



**APPENDICES NOT FOR PUBLICATION**  
**Exempt / Confidential under Rule 10.4 (3)**

**Joint Report of the Directors of City Development and Adult Social Care**

**Executive Board**

**Date: 22<sup>nd</sup> June 2010**

**Subject: Leeds Holt Park Wellbeing Centre Project- submission of the Final Business Case and execution of the contract for the new Holt Park Wellbeing Centre**

**Electoral Wards Affected:**  
Adel and Wharfedale

**Specific Implications For:**

Equality and Diversity

Community Cohesion

Narrowing the Gap

Eligible for Call In

Not Eligible for Call In

**EXECUTIVE SUMMARY**

1. On 14<sup>th</sup> October 2009 Members of Executive Board approved the submission of the Outline Business Case for a new build Wellbeing Centre at Holt Park to the Department of Health.
2. On 12<sup>th</sup> February 2010 Members of Executive Board approved the affordability envelope for the Holt Park Wellbeing Centre Project. The Department of Health (DH) and Project Review Group (PRG) approved the Wellbeing Centre Outline Business Case on 12<sup>th</sup> February 2010 confirming an allocation of £30.676 million PFI Credits.
3. Members will also recall that the completion of the procurement of Phase 1 of the BSF Programme on 3rd April 2007 involved the formal establishment of the Local Education Partnership (LEP) and the City Council entering into a Strategic Partnering Agreement with the LEP. The Strategic Partnering Agreement sets out the contractual framework, referred to as the New Project Approval Procedure for

the delivery of the Holt Park Wellbeing Centre. The Holt Park Wellbeing Centre Project is being procured through the Private Finance Initiative through this procedure.

4. With regard to the Holt Park Wellbeing Centre, negotiations relating to design, scope and price through the LEP with Interserve (part of the Environments for Learning Consortium, the Council's private sector partner in the LEP) are at an advanced stage and the completion date for the centre has been agreed at March 2012.
5. Members are requested to agree to the recommendations set out in Section 7 to this report relating to the submission of the Final Business Case, and to the execution of the contract documentation for the Holt Park Wellbeing Centre, which is programmed to be completed on 30<sup>th</sup> June 2010.

## **1.0 Purpose Of This Report**

- 1.1 The purpose of this report is to update Members of the Executive Board of the progress of the procurement through the Local Education Partnership (LEP) of the Holt Park Wellbeing Centre, following Members' approval of the Outline Business Case for the project on 14<sup>th</sup> October 2009. The Outline Business Case was approved by the Project Review Group on 16<sup>th</sup> February 2010.
- 1.2 Members are requested to note and confirm the final scope of the Holt Park Wellbeing Centre summarised in Section 3.2 to this report which has not materially changed since the approval of the Outline Business Case and also recommended to approve the demolition of the existing leisure centre in advance of the opening of the new Wellbeing Centre. A copy of the Final Business Case is lodged with the Clerk to this Executive Board and is available for inspection by Members of Executive Board. .
- 1.3 Members are also requested to note and agree the maximum affordability position for the City Council as outlined in Appendix 1 and agree that this will remain the City Council's Affordability ceiling through to Financial Close at the end of June 2010 but to note that the City Council takes the risk / benefit of interest rate changes up to Financial Close.
- 1.4 Members are further requested to approve the process to enable the Commercial and Financial Close of the Project as set out in this report, and addressed in the recommendations set out in Section 7 of this report.

## **2.0 Background Information**

- 2.1 The building of the Holt Park Wellbeing Centre in Leeds signifies a capital investment of approximately £15.7 million and a significant commitment to improving community social care, reablement, health, recreation and adult learning facilities in Leeds
- 2.2 Members of Executive Board approved the arrangements for the establishment of and Council participation in the Leeds Local Education Partnership (the LEP) as part of the BSF programme phase 1 completed in April 2007. Members will recall that the main purpose of the LEP is to develop and deliver capital investment projects in the Leeds Secondary Schools estate. The City Council entered into a Strategic

Partnering Agreement with the LEP, and this Agreement provides the framework for the delivery of the Holt Park Wellbeing Centre project and works. Members will recall that the overall rationale for the strategic procurement so far as the City Council is concerned is that through the Agreement, the City Council will:

- Save costs through not having to undertake separate procurements for individual new projects;
- Extract specific savings that arise as a result of repeat purchases through the LEP;
- Share collective Partnership Targets with the LEP, which both parties will aim to achieve through their respective contributions.
- Procurement through the LEP was approved as the most appropriate route by the Director of City Development, following consideration of the procurement options in consultation with Corporate Procurement Unit, and in light of the fact that procurement of a centre at Holt Park was intended as part of the scope of the BSF project within the OJEU notice.

