



DECISION OF THE EXECUTIVE MAYOR

Monday, 9th December, 2013

at 4.30 pm

Hackney Town Hall - Town Hall

Committee Members:

Mayor Jules Pipe

Gifty Edila
Corporate Director of
Legal and Democratic Services

Contact: Jackie Barrett
Tel: 020 8356 3503
Email: Jackie.Barrett@hackney.gov.uk

The press and public are welcome to attend this meeting

AGENDA

Monday, 9th December, 2013

ORDER OF BUSINESS

Item No		Page No		
1.	<p data-bbox="300 539 1286 600">LIQUIDATION OF THE LEARNING TRUST AND TRANSFER OF SURPLUS MONIES TO THE COUNCIL</p> <p data-bbox="300 622 1286 786">This report requests the Mayor to agree to proposed amendment to the Learning Trust's (TLT) Articles of Association in order that the surplus monies remaining in the TLT's accounts, before TLT is voluntarily liquidated, can be distributed to the Council to carry out its educational functions</p> <table border="1" data-bbox="288 797 1286 996"><tr><td data-bbox="288 797 799 996"><p data-bbox="435 808 655 869">Wards Affected All Wards</p></td><td data-bbox="799 797 1286 996"><p data-bbox="834 808 1262 972">Contact Officer Graham White, Interim Assistant Director Legal and Democratic Services ☎ Tel: 020 8356 6234</p></td></tr></table>	<p data-bbox="435 808 655 869">Wards Affected All Wards</p>	<p data-bbox="834 808 1262 972">Contact Officer Graham White, Interim Assistant Director Legal and Democratic Services ☎ Tel: 020 8356 6234</p>	1 - 6
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Access and Information

Location

Hackney Town Hall is on Mare Street, bordered by Wilton Way and Reading Lane.

Trains - Hackney Central Station (London Overground) - Turn right on leaving the station, turn right again at the traffic lights into Mare Street, walk 200 metres and look for the Hackney Town Hall, almost next to The Empire immediately after Wilton Way.

Buses 30, 48, 55, 106, 236, 254, 277, 394, D6 and W15.

Facilities

There are public toilets available, with wheelchair access, on the ground floor of the Town Hall.

Induction loop facilities are available in Rooms 102 and the Council Chamber

Access for people with mobility difficulties can be obtained through the ramp on the side to the main Town Hall entrance.

Copies of the Agenda

The Hackney website contains a full database of meeting agendas, reports and minutes. Log on at: www.hackney.gov.uk

Paper copies are also from the Governance Services Officer whose contact details are shown on page 2 of the agenda.

Council & Democracy Website – www.hackney.gov.uk

The Council & Democracy section of the Hackney Council website contains details about the democratic process at Hackney, including:

- Mayor of Hackney
- Your Councillors
- Cabinet
- Speaker
- MPs, MEPs and GLA
- Committee Reports
- Council Meetings
- Executive Meetings and Key Decisions Notice
- Register to Vote
- Introduction to the Council
- Council Departments

DEMOCRATIC PROCESS

Representation

Contact details for all Councillors are available on the website or by calling 020 8356 3207.

Ward Councillors may be contacted at their surgeries or through the Members' Room at the Town Hall (020 8356 3207).

You may also write to any Councillor or a member of the Cabinet c/o Hackney Town Hall, Mare Street, London E8 1EA.

Scrutiny Procedures

Details are listed in Part 4 of the Council's constitution, see the website for more details or contact the Head of Overview and Scrutiny on 020 8356 3029

Executive Meetings and Key Decisions Notice

The procedure for taking Key Decisions is listed in Part 4 of the Council's Constitution, available on the website.

The Executive Meetings and Key Decisions Notice showing Key Decisions to be taken is available on the Council's website and at the Town Hall.

Emergency Procedures

In case of fire or any other emergency the Head of Governance Services or his/her nominated officer will ensure orderly evacuation of all those present in the meeting room. All Members Officers and members of the public should proceed without delay to the assembly meeting point near the car park at the back of the Town Hall where the nominated officer will conduct a count of all who have been evacuated to ensure that all are safe.

