



Reigate & Banstead
BOROUGH COUNCIL
Banstead | Horley | Redhill | Reigate

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TO	Commercial Ventures Executive Sub-Committee
DATE	20 th October
EXECUTIVE MEMBER	Portfolio Holder for Investment and Companies

KEY DECISION REQUIRED	N
WARDS AFFECTED	(All Wards);

SUBJECT	Extension of the Terms of Reference of the Commercial Ventures Executive Sub-Committee to Cover Charitable Trusts
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Recommendation to Full Council

- (1) That, in accordance with Article 15 of the Constitution, Full Council approves the extension of the terms of reference of the Commercial Ventures Executive Sub-Committee, subject to paragraph (2) below, by incorporating the terms of reference as shown in Appendix 1 to this report.
- (2) That the Monitoring Officer be authorised to take all necessary action to finalise the terms of reference to be included in the Council's Constitution and to make such other consequential amendments to the Constitution as the Monitoring Officer deems appropriate.
- (3) The Commercial Ventures Executive Sub-Committee be renamed as the Partner, Shareholder and Trustee Sub-Committee

Reasons For Recommendations

To extend the terms of reference of the Commercial Ventures Executive Sub-Committee so as to allow it to review the activities of the Council's Charities, including monitoring their performance, which will enable the Council to administer more effectively its responsibilities as the sole trustee of Charities

Executive Summary

The Council is sole trustee for seventeen charitable trusts:

1. Churchfields Bowling Green and Public Rest Ground
2. Colesmere Road Recreation Ground
3. Earlswood Public Recreation Ground
4. Furzefield Crescent Open Space
5. Hartswood Estate Open Space
6. Manors of Reigate and Horley Public Open Spaces
7. Memorial Sports Ground
8. Merstham Public Park
9. Merstham Recreation Ground
10. Old Town Hall
11. Open Space and Ornamental Garden
12. Open Space at Reigate Hill
13. Queens Park
14. Reigate Hill Drinking Fountain
15. Reigate Park and Park Hill
16. Reigate Public Baths Trust
17. The Gatton Fund

To promote good governance and to demonstrate there is a clear separation between the Council's role as the Municipal Authority and the Council's role as trustee, officers recommend that the terms of reference of the Commercial Ventures Executive Sub Committee be extended so that it fulfils the role of trustee in the above-named charitable trusts where the Council is the sole trustee ("Charities").

The Commercial Ventures Executive Sub-Committee has the authority to approve the above recommendation.

Statutory Powers

Section 1 of the Localism Act 2011 gives local authorities a general power of competence that enables them to do anything that a private individual is entitled to do, as long as it is not expressly prohibited by other legislation.

Background

- (1) The Charity Commission is the regulator for charities in England and Wales and each of the Council's charities are registered with the Commission. These charities are:
 - Churchfields Bowling Green and Public Rest Ground

- Colesmere Road Recreation Ground
- Earlswood Public Recreation Ground
- Furzefield Crescent Open Space
- Hartswood Estate Open Space
- Manors of Reigate and Horley Public Open Spaces
- Memorial Sports Ground
- Merstham Public Park
- Merstham Recreation Ground
- Old Town Hall
- Open Space and Ornamental Garden
- Open Space at Reigate Hill
- Queens Park
- Reigate Hill Drinking Fountain
- Reigate Park and Park Hill
- Reigate Public Baths Trust
- The Gatton Fund

(2) Trustees have six main duties, these are:

- To ensure a charity is carrying out its purpose for the public benefit;
- To comply with the charity's governing document and the law;
- To act in the charity's best interests;
- To manage the charity's resources responsibly;
- To act with reasonable skill and care; and
- To ensure the charity is accountable

(3) The Council must establish a more effective way of managing its charities and in particular, to do so in a way that is clearly distinct from usual Council business. In its capacity as sole trustee of a charity, when taking decisions on behalf of the charity, the Council has a duty to act in the charity's best interests and to avoid any conflict between its duty to the charity and the interests it has in its capacity as the Council.

(4) Inevitably, conflicts of interest may occur when the Council is a sole trustee. In these circumstances, the Commission expects the Council to have a system in place for identifying and managing conflicts of interest that arise because of its role as sole trustee of the charity and as the Council.

