

<b>Report to:</b>	Cabinet	<b>Date of Meeting:</b>	26 July 2018
<b>Subject:</b>	Approval of Legal Documentation for Academy Conversions		
<b>Report of:</b>	Head of Schools and Families	<b>Wards Affected:</b>	All
<b>Cabinet Portfolio:</b>	Children, Schools and Safeguarding		
<b>Is this a Key Decision:</b>	Yes	<b>Included in Forward Plan:</b>	Yes
<b>Exempt / Confidential Report:</b>	No		

### Summary:

To inform Cabinet that on 24<sup>th</sup> May 2018, the Regional Schools Commissioner has issued an academy order to enable Kew Woods Primary School to convert to an academy. The governing body of Churchtown Primary School has also informed the Local Authority of their application to convert to an academy. Authorisation is requested for officers to sign the documentation required by the Government's academy conversion process at the appropriate time.

### Recommendation(s):

Cabinet is recommended to:

- (1) Note the statutory requirements regarding academy conversion.
- (2) Note the financial implications to the Council.
- (3) Authorise the Head of Schools and Families in consultation with the relevant Officers to complete the necessary agreements required as part of the academy conversion process for the following schools as outlined in the report: Kew Woods Primary School and Churchtown Primary School.

### Reasons for the Recommendation(s):

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)

There are no alternative options. 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

The Council is required to pick up any deficit balance of a maintained schools becoming part of a sponsored Academy Trust at the point of conversion. For schools converting on a voluntary basis, such deficits are picked up by the DfE. Any surplus balances are passed over to the new Academy after all agreed residual costs have been charged and the accounts are formally closed as a Maintained school. This may be up to 4 months after the conversion date.

There may be some loss of traded income to the Council as a result of schools converting to academies, but this cannot be quantified at this stage, since many services continue to remain available for purchase by these Academies should they wish to buy them.

There will also be a financial loss of NNDR Business Rates income to the Council as a result of any academy conversions by maintained schools as academy schools are eligible to claim the mandatory 80% business rate relief

## **(B) Capital Costs**

Not Applicable.

### **Implications of the Proposals:**

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

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

#### **Legal Implications:**

The conversion of schools to academies is a statutory process under the Academies Act 2010 (the Act)

The governing bodies of Kew Woods Primary School and Churchtown Primary School have applied for an order under section 3 of the Act. The Orders provide that on the conversion date, the school shall become an academy and will cease to be maintained by the Local Authority.

The Council have a statutory duty to facilitate the conversion process once an academy order has been made.

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:- a Commercial Transfer Agreement and a Lease Agreement.

#### **Equality Implications:**

There are no equality implications.

### **Contribution to the Council's Core Purpose:**

Not applicable

**What consultations have taken place on the proposals and when?**

**(A) Internal Consultations**

The Head of Corporate Resources (FD 5173/18) and Head of Regulation and Compliance (LD 4397/18) have been consulted and any comments have been incorporated into the report.

**(B) External Consultations**

The schools are required to consult with parents, staff and trade unions as part of the academy conversion process.

**Implementation Date for the Decision**

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

<b>Contact Officer:</b>	<b>Mike McSorley</b>
Telephone Number:	<b>0151 934 3428</b>
Email Address:	<a href="mailto:Mike.mcsorley@sefton.gov.uk">Mike.mcsorley@sefton.gov.uk</a>

**Appendices:**

There are no appendices to this report

**Background Papers:**

There are no background papers available for inspection.

## **1. Introduction/Background**

- 1.1 The governing bodies of Kew Woods Primary School and Churchtown Primary School have applied to become academies. The Secretary of State has approved the academy order for Kew Woods. At the time of drafting the report the application for Churchtown was being considered but there is no reason to believe it will not be approved.

## **2. Academy Conversion Process**

- 2.1 The process for schools converting to academies is legislated 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) or the governing body of a school can make an application to become an academy under section 3 of the Act. The academisation process covers the following main areas:

### **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 A 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 usagerights at the time of conversion are preserved. The lease transfers the responsibility for the operation and management of the land and buildings to the Academy Trust.

### **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 be drawn up. Officers will ensure that all appropriate responsibilities and liabilities are transferred to the Academy Trust 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 the converting school have been identified.

## **TUPE Process**

- 2.8 TUPE consultation will be undertaken as part of the process and this is discussed at 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 in 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 some financial implications to the Council as a result of these Academy conversions. The Council will lose approximately £64,550 of Business Rates income, in a full year, due to both schools receiving mandatory 80% rate relief after converting to academy status. The Council currently has a number of traded \ statutory services that the schools buy into some of which may be at risk going forward after the schools convert.
- 3.2 For sponsored academies, the Local Authority must finalise closing balances within 4 months of the date of conversion and 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 balance position any deficit at the point of transfer remains the responsibility of the Local Authority and does not have to be paid by the new Academy Trust.
- 3.3 The governing bodies of the following schools have all applied to become converter academies and will join an existing Academy Trust.

### **Kew Woods Primary School**

The current Budget Plan approved by the Governing Body of Kew Woods Primary School shows projected balance of £67,650 at the 31<sup>st</sup> March 2018. The draft budget plan for 2018/19 shows projected balances of £70,080 at the 13th March

2019 however if the school converts before the 31<sup>st</sup> March 2019 then the school balances at the point of transfer may be higher.

### **Churchtown Primary School**

The current Budget Plan approved by the Governing Body of Churchtown Primary School shows an outturn balance position of £361,594 at 31<sup>st</sup> March 2018. The approved budget plan for 2018/19 shows projected school balances of £380,996 at the 31<sup>st</sup> March 2019 however if the school converts before the 31<sup>st</sup> March 2019 then the school balances at the point of transfer may be higher.

- 3.5 For Converter Academies, the Local Authority must finalise closing balances within 4 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 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. The schools currently 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 the new Academies may buy back, but this could be a further loss of income to the Council.

## **4. Timetable**

- 4.1 A date for conversion has not yet been agreed.