

CLOSURE OF EYRESCROFT 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

October 2015

Cabinet portfolio holder:	Councillor John Holdich, Leader of the Council and Cabinet Member for Education, Skills, University, and Communications John Harrison, Executive Director Resources
Responsible Director:	
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/21SEPT15/02
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 Eyrescroft Primary School and authorise the execution and completion of a Commercial Transfer Agreement (CTA) between Peterborough City Council, the Governing Body of Eyrescroft Primary School and The Elliot Foundation Academies Trust;
- 2) To authorise the grant of a 125 year lease of the land and buildings occupied by the School and known as Eyrescroft Primary School, together with the land currently used as a pre-school, at a peppercorn rent to The Elliot Foundation Academies Trust; and
- 3) To authorise entering into Deeds of Assignment with The Elliot Foundation Academies Trust to assign the benefit of the following contracts to The Elliot Foundation Academies Trust, to give effect to the terms of the CTA:
 - a. Contract dated 12 August 2011 with Benchmark Contracts Limited;
 - b. Contract dated 16 July 2007 with Elliott Group Limited; and
 - c. Contract dated 1 August 2007 with AG Aylward EMS Limited.

1. SUMMARY OF MAIN ISSUES

- 1.1 It is the Government's policy for schools to become Academies.
- 1.2 The Governing Body of Eyrescroft Primary School applied to become an academy and the school has been accepted onto the academy programme. The change of status is currently scheduled to take effect from 1 December 2015. The new academy will be sponsored by the Elliot Foundation Academies 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 consultations 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.

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?	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 Eyrescroft Primary School, which is currently a community school, and authorise the execution and completion of a Commercial Transfer Agreement between Peterborough City Council, the Governing Body of Eyrescroft Primary School and The Elliot Foundation Academies Trust;

4.1.2 Authorise the grant of a 125 year lease of the land and buildings occupied by the School and known as Eyrescroft Primary School, together with the land currently used as a pre-school, to The Elliot Foundation Academies Trust; and

4.1.3 Authorise entering into Deeds of Assignment with The Elliot Foundation Academies Trust to assign the benefit of the following contracts to The Elliot Foundation Academies Trust, to give effect to the terms of the CTA:

- a. Contract dated 12 August 2011 with Benchmark Contracts Limited;
- b. Contract dated 16 July 2007 with Elliott Group Limited; and
- c. Contract dated 1 August 2007 with AG Aylward EMS Limited.

5. CONSULTATION

- 5.1 The consultation process started on 30 September 2015. The Governing Body of the School wrote to parents and staff providing information and inviting questions and comments. Meetings have been held with parents, staff and trade unions. The prescribed consultation required under the Transfer of Undertakings (Protection of Employment) Regulations 2006 has been carried out.

6. ANTICIPATED OUTCOMES

- 6.1 The anticipated outcome is that Eyrescroft Primary School will close and re-open as an Academy operated by the Trust, the land and buildings currently occupied by Eyrescroft Primary School and the land used as a pre-school 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 1 December 2015.

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 Governing Body 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 also additional land within the School grounds which is currently operated as a pre-school by a third party however no legal documentation is in place and due to the logistics of access and other facilities provided by the School and the Trust's future plans the area is to be included in the 125 year lease.
- 7.4 The CTA sets out the respective obligations of the Governing Body 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 contracts entered into by the Council for the purpose of operating the School, and recommendation 3 therefore requests authority to enter into Deeds of Assignment with the Trust to give effect to the terms of the CTA.

8. ALTERNATIVE OPTIONS CONSIDERED

- 8.1 Refuse the closure of Eyrescroft 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.

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, as tenant, for a 125 year period, unless the lease is terminated early for any reason.

9.2 Finance

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

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 contracts in relation to building/construction and works carried out at the School, and entering into Deeds of Assignment with the Trust in relation to those contracts (as detailed within recommendation 3), will enable the Trust to have the benefit of those contracts and any claims arising out of the building/construction and works, instead of the Council. The assignment does not involve a change of contractor, and therefore, it is not necessary for reference to have been made to the assignment in the tender documents.

10. DECLARATIONS / CONFLICTS OF INTEREST & DISPENSATIONS GRANTED

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

None.