



APPENDIX 1 NOT FOR PUBLICATION
Exempt / Confidential under Rule 10.4 (3)

Report of the Deputy Chief Executive

Executive Board

Date: 24th January 2007

Subject: Leeds Building Schools for the Future – Submission of the Final Business Case and Execution of the Contracts

Electoral Wards Affected:
All

Specific Implications For:

Equality and Diversity

Community Cohesion

Narrowing the Gap

Eligible for Call In

Not Eligible for Call In
(see paragraphs 2.8 and 2.9)

EXECUTIVE SUMMARY

- 1 Members of Executive Board will recall from reports considered by them on 9th March and 16th November 2005 that Leeds had been selected as a Wave 1 Authority under the Government's Building Schools for the Future (BSF) Programme. The aim of the BSF Programme in Leeds is the rebuilding or substantially refurbishing, over three phases, 14 secondary schools. Members also gave their approval to the establishment of a Local Education Partnership (LEP) and to the final scoping and financial implications of Phase 1 of the City Council's BSF Programme.
- 2 This report informs Members of the work of the Education PFI and BSF Project Board in securing the procurement of a Local Education Partner (LEP) to rebuild or refurbish through PFI and conventional Design and Build, the 14 Secondary Schools in the City, with the schools to become operational between August 2008 and August 2010. The total investment over all three phases, including ICT, is £249m. The total level of investment in Leeds Schools through the Government's PFI and BSF initiatives amounts to £429m.

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 BSF project since the report of 16th November 2005, when Members agreed to:

- a) Note and agree:
 - (i) the establishment of the LEP through the procurement process;
 - (ii) the exclusivity awarded to the LEP through the contractual arrangements;
 - (iii) the principle of the differentiation of roles and responsibilities between the LEP and Education Leeds;
- b) Note and agree the final scoping of Phase 1 of Wave 1 of the City Council's BSF Programme, as summarized in Section 4 of that report and that that would form the basis of the Output Specification included as part of the Invitation to Negotiate (ITN) Documents subsequently released to bidders;
- c) Approve the financial implications of Phase 1 of Wave 1, summarized in Section 8 of that report;
- d) Note the headline Unitary Charge for the four schools to be procured through PFI, amounting to £12.952m at April 2010 prices and agreed that this would be the City Council's PFI Affordability threshold issued to bidders with the ITN Documentation;
- e) Note the costs for the works at Temple Moor and Cockburn High Schools were estimated to total £29.855m and agreed that this would be the Council's Capital Investment Affordability threshold for these two schools, also issued to bidders with the ITN Documentation.

2.0 Background Information

2.1 By providing for the rebuilding of four existing secondary schools, the building of a new secondary school in West Leeds and the significant refurbishment of a further nine schools in Leeds, over three phases, with a capital investment value, including ICT, of £249m, this project represents the largest procurement undertaken in the history of the City Council. Members should be aware that the time taken to procure the Project from the approval of the Outline Business Case in May 2005, through to Financial Close, programmed for 28th February 2007, is the shortest of any BSF Project to date.

2.2 Subject to the approval of Members, the Leeds BSF Project will be the seventh signed Project within the City. The capital investment procured through these signed contracts and those currently in procurement is summarised below:

Learning and Leisure	£m
Education Sector	
Cardinal Heenan High School	9
Two Secondary and five Primary Schools	38
10 Primary Schools	36
Five Secondary and one Primary Schools	97
14 Secondary Schools in Wave 1 of this BSF Programme	249
	<hr/> 429 <hr/>
Leisure Sector	
New Leaf Leisure Centres	30
Social Housing Sector	
Swarcliffe	113
Little London	77
	<hr/> 190 <hr/>
Social Services	
Independent Living Accommodation for People with Learning Difficulties and People with Mental Health Problems	60
Access to Services	
Joint Service Centres	15
Transport Sector	
Street Lighting	106
Total Investment	<hr/> 830 <hr/>

