

Lancashire County Council

Cabinet

Thursday, 14th May, 2020 at 2.00 pm to be held as a Virtual Skype Meeting

Supplementary Agenda

We are now able to enclose, for consideration at the next meeting of the Cabinet to be held on Thursday, 14th May, 2020, the following information which was unavailable when the agenda was despatched

Part I (Open to Press and Public)

No. Item

7. Urgent Business

An item of urgent business may only be considered under this heading where, by reason of special circumstances to be recorded in the Minutes, the Chair of the meeting is of the opinion that the item should be considered at the meeting as a matter of urgency. Wherever possible, the Chief Executive should be given advance warning of any Member's intention to raise a matter under this heading.

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|-----|---|----------------|
| (a) | Request Approval to Extend Existing Contracts in Response to Covid-19 Outbreak | (Pages 1 - 8) |
| (b) | Academy Conversion - Marsden Heights Community College | (Pages 9 - 14) |

Angie Ridgwell
Chief Executive and Director of
Resources

County Hall
Preston

Report to the Cabinet

Meeting to be held on Thursday, 14 May 2020

Report of the Head of Service - Procurement**Part I**Electoral Divisions affected:
(All Divisions);**Request Approval to Extend Existing Contracts in Response to Covid-19 Outbreak**

(Appendix 'A' refers)

Contact for further information:

Rachel Tanner, Tel: (01772) 534904, Head of Service - Procurement,
rachel.tanner@lancashire.gov.uk**Executive Summary**

Given the unprecedented circumstances brought about by the COVID-19 outbreak the Procurement Service has undertaken an urgent review of contracts expiring that would otherwise have been re-procured in the next 6 to 12 months. Proposals for those contracts have been considered in accordance with Procurement Policy Note 01/20 'Responding to COVID-19' and this report identifies those contracts meeting the criteria for extension with the incumbent supplier.

Approval will enable the Council to extend contracts and permit the Procurement Service to:

- Ensure its focus is maintained on essential category management activities, namely the supply of PPE.
- Where resource permits redeploy staff to support essential services outside of the Procurement Service.
- Undertake full tendering processes to put new contractual arrangements in place at a later date.

This is deemed to be a Key Decision and the provisions of Standing Order C21 have been complied with.

Recommendation

Cabinet is asked to:

- (i) Approve the extension of the contracts as set out in this report and detailed in Appendix 'A'.
- (ii) Authorise Directors and Heads of Service to determine the length and number of extensions within the maximum scope permitted by this report.

This decision should be implemented immediately for the purposes of Standing Order C29 as any delay could adversely affect the execution of the county council's responsibilities. The reason for this is that the decision has been designated as business critical by Corporate Management Team, and any delay in its implementation would have an adverse effect on the operations of the county council.

Background and Advice

Given the unprecedented circumstances brought about by Covid-19 the Procurement Service has undertaken an urgent review of contracts expiring that would otherwise have been re-procured in the next 6 to 12 months.

The majority of 'business as usual' new tendering activity is for the time being to be regarded as non-essential in the context of maintaining a focus on providing the essential services which support the most vulnerable people in Lancashire.

Where the council has a need to maintain continuity for the delivery of goods, works and services, the council must generally procure contracts in accordance with the Public Contract Regulations 2015 (PCRs). Where the council, due to circumstances beyond its control, is unable to procure new contracts by undertaking a compliant tender exercise, the PCRs permit extension or modification of existing contracts if certain conditions are met. The most relevant provision of the PCRs in the circumstances is Regulation 72(1)(c).

Proposals for contracts expiring have therefore been considered in accordance with Cabinet Office Guidance (Procurement Policy Note 01/20 'Responding to COVID-19') and Regulation 72(1)(c) PCR.

