

CABINET	AGENDA ITEM No. 10
17 OCTOBER 2022	PUBLIC REPORT

Report of:	Charlotte Black, Corporate Director for People Services	
Cabinet Member(s) responsible:	Councillor Lynne Ayres, Cabinet Member for Education, Skills and University	
Contact Officer(s):	Clare Buckingham, Strategic Education Place Planning Manager, Cambridgeshire & Peterborough, 0-19 Place Planning and Organisation Service, New Shire Hall, Alconbury Weald, Huntingdon	Tel. 01223 699779
	Kathy Stansbie, Project Officer – Academies Cambridgeshire County Council 0-19 Place Planning and Organisation Service, New Shire Hall, Alconbury Weald, Huntingdon	Tel. 01480 373764

DELEGATION OF AUTHORITY TO NEGOTIATE AND AGREE DETAILS OF ACADEMY CONVERSION OF NENEGATE

RECOMMENDATIONS	
FROM: Corporate Director for People Services	Deadline date: N/A
<p>It is recommended that Cabinet delegate authority to the Corporate Director of People Services in consultation with the Cabinet Member for Education, Skills and University to negotiate and enter into the following, for the purposes of giving effect to the conversion of a School (Nenegate) to academy status:</p> <ol style="list-style-type: none"> 1. A Commercial Transfer Agreement between the relevant parties; 2. Deed(s) of Novation between the relevant parties, if required; 3. Deed(s) of Assignment between the relevant parties, if required; and 4. Any other documentation reasonably required to facilitate the academy conversion, in the view of the Corporate Director of People Services. 	

1. ORIGIN OF REPORT

- 1.1 The Director of Resources, after reviewing a draft Cabinet Member Decision Notice (CMDN) in this regard, requested this report instead go to Cabinet

2. PURPOSE AND REASON FOR REPORT

- 2.1 The purpose of this report is for Cabinet to consider delegating authority to authorise the conversion of a school to academy status.
- 2.2 This report is for Cabinet to consider under its Terms of Reference No. 3.2.2, *'To take collective responsibility for any Executive decision that has significant implications across two or more portfolios.'*

3. **TIMESCALES**

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

- 4.1 Nenegate (the “School”) is currently a maintained special school and has applied to convert to academy status. The application was tabled at the DfE Advisory Board meeting on 23 June 2022 and approved of an Academy Order under the Academies Act 2010. Once converted to an academy, the School will be operated by an academy trust (the “Trust”). The “Trust” in this case is envisaged to be Meridian Trust.
- 4.2 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 lease will be authorised by separate governance and this report does not seek to delegate authority to the Corporate Director of People Services to enter into the lease.
- 4.3 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 employees, the transfer of assets (other than land), contracts and liabilities). This is reflected in point 1 of the recommendations at the beginning of this report.
- 4.4 As part of conversion (and under the Council’s standard CTA terms), the Governing Body of the School is usually obliged to assign and/or novate contracts it has entered into for the purpose of operating the school, to the Trust. These may relate to contracts the Governing Body has with the Council (for example, this could include solar panel arrangements or where the Council has provided services to the School) and in that case it may be necessary for the Council to be a party to the assignment/novation documentation. This is reflected in point 2 of the recommendations at the beginning of the report.
- 4.5 Similarly, the Council is usually obliged to assign and/or novate the benefit of contracts entered into by the Council for the purpose of operating the School, to the Trust (for example, this may include building contracts in relation to works which have been carried out at the School). This is reflected in point 3 of the recommendations at the beginning of this report.
- 4.6 If a site used by a school is shared with the Council or a third party, then it is sometimes appropriate to enter into a formal arrangement setting out the terms of such dual use. This is reflected in point 4 of the recommendations at the beginning of this report.
- 4.7 Depending upon the circumstances of the conversion, there may be additional documentation which is required to facilitate the conversion, specific to the School or site. This is reflected in point 5 of the recommendations at the beginning of this report.
- 4.8 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.
- 4.9 The anticipated conversion date is 1 November 2022; however, this is subject to change.
- 4.10 There is a charge of £10,000 from the Council for schools converting into an academy to contribute towards the associated costs.

5. **CONSULTATION**

- 5.1 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.
- 5.2 As part of the academy process council officers in finance, insurance, property and education, together with the relevant Ward Councillors, will be informed of the proposed conversion.
- 5.3 The Council's Human Resources department are involved to ensure that the statutory consultation required under the Transfer of Undertakings (Protection of Employment) Regulations 2006 has been carried out.

6. ANTICIPATED OUTCOMES OR IMPACT

- 6.1 The anticipated outcome is that the School will close as a maintained school and re-open as an Academy operated by the Trust. The land and buildings currently occupied by the 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 the conversion date.

7. REASON FOR THE RECOMMENDATION

- 7.1 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.
- 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 by negotiating and entering into lease arrangements and also the CTA, it would be in breach of its statutory obligations to facilitate the conversion.
- 7.3 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.
- 7.4 In the early stages of an academy conversion, it is not possible to confirm, with certainty, what documentation will be required and the provisions which will be contained within such documentation, as this will be subject to the relevant due diligence being carried out (such as looking into the circumstances of the site, for example) and subsequent negotiation with the Trust and Governing Body of the School. Accordingly, it is recommended to delegate authority to the Corporate Director of People Services to negotiate and enter into the relevant documentation in due course, after such investigations and negotiations have been carried out and the details of the documentation are known.

8. ALTERNATIVE OPTIONS CONSIDERED

- 8.1 Do nothing:
The Council could choose to not enter into the negotiations or execute the relevant documents, 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.

9. IMPLICATIONS

Financial Implications

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

When a school transfers to an academy on a 125 year lease the value of the asset is written out of the balance sheet, the carrying value of Nenegate school on the Councils balance sheet is £5.2m. If the Council has previously borrowed money to fund building works at Nenegate school this liability remains with the Council.

Legal Implications

- 9.2 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 and to take all reasonable steps to facilitate conversion to academy status. Paragraph 7 of this report sets out the implications if the Council fails to cooperate.

Equalities Implications

- 9.3 There are no equalities implications arising from this decision.

Carbon Impact Assessment

- 9.4 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. This approach has been agreed with the Transport and Environment Team.

Admissions Implications

- 9.5 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.

Property Implications

- 9.6 The land and buildings will remain under the ownership of the Council, but the Academy Trust will have full control of them (subject to any specific lease arrangements) as tenant for a 125-year period, unless the lease is terminated for any reason. The lease will be authorised by separate governance and this report does not seek to delegate authority to the Corporate Director of People Services to enter into the lease. Any property implications arising from the lease will therefore be set out in that separate governance report.

10. BACKGROUND DOCUMENTS

Used to prepare this report, in accordance with the Local Government (Access to Information) Act 1985

- 10.1 None.

11. APPENDICES

- 11.1 None.