

Members are reminded that they must declare all relevant pecuniary and non-pecuniary interests relating to any items of business to be discussed at this meeting

BIRMINGHAM CITY COUNCIL

TRUSTS AND CHARITIES COMMITTEE

THURSDAY, 12 NOVEMBER 2015 AT 10:30 HOURS
IN COMMITTEE ROOM 2, COUNCIL HOUSE, VICTORIA SQUARE,
BIRMINGHAM, B1 1BB

A G E N D A

1 **NOTICE OF RECORDING**

Chairman to advise meeting to note that members of the press/public may record and take photographs except where there are confidential or exempt items.

2 **APOLOGIES**

3 **MINUTES**

5 - 12

To note Part 1 of Minutes of the last meeting of Committee on the 23 September 2015.

4 **MATTERS ARISING**

To consider matters arising.

5 **DECLARATIONS OF INTERESTS**

Members are reminded that they must declare all relevant pecuniary interests and non-pecuniary interests relating to any items of business to be discussed at this meeting. If a pecuniary interest is declared a Member must leave the room or Chamber where the meeting is being held, unless a dispensation has been obtained from the Authority's Standards Committee. Any declarations or leaving of the room/chamber will be recorded in the minutes of the meeting.

CORPORATE FINANCE & LEGAL SERVICES REPORTS

<u>13 - 24</u>	6	<u>SOLE CORPORATE TRUSTS - GRANTS</u>
		Report of Director of Finance
<u>25 - 42</u>	7	<u>BIRMINGHAM MUNICIPAL CHARITY - REVISED MECHANICS OF FUNDING</u>
		Report of Director of Finance
<u>43 - 46</u>	9	<u>HIGHBURY TRUST APPOINTMENT OF AUDITOR TO UNDERTAKE INDEPENDENT EXAMINATION OF THE TRUST ACCOUNTS</u>
		Report of Director of Finance
	10	<u>CENTRE FOR THE CHILD TRUST</u>
		Verbal update from Linda Monk - Children's and Music Library Manager on the charity's activities.
		<u>PROPERTY REPORTS</u>
<u>47 - 50</u>	11	<u>WILLIAM WALTER HINDE FOR OPEN SPACE (REG. CHARITY NO. 522893) - LAND ADJOINING 18 ROSE HILL, LICKEY HILLS</u>
		To update the Committee on action to defend land at Lickey Hills
	12	<u>EVENTS & ACTIVITIES IN PARKS IN TRUST - ANNUAL UPDATE - TO FOLLOW</u>
		Acting Strategic Director (Place Directorate)
	13	<u>APPOINTMENT OF CHAIRMAN OF THE NEW HIGHBURY INDEPENDENT TRUST - FOR INFORMATION AND NOTING ONLY</u>
<u>51 - 52</u>		Verbal update from the Chairman of the Committee.
	14	<u>SCHEDULE OF OUTSTANDING MINUTES</u>
		To consider outstanding minutes.
	15	<u>OTHER URGENT BUSINESS</u>
		To consider any items of business by reason of special circumstances (to be specified) that in the opinion of the Chairman are matters of urgency.
	16	<u>AUTHORITY TO CHAIRMAN AND OFFICERS</u>
		Chairman to move:-
		'In an urgent situation between meetings, the Chair jointly with the relevant Chief Officer has authority to act on behalf of the Committee'.

17 **EXCLUSION OF THE PUBLIC**

That in view of the nature of the business to be transacted which includes exempt information of the category indicated the public be now excluded from the meeting:-

Minutes - Exempt Paragraphs 3

P R I V A T E A G E N D A

1 **MINUTES**

To note Part 2 of Minutes of the last meeting of Committee on the 23 September 2015.

2 **MATTERS ARISING - PRIVATE**

To consider matters arising.

3 **WILLIAM WALTER HINDE FOR OPEN SPACE (REG. CHARITY NO. 522893) - LAND ADJOINING 18 ROSE HILL, LICKEY HILLS**

Report of the Director of Property.

4 **OTHER URGENT BUSINESS (EXEMPT INFORMATION)**

To consider any items of business by reason of special circumstances (to be specified) that in the opinion of the Chairman are matters of urgency.

BIRMINGHAM CITY COUNCIL

TRUSTS AND CHARITIES COMMITTEE 23 SEPTEMBER 2015

PRESENT: Councillor Phil Davis in the Chair

Committee Members:
Councillor John Alden (JA)
Councillor Hendrina Quinnen (HQ)
Councillor Ansar Ali Khan (AAK)
Councillor John Alden (JA)

Officers:
Sanjeev Bhopal, (SKB) Senior Solicitor, Legal & Democratic Services
Mark Szurminski, Senior Business Analyst, Corporate Finance
Nigel G Oliver, Property Manager, BPS

721 **NOTICE OF RECORDING & PRELIMINARY MATTERS**

The Chairman advised the meeting to note that members of the press/public may record and take photographs except where there are confidential or exempt items.

The Chairman also welcomed Cllr Ansar Ali Khan to his first meeting of the Committee.

SKB explained to Members that due a technical issue, the hard copy of the Committee Papers were incomplete, in that some pages had been omitted from the Committee Pack. This was not the case in relation to the electronic papers that were loaded on to CMIS.

722 **APOLOGIES**

Apologies for non-attendance were submitted on behalf of:

Councillor David Pears
Councillor Paul Tilsley

723 **MINUTES**

The public minutes of the meeting on 22 July 2015, were confirmed as an accurate record.

724 **MATTERS ARISING**

Minute 710

2014/2015 CROPWOOD ANNUAL REPORTS AND ACCOUNTS

In response to the query raised by Cllr John Alden (JA) re Trust Investments, MS confirmed that the Trust's investments have been transferred to CCLA's COIF deposit account as part of the Council's overall investment strategy for Trust Funds.

Minute 712

ANNUAL REPORT AND ACCOUNT -2014/2015 CENTRE FOR THE CHILD

MS confirmed that with regard to Note 7 of the Accounts, £5,168.00 (debtor), is in the process of being transferred to CCLA's COIF deposit account . MS also advised Members that Linda Monk was unable to attend today's meeting. However, she has now confirmed her attendance at the next Committee Meeting on the 12 November 2015 to provide an update and answer questions raised at July's Committee.

The Chairman took the opportunity of providing Cllr Ansar Ali Khan, with some background information to the charitable trusts that were ordinarily reported on at Committee. A summary of these was set out at page 39 of the Committee Pack, but this did not include various Parks and Gardens, which were also held in Trust. The Chairman also explained the distinction between the charities where the Council was Sole Corporate Trustee, and Custodian Trustee.

725

DECLARATIONS OF INTERESTS

The Chairman reminded Members that they must declare all relevant pecuniary interests and/or non-pecuniary interests relating to any items of business to be discussed at this meeting. If a pecuniary interest is declared a Member must leave the room or Chamber where the meeting is being held, unless a dispensation has been obtained from the Authority's Standards Committee. Any declarations or leaving of the room/chamber will be recorded in the minutes of the meeting.

None were declared.

726

ELECTION OF DEPUTY CHAIR

Nominations were invited from Members to elect a Deputy Chair to substitute for the Chair if absent, for the Municipal Year 2015/16.. Cllr Ansar Ali Khan was nominated by the Chairman.. This was seconded by Cllr John Alden, and agreed unanimously by the Committee.

RESOLVED:-

That Cllr Ansar Ali Khan be elected as Deputy Chair to substitute for the Chair if absent, for the Municipal Year 2015/16

**ANNUAL REPORT AND ACCOUNTS – J K GILBERT FOR PERIOD
ENDING 31 DECEMBER 2014**

MS introduced the Report and informed Members that BCC is the Custodian Trustee for the charity, and the Report is presented to Members for their information and for noting.

The City Council acts as Sole Trustee for a number of charitable and non-charitable trusts and has delegated the management of these trusts to the Trusts and Charities Committee. Charitable trusts are governed by charity law and are regulated by the Charity Commission. However, as the Council is Custodian Trustee of the J K Gilbert Charity, day to day management decisions are made by a separate and independent group of managing Trustees. The Report was therefore presented to Committee for information only, because it cannot as a matter of law be involved in managing the Charitable Trust. The Council's role is limited to holding legal title to the charity's asset. Committee Members are of course able to pass on pertinent observations to the managing Trustees for them to consider as appropriate.

RESOLVED:

Committee noted the Report.

**ANNUAL REPORT AND ACCOUNTS – CB & AB HOLINSWORTH FOR
THE PERIOD ENDING 31 MARCH 2015**

Again, MS introduced the Report and informed Members that BCC is Custodian Trustee for the charity, and the Report is presented to Members for their information and for noting.