2.3 The Strategic Partnering Agreement sets out the contractual framework, referred to as the New Project Approval Procedure for the delivery of the Holt Park Wellbeing Centre. The Holt Park Wellbeing Centre is being procured through the Private Finance Initiative through this New Project Procedure.

2.4 The work will comprise a new build of the Wellbeing Centre. Negotiations relating to design, scope and price through the LEP with Interserve (part of the Environments for Learning Consortium, the Council's private sector partner in the LEP) are at an advanced stage and the centre is programmed to be delivered by March 2012. The Project is now at the Final Business Case (FBC) stage. The DH must approve the FBC for the DH to issue a Promissory Note prior to Financial Close and Contract signature. This Promissory Note secures the commitment of PFI Credits leading to the payment to the Council of the PFI Revenue Support Grant once services commence. A copy of the FBC (which is Exempt / Confidential under Access to Information Procedure Rule 10.4 (3)) has been lodged with the Clerk to this Executive Board and is available for inspection by Members of Executive Board.

2.5 The original scope at Outline Business Case stage required the demolition of the existing leisure centre at Holt Park once the new Wellbeing centre had been constructed and become operational. However, during the development of the scope of the project and negotiations with the contractor it became clear there were a number of issues which frustrated this approach. In particular there is a planning requirement to build a footpath from the Wellbeing Centre to the District Centre across the site of the existing leisure centre and the new Wellbeing centre cannot become operational until the footpath is in place. Also opening of the new facility ahead of demolition would mean that the first 7 months of operation would be disturbed by dust, noise, creation of a new works access and reinstatement and construction traffic and an additional deep clean would be required on completion of the demolition. There would also be an additional cost associated with the demolition of the existing leisure centre after the opening of the new facility of approximately £240,000. It is therefore proposed that the existing leisure centre will be demolished during the 7 months before the new Wellbeing Centre becomes operational and the Council will work closely with existing users (as occurred for the Morley and Armley New Leaf Leisure Centres project) to ensure that they are able to access alternative facilities during this period. This proposal will not impact upon existing day centre users.

### 3.0 Final Business Case Scope

3.1 This section outlines the main issues relating to the Holt Park Wellbeing Centre, and in particular within the proposed PFI Project Agreement.

3.2 **The Scope of the Project.** Members of Executive Board, at their meeting on 12<sup>th</sup> February, agreed the scoping of the Holt Park Wellbeing Centre required by the City Council. These requirements, which have not changed during the procurement process, formed the basis of the Output Specification. The table below summarises the scope of the Holt Park Wellbeing Centre.

<b>Wellbeing Centre</b>	<b>Summary of Proposed Project Scope</b>
Holt Park Wellbeing Centre	New community social care, health and sports hub
Procurement through PFI	Proposed 100% New Build
Service commencement March 2012	The new building will incorporate high-quality care and support facilities with the provision of modern care and recreation services and lifelong learning opportunities Detailed designs will be available to view at the meeting.

3.3 **The Works Period** (construction period) runs from contract signature, programmed for 30<sup>th</sup> June 2010, to completion of the Wellbeing Centre by the end of March 2012.

3.4 **The Service Period** for the Wellbeing Centre is programmed to commence in March 2012. The Service Period will expire on 31st March 2037.

3.5 **The Services** included within the PFI contract are:

- Facilities Management
- Buildings maintenance
- Asset Management
- Installations maintenance (e.g. cabling, alarms, ICT infrastructure)
- Utilities and Environmental Conditions
- Lifecycle Maintenance
- Reinstatement and Change
- Cleaning and Waste
- Grounds maintenance
- Health and Safety and Security
- Reactive On-Site Services
- Help Desk and Administration

The services remaining with the Council include the delivery of the adult social care, and active recreation programmes, including coaching, reablement, community support and cash collection.

3.6 **Employment and TUPE** – It is envisaged that there will be no transfer of employees under this project under TUPE and the Council has agreed to take the financial risk of the Contractor incurring additional costs (subject to the Contractor being required to mitigate such costs) arising in relation to TUPE and pensions in the unlikely event that employees transfer to the Contractor.