Regulation 72(1)(c) sets out the following:

Contracts ... may be modified without a new procurement procedure ... in any of the following cases:

(c) where all of the following conditions are fulfilled:

- (i) the need for modification has been brought about by circumstances which a diligent contracting authority could not have foreseen;*
- (ii) the modification does not alter the overall nature of the contract;*
- (iii) any increase in price does not exceed 50% of the value of the original contract or framework agreement.*

This report identifies those contracts meeting the criteria for modification with the incumbent supplier. Further specific considerations in respect of certain contracts are dealt with in the "Legal" section below.

It is vital that in respect of those contracts the council:

- (a) limits any contract extension or other modification to what is absolutely necessary to address the circumstances of the COVID-19 outbreak;
- (b) limits any contract extension or modification to fall within the boundaries of Regulation 72(1)(c) of the PCRs; and
- (c) keeps a written justification that satisfies the above conditions, with reference to the specific facts;
- (d) publishes a notice in the Official Journal of the European Union in respect of each extended contract confirming reliance upon this ground.

Where an extension is requested in this report it is proposed that this is taken forward on the basis that the Director/Head of Service will be authorised to determine length and number of extensions within the maximum scope permitted by this report.

The contracts concerned are detailed at Appendix 'A', the table below summarises the extensions by procurement category:

Category of spend	Value of maximum extension requested	Number of contracts	Average length of maximum extension requested (from March 2020)
<i>Care and Public Health</i>	£6,769,180	7	Up to 12 months
<i>Construction & Assets</i>	£13,032,100	11	Up to 13 months
<i>Corporate</i>	£1,296,500	8	Up to 8 months
	£20,629,030	26	

Approval will enable the Council to extend contracts and permit the Procurement Service to:

- Ensure its effort is maintained on essential category management activities, namely the supply of PPE, which has diverted a significant number of staff away from their usual areas of focus.
- Where resource permits redeploy Procurement staff to support essential services outside of the Procurement Service.
- Undertake full tendering processes at a later date to put new contractual arrangements in place.

Consultations

Relevant heads of service and key operational staff have been consulted in drawing up the proposals included within this report.

Implications:

This item has the following implications, as indicated:

Legal

The relevant provisions of the Public Contract Regulations are set out in the body of this report. Subject to the Council complying with the prescribed limits for the proposed contract extensions/modifications and the requirements of Regulation 72(1)(c) generally, the extension of contracts recommended in this report will be undertaken in a lawful manner and in compliance with recent Cabinet Office guidance.

In respect of the county council's Procurement Rules ("the Procurement Rules") the recommended extensions are outwith the provisions of those rules. Pursuant to paragraph 14.2 of the Procurement Rules, decisions taken contrary to the Procurement Rules must be taken by Cabinet.

The report identifies two contracts (row 2 and row 16 of Appendix 'A') which, due to the value of the proposed extension, exceeds the 50% cap on increase in value as set out in Regulation 72(1)(c). However, due to the initial value of the contracts falling below the financial threshold to which the full PCR provisions apply, the council must instead consider the general EU Treaty principles (equality of treatment, transparency, mutual recognition and proportionality). The council considers that the extension of these contracts are, given the unforeseen circumstances, a necessary and proportionate response to ensuring continued service delivery.

The report also identifies certain contracts that have already expired. In each of those cases, the supplier has continued to provide the services to the council and the council has continued to pay the supplier. In each case, the council and the supplier have conducted themselves in accordance with the terms and conditions of the contract and have intended that the contractual arrangement should continue through a course of dealings. For the avoidance, any contract extension will therefore be made on the terms of the existing contract.

Financial

The estimated value of the contracts are set above and individually at Appendix 'A'.

