

COUNCIL:

28 MARCH 2024

CABINET PROPOSAL

TRUSTS – GOVERNANCE ARRANGEMENTS

Reason for this Report

1. For Cabinet to agree governance arrangements to be adopted for discharging the Council's role as corporate trustee going forward.

Background

2. Many local authorities hold assets that are subject to a trust, often a charitable trust (that is, a trust created for charitable purposes prescribed by law). A trust is a legal relationship created when assets are placed under the control of a trustee for the benefit of a beneficiary, or for a specified purpose. They often arise when a donor has gifted or transferred land or property to the Council on condition it is used for a public purpose, such as a museum, art gallery or recreation ground, but may also be financial investments or other funds, often for the purpose of awarding grants to the community.
3. Trustees hold a fiduciary position that demands high standards of trust and confidence. A trustee is responsible for the affairs of the trust and must act in the best interests of the trust to ensure that its assets are used for the trust's purposes (or objectives) for the benefit of the trust's beneficiaries, as set out in its governing documents, and in accordance with the law.
4. Where the Council is a corporate trustee, it must ensure that trust assets are held separately from the Council's own estate and property and are used strictly in accordance with the trust's particular purpose and not generally for Council functions. In some cases, such as recreation grounds, the Council also has statutory power to provide these as a local authority function, so it may be difficult to distinguish whether the Council is holding such land upon trust or for statutory purposes. All decisions made by the Council as trustee must be made in the best interests of the trust, and not influenced by Council or political objectives or priorities.

5. In March 2023, the Cabinet, considered a report in its capacity as sole corporate trustee of Maindy Park Trust, a registered charity with the objects to use land at Maindy Park for recreation, playground and open space. One of the approved recommendations arising from that report was that a review of the governance and financial management arrangements of all trusts of which the Council is a trustee would 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. This report provides Cabinet with an update on that review and proposed improvements to the Council's governance arrangements.
6. A multi-disciplinary team of officers from the Council's Estates, Finance and Legal departments has been working on a review of all trusts where the Council is a corporate trustee. In many cases, this has involved reviewing and collating information held within different departments of the Council, as well as information held by the Land Registry and Charity Commission to check whether property is held on charitable or other trusts, confirm the identity of all trustees, the trust's objectives and all dealings with the trust's assets.
7. This work is ongoing and will be kept under continual review. In the case of land, it can be difficult to determine whether land is held upon charitable trust or for statutory purposes. This is common in the case of public recreation grounds which can be acquired for the purposes of a specific Act of Parliament, such as the Public Health Acts, which provide a local authority with power to acquire land for public recreation; or may be acquired to be held on 'charitable' trust for the purposes of public recreation, which is governed by charitable law and imposes different considerations, that must be in the best interests of the charity rather than the local authority. The capacity in which the Council holds land is not always clear in the charity's deeds or governing document, which is a common issue for many local authorities.
8. The outcome of this review will allow all departments that deal with trust property to have knowledge and easy access to relevant trust information, before any detailed discussions are commenced concerning trust assets. This will also include mapping details of trust property on the Council's GIS mapping system, so that trust land can be easily identified. Whilst in most cases specific legal advice should be sought on a proposal, it will enable officers to be aware of the potential for trust implications at an earlier stage and help identify potential conflicts of interest.
9. In reviewing the financial management arrangements, some work will be required in order to ensure the value of assets held in trust are clearly set out in Trust Accounts going forward and are reflected appropriately within the Council's own statement of accounts. This work can only be fully concluded once the responsibilities of each trust are fully understood.
10. In addition, where trusts hold land or assets, there are cases where costs incurred by the Council for maintaining the Trust asset are currently captured within the Council's own accounts because they are subsidised

by the Council, but they are neither separated from each trust asset nor from the maintenance of other assets owned by the Council. Currently, there are no charges made by the Council to the Trust thus the Charities Commission guidance referenced in para 14 (V) is currently adhered to as the Trust does not currently pass any of its funds to the Council for those activities. However, further consideration needs to be given as to whether or not it is useful for the purposes of transparency to separately identify the costs incurred by the Council in maintaining the trust assets.