3.7 **Communication and Consultation Strategy** – Throughout the procurement stage of the project Public Stakeholder Groups have been consulted on a regular basis at key stages of the project. These groups were established from volunteers from existing day centre and leisure centre users, staff, local residents and businesses, sports and user groups, Ward Members and specialist interest groups such as Parent Carers, PCT, Education Leeds, Adult Social Care. In addition newsletters have been posted on the Holt Park website and shared with the Stakeholder Groups as well as being posted on notice Boards both in the Leisure Centre and other local public buildings. A lot of valuable feedback has been received from the Stakeholder Groups and where possible suggestions have been incorporated. This process will continue throughout the construction phase of the project and beyond.

3.8 **Stakeholders** in this project are identified as:

- The existing Day Centres and Holt Park leisure centre, their managers, staff, users and their communities
- The City Council's Executive Board
- The Holt Park and Education BSF / PFI Project Boards
- The Holt Park Project Team
- Adult Social Care Departmental Management Team
- Ward members
- Department for Health
- Other agencies and specialist bodies, including Commission for Architecture and the Built Environment (CABE) etc.
- Employee representatives
- Media

3.9 Communication and consultation throughout the project to date has been undertaken with all of these stakeholders including:

- Members briefings
- Regular meetings with City Development on planning, highways and site issues
- Discussions with Sport England, CABE etc.

3.10 As the project moves from contract close towards service commencement the Council will be undertaking further stakeholder consultation with input from the consortia as appropriate.

#### **4.0 Implications For Council Policy And Governance**

4.1 Decisions relating to the Project procurement have been made under the governance arrangements previously approved by Executive Board, as follows 4.1.1 up to 1<sup>st</sup> February 2010 by the Chair of the Education PFI/BSF Project Board.

4.1.2 from 1 February 2010 by the Director of City Development (following review and recommendations of a newly formed Holt Park PFI Project Board) under new delegated powers for PPP/PFI projects in part 3E of the Constitution (Officer Delegation Scheme) approved by the Leader of the Council.

4.2 The procurement process followed the process set out in the Strategic Partnering Agreement, signed by the relevant parties on 3<sup>rd</sup> April 2007.

All stages of the procurement are duly recorded in the reports and minutes of the Education PFI / BSF and Holt Park PFI Project Boards and the PPP / PFI Coordination Board and Strategic Investment Board.

4.3 DH has advised that this project is part of the spending review currently being undertaken by the Treasury but that the Council should continue to progress the project whilst the review continues.

## 5.0 Legal and Resource Implications

5.1 The negotiations on Financial and Legal matters are reaching their conclusion. The contract documentation is adapted from template BSF documents and broadly reflects the commercial position reached on the New Leaf Leisure Centres Project.

5.2 **Financial Issues:** Attached as Appendix 1 is a detailed report covering the financial issues relating to the project. In summary the main issues are:

- Value for Money.
- Affordability.
- Compliance with Capital Finance Regulations.
- Termination of the contract.

These Appendices, and the Final Business Case, are confidential under Access to Information Rule 10.4.3 because publication could prejudice the City Council's commercial interests as, both Appendix 1 and Appendix 2 (lodged with the Clerk to this Executive Board and available for inspection by Members of Executive Board) and Annexe A and B, and the Final Business Case include matters where final negotiations on the Contract are not yet complete, and these negotiations are confidential between the City Council, the LEP and the E4L Consortium. In addition both the Appendix and the Final Business Case contain sensitive commercial information supplied to the City Council by E4L. In these circumstances it is considered that the public interest in not disclosing this commercial information outweighs the interests of disclosure.

5.3 **Legal Implications and Powers:** The following paragraphs identify the principal powers enabling the contract to be signed. The final report to the Director of City Development will contain full detail of the Council's powers to enter into the contract. Paragraph 5.4 below explains that the Council's powers to enter into the Project Agreement are required to be ratified under the Local Governments (Contracts) Act 1997.

5.3.1 Project Agreement and ancillary documentation – The Council has broad powers to provide leisure facilities under Section 19 of the Local Government (Miscellaneous Provisions) Act 1976 (and a duty to provide adequate recreation facilities to support education functions under Education legislation). Powers to provide after care and

support and welfare facilities include Section 2 National Health Service Act 2006, and Section 2 Chronically Sick and Disabled Persons Act 1970, and Section 2 of the Local Government Act 2000 enables the City Council to do anything considered to be likely to achieve the promotion or improvement of the social, economic or environmental wellbeing of the area. When exercising the powers in the 2000 Act regard must be had to the Councils Community Strategy (contained in the Vision for Leeds) other supporting powers include section 111 of the Local Government Act 1972.

The Vision for Leeds 2004 to 2020 is the Community Strategy for the city and is based on the principles of sustainable development - "making sure everyone has a better quality of life now and for generations to come".

