

Report to:	Cabinet	Date of Meeting:	3 February 2022
Subject:	Sacred Heart Catholic Secondary School – Approval of Legal Documentation for Academy Conversion		
Report of:	Head of Education	Wards Affected:	All
Cabinet Portfolio:	Education		
Is this a Key Decision?	Yes	Included in Forward Plan:	Yes
Exempt / Confidential Report:	No		

Summary:

To inform Cabinet of the decision by the Secretary of State for Education to convert Sacred Heart Catholic High School, to the Pope Francis Multi Academy Trust in accordance with statutory requirements and seek authorisation for officers to sign the documentation required to by the academy conversion process. The ESFA has indicated that the date of conversion has still to be confirmed but the earliest this will be 1st April 2022 although this seems likely to slip by due to consultation process / completion of conversion documentation.

Recommendation(s): That the Cabinet is requested to:

- 1) Note the statutory requirements regarding academy conversion
- 2) Note the financial implications to the Council of the academy conversion
- 3) Authorise appropriate officers, the Executive Director of Corporate Resources and Customer Services and the Interim Executive Director of Children's Social Care and Education in consultation with the Cabinet Member to complete the necessary agreements required as part of the academy conversion process as outlined in the report.

Reasons for the Recommendation(s):

- 4) Cabinet needs to authorise appropriate officers to enter into the agreements required as part of the academy conversion process.

Alternative Options Considered and Rejected: (including any Risk Implications)

No other options are available. The Secretary of State has the powers to direct that the academy conversion process can continue if the agreements are not signed.

What will it cost and how will it be financed?

(A) Revenue Costs

There will be financial implications to the Council from the conversion of the school to an academy. These have been highlighted in more detail later in

the report under paragraph 3 but will include the loss of funding for Education functions and specific central functions to maintained schools, the loss of Traded Service income. Any losses in income from Traded Services will need to be met from with appropriate Service Department budgets. The overall financial position of the school will be carefully monitored up to conversion.

(B) Capital Costs N/A

Implications of the Proposals:

Resource Implications (Financial, IT, Staffing and Assets):

Upon conversion to an Academy, staff within the school will transfer under Transfer of Undertakings Protection of Employment Regulations 2006 (“TUPE”) to the new Multi Academy Trust. As a voluntary aided school under the Archdiocese that school and Governing Body are the current employer and employment will move for those employees to the Multi Academy Trust with protections under that legislation.

The is understood from the Archdiocese that the Multi Academy Trust will form its own collective bargaining structures and not continue to utilise Human Resources professional advice or HR Transactional services such as payroll from Sefton MBC.

The academy conversion will also see the transfer of all school land over to the Multi-Academy Trust from Sefton Council via a lease agreement for 125 years.

Legal Implications: The conversion of schools to academies is a statutory process under the Academies Act 2010.

As the school is eligible for intervention under sections 61 and 62 of the 2006 Education and Inspections Act, the Secretary of State for Education under Section 4 of the Academies Act 2010 (as amended by the Education and Adoption Act 2016) is required to an issue Academy Order. The Order provides that on the conversion date, the school in question shall become an academy and shall cease to be maintained by the Local Authority.

The governing body and the local authority are also under a duty to take all reasonable steps to facilitate the making of academy arrangements with a sponsor, once determined (section 5B of the Academies Act 2010, as amended by the Education and Adoption Act 2016).

The principal issues in relation to conversion are transfer of Staff, transfer of Land and transfer of Assets and Contracts. These issues will be addressed in two documents for the conversion- a Commercial Transfer Agreement and a Lease Agreement.

Equality Implications: There are no equality implications.

Climate Emergency Implications:

The recommendations within this report will	
Have a positive impact	N
Have a neutral impact	Y
Have a negative impact	N
The Author has undertaken the Climate Emergency training for report authors	Y

Contribution to the Council's Core Purpose:

Protect the most vulnerable: this will ensure that there is Catholic provision for the most vulnerable secondary aged pupils in Crosby and the South Sefton area.
Facilitate confident and resilient communities: continue to provide Catholic education for secondary aged pupils in Crosby and the South Sefton area
Commission, broker and provide core services: Catholic education for secondary aged pupils
Place – leadership and influencer: N/A
Drivers of change and reform: N/A
Facilitate sustainable economic prosperity: N/A
Greater income for social investment: N/A
Cleaner Greener: N/A

What consultations have taken place on the proposals and when?

(A) Internal Consultations

The Executive Director Corporate Resources & Customer Services (FD.6674/22) and Head of Regulation and Compliance (LD.4874/22) have been consulted and any comments have been incorporated into the report.

(B) External Consultations

As part of the process the school will consult with staff and trade unions.

