

SLOUGH BOROUGH COUNCIL

REPORT TO: Council **DATE:** 24 April 2018

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WARD(S): All

PART I **FOR DECISION**

ESTABLISHMENT OF TRUSTEE COMMITTEE

1 Purpose of Report

To recommend to Council the appointment of a committee of the Council to discharge the Council's duties as a corporate trustee of its charitable assets and consequential actions to enable the setting up and operation of such committee.

2 Recommendation(s)/Proposed Action

Council is requested to resolve that:

- (a) a Committee of the Council comprising seven members be established to discharge the Council's duties as a corporate trustee of its charitable assets in accordance with the contents of this Report
- (b) allocation of seats, receipt of nominations of Members to serve on the Committee and appointments to the Committee be effected pursuant to Rule 1.2 of the Council Procedure Rules in Part 4.1 of the Constitution at the Council's Annual Meeting in accordance with the contents of this Report.
- (c) A Member be appointed in the meanwhile to prepare for the work of the Committee and the settling of any enabling documents in consultation with the Head of Democratic Services and the Service Lead Governance
- (d) the Service Lead Governance be instructed to arrange for any necessary changes to the Constitution to be presented to Council for adoption at the Annual Meeting, following approval by the Monitoring Officer, to enable the work of the committee to begin as soon as possible; and
- (e) induction be arranged for the members of the Committee in accordance with the contents of this Report following their appointment.

3. The Slough Joint Wellbeing Strategy, the JSNA and the Five Year Plan

3a. Slough Joint Wellbeing Strategy Priorities

Good governance arrangements will have positive implications for the SJWS and the JSNA

3b **Five Year Plan Outcomes**

Good governance arrangements relating to the Council’s charitable assets will enhance the following outcomes of the Five Year Plan:

- Outcome 1 – Slough Children will grow up to be healthy, happy and successful
- Outcome 2 – Our people will be healthier and manage their own care needs
- Outcome 3 – Slough will be an attractive place where people choose to live, work and stay.

4 **Other Implications**

(a) Financial

The Charitable Assets of the Council do generate some income and the Committee will need to consider in due course covering the administrative costs of the operation of the Committee from such income.

(b) Risk Management

Recommendation from section 2 above	Risks/Threats/ Opportunities	Current Controls	Using the Risk Management Matrix Score the risk	Future Controls
(a) a committee of the Council comprising seven members be established to discharge the duties of the Council as a corporate trustee of its charitable assets in accordance with the contents of this Report.	Decisions continue to need to be made at discrete meetings of full Council if no committee established	Meetings of the Council	Political Probability: Very Low Impact: Negligible Score : 2	Properly constituted and functioning committee with appropriate terms of reference.
(b) nominations and appointments to the Committee be effected pursuant to Rule 1.2 of the Council Procedure Rules in Part 4.1 of the Constitution at the annual meeting of the Council in accordance with	Decisions continue to need to be made at discrete meetings of full Council if no Committee appointed and operating	Meeting of the Council	Political Probability: Very Low Impact: Negligible Score: 2	Properly constituted and functioning committee

<p>the contents of this Report. Subject thereto, The Leader of the Council be authorised to appoint a Member provisionally in the meanwhile to lead on the preparation of enabling documents for the work of the committee to begin as soon as possible in consultation with Lead Members, Members, interested parties and other stakeholders</p>				
<p>(c) that the Service Lead Governance be instructed to arrange for any necessary changes to the Constitution to be presented to Council at its Annual Meeting for approval, following approval by the Monitoring Officer, to enable the work of the committee to begin as soon as possible; and</p>	<p>Procedures adopted and operated without proper authority under the constitution</p>	<p>Advice and recommendations of Officers</p>	<p>Legal/ Regulatory Probability: Almost impossible Impact: Marginal Score: 2</p>	<p>Appropriately amended Constitution</p>
<p>(d)</p>	<p>Committee not properly equipped to carry out its functions</p>	<p>Advice and recommendations of Officers</p>	<p>Legal / Regulatory Probability: Almost negligible Impact: Marginal Score: 2</p>	<p>Appropriately inducted members capable of discharging the Council's duties as a corporate trustee.</p>

(c) Human Rights Act and Other Legal Implications

There are no Human Rights Act implications.

