

**TRUSTEES OF THE CHARITY
KNOWN AS
NEWTOWN YOUTH CENTRE**

Wednesday, 16th March, 2016
To follow the Council Meeting
Council Chamber - Civic Centre

This meeting is open to the public

Members of the Council

The Mayor – Chair

The Sheriff – Vice-chair

Leader of the Council

Members of the Council (See overleaf)

Contacts

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| WARD | COUNCILLOR | WARD | COUNCILLOR |
|----------------------|------------------------------------|-------------------|---------------------------------|
| Bargate | Bogle Noon Tucker | Millbrook | Denness Furnell Galton |
| Bassett | Hannides B Harris L Harris | Peartree | Houghton Keogh Lewzey |
| Bevois | Barnes-Andrews Burke Rayment | Portswood | Claisse Norris O'Neill |
| Bitterne | Jordan Letts Lloyd | Redbridge | McEwing Pope Whitbread |
| Bitterne Park | Fuller Inglis White | Shirley | Chaloner Coombs Kaur |
| Coxford | Morrell Spicer Thomas | Sholing | Hecks Jeffery Wilkinson |
| Freemantle | Moulton Parnell Shields | Swaythling | Mintoff Painton Vassiliou |
| Harefield | Daunt Fitzhenry Smith | Woolston | Chamberlain Hammond Payne |

PUBLIC INFORMATION

Role of the Council

The Council comprises all 48 Councillors. The Council normally meets six times a year including the annual meeting, at which the Mayor and the Council Leader are elected and committees and sub-committees are appointed, and the budget meeting, at which the Council Tax is set for the following year.

The Council approves the policy framework, which is a series of plans and strategies recommended by the Executive, which set out the key policies and programmes for the main services provided by the Council. It receives a summary report of decisions made by the Executive, and reports on specific issues raised by the Overview and Scrutiny Management Committee. The Council also considers questions and motions submitted by Council Members on matters for which the Council has a responsibility or which affect the City.

PUBLIC INVOLVEMENT

Questions:- People who live or work in the City may ask questions of the Mayor, Chairs of Committees and Members of the Executive. (See the Council's Constitution ref Part 4 Council Procedure Rules 10.8)

Petitions:- At a meeting of the Council any Member or member of the public may present a petition which is submitted in accordance with the Council's scheme for handling petitions. Petitions containing more than 1,500 signatures (qualifying) will be debated at a Council meeting. (See the Council's Constitution ref Part 4 Council Procedure Rules 10.1)

Representations:- At the discretion of the Mayor, members of the public may address the Council on any report included on the agenda in which they have a relevant interest. Any member of the public wishing to address the meeting should advise the Democratic Support Officer (DSO) whose contact details are on the front sheet of the agenda.

Deputations:- A deputation of up to three people can apply to address the Council. A deputation may include the presentation of a petition. (See the Council's Constitution ref Part 4 Council Procedure Rules 10.7)

MEETING INFORMATION

Use of Social Media:- The Council supports the video or audio recording of meetings open to the public, for either live or subsequent broadcast. However, if, in the Chair's opinion, a person filming or recording a meeting or taking photographs is interrupting proceedings or causing a disturbance, under the Council's Standing Orders the person can be ordered to stop their activity, or to leave the meeting. By entering the meeting room you are consenting to being recorded and to the use of those images and recordings for broadcasting and or/training purposes. The meeting may be recorded by the press or members of the public.

Any person or organisation filming, recording or broadcasting any meeting of the Council is responsible for any claims or other liability resulting from them doing so.

Details of the Council's Guidance on the recording of meetings is available on the Council's website.

Mobile Telephones – Please switch your mobile telephones to silent whilst in the meeting.

Southampton City Council's Priorities:

- Jobs for local people
- Prevention and early intervention
- Protecting vulnerable people
- Affordable housing
- Services for all
- City pride
- A sustainable Council

Access – Access is available for disabled people. Please contact the Council Administrator who will help to make any necessary arrangements

Smoking policy – The Council operates a no-smoking policy in all civic buildings

Fire Procedure – In the event of a fire or other emergency, a continuous alarm will sound and you will be advised by Council officers what action to take.

| Proposed dates of meetings (Municipal year 2015/16) | |
|--|----------------------|
| 2015 | 2016 |
| 15 July | 10 February (Budget) |
| 16 September | 16 March |
| 18 November | 18 May (AGM)* |

*Date subject to the election schedule

CONDUCT OF MEETING

FUNCTIONS OF THE COUNCIL

The functions of the Council are set out in Article 4 of Part 2 of the Constitution

RULES OF PROCEDURE

The meeting is governed by the Council Procedure Rules as set out in Part 4 of the Constitution.

