

**CLOSURE OF GLADSTONE PRIMARY SCHOOL, ACADEMY TRANSFER AGREEMENT AND LEASE OF PREMISES**

**Councillor John Holdich, Leader of the Council and Cabinet Member for Education, Skills, University and Communications**

**January 2017**

Cabinet portfolio holder:	Councillor John Holdich, Leader of the Council and Cabinet Member for Education, Skills, University, and Communications
Responsible Director:	Wendi Ogle-Welbourn, Corporate Director People and Communities
Is this a Key Decision?	YES If yes has it been included on the Forward Plan : Yes Unique Key decision Reference from Forward Plan: KEY/31OCT16/01
Is this decision eligible for call-in?	YES
Does this Public report have any annex that contains exempt information?	NO

**RECOMMENDATIONS**

The Cabinet Member is recommended:

- 1) To approve the closure of Gladstone Primary School and authorise the execution and completion of a Commercial Transfer Agreement (CTA) between Peterborough City Council, the Interim Executive Board of Gladstone Primary School and TDA Education Trust;
- 2) To authorise the grant of a 125 year lease of the land and buildings occupied by the School known as Gladstone Primary School (located at Gladstone Street and Bourges Boulevard site), excluding the land currently used as a children's centre and the public play area, at a peppercorn rent to TDA Education Trust;
- 3) To authorise entering into a Deed of Novation with TDA Education Trust and Carillion Construction Limited to novate the Council's contract dated 12 August 2013 with Carillion Construction Limited to TDA Education Trust, to give effect to the terms of the CTA;
- 4) To authorise entering into a Duty of Care Deed with Carillion Construction Limited;
- 5) To authorise entering into a Dual Use Agreement with TDA Education Trust in respect of the Bourges Boulevard site; and
- 6) To delegate authority to the Corporate Director People and Communities to authorise variations to the Dual Use Agreement entered into pursuant to recommendation number 5 during the operation of the Dual Use Agreement.

## 1. SUMMARY OF MAIN ISSUES

- 1.1 It is the Government's policy for schools to become Academies.
- 1.2 The Governing Body of Gladstone Primary School was replaced by an Interim Executive Board (IEB) in April 2016 following an Ofsted inspection which judged the school to be providing an inadequate standard of education for its pupils. The Local Authority applied through the Regional Schools Commissioner and the Secretary of State who gave their approval for an Interim Executive Board to be established and the governing body to be disbanded. An application was also made for an Academy order to be instituted, which was agreed. The Local Authority, in partnership with the Regional Schools Commissioner, brokered an agreement with the TDA Education Trust to become the sponsor and the Secretary of State, the Regional Schools Commissioner and the Headteacher Board approved this. The new academy will be sponsored by TDA Education Trust as agreed with the Regional Schools Commissioner. The sponsoring academy trust is in the process of converting from a single academy trust to a multi academy trust, and as part of that process intends to change its company name from 'The Thomas Deacon Academy' to 'TDA Education Trust' in advance of the academy conversion of Gladstone Primary School, and has therefore been referred to in this report as TDA Education Trust (the "Trust").
- 1.3 As part of the conversion to an Academy, Department for Education guidance specifies that the land held by the Local Authority is to be leased to the academy on a 125 year lease for a peppercorn rent. Local Authorities also enter into a Commercial Transfer Agreement ("CTA") as part of the conversion, to set out the respective obligations of the parties in relation to the conversion (including in relation to the transfer of assets, contracts and liabilities).
- 1.4 The Trust will be responsible for the operation of the Academy upon conversion and will be the employer of school staff. The Council employees in respect of the school will therefore transfer from the Council to the Trust under the Transfer of Undertakings (Protection of Employment) Regulations 2006. The prescribed consultation meetings with staff and trade unions have been held. The respective liabilities of the Council and the Trust in relation to those employees are dealt with within the CTA.
- 1.5 As part of the site currently occupied by the school (Bourges Boulevard site) is shared use with Gladstone Park Community Centre, a Dual Use Agreement is proposed to formalise and govern that shared use.

## 2. PURPOSE OF THIS REPORT

- 2.1 This decision is proposed in accordance with the delegations for Councillor Holdich, Cabinet Member for Education, Skills and University exercising delegated authority under paragraph 3.4.3 of Part 3 of the constitution in accordance with the terms of their portfolio at paragraph (i).

