

ABERDEEN CITY COUNCIL

COMMITTEE	Council
DATE	9 December 2019
EXEMPT	No
CONFIDENTIAL	No
REPORT TITLE	Governance Review of Trusts - Update
REPORT NUMBER	GOV/19/446
CHIEF OFFICER	Fraser Bell Chief Officer – Governance
REPORT AUTHOR	Kundai Sinclair
TERMS OF REFERENCE	Intro. 6

1. PURPOSE OF REPORT

- 1.1 The purpose of this report is to provide elected members with an update on the ongoing work to review, wind up and/or amalgamate uneconomic or obsolete Trusts.

2. RECOMMENDATIONS

That Council: -

- 2.1 acting in their capacity as trustees of the Educational Trusts listed in Appendix A:-
- (i) approve the proposed actions in relation to each Trust as detailed in Appendix A; and
 - (ii) instruct the Chief Education Officer, following consultation with the Chief Officer – Governance, to take any necessary steps to implement these proposals.
- 2.2 acting in their capacity as trustees of the Children’s Social Work Trusts listed in Appendix B:-
- (i) approve the proposed actions in relation to each Trust as detailed in Appendix B; and

- (ii) instruct the Chief Officer – Integrated Children’s and Family Services, following consultation with the Chief Officer – Governance, to take any necessary steps to implement these proposals.
- 2.3 acting in their capacity as trustees of the Adult Social Work Trusts listed in Appendix C:-
 - (i) approve the proposed actions in relation to each Trust as detailed in Appendix C; and
 - (ii) instruct the Chief Officer – Aberdeen City Health and Social Care Partnership (ACHSCP), following consultation with the Chief Officer – Governance, to take any necessary steps to implement the proposals.
- 2.4 acting in their capacity as trustees of the Arts & Culture Trusts listed in Appendix D:-
 - (i) approve the proposed actions in relation to each Trust as detailed in Appendix D; and
 - (ii) instruct the Chief Officer – City Growth, following consultation with the Chief Officer – Governance, to take any necessary steps to implement these proposals.
- 2.5 acting in their capacity as trustees of the Trusts listed in Appendices A to D, instruct the Chief Officer – Governance, following consultation with the Chief Officer – Finance, to obtain authorisation from relevant regulatory authorities to vary the constitutions of the Trusts with a balance sheet of less than £20,000 to allow trustees to apply reserves.
- 2.6 acting in their capacity as trustees of the City of Aberdeen Council Guildry & Mortification Funds (SC011857), Lands of Skene (SC018533) and Lands of Torry (SC021299), note the progress of the reorganisation of these Trusts.
- 2.7 acting in their capacity as trustees of the Bridge of Don Fund (SC018551),
 - (i) approve the change of name of this charity from the Bridge of Don Fund to the Bridges of Aberdeen Heritage Trust; and
 - (ii) instruct the Chief Officer – Governance to take any necessary steps to implement this proposal.
- 2.8 acting in their capacity as trustees of the Robert Skene Mathew Bequest, Molly Craig Fund and Stewart Reid Memorial Fund,
 - (i) instruct the Chief Officer – Governance, following consultation with the Chief Officer – Finance, to wind up the Trusts and transfer the funds to the Lord Provost’s Charitable Trust (SC028829).

2.9 nominate an elected member for appointment as a trustee to Robb's Trust.

3. BACKGROUND

3.1 There are several Trusts that the Council is affiliated with that have administration costs which are greater than the assets held. The main aim of the governance review of trusts is to streamline Trusts that are deemed to be uneconomic or whose trust purposes may be considered to be out-dated. At the Council meeting of 10 September 2018, Council instructed Officers to develop proposals for the future of such Trusts. These proposals were to be bought back to this Council meeting for consideration.

