

Agenda Item 7.1

Committee: King George's Fields Charity Board	Date: 17 th June 2009	Classification: Unrestricted	Report No: (KGFCB/03/0 89)	Agenda Item:
Report of: Isabella Freeman, Assistant Chief Executive (Legal Services) Originating officer(s) David Galpin, Head of Legal Services - Community		Title: Governance of the King George's Fields Trusts Wards Affected: All		

1. SUMMARY

- 1.1 At the meeting on 7 January 2009, the Board considered information concerning the governing documents of the two charities.
- 1.2 The Board directed the following actions: (1) review of the governing documents for the charities; (2) presentation of a report to the April meeting of the Board addressing alternative governance schemes, clarifying the land under the remits of the charities, identifying the purposes for which the land may be used and clarifying the duties of the trustees; (3) commencement of discussions with the Charities Commission with a view to amalgamating the Mile End and Tredegar Square charities; and (4) clarification of the position regarding Crossrail.
- 1.3 This report presents the results of the work undertaken since the meeting on 7 January 2009.

2. RECOMMENDATIONS

The Board is recommended to:-

- 2.1 Note the proposal in paragraph 3.3.
- 2.2 Agree that plans may be prepared as referred to in paragraphs 5.12, 5.13 and 6.13 of the report.
- 2.3 Note that the Assistant Chief Executive (Legal Services) will give consideration to the mechanism by which any amendment might be effected to the governing documents to reflect revised plans or revised powers, or in relation to merger, as contemplated in the report and will bring forward any proposals to a further meeting of the Board.

- 2.4 Note the information provided in section 7 of the report concerning merger and executive arrangements and make such determinations, if any, as to the Board seem appropriate.
- 2.5 Note the proposal in the report to provide training on trustee duties at the next meeting of the Board.
- 2.6 Note the position regarding Crossrail detailed in the report.

3. BACKGROUND

- 3.1 There are two King George's Fields charities, both of which are registered with the Charity Commission: (1) The King George's Field, Mile End charity, registered number 1077859 ("**the Mile End charity**"); and (2) the King George's Field – Stepney (Tredegar Square, Bow) charity, registered number 1088999 ("**the Tredegar Square charity**"). The Council is the trustee of both charities pursuant to the governing documents detailed in this report.
- 3.2 The King George's Fields Charity Board ("**the Board**") is established by section 3.3.12 of the Council's Constitution, which gives the Board the following functions:
 - 3.2.1 To administer the affairs of the King George's Fields Charity and discharge all duties of the Council as sole trustee of the Charity.
 - 3.2.2 To administer the affairs and discharge the duties of trustee of such other charities controlled by the Council as the Cabinet might authorise by resolution.
- 3.3 It is assumed that the reference to the King George's Fields Charity is to the Mile End Charity. At present the resolution of Cabinet making the Board responsible for the Tredegar Square charity has not been located. It would be prudent to take a report to Cabinet to regularise the position, irrespective of the outcome of any progress toward merging the two charities.

4. THE KING GEORGE'S FIELDS FOUNDATION

- 4.1. The governing documents of both charities make reference to the King George's Fields Foundation ("**the Foundation**").
- 4.2. It is understood that references to the Foundation mean that established by a deed dated 3 November 1936 between the Lord Mayor of London and others ("**the 1936 Deed**"). The Foundation consisted of a fund of money established following an appeal to the nation for collection of a sum to perpetuate the memory of the late King George V. According to the 1936 Deed, the fund was to be held by the trustees and administered with the object of promoting and assisting in the establishment of Playing Fields to be called "King George's Field"

and distinguished by Heraldic Panels commemorative of King George V. The 1936 Deed defined "Playing Field" as "any open space used for the purpose of outdoor games, sports and pastimes".

- 4.3. The Foundation took the view that "the maximum results might best be achieved by distributing the funds by way of grants-in-aid towards the capital costs of as many fields as possible, the balance of the capital required for each scheme being raised by the local authority or other body undertaking the construction of the field and accepting responsibility for its maintenance as a 'King George's Field'" (Final Report of the Foundation, 1965). The Foundation entered into a working arrangement with the National Playing Fields Association for the latter to undertake the technical investigation of schemes and to process the applications for grants. Grants were made for King George's Field, Stepney, as detailed below (for the Mile End Charity).
- 4.4. On 1 December 1965, the Charity Commissioners for England and Wales ordered that a Scheme be approved and established for the King George's Fields Foundation ("**the 1965 Scheme**"). The objects of the Foundation were amended to place emphasis on preservation of the King George's Fields and now read as follows:

"to promote and to assist in the establishment and to promote the preservation throughout the United Kingdom of Playing Fields for the use and enjoyment of the people every such Playing Field to be styled "King George's Field" and to be distinguished by heraldic panels or other appropriate tablet medallion or inscription commemorative of His Late Majesty King George V and of a design approved by the Trustees".