Advice To Members And Officers On Handling Exempt Papers

- Do not photocopy
- Store securely for as long as you hold it
- All papers can be given to Governance Services Officers who will dispose of them appropriately and arrange for them to be recycled
- Note that copies of all exempt papers are held by Governance Services staff.

ADVICE TO MEMBERS ON DECLARING INTERESTS

Hackney Council's Code of Conduct applies to all Members of the Council, the Mayor and co-opted Members.

This note is intended to provide general guidance for Members on declaring interests. However, you may need to obtain specific advice on whether you have an interest in a particular matter. If you need advice, you can contact:

- The Corporate Director of Legal, HR and Regulatory Services;
- The Legal Adviser to the committee; or
- Governance Services.

If at all possible, you should try to identify any potential interest you may have before the meeting so that you and the person you ask for advice can fully consider all the circumstances before reaching a conclusion on what action you should take.

1. Do you have a disclosable pecuniary interest in any matter on the agenda or which is being considered at the meeting?

You will have a disclosable pecuniary interest in a matter if it:

- relates to an interest that you have already registered in Parts A and C of the Register of Pecuniary Interests of you or your spouse/civil partner, or anyone living with you as if they were your spouse/civil partner;
- relates to an interest that should be registered in Parts A and C of the Register of Pecuniary Interests of your spouse/civil partner, or anyone living with you as if they were your spouse/civil partner, but you have not yet done so; or
- affects your well-being or financial position or that of your spouse/civil partner, or anyone living with you as if they were your spouse/civil partner.

2. If you have a disclosable pecuniary interest in an item on the agenda you must:

- Declare the existence and nature of the interest (in relation to the relevant agenda item) as soon as it becomes apparent to you (subject to the rules regarding sensitive interests).
- You must leave the room when the item in which you have an interest is being discussed. You cannot stay in the meeting room or public gallery whilst discussion of the item takes place and you cannot vote on the matter. In addition, you must not seek to improperly influence the decision.
- If you have, however, obtained dispensation from the Monitoring Officer or Standards Committee you may remain in the room and participate in the meeting. If dispensation has been granted it will stipulate the extent of your involvement, such as whether you can only be present to make representations, provide evidence or whether you are able to fully participate and vote on the matter in which you have a pecuniary interest.

3. Do you have any other non-pecuniary interest on any matter on the agenda which is being considered at the meeting?

You will have 'other non-pecuniary interest' in a matter if:

- i. It relates to an external body that you have been appointed to as a Member or in another capacity; or
- ii. It relates to an organisation or individual which you have actively engaged in supporting.

4. If you have other non-pecuniary interest in an item on the agenda you must:

- i. Declare the existence and nature of the interest (in relation to the relevant agenda item) as soon as it becomes apparent to you.
- ii. You may remain in the room, participate in any discussion or vote provided that contractual, financial, consent, permission or licence matters are not under consideration relating to the item in which you have an interest.
- iii. If you have an interest in a contractual, financial, consent, permission or licence matter under consideration, you must leave the room unless you have obtained a dispensation from the Monitoring Officer or Standards Committee. You cannot stay in the room or public gallery whilst discussion of the item takes place and you cannot vote on the matter. In addition, you must not seek to improperly influence the decision. Where members of the public are allowed to make representations, or to give evidence or answer questions about the matter you may, with the permission of the meeting, speak on a matter then leave the room. Once you have finished making your representation, you must leave the room whilst the matter is being discussed.
- iv. If you have been granted dispensation, in accordance with the Council's dispensation procedure you may remain in the room. If dispensation has been granted it will stipulate the extent of your involvement, such as whether you can only be present to make representations, provide evidence or whether you are able to fully participate and vote on the matter in which you have a non pecuniary interest.

