

CABINET (MAINDY PARK TRUST): THURSDAY, 2 MARCH 2023 at 2.00 PM

A Cabinet (Maindy Park Trust) Meeting will be held in CR 4, County Hall and as a Multi Location Meeting on at Thursday 2 March 2023 at 2.00 pm

A G E N D A

- 1 Proposed Land Exchange at Maindy Park

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**CARDIFF COUNCIL
CYNGOR CAERDYDD**



CABINET (AS TRUSTEE OF MAINDY PARK TRUST)

2 MARCH 2023

**REPORT OF THE DIRECTOR OF GOVERNANCE AND LEGAL
SERVICES & MONITORING OFFICER**

ITEM 1

PROPOSED LAND EXCHANGE AT MAINDY PARK

Reason for this Report

1. For the Cabinet, acting as Trustee of Maindy Park Trust ('the Trust' or 'the Charity'), to:
 - (a) consider the recommendations of the Maindy Park Trust Advisory Committee in relation to a proposed exchange of Trust land at Maindy Park;
 - (b) to determine whether or not the proposed exchange of land at Maindy Park for land at Cae Delyn Park is in the best interests of the Charity and should be agreed, subject to Charity Commission consent; and
 - (c) to consider related matters, such as the regularisation of the current and future management arrangements for the Trust's land.

Background

2. The Council is the sole corporate trustee of Maindy Park, a charity registered with the Charity Commission under Charity Number 524137 ("the Charity"), with the objects to use the land for recreation, playground and open space.
3. The Council, in its separate capacity as Local Education Authority, proposes to expand Cathays High School, situated opposite the Charity land, which would require part of Maindy Park to be released for this project. The Cathays High School proposals were approved by Cabinet in October 2021, subject to the resolution of property and trust matters relating to Maindy Park. The Council, as Local Authority, is proposing a land exchange for part of the Trust's land at Maindy Park in order to facilitate the expansion of Cathays High School.
4. The status of Maindy Park as a charitable trust requires the Council, separately, as Trustee, to consider the proposed land exchange, and make a decision as

to whether the land swap is in the best interests of the charity having regard to the objects and best interests of the Charity ('the Trust Decision').

5. The Council is faced with conflicting interests between its proposed school development project and acting in the best interests of the Maindy Park Trust.
6. The Council has taken legal advice from Counsel on how it should manage its conflict of interests in this matter. The Cabinet considered this legal advice and proposed decision making arrangements at its meeting on 28th September 2022, and agreed the arrangements to be recommended to full Council for approval.
7. In accordance with the legal advice from Counsel, the decision making arrangements agreed and adopted, on the recommendations of Cabinet and with the approval of full Council in September 2022, are as follows:
 - (i) Individual members of the Cabinet should identify and declare any potential conflicts of interest in the Trust Decision and any Member who voted on the Council's development proposals or is directly involved / interested in those proposals should declare a 'serious conflict of interests' in the Trust Decision and refrain from taking any part in the Trust Decision.
 - (ii) To set up an Advisory Committee (under section 102(4) of the Local Government Act 1972), 'the Maindy Park Trust Advisory Committee', comprised of 3 independent members of the Standards and Ethics Committee, with the following terms of reference:

'(a) To consider whether the land exchange proposed by Cardiff Council in its statutory capacity as local authority should be agreed by the Maindy Park Trust ('the Charity'), having regard to the best interests of the Charity and its beneficiaries, and all relevant evidence in this respect, including (but without limitation to) independent valuation advice on the relevant land and views submitted in response to the public consultation on this matter; and

(b) to make a recommendation to Cabinet, in its capacity as Trustee of the Charity, on whether or not the proposed land exchange should be agreed (subject to approval by the Charity Commission).'
 - (iii) For Cabinet to take the Trust Decision on the proposed land exchange, having regard to the recommendations of the Maindy Park Trust Advisory Committee, PROVIDED THAT no seriously conflicted Cabinet Member, that is, any Member who has had any previous involvement, or has any other personal interest, in the Council's development proposals concerning Maindy Park, shall take any part in the Trust Decision (any seriously conflicted Cabinet member shall declare their conflict of interests and withdraw from the Cabinet meeting).
8. The Maindy Park Trust Advisory Committee has been established, comprised of three independent members of the Standards and Ethics Committee. The

Advisory Committee has met on three separate occasions to consider this matter. At each meeting, the Committee considered a report from the Director of Governance and Legal Services, providing the Committee with relevant information and all further information requested by the Committee in order to inform its recommendation. The reports considered by the Advisory Committee are as follows:

- (i) 'Proposed Land Exchange at Maindy Park', 12th October 2022 (**Appendix 1**);
- (ii) 'Proposed Land Exchange at Maindy Park – Further Information', 17th November 2022 (**Appendix 2**); and
- (iii) 'Proposed Land Exchange at Maindy Park – Additional Further Information', 17th November 2022 (**Appendix 3**).

9. At each meeting, the Committee received written and oral representations made on behalf of various interested groups. The Council's Director of Governance and Legal Services, who was not involved in giving advice on the school redevelopment proposals, advised on Council decision making processes and Committee procedures. Council officers from Estates, Finance and Legal Services were present to answer questions from the Committee or the objectors, as necessary. The Committee was advised by an independent valuer and an independent charity law specialist.
10. Following the October Committee meeting, the Committee members carried out a site inspection of the Trust land at Maindy Park and the proposed alternative land at Blackweir and Cae Delyn Park. At the November Committee meeting, the Committee explained that, on the basis of all the available information, they had ruled out the land at Blackweir, as it was not considered to be a suitable alternative to the Trust land at Maindy Park. The Committee's considerations focussed thereafter on the proposed exchange land at Cae Delyn Park.
11. The Committee has given careful and thorough consideration to this matter, which has included taking account of the following specific information:
 - (i) The governing documents of the Charity (Indenture dated 15th August 1922 and Charity Commission Scheme dated 10th March 1988);
 - (ii) Plans of the Charity's land at Maindy Park and the proposed exchange land at Blackweir and Cae Delyn Park, as updated during the process of considering the proposals;
 - (iii) Site inspections of all 3 sites;
 - (iv) Reports of the independent Qualified Surveyor on the proposals, including an addendum and an updated report to reflect revised plans for the proposed land exchange;
 - (v) Two public consultation exercises, carried out firstly in May 2022 and then repeated in December 2022 (to seek views on the revised plans), and the outcomes of those consultations;
 - (vi) An Equalities Impact Assessment, identifying equalities implications of the proposals (including a health and safety assessment), which was kept under review and updated on the basis of public consultation responses and representations received from a vulnerable users group;

