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Dear Councillor

FULL COUNCIL - TUESDAY, 17TH DECEMBER, 2019

I now enclose, for consideration the following reports that were unavailable when the agenda was published.

Agenda No Item

- 11. Housing Management Review - Delegation Arrangements (Pages 2 - 18)

- 13. Gilstrap Charity and Charity of William Edward Knight - Trusteeship (Pages 19 - 29)

- 19. i) Councillors Commission- 9 December 2019 (Pages 30 - 33)

Please note that Agenda Item No. 12 – Active4Today Governance Arrangements is to be withdrawn from the Agenda.

COUNCIL MEETING – 17 DECEMBER 2019

HOUSING MANAGEMENT REVIEW – CONSTITUTION CHANGES – DELEGATION ARRANGMENTS

1.0 Purpose of Report

- 1.1 To consider amendments to 'Part 2 – Responsibility for Functions' of the Council's Constitution.

2.0 Background Information

- 2.1 Following the decision made by the Council to bring the housing management services back in-house for direct service provision by the Authority and wind up its housing management company (Newark and Sherwood Homes Ltd), a review has been undertaken of the Council's Constitution.

- 2.2 Part 2 of the Council's Constitution sets out the responsibilities for all Council functions, detailing those to be discharged through committees and those delegated to officers. Currently, there are references within this part of the Constitution to managing and overseeing the Council's relationship with, and the performance of, Newark and Sherwood Homes Ltd. These references have been updated to reflect the position to transfer the housing management services back into the Council. Certain housing related functions are currently delegated to the Company, and these will come back to the Council post the transfer. The remits of the Policy and Finance, and Homes and Communities Committees have been amended to ensure that they reflect the housing related decisions to be taken by these two committees once the service has been brought back in-house. There are also some minor amendments proposed to the scheme of officer delegation within Part 2 to facilitate operational decision-making.

- 2.3 The proposed changes to committee remits and officer delegation are set out in **Appendix A** to this report, with the proposed changes highlighted for ease of reference. For clarity, only those sections of Part 2, which are proposed to be changed have been included within the Appendix, the rest remains unchanged. It is proposed that the changes be implemented with effect from the date of the transfer-in of the housing management service, which is anticipated to take place on 1 February 2020.

- 2.4 The proposed changes were considered by the Councillor's Commission at its meeting on 9 December 2019 when it was agreed to recommend to full Council that the amendments as detailed in **Appendix A** be approved.

- 2.5 It should be noted that further work is currently being undertaken to consider how best to actively engage and involve tenants and tenant representatives in the delivery of the housing management service and decision making post the transfer. A report setting out the various options for this will be submitted to the Homes and Communities Committee for consideration in the new year.

3.0 RECOMMENDATION

That the Council approve the amendments to the Council's Constitution, 'Part 2 – Responsibility for Functions' to take effect from the date of the transfer-in of the housing management service.

Background Papers

Nil.

For further information please contact Karen White on extension 5240.

Karen White
Director – Governance and Organisational Development

PART 2

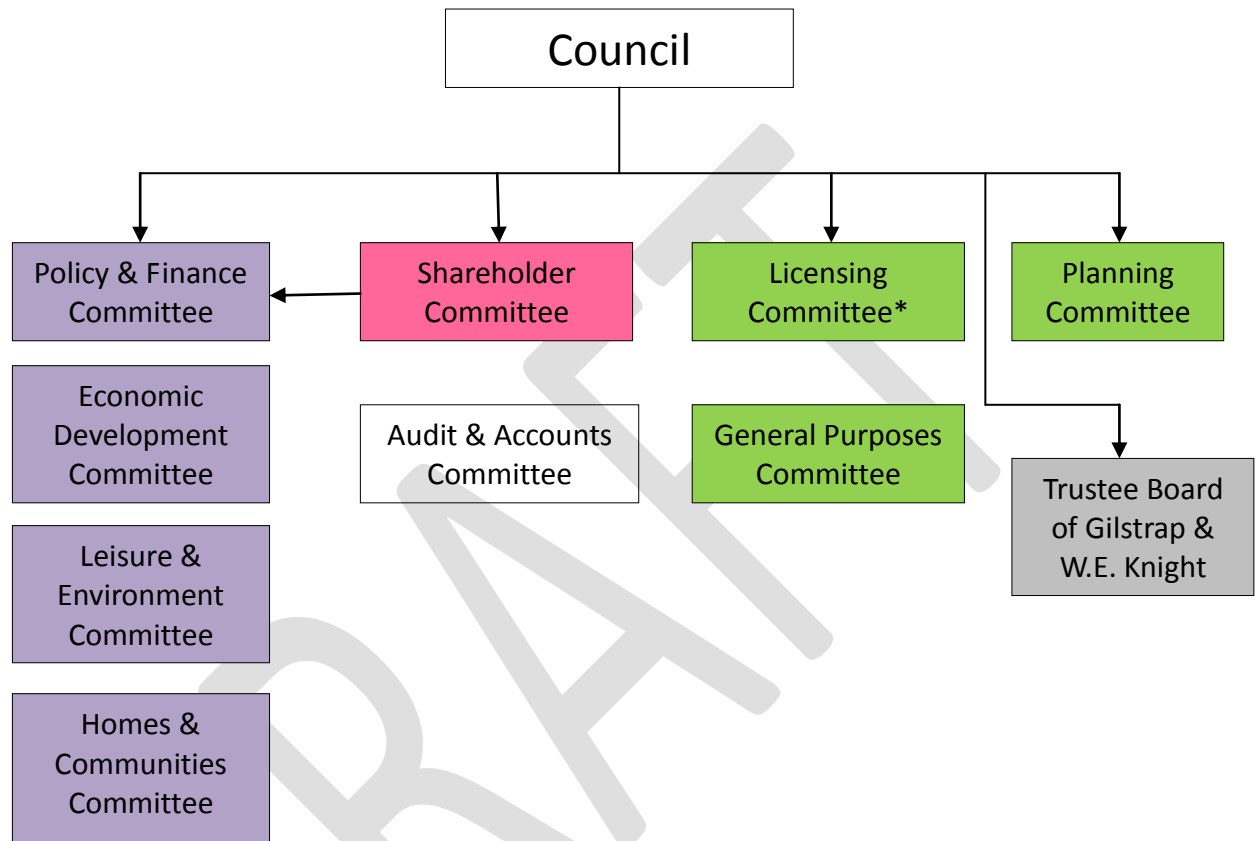
RESPONSIBILITY FOR FUNCTIONS

DRAFT

Introduction

This diagram shows the current approved Council Structure

Committee Structure



*Statutory Committee established under the Licensing Act 2003

RESPONSIBILITY FOR COUNCIL FUNCTIONS

Some functions can only be carried out by the Council. Other functions can be carried out by the Council or may be discharged through Committees. In addition the Council may delegate decision making to Officers except where a function is expressly reserved to the Council for decision.