- 2.3 Executive Board received a report in October 2004 updating Members on the progress with the Wave 1 BSF Programme. Since that date, the Strategic Business and Outline Business Cases for Phase 1 of the Programme were developed and approved by Members on 9th March 2005. Members also agreed to the principle of establishing a Local Education Partnership (LEP). Formal approval of the Business Cases was received from the Department for Education and Skills (DfES) on 26th May 2005. DfES has committed £140m of PFI Credits for the four secondary schools included within the PFI element of Phase 1 of the Programme and £26.18m in specific capital grant for the refurbishment of Cockburn and Temple Moor High Schools.
- 2.4 On 16th November 2005, Members also received further details on the LEP and a summary of the scope of the proposed works to each school included within Phase 1. Members also received details on the estimated costs of both the PFI and Design and Build elements of Phase 1 and agreed the Affordability Thresholds to be issued to the bidders. A summary of the recommendations noted and approved by Members on 16th November are set out in paragraph 1.1, above.
- 2.5 A detailed report setting out the main issues relating to the structure of the Local Education Partnership, and the City Council's responsibilities as a shareholder to the Company is also included on the agenda of this meeting of Executive Board.
- 2.6 The Project is now at the Final Business Case (FBC) stage. The DfES must approve the FBC for the DfES to issue a Promissory Note prior to Financial Close and Contract signature. This Promissory Note secures the release of the Notional

Credit Approvals and final commitment of the Capital Grant Funding for the conventionally funded schools to be refurbished under Design and Build. A copy of the draft 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.

2.7 The E4L Consortium comprises:

Equity Investors	Interserve Investments PLC Mott MacDonald Barclays Private Equity
Senior Lender	Sumitomo Mitsui Banking Corporation Europe Limited
Construction	Interserve Project Services Limited
Facilities Management	Interserve Project Services Limited Scholarest (Catering)

2.8 It is reluctantly proposed that the decisions recommended in this report be exempt from call in by reason of urgency, because any delay in implementing the decision would seriously prejudice the Council's interest, and taking account of the extent of the prior reporting to, and approvals of Executive Board in relation to the Project. Entry into the various agreements is programmed for 28th February 2007, and this timescale is crucial to provide sufficient construction time for the rebuild and refurbishment of five of the schools within Phase 1 in time for those schools to become operational in August 2008. If the report is called in for scrutiny and any issues are identified requiring further information, this could result in the required approvals not being in place in time for construction to begin. A delay to the signing of the Contract may also impact on the affordability of the Project to the City Council.

2.9 However, officers are mindful of the general public interest in permitting proper scrutiny, given the significance of the Project. The recommend approach is only proposed because of the extensive prior reporting and approvals, the importance of the Project in furthering the Council's objectives and the significance of the possible delay involved (it cannot be said with certainty that scrutiny following call in would not impact on the programme for the new schools). Accordingly, members are asked to consider what alternative steps might be taken to promote scrutiny, while still exempting the report from call in.

3.0 Main Issues

3.1 This section outlines the main issues covered in Phase 1 of Wave 1 of the City Council's BSF Programme, and in particular within the PFI Project Agreement which affects four of the six schools included within Phase 1.

3.2 **The Scope of the Project.** Members of Executive Board, at their meeting on 16th November 2005, agreed the scoping of the school accommodation 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 six schools included within Phase 1 which included a proposed split between the proportion of refurbishment and new. Following discussions with

bidders and the evaluation of bids received, capacity by reference to pupil numbers remains unchanged, although on grounds of value per money the proportion of New Build in the project has increased.

