

## Wiltshire Council

### Cabinet

17 May 2016

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**Subject:** **Transferring a Deficit into a Loan to enable a Maintained School to convert to an Academy**

**Cabinet Members:** **Councillor Laura Mayes - Cllr Laura Mayes, Cllr Dick Tonge**

**Key Decision:** **Yes**

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#### **Executive Summary**

This Cabinet report updates Members on the progress of maintained schools converting to academies and the potential role of the Local Authority in converting a current budget deficit into a formal loan to a maintained school, to facilitate their transition to become an academy.

#### **Proposal(s)**

That Cabinet

- Note the current position of Wiltshire schools converting to academies
- Delegate powers to the Associate Director, Finance to consider awarding loans to maintained schools to facilitate their conversion to become an academy.
- Authorise the Associate Director, Finance, to enter into appropriate formal arrangements for the award of a loan, where the maintained school currently is in a financial deficit position with the Local Authority and has an agreed recovery plan that extends beyond the standard 3-5 year recovery period. In all cases, loans will only be made following consultation with the Cabinet Member for Children's Services, Cabinet Member for Finance, Associate Director Law and Governance, Associate Director Commissioning Performance and School Effectiveness and in accordance with the requirements of the Local Government Act 1972.

#### **Reason for Proposal(s)**

Due to Wiltshire being a poorly funded authority for school funding, combined with the impact of the current demographics, a small number of Wiltshire schools are in a financial budget deficit position. All deficits are being managed in conjunction with the LA.

Budget deficits have proved a barrier to those schools converting to become an

academy, and leave the financial risk of the deficit with the local authority.

The purpose of this report is to provide members with background information and seek a decision regarding the conversion of these budget deficits into a formal loan.

**Carolyn Godfrey**  
**Corporate Director**

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1. Due to the national priority for a maintained school to convert to become an academy school, Wiltshire is set to see an increase in the number conversion applications in the next 3 to 4 years.
2. There are currently a number of Wiltshire schools operating with a financial budget deficit. The Local Authority has a duty to offer financial assistance to its maintained schools and currently 'cashflows' the deficit whilst the school works through an agreed Financial Recovery Plan over a 3 – 5 year period to repay the deficit.
3. Due to a number of factors including demographics, school funding reform and overall school funding, a small number of Wiltshire's maintained secondary schools are in a position where their Financial Recovery Plan is unable to be achieved within a five year period. However these schools are all keen to pursue academy conversion, and following the Chancellor of the Exchequer's budget statement that all schools will need to convert or have plans to convert by 2020, the Local Authority will need to work with these schools to facilitate conversion.
4. The purpose of this report is to seek authorisation to convert the budget deficits of schools into formal loans where the agreed recovery plan is outside of the normal parameters and may prove a barrier to conversion, to assist with the schools' conversion to academy status, whilst securing the Council's financial position.

#### **Relevance to the Council's Business Plan**

5. The Council is committed to provide opportunities for every child and young person to improve their attainment and skills so they can achieve their full potential. Securing the correct skills will ensure future employment opportunities are maximised.

#### **Main Considerations for the Council**

6. The proposals outlined will transfer the risks associated with a maintained school having a budget deficit into a formal loan agreement with the school and ensure that the school is able to convert from a maintained school to an

academy. Any risk of the local authority being forced to write off the budget deficit will be removed.

7. The adoption of the proposal will place the budget deficit into a formal loan arrangement.
8. Whilst there is a risk that the Academy may fail to repay the loan in accordance with the formal loan agreement, the immediate risk of the local authority being forced to write off the budget deficit, will be removed. The LA are still waiting for legislation to underpin central government's policy of all schools becoming academies, and the statutory treatment of existing deficits and other liabilities under the new policy remains to be seen.

## **Background**

9. The table below sets out the current position of Wiltshire schools, with regard to the academy conversions.

	<b>Maintained</b>	<b>Academy</b>
Primary	160	48
Secondary	7	23
Special	4	2
<b>TOTAL</b>	<b>171</b>	<b>73</b>

10. The LA is not in a financial position to be able to write off the budget deficits for those schools currently operating a budget deficit. However, the LA is aware that a number of the schools are currently looking at academy conversion and Multi-Academy Trust (MAT) options. In order to facilitate the conversion and also to put the budget deficit onto a formal footing, transferring the deficit into a loan would provide an agreed and enforceable repayment plan between the school and the LA.

