

## 2. GILBERTHORPE SCHOOL – BARNARDOS CRECHE

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Corporate Plan Output: Commercial Property	

The purpose of this report is to seek the Council's approval to give Barnardos authority to use the former Riccarton Borough Council's amenity building (which has been converted into a creche) as per the terms and conditions set out in this report.

### FRIENDSHIP HOUSE CRECHE

#### **Brief History**

The Friendship House Creche operated out of Friendship House situated at 153 Gilberthorpes Road which is owned and operated by the Hornby Presbyterian Church Community Trust. The Trust held the creche licence and during 1997 decided it no longer wished to do so. Accordingly the Trust gave notice to the creche that unless they could find someone to operate the licence they would have no alternative but to close the creche. (They also indicated they had another use for the building). As no-one was prepared to pick up the licence the Trust advised the Creche Committee the creche would close at the end of the year).

A public meeting was held and the community agreed the creche should continue. Support mainly came from the parents using the creche. The Creche Committee and other interested parties sought the Council's help. A meeting was held in early December with this group and Council officers. It was explained to the group that if they were to run the creche a significant commitment by them would need to be confirmed.

The meeting was attended by a representative from Barnardos who had been invited to attend the meeting to observe the response of both the Council and the group.

Barnardos, depending on the outcome, were interested in taking over creche responsibilities if required.

#### **Outcome**

- The community group decided the obligations and responsibilities were beyond them.
- The community group accepted the suggestion that as long as Barnardos were prepared to administer the creche they would be happy with this arrangement.
- Barnardos agreed to this, the present situation being that Barnardos has taken over the licence and will run the creche at Friendship House until Easter when the lease runs out.
- At the public meeting the principal of Gilberthorpes School intimated the school could accommodate the creche on the school grounds.

## **BUILDING**

Early in 1990 the former Riccarton Borough relocatable amenities block was shifted from its site in Blenheim Road to its present site in the Sockburn Yard.

In September 1994 the Council received a request from the Springs Community Preschool seeking support regarding accommodation because the Elim Church property from which they were operating was to be sold.

The Community Board supported this request and funds were allocated in the 1995 / 96 budget for a new preschool to be built. In the interim the preschool was granted use of the former Riccarton Borough amenities building. The building was converted into a preschool to meet the Ministry of Education's guidelines for creches.

Springs Community Preschool vacated the building in March 1998. Prior to this however, the Council had received a request from the Friendship House Creche for assistance.

The outcome of this request resulted in Barnardos taking over the management of the creche on their present site, whilst pursuing the option of obtaining a building and land to relocate to.

Councillor Keast approached the Property Manager to see if once the Springs Community Preschool vacated the building on the Sockburn Yard site it could be made available for Barnardos to shift to a suitable site. Because the building had been altered to meet Creche standards it was agreed this was the best use to put this building to. Therefore in the circumstances it was considered there was no need to put this building through the surplus property process as a need had been identified.

## **LEGAL ASPECTS**

The Property Unit sought a legal opinion from the Legal Services Unit on whether the Council could in fact enter into such an undertaking with Barnardos. The following is an extract from the legal opinion given by Karilyn Shutt, one of the Council's solicitors in the Legal Services Unit. Several options were considered, with the following option being considered most appropriate for the Council.

*“LEASE OF BUILDING, WITH REGISTRATION UNDER THE CHATTELS TRANSFER ACT*

*The Council could lease the building to Barnardo’s for a nominal amount. The lease could specify that:*

- (a) Barnardo’s will be responsible for the relocation costs, resource consent costs, reconnection fees etc.*
- (b) The building is only to be used as a creche or for some purpose approved by the Council.*
- (c) The building is only to be located at Gilberthorpe School or at some location approved by the Council.*
- (d) Barnardo’s will be responsible for all external and internal maintenance costs.*

*The Council could then register the lease in the High Court under the Chattels Transfer Act 1924 as notice to all the world that the building is owned by the Council, and is not available for sale by any other person.*

*The advantages of this option are that:*

- 1. It is simple.*
- 2. Barnardo’s takes on a number of the costs associated with relocating and maintaining the building.*
- 3. Barnardo’s is responsible for obtaining a lease or a licence from the Ministry of Education for the land at Gilberthorpe School.*
- 4. Registration under the Chattels Transfer Act protects the Council’s ownership in the building.*

*If the Council takes this option (which is one that I recommend), the Council should also obtain Gilberthorpe School’s written acknowledgment that the building is owned by the Council and not by Barnardo’s.*

