

NORTH YORKSHIRE COUNTY COUNCIL

CHILDREN & YOUNG PEOPLE'S SERVICE

CORPORATE DIRECTOR'S MEETING WITH EXECUTIVE MEMBERS

17<sup>th</sup> December 2013

**FOREMOST SCHOOL**

1.0 PURPOSE OF THE REPORT

- 1.1 To seek the views of Executive Members on their preferred option to secure the future of Foremost School.

2.0 BACKGROUND

- 2.1 Foremost School opened in March 2012. This was achieved by transferring Baliol School, a North Yorkshire maintained residential school for boys aged 11-16 with behaviour, emotional and social difficulties, from Sedbergh, Cumbria to the site at Forest Moor, Darley.
- 2.2 Since the school opened there have been serious ongoing issues relating to the overall quality of educational provision and care of children and young people placed at the school. The school was judged "Inadequate" by an inspection by Ofsted in March 2013. This inspection covered both educational and residential care provision at the school. A second HMI Education Monitoring Inspection conducted in November 2013 judged that the school had not made enough progress to change the educational status, though some important improvements were noted. A simultaneous full inspection of residential provision by Ofsted judged the overall effectiveness of residential provision to be now adequate.
- 2.3 Since the inspection in March 2013, the local authority has worked intensively with the school and its governors to ensure that required improvements are effectively made. As indicated above, that work has made some impact but more progress is still required. At the same time, we have openly described parallel work to review the role of Foremost School in the context of our overall approach to the care and education of child with complex needs. In that context and following discussion with Executive Members, a "Discovery Day" was held on 29<sup>th</sup> October 2013 with senior representatives from the independent provider sector to help inform officers in developing options for the future of the school. There has subsequently been correspondence with those providers to clarify some issues.

2.4 Officers attended a meeting of the governing body on 15<sup>th</sup> November 2013, and afterwards a full staff meeting, at which it was explained that Executive Members are keen to consider a range of options for the future of the school. Depending upon the preferred option, there would be engagement and formal consultation with staff, parents and governors and interested parties. It was explained that necessary statutory and Council processes would be carefully followed in taking forward any proposals and that the local authority was keen to implement carefully managed change as soon as practicable.

2.5 Officers attended a second meeting of the governing body on 2<sup>nd</sup> December, 2013 to outline the five options presented in this report and to seek governors' initial views, which are included in section 5.0 of this report.

### 3.0 OBJECTIVES

3.1 It is essential that the local authority secures a sustainable, long term solution for the future of Foremost School and one which is sufficiently flexible to meet changing needs. The option which is adopted must meet the needs of children currently on roll and ensure stability for pupils in the future. It must enable the local authority to meet its statutory obligations and it must fit into the whole county pattern of provision for children with special educational needs. The preferred option must include transitional arrangements which take account of duties and obligations to staff.

3.2 Foremost School was established as a 40 place day and residential special school for boys aged 11-16 with statements of special educational needs (SEN) for behaviour, emotional and social difficulties (BESD). There are currently 18 pupils on roll, of which 7 are residential. Ordinarily we would have anticipated there to be a higher number of pupils on roll but the current difficulties at the school have led to alternative arrangements being made for some pupils who would otherwise have been placed at Foremost School and for others who have left the school.

3.4 The local authority has over time, made significant investment and changes to the provision of support for BESD available across the system. All of the specialist provision for BESD which was agreed as an outcome of the 2006 SEN/BESD review is now in place. This comprises 8 Enhanced Mainstream Schools (EMS) and 5 Pupil Referral Units (PRUs). There are more places purchased at Brompton Hall School, Scarborough than was the case in 2006. A post implementation review of the EMS and PRUs is currently underway and, looking to the future, it is reasonable to expect that this additional specialist provision and the outcomes of that review should mean that fewer places will be required at Foremost School to meet the needs for which it was established.