- 4.5. Under the 1965 Scheme, the National Playing Fields Association (now known as Fields in Trust) became the trustees of the Foundation.

5. THE MILE END CHARITY

Background

- 5.1. By 1950, the Foundation had made a grant of £75,000 towards the capital cost of King George's Field, Stepney. This was said to be consistent with the Foundation's aim of providing a large playing field for the people of the East End of London. It is understood that the original grant was applied towards the cost of laying out the playing area and the provision of Memorial Gates. HRH the Duke of Edinburgh KG opened King George's Field, Stepney on 20 October 1952.
- 5.2. The Foundation subsequently made a further grant of £25,000 to the Greater London Council in respect of King George's Fields, Stepney. On 9 November 1965, the Greater London Council ("**GLC**") gave a declaration and undertaking

that land shown on a plan marked “KGF1” would be preserved in perpetuity as a memorial to King George V under the provision of the Foundation (“**the 1965 Undertaking**”). The identified land included land to be purchased by the GLC, presumably using the grant monies. The 1965 Undertaking provided for the erection of a main entrance to the fields at Burdett Road.

- 5.3. The Council was the statutory successor to the GLC under the London Government Act 1963 and the Local Government Act 1985. On 29 January 1997, the Council entered into a deed with the National Playing Fields Association (“**the 1997 Deed**”) to amend the land affected by the 1965 Undertaking to be “the land shown edged red on the plan No KGF2” which is attached to the 1997 Deed (“**the Park Lands**”). A copy of KGF2 with the areas marked red is attached to this report as **Appendix 1**. The plan KGF2 is not good quality and further reference is made to this below.
- 5.4. In about 1994, the Millennium Commission identified redevelopment of Mile End Park as a suitable project to mark the new millennium. In January 1998, building work began on the new Mile End Park, which ultimately saw construction of the Terrace Garden, the Green Bridge (completed July 1999), the Art Park, the Ecology Park, the Children’s Park and the Children’s Pavilion.
- 5.5. The report of the trustees of the charity for the 2007/2008 year states that the running of Mile End Park is delegated to the Director of Mile End Park. It is not clear that this is a correct statement of the legal position. The better view is that the Council as trustee has employed the Director to carry out the work of the charity. The revision of powers proposed in paragraphs 5.25 and 5.26 may assist to reinforce the legitimacy of this position, by making it clear that the Council as trustee may employ staff.

The governing document

- 5.6. On 28 February 2000, the Charity Commissioners for England and Wales ordered under the Charities Act 1993 that the charity known as King George’s Field, Mile End, at Stepney in the London borough of Tower Hamlets be administered according to a specified scheme (“**the 2000 Scheme**”). A copy of the 2000 Scheme is included as **Appendix 2** to this report. The 2000 Scheme expressly provides that it replaces the existing trusts of the charity.
- 5.7. Under the 2000 Scheme, the London Borough of Tower Hamlets (“**the Council**”) is the trustee of the charity. The Council is empowered to delegate its trustee function to a committee consisting of any two or more members, provided that the Council exercises reasonable supervision over the committee. The committee must “promptly” report their acts and proceedings to the Council.
- 5.8. The purpose of the charity is to preserve the Park Lands in perpetuity as a memorial to King George V under the provisions of the King George’s Fields

Foundation. As set out above, it is understood that the reference to the Foundation is a reference to the Foundation as governed by the 1965 Scheme. It is not entirely clear what it means to preserve a property in perpetuity “under those provisions”. However, it probably means that the property is to be maintained in perpetuity in accordance with the object set out in the 1965 Scheme, namely “to promote and to assist in the establishment and to promote the preservation throughout the United Kingdom of Playing Fields for the use and enjoyment of the people...”

