

Report of Head of Service – Learning Systems

Report to Director of Children’s Services

Date: 1 February 2017



Subject: Consideration of whether to extend the Building Schools for the Future Strategic Partnering Agreement between the Council and Leeds Local Education Partnership (LLEP)

Are specific electoral wards affected? If relevant, name(s) of ward(s):	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Are there implications for equality and diversity and cohesion and integration?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Is the decision eligible for call-In?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Does the report contain confidential or exempt information? If relevant, access to information procedure rule number: Appendix number:	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

Summary of main issues

1. The purpose of the report is to update the Director of Children’s Services on the work the Leeds Local Education Partnership (LLEP) has undertaken for the Council since its inception in April 2007 and to seek approval to extend the Strategic Partnering Agreement entered into with the LLEP (which formed part of the Building Schools for the Future Programme) for a further five years.
2. Leeds Local Education Partnership (LLEP) was formally established in April 2007 as part of the arrangements for the Building Schools for the Future (BSF) programme. The Local Education Partnership (LEP) structure was a national approach adopted to deliver government funded capital investment in to the secondary schools estate, the LEP’s purpose was to deliver the schemes which formed part of the original BSF investment and deliver subsequent schemes beyond the original procurement through both private finance initiative (PFI) and design and build (D&B) schemes in a cost efficient manner without duplicating procurement costs and timescales.
3. The LEP arrangements had an initial term of ten years and an option to review and extend at that point for a further five years. The LEP has exclusivity to develop Council funded capital works over £100,000 on secondary schools and provided for a range of partnering services which could be applied to the wider estate. The Leeds LEP arrangements were also innovative as they included leisure and well-being facilities (Holt Park and New Leaf) within the initial scope.

4. The LLEP has helped to facilitate the successful delivery of a major programme of investment in Leeds schools over the last nine years. There is strong stakeholder support for the retention of the Leeds LEP providing the arrangements can be successfully developed between the parties to ensure continued demonstration of value for money. There is a potential pipeline of work subject to funding stream that this mechanism has significant experience of delivering against.
5. It is therefore proposed that the arrangement be extended for a further five years to provide the Council with an additional method of delivery.

Recommendations

The Director of Children's Services is asked to:

1. Approve the extension of the Strategic Partnering Agreement with the LLEP for a further five years on the terms proposed in this report, with exclusivity in relation to Council funded capital works over £100,000 on secondary schools to remain the same as the original contract;
2. Authorise the Chief Officer PPPU to take any necessary action to implement the extension.

3 Purpose of this report

- 3.1 The purpose of the report is to update the Director of Children's Services on the work the Leeds Local Education Partnerships (LLEP) has undertaken for the Council since its inception in April 2007 and to seek approval to extend the (LLEP) contract which formed part of the Building Schools for the Future Programme for a further five years.

4 Background information

- 4.1 Leeds Local Education Partnership (LLEP) was formally established in April 2007 as part of the arrangements for the Building Schools for the Future (BSF) programme. The Local Education Partnership (LEP) structure was a national approach adopted to deliver government funded capital investment in to the secondary schools estate. The LEP's purpose was to deliver the schemes which formed part of the original BSF investment and deliver subsequent schemes beyond the original procurement in a cost efficient manner without duplicating procurement costs and timescales.
- 4.2 The LEP arrangements had an initial term of ten years and an option to review and extend at that point for a further five years. The LEP had exclusivity to develop Council funded capital works over £100,000 on secondary schools and provided for a range of partnering services which could be applied to the wider estate. The initial procurement also afforded the right to the LEP to develop leisure facilities within the scope of the arrangements. The Strategic Partnering Agreement enabled new schemes to be delivered on a value for money basis through a two-stage process which involved proposals on design, cost and programme being reviewed by the Council, following which packages of work are market tested within a design and build contract entered into with a special purpose vehicle established by the LEP.
- 4.3 During the last ten years the policy environment for commissioning school places has significantly changed, with the estate currently comprised of a mixture of academy, foundation/trust, free, Voluntary Aided, Voluntary Controlled and maintained schools. However, Local Authorities still retain the statutory duty for providing sufficient school places and it is clear from current demographic trends that there is an ongoing need for the authority to continue to undertake capital investment in the school estate, whether or not fully funded by central government, in order to meet demand for school places given the rising number of young people in the city.
- 4.4 Over the last ten years, the LLEP has delivered an extensive programme of capital investment in Leeds schools and leisure facilities with a value currently approaching £400 million. Whilst this level of spend is lower than was anticipated at the start of the procurement, this is mainly because the second phase of anticipated investment through the BSF programme didn't materialise due to a change in government policy. The Wave 1 scheme however, was delivered fully and the significant external investment was fully secured.