3.5 The local authority currently places a number of pupils with more complex needs, including 'high acuity' BESD and Autism, in independent residential schools outside of North Yorkshire. The intention would be to make provision for some pupils with this higher level of need at Foremost School. This would promote the strategic objective of keeping children and young people as close

to home as possible. It would also be likely to lead to an overall reduction in the cost of out of authority provision.

- 3.6 The specification for a procurement exercise, if that is the preferred option, would set out in detail the type of needs to be met in the school. Independent providers who attended the Discovery Day are confident that with effective leadership and management, and careful preparation, the school would be capable of meeting a wider range of needs than currently. This could include 52 week provision, potentially provision for a small number of pupils at KS2 and create local provision for girls.
- 3.7 It will be vital to the overall objectives to ensure that the number and type of places required by the local authority is accurately specified and that any contract which is let is significantly flexible in this regard. Failure to do so would place unrealistic expectations on other specialist provisions in the area and potentially have significant financial consequences.

#### 4.0 OPTIONS FOR THE FUTURE OF THE SCHOOL

Five options have been researched and considered for the future of the school. These are set out below.

##### 4.1 **Option 1: Continue with existing service**

Under this option the local authority would continue to maintain Foremost School as a maintained special school. It would continue to be funded in line with the current arrangements for both revenue and capital. Admissions would continue to be determined by the local authority on the current basis. The governing body would retain its existing responsibilities. The site would continue to be owned and maintained by the local authority.

##### 4.2 **Option 2: Academisation**

Under this option the governing body would approach the Department for Education (DfE) to express an interest in becoming either a standalone or, more likely, a sponsored Academy. The sponsor would be one approved by the DfE. The school would become an independent school with a funding agreement with the DfE and whose funding would come directly from central government. An Academy trust would be formed (either as a single trust or as part of a multi academy trust). The governing body would be reconstituted. Staff would be transferred to the new employer in accordance with the provisions of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE). The site and building would pass to the Academy trust on the basis of a 125 year lease. Responsibility for capital maintenance would pass to the Academy trust. Normally a school converting to Academy status would transfer on the basis of the existing admission numbers, gender or level of need. Admissions would need to be negotiated with the Academy trust by the local authority. Any future change to the school's characteristics would subsequently be amended through a variation to the funding agreement (where necessary) or determined by the Academy trust.

#### 4.3 **Option 3: Maintained Special School with Management Contract**

Under this option the school would continue to be maintained by the local authority as a maintained special school. The governing body would continue to have responsibility for the school's performance. The governing body would conduct an appropriate procurement exercise and enter into a contract for the day to day management and running of the school with a third party contractor which could be a school improvement company (profit-making or otherwise) or educational trust. The contracted service could include the provision of the headteacher and full leadership team. The governing body would be responsible for managing the performance of the contractor. The local authority would continue to have responsibility for revenue and capital funding. It would continue to determine admissions to the school.

#### 4.4 **Option 4: Procurement of a Contract for service with land included**

This involves the closure of the school followed by contracting with a third party provider for the provision of educational placements tied into the lease or sale of the site with the market value sale price or rental costs offset by the costs of the placements over a set term.

It would be necessary to undertake formal closure proposals for the school as a maintained school. The closure proposal would run in parallel with a procurement exercise to secure an independent provider who would continue to operate the site as an independent special school which would be contracted to provide a number of places for North Yorkshire children. The school would no longer be maintained by the local authority and the governing body would be disestablished. Staff would be transferred to the new employer under TUPE arrangements. Existing and future pupils would be provided with places through a contract between the local authority and the independent provider.

The two variants of this option are that the land could either be leased or sold to the third party provider as follows:

##### (a) Lease

A lease could be entered into in parallel with the contract for services. If the two agreements were integrated there could be some offsetting of the value of the lease which could be reflected in the cost of places to the local authority.

##### (b) Sale

The land could be sold to the third party provider with some offsetting of the capital value of the transfer tied to the charging schedule for the provision of places for North Yorkshire children. Under this option the local authority would agree to dispose of the freehold of the site to the independent provider. Approval would be required to the disposal in accordance with the local authority's property procedure rules. As a school site, approval would also be required from the Secretary of State in accordance with the regulations

around the protection of playing fields and the provision of land for Academies.

