

**Decision Report - Lead Member and Director  
Decision**

Forward Plan Reference: FP/23/05/09

Decision Date – 15 November 2023

Key Decision – Yes



---

**Academy Conversion Heathfield Community School**

Executive Member(s): Cllr Tessa Munt - Lead Member for Children Families & Education  
Local Member(s) and Division: Cllr Norman Cavill and Cllr David Fothergill (Monkton and North Curry)

Lead Officer: Claire Winter – Director of Children’s Services

Author: Elizabeth Smith – Education Relationship Manager

Contact Details: [elizabeth.smith@somerset.gov.uk](mailto:elizabeth.smith@somerset.gov.uk) 01823 356260

**1. Summary / Background**

- 1.1. The Secretary of State for Education has directed via an Academy Order, the conversion to Academy Status of Heathfield Community School.
- 1.2. This is a decision to authorise officers to enter into property and land arrangements (Service Director Strategic Asset Management) and associated HR, finance and business management (Assistant Service Director Education Partnerships and Schools) to facilitate the conversion of Heathfield School. The decision that Heathfield Community School should convert to academy status has been taken by the Secretary of State for Education.
- 1.3. In accordance with the Council’s Constitution the: Strategic Asset Management Service Director who is the Director responsible for property has delegated authority to agree the disposal of Council land, together with being able to agree granting leases and licences in relation to all academy conversions.

**2. Recommendations**

- 2.1. It is recommended that the Lead Member for Children and Families and Service Director - Strategic Asset Management:
- 2.2. a) authorise the Council to enter into a Commercial Transfer Agreement relating to the transfer of the staff, assets and contracts at Heathfield Community School to The Cabot Learning Federation:

School Name	School Category	Proposed Conversion Date
Heathfield Community School	Community	01/11/2023

- b) Approve the grant of a 125 year leasehold interest in the school site at Heathfield Community School to The Cabot Learning Federation on a peppercorn basis. The 125 year lease will include the Tacchi Morris Centre and a new Joint User Agreement will be put in place between the Cabot Learning Federation, Tacchi Morris Trust and the Council as set out in paragraph 16.8 of this report
- c) Take on behalf of the Council all necessary actions and enter into any necessary transactions to give effect to the above and any supporting documentation that may be required to give effect to the same.

### **3. Reasons for recommendations**

- 3.1. To meet the requirements of the Academies Act 2010

### **4. Other Options Considered**

- 4.1. No other options were considered since these are directives from the Secretary of State for Education.

### **5. Links to Council Plan and Medium-Term Financial Plan**

- 5.1. The Council Plan 2023 - 2027 priorities is that children need access to good schools and education outcomes should be improved for all children.

### **6. Financial and Risk Implications**

- 6.1. An amount pro-rata from the date of conversion to 31 March 2024 will be recouped from the Dedicated Schools Grant equivalent to the funding that Heathfield School would have received through the funding formula as a maintained school.
- 6.2. The 125 year lease with the Academy Trust for the school site will be on a peppercorn basis. The proposed new Joint User agreement between the Tacchi Morris Trust, Cabot Learning Federation and the Council will not include any financial liability for the Council.
- 6.3. Councils are unable to levy any charge for a school in receipt of a direct academy order due to poor performance. The cost of this conversion to the Council is estimated to be in the region of £7,000 for legal fees and £10,625 of officer time.
- 6.4. On the 2 August 2023, the Council's Executive approved a new Academisation Finance Policy and Procedure. This decision brings the Council's policy in line with the Department for Education guidance including that for the treatment of any surplus or deficit balance at the date of conversion. This policy states that for schools in receipt of a direct academy order, any surplus is retained by the Council and any deficit is also retained by the Council. In the case of a voluntary conversion, any deficit or surplus balance is transferred to the trust. The academy trust will also be entitled to retain committed funds where these fall into any of the categories specified in the new policy.
- 6.5. The most recent position based purely on the 22/23 year-end figures and the school 23/24 budget plans is:

School Name	Conversion type	Estimated Reserves	Estimated Committed Funds
Heathfield Community School	Direct Order	£1,024,697	£403,228

- 6.6.** For conversions subject to a directed academy order, if at the point of conversion, there is a surplus, this will be retained by the Council but will exclude any agreed committed funds as defined in the new Academisation Finance Policy and Procedure. If at the point of conversion there is a deficit, this will remain with the Council.
- 6.7.** In 2023/24, the Council received income of £209,577 for services provided to Heathfield School. Similar income is unlikely to be received in 2024/25. The service will therefore prepare its budget for 2024/25 taking this into account.
- 6.8.** The amount of the Local Government Pension Scheme deficit relating to the employees transferring will be provided to the Academy Trust and, at the point of conversion, any such liability will become the responsibility of the Academy Trust.
- 6.9.** Two key risks relating to the proposed conversions have been identified:
- For conversions subject to a directed academy order, expenditure in the period before conversion beyond that defined within schools' budget plans could reduce any surplus or increase any deficit due to be retained by the Council at the point of conversion. This would have a direct impact on the Council's own finances.
  - Unforeseen legal costs may arise relating to the land and asset transfers.

