

DERBYSHIRE COUNTY COUNCIL**CABINET****5 August 2014****Report of the Strategic Director for Children & Younger Adults****Heritage High School Facilities Management Agreement – (Children and Young People)**

1. **Purpose of Report** To seek approval to terminate the Facilities Management Agreement for Heritage High School and take out an agreement limited to statutory maintenance only, to bring the school into line with other Building Schools for the Future (BSF), non PFI, schools.
2. **Information and Analysis** Heritage High School moved into new premises in January 2011. It was built as one of three sample schools under the BSF programme but, unlike the other two which were PFI schools, Heritage was a design and build project with ownership remaining with the Authority. A requirement of BSF funding was that long term maintenance of new facilities along PFI lines should be put in place. As a consequence the Authority entered into a Facilities Management Agreement (FMA) with the Derbyshire Learning and Community Partnership at a cost of £301,599.00 (excluding VAT and at current rates) per annum to ensure that the building is maintained to high standards. In addition, there is a payment to a lifecycle fund of £178,516 per annum to ensure funding for future maintenance requirements. These sums are funded partly by the school, based on pupil number and partly by the Authority. These sums are determined by a Governing Body Agreement that was entered into at the same time. Using current pupil numbers, in Financial Year 2014/15, the school has a liability for £323,079 per annum and the Authority's liability is £157,035, which covers payment of the costs of the FMA and the cost of the lifecycle fund.

These arrangements were agreed by Cabinet on 30 June 2009.

Due to the reduction in pupil numbers at Heritage High School and the subsequent reduction in funding, the school is facing a budget shortfall. With the demise of the BSF programme in its original form, Heritage is the only Authority school in the County which is included in this FM Agreement. Subsequent school projects have only been required to operate with an agreement covering statutory maintenance.

The proposal is to terminate the FMA, cease the lifecycle contributions and for the school to take out an agreement covering statutory maintenance. The cost of the termination under the contract drawn up on 23 July 2009 is £130,000. The sum comprises £45,000 compensation, £65,000 in legal fees for the LEP and associated partners and £20,000 for external legal advice on behalf of the Authority. The Authority's legal costs are subject to confirmation when the scope of the work is finalised. The cost of the statutory maintenance agreement would be £54,296.89 per annum plus a cost of £2,500 every 3 years and £6,727.50 every 5 years for periodic checks. Under this proposal, the school would become responsible for all other elements of maintenance.

It is estimated that these revised arrangements will save the school £268,782 per annum (based on the current rates) although it will assume financial responsibility for other maintenance tasks such as window cleaning and waste disposal. The authority will save £157,035 per annum on the same basis.

3. Financial Considerations

The cost of termination which is referred to above would be funded from the lifecycle fund which currently stands at £399,702. The balance of the lifecycle fund would be distributed based on the respective contributions made by the Authority and the school.

The cost of the statutory maintenance agreement would be met by the school. The additional maintenance required on the site would also be funded by the school.

4. Legal Considerations

The Facilities Management Agreement contains provisions for the termination of the contract. The Director of Legal Services will be involved in the termination of the FMA and amendment of the Governing Body Agreement with additional external legal advice being provided by Nabarro LLP, who were involved in the original BSF contractual documentation.

The FMA contains a notice provision in respect of termination of 3 months. MITIE have been contacted to request that they agree to a reduction in the notice period.

5. Human Resources Considerations

The termination of the FMA will require that three members of the caretaking staff who are current employees of MITIE will transfer under TUPE arrangements to the employment of the school.

An appropriate consultation process will take place with the staff concerned and their Trade Unions.

The three members of staff will transfer under their existing terms and conditions.

6. Other Considerations

In preparing this report the relevance of the following factors has been considered:- prevention of crime & disorder, equality of opportunity, environmental, health & human rights, human resources, property and transport considerations.

7. Is it necessary to waive the call-in period? No

8. Background Papers

These are held on file in the CAYA Development Section

9. Key Decision Yes

10. Strategic Director's Recommendations That Cabinet agrees that:

- 10.1.** the Authority terminates the Facilities Management Agreement in respect of Heritage High School at a cost of £130,000.
- 10.2.** the staff affected by the termination of the Facilities Management Agreement be transferred to the employment of Heritage High School
- 10.3.** contributions to the lifecycle fund end and that Heritage High School receives its share of the unused fund.
- 10.4.** the Governing Body Agreement with the school be amended as required to reflect the agreement to terminate the Facilities Management Agreement.

Ian Thomas
Strategic Director for Children & Younger Adults