School	Summary of Proposed Project Scope
<p>Allerton High School</p> <p>Procurement through PFI</p> <p>Service commencement August 2008</p>	<p>Schools capacity: 900 pupils aged 11 to 16 220 pupils aged 16 to 18 30 Generic Special Needs pupils Multi- Faith Centre</p> <p>Proposed initial minimum scope of the work 90% New Build; 10% Refurbishment Final scope of work = 100% New Build</p>
<p>Pudsey Grangefield School</p> <p>Procurement through PFI</p> <p>Service commencement August 2008</p>	<p>School capacity: 975 pupils aged 11 to 16; 170 pupils aged 16 to 18</p> <p>Proposed initial minimum scope of the work: 87% New Build; 13% Refurbishment Final scope of work = 100% New Build</p>
<p>Rodillian School</p> <p>Procurement through PFI</p> <p>Service commencement August 2008</p>	<p>School capacity: 1,050 pupils aged 11 to 16; 170 pupils aged 16 to 18; 30 Generic Special Needs pupils Children's Centre</p> <p>Proposed initial minimum scope of the work: 91% New Build 9% Not affected Final scope of work = 100% New Build</p>
<p>Allerton Grange High School</p> <p>Procurement through PFI</p> <p>Service commencement August 2009</p>	<p>School capacity: 1,200 pupils aged 11 to 16; 270 pupils aged 16 to 18; 30 Generic Special Needs pupils</p> <p>Proposed initial scope of the work: 100% New Build Final scope of work = 100% New Build</p>
<p>Cockburn High School</p> <p>Conventional funding Supported Borrowing</p> <p>Operational August 2008</p>	<p>School capacity: 1,050 pupils aged 11 to 16; 100 pupils aged 16 to 18;</p> <p>The proposed scope of the work suggested a partial New Build and partial refurbishment solution. Initially it was suggested 32% would be New Build. However the final proportion depended upon the bidder's design and how it best met the Council's Output Specification in the most economically advantageous way. As a result this school will have a slightly higher proportion of New Build than initially suggested.</p>

Temple Moor High School	School capacity: 1,050 pupils aged 11 to 16;
Conventional funding Supported Borrowing	170 pupils aged 16 to 18; 30 High Dependency Special Needs pupils
Operational August 2008	The proposed scope of the work suggested a partial New Build and partial refurbishment solution. Initially it was suggested 32% would be New Build. However the final proportion depended upon the bidder's design and how it best met the Council's Output Specification in the most economically advantageous way. As a result this school will have a slightly higher proportion of New Build than initially suggested.

3.3 **The Works Period** (construction period) runs from contract signature, programmed for 28th February 2007, to phased completion of five of the schools at the end of July 2008 and the sixth school, Allerton Grange at the end of July 2009.

3.4 **The Service Period** for the three of the four schools procured through the Private Finance Initiative is programmed to commence on 1st August 2008, with service commencement for Allerton Grange programmed for 1st August 2009. Service completion for all four schools will be 31st July 2034.

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

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

3.6 **Employment and TUPE** – The PFI Contract will involve the transfer of caretaking, cleaning and catering staff under TUPE from the City Council to the Service Providers. Drafting within the Contract includes requirements for the Service Providers to comply with the Code of Practice on Workforce Matters set out in the ODPM Circular 03/2003, which is aimed at avoiding a two tier workforce.

3.7 **Pensions:** The PFI Contract provides for protection of pensions provision through an admission agreement to the West Yorkshire Pension Fund (WYPF). It is proposed that transferring employees and new employees of the facilities management Service Providers will have continued membership of, or access to the WYPF. If for any reason the employer cannot achieve or retain Admitted Body

status for this purpose, then broadly comparable arrangements would have to be provided.

3.8 **Communication and Consultation Strategy** - The Education PFI / BSF Project Board approved the Communications Strategy and Consultation strategy for the Project to ensure all stakeholders would be kept informed at the appropriate times during the project. This strategy works through the established protocols of Education Leeds and the City Council and was developed from experience acquired on earlier Education PFI contracts.

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

- The schools, their head teachers, governors, staff, parents, pupils and their communities
- Education Leeds
- The City Council's Executive Board
- The Education PFI / BSF Project Board
- The BSF Project Team
- Ward members (where schools located)
- Department for Education and Skills
- Partnerships for Schools
- Other agencies and specialist bodies, including Sport England, English Heritage, Commission for Architecture and the Built Environment (CABE) etc.
- Employee representatives
- Media

3.10 Communication and consultation throughout the project to date has included:

- Regular newsletters to schools to adapt for their wider community. Newsletters are made available to Ward Members, MP's, and to Trade Unions
- Members briefings
- Governor and staff meetings at each school
- Regular update meetings with Headteachers and their Chairs of Governors
- Regular reports to the Education PFI / BSF Project Board,
- Regular meetings with Partnerships for Schools
- Regular meetings with Development Department on planning, highways and site issues
- Discussions with Sport England, English Heritage, CABE etc.

