1. **Decision required**

Cabinet is requested to:

1.1 Note the receipt of the Academy Order in respect of The John Roan School (TJR) dated 12 June 2018 and the selection of University Schools Trust, East London (UST) as the academy sponsor by the Secretary of State for Education (SoS). Notwithstanding the clear policy of Full Council agreed on 31 October 2018 to resist further academisation, the Council is required, by law, to take reasonable steps to facilitate the academy conversion process.

1.2 Delegate to the Director of Children’s Services working in liaison with the Cabinet Member for Children and Schools the overall management and timing of the conversion process working with all relevant parties.

1.3 Delegate to the Director of Finance, the authority to complete the formal agreements for the transfer of staff under TUPE arrangements as detailed in section 5.4 of this report.

1.4 Delegate to the Director of Finance, in consultation with the Director of Children’s Services, the authority to negotiate and agree the terms of the Commercial Transfer Agreement (CTA) and any other legal documentation required to protect the Council’s investment in the Building Schools for the Future programme (BSF) following the conversion as set out in sections 4.7 and 5.6 of this report, respectively.

1.5 Agree to grant the lease of the TJR Westcombe Park site (edged in red on the plan in Appendix A) to UST for a term of 125 years at peppercorn rent,
in accordance with the relevant standard documentation produced by the Department for Education (DFE), and delegate to the Director of Regeneration, Enterprise and Skills (DRES) in consultation with the Director of Children’s Services, the authority to negotiate the detailed terms of the lease.

2. **Links to the Royal Greenwich high level objectives**

2.1 This report relates to the Council’s high level objective to promote excellence in education.

3. **Reasons for decision**

3.1 Agreement of Cabinet is required to enable officers to take necessary steps to facilitate the conversion of TJR to Academy status as required by law, following the receipt of an Academy Order in this respect.

4. **Background**

4.1 TJR was inspected by Ofsted on 21 March 2018 and was judged to be ‘Inadequate’. By virtue of Sections 61 and 62 of the Education and Inspection Act 2006, TJR is considered eligible for intervention by the SoS. The academy conversion of inadequate schools is a statutory duty rather than a power of the Regional School Commissioner.¹

4.2 On 12 June 2018, an Academy Order was issued by the SoS under Section 4 of the Academies Act 2010 (as amended by the Education and Adoption Act 2016). A copy of the Academy Order is included in Appendix C.

4.3 Under Section 5B of the Academies Act 2010 (as amended), the governing body of TJR and Royal Greenwich, the maintaining local authority are under a duty to take all reasonable steps to facilitate the conversion of the school to an academy. The governing body and local authority are also under a duty to take reasonable steps to facilitate the making of the academy arrangements with the sponsor.

4.4 Further to the above, a letter dated 12 June 2018 (Appendix D) was issued by the Regional Schools Commissioner (RSC) to the Director of Children’s Services notifying the Council of the appointment of UST as academy sponsor


Section 4(A1) of the Academies Act 2010, as inserted by the Education and Adoption Act 2016.
of TJR and urging officers to work with the relevant stakeholders to facilitate the conversion. There was an expectation by the DfE that the TJR academy conversion will take effect from 1 January 2019, but all parties are now agreed that the very earliest this is legally possible would be 1 February 2019.

4.5 The Cabinet Member and Director of Children’s Services have taken all reasonable steps to support the stabilisation and improvement of the school under the leadership of the new Head.

4.6 This report seeks Cabinet’s agreement for officers to take necessary steps to fulfil their legal duty to facilitate the making of the academy arrangements for TJR with the relevant stakeholders. These steps include all negotiations leading to the transfer of land assets owned by the Council (on which TJR currently operates) on a 125-year standard lease term, all staff employed at the school by the Council and all operational contracts currently managed by the school to the academy sponsor (UST) by the anticipated conversion date. The earliest date that this is legally possible is now 1 February 2019, subject to negotiations with UST and further discussions with all relevant stakeholders including the DfE.

4.7 TJR was part of the Council’s BSF programme and as part of this, the Council has entered into facilities management (FM) and ICT arrangements, as well as back-to-back arrangements with the TJR and the Governing Body Agreement. Whilst the FM arrangements remain in place, the ICT contract has expired with no on-going implication for the Authority. As part of the conversion process, the Council will need to ensure that appropriate arrangements are entered into with UST and where appropriate, the FM provider, to protect the Council’s position in respect of the BSF investment following the conversion.

