
NORTH AYRSHIRE COUNCIL

13 November 2019

North Ayrshire Council

Title: McGavin Park Trust – Reorganisation Scheme and Winding Up

Purpose: To approve changes to the McGavin Park Fund and thereafter confirm expenditure of the remaining funds, the transfer of the trust assets and the winding up of the Trust

Recommendation: The Council as Trustees of the McGavin Park Fund (a) approve the changes to the wording of the McGavin Park Fund Trust Deed as approved by the Office of the Scottish Charity Regulator; (b) confirm the proposed expenditure of the remaining trust funds; (c) agree the transfer of McGavin Park to the Council; and (d) approve the winding up of the Trust once all assets have been transferred.

1. Executive Summary

- 1.1 The Council are Trustees of the McGavin Park Fund, which was established following a bequest by John McGavin for the provision of a park for the town of Kilwinning. McGavin Park was purchased with this bequest and is presently held by the Council as Trustees. The balance of the Trust Funds are insufficient for the upkeep of the park and the fund has been classed as a dormant trust.
- 1.2 A grant application by Kilwinning Community Events to use the remaining funds has been approved by Kilwinning Locality Partnership. The Office of the Scottish Charity Regulator (OSCR) has approved the amendment of the Trust Deed to allow the capital of the fund to be used and to approve the transfer of McGavin Park, the remaining trust asset, to North Ayrshire Council. The Council as Trustees of the McGavin Park Fund is asked to approve the amendment of the Trust Deed, and thereafter approve the expenditure of the remaining capital, the transfer of the park and the winding up of the Trust.

2. Background

- 2.1 The McGavin Park Fund is a charitable trust fund which is registered with OSCR as part of the North Ayrshire Council Charitable Trusts (SC025083). It was established by the Trust Disposition and Settlement of John McGavin registered on 23 July 1881. Mr McGavin set aside the sum of £7,000 in his will for the provision of a park for the town of Kilwinning, with a maximum of £5,500 to be used for the purchase of land and the

laying out, etc. of the park. The balance was to be invested and the interest thereof applied in the management, maintenance and ornamentation of the park.

- 2.2 McGavin Park was purchased and laid out with this bequest. The balance of the Trust Fund as at 31 March 2018 was £2,331.68 and the income of this fund is low. It was accordingly classed as a dormant trust and expenditure of the capital considered appropriate as the best use of the fund for the trust purposes.
- 2.3 The Kilwinning Locality Partnership approved a grant application by Kilwinning Community Events to use the remaining funds held in the McGavin Park Fund as a contribution towards the cost of green gym equipment within McGavin Park. At its meeting on 7 November 2018, the Council as Trustees of the McGavin Park Trust, approved this expenditure and agreed to allow the McGavin Park Trust to be wound up in line with OSCR recommendations.
- 2.4 Although the expenditure of the remaining capital and revenue held in the fund has been approved, the Trust Deed only permits the Trustees to use the annual income. An application to OSCR was accordingly required to approve an amendment to the Trust Deed to allow the expenditure of both capital and income.
- 2.5 McGavin Park is held by the Council as Trustees of the McGavin Park Fund and forms part of the trust assets. However, the park has no market value and the income and capital of the Trust is not sufficient to cover maintenance of the park. As a result, these costs have for many years been met by the Council and the park is treated in the same manner as other Council owned parks in North Ayrshire. The amendment to the Trust Deed will accordingly also allow the Trustees to transfer of ownership of the park to The North Ayrshire Council subject to the condition that it is maintained as a public park.
- 2.6 OSCR have approved the application to amend the Trust Deed, and the approved changes are set out in the Supplemental Deed annexed to the Report. In particular, the Trust Deed as amended will allow the Trustees:
 - 2.6.1 to make payments from the capital for the management, maintenance and ornamentation of the park where the Trustees consider this reasonable, including if appropriate expenditure of all the remaining capital for one or more of these purposes and the winding Up of the Trust Fund, and
 - 2.6.2 if the Trust Fund is wound up, to transfer McGavin Park to an organisation which undertakes to maintain the park as a public park for use of the inhabitants of Kilwinning, the said organisation being either (i) a charity or (ii) a Local Authority or other body which has statutory powers and duties in relation to the provision of recreational facilities.