The Chairman enquired whether Members wished to raise any queries. JA responded by enquiring what the current position was in relation to the appointment of representative and co-opted Trustee vacancies for the charity. Furthermore, he enquired whether the Trustees had met to consider the issue of Support Costs and how these would be funded?

The Chairman explained the background to the Supports Costs exercise currently being undertaken by officers, namely to:-

- 1) Identify by discipline, what officer support is provided to various charities;
- 2) Establish the financial value of this support on an annual basis;
- 3) Review individual charity finances to establish how many can potentially afford to meet the costs of support services;.
- 4) For those charities that can afford to meet the costs, to invite them to do so on a formal basis, or alternatively, should they determine that the charity is not financially viable, to consider merger with another charity with comparable objects/purposes.
- 5) Letters were sent out to various charities on behalf of Jon Warlow and the Chairman explaining the above.

Officers agreed to provide Members with an update on these matters under Agenda Item 11 (see Minute 731 below).

RESOLVED:

Committee noted the Report.

729

REVENUE BUDGET MONITORING 2015/16 - QUARTER 1 (TO 30 JUNE 2015)

MS introduced the Report for noting by Members.

As per the earlier discussions, MS reminded Members that the information within Appendix 2 was split by charities where the Council is Sole Corporate Trustee and Custodian Trustee. Referring to Appendix 2 he highlighted the Closing Balance as at 30 June 2015 (page 39 of the Committee Papers), movements in the quarter, and that the balances were a combination of cash, investments, buildings and land.

The Chairman reminded Members of the distinction between Sole Corporate Trustee charities and Custodian charities as set out above. JA commented that the list did not include various charitable Parks and Gardens which also fell within the purview of the Committee e.g. Cannon Hill Park, Cofton Park, Calthorpe Park, Victoria Park, Small Heath etc. These were excluded from the list as they had no cash income / balances. MS confirmed that this was correct. NGO suggested that the definitive list of charities should be re-circulated to Members. He also reminded Members that further charities could come to light as and when their property deeds were reviewed.

The Chairman commented that the Council was a lot better at determining which assets were held in the Trust at an early stage, so that they are correctly dealt with in accordance with charity law. The Chairman enquired whether the information could be presented by category i.e. land, cash, fixed assets, investments - restricted and unrestricted balances etc. MS confirmed it could subject to a further analysis of the information. The Chairman reminded officers of the need to report to next Committee re options for funding grant applications across the portfolio, how this could be opened up and publicised to the public/community groups for charitable purposes.

RESOLVED:

Committee noted the Report.

730

ANNUAL REPORT AND ACCOUNTS – SIR WHITWORTH WALLIS CHARITY FOR THE PERIOD ENDING 31 MARCH 2015

MS presented the Report to Members, who having considered the same, agreed to note the Report.

RESOLVED:

Committee noted the Report.

731

SUPPORT COSTS CHARGES UPDATE

At the Chairman's request MS provided Members with a verbal update on the above. He began by providing Members with the background to implementing support costs to custodian trusts and set out the current position. At present, responses are outstanding from the Trustees of CB & AB Holinsworth Charity and Alderson Trust.

The Trustees of Jane Kate Gilbert and John Billingsley the Elder have resolved to transfer the assets of each respective charity to the Birmingham Municipal Charity. The Lord Mayors Charity, was exempt from the process, Sir Whitworth Wallis and Moseley Road Friends Institute did not have the ability to pay and BCC will continue to provide professional support to the respective trusts free of charge. Clara Martineau and Bodenham Trust have confirmed that they wished BCC officers to continue providing support at a chargeable rate.

SKB informed Members that at its meeting on the 14th September 2015, the Trustees of CB & AB Holinsworth Charity has discussed the issue of support costs, and were minded to approve a transfer of its assets into the Birmingham Municipal Charity. However, some Trustees expressed concerns over the geographical restriction within the BMC objects/purposes clauses which was limited to the citizens of Birmingham, as opposed to the provisions of their charity which provided benefit for the relief of the poor for people resident in or **near the City of Birmingham**.

On that basis, the Lord Mayor wished to meet with the Chairman to go through these matters before a final decision was made by the Trustee body. The Chairman confirmed as Alderson Trust had not made a positive decision to receive and pay for professional support services, these would now be withdrawn as per the last correspondence to the charity and Resolution 713.

JA sought an update on Birmingham Wheels Charity. SKB to provide JA with an update outside of the meeting once he had established the same.

RESOLVED:

Committee noted the verbal update from officers.

732

FUTURE OF RESIDENTIAL LODGES HELD IN TRUST

NGO introduced the Report and referred Members to relevant background and chronology of events, included the two previous Reports which had been presented to Committee on the 5th November 2104 and 4th March 2015.

In summary of the ten lodges held in trust, 6 were occupied by tenants, 4 were vacant and considered surplus to requirements by the Housing

Department. The Committee had previously approved that the making of necessary applications to gather the appropriate powers to better manage the portfolio including powers for the disposal of the 4 vacant lodges in principle, subject to Charity Commission approval and this report seeks the same powers for the remaining trust parks containing lodges. Cllr Quinnen enquired whether the Housing Department itself would consider buying the lodges. NGO, confirmed that if the lodges were to be disposed of the process of marketing the properties would be open to all but disposal to Housing would also require that the Charity Commission were minded to approve the sale to the Council as a "connected" party. Whatever outcome, all income from rent or the capital receipt would be ring-fenced to the charity in question.

NGO, advised Members that he will encourage officers in Housing to bring forward the additional Report on how the retained lodges would be managed, and contractual terms for the agreement, which would include payment of fees, repairs and maintenance, and accounting for rental income. Senior officers in Housing are aware that this issue is outstanding and needs to be resolved quickly. The Chairman was happy to approach the relevant Cabinet Member (Cllr Cotton) to try and expedite matters if this would assist. He also reminded Members that any decision to dispose of a lodge would need to be agreed by Committee first and determined to be in the best interests of the charity/compliant with the Charities Act 2011.

RESOLVED:

The Recommendation s within the Report at paragraphs 2.1-2.5 were approved by Committee.

733

HIGHBURY INDEPENDENT TRUST - UPDATE FROM THE CHAIRMAN

As per his update to Full Council on the 15th September 2015, the Chairman informed Members that the recruitment of Chairman of Trustees and other trustees for the new Trust will take place on the 16th and 30th October 2015 respectively.

The recruitment pack should have been sent to all Members of the Council to forward on to any suitable applicants.

RESOLVED:

Committee noted the verbal update from the Chairman.

734

SCHEDULE OF OUTSTANDING MINUTES

Minute 395

Committee resolved to retain this Minute, concerning reports from the Council Departments managing and distributing certain charitable funds. The Chairman would like to ensure officers directly involved in assisting the Committee to manage the relevant charity, provide Committee Members with regular updates on the work of the charity and the charitable activity it undertakes as well as reporting back on public benefit generally.

Minute 651

NGO confirmed that the Parks & Gardens Department would be providing a Report to Committee on the breach of trust. With regard to the value of the existing brickwork and timber of the current outbuildings at the Park, NGO confirmed that the development was now likely to proceed shortly, and that the views of Members had been conveyed to Parks Service, so that the charity would benefit from re-sale or re-use of these items. This would be reported back to Committee in due course.

SITE VISITS

The Chairman has now provided Members with a provisional itinerary of dates and venues and asked if they could all respond to SKB in order for him to collate responses and firm up details of the visits to various trust properties.

735 **OTHER URGENT BUSINESS**

None reported to Committee.

736 **AUTHORITY TO CHAIRMAN AND OFFICERS**

Chairman to move:-

“That the Chairman is hereby authorised to act until the next meeting of the Committee except that, in respect of the exercise of the Council’s non-Executive functions, the appropriate Chief Officers are hereby authorised to act in consultation with the Chairman and that the Director of Legal and Democratic Services is authorised to affix the Corporate Seal to any document necessary to give effect to a decision of the said officers acting in pursuance of the power hereby delegated to them; further that a report of all action taken under this authority be submitted to the next meeting and that such report shall explain why this authority is used”.

737 **EXCLUSION OF THE PUBLIC**

That in view of the nature of the business to be transacted which includes exempt information of the category indicated, the public be now excluded from the meeting.

