



Malvern Hills Trust

REPORT FOLLOWING CONSULTATION UNDERTAKEN FROM 22nd MAY TO 22nd JULY 2024 ON PROPOSALS TO UPDATE THE MALVERN HILLS TRUST'S GOVERNANCE ARRANGEMENTS

FOREWORD

This report provides a summary of the consultation process and the Trust's responses to the consultation outcomes.

The Trust thanks everyone who took the time and trouble to respond to the consultation. As well as looking at the responses to the set questions, trustees have read over 100 A4 pages of text comments, some setting out thoughtful arguments and passionately held views. All responses have been considered most carefully.

Please note: reference to "the Hills" in this report includes all of the land under the Trust's jurisdiction, including the commons, woodland, fields, verges and any other land that the Trust manages. A glossary of terms used in the consultation is attached.

John Michael, Chair

1. INTRODUCTION

1.1 Malvern Hills Trust (MHT), the working name of Malvern Hills Conservators, was established in 1884 by an Act of Parliament. Some of MHT's administrative arrangements are set out in an Act of Parliament dating back to 1847¹, and since 1884 there have been four additional Malvern Hills Acts². The Trust adopted the working name "Malvern Hills Trust" in 2017. In the event that the Bill becomes law the statutory name will also change, but this does not mean that we have forgotten the important heritage of the Conservators.

1.2 MHT is a registered charity (no 515804). As such it must comply with charity law and the Charity Commission's regulatory and governance requirements and guidance.

1.3 Changes to the Acts have been made on a piecemeal basis and MHT now needs to modernise, rationalise and consolidate its governing legislation. Furthermore, since its inception, the environment in which MHT operates has changed in ways which could not

¹ Commissioners Clauses Act 1847.

² The Acts may be viewed on the MHT website.

have been anticipated when the first Act was passed, for example by the invention of the motor vehicle, changes in farming practices and population growth.

1.4 MHT's core duties as set out in the Acts are to preserve the natural aspect of the Hills and to keep its land unenclosed and unbuilt on as an open space for the enjoyment of the public. Over the last 140 years the organisation has sought to ensure that this nationally important landscape has been safeguarded for everyone.

1.5 It was asserted in a number of consultation responses that MHT is a public body. Given MHT's unusual constitution, it is understandable that there is some confusion about this, but the Trust has always made it clear that it is a charity (governed by statute). MHT has taken legal advice to ensure trustees understand its charitable status and obligations. There is no single definition of "public body" for all purposes. Lord Attlee asked a Parliamentary question in September 2024 about this topic and the response from Baroness Hayman, Parliamentary Under-Secretary at Defra, was that the Trust was not considered to be a public body³.

2. THE CONSULTATION PROCESS

2.1 For a long time, MHT has considered that it has needed to amend its constitution, in order to reflect modern good practice in relation to charity governance and to have the tools to manage the landscape under its care more effectively in the 21st century.

2.2 MHT has been working on its proposals for over 10 years. In order to help inform its decisions, MHT conducted a public consultation in 2019. Following consideration of the feedback received, the proposals were modified, and a further consultation was run in summer 2024. 56 Degree Insight, a market research consultancy that specialises in measuring consumer views on leisure, tourism and outdoor recreation, was appointed to assist MHT with this exercise.

2.3 The consultation ran from 22 May to 22 July 2024. A questionnaire was made available online, with the option of completing a paper version if preferred. Strenuous efforts were made to promote the consultation via advertisements, posters, print and social media and briefings to parish and other councils. Recognising that the residents of Malvern and the parishes of Guarlford, West Malvern, Malvern Wells, Mathon and Colwall provide a key source of income for MHT through a levy, 14,745 flyers were delivered to households in these areas. MHT also wrote to over 60 councils, charities, government bodies and adjoining landowners inviting them to take part in the consultation and ran five "drop in" sessions around the local area, which were attended by over 300 individuals. Over a hundred businesses and places with a high "footfall" in Malvern and surrounding areas were also visited by staff and trustees.

2.4 In addition to answering a series of questions, respondents had the opportunity to share their views via free text boxes. MHT is confident that the consultation gave everyone an opportunity to participate.

³ Written question submitted by Earl Attlee: <https://members.parliament.uk/member/3425/writtenquestions>
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- 2.5 There were 483 validated⁴ responses to the online consultation from individuals and 13 from those who classified themselves as organisations (including councils, local groups and national and local charities). Eleven organisations also responded to MHT directly.
- 2.6 There was an opportunity for respondents to provide information about themselves. Most said that they spent time enjoying nature or scenery (87 %) and took part in leisure or recreation pursuits (85 %) on the Hills. At least 70 % of respondents were over 55, whilst only 6 % came from the age group 16-34.
- 2.7 During the consultation there were high numbers of visits to MHT web pages relating to governance changes and the consultation. At the end of the consultation, there was a significant reduction in visits. Some peaks, however, occurred in August coinciding with postings on local Facebook pages not generated by the Trust.
- 2.8 It was noted that before and during the consultation period, a significant effort was made to elevate public concern about MHT's proposals. One example was a website stating *"The Malvern Hills Trust Private Bill will mean loss of our green spaces, more building and loss of control by local people. Preserving Nature's Beauty for future generations will no longer be paramount"*.
- 2.9 This website also set out how to respond to the consultation questionnaire in four minutes, in order to submit an entirely negative response. 56 Degree Insight confirmed that 12 % of the validated responses conformed to this template, although they were still included in the validated responses. It was evident from the text comments that some respondents had been influenced by material circulated that MHT considers was incorrect.

3. CONSULTATION OUTCOMES

3.1 MHT's decision making process

The consultation closed on 22 July 2024 and responses were circulated to trustees between 29 July and 5 August 2024. These included at that stage nine organisations that responded direct to MHT. There were around 1,300 text comments to consider, which were divided for the purposes of MHT's deliberations, into:

- comments that went to the heart of some of the proposals, meriting reconsideration of those areas by MHT;
- comments that needed to be referred to the Parliamentary Agent⁵ to consider whether the drafting of those clauses that were set out in the consultation document could be amended to take account of concerns;

⁴ For details see 56 Degree Insight main report at <https://www.malvern hills.org.uk/governance-changes/consultation/>

⁵ Definition of Parliamentary Agent: <https://www.parliament.uk/site-information/glossary/parliamentary-agent/>

- areas where MHT considered that there was some degree of misunderstanding about the proposals or possible outcomes of the changes where MHT needed to make further efforts to improve public understanding;
- comments that were not relevant to the consultation, but which should be considered in the way MHT continues to manage the Hills.

3.2 At its board meeting on 8th August 2024, a working group of trustees was set up, tasked with reviewing all results and comments. They were asked to focus on areas that had been identified by the board as having attracted the most significant comments and where MHT might need to revisit its proposals. The working group considered the background to the proposals and sought additional professional input where needed.