Leeds City Council's role is defined in its mission statement, which is "to bring the benefits of a prosperous, vibrant and attractive city to all the people of Leeds".

The effective use of the Council's capital resources is fundamental to achieving this objective as well as the objectives of the Council's Strategic Plan 2008-2011, as outlined below:

- improved quality of life for vulnerable people by promoting independence, dignity and respect;
- increased safety and support for vulnerable people through preventative and protective action, minimising risks and maximising wellbeing.

5.4 **Final Report and Authorisation:** Some elements of the detailed contract documents remain to be finalised, and the final report seeking authority to enter into the contract documentation will be supported by a report from DLA Piper the legal advisors supporting the project, in relation to this project. This report is anticipated to

- i. Confirm the Council's statutory powers to enter into the documentation
- ii. Provide advice on the terms of that contract documentation
- iii. Advise on the steps taken to check the terms of the supporting financing documents and sub-contracts, that they are satisfactory from the Council's point of view, and due diligence undertaken
- iv. Comment on the enforceability of the payment mechanism.

It is also anticipated that it will support the proposed certification of the PFI contract and of the direct agreement between the City Council and the contractor and senior lender under the Local Government (Contracts) Act 1997, together with any other certificates deemed necessary. These certificates are required by and Authority for any necessary additional arrangements for execution or certification of documentation at close will be sought from the Assistant Chief Executive (Corporate Governance), provide protection to the PFI contractor and senior lender against the consequences of the transactions being outside the Council's statutory powers. The Director of Resources (or any officer to whom the Director delegates the function), is authorised under the Constitution to sign such certificates for PFI Projects.

Under the new delegations (part 3 section 3E officer delegation scheme), relevant Directors are authorised

*Subject to*

*a) approval by the relevant Government Department or other relevant body of*

*the Final Business case for the Project (if applicable); and*

*b) the Director being satisfied that the Project remains within scope and affordability limits approved by Executive Board:*

*i) to approve the terms of all Project related contractual, property and other documentation; and*

*ii) to make arrangements for and approve any delegations necessary to effect commercial & financial close including any amendments to such documentation at commercial & financial close.*

It is proposed that the Director of City Development, in consultation with the Director of Adult Social Care, will continue to approve all Project specific issues to close, and give such final approvals to the Project. Because of the significance of the above it is proposed that the delegations to the Director of City Development in relation to the approval of the terms of the transaction and the conclusion of the contracts be conditional on the outcome of the receipt of a report from DLA Piper, as outlined above satisfactory to the Director of City Development.

- 5.5 **The Performance & Payment Mechanism** is set out in a schedule to the Project Agreement and is based upon the Partnerships for Schools Standard Form Document for Calibrated Payment and Performance Mechanisms and the Performance and Payment Mechanism agreed for the four PFI Schools procured in Phase 1 of the BSF Programme. The Performance and Payment Mechanism for the Holt Park Wellbeing Centre Project does not contain any specific derogations from the Standard Form that had not been agreed during Phase 1. The Payment Mechanism is designed to ensure effective Contractor performance whilst also ensuring that the Project remains bankable. The Payment and Performance mechanism provides for specific deductions to be made from the Unitary Charge (the annual payment) when specified standards for the premises and services are not met. 100% of the unitary charge is at risk for 'unavailability' of the premises and up to 30% of the unitary charge is at risk for 'poor performance' of the services. The payment mechanism regulates the calculation and payment of the invoices, including utilities and addresses issues such as the impact of inflation.

**Third Party Use** – One of the roles of the existing leisure centre is for emergency refuge and the Contract enables the use of the new wellbeing facilities outside of the core hours of the contract for this purpose. The project is a unique collaboration between two Directorates Adult Social Care and City Development working in Partnership to deliver the facility and manage and deliver the services within it.

## **6. Risk Assessments**

- 6.1 Once the Project has passed Stage 2 of the New Projects Procedure as set out in the Strategic Partnering Agreement, if the Council decides not to proceed with the Project once this stage has been entered into, the LEP can recover its Bid Development costs from the Council. If the project had not yet achieved a pass at New Projects Process the contractor may still be able to recover its costs if it has complied fully with its obligations under the contract. The Council is exposed to these risks if it receives a compliant submission from the LEP but does not to proceed with the Project through to Financial Close.

- 6.2 Members will be aware of the current issues in the Financial Markets due to the recession and further to the general election and this may impact on the interest SWAP rates. The interest SWAP, which determines the final agreed Unitary Charge is fixed at Financial Close (programmed for 30th June) and is outside the control of any of the parties to this proposed Contract. and is a risk that cannot be mitigated by any of the partners to the Contract.