List of Background Papers

Paper	Date	Contact/Tel
None		
Reason for inclusion in Part II, if appropriate		
N/A		

Category	Contract Title	Contract Description	Contractor	Contract Start Date	Contract End Date	Annual Value	Total Contract Value (excluding any extension period)	COVID 19 - Proposed Emergency Measures	New Contract End Date	Value of Extension required after March 2020	Approx Length of Extension in months from March 2020
CAPH	Telecare Home Response Service Lancashire	Telecare Home Response Service provides emergency home visits to Service Users across Lancashire in response to an alarm signal. The Service is available 24 hours a day, 7 days a week, 365 days per year, including bank holidays and other public holidays.	NEW PROGRESS HOUSING ASSOCIATION [453659] INACTIVE	01/10/19	30/09/20	121,300	£121,300	Contract was due to be re tendered. (Schedule 3)Tender process was delayed due to the CORVID -19 lockdown.Extend by 12 months to enable essential services to continue. month	30/09/21	121,300	12
CAPH	Extra Care Services	Provision of Extra Care Services in social housing accommodation	ICARE SOLUTIONS NW LTD GUARDIAN HOMECARE	24/07/17	23/07/20	2,500,000	£7,500,000	Extend by 12 months	23/07/21	2,500,000	12
CAPH	Framework Agreement for the Provision of an Emotional Health and Wellbeing Service in Lancashire	The purpose of the service is to provide preventative and early intervention support to children and young people with low level emotional health and wellbeing needs, to build their capability and capacity for them to manage challenges/difficulties safely within their home and family environment, and the local community.	CHILD ACTION NORTHWEST	01/05/18	31/03/21	1,455,000	£4,555,000	Extend by 12 months	31/03/22	1,455,000	12
CAPH	NHS Health Checks in Communities, Workplaces and Places of Worship settings in Lancashire Lot 1	Provision of NHS Health Checks in Communities, Lot 1 - NHS Health Checks in Communities	CHOOSE HEALTH LTD	01/04/17	31/03/21	400,000	£1,600,000	Extend by 12 months	31/03/22	400,000	12
CAPH	NHS Health Checks in Communities, Workplaces and Places of Worship settings in Lancashire Lot 2	Provision of NHS Health Checks in Communities, Lot 2 - NHS Health Checks in Workplaces and Places of Worship in Lancashire	BLUE HEALTHCARE (PART OF BLUE ENVIRONMENTAL LTD)	01/04/17	31/03/21	200,000	£800,000	Extend by 12 months	31/03/22	200,000	12
CAPH	Lancashire Tobacco and Nicotine Addiction Treatment Service	Lancashire Tobacco and Nicotine Addiction Treatment Service	LANCASHIRE CARE NHS FOUNDATION TRUST	01/04/16	31/03/20	1,792,880	£8,176,000	Extend by 12 months	31/03/21	1,792,880	12
CAPH	Contract for Crisis Support Scheme – Provision of Household Essentials	Supply, delivery and installation of essentials household goods to citizens awarded crisis support	SOCIAL ENTERPRISE LANCASHIRE NETWORK	01/08/18	30/06/20	250,000	£500,000	Extend by 12 months	30/06/21	250,000	12
Corp	Toxicology (Coroners)	Provision of forensic toxicology services for the Lancashire and Blackburn with Darwen Coroner service. Current supplier Sheffield Teaching Hospitals NHS Foundation Trust. Council has a statutory obligation to support the Coroner	SHEFFIELD TEACHING HOSPITALS NHS FOUNDATION TRUST	01/01/17	31/12/20	135,000	£540,000	6 Month Extension to be investigated. Approximate value of extension £70,000	30/06/21	67,500	6
Corp	Catering Disposables (Catering)	The supply of delivery of catering disposable materials, such as plates, cups, cutlery, sandwich boxes, clingfilm etc. to LCC establishments including primary and high schools.	BUNZL CATERING SUPPLIES	01/06/16	31/05/20	130,000	£528,000	12 Month Extension to be investigated. Approximate value of extension £130,000	31/05/21	130,000	12