3.3 The working group prepared reports setting out their recommendations to the board on: MHT's objects; the appointment of board members; board administration; powers to borrow; land management; leases and licences; and some miscellaneous matters. These were discussed in board workshops on 4th, 10th and 20th September and 3rd October 2024, giving trustees the opportunity to consider the recommendations and request any additional information in advance of board meetings on 19th September and 10th October 2024. The resolutions that were made at the board meetings are set out in the schedule in Section 4 of this report.

3.4 Questionnaire responses

Some of the factors that needed to be borne in mind when considering the responses were:

- respondents were not a representative cross-section of the population or of users of the Hills;
- the age profile of those who responded was not typical of users of the Hills. In the latest Malvern Hills and Commons Visitor Survey, the largest age group recorded was 45-54 years (20 %), followed by those aged 35-44 and 55-64 years, both 17 %. Very few visitors to the area were in the oldest age category of 75+ (1 %). Our survey attracted a higher response rate from 75+ yrs (15 %) and fewer from younger categories (eg 35 – 44, 6 %, 45 – 54, 10 %).
- there was an active campaign to encourage negative responses and no equivalent campaign to encourage other types of responses.

3.5 Use of comments

The text comments were all considered carefully, particularly those:

- that highlighted problems/weaknesses in MHT's proposals that had not been foreseen;
- with ideas about where the proposals might be improved, eg with new ideas or better drafting;
- with suggestions that were supported by evidence and reasoned justification or that came from acknowledged specialist or expert bodies.

3.6 Thank you

The trustees are very grateful for the input from everyone who took part in the

consultation and have considered all the responses. Whilst noting and respecting all opinions expressed, the trustees are required to act solely and exclusively in the best interests of fulfilling MHT's charitable objectives.

4. BOARD RESOLUTIONS

4.1 At its meetings on 19th September and 10th October 2024, the MHT board made the following resolutions:

Objects

To make no changes to the proposed objects.

it was noted that there will be a separate clause in the Bill imposing a duty on MHT to keep its land unenclosed and unbuilt on except as otherwise provided in the Bill.

The Parliamentary Agent will be asked to consider some of the concerns expressed about subsection (4) which says, "In subsection (1), "unbuilt on" means unbuilt on except for any buildings that existed at the date on which this Act was passed and any buildings that replace them". Otherwise it was agreed to retain the draft clause included in the consultation document.

Appointment of Board Members

To make no change to:

- (a) the proposal to have a maximum of 12 trustees.
- (b) the proposal to have a balance of elected and selected trustees (50:50).
- (c) the proposed area from which people can stand in trust elections.
- (d) the proposal that the levy paying area and the voting area for the Trust should be defined by the same criteria, namely the parishes of Malvern, West Malvern, Malvern Wells, Guarlford, Mathon and Colwall.
- (e) the proposal to combine the current wards and parishes into a single electoral area, and to include a further provision in the Bill allocating trustees to local areas in a liaison capacity.

And

- (f) To adopt the proposal for a Nominations Committee as outlined in the paper.

Land Management

- (a) To amend the clause relating to securing the grazed commons to take account of Officer concerns that the most appropriate site for fencing/other means of securing the commons would not always be on the exact perimeter of the common.

All fencing by MHT to secure the Commons will be subject to obtaining Secretary of State consent under the provisions of s38 Commons Act 2006.

- (b) To include a requirement that there should be a minimum break of six months following fencing to regulate grazing before the same area could be fenced again, but with a *de minimis* exception to enable up to 1ha to be fenced again for the control of unwanted vegetation.

- (c) To remove the provision permitting fencing for animal health reasons.

Leases and licences

- (a) To make no change to the proposals in relation to leases and licences of land.
(b) To make no change to the proposals in relation to licensing activities on Trust land.
(c) To make no change to the proposal to change the consultee in relation to licences for overground services.

The Parliamentary Agent to be asked whether some of the concerns about the open ended nature of the provisions might be addressed in the drafting.

Administrative provisions

- (a) To retain the provision to hold hybrid or online meetings.

Meetings held online must be streamed to the public.

- (b) To retain the current proposal to open all board meetings to the public (except where exempt business is to be discussed) but only to open committee meetings to the public where a decision binding on the Trust is being made under delegated authority.

- (c) To retain the provision to permit the Trust to set up a supporters organisation but to adopt the term “supporters” instead of “members”.

This organisation would not be part of the governance structure of MHT.

- (d) To have a restricted general power.

- (e) To change the statutory name to Malvern Hills Trust.

- (f) To retain, using modern language, the following powers to borrow:

- the power to borrow in furtherance of the charity’s objects;

- the power to secure borrowing against land and revenues, but without any power of sale or to cut and sell timber in relation to its current purpose⁶ land;
- powers to secure borrowings against ancillary⁷ land without third party consent, and any such loan agreement can include a power of sale.

The Parliamentary Agent will seek to establish the view of the relevant Government department and the Charity Commission on any requirement for third party consent to secure borrowings against existing purpose land or new purpose land.

Miscellaneous

- (a) To retain the provision to permit the issue of Fixed Penalty Notices.
- (b) To add the power to allow the Trust to build on ancillary land for the purposes set out in the consultation document.

5. PUBLIC COMMENTS AND MHT RESPONSE

- 5.1 Details about the main points raised by members of the public during the consultation are set out in Sections 6 to 10. This report should be read in conjunction with the report by 56 Degree Insight at <https://www.malvern hills.org.uk/governance-changes/consultation/>
- 5.2 It should be noted that respondents were not obliged to answer every question in the questionnaire, since it was anticipated that some respondents with specific areas of interest would not have a view on every topic.
- 5.3 The purpose of the consultation was to collect views to help MHT decide on the best way to amend its governing legislation.

6. OBJECTS

6.1 The Malvern Hills Trust's purposes

The draft clause consulted on, (which has been accepted by the Charity Commission), is:

- (1) *The objects of the Trust are, for the benefit of the public—*
 - (a) *to protect, conserve and maintain the landscape, natural appearance, habitats, flora and fauna, geology and archaeology of the Malvern Hills;*
 - and*

⁶ Land under MHT's jurisdiction to which the public normally have access and which is held to fulfil its charitable objectives. See attached glossary.

⁷ Used for operational purposes (eg offices, storage, workshops, in-by land) which is not public access land. See attached glossary.