- 4.5 A number of issues have arisen through the Strategic Partnering Agreement and associated PFI and D&B arrangements around abortive scheme development costs, liability for construction defects, TUPE transfer, insurance savings and operational performance of the PFI project companies. However, all of these issues have been overcome by adopting a partnership approach to working between the Council, the LEP and its contractors, and a strong working partnership has been developed and continues to be in place.
- 4.6 The LEP funds all project development activity from a management fee charge on new projects. If no new project development work is forthcoming, then the LEP flexes its capacity to ensure that it is not carrying unnecessary overheads, which means that the authority is not exposed to additional financial risk.
- 4.7 The Strategic Partnering Agreement also provides for a range of additional partnering services to be carried out by the LEP. Practically these services (including development of a 'Strategic Business Case' for future investment, and support to the council's policy around school places) supported the initial BSF programmed investment, but have only been needed on an ad-hoc basis in more recent years. A large number of KPIs were also established to support this activity, most of which are no longer directly relevant to the LEP's activity it is proposed that these are updated as part of the review to provide appropriate incentives during the proposed extension period.

5 Main issues

- 5.1 A review of the LEP arrangements was undertaken by PPPU at the request of the Director of Children's Services. A summary of the review is appended at **Appendix A**. With regards to the future relationship with the LEP the following main options were considered:-
1. Extend for a full five years based on the current arrangement
 2. Extend for five years with some changes to the current arrangements negotiated by agreement
 3. Don't extend the current arrangements
- 5.2 As part of the consultation stakeholders commented on a mutually beneficial working relationship to date and identified the following advantages. Speed of delivery, agility of the local based team to respond to adhoc request, perception of good value for money and quality of finished works. Ongoing senior level engagement was also noted which had facilitated the resolution of commercial issues without detrimentally affecting the partnership approach to future scheme development.
- 5.3 Stakeholders were positive about the contribution of the LLEP which has facilitated the successful delivery of a major programme of investment circa £373m in Leeds schools over the last nine years. The table below demonstrates the experience and extent of work delivered through this arrangement.

Description of Works	Value £
Original BSF Construction (PFI Education)	131,000,000
Original BSF Construction (PFI Leisure)	41,000,000
Original BSF Construction (D&B Education)	147,000,000
Primary Capital Schemes	26,000,000
Other Primary Estate works, inclusive of Nightingale PS	11,000,000
Special Schools	12,000,000
Capital Maintenance Programme	5,000,000
Total construction delivered	373,000,000

5.4 It was noted that there is a potential pipeline of work subject to funding stream that the LLEP mechanism has significant experience of delivering. Secondary school place projections have previously indicated that 4 new schools are required before 2019. Since then, changes to the provision available in some areas of the city have adjusted these projections. These include:

- An additional 50 places have been created at Roundhay in the Inner North East;
- The Temple Learning Academy free school, due to open secondary provision in 2017, creating 120 places per year in the Outer East;
- The Dixons Academy free school on Roundhay Road, due to open in 2017, creating 120 places per year in the Inner North East;
- Looking at potential expansions of existing schools/academies, which could potentially deliver an additional 60 places per year within the Inner East;
- Other capacity created in some schools by increasing their PAN within their existing accommodation or through changes to schools sixth form provision.

5.5 Given these changes, we believe there is still a projected need for the equivalent of 4 new schools across the city, but this has put the need back a year to 2020. This rises to the need for the equivalent of 7 new schools by 2023. The most immediate pressures are in the East and the West.