Corp	Domestic Electrical/Lamp and Lightbulbs (Facilities Management)	Contract for domestic electrical equipment. Lot 1 provides domestic electrical appliances to be used within LCC buildings for example fridge, microwave and TV's. Lot 2 is for the supply of lightbulbs used within all LCC buildings.	STEARNS ELECTRICAL DISTRIBUTORS	01/04/16	30/06/20	312,000	£1,300,000	12 Month Extension to be investigated. Approximate value of extension £312,000	30/06/21	312,000	12
Corp	Interpretation and Translation Services (Corporate)	Contract is divided into two Lots. Lot 1 is the provision of spoken interpretation services and written translation. The majority of spend is for Children's Social Care to provide interpretation for children and their family. Lot 2 is for non-spoken including British Sign Language and is mainly accessed by Adult Social Care.	D A LANGUAGES LTD	01/10/16	30/09/20	220,000	£880,000	6 month Extension to be investigated. Approximate value of extension £110,000	31/03/21	110,000	6
Corp	Courier Services (Legal Services)	Contract to provide courier services to deliver case files and legal documents to courts across Lancashire to be used in legal proceedings	CITYSPRINT	08/07/19	07/07/20	74,000	£74,000	6 month Extension to be investigated. Approximate value of extension £37,000	07/01/21	37,000	6
Corp	Development Management Support (4ward) (Economic Development)	Professional services in relation to the SAEZ site for Development Management and Cost Management including the delivery of the AMRC, input into site wide infrastructure strategy, procurement and delivery of site wide infrastructure and supporting the LCC teams with tenant enquiries.	4aAward Management	01/06/19	31/03/20	250,000	£300,000	Contract was due to be re tendered. Tender process was delayed due to the CORVID -19 lockdown. 6 Month Extension is required to allow services to continue. Value of work that will be completed in the 6 month period is estimated at £75,000	N/A	75,000	6
Corp	Enterprise Adviser Network & Career Hub Lead (Economic Development)	Service to provide schools and young people throughout Lancashire with engagement with businesses and the 'world of work'. Use of a network of advisors and leaders both employed and volunteers to attain key benchmarks within schools and help drive skills for growth in young people.	Inspira Cumbria Ltd	01/03/17	31/08/20	310,000	£1,148,700	The services for period 2020-2021 are to be an increased service expanding the coverage to all schools in Lancashire which is the model outlined in the CEC funding application. This means a higher annual value to accommodate the increased services. Propose a short term (6 month) direct award on the increased services to the existing supplier. Approximate extension value £390,000. The above is the current contract value p.a. The extended services required for 2020-2021 will have an increase contract value of circa £780,000 p.a.	28/02/21	390,000	6
Corp	Condition Survey (Highways)	Collection of data via a physical survey of Lancashire's road network and collation / provision of a system to visualise this information. The survey is used for identifying the true condition of Lancashire's entire carriageway and footway network allowing highways inspectors to be able to analyse the data and use digital tools to store and use the data in different ways.	GAIST SOLUTIONS	01/11/19	01/09/20	175,000	£175,000	The contract is for the annual condition survey. The contract was due to be re tendered but was delayed due to the CORVID -19 lockdown. A 12 month extension is required to enable the next annual survey to be completed.Approximate value of extension £175,000	01/09/21	175,000	12

