

SOMERSET ARCHAEOLOGICAL AND NATURAL HISTORY SOCIETY

ANNUAL GENERAL MEETING 2014

At the 2013 AGM, a full team of four executive officers was elected, mostly for just one year, to cover the impending negotiations with the Somerset County Council (SCC) over its creation of a Heritage Trust to deliver the Council's heritage services. The Society expected a full and detailed consultation with those responsible for taking this plan forward, and, soon after the May 2013 AGM, a SCC/SANHS Joint Project Group was established. SANHS has been linked to SCC since 1957 and, as a result, has benefited from some £18m of investment in the County's heritage and we need to protect these advantages in the face of change to the service delivery that the Somerset Heritage Service is currently implementing. The Council Cabinet discussion on 20 March 2013 approved, in principle, a project to create a new charitable Trust and required evidence of the affordability, viability, and sustainability of the Trust. The Executive Officers of the Society, advised by the Development and Policy Committee, and the Council have regularly discussed project progress, and, as a primary stakeholder, the Society has monitored the risks that the project poses for its charitable purposes and its assets. The SCC Cabinet meeting on 11 November 2013 approved the creation of the Trust by 1 September 2014, and the Society requested detailed financial information necessary for its Trustees to undertake due diligence of the proposal.

Specific enabling arrangements, agreed with the Council early in the first quarter of 2014, included compliance with a Non-Disclosure Agreement and a Heads of Terms to initiate negotiations for the oversight of a possible Council sub-lease of part of the Castle Estate and devolution of the collections loan agreements to the Trust as a whole set of formal agreements. These negotiations will not be completed until after the May 2014 AGM.

October saw the Associated Societies AGM meet in Taunton Castle, and, amongst other things, the meeting debated how SANHS and its Associated Societies could work more closely together to mutual benefit of the heritage of Somerset. A General Meeting was held in December 2013 at Taunton

Castle to update Members on progress with the creation of a new Heritage Trust, on the completion of the Council's plans for the refurbishment of Castle House, and on the options for the future of Wyndham Hall. Reports on the excellent variety of talks and visits that have taken place across the Society can be found in the Newsletters and on the website. The Society has endeavoured to manage its programmes more efficiently and so avoid event confliction that prevents members from having the pleasure of attending events of all disciplines.

The Society is able to look back with satisfaction on a year, started with a full complement of executive officers, that presented the twin challenges of a demanding but achievable budget and novel due diligence of an unproven, heritage trust for Somerset. We saw the use of the splendidly refurbished Castle House by Vivat Trust and the Castle House Management and a Royal visit by the Duke of Gloucester to open formally the building. This is the culmination of much visionary endeavour and hard work over many years by our Heritage Service colleagues, the Somerset Buildings Preservation Trust, and the supporting SANHS team. The Society aims to celebrate this event in its own way with a fine Christmas Party in Castle House.

Peter Ellis, former Editor of Proceedings was inducted as our President for the following year and Jerry Sampson who immediately became a Vice-President. During the final two quarters of this year Bill Kelly and Robin Cloke remained the only elected officers of the Society until the AGM when Tom Winsborough was elected as chairman, Peter Jessop as Honorary Secretary, Des Atkinson as Treasurer and Robin Leamon as vice chair. The Trustees had co-opted Liz Caldwell (Secretary of the Archaeology Committee) to the Board as a candidate for Trustee at the May 2014 AGM and other new trustees included Duncan Chalmers, Mary Claridge, Andrew Watson, and Adrian Webb. In the office, Gail Willis, a new volunteer, joined the team.

The Society is moving forward with stable

finances, strengthened governance, a professional and diverse Board, and a campaign to raise our profile and attract new members. We can point to many successes over the past year, and there

are exciting projects and activities ahead that the Society will work at with energy tempered by its risk management approach.

**SOMERSET ARCHAEOLOGICAL AND NATURAL HISTORY SOCIETY
STATEMENT OF FINANCIAL ACTIVITIES
FOR THE YEAR ENDED 31 DECEMBER 2013**