BUSINESS TO BE DISCUSSED

Only those items listed on the attached agenda may be considered at this meeting.

QUORUM

The minimum number of appointed Members required to be in attendance to hold the meeting is 16.

DISCLOSURE OF INTERESTS

Members are required to disclose, in accordance with the Members' Code of Conduct, **both** the existence **and** nature of any "Disclosable Pecuniary Interest" or "Other Interest" they may have in relation to matters for consideration on this Agenda.

DISCLOSABLE PECUNIARY INTERESTS

A Member must regard himself or herself as having a Disclosable Pecuniary Interest in any matter that they or their spouse, partner, a person they are living with as husband or wife, or a person with whom they are living as if they were a civil partner in relation to:

- (i) Any employment, office, trade, profession or vocation carried on for profit or gain.
- (ii) Sponsorship: Any payment or provision of any other financial benefit (other than from Southampton City Council) made or provided within the relevant period in respect of any expense incurred by you in carrying out duties as a member, or towards your election expenses. This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992.
- (iii) Any contract which is made between you / your spouse etc (or a body in which the you / your spouse etc has a beneficial interest) and Southampton City Council under which goods or services are to be provided or works are to be executed, and which has not been fully discharged.
- (iv) Any beneficial interest in land which is within the area of Southampton.
- (v) Any license (held alone or jointly with others) to occupy land in the area of Southampton for a month or longer.
- (vi) Any tenancy where (to your knowledge) the landlord is Southampton City Council and the tenant is a body in which you / your spouse etc has a beneficial interests.
- (vii) Any beneficial interest in securities of a body where that body (to your knowledge) has a place of business or land in the area of Southampton, and either:
 - a) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body, or
 - b) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which you / your spouse etc has a beneficial interest that exceeds one hundredth of the total issued share capital of that class.

Other Interests

A Member must regard himself or herself as having an, 'Other Interest' in any membership of, or occupation of a position of general control or management in:

Any body to which they have been appointed or nominated by Southampton City Council

Any public authority or body exercising functions of a public nature

Any body directed to charitable purposes

Any body whose principal purpose includes the influence of public opinion or policy

Principles of Decision Making

All decisions of the Council will be made in accordance with the following principles:-

- proportionality (i.e. the action must be proportionate to the desired outcome);
- due consultation and the taking of professional advice from officers;
- respect for human rights;
- a presumption in favour of openness, accountability and transparency;
- setting out what options have been considered;
- setting out reasons for the decision; and
- clarity of aims and desired outcomes.

In exercising discretion, the decision maker must:

- understand the law that regulates the decision making power and gives effect to it. The decision-maker must direct itself properly in law;
- take into account all relevant matters (those matters which the law requires the authority as a matter of legal obligation to take into account);
- leave out of account irrelevant considerations;
- act for a proper purpose, exercising its powers for the public good;
- not reach a decision which no authority acting reasonably could reach, (also known as the "rationality" or "taking leave of your senses" principle);
- comply with the rule that local government finance is to be conducted on an annual basis. Save to the extent authorised by Parliament, 'live now, pay later' and forward funding are unlawful; and
- act with procedural propriety in accordance with the rules of fairness.

Service Director, Legal and Governance
Richard Ivory
Civic Centre, Southampton, SO14 7LY

8 March 2016

TO: ALL MEMBERS OF THE SOUTHAMPTON CITY COUNCIL

You are hereby summoned to attend a meeting of the TRUSTEES OF THE CHARITY KNOWN AS NEWTOWN YOUTH CENTRE to be held on WEDNESDAY, 16TH MARCH, 2016 in the COUNCIL CHAMBER CIVIC CENTRE to follow the Council Meeting, when the following business is proposed to be transacted:-

1 APOLOGIES

To receive any apologies.

2 NEWTOWN YOUTH CENTRE - CHANGE OF TRUSTEES IN PROPERTY (Pages 1 - 6)

Report of the Acting Chief Operations Officer (Customer Experience) seeking to transfer the freehold of the Newtown Youth Centre to YMCA Fairthorne Group. The Council holds the freehold interest of these premises in its' capacity as sole trustee of a charitable trust. It is proposed that the YMCA be appointed as new trustee in place of the Council. The Council then to transfer formally the legal estate in the property to the new trustee, attached.