3.11 As the project moves from contract close towards service commencement the Council will be undertaking staff consultation with all affected staff, with input from E4L as appropriate. The trade unions will be included throughout this process.

3.12 **Impact upon the Leeds Public Playing Field Strategy** - In accordance with the requirements of the report on Leeds Public Playing Fields Strategy, approved by Executive Board on 13 December 2006, the potential of this Phase of the BSF project on school, and other public playing fields has been considered.

3.13 Subject to the approval of the final designs to be submitted to Plans Panel in February, it can be confirmed that none of the construction work necessary to create the new school accommodation, or temporary facilities to support the phasing of works on site, will have any adverse impact on the existing sports pitches.

- 3.14 There will be limited impact on existing indoor sports facilities, as sports halls and gymnasias are replaced, or refurbished, however, each school will seek to address this within existing budget provisions.
- 3.15 Following consultation with the Department of Learning and Leisure, it can be confirmed that there are no outstanding issues on this Phase of the project.
- 3.16 **Early/enabling works** - The programme to achieve completion of construction to enable school opening for September 2008 assumes full commencement of works on 1 March 2007. However (although final details are being confirmed) the programme also assumes that some mobilisation/enabling works (eg to provide site compounds, temporary access) may be required prior to 1 March. It is also prudent to enable a timely response to any delay in reaching financial close. Accordingly, Members are requested to grant delegated powers to the Chair of the Education PFI/BSF Project Board (in consultation with the Director of Corporate Services and the Director of Legal and Democratic Services) to:
- 3.16.1 authorise preparation, mobilisation, and enabling works to be carried out in advance of 1 March on appropriate terms;
- 3.16.2 subject to being satisfied that the risks of such an approach are appropriate, authorise terms to enable early works on site to be commenced in advance of financial close if such close is anticipated to be delayed beyond 28 February. Members should note that this is not currently anticipated.

4.0 Implications For Council Policy And Governance

- 4.1 At their meetings on 9th March and 13th October 2005, Members of Executive Board agreed the Corporate Governance arrangements for the procurement of PPP / PFI projects, giving appropriate delegations to the PPP / PFI Co-ordination Board and to specific PFI Project Boards. The procurement of this Project has been undertaken in compliance with these arrangements. The authority and powers to enter into a contract with the Preferred Bidder are reserved to Members of Executive Board.
- 4.2 The following are the individual stages in the procurement process determined by the Education PFI / BSF Project Board:
- | | | |
|------|---|---------------------------------|
| i) | OJEU Notice | 5 th August 2005 |
| ii) | Receipt of Pre Qualification Questionnaire and Pre ITN Documents from Bidders | 19 th September 2005 |
| iii) | Invitation to Negotiate Shortlist | 22 nd November 2005 |
| iv) | Issue of ITN Documents to Bidders | December 2005 / January 2006 |
| v) | Selection of two bidders at Stage 2 of the ITN process | 8 th June 2006 |
| vi) | Selection of the Preferred Bidder | 7 th November 2006 |

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

- 4.3 The outcome of the procurement process was that on 7th November 2006, the Environments for Learning (E4L) Consortium was selected as the Preferred Bidder

for this Project, subject to the agreement of a satisfactory Preferred Bidder letter, which was signed by the City Council and the E4L Consortium on 14th December 2006.

- 4.4 Members are requested to note that under the “Exclusivity” arrangements inherent within BSF, referred to in paragraph 1.1 (a) (ii), above, and outlined in paragraph 2.3 of the report to this Executive Board entitled “Building Schools for the Future – Leeds Local Education Authority Partnership” states that subject to the successful Financial Close of Phase 1, the E4L Consortium, being the major shareholder in the LEP, will in effect be the Preferred Bidder for Phases 2 and 3 of the City Council’s Wave 1 BSF Programme.

