

Item 4 - Memorandum of Agreement – Counter Signature

Lightwater Recreation Ground Trust 27th October 2026

Purpose of paper

To seek the Trust's agreement that the Chair of the Trust should counter-sign the original agreement, notwithstanding that the Clerk signed it on behalf of the Trust.

Recommendation

Members are asked to note the information below and resolve that the Chair of the Trust counter-sign the original agreement.

Background

Having attended further training on charitable trusts, it is considered good governance practice that, where an agreement is entered into on behalf of the Trust, the document should also be evidenced by the signature of the Chair. This provides a clearer record that the Trust itself has considered and authorised the arrangement, rather than the document being signed solely at officer level.

The Clerk's signature was appropriate as the Trust's administrative officer acting on its behalf. However, in light of the further training received, it would be preferable for the Chair to counter-sign the original agreement so that the Trust's approval is clearly reflected on the face of the document.

This approach would also sit with the principle that trust business should be kept distinct and properly recorded, with separate governance arrangements where the council is acting in a trustee capacity.

DATED 01 APRIL 2025

PARTIES

- (1) WINDLESHAM PARISH COUNCIL as trustee of LIGHTWATER PLAYING FIELDS
AND RECREATION GROUND ('the Trustee') and
- (2) WINDESHAM PARISH COUNCIL ('the Council')

MEMORANDUM OF AGREEMENT RELATING TO THE MANAGEMENT AND MAINTENANCE OF
LIGHTWATER PLAYING FIELDS AND RECREATION GROUND

Surrey Hills
Solicitors 

Surrey Hills Solicitors
Oak Green House
250 – 256 High Street
Dorking
Surrey RH4 1QT
Ref: WINDL01-05
V1 19.01.2025

THIS AGREEMENT is made on
PARTIES

- (1) WINDLESHAM PARISH COUNCIL of Council Offices The Avenue, Lightwater GU18 5RG as trustee of Lightwater Playing Fields and Recreation Ground ('**the Trustee**')
and
- (2) WINDLESHAM PARISH COUNCIL of Council Offices The Avenue, Lightwater GU18 5RG ('**the Council**')

BACKGROUND

1. The Trustee is the registered proprietor of the land known as Lightwater Playing Fields and Recreation Ground (the 'Recreation Ground') by virtue of a conveyance dated 13 June 1931 and is the sole managing trustee of the Recreation Ground.
2. Notwithstanding this Memorandum of Agreement the Trustee remains responsible for the discharge of its duties as charity trustee and certifies that it has the power under its trusts and under the Charities Act 2011 to enter into this Memorandum of Agreement.
3. The Trustee has requested the Council to perform the Services.
4. The Council pursuant to section 111 of the Local Government Act 1972, section 19 of the Local Government (Miscellaneous Provisions) Act 1976, section 297 of the Charities Act 2011 and other enabling powers has agreed to perform the Services set out in the schedule ('**the Services**').

IT IS AGREED:

1 Council's obligations

At the request of the Trustee and for the consideration specified in Clause 2 the Council shall perform the Services in accordance with this Memorandum of Agreement.

2 Contract Sum

2.1 The Trustee shall pay to the Council all income received from the Services as received from time to time as specified in this Memorandum of Agreement.

2.2 The Council shall in its discretion grant aid the Trustee to the extent that the income derived from the Services shall fall short of the cost to the Council of providing the Services.

2.3 The Council shall pay to the Trustee any surplus of income derived from the Services over the costs and expenses incurred or allocated to the performance of the Services

2.4 The accounting arrangements for income derived and costs and expenses incurred or allocated shall be in accordance with Condition 5.

2.5 For the purposes of determining the financial arrangements pursuant to this Agreement, Schedule 2 shall have effect.

2.6 The financial arrangements shall be reviewed annually as part of the Council's budget-setting process.

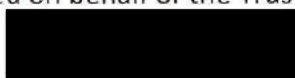
3 Authorised Officer

The 'Authorised Officer' means the Clerk to the Trustee or such other person or persons as shall be appointed by the Trustee.