Issues

11. For some trusts, the Council has the right to appoint trustees (who may be Councillors or officers or third parties), but it is then the individual, rather than the Council as a corporate body, that is the trustee. In such cases, the individually appointed trustees have a duty to act in the best interests of the trust and are provided with guidance about their duties in this regard, for example, within the WLGA's Guidance for Councillors on Outside Bodies: [Outside Bodies | WLGA Councillors Website Guide \(wlgacouncillorsguide.wales\)](#) and the Charity Commission's Essential Trustee guidance: [The essential trustee: what you need to know, what you need to do \(CC3\) - GOV.UK \(www.gov.uk\)](#)
12. However, where the Council as a corporate body is the trustee, then arrangements need to be made to discharge that role. Under executive arrangements, the function of the Council as charity trustee is an executive function (pursuant to s 13(2) of the 2000 Act), which may be discharged by the full Cabinet, a Committee of the Cabinet or delegated to an officer (or another local authority or a joint committee).
13. The following relevant provisions are set out under the Council's Scheme of Delegations (in Part 3 of the Constitution):
 - (i) The Corporate Director Resources is authorised to manage trust funds, including charitable trust funds, where the Council or its officers are trustees (delegation reference FS5 in Section 4E of the Scheme of Delegations); and
 - (ii) The Cabinet has a reserved power to perform any Executive Function where arrangements have not been made for an officer to discharge the function under delegated authority (Cabinet's reserved power number 43 in Section 2 of the Scheme of Delegations).

This means that, except for the Corporate Director Resources' delegation to manage trust funds (under delegation reference FS5), all other decisions of the Council as corporate trustee currently fall within the reserved powers of the Cabinet.

The Council's role as trustee

14. Guidance issued jointly by the Local Government Association and the Charity Commission (Councillors' guide to a Council's role as charity trustee) recognises that:

'Local authorities are well suited to being charity trustees; in particular, councils are:

- Rooted in the local community;
- Open and transparent in their dealings;
- Highly accountable for their actions; and
- Have the high standards of public conduct embedded in the way they work.

Further, 'Local authorities have the skills, public knowledge and professionalism to manage charitable trusts very effectively, but care needs to be taken to ensure that unnecessary problems do not arise.'

15. The guidance goes on to set out a number of key principles to assist Councils to manage charitable trusts safely, including:

- (i) The charity must be independent and operate solely for charitable purposes, and not used as a means of carrying out the policies or directions of the local authority.
- (ii) Where a local authority is a trustee of a charity, it is the corporate body, acting in accordance with its usual procedures, which is the trustee; and while ongoing management may be delegated to officers, responsibility for decision-making and oversight rests with the Councillors (i.e. the Cabinet).
- (iii) The terms of the charity must be clearly understood and appropriate advice should be sought as necessary.
- (iv) Management of the charity should be kept separate, as far as possible, from the business of the local authority; and it may make sense for a committee of Councillors to be allocated this task.
- (v) Finances of the trust must be kept separate from those of the Council. The assets must be accounted for separately and income and expenditure should be channelled through discrete cost centres. The LA may top up the finances of the trust, but no funds should pass from the trust into the Council's own accounts, although the Council may in certain circumstances recover the costs of administration.

