



Report of the Deputy Chief Executive

To: Executive Board

Date: 24th January 2007

Subject: BUILDING SCHOOLS FOR THE FUTURE – LEEDS LOCAL EDUCATION PARTNERSHIP

Electoral wards affected:

All

Specific implications for:

Equality and Diversity

Community Cohesion

Narrowing the gap

Eligible for call In

Not eligible for call in
(details in paras. 1.2 and 1.3)

Executive Summary

- 1) Members will be aware from the previous item on the agenda for this meeting that the Council is reaching the final stages of the initial Building Schools for the Future (BSF) procurement. The main commercial issues relating to the procurement and authority to enter into the contracts involved are addressed in that report.
- 2) BSF is based on a model of strategic procurement under which authorities procure long term partners, rather than a succession of contractors for individual works. For the Council, this partner is the Leeds Local Education Partnership (LEP).
- 3) The Council will enter into partnership and joint venture arrangements with the LEP and these will provide the framework for the delivery of individual projects and works for 10 years or more. This framework includes arrangements for delivering value for money and other benefits, and also for the LEP to have exclusivity in relation to certain new projects.
- 4) The Council has two roles in relation to BSF. The main role is as client or Strategic Partner of the LEP. The second is as shareholder in the LEP. Both roles are examined in this report, and recommendations are made concerning the governance arrangements to support them, and the extent of the Council's financial participation in the LEP.

1. Purpose of Report

- 1.1 This report explains the concept of the LEP and recommends appropriate governance arrangements to ensure that there are transparent and effective Council interfaces with the LEP, that the LEP is appropriately supported by the City Council, and that the Council is best placed to realise the benefits of the strategic procurement. It also considers and makes a recommendation on the extent of the Council's financial investment in the LEP.
- 1.2 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.
- 1.3 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.

2.0 **Background information**

- 2.1 Executive Board will recall that in reports dated March 2005 and October 2005 on BSF, the concept of the LEP was introduced. The main purpose of the LEP is to develop and deliver capital investment projects in the schools estate. It is not the role of the LEP to deliver Education Services, although it will support and work in partnership with Education Leeds to take forward strategic objectives to achieve transformational outcomes in teaching and learning.
- 2.2 The completion of the BSF procurement at end of February 2007 will involve the formal establishment of the LEP, with the City Council entering into the Shareholders Agreement, prior to entry by the City Council into the Strategic Partnering Agreement and the PFI and Design and Build contracts.
- 2.3 The LEP is a Joint Venture Company to be established between:
- E4L, the Council's private sector partner and the majority shareholder, with an 80% share;
 - BSFI, the BSF investment vehicle jointly owned by the Department for Education and Partnerships UK (10%); and
 - the City Council (10%).
- The LEP will be minority interest company for the purposes of Part V of the Local Government and Housing Act 1989 and the Local Authorities (Companies) Order 1995 thereunder as amended.
- 2.4 The LEP (or a subsidiary Project Company of the LEP) will also enter into the contracts with the City Council to provide the Phase 1 Schools, and later the Phase 2 and Phase 3 schools and other capital investment projects developed under the arrangement.
- 2.5 Further, the LEP will enter into a Strategic Partnering Agreement (SPA) with the City Council. This agreement provides the framework for the delivery of BSF Phases 2 and 3, as well as certain other projects and works. Under it the Council will agree to place these projects and works with the LEP within a developed contractual framework, which is aimed at ensuring value for money, and which provides an agreed basis for risk allocation.
- 2.6 The overall rationale for the strategic procurement so far as the City Council is concerned is that through it the City Council will:
- Save costs through not having 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.
- 2.7 In order to be effective for these purposes in procurement terms, and in order to secure the commitments of E4L, the Council will grant the LEP exclusivity, within the framework outlined above. For the duration of the SPA (10 years, with an extension for a further 5 years if both parties agree) the LEP will have exclusive rights in relation to certain projects, provided that it develops and is able to provide those projects appropriately and that it achieves its Key Performance Indicators (KPIs) and does not default (as set out in the SPA).

- 2.8 In order to develop projects, the LEP will provide Partnering Services in accordance with the SPA.
- 2.9 The existence and operation of the LEP will present the Council with substantial management and governance challenges, and these are addressed in the remainder of this report.

3.0 **The Proposed LEP**

- 3.1 The scope of the proposed exclusive rights of the LEP is that it will have the right (on the basis referred to above) to develop and deliver Major Capital Projects, being
- The delivery of the projects within the Wave 1 BSF Investment Programme (Phases 1, 2 and 3);
 - Any PFI or Design and Build contract (contract for refurbishment, repair or extension) for a secondary school in excess of £100k;
 - Any PFI or Design and Build contract (contract for refurbishment, repair or extension) for a primary school that is funded through the BSF programme.
- 3.2 Existing PFI projects are excluded from this, as are projects funded wholly or mainly through Devolved Formula Capital, and the facilities management of the re-modeled Design and Build Schools is not included.
- 3.3 The New Leaf Leisure Project will also be included within this exclusivity, subject to the approval by the City Council and Government (DCMS and PRG) of the Outline Business Case.
- 3.4 In addition to those contracts which the LEP will have a right to provide, it may also provide certain Additional Services that may be requested of the LEP, but it has no obligation to do so.
- 3.5 The LEP's other main strand of activity will be to work with the City Council and Education Leeds to deliver Partnering Services. These services complement the existing capacities of the PPPU and Education Leeds in relation to the development and delivery of New Projects, but they also provide an element of support to Education Leeds on areas linked to the development of new projects.

