



# Officer Delegated Decision Report

## **DECISION UNDER DELEGATED POWERS**

**DECISION CANNOT BE TAKEN BEFORE 30 MAY 2023**

Title	<b>APPROVAL TO COMMENCE CONSULTATION AND MARKET THE FORMER YARMOUTH CE PRIMARY SCHOOL, MILL LANE, YARMOUTH</b>
Report of	<b>CABINET MEMBER FOR CHILDREN'S SERVICES, EDUCATION AND LIFELONG SKILLS</b>

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### EXECUTIVE SUMMARY

1. This report seeks approval to commence consultation and market the former Yarmouth CE Primary School, Mill Lane, Yarmouth following relocation of the school to a new site in Freshwater, with a view to inviting best bids for the sale of the site.
2. If approved, the Department for Education Section 77 public consultation will commence, a marketing exercise will be undertaken and bids received. IWC can then decide on the next course of action in relation to the site if any, which will require approval by a further formal IWC decision.
3. A number of formal decisions have been made by IWC during the development of the new school, and this report includes reference to these.

### RECOMMENDATION

4. Option 1: to approve the School Standards and Framework Act 1998 Section 77 consultation process and marketing of the former Yarmouth Primary CE School site, Mill Lane, Yarmouth, and invite best bids for IWC's consideration.

### CONFIDENTIAL / EXEMPT ITEMS

5. DfE Funding Agreement – Appendix B

## BACKGROUND

6. In 2015 the Department for Education (DfE) approved a bid submitted by the IWC to refurbish part of the former All Saints CE Primary School, Freshwater under the Priority Schools Building Programme (PSBP). Across the country the programme aimed to address the urgent condition issues of schools most in need of repair, however a timeframe for completing the works was not known at that time.
7. In March 2019 authority was provided by the Cabinet Member for Children's Services, Education and Skills to undertake a consultation on the removal of surplus primary school places within the West Wight school place planning area. The planning area was made up of; All Saints' CE Primary, Brighstone CE Primary, Shalfleet CE Primary, St Saviour's Catholic Primary and Yarmouth CE Primary.
8. Several options were consulted upon during this period and a final report was considered by Cabinet on 9 January 2020 which approved the discontinuance of All Saints' CE Primary School, 79 School Green Road, Freshwater, PO40 9AX, from 31 August 2020. This decision was only to be implemented on the basis that the Governing Body of the Federation of Church Schools of Shalfleet and Yarmouth agreed to relocate Yarmouth CE Primary School to the Freshwater site upon the completion of the new school. The Governing Body provided this approval on 13 January 2020. As a result, Yarmouth CE Primary School would become surplus to educational requirements. A plan showing the site edged red is attached as Appendix A.
9. Following this decision outline business case approval was provided by DfE to enter into the design and procurement phase to deliver the new 210 place school on the former All Saints CE Primary School site.
10. Upon receipt of the planning approval and successful tender process the DfE set a requirement within the funding agreement for the Council to apply sufficient funds received pursuant to the sale of the current Yarmouth Primary School at Mill Road, Yarmouth, to the project. However, the Diocese of Portsmouth owned part of the Yarmouth Primary School, Mill Road, therefore, to enable the Council to sell Yarmouth Primary School and satisfy the terms of the DfE funding agreement, a land swap was required to take place so that Yarmouth Primary School is now in the sole ownership of the Council. This land transaction was approved by the Cabinet Member for Childrens Services, Education and Skills on 10 August 2021.
11. Final funding approval of £4.9 million for the new school building was received from the DfE on 26 October 2021 enabling the project to commence work on site in November 2021. The new school building was completed ahead in December 2022 and the school relocated over the Christmas holiday period.

