

THE CLOSURE OF JACK HUNT SCHOOL AS A MAINTAINED SCHOOL AND IT'S RE-OPENING AS AN ACADEMY, ACADEMY TRANSFER AGREEMENT AND PFI CONTRACTUAL DOCUMENTATION

Councillor Lynne Ayres, Cabinet Member for Education, Skills and University

February 2018

Cabinet portfolio holder:	Councillor Lynne Ayres, Cabinet Member for Education, Skills and University
Responsible Director:	Wendi Ogle-Welbourn, Executive Director People and Communities Cambridgeshire County Council and Peterborough City Council
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/07AUG17/02
Is this decision eligible for call-in?	YES
Does this Public report have any annex that contains exempt information?	NO

R E C O M M E N D A T I O N S

The Cabinet Member is recommended:

1. To approve the closure of Jack Hunt School as a maintained Foundation Trust school, it's re-opening as an Academy and authorise the execution and completion of a Commercial Transfer Agreement (CTA) between Peterborough City Council, the Governing Body of Jack Hunt School and Peterborough Keys Academies Trust;
2. To authorise entering into a Dual Use Agreement (DUA) between Peterborough City Council, Vivacity and Peterborough Keys Academies Trust for use of the gym and swimming pool facilities.
3. To authorise entering into Deeds of Assignment or Novation with Peterborough Keys Academies Trust (and if applicable, the relevant contractor(s)) to assign the Council's interest in (or novate if applicable) the following contracts, to Peterborough Keys Academies Trust, to give effect to the terms of the CTA:
 - a) Contract dated 15 August 2011 between (1) Peterborough City Council (2) Harmony Roofing Services Ltd;

- b) Contract dated 10 October 2016 between (1) Peterborough City Council (2) Clegg Construction Ltd;
 - c) Sub-contractor warranty dated 7 November 2016 between (1) Peterborough City Council (2) Stoglaze Ltd (3) Clegg Construction Limited;
 - d) Sub-contractor warranty dated 26 July 2017 between (1) The Partners in Frank Shaw Associates Limited (2) Peterborough City Council (3) Carillion Construction Limited t/a Carillion Building ;
 - e) Sub-contractor warranty dated 26 July 2017 between (1) HSP Consulting Ltd (2) Peterborough City Council (3) Carillion Construction Limited t/a Carillion Building ; and
 - f) Sub-contractor warranty dated 26 July 2017 between (1) Anderson Green Limited t/a Anderson Green (2) Peterborough City Council (3) Carillion Construction Limited t/a Carillion Building.
4. To authorise entering into Deeds of Novation with Peterborough Keys Academies Trust and the Governing Body of Jack Hunt School, for the following contracts to be novated from the Governing Body of Jack Hunt School to Peterborough Keys Academies Trust:
- a) Service Level Agreement: Specialist Mainstream Resource Hub (Physical Disability) between (1) Peterborough City Council (2) Governing Body of Jack Hunt School; and
 - b) Service Level Agreement: Specialist Mainstream Resource Hub (Hearing Impairment) between (1) Peterborough City Council (2) Governing Body of Jack Hunt School.
5. To authorise entering into the following contractual documents in relation to the PFI contract relating to Jack Hunt School:
- Schools Agreement – between the Council and Peterborough Keys Academies Trust
 - Principal Agreement – between the Council, the Secretary of State for Education and Peterborough Keys Academies Trust
 - Deed of Variation – between the Council and IIC BY Education (Peterborough Schools) Limited
6. To authorise entering into a Development Agreement and Licence with Peterborough Keys Academies Trust to enable the current building works relating to the school's expansion to continue post-conversion.

1. SUMMARY OF MAIN ISSUES

- 1.1 It is the Government's intention for schools to become academies.
- 1.2 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 Trust on a 125 year lease for a peppercorn rent, but in the case of Foundation Trust schools like Jack Hunt School where the Local Authority does not have title to the real estate, the Governing Body of the school transfers the land freehold to the Academy Trust
 - 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).
- 1.3 The Academy Trust will be responsible for the operation of the academy upon conversion and will be the employer of school staff. As the school is a Foundation Trust school, the staff are employed by the Governing Body and not the Council.
- 1.4 Jack Hunt School is part of the Council's Schools Private Finance Initiative (PFI) with

IIC BY Education (Peterborough Schools) Limited dated 31 July 2006, which also includes Queen Katherine Academy and Ken Stimpson Community School.

