

REPORT FOR: CABINET

Date of Meeting:	7 April 2011
Subject:	Potential Conversion of Harrow's High Schools to Academy Status – Land and Assets Issues
Key Decision:	Yes (impacts upon more than 2 wards)
Responsible Officers:	Catherine Doran, Corporate Director Children's Services Andrew Trehern, Corporate Director Place Shaping
Portfolio Holder:	Councillor Brian Gate, Portfolio Holder for Schools and Colleges Councillor Thaya Idaikkadar, Portfolio Holder for Property and Major Contracts
Exempt:	No
Decision subject to Call-in:	Yes
Enclosures:	None

Section 1 – Summary and Recommendations

This report updates Cabinet on issues related to the potential transfer of 7 of Harrow's High Schools to Academy status since the previous cabinet report. It also seeks delegated authority (in the event that the Governing Body of any of those schools determines to enter a funding agreement with the Secretary of State and become an Academy) to complete any requisite transfers of land and enter a transfer agreement with the schools concerned.

Recommendations:

Cabinet is recommended to agree:

In the event of a decision of the Governing Body of any of the High Schools listed in this report agreeing with the Secretary of State to transfer to an Academy, Cabinet agrees the following:

1. The transfer of the individual school premises to the school on a long lease;
2. The Council to enter into a transfer agreement with the school in relation to assets, third party contracts, staffing and information transfer;
3. To grant delegated authority to the Corporate Director of Place Shaping in consultation with the Portfolio Holder for Property and Major Contracts to determine the terms of the land transfer based on the model lease issued by the DfE, including the extent of the school premises and licences for land outside of the lease arrangements;
4. Delegate authority to the Corporate Director of Children's Services in consultation with the Portfolio Holder for Schools and Colleges to determine the terms of the transfer agreement.
5. That the Council should offer services under Service Level Agreements (SLAs) to any transferring school. The terms upon which such services are provided to any such school are to be determined by the relevant Director for the service in question.

Reason: (For recommendation)

The reasons for the recommendations are set out in greater detail in the report. In essence, some or all of the Governing Bodies of the named High Schools may, during the month of May 2011, decide to become Academies and enter formal funding agreements with the Secretary of State. Given that those schools are currently indicating that, if they proceed, they will look to complete transfer before the end of the summer term, Cabinet is being asked to give approval to land and asset transfer, required under the Council's constitution and the Academies Act 2010, conditional upon the decisions of those Governing Bodies. This would enable officers and any schools so transferring to undertake the considerable amount of work that would be required, in the timescales envisaged, with the necessary Cabinet authority.

Recommendation 5 (SLAs) simply authorises officers to negotiate the **terms upon which any services are provided to** any transferring school.

Section 2 – Report

Introduction

At its meeting on 17th March, Cabinet considered a paper from the Director of Children's services setting out a number of issues and implications relating to the possible transfer of certain Harrow High schools to Academy status under the Academies Act 2010. Cabinet agreed that paper and the report set out the process that any school considering transferring status would need to follow. A likely timetable of activities was also set out in the paper. That report also identified that a further decision would be required by Cabinet to enable the Council to enter land and commercial transfer agreements with any schools that decided to become Academies.

Background

The Governing Bodies of 7 High Schools (namely Bentley Wood, Canons, Harrow High, Hatch End, Nower Hill, Park and Rooks Heath) have now formally determined to investigate a transfer to Academy status. The next formal decision that those Governing Bodies will take will be whether or not to transfer to Academy status. It is likely these decisions will be taken by the schools on different dates during the month of May 2011. As described in the previous Cabinet report, in the event that any of those schools do decide to transfer a considerable amount of work will be required by the Local Authority and the schools in question to facilitate a smooth transfer prior to the end of the Summer term.