## **Overview & Scrutiny Engagement**

11. The local authority does not have financial capacity to write off the deficits and therefore the conversion of the deficit to a loan provides a formal certainty regarding the recovery of the outstanding funds.

### **Safeguarding Implications**

12. There are no safeguarding implications.

### **Public Health Implications**

13. There are no Public Health implications.

### **Procurement Implications**

14. There are no Procurement implications.

### **Equalities Impact of the Proposal**

15. There are no Equalities implications.

### **Environmental and Climate Change Considerations**

16. There are no Environmental and Climate Change implications.

### **Risk Assessment**

17. The awarding of loans to schools does come with various risks and appropriate due diligence will be required.

18. The Schools/Multi-Academy Trusts Business Plan must satisfy the EFA's funding requirements incorporating the repayment of the loan. The Business Plan will also be scrutinised by the Associate Director, Finance, annually.

### **Risks that may arise if the proposed decision and related work is not taken**

19. In the event that one of the maintained schools was to be classified as 'inadequate' by Ofsted, they would be forced to convert into an academy with the financial deficit returning to the local authority to be written off.

20. The financial budget deficit at a school would serve as a barrier to conversion which could force the school to take considerable financial actions to the detriment of the education of the pupils in these schools.

### **Risks that may arise if the proposed decision is taken and actions that will be taken to manage these risks**

21. Should the schools not be awarded loans, these schools would not be in a position to convert to become academy schools. The financial risk associated with these schools falling into an inadequate category has not been budgeted for and would present a financial risk and potential burden to the authority.

## **Financial Implications**

22. The Local Authority does not currently have the financial resources to offer loans to these schools and would therefore have to borrow funds in order to provide the loans. Loans would be secured through the PWLB (Public Works Loan Board).
23. Any loan would be offered to the school, incorporating the prevailing interest rate to ensure that the financial position of the Authority is not compromised.
24. The total value of the loans would be expected to total approximately £3m.
25. The EFA will not allow the schools to convert to become an academy unless the school can demonstrate an affordable Business Plan which incorporates the repayments in accordance with the loan agreements.
26. The repayment of the loans and security against default will be agreed with each conversion; however the length of the loan should not exceed 15 years. The Council will not charge an administration charge unless there is a default or rescheduled provision enacted.
27. Appropriate security for each formal loan will be considered on a case by case basis – see further Legal Implications section below

## **Legal Implications**

28. The successful implementation of this decision will entail close working between the Local Authority and the school, to formulate an appropriate loan agreement, enforceable in the eyes of the law.
29. S.111 of the Local Government Act 1972 grants the power to a local authority to do anything (including lending) which is calculated to facilitate or is conducive or incidental to the discharge of their functions, in this case the function is the provision of education. In addition, s. 6A of the Academies Act 2010 allows a local authority to give financial assistance to an academy. Therefore the Local Authority has the power to give a loan.
30. Appropriate security for each formal loan arrangement will be considered on a case by case basis. The Council has asked the Department for Education to underwrite all loans, since it is the funding body for academies. The Department is currently unwilling to give such a guarantee. Even in cases where a legal charge over academy property is possible, a legal charge will be of limited practical value to the Council. Legal and Finance are currently in further negotiation with the Department for Education and exploring remaining options to try to ensure that appropriate security is included in any formal loan. However, for certain converters, security may not be available.

## **Options Considered**

31. The only option to be considered is for the conversion of the current budget deficits at these schools into formal loan agreements. The financial risk transfers from the local authority to the academy schools. The local authority is simply facilitating the conversion process and placing the financial risk with the academy school.

## **Conclusions**

32. Formal loan agreements will be the only vehicle available to enable some Wiltshire schools to convert and become academy schools.

**Michael Hudson**

**Associate Director – Finance**

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