

**South Lakeland District Council**  
**Council**  
**Wednesday, 18 May 2022**  
**Corporate Trusteeship Board**

---

**Portfolio:** Finance and Assets Portfolio Holder  
**Report from:** Director of Strategy, Innovation and Resources, Monitoring Officer  
**Report Author:** David Sykes, – Director of Strategy, Innovation and Resources,  
Danielle Walls, Legal, Governance and Democracy Specialist (Solicitor)  
**Wards:** (All Wards);  
**Forward Plan:** Not applicable

**Links to Council Plan Priorities:**

The establishment of a Corporate Trusteeship Board provides the necessary governance in the Council's management of property matters related to lands it holds on trust.

Such lands comprise some of the parks managed by the Council. Parks provide community and health benefits which contribute to the wellbeing of the areas communities.

---

**1.0 Expected Outcome and Measures of Success**

1.1 The establishment of a Corporate Trusteeship Board provides the necessary governance in the Council's management of property matters related to lands it holds on trust. It will also assist in preparing for Local Government Reorganisation on a 'safe and legal' basis.

**2.0 Recommendation**

**2.1 It is recommended that Council:-**

- (1) Agree the establishment of a Corporate Trustee Board as described in paragraphs 3.6 and 3.7 of the report;**
- (2) Agree that Cabinet appoint seven Councillors to the Board; and**
- (3) Authorise the Legal, Governance and Democracy Lead Specialist to make the necessary amendments to the Council's constitution**
- (4) Note that as part of the preparation for Local Government Reorganisation a comprehensive list of properties held in trust will be prepared.**

**3.0 Background and Proposals**

3.1 The Council holds a number of properties in trust. Whilst the specific terms and deed of trust will vary from property to property, the common factor is that such lands share a history of a benefactor transferring the land to SLDC's predecessor councils through a deed of trust. Such deeds prescribe how the public benefits will be protected. It is the role of the Council to act as trustee, working in the interest of the trust to protect the public benefits the benefactor sought through the original establishment of the trust.

- 3.2 Examples of land which the Council holds on trust include Rothay Park, Ambleside; Longlands, Bowness (the responsibilities for which are in process of being transferred to Windermere Town Council) and Queens Park, Windermere. A review of the Council's property titles is proceeding to identify all such properties. This is beneficial in providing clarity on tenure of the Council's estate for the Local Government reorganisation process.
- 3.3 In all cases, the Council acts as a corporate trustee and as such the Council carries the risks of the liabilities associated with the property and public use. There are no requirements for Council members or officers to be named and act as personal trustees.
- 3.4 The Council's practice to date has been for the Cabinet to consider and determine any matters related to change in the holding of the trust land. Reports would indicate that the land was held in trust. However, this approach does not clearly differentiate when the decision maker has to act in the interests of the Council and the interests of the trust. For example, when considering a disposal of land or part of land held in trust, the decision maker must do so acting solely in the interests of the trust and not the wider interests of the Council.
- 3.5 The general nature of the trusts are that they are small and without significant revenue streams to fund their maintenance. Accordingly, the Council applies General Fund resources to the management and repair of the properties, including, for example, play infrastructure. It continues to be the case that the Council will exercise executive decision making on matters to do with provision and management of facilities on the trust land and their maintenance.
- 3.6 The proposal is to establish a Corporate Trusteeship Board to determine matters related to the management of the lands held in trust which have a bearing on the purpose the benefactor established the trust. Examples of the type of decision would be: To consider the disposal of the land or any part of the land; to consider extending or reducing the areas of the trust land used for particular purpose (e.g. play areas); or the transfer of trusteeship to another body.
- 3.7 It is the case that the need for such decisions are infrequent. For the expediency of establishing and conducting a Board, it is proposed that Cabinet be given authority to appoint Councillors to the Board and that in practice, these appointments be made from within the current membership of the Cabinet. This would enable agenda meetings of the Board to be held on the rising of the Cabinet. The Board would adopt rules of procedure similar to the Cabinet unless the trust deed specifies otherwise.
- 3.8 If Council approve the proposal, it is further recommended that authority to introduce necessary amendments to the Council's constitution is given to the Legal Governance and Democracy Lead Specialist.