Land subject to the Mile End charity

- 5.9. The Mile End charity in fact relates to two categories of land, which are described in Parts 1 and 2 of the Schedule to the 2000 Scheme.
- 5.10. The first category of land, referred to in Part 1 of the Schedule, consists of park lands identified in plan KGF2, referred to in the 1997 Deed (“**the Park Lands**”). The attached copy of plan KGF2 in Appendix 1 was obtained from the Charity Commission. It is low in quality and difficult to follow, but so far as it can be read, the Park Lands covered by KGF2 are as follows –
- Stepney Green Park and nearby lands, namely Belgrave Road open space and White Horse Road Park.
 - Stepping Stones Farm.
 - Most of Mile End Park.
- 5.11. The Council’s Parks and Open Spaces department has expressed concerns as to whether KGF2 accurately captures the lands around Stepney Green Park that form part of the charity. The Director of Mile End Park has advised that, as regards Mile End Park, the plan KGF2 does not reflect the actual present configuration of the Park. For example, it does not include the lands, forming part of Mile End Park situated to the south of the rail line on the southern side of the stadium and adjacent football courts. The omitted land includes the go kart track and the skateboard arena. There may be other omitted lands, including stopped up roads. The status of the railway arches in Burdett Road should be clarified.
- 5.12. There would appear to be merit in having plans prepared that are easy to read and accurately reflect the areas presently the subject of the Mile End charity. It would assist if the plans could reflect, for consideration by the Board, any areas that officers identify could be included as part of the charities. The Council’s Asset Management department may be able to prepare the plans in consultation with the Parks and Open Spaces department and the Director of Mile End Park. There is proposal by the Parks and Open Spaces department for electronic presentation of lands the subject of the charity, for example by GIS viewer, that can also be explored.

- 5.13. The second category of land, referred to in Part 2 of the Schedule to the 2000 Scheme consists of “10 shop units situated beneath the ‘Green Bridge’ at Mile End in Stepney, in the London Borough of Tower Hamlets, on north and south sides of Mile End Road, just west of its junction with Burdett Road and Grove Road” (“**the Shop Units**”). The Shop Units are only described in words. There is no plan showing their location. The Council, as trustee of the Mile End charity, is given specific powers in relation to the Shop Units, which are referred to below.

Objects

- 5.14. As set out above, the principal purpose of the Mile End charity is to maintain the Park Lands in perpetuity as playing fields for the use and enjoyment of the public.
- 5.15. The 2000 Scheme makes it clear that the Council may also apply “the land” (assumed to be the Park Lands) to recreational purposes set out in the Recreational Charities Act 1958. The 1958 Act provides that it is charitable to provide, or assist in the provision of, facilities for recreation or other leisure-time occupation, provided that it is in the interests of social welfare and for the public benefit. In order to satisfy the requirement that the provision be in the interests of social welfare, the facilities must be provided with the object of improving the conditions of life for the persons for whom the facilities are primarily intended and either: (i) those persons have need of the facilities by reason of their youth, age, infirmity, disablement, poverty, or social and economic circumstances; or (ii) the facilities are to be available to the members or female members of the public at large.
- 5.16. In summary, the Council is to keep the Park Lands in perpetuity as a memorial to King George V and may use the land –
- 5.16.1. For playing fields named and sign-posted as “King George’s Fields”.
- 5.16.2. For facilities for recreation or other leisure-time occupation, provided that it is in the interests of social welfare and for the public benefit.
- 5.17. The Board may wish to receive further reports in due course concerning management activities in respect of the lands the subject of charity, taking into account the objects and powers outlined in this report.

Powers

- 5.18. The Council is given specific powers, as trustee of the King George’s Field, Mile End charity, which it may exercise to further the objects of the charity. In addition, the Council has powers as trustee provided under the legislation governing trusts, particularly the Trustee Act 1925 (“**TA 1925**”) and the Trustee Act 2000 (“**TA 2000**”).