CAS	Supply of Motor Vehicles (Fleet Services)	Supply of various types of motor vehicles, predominantly for Fleet Services.	BCC MOTOR GROUP FORD MOTOR CO LTD FORD RETAIL LTD T/A TRUST FORD GREENHOUS FLEET SERVICES NOT ON ORACLE PEUGEOT CITROEN AUTOMOBILES UK LTD RENAULT UK LTD TREKA BUS LTD WALTON SUMMIT TRUCK	01/06/2016	31/05/2020	1,750,000	£7,000,000	Due to the current emergency situation procurement work on this Framework has been delayed. The extension of 12 months represents a value of £1,750,000, which is less than 50% of original contract value and is compliant with PCR 2015 72(1) and government notice Ref PPN 01/20 .	31/05/2021	1,750,000	12
CAS	Vehicle Bodybuilding(Fleet Services)	Supply of bodybuilding services for various types of vehicle chassis, used predominantly by Fleet Services.	AEBI SCHMIDT UK LTD BRI-STOR SYSTEMS LTD ECON ENGINEERING LTD FLEET SERVICE LTD GARSTANG TRUCK BODIES LTD GM COACHWORK LTD JAMES ALPE LTD MR DARRAN REYNOLDS MOBILE INSTALLATION SOLUTIONS (UK) LTD BABCOCK VEHICLE ENGINEERING LTD THOMPSONS SPARES & SERVICE LTD TREKA BUS LTD	01/06/2016	31/05/2020	1,750,000	£7,000,000	Due to the current emergency situation procurement work on this Framework has been delayed. Extension of existing arrangement to 31/05/21. The extension of 12 months represents a value of £1,750,000, which is less than 50% of original contract value and is compliant with PCR 2015 72(1) and government notice Ref PPN 01/20 .	31/05/2021	1,750,000	12
CAS	R&M Framework Agreement (Under £60,000)	Reactive maintenance and improvement works	Multiple contractors : Mechanical - 13 contractors, Electrical: 23 contractors: 30 contractors	01/07/16	30/06/20	2,900,000	11,600,000	Works mainly for schools. Suppliers form part of the Beacon system. Current tender is being evaluated and suppliers will be awarded to the Framework Agreement. Mini competitions for work packages will be delayed due to current emergency situation. The extension of 12 months represents a value of £11,600,000, which is less than 50% of original contract value and is compliant with PCR 2015 72(1) and government notice Ref PPN 01/20 .	30/06/21	2,900,000	12
CAS	Vehicle Bodybuilding Lots 6/8/9/11(Fleet Services)	Supply of bodybuilding services for various types of vehicle chassis, used predominantly by Fleet Services.	Aldercote, Gownings Mobility, Woodhall Nicholson, Optare, Scarab Sweepers, Aebi Schmidt, Stock Sweepers	01/06/2016	31/05/20	350,000	£1,400,000	Due to the current emergency situation procurement work on this Framework has been delayed. Extension of existing arrangement to 31/05/21. The extension of 12 months represents a value of £350,000, which is less than 50% of original contract value and is compliant with PCR 2015 72(1) and government notice Ref PPN 01/20 .	31/05/2021	350,000	12
CAS	Cements & Mortars(Highways)	Supply of cements and mortars to Lancashire Highways Service.	PAREX LTD LARSEN BUILDING PRODUCTS	03/05/2016	02/05/20	350,000	£1,400,000	Framework used to purchase cement and mortar. Limited number of suppliers that can provide this material. Due to the current emergency situation procurement procedures have been delayed. Extension of existing arrangement to 31/05/21. The extension of 12 months represents a value of £350,000, which is less than 50% of original contract value and is compliant with PCR 2015 72(1) and government notice Ref PPN 01/20 .	31/05/2021	350,000	12
CAS	Stone and Paving Products(Highways)	Supply of various building materials (stone and paving) to Lancashire Hihways Service.	AGGREGATE INDUSTRIES UK LTD HARDSCAPE PRODUCTS LTD JOHNSONS WELLFIELD QUARRIES LTD MARSHALLS MONO LTD TRAVIS PERKINS PLC	01/07/2016	30/06/20	500,000	£2,000,000	Due to the current emergency situation procurement procedures have been delayed. The extension of 12 months represents a value of £500,000, which is less than 50% of original contract value and is compliant with PCR 2015 72(1) and government notice Ref PPN 01/20 .	30/06/2021	500,000	12
CAS	Hire of Vehicles & Plant (Operator & Non Operator) (Highways)	Vehicle and plant hire on a spot hire basis.	ASHTREAD PLANT HIRE CO LTD GAP GROUP LTD BRIAN DENT LTD ONE STOP HIRE LTD AMBROSE HIRE LTD READYPLANT LTD CLIVE HURT (PLANT HIRE) LTD SPEEDY ASSET SERVICES LTD O'CALLAGHAN LTD PROCTOR BUILDING & CIVIL ENGINEERING SERVICES GRAEME PROCTOR	12/12/2015	07/03/2020	2,640,000	£10,560,000.00	Release of the ITT documents was delayed due to the developing situation with CORVID . Due to the following emergency situation procurement activity on this Framework Agreement could not continue. The extension of 12 months represents a value of £2,640,000, which is less than 50% of original contract value and is compliant with PCR 2015 72(1) and government notice Ref PPN 01/20 .	07/03/2021	2,640,000	12
CAS	Highway Repair & Maintenance Works based on Dayworks (Labour, Plant & Materials rates) (Highways)	Ad hoc maintenance work/labour required by Lancashire Highways Service for civil engineering and maintenance work.	COLIN BRISCOE CONSTRUCTION LTD C W M DRAINAGE LTD GROUNDWORK DIRECT LTD J J O'GRADY LTD MARCHBRIDGE BUILDERS LTD NORTHERN MOTORWAY SERVICES PW BUILDING SERVICES W & J CONSTRUCTION LTD WILLIAM PYE LTD	22/02/2017	23/05/2020	900,000	£2,700,000.00	ITT documents was delayed due to the developing situation with CORVID . Due to the following emergency situation procurement activity on this Framework Agreement could not continue. The extension of 12 months represents a value of £900,000, which is less than 50% of original contract value and is compliant with PCR 2015 72(1) and government notice Ref PPN 01/20 .	22/05/2021	900,000	12

