

CABINET	AGENDA ITEM No. 8
17 June 2024	PUBLIC REPORT

Report of:	John Gregg, Director of Children’s Services Isabel Clark Interim Head of School Place Planning	
Cabinet Member(s) responsible:	Councillor Dennis Jones, Leader of the Council	
Contact Officer(s):	Isabel Clark Interim Head of School Place Planning	07711804965

ACADEMY CONVERSION OF A SCHOOL

RECOMMENDATIONS

FROM: Interim Head of School Place Planning	Deadline date: N/A
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It is recommended that Cabinet:

1. Authorises the Council to enter into the following:
 - a. A Commercial Transfer Agreement (CTA) between the Council, the Governing Body of Saint Michael Church of England Primary School (the “School”) and ACT Multi Academy Trust.
 - b. Deeds of Novation/Assignment between the Council, ACT Multi Academy Trust and (if applicable) the relevant third-party contractors, for the Council’s interest in the following contracts to be novated or assigned to ACT Multi Academy Trust:
 - i. Contract dated 21 August 2015 between the Council and John F Dunkling Limited;
 - ii. Collateral warranty dated 5 April 2017 between Lindum Group Ltd t/a KGM Roofing, the Council and Carillion Construction t/a Carillion Building Ltd;
 - iii. Collateral warranty dated 5 April 2017 between Traditional Structures Limited, the Council and Carillion Construction t/a Carillion Building Ltd;
 - iv. Collateral warranty dated 27 January 2016 between Anderson Green Limited, the Council and Carillion Construction t/a Carillion Building Ltd;
 - v. Collateral warranty dated 5 April 2017 between Fink Projection Plastering Limited, the Council and Carillion Construction t/a Carillion Building Ltd;
 - vi. Collateral warranty dated 27 January 2016 between Frank Shaw Associates Limited, the Council and Carillion Construction t/a Carillion Building Ltd;
 - vii. Collateral warranty dated 5 April 2017 between Idealcombi A/S, the Council and Carillion Construction t/a Carillion Building Ltd;
 - viii. Collateral warranty dated 5 April 2017 between Playfords Limited, the Council and Carillion Construction t/a Carillion Building Ltd;
 - ix. Collateral warranty dated 5 April 2017 between Page Group (Peterborough) Ltd, the Council and Carillion Construction t/a Carillion Building Ltd;
 - x. Collateral warranty dated 27 January 2016 between HSP Consulting Limited, the Council and Carillion Construction t/a Carillion Building Ltd.
2. Authorises the Council to enter into a lease of 125 years of the playing fields occupied by the school (and/or, if required in the interim, a tenancy at will), at a peppercorn rent granted by the Council to ACT Multi Academy Trust, the main terms of which are set out in Appendix 1 (or such alternative terms as the Executive Director for Children's Services, in consultation with the Director for Legal and Governance and the Executive Director for Corporate Services, determines are necessary to facilitate the academy conversion of the School).

3. Delegate authority to the Executive Director for Children's Services, in consultation with the Director for Legal and Governance and the Executive Director for Corporate Services to negotiate and enter into any documentation reasonably required to facilitate the academy conversion of the school.

1. ORIGIN OF REPORT

- 1.1 This report is presented to Cabinet following receipt of an Academy Order in relation to the school.

2. PURPOSE AND REASON FOR REPORT

- 2.1 The purpose of this report is for Cabinet to authorise the documentation necessary to facilitate the conversion of the school to an academy.
- 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.'*
- 2.3 The attached report/background information contained within Exempt Appendix 2 is NOT FOR PUBLICATION in accordance with paragraph 3 of Schedule 12A of Part 1 of the Local Government Act 1972 in that it contains information relating to the business affairs of the Council and/or potential legal action. The public interest test has been applied to the information contained within the exempt annex and it is considered that the need to retain the information as exempt outweighs the public interest in disclosing it as to do so may prejudice the Council's position in relation to future legal action.