5. **TJR academy conversion process**

5.1 The DfE sets out the process of academy conversion and issues key dates by which the stages in the process must be completed relative to chosen conversion dates. In the case of TJR, there was an expectation that the conversion date would be 1 January 2019, but following further discussions with the DfE and TJR Governing Body, it is now recognised by all parties that 1 February 2019 is the earliest possible date for the conversion.

5.2 In this regard, all necessary paperwork associated with the conversion must be completed and issued to the DfE by 4 January 2019. To achieve this, the terms of the proposed lease and commercial transfer agreement must be
agreed in advance of 4 January 2019 in order to guarantee the conversion by 1 February 2019.

5.3 The process includes:

- The transfer of all staff employed at the school to the employment of the Academy Trust under the TUPE provisions.
- The transfer of buildings and land used by the school.
- The transfer of other assets and contracts where agreed.

5.4 **Transfer of Staff**

5.4.1 The transfer of staff will follow the TUPE process as academies are non-maintained schools. The detailed arrangements for this are part of model agreements published by the DfE.

5.4.2 The model agreements acknowledge that the academy will have the status of “scheme employer” for purposes of the Local Government Pension Scheme (Administration Regulation 2014) and as the “employer” for the purposes of the Teachers’ Pension Scheme Regulations 2014). The agreements will provide indemnity for both parties to claims and liabilities incurred prior to and after the conversion date.

5.4.3 As a local authority maintained school, the Council and the governing body of TJR must consult with staff and trade unions on the terms of the transfer, and take into consideration any representations received when negotiating the terms of the transfer with the Academy Sponsor.

5.4.4 In view of the above, Cabinet is asked to delegate to the Director of Finance, in consultation with the Head of Legal Services and Director of Children’s Services, the authority to complete all the necessary formal agreements for the transfer of staff to UST as the chosen Academy Sponsor.

5.5 **Transfer of land and buildings**

5.5.1 Section 8 of the Academies Act 2010 (as amended) requires that all publicly funded land and buildings used by a school converting to Academy Status be transferred to the Academy on a 125-year lease at peppercorn rent. There are sufficient safeguards in the lease for the land only to be used for Academy school purposes. It would be a breach of the lease, leading to forfeiture and the return of the land to the Council, if the Academy school use (including
community, fundraising and recreational purposes which are ancillary to the use permitted) was discontinued. All buildings and land used by the school prior to conversion will be included in the lease to UST.

5.5.2 TJR is located on two sites, namely: Westcombe Park site and Maze Hill site. Royal Greenwich owns the freehold of Westcombe Park edged in red on the plan in Appendix A. The Maze Hill site (edged in blue on the plan in Appendix A) is privately owned by The John Roan Foundation Trust (TJRF).

5.5.3 In addition, TJR currently has the benefit of access to playing fields on Kidbrooke Park Road for curriculum delivery. The playing fields are also in the ownership of TJRF (see Appendix B).

5.5.4 Whilst the Westcombe Park site is subject to the provisions of Section 8 of the Academies Act 2010 (as amended) and must, therefore, be transferred to UST on the basis of the model 125-year lease produced by the DfE, the Maze Hill site and playing fields (due to their private ownership) would be a matter to be discussed between UST and TJRF, and a suitable route for transfer to UST would need to be agreed between these two parties.

5.5.5 According to the DfE’s Land Transfer Advice (April 2013), a variety of arrangements are possible between private land owners and academies (where a converting school sits on entirely private land owned by a foundation/trust). This may be in the form of a lease, a licence to occupy, or an informal land arrangement which does not transfer the land to the academy trust, but ensures that the academy still has security of occupancy on, and/or use of the site. If any land is to remain with a foundation/trust upon academy conversion, the DfE requires that parties sign up to a Land Supplemental Agreement.

5.5.6 RBG’s understanding is that the Trust has agreed, in principle, to give UST the rights to use the Maze Hill site and playing fields subject to a formal agreement being reached and they have instructed solicitors accordingly. It is expected that an agreement should be reached between UST and TJRF on the Maze Hill site and playing fields by the proposed conversion date.

5.5.7 The lease of the Westcombe Park site to UST would be contracted out of the security of tenure provisions (sections 24 to 28) of the Landlord and Tenant Act 1954, and UST would assume all repair and maintenance responsibilities for the period of the 125-year lease term.

