

TERMINATION OF CONTRACTS WITH CARILLION CONSTRUCTION LIMITED – RELATING TO WORKS AT JACK HUNT SCHOOL EXPANSION WORKS, HAMPTON GARDENS SCHOOL AND ST MICHAEL’S CHURCH SCHOOL

Councillor Ayres, Cabinet Member for Education, Skills and University

January 2018

Deadline date: N/A

Cabinet portfolio holders:	Cllr Ayres, Cabinet Member for Education, Skills and University
Responsible Director:	Wendi Ogle-Welbourn, Executive Director People and Communities Cambridgeshire County Council and Peterborough City Council
Is this a Key Decision?	YES If yes has it been included on the Forward Plan: NO – Urgency Procedures Invoked
Is this decision eligible for call-in?	NO – Suspension of Call-in Invoked
Does this Public report have any annex that contains exempt information?	NO

R E C O M M E N D A T I O N S

The Cabinet Member is requested to :

1. Authorise the termination of contract and all other associated legal agreement(s) with Carillion Construction Limited for the design and build of new accommodation associated with the expansion of Jack Hunt School, for the reasons set out in this report.
2. Authorise the termination of contract and all other associated legal agreement(s) with Carillion Construction Limited for the design and build of the new Hampton Gardens School, for the reasons set out in this report.
3. Authorise the termination of contract and all other associated legal agreement(s) with Carillion Construction Limited for the design and build of new accommodation associated with the expansion of St Michael’s Church School, for the reasons set out in this report.
4. To delegate authority to the Executive Director People and Communities in consultation with the Cabinet Member, Interim Head of Legal and Governance (or authorised officers), Interim Corporate Director of Resources to award a contract relating to the completion of the construction works for the Jack Hunt school expansion.
5. Authorise the Interim Head of Legal and Governance or delegated officers to enter into any legal documentation on behalf of the Council in relation to this matter.

1. SUMMARY OF MAIN ISSUES

- 1.1 This report seeks the Cabinet Member's approval to the recommendations to terminate the Council's design and build contracts with Carillion Construction Limited for the new accommodation required to support the expansion of Jack Hunt School and the completed works at Hampton Gardens School and St Michael's Church School.
- 1.2 The Council utilised the Education Funding Agency Framework Panel Member Carillion Construction Limited appointed through a competitive process to deliver the Hampton Gardens School works as part of a batched programme of works which included other schools. The contract with Carillion Construction Limited for the expansion works at Jack Hunt School was awarded in June 2017 under MAY16/CMDN/29. The contract for Hampton Gardens was awarded in December 2015 under CMDN KEY/12DEC14/04 and for St Michael's in February 2016 under KEY/06MAR15/07. The standard form of lump sum design and build contract was used.
- 1.3 On 15 January 2018 a winding up order was made and the High Court appointed the Official Receiver as liquidator of Carillion Construction Limited along with Carillion Plc, Carillion Services Limited, Planned Maintenance Engineering Limited, Carillion Integrated Services Limited and Carillion Services 2006 Limited. PwC have been appointed as 'Special Managers' to support the Official Receiver.
- 1.4 Under the terms of the design and build contracts between the Council and Carillion Construction Limited, the Council is entitled to serve a notice of termination upon a contractor default, this includes a court making a winding up order against the company. As a result of this proposed action the Council can terminate the contracts and in relation to Jack Hunt School, the school as a foundation trust can take re-possession of the site where the new accommodation is under construction.
- 1.5 If the Council does not terminate the contract relating to the Jack Hunt expansion as soon as possible and the site does not revert to the school, there are financial, health and safety and security implications. A site inspection was carried out by the Council's representative on 16 January, which revealed that building materials had been removed from the site. There is a risk that further assets will be removed from the site (i.e site hoarding which segregates the construction site from the rest of the school site) which in turn could leave the site and the school exposed to security and health and safety risks.
- 1.6 The works at Hampton Gardens School were completed and handed over in August 2017. At St Michael's Church School the works were completed and handed over in February 2017. However, the contracts are still in operation and both are in the 12 month defect liability period. If any defects are identified during this period the contractor is liable and will rectify the defect. In addition, the Council, under the payment terms of the contract, hold retention funds. These are paid to the contractor upon completion of all rectification works in the 12 month period.
- 1.7 The Council is considering the alternative options to ensure that Jack Hunt School can accommodate the additional form of entry from September 2018 as a result of the winding up order and the subsequent delay in the delivery of the new accommodation at the site.

2. PURPOSE OF THIS REPORT

- 2.1 The purpose of this report is to provide background information and seek the Cabinet Member's approval in relation to the recommendations.
- 2.2 This decision is proposed in accordance with the delegations for the Cabinet Member for Education, Skills and University exercising delegated authority under paragraph 3.4.3 and 3.4.8 (a) of Part 3 of the constitution in accordance with the terms of her portfolio (b).
- 2.3 With the approval of the Chairman of the Children and Education Scrutiny Committee Urgency, Special Urgency and waiver of call-in procedures have been invoked to suspend

the requirement to advertise the decision for 28 days, publish the decision for 5 days prior to publication, and to suspend the 3 day call-in period.