5.6 In addition, extra demand for secondary school places will be created as large housing developments across the city come forward. For instance, the East will be impacted by the East Leeds Extension, initially by the 2000 houses that form part of the Northern Quadrant. Evaluation of potential sites is being undertaken to meet this need.

5.7 The Sufficiency and Participation Team within Childrens Services are working closely with secondary schools, governing bodies and other stakeholders across the city to discuss the options available to meet the increasing demand for places. The current options and opportunities available include:

- The temporary or permanent increase in the PAN of an existing school within the school's current accommodation;

- The temporary or permanent increase in the PAN of an existing school with additional accommodation.
- Development of a new secondary Free School by the Local Authority through the Free School Presumption Process where there are no options for temporary or permanent expansions of an existing school within an area of need, however this would be run independently of the LA.
- Academy and Free School providers may apply to the DfE/EFA to establish new secondary schools, either as 11-16 Secondary schools or as part of a 4-16 through school, which may be in an area of demand, however it should be noted that this is outside the control of the Local Authority;
- The development of Post 16 free school applications by existing schools and academies, creating space and accommodation within existing schools;

5.8 As identified above, these demographic projections indicate there is a need to construct a number of secondary new build/expansion projects prior to 2020 to accommodate the projected demand, which will fall within the proposed extension to the LLEP exclusivity and contract. However, what is not clear is the extent this would manifest itself in additional investment through the local authority and to what extent this would be in the form of the DfE / EFA directly funding free schools and academies going forward. Given this level of uncertainty, it is not possible to accurately quantify the potential pipeline of work beyond what is currently planned, as the agreement only offers exclusivity where the Council has the power to effect and control the procurement.

5.9 If the LLEP arrangement ceased to be available these schemes could be procured through other frameworks currently used for the delivery of school places, principally YORbuild. Stakeholders were keen to retain the LLEP as an additional procurement route building on the established efficient delivery practices whilst recognising the scale and complexity of the Learning Places Programme which covers primary, secondary and SEMH provision extension of the arrangement would allow the Council to spread the risk of programme delivery.

5.10 There is strong stakeholder support for the retention and extension of the Leeds LEP providing the arrangements can be successfully developed between the parties to ensure that value for money continues to be achieved. The following changes are proposed to support this:-

5.10.1 Clear Governance Around Decisions to procure through the LLEP – Clear guidelines to be developed to ensure that there is an objective basis on how the LEP mechanism is selected for each set of works;

5.10.2 Strategic Business Case and Partnering Services – it is proposed that partnering services (save for those directly relating to new projects) will be optional following extension, with revised KPIs to be incorporated only into any specific activity called off. LEP obligations under the wider Partnering Services definition relevant to specific schemes will be incorporated into those schemes to avoid duplication of reporting;

- 5.10.3 KPIs - standard set of KPIs to be developed for new project activity which aligns to the key information and delivery requirements within other frameworks currently used for delivery of school places (principally YORbuild). These will be proportionate and tailored to the project in question, but as standard will cover employment and skills outputs, social value, defects and waste reduction KPIs;
- 5.10.4 Exclusivity – this is proposed to remain for secondary school projects (capital) above £100k subject to satisfactory performance and demonstration of value for money through the application of robust KPI's and applying good practice contract management. This exclusivity will not however extend to Interserve who have acted as the main contractor under the original agreement. The LLEP will be free to appoint other contractors to take this role where it's considered appropriate to do so, any decisions in this respect will be taken in conjunction with LCC;
- 5.10.5 Fees margins and rates. The current position under the Strategic Partnering Agreement envisages a project management fee, margins and hourly rates for Partnering Services as set out in SPA. New arrangements will cap the LEP margin, OHP's and preliminaries for new schemes to ensure they are consistent with current market rates. A review will be carried out on an annual basis to verify this presumption remains true. Partnering Services costs will be based on annualised rates with cost pro-rata'd to take account of the individual project requirements, the annualised rates within the agreement have been benchmarked against current costs and have been reset to be more reflective of current market rates.
- 5.10.6 New project procedure – schedules to the agreement set out a two stage process, but expressly permits flexibility moving forward; on recent projects the parties have adopted revised one and two stage processes, and it is proposed that this be formalised into new agreed schedules, along with use of the most appropriate form of contract for the size and scope of project with the contractor special purpose vehicle, including the NEC/JCT form (which are both available through the YORbuild framework)
- 5.10.7 Market testing to achieve value for money on specific schemes - packages for market testing are agreed through the new project process for each project, with up to 100% of the packages being subject to market testing, where market testing is not applied costs can be benchmarked against market/EFA rates to ensure they provide value for money. It is proposed to review and formalise this current practical approach, with an assumption for the percentage market tested in each Project, and an acknowledgement that a different main contractor may be identified/market tested.
- 5.10.8 Contract Management – Resources to be identified to carry out the contract management and enforcement of KPI's and performance measures during the life of the extension.
- 5.10.9 Continuous improvement targets - these have been removed as now largely redundant, with the exception of one, around sharing of unspent vandalism risk monies. Additionally it has been agreed that another around unspent insurance