## 3. TIMESCALE

Is this a Major Policy Item/Statutory Plan?	<b>NO</b>	If Yes, date for relevant Cabinet Meeting	<b>N/A</b>
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## 4. DETAILS OF DECISION REQUIRED

- 4.1 The decision maker is asked to:
- 4.1.1 Approve the closure of Gladstone Primary School, which is currently a community school, and authorise the execution and completion of a Commercial Transfer Agreement between Peterborough City Council, the Interim Executive Board of the school and The Trust;

- 4.1.2 Authorise the grant of a 125 year lease of the land and buildings occupied by the School and known as Gladstone Primary School, excluding the land currently used as a children's centre and the public play area, to the Trust;
- 4.1.3 Authorise entering into a Deed of Novation with the Trust and Carillion Construction Limited to novate the Council's contract dated 12 August 2013 with Carillion Construction Limited to the Trust, to give effect to the terms of the CTA;
- 4.1.4 Authorise entering into a Duty of Care Deed with Carillion Construction Limited;
- 4.1.5 Authorise entering into a Dual Use Agreement with TDA Education Trust in respect of the Bourges Boulevard site; and
- 4.1.16 Delegate authority to the Corporate Director People and Communities to authorise variations to the Dual Use Agreement entered into pursuant to recommendation number 5 during the operation of the Dual Use Agreement.

## **5. CONSULTATION**

- 5.1 The staff consultation process commenced with discussion regarding the conversion at the Education Consultative Negotiating Forum on 20 October 2016. The Interim Executive Board (IEB) of the School wrote to parents and staff on 2 November 2016 providing information and inviting questions and comments by 23 November 2016. A meeting was held with parents, staff and trade unions on 9 November 2016. The prescribed consultation required under the Transfer of Undertakings (Protection of Employment) Regulations 2006 has been carried out.
- 5.2 Consultation was carried out internally and with Councillor Khan in relation to the future community use of the school multi use games area situated on the Gladstone Street site outside of school hours. Concerns were raised that the availability of play areas within the ward would be significantly reduced if the multi use games area became unavailable to members of the public outside of school hours. As a consequence of that consultation, the multi use games area on the Gladstone Street site will continue to be made available for community use outside of school hours.

## **6. ANTICIPATED OUTCOMES**

- 6.1 The anticipated outcome is that Gladstone Primary School will close and re-open as an Academy operated by the Trust, the land and buildings currently occupied by Gladstone Primary School (excluding the land used as a children's centre on the Gladstone Street site and the public play area) will be leased to the Trust, and the staff, assets and contracts relating to the School will be transferred to the Trust to enable it to operate the Academy from the conversion date (currently anticipated to be 01 February 2017).

## **7. REASONS FOR RECOMMENDATIONS & ANY RELEVANT BACKGROUND INFORMATION**

- 7.1 The Council is obliged under the Academies Act 2010 to cease maintaining a school on the date it opens as an Academy. The DfE expect Local Authorities to co-operate with the Academy conversion process, once approved by the Secretary of State for Education.
- 7.2 The Council's consent is not required for a school to convert to an Academy and if the Council does not cooperate with the conversion process and negotiate and enter into lease arrangements and a CTA, the Secretary of State has the power to make transfer schemes under the Academies Act 2010 in relation to property, land, rights and liabilities (including rights and liabilities in relation to staff) which would be binding on the Council. It is therefore preferable for the Council to reach agreement with the IEB of the School and Trust and enter into the lease arrangements and CTA in respect of these matters, rather than be subject to transfer schemes made by the Secretary of State.

- 7.3 The proposed lease to the Trust includes the land currently occupied and used for the purposes of the School, but excluding land within the school grounds which is currently operated as a children's centre by a third party at the Gladstone Street site, and the public play area.
- 7.4 The CTA sets out the respective obligations of the IEB of the School, the Council and the Trust arising from the academy conversion in relation to employees, contracts and assets (other than land), and the liabilities of each of the parties in that regard.
- 7.5 Under the proposed terms of the CTA, the Council is obliged to assign the benefit of and/or novate contracts entered into by the Council for the purpose of operating the School, and the approach usually taken by the Council in academy conversions is to transfer all such existing contracts relating to the School (including building contracts) to the academy trust. Recommendation 3 therefore requests authority to enter into a Deed of Novation with the Trust and Carillion Construction Limited to give effect to the terms of the CTA. As the works carried out by Carillion Construction Limited under that contract did, however, also include refurbishment works to Gladstone Park Community Centre, the intention is to enter into a duty of care deed with Carillion Construction Limited simultaneously. Recommendation 4 therefore requests authority to enter into a duty of care deed in that regard. It should be noted that the Council will retain the sub-contractor warranties associated with the Carillion Construction Limited contract.
- 7.6 Part of the site currently occupied by the school (Bourges Boulevard site) is shared use with Gladstone Park Community Centre. For example, the school's 4G pitch is used by the members of the community during evenings and weekends, and part of the sports hall within the community centre is used by the school during term time.
- 7.7 As the school will no longer be a maintained school, and the Trust will occupy the school site under a lease upon conversion to an academy, it is necessary to formalise the shared use of the site by way of a Dual Use Agreement between the Council and the Trust. The Dual Use Agreement will set out the details of the shared use, including the timings of the use by each party of certain areas, contributions for costs of repairs and utilities, insurance and security of the site. The agreement will remain in place unless and until both parties jointly agree to terminate it. Recommendation 5 therefore requests authority to enter into the Dual Use Agreement.
- 7.8 The proposed Dual Use Agreement contains provision to review the dual use arrangements annually to consider if any changes are required to assist in the operation of the shared use arrangements or to more fairly represent the parties, and recommendation 6 requests that authority be delegated to the Corporate Director People and Communities in this regard, to authorise variations to the Dual Use Agreement during its operation.