- (b) *to keep the Malvern Hills unbuilt on as open space for recreation and enjoyment of the public.*
- (2) *If in exercising its functions, it appears to the Trust that there is a conflict between the object specified in subsection (1)(a) and the object specified in subsection (1)(b), and the conflict cannot be resolved by the Trust, the Trust must attach greater weight to the object specified in subsection (1)(a).*
- (3) *Subsection (2) is subject to consideration by the Trust of the health and safety of persons.*
- (4) *In subsection (1), “unbuilt on” means unbuilt on except for any buildings that existed at the date on which this Act was passed and any buildings that replace them.*

6.2 Questionnaire response

- (a) 54 % of **individuals** agreed the proposed clause accurately summed up the Trust’s existing duties and was appropriate for the future, and 39 % disagreed. (**Organisations:** 46 % and 39 %).
- (b) 58 % of **individuals** agreed that in the case of an unresolved conflict between clauses (1)(a) and (1)(b), conservation should be given greater weight, and 37 % disagreed. (**Organisations:** 54 % agreed with this proposition)

6.3 Public comments The main points raised by members of the public in the free text box were:

(a) “Unenclosed”

Concerns were expressed about the absence of the word “unenclosed” in subsection 1(b) and related concerns about public access and losing the open landscape of the Commons. Although there were limited comments specifically about the omission of the word “unenclosed”, there were a number of comments reflecting the importance of maintaining the open landscape and expressing concern about whether access would in some way be restricted.

MHT Response

The open aspect of the Malvern Hills and Commons is one of the outstanding features of the landscape and it is clear that this is treasured by many of those who took part in the consultation.

All trustees wish to see the open nature of the landscape maintained and access to it fully available to all wishing to exercise their rights under the Acts.

The Bill will contain a separate clause, restating section 3 of Malvern Hills Act 1930, in relation to the duty to keep the Malvern Hills unenclosed.

The inclusion of this clause will provide reassurance to those who expressed concerns that this important element of the Trust’s duties might be lost.

(b) **“Enhance”**

There were a small number of comments expressing the view that the word “enhance” should be included in subsection 1(a), since it was felt this would better allow for changes in land management in the future, eg in response to climate change.

MHT Response

The advice that the Trust has received is that the current wording - “*protect, conserve and maintain*” - would enable the Trust to respond to external factors such as climate change, and that an obligation (rather than a power) to “enhance” would potentially impose an additional statutory burden on the Trust, which it might not have the resources to fulfil. The Trust has an obligation to manage the SSSI land effectively and appropriately to conserve the special features of the site.

The board does not propose to include the term “enhance” in the objects.

(a) **“Biodiversity” vs “flora and fauna”**

There were a small number of comments expressing the view that the term “biodiversity” should be used instead of “flora and fauna” in subsection 1(a).

MHT Response

Although the term “biodiversity” can be seen as broadly equivalent to “flora and fauna”, MHT is unaware of any definition in English law. For MHT’s purposes, the term “flora and fauna” is felt to be more appropriate and is likely to be better understood.

The board therefore proposes to retain the term “flora and fauna”.

(b) **“Natural Aspect”**

Comments reflected a degree of ambiguity in relation to both “natural” and “aspect” in subsection 1(a). Some supported the proposal to use “natural appearance” on the basis that it incorporated the various elements that were intrinsic to the appearance of the Hills. Others put forward their own views on what the term meant. One commented that it should include the outlook from the Hills whilst others pointed out that in fact the landscape of the Malvern Hills and Commons has been shaped by humans and is in reality a managed landscape.

MHT Response

The Bill provides an opportunity to clarify the term “natural aspect”. There is no legal definition, and the Trust has had to make its own interpretation of the term in the past in order to manage the landscape under its jurisdiction.

The Trust's lawyers noted the case law relating to "natural aspect", which first appeared in the 1924 Act. The expression was quite common in Victorian and Edwardian legislation but except for a reference back to Victorian legislation in The City of London Corporation (Open Spaces) Act 2018, the term has not been used in recent legislation.

The Trust noted the value that some respondents placed on the term "natural aspect" but felt that "landscape [and] natural appearance" together with the other words, captured what was meant by "natural aspect" 100 years ago and was more readily understandable.

The board therefore proposes to retain the term "natural appearance" in the proposed Bill.

NB The outlook *from* the Hills is outside the Trust's remit and resources. The Malvern Hills National Landscape (MHNL) Partnership and local planning authority helps to protect the setting of the MHNL.

(c) **"Unbuilt on"**

There were some suggestions that the reference point in subsection (4) of the proposed objects should be when the Bill was lodged rather than enacted, and that there should be some further definition of "replacement."

MHT Response

The Trust has very limited powers to build on purpose land and these existing powers will remain in use until the Bill is enacted.

The Trust has asked its Parliamentary Agent to consider being more specific about the meaning of "replace."

(d) **Subsection 2 of the draft objects– in the event of a conflict between the objects** Some felt there was no need for this subsection and that such conflicts should be dealt with on a case-by-case basis using existing powers.

MHT Response

The inclusion of subsection (2) does not mean that conservation will always take priority. One of the key roles of MHT's Conservation Department is to manage the land to avoid conflict between the Trust's various duties under the Acts. This subsection will come into play on the rare occasions when that proves impossible. The Trust already makes this judgement when using the powers in s15(3) of the 1995 Act to fence off certain areas for the purposes specified.

The underlying principle is that the attributes of the Malvern Hills and Commons that people come to enjoy should not be downgraded but be available for future generations to experience.

The board therefore proposes to retain subsection 2.

7. APPOINTMENT OF BOARD MEMBERS

7.1 Questionnaire response The proposals respondents were asked to consider were:

(a) There should be a maximum of 12 Trustees.

52 % of **individuals** agreed. (**Organisations** 62 %).

(b) Half the board should be elected and half selected for their skills and experience.

47 % of **individuals** agreed, 48 % disagreed. (**Organisations**: 53 % agreed).

(c) The electoral area should be defined by parish, to link the voting area to the levy-paying area.

53 % of **individuals** agreed. (**Organisations**: 46 % agreed).

(d) Given that elected Trustees are required to serve the best interest of the charity rather than 'represent' an area, combining the electoral areas is the most practical way to overcome the current disparities in the size of the electorates.

52 % of **individuals** agreed. (**Organisations**: 38 % agreed and 23 % disagreed).

(e) People who live in or within one mile of the boundary of a parish where the Trust has land under its authority should be able to stand for election to the board, subject to them being nominated by people living within the electoral area.

54 % of **individuals** agreed. (**Organisations**: 46 % agreed and 23 % disagreed).

(f) When an interim vacancy is created by the departure of an elected Trustee, that vacancy could be temporarily filled.

In **individual responses** 45 % agreed, 46 % disagreed.

(g) Respondents were also asked to rank their preferences for the appointment of Trustees. The most popular option (62 %) was for an independent panel to be appointed to run a Trustee recruitment and selection process.

