

**Maindy Park Trust Advisory Committee - Proposed Land Exchange**

**Purpose of the Report**

1. To enable the Committee to consider the robustness of the decision-making arrangements, and the process followed by the Maindy Park Trust Advisory Committee to progress the matter of the proposed exchange of land at Maindy Park held in Trust by the Council for land at Cae Delyn.

**Structure of the Papers**

2. Attached and linked to this report to assist Members preparations for the scrutiny:

**Appendix A: Cabinet Report – Proposed Land Exchange at Maindy Park**

Appendix 1: ‘Proposed Land Exchange at Maindy Park’, Maindy Park Trust Advisory Committee report, 12<sup>th</sup> October 2022:

[Item 5 - Committee Report.pdf \(moderngov.co.uk\)](#)

Appendix 2: ‘Proposed Land Exchange at Maindy Park – Further Information’, Maindy Park Trust Advisory Committee report, 17<sup>th</sup> November 2022: [Item 4 Report.pdf \(moderngov.co.uk\)](#)

Appendix 3: ‘Proposed Land Exchange at Maindy Park – Additional Further Information’, Maindy Park Trust Advisory Committee report, 23<sup>rd</sup> January 2023: [Agenda for Maindy Park Trust Advisory Committee on Monday, 23rd January, 2023, 10.00 am : Cardiff Council \(moderngov.co.uk\)](#)

Appendix 4: Full Reasons for Maindy Park Trust Advisory Committee Decision

Appendix 5: Preparatory Surveys at Maindy Park

**Background**

3. This Committee has responsibility within its Terms of Reference for scrutiny of the Governance and Legal Services of the Council.

4. The Council is dealing with a conflict of interest, which has arisen because the Council is the sole corporate trustee of Maindy Park, a registered charity, and, in a separate capacity, is the Local Education Authority making the proposal to expand Cathays High School, using land under the control of the Maindy Park charitable trust.
5. In September 2022, the Committee considered Counsel's advice on arrangements as to how the Council should manage the conflict of interests in discharging its role as sole trustee of the Maindy Park Charitable Trust, and thereby ensure a lawful and robust decision-making process. Members agreed that the proposal to set up an Independent Advisory Committee consisting of independent members of the Council's Standards and Ethics Committee to make a recommendation to Cabinet whether or not the land swap is in the best interests of the charity was "an elegant solution" to managing the conflict of interest.
6. Council subsequently agreed to the appointment of the Maindy Park Trust Advisory Committee, comprised of 3 independent members of the Standards and Ethics Committee.
7. The Advisory Committee has now completed its investigations and evidence gathering from internal and external stakeholders, published its decision and made recommendations to Cabinet as sole Trustee of Maindy Park Trust.
8. Members are referred to **Appendix A** for a full explanation of the background (*points 2-13*) to this decision to be considered by Cabinet, and the issues (*points 14-33*) including:
  - The Advisory Committee's Recommendations
  - Reasons for the Advisory Committee's Decision
  - The Trust Decision
  - Conditions Recommended by the Advisory Committee
  - The requirement for Charity Commission Consent

### **Recommendations of the Advisory Committee**

9. Following the Maindy Park Trust Advisory Committee meeting on 23<sup>rd</sup> January 2023, the Committee decided that the proposed exchange of the Maindy Park land for the land at Cae Delyn Park *is* in the best interests of the Charity, *subject to compliance with the following 6 conditions*:

- (i) Condition One - The new velodrome is to be built and operational prior to the proposed land swap taking place.
- (ii) Condition Two - The terms and conditions recommended in the Qualified Surveyors updated report are to apply; including specifically in relation to overage provision - being 50% of the uplift in value to be paid to the Trust if the site is sold for future development during a period of 75 years from the date of the release of the restrictive covenant (which would entitle the Trust to receive a share of any potential increase in value if an implementable planning permission is obtained for a higher value use of the land).
- (iii) Condition Three - Improvement works are to be carried out at Cae Delyn (including improved drainage of the site, walkways, lighting and other reasonable and proportionate measures to reduce anti – social behaviour in the area) and the retained land at Maindy, in order to improve its amenity value for the purposes of meeting the Trust's charitable objectives. The Advisory Committee is to hold another meeting (within 90 days from the date of its last meeting on 23<sup>rd</sup> January 2023) to agree the proposed recommended improvements, which may be subject to further public consultation. The Committee agreed, however, that the recommendations made at its January 2023 meeting could be reported to Cabinet before the date of the Committee's further meeting to consider the improvement works.
- (iv) Condition Four - Arrangements are to be made between the Trust and the Council for a lease or licence to be agreed to cover the future maintenance and management of the land at Cae Delyn and Maindy by the Council, with no ongoing revenue costs to the Trust which exceed income.
- (v) Condition Five - The Council is to carry out a review of the governance and financial management arrangements of all trusts of which the Council is a trustee.