Members of Executive Board are requested to agree to a Unitary Charge cost ceiling predicated on an interest SWAP rate of 5.00%. Current rates are lower than 5.00%, and if they remain lower, the Council will benefit with a lower Unitary Charge. However there is a risk that interest rates could fluctuate above 5.00% and above the City Council's affordability ceiling. Although this risk is considered to be low, if it does arise, officers would be unable to sign the Contract on behalf of the Council with the consequence that the Council could be liable to the LEP's bid development costs referred to in Appendix 1 Recommendation (c).

## **7. Conclusions**

- 7.1 The Holt Park Wellbeing Centre Project seeks to secure significant capital investment into the social care sector in Leeds, and is seen as one of the major steps in improving community support and wellbeing.
- 7.2 Leeds has been successful in being selected as a Wave 1 Authority in the Government's national BSF Programme, and attracting over £280m in investment into Leeds through the rebuilding or refurbishment of 14 high schools and through £30 million investment in 2 new leisure centres. Six of these schools are fully operational with the leisure centres now moving into the Services Period. This represents the largest single procurement to date undertaken by the City Council and the Wellbeing Centre forms part of it.
- 7.3 The affordability implications of this Project to the City Council are reported in Appendix 1, which is confidential to this report.
- 7.4 The terms of the various contractual documents are currently being finalised with the LEP and Environments for Learning. Under the terms of the City Council's Corporate Governance arrangements for PPP / PFI projects (which permit submission of the FBC for a Project in advance of the Executive Board meeting if the Director considers approval to be urgent) the Director of City Development, following review by the Strategic Investment Board has approved the submission of the Final Business Case to DH subject to the decision of Executive Board. This was necessary to seek to ensure that the relevant Government agencies have sufficient time to consider and grant final approval for the Project prior to Financial Close, programmed for 30<sup>th</sup> June 2010. Once the review of the FBC has been completed, and subject to their approval, DH will issue a Promissory Note to the City Council which will provide the necessary written confirmation regarding credit cover and revenue support the City Council requires before it can sign the Contract with E4L. Subject to the approval of Members of Executive Board, a copy of this report and the resolutions will be submitted to DH following the meeting of this Executive Board.
- 7.5 Financial Close and Contract signature will in turn see the commencement of the start of construction for the Holt Park Wellbeing Centre and following successful construction will lead to the Wellbeing Centre being in beneficial use by April 2012.

## **8 Recommendations**

Members of Executive Board are recommended to note this report, and:

- 8.1 Note and confirm the final scope of the Holt Park Wellbeing Centre Project (Project) set out in the report;
- 8.2 To approve the submission of the Final Business Case to the Department of Health and authorize the Director of City Development to make any necessary amendments to the FBC. The Final Business Case covers the Holt Park Wellbeing Centre Project financed through the Government's Private Finance Initiative.
- 8.3 Approve the demolition of the existing leisure centre in advance of opening the new Wellbeing Centre
- 8.4 Approve the financial implications for the Council of entering into the Project, and to agree the maximum affordability ceiling for the City Council in relation to the PFI of £2.428m in the first full year of service commencement (2012/13), as set out in Appendix 1 but subject to paragraph 8.7 below should the SWAP rate exceed 5.00%.
- 8.5 Note the balance sheet treatment for the Project.
- 8.6 Approve the arrangements to Financial Close and implementation of the Project to include (but not by way of limitation) the award/entry into a PFI Project Agreement to a special purpose company to be established under terms agreed between the City Council and the Leeds Local Education Partnership (LEP), and  
  
in connection therewith, confirm the arrangements at paragraph 5.4 of this report and authorise (for the avoidance of doubt) that the delegated powers set out at Part 3 section 3E of the Constitution in relation to PPP/PFI and other Major Property and Infrastructure Related projects be exercised in relation to this Project by the Director of City Development (or delegee) in consultation with the Director of Adult Social Care (or delegee)
- 8.7 To delegate authority to the Director of City Development or her nominee to approve the completion of the project should the SWAP rate exceed 5.00% but be less than 5.50% at the time of Financial Close to a maximum affordability ceiling of £2.500m in 2012/13 terms.

### **Background Papers**

Holt Park Wellbeing Centre Outline Business Case  
Holt park Wellbeing Centre Executive Board reports of 12<sup>th</sup> February 2010 and 14<sup>th</sup> October 2009