- 5.19. **Disposal of land.** The 2000 Scheme makes provision for limited disposal of land. The Council may let part or parts of the Park Lands on leases not exceeding 10 years to provide recreational facilities to the public or to provide such services to the public ancillary to recreation as are mentioned in Article 7 of the Greater London Parks and Open Spaces Order 1967 on the terms mentioned in that article. The Council may let the Shop Units. In disposing of any land, the Council must comply with section 36 of the Charities Act 1993, which sets out a number of requirements relating to prior approval, advice, consultation and deliberation. The 2000 Scheme does not make provision for sale of any of the land.
- 5.20. **Investment.** It is understood there are presently no investments by the Council as trustee. However, the Council has a general power of investment which authorises the making of any investment that the Council could make if it were absolutely entitled to the assets of the trust (TA 2000, Part 2). The power of investment does not permit investments in land other than loans secured on land. In exercising the power of investment the Council must have regard to the following investment criteria: (a) the suitability to the trust of investments of the proposed kind and of the particular investment; and (b) the need for diversification of investments of the trust, in so far as is appropriate to the circumstances of the trust. The Council must obtain and consider proper advice about the way the power of investment should be exercised before exercising the power.
- 5.21. **Acquisition of land.** The Council has power to acquire freehold and leasehold land in the UK as an investment or for any other reason (TA 2000, Part 3).
- 5.22. **Appointment of agents, nominees and custodians.** The Scheme specifically makes provision for appointment of a manager for the land the subject of the trust or any part of that land. The Council has additional power under the TA 2000 to delegate the following functions to an agent: (a) carrying out a decision it has taken as trustee; (b) functions relating to the investment of assets subject to the trust; (c) some functions relating to the raising of funds; and (d) other functions prescribed by the Secretary of State. The Act governs the terms of appointment pursuant to the statutory power and the exercise of functions by the agent. The TA 2000 contains power to appoint nominees and custodians in relation to assets of the trust.
- 5.23. **Power to give receipts etc.** The TA 1925 provides the Council with powers as trustee to give a receipt in writing that may be relied upon by a person paying, transferring or delivering personal property. The TA 1925 also empowers the Council to compound liabilities, including by compromising or settling any debt or claim. The Council is also empowered by the TA 1925 to insure any property the subject of the trust. The TA 1925 contains other powers that are probably not relevant for present purposes.

- 5.24. **Amendment of the Scheme.** The 2000 Scheme expressly provides that the Council may amend the provisions of the scheme, with the exception of the following: (i) the power of amendment itself; (ii) the definitions; (iii) the restrictions on use of property (ie the objects of the trust); (iv) the (limited) power to dispose of land; the creation of a power to dissolve the charity; or (v) the power to spend permanent endowment of the charity. Whilst the Council may amend the name of the charity it must first obtain the written approval of the Charity Commission.
- 5.25. **Other powers.** There are additional powers not presently provided for in the 2000 Scheme that it may be beneficial for the council to have, for example –
- 5.25.1 to raise funds, provided that the trustees must not undertake any substantial permanent trading activity and comply with any relevant statutory regulations;
 - 5.25.2 to borrow money and to charge the whole or any part of the property belonging to the Charity as security for repayment of the money borrowed, subject to compliance with sections 38 and 39 of the Charities Act 1993 (including the need to obtain proper advice before mortgaging the land);
 - 5.25.3 to co-operate with other charities, voluntary bodies and statutory authorities and to exchange information and advice with them;
 - 5.25.4 to employ and remunerate such staff as are necessary for carrying out the work of the Charity; and
 - 5.25.5 to do any other lawful thing that is necessary or desirable for the achievement of the objects.
- 5.26. Some of these powers may have immediate utility, such as the power to employ staff for the charity, which may underpin present arrangements such as the employment of the Director of Mile End Park. Others of the powers may not have an obvious immediate application, but may in the future facilitate action by the Board. It may be possible to bring forward proposals to expand the powers of the Council as trustee by the power of the amendment contained in the 2000 Scheme or otherwise. This needs to be considered against the background of the merger proposal contemplated by the Board.

Operation of the charity and plans for the Park Lands

- 5.27. As set out above, the lands falling under the Mile End charity include most of Mile End park.
- 5.28. There is an annual management plan for Mile End Park that sets out a number of objectives for the Park. It is clear that the management plan has been and in the future will be influenced by a number of matters –
- 5.20.1 The themes in the Council's Community Plan.

- 5.20.2 The Mile End Park Ecology Strategy, Mile End Park Arts Strategy and Mile End Park Play Strategy.
- 5.20.3 The three Forums for Ecology, Arts and Play.
- 5.20.4 The Mile End Park Partnership, formed to oversee the construction work funded by the Millennium Commission.
- 5.29. The emergence of ecology as one of three key themes for management of Mile End Park is a matter to which the Board may wish to give some consideration. Mile End Park now contains an ecology park and an ecology pavilion. It is doubtful that anyone visiting the park would view these areas as anything other than facilities for recreation or other leisure-time occupation relevantly within the purposes for which the Park Lands may be used under the 2000 Scheme. However, care must be taken with this. One of the objectives referred to in the 2009-2010 Management Plan is a wind turbine. Whilst this may be justifiable by reference to the purposes for which land may be used under the 2000 Scheme, care must be taken to make the necessary links. Ecology per se is not one of the relevant purposes. It may be possible to add this as a relevant object of the charity and this is something that can be addressed in any further report dealing with amendment of the governing documents.
- 5.30. The Council has not published a management plan or strategy specifically for the other lands referred to in paragraph 5.10 above. The lands, or some of them, are referred to in the Council's Open Space Strategy for 2006 – 2016 which establishes minimum standards for the protection and provision of open space. The open space strategy makes clear that open space should be upgraded to cope with competing demands and to take account of: the need to use open spaces more effectively to address the borough's significant health inequalities and encourage healthier lifestyles including sport; the needs of a growing population of young people; the demands of the festival programme on open spaces; biodiversity and sustainability. With the exception then of Crossrail, which is dealt with below, there do not appear to be any specific plans for Stepney Green Park and nearby lands that would conflict with the objects and powers in the 2000 Scheme. Any specific plans developed for the lands would have to be progressed having regard to the 2000 Scheme and the views of the Board.

