

MAINDY PARK TRUST – DECISION MAKING ARRANGEMENTS

LEADER (COUNCILLOR HUW THOMAS)

AGENDA ITEM: 1

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

Reason for this Report

1. For the Cabinet to agree the decision making arrangements to discharge its role as sole trustee of the charitable trust, Maindy Park, in relation to a land exchange proposed by the Council in its statutory local authority capacity.

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”).
3. The land was gifted by the Marquis of Bute to the Mayor, Aldermen, and Burgesses of the City of Cardiff by an Indenture dated 15th August 1922, subject to covenants to use the land for open space, recreation and Playground (Appendix 1).
4. The current site mainly features an outdoor velodrome, which was constructed for the Empire Games held in Cardiff in 1958, and also a leisure centre with car park. These facilities have been let to a leisure operator under a public concession contract and subject to a long lease.
5. The Council, in its separate capacity as Local Education Authority, proposes to expand Cathays High School, situated opposite the Charity land. The Cathays High School proposals were approved by Cabinet in October 2021, subject to the resolution of certain property and trust matters relating to Maindy Park, being part of the land required for the expansion of the school.
6. The Council is also undertaking a separate project to relocate the existing Velodrome to the International Sports Village, which the Council is developing as a centre of high quality sports facilities. The Council has consulted on that relocation and the outcomes of the

consultation were reported to Cabinet in March 2022, when it was agreed that the new Velodrome should be progressed as part of the combined cycling facilities. The Velodrome relocation proposals will be further considered by the Cabinet, along with the full business case for the proposed combined cycling facilities, for decision in February 2023.

7. The Council is faced with conflicting interests between its proposed development projects and acting in the best interests of the Maindy Park Trust.

Issues

8. The proposed use of part of Maindy Park for the school expansion is not compatible with the objects of the Maindy Park Trust. However, the Council, in its capacity as local authority, may offer suitable substitute land to the Trust for its charitable purposes in exchange for land required at Maindy Park.
9. Under charity law, the consent of the Charity Commission would be required for the proposed exchange of land, because this would be regarded as a disposal to a 'connected person' within Part 7 of the Charities Act 2011.
10. The Council has accordingly, identified two substitute parcels of land located at Blackweir and Cae Delyn Park that could be offered in exchange for land at Maindy Park and obtained independent valuation advice in relation to the proposed land exchange. The Council has also undertaken a consultation exercise in relation to the proposed land exchange as a means to ensure wider consultation across the city. All duly submitted consultation responses are to be considered in the decision making process.
11. The status of Maindy Park as a charitable trust requires the Council, separately, as Trustee, to consider the proposed land exchange, and make a separate Trust decision having regard to the objects and best interests of the Charity ('the Trust Decision').
12. In view of the Council's conflict of interests in this matter, advice has been sought from Counsel in relation to how the Council should manage its conflict of interests and ensure its decision making process is lawful and robust.

Proposed Decision Making Arrangements

13. In line with Counsel's advice, Cabinet is recommended to agree the following decision making arrangements to manage the Council's conflicts of interests in this matter and ensure the Trust Decision is taken properly in the best interests of the Trust:

(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. It is understood that there are 4 remaining Cabinet members, 2 of whom are Cabinet job-sharers (of different Cabinet portfolios), who have no 'serious conflict of interests'.

(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 and or the Governance and Audit 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 (please see sub-paragraph (ii) above), 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).

14. 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.
15. As noted in paragraph 9 above, if the Trust Decision is to approve the proposed land exchange, this will be subject to approval by the Charity Commission under Part 7 of the Charities Act 2011, which will provide further independent assurance that the decision has been taken lawfully and properly.

Reason for Recommendations

16. To allow the Council to properly discharge its responsibilities as Trustee of Maindy Park Trust and manage its conflict of interests in relation to the development projects it is progressing in its statutory capacity as local authority.

Scrutiny Consideration

17. The Policy Review and Performance Scrutiny Committee will consider this issue on 26 September. Any comments received will be circulated at the Cabinet meeting.

