Malvern Hills Trust

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Registered charity number 515804

Application for consent under s 74 Charities Act

Chair's foreword

Malvern Hills Trust (the working name of Malvern Hills Conservators - registered charity no. 515804) is governed by 5 Acts of Parliament: the Malvern Hills Acts 1884, 1909, 1924, 1930 and 1995 and some of its administrative provisions are contained in the Commissioners Clauses Act 1847. There are provisions in these Acts that can no longer be applied and others which reflect a legal, cultural and economic context that no longer exists. The Trust believes it is vital to consolidate, rationalize and modernise its governing legislation to establish a sustainable future for the charity in governance and economic terms so that it can continue to fulfil its charitable objectives properly.

In 2002, the Charity Commission's report following a review visit included the following comment: "It is recommended that [the Conservators] consider applying to the Commission for a [Parliamentary Scheme]. The Conservators would need to make a case detailing the inadequacies of the current governance documents and the failings of the latest 1995 Act to provide an effective governance framework to run the charity in the most efficient manner." This was highlighted in the report as a key action point - identifying a legal requirement that the charity was not meeting.

In 2013 the Trust completed a governance review and in 2014, encouraged by a further offer of support with a S73 Scheme from the Charity Commission, commenced a detailed review of the Acts that culminated in 2019 in a public consultation on proposed changes, which the majority of respondents supported. Following the consultation, in a statement dated 11 March 2020 the Commission advised that "the amount of public interest the consultation generated was significant, particularly from precept payers of the charity" and that led DCMS and CC to conclude that "changes to the charity's governing documents would now be best handled via a private bill, allowing greater scope for public scrutiny and debate than under a parliamentary scheme procedure.". In turn, that means the Trust needs to obtain consent from the Charity Commission under section 74 of the Charities Act 2011.

The benefits that will flow from the proposed changes have been assessed in a thorough cost and benefit analysis[1] which supports the Trust's aim of making the governance changes outlined in this section 74 request.

Eliminating the complexity, conflicts and irrelevances contained in the antiquated Acts will address not only issues with the efficiency of the organization as noted by the Charity Commission in 2002 but will also eliminate the legal costs arising from managing those conflicts, uncertainties and unavoidable non-compliance that arises from time to time. Currently, the Trust's powers are critically constrained by the Acts. In particular, in the area of fundraising and public engagement, the organization is fettered in its ability to respond to the challenging 21st century economic climate and compliance requirements by 19th century restrictions. In its day to day management of public land for the public benefit, the Trust is deprived of the most basic of powers that a modern landowner would consider to be vital to the wellbeing of the landscape and the people who enjoy it.

The costs anticipated for managing the private bill process are as set out in this paper and whilst this is a major financial commitment, funds are available to cover those costs at no risk to the financial stability of the Trust.

Mick Davies
22 May 2023

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[1] Paper A for Governance Committee meeting 21 October 2021
See Appendix D page 154

Contents

Introduction

1. Background

1.1 Malvern Hills Conservators was established by the Malvern Hills Act 1884, and is governed by this and four subsequent Acts made in 1909, 1924, 1930 and 1995 (together "**the Acts**"), all of which are private Acts. Some of the provisions of these Acts have been modified by other legislation, in particular the Malvern Hills (Amendment of Local Enactment) Order 1958.

1.2 Malvern Hills Trust ("**MHT**") is the working name of the Malvern Hills Conservators. It became a registered charity in 1984.

1.3 MHT manages about 3,000 acres on the Worcestershire/Herefordshire borders. The land is two thirds SSSI and mostly registered common land. MHT works to keep a balance between maintaining the land as public open space and looking after the natural environment. The following are examples of how MHT achieves this:

- Works in partnership with the Malvern Hills AONB
- Works alongside other charities for example Butterfly Conservation, U3A, Earth Heritage Trust and bird ringers who provide records to British Trust for Ornithology
- Helps to facilitate access to Worcestershire Beacon for the less able, with partners Malvern Rotary and Café H_2O
- Runs a number of public engagement events to facilitate understanding of the special qualities of the Hills (eg supporting dog training around livestock, public walks and talks and volunteering opportunities).