- 1.5 As a Foundation Trust secondary school, the Governing Body holds the freehold to the land, therefore the Governing Body of the school will enter into a transfer of the land and buildings with the Academy Trust.
- 1.6 The use of the swimming pool facilities and the gym at the school are working under the term of an unsigned Dual Use Agreement between the Council, Vivacity and the Governing Body of Jack Hunt School. A new Dual Use Agreement between the Council, Vivacity and Peterborough Keys Academies Trust will be entered into.
- 1.7 The Department for Education (DfE) requirements for schools converting to academies and which are subject to PFI arrangements are to enter into the following documents and structure:
 - Schools Agreement – this agreement replaces the Governing Body Agreement between the Council and the Jack Hunt School Governing Body and governs the ongoing relationship with a particular reference to PFI liabilities;
 - Principal Agreement – this agreement provides that the DfE guarantees the commitments of the Academy Trust to the Council under the Schools Agreement;
 - Deed of Variation – this relates to a small number of amendments to the PFI Project Agreement that are required as a result of the conversion. The amendments cover four areas Authority Related Parties, Insured Parties, Land and Conversion.

In order to enable the school to convert to academy status these documents must be entered into before conversion.

- 1.8 The school is currently undergoing building works associated with an increase in school places from September 2018. The Council will enter into a Development Agreement and Licence with the Academy Trust to enable the works to continue post-conversion. The works are subject to a separate decision notice published in May 2016. The academy will make a financial contribution to the scheme of £473,707 as confirmed in the Development Agreement.
- 1.9 On 15 January 2018 a winding up order was made and the High Court appointed the official receiver as liquidator of Carillion Construction Ltd who were undertaking the building work at the school. The Council is currently considering its options for re-procurement of the remainder of the works. The agreed approach will be captured in the Development Agreement between the Council and the Academy Trust.

2. PURPOSE OF THIS REPORT

- 2.1 This decision is proposed in accordance with the delegations for Councillor Ayres, 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 her portfolio at paragraph (a).

3. **TIMESCALE**

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

4.1 The decision maker is asked to:

4.1.1 Approve the closure of Jack Hunt School which is currently a maintained Foundation Trust secondary school and will re-open as an academy, and authorise the execution and completion of a Commercial Transfer Agreement between Peterborough City Council, the Governing Body of the school and Peterborough Keys Academies Trust;

4.1.2 Enter into a Dual Use Agreement (DUA) between Peterborough City Council, Vivacity and Peterborough Keys Academies Trust for use of the gym and swimming pool facilities

4.1.3 Authorise entering into Deeds of Assignment or Novation with Peterborough Keys Academies Trust (and if applicable, the relevant contractor(s)) to assign the Council's interest in (or novate if applicable) the following contracts, to Peterborough Keys Academies Trust, to give effect to the terms of the CTA:

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- c) Sub-contractor warranty dated 7 November 2016 between (1) Peterborough City Council (2) Stoglaze Ltd (3) Clegg Construction Limited;
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- f) Sub-contractor warranty dated 26 July 2017 between (1) Anderson Green Limited t/a Anderson Green (2) Peterborough City Council (3) Carillion Construction Limited t/a Carillion Building.

4.1.4 Authorise entering into Deeds of Novation with Peterborough Keys Academies Trust and the Governing Body of Jack Hunt School, for the following contracts to be novated from the Governing Body of Jack Hunt School to Peterborough Keys Academies Trust:

- a) Service Level Agreement: Specialist Mainstream Resource Hub (Physical Disability) between (1) Peterborough City Council (2) Governing Body of Jack Hunt School; and
- b) Service Level Agreement: Specialist Mainstream Resource Hub (Hearing Impairment) between (1) Peterborough City Council (2) Governing Body of Jack Hunt School.

4.1.5 Authorise entering into the following contractual documents in relation to the PFI contract relating to Jack Hunt School:

- Schools Agreement – between the Council and Peterborough Keys Academies Trust
- Principal Agreement – between the Council, the Secretary of State for Education and Peterborough Keys Academies Trust
- Deed of Variation – between the Council and IIC BY Education (Peterborough Schools) Limited

5. CONSULTATION

- 5.1 The school staff consultation process started with a briefing on 7th February 2017 followed by consultation from 26th April until 26th May 2017 on the proposal to convert to academy status and join the proposed Peterborough Keys Academies Trust. A meeting with the trade unions was held on 5th September 2017. The prescribed consultation required under the Transfer of Undertakings (Protection of Employment) Regulations 2006 have taken place and a meeting with staff was held on 12th September 2017. The foundation status at Jack Hunt School means that the Governing Body is the current staff employer and not the Council.
- 5.2 The relevant Ward Councillors were notified of the conversion process in November 2017.