4 Disputes

Any dispute concerning this Memorandum of Agreement shall be dealt with in accordance with Condition 15 of the Conditions of Agreement

Signed on behalf of the Trustee



CLERK TO WINDLESHAM PARISH COUNCIL
MANAGING TRUSTEE

Signed on behalf of the Council



WINDL01-05

CLERK TO WINDLESHAM PARISH COUNCIL

MINUTE REF. 0/24/211

CONDITIONS OF AGREEMENT

1. Definitions

- 1.1 In this Memorandum of Agreement, save where the context otherwise requires, the following expressions shall have the meanings assigned to them:
- 1.2 '**Authorised Officer**' means the officer referred to in Clause 3 of this Agreement or officer fulfilling the like role;
- 1.3 '**Commencement Date**' means 01 April 2025
- 1.4 '**Conditions**' means these Conditions, any supplementary conditions and any modification of these Conditions;
- 1.5 '**Contract Sum**' shall be the sums which shall be the actual costs of effecting and carrying out the Services less the fees and charges collected by the Council (which fees and charges shall belong to the Council and which sums shall be credited against the Contract sum);
- 1.6 '**Costs and Expenses**' include all revenue and capital costs and expenses incurred in or allocated to the performance of the Services including staff costs, overheads, administrative, professional and technical costs and fees, payments due to or made to third parties for service, supplies and works, irrecoverable VAT, irrecoverable National non-domestic rates and other taxes.
- 1.7 '**the Land**' means the land referred to recital 1;
- 1.8 '**the Memorandum of Agreement**' and '**this Memorandum of Agreement**' means the Agreement set out above, these Conditions, any supplementary conditions and any modification of these Conditions, the Schedule;
- 1.9 '**Term**' shall be construed in accordance with Condition 4;
- 1.10 '**Plan**' means the plan attached to this Memorandum of Agreement;
- 1.11 '**Plant**' means equipment, machinery, plant and vehicles;
- 1.12 '**the Schedule**' means the Schedule to the Memorandum of Agreement;
- 1.13 '**the Services**' means the services described in the Schedule;
- 1.14 '**the Trustee**' means Windlesham Parish Council or any successor authority;
- 1.15 the masculine includes the feminine and in the case of a limited company the indefinite article, and the singular includes the plural and vice versa; and

1.16 reference to any Act of Parliament and to any orders, regulations or rules made pursuant to that Act shall include reference to any modification, re-enactment or replacement.

2. Variation of Contract

2.1 Without prejudice to any other of these Conditions, no omission from, addition to or variation of this Memorandum of Agreement shall be valid or of any effect unless it is agreed in writing and signed by the Authorised Officer and by a duly authorised representative of the Council.

2.2 Save for an omission, addition or variation agreed pursuant to Condition 2.1 any provision inconsistent with these Conditions contained in any other document or in any oral agreement is agreed to be void and of no effect.

3. The Authorised Officer

The functions, rights and powers conferred by this Memorandum of Agreement upon the Trustee shall be exercised by the Authorised Officer.

4. Term

This Memorandum of Agreement shall extend for a period of 5 years from the Commencement Date and shall not be terminable by either party within that period save in accordance with this Memorandum of Agreement.

5. Performance of the Services

5.1 During the Term the Council shall perform the Services (and any modifications authorised by or under this Memorandum of Agreement) efficiently, effectively and safely and in a manner totally consistent with the terms of this Memorandum of Agreement and to the entire satisfaction of the Authorised Officer.

5.2 All costs and expenses incurred in the performance of the Services shall be paid by the Council who shall be entitled to be paid any income received from the use and facilities of the Land as from the date of this Memorandum of Agreement.

5.3 The Trustee shall (to the extent of any funds which are available to them) reimburse to the Council reasonable costs expended by the Council in carrying out any instructions under this Condition 5.

- 5.4 By no later than 30 June in each year of the Term the Council shall provide a statement to the Trustee detailing the income received and the costs and expenses incurred in or allocated in the financial year to 31 March.
- 5.5 In the event of there being a shortfall in the income received against the costs and expenses incurred in or allocated in a financial year the Council shall make a determination of the appropriate level (if any) of grant aid by no later than the following 31 July.
- 5.6 In the event of there being a surplus of income received over the costs and expenses incurred in or allocated in a financial year the Council shall pay such surplus to the Trustee no later than the following 31 July.
- 5.7 The treatment of and procedures for the accounting for income and costs and expenses shall be made in accordance with the Accounts and Audit Regulations 2015 or provisions replacing or amending the same as they apply to the Council.

6. Assignment

- 6.1 The Trustee shall not be entitled to assign the benefit of this Memorandum of Agreement or any part of the Memorandum of Agreement
- 6.2 The Council shall not assign this Memorandum of Agreement or any part of it or any benefit or interest in or under it.
- 6.3 The Council may sublet the whole or part of the Services but such subletting shall not relieve the Council from any liability or obligation under the Memorandum of Agreement and it shall be responsible for the acts, defaults and neglects of any contractor, its agents or servants as fully as if they were the acts, defaults or neglects of the Council, its agents or servants.