Every effort will be taken to avoid costs to the Council including those resulting from historical liabilities.

## **7. Legal Implications**

- 7.1.** The Academies Act 2010 enables all maintained schools to convert to Academy status. The Council has a duty under section 5B of the Act to take all reasonable steps to facilitate the conversion of the school into an Academy.
- 7.2.** In order for a maintained school to convert to an Academy the Council, the governing body of the school and the Academy Trust must enter into a Commercial Transfer Agreement (CTA) based on the model form published by the Department for Education. The CTA records the assets, contracts and staff transferring from the maintained school to the Academy. Under the CTA, the Council retains liability for employment costs arising before the transfer date in respect of school staff who were employed by the Council and provides an indemnity to the Academy Trust in respect of these costs. At the date of this report, no such costs have been identified.
- 7.3.** The legal work to progress the transfer of the statutory and leasehold interests together with any ancillary property documentation or matters related to the same and the CTAs for the relevant site will be carried out by the Council's in-house Legal Services.

## **8. HR Implications**

- 8.1.** The necessary Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) consultations are being undertaken during the Summer term. The relevant trade unions have been consulted via the Somerset Schools CYP JCC. The Council is the employer of staff at Heathfield Community School and is responsible for consulting with staff and their unions.
- 8.2.** Teaching and support staff unions will be seeking assurance that all employer responsibilities in respect of staff transfers and more general staff consultation requirements are met.

## **9. Equalities Implications**

- 9.1.** The Council has a statutory duty to promote equality of opportunity (for example race, gender and disability equality) which includes requirements to remove/minimise disadvantage, meet specific needs and promote participation. Core advice and support will therefore continue to be provided to academies free of charge, but additional support will be traded. Academies, in common with other schools, are also required to promote equality, for example through monitoring attainment, progress, exclusions and attendance, and taking action to address disadvantage.
- 9.2.** There may be equalities implications associated with the proposed transfer of Council assets but the Local Authority has no control over these.

## **10. Community Safety Implications**

- 10.1.** None

## **11. Climate Change and Sustainability Implications**

- 11.1.** None

## **12. Health and Safety Implications**

- 12.1.** On transfer to an Academy the Council no longer has any Health & Safety (H&S) legal duties for the staff, visitors, and public within the school. On transfer these duties all fall under the responsibilities and accountability of the School Governing Body. However, the Council does retain a duty of care for the children attending the Academy. The Council currently carry out monitoring of maintained schools under its control including, H&S arrangements and undertakes a H&S compliance audit on a maintained school on a 3-yearly cycle. On transfer to Academy status this will no longer occur.
- 12.2.** On transfer all accidents, near misses, recording of acts of violence and aggression cease to be recorded on a Management System which is monitored within the Council. The Academy Trust are wholly responsible for reporting accidents/incidents to the Health and Safety Executive (HSE) in a timely and accurate way. The Academy should appoint or have access to a H&S professional.
- 12.3.** On conversion the current Fire Risk Assessment for the site and premises is transferred to the Academy Trust and the Trust takes sole responsibility for Fire Risk Assessment.

### **13. Health and Wellbeing Implications**

**13.1.** None

### **14. Social Value**

**14.1.** The Council will be party to the new Joint User Agreement for the Tacchi Morris Arts Centre and Council consent will be required to any change in the hours of community use.

### **15. Scrutiny comments / recommendations:**

**15.1.** The proposed decision has not been considered by a Scrutiny Committee.

### **16. Background**

**16.1.** The Academies Act received Royal Assent on 27 July 2010. The purpose of the Academies Act is to enable more schools to become academies. It includes provisions to:

- Enable all maintained schools to apply to become academies;
- Give the Secretary of State the power to issue an Academy Order requiring the local authority to cease to maintain the school;
- Require governing bodies of maintained schools to consult before converting to an academy;
- Ensure that foundation or voluntary schools, obtain consent from that school's foundation before the school can apply to become an academy;
- Prohibit the religious character of schools changing as a result of the conversion process;
- Allow maintained schools that currently select to continue to do so as an Academy;
- Deem academy trusts to be exempt charities;
- Ensure that a converting school will continue to occupy the land/buildings it had as a maintained school, and that the school's other assets may also transfer to the new academy;

**16.2.** There are currently 133 Academies in Somerset: 24 Secondary, 6 Middle, 97 Primary, 1 All Through School. 1 Middle deemed Primary, and 4 Special Schools. 90 are Converter Academies where the Governing Body have decided to seek Academy Status. 38 are Academies with a Sponsor. Sponsored Academies will generally replace underperforming schools where standards need to be raised. Sponsors are held accountable to the Department for Education for their academies and in particular improving performance. There are also five Academies in Somerset which opened as new Free Schools.

**16.3.** Heathfield Community School was inspected by Ofsted in March 2023 and received an inadequate judgement and is therefore required by the Secretary of State to become a sponsored Academy. The Regional Director for South West on behalf of the Secretary of State has determined Heathfield Community School is to be sponsored by The Cabot Learning Federation.

