

<b>DECISION-MAKER:</b>	CABINET TRUSTEES OF THE CHARITY KNOWN AS NEWTOWN YOUTH CENTRE		
<b>SUBJECT:</b>	TRANSFER OF TRUSTEESHIP OF CHARITY KNOWN AS NEWTOWN YOUTH CENTRE		
<b>DATE OF DECISION:</b>	15 MARCH 2016 16 MARCH 2016		
<b>REPORT OF:</b>	LEADER OF THE COUNCIL ACTING CHIEF OPERATIONS OFFICER (CUSTOMER EXPERIENCE)		
<b><u>CONTACT DETAILS</u></b>			
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<b>STATEMENT OF CONFIDENTIALITY</b>			
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 21<sup>st</sup> 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

<b>WARDS/COMMUNITIES AFFECTED:</b>	Bevois
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### SUPPORTING DOCUMENTATION

#### Appendices

1.	Site Plan
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#### Documents In Members' Rooms

1.	None
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#### 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
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#### Privacy Impact Assessment

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