1.4 The Acts have not been updated for more than twenty-five years and MHT's governance arrangements have remained largely untouched since the 1924 Act. The legislation does not reflect or permit modern best practice in relation to charity governance, and does not contain all the powers that the trustees need in order to administer the charity in the most effective way and to best achieve its objects. The Acts are badly in need of modernisation.

1.5 In 2014 MHT approached the Charity Commission about a proposal for a Scheme under s73 Charities Act 2011 to make changes to the Acts. The Charity Commission agreed in principle to make a Scheme and initially the DCMS gave support but following a public consultation in 2019, the DCMS advised that a private Bill would be the preferred mechanism for the proposed changes.

2. Current charitable purposes

2.1 The charitable purposes of MHT are expressed as duties and scattered through the Acts but in summary they are to:

- Preserve the natural aspect of the land under its jurisdiction ("the Hills")
- Protect and manage trees, shrubs, turf and other vegetation
- Prevent unlawful digging and quarrying

- Keep the Hills open, unenclosed and un-built on as open spaces for the recreation and enjoyment of the public.

3. Overall goals for reform

3.1 The two main aims are:

3.1.1 to modernise and make the Acts fit for purpose in the 21st Century and much more easily useable; and

3.1.2 to provide greater flexibility and adaptability to enable the charity to more effectively deliver its objects and evolve over time without the need to go through the costly and time consuming process of amending the Acts.

4. Current governance arrangements

4.1 The 1884 Act incorporates many of the provisions of the Commissioners Clauses Act 1847 ("**CCA**") which include a raft of trustee powers, provisions in relation to the holding of meetings, appointment of auditors and so on.

4.2 The Acts also incorporate sections from a large number of other Acts of Parliament, many of which have now been repealed.

4.3 MHT currently has a large trustee body of 18 nominated trustees and 11 elected trustees.

4.4 The provisions relating to nomination and election of trustees are contained in section 7 of the 1924 Act as modified by the Malvern Hills (Amendment of Local Enactment) Order 1958 and the Hereford and Worcester (Structural, Boundary and Electoral Changes) Order 1996. In addition, MHT entered into an agreement with Worcestershire County Council dated 22nd July 1960 (under section 10 of the 1909 Act) to permit the Council to appoint three additional trustees on behalf of three local parishes.

4.5 As at 2019, twenty nine trustees were appointed as follows:

Elected trustees **Electoral area (Ward/Parish)**	**Number of trustees elected**
Priory Ward	1
Chase Ward	1
Wells Ward	1
West Ward	1
Dyson Perrins Ward	1
Malvern Link Ward	1
Pickersleigh Ward	1
Guarlford Parish	1
Colwall Parish	2
Mathon Parish	1

<u>Nominated/appointed trustees</u> **<u>Appointing body</u>**	**Number of trustees nominated**
Herefordshire Council	2
Worcestershire County Council	2
Worcestershire County Council (for parishes of Castlemorton, Newland and Powick)	3
Malvern Hills District Council	8
Colwall Parish Council	1
Mathon Parish Council	1
The Church Commissioners	1

4.6 There are particular issues with these current arrangements, as highlighted below (section 6).

5. Current financial position

5.1 In common with some other conservator organisations, MHT is both a levying body and a charity. MHT levies a rate in 6 parishes (section 33 of the 1924 Act and section 19 of the 1884 Act, as amended).

5.2 Some of the provisions of the Acts and the extraneous Acts of Parliament which are incorporated into the Acts provide for accountability to the local area and, in particular, those areas which pay the levy. It is, for example, a requirement of the Commissioners Clauses Act 1847 that accounts are available for the inspection by levy payers (s90) who also have a power to appoint the auditors (s92).

5.3 We attach a copy of the most recent accounts for MHT being its accounts for the financial year ending 31 March 2022 (Appendix B). The 2023 accounts will be available by the end of the year.

5.4 Over the past 4 years MHT has derived an average of 42% of its income from the levy and in 2022, income from the levy totalled £567,000.

5.5 MHT also has income from stewardship grants and car parking fees which in 2022 totalled £705,000. Other income derives from grants, donations, legacies and income from exploiting MHT's property (e.g. licences, wayleaves, and rent).

