

## **CABINET**

**11 MARCH 2014**

### **THE STROOD ACADEMY – CONSENT TO VARIATION OF DEED OF GIFT**

Portfolio Holder: Councillor Alan Jarrett, Finance  
Councillor Mike O'Brien, Children's Services (Lead Member)

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#### **Summary**

This report seeks authority to consent to the variation proposed by the Strood Academy Trust of a Deed of Gift and Declaration of Trust dated 17 August 2009 made between the then Secretary of State for Children Schools and Families (1) Strood Academy (2) and Medway Council (3) regarding the use of the sum donated by the Council to the Academy ("the Principal Sum") in accordance with the Deed of Gift and Declaration of Trust.

#### **1. Budget and Policy Framework**

- 1.1 As the amount paid by the Council under the Deed of Gift and Declaration of Trust was under £1,000,000, the delegation of authority to vary it is a matter for Cabinet.

#### **2. Background**

- 2.1 The Council is a co-sponsor of the Strood Academy. When the Academy was set up and in line with guidance from the Department for Education, the Council paid the Principal Sum of £500,000 (five hundred thousand pounds) to the Trust. This followed a change in Government policy on sponsorship of Academies which was reported to Cabinet on 25 September 2007 with the amount added to the Capital Programme for 2009/10 and agreed at a Full Council meeting on 26 February 2009.

2.2 The Deed of Gift and Declaration of Trust provided for the Council to donate £500,000 to the Academy to generate income to be used to advance education in Medway by :

- Assisting and supporting the education of students at the School including the provision of awards, prizes or other rewards.
- Relieving the financial hardship of pupils and ex pupils of the school by the provision of bursaries, scholarships, equipment or in any other way the school thinks fit to enable them to pursue their education.
- Providing grants or other financial assistance to assist pupils in financial need to under take extra curricular activities.
- Providing assistance in the provision of services or facilities at the school.
- Fostering closer ties between the school and the community including promoting education in the community served by the school.

2.3 The Strood Academy has put forward a proposal to acquire the Inspiration centre from the Council. Cabinet will recall that the Inspiration Centre had originally been built for use as a vocational centre but that the national policy on diplomas and vocational training changed and then consideration was given by Cabinet in August 2012 to an alternative use. Cabinet ultimately approved the proposal for the Academy to acquire the Inspiration Centre in February 2013 and Full Council at its meeting of 21 February 2013 agreed:

- To Strood Academy's proposals for the Inspiration Centre and
- To declare the Council's interest in the Inspiration Centre at Strood Academy surplus to requirements and to delegate authority to the Assistant Director, Legal and Corporate Services in consultation with the Portfolio Holder for Finance to finalise the detailed negotiations and dispose of its interest in the Centre.

2.4 To help the Academy fund this purchase, it has asked the Council to consent to the restrictions on the use of the Principal Sum being lifted by the Council. It has asked for that consent, if agreed, to be set out in a letter of support to the Charity Commission.

### **3. Options**

3.1 The council can either refuse to vary the Deed of Gift and Declaration of Trust, in which case, the sale of the Inspiration Centre may not complete or may not complete in a timely manner or it can agree to the variation and provide a letter in support so that the sale can proceed subject to the Academy obtaining all other necessary approvals (e.g. from the Charity Commission).

#### **4 Advice and analysis**

- 4.1 The variation of the Deed of Gift to part fund the acquisition of the Inspiration Centre by the Academy will in essence enable many of the purposes of the Deed of Gift to be realised as the space available for the Academy to use is increased.

#### **5. Risk Management**

<b>Risk</b>	<b>Description</b>	<b>Action to avoid or mitigate risk</b>	<b>Risk rating</b>
Adverse reaction to proposals to vary the deed.	Potential beneficiaries react badly to the proposals.	The proposal has been agreed with the Academy and after consultation with the Children's and Adults Services Department	D3

#### **6. Consultation**

- 6.1 Consultation has taken place with the service department and the Academy.

#### **7. Financial and legal implications**

- 7.1 The £2.0 million funding for the Inspiration Centre was allocated in 2009 from the Targeted Capital Grant (SEN and 14-19 Diplomas). Within this budget £1.5 million was allocated to the build cost with £0.5 million retained to cover the costs of additional furniture and equipment, including IT.
- 7.2 The Council has entered into a Development Agreement with Strood Academy Trust under which the Council retains the freehold and grants a 125-year lease to the Trust. This agreement follows the grant of government funding for the Academy Programme and is in a prescribed form. Pending the grant of the 125-year lease, the Trust is occupying the site under a licence from the Council.
- 7.3 Responsibility for outgoings in respect of the Inspiration Centre such as business rates, utilities, internal repairs and a contribution to external repairs will pass to the Academy.
- 7.4 In considering whether to consent to the variation of the Deed, Cabinet must comply with its duties in section 149 Equality Act 2010 to have 'due regard' to the need to eliminate discrimination, advance equality, and foster good relations. Since the variation will be carried out by a third party and the purposes of the Deed of Gift are to be met through

the extended capacity at the Academy it is not considered that this proposal raises any specific issues under the Equality Act.

- 7.5 The Deed of Gift and Declaration of Trust for the Strood Academy endowment creates a permanently endowed charity. The Principal Sum (permanent endowment) is restricted and the Deed does not allow it to be spent; only the income from the investment can be spent. There are, however, mechanisms by which the permanent endowment can be released, including the use of statutory powers in sections 281 to 291 of the Charities Act 2011, requesting the Charity Commission to authorise specific expenditure (eg the purchase of the Inspiration Centre) or obtaining the Charity Commission's consent to the modification of the Deed of Gift that created the permanent endowment. The choice of routes is a matter for the Academy.
- 7.6 The Deed of Gift provides at clause 3.1.2 that the Academy may not exercise any power to expend the Principal Sum other than with the express written consent of the Secretary of State. Guidance published on the Department for Education's web site states that "the Department for Education (DfE) will not be enforcing existing Deeds of Gift and we will be providing academy trusts with as much flexibility as possible in how they can use funds raised or donated to date and in the future". The Guidance also states that the Charity Commission will, before exercising its powers to authorise expenditure of permanent endowment, consult the DfE.

## **8. Recommendation**

- 8.1 That Cabinet delegates to the Assistant Director of Legal and Corporate Services, in consultation with the Portfolio Holder for Finance, to take all necessary steps to enable the purchase of the Inspiration Centre to proceed including but not limited to writing a suitable letter to the Charity Commission regarding the Deed of Gift and Declaration of Trust and entering into a Deed of Variation of the Deed of Gift and Declaration of Trust if required.

## **9. Suggested reasons for decision(s)**

- 9.1 In order to generate a capital receipt from the sale of the Inspiration Centre and to improve service delivery at the Academy and otherwise provide an alternative means to meet the aims of the Deed of Gift.

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## **Background Papers:**

Report to Cabinet 12 February 2013: Proposals for the Inspiration Centre at Strood Academy.

<http://democracy.medway.gov.uk/mglIssueHistoryHome.aspx?IId=10302>

Report to Full Council 21 February 2013: Proposals for the Inspiration Centre at Strood Academy.

<http://democracy.medway.gov.uk/mglIssueHistoryHome.aspx?IId=10302>

Report to Cabinet 25 September 2007: Future of Secondary Education in Strood

<http://democracy.medway.gov.uk/mglIssueHistoryHome.aspx?IId=2264>

Report to Full Council 26 February 2009: Capital and Revenue Budgets 2009/10

<http://democracy.medway.gov.uk/CeListDocuments.aspx?MID=737&RD=Minutes&DF=26%2f02%2f2009&A=0&R=0>