- (vii) Written representations from various interested groups and individuals, who were given opportunities to submit their representations and any additional points to each of the three Committee meetings;
 - (viii) Maps showing public recreation spaces in the surrounding areas of Gabalfa, Heath and Cathays;
 - (ix) Data on incidents of crime, anti-social behaviour and public safety for all 3 sites (Maindy Park, Blackweir and Cae Delyn Park);
 - (x) Specialist tax advice on the implications for the Trust of the proposed land exchange;
 - (xi) The Charity's Annual Accounts for the year ended 31st March 2022; and
 - (xii) The Accounts for Maindy Leisure Centre 2016-2022, which is operated by a third party, shared with the Committee on a confidential basis.
12. All Committee meetings were held in public and live webcast (except for the Committee's private discussions on possible decisions) and access to reports and associated documents was provided in accordance with the statutory rules set out in Part VA of the Local Government Act 1972 and the Council's Access to Information Procedure Rules (in Part 4 of the Constitution).
13. At the end of the Advisory Committee meeting on 23rd January 2023, after careful consideration of all the evidence (written and oral) presented to it over the course of the 3 Committee meetings, and their site visit, the Chair announced the decision of the Committee and the recommendations to be made to Cabinet, as Trustee of Maindy Park Trust.

Issues

The Advisory Committee's Recommendations

14. At the Maindy Park Trust Advisory Committee meeting on 23rd January 2023, having carefully considered all the relevant information presented to it, the Committee decided that the proposed exchange of the Maindy Park land (shown in **Appendix 3C**) in exchange for the land at Cae Delyn Park (shown in **Appendix 3D**) *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 (**Appendix 3E**) 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 covenant¹ (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).

¹ Corrected to accurately reflect the terms of overage recommended by the Qualified Surveyor (the draft decision erroneously referred to the 75 year period running from the date of the land swap).

- (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 23rd 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.
15. The Advisory Committee recommended 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.

Reasons for the Advisory Committee’s Decision

16. The Advisory Committee announced a summary of the reasons for its decision at the end of its meeting on 23rd January 2023, as follows:
- ‘The land left at Maindy will provide a larger area of green space² than currently, and together with the land at Cae Delyn means there will be 2 areas of land for the benefit of all Cardiff residents which will benefit more people than having one specialist activity on one site and will be of a greater financial and amenity value, and therefore is in the best interests of the charity.’*
17. Full reasons for the Advisory Committee’s decision, including its assessment of the evidence and representations received, are set out in **Appendix 4**.

The Trust Decision

18. The Cabinet, as Trustee, must decide whether or not the proposed land exchange should be approved, *having regard to the objects and best interests*

² This refers to an increase in unrestricted access open space available for use by the local community.

of the Charity, and not as a local authority pursuing an education or any other facility.

19. Specifically, the Cabinet should note that the merits of the Cathays High School development proposals are irrelevant to the Trust Decision, because the Trust's charitable objectives are to use its land for recreation, playground and open space. Legal advice has confirmed that the use of Trust land for the school expansion is not compatible with the Trust's charitable objectives.
20. The Cabinet, in its capacity as Trustee of Maindy Park Trust, must consider whether to accept the recommendation of the Advisory Committee to approve the land exchange subject to the 6 stated conditions (set out in paragraph 14 above).
21. In this regard, the Cabinet, as Trustee, should consider the suitability of the proposed replacement land at Cae Delyn Park, compared with the land at Maindy Park, for meeting the objectives of the Charity, and any difference in the financial or amenity value of the land.

Conditions Recommended by the Advisory Committee

22. As noted in paragraph 14 above, the Advisory Committee recommended that the land exchange should only be approved subject to satisfaction of certain conditions, intended to protect and promote the best interests of the Charity and its beneficiaries.
23. The Cabinet, as Trustee, must consider whether the conditions are appropriate to protect and promote the best interests of the Charity, and must not take account of the Council's interests as local authority, whether relating to educational, economic development or any other objectives of the Council.
24. The Trustee should note that Condition One, requiring the new velodrome to be built and operational prior to the proposed land exchange taking place (see paragraph 14(i) above), reflected the Advisory Committee's view that the existing velodrome at Maindy Park contributes to the recreational amenity value of the current site and that the land exchange would only be in the best interests of the Trust if that amenity was maintained, without interruption. (Cabinet will, of course, be aware of the Council's development proposals for a new modern velodrome and combined cycling facilities within the International Sports Village plans (Cabinet report, 'International Sports Village', 19th January 2023), although specific consideration of these development proposals is not relevant for the purposes of the Trust Decision.)
25. An enquiry has been made by the Council's School Organisation Programme Director about whether, if approval for the land swap is given by the Trust and the Charity Commission, Condition One would prevent preparatory surveys being carried out as necessary to plan for the education build prior to the land swap taking place. Details of the required surveys, including the planned commencement date, health and safety measures and undertakings to be given to the Trust are set out in **Appendix 5**. The Advisory Committee members have been informally consulted and have indicated that they are content that the

Trust may agree to grant permission for such preparatory surveys without breaching Condition One, as the Committee's concern is to ensure continuous access to a velodrome facility is maintained. The Trustee is asked to consider granting permission, in principle, subject to an appropriate licence agreement being prepared in due course for the Trust's approval, in consultation with the Trust's independent legal advisors, with all legal fees being covered by the Council.