CAS	Commercial Kitchen Equipment Service, Repair and Maintenance(D/C Servicing)	Periodic inspection, testing, the maintenance and reactive repairs to the Assets including Gas fired kitchen equipment,Food preparation equipment,• and Gas installations.	Holgates Maintenance, North West Catering Engineers	01/11/2019	31/01/20	189,600	£758,504	ITT documents was delayed due to the developing situation with CORVID . Due to the following emergency situation procurement activity on this Framework Agreement could not continue. The extension of 12 months represents a value of £189,600. which is less than 50% of original contract value and is compliant with PCR 2015 72(1) and	31/01/2021	189,600	12
CAS	Kitchen Refurbishment & Catering Repairs(Schools & Residential Catering)	Design and refurbishment of schools and residential cooking areas	CATERWARE LTD COMMERCIAL KITCHEN SERVICES LTD INSTOCK LTD KCCJ LTD C H R FOOD SERVICE EQUIPMENT THE KITCHEN EQUIPMENT CO LTD	01/10/2016	30/09/20	800,000	£ 3,200,000	Due to the current emergency situation work on the procurement process has stopped. Extension of existing arrangement to 30/09/21. The extension of 12 months represents a value of £800,000. which is less than 50% of original contract value. This is compliant with PCR 2015 72(1) and government notice Ref PPN 01/20 .	30/09/2021	800,000	12
CAS	Vehicle Parts(Fleet Services)	Supply of various vehicle parts for Fleet Services vehicles.	ALLIANCE AUTOMOTIVE UK CV LTD ANDREW CURRAN LTD ARNOLD CLARKE FINANCE LTD BERNER UK Ltd CICELEY COMMERCIALS LTD C P DAVIDSON & SONS LTD ESPUMA CLEANER SOLUTIONS LTD EURO CAR PARTS LTD F R SHARROCK LTD REMA TIP TOP UK LTD LANCASHIRE DAF LTD LOOKERS MOTOR GROUP LTD MERLIN DIESEL HOLDINGS LTD RIBBLESDALE AUTO ELECTRICS UNITS LTD QUICKCO THORANMART T/A PRESTON MOTOR PARK WALSH & MIDGLEY LTD WALTON SUMMIT TRUCK CENTRE LTD	07/12/2015	07/03/2019	645,000	£3,332,500	The initial tender had to be abandoned due to a poor market response. The tender was redesigned and the contract updated to encourage local SME participation. Tender issue was delayed due to Corvid-19 crisis. Although the Framework has expired the suppliers have continued to conduct themselves in accordance with the terms and conditions of the Framework Agreement and have intended that the contractual arrangement should continue through a course of dealings. Any contract extension will therefore be made on the terms of the existing contract.	31/12/2020	483,750	9