- 16.4.** The Secretary of State for Education has issued Academy Orders under section 4 of the Academies Act 2010. This directs the Schools and the Local Authority to commence formal TUPE consultations and to gather land ownership and land registration documentation to enable the land and buildings occupied by the school to be transferred to relevant Academy Trusts.
- 16.5.** Governing bodies of maintained schools are required to consult before converting to an Academy and must submit a consultation report to the Department for Education. Who must be consulted is not specified but parents and the local community are suggested.
- 16.6.** Trade unions representing staff working in Somerset schools have been consulted about the proposals. They will be seeking assurance that all employer responsibilities in respect of staff transfers and more general staff consultation requirements are met.
- 16.7.** Academies will receive the equivalent level of funding per pupil to that which they would receive from the Local Authority as a maintained school. Funding will be in the form of a grant from the Education and Skills Funding Agency (ESFA). The ESFA will recoup from the schools budget an amount of money to go towards funding the Academy. Schools/Sponsors receive a minimum of £25,000 towards the costs of conversion from the DfE but no additional funding is available for Local Authorities to cover their costs.
- 16.8.** Leases granted to Academy Trusts are on a full repairing and on a peppercorn basis. Heathfield Community School is owned by Somerset Council and the Council will grant a 125 year lease to the Cabot Learning Federation. The lease to The Cabot Learning Federation will include the Tacchi-Morris Arts Centre. The Arts Centre's use will be subject to a new Joint User Agreement similar to that which currently exists but with the Academy Trust being responsible for meeting the repair obligations currently held by Somerset Council. Somerset Council will remain party to the new Joint User Agreement as the freeholder.
- 16.9.** Legal Services and Strategic Asset Management will structure the land transaction for these schools so as to protect the Council's interests while complying with any DfE stipulations.
- 16.10.** The relevant legal issues relating to this conversion are set out in the legal implications section of this report.
- 16.11. School Organisation**  
When a school becomes an Academy, the Academy Trust becomes the admissions authority, i.e., it will need to manage its own admissions process and ensure that its admission arrangements comply with the School Admissions Code. Schools converting to Academy status will retain the current admissions arrangements on conversion and Governing Bodies would need to consult widely before changing these.
- 16.12. Special Educational Needs and Disability**  
Academies also have a continuing duty to meet the needs of children with special educational needs and /or a disability and must follow the SEND Code of Practice.
- 16.13. Human Resources**  
An Academy is a separate legal entity to which existing staff are transferred under Transfer of Undertakings (TUPE). This means that staff are entitled to transfer under

their current terms and conditions of employment. The Council is responsible for consulting with staff and their recognised trade union representatives. Trade Unions representing staff working in Somerset schools have been consulted about the proposals via Somerset Schools CYP JCC. The Trade Unions will be seeking assurance that all employer responsibilities in respect of staff transfers are met. Consultation with staff is being carried out during the Autumn term.

- 16.14.** Staff are also entitled under TUPE to be provided with certain written information in relation to the transfer of their employment by the Council. Once the Academy is open, the Academy Trust may consult with staff and trade unions on changes to those terms and conditions.
- 16.15.** The Council must carry out a due diligence exercise for all transferring staff to verify information on contracts, terms and conditions, pension deficits etc before passing this information to the Academy Trust.
- 16.16.** In the Commercial Transfer Agreements entered into with the Academy Trusts where, prior to the transfer, the Council was the employer of school staff, the Council indemnifies each Academy Trust in respect of all costs and liabilities which transfer to the Academy Trust under TUPE and which relate to the period prior to the date when the Academy opens. Any costs incurred will need to be met from the Council's contingency budget.

## **17. Background Papers**

- 17.1.** Academisation Finance Policy and Procedure August 2023  
<https://democracy.somerset.gov.uk/documents/s11543/Item%205%20-%20Academisation%20Finance%20Policy%20and%20Procedure.pdf>
- 17.2.** Academies Act 2010:  
<http://www.legislation.gov.uk/ukpga/2010/32/contents>

## **18. Appendices**

- 18.1.** None

## **Report Sign-Off**

	Officer Name	Date Completed
Legal & Governance Implications	Scott Wooldridge to May AGM and then David Clark	28/09/2023
Communications	Peter Elliott	04/10/2023
Finance & Procurement	Nicola Hix	05/10/2023
Workforce	Alyn Jones	18/09/2023
Asset Management	Oliver Woodhams	20/09/2023
Executive Director / Senior Manager	Claire Winter	27/09/2023
Strategy & Performance	Alyn Jones	18/09/2023

Executive Lead Member	Cllr Tessa Munt - Lead Member for Children Families & Education	05/10/2023
<b>Consulted:</b>	Councillor Name	
Local Division Members	Cllr Norman Cavill & Cllr David Fothergill	29/09/2023 & 04/10/2023
Opposition Spokesperson	Cllr Frances Nicholson, Opposition Spokesperson for Children, Families, and Education	05/10/2023
Scrutiny Chair	Cllr Leigh Redman, Scrutiny for Children and Families Education	04/10/2023