Specific issues for local authorities which are charity trustees include:

Conflicts of Interest

16. Local authorities have to manage the conflicts of interest that can arise because of the different 'hats' they may be wearing – for example, as land-holding charity trustees, as the provider of statutory amenities, and as planning authorities.
17. The Charity Commission has published guidance on 'Managing conflicts of interest in a charity', which explains the need for trustees to:

- (i) Identify conflicts of interest – A conflict of interest is defined as any situation in which a trustee's personal interests or loyalties could, or could be seen to, prevent the trustee from making a decision only in the best interests of the charity. Conflicts of interest usually arise where either there is a potential financial or measurable benefit directly or indirectly to a trustee (Benefits to trustees); or a trustee's duty to the charity may compete with a duty or loyalty they owe to another organisation or person, such as the Council (Conflicts of loyalty). The guidance indicates that it is good practice for a trust's governing document to include provisions dealing with conflicts of interest and for the trust to have a written conflicts of interests policy and register of interests.
- (ii) Prevent conflicts of interest from affecting decision making – any conflicts of interest must be declared and the trustee body must go on to consider how to prevent the conflict from affecting the trust's decision making, which will depend on the circumstances. The trustees must consider whether the conflict can be removed, for example, by changing the course of action so that the conflict does not arise. This is particularly important where there is a serious conflict, which will arise, for example, in situations where the Council is the sole corporate trustee and has a commercial interest in the charity decision. In such cases, the guidance advises that consideration should be given to appointing additional trustees who are not affected by the conflict, taking legal advice and or seeking authority from the Charity Commission.
- (iii) Where there is a conflict of loyalty without any trustee benefit, for example, where Cabinet, as trustee, is considering a proposed trust transaction with a third party (and the only conflict arises in relation to Cabinet members' loyalty to the Council), the trustees must give careful consideration to whether or not the conflicted trustee (Cabinet) should participate in the decision or withdraw from it and whether they will be able to demonstrate that the decision was made only in the best interests of the charity. It is anticipated that most trust decisions will not present any potential financial or other measurable benefit for the Council, so it is a conflict of loyalty which will be most likely to arise. Legal advice on the nature and extent of the potential conflict and how to manage this will be provided to inform any proposed decision in any such case.
- (iv) Any conflict relating to benefits to trustees, for example in a case where it is proposed that the trust enters a transaction with the Council (even if the transaction is for market value), must be authorised, either under the governing document, by legislation (for example, the power in the Charities Act which allows charities, in some circumstances, to pay trustees for additional goods or services they provide to the charity over and above normal trustee duties) or by the Charity Commission or the court. Legal advice should be sought before proceeding and if Council officers may be conflicted because of their duties to the Council, then independent advice would be procured from external advisors.

- (v) Record conflicts of interest – a written record should be kept of any conflicts of interest, both in a register of interests and in the minutes of the trustees meeting. The records should include the nature of the conflict, which trustee/s were affected, whether the conflicts were declared in advance, whether anyone withdrew from the discussion, what advice the trustees were given and who provided it and how the trustees took the decision in the best interests of the charity. Any benefits received by trustees should be disclosed in the charity's accounts.

Consultation

- 18. Where a local authority is the trustee of charity land, there is often another important factor to take into account – the voice of local inhabitants. This is because in some cases of trust property the land may be a facility intended for local community use (e.g. a recreation ground or public building). Proposals for a major change in the way that such land is used, or for the sale or lease, where permitted under charity law, of a significant part, or all, of the land, will have an impact on its use by the public. For this type of trust land, there may be strong local views that may need to be taken into account as part of a decision-making process.
- 19. Public consultation may sometimes be required by law and at other times is a matter of good practice. The extent and breadth of the consultation should be considered on a case-by-case basis depending on the charity's objective and the beneficiaries that were intended to benefit from it.
- 20. Where consultation is undertaken, it must comply with the Gunning principles, i.e. the consultation process should:
 - (i) be undertaken when proposals are still at a formative stage;
 - (ii) include sufficient reasons and information for particular proposals to enable intelligent consideration and response;
 - (iii) provide adequate time for consideration and response; and
 - (iv) ensure that the product of consultation is conscientiously taken into account when the ultimate decision is taken.
- 21. Any consultation requirements applicable to specific trust decisions will be set out within the accompanying decision report.

