

**ESHER SIXTH FORM COLLEGE**  
(the "Trust")

**MINUTES** of a meeting of the board of trustees (the "Trustees") of the Trust held at the offices of Esher College on 10 July 2019 commencing at 5.45 pm.

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**PRESENT:** Robin John (In the Chair)  
Dan Dean  
Karin Rowsell

**IN ATTENDANCE:** Stephanie Wiles (Director of Finance and Estates)  
  
Kerry Webb (Clerk)  
  
Tim Oliver (Chair to Corporation)

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1. **NOTICE AND QUORUM**

- 1.1 A quorum being present, **IT WAS RESOLVED** that Robin John chair the meeting. Accordingly, Robin John took the chair and declared the meeting open.
- 1.2 It was confirmed that notice of the meeting had been given to each Trustee who was entitled to receive notice of the meeting.

2. **PURPOSE OF MEETING**

- 2.1 The chair of the meeting reported that the Trust had been established to operate a 16 to 19 academy replacing Esher College, a sixth form college ("the College") on its conversion to academy status ("the Conversion"), proposed to take place on 1 September 2019. The purposes of the meeting was to:
- 2.1.1 confirm the details of the Trust following its incorporation;
  - 2.1.2 consider the conversion of the College and the transfer of the College's property, rights and liabilities from the College to the Trust on 1 September 2019 and, if thought fit, to resolve to accept the transfer of those property, rights and liabilities to the Trust; and
  - 2.1.3 consider and, if thought fit, approve the Documents (as defined in minute 12 below) as documents to be entered into prior to 1 September 2019 in respect of the Conversion.
- 2.2 The chairman reminded the Trustees of their statutory duty to promote the objects of the Trust (both in relation to the matters being considered in the meeting and generally)

and identified each of the considerations to which they were to have regard as set out in section 172 (1) of the Companies Act 2006.

3. **DECLARATION OF INTERESTS**

Each Trustee present (in accordance with the articles of association of the Trust), declared the nature and extent of their interests to the Trustees in accordance with the duty imposed by section 182 of the Companies Act 2006 in any transactions or arrangements or section 177 of the Companies Act 2006 in any proposed transactions or arrangements with the Trust and which were to be considered at the meeting.

4. **CERTIFICATE OF INCORPORATION**

**IT WAS CONFIRMED** that the Trust had been incorporated on 20 June 2019 and had received its Certificate of Incorporation.

5. **REGISTERED OFFICE**

**IT WAS CONFIRMED** that the registered office of the Trust was at Weston Green Road, Thames Ditton, Surrey KT7 0JB

6. **ACCOUNTING REFERENCE DATE**

6.1 **IT WAS RESOLVED** that the accounting reference date be changed to 31 August.

6.1 **IT WAS CONFIRMED** that the first accounting period would run from 20 June 2019 to 31 August 2020, with the first accounts being due for filing no later than 20 March 2021.

6.2 **IT WAS RESOLVED** that Eversheds Sutherland (International) LLP be instructed to arrange for the required notification (form AA01) to be filed with the Companies Registry.

7. **AUDITORS**

**IT WAS RESOLVED** that Crowe U.K LLP be appointed as auditors of the Trust from the date of incorporation.

8. **BANK ACCOUNT**

**IT WAS RESOLVED** that a bank account be opened with Natwest Bank PLC in the name of the Trust.

9. **TRUSTEES**

9.1 **IT WAS CONFIRMED** that Danial Marshal Dean, Robin Wayne John and Karin Rowsell (each having consented to act) had been appointed as directors and therefore also as Trustees of the Trust with effect from its incorporation.

10. **SUBSCRIBERS**

10.1 **IT WAS NOTED** that that the following individuals were the subscribers to the Memorandum of Association, guaranteeing the amount of £10.00 each:

10.1.1 Terence David Price;

10.1.2 Clarissa Wilks; and

10.1.3 David Keith Lavarack.

(together, the "Subscribers")

10.2 They were, in accordance with the Trust's Articles of Association, admitted as the members of the Trust. After careful consideration **IT WAS RESOLVED** that the Subscribers be entered in the Register of Members and guarantee certificates be issued in the name of the Subscribers and be executed by the Trust.

## 11. THE PROPOSED CONVERSION

### 11.1 IT WAS NOTED that:

- 11.1.1 the Conversion has consent from the Department for Education;
- 11.1.2 the College had published the results of its statutory consultation exercise (as required under The Sixth Form College Corporations (Publication of Proposals)(England) Regulations 2012);
- 11.1.3 consultation had been carried out on behalf of the Trust on the question of whether the Trust should enter into "academy arrangements" and the responses to that consultation were presented to the Board;
- 11.1.4 legal due diligence had been carried out on the College, the reports for which were presented to the board;
- 11.1.5 the College is formally seeking confirmation from HMRC that there will be no VAT reclaim on Conversion in respect of the zero rated College buildings. The College's maximum exposure is £121,265.87 and if a reclaim should arise it will be met out of College reserves;
- 11.1.6 a deed by way of a 'pensions agreement' was being agreed with Surrey County Council, as administering authority of the Surrey Pension Fund (the "**Fund**"), regarding the treatment of the College's LGPS liabilities ("the LGPS Liabilities" in the Fund (the "**Pensions Agreement**"). Under the Pensions Agreement, the Trust agrees to be responsible for all of the LGPS Liabilities with effect on and from the Conversion date and therefore no LGPS exit debt (the "**LGPS Debt**") will be triggered or payable by the College;
- 11.1.7 The College is in receipt of a number of condition improvement grants from the ESFA (as set out below), the terms of which require ESFA consent to the transfer of such grants from the College to the Trust on Conversion. ESFA has asked for these grants to be noted on Conversion and that consent to their transfer will be given as part of the overall agreement of DfE to the Conversion of the College:
  - 11.1.7.1 £497,211.00 (four hundred and ninety seven thousand, two hundred and eleven pounds) on or around 2011/2012 (received from The Young People's Learning Agency, a predecessor to the ESFA);
  - 11.1.7.2 £885,756.00 (eight hundred and eighty five thousand, seven hundred and fifty six pounds) on or around May 2012 (received from the Building Condition Improvement Fund);
  - 11.1.7.3 £1,500,000.00 (one million, five hundred thousand pounds) on or around 2013/2014 (received from the Building Condition Improvement Fund);
  - 11.1.7.4 £495,000.00 (four hundred and ninety five thousand pounds) on or around 2014 (received from the Building Condition Improvement Fund);
  - 11.1.7.5 £232,381.00 (two hundred and thirty two thousand, three hundred and eighty one pounds) on or around 2015 (received from the Condition Improvement Fund);

