

EXECUTIVE COUNCIL

PUBLIC

Title:	Environment Trust Bill
Paper Number:	137/20
Date:	28 October 2020
Responsible Director:	Director of Mineral Resources
Report Author:	Offshore Environmental Advisor
Portfolio Holder:	MLA Barkman
Reason for paper:	This paper is submitted to Executive Council: For policy decision (including budgetary policy) For policy update/information To meet a statutory requirement
Publication:	Yes
Previous papers:	187/15, 124/16, 73/19, 135/19 and 181/19
List of Documents:	Appendix A – Environment Trust Bill 2020 Appendix B – Environment Trust Policy

1. Recommendations

Honourable Members are recommended to approve:

- (a) That the Environment Trust Bill be put out to public consultation.
- (b) That a covering report detailing the consultation responses and any amendments to the current draft (if required) will be brought back to ExCo before the Bill is referred to Legislative Assembly.
- (c) Honourable Members are recommended to authorise the Attorney General to correct typographical errors and non-substantive drafting errors found in the Bill prior to consultation.

2. Additional Budgetary Implications

2.1 None at this stage.

3. Executive Summary

- 3.1 Since 2015 the Department of Mineral Resources (DMR) have been progressing policy relating to offsetting. This policy direction is drawn from Schedule 4(2) of The Offshore Minerals Ordinance 1994 (as amended) which requires operators to include within Environmental Impact Statements (EISs) a description of the measures envisaged to eliminate, reduce, remedy and/or offset significant adverse effects to the environment arising out of projects and associated infrastructure.
- 3.2 ExCo Papers 124/16 and 187/15 informed Honourable members that Premier Oil (PMO), as part of its Sea Lion Development EIS, propose to make an annual compensatory payment to offset the residual environmental impacts of their activities.
- 3.3 The proposed Environment Trust legislation will create the vehicle by which compensatory payments made by PMO (and/or other contributors) will be received and administered in line with the purpose of the Trust. The establishment of the Trust was agreed by ExCo in 2016, subsequently followed by a stakeholder workshop which sought views on the aims, objectives, internal administration and grant making processes of the proposed trust, which were in turn reflected in the detailed policy document 181-19.
- 3.4 Legislative drafting has been undertaken to reach the current stage, and the Environment Trust Bill is now ready to be consulted upon before final amendments are made and the Bill may become an Ordinance. The Environment Trust Bill lays out draft legislation in order to enable the detailed policy previously accepted by ExCo.
- 3.5 The drafting of legislation for the establishment of the Falkland Islands Environment Trust was approved by Exco. The Trust will be able to receive and manage payments received for offsetting negative environmental impacts arising from any activities. It is anticipated that companies that are engaged in activities resulting in environmental impacts that cannot be avoided or mitigated can make contributions that will be managed by the Trust for the purpose of offsetting the damage – in the first instance, offsetting negative environmental impacts from the Sea Lion development. The Trust will provide funding for projects or activities that advance or promote the purposes of the Trust.

4. Background and Links to Islands Plan and Directorate Business Plan/s

- 4.1 For detailed background Honourable Members are invited to read the previous ExCo papers listed. The detailed policy document in Appendix B is available alongside this paper for additional clarity.
- 4.2 The Islands Plan vision for the environment states:
 - We will respect our globally significant biodiversity and unique environment, taking a proactive and responsible approach to development;
 - We will ensure that the environment is preserved for future generations.

This new policy and legislation for an Environment Trust will assist to achieve that vision by offering a new offsetting option for adverse environmental impacts created by hydrocarbon developments (or other activities) that cannot be avoided or mitigated.

- 4.3 A summary table is presented below which demonstrates where the policy has been reflected in the Bill.

Part	Description
Part 1	Preliminary matters: short title, commencement and interpretation.
Part 2	Establishes and sets out the purpose of the Trust: to support through grants persons engaged in, or intending to engage in, the conservation, management and enhancement of the environment for the benefit of present and future generations of the Falkland Islands. Without limiting this general purpose, the Trust may specifically support persons engaged in activities that offset negative environmental impacts, benefit biodiversity or are incidental to those activities. Where funding is approved, the Trust must ensure that the funds are used for the intended purpose through monitoring. The Trust can claim a refund from a person who does not deliver on an activity to the satisfaction of the Trust. The affairs of the Trust will be managed by a Board of Trustees composed of not less than 7 and not more than 9 members. Trustees are appointed by the Governor and the chairperson must have an interest in, experience and knowledge of the Falkland Islands environment. One Trustee is an MLA. The rest of the Trustees must have relevant skills and interests that will benefit the purposes of the Trust including, but not limited, to science, management, finance, administration and law.
Part 3	Provides for payments into the Trust and applications for funding. Payments are either compensatory, contributory or a goodwill gesture. Payments into the Trust can be earmarked for a specific purpose. This Part also deals with applications for funding by any person who is engaged in a project or activity that promotes the purposes of the Trust. The Board must issue guidance on the procedures for submitting applications and the assessment criteria, which must be fair and transparent.
Part 4	Relates to the finances and accounts of the Trust. The main source of funds is payments made to the Trust by contributors. This Part provides for the accounts of the Trust and the requirement to keep financial records. It requires the financial records and statements to be audited by a suitably qualified auditor and for an audit report to be prepared. The Trust must prepare an annual report and financial statements and the Secretary of the Trust must send copies of the financial statements to the Governor and Clerk of the Legislative Assembly. These documents must be laid on the table of the Legislative Assembly and be available to the public. The income of the Trust is tax free.
Part 5	Relates to meetings and the Secretary of the Trust. Meetings of the Board must be chaired by the Chairperson and in the absence of the Chairperson, a Trustee elected by members present. The Board must appoint a Secretary who may or may not be a Trustee, and the functions of this role are laid out.
Part 6	General matters like contracts by the Trust, notices and regulations.
Schedule	Additional provisions relating to the Trust and the Board.

