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**Report of:** Laraine Manley - Executive Director of Place

**Report to:** Cabinet as Trustee of the High Hazels Park Charity

**Date of Decision:** 2019

**Subject:** Amendment to the Objects of the High Hazels Park Charity

|   |                              |  |
|---|------------------------------|--|
| Is this a Key Decision? If Yes, reason Key Decision:-   | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| - Expenditure and/or savings over £500,000  | <input type="checkbox"/>     |  |
| - Affects 2 or more Wards   | <input type="checkbox"/>     |  |
| Which Cabinet Member Portfolio does this relate to?<br>Culture, Parks and Leisure   |                              |  |
| Which Scrutiny and Policy Development Committee does this relate to?<br>Economic and Environmental Wellbeing Scrutiny and Policy Development Committee  |                              |  |
| Has an Equality Impact Assessment (EIA) been undertaken?  | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| If YES, what EIA reference number has it been given? <i>(Insert reference number)</i>   |                              |  |
| Does the report contain confidential or exempt information?   | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| If YES, give details as to whether the exemption applies to the full report / part of the report and/or appendices and complete below:-<br><i>"The (report/appendix) is not for publication because it contains exempt information under Paragraph (insert relevant paragraph number) of Schedule 12A of the Local Government Act 1972 (as amended)."</i> |                              |  |

**Purpose of Report:**

This report seeks Cabinet approval on behalf of the Council as Charity Trustee of High Hazels Park:

- to the amendment to the wording describing the Charity's Objects in the amended Trust Deed attached to this report at Appendix 1 (as required by the Charity Commission and detailed in the Legal Implications section of this report; and

2. to adopt the amended trust deed as the Charity's governing document.

**Recommendations:**

It is recommended to Cabinet that the following decisions are made:

- R1.** To approve the amendments to the Trust Deed for the future governance and management of High Hazels Park.
- R2.** To agree to adopt the amended Trust Deed as the charity's governing document.
- R3.** That the Director of Legal and Governance in consultation with Director of Culture and Environment draft and complete all necessary legal documentation in order to implement the registration of High Hazels Park as a charitable trust.

**Background Papers:**

*(Insert details of any background papers used in the compilation of the report.)*

**Appendix 1:** Amended Trust Deed for High Hazels Park

**Appendix 2:** Original Trust Deed for High Hazels Park

**Appendix 3:** Executive Report: Registration of High Hazels Park as a Charitable Trust and Cabinet Decision dated 17<sup>th</sup> January 2018

| Lead Officer to complete:-  |  |   |
|---|--|---|
| 1   | I have consulted the relevant departments in respect of any relevant implications indicated on the Statutory and Council Policy Checklist, and comments have been incorporated / additional forms completed / EIA completed, where required.   | Finance: Janinne Scarborough  |
|   |  | Legal: Leonie Wallace   |
|   |  | Equalities: Annemarie Johnston – no equalities impact, no EIA required. |
| <i>Legal, financial/commercial and equalities implications must be included within the report and the name of the officer consulted must be included above.</i> |  |   |
| 2   | <b>EMT member who approved submission:</b>   | Laraine Manley  |
| 3   | <b>Cabinet Member consulted:</b>   | Cllr Mary Lea   |
| 4   | I confirm that all necessary approval has been obtained in respect of the implications indicated on the Statutory and Council Policy Checklist and that the report has been approved for submission to the Decision Maker by the EMT member indicated at 2. In addition, any additional forms have been completed and signed off as required at 1. |   |
|   | <b>Lead Officer Name:</b><br>Lisa Firth  | <b>Job Title:</b><br>Head of Parks & Countryside                        |
|   | <b>Date:</b> [17/04 ] 2019   |   |

## 1. PROPOSAL

*(Explain the proposal, current position and need for change, including any evidence considered, and indicate whether this is something the Council is legally required to do, or whether it is something it is choosing to do)*

- 1.1 This report summarises correspondence between Legal Services and the Charity Commission arising from the application to register High Hazels Park as a charity. At the Cabinet meeting on 17<sup>th</sup> January 2018 Cabinet approved a recommendation to transfer High Hazels Park into a charitable trust, to approve and adopt the Trust Deed in its original form (attached at Appendix 2 to this report) and further to authorise the registration of High Hazels Park (the Charity) as a charity on application to the Charity Commission. This decision by Cabinet created the Charity and appointed Sheffield City Council as sole trustee of the Charity (the Charity Trustee).
- 1.2 As explained in the Executive Report attached at Appendix 3 to this report, Section 30(1) of the Charities Act 2011 requires every charity to be registered in the register unless an exemption applies to it. High Hazels Park exceeded the income threshold of £5,000 per year set out in section 30(2)(d) of the Charities Act 2011 in the 2015/2016 financial year. The park trust is now required to be registered as a charity at the Charity Commission and entered on the register of charities as a statutory requirement.
- 1.3 Legal Services implemented the above decision of Cabinet and submitted the application for registration of the Charity at the Charity Commission. There then followed an exchange of correspondence with the Charity Commission in response to its requests for confirmation and evidence that the activities the Council will be carrying out at High Hazels Park are capable of furthering exclusively charitable purposes.
- 1.4 The Charity Commission have now confirmed that it is satisfied that the purposes are exclusively charitable, however, the Charity Commission is not satisfied with the wording of the Objects clause of the original Trust Deed.
- 1.5 The Charity Commission has proposed alternative wording for the Objects clause and stipulated that it requires the Trust Deed to be amended.
- 1.6 The Charity Commission is the regulator of charities in England and Wales and its responsibilities include deciding whether organisations are charitable and should be registered. As part of its functions as the registrar the Charity Commission is empowered to decide whether or not a charity's governing document is satisfactory and compliant with the Charities Act 2011 and to make a decision to register a charity subject to conditions requiring amendment of the wording of any governing document which it does not determine to be satisfactory or compliant.