At the date of drafting this report, each of the schools has commenced the required consultation process, running from 7th March to 4th April. Harrow Council is using its best endeavours to ensure a wide civic debate on this important issue, ensuring that parents, pupils and communities are encouraged to have their say and have access to a wide variety of resources and views on the issue. Officers and members have attended public meetings for all governors, held conversations with concerned staff and their representatives, as well as with the schools concerned, to make clear the process and the various responsibilities that exist. The Council's website and Communications activities have also been used to encourage widespread involvement across communities. Members, MPs, staff, community organisations and the Youth Parliament have all been sent copies of, or provided with access to, the consultation documents and encouraged to respond. It is currently anticipated that each school will collate responses that are specific to their own decision. One school may collect and collate generic response to the Academy issue and then provide those to all the other schools as well. Governing Bodies will want to carefully consider the product of the consultation in making their decisions. The ultimate decision however is one for the Governing Bodies concerned.

All schools have stated that if they decide to transfer, it will be prior to the start of the Autumn term 2011. Council officers have carried out preliminary work on the basis that transfer of 7 schools may happen. It has been a careful balancing act between doing just enough work to enable deadlines to be met if schools decide to go forward, without over committing resources on issues that may not be needed if Governing Bodies decide not to proceed. As set out

in the previous Cabinet report, officers have been developing co-ordinated work streams on:

- Consultation and communications e.g. ensuring Harrow communities are aware of the consultation process
- Staffing and pensions e.g. ensuring correct data is held on workforce issues before any possible TUPE transfer consultation processes started
- Land and property e.g. investigating title and understanding any particular issues for individual schools around shared use, community use, playing fields, building conditions, etc.
- Finance e.g. modelling what likely financial implications are of transfer of all or some of the schools
- Service Level Agreements e.g. clarifying what any Academy might wish to 'buy back' from the Local Authority, and investigating how best to organise and offer new services. The Council has the power to provide a range of services to any new Academy school under S.1. of the Local Authorities (Goods and Services) Act 1970.
- Third party contracts e.g. identifying the contracts that exist, that need renegotiation, novation or termination and re-letting
- Data and information transfer issue e.g. identifying protocols for effective and lawful transfer of a range of sensitive data
- Broader corporate implications for the Council e.g. working through what some of the broader policy and organisational impacts might be if a significant number of schools decided to transfer

Briefings have been provided to all members of the Council on this important issue and a small project team has been established to manage the Local Authority work involved.

Land and asset issues

In the event that any school does decide to become an Academy, the Academies Act (and related guidance) requires the Local Authority, the transferring school and the new Academy Trust to enter a transfer agreement. The Department for Education (DfE) has provided a model document which covers issues such as transfer of non-land assets, contracts, staff and information as well as issues around warranties and indemnities expected in the transfer of a sizeable going concern. Where any new Academy 'buys back' services from Harrow Council the terms of supply of those services will be enshrined in a legally binding Service Level Agreement.

The DfE has also provided a model 125 year lease to transfer the school premises, as defined by the Act. The act requires the Local Authority to transfer any land and buildings used exclusively by the school. In the event that the school and the Local Authority cannot agree on the terms of the lease, including the extent of the school premises, the Secretary of State has power to compel the transfer of land. Legal Services are currently preparing site constraints reports in respect of all the schools which will be used to decide on the land to be transferred in consultation with the schools.

For the purpose of clarity, should any of the Governing Bodies decide not to transfer, then the authority given by Cabinet will be voided and those schools remain community maintained schools as at present.

In order to enable officers to progress with the necessary work and negotiations, Cabinet authority is sought prior to the schools making final decisions. It is proposed that delegated authority is given to officers in consultation with relevant portfolio holders to deal with site specific issues arising on a school-by-school basis. By way of illustration, the type of local level land issues anticipated to arise for each school might include shared land use, community uses, access ways, how to deal with any caretakers houses, licences to use off site playing fields and dealing with any restrictive covenants on the land.

Financial Implications

There are a range of financial implications and risks to the Council should the schools decide to convert to Academy status.