Implementation Date for the Decision

Following the expiry of the “call-in” period for the Minutes of the Cabinet Meeting

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Appendices:

There are no appendices to this report

Background Papers:

Academy Order made further to section 4(A1) of the Academies Act 2010 (22 July 2016)

1. Introduction/Background

- 1.1 Sacred Heart Catholic High School was judged inadequate at its last inspection. As the school is eligible for intervention under sections 61 and 62 of the 2006 Education and Inspections Act, the Secretary of State for Education, under Section 4 of the Academies Act 2010 (as amended by the Education and Adoption Act 2016), is required to issue an Academy Order. The Order provides that on the conversion date, the school in question shall become an academy and shall cease to be maintained by the Local Authority.
- 1.2 Since this school was judged inadequate the Local Authority has exercised its statutory duty to intervene and develop an action plan to support improvement in the school.

2. Academy Conversion Process

- 2.1 The process for schools converting to academies is legislated for under the Academies Act 2010 (as amended) which states that the Secretary of State is required to make an Academy order in respect of a maintained school in England if the school is eligible for intervention (within the meaning of Part 4 of EIA 2006). Sacred Heart Catholic High School by virtue of the inspection outcome falls within this category. As part of the process the Regional Schools Commissioner has chosen a sponsor for the school. The Governing Body of the school and the local authority both have a statutory duty to facilitate the academy conversion.
- 2.2 The Academies Act 2010 contains specific powers for the Secretary of State in respect of the land of the schools when they were maintained schools. It is intended that the transfer of publicly funded land owned by the local authority to the Academy will usually be by way of a 125-year lease.
- 2.3 Lease will be drawn up to comply with the above requirements and to ensure there are no undue risks to the authority and that any usage rights etc are preserved. The lease transfers the responsibility for the operation and management of the land and buildings to the Pope Francis Multi Academy Trust sponsoring the school.

Commercial Transfer Agreement

- 2.4 This document is designed to ensure that all information on the staff who are transferring to the academy is recorded and transferred to the Academy Trust,

so that the appropriate arrangements for payment of salaries, pension contributions, etc. can be made. It also includes details of any assets or contracts that will transfer to the Academy Trust and of those that will not.

- 2.5 A Commercial Transfer Agreement, which is an agreement between the school governing body, the local authority, and the academy trust, will be drawn up. Officers will ensure that all appropriate responsibilities and liabilities are transferred to the Academy Trusts to ensure there are no undue risks to the authority.

Assignment or novation of contracts

- 2.6 This forms part of the Commercial Transfer Agreement and covers agreements and contractual arrangements which will need to transfer to the Academy Trust.
- 2.7 Specific contracts and arrangements in respect of the converting school have been identified.

TUPE Process

- 2.8 The Employees within the School are employed by the Governing Body who are responsible for the movement of employees from the School which is converting to the new Multi Academy Trust.
- 2.9 TUPE consultation will need to be undertaken as part of the process. The Governing Body as the Employer of the employees within the School are responsible for this along with the Multi Academy Trust. Consultation with the Council's trade unions will also be necessary in respect of any effects of the TUPE transfer to Council employees.
- 2.10 By virtue of TUPE, there is a legal obligation to provide written information about the transfer to employee representatives. The information which the current employer must give in writing to employee representatives (which will be trade union representatives):
- The fact that the transfer is to take place, when and why.
 - The "legal, economic and social implications" of the transfer for the affected employees.
 - The "measures" which the employer envisages it will take in connection with the transfer or, if no measures are envisaged, that fact; and
 - Any measures which the employer envisages the Academy Trust taking in connection with the transfer in respect of the transferring employees or, if no measures are envisaged, that fact.
- 2.11 By virtue of TUPE terms and conditions of employment should be protected in accordance with the legislation. The Multi Academy Trust will be required to provide full details to the Governing body to allow meaningful consultation.

- 2.12 No specific timescale is provided for consultation, but it must be meaningful with legal penalties and remedies in respect of consultation if it does not take place as required.
- 2.13 By virtue of TUPE terms and conditions should be protected. The contractual documentation should address this. Pension issues should also be addressed accordingly in the process between the Governing Body and Multi Academy Trust.

3.0 Financial Implications

- 3.1 The potential financial implications to the Council because of the Academy conversions are listed below:
- 3.2 Maintained schools pay a contribution from their delegated budget each year to the Local Authority towards the costs of meeting its statutory education functions and central support functions for maintained schools. Academies can purchase certain school support services from whoever they choose. The amount Sacred Heart currently pays for this support is £19,400
- 3.3 Sacred Heart currently buys into many traded services from the Council. The MAT has already stated that they will not be buying into central support functions such as HR and Finance however it is not known at this time what other traded services may be at risk.
- 3.4 As the Academy Order is being made by the Secretary of State, any financial deficit at the point of conversion remains with the Council and does not transfer to the Multi Academy Trust. Sacred Heart currently has a small positive revenue balance and so there is no financial liability, to pick up any deficit balance, by the Council at the point of conversion.