5.0 Legal And Resource Implications

- 5.1 The negotiations on Financial and Legal matters are reaching their conclusion. The appendices attached to this report outline the current key issues.
- 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 regulation 40 of the Local Authorities (Capital Financing) Regulations (as amended).
 - Termination of the contract.

This Appendix, and the Final Business Case, is confidential under Access to Information Rule 10.4.3 because publication could prejudice the City Council’s commercial interests as, both the Appendix 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 and the Preferred Bidder. In addition both the Appendix and the Final Business Case contain sensitive commercial information supplied to the City Council by the Preferred Bidder. 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:** Appendix 2 gives information on the agreements which will be required and the key legal issues. The following paragraphs identify the principal powers enabling the contracts to be signed. The final report to the Deputy Chief Executive will contain full detail of the Council’s powers to enter into the contracts.

5.3.1 Project Agreement and Design and Build contract and ancillary documentation – Leeds City Council has statutory powers to provide schools and to enter into this documentation for that purpose contained within education legislation (primarily Part 1 of the Education Act 1996 and section 22 of the School Standards and Framework Act together with section 1 of the Local Government (Contracts) Act 1997.

5.3.2 Strategic Partnering Agreement and Shareholders Agreement– in addition to the education legislation referred to above, which covers provision of additional school facilities and replacement school facilities through the new projects procedure, the City Council also has powers to enter into the Strategic Partnering Agreement and Shareholders Agreement under, inter alia, the powers contained in section 2 of the

Local Government Act 2000 (power 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.

- 5.4 **Final Report and Authorisation: Final Report and Authorisation:** Because of the extent to which detailed contract preparation documents remain to be finalised, the City Council has not to date received a detailed report from the Council's external legal advisers (DLA Piper) in relation to this project.

Once all negotiations and contract preparation is finalised, the City Council will receive a detailed report from the City Councils external legal advisors, DLA Piper, in relation to this project. This report is anticipated to

- i. Confirm in detail the Councils 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, sub-contracts, and shareholder and investment documents that they are satisfactory from the Council's point of view, and due diligence undertaken.

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 contractors and senior lender under the Local Government (Contracts) Act 1997, together with any other certificates deemed necessary. These certificates provide protection to the PFI contractor and senior lender against the consequences of the transactions being outside the Council's statutory powers. Because of the significance of the above it is proposed that the delegations to the Deputy Chief Executive in relation to the approval of the terms of the transaction and the conclusion of the contracts be conditional on the outcome of the report from DLA Piper, as outlined above.

- 5.5 **The Performance & Payment Mechanism (applying to the PFI Schools)** 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. Any specific derogations from this document have been discussed and agreed with Partnerships for Schools. 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 40% of the unitary charge is at risk for 'performance' of the services. The payment mechanism regulates the calculation and payment of the invoices, including payment for school meals and utilities and addresses issues such as the impact of inflation.

6. Conclusions

- 6.1 The Leeds Building Schools for the Future Programme seeks to secure significant capital investment into the Secondary School sector in Leeds, and is seen as one of the major steps in improving educational attainment in this sector.
- 6.2 Leeds has been successful in being selected as a Wave 1 Authority in the Government's national BSF Programme, and attracting almost £250m in investment

into Leeds through the rebuilding or refurbishment of 14 high schools. These schools will be completed over three phases and will become operational between August 2008 and August 2010. This Project represents the largest procurement undertaken by the City Council.