Proposed Governance Arrangements

(summarised in the Flowchart which is attached as **Appendix A** to this report)

Trusts Cabinet Committee

- 22. As noted in paragraph 12 above, the function of the Council as charity trustee is an executive function, which may be discharged by the full Cabinet, a Committee of the Cabinet or delegated to an officer (or another local authority or a joint committee). It is recommended that a Cabinet Committee, 'the Trusts Cabinet Committee', be appointed, comprised of 5 Cabinet members, with delegated powers to consider and deal with all

matters in which the Council acts as Trustee, with the exception of any matters lawfully delegated to officers. The establishment of a separate Committee of Cabinet is intended to facilitate a clear separation of the Council's role as corporate trustee from its ordinary statutory functions. It is recommended that the terms of reference for the Committee include express provision that 'All Members of the Committee will be required to undertake relevant training to enable them to properly discharge their duties.' This is to ensure that Committee members receive appropriate training to ensure they understand their legal duties as trustee; and it reflects the term included in many of the Council's other decision-making Committees. It should be noted that the Committee may decide to delegate certain powers to officers (under section 15(7) of the Local Government Act 2000) – for example, for more routine decisions relating to the repair, maintenance and management of trust property. A report may be presented to the Trusts Cabinet Committee setting out the precise terms of any proposed officer delegations, with supporting reasons and any appropriate limitations. However, overall responsibility for all trusts decisions will rest with the full Cabinet.

23. Committees of Cabinet are subject to the same public access to information rules as Cabinet meetings, requiring public access to meetings and documents, save for any exempt information. Their meetings are governed by the Cabinet Procedure Rules (in Part 4 of the Constitution [Cabinet Procedure Rules.pdf \(moderngov.co.uk\)](#)). Quorum of a Cabinet Committee requires a minimum of 3 Cabinet members.
24. Matters for decision by the Cabinet Committee would be submitted within decision reports, with all relevant information and professional advice contained therein, including legal and financial implications of recommended decisions. Members would be required to disclose any personal interests or conflicts of interest in accordance with the Members' Code of Conduct and legal advice in relation to their duties as trustee.
25. In accordance with the Members' Code of Conduct, no Cabinet Member who has a personal and prejudicial interest in any trust decision shall take any part in that decision (the Cabinet member will be required to declare their conflict of interests and withdraw from the Cabinet Committee meeting). This may arise, for example, where a Cabinet member may have an involvement in a third party organisation which may benefit from a proposed trust decision. [Cabinet members who are members of the Trusts Cabinet Committee will also need to consider and declare any personal interests in Cabinet business which may arise from decisions taken, as Corporate Trustee, in relation to specific Trusts. The Monitoring Officer can provide advice in this regard, upon request.]
26. In considering appointments to the Trusts Cabinet Committee, potential conflicts of individual Cabinet Members should be considered in order to reduce the risk of conflicts and quorum difficulties arising.

Conflicts of Interest Policy and Register of Interests

27. It is recommended that the Trusts Cabinet Committee, if established, should receive a report at its first meeting giving further consideration to provisions for conflicts of interest, including the potential adoption of a Conflicts of Interests Policy for Trusts where the Council is a Corporate Trustee and an associated separate Register of Interests for Trusts decisions. Members will, of course, be aware of the regulation of their personal interests in relation to Council business within the statutory Members' Code of Conduct, including the requirement for publication of the Members' Registers of Interests. However, it is recommended that further consideration should be given to arrangements for disclosing and managing conflicts of interest in relation to managing the business of each trust of which the Council is a corporate trustee, which means considering conflicts from the perspective of each trust and its objectives, rather than the Council. The arrangements to be adopted for each trust will need to reflect the specific nature and governing documents of the respective trust, but it may be possible to develop a single conflicts policy setting out guidelines for managing conflicts in different types of trusts. It is recommended that the issues and options in this regard should be explored further, with relevant legal advice, and presented in a report to the Trusts Cabinet Committee for consideration and decision.