7. Premises and Licence

The Trustee grants to the Council a licence to enter, occupy and use the Land and any buildings or other facilities for the purposes of performing the Services.

8. Plant

The Council shall at all times during the Term provide and maintain all such Plant as is necessary for the proper performance of the Services.

9. Council's staff

- 9.1 The Council shall at all times during the Term employ sufficient persons of sufficient abilities and skills for the proper performance of the Services. In particular the Council shall provide sufficient currently qualified staff to operate all premises and undertake all activities in accordance with all appropriate statutes, regulations and case law to ensure, amongst other things, that employees and members of the public are kept safe at all times.
- 9.2 The Council shall at all times during the Term employ sufficient persons of sufficient abilities and skills to supervise and administer the performance of the Services in a proper and continuous manner.
- 9.3 The Council shall at all times take all such precautions as are necessary to protect the health and safety of all persons employed by it, and shall comply with the requirements of the Health and Safety at Work etc Act 1974 and of any other Acts, regulations, orders or EU directives relating to the health or safety of employed persons.

10. Liability of Council

- 10.1 The Council shall be liable for and shall indemnify the Trustee against any expense, liability, loss, claim or proceedings arising under any statute or at common law in respect of personal injury to or death of any person arising out of or in the course of or caused by the performance of the Services, except to the extent that the same is due to any act or neglect of the Trustee or of any person for whom the Trustee is responsible.
- 10.2 The Council shall be liable for and shall indemnify the Trustee against any expense, liability, loss, claim or proceedings in respect of any loss of or injury or damage to any property, real or personal, in so far as such loss, injury or damage arises out of or in the course of or by reason of the performance of the Services, and to the extent that the same is due to any negligence, breach of statutory duty, omission or default of the Council, its employees or agents, or of any person employed or engaged by the Council upon or in connection with the performance of the Services or any part, its employees or agents.

11. Insurance

Without prejudice to Condition 16, the Council shall at all times maintain in force such policies of insurance and shall fully insure and indemnify itself against liability:

- i. to the Trustee and to any employee of the Trustee;

- ii. to its employees;
- iii. to any other person;
- iv. in the sum of at least £10 million in respect of each claim.

12. Liability of Trustee

- 12.1 The Trustee shall not be liable for any loss or damage however arising except for loss or damage directly arising from negligent acts or omissions of the Trustee, its servants or agents. Damages arising from such negligent acts or omissions shall be limited to direct and unavoidable losses and the Council shall take all reasonable steps to mitigate such losses.
- 12.2 The Trustee shall remain responsible for its duties as charity trustee.
- 12.3 The Trustee shall be liable to pay any irrecoverable value added tax.
- 12.4 The Trustee shall be liable for any taxes and outgoings affecting premises or the Services to the extent that they are not recoverable the Council and the Trustee must obtain any necessary reliefs and allowances from national non-domestic rates.

13. Termination

- 13.1 Without prejudice to any other remedy, the Trustee shall be entitled forthwith to terminate this Memorandum of Agreement in the event of any material breach by the Council of any other provision of the Memorandum of Agreement;
- 13.2 Either party may give to the other 6 months' prior written notice to terminate this Memorandum of Agreement;
- 13.3 Such termination shall be without prejudice to any rights and liabilities which may have accrued up to the date of termination and upon such termination, in addition to such consequences as are set out in the other provisions of this Memorandum of Agreement the Council shall immediately cease to perform any of the Services.

14. Notices

- 14.1 Any notice to be served upon the Trustee shall be valid or effective provided it is sent by prepaid post or delivered by hand to the Trustee at the address specified in the Agreement or to such other address as the Authorised Officer may notify the Council in writing.

14.2 Any notice to be served upon the Council shall be valid or effective provided it is sent by prepaid post or delivered by hand to the Council at the address specified in the Agreement or to such other address as the Council may notify the Trustee in writing.

15. Arbitration

15.1 If any dispute or difference concerning this Memorandum of Agreement shall arise between the Trustee (or the Authorised Officer on its behalf) and the Council, such dispute or difference shall be referred to the arbitration and final decision of a person to be agreed between the parties, or failing agreement within 14 days after either party has given to the other a written request to concur in the appointment of an arbitrator, a person to be appointed on the request of either party by the President of the {President of the Institute of Leisure and Amenity Management.