26. In relation to Condition Three, requiring improvement works to be carried out to improve the amenity value of the exchange land at Cae Delyn and the retained land at Maindy Park (see paragraph 14(iii) above), it should be noted that if the Cabinet, as Trustee, is content to approve this condition, the Advisory Committee proposes to hold a further meeting (within 90 days of its last meeting) to consider and agree the specific improvements to be carried out. The Advisory Committee would then make a further recommendation to the Cabinet, as Trustee, for the Trust's approval of the improvement works.
27. Condition Four requires arrangements 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 (see paragraph 14(iv) above). It should be noted that, in effect, this would formalise arrangements which are currently in place for the Trust's land at Maindy Park concerning the leisure centre and current velodrome site, which was let by the Council, together with other leisure centres in the city, as part of a public concession contract arrangement, to GLL Limited, a leisure provider and charity. It is understood that the leisure centre and pool was funded and constructed in the early 1990's using the Council's own financial resources and not those of the Charity. This suggests that the Council has provided the leisure centre under local authority powers, rather than in its capacity as a charity trustee. It is recommended that this position should be regularised as part of an overriding lease arrangement granted by the Trust to the Council, as local authority, with consent to sublet to GLL. This will enable the Council to continue to manage the leisure centre through the existing concession contract and lease.
28. The Trust will note that the Council's Finance officers have confirmed that there is no income due to the Trust arising from the current facilities operated by the leisure provider, due to the fact that expenditure exceeds income; and that the Council maintains the footways, roads and parkland at no charge to the Trust (as set out in paragraph 13 of the report to the Advisory Committee in January 2023, **Appendix 3**). It is recommended that the current informal arrangements should therefore be formalised by the grant of a lease by the Trust to the Council for the maintenance and management of the residue of the Trust's land at Maindy Park that will remain after the proposed land exchange. If the Trust is content to approve this in principle, a draft lease will be prepared, in consultation with the Trust's independent legal advisor (with all legal fees being covered by the Council), for the Trust's approval at a future Trust meeting.
29. Similarly, in respect of the proposed exchange land at Cae Delyn, the Trust will note that the Council's records indicate that the costs of maintaining the land are higher than the income generated (from rental of the sports pitches) and

the Council therefore proposes that future management of the day to day activities could be managed through a potential lease granted by the Trust to the Council, for the Council to continue with maintenance of the park and collection of any pitch fees to be reinvested in the park (as set out in paragraph 10(iv) of the report to the Advisory Committee in January 2023, **Appendix 3**). If the Trust is content to approve this in principle, the draft lease to be prepared in respect of the land at Maindy Park (referred to in paragraphs 27-28 above), will, subject to approval of the land exchange, include management and maintenance of the exchange land at Cae Delyn Park, with the lease/s being prepared in consultation with the Trust's independent legal advisor (all legal fees being covered by the Council), for the Trust's approval at a future Trust meeting.

30. In considering the Trust Decision, the Cabinet should give due regard to the recommendations of the Advisory Committee. The Cabinet, as Trustee, should only agree to the proposed land exchange and the conditions recommended by the Advisory Committee if it is satisfied that it is in the best interests of the Trust to do so. The Trust Decision remains the responsibility of the Cabinet, as Trustee, but is subject to the approval of the Charity Commission.

Charity Commission Consent

31. The Charities Act 2011 classifies the proposed land exchange as a 'connected person' transfer, which requires the consent of the Charity Commission. This means that if the Trust Decision taken by the Cabinet is to agree to the proposed land exchange, this will be subject to approval by the Charity Commission. The requirement for Charity Commission approval is an additional safeguard to provide independent assurance that the Trust Decision has been taken lawfully and properly in the best interests of the Charity.
32. In considering an application for its consent, the Charity Commission will need to be satisfied that:
 - (i) The disposal is "expedient in the interests of the Charity";
 - (ii) That it is in the trustee's view that the disposal is in the best interests of the Charity; and
 - (iii) The decision to proceed with the disposal is within the range of reasonable decisions that the trustee could take.

Pre-Decision Scrutiny

33. The Policy Review and Performance Scrutiny Committee is due to consider this matter at its meeting scheduled for 1st March 2023. Any recommendations or comments made by the Scrutiny Committee will be circulated at the Trust's meeting.

Legal Implications

34. The Council's functions, as sole corporate trustee of Maindy Park ('the Charity'), are executive functions (pursuant to section 13 of the Local Government Act 2000 and the Functions and Responsibilities Regulations issued thereunder, SI

2007/399). Under the Council's Scheme of Delegations, Section 2, paragraph 43, these functions are reserved to the Cabinet.

35. As Trustee, the overriding duty of the Cabinet is to further the purposes of the Charity, meaning that any decisions must be taken in the best interests of the Charity.
36. An advisory committee may only advise the Cabinet within its approved terms of reference (set out in paragraph 7(ii) above). The Trust Decision remains the responsibility of the Cabinet, to be taken having regard to the recommendations of the Advisory Committee.
37. In considering whether to proceed in disposing of land, the Trustee must consider whether the Charity has power to dispose of the land. There is no express power of disposal in the Charity's governing document, being the Indenture dated 22nd August 1922. The Charity's land is considered to be 'Designated Land', being land held for a specific charitable purpose and the Trustee must have regard to its ability to continue to use the land for the provision of recreation, playground, and open space. As there is intention to replace land to continue the objectives, the Charity may rely on the statutory power to dispose of land pursuant to Section 6 of the Trusts of Land and Appointments of Trustees Act 1996. The Trustee must be satisfied that there is nothing within the governance documents of the charity that prevents a disposal of land.
38. In addition, the Trustee must also comply with the procedural requirements set out in Part 7 of the Charities Act 2011. Generally, no land held in trust by a Charity may be disposed of without permission from the Charity Commission or the Court. However, a trustee may dispose of land where it can comply with the requirements set out Part 7, which requires the Charity to obtain and consider a written report from a Qualified Surveyor, and to advertise the disposal. A copy of the Qualified Surveyor's report prepared by Cooke and Arkwright dated 8th December 2022 is attached as **Appendix 3E**.
39. As the proposal involves a proposed exchange of land, the statutory requirement for a charity to advertise a disposal does not apply pursuant to Section 121(5)(a) Charities Act 2011. However, public notice has been published (on two separate occasions, as explained in paragraph 11(v) above) to ensure public consultation. The outcomes of the public consultation are annexed for consideration (**Appendix 1/6** and **Appendix 3G**).
40. Further legal advice in relation to the obligations of the Trustee will be available from the independent legal advisor at the Cabinet meeting.
41. In line with Counsel's advice, individual members of the Cabinet should identify and declare any potential conflicts of interest in the Trust Decision, including whether a conflict is 'serious' or 'technical', defined as follows:
 - (i) Any Member who voted on the Council's school development proposals or is directly involved or interested in those proposals, for example as a school governor of Cathays High School, should declare a 'serious

conflict of interests' in the Trust Decision, as a personal and prejudicial interest under the Members' Code of Conduct, and withdraw from the meeting.