Minutes of the last meeting

Exempt information paragraph 3

.....
Cllr Philip Davis
Chairman of Trusts and Charities Committee

Report to:	TRUST AND CHARITIES COMMITTEE	<i>Exempt information paragraph number – if private report:</i>
Report of:	Director of Finance	
Date of Decision:	12 th November 2015	
SUBJECT:	SOLE CORPORATE TRUSTS - GRANTS	
Key Decision: Yes / No	Relevant Forward Plan Ref: No	
If not in the Forward Plan: (please "X" box)	Chief Executive approved <input type="checkbox"/>	
	O&S Chairman approved <input type="checkbox"/>	
Relevant Cabinet Member(s):	N/A	
Relevant O&S Chairman:	N/A	
Wards affected:	All	

1. Purpose of report:

- 1.1 For Committee to consider various officer recommendations which are designed to enhance and widen the existing basis upon which charitable grants are awarded.

2. Decision(s) recommended:

- 2.1 Committee notes the Report and authorises officers to start the process of revising the existing arrangements for grant awards as set within this Report.
- 2.1 That the Directors of Legal Services and Democratic Services and Director of Finance, be authorised to make all investigations and applications required and negotiate, seal, execute and complete all legal documentation to give effect to the above recommendations.

Contact Officer:	Mark Szurminski and Sanjeev Bhopal
Telephone No:	0121 675 0482 0121 675 4673
E-mail address:	Mark.szurminski@birmingham.gov.uk Sanjeev.Bhopal@birmingham.gov.uk

3. Consultation

Consultation should include those that have an interest in the decisions recommended

3.1 Internal

The Chairman of the Committee has been consulted in the preparation of this report as have officers who support the Committee, from Legal Services, Director of Finance and BPS.

3.2 External

The revisions intended are expected to widen the Grants process and increase the sums the Council as Trustee can award. On that basis, no external consultation with the beneficiaries of the relevant charities is deemed necessary at this point, subject to the views of the Members of the Committee.

4. **Compliance Issues:**

4.1 Are the recommended decisions consistent with the Council's policies, plans and strategies?

Notwithstanding the legal separation of functions, duties, and responsibilities as between Birmingham City Council and the Council in its capacity as Sole Corporate Trustee, the objects/purposes of the Council's charitable trusts, all have a commonality, namely for the benefit of the citizens of Birmingham. This is consistent with the Council's Policies, Plans and Strategies which are focused on "fair, democratic and prosperous Birmingham."

4.2 Financial Implications (Will decisions be carried out within existing finance and Resources?)

These cannot be commented on in any meaningful way at present, until officers have undertaken an evaluation of each of the proposals set out below, within a short term, medium term and long term context.

4.3 Legal Implications

Management and governance arrangements for Charitable Trusts are set out in the constitution under which they were established. Charity Trustees must also comply with Charities Act 2011, Trustee Act 2000, other relevant legislation and guidance issued by the Charity Commission. The assets of a charity must be used in accordance with charitable law, failing which this will give rise to a breach of trust. Legal sanction can follow from either the beneficiaries of the charitable trust and/or Charity Commission. Decisions made by the charity must be expedient in the interests of the charity at all times. The Committee has empowered officers within the Council to discharge certain functions on its behalf as Council as Trustee.

4.4 Public Sector Equality Duty (see separate guidance note)

None. The statutory functions discharged by the Council as Trustee are subject to a separate and distinct statutory regime underpinned (principally) by the Charities Act 2011, Trustee Act 2000 and relevant Charity Commission guidance. These are non-executive functions and are therefore not subject to the Equalities Act 2010 provisions.

5.	Relevant background/chronology of key events:
5.1	The Council acts as Sole Trustee for a number of charitable and non-charitable trusts and has delegated the management of these trusts to the Trusts and Charities Committee. Charitable trusts are governed by charity law and are regulated by the Charity Commission.
5.2	Committee will be aware that within Key Tasks 1 & 5 of the Committee Business Plan 2015-17, officers were instructed to undertake a review of Trust Capital Assets and the method of disbursing of Grants with a view to achieving various outcomes. If the recommendations within this Report are accepted by Committee officers will be able to advance these matters within the short, medium and long term.
5.3	Of the eight Sole Corporate trusts that fall under the remit of this Committee, only three currently award grants - Harriet Louisa Loxton ("HLL"), Elford Estate ("EE") and Birmingham Municipal Charity ("BMC").
5.4	On review of current charitable activity within these Trusts, it is acknowledged that more charitable activity could be taking place within the eight Sole Corporate Trusts. This Report sets out recommendations to increase charitable activity in accordance with charitable objectives/purposes under which the Trusts' were established.

5.5 Set out below are a number of Recommendations for the Committee to consider and approve, which are designed to achieve the above:

Recommendations

Short Term

- To seek agreement with People Directorate to use the administrative resources of “HLL” Trust to administer grants for “EE” and “BMC”. The cost of the support will be quantified and met from the two Trusts on the same basis that professional support services are currently charged to various Trusts by the Council.
- Review “BMC” Mechanics of Funding to increase the level of grants awarded to applicants; use of endowment and the level of charitable donations that can be transferred to “BMC” unrestricted funds.
- Once the infrastructure is in place, to raise awareness of grant funding available and provide details of grants process. This information may be disseminated in a number ways: 1) District and Ward Committee Meetings; 2) Full Council Meetings –through the T&C Annual Report; 3) T&C Committee Website Page & Newsletter; 4) EMT Away Days

Medium Term

- Review existing grants processes of “HLL” and “EE”. On the latter, exploring the possibility of support for administering the disbursement of grants being undertaken by the officer supporting the “HLL”.
- To explore the possibility of procuring the services of either an independent or external fund raiser to generate income/charitable donations to the principle grant awarding charities or other charities as appropriate dependent on financial need,

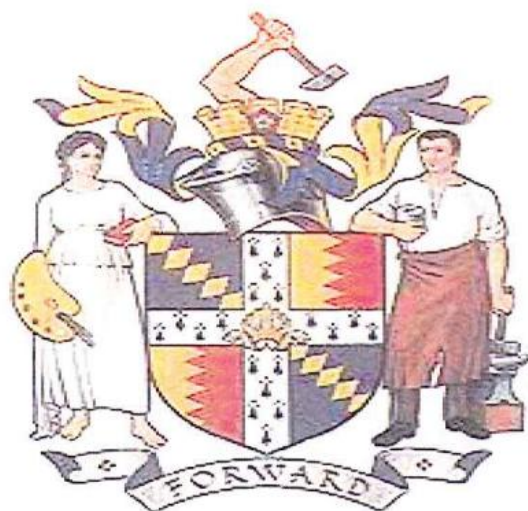
Long Term

- Review all Sole Corporate Charitable Trusts to establish if the objects / purposes can be amended to award grants.
- To gain approval from the Charity Commission, where necessary, to transfer trusts permanent endowment to unrestricted funds to enable trusts to increase activity and meet their charitable objectives.
- Seek approval to establish if receipts generated from disposals at trust parks can be consolidated and used for the benefit of all trust parks and gardens
- All three actions points may require formal approval by the Charity Commission but officers will Report back to Committee on what is required at the relevant time.

6.	Evaluation of alternative option(s):						
6.1	<p>To continue with the existing arrangements could result in both regulatory and reputational harm to the Council as Trustee, if the Council as Trustee does not undertake sufficient charitable activity or provide public benefit. Against this, is the legal duty of prudence which can be summarised as follows:</p> <p>“You must act responsibly, reasonably and honestly. This is sometimes called the duty of prudence. Prudence is about exercising sound judgement. You and your co-trustees must:</p> <ul style="list-style-type: none"> •make sure the charity’s assets are only used to support or carry out its purposes •avoid exposing the charity’s assets, beneficiaries or reputation to undue risk •not over-commit the charity •take special care when investing or borrowing •comply with any restrictions on spending funds or selling land <p>....trustees should put appropriate procedures and safeguards in place and take reasonable steps to ensure that these are followed. Otherwise [they] risk making the charity vulnerable to fraud or theft, or other kinds of abuse, and being in breach of your duty.”</p>						
7.	Reasons for Decision(s):						
7.1	For Committee to approve the above course of action.						
<table style="width: 100%; border: none;"> <tr> <td style="width: 60%; border: none;">Signatures</td> <td style="width: 40%; border: none; text-align: right;"><u>Date</u></td> </tr> <tr> <td style="border: none;">Director of Finance</td> <td style="border: none; text-align: right;">.....</td> </tr> <tr> <td style="border: none;">Chairman</td> <td style="border: none; text-align: right;">.....</td> </tr> </table>		Signatures	<u>Date</u>	Director of Finance	Chairman
Signatures	<u>Date</u>						
Director of Finance						
Chairman						

List of Background Documents used to compile this Report:
Trusts and Charities Committee Business Plan 2015-17

List of Appendices accompanying this Report (if any):
None



Strategic Business Plan

Trusts and Charities Committee 2015-2017

Trusts & Charities Committee ("T&CC")

Strategic Business Plan

2015-2017

Introduction and background

Members will be aware of a number of developing themes in the work of Trusts & Charities Committee. These focus on the better management of assets held in trust, plus greater transparency, for both members and the public, concerning charitable assistance that may be granted by the various Trusts under the Committee's oversight. This report aims to provide greater clarity around the Committee's work programme, consistent with the above broad objectives.

