

Report to: Cabinet

Date of Meeting: 15 January 2015

Subject: Approval of Legal Documentation for Academy Conversions

Report of: Director of Young People
and Families

Wards Affected: All

Is this a Key Decision? Yes

Is it included in the Forward Plan?
Yes

Exempt/Confidential No

Purpose/Summary

To inform Cabinet of the decision by the Secretary of State for Education to convert St Michael's CE High School, Litherland High School and Hillside High School to sponsored academies in accordance with Government policy and seek authorisation for officers to sign the documentation required to by the Government's academy conversion process.

Recommendation(s)

Cabinet is recommended to:

- 1) Note the statutory requirements regarding academy conversion.
- 2) Note the financial implications to the Council of these Academy conversions.
- 3) Authorise appropriate officers to complete the necessary agreements required as part of the academy conversion process for St Michael's CE High School, Hillside High School and Litherland High School as outlined in the report.

How does the decision contribute to the Council's Corporate Objectives?

	<u>Corporate Objective</u>	<u>Positive Impact</u>	<u>Neutral Impact</u>	<u>Negative Impact</u>
1	Creating a Learning Community		√	
2	Jobs and Prosperity		√	
3	Environmental Sustainability		√	
4	Health and Well-Being		√	
5	Children and Young People		√	
6	Creating Safe Communities		√	
7	Creating Inclusive Communities		√	
8	Improving the Quality of Council Services and Strengthening Local Democracy		√	

Reasons for the Recommendation:

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

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 three Secondary schools to Academies referred to in this report. These have been highlighted in the report below, but include loss of Education Services Grant; Possible loss of Traded service income; and potential loss in the event of any of these sponsored Academies falling into a deficit position before conversion. This latter position is unlikely, owing to the three schools in question being in a surplus balance position. This will be carefully monitored up to conversion.

(B) Capital Costs N/A

Implications:

The following implications of this proposal have been considered and where there are specific implications, these are set out below:

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

The Secretary of State for Education has made Academy Orders in respect of the conversion of St Michael’s CE High school, Litherland High School and Hillside High School. The Orders provide that on the conversion date, the school in question shall become an academy and that they shall cease to be maintained by the Local Authority.

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 each conversion- a Commercial Transfer Agreement and a Lease Agreement

Human Resources- Upon conversion to an Academy, staff within the school will transfer under Transfer of Undertakings Protection of Employment Regulations 2006 to the new academy.

Equality

- | | |
|---|-------------------------------------|
| 1. No Equality Implication | <input checked="" type="checkbox"/> |
| 2. Equality Implications identified and mitigated | <input type="checkbox"/> |
| 3. Equality Implication identified and risk remains | <input type="checkbox"/> |

Impact on Service Delivery:

N/A

What consultations have taken place on the proposals and when?

The Head of Corporate Finance (FD3359/14) has been consulted and would comment that there are some financial implications to the Council as a result of the conversion of the three schools referred to in this report becoming Academies. These are indicated in the paragraphs at section 3 to this report.

Head of Corporate Legal Services (LD 2652/14) have been consulted and any comments have been incorporated into the report.

The schools have consulted with staff and trade unions.

Are there any other options available for consideration?

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

Implementation Date for the Decision

Immediately following the call in period for the minutes of this meeting.

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Background Papers:

None

1. Introduction/Background

- 1.1 St Michael's CE High School, Litherland High School and Hillside High School were all judged inadequate at their last inspection. Government policy is that all failing schools will be converted to academies and the Secretary of State notified the Council that all three schools will be converted into sponsored academies. Each of the schools will have a different sponsor.
- 1.2 Since these schools were judged inadequate the Local Authority has exercised its statutory duty to intervene and all three schools have made significant progress in improving.

2. Academy Conversion Process

- 2.1 The process for schools converting to academies is legislated for under the [Academies Act 2010](#) which states that the Secretary of State may 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). The three schools mentioned above by virtue of their inspection outcomes fall within this category.

Land Issues

- 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 Leases 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 leases transfer the responsibility for the operation and management of the land and buildings to the respective Academy Trust for each 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 Commercial Transfer Agreements, which are agreements between the school governing body, the local authority and the academy trust, will 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 contract and arrangements in respect of each of the converting school have been identified.

TUPE Process

- 2.8 TUPE consultation will be undertaken as part of the process with the three schools and this is discussed in regular meetings with the Trade Unions.
- 2.9 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 union representatives where a trade union is recognised in respect of the relevant category of staff) is as follows:
- (a) The fact that the transfer is to take place, when and why;
 - (b) The "legal, economic and social implications" of the transfer for the affected employees;
 - (c) The "measures" which the employer envisages it will take in connection with the transfer or, if no measures are envisaged, that fact; and
 - (d) 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.
- 2.10 By virtue of TUPE terms and conditions should be protected. The contractual documentation should address this and should ensure Sefton obtain appropriate warranties and indemnities. Pension issues should also be addressed.

3. Financial Implications

- 3.1 There will be financial implications to the Council as a result of these three Academy conversions.
- 3.2 Education Services Grant (ESG) is paid to the Local Authority towards the costs of meeting its statutory functions for schools. Academies are paid this grant separately by the Education Funding Agency, to enable them to purchase certain school support services from whoever they choose. Only a small amount of this grant is retained by Local Authorities to meet statutory provision of services for Academies, which is exercised by the Director of Children's Services. The rates paid for ESG to Local Authorities for mainstream schools is £140 per pupil in 2014/15 reducing in 2015/16 to £87 per pupil. In both years the level of retention grant is £15 per pupil.
- 3.3 On the basis that there will be clawback of this funding in 2014/15 for the three schools converting to Academies, it is expected that the Local Authority will lose £40,535 in 2014/15 and £183,222 in 2015/16, using the different rates of ESG for both years; and for 2014/15, based on a pro-rata calculation from the date the schools became an Academy to the end of the Financial year. This loss of funding may have an impact on the Council's MTFP.

There is however the opportunity that the 3 schools may buy back into some of these services, which might help mitigate this loss.

- 3.4 In addition to the loss of ESG revenue Grant to the Council, it is possible that there may also be a loss of traded income. Academies are at liberty to purchase a range of services from whichever supplier they choose. Currently all three Secondary Schools purchase a range of services from the Local Authority as traded services. Due to the organisation of Academies, many of whom operate in a sponsorship arrangement, such services may be provided by the sponsor. At this stage, it is not known which, if any, services these new Academies may buy back, but this could be a further loss of income to the Council.
- 3.5 For Academies without a sponsor, the Local Authority must finalise closing balances within 3 months of the date of conversion. If the agreed closing balance is a surplus, the Local Authority must pay over any surplus balances due to the school within 1 month of agreeing their final accounts. Should no agreement be reached on the final balances the DfE can be asked to review the position within this 1 month period. In the event of a deficit, the Local Authority would be reimbursed by the EFA, and agreement would then be reached between the new Academy and the EFA as to how this could be repaid.
- 3.6 For sponsored Academies however, any deficit on balances remains the responsibility of the Local Authority, and does not have to be paid by the new Academy Trust. The three Sefton schools, which are converting to Academies are all being sponsored, however they all have surplus balances, and so it is not anticipated that there will be any cost to the Local Authority in this respect.