| Incoming Resources | Note | Unrestricted Funds £ | Restricted Funds £ | Endowed Funds £ | Total 2013 £ | Total 2012 £ |
|--|----------|----------------------------|--------------------------|-----------------------|--------------------|--------------------|
| Incoming Resources from generated funds | | | | | | |
| Subscriptions | 2 | 15,892 | - | - | 15,892 | 16,044 |
| Gift Aid | | 2,500 | - | - | 2,500 | 2,584 |
| Rent Received | 4 | 12,315 | - | - | 12,315 | 12,528 |
| Investment Income and royalties | | 3,718 | 1,811 | 9,244 | 14,773 | 11,933 |
| Legacies and Donations | 3 | 3,362 | 500 | - | 3,862 | 22,865 |
| Publication Sales and Contributions | | - | 3,331 | - | 3,331 | 4,730 |
| Proceedings | | 1,242 | - | - | 1,242 | 1,482 |
| Function Income | | 3,484 | - | - | 3,484 | 2,015 |
| Group events income | | 4,453 | - | - | 4,453 | - |
| Other Income | | 1,775 | - | - | 1,775 | 5,027 |
| Total Incoming Resources | | 48,741 | 5,642 | 9,244 | 63,627 | 79,208 |
| Charitable Activities | | | | | | |
| Grants | | - | 6,090 | - | 6,090 | 4,219 |
| Proceedings | | 4,086 | - | - | 4,086 | 8,280 |
| Newsletter | | 1,401 | - | - | 1,401 | 2,814 |
| Library Acquisitions | | 1,537 | - | - | 1,537 | 1,344 |
| Library maintenance | | 56 | - | - | 56 | 130 |
| Function Costs | | 921 | - | - | 921 | 2,299 |
| Publications | | - | 3,964 | - | 3,964 | 719 |
| Group events expenditure | | 3,291 | - | - | 3,291 | - |
| Office Costs | 5 | 20,515 | - | - | 20,515 | 17,646 |
| | | 31,807 | 10,054 | - | 41,861 | 37,451 |
| Governance Costs | 5 | 8,336 | 960 | - | 9,296 | 12,686 |
| Total Resources Expended | | 40,143 | 11,014 | - | 51,157 | 50,137 |
| Net Incoming/(Outgoing) Resources | | 8,597 | (5,372) | 9,244 | 12,469 | 29,071 |
| Other Recognised (Losses)/Gains | | - | 224 | 1,394 | 1,618 | 14,359 |
| Transfers between funds | | - | 9,244 | (9,244) | - | - |
| Net Movement in Funds | | 8,597 | 4,096 | 1,394 | 14,087 | 43,430 |
| Total Funds Brought Forward | | 6,087 | 105,154 | 177,463 | 288,704 | 245,274 |
| Total Funds Carried Forward | | 14,684 | 109,250 | 178,857 | 302,791 | 288,704 |

DUE DILIGENCE PAPER

by David Roberts, Chair, Development and Policy Committee

The decision early in 2012 by Somerset County Council [SCC] to review the future of its Heritage Service (Museums, Archives, Historic Environment and Local Studies Library) was the start of a long road which led to the vesting of the Service in the South West Heritage Trust on 1st November 2014. The paper, published here [in slightly edited form] and presented to the Board of Trustees on 27th October 2014, was the key document that led to their resolution that *'having considered the papers and having completed the Archive Agreement dated 21st October 2014 between SCC and SANHS (being the third Agreement with SCC the others covering the SANHS Library and Museum Collections), and the legal documentation dated 21st October 2014 concerning the building of the Glass Bridge on Castle Green and the creation of the option for SANHS to take back the Wyndham Hall from SCC (such documentation being outstanding pending Access Works to the Wyndham Hall, now completed), hereby agree to the form of the licence [to sublet the Castle to the new trust] and the Forward Loan Agreement [with SCC and the new trust concerning the collections] presented to the meeting and authorises their completion.'* To preserve the flavour of the original document the tense of the verbs used have not been changed though three of the appendices have been omitted.

1. Executive Summary [1]

This paper is produced by the Development and Policy Committee of the Somerset Archaeological and Natural History Society for consideration by the Society's Board of Trustees. The Development and Policy Committee was charged by the Board with overseeing the Society's strategy with regard to the proposed South West Heritage Trust and with the task of formulating a recommendation to put to the Board of Trustees.

In all the Committee's negotiations and deliberations, the principal focus was on the prudent stewardship of the Society's assets and the furtherance of its charitable purposes.

The committee has considered in great depth a range of agreements and other documents and received regular and detailed reports from a legal sub-group and from the Society's negotiators. The Committee has also obtained specialist legal advice

from firms with expertise in property, charity and intellectual property matters.

The Committee has evaluated the options available to the Board and assessed the advantages, disadvantages and risks associated with each course of action. Having completed a thorough due diligence process, the Development and Policy Committee decided unanimously on 23rd October 2014 to recommend to the Board of Trustees that it authorise the necessary steps to lease or loan the relevant assets of the Society to the South West Heritage Trust.

2. Abbreviations used in this document [1]

- 2.1 SANHS – Somerset Archaeological and Natural History Society, a registered charity, sometimes referred to as 'The Society.'
- 2.2 SCC – Somerset County Council.
- 2.3 SWHT – South West Heritage Trust.
- 2.4 SHC – Somerset Heritage Centre, the headquarters of the Somerset Heritage Service and registered address of SANHS.