5.6 MHT's overall income for the financial year ending 31 March 2022 was £1,395,317 and total expenditure was £1,205,079. On 31 March 2022 MHT held £2,177,072 total charity funds.

5.7 It is proposed that the preparing and promoting a private Bill is funded by way of a loan from one of MHT's capital funds – the Land Purchase (1992) Fund. This is a restricted fund held solely to buy land that becomes available. A similar loan mechanism was used to fund the 1995 Act. It is proposed that the loan, together with the loss of investment income arising from the transfer of funds to cover the cost of the Bill be repaid over 25 years (or sooner if feasible). The current balance of the Fund as at 31 March 2023 is £756,671.

6. Difficulties with the current Acts

6.1 Having been set up nearly 140 years ago, many of the governing provisions are out of date and it has been difficult to adapt, within the constraints of the Acts, to the changes that have taken place over that period. A hotchpotch of additions and alterations has been made over the years by successive Malvern Hills Acts and this means the Acts are now difficult to follow and to use. For example there are 3 different powers to mortgage in the Malvern Hills Acts plus provisions relating to mortgages in the Commissioners Clauses Act. Another example is that references to second tier councils are to bodies abolished by the Local Government Act 1972.

6.2 The governing provisions are in dire need of update and rationalisation. When the last Malvern Hills Bill (as then was) was being debated in the House of Lords in 1994, Baroness Nicol referred to the fact that the Hills would, on the passing of the Act, be governed by five Acts of Parliament. She said "In the interests of good management and open government it is essential that there should be a consolidation exercise. I hope that the conservators will feel that they can take that on as soon as possible".

6.3 As noted above, the Acts also incorporate provisions from a number of Acts which have long since been repealed.

Proposals for reform

This is a summary of the proposals. More details are set out in **Appendix A** accompanying this application.

7. Main proposals

The main proposals are as follows:

7.1 Charitable objects

7.1.1 The objects are recorded in different forms in various parts of the Acts, largely expressed as "duties" of MHT. It is not intended to materially alter the objects but to update and restate them so that there is one clear statement of the charitable objects of MHT.

7.7.2 Specific proposed changes include the following:

(a) replace reference to the "natural aspect" (which does not have a clear legal definition) with "landscape character", which has a clear meaning in planning terms; and

(b) the restated objects should reflect the "Sandford principle" (incorporated into the National Parks legislation) so that there is a method of resolving conflicts between public enjoyment and conservation of the environment.

7.2 The board of trustees:

7.2.1 The current size of the trustee body is considered to be disproportionately large and makes decision-making unwieldy. By way of contrast, the Ashdown Forest Conservators have 15 trustees (5 elected and 10 appointed) and the National Trust has 9-15 trustees.

7.2.2 The present arrangements for electing Board members are very inequitable and do not properly reflect the populations which pay the levy. In particular, three wards with over 4,000 voters[2] each appoint one Board member, whilst one parish of only 218 voters appoints one, another of 236 elects one and appoints a second and a parish of 2,032 elects two and nominates a third.

7.2.3 It is proposed to change the structure to significantly reduce the overall size of the trustee body (currently 29 trustees) by creating a smaller board of 12 trustees, in order to make the board fit for purpose.

7.2.4 Under the proposals, the number of trustees appointed/elected by the local population who pay the levy would be reduced but would remain a significant proportion of the Board membership.

7.2.5 Changes would also be made to the way in which board members are elected and appointed. In summary, the proposals are:

[2] This is based on figures prior to the making of the Malvern Hills (Electoral Changes) Order 2023. This order has amalgamated two of the wards with areas outside the levy paying area and which has created uncertainty in relation to who can vote.

(i) Amalgamate all the electoral areas and reduce the number of elected trustees from eleven to six.

(ii) In addition, an equal number of trustees would be appointed, who would be selected for their skills and experience by an independent body. The current appointment and election process does not allow for trustees to be appointed to fill gaps in skills and experience, which is considered to be vital for ensuring good governance of MHT.

(iii) The bodies which currently nominate/appoint trustees would no longer have power to do so. The current nominating bodies would be free to put forward candidates for selection as appointed Board members if they wished.

(iv) The appointed Board members would be appointed by an independent committee constituted under the provisions of the Bill. This would have a limited function namely the power to recommend trustees for appointment.