This part of the Constitution contains the remits of the Council, Committees, Sub-Committees and Panels and also contains the Scheme of Delegation to Officers.

Appointments to Committees are made at the Annual Council Meeting or, when a vacancy occurs, at the next available meeting of the Council.

The Leader of the Council is a Member, ex-officio of the Economic Development Committee, the Leisure and Environment Committee and the Homes and Communities Committee and may attend to speak but will not carry voting rights unless expressly appointed to that Committee.

COUNCIL

1. All non delegable functions as defined by the Local Authorities (Committee System)(England) Regulations 2012 including: -
 - Making of a Members Allowance Scheme and amending the same.
 - Determination of Chairman and Vice Chairman's allowances.
 - Making a request for single member electoral wards to the Local Government Boundary Commission.
 - Resolution to change a scheme for elections.
 - Making an order giving effect to the recommendations made in a Community Governance Review.
 - Conferring voting rights on co-opted members of Overview and Scrutiny Committees (if any).
 - Making or revoking or amending the following policies, plans and strategies :-
 - Crime and Disorder Reduction Strategy.
 - Licensing Authority Policy Statement.
 - Local Development Framework - Development Plan Documents, Plans and alterations which together comprise the Development Plan.
 - Sustainable Community Strategy.
 - Policies made under the Gambling Act (including any resolution relating to casinos).
 - The approval or adoption of a plan or strategy for the control of the local authority's borrowing, investments or capital expenditure or for determining the authority's minimum revenue provision including:-
 - Capital programme.
 - Capital investment strategy.
 - Medium term financial plan.
 - Treasury management strategy.

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- 2 Approval of the Council's corporate plan.
 - 3 Setting the Council's Budget and Council Tax
 - 4 Appointing the Chairman and Vice Chairman of the Council.
 - 5 Appointing the Leader of the Council.
 - 6 Agreeing or amending the committee structure, the remit/terms of reference of committees, their size and membership.
 - 7 Confirming the appointment of the Head of Paid Service and confirming the dismissal of the Head of Paid Service, Monitoring Officer and Chief Financial Officer (Section 151 Officer).
 - 8 Confirming the appointment of the Independent Persons.
 - 9 Making, amending, revoking, re-enacting or adopting bylaws and promoting or opposing the making of local legislation including bylaws or personal bills.
 - 10 Appointment of the Returning Officer and Electoral Registration Officer.
 - 11 Adopting and amending standing orders, Rules of Procedure, Contract Procedure Rules and Financial Regulations.
 - 12 All matters which by law are reserved to the Council including: -
 - Ombudsman reports where there has been a finding of maladministration with injustice and the report has been rejected
 - Statutory officer reports of the Monitoring Officer, Chief Financial Officer and Head of Paid Service and External Auditor's public interest reports.
 - 13 Conferring the title of Honorary Freeman and Honorary Alderman.
 - 14 Approving the Annual Senior Officer Pay Policy Statement.
 - 15 Changing the name of the District.
 - 16 Significant changes to the Council's Constitution (other than variations to the scheme of Delegation which may be approved by committees within their remits and minor and consequential changes to the constitution which are delegated to the Monitoring Officer (see Scheme of Officer Delegation Post).
 - 17 Appointment of representatives to outside bodies.
 - 18 Consideration of reports from committees, sub-committees, or any other body constituted by the Council.
 - 19 To receive the minutes of committees and sub-committees acting under delegated powers for question and comment.
 - 20 Making compulsory purchase orders (other than under planning grounds).
 - 21 Making recommendations to the Secretary of State on district boundaries, ward boundaries, electoral divisions, ward or polling districts.
 - 22 Receiving the annual report of Newark and Sherwood Homes
 - 22 Receiving the annual report of Active4Today Limited
 - 23 To approve the following with respect to the Council's Development Company (Arkwood Developments Ltd):
 - the Company's Articles of Association;
 - the Governance Agreement between the Council and the Company;
 - the funding for the Company as part of the annual budget setting process; and
 - any additional in-year funding exceeding the approved budget.
 - 24 Any other function which must, by law, be reserved to the full Council.

Note

For the avoidance of doubt, the Full Council retains ultimate responsibility for the actions and decisions of all its Committees and also retains the ability to exercise all its powers whether or not they have also been delegated to a Committee or Officer.

However the Council shall not exercise a power that has been delegated without first ensuring that such a step is in the best interests of the Council. The Council's ability to exercise its powers will not override or supersede any decision or action already taken by a Committee or Officer acting under delegated authority.

POLICY & FINANCE COMMITTEE

- Key strategic decisions (other than those which must be determined by the Council) including all decisions which have a major impact on a number of Council services or on the Council as a whole and decisions which are deemed significant in terms of impact on the Council's revenue or capital (to be determined by The Head of Paid Service and/or Section 151 Officer in consultation with the Leader).
- All key strategic policies to be adopted by the Council (except those which are reserved to Council for approval) including:-
 - Annual Budget Strategy
 - Anti-Fraud Strategy.
 - Budget and Council Tax Policy
 - Business Continuity Plan.
 - Cleaner, Safer, Greener Strategy.
 - Commissioning Framework
 - Consultation and Communication Strategy.
 - Corporate Asset Utilisation and Disposal Strategy.
 - Corporate Capital Strategy and Asset Management Plan.
 - Emergency Plan.
 - Equalities and Diversity Policy.
 - Financial Strategy.
 - General Fund Balances and Reserves Policy
 - Health and Wellbeing Strategy.
 - Leisure and Culture Strategy.
 - Risk Management Strategy, Policy and Guidance.
 - Staffing Budget
 - Strategy relating to HRA Business Plan.
- Strategic Housing, including determining the future of, and managing the Council's relationship with its Housing Management company, Newark and Sherwood Homes Ltd.
- Formulating the Council's budget proposals and recommending the same to Council for approval (but excluding any matters relating to the Council's leisure company which shall be formulated by the Leisure & Environment Committee).
- Formulating the Council's capital programme and recommending the same to Council for approval (but excluding any matters relating to the Council's leisure company which shall be formulated by the Leisure & Environment Committee).