20,629,030

Report to the Cabinet

Meeting to be held on Thursday, 14 May 2020

Report of the Head of Asset Management**Part I**

Electoral Division affected:
Nelson East;

Academy Conversion – Marsden Heights Community College

Contact for further information:

Susan Strother, (01772) 534404 Property Assets Principal,
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Executive Summary

Lancashire County Council received a directive Academy Order for Marsden Heights Community College from the Department for Education on 8 February 2017, following the special measures Ofsted judgement in December 2016 and in line with Section 4 of the Academies Act 2010.

The academy conversion process to implement the Academy Order requires the Authority and Trust to each enter into various legal documents.

This report seeks permission from Cabinet to delegate authority for finalising and approving the detailed legal documents to the Director of Corporate Services, and to provide the necessary authority and indemnity to the Chief Executive and Director of Resources to complete the transfer.

Recommendation

Cabinet is asked to agree that:

- (i) the Director of Corporate Services be authorised to finalise and approve any documents necessary to give effect to the academy conversion of Marsden Heights Community College from the conversion date (with a target conversion date of 1 June 2020 or as soon as reasonably practicable thereafter)
- (ii) the Chief Executive and Director of Resources be authorised to issue all necessary certificate(s) within and for the purposes of the Local Government (Contracts) Act 1997 in respect of the School Agreement (and any other certified service contracts with a term exceeding five (5) years being put in place to implement the directed academy conversion)
- (iii) Lancashire County Council give an indemnity to the Chief Executive and

Director of Resources as follows:

“Lancashire County Council shall indemnify the Chief Executive and Director of Resources against any claims made against them (including costs incurred by and awarded against them) and will not itself make claims against them for any loss or damage occasioned by neglect and error or omission committed by the Chief Executive and Director of Resources in the course of or in connection with the signing of the certificate(s) referred to above.”

This decision should be implemented immediately for the purposes of Standing Order C29 as any delay could adversely affect the execution of the county council's responsibilities. The reason for this is that the decision has been designated as business critical by the relevant Executive Director, and any delay in its implementation would have an adverse effect on the operations of the county council.

Background and Advice

On 8 February 2017, Lancashire County Council received a directive Academy Order for Marsden Heights Community College in Brierfield, Nelson from the Department for Education under section 4(A1) of the Academies Act 2010. Pursuant to the Academy Order, responsibility for delivering educational services would be transferred from the Authority to an academy trust company called United Learning Trust. The Authority would be responsible for the provision of school facilities, to enable the Trust to deliver its educational services to the pupils. This was an order with which the council was required to comply. The school will be known as an academy after the conversion date.

Following the issuing of the directive academy order, the Local Authority has fulfilled its statutory duty issuing a local authority statement of Action outlining the ongoing support to the school up until the point of conversion.

Lancashire County Council has continued to monitor and support the school in addressing the key school improvement issues raised at the inspection. In January 2019, the school was re-inspected due to the lengthy delay in the process of conversion and was judged to 'require improvement' demonstrating the impact of the actions taken by the school to this point.

As the school was procured under the Building Schools for the Future programme, additional legal agreements beyond those seen in the academy conversion of a typical local authority maintained school are required to deal with the relationship between Lancashire County Council and its chosen contractor who maintains the school and delivers facilities management services.