(v) Elections would be carried out by post (with an option to vote online), by a body such as Electoral Reform Services.

7.2.6 In addition, other proposals in relation to the trustee body are as follows:

(a) Provisions would be included to deal with the management of conflicts of interest.

(b) MHT should have suitable powers to remove trustees in relevant circumstances (there are no powers to remove trustees at present other than in the event of bankruptcy or insolvency). It is expected that a power of removal would be vested in the board, subject to due process and a right for the trustee to be removed to be heard/to make representations etc..

(c) In order to ensure that the board does not stagnate, in line with good governance practice, a maximum number of terms of office as trustee would be included in the Bill. After say, two terms, a trustee must step down from the trustee body for at least a year before being eligible for re-appointment or re-election. There is no maximum term at present.

(d) The end dates of trustees' terms of office would be staggered so that 3 trustees are replaced (or reappointed/re-elected) every year. At present all the trustees are appointed/elected at the same time, risking total lack of continuity on the Board from one term to the next.

(e) An express power for MHT to pay board members' expenses is also proposed. This is presently excluded by the Commissioners Clauses Act.

7.3 Modernise and extend trustee powers

7.3.1 As MHT is governed by statute, the trustees only have the powers expressly conferred upon them either by the Acts themselves or by certain extraneous Acts of Parliament and related instruments.

7.3.2 Clarity is needed in respect of the trustees' general powers of investment.

7.3.3 The main aims of the proposed changes are as follows:

(a) To update and extend powers to include those powers commonly conferred on charity trustees e.g. to compromise legal proceedings, to contract, to reserve income etc;

(b) To include a power similar to the general power of competence available to councils, subject to constraints within the governing documents; and

(c) To update and make extensions to the land management powers, including a wider power to fence, and a power to grant short leases.

7.4 The power to levy

7.4.1 Reform of the current powers to levy is a complex problem on which advice is to be sought in the context of the preparation of the Bill.

7.4.2 The existing powers to levy are found in a number of places in the Acts including s19 of the 1884 Act, s9 of the 1909 Act and s33 of the 1924 Act. The powers to levy might be replaced by one provision expressed in modern terms, although consideration needs to be given to the appropriate application of the Local Government Finance Act 1988 and subsequent legislation under which the levy is now raised.

7.4.3 Section 33 of the 1924 Act sets out the relevant "contributory authorities" from which money can be raised for meeting the expenses of MHT. However, the "area within the jurisdiction of the Conservators" in respect of which expenditure may be incurred by MHT is defined in section 5 of that Act as the area set out in the Schedules to that Act and the common or waste **land that may subsequently be acquired**. Hence there is a mismatch between the area within which the levy is raised and the areas which benefit from the levy.

7.4.4 The trustees have also discussed whether the power to levy should be extended to parishes which do not currently pay the levy. The current powers were formulated when the Trust's land holding was considerably smaller than it is today. As a result, a number of parishes currently benefit from MHT land being within their boundaries but make no contribution to its upkeep. By way of example, MHT now manages about 1200 hectares, of which 275 hectares (nearly a quarter of total land held by MHT) is in Castlemorton parish but its residents do not pay the levy.

7.4.5 However, if MHT's ownership of land in the particular parish were the only criterion for extending the levy, this would not result in an entirely fair system. For example, MHT holds no land in Welland parish, but Welland parish immediately abuts MHT's land in Castlemorton and has many more residents living within easy reach of the land. If the levy were based on land-holding, Welland residents would still pay nothing but benefit as much, if not more, than Castlemorton residents.

7.4.6 The trustees' view is that whilst it would be fairer to extend the levy, it is likely to prove controversial.

7.4.7 If the levy paying area is extended, the electoral area would likewise need to be extended.

7.5 Additional powers in relation to land management

7.5.1 Additional powers are sought in relation to the management of land held by MHT for the reasons explained below.

7.5.2 Scores of local properties carry with them commoners' rights over land owned or managed by MHT. Typically, the commoner would own a cottage and a small paddock, and would have a right to graze a specified number of animals on the common. In times past, many people used their rights to supplement their resources or as part of a farming business.

