

Report Author:

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OFFICER DECISION TITLE: Academy Conversion of Nenegate
ENTER NAME OF OFFICER EXERCISING DELEGATED POWERS: Elaine Redding Executive Director Children's Services
ENTER DATE OF OFFICER DECISION: 11 January 2023

Responsible Director:	Elaine Redding Executive Director Children's Services
Does this Public report have any annex that contains exempt information?	NO If yes, specify number of exempt annex (e.g. Annex 1), the reason for exemption and explain the application of the public interest test
Is this a project and if so has it been registered on Verto?	NO

Decision taken	<p>To authorise the Council entering into the following for the purposes of giving effect to the conversion of Nenegate to academy status:</p> <ol style="list-style-type: none"> 1. A Commercial Transfer Agreement (CTA) between the Council, the Governing Body of Nenegate and Meridian Trust; 2. A Deed of Novation between the Council, the Governing Body of Nenegate and Meridian Trust, for the Governing Body's interest in the following contracts to be novated from the Governing Body of Nenegate to Meridian Trust: <ol style="list-style-type: none"> a) The Solar Power Purchase Agreement dated 14 April 2015 between the Council and the Governing Body; b) The PV System Roof Access Agreement dated 14 April 2015 between the Council and the Governing Body; and c) The Energy Performance Contract letter dated 18 November 2014, signed by the Governing Body on 26 March 2015 between the Council and the Governing Body;
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	<p>3. Deeds of Novation/Assignment between the Council, Meridian Trust and (if applicable) the relevant third party contractors, for the Council's interest in the following contract to be novated or assigned to Meridian Trust:</p> <p>a) A building contract between the Council and Garfield Builders Limited dated 24 December 2014 in relation to the construction of a two classroom extension together with works to the existing building at Nenegate School, Park Lane, Eastfield, Peterborough (also consisting of associated drainage and site works).</p>
<p>Authorisation</p>	<p>This decision has been taken under:</p> <p>Express authorisation:</p> <p>The decision was delegated to Charlotte Black, Corporate Director of People Services in consultation with the Cabinet Member for Education, Skills and University, pursuant to the Cabinet Decision of 17 October 2022: https://democracy.peterborough.gov.uk/documents/s48057/10.%20Delegation%20of%20Authority%20to%20Negotiate%20and%20Agree%20Details%20of%20Academy%20Conversion.pdf</p>
<p>Background Information</p>	<p>Nenegate (the "School") is currently a maintained special school which is undergoing conversion to academy status by virtue of an Academy Order under the Academies Act 2010. Once converted to an academy, the School will be operated by Meridian Trust (the "Trust").</p> <p>Background to this matter is contained within the Cabinet report detailed above.</p> <p>The anticipated conversion date is now 1st February 2023, however, this remains subject to change.</p> <p>Since the Academy Order, the Council has been investigating which school specific documentation (in addition to the CTA) is necessary in order to facilitate the conversion of the School to an academy, and negotiating the same with the relevant parties. Authorisation is now requested for the Council to enter into this documentation, for the reasons explained in the abovementioned Cabinet report.</p> <p>As detailed in the mentioned Cabinet report, the Council is obliged under the Academies Act 2010 to cease maintaining a school on the date it opens as an Academy and to take all reasonable steps to facilitate the conversion to academy status. If the Council fails to cooperate then the Secretary of State has the power to make transfer schemes in relation to property, land, rights and liabilities (including rights and liabilities in relation to staff) which would be binding on the Council. It is therefore preferable for the Council to reach agreement with the parties and enter into the CTA and associated documents in respect to these matters, rather than be subject to transfer schemes made by the Secretary of State.</p>

	<p>The CTA details each party's obligations in relation to the conversion (except in relation to land). As part of the CTA, ownership of the School's 9 seater van, minibus and mobile classroom will be transferred to the Trust.</p> <p>There are existing contracts in place between the Council and the Governing Body of Nenegate (relating to solar panels on site and energy performance works) which need to continue post-conversion. Entering into a Deed of Novation in relation to those contracts (as detailed in recommendation 2), will transfer those contracts from the Governing Body to the Trust, giving the Trust and Council and direct contractual relationship in that regard following conversion.</p> <p>The Council has previously entered into contracts in relation to building/construction works carried out at the School, and entering into a Deed of Novation/Assignment in relation to that contract (as detailed within recommendation 3), will enable the Trust to have the benefit of the contract (and any claims arising out of the building/construction works), instead of the Council. The novation/assignment does not involve a change of contractor, and therefore, the reference in the Council's Contract Rules for reference to have been made to the assignment in the tender documents, do not arise.</p>
<p>Alternative options considered.</p>	<p><u>Refuse the closure of the School and the conversion to academy status and not enter into a CTA:</u> Once a school has been accepted for academy status by the Secretary of State, the Council is required to support the decision and take reasonable steps to facilitate the conversion. Failure to cooperate or negotiate a CTA could result in the Secretary of State making transfer schemes which would be binding on the Council and would be in breach of the Council's statutory obligations under the Academies Act 2010.</p> <p><u>Not entering into deeds of novation to enable the Governing Body of the School to novate the contracts it has with the Council, to the Trust:</u> This option was rejected, as this would result in the Council not having the proper documentation in place with the Trust in relation to the solar panels on site or the energy performance works at the School.</p> <p><u>Not to novate/assign the benefit of the Council's building contract relating to the School, to the Trust:</u> This option was rejected because, if the Council retained the benefit of the contract, if any claim in relation to those works/services in respect of the School were to arise, it is likely that the Council would then have to become involved or take action on behalf of the Trust. Novating/Assigning the benefit of the contract allows the Trust to deal with any such claims directly.</p>
<p>Consultation</p>	<p>Once an Academy Order has been obtained, the Governing Body of the School is obliged to carry out the DfE required consultations with stakeholders including staff and parents of children on roll at the School.</p> <p>As part of the academy process, Council officers in finance, insurance, property and education, together with the relevant Ward Councillors, are informed of the proposed conversion.</p> <p>The Council's Human Resources department are involved to ensure that the statutory consultation required under the Transfer of Undertakings (Protection of Employment) Regulations 2006 has been carried out.</p>

	<p>Legal Services have been instructed to assist in the negotiation and completion of the relevant documents.</p> <p>The Cabinet Member for Education, Skills and University has been consulted in relation to this report, in accordance with the delegation made by Cabinet on 17 October 2022.</p>
Declarations / Conflicts of Interests (only if the decision falls under the 'Express Authorisation' category)	Not applicable.
Carbon Impact Assessment	Approved by Hannah Swinburne on 10 January 2022
Supporting documentation	None.

Officer signature		Date 11/01/2023
<i>Once signed please pass to Democratic Services and we will arrange publication.</i>		