

**CLOSURE OF JOHN CLARE 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: KEY07AUG17/09
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 John Clare Primary School, and authorise the execution and completion of a Commercial Transfer Agreement (CTA) between Peterborough City Council, the Governing Body of John Clare 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 John Clare Primary School (including the pre-school/out of school club), at a peppercorn rent to Soke Education Trust;
3. 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:
4.
  - a) Contract dated 14 August 2009 between (1) Peterborough City Council (2) RF Blount & Sons Limited;
  - b) Contract dated 21 July 2010 between (1) Peterborough City Council (2) PGR Construction;

- c) Sub-contractor warranty dated 11 June 2010 between (1) Harlow Bros Ltd (2) PGR Constuction (3) Peterborough City Council; and
- d) Sub-contractor warranty dated 10 August 2010 between (1) Roger Bullivant Limited (2) PGR Construction (3) Peterborough City Council.

## 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 also specifies 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 proposed lease to the Trust includes the land currently occupied and used for the purposes of the School and also the pre-school/out of school club. The lease will contain clauses to protect the early years provisions throughout the term of the lease.
- 1.5 The proposed lease to the Trust includes land currently occupied and used for the purposes of community use. The lease will contain provisions to protect the community use and the play equipment contained on the land.

## 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?	<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 John Clare 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 John Clare Primary School (including the pre-school/out of school club), at a peppercorn rent to Soke Education Trust;

4.1.3 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 14 August 2009 between (1) Peterborough City Council (2) RF Blount & Sons Limited;
- b) Contract dated 21 July 2010 between (1) Peterborough City Council (2) PGR Construction;
- c) Sub-contractor warranty dated 11 June 2010 between (1) Harlow Bros Ltd (2) PGR Constuction (3) Peterborough City Council; and
- d) Sub-contractor warranty dated 10 August 2010 between (1) Roger Bullivant Limited (2) PGR Construction (3) Peterborough City Council.

## **5. CONSULTATION**

5.1 The consultation process started on 16 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 John Clare Primary School will close and re-open as an Academy operated by the Trust. The land and buildings currently occupied by John Clare Primary School (including the pre-school/out of school club) 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 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 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.
- 7.4 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 3 therefore requests authority to enter into a Deed of Assignment or Novation with the Trust to give effect to the terms of the CTA.
- 7.5 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.
- 7.6 There is a reserved public right of way contained on the land within the proposed lease.
- 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 John Clare 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 interest in (or novate if applicable) RF Blount & Sons Limited and PGR Construction contracts and sub-contractor warranties between Harlow Bros Ltd, PGR Construction and the Council and Roger Bullivant Limited, PGR Construction and the Council to the Trust: This option was rejected because if the Council retained the benefit of the contracts and warranties, 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 and sub-contractor warranties allows the Trust to deal with any such claims directly.
- 8.5 To retain the pre-school/out of school club and exclude these from the lease to the Trust: This option was ruled out as these provisions are delivered from 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 (subject to the lease arrangement regarding the pre-school/out of school club), 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 works carried out at the school, and entering into Deeds of Assignment (or novation if applicable) with the Trust in relation to those contracts (as detailed within recommendation 3), 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 recommendation 3, 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 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.