The 6 Key Tasks identified below describe both work in progress and proposed outcomes. They are commended to the Committee as reflecting sensible progress towards the better management of Trust assets in the interests of the citizens of Birmingham and in accordance with the City's obligations under charity law. It should be noted that the Tasks set out below are in addition to the other usual activities officers undertake to support the Committee.

Members will also be aware that, while TCC's trustee oversight is unique within the Council, the City Council provides support to its functions as both a committee and to the trusts it supports. Since the start of 2014 officers in Legal Services, Corporate Finance, and Birmingham Property Services have worked on a joint Income Generation Action Plan, which was agreed by the then Chairman, Cllr Narinder Kooner and Jon Warlow, Director of Finance. Certain tasks set out within that document remain live and the Plan was updated most recently in advance of a meeting between Jon Warlow and the current TCC Chair, Cllr Davis, on the 19 November 2014.

Given the overall financial position of the council, members will be aware of the need to minimise the level of financial assistance from the controllable budget the Council currently commits to supporting the work of Trusts & Charities Committee, where this can be done consistent with the Council's obligations as Corporate Trustee. The tasks set out below will create greater clarity in this context. They will also improve the focus of TCC in administering the City's charitable responsibilities.

KEY TASKS

Key Task 1 -Capital Asset Review [Sole Corporate Trustee -Charitable Trusts]

Officers in Legal, Finance and BPS to undertake review of all charitable trusts where BCC is sole corporate trustee.

The review will identify:-

- 1) The charity's latest financial position [income, expenditure, management arrangements, and directorate delegations];
- 2) What assets the charity holds, financial, capital or both;
- 3) Where capital is held, establish under what basis, and whether this derives an open market income; and,
- 4) Where no such income is derived, to establish why, and formulate an appropriate action plan to address this.

Outcomes

- To maximise income from charitable assets (rental income at market rate)
- To better manage these assets in the future
- Discharge legal duty of Trustee to preserve the assets of the charity
- To increase charitable activity

Completion date: Officers will start this exercise in January 2015, and provide the Committee with updates, as and when directed. Anticipated completion date by end of 2017.

Key Task 2 -Investment Fund Review [Sole Corporate Trustee -Charitable Trusts]

Officers in Treasury Management have reviewed the existing investment strategy for Trust Funds in accordance with the guidance issued by the Charity Commission and following a "beauty parade" of shortlisted fund managers on the 18th September, the appointment of "CCLA" was ratified by Trusts & Charities Committee on the 5 November 2014.

Outcomes

- To maximise income from charitable funds
- To manage any risk associated with the management of these funds through an external provider
- Discharge legal duty of Trustee to preserve the assets of the charity
- To increase charitable activity

Completion date: to be reviewed bi-annually, or as determined by Committee

Key Task 3 –Consolidation and merger of other charities into the Birmingham Municipal Charity (“BMC”)

Officers in Finance and Legal to review small and/or dormant trusts (both Sole Corporate Trustee and Custodian Trustee charities) to establish if they can be consolidated with the “BMC”. This has been an on-going exercise – W J Loxley is due to be formally consolidated to BMC. Holinsworth, J K Gilbert and J Billingsley the Elder (all Custodian) having been identified as possible trusts to be consolidated.

Outcomes

- Cost effective service provision/administration through economies of scale
- Increasing the value of the “BMC” managed fund
- The returns on which will increase charitable activity and grants awarded for public benefit

Completion date: Officers will start this exercise in January 2015, and provide the Committee with updates, as and when directed. Anticipated completion date end of 2015.

Key Task 4 –Closure or transfer of assets of charities which are not commercially viable [Sole Corporate Trustee -Charitable Trusts]

Officers in Legal, Finance and BPS to undertake review of all charitable trusts where BCC is sole corporate trustee.

The review will identify:-

- 1) The charity's latest financial position [income, expenditure, management arrangements, and directorate delegations];
- 2) Establish if income to the charity be increased or maximised through Key Task 1 (see above)
- 3) Establish if another charity or local community foundation would be interested in an asset transfer
- 4) Where the above are not possible, and no other viable option exists for the charity to establish if there is an “dissolution” or “winding up” clause or seek the same from the Commission
- 5) Establish what liabilities the charity has, and what will occur on dissolution or closure
- 6) Dispose of the Asset

Outcomes

- Prudent financial management
- Discharge legal duty of care
- Resources are better managed or can be properly directed to those charities which are sustainable

Completion date: Officers will start this exercise in January 2015, and provide the Committee with updates, as and when directed. Anticipated completion date end of 2016.

Key Task 5 –Dispersal of Grant Awards [Sole Corporate Trustee -Charitable Trusts]

Officers in Legal, Finance and BPS to undertake review of all charitable trusts where BCC is sole corporate trustee.

The review will identify:-

- 1) The charity's latest financial position [income, expenditure, management arrangements, and directorate delegations];
- 2) Establish what management powers the Trustee has to award grants within its objects and purposes/constitution
- 3) What the place of benefit is within the charity's constitution
- 4) To establish a Grants Application Protocol for the dispersal of charity funds in accordance with the charity's constitution. A grants protocol has already been established for "BMC" and Elford Estate Trust, which could be adopted for other trusts.

Outcomes

- Charitable activity/public benefit for the citizens of Birmingham
- Resources are better managed through a centralised process, as opposed to disparate grants awards for a number of charities

Completion date: Officers will start this exercise in January 2015, and provide the Committee with updates, as and when directed. Anticipated completion date end of 2016.

Key Task 6 –Highbury Trust [Sole Corporate Trustee -Charitable Trusts]

Highbury Estate: - Improve Highbury Trust governance to both protect and unlock the iconic heritage and potential of the Chamberlain Estate

The task will involve:-

- 1) The establishment of new governance arrangements to bring about the implementation of the Preferred Option- Highbury Options Appraisal;
- 2) To consult with the citizens of Birmingham (beneficiaries under the Trust) and the wider third sector on how this should be achieved;
- 3) Enter a formal lease agreement with either an existing not for profit organization or establish a new entity that will deliver a sustainable future for the estate as set out in the Options Appraisal;
- 4) Achieve the above whilst retaining important safeguards to manage any associated risks post transfer.

Outcomes

- Increase charitable activity/public benefit for the citizens of Birmingham
- Reduce liability to meet the costs of administration from the Council's General Fund

Completion date: On or before 31 December 2017, being the date the Hall is expected to be vacated by the Council's Commercial Operator, (subject to contract). This will facilitate the refurbishment of the Hall, and provide time to fund raise the capital costs of refurbishment.

Recommendation to Committee

The Trusts and Charities Committee is asked to note and endorse this Report.

21 January 2015

Report to:	TRUST AND CHARITIES COMMITTEE	<i>Exempt information paragraph number – if private report:</i>
Report of: Date of Decision:	Director of Finance 12 th November 2015	
SUBJECT:	BIRMINGHAM MUNICIPAL CHARITY – REVISED MECHANICS OF FUNDING	
Key Decision: Yes / No	Relevant Forward Plan Ref: No	
If not in the Forward Plan: (please "X" box)	Chief Executive approved <input type="checkbox"/> O&S Chairman approved <input type="checkbox"/>	
Relevant Cabinet Member(s):	N/A	
Relevant O&S Chairman:	N/A	
Wards affected:	All	

1. Purpose of report:
1.1 For Committee to approve amendments to the Birmingham Municipal Charity (“BMC”) Mechanics of Funding as set out within this Report.

2. Decision(s) recommended:
2.1 That Committee approves the revisions to the Mechanics of Funding

Contact Officer:	Mark Szurminski and Sanjeev Bhopal
Telephone No:	0121 675 0482 0121 675 4673
E-mail address:	Mark.szurminski@birmingham.gov.uk Sanjeev.Bhopal@birmingham.gov.uk

3. Consultation
Consultation should include those that have an interest in the decisions recommended
3.1 <u>Internal</u>
The Chairman of the Committee has been consulted in the preparation of this report as have officers who support the Committee, from Legal Services, Director of Finance and BPS.