3. **TIMESCALE**

Is this a Major Policy Item/Statutory Plan?	NO	If Yes, date for relevant Cabinet Meeting	N/A
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4. **DETAILS OF DECISION REQUIRED**

- 4.1 The purpose of this report is to obtain the Cabinet Member's approval in relation to:
- the termination of contracts with Carillion Construction Limited;
 - the authorisations to enter into a new contract with an alternative contractor to complete the works at Jack Hunt School
 - the authorisations required to enter into any other legal agreements as required
- 4.2 Subject to approval of the above recommendations, the Council will commence the process to terminate the contracts with Carillion Construction Limited by issuing a termination notice in accordance with the contractual provisions.
- 4.3 Subject to approval and with advice from the Council's technical advisers and the Education Skills and Funding Agency, the Council will consider options for completion of the works and implement a process to identify and appoint an alternative contractor to complete the construction works at Jack Hunt School.

5. **CONSULTATION**

- 5.1 Key stakeholder departments within the Council are briefed on the proposal to terminate. These include Planning Department, Finance, Legal Services and Strategic Property.

6. **ANTICIPATED OUTCOMES**

- 6.1 The design and build contracts with Carillion Construction Limited for works at Jack Hunt School, Hampton Gardens School and St Michael's Church School will be terminated following the High Court's appointment of the Official Receiver as part of Carillion Construction Limited's liquidation.
- 6.2 To limit the impact upon the Council, the contracts with Carillion Construction Limited will be terminated as soon as possible.
- 6.4 In order to ensure that the construction of the new accommodation at Jack Hunt School can be completed as soon as is reasonably possible, the Council will seek to appoint an alternative contractor to complete the works following advice from its technical advisers and the Education Skills Funding Agency.

7. **REASONS FOR RECOMMENDATIONS AND ANY RELEVANT BACKGROUND INFORMATION**

- 7.1 Following the announcement on the 15 January 2018 that the High Court has appointed the Official Receiver for the liquidation of Carillion Construction Limited, the Council has reviewed all contractual arrangements relating to the contractor. In order to repossess the construction site at Jack Hunt School, prevent any health and safety and security breaches and secure assets already paid for under the contract, this notice is seeking agreement that the contract be formally terminated.
- 7.2 The Council is seeking to protect its financial position in relation to the retention funds associated with the Hampton Gardens School and St Michael's Church School contracts by terminating the contracts.

8. ALTERNATIVE OPTIONS CONSIDERED

The following options were considered and rejected:

- 8.1 To do nothing: This option was rejected due to the announcement that the Official Receiver has been appointed for the liquidation of Carillion Construction Limited.
- 8.2 Not to terminate the contracts: This option was rejected due to the announcement that the Official Receiver has been appointed and the Council are part way through construction of new accommodation at Jack Hunt School, the need to secure the site and limit the financial, health and safety and security implications
- 8.3 Not to award contract to a new contractor to complete the works at Jack Hunt School: This option was rejected as the school require the new accommodation to support the expansion of the school by one form of entry. The construction commenced in July 2017 and was on target for completion in August 2018. The accommodation is partially built in a large segregated area of the school site and cannot be left incomplete.

9. IMPLICATIONS

- 9.1 Financial – There are no direct financial implications in respect of the contract terminations. However, the Council is working with stakeholders involved in the liquidation of Carillion Construction Limited. This will involve identifying the cost implications for the Council.
- 9.2 Legal – The Education Funding Agency Contractors Framework was procured under the Restricted Procedure of the Public Contracts Regulations 2006 and the Council is permitted to use the framework. The Council entered into the agreement pursuant to its powers contained in section 2 of the Local Government Act 2000, section 14 of the Education Act 1986, section 22 of the Schools Standards and Framework Act 1998 and section 111 of the Local Government Act 1972 in order to enable investment in certain educational services and facilities. Further legal implications are set out in the report.
- 9.3 Environmental – None
- 9.4 Property – Jack Hunt School is a trust school. A trust school is a foundation school supported by a charitable foundation or trust, which appoints governors to the school's governing body. As a trust school it manages its own land and assets.

10. DECLARATIONS / CONFLICTS OF INTEREST & DISPENSATIONS GRANTED

None.

11. BACKGROUND DOCUMENTS

Used to prepare this report, in accordance with the Local Government (Access to Information) Act 1985) and The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012

Jack Hunt School Expansion Contract - MAY16/CMDN/29.

Hampton Gardens Expansion Contract - CMDN KEY/12DEC14/04

St Michael's Expansion Contract - KEY/06MAR15/07.