It is important to note that any arrangement whereby the site were sold or let below market value raises concerns from both the requirements of Section 123 of the Local Government Act 1972 concerning transactions at an undervalue (with the £2 million de minimus) and State aid rules. Further consideration would need to be given to this option before proceeding.

Under both variants it is assumed that the independent provider would be permitted to accept pupils from outside North Yorkshire including children whose needs may be different from those being educated or cared for on behalf of the local authority. Admission to the school would be determined by the terms of the contract and the SEN Code of Practice. Performance management would be monitored through the terms of the contract. The local authority would become the contract manager.

#### **4.5 Option 5: Procurement of a Contract for service with separate land disposal**

This involves the closure of the school followed by a separate contract for the provision of placements and a separate sale or lease of the site at market value to either the third party provider or an entirely separate body.

It would be necessary to undertake formal closure proposals for the school as a maintained school. The closure proposal would run in parallel with a procurement exercise to secure an independent provider who would be contracted to provide a number of places for North Yorkshire children. The school would no longer be maintained by the local authority and the governing body would be disestablished. Staff would be transferred to the new provider via TUPE arrangements. Existing and future pupils would be provided with places through a contract between the local authority and the independent provider.

The two variants of this option are that the land could either be leased or sold as an entirely separate transaction to the procurement process as follows:

##### **(a) Lease**

The lease could be offered at market value to the third party provider separate from the procurement process in respect of the contract for services. Alternatively, the land could be leased to an entirely separate body than the third party provider with the third party provider providing the services at another location.

##### **(b) Sale**

The land could be sold at market value to the third party provider separate from the procurement process in respect of the contract for services. Alternatively, the land could be sold to an entirely separate body than the third

party provider with the third party provider providing the services at another location.

Under this variant the local authority would agree to dispose of the freehold of the site at market value. Approval would be required to the disposal in accordance with the local authority's property procedure rules. As a school site, approval would also be required from the Secretary of State in accordance with the regulations around the protection of playing fields and the provision of land for Academies.

## 5.0 OPTIONS APPRAISAL

- 5.1 An options appraisal has been undertaken by officers. A number of weighted criteria were considered and scored. A copy of the options appraisal summary is attached at Appendix 1. A commentary is provided below.

### **Option 1: Continue the existing service**

- 5.2 The school remains in Special Measures and recent improvements, especially in care arrangements, have to be seen in the context of very low numbers of pupils attending, additional investment of officer time, and substantial additional financial support which the school continues to receive. It has not proved possible to secure the leadership and management of the school through recruitment of an effective headteacher. The governors' initial view is that this is not a preferred option.
- 5.3 This is not an option recommended to Members.

### **Option 2: Academisation**

- 5.4 Whilst the appraisal indicates that this option would significantly meet many of the local authority's requirements it is not favoured by governors in their initial view. Furthermore in discussions with the DfE Academies Performance and Brokerage Division on 30<sup>th</sup> September 2013 it was clear that, despite the school being in Special Measures, there is no current interest from Academy sponsors. The governing body has not been approached by the DfE or the Academy Broker asking them to consider academisation. Conversion to Academy status would be a decision by the DfE supported where necessary by a governing body expression of interest. The local authority has no decision making powers regarding Academy conversion.
- 5.5 This is not an option recommended to Members.

### **Option 3: Maintained Special School with Management Contract**

- 5.6 Discussion with other local authorities and schools which have entered into management contracts has indicated that they have been difficult to manage and expensive. They appear to offer a short term solution to specific issues around leadership and quality rather than a long term financially and

educationally sustainable solution. All the authorities which were approached have either moved or are seeking to move to other solutions.

The initial view of the governors is that they lack the specific skills which such an arrangement would require. This would mean significant ongoing support from the local authority.

- 5.7 This is not an option recommended to Members.