Issues with the governing document

- 5.31. As set out in paragraphs 5.11 and 5.12 above, there is merit in exploring whether the 2000 Scheme accurately describes the Park Lands the subject of the charity and whether better plans can be incorporated as part of the Scheme. In this regard, it should be noted that the power given to the Council to amend the Scheme does not include amendment of the description of the land the subject of the Scheme and this will need to be pursued with the Charity Commission.

- 5.32. As set out in paragraphs 5.25 and 5.26, there may be merit to amending the 2000 Scheme to include additional powers for the Council as trustee. It would be possible to include these powers using the Council's power of amendment under the Scheme, but whether the amendments should be carried out in this way should be considered having regard to the totality of any amendments sought, particularly in relation to merger (see below) and amendment of the description of the property the subject of the trust. A proposal can be brought forward to the next meeting of the Board.

6. THE TREDEGAR SQUARE CHARITY

- 6.1. The Square Garden at Tredegar Square is managed by the Council through its Communities, Localities and Culture directorate.

The governing documents

- 6.2. Unlike the Mile End charity, the Tredegar Square charity is not governed by a scheme, but by three deeds dating from 1929, 1930 and 1954. Copies of the deeds are contained in **Appendix 3**.

Land subject to the Tredegar Square charity

- 6.3. On 28 October 1929, Mr Evan Morgan entered into a deed with the Metropolitan Borough of Stepney ("**the 1929 Deed**") concerning the land referred to in Schedule 3 to an earlier deed between Sir George Walker, Mr Henry Lindsay and Mr Evan Morgan, said to comprise (inter alia) the enclosed garden of Tredegar Square in the borough of Stepney ("**the Square Garden**").
- 6.4. Tredegar Square is proximate to Mile End Park. It is located off Morgan Street between College Terrace and Tredegar Terrace, about two blocks from Mile End Park. A plan showing Tredegar Square is contained in **Appendix 4**.

Objects

- 6.5. The 1929 Deed provided that the Council would at its expense lay out the Square Garden for public use in accordance with drawing number 2612. The Square Garden was to be open to the public free of charge every day from sunrise to sunset or such longer hours as the Council may determine. The 1929 Deed placed obligations on the Council to keep the Square Garden enclosed and to maintain and improve the garden.
- 6.6. On 7 April 1930, Mr Evan Morgan and the Metropolitan Borough of Stepney agreed to amend the 1929 Deed by substituting a new design for the Square Garden set out in drawing number 2612A ("**the 1930 Deed**").

- 6.7. On 20 August 1954, the trustees of the late Mr Evan Morgan (Viscount Tredegar since 1934) entered into a deed with the Metropolitan Borough of Stepney (“**the 1954 Deed**”) to supplement the 1929 Deed as amended by the 1930 Deed. The 1954 Deed recorded that the Council wanted the Square Garden to form part of the national memorial to King George V under the provisions of King George’s Fields Foundation and that the layout of the Square Garden should be further amended. It was agreed in the 1954 Deed that the Square Garden should be laid out at the Council’s expense as an open space, garden and children’s playground for public use (and for no other purpose whatsoever) in accordance with the drawing number 7349 annexed to the 1954 Deed.
- 6.8. Unfortunately, it has not been possible to locate a copy of drawing number 7349. The Charity Commission does not hold a copy. This places the Board in a somewhat untenable position as it is left to administer the Tredegar Square Charity without one of the critical documents that identifies how it is to be administered.