7.2 To summarise, a majority of individual and organisational responses were in favour of a maximum of 12 trustees, defining the voter areas by parish, using one single voting area and extending the area from which people can stand for election. Most organisations agreed that half the board should be elected, and half selected, and that interim vacancies should be temporarily filled by the Nomination Panel. A 1 % majority of individual respondents disagreed with these two proposals.

7.3 Background The current process for appointing MHT trustees does not align with charity board best practice, in particular the Charity Commission recommendation that trustees should be appointed for their relevant background, skills and knowledge. The Trust is also different from most charities because of its power to raise a levy, which means that special considerations must apply.

7.4 At present there are 11 elected trustees, who make up 38 % of the board. In reality, few of these seats tend to be contested in MHT elections (three in 2023 and four in 2019). This means that most levy payers do not have the chance to vote and anyone who wants to stand has a good chance of getting onto the board, which is not a

satisfactory method of appointment. Low turnout also means that a trustee can be elected by a very small number of the total electorate.

7.5 It is also the case that a number of the bodies who are eligible to appoint trustees do not do so. Furthermore, none has a legal obligation to consider whether the trustees they appoint have any skills or experience relevant to the running of a charity caring for a nationally important landscape with an income in excess of £1million per year. Most of the appointing bodies rely on finding volunteers, which is not a good sole criterion for appointment. The Trust needs a board of trustees who are motivated by their obligation to put the care of the Malvern Hills first and are equipped with the right skills and knowledge to do so.

7.6 A majority of the trustees has always felt that a board of 12 was the optimal size.

7.7 Public Comments Not all the comments in the free text box reflected an understanding that the Trust is a charity, that trustees once appointed must act solely and exclusively in the best interests of the charity's objects, and that there is a requirement for the charity to ensure no decision making should involve trustees with conflicts of interest.

(a) **Maximum of 12 Trustees** Comments on board size were fairly evenly split between those favouring 12 or smaller, and those favouring a larger board.

MHT Response

Twelve is the maximum number recommended by the Charity Commission for efficient decision making. This has been discussed by the board on many occasions and although there are differing views on the margins in favour of more or fewer, the consensus amongst trustees has always been that 12 is the optimal number. This view was supported by the majority of consultation respondents.

The board has resolved to retain the proposal to have a maximum of 12 trustees.

(b) **Board composition – six elected and six selected trustees**

There was a recognition that having selected trustees opened up the opportunity to bring in skilled and knowledgeable people from outside the levy paying area, particularly as Malvern Hills and Commons are of national importance for nature conservation and as a recreational amenity. Others were of the view that all trustees, including those appointed, should come from the Malvern area and/or be levy payers.

Malvern Hills District Council (MHDC) stated that it had seen “no compelling evidence” to limit the number of elected trustees to six. However, they also acknowledged that trustees with relevant skills and experience would help the work of the Trust.

One correspondent suggested that with equal numbers of elected and selected trustees there would be a risk that a single issue pressure group might influence the composition of the board through the election process.

MHT Response

Views on this issue were finely balanced. There was a 1 % majority against equal numbers of elected and selected trustees, but it is not possible to differentiate between those who thought there should be fewer elected trustees and more selected, or vice versa.

The current proposals increase the number of elected trustees from 38 % to 50 %. A further increase would not reflect either the current percentage of elected trustees or the financial contribution of the levy payers, generally around 40 to 45 %, of MHT's income. However, given that this is substantial contribution and levy payers have no option but to make the payment, it would be difficult to justify reducing the proposed number of elected trustees.

Trustees have taken due note of the risk of single-issue pressure groups influencing the composition of the board through the proposed election process. This risk would be greatest during the transition phase when all six elected seats would be contested at once. In subsequent rounds usually three seats would be contested, reducing the risk of a takeover by a pressure group.

(c) **Extending the area from which candidates can stand for election**

MHT Response

This was supported by most respondents.

The board has resolved to retain this proposal.

(d) **Electoral area to be defined by parish and linked to levy-paying area**

MHT Response

This was supported by the majority of respondents and is the only logical choice.

The board has resolved to retain this proposal.

(e) **Combining electoral areas into a 'single list'**

There were a significant number of comments against the amalgamation of wards/parishes into a single voter area, which centred around levy payers wishing to elect someone who was "accountable" to them and who would represent their interests. There were also several comments suggesting more than half of the board should be elected.

MHT Response

The proposal to have a single electoral list was supported by the majority of respondents; however, comments revealed considerable depth of feeling about “representation” and “accountability” and the board has therefore carefully reconsidered the alternatives.

The Trust is a charity and therefore elected trustees are not on the board to “represent” the views of a particular levy paying areas, because of their obligation once appointed to act exclusively in the best interests of achieving the charity’s objects.

Dividing the voter area using local government boundaries runs the risk of voting districts being upset by future local government boundary changes. The trustees carefully considered other alternatives, such as dividing the area by use of a map but reached the conclusion that the disadvantages of dividing the voting area outweighed the advantages. However, careful note was taken of the views of respondents about having a connection with a trustee and it was decided to formalise a longstanding plan to allocate a trustee as a liaison between the Trust and the different parishes.

The board has resolved to retain a single electoral area, but to include a provision in the Bill to allocate trustees to act as a point of contact between the Trust and the different areas.

(f) Independent Nomination Panel

The proposal for an independent panel was strongly supported but no satisfactory model for its creation has emerged.

MHT Response

MHT sought further advice about the proposal for an independent nomination Panel.

The board noted that many charities select new trustees using a selection committee comprising trustees who conduct the selection process. Some other charities have some independent input on trustee selection.

They also noted that it would be difficult to set up a completely independent trustee selection panel in a foolproof way. If external bodies were specified to appoint to a nomination committee, they might fail to act or there is a risk that the body might in future be abolished.

The National Trust's governance requires their nomination committee to include at least one member who is external to the charity, and universities often have a requirement for the committee nominating board members to have external members.

The trustees resolved to have a Nomination Committee as a MHT standing committee, with a fixed composition of two trustees and two external members, with the CEO or another staff member included in an advisory capacity without having a vote. The Act would need to define what was meant by "external" and might include criteria such as relevant expertise.

The Committee would advertise for external committee members, who would then serve for a set term. This would leave the Trust in control of the appointment process but also ensure a level of independence that would fetter the ability of trustees to appoint from their associates or friends.

The board resolved to adopt this proposal for a Nominations Committee.

For the avoidance of doubt, it is for the Nominations Committee to propose candidates for appointment to the Board, but it is the responsibility of the Board to appoint them.

8. MODERNISING THE BOARD'S ADMINISTRATION

8.1 Questionnaire response Respondents were asked to consider the following proposals:

(a) Meetings may be held online so long as they are streamed to the public.
57 % of **individuals** agreed. (**Organisations**: 50 % agreed).