3. Purposes of this document [1]

- 3.1 To summarise for the Board of SANHS the issues involved in the proposed creation by Somerset County Council of a trust to manage heritage assets, functions and services.
- 3.2 To describe the process that SANHS has followed to determine whether the Society's assets could reasonably and responsibly be committed to the care of the SWHT.
- 3.3 To convey the legal advice that the Society has received.
- 3.4 To report the conclusions of the Development and Policy Committee.
- 3.5 To communicate to the Board of SANHS and the Society's Custodian Trustees a recommendation as to the way forward for the Society.
- 3.6 To inform members of the issues that confronted trustees and reasoning behind their decision.
- 3.7 To provide a record for posterity of the issues faced by the Society in 2013 and 2014.

4. The obligations and liabilities of trustees [1]

- 4. [The Charity Commission advice then current was appended to the report.]

5. SANHS Charitable Purposes [1]

- 5.1 SANHS exists to *promote the study of archaeology, natural history and history with*

particular reference to the historic county of Somerset in such ways, including publications and information technology as the Board of Trustees may deem appropriate. (2006 Constitution).

5.2 SANHS is endowed with a portfolio of property and museum, library and archive collections.

5.3 One dimension of the charity's charitable purpose is as an advocate of the cause of Heritage in the county of Somerset.

6. SANHS Relationship with SCC [1]

6.1 For many years, SANHS has recognised that it cannot, on its own, manage its assets. Accordingly, the Society has come to a series of agreements with SCC, thus creating a symbiotic relationship with the County Council. In effect, many of the Society's charitable functions are carried out vicariously.

6.2 SANHS was represented on SCC management committees, latterly the Libraries, Museums and Records Committee until it was abolished consequent to the Local Government Act of 2000.

6.3 SCC was represented by a councillor on SANHS Council and later on the Society's Advisory Council.

6.4 The post of County Museums Officer was a joint SANHS / SCC appointment.

6.5 Recent years have seen the library moved from the Castle to Paul Street and then to the Somerset Heritage Centre all in the care of SCC.

6.6 SANHS has authorised the sub lease of Castle House to the Vivat Trust and the further sub lease of the ground floor of that property to the Castle House Trust.

6.7 Over the years, the Board of Trustees has regularly sought creative solutions to ensure the appropriate care of the Society's assets in changing legislative and financial circumstances. The Board has also sought to provide appropriate support to the heritage activities of SCC.

6.8 The relationship with SCC has thus been dynamic, not static.

6.9 The cuts in public expenditure, projected to continue for several years, have once again changed the context in which SCC and SANHS have to determine the best route forward for heritage in the County

7. SANHS agreements with SCC prior to the current round of negotiations [1]

7.1 There are two Collections Agreements:

- The Museum Collections Loan Agreement dated 2nd September, 2006 (termination on 31st March 2056)

- The Library Collections Agreement dated 28th July, 2010 (termination on 27th July 2040).

These agreements are signed as deeds, so they are enforceable against SCC for non performance.

7.2 There are also two Property Agreements:

- The lease of Taunton Castle for the purpose of a museum dated 2nd September 2008 (termination date 1st September 2056).

- SHC Office Lease dated 10th October 2011 (termination date 27th July 2040).

7.3 There will be an Archive Agreement in place before, but irrespective of, the creation of the proposed SWHT.

7.4 The Castle lease provides that SANHS may not "unreasonably withhold" consent to a sublet.

8. SCC Proposal to form a Heritage Trust [1]

8.1 Continuing pressure on public finances led SCC to propose the creation of a Heritage Trust to assume responsibility for those heritage assets in the care of the County Council. Many key assets are owned by SANHS and leased or loaned to SCC. The agreement of SANHS to the sub lease of the Castle to the proposed Trust is regarded by SCC as central to the establishment of a Trust.

8.2 SCC would no longer be a delivery body in respect of heritage.

8.3 SCC proposes to fund the Trust for five years on a tapering basis.

8.4 The Gateway Report paving the way for the establishment of a Heritage Trust was approved by the County Council Cabinet on 11 November 2013. The Trust concept thus has a democratic legitimacy.

8.5 Subsequently, the proposed scope of the Trust was extended to include the Devon Heritage Service.

8.6 SCC has expressed a desire to alter existing agreements as little as possible.

9. The South West Heritage Trust [1]

9.1 Initially, a company limited by guarantee, the proposed Trust now also has charitable status (register no. 1158791).

9.2 The Aims of the Trust are:

1. *The advancement of education.*

2. *The promotion of arts, heritage, culture and science including by the preservation and safeguarding of such land, buildings, structures, archaeology, objects, records or books as may be of historic or educational interest or significance; and*

3. *To provide and assist in the provision of facilities in the interest of social welfare for the recreation, or other leisure time occupation of individuals who have need of such facilities by reason of their youth, age, infirmity or disability, financial hardship or social circumstances with the object of improving their conditions of life.*

It should be noted that these aims are significantly broader than those of SANHS.