3.2 While previous efforts have focussed on whether Trusts should be wound up and/or amalgamated; the prime objective of this report is to highlight proposed actions that have the potential to ensure the effective utilisation of trust funds. These proposed actions are detailed in Appendices A – D. They illustrate that this objective can be achieved by raising public awareness and encouraging members of the public and charities to make applications for funding. The proposed actions are as follows:-

3.2.1 Educational Trusts

- (i) The Chief Education Officer shall be the Council lead in relation to all Educational Trusts.
- (ii) There are 37 Educational Trusts with a balance sheet value of £6,412,483 (as at 31 March 2019), which have been identified as having trust purposes that support the advancement of education within the City of Aberdeen.
- (iii) Council is being asked to approve the proposed actions in relation to each Trust as detailed in Appendix A.

3.2.2 Children's Social Work Trusts

- (i) The Chief Officer – Integrated Children's and Family Services shall be the Council lead in relation to all Children's Social Work Trusts.
- (ii) There are 11 Children's Social Work Trusts with a balance sheet value of £56,742 (as at 31 March 2019), which have been established to support the delivery of social work services.
- (iii) Council is being asked to approve the proposed actions in relation to each Trust as detailed in Appendix B.

3.2.3 Adult Social Work Trusts

- (i) The Chief Officer – Aberdeen City Health and Social Care Partnership shall be the Council lead in relation to all Adult Social Work Trusts.

- (ii) There are 20 Adult Social Work Trusts with a balance sheet value of £319,153 (as at 31 March 2019) that relate to specific adult social work functions or specific residential homes.
- (iii) Council is being asked to approve the proposed actions in relation to each Trust as detailed in Appendix C.

3.2.4 Arts & Culture Trusts

- (i) The Chief Officer – City Growth shall be the Council lead in relation to all Arts & Culture Trusts.
- (ii) There are 25 Arts & Culture Trusts with a balance sheet value of £7,101,019 (as at 31 March 2019), which have been listed in Appendix D.
- (iii) Council is being asked to approve the proposed actions in relation to each Trust as detailed in Appendix D.

3.2.5 Robert Skene Mathew Bequest, Molly Craig Fund and Stewart Reid Memorial Fund

- (i) The Robert Skene Mathew Bequest, Molly Craig Fund and Stewart Reid Memorial Fund form part of a group of Trusts that the Council has sole control over. The spirit of these Trusts has always been to distribute funds to trusts operating within the City of Aberdeen as the trustees may, from time to time determine.
- (ii) Every Trust has to be managed within existing charity/trust legislation to maximise funds available for expenditure on charitable/trust purposes. At present, the funds from these Trusts are not being maximised for expenditure on trust purposes. Streamlining the administration of Trusts by winding up and transferring the remaining assets of these Trusts will ensure that their administration is carried out in a cost-effective manner.
- (iii) Council is being asked to instruct the Chief Officer – Governance, following consultation with the Chief Officer – Finance, to wind up the Trusts and transfer the remaining assets to the Lord Provost's Charitable Trust (SC028829). The Lord Provost's Charitable Trust was founded in 1999, by then Lord Provost Dr Margaret Farquhar CBE, with the aim providing financial assistance to small city groups and charities with the City of Aberdeen. The Lord Provost's Charitable Trust is deemed to have similar Trust purposes to the Robert Skene Mathew Bequest, Molly Craig Fund and Stewart Reid Memorial Fund. Transferring the funds from these smaller Trusts into the Lord Provost's Charitable Trust will allow trustees to maximise funds available for expenditure on charitable/trust purposes.