- (ii) Any other Member (who has not voted on the Council's school development proposals and is not directly involved or interested in those proposals) should declare a technical conflict, as a personal interest under the Members' Code of Conduct, which arises simply by virtue of their status as a member of the Council. A technical conflict of interest does not prevent that Member from participating in the Trust Decision.

- 42. In relation to Cabinet Job-Sharers, Counsel has advised that where one job sharer has declared a serious conflict of interest ('JS-C'), their job sharing partner who has no serious conflict of interests ('JS-P') may participate in the Trust Decision and vote, provided that JS-C has agreed to give JS-P unfettered discretion in relation to the decision and shall not seek to influence their vote in any way. This is confirmed in the Cabinet Procedure Rules, Rule 2.7(e).
- 43. Under the Cabinet Procedure Rules, the quorum for a meeting of the Cabinet is three.

Equalities & Welsh Language

- 44. In considering this matter the decision maker should have regard to the Council's duties under the Equality Act 2010 (including specific Welsh public sector duties). Pursuant to these legal duties Councils must, in making decisions, have due regard to the need to (1) eliminate unlawful discrimination, (2) advance equality of opportunity and (3) foster good relations on the basis of protected characteristics. Protected characteristics are: (a) Age, (b) Gender reassignment (c) Sex (d) Race – including ethnic or national origin, colour or nationality, (e) Disability, (f) Pregnancy and maternity, (g) Marriage and civil partnership, (h) Sexual orientation and (i) Religion or belief –including lack of belief.
- 45. When taking strategic decisions, the Council also has a statutory duty to have due regard to the need to reduce inequalities of outcome resulting from socio-economic disadvantage ('the Socio-Economic Duty' imposed under section 1 of the Equality Act 2010). In considering this, the Council must take into account the statutory guidance issued by the Welsh Ministers (WG42004 A More Equal Wales The Socio-economic Duty Equality Act 2010 (gov.wales) and must be able to demonstrate how it has discharged its duty.
- 46. An Equalities Impact Assessment aims to identify the equalities implications of the proposed decision, including inequalities arising from socio-economic disadvantage, and due regard should be given to the outcomes of the Equalities Impact Assessment and the Health and Safety Assessment, annexed to this report (**Appendix 3F**).

The Well-being of Future Generations (Wales) Act 2015

- 47. The Well-Being of Future Generations (Wales) Act 2015 ('the Act') places a 'well-being duty' on public bodies aimed at achieving 7 national well-being goals

for Wales - a Wales that is prosperous, resilient, healthier, more equal, has cohesive communities, a vibrant culture and thriving Welsh language, and is globally responsible. In discharging its duties under the Act, the Council has set and published well being objectives designed to maximise its contribution to achieving the national well being goals. The wellbeing objectives are set out in Cardiff's Corporate Plan 2022-25: Cabinet 24 Feb 2022 Corporate Plan 2022-25 App A.pdf (moderngov.co.uk)

48. When exercising its functions, the Council is required to take all reasonable steps to meet its wellbeing objectives. This means that the decision makers should consider how the proposed decision will contribute towards meeting the wellbeing objectives and must be satisfied that all reasonable steps have been taken to meet those objectives.
49. The wellbeing duty also requires the Council to act in accordance with a 'sustainable development principle'. This principle requires the Council to act in a way which seeks to ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs. Put simply, this means that Council decision makers must take account of the impact of their decisions on people living their lives in Wales in the future. In doing so, the Council must:
 - Look to the long term
 - Focus on prevention by understanding the root causes of problems
 - Deliver an integrated approach to achieving the 7 national well-being goals
 - Work in collaboration with others to find shared sustainable solutions
 - Involve people from all sections of the community in the decisions which affect them.
50. The decision maker must be satisfied that the proposed decision accords with the principles above; and due regard must be given to the Statutory Guidance issued by the Welsh Ministers, which is accessible on line using the link below:
<http://gov.wales/topics/people-and-communities/people/future-generationsact/statutory-guidance/?lang=en>

Financial Implications

51. The Trust's accounts and independent valuation advice are appended to the January Advisory Committee Report. In considering the decision, the financial valuations should be considered but the key determinative factor should be the alignment with the objectives of the Trust.
52. In respect to Condition 5, activity will be undertaken by Council officers to consider and implement the appropriate governance and financial arrangements that need to be in place going forward. This will ensure that the independence of the Trust is set out in a clearer and more transparent way going forward but that also that there is clarity where financial costs are borne by the Council and where those costs are borne by the Trust. This work will require significant input from legal and property officers to ensure the solutions found are both practical and best practice.

Property Implications

53. All property implications are contained within the body of the report. Where the Council has any property transactions or valuations required to deliver any proposals, they should be managed in accordance with the Council's Asset Management processes and in consultation with relevant service areas, such as Legal, as appropriate.

HR Implications

54. There are no HR implications relating to this report.

RECOMMENDATIONS

As Trustee of Maindy Park Trust, the Cabinet is recommended to:

- 1) Consider the recommendation made by the Maindy Park Trust Advisory Committee on 23rd January 2023, that Cabinet, as the Charity trustee, do agree (subject to Charity Commission consent) that it is in the best interests of the Charity to exchange and release from the Trust the land at Maindy Park (shown on the plan annexed to the report at **Appendix 3C**) in exchange for the land at Cae Delyn Park (shown in **Appendix 3D**), to be held on trust for the Charity, subject to the conditions set out in paragraph 14 of this report;

AND EITHER:

- 2) Approve the recommendation of the Maindy Park Trust Advisory Committee, upon the specified conditions (referred to in recommendation (1) above), subject to Charity Commission consent;

AND Subject to approval of recommendation (2), without any modifications, to:

- (i) Agree, in principle, to grant permission for the Council to carry out preparatory surveys at Maindy Park, as detailed in **Appendix 5**, subject to a licence agreement to be entered into by the Trust and the Council, as set out in paragraph 25 of this report;
- (ii) Agree to receive a further report or reports to consider:
 - (a) the recommendations of the Maindy Park Advisory Committee in relation to the improvement works to be carried out to the land at Maindy Park and Cae Delyn Park, pursuant to Condition Three, and as set out in paragraph 26 of this report; and
 - (b) arrangements to be made between the Trust and the Council for a lease or licence for the future maintenance and management of the Trust's land at Cae Delyn Park and Maindy Park, pursuant to Condition Four, and as set out in paragraphs 27-29 of this report;

and

- (iii) Instruct the Trust's independent legal advisor to make an application to the Charity Commission for consent to the land exchange on the above basis.

