

TO: EXECUTIVE
27 SEPTEMBER 2016

SOUTH HILL PARK TRUST: GOVERNANCE
Director of Environment, Culture and Communities

1 PURPOSE OF REPORT

- 1.1 To agree the Council's future role in the governance of South Hill Park Arts Trust following the outcome of the analysis phase of the Council's current "Transformation Review" of the role of the Council in the arts, and as a consequence allow South Hill Park Arts Trust to undertake and complete its governance review in the knowledge that there will be no BFC nominations to its Board.

2 RECOMMENDATIONS

- 2.1 **That South Hill Park Trust be informed that, for the reasons outlined in this report, the Council no longer wishes to have any nomination rights on to its Board; and**
- 2.2 **Although entirely at the discretion of South Hill Park Trust, the Council would be pleased to nominate a non- voting observer to attend Board meetings to ensure the continuation of full and transparent dialogue between both organisations.**

3 REASONS FOR RECOMMENDATIONS

- 3.1 The Analysis phase of the Transformational Review of the Council's role in arts provision and South Hill Park Arts Trust in particular identified that the Trust's governance arrangements were not as effective as they might be in helping the Trust manage what is an increasingly complex business. In particular, it is vital that the Trust has the exact range of skills and experiences it needs on its Board and Council nominations cannot guarantee this. The recommendations are intended to better allow SHPT to appoint Directors with the right mix of skills, knowledge and abilities to ensure the most effective governance, and to remove any possibility that anyone may perceive a conflict of interest between an elected member's responsibilities as a Director of the Trust and their role as a Member of this Council.

4 ALTERNATIVE OPTIONS CONSIDERED

- 4.1 The Council could continue to have nomination rights on to the Board at South Hill Park Arts Trust at the current or reduced level, and indeed the Board at South Hill Park has expressed this would be its preferred option, but it is not considered this would guarantee that the Board had the right mix of skills to ensure effective governance in the challenging financial times ahead, and would not eradicate the potential for a perceived conflict of interest to be present in the dual role of councillor and Board Member.

5 SUPPORTING INFORMATION

- 5.1 South Hill Park Trust last reviewed its Governance arrangements in 2000/2001 which as far as the Council was concerned had the effect of de-coupling the link between a Board Member to SHPT nominated by the Council and the need for that Member to remain an elected Councillor to retain their seat on the Board. This was intended to better ensure continuity of Board Membership and allowed Council representatives who were nominated whilst being an elected member to remain on the Board as the Council's representative even if subsequently they ceased to be an elected member.
- 5.2 While recognising that changes in Company Law and the Council's own rigorous processes had long since removed what in the past was considered a legitimate "lobbying" role of board members of charitable organisations in their role as councillor, the well-established partnership between the council and SHPT meant that the governance arrangements at SHPT was felt to be effective enough. Being on the Board at SHPT was also a welcomed and popular nomination for elected members and therefore the arrangements were felt to be adequate. However, in general this was in a less urgent and less difficult financial environment and the governance arrangements were perhaps not fully challenged.
- 5.3 The 2016/17 support grant and the 4 year projections from central government required significantly more economies than the council had planned for, despite planning for the previous "worse case" scenario, made it clear that all council services would have to make significant economies in order to meet the new budget targets and that this would need to include South Hill Park Arts Trust. The process adopted by the council to review services is termed a "transformational review" and SHPT was identified as one of the first. One of the findings of this review was that the Governance arrangements were not really fit for purpose in the current much more challenging economic environment in which the Trust, and Council, must operate.
- 5.4 The Trust itself has relatively recently considered whether its governance arrangements were fully fit for purpose but probably because the previous arrangements have worked quite well determined not to pursue a full review. However, the analysis phase of the Transformation Review concluded that the 50% representation of local councillors on the Board (4 from this Council and 2 from Bracknell Town Council) was looking "increasingly anachronistic for a charity which needs to innovative and adapted to a more commercial and entrepreneurial culture, with a much wider funding base and set of stakeholder relationships"
- 5.5 The Trust has recognised the need and has appointed Trustees with more business background and the benefits of this are already bearing fruits with the Chief Executive of SHPT receiving excellent support in the preparation of various plans required by this Council as a consequence of the transformational review which are intended to make the Trust more sustainable and less reliant on this Council.
- 5.6 The recent Member Gateway Review of the Analysis Phase considered the Governance arrangements at South Hill Park and the minutes record:

The Members support a governance review of SHPT to ensure that the Trust is more independent from the Council and has the capacity to become more financially self sufficient.