risk pricing (which enables sharing of unspent sums only if insurance market premiums remain low) should be discontinued moving forward on the basis that the LEP's fees and margins have been recalibrated provided the Director is satisfied with the outcome overall on fees and margins moving forward (see paragraph 5.10.5). A sum of c.£[34k] will be paid by the LEP in respect of this sharing mechanism for the period to March 2017.

6 Corporate considerations

6.1 Consultation and engagement

6.1.1 In compiling the recommendations within this report, a consultation exercise was carried out with key stakeholders actively involved with the LEP within the council including Children's Services, PPPU, City Development and the Council's LEP Board Director and Alternate Director.

6.2 Equality and diversity / cohesion and integration

6.2.1 A completed Equality, Diversity, Cohesion and Integration Screening (EDCI) form for this report is attached at Appendix B.

6.3 Council policies and best council plan

6.3.1 The recommendations are being brought forward to provide a further option and flexibility to assist the Council in delivering its statutory duty to ensure there are sufficient school places for all children living in Leeds. Providing places local to where children live improves accessibility, reduces the journey to school and reduces the risk of non-attendance.

6.3.2 This contributes to the 2016/17 Best Council Plan outcomes for everyone in Leeds to 'Do well at all levels of learning and have the skills they need for life'; 'Be safe and feel safe' and 'Enjoy happy, healthy, active lives'. It also supports the vision in the supporting Children and Young People's Plan 2015-19 to build a child-friendly city with a focus on ensuring all children and young people are safe from harm; do well at all levels of learning and have the skills for life; enjoy healthy lifestyles; have fun growing up; are active citizens who feel they have a voice and influence. In extending this arrangement it provides the Council with a further delivery option to ensure it is able to deliver a supply of good quality accessible local school places which can contribute to these outcomes

6.4 Resources and value for money

6.4.1 Value for money through the arrangement is achieved by the application of the SPA's benchmarking and market testing strategy, this approach operates on an open book basis where all packages of work are competitively tendered to at least three subcontractors to ensure that value for money is achieved. This will be refreshed as part of the extension arrangements to ensure that it aligns with current good practice.

- 6.4.2 It should be noted that recent schemes procured through the LEP have provided out turn costs in line and or below those seen via other procurement routes available to the Council. To ensure continued VFM a review of LEP fees and margins has also been carried out to ensure that they align with current market conditions, the revised rates agreed offer a more appropriate level of remuneration for the services the LEP provide.

This coupled with the application of robust KPI's and contract management should ensure continued satisfactory performance and demonstration of continued value for money.

- 6.4.3 The LEP has a proven delivery model which is adaptable, agile and has the ability to move to market at speed reducing the cost and time spent on pre-construction activities for all parties. It has the ability to access a range of design partners/consultants, matching their skills to the project scope.

6.5 Legal Implications, access to information and call In

- 6.5.1 There are no direct legal implications arising from the recommendations in this report.
- 6.5.2 The terms of the Strategic Partnering Agreement provided for a period of six months' notice to extend the arrangements. The parties have agreed that the period should be amended to one months' notice, so the extension would have to be activated by notice from the Council on or before 2 March 2017.
- 6.5.3 This report will be subject to call in.