#### **4.0 Appendices Attached to this Report**

<b>Appendix No.</b>	<b>Name of Appendix</b>
None	

#### **5.0 Consultation**

- 5.1 This is a required procedural matter for the consideration of the Council. No consultation has been required

## **6.0 Alternative Options**

- 6.1 There is an option not to establish a Corporate Trusteeship Board and continue any decision making through the existing practice at Cabinet. However, this approach does not clearly differentiate the respective roles of Cabinet and Corporate Trustee, can risk decision making on inappropriate grounds and may lead to risk of challenge of decisions. It would also not realise a benefit of clarity for the LGR process. This option is not recommended.

## **7.0 Implications**

### **Financial, Resources and Procurement**

- 7.1 There are no financial implications of establishing a Corporate Trusteeship Board.

### **Human Resources**

- 7.2 There are no human resources implications of establishing a Corporate Trusteeship Board.

### **Legal**

- 7.3 Many local authorities act as sole trustees of local charities - especially charities for recreational or educational purposes. Local Authorities are empowered by section 139 of the Local Government Act 1972 to receive and hold gifts on charitable trusts.

In order to be a charity, a body must be established for exclusively charitable purposes. It cannot be established to further the purposes of some non-charitable body such as the local authority itself. Local authorities and charities often both have close interests in local topics. The charity needs to be independent of the local authority in the sense that decisions about the administration and operation of the charity need to be taken solely in the interests of the charity, with a view to furthering its charitable purposes, and for no other purpose.

Where the Council holds land on trust for a charitable trust, land is held by the Council as a sole corporate trustee. In this role the Council needs to create a structure covering how decisions relating to its position as charitable trust will be made. This must be separate from the Council's own interests/business and be solely in the best interests of the charitable trust. How this independence is established and maintained is something to consider. The proposed establishment of a Corporate Trusteeship Board would provide a mechanism for independent decisions to be made on behalf of the Council, outside of Council business and would ensure that decisions are made in the interests of the charity/trust .

Members of the Corporate Trusteeship Board will not be charity trustees themselves; they would be acting as the agents of the charity trustee (namely South Lakeland District Council) and therefore would not face any potential personal liability. Some decisions are to be delegated to Corporate Trusteeship Board in line with Terms of Reference/Scope of Delegation (to be agreed) and some decisions could be retained by the Council itself as trustee. But at all times, the Council would continue to be the sole charity trustee, acting as a corporate trustee.

### **Health and Sustainability Impact Assessment**

- 7.4 Have you completed a Health and Sustainability Impact Assessment? No
- 7.5 If you have not completed an Impact Assessment, please explain your reasons: This is a procedural and governance matter and does not have an impact on the public benefits derived from the provision and management of lands held in trust.

### **Equality and Diversity**

- 7.6 Have you completed an Equality Impact Analysis? No

- 7.7 If you have not completed an Impact Analysis, please explain your reasons: This is a procedural and governance matter and does not have an impact on the public benefits derived from the provision and management of lands held in trust. Further, the proceedings of the proposed Board would be conducted in accordance with the Council's constitution.

Risk Management	Consequence	Controls required
Decisions on land held in trust by the Council may not be considered solely acting in the interest of the trust.	Decisions which may be open to challenge. Decisions not robust in respect of legislation and regulations governing trust.	Clarity of decision making via a Corporate Trusteeship Board.

### Contact Officers

Danielle Walls, Solicitor - Senior Specialist (Legal, Governance and Democratic Services).  
[Danielle.walls@southlakeland.gov.uk](mailto:Danielle.walls@southlakeland.gov.uk)

### Background Documents Available

Name of Background document	Where it is available
None	

### Tracking Information

Signed off by	Date sent	Date Signed off
Section 151 Officer	26/04/2022	05/05/2022
Monitoring Officer	26/04/2022	06/05/2022
CMT	N/A	N/A

Circulated to	Date sent
Lead Specialist	N/A
Human Resources Lead Specialist	N/A
Communications Team	N/A
Leader	N/A
Committee Chairman	N/A
Portfolio Holder	26/04/2022
Ward Councillor(s)	N/A
Committee	N/A
Executive (Cabinet)	N/A
Council	18 <sup>th</sup> May 2022