3.2 External

Paragraph 3.19 of the Trust Deed provides the Council as Trustee with authority "*To do anything else within the law which promotes or helps to promote the Objects.*" The revised Mechanics of Funding are intended to widen the Grants process and increase the sums the Charity is empowered to award. On that basis, no external consultation with the beneficiaries of the charity is deemed necessary at this point, subject to the views of the Members of the Committee.

4. **Compliance Issues:**

4.1 Are the recommended decisions consistent with the Council's policies, plans and strategies?

Notwithstanding the legal separation of functions, duties, and responsibilities as between Birmingham City Council and the Council in its capacity as Sole Corporate Trustee, the objects/purposes of the Council's charitable trusts, all have a commonality, namely for the benefit of the citizens of Birmingham. This is consistent with the Council's Policies, Plans and Strategies which are focused on "fair, democratic and prosperous Birmingham."

4.2 Financial Implications (Will decisions be carried out within existing finance and Resources?) See below under paragraph 5.5

4.3 Legal Implications

Management and governance arrangements for Charitable Trusts are set out in the Constitution under which they were established. Charity Trustees must also comply with Charities Act 2011, Trustee Act 2000, other relevant legislation and guidance issued by the Charity Commission. The assets of a charity must be used in accordance with charitable law, failing which this will give rise to a breach of trust. Legal sanction can follow from either the beneficiaries of the charitable trust and/or Charity Commission. Decisions made by the charity must be expedient in the interests of the charity at all times. The Committee has empowered officers within the Council to discharge certain functions on its behalf as Council as Trustee.

4.4 Public Sector Equality Duty (see separate guidance note) None. The statutory functions discharged by the Council as Trustee are subject to a separate and distinct statutory regime underpinned (principally) by the Charities Act 2011, Trustee Act 2000 and relevant Charity Commission guidance. These are non-executive functions and are therefore not subject to the Equalities Act 2010 provisions.

5. Relevant background/chronology of key events:

- 5.1 The "BMC" Trust was established in 2011 by consolidating small and dormant trust which had an endowment of £0.353m. The Trust has general charitable objectives for the benefit of the citizens of Birmingham.
- 5.2 The latest position of the trusts permanent endowment for the first half year which has been received from CCLA (the Trust's appointed fund manager) is that the funds have decreased in value from £0.362m to £0.343m a fall in £0.019m. The Trust's unrestricted balance is £0.012m. Any interest earned from the trusts investments is transferred to the Trusts unrestricted balances.
- 5.3 The trust has a grants process whereby the Grants Panel (make up of Members of the Committee) approves grants in principal which are then formally ratified by Committee. The disbursement of grants has been fairly sporadic and ad hoc. To increase the levels of charitable activity there needs to be a greater awareness that funds are available.

The Trust's constitution is set out within the executed Trust Deed dated the 9th June 2012 (See Appendix 1). At paragraph 2.3 the Trustees are permitted to use both the income and capital from the Charity's finances to promote the objects and purposes of the charity. Paragraph 3.10 specifically provides the power to "to make grants and loans of money and give guarantees." Awarding grants in this manner would therefore be within the charity's constitution.

5.4 In order to increase the level of charitable grants the Trust awards, it is proposed that officers supporting the Charity:

1. Procure a dedicated resource from within existing finances for the Trust to deal with the administration of the Trust, principally around grants administration, this may be possible by reviewing the basis that other charities currently deal with administration, and establish the feasibility of expanding the service to include one or more other charities;
2. To obtain advice on the ability to enhance the unrestricted balance, (and therefore the principle source of grants awards) from either fund raising, or inter account transfers from the established permanent endowment, in accordance with statutory power to spend permanent endowment within sections 281 to 291 of the Charities Act 2011.

5.5 The existing Mechanics of Funding are set out at Appendix 2. Subject to the above, the following amendments are set out for the Committee's approval:

- To increase the maximum award per successful application from £500.00 to £10,000.00, subject to the available unrestricted balances in any one financial year;
- Revise the way funds are transferred into the "BMC" from other charities so that Committee will have greater flexibility in determining how funds are appropriated into which of its funds (unrestricted or restricted) on a case by case basis, so that a larger proportion, as determined by Committee, can be used for grants awards from its unrestricted balances.

There are potentially 3 custodian Trusts that may consolidate with "BMC" which based upon their current balances could see £0.026m transferred to the unrestricted fund and £0.156m transferred to the permanent endowment. If the above recommendation is approved, Committee may decide that a greater proportion of funds need to be transferred to "BMC" unrestricted funds, to increase the award of grants or vice versa.

- Annually transfer £0.050m from trust's endowment fund to the unrestricted funds to meet charitable objectives. In addition, with trust investments currently under-performing the funds endowment would be spent possibly within a short period of time.
- In the event of the annual allocation not being disbursed the amount shall be netted off against the following year's allocation to be transferred from the trusts permanent endowment.
- Charitable donations of below £0.005m to be appropriated to unrestricted funds to meet charitable objectives.

6.	Evaluation of alternative option(s):
6.1	<p>To continue with the existing arrangements could result in both regulatory and reputational harm to the Council as Trustee, if the Trust does not undertake sufficient charitable activity or provide public benefit in accordance with its Constitution. Against this, is the legal duty of prudence which can be summarised as follows:</p> <p>“You must act responsibly, reasonably and honestly. This is sometimes called the duty of prudence. Prudence is about exercising sound judgement. You and your co-trustees must:</p> <ul style="list-style-type: none"> •make sure the charity’s assets are only used to support or carry out its purposes •avoid exposing the charity’s assets, beneficiaries or reputation to undue risk •not over-commit the charity •take special care when investing or borrowing •comply with any restrictions on spending funds or selling land <p>You and your co-trustees should put appropriate procedures and safeguards in place and take reasonable steps to ensure that these are followed. Otherwise you risk making the charity vulnerable to fraud or theft, or other kinds of abuse, and being in breach of your duty.”</p>
7.	Reasons for Decision(s):
7.1	For Committee to approve the amendments to the Trusts Mechanics of Funding.

Signatures	<u>Date</u>
Director of Finance	
Chairman	

List of Background Documents used to compile this Report:
None

List of Appendices accompanying this Report (if any):
Appendix 1 – Trust Deed – BMC Appendix 2 - Existing Mechanics of Funding

Appendix 2

Management of the Birmingham Municipal Charity

Setting Up

1. With the pending consolidation of dormant and small trusts (registered and unregistered) into the **Birmingham Municipal Charity (BMC)**. It is proposed that the new trust fund objective is a general charitable nature.
2. The trusts endowment is likely to be in the region of £240k and could generate annual income in the region of £5k (interest rate used 2.25%). It is proposed that **only** the annual accumulated interest will be made available to award grants. It will be safe to assume that the initial amount of annual funding available will be insufficient to meet demand.
3. If resolution 2.3 is adopted the trust will be called the Birmingham Municipal Charity.
4. It is proposed that when the new fund is established all funds be consolidated and transferred into the permanent endowment element of the fund.
5. In the event of available funds not being disbursed in the year, the balance shall be carried forward and added to the next year's allocation.
6. Capital donations (dormant, wound up funds) will be added directly to the permanent endowment element of the fund as and when received.
7. Any fund raising or donations to be allocated directly to the permanent endowment element of the fund. Unless specifically raised to meet revenue funding.
8. As agreed by Trust and Charities Committee on 22 February 2012, apply all charitable donations below £2,000 to BMC's unrestricted fund to be used to meet the Trusts objectives.
9. Committee Approval to be sought for funds to be transferred between the Trusts permanent endowment and unrestricted funds.

Funding Application.

1. Grant awards for specific projects or from individuals will be considered.
2. In the first instance, applications to be submitted to the trusts secretary.
3. City Council officers will be available to support Trustees in vetting applications before a grants panel agrees a list to go forward to Trust and Charities Committee for approval.

Criteria of funding:

1. Grants to be awarded to recipients or beneficiaries who reside within the boundary of the City Council.
2. Grants awarded to be defrayed in the financial year or within 6 months of approval, unless agreed otherwise.
3. Evidence of tangible "public benefit" to be demonstrated in the application Form.
4. Spend is for the benefit of the citizens of Birmingham.
5. Documentary evidence of spend should be provided.
6. A narrative report to be submitted once the grant provided has been defrayed, confirming the use of funds and public benefit.
7. Funding letter to be forwarded to successful applicants
8. Applicants to sign funding agreement and Condition of Grant Aid prior to funds being released.