7.5.3 Grazing by commoners' livestock for centuries has moulded the character of the commons and contributed to their present biodiversity, landscape quality and accessibility – the open outline of the Hills in photos in the 1970s is free of trees and scrub and this was entirely as a result of them being grazed or browsed by stock.

7.5.4 The rare plant communities are the main reason that much of the Hills and Commons are designated as SSSIs, but these can only be maintained in favourable condition by the use of livestock grazing. By way of example, chaffweed which is present on Castlemorton Common requires trampling by stock as part of its life cycle.

7.5.5 Grazing is vital to the maintenance of the open landscape and the biodiversity of the Malvern Hills, but changes in farming, a massive increase in motor vehicles crossing the commons and conflict with visitors mean that grazing stock on the common is no longer viable as a way of life. Most if not all the people who buy properties with rights of common do not wish to exercise their rights.

7.5.6 All of MHT's commons (except on Chase End Hill) are "open", that is to say the stock is not contained on the common and can wander off anywhere.

7.5.7 As a result of the availability of Government grants (Higher Level Stewardship and Countryside Stewardship), MHT has been able to financially support the few local graziers who wish to exercise their rights, in order to make grazing viable. In addition, MHT currently license a number of people to graze sheep and cattle. If the grant systems were to be restructured or abolished this support would no longer be possible.

7.5.8 In order to have a hope of persuading livestock keepers to graze the Hills and commons in future, the only option is to have powers to prevent the stock leaving the common by fencing or other suitable barriers. MHT would only seek to exercise these powers where grazing was a viable option – not for example on the urban commons. In practice, most of the perimeter of the grazed commons is already secure (92% in the case of CL9 – Castlemorton Common) and most of the open points are where the roads exit the common. In many cases fencing would be on the boundary but there are certain areas where, for example, there are other existing barriers that could sensibly be incorporated (quarry fencing, churchyard wall) as part of the scheme. There is no intention of restricting public access, but inevitably access would have to be at specific points which would be included at regular intervals, focussed on the routes that people currently use.

7.5.9 In order to effectively manage the land under its control in pursuit of MHT's charitable objectives, powers are also sought:

(a) to lease areas of land which do not form part of the common land (and the buildings thereon). This power should allow for letting any non-common land (subject to public rights of access) but potentially subject to:

(i) a maximum term of, say, 5 or 10 years without consent (but nevertheless subject to Charities Act compliance); or

(ii) for longer periods with the consent of the Charity Commission and/or Secretary of State;

(b) to lease *existing* buildings on the common land (of which there are a small number, including a barn at Castlemorton and a storage shed) subject to similar limitations outlined above;

(c) to license the use of any land;

(d) to purchase land off the Hills and commons to provide stock handling facilities (which should be excepted from the requirement of open access to the public);

(e) to erect buildings, fence and enclose, create hardstanding etc. and to repair/replace/ maintain the infrastructure on the land in (d) above. These may be for use either by MHT or for outside graziers to load/unload stock, to hold stock if it was necessary to get them off the common, to enable animals to have veterinary treatment or to be isolated etc. This power would be limited to being ancillary to achieving MHT's objects;

(f) to purchase/sell/look after stock ancillary to management of the Hills;

(g) to install/permit installation of cattle grids and ancillary gates and fencing;

(h) to install watering points;

(i) to fence or otherwise secure (in furtherance of its objects) the perimeter of its land with the consent of the Secretary of State where access by the public to common land would thereby be impeded (subject to a *de minimis* exception);

(j) to amend section 15 of the 1995 Act to allow temporary grazing for up to 60 days.

7.5.10 All the above powers would be subject to general legislation relating to charity land.

7.6 General power

7.6.1 A new catch-all power would be added which would empower the trustees to do any lawful thing (not prohibited by the Acts or by general legislation) to further the objects of the charity. This is a standard power included in the constitutions of the majority of charities. Similar powers are conferred on other statutory charities such as the National Trust and on other organisations such as Parish and District Councils.

7.6.2 This will give much-needed flexibility to ensure that MHT does not have to seek a new power every time there is a development which means that its existing express powers are not adequate. An example (although covered in the proposed new powers) would be the need to install electric vehicle charging points within car parks on MHT land.