5.7 Subsequently, the matter has been considered in more detail by the Council's Transformation Board and been discussed by the Council's Executive Members. The conclusions drawn by both are that the current way in which the council engages in the governance of the Trust does not necessarily guarantee that the Trust has access to all the skills and knowledge that it needs and that the current arrangements also give rise to the perception that there is a conflict of interest in Councillors who are both Directors of the Trust and part of a Council that may have to make difficult decisions regarding the Trust – even though our processes guarantee that this cannot happen.

5.8 In terms of how to address these issues, it is considered that were the Council not to have any nomination rights to the Board of South Hill Park, this would bring benefits to the Trust and the Council:

The Trust would have more space on the Board to appoint board members with the skills, knowledge and experience that it requires at any given time. While obviously nominated councillors may have the right skills and experience, currently this is a matter of chance and the pressing need for the Trust to have effective governance in place looking to the future means it should have the flexibility to ensure this is the case as best as possible.

With no nominations on to the Board, there is no possibility that conflicts of interest could reasonably be cited to the Council and South Hill Park Trust would be seen to be fully independent from the Council.

The Council has maintained a strong relationship with SHP since it was constituted in 1973 and this should continue but it is felt more effective for this to be done through a non-voting observer. Ultimately, this would be a matter for the Trust, but it is considered that the clear division between the Trust and the Council's representative would allow even tighter communication between both parties

5.9 For the avoidance of doubt, the Trust has indicated that it is content with the current arrangements although recognise that in the pursuit of best governance practice even this would have to change (for example fewer nominations, the Council having regard to the skill sets required by the Board when making nominations) but also recognise the benefits of a different type of relationship made possible by what the Council has already indicated to the Chief Executive of the Trust. The Trust has indicated it will respond positively to whatever decision the Council takes regarding its role in SHPT's governance.

5.10 This report focusses on the Council's representation on the Board, but as identified by the Gateway Review, the Trust is undertaking a comprehensive review of its governance including a skills audit, and a thorough examination of its policies and procedures.

5.10 SHPT has responded positively and vigorously to the recommendations from the analysis phase of the transformation review, and it is considered that the recommendations in this report will support them more effectively into the future.

6 ADVICE RECEIVED FROM STATUTORY AND OTHER OFFICERS

Borough Solicitor

- 6.1 South Hill Park Trust is a Charitable company. As such its Directors will also be the Trustees of the Charity and be bound by duty under the Companies Act 2006 to promote the success of the company in achieving its charitable objectives. This duty can however give rise to conflicts of interests for Council nominees having regard to their role as Elected Members of the Council. Indeed, when acting for SHP Councillors should put the interests of SHP above the duties they owe to the Council or withdraw from any Board consideration of that matter.

Whilst Directors are not generally liable for the debts of the company when it is wound up such liability can arise when there has been some form of wrongdoing (such as misfeasance, wrongful or fraudulent trading) creating a liability to pay compensation for the wrongful act to the company's creditors

Borough Treasurer

- 6.2 There are no financial implications as a consequence of this report.

Equalities Impact Assessment

- 6.3 There are no equality impacts as a consequence of this report.

Strategic Risk Management Issues

- 6.4 The recommendations should reduce the risk of any perceived conflict of interest in the Council's relationship with South Hill Park Trust.

7 CONSULTATION

Principal Groups Consulted

- 7.1 Members attending the Gateway Review agreed the need for a governance review.

Transformation Board and Executive Members

Chief Executive of South Hill Park Trust

- 7.2 Method of Consultation

Reports, e-mails, verbal communication

Representations Received

- 7.3 General support for the proposals in this report; SHPT would be content though if no changes were made to the existing arrangements.

Background Papers

Transformation Review of Arts Provision: Analysis Phase

Arts Gateway Review: Minutes

Contact for further information

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