Management Costs

Staffing costs to run the Trust are to be met in part (proportion to be decided) from the funds unrestricted element.

Review

1. Report to Trusts and Charities Committee on first year of the fund is to be submitted by 30 September 2012.
2. 18 months after the inception of the fund a review should be undertaken to establish if the Trust is operating effectively and report to the Trusts and Charities Committee by 31 March 2013.

TRUST DEED FOR THE
“THE BIRMINGHAM MUNICIPAL CHARITY”
A CHARITABLE TRUST

THIS TRUST DEED made by Birmingham City Council

The Trustee:

(1) **Birmingham City Council**

WITNESSES AS FOLLOWS:

1. INTRODUCTION

- 1.1 The Trustee holds the consolidated capital sum of £ 241,348.85 (as at January 2011) on the trusts declared in this Deed.
- 1.2 Further money or property may be paid or transferred to the Trustee for the Charity.
- 1.3 The sum referred to at paragraph 1.1, represents the total value of Trust fund balances in respect of various small and dormant Charitable Trusts where Birmingham City Council is sole corporate Trustee. Further details of each of the aforementioned Charitable Trusts, is set out at **Appendix “BMC1”**.
- 1.4 Birmingham City Council approved the process for consolidating dormant and small trusts on the 15 September 2010. On the 3 November 2010, the Trustee recommended consolidation of various Trust fund balances to a new Trust, namely, “The Birmingham Municipal Charity”.

2. NAME & OBJECTS AND PURPOSES

- 2.1 The name of the Charity is "The Birmingham Municipal Charity" (or any other name chosen by resolution of the Trustee).
- 2.2 The Objects and purposes of the Charity are to fund general charitable activity, for the benefit, and on behalf of, the citizens of Birmingham.
- 2.3 The Trustee must use the income and may use the capital of the Charity in promoting the Objects and Purposes of the Charity.

3. POWERS

The Trustee has the following powers, which *may* be exercised only in promoting the Objects and Purposes:

- 3.1 To promote or carry out research.
- 3.2 To provide advice.
- 3.3 To publish or distribute information.
- 3.4 To co-operate with other bodies.
- 3.5 To support, administer or set up other charities.
- 3.6 To raise funds (but not by means of **taxable trading**).
- 3.7 To borrow money and give security for loans (but only in accordance with the restrictions imposed by the **Charities Act**).
- 3.8 To acquire or hire property of any kind.
- 3.9 To let or dispose of property of any kind (but only in accordance with the restrictions imposed by the Charities Act).
- 3.10 To make grants or loans of money and to give guarantees.
- 3.11 To set aside funds for special purposes or as reserves against future

expenditure.

3.12 To deposit or invest funds in any manner (but to invest only after obtaining such advice from a **financial expert** as the Trustee considers necessary and having regard to the suitability of investments and the need for diversification).

3.13 To delegate the management of investments to a financial expert, but only on terms that:

- (1) the investment policy is recorded **in writing** for the financial expert by the Trustee;
- (2) every transaction is reported promptly to the Trustee;
- (3) the performance of the investments is reviewed regularly with the Trustee;
- (4) the Trustee is entitled to cancel the delegation arrangement at any time;
- (5) the investment policy and the delegation arrangement are reviewed at least once a year;
- (6) all payments due to the financial expert are on a scale or at a level which is agreed in advance and are reported promptly to the Trustee on receipt;
- (7) the financial expert must not do anything outside the powers of the Trustee.

3.14 To insure any such property of the Charity against any foreseeable risk and take out other insurance policies to protect the Charity when required.

3.15 To employ paid or unpaid agents, staff or advisers.

3.16 To enter into contracts to provide services to or on behalf of other bodies.

3.17 To establish or acquire subsidiary companies to assist or act as agents for the Charity.

3.18 To pay the costs of forming the Charity.

3.19 To do anything else within the law which promotes or helps to promote the Objects and Purposes of this Charity.

3.20 Power to delegate the performance of any act, including the exercise of any power or discretion, to a Committee. The Trustee must exercise reasonable supervision over the Committee and the Committee must promptly report their acts and proceedings to the Trustee. The Committee must not incur expenditure on behalf of the charity except in accordance with a budget previously agreed by the Trustee.

4. PROCEEDINGS OF TRUSTEE

4.1 The Trustee must meet at least every 6 months of each year.

5. DECISION-MAKING

The Trustee has the following procedural powers in relation to decision-making:

5.1 To make regulations consistent with this Deed to govern the administration of the Charity including the use and application of the income, any such property and funds, the operation of bank accounts and the commitment of funds.

6. BENEFITS TO TRUSTEE

6.1 The property and funds of the Charity must only be used for promoting Objects and Purposes of the Charity and do not belong to the Trustee. [The following

provisions of this clause take effect subject to the proviso to clause 2.3.]

7. PROPERTY AND FUNDS

7.1 Funds which are not required for immediate use (including those which will be required for use at a future date) must be placed on deposit or invested in accordance with clause 3.12 until needed.

7.2 Investments and other property of the Charity may be held:

- (1) in the names of the Trustee;
- (2) in the name of a trust corporation as a **holding trustee** for the Charity which must be appointed (and may be removed) by deed executed by the Trustee;

8. RECORDS & ACCOUNTS

8.1 The Trustee must comply with the requirements of the Charities Act as to the keeping of financial records, the audit or independent examination of the accounts and the preparation and transmission to the Commission of:

- (1) annual returns;
- (2) annual reports; and
- (3) annual statements of account.

8.2 The Trustee must maintain proper records of:

- (1) all proceedings at meetings of the Trustee;
- (2) all reports of committees; and
- (3) all professional advice obtained.

9. AMENDMENTS

This Deed may be amended by supplemental deed on a resolution passed by the Trustee but:

- 9.1 No amendment is valid if it would make a **fundamental change** to the Objects and Purposes or to this clause or destroy the charitable status of the Charity.
- 9.2 Clause 2.2 and 11 may not be amended without the prior written consent of the Commission.

10. AMALGAMATION

- 10.1 The Trustee may at any time on a resolution passed by the Trustee transfer the assets and liabilities of the Charity to another charity.
- 10.2 The transferee Charity must be established for exclusively charitable purposes within, the same as or similar to the Objects and Purposes set out herein.
- 10.3 On a transfer under clause 10.1 the Trustee must ensure that all necessary steps are taken as to:
 - (1) the transfer of land and other property;
 - (2) the novation of contracts of employment and the transfer of any pension rights; and
 - (3) the trusteeship of any property held for special purposes.

11. DISSOLUTION

- 11.1 The Trustee may at any time decide by resolution passed by the Trustee that the Charity is to be dissolved. The Trustee will then be responsible

for the orderly winding up of the Charity's affairs.

11.2 After making provision for all outstanding liabilities of the Charity, the Trustee must apply the remaining property and funds in one or more of the following ways:

- (1) by transfer to one or more other bodies established for exclusively charitable purposes within, the same as or similar to the Objects;
- (2) directly for the Objects or charitable purposes within or similar to the Objects; or
- (3) in such other manner consistent with charitable status as the Commission approves in writing in advance.

11.3 A final report and statement of account relating to the Charity must be sent to the Commission.

12. INTERPRETATION

In this Deed:

12.1 The following expressions have the following meanings:

'the Charities Act' means the Charities Acts 1993 and 2006;

'the Charity' means the charitable trust created and governed by this Deed;

'charity trustee' has the meaning prescribed by section 97(1) of the Charities Act;

'the Commission' means the Charity Commission for England and Wales or any body which replaces it;

'financial expert' means an individual, company or firm who is authorised to give investment advice under the Financial Services and Markets Act 2000;]

'financial year' means the Charity's financial year;

'the Trustee' means the party to this Deed;

'firm' includes a limited liability partnership;

'fundamental change' means such a change as would not have been within the reasonable contemplation of a person making a donation to the Charity;

'holding trustee' means an individual or corporate body responsible for holding the title to property but not authorised to make any decisions relating to its use, investment or disposal;

[means insurance against personal liability incurred by any Trustee for an act or omission which is or is alleged to be a breach of trust or breach of duty, unless the Trustee concerned knew that, or was reckless whether, the act or omission was a breach of trust or breach of duty].

