

COUNCIL

29 SEPTEMBER 2022

REPORT OF DIRECTOR OF GOVERNANCE AND LEGAL SERVICES
AND MONITORING OFFICER

MAINDY PARK TRUST – ESTABLISHMENT OF INDEPENDENT
ADVISORY COMMITTEE

Reason for this Report

1. For the Council to consider the recommended establishment of an independent advisory committee to advise the Cabinet, in its capacity 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”). As trustee, the overriding duty of the Council is to further the purposes and best interests of the Charity. The Council’s functions as Trustee of Maindy Park are executive functions, falling within the responsibility of the Cabinet.
3. The Council, in its separate capacity as Local Education Authority, proposes to expand Cathays High School, situated opposite the Charity land.
4. The Council is faced with conflicting interests between its proposed development projects and acting in the best interests of the Maindy Park Trust. 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.

Issues

5. At its meeting on 28th September, the Cabinet is due to consider a report on the decision making arrangements to be adopted in this matter (**Appendix A**). Prior to Cabinet’s consideration of this matter, the Policy Review and Performance Scrutiny Committee is also due to consider the Council’s decision making arrangements in relation to the Maindy Park Trust at its meeting on 26th September 2022: [CARDIFF COUNCIL \(moderngov.co.uk\)](http://CARDIFF.COUNCIL(moderngov.co.uk)). Any comments, observations, or concerns raised by the Scrutiny Committee will be reported to the Cabinet, prior to its consideration of the decision-making arrangements.

6. In order to manage the Council's conflicts of interests in this matter in line with Counsel's advice, the recommended decision making arrangements include the establishment of 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).'

7. The establishment of an advisory committee requires the approval of full Council.

Financial Implications

8. 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

9. 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 6 of the report.
10. 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 cannot make a substantive decision on behalf of the Council; it may only advise.
11. 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).
12. 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).
13. 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)).

14. It should be noted that this report recommends a decision making process only, and is separate to any substantive decision to be taken in relation to Maindy Park.
15. 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.
16. Other relevant legal implications are set out in the body of the report.

RECOMMENDATIONS

Subject to approval of the Cabinet's recommendation in this regard at the Cabinet meeting on 28th September, Council is recommended to approve the establishment of a Maindy Park Trust Advisory Committee, with the membership and terms of reference set out in paragraph 6 of this report.

DAVINA FIORE
DIRECTOR OF GOVERNANCE AND LEGAL SERVICES AND MONITORING
OFFICER
22 September 2022

APPENDICES

Appendix A – Cabinet report, 'Maindy Park Trust – Decision Making Arrangements', 28 September 2022 (Appendix A, Exempt)