



CABINET AS TRUSTEES OF VARIOUS RECREATION GROUNDS

11TH JULY 2018

SUBJECT: RECREATION GROUND CHARITIES

REPORT BY: INTERIM CORPORATE DIRECTOR - COMMUNITIES

1. PURPOSE OF REPORT -

- 1.1 To obtain Cabinet approval for officers to enter into correspondence and discussion with the Charity Commission as to the possibility of making applications for schemes altering or replacing the governing documents of the charities set out in Appendix 1 of this report ("the Charities") so as to include a power of disposal. The inclusion of such power will enable the letting or other disposal of land, if appropriate to do so, to further the objectives of those charities in providing public recreation.

2. SUMMARY

- 2.1 The Council is currently the corporate trustee for the Charities. The Charities have limited financial resources with which to carry out enhancements to the existing facilities. There has, in recent years, been a trend towards improvements being undertaken by user groups or social enterprises that are able to secure grant funding from external sources. It is, typically, a requirement of such funding to have an interest in the land concerned. At a minimum this would usually require a lease with a minimum term of 7 years.
- 2.2 The recreation land of the Charities held by the Council as Trustee is considered to be 'designated land' or 'specie land', which is land held for the specific objects of a charity. Many of the governing documents of the Charities do not contain a power to dispose of charity land, which means that the Council as Trustee is unable to let the land when it receives an application from a third party.
- 2.3 It is possible that such a power could be obtained on application to the Charity Commission for a new scheme containing a power of disposal, which would replace an existing scheme or other governing document setting out the rules and objectives of the charity concerned. If obtained, such power would permit the Council as Trustee to consider applications from community enterprises and users of the recreation grounds who might be able to obtain grant funding for improvements to the existing facilities, but who cannot secure such funding without a formal lease arrangement. Whilst a power would not guarantee that a letting could be granted, it would permit the council to grant such an interest provided it was considered to be in the best interests of the charity concerned.

3. LINKS TO STRATEGY

- 3.1 This report is being considered by Cabinet acting as a corporate trustee rather than in its capacity as a local authority. Trustees are required to act in good faith and only in the best interests of the Charities.

4. THE REPORT

- 4.1 In the majority of cases, land used by recreation ground charities must be used for those particular purposes of the charities set out in their respective governing documents. If a charity trustee were to sell or lease all or part of land consisting of a recreation ground, it is probable that Trustees will no longer be able to carry out the charity's purposes.
- 4.2 The charity's governing document, either in the form of a trust deed or Charity Commission scheme, will largely determine where a sale or letting is permitted under the terms of the trust. Where a charity is established only for the provision of a recreation ground and it is clear that the governing document contains no power of disposal of the land or power to amend its purpose or objects, it is, usually, not possible to dispose of all or any part of the recreation ground without making an application to the Charity Commission for a scheme granting this power.
- 4.3 Many of the Council's recreation ground charities became vested in the authority either directly by donation to the Council of land by wealthy landowners of the time, or at the request of a welfare trust established for providing areas of recreation for public use, or specific classes of the public or communities. Most recreation grounds were simply conveyed to the authority or its predecessor authority by deed of conveyance or transfer of land and, therefore, contain neither any detailed governing rules generally, nor any powers of disposal of the land. Some charitable recreation grounds such as those at Bargoed, Aberbargoed, and Gilfach have since been placed within a charitable scheme and may contain limited powers of disposal of land, but only in certain circumstances, such as when there may be no demand for the recreation ground and the charity is wound up.
- 4.4 Set out in Appendix 1 to this report is a current list of applications along with a brief synopsis of the application detail. In the current financial climate, the Council does not have funding available, to develop these community facilities and increasingly, enhancements to recreation grounds come from the third sector.
- 4.5 It is possible that, if the Charity Commission were to grant new or amended schemes for these charities, it would open up the possibility of granting leases to user groups of these recreation grounds and community enterprise organisations who may be able to secure external grant funding for such improvements or facilities and thereby furthering the charities' objects in providing recreation facilities.
- 4.6 At this stage it is not possible to advise, without discussions with the Charity Commission, whether a scheme for any particular charity would be granted and it is therefore proposed that the Commission be contacted to discuss each recreation ground affected on its individual merits. Further reports would be brought back to Cabinet sitting as trustee concerning the outcome of those discussions and providing specific details on a case by case basis. If the commission is to look favourably on any given application, it will, of course, need to be satisfied that a scheme is both necessary and in the best interests of the Charity.
- 4.7 If an application for a scheme or schemes is successful, it must be noted that the inclusion of a power of sale does not guarantee that the Council acting as trustee should accept any or all requests for lettings or sales of charitable recreation grounds. Cabinet as Trustee will need to further consider each application for lease or purchase on its own merits and have regard to how such a letting or sale will further the objects of the Charity. In some cases, a letting of all

or the majority of the recreation ground would need to be considered carefully so as to not prevent use by the publically generally.