3.3 POWER TO USE RESERVES

- 3.3.1 Currently, Trust reserves are held in the Council's Consolidated Loans Fund (CLF). The Council maintains a CLF under the powers contained in the Local Government (Scotland) Act 1975. All loans raised by the Council are paid into the Fund and all advances to finance capital expenditure are made from the Fund except projects financed directly from Revenue Accounts.
- 3.3.2 In essence the Loans Fund acts as a bank to the Council's Services. That is it finances the daily cash flow of Services (and either pays or charges interest) as well as deciding the amount of borrowing to undertake to finance capital expenditure.
- 3.3.3 The Loans Fund offers a Temporary Investment service to Trusts, Festivals and other Arms Length External Organisations, which enables them to obtain a risk free return on their excess funds. These excess funds are transferred into the Council's Loans Fund as a Temporary Loan, and a fixed rate of interest, calculated daily, is paid to the organisations for the use of these funds every six months. It should be noted that this facility is offered as a service to these organisations to assist them in obtaining a fair return on their monies, rather than as a means of borrowing for the Council.
- 3.3.4 Due to low levels of investment income, expenditure on trust purposes for Trusts with a balance sheet value of less than £20,000 are currently at a level which may be considered immaterial to beneficiaries. It would be desirable to add a provision in the constitutional documents of each of these Trusts to permit use of reserves as revenue expenditure. This will allow trustees to use their discretion to disburse grants of higher value to beneficiaries and ultimately wind up the Trust. Officers are seeking approval from Council to contact relevant regulatory authorities to obtain authorisation to allow trustees to spend the reserves of the Trusts.
- 3.3.5 Deciding the level of reserves that a Trust needs to hold is an important part of financial management and forward financial planning. Failure to do this may result in reserves levels which are either:
- (i) higher than necessary and may tie up money unnecessarily. Holding excessive reserves can unnecessarily limit the amount spent on trust activities and the potential benefits a trust can provide;
 - (ii) too low, increasing the risk to the trust's ability to carry on its activities in future in the event of financial difficulties, and increasing the risks of unplanned and unmanaged closure and insolvency.
- 3.3.6 There is no single level, or even a range of, reserves that is right for all trusts. Any target set by trustees for the level of reserves to be held should reflect the circumstances of the individual trust. To do this, trustees need to know why the charity should hold reserves and, having identified those needs, the trustees should consider how much should be held to meet them.

3.4 GENERAL PROGRESS REPORT

3.4.1 *The City of Aberdeen Council Guildry & Mortification Funds (SC011857)*

- (i) Officers are currently working with the Office of the Scottish Charity Regulator (OSCR) and the Burgesses of Guild of the City and Royal Burgh of Aberdeen to update the trust purposes for the City of Aberdeen Council Guildry & Mortification Funds.
- (ii) Currently, the Trust has two purposes:
 - 1) relief of financial hardship among the Burgesses of Guild of Aberdeen and their families; and
 - 2) assistance of persons resident in Aberdeen to pursue educational or vocational training courses.
- (iii) Consideration is being given to making the funds available as a targeted support fund for education for those within Scottish Index of Multiple Deprivation (SIMD) bands 1 to 3. The aim being to ensure that a wider pool of people can benefit from the trust purposes. The finalised documents will be brought to Council for approval.

3.4.2 *Lands of Skene (SC018533) and Lands of Torry (SC021299)*

Constitutional documents for these Trusts will be brought to Council for approval in due course.

3.4.3 *Bridge of Don Fund (SC018551) – Change of Charity’s Name*

- (i) On 23rd August 2017, Council agreed to amalgamate the Bridge of Dee Fund into the Bridge of Don Fund. Both charities were historic trusts whose funds were used originally to build and maintain the bridges of the River Dee and Don (including the Brig O Balgownie). At this meeting it was agreed that the charity purpose be changed from the maintenance of bridges to the advancement of heritage within the City of Aberdeen. This change reflects the historic nature of the bridges and takes into account their status as listed monuments within the City.
- (ii) At the Council meeting of 10 September 2018, it was agreed that officers would bring a report to this Council meeting with a proposed new name for the Bridge of Don Fund charity. It is proposed that the charity’s name be changed to "Bridges of Aberdeen Heritage Trust" to reflect the purpose of the remaining trust.

3.5 APPOINTMENTS TO TRUSTS WITH UNFILLED POSITIONS

In 2017, the Council made a number of appointments to outside bodies on a proportionate basis between the Administration and Opposition Groups. There is currently one vacant position on the following Trust:

- 3.5.1 **Robb's Trust** – Following the elections in May 2017, a place on the board of trustees of Robb's Trust was allocated to the Opposition Groups. To date, both Opposition Groups have declined to nominate one of their members as a trustee of Robb's Trust. A legal representative from Stronachs LLP has contacted the Council on behalf of Robb's Trust seeking an update on the situation. The Trust Deed stipulates that the board of trustees for Robb's Trust should be comprised of 2 Elected Members who have been appointed by Aberdeen City Council. The Council is being asked to fill the one outstanding vacancy on this Trust.

