

	<p>ACTION TAKEN UNDER DELEGATED POWERS BY OFFICER August 2017</p>
Title	Summerside School Academy Conversion: Commercial Transfer Agreement and Lease of the School Premises
Report of	Director of Resources
Wards	Woodhouse Ward
Status	Public
Enclosures	Drawing Academy Lease Plan
Officer Contact Details	<p>Alison Dawes, Assistant Director – School Access & Corporate Services, Education and Skills Service Alison.Dawes@barnet.gov.uk 0208 359 7698</p>

Summary

Summerside School, a Community School, has been approved by the Secretary of State to convert to an Academy as part of a multi-academy trust (Reach2 Academy Trust). As part of the conversion process, the Council is required to grant a lease of the land and buildings used by Summerside School to the Academy Trust in the terms of the model long term Department for Education Academy Lease and this report sets out the main terms.

The Council, the Governing Body of the School, and the Academy Trust are also required to execute a Commercial Transfer Agreement, which includes information relating to: (i) any employees of the Council or the Governing Body who are assigned to the School

and who will transfer from the employment of the Governing Body or the Local Authority to the new Academy Trust; and (ii) assets and contracts which will transfer from the Local Authority or the Governing Body to the new Academy Trust, together with other rights and obligations of the Council or the Governing Body.

Decisions

1. That the Director of Finance having consulted with the Commissioning Director for Growth and Development and the Head of Estates be authorised to approve and confirm that the Council :

**(i) sign and complete the Commercial Transfer Agreement; and
(ii) enter into an Academy lease of the whole site shown edged red on the attached drawing on the terms set out at section 1.6 with the Reach2 AcademyTrust .**

1. WHY THIS REPORT IS NEEDED

- 1.1 Summerside School is currently a maintained school. The governing body has applied to become an Academy, under the provisions of the Academies Act 2010. The school has applied to become an Academy within The Reach2 Academy Trust. The Secretary of State has approved the school's application and the school is scheduled to convert on 1 September 2017.
- 1.2 In order for the school to convert, the Reach2 Academy Trust has instructed their appointed legal representatives to complete the necessary documents and agreements. To this effect, the Council has sent a Commercial Transfer Agreement (the Agreement) from the Solicitor acting for The Reach2 Academy Trust, which must be signed by the current Governing Body of the school, the Reach2 Academy Trust and the Local Authority.
- 1.3 The Agreement is intended to ensure that all information on the staff that are transferring to the academy is recorded and transferred to the Reach2 Academy Trust, so that the appropriate arrangements for payment of salaries, pension contributions, etc. as outlined in the report can be made. It also includes details of any assets or contracts that will transfer to the Reach2 Academy Trust. The Commercial Transfer Agreement is based on the current model provided by the Department for Education. The Agreement also includes confirmation that the Reach2 Academy Trust will pick up the Local Government Pension Scheme liabilities, with respect to staff transferring from the Governing Body to the Reach2 Academy Trust.
- 1.4 The transfer of staff, assets and contracts is the principal purpose of the Agreement, and the Council does have certain other rights and

obligations, mainly in relation to any balance remaining from the School's budget following completion of due accounting procedures.

- 1.5 With respect to the transfer of assets, under the Agreement, the Council and/or the Governing Body (as applicable) will transfer (or to the extent that it is not the owner thereof shall procure the transfer of) the legal and beneficial interest in the Assets (as defined in the Agreement which includes the property to be comprised in the lease), free of charge and free from any encumbrance, to the Academy Trust.

1.6 **The principal terms of the Academy lease are:-**

Lease Terms	
Landlord	The London Borough of Barnet
Tenant	Reach2 Academy Trust
Premises	See Drawing attached
Term	125 years
Rent	a peppercorn rent if demanded
Repairs	To keep the property in a clean and tidy, condition, to make good any damage caused together with any deterioration that has occurred from the Term Commencement Date of the Lease (NB this excludes anything pre the date of grant of the Lease for which the Council remains responsible).
Alterations	Landlord's consent not to be unreasonably withheld to the erection or alterations of any buildings or structures subject to the usual model form Academy lease caveats
Statutory Obligations	To comply with all laws affecting the property, the physical condition, or the users of them
Use	Not to use the property other than for the purposes of the provision of educational services by the tenant and for community, fundraising and recreational purposes which are linked to this use
Alienation	The tenant may share occupation of part

	<p>of the property with a body or individual providing services or facilities which are ancillary to the main use</p> <p>The tenant may also underlet a part or parts of the Property (1) for a term not exceeding 7 years (2) with the consent of the Council, such consent not to be unreasonably withheld or delayed and (3) provided the underlease has no statutory protection allowing the undertenant to renew its lease</p>
Insurance	The tenant to insure
The security of tenure provisions of the Landlord and Tenant Act 1954 are excluded	Confirmed

2. REASONS FOR DECISIONS

- 2.1 Summerside School's Governing Body has decided to join The Reach2 Academy Trust in order to improve educational standards. To join the multi-academy trust, Oak Lodge Special School must become an academy.

