

A separate report is submitted in the private part of the agenda in respect of this item, as it contains details of financial information required to be kept private in accordance with Schedule 12A of the Local Government Act 1972. The grounds for privacy are that it refers to the identity, financial and business affairs of an organisation and the amount of expenditure proposed to be incurred by the Council under a particular contract for the supply of goods or services.

Cabinet

11th April 2017

Name of Cabinet Member:

Cabinet Member for Jobs and Regeneration – Councillor J O’Boyle

Cabinet Member for City Services – Councillor J Innes

Cabinet Member for Public Health and Sport – Councillor K Caan

Director Approving Submission of the report:

Deputy Chief Executive (Place)

Ward(s) affected:

Earlsdon

Title:

Cabinet acting as Charitable Trustees for War Memorial Park

Is this a key decision?

No

Executive Summary:

This report seeks agreement of Cabinet sitting as the Charitable Trustees to grant a wayleave agreement which allows Western Power Distribution to lay and retain new power cables on a route which crosses through part of the War Memorial Park.

By virtue of a conveyance dated 27th January 1921 The War Memorial Park is held on trust by the Council and therefore any decisions relating to it must be made on the basis of and acting in the capacity as sole charitable trustee and what is in the best interests of the charity alone.

Where a local authority is trustee of an asset held on charitable trust, it is essential to ensure that the asset is held and applied in accordance with the particular charitable purpose to which it was conveyed to the local authority.

Where the local authority is the sole trustee, it is the corporate body (“authority itself”) which is the trustee and as such guidance from the Charity Commission states that responsibility for decision-making and oversight rests with the Councillors. In exercising the obligation as charity

trustee, the decision takers must ensure that their decisions are only taken on the basis on what is in the interest of the charity and not that what is in the best interest of the of the local authority.

A request has been received from Western Power Distribution to allow them to lay and retain new power cables on a route through part of the park (as shown on the plan attached at Appendix A) and enter into a wayleave agreement to allow this.

Recommendations:

It is recommended that Cabinet:

1. In its role as charitable trustee of the War Memorial Park, agrees in principle to the entering into an agreement with Western Power Distribution for the laying and retention of cables through the park and any other land held on Trust by the Council through which the cable will run subject to:
 - An independent Charities Act report recommending that the intended easement between the Charitable Trust and Western Power Distribution represents best value to the charity.
2. Delegated Authority be granted to the Executive Director of Place and the Council's Section 151 Officer in consultation with the Cabinet Member for Jobs & Regeneration and Cabinet Member for City Services and Cabinet Member for Public Health and Sport to negotiate the detailed terms of agreement with Western Power Distribution which shall include undertaking the appropriate due diligence and completion of the necessary legal documentation

List of Appendices included:

Appendix A – Sectional Plan of proposed cable route
Appendix B – Proposed Cable Route

Other useful background papers:

None

Has it been or will it be considered by Scrutiny?

No

Has it been or will it be considered by any other Council Committee, Advisory Panel or other body?

No

Will this report go to Council?

No

Report title: Cabinet acting as Charitable Trustees for War Memorial Park

1. Context (or background)

- 1.1 The Council holds the legal title to the War Memorial Park by virtue of a conveyance dated 27 January 1921. The land was transferred to the Council to be held 'to the use' of the Corporation and its successors and assigns *'to be maintained by the Corporation and dedicated in perpetuity as a public park or Recreation Ground for the people or for use for Agricultural Shows Flower Shows or similar purposes with a right to charge for admission'* the wording of this conveyance clearly settled the land (including the War Memorial Park) on charitable trust and as such the Council is now the sole corporate trustee of the Trust.
- 1.2 In the absence of any other trust document the conveyance is the sole governing document of the charity which it created.
- 1.3 Where the Council is the sole trustee it is essential to ensure that the assets are held and applied in accordance with the charity's particular purpose.
- 1.4 For a body to be a charity it must be independent i.e. it must exist and operate solely for charitable purposes not as a means of carrying out the policies or directions of the local authority.
- 1.5 Any income received from any agreement can only be used toward furthering the purpose upon which the charity was provided and cannot be used for the local authority's general purposes and any income received from the asset must be kept separate from that of the Council and accounted for separately.
- 1.6 Currently the Council's constitution has no provision for decisions relating to the Council acting in its capacity as a corporate trustee being delegated to either officers or a committee and therefore it is necessary for this report to be brought to Cabinet for a decision to be made.