*The Council should also address the question of who should be responsible for the costs of removing the building if Barnardo’s no longer wants to lease it or the period of the lease expires.*

*The only disadvantages that I can see with this option are that:*

- 1. The Council will have Health and Safety in Employment Act responsibilities as a “person who controls a place of work”. However, this can be regulated through the Council’s usual policies concerning health and safety matters. (For example, the Council would ensure that Barnardo’s have a health and safety management plan in place.)*
- 2. Again, politically, it may be difficult for the Council to require rigorous compliance with the terms of the lease.*

*I see the above disadvantages as relatively minor.”*

#### **PROPOSED LEASE**

*The proposed lease would be for a term of six years with two further rights of renewal for a further term of six years each, with the renewals being subject to the condition that the Council may refuse to grant a renewal if it considers that it has an alternative use for the building or if the terms of the proposed lease do not meet with the Council’s Early Childhood Policy (as created or amended from time to time). The rental would be at a nominal rental and upon the conditions that:*

- (a) The building is used only for a purpose approved by the Council (Creche).*
- (b) The building is located only at a location approved by the Council (Gilberthorpe School).*
- (c) Barnardos are responsible for:*
  - i. Obtaining the Gilberthorpe School’s Board of Trustees approval to site the building on the school grounds.*
  - ii. Obtaining a licence to occupy from the Ministry of Education. “If the licence to occupy the premises at Gilberthorpes School is terminated for whatever reason then the licence shall cease on the same date that the licence to occupy determines. In such circumstances Barnardos will be required to remove the building from Gilberthorpes School at its own expense.”*
  - iii. Relocation costs, resource consent, building consent, disconnection and reconnection fees and any other statutory, bylaws, ordinances and regulations relating to the use of the building.*
  - iv. Total maintenance (external and internal) of the building.*
  - v. Registration under the Chattels Transfer Act 1924 of the Council’s ownership in the building.*
  - vi. Obtaining on behalf of the Council written acknowledgment from the School’s Board of Trustees that the building is owned by the Council.*
  - vii. For all legal costs associated with the drawing up of the lease.*
  - viii. Confirming that Barnardos have a health and safety management plan in place.*

- ix. *Building Warrant of Fitness.*  
*Comply with the terms and conditions of the Building Act. For all costs associated with maintaining the building to the standard of the Act and meeting the Ministry of Education's requirements for creches.*
- x. *The Council gives Barnardos the authority to alter the building at their cost provided:*
- (a) *It complies with the Building Act and any other statutory bylaws, ordinances and regulations relating to the use of the building (creche).*
  - (b) *The alterations and maintenance of the building are carried out in a professional and tradesman like manner. (Alterations are of a nature that the whole building is relocatable).*
  - (c) *Barnardos acknowledges that upon the termination of the lease, whether by passage of time or upon re-entry of breach no compensation shall be payable for improvements made by it to the building. Nothing in this clause shall be deemed to affect Barnardo's right or obligation to remove fixtures and fittings subject to (d).*
  - (d) *Barnardos makes good at its own expense all resulting damage caused by the removal of the fixtures and fittings.*
  - (e) *Barnardos are responsible for insuring the building for its replacement value.*
  - (f) *Barnardos may assign the lease to another caregiver / provider provided it has first obtained the written consent of the Council and the following conditions are fulfilled.*
    - (i) *The assignee is respectable, responsible and has the financial resources to commitments under this lease.*

- (ii) *The assignee pays the Council's costs and disbursements in respect of the approval or preparation and stamping of any deed of covenant or guarantee.*
- (iii) *Where the assignee is to a Company, the directors give personal guarantees.*

*xi. Cost of removing the building from the site:*

- (a) *If requested by either the Gilberthorpe School Board of Trustees, or the Ministry of Education (exercising its rights under the licence to occupy).*
- (b) *If they no longer wish to continue with the lease or if they are in breach of the lease.*

#### **CONCLUSION**

*Under the "Early Childhood Education policy" the Council is committed to proactively promote equitable access for all children and their families / whanau to quality early childhood education in Christchurch. In this instance Barnardos are carrying out the Council's obligations in partnership with the Council.*

#### **COMMUNITY BOARD COMMENTS**

The Board was supportive of the recommendation to lease the building to Barnardos subject to additional wording in clause (b) of the proposed lease.

**Recommendation:** That the Council agree to lease the former converted Riccarton Borough Amenities Building to Barnardos, upon the terms and conditions set out in the "Proposed Lease Section" of this report, subject to clause (b) being amended to include the following additional words – "*or any site or location as approved by Council*" or as may be considered appropriate by the Council's Property Manager.