(b) Meetings of the Trust should be open to the public when a binding decision is to be made.
82 % of **individuals** agreed. (**Organisations**: 67 % agreed)

(c) The Trust should have a power to set up a membership organisation.
45 % of **individuals** agreed and 46 % disagreed. (**Organisations**: 41 % agreed and 42 % disagreed).

(d) *The Trust should have a restricted general power as set out in the consultation document.*

45 % of **individuals** agreed and 47 % disagreed. (**Organisations**: 50 % agreed).

(e) *Change of statutory name⁸*

41 % of **individuals** agreed, 42 % disagreed. (**Organisations**: 33 % agreed and 33 % disagreed).

8.2 **Public Comments**

Comments raised by members of the public in the free text box were:

(a) **Online Meetings**

Comments were limited; some respondents favoured having the option of holding meetings online, others commented that this should be the exception rather than the default position and also that not everyone has online access.

MHT Response

The proposal to be able to hold online or hybrid meetings was included in the Trust's 2019 consultation. Since then the technology to hold such meetings has become commonplace as Covid 19 brought home the importance of being able to meet "virtually". More members of the public logged into the Trust's online meetings during Covid than attended the meetings when they were face-to-face.

Face-to-face meetings remain the most satisfactory option, and the Trust does not envisage online meetings becoming "the norm", but having the option of online/hybrid meetings would provide much needed flexibility.

Meetings that are open to the public and that are held online would be streamed. It is noted that not everyone has access to the internet, but the Trust could ensure that there was a facility for those without internet access to view online meetings.

The board has resolved to retain this provision in the Bill.

- (b) **Meetings of the Trust should be open to the public when a binding decision is to be made** A number of respondents expressed the view that all meetings of the Trust should be open to the public whether a decision is being made or not, including in some cases where confidential matters were being discussed.

MHT Response

Charity trustee meetings are not normally open to the public. The present requirement for the Trust to hold public meetings reflects its unusual position as a levying body. The current requirement is that all board and committee meetings are open to the public except where legal, personnel or commercially sensitive

⁸ Appeared under "Miscellaneous" in consultation document.

matters are being discussed. The Trust is content to be transparent in its decision-making processes.

The current committee system is partly a response to the large size of the board. Committees enable smaller and hopefully more specialist groups of trustees to work through issues surrounding a particular topic and make recommendations to the board. The board can then instigate a further discussion and a decision is made. With very limited exceptions, no decisions binding on the Trust are made in committee meetings.

With a smaller board it would be easier to have more effective discussion and decision making, and so there should be less need for committees. However, there would occasionally be a need for a committee to give detailed scrutiny to particular topics (eg preliminary discussions on a budget or when a particular task was being planned).

It is proposed that meetings where no binding decision is made should not be open to the public to enable trustees to have a frank and open debate. When a committee's remit is limited to making recommendations, further discussions and decisions would be made in a board meeting, which would be open to the public, and the process would remain transparent.

There is also a proposal to have an express power to close meetings if the normal conduct of the meeting was being disrupted by members of the public.

The board has resolved to retain the current proposal to open all board meetings to the public (except where exempt business is to be discussed), but only to open committee meetings to the public where a decision binding on the Trust is being made under delegated authority.

(c) **Membership Organisation**

The proposal to introduce a membership organisation prompted a large number of comments. Many thought the membership organisation would be part of MHT's governance and worried that it might give rise to single-issue pressure groups that would influence decision making. Others were concerned that it would allow people outside the Malvern area to drive changes to the management of the Hills and Commons, to the detriment of local people, or that it would introduce a "2-tier" system in which members would get privileged access to the Hills and Commons. Some simply felt that a membership organisation would be too costly and burdensome for the Trust to manage. Some respondents welcomed the idea of a membership organisation, provided it had no voting rights, seeing it as a way for those not already contributing to MHT through the levy to provide a degree of financial support.

MHT Response

We have concluded that the use of the term “membership” was unfortunate as it seems to have carried implications which were not intended. The term “supporters’ group” (or similar) would be more appropriate.

Any such group would not be part of MHT’s governance structure so would not influence the Trust’s decision-making. The intention would be to provide people who have an interest in the Hills, wherever they might live, with the opportunity to learn more about them and to get involved with their care. It might also be a fundraising source and facilitate more volunteering.

The board has resolved to retain the provision to permit the Trust to set up a supporters’ organisation but adopt the term “supporters” instead of “members”. This organisation would not be part of the governance structure of MHT.

NB At this stage the Trust is seeking the power to create a supporters’ group, but no details will be worked up until the Bill becomes law.

(d) General Power

The proposal to include a general power prompted a significant number of comments about potential misuse. These centred around concerns that it might enable the Trust to do anything it wished without constraint. For example, comments were circulating on social media during the consultation period, suggesting the power could be used to facilitate the introduction of solar farms, shops, business or residential development on the Hills, or that it would allow the Trust to sell off land, and these were picked up in some of the consultation responses.

Some comments supported the power but advocated constraints such as: linking it to the objects; making clear MHT would not be able to conduct any actions specifically prohibited by the current Acts; supervision of the use of the power by the levy payers, or; a requirement for a “special majority” by the board whenever the general power was to be exercised.

MHT Response

As a charity governed by statute, the Trust only has the powers that are set out in its Acts. Frequently, it is not clear whether the Acts cover a particular situation or not and the Trust has to seek costly legal advice, which does not always provide a solution.

If the Trust needs to do something outside the scope of the Acts, as a one-off, it can apply for a s105 Charities Act 2011 Order in certain circumstances. This is time consuming and expensive but otherwise the only option is to amend the Trust’s governing legislation. This is a huge drain on the Charity’s resources.

It is impossible to cover every eventuality in the Bill because we do not know what challenge the future may bring, and how they will affect the Trust. A general power

would enable the Trust to be as responsive and flexible as possible in meeting such challenges and dealing with unexpected circumstances. The power is drafted to exclude its use where there are already specific powers available.

This power could only be used in furtherance of the Trust objects. Also, it would not permit MHT to conduct actions that are already specifically provided for or prohibited in the Acts. There would be no possibility of engaging in the sorts of activities that have been suggested, such as putting up solar panels on the Hills. This would directly contradict the requirement to keep the Hills as an open space for public access and be contrary to the designations (eg SSSI) to which the landscape is subject.

Many other bodies have a general power, eg parish councils have the general power of competence, the National Trust has a general power and the Charity Commission's own model trust deed contains a general power - "to do any other lawful thing that is necessary or desirable for the achievement of the objects". These clauses are far wider than the one proposed by the Trust.

The board has resolved to retain this provision in the Bill. The Parliamentary Agent has been asked to consider clarificatory drafting in order to meet specific concerns expressed in some of the responses.