3. Proposals

- 3.1 In order to use the balance of the Trust Funds in an effective manner for the Trust purposes, it is proposed that the Trust Deed is amended in accordance with the attached Supplemental Deed by the North Ayrshire Council as Trustees in terms of the McGavin Park Fund to allow the expenditure of the remaining capital, the transfer of McGavin Park to the Council and the winding up of the Trust.
- 3.2 Following amendment of the Trust Deed in terms of 3.1 above, it is proposed that the Council as Trustees of the McGavin Park Trust then approve:
 - (i) expenditure of the remaining trust funds for the purpose previously approved by the Kilwinning Locality Partnership,

- (ii) transfer of McGavin Park to the North Ayrshire Council as Local Authority, subject to a condition stated in the transfer deed that the park is retained as a public park for the town of Kilwinning, and
- (iii) the winding up of the McGavin Park Fund.

4. Implications/Socio-economic Duty

Financial:	The Council will require to maintain the park. However, note that the Council already maintains the park and has done so for many years as the Trust Fund is insufficient for this purpose.
Human Resources:	None
Legal:	The proposed amendment to the Trust Deed has been approved by OSCR. The changes to the Deed and the winding up of the Trust will, if approved, require to be notified to OSCR.
Equality/Socio-economic Duty:	None
Children and Young People:	None
Environmental & Sustainability:	There are no environmental implications relating directly to this Report.
Key Priorities:	The use of the remaining Trust monies, together with the transfer of the Park to the Council, will improve the park facilities and will accordingly support the North Ayrshire Council Plan 2019-2024 priorities, in particular: working with individuals and communities to support positive lifestyle choices which improve health and wellbeing
Community Benefits:	The proposed expenditure will improve the facilities at McGavin Park for the community, in accordance with the intention of the original bequest to provide a public park for the inhabitants of the town of Kilwinning.

5. Consultation

- 5.1 Kilwinning Locality Partnership has been involved in the proposals and have consulted the Local Community in relation to the proposed expenditure.

ANDREW FRASER
Head of Democratic Services

For further information please contact **Rosemary Conner, Solicitor**, on **01294 324327**.

Background Papers

SUPPLEMENTAL DEED

by

THE NORTH AYRSHIRE COUNCIL

in respect of the

McGAVIN PARK FUND

WE, THE NORTH AYRSHIRE COUNCIL, constituted under the Local Government etc. (Scotland) Act 1994 and having our principal office at Cunninghame House, Irvine, KA12 8EE (hereinafter referred to as the "Council"); the Trustees (hereinafter referred to as "the trustees") acting under the Trust Disposition and Settlement and Codicils of the late John McGavin dated 29 November 1871 and subsequent dates and recorded in the Books of Council and Session on 23 July 1881 (hereinafter referred to as "the Trust Deed") which established the trust known as the 'McGavin Park Fund' in accordance with (1) the Trust Deed which provided that the trust should be managed by a Committee of nine men residing in Kilwinning appointed in accordance with the Trust Deed and (2) Court of Session Decree dated 3 June 1952 in the petition of John Agnew and Others, the Trustees and Committee of Management of the McGavin Public Park Kilwinning granting authority to transfer the whole property and assets of the McGavin Park Fund to the Provost, Magistrates and Councillors of the Burgh of Kilwinning to be held and managed by them, from whom we, The North Ayrshire Council, acquired right by virtue of (i) the Local Authorities (Property, etc.)(Scotland) Order 1975 made in terms of Section 222 of the Local Government (Scotland) Act 1973 and (ii) Article 2 of the Local Authorities (Property Transfer)(Scotland) Order 1995 made in terms of Section 15 of the Local Government, etc. (Scotland) Act 1994;