'independent examiner' has the meaning prescribed by the Charities Act;

'month' means calendar month;

'the Objects' means the charitable objects set out in clause 2;

'taxable trading' means carrying on a trade or business for the principal purpose of raising funds, and not for the purpose of actually carrying out the Objects, the profits of which are liable to income tax;

'trust corporation' has the meaning prescribed by section 205(1)(xxviii) of the Law of Property Act 1925 but does not include the Public Trustee;

'Trustee' means a trustee of the Charity.

'written' or 'in writing' refers to a legible document on paper or a document sent by electronic means which is capable of being printed out on paper;

'year' means calendar year;

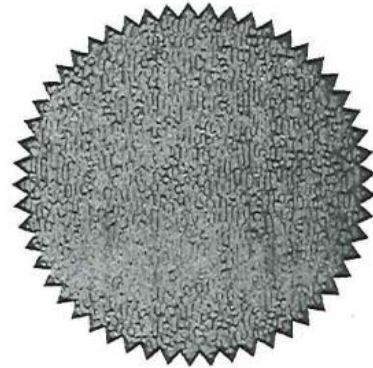
Proposed Dormant and Small Trusts to be transferred to**Birmingham Municipal Charity**

	(A) Scheme	(B) Directorate	(C) Balance 30.9.10 £
	Trusts for Consolidation		
n/a	John & Mable Brewin	A&C	36,214.57
n/a	Francis Leonard Clarke Bequest	A&C	4,581.88
n/a	Estate of Margaret May Jones	A&C	12.22
n/a	Mackenzie Legacy	A&C	0.00
n/a	Summerhill Homes	A&C	9,366.00
n/a	Maypole Grove Day Centre	A&C	2,614.53
5288861	Airey, Dr	CYP&F	650.71
n/a	Barton, Alice	CYP&F	647.73
528947	Beston, M G	CYP&F	80.07
504174	Boote, M.	CYP&F	153.72
528926	Booth, H	CYP&F	834.51
528932	Boughton, G.B. (Alderman)	CYP&F	1,897.20
528943	Boxfoldia (Winifred Jones)	CYP&F	56.57
528942	Brampton History	CYP&F	6,491.77
529068	Brian Memorial	CYP&F	630.95
n/a	Burke, Harold	CYP&F	47.13
700935	Bordesley Centre	CYP&F	2,259.14
529064	College of Art (Oxley)	CYP&F	3,881.91
n/a	Chopping, R.	CYP&F	11,984.25
529068/3	Clarke, Robert	CYP&F	482.85
n/a	Consolidated Trust Fund	CYP&F	7,937.39
n/a	Cris L. Finney Bequest	CYP&F	0.00
n/a	Fallows, T.S.	CYP&F	72.34
n/a	Former Staff Association	CYP&F	2,029.36
528948	Haines, Tom	CYP&F	611.81
528924	Hallas, Eldred	CYP&F	786.66
n/a	Hastillo, C.	CYP&F	403.87
529068	Henry, Graham	CYP&F	317.19
n/a	Husband, G.	CYP&F	136.95
528862	Innes, Sir Peter	CYP&F	41.38
528980	Kings Heath & Moseley Institute	CYP&F	23,332.99
528931	McCarthy	CYP&F	236.53
528868	Marriott, N.S.	CYP&F	34.92
528951	Martin, Patricia	CYP&F	91.59
504174	Mills, A.H.	CYP&F	219.68
528921	Pupil Teacher Centre	CYP&F	3,680.54
n/a	Queen Elizabeth Silver Jubilee	CYP&F	229.16
528949	Russell, E.L.	CYP&F	127.24
n/a	Reeves, Francis	CYP&F	622.54
n/a	Samuel, H. Travel & Salesman	CYP&F	115.45
n/a	Skilts Endowment	CYP&F	1,609.35
528934	Tagore Essay	CYP&F	219.62
n/a	Terry, A.	CYP&F	1,051.23
528946	Tyler, Winifred	CYP&F	212.93
700662	Waverley Trust	CYP&F	2,460.87
528944	Wheeldon, W. Edwin	CYP&F	213.15
528927	Yardleys School War Memorial	CYP&F	77.86
n/a	Lionel Aldridge Bequest	Corporate	13,513.99
n/a	Horton and Staite Memorial Fund	Corporate	72,945.23
n/a	JHH Ferrer Bequest	Corporate	10,163.24
n/a	Kate and Walter Bick	Corporate	226.42
218615	Jackson Middlemore	Corporate	1,070.02
217299	John Foster Vince Memorial Fund	Corporate	6,518.44
n/a	Alderman Grey Memorial	Corporate	280.30
n/a	Sutton Street Maternity & Child Welfare	Corporate	2,683.83
246002	Swiffen Bequest	Corporate	874.07
213818	Old Public Hall	Housing & Con.	3,313.00
	Trusts for Consolidation		241,348.85

12.2 References to an Act of Parliament are references to the Act as amended or re-enacted from time to time and to any subordinate legislation made under it.

IN WITNESS of the above the Trustee has executed this Deed

SIGNED AS A DEED BY



[Name of Trustee]

[Corporate Seal]

Birmingham City Council

in the presence of:



[Name, address and occupation of witness]

[Signature of Witness]

The Lord Mayor of Birmingham

Councillor Anita Ward

Council House,

Victoria Square

Birmingham

B1 1BB

9th day of June 2011

Report to:	Trust and Charities Committee	<i>Exempt information paragraph number – if private report:</i>
Report of:	Director of Finance	
Date of Decision:	12 November 2015	
SUBJECT:	HIGHBURY TRUST APPOINTMENT OF AUDITOR TO UNDERTAKE INDEPENDENT EXAMINATION OF THE TRUST ACCOUNTS	
Key Decision: Yes / No	Relevant Forward Plan Ref: No	
If not in the Forward Plan: (please "X" box)	Chief Executive approved <input type="checkbox"/> O&S Chairman approved <input type="checkbox"/>	
Relevant Cabinet Member(s):	N/A	
Relevant O&S Chairman:	N/A	
Wards affected:	MOSELEY	

1. Purpose of report:

1.1 To inform Committee of the action taken by the Chairman under his authority to act between meetings, in relation to the Director of Finance seeking the authority from Chairman in appointing an auditor to undertake an independent examination of Highbury Trusts 2014/15 accounts.

1.2 The City Council acts as Sole Trustee for a number of charitable and non-charitable trusts and has delegated the management of these Trusts to the Trusts and Charities Committee. Charitable trusts are regulated by the Charity Commission. Each Trust registered with the Charity Commission is required to annually submit an annual Report and Accounts, except where gross annual income is less than £25,000. Below this threshold, external scrutiny is only needed if this is set out in the Charity's governing document.

The accounts of such Trusts are required to have been independently examined if gross income is between £25,000 and £500,000, and if the income exceeds £500,000 a full audit is required. An audit will also be required if total assets (before liabilities) exceed £3.26m, and the charity's gross income is more than £250,000. This is the case in respect of Highbury's accounts.

2. Decision(s) recommended:

2.1 That the action taken by the Chairman of the Committee be noted.

Contact Officer:	Mark Szurminski
Telephone No:	0121 675 0482
E-mail address:	Mark_szurminski@birmingham.gov.uk

Signatures	Date
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Director of Finance

Chairman

List of Appendices accompanying this Report (if any):

1. Chairs Action

BIRMINGHAM CITY COUNCIL- COUNCIL TRUSTEE

TRUSTS AND CHARITIES COMMITTEE

CHAIRMAN'S ACTION

Highbury Trust

APPOINTMENT OF AUDITOR TO UNDERTAKE INDEPENDENT EXAMINATION OF THE TRUST ACCOUNTS

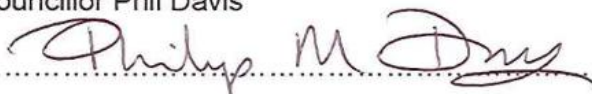
Wards affected:	All Wards
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1.1 The Director of Corporate Finance seeks the approval of the Chairman of the Trusts and Charities Committee, for officers to seek appointment of auditors to undertake independent examinations of Highbury Trusts 2014/15 up to a value not exceeding £750, (excluding VAT).