Richard Ivory
Service Director, Legal and Governance

| | | | |
|-------------------------------------|--|---------------------------------|---------------------------|
| DECISION-MAKER: | CABINET TRUSTEES OF THE CHARITY KNOWN AS NEWTOWN YOUTH CENTRE | | |
| SUBJECT: | TRANSFER OF TRUSTEESHIP OF CHARITY KNOWN AS NEWTOWN YOUTH CENTRE | | |
| DATE OF DECISION: | 15 MARCH 2016 16 MARCH 2016 | | |
| REPORT OF: | LEADER OF THE COUNCIL ACTING CHIEF OPERATIONS OFFICER (CUSTOMER EXPERIENCE) | | |
| <u>CONTACT DETAILS</u> | | | |
| AUTHOR: | Name: | Nigel Mullan | Tel: 023 8083 4259 |
| | E-mail: | nigel.mullan@southampton.gov.uk | |
| Chief Officer | Name: | Mark Heath | Tel: 023 8083 2371 |
| | E-mail: | mark.heath@southampton.gov.uk | |
| STATEMENT OF CONFIDENTIALITY | | | |
| None. | | | |

BRIEF SUMMARY

This report sets out the options regarding the future use of the Newtown Youth Centre and seeks approval for the appointment of YMCA Fairthorne Group as sole trustee of the charity "Newtown Youth Centre" in place of the Council (who are the current trustees) and for transfer of the freehold of the Newtown Youth Centre at Graham Road, to YMCA Fairthorne Group for no monetary consideration.

RECOMMENDATIONS:

CABINET

- (i) To uphold the previous decision to exclude this property from offer under the Community Asset Transfer (CAT) process in order to ensure the continued delivery of youth services from the site.

TRUSTEES OF THE CHARITY KNOWN AS NEWTOWN YOUTH CENTRE

- (i) To approve the appointment of YMCA Fairthorne Group charity as the sole trustee of the Newtown Youth Centre Charity in place of the Council and to transfer the freehold legal estate of Newtown Youth Centre, Graham Road, Southampton to YMCA Fairthorne Group for no monetary consideration;
- (ii) To authorise the Service Director, Legal & Governance, to enter into any legal documentation necessary in respect of the transfer of both the trusteeship and the freehold property and to liaise as appropriate, with the Charity Commission, to effect any necessary changes;
- (iii) To authorise the Chief Operations Officer to take any further action necessary, following consultation with the Service Director, Legal & Governance, to give effect to the decision of the Council in its capacity as charity trustee in relation to this matter; and
- (iv) To note that this property is excluded from an offer under Community

Asset Transfer.

REASONS FOR REPORT RECOMMENDATIONS

1. The property at Newtown Youth Centre is currently occupied by the YMCA Fairthorne Group ("YMCA") under a lease granted by the Council and due to expire in March 2017. The YMCA confirm that the continuation of the service provided by the YMCA to the community is subject to the confirmation of additional funding. Such external funding approval can only be obtained on evidence of a long term interest in the property. The YMCA advise that the freehold interest in the property is required.

ALTERNATIVE OPTIONS CONSIDERED AND REJECTED

2. The alternatives considered were :
 - Do nothing – this would not give the YMCA enough legal interest in the property to secure the funding they require to continue in occupation.
 - The Council explore the possibility of transferring the property to another charity with the same or similar objects on the basis that it would form a permanent endowment of that charity, and the Council terminating all involvement with the youth centre.
 - Dispose of the property and use the proceeds to provide an alternative youth centre elsewhere.

DETAIL (Including consultation carried out)

3. Southampton City Council (the Council) is the sole corporate trustee of the charity called Newtown Youth Centre (the Charity) under a scheme of the Charity Commission made on 21 April 1998. Although the scheme confers a power of sale there is no outlet for the sale proceeds except, impliedly, in the provision of (another) youth centre in accordance with the Charity's object. It thus appears that the land and buildings (the Property), or the funds representing the Property, constitute permanent endowment of the Charity. This has the effect that the Charity cannot simply be wound up, and that if the Property were to be sold, the Council would be obliged to use the proceeds in providing another youth centre elsewhere. The Property is shown on attached plan, Appendix 1.
4. The Property is the subject of a short term lease at a peppercorn rent to the YMCA Fairthorne Group, also a charity (the YMCA charity), subject to a covenant confining the user to that of a youth centre. This enables the charitable object to be carried out at the Property without involving the Council in its day to day management.
5. The proposal is the appointment of the YMCA charity as the sole trustee of the Charity in place of the Council, which would thereby be discharged from its trusteeship. The YMCA charity would thus step into the shoes of the Council and become the trustee for all purposes of the youth centre, subject to the terms of the 1998 scheme. The legal estate in the freehold would be transferred by the Council, simultaneously to YMCA Fairthorne Group, which currently occupies the property under a 2 year lease, granted by the Council, and expiring in March 2017. The Council *only* holds the freehold interest of these premises in its capacity as sole trustee of a charitable trust. Legal advice obtained from Counsel recommended that the YMCA could be appointed as new trustee in place of the Council. This will meet the Council's aims to maintain youth services at the premises.