7.7 Administrative and governance powers

7.7.1 A new set of up-to-date administrative powers and provisions should be set out in the Bill.

7.7.2 MHT would benefit from an express power to make rules to underlie the statutory powers, subject to the constraints of the Act, to allow the Board to regulate MHT's internal governance e.g., calling and regulation of trustees' meetings, electronic service of papers and so on. It is proposed that any such power should be circumscribed so as not to jeopardise the accountability of MHT to the public (e.g. the requirement to hold public meetings). However, bearing in mind that constraint, as much as possible should be covered by the separate rules.

7.8 Other additional powers

7.8.1 The addition of express specific powers (some of which are currently covered by the CCA) is also sought, for example:

(a) to set up a trading company to raise funds in support of MHT;

(b) to set up a membership organisation both to raise funds and to enable greater local engagement with the charity;

(c) to compromise legal proceedings;

(d) to reserve income;

(e) to employ staff;

(f) to enter into contracts;

(g) the three existing powers to mortgage should be replaced with one single power.

7.9 Liability

7.9.1 It is understood that, as a result of certain definitions in the Countryside and Rights of Way Act 2000 ("**CROW**"), there is a lacuna as a result of which section 1(6A)-(6C) of the Occupiers' Liability Act 1984 does not apply to land under the jurisdiction of MHT. It is proposed that MHT should enjoy the same limitation of liability as do the occupiers of "access land" under the terms of CROW.

7.10 Miscellaneous issues

7.10.1 Under the Acts, there are a number of requirements for third party consents. Most of the bodies referred to have ceased to exist or merged into other organisations. All references to those bodies in requirements for third party consents should be replaced by references to current relevant bodies where the requirements remain applicable.

7.10.2 A large number of statutes are expressly applied to MHT in the Acts. Many of these have now been repealed and so these provisions have fallen away. The references to repealed legislation need to be reviewed and the requirements either replaced by new express provisions in the Bill or the references updated.

7.10.3 There are references to a number of third party rights in the Acts. Some of these are no longer relevant and need to be removed or updated.

7.10.4 Transitional arrangements will need to be incorporated in the Bill.

7.10.5 Some sections of the Acts could be discarded as they are no longer relevant eg the powers in the 1924 Act to set up sinking funds and compensation funds.

8. Consultation

8.1 MHT have consulted trustees and staff throughout the process of planning the proposed changes. In particular:

8.1.1 One to one interviews were offered to all trustees as the proposals were being developed, in addition to debating the issues in MHT meetings.

8.1.2 All staff were interviewed in groups.

8.2 MHT ran an extensive consultation in 2019 on most of the measures now being proposed, at the time when an application for a section 73 scheme was being considered. The consultation exercise included writing to all identified stakeholders and holding a 6 week public consultation including opportunities for members of the public to respond online or by paper copy, attend focus groups and a number of public drop-in sessions held to explain about the aims of the changes and answer questions[3].

8.3 It is recognized that a further public consultation will be required as the Bill will inevitably cover new territory and in recognition that the previous consultation was undertaken a number of years ago.

[3] Analysis of consultation outcomes Paper A Governance Committee meeting 30 January 2020

Costs

9. Background

9.1 This section of the application sets out MHT's understanding of the projected costs for the promotion of the Private Bill.

9.2 In compiling this section, MHT have sought estimates from 3 firms of Parliamentary Agents who are experienced in the promotion of private Bills. All were provided with the same information including

- the first draft ("the Draft") prepared for the s73 Scheme
- a detailed list of the amendments required to the Draft which had been identified to date (including amendments following the consultation, changes identified by MHT and where drafting was incomplete)
- additional items likely to be included if the changes were effected by Private Bill as opposed to a s 73 scheme
- relevant history – including that there were a number of petitions in both Houses when the Bill which became the 1995 Act was progressing through Parliament

[redacted]

[redacted]

[redacted]

10. Work required

10.1 In general terms, MHT have been advised that the work that would normally be expected to be done by the Parliamentary Agents would include, but not be limited to:

(a) Advising generally on procedure throughout

(b) Drafting and settling the Bill and the explanatory memorandum

(c) Advising on consultation

(d) Obtaining human rights advice

(e) Preparing, serving and placing relevant notices at the time of the Bill's deposit

