

Bath & North East Somerset Council	
MEETING	Council
MEETING DATE:	23 March 2016
TITLE:	Creation of a Charitable Trust Board to manage Charitable Trusts
WARD:	All
AN OPEN PUBLIC ITEM SAVE FOR APPENDIX B WHICH IS LIKELY TO BE TAKEN IN EXEMPT SESSION	
<p>List of attachments to this report:</p> <p>Proposed Trust Board Terms of Reference – Appendix A</p> <p>EXEMPT INFORMATION Advice on the Alice Park Trust – Appendix B paragraph 12(b) of schedule 12A LOCAL GOVERNMENT ACT 1972</p>	

1 THE ISSUE

- 1.1 The Council is sole trustee for a number of Trusts including the Alice Park Trust in Bath. There has been a lack of clarity in how the Council has previously dealt with these Trusts. The creation of the Trust Board will in future ensure the clear separation of the Council's interest as sole trustee of these charities and the Council's interests as a Local Authority.
- 1.2 Once created with the terms of reference proposed the Trust Board will be able to:
- (i) Independently determine that the past use of assets by the Council as Local Authority has been correctly accounted for, and
 - (ii) In the case of the Alice Park to independently determine the proposal for a skateboard park to be constructed on the site and if so to independently consider the options and manage the terms, conditions and safeguards appropriate to its construction
- 1.3 Following Local Government reorganisation, counsel advises that the trustees of the Alice Park Trust are all the members of the Council but to provide clarity counsel advises passing a resolution pursuant to s.280 of the Charities Act 2011 whereby the appointment of the Council as sole corporate trustee is confirmed

- 1.4 The Creation of the Trust Board will also enable the Council, to investigate and consider the other assets it holds as sole charitable trustee and acting in that capacity to further delegate to the Board powers to manage those other assets subject to further reports to Council.

2 RECOMMENDATION

- 2.1 The Council establish the Trust Board as a committee of the Council
- 2.2 The Council approve the proposed Terms of Reference of the Trust Board
- 2.3 Subject to the Charter Trustees written agreement the Council resolves under s.280 of the Charities Act 2011 that Bath and North East Somerset Council is the sole corporate trustee of the Alice Park Trust
- 2.4 The Council authorises officers to investigate and subsequently report on the enlargement of the Trust Board's Terms of Reference to include the Trusts detailed in paragraph 5. 4

3 RESOURCE IMPLICATIONS (FINANCE, PROPERTY, PEOPLE)

- 3.1 The Trust Board will be a committee of the Council and will therefore need to be resourced by officers and financed to enable it to obtain independent advice subject to the power to recoup administration costs from the assets of the Trust(s).

4 STATUTORY CONSIDERATIONS AND BASIS FOR PROPOSAL

- 4.1 Where a Council is the sole trustee of a charity, it is the corporate body, acting in accordance with its usual procedures, which is the trustee. While ongoing management may be delegated to a committee and officers, responsibility for decision making and oversight rests with all councillors. The Terms of Reference of the Trust Board therefore require that it reports to full Council on an annual basis after it has filed all annual reports for the charitable trusts that it manages on behalf of the Council with the Charity Commission.
- 4.2 The management of the Trust(s) should be kept separate, as far as possible, from the business of the Council and equally the finances of the Trust(s) must be kept separate from those of the Council. The assets must be accounted for separately and income and expenditure needs to be channelled through discrete cost centres. The Council may top up the finances of the Trust(s) but no funds should pass from the Trust into the Council's own accounts although, in appropriate cases, the Council may recover the cost of administering the Trust(s)
- 4.3 It is proposed that if members resolve to establish the Trust Board, the Trust Board should in turn delegate its operational management functions to a sub-committee formed specifically for each charitable trust in Schedule 1 of the Terms of Reference of the Trust Board. In that way the Council can ensure the assets of each Trust are separately considered and administered and a distinct audit trail will be created.

5 THE REPORT

Demonstrating independence

- 5.1 The Charities Commission has advised the Council that in order to demonstrate that in future the assets of the Trusts are separately managed the Council should form a Trust Board to independently manage the assets and to demonstrate a clear separation of its functions as sole trustee of the charitable assets and its other assets held in its capacity as a Local Authority.
- 5.2 The creation of the Trust Board, as a committee of the Council, and sub committees to manage each Trust will demonstrate the decisions taken on their behalf, as sole trustee, are being independently taken in accordance with each Trust's objects and the duties it owes pursuant to the Charities legislation.
- 5.3 It is proposed that the Trust Board once constituted would be independently trained by a firm of solicitors specialising in charities legislation. It would also receive advice on regulating each Trusts accounts with the Charities Commission.

Other Charitable Trusts

- 5.4 The Council has present responsibility for the following:

- 5.4.1 Weston Recreation Ground
- 5.4.2 4, The Circus
- 5.4.3 Free Fields (Rainbow Woods)
- 5.4.4 Beechen Cliff
- 5.4.5 Newbridge Meadows (Queen Elizabeth the Second Fields)
- 5.4.6 Blackstones
- 5.4.7 Innox Park
- 5.4.8 Lansdown Playing Field
- 5.4.9 Post Office Museum
- 5.4.10 Former Radstock Infant School

- 5.5 The legal basis for its involvement with these trusts is presently unknown. It is proposed that the legal basis is investigated and that where possible the responsibility for operational management of these Trusts is also delegated to the Trust Board to be managed in accordance with their charitable objects and any duties the Council owes pursuant to the charities legislation. Any subsequent proposals will be subject to investigation and full reports to Council together with any recommended amendment to the terms of reference of the Trust Board.

6 RATIONALE

- 6.1 A Trust Board and sub committees for each Charity, for which the Council is sole trustee, with a limited number of sub-committee members which have delegated

to them the management decisions necessary to run each Trust is the most appropriate and cost effective way of dealing with the Charitable Trusts. It is envisaged that initially the Trust Board and the sub-committee for the Alice Park Trust will need to meet on a frequent basis to train members, resolve any issues with the Charity Commissioners, and consider the current proposals for the skateboard park.

6.2 It is envisaged that going forward the Trust Board will be able to manage other charitable Trust assets detailed in Paragraph 5.3.

7 OTHER OPTIONS CONSIDERED

7.1 Full Council could retain the decision making functions in relation to the Trust's assets and the Other Trusts (para 5.3) but this would be unwieldy and time consuming

8 CONSULTATION

8.1 The proposed Trust Board has been consulted upon with the Charities Commission, Leader, Chief Executive and S.151 Officer.

9 RISK MANAGEMENT

9.1 A risk assessment related to the issue and recommendations has been undertaken, in compliance with the Council's decision making risk management guidance.

Contact person	Michael Hewitt, Solicitor, 01225 395125
Background papers	The Conveyance dated 17 December 1973 (1973 Conveyance) creating Alice Park Trust the Endowment for Alice Park Trust the Scheme of the Charity Commission dated the 17 December 1973 (the Scheme)
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