

DELEGATION OF AUTHORITY TO NEGOTIATE AND AGREE DETAILS OF ACADEMY CONVERSION
COUNCILLOR LYNNE AYRES, CABINET MEMBER FOR CHILDREN'S SERVICES, EDUCATION, SKILLS AND UNIVERSITY
OCTOBER 2021
Deadline date: N/A

Cabinet portfolio holder:	Councillor Lynne Ayres, Cabinet Member for Children's Services, Education, Skills and University
Responsible Director:	Wendi Ogle-Welbourn, Corporate Director of 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/11 Oct 21/02
Is this decision eligible for call-in?	YES
Does this Public report have any annex that contains exempt information?	NO
Is this a project and if so has it been registered on Verto?	NO

RECOMMENDATIONS

The Cabinet Member is recommended to authorise the Corporate Director of People and Communities to enter into negotiations of the following for the purposes of giving effect to the conversion of Ken Stimpson Community School to academy status :

1. A Commercial Transfer Agreement between the Council, the Governing Body of the School and the Trust;
2. A Deed of Novation between the relevant parties, in relation to PFI contract, if required
3. Deeds of Assignment between the relevant parties if required.
4. Dual Use Agreements between the relevant parties if required.

1. PURPOSE OF THIS REPORT

- 1.1 This report is for the Cabinet Member for Children’s Services, Education, Skills and University to consider exercising delegated authority under paragraph 3.4.3 of Part 3 of the constitution in accordance with the terms of their portfolio at paragraph (g).

2. **TIMESCALES**

2.1	Is this a Major Policy Item/Statutory Plan?	NO	If yes, date for Cabinet meeting	N/A
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3. **BACKGROUND AND KEY ISSUES**

Background:

- 3.1 Ken Stimpson Community Secondary School is currently a maintained school and has applied to convert to academy status. The application is to be tabled at the DfE Advisory Board meeting on 21 Oct 21 where it is anticipated approval by virtue of an Academy Order under the Academies Act 2010 will be given.
- 3.2 As part of conversion to an Academy, Department for Education guidance specifies that if the land is held by the Local Authority then it is to be leased to academy trusts on a 125 year lease, for a peppercorn rent. The School currently operates on one site, which will be leased to the Trust.
- 3.3 In addition to the lease, 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).
- 3.4 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.
- 3.5 It is proposed that the school will be run by the Four C’s Multi Academy Trust. The anticipated conversion date is 1 April 2022, however, this is subject to change.

Reasons for decision & further information:

- 3.6 The Council is obliged under the Academies Act 2010 to cease maintaining a school on the date it opens as an Academy and must take all reasonable steps to facilitate the conversion of a school into an Academy, once an Academy Order has been made.
- 3.7 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 by negotiating and entering into lease arrangements and also the CTA, it would be in breach of its statutory obligations to facilitate the conversion. 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 CTA and associated documents in respect of these matters, rather than be subject to transfer schemes made by the Secretary of State. Accordingly, the purpose of this report is to enable the Corporate Director of People and Communities to enter into the required negotiations, on behalf of Peterborough City Council in order to facilitate the academy conversion.

- 3.8 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.
- 3.9 Under the proposed terms of the CTA, the Governing Body of the School is obliged to assign and/or novate contracts it has entered into for the purpose of operating the school, to the Trust.
- 3.10 There is a charge of £10,000 from the Council for schools converting into an academy to contribute towards the associated costs.

Implications:

3.11 Finance

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

3.12 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.

Legal

- 3.13 As detailed above, the Council is obliged under the Academies Act 2010 to cease maintaining a school on the date it opens as an Academy and to take all reasonable steps to facilitate the conversion to academy status. The section above sets out the implications if the Council fails to cooperate.

4. CONSULTATION

- 4.1 Once an Academy Order has been obtained the Governing Body of the school will be obliged to carry out the DfE required consultations with stakeholders including staff and parents of children on roll at the School.
- 4.2 As part of the academy process council officers in finance, insurance, property and education, together with the Ward Cllrs and the Cabinet Member for Education, will be informed of the proposed conversion.

5. ANTICIPATED OUTCOMES OR IMPACT

- 5.1 The anticipated outcome is that the School will close as a maintained school and re-open as an academy operated by the Academy Trust. The land and buildings currently occupied by the School will be leased to the Academy Trust, and the staff, assets and contracts 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 1 April 2022).

6. REASON FOR THE RECOMMENDATION

- 6.1 As detailed above, the Council is obliged under the Academies Act 2010 to cease maintaining a school on the date it opens as an Academy and to take all reasonable steps to facilitate the conversion to academy status. The section above sets out the implications if the Council fails to cooperate and delegation of authority to negotiate and agree details

for academy conversion is required to be able to enter into discussions with the required stakeholders.

7. ALTERNATIVE OPTIONS CONSIDERED

- 7.1 The Council could choose to not enter into the negotiations, listed above, however, this would mean that it would be in breach of its statutory obligations and the Secretary of State would make the transfer schemes under the Academies Act 2010 without the Council's consent, 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 CTA and associated documents in respect of these matters, rather than be subject to transfer schemes made by the Secretary of State. .

8. IMPLICATIONS

8.1 Financial Implications

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

8.2 Legal Implications

As detailed within paragraph 6.1 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. This report sets out the implications if the Council fails to cooperate.

8.3 Equalities Implications

There are no equalities implications arising from this decision.

8.4 Carbon Impact Assessment

A Carbon Impact Assessment (CIA) is undertaken in support of the confidentiality agreement at the beginning of the conversion process and a further assessment in support of the Officer Decision Notice at the sign off stage of the conversion process.

9. DECLARATIONS / CONFLICTS OF INTEREST & DISPENSATIONS GRANTED

- 9.1 None.

10. 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.

- 10.1 None.

11. APPENDICES

- 11.1 None.