12. The grant was formalised by the signing of a Funding Agreement by both the DfE and IWC. This funding agreement is legally binding and therefore IWC is now under a legal obligation to act in accordance with the conditions set out within it. The funding strategy was approved by the former Chief Executive and S151 Officer.
13. In addition to this, IWC invested £575,375 in the new school. The funding agreement allows IWC to retain the first £400,000 of the capital receipt received on the sale of the former Yarmouth CE Primary School site as part reimbursement of this contribution by IWC. The £575,375 investment by IWC into the new school was made on the basis that IWC would be reimbursed £400,000 on the sale of the site and if this isn't received there will be a deficit in the corporate capital budget.
14. Under the school Standards and Framework Act 1998 Section 77 (S77 consent) it should be noted that the site cannot be leased, sold or used for any non-education use without first obtaining a consent to do so from the Secretary of State. A key criteria of this consent is that best consideration is achieved and that any capital receipt realised is reinvested within the local sports or education estate, in specific projects agreed with the DfE. The most accurate way to ensure best consideration is achieved is to openly market the site for a sufficient amount of time. Best consideration can include non-monetary benefits, but confirmation by a suitably qualified person will still be required to confirm that such an offer does indeed offer best consideration. A six week public consultation must be undertaken in accordance with the guidance as part of the S77 application process.
15. It is proposed that the site will be marketed for a minimum of four months by a suitably qualified and experienced local commercial agent to give sufficient time for meaningful bids to be submitted. There will be a full and thorough marketing campaign to ensure that the market has been fully tested, and to satisfy the DfE that best consideration has been achieved. Bids will be received at the end of this process, following which IWC will be able to consider the next steps, if any.
16. This report therefore seeks approval to commence the S77 consultation process and market the site only to invite best bids. It should be stressed that this report seeks only to market the site, not to commit to any further action at this stage.

## STRATEGIC CONTEXT

17. This proposal supports IWC's Corporate plan 2021 to 2025 on the following basis, although it is difficult to comment on these points with any certainty at this time as this report is seeking approval to market the site only at this stage:
18. Provision of affordable housing for Island Residents: if the site is eventually sold and redeveloped to housing, it is possible that at least part of the site will provide affordable housing for island residents.

19. Responding to climate change and enhancing the biosphere: if the site is eventually redeveloped, it will need to be in accordance with statutory and local regulations to minimise zero emissions during and after construction.
20. Economic Recovery and Reducing Poverty: if the site is eventually sold for commercial use, it could bring a range of benefits to assist in economic recovery and reducing poverty, such as apprenticeships and new jobs.
21. Impact on Young People and Future Generations: again, if the site is eventually sold for commercial use it could provide a range of benefits for young people and future generations through apprenticeships and training.

## CONSULTATION

22. Consultation has been undertaken with the Leader and Cabinet Member for Children's Services, Education and Lifelong Skills, and Cabinet Member for Strategic Finance, Transformational Change and Corporate Resources.
23. Subject to approval of this report in line with the S77 guidance a six week public consultation will commence. This will include a number of key consultees such as the local Member, Yarmouth Town Council and local schools. The outcome of this consultation will form part of any S77 application forms submitted to the DfE for consent to dispose of the site.

## SCRUTINY COMMITTEE

24. This decision is regarded as a 'key decision' and ordinarily under regulation 9 of the Regulations at least 28 clear days' notice is required to be given in advance on the Forward Plan, setting out that a key decision is to be made, the matter in respect of which the decision is to be made, the name of the decision-making body and its members or the name of the individual decision maker, the date on which, or the period within which, the decision is to be made, a list of the documents submitted, the address from where copies of documents may be obtained, notice that other documents may be submitted to the decision maker and the procedure for requesting details of these documents (if any) as they become available.
25. Where such notice is impracticable, a general exception notice may instead be given in accordance with regulation 10 of the Regulations. It has been impracticable to provide the 28 days' notice in regard to this decision, as there is a need to proceed to market as soon as possible to ensure the maximum time is made available for meaningful bids to be submitted.
26. The Monitoring Officer has by written notice informed the Chairman of the Corporate Scrutiny Committee of the matter about which the decision is to be made, and why it was impracticable to have complied with the standard advance notice".

## FINANCIAL / BUDGET IMPLICATIONS

27. IWC invested £575,735 in the new Freshwater and Yarmouth CE Primary School on the condition that it would be reimbursed £400,000 on the sale of the former Yarmouth CE Primary School site. If the site is not sold IWC will therefore either not be reimbursed the £400,000 or it will need to be reimbursed from a different source.
28. There will be some costs to marketing the site, including advertising and some estate agent fees whether or not the site is sold. While the site remains in council ownership there will also be security and management fees which can become substantial over time.