15.2 The arbitrator shall be entitled to make such decision or award as he thinks just and equitable having regard to the circumstances then existing, the cost of such arbitration to follow the event, or in the event of neither party succeeding, to be apportioned between the parties by the arbitrator in such proportions as he in his absolute discretion thinks fit.

15.3 Any award or decision of such arbitrator shall be final and binding on the parties to this Memorandum of Agreement.

15.4 Unless this Memorandum of Agreement shall have already been determined or abandoned, the Council shall in every case continue to proceed with the Services with all due diligence, and the Council and the Trustee shall both give immediate effect to every such decision of the Authorised Officer, unless and until the same shall be revised by an arbitrator.

16. Observance of statutory requirements

16.1 The Council shall comply with all statutory and other provisions to be observed and performed in connection with the Services provided under this Memorandum of Agreement with particular regard to the health and safety of employees and of the public and shall indemnify and keep indemnified the Trustee accordingly.

16.2 Without prejudice to the generality of Condition 16.1 the Council shall in performing the Services seek to protect the natural flora and fauna and the historical heritage of the Land.

16.3 Each party will comply with its obligations under the Freedom of Information Act 2000, Environmental Information Regulations 2004, and Data Protection Act 2018. Each party will supply promptly to the other all information necessary to enable the other to comply with its obligations under the Freedom of Information Act 2000, Environmental Information Regulations 2004, Data Protection Act 2018, Public Bodies (Admission to Meetings) Act 1960, the Local Government Act 1972, the Local Audit and Accountability Act 2014, the Openness of Local Government Bodies Regulations 2014, the Charities Act 2011 and with respect to disclosure and barring service checks and the requirements, orders or instructions of any regulator or court .

17. Whole understanding

This Memorandum of Agreement constitutes the whole understanding of the parties as to the subject matter of this Memorandum of Agreement and there are no prior or contemporaneous agreements between the parties.

18. Waiver

Failure by the Trustee at any time to enforce any provision of this Memorandum of Agreement or to require performance by the Council of any of the provisions of this Memorandum of Agreement shall not be construed as a waiver of any such provisions and shall not affect the validity of this Memorandum of Agreement or any part of it or the right of the Trustee to enforce any provision in accordance with its terms.

19. Severance

If any provision of this Memorandum of Agreement shall become or shall be declared by any court of competent jurisdiction to be invalid or unenforceable in any way such invalidity or unenforceability shall in no way impair or affect any other provision, all of which shall remain in full force and effect.

20. Contracts (Rights of Third Parties) Act 1999

This Memorandum of Agreement does not confer any rights on persons not party to this Memorandum of Agreement and is personal to the parties.

21. Inconsistency

In the event of a conflict between any of these Conditions and any provision of the Appendices the provision of these Conditions shall prevail.

22. Clause headings

The clause headings shall not be construed as part of these Conditions.

23. Law

This Memorandum of Agreement shall be governed by and construed in accordance with the laws of England and the Council irrevocably submits to the jurisdiction of the English courts.

SCHEDULE 1 (the Services)

		Particulars	Standards
1.	Manage events on the Land	Arrange bookings Issue appropriate licences Collect fees Check insurances Ensure that organisers have undertaken appropriate risk assessments and carry into effect appropriate safeguards, have arrangements in place to comply with health and safety, food hygiene and safety and electrical safety	Ensure that no organisers acquire any rights in the land or any tenancy
2.	Undertake the maintenance of the Land	Grass cutting Tree maintenance Water quality control Brush cutting Hedgerow and fence management Ditch clearance Strimming Litter picking Litter collection Pitch maintenance and marking	
3.	Manage and maintain the car parks	Maintain the surface and boundary structures and devices for taking payments (if applicable) Install and maintain any security or safety measures Collect charges Take appropriate enforcement action Erect and maintain appropriate signs and markings	
4.	Grant and manage concessions and licences	Arrange bookings Issue appropriate licences Collect fees Check insurances Ensure that concessionaires and licensees have undertaken appropriate risk assessments and	Ensure that no concessionaire or licensee acquires any rights in the land or any tenancy