Powers and functions

- 6.9. Little is provided in the governing documents by way of powers to the Council as trustee. The following additional controls apply under the 1929 Deed –
- 6.9.1 The Square Garden is to be open to the public from sunrise to sunset or during such longer hours as the Council may determine.
 - 6.9.2 Enjoyment of the Square Garden is to be free of charge.
 - 6.9.3 The Council is not to erect or permit the erection of any building on the Square Garden except shelters and conveniences for the public or for caretakers and toolhouses or other buildings incidental and conducive to the better enjoyment of the square garden by the public.
 - 6.9.4 The Council is to keep the Square Garden in repair.
 - 6.9.5 The Council is to employ sufficient custodians and caretakers to prevent nuisance and preserve order in the Square Garden. The Council must secure that the Square Garden is cleared at closing hours and do all things in its power to prevent any use of the garden that may be or become a nuisance or annoyance to the owners or occupiers of the houses fronting upon or in the immediate neighbourhood (“the Neighbours”).
 - 6.9.6 The Council may permit children’s games and sports in the Square Garden provided that they are conducted in a manner that does not cause disturbance, nuisance or annoyance to the Neighbours.
- 6.10. According to the 1954 Deed, the Square Garden is to be known as King George’s Field.
- 6.11. The Council will, as trustee, also have the powers under the TA 1925 and TA 2000 outlined above. There is no power, such as is contained in the 2000

Scheme, to amend the trust deeds. It is questionable whether any additional powers are strictly speaking required in respect of the charity, given that the Council is simply required to maintain the Square Garden in perpetuity and at its own expense for the public to enjoy. If, however, any amendment of the trust deeds is proposed, for example by amending the reference to drawing number 7349 to refer to a drawing that can be found, then it may be sensible at the same time to include some general powers such as are suggested above in relation to the Mile End charity.

Plans for Tredegar Square

6.12. As with Stepney Green Park and nearby lands, the Council has not published a management plan or strategy specifically for Tredegar Square. The Square is referred to in the Council's Open Space Strategy for 2006 – 2016 which establishes minimum standards for the protection and provision of open space, referred to in paragraph 5.30 above. Any specific plans developed for the lands would have to be progressed having regard to the 2000 Scheme and the views of the Board.

Issues with the governing documents

6.13. The most significant issue identified in relation to the trust deeds governing the Tredegar Square charity is the inability to locate the drawing setting out the plan in accordance with which the Council is required to maintain the Square Garden. The Council's Parks and Open Spaces department has also advised that it would be more appropriate to simply reference a location plan for the Square Garden, rather than specifying a rigid design to be followed. There would appear to be merit in having the Council's Asset Management department prepare an appropriate location plan. Consideration could then be given to whether the governing documents can be amended to reference the revised plan.

6.14. The Council's powers under the trust deeds are limited, as outlined above, and it may be beneficial if amendment to the trust deeds is contemplated to include additional powers.

6.15. Any revision of the governing documents will, however, need to be carefully considered, including by reference to the merger of the charities contemplated by the Board. It will by no means be straightforward to revise the governing documents, given that they do not contain any express powers of amendment.

7. ALTERNATIVES FOR GOVERNANCE OF THE CHARITIES

7.1 The Board determined on 7 January 2009 that the charities should be merged and authorised the Assistant Chief Executive (Legal Services) to approach the Charity Commission in this regard. An approach has been made to the Commission and discussions commenced.

- 7.2 There are a variety of means by which the governing documents of unincorporated charities can be amended.
- 7.3 The first consideration is whether the governing documents permit the amendment. In this case, the governing documents of the Tredegar Square charity do not contain any relevant powers to support a merger.
- 7.4 Secondly, it may be possible, using the power in section 74D of the Charities Act 1993 to have a simple administrative linkage of the two charities. The Charity Commission has advised that it can make a "uniting direction", pursuant to which the charities will be linked for the purposes of registration and accounting. According to the Charity Commission, charities subject to a "uniting direction" remain legally distinct, and the trustees remain under a duty to ensure that funds for each charity are applied only for the separate purposes of those charities. If the Board wishes to have a simple administrative linkage, then it will need to make a resolution to that effect.
- 7.5 If the Board wishes to make a more complete merger then this may be possible by reference to the powers of the Charity Commission to make orders and schemes. One of the recommendations of the report is that a proposal be brought forward to a further meeting of the Board concerning amendments canvassed in this report may be effected. It is proposed that this will also deal with merger. Discussions will continue with the Charity Commission in this regard.
- 7.6 As set out in paragraph 3.2 above, the Council currently deals with its trustee function in respect of the charities as part of the executive arrangements provided in the Council's Constitution. This is in accordance with the view that under the Local Government Act 2000 any function exercised by the Council that is not specified in the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 as a non-executive or local choice function is an executive function. Further consideration is being given to this view, which does not necessarily sit comfortably with the fact that the Council's obligations as trustee are constrained by the governing documents of the charities and may be quite separate from its other functions. An oral report on progress may be provided at the Board meeting on 15 April 2009.