5. Options and Reasons for Recommending Relevant Option

- 5.1 Honourable members have already approved the establishment of a statutory Environment Trust and have also approved the detailed policy that enabled the legislation to be drafted. The Environment Trust Bill is attached (Appendix A) and members are recommended to direct that the Bill is consulted upon and amended if appropriate before continuing towards commencement.
- 5.2 Alternatively, members could choose not to approve the Bill for consultation, but this would stall the process and would not be in line with the direction of travel for this policy and legislation. This would also risk not having the Environment Trust in place in time to receive compensatory contributions from PMO and the Sea Lion Development.

6. Resource Implications

6.1 Financial Implications

Under section 57(1)(c) of the Taxes Ordinance the Trust will qualify as a tax-exempt body and no tax income will be generated from the activities of the Trust. There is a provision in the Environment Trust Bill (clause 15) that, for the avoidance of doubt, explains the Trust is an institution to which section 57 (1)(c) applies.

This is appropriate to allow for the income of the Trust to be used for the purposes of the Trust, as described in the policy document. The Trust must demonstrate financial good governance through transparent and accountable management of offsetting contributions to ensure it achieves its purpose and is additional to existing environmental funding streams.

6.2 Human Resource Implications

There is an expectation for continued resources from FIG officers, namely at DMR and Legal Services. Once the legislation is in place, the formation of the Trust will also require resources from Treasury. It is anticipated that the Trust will only be established if the Sea Lion development (or similar) is sanctioned as it is difficult at this stage to determine whether there will be any funding from elsewhere. The Trust will be managed independently of government but there is likely to be an ongoing resource requirement to assist with administration. It is currently envisaged that the resource requirement for administration could be accommodated in DMR if Sea Lion is sanctioned, but the decision-making function of the Trust will remain independent through the Trust structure (to prevent any pseudo-privatisation of FIGs existing commitments to the environment).

6.3 Other Resource Implications

The Bill describes how the Trust will be formed and how Trustees will be appointed by the Governor; there will be a need for Trustees to be nominated from the community in line with clauses 6 and 7 of the Bill,

7. Legal Implications

- 7.1 Post-consultation there may be additional drafting to incorporate amendments where required.
- 7.2 The Bill will eventually result in a new Environment Trust Ordinance which will come into force on a date as directed by the Governor through a notice in the Gazette.

8. Environmental & Sustainability Implications

- 8.1 The establishment of a Trust to administer payments, initially from PMO, aims to offset the residual environmental impacts from the Sea Lion development as described in the EIS, and in line with the requirements of the Offshore Minerals Ordinance 1994. The general purpose of the Trust as laid out in the policy document is to receive compensatory offsetting payments and to allocate grants for projects that offset residual environmental impacts from development (at this stage primarily the Sea Lion development); benefit biodiversity; and aim to deliver positive environmental legacy in the Falkland Islands (clause 4 of the Bill aims to translate this policy in to legislation). The use of the funding (offsetting payments and other payments to the Trust) will aim to improve sustainability and counterbalance negative environmental impacts caused by anthropogenic activities.
- 8.2 There are substantial benefits for the Falklands economy through good environmental stewardship which could in turn enhance existing and future industries. A positive environmental legacy would contribute to maintaining and improving ecosystem services and biodiversity. All of this would create a healthier environment, with a cascading chain of effects on value of products, cultural wellbeing, resilience to climate change, and improved public and media image – both domestically and internationally - for the future sustainability of the Falklands.

9. Significant Risks

- 9.1 There are no significant risks associated with this paper as the legislation will not be brought into operation immediately. There is a residual risk that resources may be directed towards finalising legislation to establish a Trust which may not be able to meet its purposes until it receives the first payment. The broad purpose of the Trust is in line with the general global direction of travel towards committing more to the environment and aspiring to offsetting anthropogenic impacts, achieving positive environmental legacy and benefitting biodiversity, which may attract funding from wider sources. If there is further delay to the Sea Lion project it is unlikely that there will be imminent payments made to the Trust as there are currently no other expectations for additional funding. The Ordinance commencement may be delayed until required.

10. Consultation

- 10.1 DMR led a workshop with relevant stakeholders that fed in to the detailed policy for the establishment of the Environmental Trust (Appendix B, approved by ExCo alongside paper 181-19). The policy document was shared with stakeholders and provided the foundation for the legislative drafting of the Bill attached to this paper. The purpose of

this legislation is distinct from the policy document and policy principles; it is to reflect the policy in a law which is clear, effective and durable. The detailed policy document, set out what was intended to be achieved and why. The Bill aims to enable the policy by setting out appropriate rights and powers as in Appendix A, which has been reached through an iterative drafting process. The next stage of consultation will seek feedback on the current Bill.