9.3 A shadow board was appointed in April 2014 with Mr. David Gwyther as Shadow Chair.

9.4 The Chief Executive Designate is Mr. Tom Mayberry.

9.5 A five year business plan for the Trust has been produced and approved by SCC.

A copy is available in the Society's office in the Heritage Centre.

9.6 The Trust's draft structure plan includes an Advisory Forum, on which SANHS would be represented.

9.7 The proposed vesting date for the Trust was initially 1st October, 2014. This was later deferred to 1st November, 2014.

10. The SANHS Position [1]

10.1 SANHS initial response to the SWHT proposal was:

10.1.1 To respect the democratic legitimacy of the proposal.

10.1.2 To recognise that the County's finances are under acute pressure and that further, possibly heavy, cuts in services are unavoidable. Inevitably these would include cuts to the heritage budget. Ongoing cuts would possibly compromise the proper care of SANHS assets and the fulfilment of its charitable purposes through underfunding and the loss of key expertise in the Heritage Service. Future SCC budgets are unknown.

10.1.3 To appreciate that, if support for the establishment of the SWHT were to be withheld without full exploration of the concept, SANHS could well be deemed to have acted unreasonably and thus be vulnerable to legal action by SCC.

10.1.4 To fear that the County's wider heritage and the heritage agenda within Somerset would be compromised by the budgetary pressures to which SCC is subject.

10.2 In the light of the above risks and concerns, the Board of SANHS decided to offer broad support to the establishment of the SWHT, subject to the structure of the Trust and the necessary legal agreements proving consistent with the Society's charitable obligations. SANHS would seek to influence SCC's emerging proposals so that they would be compatible with the charitable obligations of the Society.

10.3 The Board of SANHS established a negotiating structure. The Development and Policy Committee would supervise the overall strategy. A legal sub group would consider the content and implications of the various agreements. Two members would be delegated to conduct direct negotiations with SCC. The Board would remain ultimately responsible for all decisions.

10.4 In November, 2013, the Board of SANHS approved a set of fundamental principles that would underpin the Society's negotiating position. These are set out in Appendix 2. As indicated in 17 below, the text in *italics* indicates how these points have been addressed.

10.5 The Society would act as a critical friend to SCC in the preparation of the SWHT.

10.6 The Society would not seek the right to nominate a trustee to the proposed Trust, as any such appointee would be obliged, when sitting on the board of the SWHT, to act solely in the interests of that charity. In the event of any dispute between the SWHT and SANHS the trustee would have to declare a conflict of interest and probably lose the right to participate in any debate.

10.7 The Society decided to remove the Wyndham Hall from the portfolio of property that might be transferred to the SWHT.

10.8 Castle House would similarly lie outside the negotiations with SCC, having already been sublet to the Vivat Trust with the ground floor subject to a further sub lease to the Castle House Trust.

10.9 The Society recognised that the trustees' inevitable focus on issues connected with the proposed establishment of the SWHT would compromise their ability to address other matters of concern to SANHS.

11. Negotiating priorities [1]

11.1 The drafting and signing of an archive agreement.

11.2 Ensuring that the terms of SANHS

existing legal agreements and administrative arrangements with SCC would be maintained and respected by the SWHT.

11.3 Enshrining in all collections agreements that assets would only be bailed (loaned) to the Trust. SANHS assets would thus be protected in the event of the insolvency of the trust.

11.4 Ensuring consistency of legal definitions across all documentation. Ensuring overall consistency.

11.5 Ensuring that SANHS primary legal relationship in relation to the SANHS collections would remain with SCC.

11.6 Ensuring the continued operation of existing collections agreements with SCC through the establishment of the SWHT.

11.7 Ensuring that the SWHT would be required to maintain assets to nationally recognised standards.

11.8 Ensuring that SANHS assets would be used only in ways that could be justified in terms of SANHS charitable purposes. Note that SWHT purposes are wider than those of SANHS.

11.9 Ensuring appropriate protection of SANHS intellectual property rights.

11.10 Ensuring that appropriate insurance arrangements would be in place.

11.11 Ensuring that SCC would have in place robust procedures for monitoring the performance of the SWHT and for addressing any shortcomings. Ensuring the framing of such procedures with regard to the obligations of SCC under the collections agreements and securing their relationship to the monitoring and review arrangements in those agreements.

11.12 Ensuring that, in the event of the insolvency of the Trust, all SANHS assets would revert to the care of SCC on a “*status quo ante*” basis. The primary safeguards for SANHS assets would thus be the legal agreements with SCC.

