 if it wishes to mortgage land;</p>	
<p>(k) To sell, improve, manage, develop, lease, exchange, dispose of, turn to account, or otherwise deal with all or any part of the property and rights for the time being of the Society, provided that (subject to any trusts declared in any transfer to the Society) no sale, exchange or absolute disposition of any real property shall be made without the consent of a General Meeting of the Society.</p>		<p>Art. 5(6) to sell, lease or otherwise dispose of all or any part of the property belonging to the charity. In exercising this power, the charity must comply as appropriate with sections 117 and 122 of the Charities Act 2011. Authorisation from an ordinary resolution at a General meeting is required when the value of the property for disposal exceeds £750,000 or the property is a designated heritage asset (<i>defined in a footnote</i>). The valuation of the property for disposal should be that provided by a qualified surveyor as required Statutory Instrument 1992 No. 2980 - The Charities (Qualified Surveyors' Reports) Regulations 1992.</p>	<p>The Committee had lengthy discussion on when property disposals should go to a General Meeting for approval. Bearing in mind that disposals can be small parts of an existing policy, we did not want every minor disposal to be considered in this way, but felt it necessary to retain members' consent for any disposal which was large or of heritage importance.</p>
<p>(l) To invest the moneys of the Society not immediately required for its purpose in or upon such investments, securities, or property as may be thought fit, subject nevertheless to such conditions (if any) and such consents (if any) as may for the time being be imposed or required by law and subject also as hereinafter provided.</p>		<p>Art. 5(14) to: (a) deposit or invest funds; (b) employ a professional fund-manager; and (c) arrange for the investments or other property of the charity to be held in the name of a nominee; in the same manner and subject to the same conditions as the trustees of a trust are permitted to do by the Trustee Act 2000;</p>	

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(m) In furtherance of the charitable objects of the Society (but not otherwise) to print, publish or sell or distribute gratis any magazines, journals, newspapers, periodicals, books, photographs, indices, pedigrees, lists and papers.		Art. 5(8) to print, publish, sell, distribute, or make available electronically any publications, magazines, journals, books, photographs or other materials;	
(n) To enter and create covenants, agreements, undertakings and trusts as to the preservation of any property of historical, architectural or archaeological interest or of natural beauty or public resort vested in or in the custody of the Society and likewise to be a party to and to accept and when necessary by all lawful means to enforce any covenants, agreements, undertakings and trusts in regard to property of a like nature not belonging to the Society which may be entered into with the Society by the owners thereof or any other person or persons in any way interested therein.			This is no longer required as an Object or Power as there is now much more extensive protection under law for archaeology, listed buildings and protected monuments.
(o) To endeavour to secure by any lawful means the preservation of antiquities likely to be of service or interest, whether the same be in public or private possession, and particularly by urging upon the possessors or custodians of any antiquities the necessity or expediency of preserving them and taking reasonable steps to safeguard them from risk including risk from fire, injury and/or theft, and to allow free and ready access to them.		Art.5(4) to secure the preservation of antiquities likely to be of current or future interest, whether they are in public or private possession. This power can be exercised by taking them into the charity's care or by persuading or empowering the custodians to take action to preserve them and safeguard them from risk;	
(p) To act in concert or make arrangements with any Corporation, County Council, District Council, Parish Council or other Local Authority or with any residents in any neighbourhood or any Committee representative thereof, with reference to any of the objects aforesaid.			Planning law has changed extensively, and this is no longer required as an Object or Power.

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<p>(q) For any of the purposes aforesaid to employ servants, keepers, attendants and agents at such remuneration as the Society may think fit.</p>		<p>Art. 5(13) to employ and remunerate such staff as are necessary for carrying out the work of the charity. The charity may employ or remunerate a trustee only to the extent it is permitted to do so by article 7 and provided it complies with the conditions in that article;</p>	
<p>(r) To do all such other lawful things as are incident or conducive to the attainment of the above objects, provided that the objects of the Society shall not extend to the regulation of relations between workers and employers or organisations of workers and organisations of employers. Provided also that in case the Society shall take or hold any property subject to the jurisdiction of the Charity Commissioners for England and Wales, the Society shall not sell, mortgage, charge or lease the same without such authority, approval or consent as may be required by law, and as regards any such property the Council of Management for the time being of the Society (hereinafter called “the Council”) shall be chargeable for such property as may come into their hands and shall be answerable and accountable for their own acts, receipts, neglects, and defaults, and for the due administration of any property in the same manner and to the same extent as they would as the Council had been if no incorporation had been effected, and the incorporation of the Society shall not diminish or impair any control or authority exercisable by the Chancery Division or the Charity Commissioners over the Council, but they shall, as regards any such property, be subject jointly and separately to the same control or authority as if the Society were not incorporated. In case the Society shall take or hold any property which may be subject to any trusts, the Society shall only deal with the same in such manner as may be allowed by law having regard to those trusts.</p>		<p>Art. 5(12) to set aside income as a reserve against future expenditure but only in accordance with a written policy about reserves;</p> <p>Art. 5(15) to provide indemnity insurance for the trustees in accordance with, and subject to the conditions in, section 189 of the Charities Act 2011;</p> <p>Art. 5(16) to pay out of the funds of the charity the costs of forming and registering the charity both as a company and as a charity.</p>	

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Peter Vos and Stuart Chatfield