CONSIDERING THAT:-

(a) The Trust Deed was granted by John McGavin for the purpose of settling his affairs and provided that his estate should be applied for a number of purposes, including In The Sixth Place a provision that the sum of £7,000 should be set aside for the provision of a park for the town of Kilwinning, with a maximum of £5,500 to be used for the purchase of land and laying out same as a public park with the balance to be invested and the interest thereof applied in the management, maintenance and ornamentation of the said park.

(b) An area of land was acquired in 1883 and laid out as a park, now known as McGavin Park. The Trust Deed restricts the annual expenditure from the balance of the fund to the annual interest. The annual income is currently less than £15 and Trust has not been able to meet the maintenance costs of the park for many years. These costs are met by The North Ayrshire Council as local authority, not from the trust fund, and it is not possible to identify a use for this level of income which would contribute effectively to the management, maintenance and ornamentation of the park. The trustees accordingly wish to undertake a reorganisation scheme by making certain amendments to the Trust Deed as are hereinafter set out. The amendments would permit both the capital and income to be used and also allow the transfer of the park to an organisation which is not a charity provided it agrees to maintain the land as a public park. This will secure the future of the park and allow the remaining funds to be used more effectively in accordance with the trust purposes as set out in the Trust Deed.

(c) In terms of section 39 of the Charities and Trustee Investment (Scotland) Act 2005, the Office of the Scottish Charity Regulator (hereinafter referred to as "OSCR") is empowered to approve a reorganisation scheme on the application of a charity;

(d) Such an application has been made and the reorganisation scheme has been approved by OSCR;

(e) The reorganisation scheme varies the Trust Deed as follows:

(one) On page Third of the Trust Deed after the words "ornamentation of said Park," where they occur in the 3rd and 2nd line from the end of the said page, the following wording shall be inserted:

"And the Trustees will have the discretion to make payments from capital for the management, maintenance and ornamentation of said Park where they consider this reasonable and may, if appropriate, decide to expend all the remaining capital for one or more of these purposes and wind up the trust fund, subject to obtaining any necessary consents from the Scottish Charity Regulator. In that event, the said Park may be transferred to an organisation which undertakes to maintain the Park as a public park for use of the inhabitants of Kilwinning. For the avoidance of doubt, the said organisation may be either (i) a charity or (ii) a statutory body, such as a local authority, which has statutory powers and duties in relation to the provision of recreational facilities."

(two) On page Fifth of the Trust Deed, immediately before the words "And lastly", where they occur in the 7th line from the top of the said page, the following wording shall be inserted into the Trust Deed:

"The Trustees shall be empowered to make any amendment to the terms of the Trust Deed provided always that any amendment to the trust purposes shall be consistent with the spirit of the original Trust Deed and that the resources of the trust shall be applied in a manner consistent with the spirit of the original Trust Deed."

(three) If and where they appear in the Trust Deed, the following expressions shall have the meanings set out below:

"charitable purpose" - a charitable purpose under section 7 of the Charities and Trustee Investment (Scotland) Act 2005 which is also regarded as a charitable purpose in relation to the application of the Taxes Acts.

"charitable body" - a body on the Scottish Charity Register which is also regarded as a charity

"charitable organisation" – an organisation regarded as charitable in relation to the application of the Taxes Acts

"charity" - a body entered in the Scottish Charity Register

NOW THEREFORE we the Trustees DO HEREBY:-

(a) Vary the TRUST DEED as set out in Clause (e) above: IN WITNESS WHEREOF this Deed consisting of this and the preceding page is sealed with the Common Seal of the said The North Ayrshire Council and subscribed for and on their behalf by the undernoted Proper Officer at the place and on the date undernoted: