

Report of the Sufficiency and Participation Lead

Report to Director of Children & Families

Date: 20th August 2019

Subject: Commercial Transfer Agreements – Holy Rosary and St Anne’s Catholic Primary School, Immaculate Heart of Mary Catholic Primary, St Augustine’s Catholic Primary, Sacred Heart Catholic Primary, St Paul’s Catholic Primary and St Urban’s Catholic Primary conversion to St Gregory the Great Catholic Academy Trust



Are specific electoral wards affected?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
If yes, name(s) of ward(s): Moortown, Chapel Allerton, Gipton and Harehills, Kirkstall		
Has consultation been carried out?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Are there implications for equality and diversity and cohesion and integration?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Will the decision be open for call-in?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Does the report contain confidential or exempt information?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
If relevant, access to information procedure rule number:		
Appendix number:		

Summary

1. Main issues

- The Project Team (including Children’s Services, Legal Services and PPPU) have negotiated six Commercial Transfer Agreements (“CTA”) between (1) the Council; (2) The Governing Bodies of each of Holy Rosary and St Anne’s Catholic Primary School, Immaculate Heart of Mary Catholic Primary School, St Augustine’s Catholic Primary School, Sacred Heart Catholic Primary School, St Paul’s Catholic Primary School and St Urban’s Catholic Primary School (“Governing Bodies”) and (3) St Gregory the Great Catholic Academy Trust (“The Trust”) and agreed a commercial position in preparation for the academy transfer on 1st October 2019. All issues have been resolved to the Project Team’s satisfaction and the formalisation of the CTA is recommended in preparation for the transfer of the school to Academy status.

2. Best Council Plan Implications (click [here](#) for the latest version of the Best Council Plan)

- Academy transfers are a statutory duty for which local authorities are to complete under the Academies Act 2010.

3. Resource Implications

- The City Council has incurred costs relating to legal, finance and project management. It should be noted that there is no DfE funding support for these costs. However, it has been agreed that the 6 Schools will reimburse £2,500 each towards the legal fees that have been incurred on this non-PFI school conversion.

Recommendations

It is recommended that the Director of Children & Families:

- a) Notes the negotiations held with Solicitors acting on behalf of the Governing Bodies and The Trust;
- b) Gives authority for the Commercial Transfer Agreements listed below to be executed and completed to enable 6 schools to open as academies on 1st October 2019 (or a later date if agreed between the parties).
 1. Between (1) the Council; (2) the Governing Body of Holy Rosary and St Anne's Catholic Primary School; and (3) St Gregory the Great Catholic Academy Trust
 2. Between (1) the Council; (2) the Governing Body of Immaculate Heart of Mary Catholic Primary School; and (3) St Gregory the Great Catholic Academy Trust
 3. Between (1) the Council; (2) the Governing Body of St Augustine's Catholic Primary School; and (3) St Gregory the Great Catholic Academy Trust
 4. Between (1) the Council; (2) the Governing Body of Sacred Heart Catholic Primary School; and (3) St Gregory the Great Catholic Academy Trust
 5. Between (1) the Council; (2) the Governing Body of St Paul's Catholic Primary School; and (3) St Gregory the Great Catholic Academy Trust and
 6. Between (1) the Council; (2) the Governing Body of St Urban's Catholic Primary School; and (3) St Gregory the Great Catholic Academy Trust.

1. Purpose of this report

- 1.1 The report provides a summary of negotiations to date, advises on issues and risks and requests the Director of Children and Families to:
 - 1.1.1 Notes the negotiations held with Solicitors acting on behalf of the Governing Bodies and The Trust;

- 1.1.2 Approve the entering into and the signing of the Commercial Transfer Agreements required to enable each of Holy Rosary and St Anne's Catholic Primary School, Immaculate Heart of Mary Catholic Primary School, St Augustine's Catholic Primary School, Sacred Heart Catholic Primary School, St Paul's Catholic Primary School and St Urban's Catholic Primary School (the "Schools") to open as academies on 1st October 2019 or such future date as agreed by the parties.

2. Background information

- 2.1 The Director of Children's Services received the Academy Orders enabling each of the Schools to convert to an Academy under Section 4 of the Academies Act 2010. The proposed conversion date is 1st October 2019 for each School.

3. Main issues

- 3.1 Under the Academies Act 2010, publicly funded schools in England may become Academies. Schools may be converted into academies by an Academy Order made under s4 of the Act, and on 2nd February 2019, the Director of Children's Services received an Academy Order enabling the school to convert.
- 3.2 As part of the conversion process, a Commercial Transfer Agreement (CTA) has to be entered into between the Academy Trust and Leeds City Council (if the Commercial Transfer Agreement is signed prior to the conversion then the Governing Bodies of the outgoing schools also joins into the Agreement).
- 3.3 The Commercial Transfer Agreement deals with the transfer of the assets, staff and contracts from the Council to the new Academy Trust (where applicable). When a community school converts to Academy status, the CTA provides for apportionments of payment of salaries, pension contributions, etc. and indemnities from both parties in relation to employment matters.
- 3.4 The standard form (which provides for extensive indemnities from the Council to the Academy) was modified in line with Children's Services policy to accept only the minimum obligations required under the Transfer of Undertakings (Protection of Employment) Regulations 2006 (known as TUPE) to pay staff up to the date of transfer and for any personal injuries prior to transfer.
- 3.5 On the basis that the six schools are Voluntary Aided Catholic schools, all of the staff are already employed by the Governing Bodies of the school, therefore these particular CTAs will not deal with the transfer of staff from the Council. It does, however, ensure that it is clearly documented that these liabilities sit with the Governing Bodies and not the Council and such liability should not fall on the Council on dissolution of the Governing Bodies on conversion and including an indemnity to the Council from the Trust in respect of the same.
- 3.6 It should be noted that it is not necessary for the Commercial Transfer Agreements to be entered into in order for the transfer to take place; however, it is in the Council's interests for the Agreement to be entered into to set out the formal transfer of the assets, contracts and staff (where applicable).