8. DUTIES OF THE TRUSTEES

- 8.1 The terms of the governing documents pursuant to which the Council as trustee and the Board as its delegate must operate are detailed in the report. It is proposed that a training session be conducted at the next meeting of the Board dealing with the general duties of trustees binding on Board members.

9. CROSS RAIL

Background

- 9.1 The route of Crossrail runs east to west through the borough with stations at Whitechapel and Isle of Dogs. Although running entirely in tunnel through the borough, surface shafts are necessary at various locations to provide access to the tunnels for both construction and emergency escape purposes. Although it now seems likely that Crossrail will reach agreement with the Fire Authority to reduce the number of shafts in the borough, the shaft at Stepney Green is still required. It will be the location of the junction of the two eastern branches where a major underground chamber will need to be constructed, and is also a site where the tunnelling machines may need to enter or leave the tunnels (however no tunnelling spoil will be removed at Stepney Green).
- 9.2 At the surface, the construction works site will result in the temporary loss of the Astroturf football pitch and the children's playground, as well as the temporary loss of one third of the site of Stepping Stones Farm. There will also be a permanent loss of approximately 1800m² of open space resulting from the need to provide permanent surface facilities for emergency access to the tunnels.
- 9.3 Following the publication of the Crossrail Bill proposals, the Council lodged a petition against a number of the detailed aspects of the Bill proposals which included the impact of the temporary and permanent loss of open space at Stepney Green. Following negotiations, Crossrail agreed to give legal undertakings to finance the temporary re-provision of the football pitch and changing rooms during the 5 year construction period, and its permanent restatement following the completion of the Crossrail works. Similar undertakings were given in respect to Stepping Stones Farm. These undertakings and assurances have been collated and published in a formal register the last version of which was published in August 2008.
- 9.4 However, following further consideration of the detailed design of the construction site, Crossrail were able to reduce the size of the worksite. This meant that rather than completely relocate the football pitch it was now possible to retain the pitch in its current position but reoriented by 90°; although the pitch would still be out of use for up to 6 months. Since this proposal minimised disturbance to the remainder of the open space it was agreed to pursue this option rather than the original relocation proposal. Formal undertakings were given to progress this option and these are now included in the Register.

Current Situation

- 9.5 Early in 2008, negotiations and discussion commenced on the detailed design of the replacement football pitch and associated facilities at Stepney Green and are still ongoing. Since some of the land on which the new pitch is located is outside

the area covered by the Crossrail Act, a formal planning application will eventually need to be submitted to the council in order to progress the proposals. Although the football pitch is remaining in the same general location, it will be noted that the football pitch will be a brand new facility built to modern standards and that the changing rooms will also be completely rebuilt. The current programme is for this application to be submitted in mid-July 2009.

- 9.6 Proposals to deal with the impact of the Crossrail works on Stepping Stones Farm are also being progressed and a consultant has been appointed who is working on both setting up a new management structure for the Farm and developing proposals for the re-provision of facilities lost as a result of the Crossrail construction works.
- 9.7 During the initial discussions with Crossrail, officers were made aware that all the land at Stepney Green and Stepping Stones Farm was subject to a charity for which the council was the sole trustee. Officers then met with a representative of the charity in May 2008 in order to gain a full understanding of the impact of the charitable status on the Crossrail proposals. Crossrail was also immediately advised of the charity's interest but it was clear from their response that whilst they were not aware of the existence of the charity, it was Crossrail's view that the Compulsory Purchase powers authorised by the Crossrail Act provide the necessary powers to purchase both the charitable interest as well the land itself. However, as made clear to Crossrail, financial compensation would be sought by the charity from Crossrail to compensate for both the temporary and permanent loss of covenanted open space.
- 9.8 In order to assist in negotiations with Crossrail, officers have appointed CB Richard Ellis to provide specialist valuation advice both in respect to the loss of the open space within the council's ownership and the "value" of the charity's interest. The consultant's advice has yet to be provided but will in due course provide the basis of future discussions with Crossrail on the land disposal issues.