- Formulating the Council's housing capital programme and recommending the same to Council for approval.
- Formulating, monitoring and reviewing the Council's Housing Revenue Account **Self Financing** Business Plan and recommending the same to Council for approval.
- Formulating the Council's borrowing and investment strategy and recommending the same to Council for approval.
- Managing and monitoring the Council's Capital Programme.
- To determine how S106 monies should be applied or obligation fulfilled where the relevant agreement allows scope for discretion.
(NOTE: the Scheme of Delegation provides that this may be determined by Officers where the terms of the S106 Agreement are sufficiently precise or where the amount of the proposed expenditure does not exceed £50,000).
- Appointment and dismissal of employees (subject to legislative requirements) (*1).
- Terms and conditions of employment.
- Procedures for dismissal of employees (subject to legislative requirements).
- Agreeing secondments pursuant to Section 113 of the Local Government Act 1972.
- Agreeing voluntary severance terms for the Chief Executive and Chief Officers (*2).
- Hearing appeals relating to the discretionary elements of pension enhancements for the Chief Executive and Chief Officers where the scheme provides for such a right of appeal.
- Approving resources for the appointment of a designated independent person.
- Approving human resources procedures and policies (*3).
- Pensions and superannuation
- To receive and review reports from the Shareholder Committee.
- To review the outcomes of the Council's Development Company (Arkwood Developments Ltd) in the context of the Council's Strategy and to consider and approve requests for funding within the approved budget.

NOTES:

- 1* The appointment of staff below Deputy Chief Officer level is the responsibility of the Head of Paid Service or their nominee. Statutory Officer appointments (Head of Paid Service, Monitoring Officer and Section 151 Officer) are expressly reserved to the Council for approval. Certain appointments are the responsibility of the Chief Officer Appointment Panel. Mandatory standing orders relate to the dismissal of certain categories of employees.
- 2* The function of determining pension and redundancy entitlements is delegated to the Discretionary Payments Panel. Normally an appeal would go to the Head of Paid Service or a Chief Officer. An alternative mechanism for appeals is accordingly required in respect of Chief Officers.
- 3* This function has been delegated to the Head of Paid Service after prior consultation at the Joint Consultative Committee.

Determination of:

- HRA Business Plan (including the Asset Management Strategy and Delivery Plan);
- **The key strategic outcomes for delivery by NSH over the term of the HRA Business Plan;**
- Areas of maximisation of the HRA (ie areas where the HRA could legitimately fund services of

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- benefit to tenants AND the wider community);
 - The level and use of surpluses and reserves within the HRA and NSH – ie use to pay down debt or fund other initiatives/development;
 - ~~The key performance indicators of NSH;~~
 - 'Health Check' of NSH by the Council as the sole shareholder including decisions regarding its future – i.e. retention, dissolution etc.
 - operational decision making in respect of the following: -
 - Acquisition and Disposal of Industrial Units.
 - Administrative Services.
 - Asset Management.
 - Audit Issues (other than matters falling within the remit of the Audit and Accounts Committee).
 - Audit.
 - Castle House
 - Democratic Services.
 - Financial Services
 - Human Resources (staffing and resources).
 - Legal.
 - Major Projects.
 - Member Development.
 - Member Services and Civics.
 - Organisational Development.
 - Performance Management.
 - Policy and Commissioning.
 - Procurement.
 - Revenues and Benefits.
 - Staffing and resourcing issues for the following service areas:
 - Strategic Commissioning including Decommissioning.
 - Strategic Risk Management.
 - Transformation Programmes.
 - Approval of payments or other benefits for maladministration under s92 of the Local Government Act 2000, except where it relates to a matter falling within the remit of the Planning Committee or is dealt with by Officers acting under delegated powers.
 - To approve the write-off of any outstanding debt owed to the Council or Newark and Sherwood Homes, above the delegated limit of £10,000.
 - Making recommendations to the Council on standing orders relating to contracts and financial regulations.
 - All cross cutting matters across the Council and any matter/issue not expressly delegated to another Committee.
 - Receiving reports from the following outside bodies:-
 - Local Government East Midlands
 - LGA
 - LGA – Rural Commission
 - LGA – Urban Commission
 - Nottinghamshire and Derbyshire Joint Leaders Board
 - Nottinghamshire Local Authorities Association

- Rural Community Action Nottinghamshire
- Determining the Council's strategic approach to the Local Strategic Partnership.

Performance Management

- Overall responsibility for managing and monitoring council performance against approved estimates of revenue expenditure and income
- Overall responsibility for monitoring council performance against locally set performance indicators
- ~~Monitoring the overall management and performance of Newark and Sherwood Homes~~
- To undertake annual monitoring of S106 expenditure.

HOMES & COMMUNITIES COMMITTEE

- Policy development, implementation and review in respect of all areas falling within the remit of the committee including making recommendations to Policy & Finance Committee or Council as appropriate in respect of key strategic policies impacting on the role and function of the committee.
- Developing and adopting policies and procedures in accordance with the councils community safety strategy including: -
 - Anti-Social Behaviour Strategy
 - CCTV Strategy
 - Domestic Violence Strategy
- Developing policies, procedures and protocols in relation to the Council's emergency plan and responses to flooding (other than planning issues).
- Developing and adopting policies and procedures in relation to housing including:
 - Affordable Housing
 - Affordable Warmth Strategy
 - Allocation Scheme & Housing Register
 - Anti Social Behaviour Policy (housing)
 - Gypsy and Travellers
 - HECA Statement Strategy
 - Homelessness Strategy
 - Housing Needs Assessment
 - Housing Options and First Contact
 - Local Housing Strategies and Action Plans
 - Local Lettings Policies
 - Neighbourhood sustainability/environmental estate improvements
 - Regeneration and reconfiguration of the existing housing stock
 - Tenancy Agreement
 - Tenancy Strategies
 - Tenant Engagement and Involvement.
- ~~Scrutiny of the operational performance of the Council's wholly owned housing management company~~
- decision making in respect of the following: -
 - CCTV

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- Citizens Advice
 - Communications including use of social media and relationships with the media
 - Community Cohesion
 - Community Resilience
 - Community Safety
 - Customer Services and ICT including developing new customer access channels
 - Data Protection
 - E-Government
 - Electronic Records Management
 - Emergency Planning
 - External Relationships
 - Freedom of Information
 - Health and Safety Scrutiny
 - Homeless accommodation
 - Licensing (administrative and staffing)
 - Management of all land, estates, property and assets held for housing purposes.
 - Public Relations
 - Safeguarding Children and Young Persons
 - Social inclusion (young people, older people, debt and rural issues)
 - Troubled Families
 - Voluntary Sector
- Receiving reports from the following outside bodies:-
 - Bassetlaw, Newark and Sherwood Community Safety Partnership
 - Municipal General Charity
 - Nottinghamshire Police and Crime Panel
 - Sherwood & Newark Citizens' Advice Bureau

Overview & Scrutiny

- To meet at least annually with the appropriate overview and scrutiny committee of Bassetlaw District Council to undertake joint scrutiny of the Bassetlaw/Newark & Sherwood Community Safety Partnership. For this purpose the membership of the Homes & Communities Committee will constitute the designated Crime and Disorder Committee for the purposes of the Police and Justice Act 2006.