#### **Option 4: Procurement of a Contract for service with land included**

- 5.8 The options appraisal indicates that a contract for service including a lease with rental costs offset by the costs of placements is the second placed option. There would need to be a mechanic included in the procurement documentation for calculating the offset of the lease/sale costs of the site against the costs for the services. This would be complicated as the local authority does not know at the outset what level of placements will be required throughout the term. In particular this would make sale of the site very complicated given the unknown future values.

#### **Option 5: Procurement of a Contract for service with separate land disposal**

- 5.9 The options appraisal indicates that a separate contract for the provision of placements and a separate lease of the site at market value is the preferred option. The separation of the lease of the site and the contract for the supply of the services would provide the local authority with freedom going forward to vary the services required without complicated changes to the financial arrangements being required.
- 5.10 The initial view of the governors is that lease or sale i.e. options 4 and 5, are their preferred options. There were no views expressed as to the relative merits as to whether it would be preferable to separate a contract for the site from a contract for placements.

### **6.0 PLANNING AND IMPLEMENTATION**

- 6.1 A detailed draft implementation plan has been developed which is attached at Appendix 2. This is based on options 4 and 5, procurement for contract for service (either with or without land). Option 1 would not require any change. Option 3, Management Contract would require a similar process to the one outlined in Appendix 2 in terms of procurement, but there would be no requirement for the school closure consultation or the TUPE transfer. Option 2, Academisation, would require a different process to be completed and clearly a new project plan, although this process would not take as long to conclude.
- 6.2 If the preferred option is procurement of a service from the Independent sector then the integration of the procurement exercise, discontinuance of the school

and necessary TUPE requirements suggest that the new management arrangements would best be implemented from October half term 2014.

- 6.3 Depending upon the preferred option officers will provide an Equalities Impact Assessment, risk register consultation document, SEN Improvement Test and detailed specification for procurement purposes.

## 7.0 LEGAL ISSUES

### **Statutory Powers**

- 7.1 It will be necessary to review the powers under which the Council is permitted to enter into arrangements for the provision of the educational services required, as set out in Options 4 and 5 at section 5 of this report.

### **Statutory Duties**

- 7.2 It will be necessary to review and ensure compliance with all the duties imposed by the Education and Inspections Act 2006 and the School Organisational (Establishment and Discontinuance of Schools)(England) Regulations 2007 in respect of any proposal for:

- the discontinuance of the school
- prescribed alterations to the school
- the establishment of a new school.

This will include any statutory consultation processes and the publication of any statutory proposals and notices.

- 7.3 It will be necessary to review and ensure compliance with the Special Educational Needs Improvement Test.
- 7.4 It will be necessary to ensure compliance with the duty to maintain the continuity of SEN provision for the current pupils at the school.
- 7.5 It will be necessary for further detailed work to be carried out in respect of each option to ensure an adequate timeframe for necessary statutory processes to be completed.

## **TUPE**

- 7.6 It will be necessary to review the application of TUPE to the proposed service and to understand the financial implications of any such application.

## **State Aid**

- 7.7 It will be necessary to understand whether the potential disposal of property at an undervalue will have any implications in respect of State Aid.



## **Procurement**

7.8 A detailed analysis of the procurement options available in respect of the provision of the service has been carried out.

7.9 It is likely that the service will fall under the definition of a Part B Service in the Public Contracts Regulations 2006. Any services falling within the definition are not subject to the full EU procurement rules, however the local authority will still have to ensure that an appropriate process has been carried out which ensures equal treatment, non-discrimination and transparency.

7.9 Due to the potential value of the contract and the associated risks the procurement would be subject to the Council's risk based Gateway process.

## **8.0 FINANCIAL ISSUES**

8.1 In the current financial year, the expected cost of the school is just under £2m. Funding for this is received via the normal arrangements for special schools within the Dedicated Schools Grant, although it is expected that one-off reserves (of around £300k - £400k) will be required in addition to this normal funding.

8.2 The unit cost per place would be approximately £50k per annum (Including Base Funding, Top-up funding and Transitional Funding) if the school was at full capacity. Based on the current roll of 18, the actual average cost for the year is in excess of £110k per place.