Conclusions

- 9.9 In summary officers are taking a three pronged approach to negotiations with Crossrail in respect to the loss of open space at Stepney Green. This can be summarised as follows:-
- 9.1.1 Progress the planning application to ensure that all the existing open space facilities at Stepney Green and Stepping Stones Farm are re-provided to an acceptable standard.
- 9.1.2 Ensure that the council is compensated for both the temporary and permanent loss of open space as well as the loss of revenue arising from the loss of the football pitch.
- 9.1.3 Ensure that the Mile End charity is compensated for the loss of charitable land either financially or in kind.

- 9.10 In due course the planning application will be considered by the planning Committee and the compensation issues referred to both the Cabinet and the Board.
- 9.11 In respect of the foreshadowed loss of land, it is clear that there is no power in the 2000 Scheme for the Council as trustee to sell the park lands. Any compulsory purchase will need to be examined against the legislative schemes for Crossrail and the charities. Further advice can be given about this in due course. It may be possible for the Council to accept compensation for loss of land if that is inevitable, but this will need to be carefully considered, including by reference to the views of Fields in Trust as trustees of the Foundation.

10. COMMENTS OF THE CHIEF FINANCIAL OFFICER

- 10.1. This report is principally for noting and as such there are no specific financial implications with the exception of any costs arising from preparing plans as referred to in recommendation 2.2 which will be met from the Mile End Park Budget. When further reports are presented to the Charity Board detailing amendments to the Scheme of Governance and other issues referred to in this report, the Board will receive relevant advice as to the financial implications.

11. CONCURRENT REPORT OF THE ASSISTANT CHIEF EXECUTIVE (LEGAL)

- 11.1. There are no additional comments to those set out in the report.

12. ONE TOWER HAMLETS CONSIDERATIONS

- 12.1. The Council's role as trustee of the charities referred to in this report must be exercised having regard to the objects, powers and limitations in the governing documents, which are described in this report. The Council is not, in exercising the functions of trustee, necessarily free to pursue its own partnership goals expressed in the Community Plan. That said, it seems clear that the discharge of the trustee duties, which involve the maintenance of playing fields and a public garden in perpetuity, will contribute to one of the key themes in the Community Plan: A Great Place to Live. The priorities for achieving a great place to live include supporting vibrant town centres and a cleaner safer public realm by supporting and improving open spaces.

13. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT

- 13.1. As stated in paragraph 12.1, the Council's role as trustee of the charities referred to in this report must be exercised having regard to the objects, powers and limitations in the governing documents, which are described in this report. The Council is not, in exercising the functions of trustee, necessarily free to pursue its own goals for sustainable action, whether expressed in the Community Plan, or

otherwise. This is consistent with the discussion in paragraph 5.29 above, where it is made clear that “ecology” is not an object in itself within the Mile End charity, but that ecology related goals may still be pursued provided it is connected with the express objects in the governing documents. In other words, the Council’s discharge of its trustee duties may incidentally, and perhaps will likely, contribute to sustainable action for a greener environment through the maintenance of playing fields and a public garden in perpetuity.

14. RISK MANAGEMENT IMPLICATIONS

14.1. It is important that the Council carries out its role as trustee of the charities according to law. Failure to do so may result in legal action or public criticism. That risk is assessed as low, but the purpose of this and related reports is to ensure that the Board is aware of its obligations in carrying out the Council’s trustee function and is satisfied that the function is being properly exercised.

15. EFFICIENCY STATEMENT

15.1. This report is primarily concerned with governance arrangements for the Mile End and Tredegar Square charities. It is important that the Council carries out its role as trustee of the charities according to law. This is not directly a matter of efficiency, having regard to the Council’s duty as a best value authority under the Local Government Act 1999. That said, it is likely that review of the governance arrangements will aid the efficient management of the charities. Examples of possible efficiency gains are: (a) it may be easier for the Board and officers to manage the lands the subject of the charities if they are readily identifiable according to clear and accurate plans as is recommended in the report; (b) if the merger of the two charities proceeds, then there would be a need to produce only one set of accounts rather than two; and (c) if there is amendment to the powers of the Council as trustee, then this may facilitate future action.

Local Government Act, 1972 Section 100D (As amended) List of “Background Papers” used in the preparation of this report

Brief description of “background papers”	Name and telephone number of holder and address where open to inspection.
--	---

APPENDICES

Appendix 1 Plan No. KGF2

Appendix 2 The scheme pursuant to which the Charity Commissioners of England

and Wales ordered on 28 February 2000 that the charity known as King George's Field, Mile End should be administered

Appendix 3 The three deeds from 1929, 1930 and 1954 governing the charity known as King George's Field – Stepney (Tredegar Square, Bow)

Appendix 4 Plan showing Tredegar Square