11.13 Ensuring that the “Fundamental Points” identified by the Board of SANHS were satisfactorily addressed.

12. Negotiations [1]

12.1 Legal advice is that SCC already has the right to pass the benefits but not the obligations of non-property assets to the SWHT without the specific agreement of SANHS but subject to the terms of existing collections agreements. However, no sub lease of Taunton Castle to SWHT could take place without the consent of SANHS, the landlord, although the Society

may not “unreasonably withhold” such consent. The need for this consent enabled SANHS representatives to negotiate across the whole range of agreements to ensure that these secured appropriate protection for the Society’s assets in changing circumstances. Without the castle, the SWHT would not be able operate.

12.2 The Society’s lawyers agreed with the Society’s legal sub-group that a Forward Loan Agreement, encapsulating the core obligations of the Society, the SWHT and SCC under the three existing agreements, should be drawn up and signed by representatives of the three bodies. The same agreement would provide a framework for maintaining the Society’s productive relationship with the staff of Somerset’s Heritage Service through joint collection committees. This proposal was initially resisted by lawyers representing the SWHT. The existence of a Forward Loan Agreement would strengthen the Society’s position beyond that envisaged in the agreements between SCC and SWHT.

12.3 The legal sub-group and the Society’s negotiators spent many hours over many months discussing issues surrounding the establishment of the SWHT and the implications for SANHS assets with representatives of SCC.

12.4 It should be noted that parties other than SANHS are involved with SCC in discussions leading to the possible establishment of the SWHT. While issues raised by SANHS negotiators may be of use to other parties, the Society’s aim has always focused on the need to protect its own interests and charitable purposes.

12.5 The Society had long recognised that there was no archive agreement between SANHS and SCC. There was a need to put such an agreement in place, irrespective of the establishment of the SWHT.

13. Consultation with members [1]

13.1 As far as possible, details of the evolving situation have been placed on the Society’s website.

13.2 Members have been briefed on the state of negotiations at General Meetings on 7th December 2013 and at the Annual General Meeting held at Monk’s Yard on 17th May 2014.

13.3 A General Meeting to advise members on the final package and to seek their views before any decision by the Board was arranged for 23rd June 2014. This had to be cancelled because of significant delays in the availability

of information to the Society's project team and negotiators and the consequent slow progress of negotiations. The Board's plans to consult members well before the proposed vesting date were thus frustrated.

13.4 A special General Meeting took place on Saturday, 18th October 2014, at which members had the opportunity to learn about, to consider and to express a view on the proposals upon which the Board plans to decide on 25th October 2014. A preliminary version of this Due Diligence paper was distributed at the meeting.

14. SANHS Expertise [1]

14.1 In addressing the issues involved in the proposed establishment of the SWHT, the Society was able to draw on important expertise and experience from within its own ranks. These areas of expertise included:

- Project Management
- Risk Assessment
- The handling of complex negotiations
- The analysis of complex documents
- Detailed knowledge of the legislative framework and professional protocols governing the management of museums, collections, libraries and archives.
- Flexible and tenacious administration, able to draw on a legal background to assimilate and interpret complex issues rapidly and accurately.

14.2 Professional legal advice was sought as described in 15 below.

15. Legal Position following negotiations and consultations [1]

15.1 Property issues have been dealt with by Michael Gay of Foot Anstey, while other matters have been handled by Alexandra Whittaker of Stone King. The purpose of seeking legal advice was to ensure that all the concerns outlined in 10 and 11 above were securely incorporated into all legal documents and that these constituted a coherent and legally watertight package. SANHS would then seek a letter of comfort from each solicitor to confirm that legal position.

15.2 It should be noted that, although exchanges with SCC representatives were complex and time-consuming, they remained constructive.

15.3 Following prolonged discussions and negotiations over many months, the following agreements now exist:

Between SANHS and SCC:

- Draft Archive Collection Agreement dated 6th August 2014 (to terminate 24th July 2040).

Between SANHS, SCC and SWHT:

- Draft Licence to Forward Loan (to continue until the termination of the Collections Management Agreement or SANHS Collections Agreements).
- Draft Licence to agree a Transfer dated 20th August 2014. The Licence is for 3 months. The term of the Underlet is for whole of the Castle Lease, i.e. until 28th March 2056.

There are also agreements between SCC and SWHT to which SANHS is not a party:

- Draft Transfer Agreement dated 15th August 2014. This is an indefinite agreement subject to termination on e.g. ceasing to be a charity, etc.
- Draft Grant Agreement dated 15th August 2014. (Condition as above).
- Draft Collections Management Agreement dated 15th August 2014. (Condition as above).