Financial Implications

18. The remuneration provided to Independent members agreeing to sit on the proposed new Advisory Committee will be funded from an earmarked Reserve. The amount of remuneration paid to the Independent members will be in accordance with the approved Schedule for Members Remuneration.

Legal Implications

19. 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.
20. As trustee, the overriding duty of the Council is to further the purposes of the Charity. Any decisions taken by the Cabinet in exercise of the Council's role as trustee must be taken in the best interests of the Charity.
21. As noted in the body of the report, the Council has a conflict of interests between its proposed development projects affecting Maindy Park and its duties, as trustee of the Charity, to act in the best interests of the Charity; and independent legal advice has therefore been sought from Counsel on the decision making arrangements the Council should make in order to properly manage its conflict of interests. Counsel's advice is attached as **Appendix A** (Exempt from publication).
22. In line with Counsel's advice, the report recommends the appointment of an independent Advisory Committee, the Maindy Park Trust Advisory Committee, with the membership and terms of reference set out in paragraph 13(ii) of the report.
23. An advisory committee may be appointed (under section 102(4) of the Local Government Act 1972) to advise the Cabinet in relation to the discharge of executive functions. An advisory committee may consist of such persons (whether members of the Council or not), appointed for

such term as may be determined by the Council (but may not include Council employees or anyone who is disqualified from being an elected Member of the Authority, for example, those declared bankrupt).

24. The appointment of an advisory committee, its membership and terms of reference, may be recommended by the Cabinet, but requires the approval of full Council (pursuant to Regulation 3(9) of the Local Authorities (Executive Arrangements) (Functions and Responsibilities) Wales Regulations 2007).
25. Meetings of an advisory committee are governed by the Committee Meeting Procedure Rules; and the Access to Information Procedure Rules apply in relation to public access to meetings, agendas and reports (Local Government Act 1972, section 100E(3)(a)).
26. An advisory committee may only advise the Cabinet in relation to the Trust Decision on the proposed land exchange. The Trust Decision remains the responsibility of the Cabinet, to be taken having regard to the recommendations of the advisory committee.
27. Under the Cabinet Procedure Rules, the quorum for a meeting of the Cabinet is three. As noted in paragraphs 13 and 14 of the report, after all Cabinet members with a serious conflict of interests in the Trust Decision have withdrawn, the number of remaining Cabinet members will meet the quorum requirements to enable the Trust Decision to be lawfully made.
28. It should be noted that this report recommends a decision making process only, and is separate to the substantive Trust Decision. Any Member who declares a serious conflict of interests in relation to the Trust Decision is not necessarily precluded from participating in the consideration of the decision making process which is the subject of this report. Members should consider, in the usual way, whether they have any personal interest under the Members' Code of Conduct in the recommendations of this report, and if so, whether that interest is prejudicial, having regard to advice from the Monitoring Officer. The Monitoring Officer's general advice is that, under the Members' Code of Conduct, a Member's involvement in previous Cabinet decisions relating to the development proposals affecting Maindy Park would not constitute a personal interest in the recommendations of this report.
29. Other relevant legal implications are set out in the body of the report.

Property Implications

30. There are no property implications arising from this report.

HR Implications

31. There are no HR Implications arising from this report.

RECOMMENDATIONS

Cabinet is recommended to:

1. Note any serious conflicts of interest declared by individual Cabinet members in relation to the Maindy Park Trust Decision in respect of the Council's proposed land exchange;
2. Recommend 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, 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 the proposal; 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).'
3. 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.

SENIOR RESPONSIBLE OFFICER	Director Name Davina Fiore, Director of Governance and Legal Services
	Date submitted to Cabinet office

The following appendices are attached:

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 papers

Cabinet report, '21st Century Schools: The Expansion and Redevelopment of Cathays High School', 14th October 2021; and decision in respect thereof.

Cabinet report, 'Cardiff Bay Regeneration Overview', 10th March 2022; and decision in respect thereof.