

Report to: Cabinet

Date of Meeting: 6th October 2015

Subject: Stanley High School - Approval of Legal Documentation for Academy Conversion

Report of: Head of Schools 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 Stanley High School, Southport to a sponsored academy in accordance with statutory requirements and seek authorisation for officers to sign the documentation required to by the 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 the Academy conversion.
- 3) Authorise appropriate officers to complete the necessary agreements required as part of the academy conversion process 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 school to an academy. These have been highlighted in the report below, but include loss of Education Services Grant; possible loss of Traded service income; reduction to the amounts de-delegated towards specific central functions and potential loss in the event of any of the school falling into a deficit position before conversion. This latter position is unlikely, owing to the school 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.

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.

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 (FD4331/16) 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 3614/16) has been consulted and any comments have been incorporated into the report.

The school has 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:

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

1. Introduction/Background

- 1.1 Stanley High School in Southport 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 these schools were 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). Stanley High school by virtue of the inspection outcome falls within this category. As part of the process the Regional Schools Commissioner will choose 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.

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 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 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 TUPE consultation will be undertaken as part of the process 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:

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.

- 2.10 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 the 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 across both maintained schools and Academies, which is exercised by the Director of Children's Services. The rates paid for ESG to Local Authorities for services to its mainstream schools is £77 per pupil and the level of Retention grant is £15 per pupil. There would be no loss of the Retained element of this funding.

- 3.3 On the basis that there will be clawback of this funding in 2016/17 for the school converting to an Academy, it is expected that the Local Authority will lose up to £27,412 General ESG if the conversion were to be wef 1 October 2016, or £22,843 if wef 1 November 2016. The amount of loss is commensurate to the date of conversion. The full year effect would be a loss of £54,824 However, as part of the spending cuts to ESG announced in November 2015 as part of the government's Spending Review, the DfE are proposing the complete loss of the General ESG funding to Local Authorities from September 2017 and the Authority's MTFP is making this assumption. The loss of funding as a result of this conversion would be subsumed into this change.
- 3.4 In addition to the loss of ESG revenue Grant to the Council, it is possible that there will also be a loss of traded income. Academies are at liberty to purchase a range of services from whichever supplier they choose. Currently, Stanley High School purchase a range of services from the Local Authority as traded services valued at £73,011 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 Academy may buy back, but this could be a further loss of income to the Council.
- 3.5 The school also has some of its funding top-sliced for services which are currently de-delegated, as agreed by Schools Forum, including contribution towards Trade Union Facility time; and Support for minority ethnic pupils or under-achieving groups (£8,994 in 2016/17). Academy schools cannot have their budgets adjusted for de-delegation and so there is expected to be a commensurate loss of funding towards these services of £4,497 if conversion takes place wef 1 October 2016 or £3,748 if from 1 November 2016.
- 3.6 For Academy conversion, 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. For sponsored Academies, however, any deficit on balances remains the responsibility of the Local Authority. Stanley High School has surplus balances, and so it is not anticipated that there will be any cost to the Local Authority in this respect.
- 3.7 The Local Authority reserve the right to charge reasonably for any services they continue to provide to the school during this transitional 3 month accounting period.