OR

- 3) If any modifications are proposed to the recommendations of the Maindy Park Trust Advisory Committee (referred to in recommendation (1) above), to refer the recommendation back to the Advisory Committee for it to consider if the modified recommendation is in the best interests of the Trust;

AND

- 4) To note that a review of the governance and financial management arrangements of all trusts of which the Council is a trustee is to be carried out by the Council's Corporate Director Resources and the Director of Governance and Legal Services under their delegated authority, to identify any necessary improvements to be agreed and put in place.

DAVINA FIORE

Director of Governance & Legal Services and Monitoring Officer

24 February 2023

Appendices

- Appendix 1** 'Proposed Land Exchange at Maindy Park', Maindy Park Trust Advisory Committee report, 12th 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, 17th 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, 23rd 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 papers

Council report, Maindy Park Trust – Establishment of Independent Advisory Committee, 29th September 2022 [CITY & COUNTY OF CARDIFF \(moderngov.co.uk\)](https://www.moderngov.co.uk/city-and-county-of-cardiff)

Cabinet report, Maindy Park Trust - Decision Making Arrangements, September 2022: [CARDIFF COUNCIL \(moderngov.co.uk\)](https://www.moderngov.co.uk/council)

Cabinet report, 'International Sports Village', 19th January 2023: [CARDIFF COUNCIL \(moderngov.co.uk\)](https://www.moderngov.co.uk/council)

MAINDY PARK TRUST ADVISORY COMMITTEE**DECISION REPORT****In relation to: Proposed Land Exchange****1. INTRODUCTION**

1.1 The Maindy Park Trust Advisory Committee was established, by resolution of Cardiff Council dated 29th September 2022, in order to manage its conflict of interests in relation to Maindy Park, arising from its role as sole corporate trustee of Maindy Park, a charity registered with the Charity Commission under Charity Number 524137 (“the Charity” or the “the Trust”) with the objects to use the land for recreation, playground and open space; and the Council’s proposals as Local Education Authority to expand Cathays High School, situated opposite the Charity land, which would require part of Maindy Park to be released for this project.

1.2 The agreed terms of reference for the Advisory Committee are:

- a) to consider whether the land exchange proposed by Cardiff Council in its statutory capacity as local authority should be agreed by the Maindy Park Trust (‘the Charity’), having regard to the best interests of the Charity and its beneficiaries, and all relevant evidence in this respect, including (but without limitation to) independent valuation advice on the relevant land and views submitted in response to the public consultation on this matter; and
- b) to make a recommendation to Cabinet, in its capacity as Trustee of the Charity, on whether or not the proposed land exchange should be agreed (subject to approval by the Charity Commission).

2. DECISION MAKING PROCESS

2.1 The Advisory Committee was established, comprised of three independent members of the Standards and Ethics Committee of the Council: Jason Bartlett (Chair), Arthur Hallett and David Mills.

2.2 The Committee met on 12th October 2022, 17th November 2022 and 23rd January 2023 to consider this matter. At each meeting, the Committee:

- (i) considered a report from the Director of Governance and Legal Services (who was not involved in advising on the school redevelopment proposals), providing the Committee with relevant and requested information [[Item 5 - Committee Report.pdf \(moderngov.co.uk\)](#) [Item 4 Report.pdf \(moderngov.co.uk\)](#) [Item 4 Report.pdf \(moderngov.co.uk\)](#)], along with advice on Council decision making processes and Committee procedures;
- (ii) received written and oral representations made on behalf of various interested community groups, including the Save Maindy Velodrome Campaign Group,

the Association of the Beneficiaries of the Covenanted Land at Maindy Park, Cardiff Civic Society and the Vulnerable Users of Maindy Park Group;

- (iii) sought information and clarification from Council officers from Estates, Finance and Legal Services; and
- (iv) was advised by an independent qualified surveyor and valuer (from Cook and Arkwright) and an independent charity law specialist (from Geldards Solicitors).

2.3 The information considered by the Committee included the following:

- (i) The governing documents of the Charity (Indenture dated 15th August 1922 and Charity Commission Scheme dated 10th March 1988);
- (ii) Plans of the Charity's land at Maindy Park and the proposed exchange land at Blackweir and Cae Delyn Park, as updated during the process of considering the proposals;
- (iii) Site inspections of all 3 sites;
- (iv) Reports of the independent Qualified Surveyor on the proposals, including an addendum and an updated report to reflect revised plans for the proposed land exchange;
- (v) Two public consultation exercises, carried out firstly in May 2022 and then repeated in December 2022 (to seek views on the revised plans), and the outcomes of those consultations;
- (vi) An Equalities Impact Assessment, identifying equalities implications of the proposals (including a health and safety assessment), which was kept under review and updated on the basis of public consultation responses and representations received from the Vulnerable Users of Maindy Park Group;
- (vii) Oral and written representations from various interested community groups, who were given opportunities to submit their representations and any additional points to each of the three Committee meetings;
- (viii) Maps showing public recreation spaces in the surrounding areas of Gabalfa, Heath and Cathays;
- (ix) Data on incidents of crime, anti-social behaviour and public safety for all 3 sites (Maindy Park, Blackweir and Cae Delyn Park);
- (x) Specialist tax advice on the implications for the Trust of the proposed land exchange;
- (xi) The Charity's Annual Accounts for the year ended 31st March 2022; and
- (xii) The Accounts for Maindy Leisure Centre 2016-2022, which is operated by a third party, shared with the Committee on a confidential basis.

2.4 All Committee meetings were held in public and live webcast (except for the Committee's private discussions on possible decisions) and access to reports and associated documents was provided in accordance with the statutory rules set out in Part VA of the Local Government Act 1972 and the Council's Access to Information Procedure Rules (in Part 4 of the Constitution).

2.5 At the end of the Advisory Committee meeting on 23rd January 2023, after careful consideration of all the evidence (written and oral) presented to it over the course of the 3 Committee meetings, and their site visit, the Chair announced the decision of the Committee and the recommendations to be made to Cabinet, as Trustee of Maindy Park Trust.