6.6 Risk management

- 6.6.1 In terms of the current scope of LEP exclusivity, this is determined by reference to the original OJEU notice as well as the terms of the additional contract. It is clear from the Strategic Partnering Agreement that whilst exclusivity is limited to secondary school works over the value of £100,000 (index linked), it was anticipated that a far greater potential scope of services would be delivered subject to funding through the BSF programme, which covered partnering services for other education settings.
- 6.6.2 The OJEU notice was issued in 2004, anticipating works up to £500m across schools and leisure facilities and which index linked in 2016 prices would equate to a value of circa £705 million based on the last published inflation index, therefore the current value of works procured of circa £373 million is well within this tolerance.
- 6.6.3 The Strategic Partnering Agreement enables provision by the LEP of 'Additional Services' (at the option of the Council) which includes maintenance, asset management, and support to and development of the Primary Capital Programme to align it with the secondary works. It should be noted that to date maintenance and primary capital work of circa £50 million in value has been commissioned in these areas. Leeds City Council has not received any formal challenge to these decisions but it has been necessary to consider the application of the Strategic

Partnering Agreement in each case (albeit much of the activity was individual schemes below the EU threshold for Works contracts).

- 6.6.4 The SPA sets out a series of requirements as to how the Contractor is required to respond to LCC's requirements for new projects through a New Project Development Process. This process provides for a staged process to project development, the market testing of principal works packages but not the main Sub Contractor and sets out a schedule of overhead charges and the contractual mechanism which will be used to undertake the works.
- 6.6.5 All of the above processes have been varied during the life of the arrangement in order to respond to market conditions and the contract provides for such variation within the parameters of the original agreement. The extent of works subject to exclusivity has not been varied. Any such variation seeking to increase the scope of exclusivity beyond secondary provision, for example, carries procurement challenge risk.
- 6.6.6 There has been no challenge to date to the placement of works under the terms of the Strategic Partnering Agreement and whilst there remains a risk of challenge, this risk is considered to be relatively low due to the nature of the original procurement and the scope of works that could be undertaken through the contract, and the suitability and availability of the arrangements to projects outside secondary provision is considered on a case by case basis.
- 6.6.7 If significant changes are anticipated in relation to an extension, then the Council would need to consider the provisions of Regulation 72 of the Public Contracts Regulations. This essentially provides that a contract may only be varied outside any clear terms contained within it to the extent it would not distort competition (i.e. other bidders would have participated or won) or create a materially different contract, or distort the commercial balance between the parties, and within strict parameters.
- 6.6.8 It is proposed that changes are made to the process for commissioning and that clear guidelines be developed (and governance around decisions) to ensure that there is an objective basis on how the LEP mechanism is selected for each set of works and what needs to be in place to engage productively.
- 6.6.9 As part of the review process, changes have been made to the New Project Development Process to bring it into line with current conditions and enable the City Council to require the main sub-contractor to be market tested to assess value for money where possible (this might be through use of suppliers listed on YorBuild or similar frameworks).

7 Conclusions

- 7.1 It is clear that the LLEP has helped to facilitate the successful delivery of a major programme of investment in Leeds schools over the last nine years. There is strong stakeholder support for the retention of the Leeds LEP providing the arrangements can be successfully developed between the parties to ensure continued demonstration of value for money, and as long as the changes do not

materially change the nature of the agreement to the extent that could open up the Council to challenge.

- 7.2 There is a potential pipeline of work (subject to capital funding streams) that this mechanism has significant experience of delivering against, and provides the authority with the flexibility of an alternative procurement delivery option which can be utilised where appropriate.

8 Recommendations

The Director of Children's Services is asked to:

1. Approve the extension of the LLEP Strategic Partnering Agreement with the LLEP for a further five years on the terms proposed in this report, with, the exclusivity in relation to Council funded capital works over £100,000 on secondary schools arrangement to remain the same as the original contract;
2. Authorise the Chief Officer PPPU to take any necessary action to implement the extension

9 Background documents¹

- 9.1 None

¹ The background documents listed in this section are available to download from the Council's website, unless they contain confidential or exempt information. The list of background documents does not include published works.