15.4 The Society has obtained legal advice from Foot Anstey and Stone King to confirm that the agreements listed above would offer trustees the security that they would be following a course of action that would:

1. be legal, reasonable and consistent with their obligations as trustees of a charity.
2. safeguard the security and good maintenance of SANHS property and assets.
3. guarantee the right of redress in the event of any problem arising.

15.5 Legal advice from Foot Anstey and Stone King is set out in Appendix 3.

16. Risks [1]

16.1 The trustees of SANHS face a choice: to approve the lease of the castle to SWHT and therefore the loan of other assets to the SWHT or to decline to agree to that proposal, thus continuing the current arrangement with SCC. Neither course is free of risk.

16.2 SANHS initial assessment of the risks of inaction is set out in paragraph 10 above. Essentially, following negotiations, these remain.

16.3 If SANHS were to decline to approve the onward lease of the Castle and the loan of the collections, it could be accused of not having negotiated in good faith and of "unreasonably withholding consent" to a sub-lease. Continuing negotiations over months, it could be argued, implied that acceptance of the Trust concept.

While such a position would not be rationally sustainable since final agreement always depended on a Board resolution, trustees have to be aware of the possibility of an unpleasant “blame game” should the Trust proposal collapse. A further consequence would probably be a deterioration of the relationship between SANHS and SCC that could, in turn, compromise the Society’s charitable aims.

16.4 Should trustees decide to commit SANHS assets to the care of the SWHT, the risks would be:

1. Financial. To maintain the present level of heritage activity, the SWHT would have to generate significant sums to augment and enhance the tapering grant from SCC. Should it fail to raise sufficient funds, then its capacity to fulfil its obligations would be reduced. This could lead to inadequate care of SANHS property and other assets and the frustration of SANHS charitable purposes. In such circumstances, the Forward Loan Agreement would allow SANHS to seek direct redress from the SWHT, as well as from SCC.
2. Aspects of the finances of SWHT remain unknown. For example, SANHS is not party to the Trust’s arrangements with Devon County Council and North Somerset Council.
3. There is no information in the public domain about the finances of the SWHT after its first five years.
4. Should the SWHT collapse into administration with debts, SANHS assets would revert to the care of SCC or any successor organisation. While we are assured by our lawyers that those assets would be secure from the administrators and creditors of the SWHT, it is unclear how SCC, having divested itself of, or greatly reduced, its heritage staff, would be able to provide an appropriate level of care and service. Clearly, SCC would have to decide whether to maintain heritage services itself or to seek to sub-contract those services or even to consider termination of some agreements (see 7 above). In such circumstances, the future management of SANHS assets is unclear.
5. Care of SANHS assets and the fulfilment of its charitable purposes depend on an effective partnership involving SCC, SWHT and SANHS. Any fracture in or diminution of those relationships could impair the efficiency of the operation.
6. There is a growing number of heritage

trusts across the country, not least English Heritage. All could be seeking grants from the same sources.

16.5 One significant difference between the risks associated with the assets remaining in the care of SCC and those associated with the care of assets by the SWHT is that the entire focus, energy and resources of the Trust would be directed at the heritage issues of Somerset and Devon. By contrast, SCC would always be juggling priorities within a diminishing budget.

16.6 It is impossible at this stage to assess the effectiveness of the leadership of the Trust, or the robustness of its business plan. In the most optimistic scenario, the trustees and senior management of the SWHT will incorporate the necessary combination of commitment, drive, vision and entrepreneurial skills that will offer a secure future for all aspects of Somerset’s heritage. The pessimistic scenario in which the SWHT struggles or fails is outlined above. Should the Trust come into being, SANHS will need to explore and monitor the financial and operational performance of the Trust as it evolves. Inevitably, the full picture will emerge and indeed, change over time.

16.7 SANHS is not a party to agreements between SCC and SWHT and is therefore not in a position to control the way in which these might evolve, although the Society will have an agreed point of contact with SCC.

16.8 The legal advice (see Appendix 3) provides reassurance to the trustees and to the membership that, if the Society’s assets were to be entrusted to the SWHT, they would be protected by a secure and robust legal framework.

16.9 The Office Manager has established by consultation with the Society’s insurance brokers that trustees (not the Society, but including officers, including the Office Manager if acting as an officer, and volunteers) are covered under the existing insurance policy for “errors and omissions they make in their internal management and administration duties.” This would not include liability resulting from the decision on the proposed SWHT.

17. Issues for Trustees to take into account when reaching a decision [1]

17.1 Trustees will need to satisfy themselves on the following points:

- That the requirements of charity law and the

Charity Commission (see Appendix 1) have been met.

