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TO	Partner, Shareholder, Trustee Executive Sub Committee
DATE	26 th January 2023
EXECUTIVE MEMBER	Portfolio Holder for Investment and Companies

KEY DECISION REQUIRED	N
WARDS AFFECTED	(All Wards);

SUBJECT	Trustee Annual Reports and Accounts 2021/22
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Recommendations
<p>(i) To approve the Council's Trustee Annual Reports (TARS) and Annual Accounts for 2021/22;</p> <p>(ii) To authorise Council's Finance Team to submit the TARs and Annual Accounts to the Charity Commission by 31st January 2023.</p> <p>(iii) To adopt the extension of the terms of reference of the Commercial Ventures Executive Sub-Committee, renamed as the Partner, Shareholder and Trustee Sub-Committee, as approved by Council on 1 December 2022.</p>

Reasons For Recommendations

Charities registered in England or Wales must send an annual return to the Charity Commission or report their income and spending every year.

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

The Partner Shareholder Trustee Executive Sub-Committee has the authority to approve the above recommendations.

Statutory Powers

1. 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

2. The Charity Commission is the regulator for charities in England and Wales and each of the Council's charities are registered with the Commission.
3. These charities are:

1. Churchfields Bowling Green and Public Rest Ground
2. Colesmere Road Recreation Ground
3. Earlswood Public Recreation Ground
4. Furzefield Crescent Open Space
5. Hartwood 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

4. Trustees have six main duties, these are:

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

5. 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.

6. 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.

7. The Trustee Annual Report (TAR) helps people understand what its charities do, particularly potential funders and beneficiaries. Along with the Accounts, the report tells people:

- about the charity's work
- where the charity's money comes from; and
- how the charity has spent its money in the past year

8. As a trustee the Council must take steps to make sure that its charities money is safe, properly used and accounted for. The Council is responsible for overseeing its charities money.

Options

The Committee has two options:

- (i) **Option 1: To approve the recommendations.** This is the recommended option for the reasons set out in this report.
- (ii) **Option 2: To do nothing.** This is not recommended because it will prevent submission to the Charity Commission by the 31st January deadline.

Legal Implications

9. Section 1 of the Localism Act 2011 provides local authorities with the power to do anything an individual may do, subject to several 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 taxpayers) and to the public law requirements to exercise the general power of competence for proper purpose.
10. 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.
11. 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.
- The Partner Shareholder Trustee 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.

Financial Implications

12. At 31 March 2022 the 17 charitable trusts held cash balances of £1,623k and assets valued at £703k.
13. Income receipts totalled £346,978 and expenditure totalled £346,978. They related to:
- £2,187 - Interest on balances
 - £97,895 - Rent receivable
 - £246,895 - Grounds maintenance services received 'in kind'
14. Expenditure related to
- £20,165 - Rent payable
 - £381 - Asset maintenance costs
 - £85,588 Contribution paid to the Council (comprising the rent received for the Old Town Hall to the council plus interest)
 - £240,844 Grounds maintenance charges
15. These sums are consistent with the amounts received and paid in previous years.
16. Trustee Annual Reports (TARs) and Annual Accounts are required for charitable trusts that generate more than £25,000 Income.

17. The Accounts and TAR require an Independent Examination and submission to the Charity Commission within nine months of the charities' financial year end.

18. TARs and Annual Accounts for the year to 31 March 2022 have been prepared by the Finance team for the following charitable trusts:

(i) 204907 Old Town Hall

(ii) 305104 Manors of Reigate & Horley Public Open Spaces

(iii) 305107 Queens Park

(iv) 305109 Reigate Park and Park Hill

Copies are attached at Annex 1.

19. The Council's Legal & Governance Team has prepared the TARs and the Finance Team has prepared the Annual Accounts. They have also been subject to Independent Examination by an accountant in the Finance team.

20. They are now presented for review and approval by this Committee (on behalf of the Council, the trustee) and then submitted to the Charity Commission via its online portal by 31 January 2023.

21. The remaining 13 charities do not require preparation of a TAR or Annual Accounts, but the balances held do have to be reported to the Charity Commission by the 31 January 2023 deadline.

22. A summary of the balances held is attached at **Annex 2.**

Equalities Implications

23. 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

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

Risk Management Considerations

25. There are no direct risk management implications arising from the report

Environmental Sustainability Considerations

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

27. 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

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

Annexes

1. Trustee Annual Reports and Accounts
2. Charitable Trust Balances