Cabinet is therefore asked to authorise the Director of Corporate Services to approve the entering into of the following agreements:

- (a) a School Agreement with United Learning Trust (as academy trust to deliver educational services from the conversion date (with a target conversion date of 1 June 2020 or as soon as reasonably practicable thereafter));

- (b) a Lease with United Learning Trust;
- (c) a Commercial Transfer Agreement with United Learning Trust and the Governing Body of Marsden Heights Community College;
- (d) a Principal Agreement with United Learning Trust and the Secretary of State for Education;
- (e) a Deed of Variation to the Project Agreement with Lancashire Schools Special Purpose Company Phase 2A Limited (the contractor responsible for designing, building, financing and operating the school facilities); and
- (f) any other documents which are identified as being ancillary to the above and are necessary to give effect to the academy conversion of Marsden Heights Community College from the conversion date (with a target conversion date of 1 June 2020 or as soon as reasonably practicable thereafter).

These additional academy conversion documents are necessary because the school was provided under the Building Schools for the Future programme:

- School Agreement: between Authority and Trust based on Department for Education template;
- Principal Agreement: between Authority, Trust and Department for Education based on Department for Education template;
- Project Agreement Deed of Variation (the Project Agreement being the principal contract between the Authority and Lancashire Schools Special Purpose Company Phase 2A Ltd);
- A certificate under the Local Government (Contracts) Act 1997.

The 1997 Local Government (Contracts) Act Certificate is issued by the Authority and signed by an Authority's chief statutory officer (typically the Section 151 Officer which will be the Authority's Chief Executive and Director of Resources) and provides protection for Lancashire Schools Special Purpose Company Phase 2A Limited against any losses in the event that the School Agreement was declared void as a result of an ultra vires act on the part of the Authority.

An indemnity provided by the Authority in favour of the Chief Executive and Director of Resources is required as the 1997 Act Certificate is signed in the officer's personal capacity. As such, although a private sector contractor would take the protection from the 1997 Act Certificate, a separate cause of action may lie against the Chief Executive and Director of Resources, for which they must be indemnified.

The Department for Education and the Trust are eager to implement the academy conversion as soon as possible, on the target academy conversion date of 1 June 2020 or as soon as reasonably practicable thereafter.

The Authority will have to evidence:

- Academy conversion ("what is it"): this is achieved by the issue of the Academy Order;
- Proper implementation of the academy conversion ("how will it be done"): this is achieved in a comparable manner to the original Building Schools for the Future project documentation approvals from 22 April 2008, by demonstrating

the nature of the academy conversion documents which have been circulated for approval and approved by an appropriate Cabinet decision and/or an audit trail of decision making which is compliant with a scheme of delegation.

Since the Department for Education has instigated a directed academy conversion, then there are no alternative options and Marsden Heights Community College will convert to an academy.

Consultations

N/A

Implications:

This item has the following implications, as indicated:

Legal

The Authority is required under section 5B of the Academies Act 2010 to support the directed (forced) academy conversion of a local authority maintained school, such as Marsden Heights Community College, and "must take all reasonable steps to facilitate the conversion of the school into an academy".

The Authority may also issue certificates under the Local Government (Contracts) Act 1997 and its accompanying regulations to certify any service contract with a term lasting over five (5) years such as the School Agreement. The intention is to provide "safe harbour" relevant discharge terms should any certified transaction documents be found to be ultra vires.

The suite of academy conversion template documents produced, and amended from time to time by the Department for Education have been used to prepare bespoke implementation documents. For a Building Schools for the Future scheme school, additional implementation documents have been prepared to recognise the structural requirements of the Building Schools for the Future programme.

The Authority has prepared recommendations for approval which are consistent with the original Building Schools for the Future scheme approvals from 22 April 2008 so that their format should, acting reasonably, satisfy the Contractor and its Senior Lenders (and the Trust) of the Authority's ability to properly enter into the transaction documents for the forced academy conversion.

The Department for Education has approved the forms of School Agreement, Lease and Principal Agreement which are to be entered into by the Authority. The Commercial Transfer Agreement is substantially in an agreed form but still requires final review and approval by the Department for Education.

List of Background Papers

Paper	Date	Contact/Tel
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None

Reason for inclusion in Part II, if appropriate

N/A