- That, as far as has proved reasonably possible, the fundamental points drawn up by the Development and Policy Committee and approved by the Board (see Appendix 2) have been addressed. The text in *italics* summarises how these points have been met.
- That they have weighed up carefully the advantages, disadvantages, implications and risks of each possible course of action.

18. Issues still to be resolved [1]

18.1 Clarification of the precise details of the insurance policies taken out by SCC.

18.2 Full completion of the work to permit vehicular access to the Wyndham Hall. A preliminary certificate of completion has been issued. This is relevant as the Board had decided that no agreements should be signed until the whole package was in place.

18.3 Details of the commercial and trading arrangements proposed by SWHT.

18.4 The way in which SCC will implement its responsibilities for supervising and monitoring the Trust's overall and day-to-day management of its collections is still to be addressed. SANHS needs the confidence that SCC has access to good independent professional advice.

18.5 The Society recognises that the detailed operational arrangements of the SWHT will evolve over time and that the Society's liaison with that organisation will develop similarly. The Society hopes to achieve a constructive and harmonious relationship that will benefit both parties and contribute to the prudent stewardship of the Society's assets and the furtherance of its charitable purposes.

19. The View of the Development and Policy Committee [1]

19.1 On October 23rd 2014, the Development and Policy Committee formally reviewed the position of the Society in relation to the proposed SWHT.

19.2 The Committee concluded that:

- The Society does not have reasonable grounds for withholding consent to the granting of a

sub-lease in respect of the Castle. This is because the interests of the Society continue to be protected as before, save for the matter of insurance, which SCC has undertaken to continue to provide. A letter from Michael Gay of Foot Anstey (Appendix 3) confirms this.

- The trustees' obligations under Charity Commission requirements have been met in that assenting to the SWHT concept would be lawful, responsible, in the interests of the charity, concluded with care and skill and on the basis of professional advice. The letter from Alexandra Whittaker of Stone King (Appendix 4) confirms that such an action would be in accordance with charity obligations and law.
- The fundamental issues identified in November 2013 by the Development and Policy Committee and adopted by the Board have largely been satisfied.
- The committee recognises that the argument for endorsing the Trust by permitting the sub lease of the Castle is not without risk. Not all the Society's negotiating aspirations have been achieved. It is clearly not possible to assess the competence of the SWHT trustees or the Trust's future financial position. However, exactly the same could be said of the future management of the Heritage Service and its finances if those were to remain the responsibility of SCC.
- The Committee assessed the alternative course of action, leaving the management of its assets and their wider public use with SCC and concluded that this would represent a greater threat to the Society's assets (see **10** above).
- The Committee therefore commends to the Board of Trustees the following resolution drafted by Alexandra Whittaker of Stone King:
RESOLUTION [see above]

APPENDICES 1, 2 and 3 Charity Commission advice and letters from the Society's solicitors are omitted [1]

APPENDIX 2: SANHS Fundamental Points [1]
SANHS would deal with the negotiations in a positive, professional and business-like manner. *The structure put in place to address the SWHT proposal confirms the business-like and thoughtful approach of the Society. The substantial paper trail (Board minutes, Development & Policy Committee minutes, working papers, email record, correspondence with SCC, letters to and from solicitors, etc.) demonstrates the professionalism and thoroughness with which the Society approached the negotiations.*

1. SANHS will aim to work positively with SCC towards a successful new Trust, but with regard to its own charitable objects and status. *Scrutiny of the paperwork will confirm that SANHS efforts were always guided by these principles.*
2. SANHS trustees must ultimately be guided by their legal responsibilities and those to the Charity Commission for assets in their care. *The documentation listed in 1 above confirms the fulfilment of this requirement. SANHS obtained high quality legal advice, the total cost of which amounted to about £20K, thus confirming a determination to ensure legal probity.*
3. The service level which SANHS will negotiate for in the new Trust is that provided to SANHS on 1 November 2013, plus any improvements. *In their stewardship of assets, the Trust would be required to implement the relevant national standards which are externally audited.*
4. SANHS will require SCC to guarantee the *status quo ante* of that date should the new Trust fail. *In the event of the failure of the proposed Trust, assets would revert to SCC in line with existing agreements. See letters from solicitors.*
5. SANHS will look to set review points so as to align the term / period of all the agreements and leases to match the 5 year funding cycle from SCC to the new Trust. *A twice yearly review by SANHS and SCC of the performance of the Trust is built into the Forward Loan Agreement.*
6. SANHS will look for full Intellectual Property Rights and insurance protection in all agreements and leases. *Advice on Intellectual Property Rights has been obtained from a solicitor specialising in that field and incorporated into the relevant agreement. Insurance covered. See letters from solicitors.*
7. SANHS will need to see the full financial package and take professional advice accordingly, including arranging Section 119 assessments for the Charity Commission if required. *Legal advice from Foot Anstey was that a Section 119 assessment was unnecessary. Financial projections of the SWHT budget do not lend themselves to analysis as plans to address the gap between the current level of expenditure on heritage and the position as the public grant tapers remain unclear. The only published accounts relate to the grant from SCC.*
8. SANHS will not agree any document in isolation and will have to see the whole package of agreements (and may take professional advice) before a recommendation can be made to the Board of Trustees. *No agreements have been made, or will be made prior to the Board meeting on 25th October 2014.*
9. SANHS cannot, in particular, make a decision on whether the Wyndham Hall should sit inside or outside the Trust without the trustees having a full understanding of the advantages to the Society from its transfer to the Trust. *On 26th June 2014, the Board approved a strategy for the Wyndham Hall outside the remit of the proposed SWHT.*
10. SANHS will consider a Confidentiality Agreement if this assists in the disclosure of financial or other sensitive information on which to make an informed decision on the financial viability of the new Trust. *Confidentiality agreements were entered into in respect of the three agreements between SCC and the SWHT (ie those agreements to which SANHS is not a party).*
11. SANHS expects to agree Heads of Terms now a cabinet decision has been taken to proceed with the Trust. *Heads of Terms were agreed on 14th May, 2014 and approved by the Board on 26th June, 2014.*
12. SANHS expects to continue to deal with SCC (not shadow Trust) representatives on policy matters, including the drafting of a Collections

