

Cabinet Member Briefing Note

Orchid Vale Primary School Academy Conversion

To: Cabinet Member for Finance, Education and Skills

Date: 11th May 2020

Author:	Head of Property Assets
Wards:	Priory Vale
Parishes Affected:	Haydon Wick Parish Council

1. Purpose and Reasons

- 1.1 To authorise the suite of contract documents required to enable the conversion of Orchid Vale Primary School to Academy status as part of The Parks Academy Trust.
- 1.2 The current delegated authority for the Corporate Director of Children's Services (Paragraph 303 of the Scheme of Delegations) does not refer to Academy conversions. Officers are seeking to authorise the completion of the suite of contract documents under the Articles of the Constitution.
- 1.3 The proposal supports Priority Two: Offer education opportunities that lead to the right skills and right jobs in the right places.

2. Recommended Action to be taken by Officers Under Delegated Powers

Recommended that:

- 2.1 The Corporate Director for Children's Services, in consultation with the Chief Legal Officer and the Corporate Director of Finance and Assets, will exercise his authority (Paragraph 14.06 of the Articles of the Constitution) to enter into all necessary commercial and contract agreements on such terms that are agreed by the Chief Legal Officer.
- 2.2 The Head of Property Assets in consultation with the Chief Legal Officer and the Corporate Director of Finance and Assets (S151 Officer), will exercise his delegated authority (Paragraph 43 of the Council's Scheme of Delegations, Part 8 of the Constitution) to grant a 125 year lease to The Parks Academy Trust. The Lease will be on such terms and conditions as are required by the Head of Property Assets and the Chief Legal Officer in order to protect the Council's interests.

3. Detail

- 3.1 Under the Academies Act 2010 and subsequent revisions, the Local Authority (LA) and Governing Body has a duty to facilitate conversion where there is an Academy Order in respect of the school. An Academy Order in respect of Orchid

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Vale Primary School ('OVPS') was issued on 18th March 2019 and is attached at Appendix One.

- 3.2 OVPS initially looked to convert in 2019 but due to a change in leadership at the school decided to delay and is now seeking to become an Academy school as part of The Parks Academy Trust ('TPAT') on the 1st June 2020.
- 3.3 OVPS is part of the Swindon Schools PFI contract and to enable these conversions to take place the LA, the Governing Body of the existing school, the Academy Trust, the Department for Education (DfE) and where appropriate the PFI (Private Finance Initiative) Contractor must enter into a suite of contracts to reflect the schools change in status and transfer the assets required for the TPAT to operate the school, including but not limited to, the following:
 - 3.3.1 The Commercial Transfer Agreement (CTA) allows for the transfer of staff, assets and contracts held by the Governing Body and the LA in respect of the converting school to the Academy Trust and sets out responsibilities in relation to these for respective parties once the school converts.
 - 3.3.2 Deed of Variation to the Swindon PFI Project Agreement to recognise the schools' change in status and to comply with the requirements of the PFI Funders.
 - 3.3.3 Schools Agreement which replaces the existing Governing Body Agreement so that the Academy Trust is obliged to continue to make financial contributions, which were required to be made under the Governing Body Agreement in relation to the running of the School.
 - 3.3.4 Principal Agreement providing an indemnity for Swindon Borough Council from the DfE in respect of some of the payment liabilities of the Academy Trust in the event of non-payment by the Academy Trusts.
 - 3.3.5 Lease to grant 125-year leasehold interest in the site to the Academy Trust.
- 3.4 The remaining schools within the Swindon Schools PFI contract have already joined larger multi academy trusts. The above documentation for OVPS will be in line with the others that the LA has already completed.
- 3.5 There is a directive from the DfE for the Council to facilitate the school's academy conversion by the 1st June 2020. To facilitate this, officers are recommending that the contract documentation be agreed by the Corporate Director of Children's Services under the authority permitted by paragraph 14.06, Part Two of the Constitution.

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3.6 The following ward members have been consulted on the recommendations of the report and their responses summarised below:

3.6.1 Councillor Malcolm Davies – no response received

3.6.2 Councillor Emma Faramarzi – no response received

3.6.3 Councillor Vinay Manro – no response received

3.7 Parish was notified on the 29 April 2020 of the school's conversion

4. Alternative Options

4.1 None, the LA has an obligation to facilitate the conversion under the Academies Act 2010.

5. Implications, Diversity Impact Assessment and Risk Management

Financial and Procurement Implications

5.1 There are no financial consequences to the PFI financial position in respect of OVPS transferring to Academy, as the terms of the contract are unchanged. The LA will continue to make Unitary Charge payments to the PFI contractor, will recover contributions from the School towards service costs in accordance with Schools Agreements, and indemnified by the DfE within the Principal Agreement. Future contributions will be revised in accordance with the terms of the PFI contract to reflect appropriate cost sharing where school expansion or other changes are required.

Legal and Human Rights Implications

5.2 Legal and Human Rights implications have been fully taken into account in the preparation of this report. It is considered that the recommendations of this report are compatible with Convention Rights.

Climate Change Impact

5.3 The proposals would not bring a change in service delivery and Officers believe that there is no expected impact on the Council's carbon footprint.

All Other Implications (including Staff, Sustainability, Health, Rural, Crime and Disorder)

5.4 Staff will be transferred pursuant to the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended (TUPE) to the new Academy Trust

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as part of the conversion process. There are no issues regarding sustainability, health, rural crime and disorder to be considered as part of this paper.

Diversity Impact Assessment

- 5.5 The decision recommended in this paper relates to the implementation of national legislation described in The Academies Act 2010 and subsequent amendments. The Department for Education has evaluated the Act's impact on equality and the assessment is available from the DfE's website.

Risk Management

- 5.6 Delays in the conversion of the school present a reputational risk to the Council.

6. Consultees

- 6.1 The Corporate Director of Finance and Assets (s151 officer) and Chief Legal Officer (Monitoring Officer) are consulted in respect of all reports.

7. Background Papers

- 7.1 None

8. Appendices

- 8.1 Appendix One: Academy Order

9. Declarations of Interest

- 9.1 Cabinet Members are reminded to consider whether they have any known interests in any of the matters referred to in this Briefing Note. If such an interest exists this should be declared to the Monitoring Officer (or Committee and Member Services Manager), and they should take no part in the consideration of the Briefing Note and should refer the Briefing Note to the Leader of the Council instead for consideration.

10. Sign-off

- 10.1 The Cabinet Member is requested to respond with 5 days of the date of this report (by 18th May 2020).
- 10.2 The Cabinet Member is requested to indicate one of the following responses to the Recommendations set out in Section 2 of this report:

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Note and support the proposed action to be taken under delegated authority –

Yes / No

Note and request the proposed action be reconsidered – Yes / No

Reasons for Reconsideration:

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Request Report be Referred to Cabinet - Yes / No

NB To protect against identity theft, Cabinet Member's signatures will be redacted on public versions of the signed Briefing Note.

Date11th May 2020.....

Signed Signature redactedCabinet Member