6. ANTICIPATED OUTCOMES

- 6.1 The anticipated outcome is that Jack Hunt School will close as a maintained Foundation Trust school and re-open as an academy operated by the Academy Trust. The staff, assets, contracts and future liabilities relating to the school will be transferred to the Academy Trust to enable it to operate the academy from the conversion date (currently anticipated to be 01 April 2018).
- 6.2 The Council will enter into the required PFI documentation as part of the academy conversion.

7. REASONS FOR RECOMMENDATIONS & ANY RELEVANT BACKGROUND INFORMATION

- 7.1 The Academies Order was issued by the DfE on 6th July 2017 and the Council is obliged under the Academies Act 2010 to cease maintaining a school on the date it opens as an academy and to co-operate with the academy conversion process once the Order is issued.
- 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 Governing Body of the school and Academy Trust and enter into the property arrangements and negotiate the CTA within the constraints of the Act, rather than be subject to transfer schemes made by the Secretary of State with only minimal protections for the Council.
- 7.3 Jack Hunt School is a Foundation Trust secondary school. As such, the land and buildings are owned by the school and the staff are employed by the Governing Body. Therefore, the Governing Body of the school will enter into a land and buildings transfer freehold with the Academy Trust and the staff will transfer from the Governing Body to the Academy Trust.
- 7.4 The CTA sets out the respective obligations of the Governing Body of the school, the Council and the Academy 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 contracts entered into by the Council for the purpose of operating the school, to the Academy Trust, and recommendations 3 and 5 therefore request authority to enter into a Deed of Assignment or Novation with the Academy Trust to give effect to the terms of the CTA.
- 7.6 The Governing Body of the school is also obliged, under the Act and proposed terms of the CTA, to assign and/or novate contracts it has entered into for the purpose of operating the school, to the Academy Trust.
- 7.7 There is a charge of £5,000 from the Council for every school converting into an Academy to contribute towards the associated costs for the Council.
- 7.8 It should be noted that since inception of the PFI contract in 2006 Jack Hunt School, Queen Katherine Academy and Ken Stimpson Community School have paid the Council for the cost of their utilities through payment of their contribution to the Council's payment of the unitary charge. The Council has paid the utility providers direct for the cost of all utility services to date. The Council has exercised its discretion under The Education Act 1996 and the Local Government Act 2000 to continue this arrangement following Jack Hunt School's conversion to an academy until its new financial year commences in September 2018. From 01 September 2018 the academy will then pay its utility costs direct to the utility providers. The academy's contribution to the unitary charge will be reduced accordingly. These arrangements are set out in the Schools Agreement.

8. ALTERNATIVE OPTIONS CONSIDERED

- 8.1 Refuse the closure of Jack Hunt 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 entering into the required PFI documentation: This option was rejected as it is a Department for Education requirement to enter into the Schools Agreement and Principal Agreement as part of the process for academisation of a PFI school. A Deed of Variation to the PFI contract will capture the necessary amendments to the Project Agreement as a result of the conversion.
- 8.3 Not entering into a Dual Use Agreement: This option was rejected as the Dual Use Agreement sets out the terms under which the swimming pool facilities and the gym are used by the academy and the community.
- 8.4 Not entering into Deeds of Assignment or Novation to assign the Council's interest (or novate if applicable) in the contracts listed under recommendation 3 and 5: This option was rejected, as this would result in the Council not having the proper documentation in place with the Trust.
- 8.5 Not to use discretion in respect of the mechanism for payment of utility costs until the new Academy financial year: This option was rejected as it is consistent with the practice adopted by the Council whilst the school was a maintained Foundation Trust and will not be a significant cost during the period between conversion and the new academy financial year.

9. IMPLICATIONS

9.1 Property
The Academy Trust will enter into a Dual Use Agreement with the Council and Vivacity for use of the swimming pool and gym facilities.

9.2 Finance
The Academy Trust will receive its funding direct from the Department for Education. Government funding for Peterborough schools will be reduced proportionately.

9.3 Admissions
The Academy 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 works carried out at the school, and entering into Deed of Assignment with the Trust in relation to those contracts (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 works, instead of the Council.

9.4.3 The Deed of Assignment and Deeds of Novation, within recommendations 3 and 5, do 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 assignment/novation in the tender documents, do not arise.

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.