(f) Preparing a "precedent Bill" which shows where the relevant precedents for each clause are, together with other various versions of the Bill required by Parliament

(g) Liaising generally with the House authorities before and throughout the promotion

(h) Physically depositing the Bill in Parliament and various versions of it throughout the Bill promotion

(i) Preparing for and appearing before the Examiners in Parliament to prove compliance with the Standing Orders (once when the Bill is deposited, again when it goes to the second House)

(j) If there are petitions against the Bill, considering whether the petitioners' standing should be challenged, serving notices and appearing before the relevant committee

(k) Assisting in dealings with the Charity Commission and interested government departments (Attorney General and DCMS are most likely to be interested)

(l) Assisting in negotiations with petitioners, if any

(m) Dealing with queries about the Bill from interested MPs or peers

(n) Drafting amendments, undertakings and assurances to meet concerns raised by third parties and assisting in negotiations

(o) If necessary, assisting in briefing MPs and Peers and attending Parliament for any debates (on second reading, consideration and/or third reading)

(p) Preparing filled up Bill (ie Bill with amendments) and other documents for committee stages

(q) If unopposed by petition, preparing for and appearing as advocate at the committee hearings in the relevant House

(r) If opposed by petition, instructing counsel, assisting in the preparation of evidence etc for committee in the relevant House.

[redacted]

12. Other costs

12.1 In addition to the costs of the Parliamentary Agent MHT anticipates other costs:

£20,000 for other miscellaneous legal advice from its charity lawyers

£45,000 for 1.5 full time equivalent staff members to support the process

£20,000 for further consolation costs

12.2 In addition MHT has planned for a contingency of £39,000 for other unanticipated expenses.

Record of decisions

13.1 MHT has a decision-making structure of board and committees. The primary reason for this is because with a large Board (potentially 29 members), it is impractical to have detailed discussion on a number of complex issues within a reasonable timescale if everyone is to have input.

13.2 Most governance matters requiring in depth consideration go to the Governance Committee first (non-committee members can sit in on the Governance Committee meetings if they wish). The committee, however, has no delegated powers and only makes recommendations to the Board. There is often further discussion at Board meetings, but having had sight of the committee minutes and the recommendation, the length of the Board's discussion is generally shorter than it otherwise might have been.

13.3 MHT has a Governance Committee of 7 (in addition the Chair and Vice-Chair of the board can sit on a committee, but do not have a vote) most of whom either have appropriate skills and knowledge or a good understanding and acceptance of charity governance. The Governance Committee set up a series of Working Groups to carry out trustee consultations, in depth consideration of issues and possible solutions and then report back to the Committee.

13.4 The process of considering the necessary revision of the Malvern Hills Acts has taken a considerable amount of time. This reflects not only the importance to MHT of the modernisation but also the number of changes required and the need to canvass all the options to be considered. Trustees have had to grapple with outdated legal language contained in over 80 pages of legislation and concepts with which they are not familiar. Whilst it would be fair to say that some of the changes proposed have not received universal support from all (currently 22) trustees and are never likely to do so, the majority of the proposals carry the support of the great majority of the trustees.

13.5 All minutes and supporting papers can be provided separately if required. Relevant section of the minutes referred to below and the related papers are set out in Appendix D.

13.6 References in the table below to a decision or an approval means a decision or approval of the MHT Board unless indicated otherwise.

13.7 The key decisions and steps taken are:

Date	Decision or Step Taken
11 September 2014	Decision to proceed in principle with a Scheme under section 73 Charities Act 2011 and key issues identified.
9 October 2014	Original Working Group appointed.
28 January 2016	Further Working Group (FWG) appointed following October 2015 elections.
9 June 2016	Following one to one consultations between trustees and FWG, initial proposals were approved:- to proceed with a "Council and Board" model with a reduction in the Board size to around 12 trustees, plus 21 other changes and work to scope the cost of the changes. (The "council and board" model was subsequently abandoned).
9 March 2017	Allocation of budget to prepare a section 73 Scheme to include legal advice, preliminary consultation and drafting (save for the issue of board structure and appointment).