- 4.8 If such a decision to dispose of the recreation ground is eventually made, the council must first follow and consider the responses and outcomes of the procedures laid out in Part 7 of the Charities Act 2011. This may require the authority to procure a qualified surveyor's report and obtaining the best price for the disposal reasonably achievable. Public notice under s.121 of the Charities Act 2011 is also required where the disposal concerns designated land.

5. WELL-BEING OF FUTURE GENERATIONS

- 5.1 This report in being considered by Cabinet acting as a corporate trustee and not in its capacity as a local authority.

6. EQUALITIES IMPLICATIONS

- 6.1 This report is being considered by Cabinet acting as corporate trustees and not in its capacity as a local authority.

7. FINANCIAL IMPLICATIONS

- 7.1 Many of the Council's recreation ground charities have an income of less than £10,000 and are not required to be registered with the Charity Commission. In some cases the lack of financial resources available has resulted in maintenance of the recreations being funded by the Council in its capacity as local authority. If the Recreation Grounds could be let, this could result in either a rental income for the Charity concerned, or result in an enhancement to the existing recreation facilities that could be maintained by a third party under the terms of the letting.
- 7.2 There maybe revenue savings for the Authority if responsibility for maintenance of the Recreation Grounds can be passed on, however, these savings are not quantifiable at this juncture.

8. PERSONNEL IMPLICATIONS

- 8.1 There are no initial personnel implications associated with this report however, should a programme of transfers be pursued, there may be resultant personnel issues which may need to be considered at that time. These will be detailed in further reports.

9 CONSULTATIONS

- 9.1 The report reflects the views of the consultees.

10. RECOMMENDATIONS

- 10.1 That Cabinet, sitting as Trustee, authorises officers to enter into correspondence and discussions with the Charity Commission as to the possibility of making an application for a new charitable scheme or schemes for its recreation ground charities providing better powers of management and a power of disposal.
- 10.2 That, subject to the outcome of correspondence and discussions with the Charity Commission, further reports are presented to Cabinet, sitting as Trustee, seeking authority to

apply to the Charity Commission for new scheme in respect of specific recreation ground charities listed in Appendix 1.

11. REASONS FOR THE RECOMMENDATIONS

11.1 To enhance and further the objects of the Charities as set out in this report.

12. STATUTORY POWER

12.1 Charities Act 2011. This power is exercised by Cabinet acting as corporate trustee of the Charities.

Author: Mike Headington, Green Spaces & Transport Services Manager

Consultees:

- Christina Harrhy, Interim Chief Executive
- Mark S. Williams, Interim Corporate Director – Communities
- Timothy Broadhurst, Estates Manager
- Lisa Lane, Corporate Solicitor and Interim Monitoring Officer
- Nicole Scammell, Head of Corporate Finance and Section 151 Officer
- Lynne Donovan, Head of Human Resources and Organisational Development
- Anwen Cullinane, Senior Policy Officer
- Robert Hartshorn, Head of Policy & Public Protection
- Councillor Nigel George, Cabinet Member for Neighbourhood Services
- Rhian Kyte, Head of Regeneration and Planning
- Councillor Lisa Phipps, Cabinet Member for Places & Homes
- Richard Crane, Senior Solicitor
- Councillor Mike Davies, Local Member for Hafodyrynys
- Councillor Carl Thomas, Local Member for Hafodyrynys
- Councillor Nigel Dix, Local Member for Blackwood
- Councillor Andrew Farina-Childs, Local Member for Blackwood
- Councillor Kevin Etheridge, Local Member for Blackwood
- Councillor Roy Saralis, Local Member for Oakdale
- Councillor Ben Zaplatynski, Local Member for Oakdale
- Councillor Colin Elsbury, Local member for Caerphilly
- Councillor James Fussell, Local Member for Caerphilly
- Councillor Steve Kent, Local Member for Caerphilly
- Councillor Carol Andrews, Local Member for Bargoed
- Councillor D Tudor Davies, Local Member for Bargoed
- Councillor Diane Price, Local Member for Bargoed

Background Papers:

Appendices:

Appendix 1 List of Recreation Grounds Held in Charitable Trust