The transfer of the seven school premises on a long lease would remove these assets from the Council's balance sheet. The responsibility for maintaining the premises would also transfer including the liability for any back log maintenance.

Following conversion, non-teaching staff would continue to be members of Harrow's Local Government Pension Scheme. The impact on the pension scheme is being determined and will be considered by Licensing and General Purposes Committee on 11 April 2011. All liabilities in respect of the Teachers' Pension Agency would transfer to Academies.

Currently the Council provides services to the seven schools through a range of service level agreements that earned the Council income totalling £1.6m in 2010/11. The Academies have stated their intention to continue to purchase these services in 2010/11 where possible, however there may be circumstances where services can not be provided and going forward there is no certainty that the Academies will not transfer to alternative providers. If schools were to cease purchasing Council services there is a potential loss of income which will have budget implications for the Council, especially where the Council employ staff to provide these services.

Only schools with a deficit less than £100k are able to apply for Academy status and if a school has a deficit at the time of conversion this would transfer to the new school. On conversion an Academy will cease to receive its school budget from the Council but will instead receive funding directly from central government. The Council has three months in which to finalise the school balances that will transfer to the Academy. The Council has to ensure that all contracts and liabilities that relate to the schools are transferred to the new Academies as any liabilities arising after 3 months would fall on the Council. A number of schools have loans in respect of energy efficiency measures that would need to be considered as part of the conversion.

Each school is eligible for £25k funding from the DfE to support the cost of conversion however there is no additional funding to assist the Council with conversion costs. The project management cost of conversion is currently estimated at £50k and this expenditure can be funded from the 2009/10 unspent carry forward. Costs will be recovered from the schools where possible and other conversion costs will be managed within existing budgets where possible.

Performance Issues

Responsibility for school improvement and attainment transfers to the Academy on conversion. However, the local authority will retain some responsibility for overall performance in the local are and will need to work in partnership with all local schools to achieve this. This is an important element of the negotiations that have begun with the 7 schools concerned.

Environmental Impact

There are no specific environmental impacts regarding the transfer of the schools to the individual Academies. From the date of transfer the schools will be responsible for the management of the site which the Council would hope that they would continue on a responsible environmental basis.

Risk Management Implications

The programme of work around Academies has been structured using sound project management approaches including the identification and management of key risks and issues. The reason for seeking this conditional agreement and delegated authority is to reduce the risk to the envisaged timetable inherent in waiting until June Cabinet as set out in the report. Full project documentation including an up-to-date risk register are maintained by the project team.

Equalities implications

There are potential equalities implications in terms of service provision once schools have become Academies (in issues such as admissions, exclusions and special needs for example) as well as the potential equalities implications in relation to any staff transfer . The Council and schools are working together closely to ensure that equality issues are identified and that Governing Bodies are made aware of these before making a final decision.

Corporate Priorities: Supporting vulnerable people

Section 3 - Statutory Officer Clearance

Name: Emma Stabler	<input checked="" type="checkbox"/>	on behalf of the Chief Financial Officer
Date: 24.03.11		
Name: Sarah Wilson	<input checked="" type="checkbox"/>	on behalf of the Monitoring Officer
Date: 24.03.11		

Section 4 – Performance Officer Clearance

Name: David Harrington	<input checked="" type="checkbox"/>	on behalf of the Divisional Director Partnership, Development and Performance
Date: 24.03.11		

Section 5 – Environmental Impact Officer Clearance

Name: Andrew Baker	<input checked="" type="checkbox"/>	on behalf of the Divisional Director (Environmental Services)
Date: 24.03.11		

Section 6 - Contact Details and Background Papers

Contact: Academies Project team: 020 8420 5248

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David Harrington: David.Harrington@harrow.gov.uk

Background Papers: Cabinet report – March 2011

**Call-In Waived by the
Chairman of Overview
and Scrutiny
Committee**

NOT APPLICABLE

[Call-In applies]