Policy Review and Development

- The committee may hold enquiries and investigate the available options for future direction in policy development and may appoint advisors and assessors to assist them in this process. They may go on site visits, conduct public surveys, hold public meetings, commission research and do all other things that the reasonably consider necessary to inform their deliberations.
- The committee may scrutinise and review decisions made or actions taken by the Policy & Finance Committee in so far as they have a direct impact on the role or functions of the Committee.

External Review

- The committee may invite stakeholders to address the committee on issues of local concern

and/or answer questions in so far as it impacts directly or indirectly on the role or functions of the committee:-

- Community Safety and Crime Reduction Partnership
- Environment Agency and other statutory bodies (in relation to flooding and other emergencies)
- Other tiers of local government including county council and parish councils
- Police
- Police and Crime Commissioner
- Voluntary Sector

Performance Management

- Monitoring performance against approved estimates of revenue expenditure and income for services falling within its remit.
- Monitoring service performance against agreed targets

Membership

12 Members. (A link to the current membership of the committee can be found on the Constitution home page.)

7.3.2 POWERS AND FUNCTIONS DELEGATED TO THE CHIEF EXECUTIVE AND CHIEF OFFICERS

NOTE: Normally, the delegated powers shall be exercised by the Chief Executive, Deputy Chief Executive or Chief Officer with responsibility for the relevant power or function. However, in their absence, the delegated power shall be exercisable by the Chief Executive, Deputy Chief Executive or any other Chief Officer, or by a deputy authorised to act on their behalf (clause 7.1.7 refers).

1. To take all necessary action to administer the following functions and powers on behalf of the Council including service of notices and enforcement proceedings and the right to apply for a warrant of entry and including the power to authorise other officers to act on their behalf:-

- the administration of the Council's Corporate Procurement Function
- operation, support and development of information technology, including all systems, hardware, software and telephone systems throughout the Council
- preparation and review of Development Plan Documents and Supplementary Planning Documents
- building regulations and other enactments relating to building control including individual determination of consents and enforcement action (for the avoidance of doubt such functions may be exercised by the East Midlands Building Consultancy on behalf of Newark & Sherwood District Council and the power of the Chief Executive and Chief Officers to authorise other officers to act on their behalf shall include such officers)
- examination of strategic policies (including transportation and other plans affecting the district) and neighbouring local planning authorities Development Plans and advising the Council, and the appropriate committee of their implications
- work with neighbouring local planning authorities, the County Council and relevant public bodies to fulfil the Duty to co-operate and advising the Council, and the appropriate committee of ongoing progress.
- Administration and review of the Community Infrastructure Levy
- naming and numbering of streets
- promotion of conservation of historic buildings and areas and making recommendations as to the designation of Conservation Areas
- administering the Conservation Area Partnership Grants Scheme, the Rural Grants Scheme and grants for archaeological work and other historic buildings grants
- environmental improvement works
- land drainage
- determination of planning applications which fall within the detailed Scheme of Delegation approved from time to time by the Planning Committee and/or Council
- determination of applications for Listed Building and Conservation Area Consent, which fall within the Scheme of Delegation, approved from time to time by the Planning Committee/Council
- determination of applications for Lawful Use Certificates, applications for consent to display advertisements, applications for telecommunications notifications, agricultural notification monument consents, historic gardens consents

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- promotion of nature conservation, including designation of local nature reserves
 - protection of trees and hedgerows, including making of Tree Preservation Orders and orders under the Hedgerow Regulations
 - service of building preservation notices, enforcement, stop and breach of condition notices and prosecution of offenders, including injunctive proceedings
 - entering into Section 106 Agreements
 - making revocation orders where no financial liability will fall on the Council
 - provision and maintenance of street nameplates
 - public footpaths, including extinguishment and diversion orders (after consultation with the appropriate parish council)
 - to determine how S106 monies should be applied or obligations fulfilled where the terms of the agreement are sufficiently precise or where the proposed expenditure does not exceed £50,000.
2. To establish and maintain a corporate database of the Council's land and buildings and to perform any responsibilities placed on the Council under Part X of the Local Government Planning and Land Act 1980.
 3. To determine and issue general guidelines to Officers for the management of land resources and the maintenance of buildings etc.
 4. To prepare and submit to the Economic Development Committee and/or Council for approval, monitor and update an Economic Development Strategy for the district, including marketing, employment and training initiatives, which will retain and expand employment opportunities.
 5. Within the Council's approved budget and economic development strategy:
 - to take all necessary steps to promote the role of the District Council within the local economy and, in particular, to develop links between the Council and the local business community
 - to take all necessary steps to develop and implement Economic Development initiatives within the area
 - to take all necessary steps to promote and publicise local business opportunities, both on a national and international basis, with the objective of encouraging inward investment in the district
 - to develop, maintain and administer a business support service for the benefit of existing local companies, new business ventures and potential inward investors and to provide a focus for all enquiries, including sites and property and financial assistance
 - to develop and maintain a business directory to assist the inter-trading of local businesses
 - to take all necessary steps to develop, co-ordinate and implement the District Council's European Strategy, with the aim of gaining maximum benefit for the local community
 - to prepare plans and programmes for submission to the European Commission for assistance from programmes such as the European Regional Development Fund and the European Social Fund
 - to co-ordinate the preparation and submission of applications for funding from other external sources on behalf of the Council

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6. To liaise with business support and development agencies.
7. To take all necessary action to administer and manage the functions of tourism and twinning, including to prepare and submit to the Economic Development Committee and/or Council for approval, monitor and implement policies and strategies in respect of the following:-
- (i) district tourism strategy;
 - (ii) tourism developments;
 - (iii) new tourist attractions;
 - (iv) tourism marketing, promotions and publicity;
 - (v) operation of Tourist Information Centres;
 - (vi) overseeing and monitoring the implementation of relevant tourism strategies affecting the district.
8. To take all necessary action to administer and manage the following functions, powers and activities on behalf of the Council, including determining applications for licences and registration, service of statutory notices and any necessary enforcement procedures and including Power of Entry and power to authorise persons, whether employed by the Council or not, to act in a statutory role as appropriate to undertake the above duties and responsibilities including Powers of Entry.
- acupuncture, tattooing, ear-piercing and electrolysis
 - air quality management
 - animal boarding establishments
 - any environmental health functions of the Council not otherwise expressly specified
 - architectural services, engineering services and quantity surveying
 - atmospheric pollution
 - camp sites and moveable dwellings
 - car parking and lorry parking (including charging policies)
 - cemeteries
 - community centres
 - contaminated land
 - council depots
 - country parks
 - culture and the arts
 - dairy establishments and egg product establishments
 - dangerous wild animals
 - destitute burials
 - dog breeding
 - dog control
 - establishments for massage and special treatments
 - food business premises
 - food premises
 - food regulations
 - food safety, hygiene and quality