- 10.2 Prior to the formal workshop there was informal consultation with the Falkland Islands Offshore Hydrocarbons Environmental Forum (FIOHEF) and stakeholders, including Falklands Conservation and hydrocarbons operators.

11. Communication

- 11.1 To be consulted upon for 4 weeks allowing representations from stakeholders and the general public. This consultation will be led by DMR and may lead to some proposed amendments to the Bill.
- 11.2 The public consultation will begin on Monday 2nd November and will close on Monday 30th November.
- 11.3 DMR will make the Bill available on their website and will also share electronic copies directly with all stakeholders who have been engaged with the process through the workshop or through the FIOHEF as their input directly shaped the detailed policy.
- 11.4 A press release will be circulated to advertise the consultation to the wider public. The press release and covering email to stakeholders will consist of a short summary of the process of developing the Trust to this stage and will request comments on any part of the Bill, rather than asking targeted questions.
- 11.5 This broad approach is considered appropriate as there has been engagement with stakeholders in previous stages of the process, including the workshop which specifically sought views on the aims, objectives, internal administration and grant making processes of the proposed trust, later reflected in the detailed policy.
- 11.6 DMR will produce a consultation report of the comments received and this will feed back into a revised Bill if required. If significant issues are raised during the consultation, DMR may undertake further work and collaboration with stakeholders to fully understand and proactively deal with those issues. The Bill will return to ExCo ideally in January or February 2021 in order to be gazetted and then laid on the table.

Falkland Islands Environment Trust Bill 2020

(ORDINANCE No. OF 2020)

ARRANGEMENT OF PROVISIONS

Clause

PART 1 - PRELIMINARY

1. Title and commencement
2. Interpretation

PART 2 - ESTABLISHMENT, FUNCTIONS AND BOARD

3. The Trust
4. Purpose of Trust
5. Functions of Trust
6. Board of Trustees
7. Trustees
8. Additional provisions relating to the Trust and Board

PART 3 - PAYMENTS AND APPLICATIONS FOR FUNDING

9. Payments by contributors
10. Application for funding

PART 4 - FINANCIAL PROVISIONS OF THE TRUST

11. Funds of the Trust
12. Accounts of the Trust
13. Audit
14. Annual report and financial statements
15. Tax exemption

PART 5 - MEETINGS AND SECRETARY

16. Meetings of the Board
17. Secretary

PART 6 - GENERAL

18. Contracts by the Trust
19. Notices, etc.
20. Regulations

Schedule 1 - Additional Provisions relating to the Trust and Board

Schedule 2 - Matters to be included in policy

Falkland Islands Environment Trust Bill 2020

(assented to:)
(commencement: in accordance with section 1)
(published:)

A BILL

for

AN ORDINANCE

To establish the Falkland Islands Environment Trust, responsible for managing payments received from contributors; to provide for applications for funding by persons engaging in an activity that promotes environmental management, and conservation and enhancement of the environment for the benefit of the Falkland Islands; and to provide for connected matters.

BE IT ENACTED by the Legislature of the Falkland Islands —

PART 1 - PRELIMINARY

1. Title and commencement

- (1) This Ordinance is the Falkland Islands Environment Trust Ordinance 2020.
- (2) This Ordinance comes into operation on a day appointed by the Governor by notice in the *Gazette*.

2. Interpretation

In this Ordinance —

“**activity**” means an activity that a person engages in or intends to engage in, that promotes or advances the purpose of the Trust stated in section 4;

“**biodiversity**” means the variety of genes, species and ecosystems in the environment;

“**Board**” means the Board of Trustees appointed under section 7;

“**Chief Executive**” means the Chief Executive referred to in section 83 of the Constitution;

“**contributor**” means a person who makes a payment to the Trust;

“**controlled waters**” has the same meaning as given in the Offshore Minerals Ordinance 1994;

“**environment**” means the natural environment of the Falkland Islands including the controlled waters;

“**financial year**” means the twelve months ending on the thirtieth day of June in any year;

“**MLA**” means an elected Member of the Legislative Assembly;

“**offsetting payment**” means a payment made to the Trust to compensate for negative impacts on the environment which were caused by or resulted from that contributor’s operations;

“**payment**” means an offsetting payment, a gift or any other contribution to the Trust whether monetary or not;

“**Secretary**” means the Secretary of the Trust appointed under section 17;

“**special funds**” means a payment that is made subject to a condition that the money is to be used in a particular manner or for a particular purpose;

“**Trustee**” means a member of the Board; and

“**the Trust**” means the Falkland Islands Environment Trust established under section 3.

PART 2 - ESTABLISHMENT, FUNCTIONS AND BOARD

3. The Trust

(1) There is established the Falkland Islands Environment Trust.

(2) The Trust is a body corporate and may sue or be sued in its own name.