- 6.3 This report seeks Members' approval to submit the Final Business Case to Partnerships for Schools and the Department for Education and Skills. The Final Business Case covers Phase 1 of the City Council's BSF Wave I Programme and covers six schools. Four of these schools will be rebuilt and financed through the Government's Private Finance Initiative and two schools will be substantially refurbished and financed through specific Capital Grant.
- 6.4 One of the objectives of the Government's Building Schools for the Future Programme is to reduce the time and cost to both the Public and Private Sectors of procuring major investment into schools. The Department for Education and Skills (DfES), through Partnerships for Schools (PfS), is promoting the utilisation of a Local Education Partnership model to achieve these objectives. This involves granting a degree of exclusivity in future investment in the Secondary School estate. Details on the proposed Leeds Local Education Partnership are set out on a separate report on this Agenda. The implications for the City Council is that the Local Education Partnership in Leeds will, subject to the approval mechanisms relating to value for money established by Partnerships for Schools and contained in the SPA, be the Preferred Bidder for Phases 2 and 3 of the City Council's Wave 1 BSF Programme.
- 6.5 The terms of the various contractual documents are currently being finalised with the Council's Preferred Bidder, Environments for Learning. Subject to the approval of Members of Executive Board, a copy of this report and the resolutions will be submitted to PfS and DfES following the meeting of this Executive Board. Under the terms of the City Council's Corporate Governance arrangements for PPP / PFI projects, the PPP / PFI Coordination Board have approved the submission of the Final Business Case to PfS in advance of (and subject to) the decision of Executive Board. This should ensure that the relevant Government agencies have sufficient time to consider and grant final approval for the Project prior to Financial Close, programmed for 28th February 2007. Once the review of the FBC has been completed, and subject to their approval, DfES will issue a Promissory Note to the City Council which will provide the necessary written confirmation regarding credit cover and revenue and capital support the City Council requires before it can sign the Contract with E4L.
- 6.6 Financial Close and Contract signature will in turn see the commencement of the start of construction for five of the six schools in Phase 1, and following successful construction will lead to five of the schools being in beneficial use by August 2008 and the sixth school in August 2009.

7 Recommendations

Members of Executive Board are recommended to:

- 7.1 Note the information in this report and its appendices providing details of the process and negotiations undertaken and work carried out to date in relation to the Leeds BSF Project ("Project") and to support and confirm the decision of the PPP/PFI Coordination Board, under section 3.1 of the powers delegated to it by Executive Board on 13 October 2005 to submit the Final Business Case for the Project in advance of this meeting of this Executive Board.
- 7.2 Note the powers of the Council as referred to in paragraph 5.3 of this report to enter into the Project Documents and that confirmation of the Council's powers will be contained in the report from the Council's legal advisers referred to in paragraph 5.4 of this report.
- 7.3 Approve the financial implications for the Council of entering into the Project Documents as detailed in Appendix 1, and to agree the maximum affordability threshold for the City Council in relation to the Phase 1 PFI contract of £12.952m, as set out in Appendix 1.
- 7.4 Note the comments set out in Appendix 1, that the PFI element of Phase 1 remains good value for money for the Public Sector.
- 7.5 Note that based on the information provided in Appendix 1, the Project is affordable by the Council, and to agree a further injection into the Capital Programme for the two Design and Build Schools, as recommended in Appendix 1.
- 7.6 Note that work is currently underway and is expected to lead to the provisional assessment of the Director of Corporate Services that, on the information and advice provided, and in accordance with proper practices, no liabilities will arise which will result in the City Council being required to recognise a fixed asset in any balance sheet required to be prepared by the City Council in accordance with such proper practices, for the financial year in which the agreement will be entered, for the purposes of Regulation 3 of the Local Authorities (Capital Financing and Accounting) (England) Regulations 2003.
- 7.7 Note that the Transfer of Undertakings (Protection of Employment) Regulations (TUPE) will apply to transfer staff currently employed by the City Council and Education Leeds from the respective service commencement dates for each PFI school and that ongoing communication and consultation is taking place on this.
- 7.8 Note that an admission agreement will be entered into in connection with this project to enable those transferring employees of PFI schools who are currently members of the West Yorkshire Pension Fund to retain active membership of that scheme and to permit new employees to have similar benefits.
- 7.9 Approve the award of contracts for the implementation of the Project to the Environments for Learning consortium (E4L) to include (but not by way of limitation) the award/entry into of the following contracts:
 - in relation to the Phase 1 PFI schools of a PFI Project Agreement to a special purpose company to be established by E4L as a subsidiary of the Local Education Partnership (LEP);

