

# Birmingham City Council

## Report to Cabinet

27<sup>th</sup> July 2021



**Subject:** SKILTS SCHOOL CONVERSION FROM COMMUNITY SPECIAL SCHOOL TO ACADEMY STATUS

**Report of:** Kevin Crompton  
Interim Director of Education & Skills

**Relevant Cabinet Member:** Councillor Jayne Francis: Education, Skills & Culture  
Councillor Kate Booth, Children's Wellbeing

**Relevant O &S Chair(s):** Councillor Narinder Kooner: Education and Children's Social Care

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Are specific wards affected?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No – All wards affected
If yes, name(s) of ward(s): Glebe Farm and Tile Cross		
Is this a key decision?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
If relevant, add Forward Plan Reference: 009054/2021		
Is the decision eligible for call-in?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Does the report contain confidential or exempt information?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
If relevant, provide exempt information paragraph number or reason if confidential:		

### 1 Executive Summary

- 1.1 Academy conversions are commenced by Order of the Secretary of State; the resulting process requires the property occupied by the school, together with all relevant and associated rights, liabilities and staff, to be transferred to Forward Education Trust. In order to achieve this, the City Council is required to grant a 125 year lease and also complete a Commercial Transfer Agreement (CTA).

- 1.2 This report seeks approval for the execution and completion of the legal documentation associated with this arrangement, substantially in the form of standard template documents required by the Department for Education (DfE)
- 1.3 To ensure that Members are fully aware of known financial implications associated with the conversion of Skilts School. Specifically, that under the current legislation the cumulative projected deficit falls on the Local Authority to fund.

## **2 Recommendations**

That Cabinet;

- 2.1 Notes that Skilts School is proposing to convert to Academy status on or after 1st September 2021 and that Skilts School will be a Sponsored Academy and the sponsor is Forward Education Trust.
- 2.2 Notes that Skilts School is relocating to the former Hallmoor School site on Hallmoor Road, Kitts Green, Birmingham B33 9QY effective 1<sup>st</sup> September 2021. The school will be known as Lea Hall Academy and this is the site that will be leased to the Trust.
- 2.3 Notes that at the point of conversion Skilts School will have an estimated deficit balance of £565,828 and the deficit balance will remain with the City Council, as outlined in the DfE Guidance entitled 'Treatment of surplus and deficit balances when maintained schools become Academies'.
- 2.4 Authorises the grant and completion of the lease for Skilts School, to Forward Education Trust for 125 years substantially in the form of the model lease produced by the DfE at a peppercorn rent. The school site is identifiable as shown on the accompanying redline plan (see **Appendix 1**).
- 2.5 Authorises the completion of a Commercial Transfer Agreement to Forward Education Trust relating to the transfer of staff under the Transfer of Undertakings (Protection of Employment) Regulations 2006 and assets to the Academy Trust.
- 2.6 Authorises the City Solicitor to negotiate, execute and complete all necessary documents to give effect to the above recommendations.

## **3 Background**

- 3.1 The Academies Act 2010 empowered the Secretary of State for Education to create Academies through Academy Orders.
- 3.2 Skilts School is a Community Special School at present. The school was judged inadequate by Ofsted on 5<sup>th</sup> December 2017 and is eligible for intervention under section 62 of the 2006 Education and Inspections Act. Schools judged to be failing are ordered to convert to Academy Status to allow underperformance to be tackled swiftly.

- 3.3 A Directive Academy Order was issued to Birmingham City Council and the Governing Body of the School by the Secretary of State under section 4 (A1) of the Academies Act 2010 on 5<sup>th</sup> February 2018 requiring the school to convert to an Academy. The school intends to convert on or after 1st September 2021.
- 3.4 The school site is currently located outside of the City boundary in Redditch. Owing to the condition of the current school and the location, it was agreed that the school would relocate to a new site within the City boundary. The School Organisation Process for the relocation of the school was undertaken in 2019 and the decision was made to relocate the school to a new purpose-built school in the Glebe Farm and Tile Cross Ward as noted in 2.2 above. The relocation will take place on 1<sup>st</sup> September 2021 and the current site in Redditch will remain with the Local Authority.
- 3.5 The land and assets to be occupied and used by the school are currently owned by the City Council. In order for the Academy to operate, a lease is to be granted to the Academy Trust substantially in the form prescribed by the DfE – this requires the lease to be for 125 years and at a peppercorn rent.
- 3.6 In addition, members of staff that are currently employed by the City Council are to transfer under the Transfer of Undertakings (Protection of Employment) Regulations 2006 to the Academy Trust as well as the assets of the school under a Commercial Transfer Agreement (CTA).
- 3.7 The statutory TUPE consultation process which needs to take place prior to the proposed conversion date is being managed and coordinated by the HR Team. The consultations for Skilts School took place with Unions on 21<sup>st</sup> June 2021.