- Management Agreement, now a cabinet decision has been taken. *Direct negotiations were always with SCC. Contact with the lawyers of the other parties was always carried out through the Society's solicitors.*
13. SANHS would expect SCC to include in any future arrangement a robust, independent mechanism for assessing the performance standards of the Trust. *The performance of the Trust will be monitored by (i) its obligation to observe national standards of accreditation in respect of the stewardship of assets (ii) monitoring by SANHS and SCC as prescribed in the Forward Loan Agreement.*
 14. SANHS must have its position as a key stakeholder recognised at appropriate levels in any future arrangement. This could be through having the right to appoint a member to the Trust board, or, at the very least, a place in determining the constitution of the Trust Board. *SANHS Board decided not to seek a place on the Board of the SWHT (see 10.6 above). SANHS special position is recognised by the existence of the Forward Loan Agreement which prescribes a mechanism for monitoring the way in which SCC is holding the SWHT to account. SANHS would be represented on the proposed Advisory Forum of SWHT.*

OBITUARY: HILARY BINDING 1938–2014

The church of St John the Baptist, Carhampton, was filled to capacity for the funeral on 30 December 2014 of Hilary Binding, an Honorary Life Member of the Society and its former Chairman. She died at the age of 75 on 14 December following a short illness. That such a large congregation gathered to remember her was one sign of the great affection in which she was held. It was also recognition of all that she had achieved as a teacher, historian, writer and musician and as the servant of her community in so many different ways.

Hilary Mary Binding (née Gray) was born in Banbury, Oxfordshire, on 24 December 1938. Her father came from Ampthill in Bedfordshire, but her mother's family had deep roots in Somerset. Bridgwater, Spaxton, Crowcombe and Lydeard St Lawrence were some of the places they sprang from, and Hilary was proud to claim that the scientist Andrew Crosse of Fyne Court was one of her ancestors. When she was six years old her father, until then a Methodist minister, was ordained in the Church of England, and thereafter the life and worship of the Anglican Church became central to Hilary. In later years she was a Lay Reader in the Dunster benefice, a churchwarden at Carhampton, her home for 33 years, and Lay Chairman of the Exmoor Deanery Synod.

Hilary was educated at St Brandon's School, Clevedon, and took a degree in history and economics at Southampton University. Following

graduation she eventually became a teacher in Oxfordshire where she helped to develop courses in environmental studies with a special focus on local history. In 1967, the year she married, Hilary returned permanently to ancestral territory when she was appointed to teach history at Minehead Middle School. Her former pupils have many happy memories of her, since 'not only was she a good classroom teacher, inventive and engaging, but she cared deeply for the well-being of those in her charge.'¹

In 1989 she joined the staff of the Somerset Record Office on secondment, and in 1991, having decided to become a freelance, began her long association with the Record Office as an educational consultant. She also worked extensively with the National Trust and Exmoor National Park. In her new role Hilary visited schools to explain how archives could support learning, ran courses for teachers and pupils, and on one memorable occasion worked with young people to re-enact the life of a Victorian elementary school. Her enthusiasm and skill as a west gallery musician, not least with the Rodhuish Gallery Singers, found expression in a 'Music from the Archives' event, where manuscript sources from the Somerset Record Office were brought to life in performance.

It was in those same years that Hilary's skills as a writer about West Country history came to prominence. She had already, in 1974, become