Further Information

Advice can be obtained from Gifty Edila, Corporate Director Legal, HR and Regulatory Services, on 020 8356 3265 or email Gifty.Edila@hackney.gov.uk



FS 566728



REPORT OF THE MAYOR LIQUIDATION OF THE LEARNING TRUST AND TRANSFER OF SURPLUS MONIES TO THE COUNCIL	
9 December 2013	CLASSIFICATION: Open If exempt, the reason will be listed in the main body of this report.
WARD(S) AFFECTED All Wards	
CABINET MEMBER Cllr Sophie Linden Deputy Mayor	
KEY DECISION No	
CORPORATE DIRECTOR Gifty Edila, Corporate Director of Legal HR and Regulatory Services	

1. SUMMARY

- 1.1** This report requests the Mayor to agree to proposed amendment to the Learning Trust's (TLT) Articles of Association in order that the surplus monies remaining in the TLT's accounts, before TLT is voluntarily liquidated, can be distributed to the Council to carry out its educational functions. This report therefore records that the Council has been consulted in this regard as required by TLT's Memorandum of Association.

2. RECOMMENDATION

- 2.1** **The Mayor is asked to agree to the proposal from the Learning Trust's Board to amend the Learning Trust's Articles of Association, as proposed in their letter dated 19th November 2013, attached as Appendix 1. This is to allow the surplus funds held in the Learning Trust's accounts to be ultimately transferred to the London Borough of Hackney to discharge its statutory educational functions.**

3. BACKGROUND

- 3.1** TLT is a private company which is limited by guarantee and which is exempt from the usual legal requirement of the Companies Act 2006 to use the word "limited." This is because TLT's objects are the promotion of education and its Articles require its income to be applied in promoting these objects and prohibit the payment of dividends to its Members.
- 3.2** The current position of TLT Company is that the Council is the sole Member of TLT and the Council's Chief Executive, Corporate Director of Finance and Resources and Corporate Director of Children and Young People are the three Directors of TLT.
- 3.3** According to the latest TLT accounts, there are currently surplus funds in the Company in excess of one million pounds and Grant Thornton, the appointed liquidators, are able to prepare liquidation documents for the Company to be wound up. The Board of Directors of TLT have agreed that any surplus monies, upon TLT's dissolution, should be transferred to the Council as it is now discharging the statutory educational functions of the borough.
- 3.4** Currently TLT's Company constitution prevents such a distribution of monies to the Council as Clause 8 of TLT's Memorandum of Association provides that any surplus, "*shall not be paid to or distributed among the members of the Company, but shall be given or transferred to some other body or bodies, having objects similar to the Objects, chosen by the Secretary of State for Education and Skills in consultation with the Council at or before the time of dissolution and if that cannot be done then to some other charitable object.*" As the sole Member of the Company, therefore, the Council is currently unable to be distributed these surplus monies.

- 3.5** TLT's Board has therefore agreed in principle that the Articles of Association of TLT should be changed so that the Council is no longer the sole Member. Article 2 currently states, "The sole Member shall be Hackney Borough Council." Following advice from the liquidators and Legal Services, it has been provisionally agreed by the Board of TLT that this Article 2 should be replaced by the following wording, *"All Directors are automatically admitted as Members, and no person who is not a Director may be a Member. Upon a person ceasing to be a Director, that person shall automatically cease to be a Member. On the date these Articles come into force, any person who is a Director (but not a Member) shall be automatically admitted as a Member and any person who is a Member (but not a Director) shall be automatically removed as a Member."* The letter attached at appendix 1 demonstrates the Board's intentions and seeks the Council's agreement to this.
- 3.6** The effect of the amendment proposed above is that the Council would cease to be a Member upon the adoption of the new Articles and the three Directors would automatically become the three Members of the Company enabling the surplus monies to be transferred to the Council.
- 3.7** Clause 9 of the Memorandum of Association states that, "...No change may be made to the Memorandum or Articles of Association without the prior written consent of the Secretary of State for Education and Skills and without consultation with the Council."
- 3.8** While the Secretary of State has agreed in principle to approve the transfer of funds to the Council (in a letter from him to TLT dated 30th October 2013) he has stated that he cannot do this while the Company's Memorandum of Association prohibits this. The proposed amendment to the Articles will lift this prohibition.
- 3.9** Once this report has been agreed by the Mayor, the Secretary of State for Education will be informed of the proposed way forward in order to obtain his written consent to amend the Articles (as required by the Memorandum). After obtaining this consent the amendment will be formally approved by TLT's Board of Directors.