3. TIMESCALES

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

- 4.1 Saint Michael's Church of England Primary School (the "School") is currently a maintained voluntary aided (VA) school which is undergoing conversion to academy status by virtue of an Academy Order made by the Secretary of State under the Academies Act 2010. This is a forced conversion. 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 ACT Multi Academy 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. In this case, this consists of the playing fields of the school, as authorised by recommendation 2.
- 4.3 For Voluntary Aided schools, any built areas and hard surfaces of the school which are owned by the Local Authority, should be transferred to the Diocese pursuant to Schedule 3 paragraph 9 of the Schools Standards and Framework Act 1998. Any outstanding statutory transfers to the Diocese will be dealt with and authorised by separate governance (as these are required irrespective of academy conversion). The Diocese (Ely Diocesan Board of Finance) will then enter into their own arrangements with the Trust to make this land available to the Trust.
- 4.4 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). The CTA is authorised by recommendation 1a.

- 4.5 Under the terms of the Council's standard CTA, the Council is 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. The Council has previously entered into contracts in relation to building/construction works carried out at the School, and entering into the Deeds of Novation/Assignment in relation to those contracts (as detailed within recommendation 1b), will enable the Trust to have the benefit of those contracts (and any claims arising out of the building/construction works), instead of the Council. The novation/assignment does not involve a change of contractor, and therefore, the reference in the Council's Contract Rules for reference to have been made to the assignment in the tender documents, do not arise.
- 4.6 Depending upon the circumstances of the conversion, it may transpire that additional documentation is required to facilitate the conversion, specific to the school or site. This is reflected in recommendations 3 of this report.
- 4.7 The Trust will be responsible for the operation of the Academy upon conversion and will be the employer of school staff. As the School is Voluntary Aided, the Governing Body is the current employer of the school staff, who will therefore transfer to the Trust under the Transfer of Undertakings (Protection of Employment) Regulations 2006.
- 4.8 The anticipated conversion date is 1 September 2024; however, this is subject to change.

5. CONSULTATION

- 5.1 Once an Academy Order has been obtained, the Governing Body of the school is 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.

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 playing fields currently occupied by the school (owned by the Council) 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, in the case of forced conversions, 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 and property 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, lease 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 is 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, although the main proposed terms of the lease are detailed in Appendix 1, recommendation 2 contains a delegation for the Executive Director for Children's Services (in consultation with the Director for Legal and Governance and the Executive Director for Corporate Services) to amend these proposed terms, if necessary, to facilitate the academy conversion of the school. Similarly, recommendation 3 contains a delegation to negotiate and enter into any further documentation reasonably required to facilitate the academy conversion.

8. ALTERNATIVE OPTIONS CONSIDERED

- 8.1 Refuse the closure of the school and the conversion to academy status and not enter into a CTA or lease: Once a school has been accepted for academy status by the Secretary of State, the Council is required to support the decision and take reasonable steps to facilitate the conversion. Failure to cooperate or negotiate a CTA and lease could result in the Secretary of State making transfer schemes which would be binding on the Council and would be in breach of the Council's statutory obligations under the Academies Act 2010.
- 8.2 Not to novate/assign the benefit of the Council's building contracts relating to the school, to the Trust: This option was rejected because, if the Council retained the benefit of the contracts, if any claim in relation to those works/services 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. novating/assigning the benefit of the contract allows the Trust to deal with any such claims directly.
- 8.4 Sell the playing fields 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

Property Implications

- 9.1 The freehold title of the playing fields will remain under the ownership of the Council. A 125-year lease of the playing fields will be granted to the Trust subject to any termination clause (s) within the lease.

Financial Implications

- 9.2 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 St Michaels school on the Councils balance sheet is £602K.

Legal Implications

- 9.3 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

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

Carbon Impact Assessment

- 9.5 The proposed academy conversion of Saint Michael's C of E Primary School is anticipated to have a neutral impact.

Admissions Implications

- 9.6 The Trust will continue to be its own admissions authority and will determine its own admissions arrangements. Places will continue to be allocated using the co-ordinated admissions process.

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 Appendix 1 – Proposed Main Property Terms
Appendix 2 – Exempt

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