4. FINANCIAL IMPLICATIONS

- 4.1 Officers within Finance and Governance will be progressing with the applications for reorganisation with OSCR, the Lord Advocate or the Scottish Courts, as required, to its conclusion. The cost of that time may be re-charged to the trusts. The charges will be in line with the normal charge out rate applied to public bodies.
- 4.2 The effective and efficient management of all these trusts will maximise the funds available for expenditure on purposes.

5. LEGAL IMPLICATIONS

- 5.1 Every charity has to be managed within existing charity/trust legislation. This report provides an overview of the current and planned position of creating an appropriate governance environment that will maximise funds available for charitable purposes.
- 5.2 Approval of the above recommendations is not considered to pose any risk to the Council and will ensure that the Council meets its statutory obligations under various trust/charity legislation.

6. MANAGEMENT OF RISK

Category	Risk	Low (L) Medium (M) High (H)	Mitigation
Financial	The administration of the Trusts is no longer cost effective, in some cases most of the trust funds are being used	L	Council Officers provide support to trustees to help them ensure that they are obtaining appropriate advice when making any decisions

	to administer the Trusts rather than to fulfil the trust purposes. Failure to approve the proposals in this report will result in failure to maximise the funds available for trust purposes.		relating to the financial position of the trust.
Legal	Trustees need to be aware that if they act in breach of their legal duties they can be held responsible for consequences that flow from such a breach and for any loss the trust incurs as a result. When the regulators look into cases of potential breach or other misconduct or mismanagement, they may take account of evidence that trustees have exposed the trust, its assets or its beneficiaries to harm or undue risk by not following good practice.	L	Council Officers provide support to trustees to help them ensure that they continue to act within the powers set out in the trust's constitution.
Employee	None	N/A	N/A
Customer	None	N/A	N/A
Environment	None	N/A	N/A
Technology	None	N/A	N/A
Reputational	None	N/A	N/A

7. OUTCOMES

Local Outcome Improvement Plan Themes
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	Impact of Report
Prosperous Economy	<p>The Trusts are Public Trusts created for the benefit of the people of the city of Aberdeen. Combined, these Trusts have various trust purposes ranging from the advancement of education, heritage, arts, culture, health, recreational activities and facilities, religion, and the prevention or relief of poverty.</p> <p>Approval of the recommendations will help ensure that the available funds are used as efficiently and effectively as possible to help contribute to the delivery of the outcomes set out in the Local Outcome Improvement Plan.</p>
Prosperous People	As above.
Prosperous Place	As above.

Design Principles of Target Operating Model	
	Impact of Report
Customer Service Design	The project aims to increasing the public's awareness of the Trusts and will potentially have the effect of increasing the pool of people who can benefit from the trust funds.
Partnerships and Alliances	<p>These Trusts do not operate in a vacuum rather they are there to provide support to the public, private and third sectors.</p> <p>Key stakeholders are consulted as part of the trust review.</p>

8. IMPACT ASSESSMENTS

Assessment	Outcome
Equality & Human Rights Impact Assessment	Full EHRIA not required. Any impact at all will be positive as a wider pool of people would be able to benefit for the Trust purposes.

Data Protection Impact Assessment	Not required.
Duty of Due Regard / Fairer Scotland Duty	Any impact at all will be positive as a wider pool of people would be able to benefit for the Trust purposes.

9. BACKGROUND PAPERS

[Governance Review - Trusts Update - GOV/18/124 \(reported to Council on 10 September 2018\).](#)

[Governance Review - Trusts Update - CG/17/082 \(reported to Council on 23 August 2017\).](#)

10. APPENDICES (if applicable)

Appendix A – Educational Trusts
Appendix B – Children’s Social Work Trusts
Appendix C – Adult Social Work Trusts
Appendix D – Arts & Culture Trusts

11. REPORT AUTHOR CONTACT DETAILS

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