3. ALTERNATIVE OPTIONS CONSIDERED AND REJECTED

- 3.1 Summerside School could continue to be maintained by the Local Authority, however it is the Governing Body's view that becoming part of the Reach2 Academy Trust would benefit the Borough's students by more rapidly improving school standards.

4. POST DECISION IMPLEMENTATION

- 4.1 Once the decision has been approved, the Lease and Commercial Transfer Agreement will be sealed and signed by the Council.

5. IMPLICATIONS OF DECISION

5.1 Corporate Priorities and Performance

- 5.1.1 The Corporate Plan 2015-2020 Priority 1: 'To ensure that Barnet remains one of the best places in the country for children to grow up' is supported to ensure 'Continuing to maintain excellent school standards'. The granting of academy status to those schools that wish to convert will ensure that schools in Barnet remain popular and successful.

5.2 Resources (Finance & Value for Money, Procurement, Staffing, IT, Property, Sustainability)

5.2.1 Local Authorities are not involved in the decision as to whether a school becomes an Academy; this is a matter for the Secretary of State for Education. From April 2013 academies and maintained schools will be funded using exactly the same funding formula. However maintained schools (through the Schools Forum) have the option of 'de-delegating' funding back to the local authority for some central services and contingencies. Academies cannot 'de-delegate' but can buy back into services. Should academies decide not to buy back services, some services currently funded via the centrally retained budget may need to be reduced, with a consequential reduction in staff.

5.2.2 Finance

5.2.3 Local Authorities are not involved in the decision as to whether a school becomes an Academy; this is a matter for the Secretary of State for Education. From April 2013 academies and maintained schools will be funded using exactly the same funding formula. However maintained schools (through the Schools Forum) have the option of 'de-delegating' funding back to the local authority for some central services and contingencies. Academies cannot 'de-delegate' but can buy back into services. Should academies decide not to buy back services, some services currently funded via the centrally retained budget may need to be reduced, with a consequential reduction in staff.

5.2.4 Property

5.2.5 The freehold interest in this maintained school is currently held by the Council.

5.2.6 The Council as freeholder of the school land is required to transfer the school premises and rights over the site to the new Academy and accordingly under the Academies Act 2010, the current land and premises occupied by the school at Crossway, Finchley, N12 0QU will be transferred to the Academy Trust on a 125 year lease at a peppercorn rent in accordance with the Heads of Terms set out in section 1.6 of this report to enable the school to meet it's intended conversion date of 1 September 2017. The land to be demised is shown edged in red on the attached drawing .

5.2.7 Staffing

5.2.8 As a community school, all staff at the school are employed by the Local Authority. When Summerside School becomes an Academy, pursuant to the Transfer of Undertakings (Protection) of Employment Regulations 2006 (TUPE), the contracts of employment of any employees of the Council who are assigned to the School will transfer to The Reach2 Academy Trust. The effect of TUPE is that the contracts of employment made between the Local Authority and the transferring employees will have effect from and after the transfer date as if originally made between Summerside School and the transferring employees. Therefore, with effect from the conversion date, The Reach2 Academy Trust will be responsible for all emoluments and outgoings in respect of the transferring employees (including all wages, bonuses, commission, premiums, subscriptions, PAYE and national insurance contributions and pension contributions). There may be a reduction in the number of staff funded from the centrally retained budget should academies decide not to buy back services. The cost of any redundancies of centrally

retained funded staff is met from the Council's central redundancies budget. The School and the trade unions have agreed to a revised pay and grading structure (the Unified Reward). The Council has agreed to pay an additional supplement (in the form of a lump sum) to the school to cover pay increases and pay protection costs resulting from the Unified Reward for a period of 12 months commencing on the 1 September 2017 and ending on the 31st August 2018. This supplement is subject to a claw back provision in respect of any unspent Unified Reward supplement which may arise where employees leave before or during the 12 months period or in cases of promotions or secondments. Clauses have been included in the Agreement to reflect this position.

5.2.9 Pensions

5.2.10 Non-teaching staff in a maintained school converting to academy status either belong to or are entitled to belong to the Local Government Pension Scheme (LGPS) and have their pension dealt with by the 'Administering Authority' applicable to schools in that Local Authority. Academies are separate scheme employers under the LGPS. Academies are 'scheduled body' employers, being listed in Part 1 of Schedule 2 to the LGPS Administration Regulations 2008 [SI2008/239] (as amended). They are not 'admitted bodies'.