4. Purpose of Trust

(1) The purpose of the Trust is to receive and manage payments to be used for the support of persons engaged in or who intend to engage in the conservation, management and enhancement of the environment for the benefit of present and future generations of the Falkland Islands.

(2) Without limiting the generality of subsection (1), the Trust may support persons engaged in activities that —

(a) offset negative environmental impacts;

(b) benefit biodiversity; or

(c) are incidental to activities set out in paragraphs (a) or (b).

(3) The Trust must ensure that special funds are used for the purpose requested by the contributor.

(4) The Trust must consider Government policies and contributors’ priorities in carrying out the purposes of the Trust.

5. Functions of Trust

(1) Subject to subsection (2), the Trust has the following functions —

(a) receive and assess applications for funding under this Ordinance;

(b) award grants to applicants that qualify for funding under this Ordinance;

- (c) monitor and support a person engaged in an activity for which the Trust has awarded a grant;
- (d) keep records of all the money that is received and paid out as grants;
- (e) accept payments for the purposes of the Trust;
- (f) acquire and dispose of property;
- (g) employ on such terms as it thinks fit, any person to discharge any of the purposes of the Trust;
- (h) engage persons, whether or not for reward, on such terms as the Trust considers necessary, to advise in relation to, or to discharge, any of the functions of the Trust;
- (i) accept the services of any person upon secondment by their employer on such terms as may be agreed between the Trust and that employer;
- (j) invest surplus funds in an interest bearing account in the Falkland Islands or, with the consent of the Governor, in another location;
- (k) open and maintain bank accounts in the Falkland Islands and, with the consent of the Governor, overseas;
- (l) provide advice to the Government and others on the purposes of the Trust; and
- (m) promote interest and knowledge in the purposes of the Trust.

(2) The Trust must not expend or commit the expenditure for any of its purposes beyond funds currently available to it or which will, to the knowledge of the Trust, be available to it before the expenditure in question falls to be met.

(3) The Trust may borrow money for any of the purposes set out in subsection (1) with the consent of, and only on terms and conditions approved by the Governor.

6. Board of Trustees

- (1) The management of the affairs of the Trust will be carried out by the Board of Trustees.
- (2) The Board may authorise a person referred to in section 5(1)(f) and (g) to exercise any of the functions of the Trust.
- (3) Subsection (2) does not prevent the Board from carrying out the function itself.

7. Trustees

- (1) The Board will be composed of not less than seven and not more than nine Trustees appointed by the Governor as follows —
 - (a) a Chairperson who has an interest in, and experience and knowledge of, the Falkland Islands environment;
 - (b) one person from a list of persons nominated by contributors;

- (c) one person to represent the Government, who is either a public officer nominated by the Chief Executive or an MLA nominated by the MLAs collectively; and
 - (d) the rest of the Trustees being people with skills and interests that will promote the purposes of the Trust, including but not limited to science, management, finance, administration and law.
- (2) The Governor may not appoint a person under subsection (1)(a), (b) or (d), who has been
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- (a) sentenced to a custodial sentence for a period of three months or more;
 - (b) convicted of an offence involving dishonesty which is unspent as provided under Part 29 of the Criminal Procedure and Evidence Ordinance 2014;
 - (c) removed as a Trustee by an order of court for reasons of misconduct in connection with that trust; or
 - (d) adjudged bankrupt.
- (3) A Trustee is eligible for reappointment at the end of their term of office.

8. Additional provisions relating to the Trust and Board

- (1) Additional provisions relating to the Trust and Board are set out in Schedule 1.
- (2) The Governor may amend Schedule 1 by regulations made under section 20.

PART 3 - PAYMENTS AND APPLICATIONS FOR FUNDING

9. Payments by contributors

- (1) Any person may make a payment to the Trust for any of its purposes set out in section 4.
- (2) Payment may be a lump sum or be made periodically in instalments.
- (3) A contributor of special funds may specify how a payment under subsection (1) should be used.
- (4) A contributor may claim a refund of special funds that are not used in accordance with the specification of the contributor.

10. Application for funding

- (1) The Trust may give financial support through grants to an applicant who is engaged or intends to engage in an activity.
- (2) Any person who is engaged or intends to engage in an activity may apply to the Trust for a grant to fund or assist with funding that activity.
- (3) Financial support under this section may be given subject to conditions and the conditions may include repayment of a grant to the Trust in the event of failure by a person to deliver on an activity in a manner that satisfies the Trust.

- (4) The Board must develop a policy on the matters set out in Schedule 2.
- (5) The policy must provide for a fair and transparent process for considering applications for funding activities.
- (6) The Board must make arrangements for the publication of the policy in any way that makes it easily accessible to members of the public.
- (7) The Governor may amend Schedule 2 by regulations made under section 20.

PART 4 - FINANCIAL PROVISIONS OF THE TRUST

11. Funds of the Trust

- (1) The funds of the Trust consist of —
 - (a) payments made to it by any person;
 - (b) income received by it in relation to any investment of any of its funds;
 - (c) money borrowed by the Trust in accordance with section 5(3); and
 - (d) any other income received by the Trust from any source whatsoever.
- (2) There may be granted or lent to the Trust out of the Consolidated Fund such sums as are appropriated in accordance with law for the purpose.