3. DECISION AND RECOMMENDATIONS

3.1 The Advisory Committee decided that the proposed exchange of a portion of the land at Maindy Park ('the Maindy Exchange Land', shown in **Appendix 1**) in exchange for the land at Cae Delyn Park (shown in **Appendix 2**) *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 (**Appendix 3**) 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 covenant¹ (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 23rd 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.

¹ Corrected to accurately reflect the terms of overage recommended by the Qualified Surveyor (the draft decision erroneously referred to the 75 year period running from the date of the land swap).

(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.

3.2 The Advisory Committee recommended 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.

4. REASONS

SUMMARY

4.1 The Advisory Committee announced a summary of the reasons for its decision at the end of its meeting on 23rd January 2023, as follows:

‘The land left at Maindy Park will provide a larger area of green space² than currently, and together with the land at Cae Delyn means there will be 2 areas of land for the benefit of all Cardiff residents which will benefit more people than having one specialist activity on one site and will be of a greater financial and amenity value, and therefore is in the best interests of the charity.’

FULL REASONS

The Committee’s Remit and Decision Making Process

4.2 The Committee noted that its role is to decide whether or not the proposed land exchange is in the best interests of the Charity, having regard to the charitable objectives of the Trust; and to make a recommendation to the Cabinet on whether or not the land exchange should be approved. The Cabinet, as Trustee, would make the final decision and this would be subject to approval by the Charity Commission.

4.3 In order to properly inform its decision, the Committee was provided with independent expert advice from a charity law specialist at Geldards Solicitors and a qualified surveyor and valuer from Cook and Arkwright. The Committee found there was no basis to the challenges made by certain community group representatives questioning the independence of the Trust’s expert advisors. Both advisors were bound by their respective professional codes and had confirmed they were engaged to advise the Trust in this matter, not the Council as developer, and had confirmed that they had no conflicts of interest in this matter.

² This refers to an increase in unrestricted access open space available for use by the local community.

- 4.4 In relation to the decision making process set up by the Council to manage its conflict of interests in this matter, the Committee noted that the Advisory Committee had been established in line with advice from Counsel and local government law, and the Trust's independent legal advisor had confirmed that this was a recognised and lawful method for managing the Council's conflict of interests. The Advisory Committee members reiterated their independence, as independent members of the Standards and Ethics Committee, and noted that the Committee was obliged to work within its terms of reference, and consider whether the proposed land exchange is in the best interests of the Trust.

Qualified Surveyor's Report & Valuation

- 4.5 The Committee noted that the qualified surveyor's report provided by the independent valuer, in line with charity law requirements, confirmed that the proposed land exchange (for the Maindy Exchange Land to be exchanged in return for land at Cae Delyn Park) represents an increase in the total land area and financial value of the Trust's land. The valuer's report also included certain recommendations in relation to the terms of the proposed land exchange (including those referenced in paragraphs 4.7 and 4.13 below), all of which the Committee agreed should be accepted in order to safeguard the interests of the Trust.
- 4.6 The Committee was satisfied, on the basis of advice provided by the independent valuer and its independent legal advisor, that it is correct for the valuation of the Maindy Exchange Land to take account of the restrictive covenant in place, which allows the land to be used for recreational purposes only, because the Trust does not control the restrictive covenant and it would remain on the land whether or not the land is exchanged.
- 4.7 However, the Committee also took account of the statutory powers available to the Council, as a local authority, to override a restrictive covenant in order to facilitate a development for which planning permission has been granted. It was agreed that the overage clause recommended by the valuer would ensure that the Trust would get a fair share (50%) of any uplift in value which may be triggered by the grant of an implementable planning permission for a higher value use permitted by the release of the restrictive covenant; and that this should apply for the full recommended term of 75 years.
- 4.8 In considering the financial value of the Maindy Exchange Land, the Committee was satisfied, having reviewed the accounts provided on a confidential basis by GLL, the third party leisure services provider, that there is no income due to the Trust arising from the current facilities on the land, because of the fact that expenditure exceeds income.

Proposed Alternative Land

- 4.9 The Committee considered the suitability of the proposed replacement land for use in meeting the Trust's charitable objectives, namely, for public recreation, playground and open space. The alternative land at Blackweir was rejected following the site visit carried out by the Committee members on 26th October 2022 and having regard to concerns raised by members of the public, because it was not considered to be a suitable replacement with sufficient amenity value.

- 4.10 The Committee then sought further information about the proposed alternative land at Cae Delyn Park. It was noted that the land consists of green space, grassed playing fields and surfaced footpath, all suitable for public recreation. The Committee welcomed the suggestion put forward by the Council's Parks Operational Manager, in relation to potential improvements to the sports pitches through drainage works, supply and installation of new posts and ground sockets; consideration of the provision of solar lighting; footpath improvements; and the provision of site furniture (such as park benches). The Committee also agreed that consideration should be given to reasonable and proportionate additional measures to address anti-social behaviour concerns, which had been raised by some members of the public. It was noted that any improvement works may be subject to public consultation and would require approval by the Council. The Committee decided that the suggested improvement works should be carried out to improve the amenity value of the land at Cae Delyn for public recreation and open space; and that the Council should be asked to prepare proposals for the improvement works for consideration and approval by the Committee at a future meeting to be held within 90 days. The Committee's decision in this regard is reflected in Condition Three set out in paragraph 3.1(iii) above.
- 4.11 The Committee agreed that, subject to the improvement works referred to in the paragraph above being carried out, the land at Cae Delyn would be potentially more suitable for wider range of leisure activities, with greater public access, than provided currently by the Maindy Exchange Land.
- 4.12 It was noted that, should the land exchange proceed, the Trust would need to make arrangements for the management and maintenance of the land at Cae Delyn Park, including the hire of sports pitches. The Committee welcomed the proposal made by Council officers that a lease arrangement could be put in place between the Trust and Council, for the Council to retain responsibility for management and maintenance of the land. In order to protect the financial position of the Trust, it was agreed that the arrangements should incur no ongoing revenue costs to the Trust which exceed its income (for example, from pitch hire). The Committee agreed that the arrangements for the management and maintenance of the land at Cae Delyn should be set as a condition for approval of the proposed land exchange, and agreed the terms set out in Condition Four.
- 4.13 The Committee was pleased to note that the proposed land exchange included 4.9 acres of the Trust's land at Maindy Park being retained by the Trust. The retained land includes the leisure centre and swimming pool, meaning that those recreational facilities would remain unaffected by the proposals. The revised plans (prepared in December 2022) also made provision securing public access to the Trust's retained land and space for public car parking in the evenings and at weekends. The Committee noted that the qualified surveyor's report included a recommendation that any agreement put in place between the Trust and the Council in relation to the proposed land exchange should include terms to this effect, which the Committee agreed would safeguard the Trust's interests.
- 4.14 It was noted that the Council's proposals included carrying out various improvement works to the Trust's retained land at Maindy Park (in relation to

issues such as lighting and accessibility, to be agreed in consultation with the local community) and would increase the unrestricted access open space available for use by the local community. The Committee agreed that these improvements would increase the amenity value of the retained land for the Trust's charitable objectives and should therefore be a condition of the land exchange. This is reflected in Condition Three of the Committee's recommendation (see paragraph 3.1(iii) above).

- 4.15 The Committee enquired about arrangements for future maintenance of the Trust's retained land at Maindy Park and was content to agree to the proposal that the current informal arrangements, whereby the Council maintains the footways, roads and parkland at no cost to the Trust, should be formalised and continued. This is reflected in Condition Four of the Committee's recommendation.
- 4.16 Consideration was given to the concern raised by some members of the public and community group representatives that the location of the proposed exchange land at Cae Delyn was too far from the current Trust land at Maindy Park to be an acceptable replacement. It was suggested that some current users of the land at Maindy Park, in particular individuals with mobility issues or other vulnerabilities, would be unfairly disadvantaged by the proposed land exchange. The Committee's legal advisor advised the Committee that the Trust's beneficiaries encompass all residents of Cardiff, and that there is no requirement for the replacement land to be in the Cathays ward or close to the current Trust land at Maindy Park. The Committee acknowledged that the land at Cae Delyn may be less convenient for current users of the land at Maindy Park, but felt this was counter-balanced by the fact that its location may be more convenient for other beneficiaries of the Trust living in other parts of Cardiff. The Committee was also reassured by the fact that just under 5 acres of land would be retained at Maindy Park, and improved at the Council's expense. This would ensure that current users of Maindy Park would still have close access to a large area of public recreation space.
- 4.17 The Committee also considered the suggestion made by objectors that the proposed land exchange would result in a net reduction in the area of green space in Cardiff, because the proposed alternative land at Cae Delyn is already open access parkland. The Committee was advised by its independent legal advisor that the total area of green space in Cardiff is not relevant to the charitable objectives of the Trust and that the Trustee's responsibility is in relation to the land it holds on trust. The Committee noted that if the proposed land exchange were approved, the land at Cae Delyn would be protected by placing it into trust. This meant that the proposed exchange would result in the Trust owning 2 public recreation spaces in different parts of Cardiff, which the Committee believed would be more accessible to a larger number of the Trust's beneficiaries.

Public Consultation

- 4.18 The Committee was satisfied that reasonable and proportionate efforts had been made to bring the land exchange proposals to the attention of members of the public and that all interested parties had been given sufficient opportunities to put their views forward. The range of measures undertaken included 2 public

notices published in a newspaper; three public meetings, which were accessible in person and online, with all meeting documentation published on the Council's website in accordance with the statutory public access rules (under the Local Government Act 1972, Part VA); opportunities given to all interested community groups to make written and oral representations to the Committee on three separate occasions; and a survey published on the Council's website and available in hard copy, carried out in December 2022, which received 785 responses. The proposals had also been well publicised locally by the active campaign groups.

- 4.19 The Committee was advised by the independent legal advisor that charity law places no legal obligation on Trustees to consult on a proposed land exchange, but that it is good practice to do so to ensure that the Trustee's decision is well informed. The Council's Director of Governance and Legal Services explained the Gunning Principles applicable to consultations carried out by public bodies, arising from their overriding duty to act fairly. The Committee was satisfied that the consultation undertaken complied with the Gunning principles, in that, it had been carried out when proposals were at a formative stage; had included sufficient information about the proposals; allowed sufficient time for response; and that all responses had been carefully considered by the Committee and taken into account.
- 4.20 The Committee noted that over 90% of respondents to the public consultation were not supportive of the proposed land exchange and that the majority of these were individuals living close to Maindy Park. The loss of the velodrome at Maindy was a recurrent concern raised by those objecting to the proposals (please see paragraphs 4.21 to 4.24 below). The concerns raised by respondents were carefully considered by the Committee and are addressed throughout this decision report. The independent legal advisor confirmed that, whilst the Trustees must carefully consider the concerns raised, it is the Trustees (and not the beneficiaries) who must decide what is in the best interests of the Trust, having regard to the interests of all those within the class of beneficiaries.

Maindy Velodrome

- 4.21 Careful consideration was given to the concerns raised by objectors about the loss of the velodrome at Maindy Park. The Committee heard the various representations made about the features and use of the current velodrome and concerns that the proposed new velodrome at the International Sports Village would not offer the same type of user facilities; and concerns about the decision making process in regard to plans for the new velodrome. The Committee was pleased to note the Council's stated commitment that the current velodrome would not close until the new velodrome was open, so that a velodrome cycling facility would be maintained in Cardiff without interruption. The Committee also asked Council Officers to provide clarification and assurance to concerned community groups to confirm that the new velodrome facility would be suitable for all ages and abilities.
- 4.22 The independent legal advisor confirmed, however, that provision of a velodrome is not a charitable objective of the Trust, meaning that there is no obligation on the Trust to have a velodrome on its land; and there is no obligation to exchange 'like for like'. A velodrome offers recreational facilities, but it is not

the only way of providing recreational facilities. It was noted that consideration of issues relating to the design of the new velodrome (including the degree of banking / slope) does not fall within the Committee's terms of reference. However, the Committee agreed that any access issues relating to the design of the new velodrome would be considered as part of the Equalities Impact Assessment of the proposed land exchange (please see paragraph 4.25 below).