- subject to approval by Executive Board Members to investment in and governance arrangements relating to the LEP (the subject of the separate report to this Board), the award of a Strategic Partnering Agreement to the LEP to be established by E4L (including exclusivity in relation to Major Capital Projects as detailed in the separate report);

and

- in relation to the Phase 1 design and build schools the award of design and build contract(s) to the LEP or a special purpose company established by E4L as a subsidiary of the LEP

and, in connection therewith, grant delegated powers to the Deputy Chief Executive (or in his absence the Director of Corporate Services) to give final approval to the completion of the Project, including (but not by way of limitation) the terms of the following:

- i. Strategic Partnering Agreement
- ii. The Shareholders Agreement
- iii. The Project Agreement (phase 1 schools)
- iv. The Funders Direct Agreement
- v. The Pensions Admission Agreement
- vi. The Design and Build contract(s) (phase 1 schools)
- vii. Arrangements to appoint independent certifiers to assess the quality of the PFI and Design and Build contractors' work
- viii. Appropriate collateral warranties and
- ix. Governing body agreements with schools as appropriate

Together with any other documentation ancillary or additional to the above necessary for the completion of the Project ('Project Documents')

subject to

- (A) DFES approval of the Final Business Case
- (B) the Deputy Chief Executive (or in his absence the Director of Corporate Services) being satisfied that the Project remains within the affordability constraints set out in Appendix 1
- (C) Receipt of a report satisfactory to the Deputy Chief Executive (or in his absence the Director of Corporate Services) from the Council's external legal advisers, as described in Appendix 2 of this report and
- (D) The Director of Corporate Services (or in his absence the Chief Officer – Financial Management) assessment on the balance sheet treatment in

relation to the PFI contract as set out in paragraph 4 of Appendix 2 of this report.

- 7.10 Approve that the Director of Corporate Services, as the statutory officer under section 151 of the Local Government Act 1972, or in his absence the Chief Officer - Financial Management, be authorised to sign any necessary certificates under the Local Government (Contracts) Act 1997 in relation to the Project.
- 7.11 Approve that, in respect of certification under 7.10, and subject to the advice of the Director of Legal and Democratic Services, a contractual indemnity be provided to the Director of Corporate Services in respect of any personal liabilities arising from the certification.
- 7.12 Approve the execution of the Project Documents, by affixing the Council's common seal and / or signature (in accordance with Articles 14.4 and 14.5 of Part 2 of the City Council's Constitution) and to approve that the Director of Legal and Democratic Services (or any other officer of the Council authorised by her) take any necessary further action to complete the Project including any final amendments to the Project Documents and give effect to Members' resolutions and delegated decisions referred to in these recommendations.
- 7.13 Request and authorise the Director of Children's Services to implement any post completion arrangements necessary to monitor and administer the contract documentation (subject to the approval of the PPP / PFI Co-ordination Board under the Council's Governance arrangements for PPP / PFI contracts).
- 7.14 Approve the submission of this report, the minutes of this meeting of the Executive Board, and such other information, and including any necessary amendments as the Deputy Chief Executive may approve to the Final Business Case, to the Department for Education and Skills and Partnerships for Schools.
- 7.15 Grant delegated powers to the chair of the Education PFI/BSF Project Board (in consultation with the Director of Corporate Services and the Director of Legal and Democratic Services) to:
 - 7.15.1 authorise preparation, mobilisation, and enabling works to be carried out in advance of 1 March on appropriate terms;
 - 7.15.2 subject to being satisfied that the risks of such an approach are appropriate, authorise terms to enable early works on site to be commenced in advance of financial close if such close is anticipated to be delayed beyond 28 February.
- 7.16 Consider what further steps may be taken in relation to scrutiny, taking account of the matters referred to in paragraphs 2.8 and 2.9 of the report.