- 11.1.7.6 £197,880.00 (one hundred and ninety seven thousand, eight hundred and eighty thousand pounds) on or around 2017 (received from the Condition Improvement Fund).

The College is also fulfilling the terms and conditions of a further grant from the Condition Improvement Fund of £1,436,958.00 (one million, four hundred and thirty six thousand, nine hundred and fifty eight pounds) and is working with the ESFA to ensure that if successful the terms of that grant will transfer to the Trust on dissolution of the College.

- 11.1.8 The College has asked for confirmation from O&D Construction Limited for consent to the assignment of the building contracts for the construction of the new classroom block and associated external works entered into 28 August 2012 and the construction of a new music room building and alternations to kitchen and various classrooms 7 October 2013. A Deed of Assignment in respect of these contracts has been drawn up to be entered into by the College and the Trust; and
- 11.1.9 the Department for Education had cleared the funding agreement, property transfers and land questionnaire submitted by the College on behalf of the Trust in relation to the Conversion.

## 12. **CONVERSION DOCUMENTS**

12.1 The Trustees reviewed the following documents which were presented to the meeting:

- 12.1.1 a funding agreement between the Secretary of State for Education and the Trust in relation to the funding of the Trust (the "**Funding Agreement**"). **IT WAS NOTED** that the Funding Agreement had the approval of the Secretary of State;
- 12.1.2 a transfer deed to be entered into between the College and the Trust recording the transfer of all of the property, rights and liabilities of the College to the Trust immediately before the College's proposed dissolution on 1 April 2019;
- 12.1.3 a TR1 to transfer the College to be entered into between the College and the Trust in respect of, and to effect, the transfer of the property known as Esher College, Weston Green Road, Thames Ditton, Surrey KT7 0JB and registered under title number SY658985, such transfer to take effect 1 September 2019;
- 12.1.4 A draft Pensions Agreement to be entered into between the College, the Trust and Surrey County Council relating to the treatment of the LGPS Liabilities and LGPS Debt in the Fund; and
- 12.1.5 Deed of Assignment relating to construction contracts to be entered into between the College and the Trust.

together the "**Documents**".

12.2 Trustees were asked to consider the Documents tabled and, if thought fit:

- 12.2.1 to approve the Trust's entry into the Documents and authorise the performance of its obligations and the exercise of its rights in relation to them; and
- 12.2.2 authorise the Trust's execution and delivery of the Documents.

## 13. **RESOLUTIONS**

Having given due and careful consideration to:

- the impact of the Conversion on the Trust;

- the items listed in paragraph 11; and
- the terms of the Documents;

IT WAS **RESOLVED** as follows:

13.1 that considering the nature of the obligations which the Trust would undertake and the rights and liabilities which the Trust would acquire following completion of the Documents, that the terms of the Documents be approved (subject, in each case to such amendments as any authorised Trustee may approve) that it was in the best interests of the Trust to enter into the Documents and that:

13.1.1 Daniel Dean be authorised to approve the final forms of the Documents produced to the meeting in draft form and any other documents advised to be necessary or desirable to effect or supplement the Conversion or the Novation and Restatement Deed, together with the transactions contemplated by each of them; and

13.1.2 Daniel Dean be authorised to execute on behalf of the Trust any of the Documents or any other agreements approved under the authority given in paragraph 13.1.1 to be executed as a simple agreement; and

13.1.3 Daniel Dean be authorised to execute and deliver, on behalf of the Trust any of the Documents or any other deeds approved under the authority given in paragraph 13.1.1 to be executed as deeds.

13.2 to accept the transfer of the College Corporation’s property, rights and liabilities in accordance with section 33P(2) of the Further and Higher Education Act 1992 (as amended) immediately prior to the Corporation's dissolution **CONDITIONALLY UPON** each of the following conditions being satisfied as a matter of fact or being notified as satisfied or waived by the Chair of the Trust in writing by midnight on 31 August 2019:

**Conditions**

- (a) The Trust and the Department for Education having entered into a 16 to 19 funding agreement in relation to the funding of Esher Sixth Form College which is effective on or before 1 September 2019.
- (b) The Trust, the College and Surrey County Council as administering authority for the Surrey Local Government Pension Fund having entered into a pensions agreement relating inter alia, to the level of the LGPS Debt on the College leaving the Fund.
- (c) The College's resolution to transfer all of its property, rights and liabilities to the Trust becoming unconditional (save in relation to the condition regarding the Trust's resolution being unconditional).

14. **CLOSE**

There being no further business, the Chairman declared the meeting closed.

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Chairman of the Meeting