(e) **Change of statutory name from "Malvern Hills Conservators" to "Malvern Hills Trust"** A number of respondents disagreed that "Conservators" was confusing, arguing that it was distinctive and described what the organisation does. A few did not favour the term "Trust" as they disagreed that the organisation was a charity. Those expressing support for the name change thought that the term "Conservators" was confusing or old-fashioned. Some comments did not flow from the facts – for example that the name change was a tax dodge or that it would be a waste of money – in fact it would not incur any additional cost or confer any tax advantage.

MHT Response

The Trust adopted the working name Malvern Hills Trust in 2017. The name change flowed from work on the Trust "brand" as it had become clear the organisation was struggling to get its key messages across including an understanding of its charitable status and the work which it undertook. This was evident from research conducted with both residents and visitors.

The rebrand and name change was driven by the need to secure a number of operational benefits:

- to reduce confusion in the minds of the public about the Trust's status, and make clear it was not linked with local government;
- to give a strong, professional first impression when making grant applications;
- to increase opportunities for partnership working;
- to secure an increase in donations and legacies which were felt to be suffering as a result of lack of awareness of the Trust's charitable status.

The board has resolved to retain the provision to change the statutory name of the charity to Malvern Hills Trust.

9. POWERS TO BORROW

9.1 Questionnaire response Respondents were invited to comment on the following proposals:

(a) The Trusts powers to borrow should be consolidated.

47 % of **individuals** agreed and 37 % disagreed. (**Organisations**: 54 % agreed).

(b) The Trust should be able to secure borrowings against ancillary land and revenues without external consent.

38 % of **individuals** agreed, 51 % disagreed. (**Organisations**: 54 % agreed).

(c) Secretary of State consent should be required to secure borrowings against new purpose land.

54 % of **individuals** agreed. (**Organisations**: 36 % agreed, 45 % disagreed).

9.2 Public comments A number of comments reflected anxiety about borrowing money. Some objected on principle, expressing the view that no area of the Hills and Commons should be mortgaged, whether it be purpose or ancillary land. Others worried that the Trust might borrow too much, get into debt and lose land, or that it was moving towards a more commercial footing.

MHT Response

Most charities have a power to borrow, and to grant security, contained in their governing document. Section 124 of the Charities Act 2011 sets out the general requirements for securing borrowings against land.

The Trust has a number of existing powers that allow borrowing to be secured against land or revenue streams and which require consent of the Secretary of State. Since 1995, if borrowings are secured against purpose land, the agreement cannot contain a power of sale or a right to sell timber.

The Trust would not wish to place itself in a position, through the proposed Bill, where its powers are more restricted than at present. The Trust has been fortunate in not needing to borrow to acquire land in the recent past, but it may not always be in that position, particularly if one of the larger sections of the Malvern Hills that the Trust does not own comes up for sale.

If the Trust needed to borrow to purchase an important area of the Hills it might need to proceed quickly, for example if land is for sale by auction.

The Trust would like to be allowed to secure borrowings against ancillary land **without** a requirement for external consent, and there could be a power of sale (as now) in the event of a default.

In addition to consolidating the existing powers, the new proposal is that the Trust should be able to offer up land *that it is in the process of buying* as a security, with a power of sale. Without this provision, should the opportunity arise for MHT to purchase a sizeable new land holding on the Hills, it might be unable to offer sufficient security for any loan.

Regarding risk mitigation, trustees are under an obligation to act responsibly, in the best interests of the Trust and within their powers. This would include ensuring that any repayments could be serviced by the Trust. It is intended that in most cases some form of oversight would be required.

The board has resolved to retain the following powers to borrow which are set out in the Malvern Hills Acts:

- the power to borrow in furtherance of its charity's purposes;
- the power to secure borrowing against land and revenues, but without any power of sale or to cut and sell timber in relation to its current purpose land;
- powers to secure borrowings against ancillary land without third party consent, and any such loan agreement can include a power of sale.

The Trust's Parliamentary Agent will seek to establish the view of the relevant Government department and the Charity Commission on any requirement for third party consent to secure borrowings against existing purpose land or new purpose land.

10. LAND MANAGEMENT

10.1 Securing the Perimeter of the grazed commons - questionnaire response

The proposal that respondents were asked to consider was:

The Trust should be able to secure the perimeter of a grazed common, to make it stockproof, subject to the consent of the Secretary of State and any other necessary permissions.

52 % of **individuals** agreed and 44 % disagreed. (**Organisations:** 67 % agreed).

10.2 Background Land Management is central to achieving the Trust's objects. The way things have changed and the different and sometimes conflicting uses to which the Hills are put would be unrecognisable to someone living in 1884 or in 1930. The cars, the level of public access, cycling on the Hills and the lack of people exercising rights of common all create very different management challenges today and in the future. The Trust needs a different set of "tools" to keep the Hills open for public access and to cope with the pressures on their important features and special

qualities. The critical importance of using grazing livestock to manage the Hills was fully explained in the consultation document.

- 10.3 Public Comments** Many comments from members of the public in the free text box indicated that fencing was an emotive issue. Some suggested that there may have been a misunderstanding about what was intended. We will therefore seek to ensure the nature of the proposals are clarified.
- 10.4** There was general support for the proposal to secure the commons. Some respondents did not want to see the perimeter of the common fenced, saying that it would restrict access. Others were concerned about losing the open character of the Commons.
- 10.5** The Public Rights of Way Department of the County Council noted that if fencing crossed a public right of way, the Trust would need to consult them (as it does now) and there were a number of other comments about gates needing to be an appropriate standard to enable public access.
- 10.6** There were a small number of comments from people opposed to livestock grazing more generally on moral or environmental grounds.
- 10.7 MHT Officer Input** 92 % of Castlemorton Common is already fenced by adjoining landowners. It is only where the roads enter that stock can leave the common. Since the consultation document was prepared, the MHT Conservation Manager has highlighted that there may be specific cases where it would make no sense to fence exactly on the perimeter of the common (eg where fencing could be hidden by vegetation or topography), or where an existing feature could be used as part of the fencing (eg the churchyard wall at Hollybush). There is also an area of Old Hills where the common is divided by a busy road with poor sightlines; one side of the road is suitable for grazing but the other is mature woodland which is not.
- 10.8** The Conservation Manager referenced similar sites elsewhere in the UK which have secured open commons, such as Epping Forest. In those cases some of the fencing/infrastructure has had to be sited away from the exact perimeter of the common to deliver a successful, safe scheme.
- 10.9** Rather than the Bill trying to define specifically where the Trust could fence (for example, by reference to the perimeter), the provision for securing the commons could be amended to say that the Trust could put up fences or make other arrangements to keep stock on the common, provided the Secretary of State's consent was obtained under section 38 of the Commons Act. Using this process, the decision as to whether fencing was appropriate or not would be made on a case-by-case basis with full public input. Section 38 applications are made to the Planning Inspectorate, which acts on behalf of the Secretary of State, and the process includes public consultation so that all views can be considered. Complex cases are determined by way of a hearing or public enquiry. This amendment was supported by Open Spaces Society. S39 Commons Act 2006 outlines the factors which may be taken into account: <https://www.legislation.gov.uk/ukpga/2006/26/section/39>

