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Re: Proposed Amendments to The Garden Trust's Articles of Association

Why are we amending the articles of association?

The Gardens Trust's ("GT") articles of association (the "AoA") have not been amended since the merger of the Garden History Society and the Association of Gardens Trusts back in 2015. Close to a decade on and one pandemic later, the world in which The Gardens Trust now operates is very different and its scope of work has expanded. The Board felt it was time for an update to reflect, among other things, these changes, the difficulties experienced in recruitment to the Board lately and to facilitate hybrid general meetings.

What are the proposed amendments? And why have they been proposed?

1. An amendment is proposed to acknowledge that the previously exclusive use of male pronouns in the AoA is no longer appropriate for an inclusive organisation. Once the amendment takes effect references to "he" "him" and "his" shall apply or be construed as references to "her" "she" or "hers" or "them" and "their" (as applicable). Similarly references to "Chairman" in the AoA will now become simply "chair".
2. There is a proposed expansion of the "Objects" of The Gardens Trust (set out in Clause 4) to reflect the true scope of the work the charity is engaged with in. In particular:
 - (a) it's important function as a statutory consultee pursuant to the National Heritage Act 1983 which is absent from the current form of AoA;
 - (b) the GT's push onto social media and efforts in digital communications to promote the great work the GT does;
 - (c) the requirement for the GT to engage in fundraising and sponsorship activities given the precarious financing outlook for all charities operating in our sector;
 - (d) confirming that the GT can, not only sell or lease its possessions, but given the recent "deposit" arrangements made for the John Harvey archive at The Newt (being an exciting opportunity to promote The Gardens Trust and secure

responsible storage of this important collection), deposit them as well.

3. In Clause 13 (Membership) to Clause 15 (Ending of Membership) the changes here are proposed simply for consistency of terminology across the AoA.
4. Clause 20 (Notice of General Meetings) has been brought up to date with these proposed changes to reflect hybrid meeting practices in the world we now live in, which we think works for GT members and their busy lives. These changes give the GT the chance to maximise its potential to engage with its members. The changes require that notice of general meetings must include the form of the meeting, which may be remote or in person, or a hybrid provided all participants are able to contribute to the meeting.
5. Amendments are proposed to the provisions regarding composition of the Board and election of members to it (Clauses 33 & 34). These intended to clarify and strengthen existing practices in the appointment of trustees. As trustees and company directors, members of the Board have responsibility to observe and comply with requirements of the Charity Commission and Company Law. As a national charity responsible for the management of its own funds and grants provided by other bodies, such as Historic England and the National Lottery Heritage Fund, the GT is required to ensure that the Board is comprised of members with the skills needed in the discharge of its functions and that the membership of the Board is refreshed and renewed on a regular basis.

As a result of the 2015 merger and the three year terms of trustees, changes to the Board have been clustered and, at times, difficult to manage. The Board has regularly sought applications to join the Board from members of the GT and County Gardens Trusts, but, regrettably, has rarely received any application. The GT's current treasurer, despite recruitment efforts, is into her ninth year of service to GT and we have no internal candidates for a new chair as Peter Hughes KC comes to the end of his second three year term as a trustee. The Board has had to pro-actively seek new trustees who have the requisite skills. The existing practice is for applicants to be interviewed by a panel of trustees and, if recommended, then to join the Board initially as co-opted members until the next AGM.

It has also been brought to the Board's attention that:

- (a) for reasons of efficiency and continuity "Officers" of the charity (being the chair, vice chair, treasurer and secretary) should be treated slightly differently than other members of the board with respect to their length of service. The Board is conscious that a scenario might occur where a trustee, five years into their term, accepts an officer position, but, under the current AoA must then retire the following year, bringing a change in governance and operations too soon, and making internal recruitment into "Officer" positions (significantly more efficient for the organisation in terms of knowledge held and familiarity) unappealing; and
- (b) "ex-officio" trustees (being the chair or the chair's designee from Scotland's Garden and Landscape Heritage and the Welsh Historic Gardens Trust) have no voting rights under the AoA but yet are exposed to the legal requirements of being a GT trustee which, to the Board, is an unacceptable position.

