

Wiltshire Council

Cabinet Member Report

Subject: **Transfer of the William “Doc” Couch Trust from Wiltshire Council to the Community Foundation for Wiltshire & Swindon**

Cabinet member: **Councillor John Thomson – Deputy Leader and Cabinet Member for Adult Care, Communities and Housing**

Key Decision: **No**

Executive Summary

This report sets out the background relating to the potential transfer of the William “Doc” Couch Trust from Wiltshire Council to the Community Foundation for Wiltshire & Swindon, and in particular seeks Cabinet member approval to modify the governing document of the William “Doc” Couch Trust to allow the appointment of a new trustee so that the Council may resign as trustee.

Proposal(s)

That the Cabinet member, in exercise of his delegated functions under Part 3A of the Wiltshire Council Constitution, resolves on behalf of Wiltshire Council as sole trustee of the charity known as the William “Doc” Couch Trust (charity registration number 1079040) (“the Trust”) and in accordance with section 74D of the Charities Act 1993, that the provisions of the governing document of the Trust (being a Trust Deed dated 26th October 1998 as altered by a Scheme made by the Charity Commissioners for England and Wales on 8th August 2002) relating to the powers exercisable by the charity trustees in the administration of the charity, and/or regulating the procedure to be followed in any respect in connection with its administration, shall be modified so that the governing document shall take effect from the date of this resolution as if:

- (1) the words “(hereinafter called “the Council”)” on line 4 of the said Trust Deed were substituted with the words “(hereinafter called “the Council” which expression shall where the context so admits include the trustee or trustees for the time being hereof (but not where the Council is referred to in its capacity as Local Education Authority))”; and
- (2) clause 4 in the following terms was inserted in the said Trust Deed:
“The number of trustees shall not be less than 3 individuals or a body corporate (whether or not a trust corporation as defined by section 68(18) of the Trustee Act 1925 and so that a body corporate may act

as sole trustee) and subject to that the statutory powers to appoint new trustees shall apply (with any necessary modifications by reason of the provision hereby made as to the number of trustees to the intent and so that a trustee shall be discharged from the trusts if there shall be not less than 3 individuals or a body corporate (whether or not a trust corporation as defined by section 68(18) of the Trustee Act 1925) to act as trustees or trustee to perform the trusts)”

Reason for Proposal

This proposal would enable the progression of a scheme, already approved by Cabinet, to completion.

Sue Redmond
Corporate Director

Wiltshire Council

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Purpose of Report

1. To seek Cabinet member approval to modify the governing document of the William “Doc” Couch Trust (“the Trust”) to allow the appointment of a new trustee so that the Council may resign as trustee.

Background

2. Wiltshire Council is sole trustee of the Trust.
3. Increasingly, local authorities are recognising that acting as a charity trustee is not a core purpose and that there is insufficient capacity and expertise to manage these funds effectively. Subsequently the Charity Commission has endorsed the release of these funds to leading charitable bodies, and specifically to Community Foundations which have appropriate investment knowledge, Charity Commission reporting frameworks and community grant-making track records.
4. In line with Charity Commission thinking, and council practice nationwide, the Council investigated the transfer of Wiltshire Council’s trusts to a third party charitable body.
5. In Wiltshire, the Community Foundation for Wiltshire & Swindon (CFWS) was identified as a possible organisation to which these funds could be transferred.
6. The possibility of transferring the trusteeship of the Trust, together with 10 other trusts, to CFWS, was considered at the Cabinet meeting held on 24 May 2011 where it was resolved (at Minute 68) that Cabinet:
 - (a) gave approval to an approach being made to the Charity Commission to seek ‘in principle’ sanction to the transfer of 11 ‘in scope’ Trusts to a leading charitable body;
 - (b) approved the selection of the Community Foundation for Wiltshire & Swindon as an appropriate leading charitable body to whom the 11 ‘in

scope' Trusts could be transferred, subject to the agreement of the Charity Commission;