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- game dealers
 - game keepers
 - guard dogs
 - health and safety at work
 - health issues generally, including Health Authority and hospital consultation documents
 - health promotion
 - historic sites
 - home and community safety
 - homelessness – to include the provision of temporary accommodation for those in urgent need through homelessness or emergency
 - houses in multiple occupation
 - housing advice
 - housing associations – assistance and nomination arrangements
 - housing services, including housing, tenancy & estate management and support, housing register, lettings, voids, maintenance and repair, determination of rent levels, maintenance of estate amenities
 - infectious diseases and food poisoning
 - leisure centres
 - licences to kill game
 - maintenance, repairs, lettings and management of shops and garages vested in the Council as housing authority
 - Making best use of housing stock, including stock condition surveys.
 - markets and fairs (including Newark Livestock Market) including charging policies)
 - meat product premises
 - mobile home sites
 - museums and art galleries
 - nature reserves
 - overcrowding
 - pest control
 - pet animals
 - Pet shops
 - picnic sites
 - play leadership
 - playing fields
 - pollution control
 - pre-school play groups
 - private sector housing – repair and improvement under the Housing Acts, including grants and loans, securing the effective treatment of unfit houses, including the making of demolition and closing orders, powers and duties as to clearance areas and orders, designation of renewal areas
 - private water supplies
 - processes subject to control under Part 1 of the Environmental Protection Act
 - public conveniences
 - public health nuisances and offensive trades

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- public parks and open spaces (including charging policies)
 - rag flock
 - refuse collection and litter control services
 - refuse storage, cleansing and waste management
 - retail butchers premises carrying out commercial operations in relation to unwrapped raw meat and selling both raw meat and ready to eat foods
 - riding establishments
 - right to buy
 - scrap metal dealers
 - sex establishments
 - special promotions/competitions
 - statutory nuisances
 - swimming pools
 - theatres
 - tree and plant nurseries
 - water quality and supplies
 - water recreation
 - Zoos
9. To consider housing conditions in the district with respect to the provision of housing accommodation and to assess the housing need and to formulate and recommend to the **Cabinet relevant committee** such housing and environmental policies and improvements as may be desirable.
10. To consider cases against banding or date of registration in respect of the **Choice Based Council's policy on lettings**. ~~Scheme through the 'Review and Appeal' scheme.~~
11. To identify and analyse community needs and to recommend solutions to the **Cabinet relevant committee** and Council.
12. To take all such action as he/she considers necessary in the event of any emergency arising from whatever cause which might adversely affect the health of the community.
13. To consider and, if appropriate, recommend to the Policy & Finance Committee and/or the Section 151 Officer writing-off debts within his/her remit.
14. To monitor the introduction, implementation and ongoing effects of legislation concerned with food safety, environmental protection and health and safety at work and to monitor the Council's strategies and policies in relation to these matters.
15. Chief Officers may authorise named persons, whether employed by the Council or not, to act on behalf of the Council to exercise the powers, duties and responsibilities under the statutes and regulations specified in paragraph 16 below, including Powers of Entry and

COUNCIL MEETING – 17 DECEMBER 2019

GILSTRAP CHARITY AND CHARITY OF WILLIAM EDWARD KNIGHT - TRUSTEESHIP

1.0 Purpose of Report

- 1.1 To consider proposed amendments to the way in which the Council discharges its duties, functions and liabilities when acting as charity/corporate trustee of the Gilstrap Charity and W E Knight Trust, and to consider the membership of the Trustee Board and also that of the Economic Development Committee given the impact on the political matrix.

2.0 Background Information

- 2.1 A number of Members have expressed concern regarding the transparency of decision-making processes of the Council when discharging its functions as charity trustee. The Councillor's Commission, at its meeting on 9 December 2019, considered a report relating to these governance issues and also to whether the District Council is the appropriate body to act as Trustee. A copy of the report considered by the Councillors' Commission is attached to this report as **Appendix A**.
- 2.2 Following a recent court decision involving another local authority, the guidance to councils acting as charitable trustees has been amended. This has clarified that since the District Council is discharging its activities as charitable trustee pursuant to its statutory powers under Section 139 of the Local Government Act 1972, there is a strong public interest in transparency in matters relating to their administration.
- 2.3 The Trustee Board has operated as a separate 'committee' of the Council for a number of years. This was in order to ensure that the charities' interests were kept separate from the day-to-day business of the Council. This also assisted the fact that Members on the Trustee Board also have to act in the same way as 'trustees', i.e. they must act in the best interests of the charity, act exclusively for charitable purposes, and in accordance with charity law.

3.0 Proposals

- 3.1 The Councillors' Commission recommended that, in line with the other Council committees and to reflect the recent case law - the membership of the Trustee Board be reviewed to reflect the political balance of the Council in accordance with the principles contained in the Local Government and Housing Act 1989. The Commission also suggested that the members be drawn from Newark Wards (as far as is possible within the political balance rules) to reflect the fact that the charities' purpose is to benefit residents of the town. The Commission also recommended that the membership of the Trustee Board remain at five, but that there should be four co-opted members (with non-voting rights) drawn from the remaining Newark Ward members.
- 3.2 The Council has also recently received an expression of interest from a direct descendant of John MacRae Gilstrap, Mrs Miranda Van Lynden, to play a role in the Trustee Board and she has been invited to attend future meetings. The Commission recommended that this arrangement continue but to discontinue the co-option of representatives from the Newark Civic Trust and Friends of Newark Castle.

