

Title of meeting: Culture, Leisure and Economic Development Decision Meeting

Date of meeting: 17 July 2020

Subject: Portsmouth Coronavirus Memorial Trust

Report by: Director of Culture, Leisure and Regulatory Services

Wards affected: All

Key decision: No

Full Council decision: No

1. Purpose of report

- 1.1 The purpose of the report is to seek the Cabinet Member's approval for the establishment of the Portsmouth Coronavirus Memorial Trust.

2. Recommendations

- 2.1 That officers are authorised to establish a new charitable incorporated organisation (CIO) in order to support the anticipated public desire for memorials following the 2020 Coronavirus pandemic.**
- 2.2 That the Director of Culture, Leisure and Regulatory Services (in consultation with the City Solicitor) is delegated the authority to finalise the constitutional documents of the CIO**

3. Background

- 3.1 Everyone will be aware that the on-going Coronavirus pandemic has created a national crisis on a scale not seen for a generation. Its far-reaching consequences have touched the lives of many families and individuals including those in Portsmouth. The crisis has also reinforced to all the importance of the NHS and our essential workers. Perhaps not unexpectedly the crisis also brought out a renewed sense of community spirit, which helped many carry on and work through these worrying times.
- 3.2 Sadly a number of Portsmouth residents and workers have died as a direct result of the 2020 Coronavirus pandemic and we anticipate that the public may ask for a form of memorial to mark this occasion.

- 3.3 We already have in place a memorial bench and memorial tree scheme but with the anticipated potential requests for memorials as a result of the numbers who died in this pandemic officers do not believe these schemes are the appropriate mechanism to mark this particular event.
- 3.4 The purpose of the CIO will be to create and sustain a memorial to the Portsmouth residents and workers who died as a result of the Coronavirus pandemic and to support a sense of collective remembrance.
- 3.5 We are aware that memorials are typically thought of as sites of contemplation and healing that are created after a catastrophic event but they are often more than this as they serve as a forum to allow communities to engage in the longer term process of healing with the beneficial effects being felt by the remaining family members.
- 3.6 The initial make-up of the CIO will include a representative of the Portsmouth Hospitals Trust, a representative of those who have died and a representative of Portsmouth City Council.
- 3.7 It is anticipated that the CIO will consult with the public on the nature and type of any memorial, including consideration for options within the country park, at an appropriate time when it is perceived that the pandemic is ending so any memorial can be considered as a whole as opposed to in a piecemeal way.

4. Reasons for recommendations

- 4.1 We would like to ensure that the Council is prepared and able to respond to the anticipated requests from the public where they are seeking a memorial for a loved one as a result of the Coronavirus pandemic.
- 4.2 The proposed CIO structure enables community engagement both from direct families who lost a family member but also recognises the valiant efforts of the NHS in supporting all Portsmouth residents some of whose members also died.
- 4.3 The CIO will be better placed to apply for external funding, should this be necessary to support the long-term management of any memorial into the future.

5. Integrated impact assessment

- 5.1 An Integrated Impact Assessment is attached at Appendix 1.

6.1 Legal implications

- 6.1 Charitable incorporated organisation (CIO) is a new incorporated form of charity which is not a limited company or subject to company regulation and, as a result, does not need to be registered at the Companies House.
- 6.2 CIOs are regulated by the Charity Commission and governed under the Charities Act 2011 (and the relevant regulations). Once incorporated, the CIO will have a separate legal personality from its trustee(s).

- 6.3 By virtue of section 139 of the Local Government Act 1972 the Council is allowed to act as a trustee and hold and administer gifts made for the benefit of the inhabitants of the area (except where these would be held on trust for an ecclesiastical charity or a charity for the relief of poverty). However, some charity structures require the trustees to be natural persons thus making it impossible for the Council to act as a trustee and a representative of the Council would have to take up such role.
- 6.4 The CIO must be incorporated for exclusively charitable purposes as set out in section 3 of the Charities Act 2011. Before the CIO is incorporated, the officers need to be satisfied that the purpose of the CIO falls within at least one charitable purpose as identified in the Charities Act 2011, otherwise, the application might be rejected by the Charity Commission. Furthermore, the charitable purpose of the CIO must also be for the public benefit.
- 6.5 In addition, once established, the CIO will have to operate for exclusively charitable purposes and thus be completely independent from the Council - it cannot be established for the purposes of advancing the Council's policies. Decisions about the administration and operation of the CIO will need to be taken solely in the best interest of the CIO and its charitable purposes.
- 6.6 The trustee(s) will have to act solely in the interests of the CIO thus making it difficult for the Council itself to act as a trustee or for the officers of the Council to act as trustees without potentially breaching their duties either to the CIO or the Council. It is therefore generally not advisable for local authorities (or its officers) to act as the trustee(s).
- 6.7 The CIO's constitution must be in the form specified in regulations made by the Charity Commission, or as near to that form as the circumstances admit. The Charity Commission has published two model forms of constitution for CIOs, namely:
- 6.7.1 The 'foundation' model - this model is suitable for CIOs whose only voting members will be the charity trustees; and
- 6.7.2 The 'association' model - this model suitable for CIOs that will have a wider membership, including voting members other than the charity trustees.
- 6.8 Although it is possible to convert from one model to the other, however, the procedure is not straightforward and it may require the approval from the Charity Commission hence the advantages of each model ought to be weighed before the decision is made and if required legal services shall be consulted accordingly.

7. Director of Finance's comments

7.1 There are currently no known direct financial implications arising from the recommendation of this report.

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Signed by:
Stephen Baily
Director of Culture, Leisure and Regulatory Services

Appendices:
Appendix 1 - Integrated Impact Assessment

Background list of documents: Section 100D of the Local Government Act 1972

The following documents disclose facts or matters, which have been relied upon to a material extent by the author in preparing this report:

Title of document	Location

The recommendation(s) set out above were approved/ approved as amended/ deferred/ rejected by on

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Signed by:
Cabinet Member for Culture, Leisure and Economic Development