## LEGAL IMPLICATIONS

29. The Council has the power to dispose of property under Section 123 of the Local Government Act 1972, which requires it to achieve 'best consideration' in any disposal.
30. The Council will need consent from the Department for Education to dispose of the property.

## EQUALITY AND DIVERSITY

31. This report does not have Equality and Diversity implications as it is simply seeking authority to market the site.

## PROPERTY IMPLICATIONS

32. The site is currently owned freehold by the IWC and is surplus to requirements as part of the decision to relocate Yarmouth CE Primary School to newly built premises. While the site remains in IWCs ownership there are holding costs to keep the vacant buildings and site safe (such as security patrols and dealing with Health & Safety concerns) and which remain the legal responsibility of the authority.

## OPTIONS

33. Option 1: to approve the School Standards and Framework Act 1998 Section 77 consultation process and marketing of the former Yarmouth Primary CE School site, Mill Lane, Yarmouth, and invite best bids for IWC's consideration.
34. Option 2: to choose not to market the site.

## RISK MANAGEMENT

35. Risks for Option 1 are limited as IWC is not committing to anything at this stage other than marketing the site for sale and inviting best offers. The only risk at this stage is some costs for an estate agent to oversee the process and to fund a number of advertisements as part of the marketing campaign.
36. Risks for Option 2 are substantial, namely the Health & Safety risk of third parties breaking into the unoccupied site and buildings which, if fatal, may result in a Corporate Manslaughter charge for the IWC which is a imprisonable offence for the responsible officer. Trespassing and break-ins are common in unoccupied IWC buildings therefore there is a relatively high risk this could occur. This aside, there will also be costs to IWC of initially securing the site and buildings, regular security patrols, undertaking any repairs as damage is caused, managing the site on a day-to-day basis, officer time to manage all of these activities, etc.
37. A further risk under Option 2 is that IWC has committed to the DfE Funding Agreement, which is legally binding, and if IWC does not act in accordance with this there will be legal consequences for IWC as set out in the Legal Section above.
38. A last risk under Option 2 is that as £400,000 must be reimbursed to IWC's corporate pot as agreed by the IWC and the Funding Agreement, if the site is not sold there will be a capital deficit to IWC's budget of £400,000.
39. IWC has a Health & Safety responsibility for all its properties, but Corporate Manslaughter is of particular concern for unoccupied property. Accordingly, it is important that a new use/occupier is found for the site as quickly as possible to minimise the amount of time the buildings remain unoccupied.

## EVALUATION

40. A formal decision was made by IWC in January 2020 to relocate Yarmouth CE Primary School to a new site in Freshwater, which has now been completed following a £4.9million investment by the DfE and £575,735 investment by IWC. The Yarmouth CE Primary School children have now relocated to this new school and so the former Yarmouth CE Primary School site is surplus to IWC's educational requirements. IWC seeks to dispose of all surplus property assets as soon as possible after becoming surplus because of the substantial costs and risks of holding surplus property. In addition, IWC is required to act in accordance with the signed DfE Funding Agreement and is also required to achieve best consideration for the surplus property asset in order to receive DfE S77 consent for any future non-education use. The most accurate way to prove best consideration is to openly market the site. For all these reasons, IWC is seeking approval to market the former Yarmouth CE Primary School site, following which a second formal IWC decision will be required to approve any subsequent steps IWC wishes to take thereafter, if any, along with commencement of the S77 consultation process. It should be stressed that this report seeks only to commence the S77 consultation process and market the site only, and does not seek to commit to any further action at this stage.

## APPENDICES ATTACHED

41. Appendix A -Site Plan – Former Yarmouth CE Primary School site, Mill Rd, Yarmouth
42. Appendix B - DfE Funding Agreement – CONFIDENTIAL - NOT FOR PUBLICATION
43. Appendix C – Marketing Strategy

## BACKGROUND PAPERS

[PAPER C.pdf \(moderngov.co.uk\)](#) – Cabinet Report – July 2019

[PAPERB.pdf \(moderngov.co.uk\)](#) – Cabinet Report – October 2019

[PAPER B - West Wight Report.pdf \(moderngov.co.uk\)](#) – Cabinet Report – January 2020

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