- (c) gave approval to the appointment of a specialist Community Foundation consultant to undertake the work required to obtain 'in principle' sanction from the Charity Commission; and
 - (d) gave delegated authority to the Deputy Leader in consultation with the Corporate Director for Community Services, the Chief Finance Officer and Solicitor to the Council to progress the proposal to complete the transfer if appropriate following feedback from the Charity Commission.
7. The Charity Commission provided an 'in principle' sanction to the transfer of the Trust in July 2011.
8. The trusts of the Trust are contained in a Trust Deed dated 26 October 1998 and made between Mrs Annie Affleck and Wiltshire County Council, as varied by a Charity Commission scheme made on 8 August 2002.
9. The Trust Deed, as varied by the 2002 Charity Commission scheme, makes no provision for a trustee other than the Council to be appointed.
10. However, section 74D of the Charities Act 1993, which applies to any charity which is not a company or other body corporate, provides that the charity trustees of such a charity may resolve that any provision of the trusts of the charity –
- (a) relating to any of the powers exercisable by the charity trustees in the administration of the charity, or
 - (b) regulating the procedure to be followed in any respect in connection with its administration,
- should be modified in such manner as is specified in the resolution.
11. Counsel's advice was sought in respect of the proposal to transfer the trusteeship of the Trust to CFWS.
12. Counsel provided the following advice:
- (a) as a matter of charity and trust law, a transfer of the trusteeship of the Trust is possible;
 - (b) from her research for the purposes of the advice, Counsel could find nothing to suggest that there is anything in local government law hindering the Council from transferring the trusteeship;
 - (c) with regard to the procedure for transferring the trusteeship, this may be achieved by virtue of the statutory power of amendment contained in section 74D of the Charities Act 1993;

(d) in Counsel's view, the delegation of authority at Minute 68(d) of the Cabinet meeting held on 24 May 2011 does not cover making the resolution under section 74D of the Charities Act 1993. This is because the resolution under this section is not limited to simply 'progressing the proposal and completing the transfer', but modifies the provisions of the Trust as to the appointment of trustees generally. Whilst this modification is necessary to enable the transfer of trusteeship to go ahead, it goes further than this.

Main Considerations for the Council

13. Cabinet, at the meeting held on 24 May 2011, approved the transfer of the trusteeship of the Trust, in principle.

14. This proposal is to make a resolution, in accordance with section 74D of the Charities Act 1993, to modify the Trust Deed to allow the appointment of a new trustee so that CFWS may be appointed as trustee and the Council may resign as trustee, effecting a transfer of the trusteeship of the Trust.

Environmental and climate change considerations

15. This proposal has no adverse environmental impact.

Equalities Impact of the Proposal

16. The equalities impact of the proposed transfers was considered in the Cabinet Report prepared for the 24 May 2011 meeting. The purpose of this proposal is to enable the progression of a scheme, already approved by Cabinet, to completion. This proposal therefore has no adverse equalities impact.

Risk Assessment

Risks that may arise if the proposed decision and related work is not taken

17. If the proposed decision is not taken, the proposed transfer of the trusteeship of the Trust cannot go ahead and there is a risk to the Council's focus on its Core Strategy and consequently a risk of budget overrun.

Risks that may arise if the proposed decision is taken and actions that will be taken to manage these risks

18. No risks have been identified if the proposed decision is taken.

Financial Implications

19. This proposal has no adverse financial implications.

Legal Implications

20. Legal Services consider that this matter can be dealt with by Cabinet member approval as it is merely progressing a scheme, already approved by Cabinet, to completion.

Options Considered

21. The alternative to the proposal is not to proceed with the transfer. The consequences of this are identified in the risk assessment section above.

Conclusions

22. The purpose of this proposal is to enable a scheme, already approved by Cabinet, to proceed to completion.

Sue Redmond
Corporate Director

Report Author:

Sandie Lewis – Head of Community Strategy and Voluntary Sector Support,
01225 756597, sandie.lewis@wiltshire.gov.uk

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Background Papers

The following unpublished documents have been relied on in the preparation of this report:

None

Appendices

None