

**Maindy Park Trust – Decision making process**

**APPENDIX A TO THIS REPORT IS EXEMPT FROM PUBLICATION PURSUANT TO THE LOCAL GOVERNMENT ACT 1972, SCHEDULE 12A, PART 4, PARAGRAPH 16**

**Purpose of the Report**

1. To provide the Policy Review & Performance Scrutiny Committee with an explanation of confidential Counsel advice, 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.

**Structure of the Papers**

2. Attached to this report to assist Members preparations for the scrutiny:  
**Appendix 1** – Cabinet Report titled – MAINDY PARK TRUST – DECISION MAKING ARRANGEMENTS  
**Appendix A** - *Counsel's advice in the matter of Maindy Park Trust dated 3rd February 2022 and 12th September 2022 (Exempt from publication under the Local Government Act 1972, Schedule 12A, Part 4, paragraph 16)*

**Background**

3. This Committee has responsibility within its Terms of Reference for scrutiny of the Governance and Legal Services of the Council.
4. The attached report to Cabinet makes proposals, based on Counsel advice, as to the decision-making arrangements that need to be put in place to manage the Council's conflict of interests in delivery of its proposal to expand Cathays High School.

5. The conflict of interest 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.
6. Members are referred to **Appendix 1** for a full explanation of the background (*points 2-7*) to this decision to be considered by Cabinet, and the issues (*points 8-12*) faced that require a robust and clear arrangement to be put in place that ensures the Council's conflict of interests are appropriately addressed.

### **Recommendations to Cabinet**

7. For clarity the report to Cabinet to be considered on 28 September 2022 proposes that:
  - 1) Any serious conflicts of interest are declared by individual Cabinet members in relation to the Maindy Park Trust Decision in respect of the Council's proposed land exchange;
  - 2) That Cabinet recommends to Council the appointment of the 'Maindy Park Trust Advisory Committee', comprised of 3 independent members of the Standards and Ethics Committee and /or the Governance and Audit Committee.
  - 3) That Cabinet receive a further report on this matter in due course setting out the recommendations of the Maindy Park Trust Advisory Committee in respect of the Council's decision, as trustee of the Maindy Park Trust, on whether to agree to the proposed land exchange ('the Trust Decision'), PROVIDED THAT any Member with a serious conflict of interests in this matter shall declare that interest and withdraw from consideration of the Trust Decision.

### **Scope of the Scrutiny**

8. This report to Cabinet is a corporate governance issue and, as such, in attendance at the Committee will be the Leader, Councillor Huw Thomas and Director of Governance and Legal, Davina Fiore.
9. Members are advised that the invited witnesses are leading on resolving the best way to manage the conflict of interests outlined in the report. The scrutiny will focus on proposals to establish sound decision-making arrangements in light of

Counsel advice and will not examine any detail of the proposed project to expand Cathays High School subject to the resolution of trust matters to Maindy Park.

10. The Director of Governance and Legal is leading on governance of the decision making on this issue only and Members are reminded that the decision, attached at **Appendix 1**, to be considered by Cabinet is a completely separate issue to the development proposal itself.
11. All Members are reminded of the need to maintain confidentiality with regard to the information provided in **Appendix A**. Members will be invited to agree the meeting goes into closed session to enable discussion of this information.

### **Legal Implications**

12. 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**

13. 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 confidential Counsel advice
- II. Consider whether it wishes to pass on any comments, observations, or concerns to the Cabinet, prior to its consideration of the proposals for decision-making arrangements in respect of Maindy Park Trust.

**DAVINA FIORE**

Director Governance & Legal

20 September 2022