The adoption of the recommendations in this Report will reduce the risk of the Council being found to have acted in breach of the law relating to the duties and responsibilities of trustees of charitable assets.

(d) Equalities Impact Assessment

There is no need identified for an Equalities Impact Assessment in connections with this Report.

5 Supporting Information

- 5.1 The Council is the owner of assets which are subject to charitable trust obligations and in respect of which the Council is registered with, and regulated by, the Charity Commission.
- 5.2 These charities are the Salt Hill Playing Fields (Charity no. 215385), the War Memorial Garden at Slough (charity no. 1010350) and Langley War Memorial Fields (charity no. 1055955).
- 5.3 It may be that in the future further assets are vested in the Council to hold in a trust capacity.
- 5.4 It is the case historically that the Council's arrangements for discharging its functions as a corporate trustee of its charitable assets have not been of the best order. This is generally recognised and has been the subject of a briefing for Members and has previously lead to an amendment of the Councillors' Code of Conduct in the Constitution to clarify Members' obligations when discharging the Council's trustee duties. It is also generally recognised that this issue needs to be addressed and this Report now seeks to do so.
- 5.5 The Council have sought the advice of external Solicitors expert in the field of charity law as it affects local authorities and who have advised other authorities on best practice in this field. The salient points arising from their advice are that:
- best practice entails Councils appointing a committee to discharge their charitable trustee duties
 - there is no requirement for the membership of any such committee to be politically balanced. After consultation with the Leader of the Council and the Member Panel on the Constitution, however, it is considered that the committee should be representative of political groupings on the Council. Members of the committee would, however, need to be mindful of the special duties of the Council as a trustee of charitable assets when discharging these duties on behalf of the Council.
 - that membership is best constituted of members having expertise or interest in property, finance, charity law, compliance and sector specific knowledge or expertise e.g. in education, health and recreation.

- The Council is, itself, the corporate trustee. Committee members are not trustees in their own capacity but must have regard to the Council's duties as a trustee of charitable assets when discharging these duties on behalf of the Council.
 - All committee members should be given an induction and briefing on the objects of the trusts and their duties and responsibilities when discharging the Council's duties as the trustee of these charitable trusts.
 - Due to the special fiduciary duties and responsibilities being discharged by members of the committee on behalf of the Council a party whip may not be applied in relation to their decisions.
 - As the Committee would be discharging a trustee function the decisions can be of the Committee only and they must not fetter their discretion in any way but the committee may invite other Members and other individuals or bodies who are key stakeholders in the charitable assets to participate in the committee's discussions in order to inform the committee's decisions.
- 5.6 The external Solicitors have prepared a "Terms of Reference" document for the proposed committee which is appended to this Report.
- 5.7 It is considered that the work of the Committee should get underway as soon as possible in the new Municipal Year. It would, therefore, be appropriate for Council to appoint a member in the meanwhile to consult with the Head of Democratic Service and the Service Lead for Governance on appropriate steps to plan for the Committee to discharge the duties and responsibilities set out in the "Terms of Reference" document appended to this Report.

6 **Comments of Other Committees**

- 6.1 The Member Panel on the Constitution has considered this issue.
- 6.2 Under paragraph 3 of Article 15 of the Constitution changes to the Constitution will only be approved by the Council after consideration of the proposal by the Monitoring Officer. This Report has been submitted to the Monitoring Officer and the proposed changes have been approved by him.

7 **Conclusion**

It is considered that the resolutions recommended by this Report will enable the Council to discharge its duties as a corporate trustee in a proper manner in accordance with full legal requirements and best practice.

8 **Background Papers**

The Constitution and Charity Commission Guidance relating to "Local Authorities as Charity Trustees" and "Councillors' Guide to a Council's role as Charity Trustee".

9 **Appendices**

Appendix – Paper Prepared By External Solicitors on Terms of Reference For The Committee.