5.5.8 In view of the above, Cabinet is asked to agree to the grant of a leasehold interest of the Westcombe Park site from the Council to UST on the basis of
the DfE's model form 125-year lease at peppercorn rent. Cabinet is also being asked to delegate to the Director of Regeneration, Enterprise and Skills, in consultation with the Head of Legal Services and Director of Children’s Services, the authority to negotiate and agree the detailed terms of the lease.

5.6 **Services and contract**

5.6.1 The process for conversions makes provision for a Commercial Transfer Agreement (CTA) between the Council and the Academy Sponsor of a converting school to deal with services and other contracts to be transferred. The provisions of the CTA will specify which services or contracts have been agreed to transfer between the parties to ensure continuity of provision where appropriate.

5.6.2 The conversion to academy status will also affect the staff employed at TJR by the Council as there will be a relevant transfer under the Transfer of Undertakings (Protection of Employment) Regulations 2006. The consultation process on the TUPE transfer will be completed (as per the comments in section 7.1 below) in accordance with the required timelines and the terms of such transfer (including TUPE and Pensions arrangements) will also be included within the terms of the CTA with UST.

5.6.3 Cabinet is, therefore, asked to delegate the authority to negotiate and agree the detailed terms of the CTA to the Director of Finance, in consultation with the Director of Children’s Services.

5.6.4 Further to comments in section 4.7 above, Cabinet is also being asked to give authority to negotiate and enter into arrangements with UST to replace the Governing Body Agreement (GBA) by way of a School Agreement. In the process, officers will seek to ascertain and agree the scope of any amendments to the FM contracts and take into account the proposed change to the school’s Responsible Body, as well as the treatment of any lifecycle obligations, and transfer of rights under the Design and Build (D&B) contracts for defects liability and latent defects liabilities. This is necessary to protect the Council’s BSF investments in the school following the conversion.

5.7 **Implications for school place planning**

5.7.1 The conversion of TJR to academy status will not have an impact on the overall availability of secondary school places within Royal Greenwich provided that the school continues to operate. TJR will continue to operate as an 11-19 school, retaining its current published admission number of 210.
5.7.2 In July 2018, Cabinet agreed the School Place Planning and Capital Programme 2018/19-2020/21 report. The report specified Royal Greenwich’s school roll forecasts taking into account a variety of factors. Continued operation of TJR forms an essential part of the Council’s strategy for continuing to meet projected demands for secondary school places.

5.7.3 Following conversion, any future proposal for expansion of the school would be developed in association with the Academy Sponsor.

6 Options

6.1 The legislative framework around an Academy Order does not require the RSC to consult on whether TJR should convert to an academy. At this stage, there are no other viable options other than to facilitate the processes leading up to TJR conversion by the chosen date.

7 Statutory consultation

7.1 The governing body of TJR will be required to undertake statutory consultation with staff, trade unions and school community. Royal Greenwich will support TJR with this consultation process and the outcome will be taken into consideration when negotiating terms with the Academy Sponsor.

8 Next Steps: Implementation and communication of the decision

8.1 A strategic working group has been set up for the purpose of coordinating all activities required to fulfil the Council’s obligations in respect of the Academy Order.

8.2 Following the agreement of recommendations in this report, relevant departments and officers will negotiate and agree the lease of the Westcombe Park site, and the CTA with the Academy Sponsor ahead of the anticipated conversion date.

8.3 Negotiations and communications with the Academy Sponsor and other relevant stakeholders will follow the standard procedure for negotiating legal agreements, including appropriate Legal representation.
## Cross-Cutting Issues and Implications

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<tr>
<th>Issue</th>
<th>Implications</th>
<th>Sign-off</th>
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| **Legal** including Human Rights Act | This report requests authority for the specified officers to take actions required to facilitate and complete the conversion process for TJR to an Academy school.  

This is on the basis of the Academy Order issued by the Secretary of State to pursuant to Section 4(A1) of the Academies Act 2010 which provides the Secretary of State with the power to convert a maintained school into an academy where the school is eligible for intervention under Part 4 of Education and Inspections Acts 2006 (“2006 Act”).  

TJR as a maintained school (under the meaning of Section 59 of the 2006 Act) having receiving an inadequate judgment by virtue of the outcome of the School inspection report of 21 March 2018), the Regional Schools Commissioner acted under its duty to make an Academy Order by virtue of Section 4 (A1) of the Academies Act 2010 as inserted by the Education and Adoption Act 2016.  