2. Options considered and recommended proposal

2.1 Option 1 – Cabinet acting in capacity of Charitable Trustees approves the proposed Wayleave request through the War Memorial Park.

The apparatus to be laid will not affect the ability of the Council acting in their capacity as Charitable Trustees to comply with the objectives stated in the Conveyance as the pipes will be laid underground. Furthermore, any consideration received as part of the grant of easement payment from the War Memorial Park will be spent on furthering the objectives to which the land was entrusted to the Council pursuant to the conveyance referred to above.

This is the recommended proposal.

2.2 Option 2 – Retain Status Quo

If Cabinet, acting as Charitable Trustees do not agree to enter into Wayleave agreements with WPD for the land at War Memorial Park then the Charity could lose the potential income generated from the grant of the wayleave.

3. Results of consultation undertaken

- 3.1 The disposal referred to in this report is not being made to a connected person and as such no order will be required from the Charity Commission prior to the arrangement being put in place. However, the requirements of section 117 (2)(b) of the Charities Act 2011 will need to be complied with, one of which is to advertise the disposal as advised by the qualified surveyor who provides the Charities Act report (unless advertising is not in the interests of the Charity). Guidance by the Charity Commission on advertising when it relates to charity assets states that the trustees must give public notice of the disposal inviting representations. The notice period must be for at least a month and the trustees must consider any representations they receive. In this case, it will usually be acceptable for the Trust to put up a notice on the property itself and insert a second notice in a local newspaper.

Officers will ensure that all requirements under the Charities Act 2011 are complied with in relation to the authorisations contained in this report.

4. Timetable for implementing this decision

- 4.1 It is anticipated that the works are likely to commence in summer 2017 and therefore WPD will require any Wayleave agreements to be entered into before commencement of the works.
- 4.2 The indicative timetable for WMP works to be done will commence between 7th September 2017 and 4th October 2017, which will include open grass cutting to install the ducts. Further works will commence on the 15th January 2018 and 2nd February 2018, which will include drilling under the trees off Kenilworth Road. These works will not impact the use of the park for events such as Godiva Festival during 2017 and 2018 period. All other events which have been timetabled to take place in War Memorial Park up to 2018 continue as planned.

5. Comments from Director of Finance and Corporate Services

- 5.1 Financial implications

All costs to 'reinststate and make good' all the land back to their original state will be met by JLR/WPD. In addition, any consideration payment received for War Memorial Park will be 'ring-fenced' to be spent to enhance the park only.

- 5.2 Legal implications

Land held as Charitable Trustee

Local authorities are empowered by Section 139 of the Local Government Act 1972 to receive and hold gifts on charitable trusts. The local authority is currently the sole corporate trustee for this charity.

The Council as trustee has a legal duty to operate the charity in accordance with the charity's governing document and strictly in furtherance of its stated objects. The management of the charity should be kept separate, as far as possible, from the business of the local authority. Equally, the finances of the trust must be kept separate from those of the Council.

Where the Council is a 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 officers, responsibility for decision making and oversight must rest with the councillors.

6. Other implications

6.1 How will this contribute to achievement of the Council's key objectives / corporate priorities (corporate plan/scorecard) / organisational blueprint / Local Area Agreement (or Coventry Sustainable Community Strategy)?

Approving the cable route through the War Memorial Park will allow JLR to work with Coventry City Council and facilitate delivery of jobs and new investment into the city, it will boost the local economy and support both employers and the people of Coventry.

6.2 How is risk being managed?

Western Power Distribution (WPD) will work with the Council's Highways department to ensure all Health & Safety measures are taken whilst undertaking the digging up and reinstatement works on the adopted highway network. The reinstatement works carried out in the War Memorial Park will also be conducted by WPD and the Council's Property department will ensure this is done to a high quality finish.

6.3 What is the impact on the organisation?

The impact on the organisation is largely disruption to the roads networks and this will delay travel times and cause congestion, measures will be taken by WPD to carry out work outside of peak travelling times wherever possible.

Property Implications

The proposed route will go through land held within Streetscene & Greenspaces portfolio, any consideration received for entering into the Wayleave agreements will be used to enhance areas within War Memorial Park

6.4 Equalities / EIA

An Equality Impact Assessment has not been undertaken as the proposal concerns digging up and reinstatement of land and adopted Highway and no group will be impacted.

6.5 Implications for (or impact on) the environment

The impact will be positive as any compensation received will further enhance the reinstatement of War Memorial

6.6 Implications for partner organisations?

Friends of War Memorial Park will be informed about the works accordingly.

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Appendix A – Proposed Cable Route