Contact Officer:	Mark Szurminski
Telephone No:	Corporate Finance 0121 675 0482
E-mail address:	mark.szurminski@birmingham.gov.uk

Signatures of the relevant Chairman and officers in agreeing to the matters highlighted in paragraph 1.1 above:-

Chairman of the Trusts and Charities Committee:
Councillor Phil Davis



Chief Officer(s):

Dated October 5th 2015

Report to:	TRUSTS AND CHARITIES COMMITTEE	Exempt information paragraph number – if private report:
Report of: Date of Decision:	Director of Property 12 th November 2015	
SUBJECT:	WILLIAM WALTER HINDE FOR OPEN SPACE (REG. CHARITY NO.522893) – LAND ADJOINING 18 ROSE HILL, LICKEY HILLS	
Key Decision: No	Relevant Forward Plan Ref:	
If not in the Forward Plan: (please "X" box)	Chief Executive approved <input type="checkbox"/> O&S Chairman approved <input type="checkbox"/>	
Relevant Cabinet Member(s) or Relevant Executive Member:	N/A	
Relevant O&S Chairman:	N/A	
Wards affected:	Outside of City Boundary	

1. Purpose of report:

- 1.1 To update the Committee on the settlement of the action to defend land at Lickey Hills held in trust from adverse possession.

2. Decision(s) recommended:

That Committee

- 2.1 notes the Court action has been resolved and a settlement agreed.

Lead Contact Officer(s):

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0121 303 3028

E-mail address:

nigel.g.oliver@birmingham.gov.uk

3. Consultation

Consultation should include those that have an interest in the decisions recommended

3.1 Internal

The Chairman of the Trusts & Charities Committee was consulted on the proposed action required to seek to defend this land. Officers in Legal & Democratic Services have led the action. Full consultation has also been undertaken with the Parks Service who manage the land on behalf of the Trust and Housing officers who support the actions proposed.

3.2 External

This is action taken in defence of the loss of land and consultation is not required. However the Lickey Hills Consultative Committee has been informed.

4. Compliance Issues:
<p>4.1 <u>Are the recommended decisions consistent with the Council's policies, plans and strategies?</u> The objects/purposes of the Council's charitable trusts, all have a commonality, namely for the benefit of the public and principally are to be held as public open space for the citizens of Birmingham. The actions proposed are consistent with the Council's Policies, Plans and Strategies which are focused on "fair, democratic and prosperous Birmingham" and are intended to preserve the trust estate for the future. The need to defend this land from a claim of adverse possession is unusual for trust land but not in terms of the Council portfolio generally and the same actions have been undertaken in line with procedures applied to all land.</p> <p>4.2 <u>Financial Implications</u> (Will decisions be carried out within existing finance and resources?) Actions to defend land are required to be resourced appropriately. Initial costs have been met by the Parks Service as there is no other revenue resource for the trust land.</p> <p>4.3 <u>Legal Implications</u> Management and governance arrangements for Charitable Trusts are set out in the constitution under which they were established. Charity Trustees must also comply with Charities Act 2011, Trustee Act 2000, other relevant legislation and guidance issued by the Charity Commission. The assets of a charity must be used in accordance with charitable law, failing which this will give rise to a breach of trust. Trustees have a duty to preserve the assets of the trust.</p> <p>Decisions made by the charity must be expedient in the interests of the charity at all times. The approval of the proposed actions is the most appropriate route to safeguard the trust as owner on behalf of the beneficiaries. The Court Order overrides the need to obtain additional powers or authorisation.</p> <p>The settlement now agreed has resulted in the loss of a very small piece of land to adverse possession, the sale of some land at market value but preserved the majority of the land claimed.</p> <p>4.4 <u>Public Sector Equality Duty (see separate guidance note)</u> None. The statutory functions discharged by the Council as Trustee are subject to a separate and distinct statutory regime underpinned (principally) by the Charities Act 2011, Trustee Act 2000 and relevant Charity Commission guidance. These are non-executive functions and are therefore not subject to the Equalities Act 2010 provisions.</p>

5. Relevant background/chronology of key events:

- 5.1 The land now comprising the trust known as William Walter Hinde for Open Space (registered charity no. 522893) measuring 4.49 hectares was purchased on 5th July 1944 for value for open space. It was not then held in trust. The house and gardens of 18 Rose Hill were sold in 1972.
- 5.2 When land at Cofton Park held in trust was desired to be used by Birmingham City Council for its statutory functions it was agreed and sanctioned by the Charity Commission that a swap of the trust land could be effected in that in lieu of the 2.19 hectares of land then used as Parks Depot and glasshouses and to be taken out of trust the 4.49 hectares of land at the Lickeys would be placed in trust and registered as William Walter Hinde for Open Space. The declaration of trust was effected on 10th May 1996. The land is managed on behalf of the trust by Parks as part of the general Lickey Hill Country Park but this is a very well wooded area not regularly accessible to the public but held as public open space.
- 5.3 In January 2012 the City Council was informed that the owners of 18 Rose Hill sought to register additional land in their name claiming to have possessed it for in excess of 12 years. Since that time the Trust officers have undertaken action to defend the land from loss. There is no technical defence to a claim of adverse possession matters are based on facts and the law. Following advice from officers in Legal Services a Counsel's Opinion was obtained and action to preserve the land commenced. Court Action was suspended by agreement in the expectation that both parties might reach a settlement. A settlement was agreed and the Court Order (Tomlin Order) made.
- 5.4 **Aims and Objectives of the Charity**
Each park is held as a separate trust and decisions need to be in the best interests of that trust. The Trustees are referred to the guidance contained in the Charity Commission's general guidance on public benefit when reviewing the aim and objectives of the charity and in planning any future activities (S17 Charities Act 2011). The objects and purposes of the Charity are to fund general charitable activity, for the benefit, and on behalf of, the citizens of Birmingham. For a purpose to be charitable it must be one which falls within the definition of S3(1) Charities Act and is for "public benefit" as set out within S4 Charities Act 2011. The land in the William Walter Hinde for Open Space Trust is held as public open space.
- 5.5 **Trustee Powers**
The charity's constitution is set out within the executed Trust Deed for each park principally the acquisition deeds unless subsequently amended by a scheme agreed with the Charity Commission. All decisions will be mindful of the original intention set out in the documents. Subject to compliance with Charity law and Part 7 Charities Act 2011 sufficient powers exist for the Trustees to make decisions on the future of these assets including disposal in the Trustee of Land and Appointment of Trustees Act 1996. All disposals proposed here will comply fully with all such requirements.
- 5.6 **Charity Finances**
Accounts are prepared for the Charity Commission returns where appropriate but there is no income or capital asset except for the land in the trust. Capital receipts from this transaction will after costs have been settled be ring-fenced to the William Walter Hinde for Open Space trust.

6. Evaluation of alternative option(s):			
6.1	There is no alternative action identified. The action was commenced and defended. The trusts do not have sufficient funds to deal with the properties properly and must rely on the mechanism of managing them through the Place Directorate (Housing). The land has been successfully defended as best as possible in the circumstances.		
7. Reasons for Decision(s):			
7.1	To safeguard the Trust's asset and demonstrate that action to defend the loss of land will always be undertaken.		
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; padding: 5px; vertical-align: top;"> Signatures Chairman of the Trusts & Charities Committee <div style="text-align: right;">.....</div> Chief Officer Director of Legal & Democratic Services <div style="text-align: right;">.....</div> </td> <td style="width: 50%; padding: 5px; vertical-align: top;"> Date </td> </tr> </table>		Signatures Chairman of the Trusts & Charities Committee <div style="text-align: right;">.....</div> Chief Officer Director of Legal & Democratic Services <div style="text-align: right;">.....</div>	Date
Signatures Chairman of the Trusts & Charities Committee <div style="text-align: right;">.....</div> Chief Officer Director of Legal & Democratic Services <div style="text-align: right;">.....</div>	Date		
List of Background Documents used to compile this Report: None			
List of Appendices accompanying this Report (if any): None			

TRUSTS AND CHARITIES COMMITTEE
12 NOVEMBER 2015
SCHEDULE OF OUTSTANDING MINUTES

<u>Date/ Minute No</u>	<u>Subject Matter/Response</u>	<u>Comment</u>
19/09/12 – 395	<u>Sole and Custodian Trustee Trusts and Charities</u> – officers to report on a sixth monthly basis on the activities undertaken by Sole and Custodian Trusts and Charities.	<p>Committee determined to retain this Minute on the 22 July 2015</p> <p>Committee in light of the fact that officers would continue to Report to Committee on a six monthly basis on the activities undertaken by the Sole and Custodian Trusts & Charities.</p> <p>In addition Officers are to work towards drafting the next Annual Report to Full Council as Trustee, as determined by Committee on the 22 July 2015</p>
21/01/15 - 651	<u>Matters Arising</u> Cofton Park breach of trust– sale of flat at White House. Investigations are required to determine if any breach has occurred and action that may be required to remedy it.	<p>Officers are to investigate this issue and provide a written Report at a future meeting of Committee, once these enquiries are complete. Minute will be retained pending a report on the matters identified.</p>