5.2.11 Academies' funding agreements require them to offer LGPS membership to all non-teaching staff. Where maintained schools apply to convert to Academies under section 3 of the Academies Act 2010 and an Academy order is made under section 4, those existing staff who are already members of the LGPS by virtue of the Administration Regulations would not be affected by the conversion. Their membership of the LGPS would continue unaffected. After conversion, new non-teaching staff will be eligible to join the LGPS and will be automatically enrolled in the Scheme when employed. Whatever arrangements apply currently for remitting contributions as a maintained school, the academy will itself be responsible for remitting employer and employee contributions to the council as the 'Administering Authority' for Barnet's Local Government Pension Scheme Fund.

5.2.12 Teaching staff in a maintained school converting to academy status either belong to or are entitled to belong to the Teachers' Pension Scheme which is administered nationally by Teacher Pensions. On conversion to Academy status their membership will continue unchanged. All newly employed Teaching staff will also continue to have entitlement to join the Teaching Pensions Scheme.

5.3 Legal and Constitutional References

5.3.1 Summerside School is currently a maintained school, owned freehold by The London Borough of Barnet. Under the Academies Act 2010 (the Act) section 3, the governing body of a maintained school in England may apply to the Secretary of State for an Academy order to be made in respect of the school. Section 4 of the Act provides that the Secretary of State may make an Academy order in respect of a maintained school in England, if the governing body of the school make an application under section 3. An Academy order in respect of a school is an order for the purpose of enabling the school to be

converted into an Academy. If an Academy order is made in respect of a school, the Secretary of State must give a copy of the order to: (a) the governing body and head teacher of the school, and (b) the local authority.

5.3.2 As addressed in the body of the report, as part of the conversion process, a Commercial Transfer Agreement must be signed by the Local Authority, the Governing Body of the School and the Academy Trust. The Commercial Transfer Agreement will contain information relating to: (i) any employees of the Council or the Governing Body who are assigned to the School and who will transfer from the employment of the Local Authority or the Governing Body to the new Academy Trust; and (ii) any assets and contracts which will transfer from the Local Authority or the Governing Body to the new Academy Trust, together with other rights and obligations of the Council, the Governing Body, or the Academy Trust. The Commercial Transfer Agreement also places obligations on the Academy Trust to comply with the duties/obligations placed on it, a summary of which is set out in paragraph 1.6 above.

5.3.3 Section 13 (Schedule 1) of the Act makes provision about land transfers to the Academies following the dissolution of the governing body on the conversion date following the making of the Academy Order. The Act refers to transfer of land pursuant to one or more directions from the Secretary of State. Under the Act, references to a transfer of land are to the transfer of a freehold or leasehold interest in the land or to the grant of a lease in respect of the land.

5.3.4 According to the Council's Constitution, section 15b, Scheme of Delegated Authority to Officers delegates inter alia the following delegated powers to the Chief Operating Officer:

- The proper administration of the financial affairs of the Council, which responsibilities shall include all arrangements covering financial planning, financial control, banking accounts, banking accounts, income, insurances, investments, binds, loans, leasing, borrowing etc.,
- Exercising the functions of the Council relating to procurement

5.3.5 As outlined in the Councils Scheme of Delegation the Director of Resources has the delegated power to authorise the lease out of property for values of less than £25,000. This decision has been taken by the Director of Resources in consultation with the Commissioning Director for Growth and Development and the Chief Operating Officer.

5.3 Risk Management

5.4.1 If the Commercial Transfer Agreement is not signed and completed, the school cannot become an Academy. If arrangements are not put in place for land and premises transfer, the school cannot become an Academy.

5.5 Equalities and Diversity

5.5.1 The signing of the agreements will not give rise to any issues under the Council's Equalities Policy and do not compromise the Council in meeting its statutory equalities duties.

5.6 Consultation and Engagement

5.6.1 Summerside School's Governing Body consulted parents and staff about the

academy conversion before deciding to convert the school to have Academy status.

6 BACKGROUND PAPERS

6.4 None

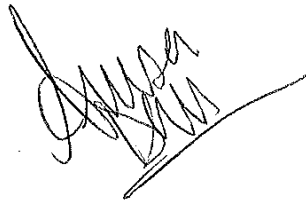
7. DECISION TAKER'S STATEMENT

7.1 *I have the required powers to make the decision documented in this report. I am responsible for the report's content and am satisfied that all relevant advice has been sought in the preparation of this report and that it is compliant with the decision making framework of the organisation which includes Constitution, Scheme of Delegation, Budget and Policy Framework and Legal issues including Equalities obligations.*

8. OFFICER'S DECISION

I authorise the following action

Signed



Anisa Darr
Director of Resources
15/08/2017

Date