## **8. ALTERNATIVE OPTIONS CONSIDERED**

- 8.1 Refuse the closure of Gladstone Primary School and the transfer to academy status: Once the school has been accepted for academy status by the Secretary of State, the Council is required to support the decision. Failure to cooperate could result in the Secretary of State making transfer schemes which would be binding on the Council.
- 8.2 Not to transfer the premises: This option was rejected because the Department for Education guidance specifies that the land held by the Local Authority is to be leased to the academy on a 125 year lease for a peppercorn rent and failure to follow the guidance and cooperate could result in the Secretary of State making a transfer scheme in relation to the land.
- 8.3 Sell the site to the Trust: This option was rejected because there is no requirement for the Trust to buy land (for which no funding has been made available) and the Council would prefer to retain ownership.
- 8.4 Not to novate the Council's Carillion Construction Limited contract to the Trust: This option was rejected because if the Council retained the contract, if any claim in relation to those

works in respect of the school were to arise, it is likely that the Council would then have to become involved or take action on behalf of the Trust. Novating the contract allows the Trust to deal with any such claims directly. Additionally, the contract makes provision for a duty of care deed to be provided to the Council to seek to protect the Council's interests in respect of the works relating to the community centre.

- 8.5 Not to enter into a dual use agreement: This option was rejected because it would result in uncertainty for both the Council and the Trust in relation to the shared use of the Bourges Boulevard site. If arrangements were not formalised in a dual use agreement, then this could result in disputes arising between the Council and the Trust regarding use and financial contributions (for example in respect of repairs and utilities).

## **9. IMPLICATIONS**

### **9.1 Property**

The land and buildings will remain under the ownership of the Council but the Trust will have full control of them (subject to the Dual Use Agreement), as tenant, for a 125 year period, unless the lease is terminated early for any reason. The shared use of the Bourges Boulevard site will be governed by the Dual Use Agreement unless and until both parties agree to terminate it.

### **9.2 Finance**

The Trust will receive its funding direct from the Department for Education. Government funding for Peterborough schools will be reduced proportionately. As a charitable organisation, the academy will receive 80% relief on business rates. This will reduce business rate income to the Council by around £20k per annum.

### **9.3 Admissions**

The Trust will be its own admissions authority and will determine its own admissions arrangements. Places will continue to be allocated via the co-ordinated admissions scheme.

### **9.4 Legal**

9.4.1 As detailed within paragraph 7.1 of this report, the Council is obliged under the Academies Act 2010 to cease maintaining a school on the date it opens as an Academy. Paragraph 7.2 of this report sets out the implications if the Council fails to cooperate.

9.4.2 The Council has previously entered into a contract in relation to building/construction and works carried out at the School, and entering into a Deed of Novation with the Trust and the contractor in relation to this contract (as detailed within recommendation 3), will enable the Trust to have the benefit of the contract and any claims arising out of the building/construction and works, instead of the Council. The novation does not involve a change of contractor, and therefore, the reference in the Council's Contract Rules for a credit check to be carried out and for reference to have been made to the novation in the tender documents, do not arise. The novation will be completed by a formal deed of novation. The value of the contract being novated is over £500,000.

### **9.5 Equalities**

There are no equalities implications arising from this decision.

## **10. DECLARATIONS / CONFLICTS OF INTEREST & DISPENSATIONS GRANTED**

- 10.1 None.

## **11. BACKGROUND DOCUMENTS**

Used to prepare this report, in accordance with the Local Government (Access to Information) Act 1985) and The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012

- 11.1 None.