Serious Conflicts of Interest

28. In cases where the Council, as corporate trustee, has a serious conflict of interest, for example, where the Council is the sole corporate trustee and has a commercial interest in a trust decision, the Charity Commission guidance advises that trustees must consider whether the conflict can be removed or managed by appointing additional trustees who are not affected by the conflict, taking independent legal advice and or seeking authority from the Charity Commission (as explained in paragraph 17 (above)).

Appointment of Additional Trustees

29. The appointment of additional trustees would require appropriate trustees to be sourced, with the relevant knowledge and skills and commensurate remuneration, which may be covered by the trust's own funds, subject to compliance with its governing documents and trust / charity law. The effect of this would be to pass responsibility for the charity assets to the individual managing trustees who would become responsible for the charity separately from the Council. Members will also note that the Charity Commission guidance recognises that local authorities have a number of advantages which make them well suited to being charity trustees, as long as care is taken in setting up appropriate arrangements to manage trusts safely (see paragraphs 14 and 15 above). Further, if the proposed transaction would be regarded as a 'connected person transaction' under charity law (specifically, Part 7 of the Charities Act 2011 and Charities Act 2022, which is partially in force), then unless the Council resigns as trustee removing the conflict, the consent of the Charity Commission would be required in any event. The requirement for Charity Commission consent would provide independent assurance that the transaction is made taking

into account the best interests of the trust and may be regarded as obviating the need for appointing additional trustees.

30. It is recommended that the option of appointing additional trustees in any case where the Council has a serious conflict of interest should be considered on a case-by-case basis and addressed within the relevant decision report.
31. Members will recall that, in the case of Maindy Park Trust (referenced in paragraph 5 above), the Council was faced with a serious conflict of interests between its proposed development projects and acting, as sole corporate trustee, in the best interests of the Maindy Park Trust. In line with the Charity Commission's guidance, the Council sought advice from Counsel in relation to how the Council should manage its conflict of interests and ensure its trustee decision was taken properly in the best interests of the trust.

Distinguishing between more and less serious conflicts

32. Counsel's advice in the Maindy Park Trust matter was that any Member who had voted on the Council's development proposals or was directly involved or interested in those proposals should declare a 'serious conflict of interests' and refrain from taking any part in the trustee decision on the proposed land exchange. However, Counsel advised that for practical purposes, the Council could demonstrate that it has managed conflicts as far as possible by distinguishing between more and less serious levels of conflict of interest. Accordingly, other Cabinet members who had no 'serious conflict of interests' could be regarded as having a 'technical conflict', which would not necessarily preclude them from participating in the trust decision, as long as their interest was properly declared and the trustees could demonstrate that the decision was in the best interests of the trust. (It should be noted that Counsel's use of the term 'serious conflict of interests' is not the same as in the Charity Commission's guidance, as referred to in paragraph 17 above, so the two uses should not be conflated.)

Independent Advisory Committee

33. Given the fact that there were no wholly unconflicted Councillors in view of all individual Cabinet members having a duty to the Council as well as their corporate trustee duty as part of the Cabinet, Counsel advised that it would be sensible to set up an Advisory Committee (under section 102(4) of the Local Government Act 1972), consisting of non-Councillors who could consider and advise on the proposed transaction. It was suggested that the Advisory Committee may be comprised of independent members of the Standards and Ethics Committee or the Governance and Audit Committee. An Advisory Committee was duly appointed by Council, comprised of 3 independent members of the Standards & Ethics Committee, with responsibility to consider the Maindy Park proposed land exchange, having regard to all relevant evidence and advice, including independent valuation advice, and make a recommendation to Cabinet, in its capacity as sole corporate trustee, on whether or not the proposal

should be agreed, in the best interests of the charity, subject to Charity Commission approval (or the Court). As a further safeguard, the Advisory Committee and the Cabinet, sitting as trustee of Maindy Park Trust, were both advised by independent external solicitors with expertise in charity law. As mentioned earlier in the report, such conflicts of interest even where properly managed will still require the approval of the Court or the Charity Commission as an additional 'safety net'.