Paragraph 5 of this report refers to the occupation, commercial transfer and other legal documentation which the Council must negotiate and enter into to facilitate the conversion pursuant to the Academy Order.  

The terms of the proposed 125-year lease of the Westcombe Park site to UST will be negotiated with UST on the basis of the DfE model documentation. This will be supplemented by the direct | John Scarborough  
Head of Legal Services  
29 October 2018 |
occupation arrangements entered into by TJRF and UST for the remainder of the school site.

The Council's legal advisers have been instructed to develop the commercial transfer documentation on the basis of the DfE model Commercial Transfer Agreement (CTA), which shall deal with all the commercial aspects of the conversion such as how the Council’s contracts and non-land assets will be transferred. The CTA will also contain indemnities to protect the Council from liabilities after the transfer date and protect the School from any liabilities prior to the transfer date.

The Council will also be entering into other documentation referred to in this report such as School Agreement to protect the Council’s investment under the BSF programme.

The conversion will affect the staff who are employed at TJR by the Council as there will be a relevant transfer under the Transfer of Undertakings (Protection of Employment) Regulations 2006. The Council must observe its legal duties as a transferor under these Regulations and ensure particularly that the required employee liability information is disclosed and that due consultation takes place with the staff affected. Those staff transferring will have their contracts of employment transferred from the Council to the Academy Trust. Officers should ensure Legal Services are instructed throughout this process.

There is no direct or material impact on the Council under the Human Rights Act.
| **Finance and other resources including procurement implications** | Under DfE regulations, schools converting to academy status (converter academies) transfer accumulated revenue balances across to the new Academy Trust.  

Where a school with a deficit is to open as a sponsored academy, the deficit remains with the LA, to be funded from its core budget. School deficits are not an allowable charge on the LA’s schools budget (funded by its allocation of Dedicated Schools Grant); however, if the Schools Forum has agreed to delegate a contingency provision, then the deficit may be funded from that contingency, depending on the criteria agreed for its use (DfE guidance March 2018).  

TJR is not expected to be in a deficit position at year end however it is overspending. The school is receiving support to address this situation.  

The final account with Wates Construction Ltd for refurbishment and new build works undertaken as part of the Councils BSF programme are complete, with no further Capital payments due. Elements of the funding sources underpinning the repayment of the capital investment have been delegated to the school. These will continue to be recovered direct from the Academy post conversion.  

The initial ICT managed service contract with Capita ICT Services Ltd has also | Leslie Oosthuizen  
Children Services Finance Manager  
25/10/2018 |
expired, with no on-going implications for the Authority. As noted in 5.6.4 above, it is recommended that the Building and Asset Service Plan agreed by the Governing Body be replaced with a new School agreement; any cost arising from the drafting of this document will be funded from established revenue budgets.

<table>
<thead>
<tr>
<th>Equalities</th>
<th>The decisions recommended through this paper have a remote or low relevance to the substance of the Equality Act. There is no apparent equality impact on end users.</th>
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<tbody>
<tr>
<td></td>
<td>Ayodeji Olaniyi Place Planning &amp; Capital Commissioning Manager 24/10/2018</td>
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<tr>
<th>Staffing Establishment</th>
<th>Affected TJR staff will be in scope to transfer to the employment of the academy sponsor in line with TUPE regulations. Affected staffing information has been obtained for verification by the school for inclusion into the final CTA in line with due process. The governing body of TJR will need to complete the relevant statutory consultation with affected staff and TU's prior to the intended transfer date. The TUPE transfer should be done in line with the relevant policies, procedures and legal requirements.</th>
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<td>Penny Gifford, Head of HR 24/10/2018</td>
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10 **Report appendices:**

The following documents are to be published with and form part of the report:

- Appendix A: Plan of the Westcombe Park School site and Maze Hill School site.
• Appendix D: Letter from the Regional Schools Commissioner to the Director of Children’s Services dated 12 June 2018.

11 Background Papers

11.1 Cabinet report agreed on 24 July 2018: School Place Planning and Capital Programme 2018/19 – 2020/21

11.2 Department for Education – Land Transfer Advice (April 2013)

11.3 Department for Education – Schools causing concern Guidance for Local Authorities and Regional Schools Commissioners on how to work with schools to support improvements to educational performance, and on using their intervention powers (February 2018)

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