12. Accounts of the Trust

- (1) The Trust must keep books of accounts to record the income, expenditure, source of funds, assets and liabilities of the Trust and must prepare in each financial year, a statement of the accounts.
- (2) The Board may prepare guidelines to assist in the keeping of financial records.
- (3) Where the Trust has received special funds, the Trust must in its books of account keep records necessary to separate the money from —
 - (a) funds available for expenditure on the purposes of the Trust generally; and
 - (b) other funds of the Trust to be used in another particular manner or for another particular purpose.
- (4) The Trust must record expenditure of special funds in such manner as to enable the expenditure attributable to special funds to be readily identified.

13. Audit

- (1) The Board must facilitate the audit of the accounts of the Trust in accordance with arrangements made by the Governor under section 80 of the Constitution.
- (2) The accounts of the Trust must be audited each financial year, within six months of the end of the financial year.

(3) The auditor arranged under subsection (1) must report in respect of the accounts for each financial year, in addition to any other matter on which the auditor considers it necessary to comment on.

14. Annual report and financial statements

(1) Following the end of each financial year, the Trust must prepare an annual report consisting of —

- (a) a report on its work during the financial year; and
- (b) its financial statements for the financial year, which must be audited in accordance with arrangements made under section 13.

(2) The Secretary must submit copies of the annual report and financial statements to the Governor.

15. Tax exemption

For the avoidance of doubt, the Trust qualifies for exemption from any form of taxation in the Falkland Islands under section 57(1)(c) of the Taxes Ordinance 1997.

PART 5 - MEETINGS AND SECRETARY

16. Meetings of the Board

(1) Subject to subsection (2), the Chairperson of the Board presides at all meetings of the Board.

(2) If the Chairperson is absent from a meeting of the Board, the Trustees present must elect one of their number to chair that meeting, and the person so elected exercises the powers of the Chairperson.

17. Secretary

(1) The Board must appoint a person who may be one of their number, excluding the Chairperson, to be the Secretary of the Trust.

(2) The Secretary must carry out corporate functions and duties as directed by the Board in addition to functions given under this Ordinance.

(3) The Secretary may attend all meetings of the Board, but may not vote upon any matter at any meeting if they are not a Trustee.

(4) The Secretary has custody of and is responsible for the safekeeping of all records of the Trust and must prepare or cause to be prepared minutes of all meetings of the Trust.

PART 6 - GENERAL

18. Contracts by the Trust

- (1) This section deals with the formalities required for contracts being made by the Trust and making a contract includes varying it or discharging it.
- (2) In the case of contracts being made by deed, the Trust must make them by means of a deed sealed in accordance with paragraph 1 of Schedule 1.
- (3) In the case of contracts being made in writing (but not by deed), the Trust may make them by means of a document signed by a person who has express or implied authority to act on behalf of the Trust.
- (4) In the case of contracts being made in some other way, the Trust may make them through the actions of a person who has express or implied authority to act on behalf of the Trust.
- (5) Any instrument required by law to be under seal is sufficiently executed if it is executed under the common seal of the Trust in accordance with paragraph 1(3) of Schedule 1.
- (6) Subject to subsection (7), all cheques and other bills of exchange drawn by or on behalf of the Trust must be signed by two Trustees or by one Trustee and the Secretary.
- (7) A cheque or other bill of exchange drawn by the Trust for a sum not exceeding £1,000 may be signed by one Trustee or by the Secretary.

19. Notices, etc.

- (1) Any notice, legal process or other document required to be served upon the Trust is validly served if served upon or sent by post to the Secretary at the Secretary's usual address or place of business and, if sent by post, addressed to the Secretary in their capacity as Secretary of the Trust.
- (2) Any notice or other document expressed to be sent by or on behalf of the Trust may be signed by any Trustee or by the Secretary.
- (3) The Board must make arrangements for the publication of its address and contact details in a way that make them accessible to the public.

20. Regulations

The Governor after consulting the Board may make regulations for any of the following purposes—

- (a) to prescribe the forms of records and other documents to be kept by the Trust;
- (b) to prescribe expenses payable to Trustees in connection with the business of the Trust; and
- (c) to amend Schedules 1 or 2 to this Ordinance.

SCHEDULE 1 - Additional Provisions relating to the Trust and Board

section 8

1. Seal

- (1) The Trust must have a seal the nature of which is to be determined by the Board.
- (2) The Secretary must keep the seal.
- (3) The Chairperson (or any person authorised in that behalf by a resolution of the Board) must authenticate the affixing of the seal.

2. Staff

- (1) The Board must ensure good corporate governance of the Trust.
- (2) The Board must prepare guidelines or manuals for staff on subjects including human resources, job descriptions, financial provisions and other matters relevant to the efficient operation of the Trust.

3. Tenure of office of Trustees

- (1) A Trustee referred to in section 7(1)(a), (b) and (d) holds office for a period not exceeding four years as specified in the Trustee's instrument of appointment.
- (2) The Governor must ensure that the periods for which Trustees are appointed are staggered and the interests that they represent are varied, in such a way that a quorum can be achieved at all times.