		carry into effect appropriate safeguards, have arrangements in place to comply with health and safety, food hygiene and safety and electrical safety	
5.	Maintain the children's play area and outdoor gym	Manage any contract for works, and maintain the facilities provided. Carry out appropriate safety inspections in accordance with best practice	
6.	Effect appropriate insurances of the land, its buildings, structures and works, public liability insurance on behalf of the Trustee	Arrange for Public Liability and Employer's Liability Insurance Motor Insurance Buildings Insurance	
7.	Manage and maintain the buildings on behalf of the Trustee.	To keep in repair the pavilion and the workshop including their structure, interior and exterior and manage their operation.	
8.	Undertake the maintenance of the facilities provided at the Recreation Ground.	Gates and padlocks including the main access gate and pedestrian access areas, Lighting, and fixtures	
9.	Functions carried out by the Council's Clerk and/or responsible financial officer	Human resources, and IT support Preparation of the Charity Commission annual return. Banking of Cash & Cheques received from the hire of facilities. Preparation of the annual budget for approval of the Trustee Day to day account administration Advice and guidance to the Trustee Annual Income statement for the Annual General Meeting of the Trustee.	

Item 5 - To consider obtaining Legal Advice on Trust Governing Objectives

Lightwater Recreation Ground Trust 27th October 2026

Purpose of Report

To seek approval to obtain specialist legal advice on the Trust's current charitable objects and the most appropriate way forward to ensure that the proposed Pavilion can support the widest appropriate range of recreational and community uses.

Actions

The Trust is asked to consider if:

- 1. Members would like to fund the cost of obtaining specialist legal advice relating to the scope and interpretation of the Trust's current charitable objects and governing arrangements, and the extent to which these permit the proposed recreational and wider community uses.**
 - 2. The advice should identify any approvals or consents required from Fields in Trust and/or the Charity Commission before any proposed changes are implemented; and**
 - 3. The Trust would like to request that Windlesham Parish Council, in its local-authority capacity, considers meeting the cost of obtaining the specialist legal advice.**
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Background

Windlesham Parish Council acts as Managing Trustee of Lightwater Playing Fields and Recreation Ground. The Recreation Ground is also subject to a Fields in Trust dedication.

The Trust has previously considered the future of the existing Pavilion and identified its replacement as a priority.

At the Trust meeting on 28 April 2026, Members were advised that Fields in Trust had indicated, in principle, that the replacement of the existing Pavilion and storage building could proceed without removal of the Fields in Trust dedication and without the Council becoming sole trustee, provided that the replacement buildings comprise a sports pavilion. The Trust subsequently agreed to progress a feasibility study, noting that Council would be asked to fund the associated costs.

Development of the Pavilion Proposal

The objective is to ensure that any new Pavilion is capable of supporting activities connected with the Recreation Ground while, so far as is legally permissible, allowing the building to accommodate wider community uses.

This raises an important question regarding the extent to which those aspirations sit within the Trust's existing charitable objects and governing arrangements.

Memorandum of Agreement

The Memorandum of Agreement maintains a distinction between Windlesham Parish Council acting as Trustee and Windlesham Parish Council acting in its local-authority capacity.

The Trustee remains responsible for the discharge of its duties as charity trustee, while under the Memorandum of Agreement the Council undertakes specified operational and management services on behalf of the Trustee.

Accordingly, the question of whether legal advice should be obtained regarding the Trust's charitable objects and how the proposed Pavilion might lawfully be used should be considered by the Trust.

Need for Specialist Legal Advice

Previous discussions and advice demonstrate the importance of establishing the legal position before the Pavilion project progresses significantly beyond feasibility.

It is proposed that specialist charity/property legal advice is obtained to establish:

1. the precise scope and interpretation of the Trust's existing charitable objects and governing arrangements;
2. the range of recreational and community activities that may lawfully be accommodated within a replacement Pavilion;
3. whether any amendment or modernisation of the charitable objects or governing arrangements would be necessary or desirable to facilitate the intended community use;
4. if changes are appropriate, the legal mechanism by which these could be achieved;
5. whether approval or consent would be required from Fields in Trust and/or the Charity Commission;
6. whether particular restrictions need to apply to use of the Pavilion by Windlesham Parish Council in its separate capacity as a local authority; and

The purpose of obtaining this advice is to establish what can lawfully be achieved under the present arrangements and, if those arrangements unnecessarily restrict an appropriate community facility, what options are available to the Trust.

Financial Implications

Obtaining specialist legal advice will incur a professional fee.

As with the Pavilion feasibility study, it is proposed that the Trust determines whether the professional work is required and, if so, requests that Windlesham Parish Council consider funding the cost.

Any decision by Windlesham Parish Council to provide funding would be a separate decision for Full Council in its local-authority capacity.