(5) By extending the terms of reference of the Commercial Ventures Executive Sub-Committee, these conflicts will be effectively and transparently managed. This Committee would make decisions as sole trustee for each of the Council's charities by considering reports from officers.

Options

1. **Option 1: To make the recommendation to Full Council as set out above. This is the recommended option for the reasons set out in this report.**
2. **Option 2: To do nothing. This is not recommended.**

Legal Implications

(1) Section 1 of the Localism Act 2011 provides local authorities with the power to do anything an individual may do, subject to a number of limitations. This is referred to as the 'general power of competence'. A local authority may exercise the general power of competence for its own purpose, for commercial purpose and/or for the benefit of others. In exercising this power a local authority is still subject to its general duties (such as fiduciary duties it owes to its rate and local tax payers) and to the public law requirements to exercise the general power of competence for proper purpose.

(2) The Charity Commission has a set of objectives, two of which are most relevant to this report. The first is to promote compliance by charity trustees with their legal obligations in exercising control and management of the administration of their charities. The second is to promote the effective use of charitable resources.

(3) One of the Commission's general functions is to identify and investigate apparent misconduct or mismanagement in the administration of charities and to take remedial or protective action in connection with misconduct or mismanagement in charities.

(4) The Commercial Ventures Executive Sub-Committee will undertake a review of the charitable objects of each charity and update where necessary. The validation and modification of a charity's objects is governed by the Charitable Trusts (Validation) Act 1954.

(5) Meetings of the Commercial Ventures Executive Sub-Committee will be held in public and will operate within the relevant Rules in the Council's Constitution. Decision-making would take place at public meetings and recorded in publicly available minutes, with decisions made by voting, where required.

(6) Except as provided by Article 4.2, which is not relevant in the present case, changes to the Constitution must be approved by the full Council, subject to the Monitoring Officer being in agreement with the proposed changes.

Financial Implications

There are no financial implications. The extension of the terms of reference of this committee of the Executive will be managed within the Council's existing budget.

Equalities Implications

Public authorities are required to have due regard to the aims of the Public Sector Equality Duty (Equality Act 2010) when making decisions and setting policies. The decisions recommended are not considered to have an impact under the Equality Act.

Communication Implications

There are no direct communication implications as a result of this report.

Risk Management Considerations

There are no direct risk management implications arising from the report

Environmental Sustainability Considerations

There are no direct environmental sustainability implications arising from this report.

Where decisions are made which affect the charities, the environmental implications of these decisions will be considered as part of the independent decision making process in each case.

Policy Framework

The recommendations of this report are consistent with the Council's Policy Framework.

Appendix 1

DRAFT AMENDMENTS TO THE TERMS OF REFERENCE OF THE COMMERCIAL VENTURES EXECUTIVE SUB-COMMITTEE

Purpose

Under the heading "Purpose", add:-

To exercise the function of the Council as a trustee of the Charities as stipulated by relevant legislation including Charities Act 2011 and associated statutory guidance and any guidance issued by relevant regulators.

Remit

Under the heading "Remit", add:-

To undertake all functions of the Council as a trustee of the Charities under the Charities Act 2011 which may include without limitation:

- To ensure compliance with and further each of the Charities' charitable objects, trust deeds and associated public benefit; including an annual review
- To ensure the completion and submission of Charity Annual Account returns and the Charity Annual Trustee Report to the Charity Commission
- To arrange a Trustee meeting to agree the accounts and Trustee's Annual Report within two months of the financial year ending
- To comply with best practice (Statement of Recommended Practice, SORP) to produce annual accounts and a report that includes an explanation of what the charity has done for the public benefit during the year
- To make strategic decisions including approving annual business plans, management agreements and leases
- To annually review the purposes of the Charities and make any required applications to amend the Charities' governing documents to support effective management of the Charities

- To approve and adopt a conflict of interest policy
- To approve disposals (leases, licences) in accordance with S117 of the 2011 Charities Act 2011 including:
 - o To consult the public on the disposal of charity property where required to do so
 - o Issue public notices regarding proposed disposal of charity property where required to do so.
- To approve the formation of management companies where considered to be a suitable mechanism for managing a charity. This could include the charity becoming a member of a management company where suitable to do so.