8.3 The budget for out of Authority placements is also under increased pressure because it has been necessary to purchase more places than anticipated to cater for pupils who otherwise would have attended Foremost School. The additional cost of placements is in excess of £500k per annum.

8.4 Additionally the local authority currently purchases 20 'high acuity' residential placements (a combination of 38 and 52 week arrangements) in Independent and non-maintained schools for children with a designation of BESD and Autism. In future under the new arrangement, some of these placements would be made at Foremost School. These placements cost between £60k and £230k per annum. This includes some placements at schools run by the Independent providers who attended the Discovery Day.

## **9.0 HUMAN RESOURCES ISSUES**

9.1 If the decision is to proceed with academisation or an alternative independent provider, then TUPE regulations would apply to the majority, if not all, of the current school staffing establishment. For those not included under TUPE regulations then there may well be redundancy and pension costs for which the local authority would be liable.

## 10.0 COMMUNICATIONS

- 10.1 Further meetings will be arranged with the governing body and staff at the school, accompanied by the Professional Associations, to outline to them the processes for taking forward the preferred option, including formal consultation and TUPE issues. This will be part of an ongoing process of engagement.
- 10.2 Meetings will be arranged with parents and carers of pupils at the school similarly to explain the local authority's proposed option and to provide reassurance about the stability and quality of existing placements.
- 10.3 The local authority will take a proactive stance to engagement with the media relating to developments at the school.

## 11.0 SCHOOL LEADERSHIP ARRANGEMENTS

- 11.1 During this period of strategic review clear interim leadership arrangements are required for the school. We can confirm that:
- (i) the deputy head teacher and the head of care have been redesignated as interim associate headteachers.
  - (ii) the head teacher of Hambleton and Richmondshire PRU has been appointed as executive head teacher to provide supervision and mentoring support throughout the week, and to be present at the school up to 2 days per week.
  - (iii) the lead local authority adviser to the school is providing ongoing scrutiny and challenge through fortnightly visits.

## 12.0 RECOMMENDATION

- 12.1 That Executive Members decide upon their preferred option for the future of Foremost School, which will be subject to a review of the statutory power referred to in paragraph 7.1 of this report.
- 12.2 That depending upon the preferred option, a draft consultation document be progressed for consideration and approval at the meeting of Executive Members on 14<sup>th</sup> January 2014.
- 12.3 That meetings be arranged with the governing body, staff at the school, and parents and carers to engage them in the developments and to explain formal consultation arrangements.

CORPORATE DIRECTOR  
CHILDREN AND YOUNG PEOPLES SERVICE

Report prepared by: Andrew Terry, Assistant Director, Access and Inclusion,  
Children and Young People's Service

December 2013

### **Options Appraisal – areas considered:**

#### **Service implications**

Review of whether the option would deliver the specific educational benefits required under the SEN Improvement Test and ensure continuity of service in the short and long term. The option for future expansion and development of the service was also considered.

#### **Financial implications**

Consideration of the revenue costs in terms of affordability over the short and long term and whether value for money would be delivered by the option.

#### **Procurement considerations**

Assessment of whether a procurement exercise would be required and whether that procurement process would enable the service to be delivered within the timetable.

#### **HR considerations**

Evaluation of the implications of TUPE and associated Council policy, as well as the ability to manage the performance of staff during the transition period. The mitigation of risk in relation to staff provision was also considered.

#### **Governance arrangements**

Determination of whether the option would allow the Council to control and manage the on-going governance arrangements.

#### **Property considerations**

Implications of the disposal of the land in whole or by lease and the advantages/disadvantages of a potential transfer of land at undervalue, as well as associated liability for the Council in relation to the land.

#### **Legal considerations**

Requirement to complete a statutory consultation on school closure and whether the SEN Improvement Test applies.

#### **Political considerations**

Whether the option is likely to be acceptable;

- to Central Government, specifically the DfE;
- politically;
- to the local community;
- to Stakeholders.