6. Trustees should also be aware that there has been third party interest by another voluntary / community group in acquiring this site under the Community Asset Transfer (CAT) process previously. That group were seeking to acquire the site to use as offices and location for general community use.
7. The group has been previously advised that the site was not available at this time for consideration under the CAT process as youth services were excluded from the pilot phase of the CAT strategy. In taking a decision to offer the freehold of the site to YMCA, as set out in this report, Cabinet indicated that, in due course, they would review that decision to determine if youth services or this specific site should be included within the CAT process at some future point.
8. This report recommends that Cabinet upholds this earlier decision to exclude this site from the CAT process in order to continue to protect the delivery of youth services from the location and in light of the charitable restrictions on the property.
9. The proposed use under CAT would not deliver the continuation of youth services on the site in accordance with the charitable restrictions without significant further negotiation and delay and would not deliver continuity of the current service provision which is considered to be the best use of the site at present for both the Council and end users.
10. In light of the other parties interest in the site, they have been advised in advance of this report of the proposal to transfer the trusteeship to YMCA and continue to exclude the site from the CAT programme and how they may make representations in relation to this matter.

RESOURCE IMPLICATIONS

Capital/Revenue

11. The current lease terms include a full repairing liability on the leaseholder. If the property were to revert to the control of the Council the future maintenance liabilities would revert to the Council.
12. Whilst the freehold of the property would be transferred to the new Trustees, a capital receipt is not foregone by the Council, as the property could only be sold by the Council in accordance with the strict principles of the Trust, for the provision of (another) youth centre in accordance with the Charity's object. If the Property were to be sold, the Council would be obliged to use the proceeds in providing another youth centre elsewhere.
13. There will be no loss of income from the disposal of the property as rental income is not received.

Property/Other

14. The disposal of the property will reduce the Council's property liabilities in the longer term.

LEGAL IMPLICATIONS

Statutory power to undertake proposals in the report:

15. The Charities Act 2011 sets out how charities in England and Wales are registered and regulated and, subject to any necessary approvals by the Charities Commission, the proposals are permitted by the Act. The Council is the sole corporate Trustee of the charity called Newtown Youth Centre, under the Scheme of the Charity Commission made on 21st April 1998. There is power under clause 9 of the Scheme to alter the trusteeship provision. There is also the power to appoint a body such as the YMCA, as the sole trustee of the charity in place of the Council, followed by a standard transfer of property at no consideration, to the new trustee. The Council would thereby be discharged from its trusteeship.

Other Legal Implications:

16. Not applicable

POLICY FRAMEWORK IMPLICATIONS

17. The proposals are consistent with the Council’s policy framework. The transfer of trustee status and disposal will facilitate the continuation of a service that delivers youth engagement, in support of the Council’s policy on Children’s Social Care.

KEY DECISION? No

| | |
|------------------------------------|--------|
| WARDS/COMMUNITIES AFFECTED: | Bevois |
|------------------------------------|--------|

SUPPORTING DOCUMENTATION

Appendices

| | |
|----|-----------|
| 1. | Site Plan |
|----|-----------|

Documents In Members’ Rooms

| | |
|----|------|
| 1. | None |
|----|------|

Equality and Safety Impact Assessment

| | |
|--|----|
| Do the implications/subject of the report require an Equality and Safety Impact Assessment (ESIA) to be carried out? | No |
|--|----|

Privacy Impact Assessment

| | |
|--|----|
| Do the implications/subject of the report require a Privacy Impact Assessment (PIA) to be carried out. | No |
|--|----|

Other Background Documents

Equality and Safety Impact Assessment and Other Background documents available for inspection at:

Title of Background Paper(s) Relevant Paragraph of the Access to Information Procedure Rules / Schedule 12A allowing document to be Exempt/Confidential (if applicable)


| | | |
|----|------|--|
| 1. | None | |
|----|------|--|

Agenda Item 2

Appendix 1



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|---|---|-------------------------------------|--------------------|---|
|  | PROPERTY SERVICES 3rd Floor, One Guildhall Square, Above Bar Street, Southampton. SO15 1GW | | SCALE (1): 1250 | DATE 12/02/16 |
| | Plan No | TITLE New Community Youth Centre | |  |

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