In light of the above, it has been proposed that:

- we increase the number of co-opted trustees the Board can have (from two to three) and remove the limit of the number of times they can be co-opted onto the Board to give the Board flexibility to operate and call in extra support when required. However, it is important to note that a trustee cannot be co-opted for more than one year at a time – this provision remains unchanged;
- we remove the concept of “ex-officio” trustees, whilst continuing to strive to keep up a good working relationship with Scotland’s Garden and Landscape Heritage and the Welsh Historic Gardens Trust (with the option to continue inviting them to board meetings as observers remaining a possibility);
- the Board remains active on the subject of recruitment and looks to put forward appropriate candidates for election, and to the extent required, co-option. The Board is committed to making sure that there a range of skills, knowledge, qualities, attributes and backgrounds on the Board and will review any CV put forward by members with great interest;
- given the difficulty in recruitment into charities in this sector and the potential inefficiencies re internal appointments to “Officer” roles, there remains some flexibility for “Officers” to continue as trustees and in their roles whilst the Board deems it is in the best interests of the charity for them to do so; and
- the maximum term of office for any co-opted trustee (being 6 years, unless they become an Officer) commences at the point they are elected by members at the AGM.

Has there been any feedback from members of the proposed new AoA?

We are grateful to members to have engaged with this process of updating our AoA.

We have:

- had one typo spotted in Clause 33.1 which has been updated in a new version on the website;
- spotted another typo (in Clause 4.1.5 – “Co-operative” not “co-operate”) which we will update in a final form;
- had the following queries, which we now set out with our responses set out alongside:

Member Query	GT AoA Committee Response
<i>“Clause 34.1, if adopted, would mean that a member cannot propose themselves, or another member, for election without the prior agreement and support of exiting trustees.”</i>	The GT Board welcomes engagement from all members and would be delighted to receive any CV from a prospective trustee for review alongside

	the existing skills, knowledge, qualities, attributes and backgrounds across the Board. Existing trustees are all under a duty to act in the best interests of the GT and part of that is working with the best people possible.
<i>“Clause 34.2, if adopted, would allow existing trustees to prevent a fellow trustee from standing for re-election, if they so wish, i.e. the ‘ejected trustee’ would have no ability to ask members to re-elect him/her”</i>	Agreed, but as above, given existing trustees are all under a duty to act in the best interests of the GT and part of that is working with and involving the best people possible for the GT in light of its immediate needs and long-term objectives, we feel this is an unlikely scenario.
<i>“Clause 34.3, if adopted, would allow existing trustees to propose themselves for repeated re-election, possibly indefinitely.”</i>	Agreed, but only insofar as the trustee in question is an Officer or a trustee who, in the opinion of the Board, is making such a significant contribution to the Board it is in the best interests of the GT for them to continue in office. This is for the reasons set out above, being concerns for the efficiency of running such a busy organisation as the GT and concerns (and current experience) regarding recruitment for officer roles. The AoA update committee had speculated over inserting a maximum number of years but felt, given our Treasurer’s current experience in her ninth year of service despite recruitment efforts, that it is difficult to place a cap on years here.
[I am concerned about the possibility for repeated relections how would any] <i>“potential abuse of power be handled, should these proposals be adopted, e.g how GT members might be able to act if they felt those elected and, in future, also solely responsible for choosing their own successors, were no longer following the objectives of GT or actions that they supported?”</i>	The AoA Committee feel that any abuse of power is extremely unlikely. All trustees are aware of their duties to act in the best interests of the GT. In any event, any member who suspects an abuse of power by the Board or otherwise feels aggrieved by the decisions taken by the Board or the direction of the charity is entitled to call an extraordinary general meeting whenever they wish under Articles 19. They will need the support of 5% of the membership in order to call it.

Please do send any further queries to the AoA Committee via email to Catriona.Hoyes@thegardenstrust.org

Date: 27 August 2024