- 4.23 For the purposes of the Trust's decision, the Committee was advised that the velodrome at Maindy Park should be regarded as a facility on the Trust's land. The Committee therefore considered how this facility helps to meet the charitable objectives of the Trust and weighed this against the recreational and open space facilities which the Trust could provide if the proposed land exchange were to proceed. It was noted that the velodrome is a well-used and valued facility, which contributes to the recreational amenity value of the Trust's land at Maindy Park. In recognition of the amenity value of a velodrome cycling facility for the city of Cardiff, the Committee agreed that they could only be satisfied that the proposed exchange would be in the best interests of the Trust if a velodrome was provided elsewhere in the city, in line with the Council's commitment, before the land exchange takes place. This is reflected in Condition One to the Committee's recommendation.
- 4.24 The Committee also considered the concerns raised about the historic value of the velodrome at Maindy Park. It noted, however, that the velodrome is not a listed structure and the advice of the independent legal advisor was that the preservation of historic structures does not fall within the charitable objectives of the Trust and is therefore not a relevant consideration for the Trustee's decision on the proposed land exchange. Nevertheless, the Committee agreed that it would recommend the installation of an information board or commemorative plaque on site at Maindy Park to explain the historic use of the site as a velodrome. This is set out in Condition Six to the Committee's recommendation.

Equalities Issues

- 4.25 The Committee was keen to ensure that it heard and took account of all relevant views, including those of vulnerable groups and groups sharing protected characteristics under the Equality Act 2010. The advice of the independent legal advisor was that charity law does not impose a legal duty on Trustees to take equalities considerations into account, but that it would be reasonable for the Trustees to do so. As a matter of good practice, an Equalities Impact Assessment (EIA) was therefore carried out, with advice from the Council's Equalities Officer, to assess any equalities implications of the proposed land exchange. The EIA was updated over the course of the Committee's consideration of this matter, to take account of all representations made to the Committee and in response to the public consultation carried out in December 2022. Representations made by the Vulnerable Users of Maindy Park Group were considered by the Committee, and the offer was made for any individuals who wished to speak with the Council's Equalities Officer or make representations through an appropriate equalities group. The EIA also included an assessment of any equalities implications of the design of the new velodrome. The outcomes of the EIA, which included a health and safety assessment of the

proposed exchange land, are reflected in the Committee's recommendations in relation to improvements required to be made to the land at Cae Delyn Park and also the retained land at Maindy Park (under Condition Three, set out in paragraph 3.1(iii) above).

Issues Not Considered Relevant

4.26 In line with the advice of the independent legal advisor, the Committee agreed that the following issues were not relevant factors to be taken into account in its decision:

- (i) The Cathays High School development proposals, which have been approved by the Council, subject to resolution of the trust and other land issues. The need for the school expansion, alternative land which may or may not be available and the decision making process for the school development was not considered relevant to the Trust Decision nor within the terms of reference of the Committee.
- (ii) The Council's economic regeneration plans, the International Sports Village development and the new velodrome proposals were not considered relevant to the Committee's decision, except to the extent set out in paragraphs 4.21 to 4.23 above, and played no part in the Committee's decision.
- (iii) The Council's reasons for the proposed land swap were considered irrelevant for the purposes of considering what is in the best interests of the Trust, having regard to its charitable objectives.

Conditions for Approval of Proposed Land Exchange

4.27 The Advisory Committee recommended that the land exchange should only be approved subject to satisfaction of the six conditions set out in paragraph 3.1 above, intended to protect and promote the best interests of the Charity and its beneficiaries. If these conditions are not met, the Committee's view is that the proposed land exchange should not proceed, unless further consideration is given to any modifications.

General Review of Trust Governance

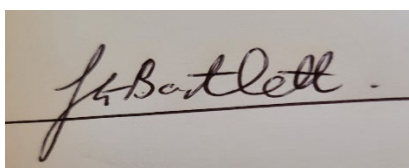
4.28 The Committee noted the difficulties that had arisen in this case from the fact that the trust status of the land at Maindy Park had not been identified at the outset of the school development project. The independent legal advisor confirmed that, unfortunately, this was not unusual for local authorities who may have historically been gifted land for charitable purposes, without any express trust deed, nor any entry at the Land Registry to indicate the existence of the trust. In order to avoid such difficulties in future, the Committee recommended that a review should be undertaken by the Council of the governance and financial management arrangements of all trusts of which the Council is a trustee. The review should seek to identify any necessary improvements to be agreed and put

in place. This is reflected in Condition Five to the Committee's recommendation.

WRITTEN DECISION

A copy of this decision report is to be provided to the Council and the community groups who submitted representations on this matter, and published on the Council's website alongside the minutes of the January 2023 Committee meeting at which the decision was announced.

SIGNED ON BEHALF OF
THE MAINDY PARK TRUST ADVISORY COMMITTEE

A photograph of a handwritten signature in black ink on a light-colored background. The signature reads "J. Bartlett" with a horizontal line drawn underneath it.

JASON BARTLETT
CHAIRPERSON

22nd February 2023

APPENDICES

Appendix 1	Maindy Park – Proposed Land Exchange Layout (moderngov.co.uk)
Appendix 2	Cae Delyn Park – Proposed Land Exchange Layout (moderngov.co.uk)
Appendix 3	Qualified Surveyor's Report Appendix E.pdf (moderngov.co.uk)

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PREPARATORY SURVEYS AT MAINDY PARK

1. It is anticipated that the survey/testing required will commence from October 2023, and that any signage or fencing required to maintain the health and Safety of users of trust land will be in place prior to the inspections being undertaken.
2. All areas of ground disturbance will be made good following completion of the survey.
3. GLL will be advised in advance of any survey work being undertaken, so users of the Velodrome can be informed, if required.
4. The following is the list of surveys which will need to be carried out:
 - a) Geotechnical Survey – This investigation will include use of a drilling rig to take soil samples at the required depth. All sample holes will be refilled.
 - b) Infiltration Testing measures absorption rate and will involve excavation pits, which will be filled in following completion of the testing.
 - c) Ground Penetrating Radar survey – non-invasive
 - d) Unexploded Ordinance Survey – this may involve ground disturbance which will be refilled on completion.
 - e) Ecological – Non-invasive
 - f) Arboriculture – Non-invasive
 - g) Invasive species – Non-invasive
 - h) Foul Drainage Survey – This will involve inspection of manholes on site
 - i) Acoustic – Non-invasive
 - j) Asbestos – This will involve samples taken of the velodrome structure to determine if asbestos containing materials were used in its construction. Any sample points will be made good and will not affect the condition of the Velodrome surface.

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