- 3.3 The Access to Information Procedure Rules will also apply to the Trustee Board meetings, agendas and reports, which require them to be open to press and public. Therefore, meetings, agendas and reports should be published in advance, and meetings should be open to the public unless exempt items are to be considered, for example items relating to individuals or commercially sensitive items. Like other committees the Board will be able to exclude the press and public for consideration of any items that it determines should be exempt by virtue of Schedule 12A of the Local Government Act.
- 3.4 The Councillors' Commission considered whether the District Council should continue to act as trustee or if another body would be better placed to act in this capacity, however a change to the current arrangements was not supported at this time.
- 3.5 Attached to this report as **Appendix B** is a copy of the existing allocation of seats to political groups; the calculations showing the impact upon the political matrix of adding five additional seats for the Trustee Board; and a proposed matrix of allocation of seats to groups.
- 3.6 These five additional seats would be allocated as Conservative +3, Labour +1 and Liberal Democrat +1 on the Board. However, it is suggested that, if the proposal is to ensure that the Trustee Board be made up solely of Newark Members, then the best fit would be to allocate the additional 1 Liberal Democrat seat on Economic Development Committee – reducing the Conservative group seats on that Committee to 8. This would mean that the Conservatives could then take four seats on the Trustee Board (from their eight Newark Members), and as Labour have one Newark Member, they could take their extra seat on the matrix straight onto the Trustee Board.
- 3.7 For information, the nine Newark Ward Councillors are:
- Beacon – Cllrs Mrs R Crowe, D Lloyd and M Skinner
Bridge – Cllrs Mrs I Brown and Mrs G Dawn
Castle - Cllr K Girling
Devon – Cllrs M Cope, B Crowe, and L Goff

4.0 RECOMMENDATIONS that:

- a) **the proposal for the Trustee Board to operate as a Committee in line with, and subject to the same procedures as the other Council Committees (whilst recognising that the Members on the board are also obliged to discharge their duties in accordance with charity law and act exclusively for charitable purposes) be approved;**
- b) **the proposed revised allocation of seats to Political Groups in accordance with the second matrix as set out in Appendix D to the report be approved;**
- c) **the Council determine the membership of the Trustee Board of the Gilstrap and W E Knight Charities to consist of Newark councillors in accordance with the proposals contained in paragraph 3.6 of the report;**
- d) **the remaining four Newark Members be co-opted as non-voting members of the Trustee Board;**

- e) the co-option of representatives from the Newark Civic Trust and Friends of Newark Castle on the Trustee Board be ceased; and**
- f) the Council determine the membership of the Economic Development Committee in accordance with the proposals contained in paragraph 3.6 of the report.**

Background Papers

Nil.

For further information please contact Karen White on extension 5240.

Karen White
Director – Governance & Organisational Development

COUNCILLORS' COMMISSION**9 DECEMBER 2019****GILSTRAP CHARITY AND CHARITY OF WILLIAM EDWARD KNIGHT - TRUSTEESHIP****1.0 Purpose of Report**

- 1.1 To consider the various constitutional and governance issues for the Council in discharging its duties, functions and liabilities when acting as charity/corporate trustee of the Gilstrap Charity and W E Knight Trust.

2.0 Background Information

- 2.1 At its meeting on 2 September, 2019 the Councillors' Commission considered a report about the way in which the Trustee Board of the Gilstrap Charity and W E Knight conducts its meetings. A number of Members have expressed concern regarding the transparency of the decision making processes of the Council when discharging its functions as charity trustee. It was agreed at the meeting in September that both the governance issues and whether the District Council is the appropriate body to act as Trustee, would be considered further by the Commission.

- 2.2 Members will recall from the report submitted in September, that following a recent court decision, guidance to local authorities acting as charitable trustees has been amended. This has clarified that since a local authority's activities as charitable trustee is one of its many functions arising from the exercise of its statutory powers, there is a strong public interest in transparency in matters relating to their administration.

- 2.3 Local authorities are empowered by Section 139 of the Local Government Act 1972 to receive and hold gifts on charitable trusts. This is a recognition of the fact that councils are well suited to being charity trustees as they are rooted in the community, open and transparent in their dealings, highly accountable for their actions and have the high standards of public conduct embedded in the way they work.

- 2.4 It is helpful to refer to an extract from the Charity Commission guidance referring to constitutional issues for local authorities when acting as charity trustees.

"In cases where a local authority is sole trustee, it should be remembered that it is responsible in the same way as any other charity trustee for carrying out the normal duties and responsibilities of a charity trustee. It is up to the local authority to decide, within the scope of local government law, what structures should be used to reach decisions in its name as trustee. An alternative to requiring all the decisions to be reached by the full body of councillors, for example, is to set up a separate committee to discharge its responsibilities as trustees."

- 2.5 The council operates a committee style of governance, and therefore the mechanism by which it discharges its functions is either through the full Council itself, (acting through all 39 of its Members), or through delegation to committees, sub-committees and officers.

- 2.6 As detailed in the previous report, since 2013 the Council has discharged its role as charity trustee through appointing a 'committee' of five Members appointed each year by full Council to a Trustee Board. The reasoning for this was to keep the management of the Charity separate from the day-to-day business of the Council. Meetings of the Board have been dealt with as distinct from the Council's more operational committees. The Charity has its own website, however the Council administers and clerks its meetings. In addition, the finances of the Trusts are accounted for separately with income and expenditure channelled through discrete cost centres separate from those of the Council's finances. The Charity Commission's registration and reporting requirements are strictly observed through the way in which the Board meetings are conducted. Financial reporting is via the Charity Commission website in accordance with legal requirements. There are also two co-opted members on the Trustee Board:- representatives from the Newark Civic Trust; and Friends of Newark Castle. The Council has recently received an expression of interest from a direct descendant of John MacRae Gilstrap, Mrs Miranda Van Lynden, to play a role in the Trust and she has been invited to attend future meetings in an advisory capacity. It should be noted that it is not possible for non-council members to have voting rights on council committees under the Local Government and Housing Act 1989.
- 2.7 Whilst it is recognised that the Trustee Board needs to operate as a committee of the Council, any councillors appointed to it must act in the same way as 'trustees', that is to say they must act in the best interests of the charity, act exclusively for charitable purposes and exercise care to avoid the potential for the best interests of the charity to conflict with the best interest of the Council. Whilst they must act in the same way as trustees, they are in essence acting as agents of the 'Trustee', which is the Council as a corporate body. In summary therefore, the Council is discharging its function as Trustee through its appointed Board of Trustees much in the same way that it discharges other of its functions through its committees, albeit that the members of the Board are governed by the obligations and objects of the charities' constitutions and powers and procedures derived from charity law.

3.0 Future Operation of the Trustee Board

- 3.1 In order to enhance the transparency of decision making by the Council when discharging its functions as charity trustee, and to better reflect the most recent guidance and caselaw, it is recommended that the Trustee Board should operate in the same way that the Council's other committees, whilst still recognising the requirements to observe charity law. This means that membership of the Trustee Board should be reviewed to reflect the political balance of the Council in accordance with principles contained in the Local Government and Housing Act 1989. This would not conflict with the Charity Schemes, which do not require any specific number of members on the Trustee Board to be from the area of benefit of the charities.
- 3.2 The Access to Information Procedure Rules will also apply to the Trustee Board meetings, agendas and reports, which require them to be open to press and public. Therefore meeting agendas and reports should be published in advance, and meetings should be open to the public unless exempt items are to be considered, for example items relating to individuals or commercially sensitive items. Like other committees the Board would be able to exclude press and public for consideration of any items that it determines should be exempt by virtue of Schedule 12A of the Local Government Act.