4. Removal and suspension of Trustees

- (1) The Governor may, in writing, remove a Trustee from the Board if the Trustee —
 - (a) referred to in section 7(1)(a), (b) and (d) —
 - (i) engages in conduct that in the opinion of the Governor, brings the Trust into disrepute;
 - (ii) is sentenced to a custodial sentence for a period of three months or more, either immediately or suspended for a period or until the happening of some other event; or
 - (iii) is adjudged bankrupt or
 - (b) referred to in section 7(1)(c) vacates the office by virtue of which they are a Trustee.
- (2) A Trustee may only be removed under subparagraph (1)(a) after a fair process appropriate to the circumstances.
- (3) The Governor may suspend a Trustee from the Board while the process referred to in sub-paragraph (2) is underway.

5. Resignations

A Trustee may resign from office by giving 30 days' notice in writing to the Governor.

6. Meeting of Board

- (1) Subject to the provisions of this Ordinance, the Board will regulate its own proceedings.
- (2) The Board must meet at least two times annually.
- (3) Three Trustees form a quorum at any meeting of the Board.
- (4) No business may be transacted at any meeting of the Board at which there is no quorum except to adjourn that meeting.
- (5) A decision of the Board on any question must be by the majority of the Trustees voting at the meeting and, in the event of an equality of votes, the Trustee presiding has a casting vote in addition to that person's deliberative vote.
- (6) The validity of anything done by the Board will not be affected even if there are one or more vacancies on it.

7. Registration of interests by Trustees

- (1) Before taking part in the proceedings of the Trust, a Trustee must complete and furnish to the Secretary in writing in the form approved by the Board, the particulars of the Trustee's registrable interests.
- (2) A registrable interest includes information on any benefit which a Trustee receives and which might be considered to influence actions taken in their capacity as a Trustee.
- (3) Further provision relating to registrable interests and declaration of interests may be set out in the Code of Conduct referred to in paragraph 10.

8. Attendance at Board meetings

The Board may invite other persons to attend any of its meetings and such persons may speak at the meeting but they are not entitled to vote.

9. Remuneration of Trustees

Trustees must not receive any remuneration from the Trust but they may be reimbursed for reasonable expenses they incur in the course of their duties.

10. Code of Conduct

- (1) The Board must adopt (and keep under review) a Code of Conduct for the Trustees.
- (2) The Code of Conduct must include provisions dealing with —
 - (a) what constitutes registrable interests by Trustees; and
 - (b) resolving conflict of interest.

SCHEDULE 2 – Matters to be included in policy

section 10

The following matters must be included in the policy of the Trust —

- (a) when it will consider applications for funding;
- (b) how applications are assessed;
- (c) information to be included in support of an application for funding;
- (d) how applicants are notified of the decision of the Board;
- (e) environmental priorities for funding by the Trust; and
- (f) implementation, monitoring and evaluation of activities.

OBJECTS AND REASONS

Background

The Bill establishes a Trust that will receive and manage money paid to it by contributors. It is anticipated that companies that are engaged in operations that result in environmental impacts that cannot be avoided or mitigated will make contributions that will be managed by the Trust. The contributions will be used to give financial support to persons engaged in or intending to engage in activities that benefit the Falkland Islands environment. The Trust will also provide a means for other persons (including Government) to contribute funds for the purpose of the Trust.

Part 1 of the Bill provides for preliminary matters i.e. title, commencement and interpretation.

Part 2 establishes the Trust in *clause 3*. *Clause 4* sets out the purpose of the Trust. The Trust will support through grants persons engaged in, or intending to engage in, the conservation, management and enhancement of the environment for the benefit of present and future generations of the Falkland Islands. Without limiting this general purpose, the Trust may specifically support persons engaged in activities that offset negative environmental impacts, benefit biodiversity or are incidental to those activities such as education or research. *Clause 5* provides for the functions of the Trust. The Trust will receive and consider applications for funding from persons engaged in activities as provided in *clause 4*. Where funding is approved, the Trust must ensure that the funds are used for the intended purpose through monitoring. The Trust can claim a refund from a person who does not deliver on an activity to the satisfaction of the Trust.

The affairs of the Trust will be managed by a Board of Trustees composed of not less than seven and not more than nine Trustees, *clauses 6* and *7*. Trustees are appointed by the Governor and one is a representative of the Government who is either an MLA nominated by the MLAs collectively or a public officer nominated by the Chief Executive. The chairperson must have an interest in, experience and knowledge of the Falkland Islands environment. The Trustees must have relevant skills and interests that will benefit the purposes of the Trust including but not limited to science, management, finance, administration and law. A person

specified in clause 7(2) does not qualify for appointment. Trustees are eligible for reappointment.

Part 3 provides for payments into the Trust and applications for funding. Payments are contributory or can be earmarked for a specific purpose, *clause 9*. Special funds must be used for the purpose requested by the contributor. A contributor may claim a refund from the Trust if their contribution is not used in accordance with their request.

Clause 10 deals with applications for funding by any person who is engaged in or intending to engage in an activity that promotes the purposes of the Bill. The Board must issue a policy on the procedures for submitting applications and the assessment criteria. Some of the matters to be included in the policy are in Schedule 2.

Part 4 deals with the finances and accounts of the Trust. The main source of funds is payments made to the Trust by contributors. Money may also be appropriated to the Trust from the Consolidated Fund, *clause 11*.