#### **4 Options considered and Recommended Proposal**

- 4.1 A do-nothing option is not available, as the Secretary of State has made an Academy Order which requires Skilts School to become an Academy. The recommendation is to allow the completion of the transfer of Skilts School in accordance with the Academy Order granted by the Secretary of State.

#### **5 Consultation**

- 5.1 Ward Councillors for the Glebe Farm and Tile Cross ward have been consulted for which no comments were received.

#### **6 Risk Management**

- 6.1 There is always a risk with Academy Conversions whereby any delay to the conversion process can result in schools developing or increasing a deficit position which would then be picked up by the Local Authority at the point of conversion; however, Skilts School currently has a deficit balance as noted in 2.3 of this report.
- 6.2 There is always a risk with Academy Conversions whereby any incoming Academy Trust may request additional indemnities for equal pay claims, in

excess of the indemnities contained within Birmingham City Council CTA template. Any such requests are reviewed in each individual case and any agreement does not represent a precedent or change to the Birmingham City Council CTA template.

## **7 Compliance Issues:**

### **7.1 How are the recommended decisions consistent with the City Council's priorities, plans and strategies?**

7.1.1 The Academies Conversion Programme is a Central Government Policy.

### **7.2 Legal Implications**

7.2.1 The Secretary of State for Education has issued the Academy Order under section 4 of the Academies Act 2010. Section 5B of that Act requires all concerned parties, including the local authority, to take all reasonable steps to facilitate the conversion of the school into an Academy.

7.2.2 Although the Director for Education & Skills has the delegated authority under the Council's constitution to authorise the grant of long leases, Commercial Transfer Agreements and other ancillary documentation relating to the changing status of maintained schools to Academies, the value of the estimated deficit balance at Skilts School means that Cabinet must be the decision-maker for all matters relating to this school's conversion.

### **7.3 Financial Implications**

7.3.1 At the point of conversion, 1<sup>st</sup> September 2021, it is estimated that Skilts School will have an estimated deficit balance of £565,828 as outlined in 2.3. The Local Authority has worked with the school and the IEB to stabilise and reduce the deficit position Under the DfE guidance relating to directed Academy conversions, the City Council will retain this balance. The final deficit amount to be funded will be confirmed after conversion has taken place, following the usual 3 months financial close-down process. The deficit will be funded from a budget held by Education and Skills for this purpose. This budget sits within the High Needs Block and covers 'Special Schools in Financial Deficit'. There is also a budget set within the MTFs for specific school deficits. Ongoing there's a twice termly meeting looking at schools in financial difficulty, therefore horizon scanning takes place and future budget requirements will be planned within the MTFs and/or the Education and Skills budget.

7.3.2 The recommendations in this report will enable Skilts School to lease land and buildings from the City Council at a peppercorn rent as required by the DfE. Resourcing for corporate legal costs and potentially external legal costs arising from this conversion and the wider Academy conversion programme

will be met from school contributions and earmarked resources within the Education Infrastructure Budget for the purposes of the Academy conversion process.

- 7.3.3 In accordance with the Academy Conversion Charging Policy schools pay a contribution towards the legal costs associated with the conversion of the school and owing to the nature and volume of work anticipated for this conversion the contribution for Skilts School, as a Community School is £7,875.00.

#### **7.4 Procurement Implications (if required)**

- 7.4.1 Not applicable

#### **7.5 Human Resources Implications (if required)**

- 7.5.1 The Statutory TUPE consultation process is being undertaken by the Schools ER Team as outlined in 3.7.

#### **7.6 Public Sector Equality Duty**

- 7.6.1 The Academies Conversion Programme is a Central Government Policy. An initial Equality Analysis was undertaken in February 2014 (EA000046) and the outcome indicated that a Full Equality Analysis was not required. The Central Government Policy has not changed since the initial Equality Analysis and it has been decided that the recommendations in this report do not require a full equality impact assessment.

### **8 Appendices**

**Appendix 1** – Redline Plan of Skilts new site (Lea Hall Academy)

**Appendix 2** – Academy Order – Skilts School

**Appendix 3** - Treatment of surplus and deficit balances when maintained schools become Academies

**Appendix 4** - Environment and Sustainability Assessment

### **9 Background Documents**

- 9.1 Relevant officer files.