34. It is recommended that the independent Advisory Committee structure may be utilised again to consider and make a recommendation to the Trusts Cabinet Committee in relation to any trust decision where the Council has a serious conflict of interests. Based on the ongoing review of trusts where the Council is corporate trustee (referenced in paragraph 6 above), it is understood that a serious conflict of interest is expected to arise in very few cases.
35. An advisory committee may be appointed (under section 102(4) of the Local Government Act 1972) to advise the Cabinet or a Cabinet Committee 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).
36. 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).
37. 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)).
38. An advisory committee may only advise the Cabinet or a Cabinet Committee in relation to trust decisions (taken as corporate trustee), but the trust decisions remain the responsibility of the Cabinet Committee, to be taken having regard to the recommendations of the advisory committee.

Charity Commission

39. As noted in paragraph 29 above, any proposed dealings with Charity assets, including land transactions to 'connected persons' will require the consent of the Court or the Charity Commission. As the requirements may differ between different charities for which the Council is trustee, further detailed legal advice will need to be sought at an early stage to confirm whether any consent requirements apply. If applicable, the Court or Charity Commission's consent will provide further independent assurance that the decision has been taken lawfully and properly.

40. An application to the Charity Commission is currently pending concerning the proposed land exchange at Maindy Park. In the event that any general governance recommendations arise from that Charity Commission decision, these will need to be reported and considered for implementation.

Reason for Recommendations

41. To improve governance arrangements in respect of trusts where the Council is corporate trustee and ensure trust decisions are taken lawfully and properly in the best interests of the relevant trust.

Financial Implications

42. The primary financial implications of this report are set out in paragraphs nine and ten. Consideration needs to be given to the treatment of these Trust assets in the respective Accounts of the Council and the individual trusts going forward. Where the assets are land and / or property further work will need to be undertaken in order to establish the benefits of separating out each asset to provide a cost of maintenance. It should be noted that currently no Trust funds pass to the Council for payments of any work undertaken.

Legal Implications

43. Many local authorities hold assets for charitable purposes, which often arises from the assets being gifted or transferred to the Council on the condition that it is to be used for charitable purposes for a public benefit such as funds provided for educational purposes or the land used for a public recreation ground. The Council has power to receive and hold gifts on charitable trusts pursuant to Section 139 of the Local Government Act 1972.
44. Where the Council is the trustee, it holds this position as a body corporate, and in most cases will be sole corporate trustee. In other cases, it may not be a trustee at all but has the right to nominate or appoint trustees to a charitable organisation, which may be a Council Member or Officer employed by the Council by virtue of their position within the Council. In those cases, those particular individuals will be an individual trustee and decision maker along with any co-trustee identified under the trust's governing document. The list of charities annexed to this report identifies the Council's role with regard to those charities. This report largely deals with future decisions for trust matters, particularly where the Council is Sole Corporate trustee.
45. Many of the Council's trusts were established many years ago and do not contain detailed or specific governance arrangements for decision making and most trust decisions are undertaken under existing Council processes. As indicated in the body of the report, Section 13(2) of the Local Government Act 2000 and the Local Authorities (Executive Arrangements)(Functions and Responsibilities)(Wales) Regulations 2007

do not specifically deal with the Council's function as a trustee and in relation to this function therefore, the default position is that trust decisions rest with the Council's Cabinet. It is noted that there is an existing officer delegation in connection with the administration of trust funds, which would usually be exercised in the case of payments of awards and bursaries.