- 3.7 Key issues that have been agreed are:
- 3.7.1 What assets / contracts will transfer
 - 3.7.2 How historic liabilities will be dealt with
- 3.8 All of the contracts that the Council and the Governing Bodies currently have in place in respect of the School will be assigned to the Academy Trust where third party consent is not required, or where consent has been sought. Where consent is required but has not been granted prior to the conversion date, all parties should use their 'reasonable endeavours' to obtain the consent of other parties to the assignment and then assign or procure the Novation of that contract(s). SLAs that the Schools or Governing Bodies have with the Council do not transfer but in many cases the Trust will enter into replacement SLAs with the relevant Council department.
- 3.9 As the six Schools are Voluntary Aided RC schools, the freehold of the school site should be held by the Diocese of Leeds Trustee (the "**Diocese**") however this is not the case with four of the Schools therefore prior to conversion the freehold of those schools must transfer to the Diocese whilst the playing fields will be dealt with via a 125 year lease in line with legislation.

4. Corporate considerations

4.1 Consultation and engagement

- 4.1.1 It should be noted that the statutory consultation process is no longer required, as the Academies Act 2010 streamlined the process so that when there is a conversion from a single school into a single academy (rather than a merger), there is no longer the requirement to issue a closure notice, as the school converts to academy status rather than closing and re-opening as an academy.
- 4.1.2 All consultations regarding the proposed academy are undertaken by the Governing Bodies and it is for the Governing Bodies to decide upon a level of consultation which is deemed appropriate under the circumstances. However, it should be highlighted that there is no set guidance on how to quantify what appropriate consultation actually means in terms of duration and consultees. All interested parties should however, be provided with opportunity to respond and ask questions.
- 4.1.3 Whilst the Council has no ability or rights to prevent the conversion from taking place, a number of stakeholders within the have been consulted as part of the conversion process including Finance, HR and Built Environment teams within Children's Services and also Legal Services, City Development and Procurement and Commercial Services. The Director of Children's Services was made aware of the proposed conversion on receipt of the Academy Order on 2nd February 2019, and both the Executive Member for Children and Families and local Ward Members have been informed and are aware of the conversions.

4.2 Equality and diversity / cohesion and integration

- 4.2.1 The DfE have undertaken an Equality Impact Assessment in relation to the Academies Bill and have also completed a Race Impact Assessment in relation to the Academies Programme – both of these are publicly available on the DfE's website.

4.3 Council policies and the Best Council Plan

- 4.3.1 The 'Leeds for Learning' policy is an ambitious city-wide commitment to achieving a child friendly city that drives school improvement and reflects the new relationship with schools, the integrated children's services and the changes to national policy and funding.
- 4.3.2 The Council has a duty to promote high standards and champion educational excellence. The relationship between the Council and its schools must influence the city wide agendas such as 'improve attainment and close the achievement gap', 'improve attendance and develop positive behaviour' and to 'create a life ready for learning'; all of which are aspirations from the Children and Young People's Plan. We will continue to apply the cycle of monitor, evaluate, challenge and support with schools in order that they become strong and capable of contributing to the key priorities of the city.

Climate Emergency

- 4.3.3 Possible effects to the climate have been considered and no risks have been identified.

4.4 Resources, procurement and value for money

- 4.4.1 The City Council has incurred costs relating to legal, finance and project management. It should be noted that there is no DfE funding support for these costs. However, it has been agreed that the 6 Schools will reimburse £2,500 each towards the legal fees that have been incurred on this non-

4.5 Legal implications, access to information, and call-in

- 4.5.1 Legal implications are outlined above in 3.0 Main Issues.
- 4.5.2 This is an Administrative decision on the basis that there is little risk and that the transfer will proceed even if the Council does not enter into the Agreement. However, it is in the Council's interests for the Agreement to be entered into to set out the formal transfer of the assets, contracts and staff (where applicable), and to give the Council some protection against future claims
- 4.5.3 This report does not contain exempt information under Access to Information.

4.6 Risk management

- 4.6.1 Negotiations around the Commercial Transfer Agreement have been handled by procurement and contract specialists in Legal Services and Procurement and Commercial Services who have given appropriate due diligence and advice. No risks have been identified which have not been raised within the Bodies of the report. No future risks have been identified which are not mitigated through the CTA.

5. Conclusions

- 5.1 Under the circumstances, negotiations have progressed well and have been concluded – furthermore the relationship with the St Gregory the Great Academies Trust and their

advisors continues to be positive. Therefore the Commercial Transfer Agreement is agreed and ready for sealing/signing as appropriate.

6. Recommendations

6.1 It is recommended that the Director of Children & Families:

- a) Notes the negotiations held with Solicitors acting on behalf of the Governing Bodies and The Trust;
- b) Gives authority for the Commercial Transfer Agreements listed below to be executed and completed to enable 6 schools to open as academies on 1st October 2019 (or a later date if agreed between the parties).
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 4. Between (1) the Council; (2) the Governing Body of Sacred Heart Catholic Primary School; and (3) St Gregory the Great Catholic Academy Trust
 5. Between (1) the Council; (2) the Governing Body of St Paul's Catholic Primary School; and (3) St Gregory the Great Catholic Academy Trust and
 6. Between (1) the Council; (2) the Governing Body of St Urban's Catholic Primary School; and (3) St Gregory the Great Catholic Academy Trust.

7. Background documents¹

7.1 None.

¹ The background documents listed in this section are available to download from the council's website, unless they contain confidential or exempt information. The list of background documents does not include published works.