

CLOSURE OF WITTERING PRIMARY SCHOOL, ACADEMY TRANSFER AGREEMENT AND LEASE OF PREMISES

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

November 2017

Cabinet portfolio holder:	Councillor Lynne Ayres, 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/07AUG17/10
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 Wittering Primary School, and authorise the execution and completion of a Commercial Transfer Agreement (CTA) between Peterborough City Council, the Governing Body of Wittering Primary School and Soke Education Trust;
2. To authorise the grant of a 125 year lease of the land and buildings occupied by the school known as Wittering Primary School (including the families centre) at a peppercorn rent to Soke Education Trust;
3. To authorise entering into Deeds of Novation with Soke Education Trust and the Governing Body of Wittering Primary School, for the following contracts to be novated from the Governing Body of Wittering Primary School to the Soke Education Trust:
 - a) Solar Power Purchase Agreement dated [] between (1) Peterborough City Council (2) Wittering Primary School; and
 - b) PV System Roof Access Agreement dated [] between (1) Peterborough City Council (2) Wittering Primary School

4. To authorise entering into Deeds of Assignment or Novation with Soke Education Trust (and if applicable, the relevant contractor(s)) to assign the Council's interest in (or novate if applicable) the following contracts, to Soke Education Trust, to give effect to the terms of the CTA:
 - a) Contract dated 5 August 2013 between (1) Peterborough City Council (2) Benchmark Contracts Ltd; and
 - b) Contract dated 12 December 2013 between (1) Peterborough City Council (2) Princebuild Limited.

1. SUMMARY OF MAIN ISSUES

- 1.1 It is the Government's policy 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 on a 125 year lease for a peppercorn rent. Guidance specifies also that Local Authorities 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 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 are underway. The respective liabilities of the Council and the Trust in relation to those employees are dealt with within the CTA.
- 1.4 The service currently operating as the families centre which is located within the demise will be included within the 125 year lease. The service which provides early years provisions through Sure Start funding will be protected under the lease as it is subject to clawback provisions safeguarding the area for this use. The lease will replace the terms contained in the existing Community Use Agreement.

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 Wittering 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 the school and Soke Education Trust;

4.1.2 Authorise the grant of a 125 year lease of the land and buildings occupied by the school known as Wittering Primary School, including the families centre, at a peppercorn rent to Soke Education Trust;

4.1.3 Authorise entering into Deeds of Novation with Soke Education Trust and the Governing Body of Wittering Primary School, for the following contracts to be novated from the Governing Body of Wittering Primary School to Soke Education Trust:

a) Solar Power Purchase Agreement dated [] between (1) Peterborough City Council (2) Wittering Primary School; and

b) PV System Roof Access Agreement dated [] between (1) Peterborough City Council (2) Wittering Primary School

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

4.1.5

a) Contract dated 5 August 2013 between (1) Peterborough City Council (2) Benchmark Contracts Ltd; and

b) Contract dated 12 December 2013 between (1) Peterborough City Council (2) Princebuild Limited

5. CONSULTATION

5.1 The consultation process started on 20 March 2017. 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 is underway.

6. ANTICIPATED OUTCOMES

6.1 The anticipated outcome is that Wittering Primary School will close and re-open as an Academy operated by the Trust. The land and buildings currently occupied by Wittering Primary School (including the families centre) 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 December 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 Governing Body of the schools 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, and also the land within the school grounds which is currently operated as a families centre. The dual use of these facilities will be covered in the lease to ensure that clawback associated with Sure Start grant funding (to protect this area for early years provisions) is not triggered. Staff at the families centre will transfer to the Trust under the Transfer of Undertakings (Protection of Employment) Regulations 2006.
- 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, to the academy trust, and recommendation 4 therefore requests authority to enter into a Deed of Assignment with the Trust to give effect to the terms of the CTA.
- 7.6 The Governing Body of the school is also obliged, under the 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. The Governing Body of the school has contracts with the Council in respect of solar panels and PV which are located on the school, and recommendation 3 requests authority to enter into Deeds of Novation to enable the Governing Body of the school to novate those to Soke Education 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.

8. ALTERNATIVE OPTIONS CONSIDERED

- 8.1 Refuse the closure of Wittering 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 assign the benefit of the Council's Benchmark and Princebuild contracts to the

Trust: This option was rejected because if the Council retained the benefit of these contracts, 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. Assigning the benefit of the contracts allows the Trust to deal with any such claims directly.

8.5 Not entering into deeds of novation to enable the Governing Body of the School to novate the solar panel and PV contracts to the Trust: This option was rejected, as this would result in the Council not having the proper documentation in place with the Trust in respect of the solar panels and PV located on the School.

8.6 To retain the families centre and exclude this from the lease to the Trust: This option was ruled out due to the location of the centre within the school building and grounds.

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 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 the contracts (as detailed within recommendation 4), will enable the Trust to have the benefit of the contracts 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 4, 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.