(vi) Condition Six - The provision of an information board on site at Maindy Park to explain the historic use of the site as a Velodrome.

10. The Advisory Committee is recommending that the Cabinet, as Trustee, should approve the proposed land exchange, subject to the conditions set out above, and make an application to the Charity Commission for its consent to the land exchange on this basis.

### **Previous Scrutiny**

11. The Committee previously scrutinised the proposed decision-making process for Maindy Park Trust on 26 September 2022, following which Members passed on their comments and recommendations in a letter to the Leader. Members unanimously agreed that the proposal to establish an Advisory Committee, comprised of members of the Council's independently appointed Standards and Ethics Committee, was an elegant solution to an awkward problem and were pleased that meetings of the Advisory Committee would be held in public.

12. The Committee made two recommendations in September 2022:

1. If the Maindy Park Trust Advisory Committee recommends it is not in the interests of the charity for the Council to proceed with its plans, that Cabinet re-considers and examines alternative options.
2. That the Council avoids conflicts of interest delaying future projects by putting in place mechanisms that prevent such a recurrence.

13. A response to the Committee's requests and recommendations was received on 14 February 2023. The response accepted the first recommendation stating that 'if Cabinet acting as Trustee decides that the proposed land exchange is not in the best interests of the Charity, or if the Charity Commission refuses to give its consent to the land exchange' Cabinet will re-consider and examine alternative options. In respect of the second recommendation 'a review of governance and financial management arrangements of all trusts of which the Council is a trustee will be carried out by the Corporate Director Resources and the Director of Governance and Legal Services, under delegated authority to identify any

necessary improvements to be agreed and put in place., with a view to avoiding any conflicts of interest delaying future projects.'

### **Scope of this Scrutiny**

14. In attendance to respond to Members questions will be Councillor Ashley Lister, Cabinet Member for Social Services (Children's Services) (one of the four Cabinet members who does not have a personal and prejudicial interest in this matter and so is able to be involved in taking the decision on the proposed land swap), Jason Bartlett, Chair of Maindy Trust Advisory Committee, Davina Fiore, Director of Governance and Legal, and Harriet Morgan, external legal expert on charitable trusts, Geldards.
  
15. The scrutiny will focus on the evidence gathering and recommendations of the Advisory Committee, testing that the decision-making process put in place to resolve this matter has been robust and independent, that stakeholder voices have been heard, due process has been applied and has provided a good evidence base for the conclusions arrived at. The Committee will not examine any detail of the proposed project to expand Cathays High School subject to the resolution of trust matters to Maindy Park as the decision on the land swap has to be made solely on whether it is in the best interests of the charity, and cannot take into account either the Council's education or economic regeneration objectives
  
16. The Director of Governance and Legal is leading on governance of the decision making on this issue only. Members are reminded that the recommendations of the Advisory Committee are presented for consideration by the Cabinet in its capacity as Trustee of Maindy Park Trust. The development proposal itself is a completely separate issue.

### **Legal Implications**

17. The Scrutiny Committee is empowered to enquire, consider, review and recommend but not to make policy decisions. As the recommendations in this report are to consider and review matters there are no direct legal implications.

However, legal implications may arise if and when the matters under review are implemented with or without any modifications. Any report with recommendations for decision that goes to Cabinet/Council will set out any legal implications arising from those recommendations. All decisions taken by or on behalf of the Council must (a) be within the legal powers of the Council; (b) comply with any procedural requirement imposed by law; (c) be within the powers of the body or person exercising powers on behalf of the Council; (d) be undertaken in accordance with the procedural requirements imposed by the Council e.g. Scrutiny Procedure Rules; (e) be fully and properly informed; (f) be properly motivated; (g) be taken having regard to the Council's fiduciary duty to its taxpayers; and (h) be reasonable and proper in all the circumstances.

## **Financial Implications**

18. The Scrutiny Committee is empowered to enquire, consider, review and recommend but not to make policy decisions. As the recommendations in this report are to consider and review matters there are no direct financial implications at this stage in relation to any of the work programme. However, financial implications may arise if and when the matters under review are implemented with or without any modifications. Any report with recommendations for decision that goes to Cabinet/Council will set out any financial implications arising from those recommendations.

## **RECOMMENDATIONS**

The Committee is recommended to:

- I. Note the recommendations of the Maindy Park Trust Advisory Committee
- II. Consider whether it wishes to pass on any comments, observations, or concerns to the Cabinet as Trustee, prior to its consideration of the recommendations in respect of Maindy Park Trust.

**DAVINA FIORE**

Director Governance & Legal

23 February 2023