4.0 Alternative Management Options for the Charities

- 4.1 As indicated in paragraph 2.1 the Commission also indicated, at its meeting in September, that it wished to consider whether the District Council should continue to be the appropriate body to act as Trustee or whether there were alternative options for management of the charities' affairs.
- 4.2 The Charity Commissioner's guidance recommends that reviews include consideration of whether trustee arrangements are still appropriate: -
- a. *Is it still in the charity's interest for the trustee to be the Council?*
 - b. *Would it be useful to have some/all independent trustees?*
 - c. *Would the charity benefit from having user trustees?*
- 4.3 The Charity Commission considers that local authorities have the skills, public knowledge and professionalism to manage charitable trusts effectively, but that nonetheless arrangements should be kept under review over time; collaboration or alternative arrangements could deliver benefits for a charity's beneficiaries.
- 4.4 The Council may wish to consider whether another body, such as Newark Town Council, would be better placed to act as trustee, or whether the Charities should become totally independent from local authority management with a newly appointed and independent board of trustees. Both options are possible, although the Town Council option is likely to be more straightforward given the fact that it is a public authority, already constituted, and the fact that the Charity Commission recognises that local authorities are well placed to run charitable trusts.
- 4.5 Changes of this nature would require Charity Commission consultation, advice and approval. The Council would need to carry out its own consultation and in some circumstances the Charity Commission will publish a public notice, and consider representations, before making a decision. The time-period to complete this process will vary depending upon the complexity of the option chosen but is likely to take a number of months. The Commission does not make a charge to process such applications but there would be a cost to the Council/charities in terms of officer time and the cost of publishing any required notices.
- 4.6 Currently the administration of the two charities is provided and undertaken by council officers, including the secretariat to Board meetings, legal advice and financial management of the charities' accounts. Any move to a different management option would need to take into account how these services would be provided.
- 4.7 It should be noted that the W E Knight Trust does not own any property but holds a capital sum which is invested in trust for the charity. Some time ago the Trustee Board committed, in accordance with the Trust Scheme, a significant contribution towards the replacement of facilities at Newark R&M Cricket Club. It is likely that this commitment will take up the whole of the remaining capital endowment fund of this Trust.

4.8 The main issue therefore relates to the Gilstrap Charity, and which would be the best future management option taking into account all the circumstances outlined in this report, i.e. for the District Council to remain the Trustee with the proposed changes to the governance procedures which would address the concerns about transparency and ensure greater scrutiny by full council of the decisions taken by the Board, or to move to a different management option for the Charity.

4.9 There is also the option, should the decision be to remain the charity trustee, for the District Council to expand membership of the Board to further external parties who are not councillors. However, as pointed out earlier in the report, such members would be co-opted as only District Councillors would have voting rights.

5.0 RECOMMENDATIONS that Members consider:

a) the proposals set out in the report to amend the governance arrangements for the Trustee Board for the Gilstrap and W E Knight charities and make recommendations to Full Council accordingly; and

b) the alternative management options for the Gilstrap Charity.

Background Papers

LGA Councillor's Guide to a council's role as charity trustee
ICO guidance for public authorities

For further information please contact Karen White on Ext 5240.

Karen White
Director - Governance & Organisational Development

**EXISTING ALLOCATION OF SEATS TO
POLITICAL GROUPS**

Committee	Conservative	Labour	Independent	Liberal Democrats	Total seats by Committee
Policy & Finance	6	1	0	0	7
Homes & Communities	8	2	1	1	12
Leisure & Environment	8	2	1	1	12
Economic Development	9	2	1	0	12
Planning Committee	10	3	1	1	15
General Purposes	10	3	1	1	15
Licensing	10	3	1	1	15
Audit & Accounts Committee	4	1	1	0	6
Shareholder Committee	4	1	0	0	5
Mansfield & District Crematorium Joint Committee*	2	0	1	0	3
Total seats by Group	71	18	8	5	102

* (includes other local authority members)

Matrix Calculations

	<u>No. of Seats</u>
Conservative	27
Labour	7
Independent	3
Liberal Democrats	2

<u>Committees</u>	<u>No. of Members</u>
Policy & Finance	7
Homes & Communities	12
Leisure & Environment	12
Economic Development	12
Planning	15
Licensing	15
General Purposes	15
Audit & Accounts	6
Shareholder	5
Gilstrap	5
Mansfield & District Crematorium Joint Committee	3

Revised total 107 seats

a) No of seats on Council = 39

% of total seats held by each Group (rounded) =

	<u>%</u>
Conservative	69.23
Labour	17.95
Independent	7.69
Liberal Democrats	5.13
	100%

b) The 107 seats on Committees are as follows:

- Policy and Finance = 7
- Homes and Communities = 12
- Leisure and Environment = 12
- Economic Development = 12
- Planning = 15
- Licensing = 15
- General Purposes = 15
- Audit & Accounts = 6
- Shareholder = 5
- Gilstrap = 5
- Mansfield and District Joint Crematorium = 3

The allocation of seats to each Group on these Committees would be:-

			<u>Rounded</u>
Conservative	107 x 69.23%	74.08	74
Labour	107 x 17.95%	19.21	19
Independent	107 x 7.69%	8.23	8
Liberal Democrats	107 x 5.13%	5.60	6
			<hr/>
			107
			<hr/>

c) The number of seats allocated on Committees to each Political Group is as follows:

Conservative	74	(+3)
Labour	19	(+1)
Independent	8	(0)
Liberal Democrats	6	(+1)

**PROPOSED ALLOCATION OF SEATS TO
POLITICAL GROUPS**

Committee	Conservative	Labour	Independent	Liberal Democrats	Total seats by Committee
Policy & Finance	6	1	0	0	7
Homes & Communities	8	2	1	1	12
Leisure & Environment	8	2	1	1	12
Economic Development	8	2	1	1	12
Planning Committee	10	3	1	1	15
General Purposes	10	3	1	1	15
Licensing	10	3	1	1	15
Audit & Accounts Committee	4	1	1	0	6
Shareholder Committee	4	1	0	0	5
Board of Gilstrap Trustees	4	1	0	0	5
Mansfield & District Crematorium Joint Committee*	2	0	1	0	3
Total seats by Group	74	19	8	6	107

* (includes other local authority members)

Public Document Pack Agenda Item 19i

NEWARK AND SHERWOOD DISTRICT COUNCIL

Minutes of the Meeting of **Councillors Commission** held in the on Monday, 9 December 2019 at 3.00 pm.