Date	Decision or Step Taken
9 November 2017	Revised arrangements for appointment of and size of board approved together with 11 other proposals. Decision made not to attempt to change levy paying area.
3 May 2018	Budget approved for consultation process.
14 June 2018	Board approval for changing the method of electing trustees to a postal voting process.
12 August 2019	Scope and arrangements for public consultation on the proposed governance changes were approved.
2 September – 10 October 2019	Consultation takes place.
1 November 2019	New Board take up posts following appointment / elections.
December 2019 /January 2020	FWG (with one additional member from new trustee intake) considered the responses to the consultation and prepares a paper outlining the amendments/ further work which should be carried out in response.
4 March 2020	MHT informed that the DCMS had advised that a Private Bill would be the preferred mechanism for amending the Acts.
12 March 2020	Board adopted the recommendations of FWG and were informed of the DCMS position on how governance changes were to be made.
	All work on the governance changes was suspended during the initial months of the Covid-19 pandemic.
4 February 2021	Governance Committee set up a new Working Group (WG1) to look at the costs and benefits of proceeding with the Governance changes. and a 2nd working group (WG 2) to carry out any work arising from the responses to the consultation.
11 October 2021	WG 1 produced its Cost and Benefit Analysis Report for consideration by the Governance Committee followed by the Board. The report concluded not only that it was expedient but that it was essential to update the Acts and that there is also an economic case for doing so.
11 November 2021	Board resolution: A. On the basis of the Governance Committee WG 1's report, the Board agree that it is expedient in the interests of the charity to proceed with a Parliamentary Bill to make the proposed governance changes (subject to a review as set out in B below). B. WG 2 proceed to: i. Carry out the further work identified in the Report of FWG dated January 2020 ii. Consider any other issues that arose during the process C. MHT Officers in conjunction with WG 2 carry out any further work required to apply for section 74 consent D. The application for s 74 consent should be submitted to the Charity Commission (provided the estimates for legal costs are within 10 % of the figures contained in the report on Costs and Benefits)

Date	Decision or Step Taken
	E. The cost of funding the work on a Private Bill should be met from a loan from the Land Purchase Fund. F. To approve expenditure of up to £10,000 to prepare the section 74 application.
11 October 2022	WG2 reported to Governance Committee that they had considered the outcomes from the consultation but most required amendments to be drafted or advice which it would not appropriate to take until after s74 consent had been given.

Summary and conclusion

14.1 MHT started looking seriously at trying to update its Acts after the St Ann's Well Inquiry. Failures of good governance contributed to poor decision making in relation to the renewal of the business tenancy of St Ann's Well which led to a serious incident being reported to the Charity Commission in February 2012.

14.2 Following this, the Charity Commission indicated it might support a s73 scheme and a process began of settling what changes might be made to just over 80 pages of governing legislation. MHT were subsequently advised in March 2020 that the DCMS considered that it would be more appropriate to make the governance changes by way of a Private Bill.

14.3 As set out in the Introduction and Proposals for Reform sections of this application, the five Malvern Hills Acts are, because of their age and the piecemeal nature of their evolution, difficult to follow and out of date – many of the references in them are to bodies which have disappeared or changed and to statutes that have been repealed.

14.4 An illustration of the problems that this has created and which has taken up a great deal of MHT resource and staff time (and remains unresolved) is a current issue arising from Local Government Boundary changes made this year which mean that the District Council ward boundaries no longer fit the narrative contained in those provisions of the Acts which determine who is entitled to elect MHT Board members. The Acts are no longer fit for purpose and if they are not updated there is a significant risk that MHT will cease to be able to function in compliance with them.

14.5 Crucially, in addition, MHT is handicapped by being unable to follow modern best practice in its governance arrangements and by a lack of powers to enable it properly to manage its land in the 21st century.

14.6 MHT has been looking for many years for a way to update its governing Acts and has shied away from committing to do so because of the resource implications. What is certain is that the cost of making the necessary changes will not reduce as time goes on and it has come to a point where the changes simply have to be made.

14.7 The Charity Commission is asked to give favourable consideration to this application for consent under s74 Charities Act 2011 to enable MHT to prepare and promote a Bill in Parliament.

14.8 **The Commission is asked to note that Private Bills must be deposited by 27 November and therefore timely consideration of this application would be much appreciated in order to make it possible for a Bill to be deposited in 2023.**