Clause 12 provides for the accounts of the Trust and the requirement to keep financial records. Under *clause 13*, the financial records and statements must be audited in accordance with section 80 of the Constitution. The auditor must produce an audit report. The Trust must prepare an annual report and financial statements. The Secretary of the Trust must submit copies of the financial statements to the Governor. *Clause 15* affirms that the income of the Trust is exempt from tax under section 57(1)(c) of the Taxes Ordinance.

Part 5: Meetings of the Board must be chaired by the Chairperson and in the absence of the Chairperson, by a Trustee elected by Trustees present. The Board must appoint a Secretary who may or may not be a Trustee. The Secretary performs the functions set out in *clause 17*.

Part 6 deals with general matters (contracts by the Trust, notices, and regulations), *clauses 18, 19, and 20*.

Schedule 1 contains additional provisions relating to the Trust and the Board. *Schedule 2* sets out matters that must be included in policy. Both Schedules may be amended through regulations made under clause 20

Falkland Islands

Government

Department Of Mineral Resources

Policy for the Establishment of the Statutory Environment Trust

Rev 01

*Originally submitted to Executive Council to accompany paper
175-19*



1 Introduction

- 1.1** On 25th September 2019 Executive Council (ExCo) approved a proposal to establish a statutory Environmental Trust. The primary function of the Trust at the current time is to manage contributions expected from Premier Oil (PMO) in order to offset residual environmental impacts arising from the planned Sea Lion development.
- 1.2** ExCo directed that the model for the Trust be developed and that detailed recommendations for the Trust should be brought back for consideration.
- 1.3** This document sets out the detailed policy proposals for a statutory Environmental Trust which, if approved, will be used as the basis for drafting instructions for the necessary legislation.

2 Background and Overarching Policy

- 2.1** The principle of establishing an Environment Trust to manage offsetting payments from PMO was established in 2016. ExCo Paper 124/16 approved setting up a fund to deliver offsetting and environmental legacy from contributions made by PMO in relation to the development of Sea Lion. The proposed financial contribution by PMO is currently the only funding anticipated and is the main driver for the establishment of the trust.
- 2.2** ExCo Paper 124/16 suggested an environmental fund could support projects with a direct benefit to the Falkland Islands and highlighted that the fund should be non-governmental to ensure that it does not enable the government to pseudo-privatise basic environmental responsibilities and use it to reduce its own environmental budget lines or subsidies.
- 2.3** ExCo papers 73/19 & 135/19 confirmed the decision to establish the environment fund as a statutory trust having had the benefit of stakeholder views as expressed in a workshop held on 29th August 2019. The aims, objectives, administrative and grant making arrangements for the proposed Trust were discussed in the workshop to inform the detailed policy proposals set out in this paper.
- 2.4** The general purpose of the Trust is to receive compensatory offsetting payments from PMO and to allocate grants for projects that offset residual environmental impacts from the Sea Lion development, benefit biodiversity, and deliver positive environmental legacy in the Falkland Islands. The trust should be managed independently of government, transparently and should demonstrate full accountability for its management of offsetting contributions to ensure it achieves its purpose and is additional to existing environmental funding streams.

3 Detailed Policy for the Establishment of a Statutory Environmental Trust

3.1 Name of the Trust

3.1.1 A statutory Environment Trust shall be established to be known as the Falkland Islands Environment Trust (FIET).

3.2 Nature of the Trust

3.2.1 The FIET shall be a corporate body, a separate legal entity for all purposes.

3.2.2 The FIET shall have a common seal.

3.3 Purposes of the Trust

3.3.1 To receive payments made by a person (defined to include corporate bodies, partnerships etc.) as compensation for negative environmental impacts from that person's activities that are not fully mitigated or avoided.

3.3.2 To properly and transparently manage the FIET and the payments received so as to be able to demonstrate good stewardship of the funds of the FIET to the contributing person(s), to the government and to the public.

3.3.3 To invite, assess and make grants in respect of proposals that will result in tangible, measurable offsetting of negative environmental impacts, benefit bio-diversity and help create a positive environmental legacy in the Falkland Islands.

3.3.4 In carrying out its functions the FIET will have regard to relevant government and stakeholder environmental policies and priorities.

3.4 Functions and Powers of the Trust

3.4.1 Accept contributions from persons making compensatory payments for negative environmental impacts. Use available finances for the purpose of activities offsetting those impacts by awarding grants.

3.4.2 Accept gifts of money from any person (though the FIET is not obliged to accept gifts of money).

3.4.3 Award grants to any person provided that the grant is awarded for the purpose of activities that result in tangible, measurable offsetting of negative environmental impacts, benefit bio-diversity and/or help create a positive environmental legacy in the Falkland Islands.

3.4.4 Monitor and support the use of grants awarded to ensure that the funds are used for the purpose for which they were granted.

3.4.5 Keep records of monies received, grants awarded and the results of the activities funded.

3.4.6 Employ and/or accept secondments of any person for the purposes, powers and functions of the FIET.

3.4.7 Engage persons (whether paid or not) to advise the FIET on any of the purposes, powers and functions of the Trust.

3.4.8 Open and maintain bank accounts in the Falkland Islands.

3.4.9 Invest surplus funds in an interest-bearing account in the Falkland Islands or another location with the consent of the Governor in ExCo.