PRESENT: Councillor R Blaney (Chairman)

Councillor L Dales, Councillor Mrs G Dawn, Councillor P Harris,
Councillor Mrs L Hurst and Councillor P Peacock

APOLOGIES FOR
ABSENCE: Councillor J Lee

ALSO IN
ATTENDANCE: Councillor Mrs I Brown, Councillor K Girling and Councillor D Lloyd

18 MINUTES OF MEETING HELD ON 30 SEPTEMBER 2019

AGREED that the minutes of the meeting held on 30 September 2019 be approved as a correct record and signed by the Chairman.

19 DECLARATIONS OF INTEREST BY MEMBERS AND OFFICERS

There were no declarations of interest.

20 GOVERNANCE REVIEW - UPDATE

The Director – Governance & Organisational Development presented a report which invited the Commission to consider the next steps following the publication of the report of the Local Government Association peer review team. A copy of the report was attached as Appendix A, and the recommendations summarised. The report challenged the Council to grasp the opportunity to improve governance and to explore and articulate the key principles of the future governance system and shape structures and the approach around those principles.

On 2 December 2019, Judith Hurcombe presented the peer team's report. During the presentation and discussion, there was particular reference to issues around ensuring a clear scrutiny and improvement function and reducing duplication of reporting the same matter to multiple committees to improve efficiency and speed up decision-making and focus on community outcomes.

The Commission further explored and welcomed the idea of visiting similar authorities to look at examples of good practice to help inform the Council in its review of governance arrangements. The Commission considered the challenge in getting the scrutiny and improvement function correct and the positive outcomes this could deliver. The Commission felt that the initial focus should be to understand how similar local authorities do this effectively.

The Commission made reference to Stevenage Borough Council that had a Cabinet model with select committees and Daventry District Council that operated a committee system but with scrutiny and improvement embedded which would both be worth considering, particularly as the Council had direct access given senior Members from these authorities were part of the peer review team.

The Commission also considered that it might be worth exploring other similar authorities such as Melton Borough Council and also an authority which had been through the process of reintegrating a housing function.

AGREED that the next focus for the governance review would be for members of the Commission (substitute members to be allowed as appropriate) to visit Stevenage and Daventry to explore their governance arrangements.

21 HOUSING MANAGEMENT REVIEW - DELEGATION ARRANGEMENTS

The Director – Governance & Organisational Development presented a report which set out proposed changes to Part 2 of the Constitution ‘Responsibility for Functions’ in light of the decision made by the Council to bring the housing management services back in-house.

Currently there were references within this part of the Constitution to managing and overseeing the Council’s relationship with, and the performance of Newark and Sherwood Homes. These references had been updated to reflect the position to transfer the housing management services back into the Council. Certain housing related functions were currently delegated to the Company, and these were to come back to the Council post transfer. The remits of the Policy & Finance, and Homes & Communities Committees had also been amended to ensure that they reflected the housing related decisions to be taken by these two committees once the service had been brought back in-house. There were also some minor amendments proposed to the scheme of officer delegation to facilitate operational decision-making. The proposed changes were set out in the Appendix to the report. The Commission were asked to consider and comment on the proposed amendments with a view to them being recommended to the Full Council Meeting on 17 December 2019 for further consideration and approval.

The Commission also noted that further work was currently being undertaken to consider how best to actively engage and involve tenants and tenant representatives in the delivery of the housing management service and decision making post transfer. A report setting out the various options for this would be submitted to the Homes & Communities Committee for consideration.

AGREED that the proposed amendments to Part 2 of the Council’s Constitution – Responsibility for Functions as set out in the Appendix to the report be recommended to the Full Council for approval.

The Director – Governance & Organisational Development presented a report concerning the various constitutional and governance issues for the Council in discharging its duties, functions and liabilities when acting as charity / corporate trustee of the Gilstrap Charity and W E Knight Trust. At their meeting held on 2 September 2019, the Commission agreed that both the governance issues and whether the Council was the appropriate body to act as Trustee, would be further considered.

The Director – Governance & Organisational Development referred to the recent court decision and amended guidance to local authorities acting as a charitable trustee. This had clarified that there was a strong public interest in transparency in matters relating to their administration. It was also recognised that the Trustee Board needed to operate as a committee of the Council with any councillors appointed having to act in the best interests of the charity, act exclusively for charitable purposes and exercise care to avoid the potential for the best interests of the charity to conflict with the best interest of the Council.

Given the recent guidance and case law, the Commission considered that the Trustee Board should operate in the same way as the other Council's other committees whilst recognising the requirements to observe charity law. This meant that membership of the Trustee Board should be reviewed to reflect the political balance of the Council in accordance with principles contained in the Local Government and Housing Act 1989. The Access to Information Procedure Rules would also apply to the Trustee Board meetings, agendas and reports, which would require them to be open to the press and public.

The Commission were also invited to consider whether another body such as Newark Town Council, would be better placed to act as a trustee, or whether the Charities should become totally independent from local authority management with a newly appointed and independent board of trustees. It was noted that changes of this nature would require Charity Commission consultation, advice and approval. Currently, the administration of the two charities were provided by the Council, including the secretariat to Board meetings, legal advice and financial management of the charities' accounts. Any move to a different management option would need to take into account how these services would be provided.

The Commission considered the local nature of the Charities and how to best ensure local member representation at all levels. In addition the Commission considered the role of the two co-opted members from Newark Civic Trust and Friends of Newark Castle and noted that the Council had recently received an expression of interest from a direct descendant of John MacRae Gilstrap, Mrs Miranda Van Lynden, to play a role in the Trust and she had been invited to attend future meetings in an advisory capacity. It was not possible for non-council members to have voting rights. In addition, the Commission considered the impact of the committee having to comply with the rules in respect of political balance.

AGREED that Full Council be recommended as follows:

- (a) that the Trustee Board should act in the same way as the Council's other Committees;
- (b) the Trustee Board should continue to comprise of five Members but which would reflect political balance;
- (c) Members appointed to the Board represent Newark Wards;
- (d) The Newark Ward Members not appointed be co-opted as non-voting members;
- (e) that the allocation of seats to political groups be reviewed accordingly; and
- (f) the co-option of representatives on the Board from Newark Civic Trust and Friends of Newark Castle cease;

Meeting closed at 4.45 pm.

Chairman