4. COMMENTS OF THE CORPORATE DIRECTOR OF FINANCE AND RESOURCES

- 4.1** As set out in this report the latest accounts of the TLT which have been updated in readiness for formal liquidation of the company show that there is a surplus to be distributed of circa £1.3m (subject to any remaining corporation tax liability).
- 4.2** It is intended that upon liquidation this sum is transferred to the Council as the body that now provides the educational services of the Borough and therefore having objectives similar to that of the TLT, in line with the Memorandum of Association for the TLT and agreed in principle with the Secretary of State.

4.3 Any costs associated with the changes required and the formal liquidation of the company have already been provided for within the Company's accounts with such provisions for liabilities already transferred to the Council.

5. COMMENTS OF THE CORPORATE DIRECTOR OF LEGAL, HR AND REGULATORY SERVICES

5.1 The legal comments are contained within the main body of this report.

APPENDICES

Appendix 1 – Letter from the Board of Directors of TLT to Ms Gifty Edila

Report Author	Graham White 020 8356 6234 Graham.White@Hackney.gov.uk
Comments of the Corporate Director of Finance and Resources	Michael Honeysett 020 8356 3332 Michael.honeysett@hackney.gov.uk
Comments of the Corporate Director of Legal, HR and Regulatory Services	Sean Eratt 020 8356 6012 Sean.Eratt@Hackney.gov.uk

Signed by the Mayor of Hackney:

Date:



Ms. Gifty Edila,
Corporate Director of Law, HR and Regulatory Services,
London Borough of Hackney,
4th Floor, 2 Hillman Street,
London,
E8 1FB

Tuesday 19 November 2013

Dear Gifty

Re: Amendment to the Learning Trust's Articles of Association

You will be aware that Grant Thornton UK LLP, the appointed liquidators of The Learning Trust (the "Company"), are now in a position to prepare the necessary liquidation documents for The Learning Trust to be wound up as a private company.

The Board of Directors of the Company have agreed that any surplus monies, upon the Company's dissolution should be transferred to the Council, as the Council is now discharging the statutory educational functions of the London Borough of Hackney. The latest accounts of the Company, which have been prepared for its formal liquidation, show that there is an amount of surplus monies to be distributed in the region of £1,300,000 (one million three hundred thousand pounds). This amount is subject to any remaining corporation tax liability.

Currently the Company's constitution prevents such a distribution of monies to the Council, because the Council is the sole Member of the Company. The Company's Board has therefore agreed in principle to the amendment of the Company's Articles of Association so that the Council is no longer a Member of the Company; the three Directors of the Board (Tim Shields, Ian Williams and Alan Wood) will become the Members of the Company. This requires the deletion of Articles 2 which currently states;

"The sole Member shall be Hackney Borough Council"

The Board's proposal is that Article 2 should be replaced with the following wording;

"All Directors are automatically admitted as Members, and no person who is not a Director may be a Member. Upon a person ceasing to be a Director, that person shall automatically cease to be a Member. On the date these Articles come into force, any person who is a Director (but not a Member) shall be automatically admitted as a Member and any person who is a Member (but not a Director) shall be automatically removed as a Member."

In order to make such a change to the Company's constitution, the Board recognises that it must obtain the prior written consent of the Secretary of State for Education. Clause 9 of the Company's Memorandum of Association requires any amendment to the Company's Articles of Association to be undertaken in consultation with the Council. The purpose of this letter is to seek this formal consultation with you on behalf of the Council.

Once the Council has been formally consulted and has agreed to the amendment to the Articles then Tim Shields, as Chair of The Learning Trust Board will write to the Secretary of State for Education to obtain his written approval to the proposed amendment. With the Secretary of State's approval the Board will then be in a position to formally adopt the new Articles of Association which will allow the surplus funds to be transferred to the Council for the purposes of discharging its educational functions. The liquidation of The Learning Trust can then be carried out.

If you have any queries please don't hesitate to contact me.

Yours Sincerely



Neil Weeks
Secretary to the Board of Directors of The Learning Trust