

## **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**

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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