- 1.7 The Charity Commission has determined that the Objects clause set out in the original Trust Deed are unclear and uncertain as it includes part of the wording contained in the model object for charitable purposes for the provision of facilities under the Recreational Charities Act 1958. To rectify this the Charity Commission has issued the following directive:

*“...the trustees should adopt either:*

- The provision and maintenance of a park and recreation ground for use by the public*

*Or the wording of our model object as follows*

- To provide or assist in the provision of facilities in the interests of social welfare for recreation or other leisure time occupation of individuals who have need of such facilities by reason of their youth, age, infirmity or disability, financial hardship or social circumstances with the object of improving their conditions of life”*

- 1.8 Legal Services recommend the adoption of the wording “The provision and maintenance of a park and recreation ground for use by the public.” This wording more accurately reflects the wording contained in the deed dated 24 October 1894 under which the Council acquired the park which states the park is to be held “upon trust to permit the said hereditaments to be forever hereafter used as public walks or pleasure grounds within the meaning of section 164 of the Public Health Act 1875”.

- 1.9 The Charity Commission has confirmed that completion of the application for registration is conditional upon the amendments being made to the wording of the Objects clause in the Trust Deed and such amendments being agreed and adopted by a resolution of the Charity Trustee at a Charity Trustee meeting.

## **2. HOW DOES THIS DECISION CONTRIBUTE ?**

*(Explain how this proposal will contribute to the ambitions within the Corporate Plan and what it will mean for people who live, work, learn in or visit the City. For example, does it increase or reduce inequalities and is the decision inclusive?; does it have an impact on climate change?; does it improve the customer experience?; is there an economic impact?)*

- 2.1 Sheffield’s Corporate plan 2015 -18 aims to ensure that “high quality parks and open spaces” are provided for people to use and enjoy. By registering High Hazels park as a charitable trust, the council will be protecting the park for current and future generations as a quality green space. Registration will also meet the object of the Charity which is the provision and maintenance of a park and recreation ground for use by the public.

## **3. HAS THERE BEEN ANY CONSULTATION?**

*(Refer to the Consultation Principles and Involvement Guide. Indicate whether the Council is required to consult on the proposal, and provide details of any consultation activities undertaken and their outcomes.)*

3.1 As this proposal is a response to the requirements of the Charity Commission as explained in the Legal Implications section of this report and there is no requirement on the Trustee to consult, there has been no consultation carried out in relation to this proposal.

#### **4. RISK ANALYSIS AND IMPLICATIONS OF THE DECISION**

##### 4.1 Equality of Opportunity Implications

4.1.1 There are no equality of opportunity implications.

##### 4.2 Financial and Commercial Implications

4.2.1 No financial and commercial implications are anticipated.

##### 4.3 Legal Implications

4.3.1 The revised version of the Trust Deed incorporating the wording recommended above is attached to this report at Appendix 1 for consideration and approval by the Charity Trustee.

4.3.2 Changes made to the objects clause of a charity's governing document must be agreed at a meeting of the charity's trustees and the new governing document must be submitted to the Charity Commission for approval. Once the Charity Trustee has agreed the wording of the revised Trust Deed it will be sealed and forwarded to the Charity Commission to complete its registration of the Charity.

##### 4.4 Other Implications

*(Refer to the Executive decision making guidance and provide details of all relevant implications, e.g. HR, property, public health).*

4.4.1 There are no property implications.

#### **5. ALTERNATIVE OPTIONS CONSIDERED**

*(Outline any alternative options which were considered but rejected in the course of developing the proposal.)*

5.1 Not to make the required amendments to the Trust Deed however this would result in the application for registration to be rejected by the Charity Commission and may result in reputational damage to the Council.

5.2 To adopt the alternative wording suggested by the Charity Commission however Legal Services have advised that this wording is not reflective of the purposes expressed in the 1894 deed of conveyance.

#### **6. REASONS FOR RECOMMENDATIONS**

*(Explain why this is the preferred option and outline the intended outcomes.)*

6.1 The Charity Trustee's approval of the revised Trust Deed and its

agreement to adopt this as the Charity's governing document will allow the completion of the application to register the Charity at the Charity Commission in compliance with the provisions contained in the Charities Act 2011.

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