**Equalities and sustainability considerations**

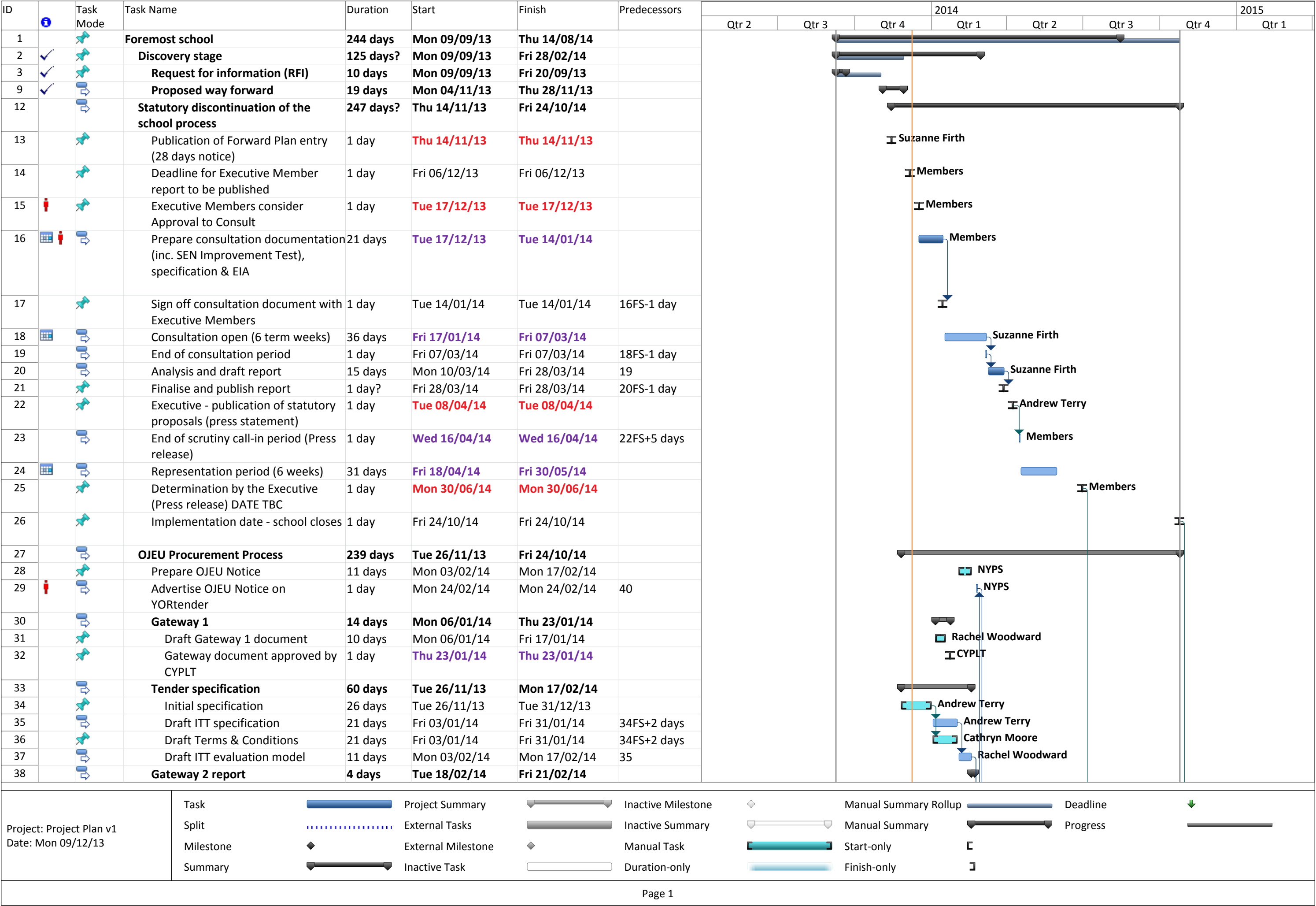
Review of any negative impacts on equality, diversity and sustainability matters.