3.4.10 With the consent of the Governor in ExCo borrow money for the purposes of the FIET.

3.4.11 Not expend or commit funding beyond the funds currently available to it or which will, to the knowledge of the FIET, be available to it, before the commitment for funding is to be met.

3.4.12 Promote the purposes of the FIET.

3.5 Accounts

3.5.1 The FIET must keep financial records and accounts in such form as directed by the Financial Secretary of the Falkland Island Government.

3.5.2 The financial year of the Trust shall be 1st July – 30th June.

3.5.3 The financial records and accounts will be subject to annual audit.

3.5.4 The financial records and accounts must be reported to the Governor in ExCo.

3.5.5 The FIET will publish an annual report containing as a minimum the information as directed by the Financial Secretary and advertise the publication in local media.

3.5.6 The income of the FIET is exempt from taxation.

3.6 Board of Trustees

3.6.1 The Board of Trustees shall consist of 7 to 9 members.

3.6.2 Trustees shall be appointed by the Governor in ExCo.

3.6.3 The period of appointment is that specified by the Governor in ExCo.

3.6.4 In appointing Trustees the following applies:

(a) Trustee responsibilities may be assigned to an office or post rather than an individual.

(b) The person(s) making compensatory payments may nominate a representative to be a Trustee. The Governor must, if a representative(s) is/are nominated, appoint at least one of them to be a Trustee.

- (c) At least one Trustee must be a representative of the Falkland Islands Government (either officer or MLA).
- (d) The remaining Trustees should be appointed having regard to their interest in the environment of the Falkland Islands and their skill and experience in relevant subjects including management, finance, administration, law and scrutiny.

3.6.5 The Governor in ExCo shall remove Trustees if:

- a) They resign (notice in writing required),
- b) They are convicted of an offence of dishonesty (unless the conviction is spent),
- c) They are convicted of an offence and are sentenced to a term of imprisonment (unless the conviction is spent),
- d) They become bankrupt, or
- e) They bring the FIET into disrepute.

3.6.6 Trustees can be reappointed.

3.6.7 There must be a register of interests which is open to public inspection. Trustees must register details of any legal and/or personal interests in land or property, shareholdings, membership of any body, or any business interest that may have a conflict of interests with the role of the Trustee of the FIET.

3.7 Business of the Trust

3.7.1 The Trustees will designate one of the Trustees to be the Chairperson of the FIET.

3.7.2 The Chairperson will Chair the meetings of FIET (if not present, the Trustees will designate a Chairperson for that meeting).

3.7.3 The Chairperson will have a casting vote where the Trustees are equally divided on any matter.

3.7.4 The FIET will appoint a person to be Secretary of the FIET (can be a Trustee but not the Chairperson).

3.7.5 The Secretary must keep the records of the FIET and prepare minutes of meeting of the FIET.

3.7.6 Three Trustees present shall constitute a quorum at any meeting of the FIET, but the majority cannot be representatives of a person(s) making compensatory payments.

3.7.7 No business may be transacted at a meeting where there is not a quorum except adjourning the meeting.

3.7.8 Meetings of the FIET shall be convened by the Secretary at the direction of the Chairperson.

3.7.9 There must be at least two meetings of the FIET each year and whenever, in the opinion of the Chairperson, the business of the FIET requires a meeting.

3.7.10 Three Trustees or the Governor (on the advice of ExCo) can require a meeting to be held on 14 days' notice to the Secretary.

3.7.11 Meetings will be held in a convenient location in the Falkland Islands.

3.7.12 Other than the above the FIET can determine its own procedures.

3.7.13 Two trustees are required to sign instruments, contracts, deeds etc. Contracts must be in writing to be valid.

3.7.14 Notices etc. to be served/sent to FIET must be sent to the Secretary in that person's capacity as Secretary at their usual address.

3.7.15 Notices from the FIET must be signed by the Secretary or, in their absence, any Trustee.

3.8 Grant Making

3.8.1 The FIET must publish details of the application process for a grant and the criteria that will be used to assess applications for a grant.

3.8.2 Criteria for the assessment of applications for a grant must include (but is not limited to):

- a) Value for money;
- b) Capacity to successfully deliver the activity;
- c) Measurable outcomes;
- d) Benefit to biodiversity;
- e) Positive environmental legacy for the Falkland Islands;
- f) Abide by the principle of 'additionality'.

3.8.3 The FIET must publish at least 3 months in advance the date(s) by which applications for a grant must be made for that year, the time table for processing grant applications and when the FIET expect to notify applicants of the outcome of their application.

3.8.4 Where FIET award a grant the FIET may impose such conditions and requirements as it thinks fit to ensure that the grant awarded achieves the purposes of the FIET.

3.8.5 For the purpose of clarity, the records of the FIET must include a record of applications received, the assessment of those applications and the decision for each application.

3.9 General

3.9.1 Power to make regulations to:

3.9.2 Prescribe what records the Trust should keep

3.9.3 To pay expenses of Trustees in connection with their work on FIET business