MHT Response

If grazing is to continue in the long term, the Trust must have the power to secure stock on the commons. Access would be maintained, and the public would not be excluded as a result of any of the new proposals to fence. Very few other grazed commons have no infrastructure to prevent the stock leaving the common. There seemed to be some misunderstanding of the proposals in the consultation responses, with some people believing that there would be fencing across the middle of the common. The Trust would like to reassure respondents that there would no such fencing, eg along the Welland straight or the road to Gullet Quarry. The Trust is asking for a *power* to fence. Each application would be subject to Secretary of State consent and judged on a case-by-case basis with full public consultation. The judgement whether to fence or not would be made by the Secretary of State and not by the Trust. Only grazed commons would need to be secured.

The points raised about using gates of an appropriate standard to enable everyone to exercise their right of access are noted and agreed in principle and have been referred to the Trust's Parliamentary Agent.

The board has resolved to amend the clause relating to securing the grazed commons to take into account that the most appropriate site for fencing/other means of securing commons will not always be on the exact perimeter of the common. In addition, all fencing by MHT to secure the commons will be subject to obtaining Secretary of State consent under the provisions of s38 Commons Act 2006.

10.10 Fencing for animal health reasons – questionnaire response

The proposal respondents were asked to consider was:

The Trust should have a power (subject to requirements to consult) to put up temporary fences on the common for up to 12 months in the interests of animal health.

55 % of **individuals** agreed and 42 % disagreed. (**Organisations:** 70 % agreed).

10.11 Public comments Castlemorton Common Association (CCA) did not support the proposal for fencing for animal health reasons, although 70 % of other organisations did.

MHT Response

Given the lack of support from the commoners for fencing for animal health purposes, the board has resolved to abandon this proposal.

10.12 Fencing to regulate grazing One organisation suggested there should be a 6 month break period before fencing the same area in order to regulate grazing.

MHT Response

The board has resolved to accept this suggestion subject to a *de minimis* exception to allow refencing of up to 1ha.

11. ANCILLARY LAND AND BUILDINGS

11.1 Questionnaire response Respondents were asked to consider the following proposal:

Subject to obtaining planning and other necessary permissions, the Trust should have a power to build, in furtherance of its objects, on land that does not form part of the Commons for the purposes as set out at page 48⁹ of the consultation document

43 % of **individuals** agreed, 50 % disagreed. (**Organisations**: 58 % agreed).

11.2 Public comments The main concerns expressed were centred on this power potentially leading to buildings being used for commercial purposes. There was a query in the responses about current ancillary land; this comprises Lidiards, a field at Hollybed Common and the Trust's offices at Manor House.

MHT Response

The Trust needs to have premises from which it can run its operations. At the moment it operates from two separate sites, the office in Malvern Town centre and Top Shed at the Wyche.

The Trust does not have a space large enough to host a board meeting, a full staff meeting, a training workshop for volunteers or a public information event. In future it may need a facility for volunteers, to welcome and provide information for visitors, facilitate educational talks etc.

Currently, field and office staff have very limited contact with each other, making it difficult to work collaboratively and build a team ethos. It would therefore be helpful to work from one site.

The chance of finding an existing building with the right range of facilities is slim. Accordingly, the Trust's existing powers to acquire land need to be supplemented with a power to build on land acquired for operational purposes.

⁹ The proposed purposes are (a) use as offices or information centres; (b) the provision of refreshments; (c) the retail sale of goods; (d) residential occupation for employees of the Trust, which may be made available to those employees on such terms and conditions (including at less than market rent) as the Trust thinks fit; (e) storage; (f) the keeping or management of livestock.

The Trust can already buy offices and build sheds, and this is a minor extension of this existing power. For the avoidance of doubt, the Trust currently has a power to sell, exchange or otherwise dispose of ancillary land and this power should be retained.

No plans have been worked up for any such project and it would need to be included in the business plan if the power was granted.

The board has resolved to add the power to the Bill to allow the Trust to build on ancillary land for the purposes set out in the consultation document.

12. LEASES AND LICENCES OF LAND

12.1 Questionnaire response The proposals respondents were asked to consider were:

(a) Subject to the public's right of access, the Trustees should have a power to grant licences of land and buildings.

39 % of **individuals** agreed, 49 % disagreed. (**Organisations:** 58 % agreed).

(b) The Trust should have a power to grant leases of buildings and of land which is not common land (subject to existing right of public access) for a period of up to 10 years.

38 % of **individuals** agreed, 49 % disagreed. (**Organisations:** 58 % agreed).

12.2 Background The Trust needs to be able to grant leases and licences for the proper management of the land under its jurisdiction and has been doing so for many years on the basis that this is an implied power of the Trust as a landowner. The new Act would be an opportunity for these powers to be made clear. Like everything the Trust does, the making of such arrangements has to be in the best interests of fulfilling its charitable objects.

12.3 Licences for land management The landscape of the Malvern Hills and Commons has been shaped by human activities for thousands of years. These include coppicing, making hay, collecting bracken and livestock grazing. In order to conserve its important features and special qualities, the land under the MHT's care needs active management, as set out in its Land Management Plan. With an area of around 3000 acres, this active management is beyond the Trust's staff resource. Licensing provides a means to gain extra effort and expertise. Presently, licences are issued to deliver woodland coppicing, haymaking, and conservation grazing with livestock.

12.4 Grazing the Commons is no longer an attractive proposition for livestock owners. Without the support of Countryside Stewardship grants, it would be unviable in most places on the Hills. Graziers are faced with unenclosed commons, high levels of public access, worrying of livestock by dogs and busy roads bisecting the commons on which there are a number of stock fatalities every year.

12.5 Much of the Trust's land is SSSI, and grazing is the method of management recommended by Natural England; in some instances it is the only practical method. Grazing is therefore essential and whilst those with rights of common are legally

entitled to graze, the Trust as landowner is entitled to graze any surplus. In order to ensure grazing continues, the Trust operates a system of tendering for licences to graze the land in a sensitive and appropriate fashion, supported by the Countryside Stewardship grants. It is a condition of the licences that grazing by licensees is subservient to those with rights of common.