**Risks**

Assessment of financial risks, risks to future service delivery and reputational risk associated with the options and whether these are considered acceptable.

**Other considerations**

Implications on other service providers of a similar nature in the locality and whether there could be a negative impact on other social care services within the Council (e.g. the application of ordinary residency).



ID		Task Mode	Task Name	Duration	Start	Finish	Predecessors	2014				2015			
								Qtr 2	Qtr 3	Qtr 4	Qtr 1	Qtr 2	Qtr 3	Qtr 4	Qtr 1
39			Draft Gateway 2 report	2 days	Tue 18/02/14	Wed 19/02/14	37								
40			Gateway 2 report submitted for approval	2 days	Thu 20/02/14	Fri 21/02/14	37FS+2 days								
41			ITT process	58 days	Mon 24/02/14	Wed 14/05/14									
42			Upload ITT onto YORtender	1 day	Mon 24/02/14	Mon 24/02/14	29FS-1 day								
43			Respond to supplier queries (40 days including weekends)	30 days	Tue 25/02/14	Mon 07/04/14	42								
44			Lodge ITT evaluation model with Audit	1 day	Mon 24/02/14	Mon 24/02/14	42FS-1 day								
45			Inform Finance of need for financial checks	1 day	Mon 24/02/14	Mon 24/02/14	42FS-1 day								
46			Complete tender opening schedule - send to Legal Services	1 day	Mon 24/02/14	Mon 24/02/14	42FS-1 day								
47			ITT closing date	1 day	Mon 07/04/14	Mon 07/04/14	43FS-1 day								
48			Tender opening	1 day	Mon 07/04/14	Mon 07/04/14	47FS-1 day								
49			Evaluation of ITTs	17 days	Tue 08/04/14	Wed 30/04/14	47								
50			Accounts checked by finance	17 days	Tue 08/04/14	Wed 30/04/14	47								
51			Obtain references	17 days	Tue 08/04/14	Wed 30/04/14	47								
52			Organise clarifications	17 days	Tue 08/04/14	Wed 30/04/14	47								
53			Final evaluation to inform contract award	10 days	Thu 01/05/14	Wed 14/05/14	52								
54			Contract Award	84 days	Tue 01/07/14	Fri 24/10/14									
55			Prepared Gateway 3 - contract award	5 days	Tue 01/07/14	Mon 07/07/14	25								
56			Gateway 3 contract award approved by CYPLT	1 day	Fri 11/07/14	Fri 11/07/14	55FS+3 days								
57			Mandatory standstill period (10 day stand still including weekends)	8 days	Fri 11/07/14	Tue 22/07/14	56FS-1 day								
58			Issue contract documentation	1 day	Wed 23/07/14	Wed 23/07/14	57								
59			Receive signed contracts from successful provider	14 days	Thu 24/07/14	Tue 12/08/14	58								
60			Contracts to be signed by appropriate NYCC officers	4 days	Wed 13/08/14	Mon 18/08/14	59								
61			Provider Implementation period	40 days	Mon 01/09/14	Fri 24/10/14									
62			Provider Service Contract starts	1 day	Fri 24/10/14	Fri 24/10/14	26FS-1 day								
63			TUPE process	40 days	Mon 01/09/14	Fri 24/10/14									
64			Initial meeting with HT/ appropriate contacts	4 days	Mon 01/09/14	Thu 04/09/14									
65			Letter to school re SLA and costs	4 days	Mon 01/09/14	Thu 04/09/14									
66			Joint TUPE consultation with Unions/ Staff	5 days	Fri 05/09/14	Thu 11/09/14	65								
67			HRSST Resourcelink report with employee data	5 days	Fri 05/09/14	Thu 11/09/14	65								

Project: Project Plan v1  
Date: Mon 09/12/13

Task

Split

Milestone

Summary

Project Summary

External Tasks

External Milestone

Inactive Task

Inactive Milestone

Inactive Summary

Manual Task

Duration-only

Manual Summary Rollup

Manual Summary

Start-only

Finish-only

Deadline

Progress

Page 2