46. It is recognised that the majority of trust decisions resting with Cabinet as the main decision maker can raise potential issues and matters of conflicts of interest, particularly where there is a perceived benefit to the Council in its capacity as a local authority, rather than as trustee. Charity Commission guidance suggests that whilst local authorities are well placed to manage charities effectively, it is important that its function as charity trustee is kept separate to its other local authority business. The proposal of establishing a Cabinet committee seeks to address that and provide a separate committee of councillors whose role will be to focus its consideration solely on trust matters. As explained in the body of the report, it is noted that there may still be a requirement for greater independence in some cases where there is a serious conflict of interests. The use of an independent advisory committee can provide an independent analysis, in conjunction with independent advice.
47. Decisions in relation to governance and decision making for charities are a matter for the charities' trustees. When making a decision as a charity trustee, the Council is required to:
- act within your powers
 - act in good faith, and only in the interests of your charity
 - make sure you are sufficiently informed, taking any advice you need
 - take account of all relevant factors you are aware of
 - ignore any irrelevant factors
 - deal with conflicts of interest and loyalty
 - make decisions that are within the range of decisions that a reasonable trustee body could make in the circumstances.
48. It is anticipated that specific and detailed legal advice will need to be provided on any specific issues relating to any of the Council's trusts and charities, particularly for dealings with land. Such matters are not the subject of this report, and if this proposal is approved, will need to be reported to the new Cabinet committee at a future date, setting out the issues in detail to be considered.

General Advice

Equalities & Welsh Language

49. In considering this matter the decision maker must 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, (i) Religion or belief – including lack of religion or belief.

50. 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.
51. The decision maker should be mindful of the Welsh Language (Wales) Measure 2011 and the Welsh Language Standards.

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

52. 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 well-being objectives are set out in the Council's Corporate Plan 2023-26.
53. When exercising its functions, the Council is required to take all reasonable steps to meet its well-being objectives. This means that the decision makers should consider how the proposed decision will contribute towards meeting the well-being objectives and must be satisfied that all reasonable steps have been taken to meet those objectives.
54. The well-being 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

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-generations-act/statutory-guidance/?lang=en>

55. Other relevant legal implications are set out in the body of the report.

Property Implications

56. This report proposes revised management processes and governance relating to land and property assets held in trust. Aligned to the work undertaken to prepare this report, records relating to trust assets have been centralised into a shared resource. Estates team will work with finance colleagues to review the existing basis for Trust assets and either undertake or procure additional valuations as and when required. It will be important for the relevant Council teams involved in trust management and related transactions (Property, Finance and Legal) to continue to work closely together in any revised governance.

HR Implications

57. There are no HR implications arising directly from this report.

CABINET PROPOSAL

Council is recommend to establish an Advisory Committee, 'the Trusts Advisory Committee', comprised of 3 independent members of the Standards and Ethics Committee, with the following Terms of Reference:

'In relation to any Trust of which the Council is a Corporate Trustee and any proposal in respect of which the Council has a serious conflict of interests, in line with Charity Commission guidance and or legal advice, to make a recommendation/s to the Trusts Cabinet Committee or the Cabinet on whether or not the proposal should be agreed, with or without modification/s, in the best interests of the Trust, having regard to all relevant issues and advice.'

**THE CABINET
21 March 2024**

The following appendix is attached:

Appendix A – Trusts Decision Making - Flowchart

Background papers

Maindy Park Trust – Governance Arrangements, report to Council Sept 2022
Maindy Park Trust, Cabinet decision as Trustee, March 2023

Counsel's advice in the matter of Maindy Park Trust dated 12th September 2022 (Exempt from publication under the Local Government Act 1972, Schedule 12A, Part 4, paragraph 16)

Councillors' guide to a Council's role as charity trustee:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/351608/council_as_charity_trustee_overview.pdf LGA and Charity Commission)

Charity Commission guidance, 'Managing conflicts of interest in a charity':

<https://www.gov.uk/guidance/managing-conflicts-of-interest-in-a-charity>
(summary)

Conflicts of Interest: a guide for charity trustees:

<https://www.gov.uk/government/publications/conflicts-of-interest-a-guide-for-charity-trustees-cc29/conflicts-of-interest-a-guide-for-charity-trustees>