

Cabinet

25<sup>th</sup> February 2020

**Name of Cabinet Member:**

Cabinet Member for Equalities and Policing – Councillor AS Khan

**Director Approving Submission of the report:**

Deputy Chief Executive (Place)

**Ward(s) affected:**

Earlsdon

**Title:**

Cabinet acting as Charitable Trustees for War Memorial Park

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**Is this a key decision?**

No.

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**Executive Summary:**

This report seeks agreement of Cabinet sitting as the Charitable Trustees to agree the introduction of car parking charges at the area of the War Memorial Park edged in red on Appendix A.

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 local authority.

It has become apparent that the car park at the War Memorial Park is being used by persons who are not particularly visiting the park for the purposes of recreational activities which is the basis upon which the park is held. This therefore presents an opportunity in the best interest of the War Memorial Park, for parking charges to be introduced to be applied to those persons who utilise the availability of parking spaces for purposes contrary to which the land is held.

**Recommendations:**

It is recommended that Cabinet:

1. In its role as charitable trustee of the War Memorial Park, agrees in principle to the introduction of parking charges in the area of the War Memorial Park (identified in Appendix A of this report) subject to:
  - An independent Charities Act report recommending that the intended charges represents best value to the charity.
2. Delegated Authority be granted to the Director of Streetscene and Regulatory Services following consultation with the Cabinet Member for Equalities and Policing to finalise the charging structure which shall include undertaking the appropriate due diligence and completion of any necessary legal process

**List of Appendices included:**

Appendix A – Plan of the car parking area

**Background Papers**

None

**Other useful documents:**

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 proposals**

#### **Option 1 – Cabinet acting in capacity of Charitable Trustees approves the introduction of car parking charges at the War Memorial Park (Recommended)**

- 2.1 The introduction of the car parking charges 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 charges will only seek to regulate the use of the car parks and not the use of the park itself. Furthermore, any consideration received as part of the introduction of the car parking charges 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.

#### **Option 2 – Retain Status Quo.**

- 2.2 If Cabinet, acting as Charitable Trustees do not agree to the introduction of the car parking charges at the War Memorial Park then the Charity could lose the potential income generated from the introduction of such charges.

### **3.0 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.

### **4. Timetable for implementing this decision**

- 4.1 It is anticipated that the introduction of the car parking charges is likely to commence in the summer of 2020.

### **Comments from Director of Finance and Legal Services**

#### **5.1 Financial implications**

Any net consideration (once the costs of implementation and administration have been deducted) received for War Memorial Park car parking will enable the park to move towards being maintained on a financially self-sufficient basis and as such will contribute to enhancement of the park. Subject to approval of this report, the proposed configuration of car parking charges is set out in the Budget Report on the same agenda as this report.

#### **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 Plan?**

- 6.1.1 The introduction of car parking charges will ensure that the War Memorial Car Parks remain available for park and recreational users. Net revenue raised from commuters will assist in making the War Memorial Park more financially self-sufficient, thereby protecting investment for the medium term.

#### **6.2 How is risk being managed?**

- 6.2.1 The report seeks the introduction of car parking charges at the War Memorial park and as such does not pose any risk which are required to be managed

### **6.3 What is the impact on the organisation?**

6.3.1 There are no impacts on the organisations as the introduction of car parking charges will generate income for the War Memorial Park which can be reinvested into the better enhanced use of the War Memorial Park by residents of the city.

### **6.4 Equalities / EIA**

6.4.1 An Equality Impact Assessment has not been undertaken as the proposal concerns the introduction of car parking charges.

### **6.5 Implications for (or impact on) the environment**

6.5.1 The impact will be positive as any income received will further enhance the use of the War Memorial Park.

### **6.6 Implications for partner organisations?**

6.5.2 The City Council will work with the Friend of the War Memorial Park on the introduction of Car Parking charges.

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