- 12.6 Licences – buildings** The Trust has a small number of buildings that it licences to individuals. It also grants a licence to the MHNL team to share the use of Manor House.
- 12.7 Leases** The Trust has a small number of fields on the lower slopes of the Hills which enhance their setting and are part of the public access land. There is a second purpose, in most instances, which is providing in-bye land to support the grazing of stock on the Hills. The Trust has to arrange for this land to be cared for and managed and in some instances this is done via a farm business tenancy, containing conditions that the land is to be managed in a nature friendly way and ensuring that any obligation to allow public access is fulfilled. This gives both the Trust and the tenant the security to enable proper medium-term planning for the use of the land.
- 12.8 St Ann’s Well** The power to lease this building is governed by separate provisions in the existing Acts that will be re-enacted.
- 12.9 Public comments** These proposals were not supported by a majority of respondents, but there were few comments explaining the opposition to the granting of leases or licences for Trust’s current land management purposes. Some worried that the power to grant licences would cause a shift away from conservation towards commercialism. Others that licensing and leasing land would restrict public access. A few were concerned that they would result in more grazing, and that MHT would become a commercial farmer.
- 12.10** There were some comments, which may have been picked up from inaccurate suggestions on social media, that the proposals would enable the Hills to be used for developing solar and wind farms. This is clearly not something MHT could do because of its charitable objects and the environmental designations that apply to much of the land.

MHT Response

Licences for Land Management

MHT needs to be able to grant leases and licences for the proper management of the land under its jurisdiction and has been doing so for many years on the basis that this is an implied power as a landowner. The Trust does not have the staff resources to undertake all the activities described above itself. The new Act would provide an opportunity for the powers to grant licences to be made clear. Like everything the Trust does, the making of such arrangements has to be in the best interests of fulfilling its charitable objects. The continuation of the current arrangements with that clarification is a way of managing the Trust’s land, not a revenue raising exercise.

The Trust will undertake further communication and engagement to explain its intentions and reassure the public.

The board has resolved to make no change to these proposals, which are essential for land management purposes.

13. LICENSING ACTIVITIES

13.1 **Questionnaire response** Respondents were asked to consider the following proposal:

The Trust should have an explicit power to issue licences to people or organisations who wish to conduct activities or run businesses on Trust land, with a power to make an administrative charge.

43 % of **individuals** agreed, 51 % disagreed. (**Organisations**: 62 % agreed).

13.2 **Background** There are multiple reasons why the Trust needs to know what events are being organised on its land and to make sure activities do not clash or impact on sensitive and important habitat.

13.3 **Public Comments** The main concerns raised by members of the public in the free text box were that issuing licences might lead to the commercialisation of the Hills, greater footfall and consequent adverse impacts on their tranquillity and natural environment. There were also comments from people worried that the issuing of licences would affect free access to the Hills, eg were people going to be charged for meeting up with families or friends for a walk or picnic? A number of respondents felt that charity/not-for-profit/community events should not attract an administrative charge. There were comments for and against having a licensing system for professional dog walkers; notably some professional dog walkers supported licensing.

MHT Response

This is another area where MHT is seeking to bring clarity to an activity it already undertakes. It currently operates a licensing system to make sure events on the Hills do not clash, fill up car parks and impact negatively on visitors. Licensing also enables MHT to guide events and activities away from sensitive wildlife habitats, fragile archaeology and conservation activity, and to understand how the Hills are being used.

Underlying this power would be policies and guidance for those using Trust land for organised activities and business purposes setting out eg: what types of event are compatible with MHT's objects; where charges should be made and at what level etc.

As a charity, MHT can only act in pursuance of its charitable objects and cannot operate for commercial gain.

Any regime to licence organised events or business activities will not affect individuals or family groups accessing Trust land in accordance with the Trust's objects. The question in the consultation did not differentiate between events run by

schools/charities and other not-for-profit organisations (some but not all of which would attract an administrative fee), and commercial activities (eg filming/photo shoots). With the existing exception of Link Common, activities that excluded public access would not be compatible with the Trust's objects.

There is no change to the existing power to license up to six temporary food stalls, or the provisions that cover the Link Common.

The Parliamentary Agent will be asked to explore whether the drafting could be strengthened to reflect some of the concerns expressed in the consultation in relation to licensing activities on Trust land. Otherwise the board has resolved to make no change to the proposals contained in the consultation document.

14. FIXED PENALTY NOTICES

14.1 Questionnaire response Respondents were asked to consider the following proposal:

The Trust should have a power to issue fixed penalty notices as a way of enforcing byelaws.

43 % of **individuals** agreed, 44 % disagreed. (**Organisations:** 54 % agreed, 45 % disagreed).

14.2 Public comments There were a number of supportive comments but also numerous comments expressing concern about the safety of employees issuing fixed penalty notices. Some made comments about the difficulty of observing and evidencing byelaws breaches. Others suggested that this power would be used as a money making exercise or that it was the job of the police to enforce the byelaws.

MHT Response

The only option available to the Trust for enforcing byelaws (other than in relation to failure to display a parking pass or ticket in the car parks) is to take offenders to court. This is a cumbersome and extremely expensive process. The police have always declined to prosecute under the byelaws (although they can).

This power will never be a substitute for giving advice and explaining why certain behaviours are not permitted. In reality, it will only be used in limited circumstances – eg where there is a repeat offender known to the Trust.

The Trust is fully aware of its responsibilities to its employees and should it be permitted to use fixed penalty notices, would need to put procedures and training in place for employee protection.

The board resolved to retain a provision to allow the Trust to use Fixed Penalty Notices.

Annex: Glossary of Terms.

Acts, the	The Malvern Hills Acts 1884,1909,1924,1930,1995.
Ancillary Land	This term applies to any land or buildings acquired: i. Under section 9 of the Malvern Hills Act 1995 (power to provide buildings for use by the conservators); ii. Under section 53 of the Commissioners Clauses Act 1847 (power to provide offices, etc.) or iii. Pursuant to an Order of the Charity Commission for England and Wales. It is land used for operational purposes – offices, storage, workshops, land exclusively used as in-by land etc, which is not public access land.
Board	Board of trustees, who together are responsible for management of the Trust.
Best interest of the charity	That which will best enable the charity to fulfil its purposes for the public benefit. It does not mean serving the best interests of the trustees, the staff or the organisation itself.
Charities Act	Charities Act 2011
MHT, the Trust	Malvern Hills Trust (this is the registered working name of Malvern Hills Conservators)
Private Bill	Private Bills go through a full Parliamentary process but only change the law as it applies to a specific organisation or location, as distinct from public bills which apply generally.
Purpose Land	This is the land under the Trust’s jurisdiction to which the public normally have access, and which is held to fulfil its charitable objectives. It does not include Ancillary Land.
Trustee	A trustee of the Malvern Hills Trust (previously referred to as conservators).