4.0 **New Project Approval Procedure**

- 4.1 The contractual framework for the delivery of future projects – those beyond BSF Phase 1 – is critical to the delivery of projects in the future which represent value for money for the Council, despite being delivered without specific competition.
- 4.2 The Council's Project Team and advisers have worked extensively further to develop the standard PfS documentation
- So that the LEP will complement, and not duplicate the roles of Education Leeds and the PPPU;
 - To improve the mechanisms for producing value for money projects in the extensive programme of Design and Build re-modelling contracts in BSF Phases 2 and 3, including by extending the arrangements for market testing as opposed to benchmarking;
 - In order to make the mechanism suitable to support the delivery of the New Leaf Leisure Project;

- So that the savings and other benefits offered by the Preferred Bidder, arising from the repeat procurements and E4L's Continuous Improvement Plan are realised.

4.3 To support the effective application of the New Project Approval Procedure, the Council's Project Team and advisers have also developed the content and contractual role of the LEP Continuous Improvement Plan and the LEP Business Plan, and this work is continuing.

5.0 Role of the City Council as Strategic Partner to the LEP

5.1 This is the principal Council role, containing as it does the client role under the partnership. It includes the following functions, which it is proposed be discharged as shown.

| Function | Discharged by |
|---|---|
| Managing the strategic relationship | Director of Children's Services |
| Acting as contractual client | Director of Children's Services |
| Approval of the Strategic Business Case | Executive Board, on the recommendation of Director of Children's Services |
| New Project Approval – approving (1) Issue of the City Council's Requirements (2) Stage 1 Submission (3) Stage 2 Submission | Education PFI/BSF Project Board, on the recommendation of (1) Director of Children's Services and (2) Chief Officer, PPPU |
| Performance monitoring, including KPIs | Director of Children's Services |
| City Council's Representative for the purpose of the SPA, the PFI contracts and the Design and Build contracts | Director of Children's Services |
| Overseeing Council compliance with partnership obligations | Director of Children's Services |
| Establishment of a Strategic Partnering Board | Director of Children's Services |

5.2 In carrying this role the Director of Children's Services will be supported by Education Leeds. In relation to the key commercial procurement steps in the development of new projects under the SPA it is envisaged that a Chief Officer, PPPU recommendation would be made. The changes that are required to the Council's Governance and Management Arrangements for PPP/PFI Projects are set out in **Annex 1** to this report.

6.0 Role of the City Council as Shareholder in the LEP

6.1 This is the secondary – but, on the standard BSF model, complementary - Council role, as minority shareholder in the LEP. The functions involved are set out below, together with proposals as to how they should be discharged.

| Function | Discharged by |
|---|--------------------------------|
| Subscription of equity | Director of Corporate Services |
| Decision to subscribe for further shares | Executive Board |
| Appointment, removal and change of Council Director to LEP Board, and of any Alternate Director | Director of Corporate Services |
| Nomination of an Observer | Director of Corporate Services |
| Consent to Shareholder Consent Matters | Council's nominated Director |

| | |
|---|--------------------------------|
| Consent to Shareholder Consent Matters where the Council's Director has declared a conflict of interest | Director of Corporate Services |
| Other Board matters | Council's nominated Director |
| Shareholder representation at general meetings, and appointment of proxies | Director of Corporate Services |
| Other shareholder approvals and decisions | Director of Corporate Services |
| Second informal stage of Dispute Resolution Procedure | Chief Executive or nominee |
| Formal recipient of notices | Director of Corporate Services |

6.2 Generally, the business of the LEP will be conducted by the Board on the basis of majority decision making, but, in order to protect the interests of the City Council and BSFI as minority shareholders and to preserve the structure of the partnership arrangements, certain decisions require the consent of the holders of each of the different categories of shares – generally of each of the Council as holder of the A Shares, of BSFI as holder of the B Shares, and of E4L as holder of the C Shares. These Shareholder Consent Matters are the key Board decisions relating to changes in the structure or financing of the LEP or the Project Companies under the LEP that have been established to deliver particular projects.

6.3 To support the operation of the LEP it is proposed that a senior Education Leeds nominee attend the LEP Board as an observer.

6.4 It will be necessary for the Council to indemnify the Council's Director against personal liability arising from the appointment, to the extent permitted by law, and it is proposed that approval of the terms, and execution of this indemnity be delegated to the Director of Legal and Democratic Services. The changes that are required to the Council's Governance and Management Arrangements for PPP/PFI Projects in relation to the shareholder role are also set out in **Annex 1**.

7. CITY COUNCIL FINANCIAL INVESTMENT

7.1 In liaison with the Council's Project Team, the E4L bid has developed on the basis of City Council investment in the LEP, and with no direct or indirect Council investment in the project company established to undertake the Phase 1 PFI contract (Special Purpose Vehicle or SPV).

7.2 The rationale for this approach is that, while Council investment in the LEP is necessary to secure the strategic partnership, investment at SPV level would risk reducing the clarity of the Council's focus as client for the strategic investment programme, and risk a conflict of interest during the operation of the PFI contract. It is mainly for this reason that the investment has not been assessed as an investment opportunity. Given the extent of the Council's commitment as client in relation to Wave 1 PFI and Design and Build Contracts, with capital expenditure of £225m, and potentially in relation to New Leaf and other Major Capital Projects over a ten year period, it has been considered that the Council's overriding concern should be with the establishment and maintenance of a robust strategic partnership which will – both in prospect and in delivery – provide high quality, transformational, value for money solutions.

7.3 Also, investment at the SPV level would make additional demands, in terms of the allocation of Council Director time, support and due diligence. Further, the Council's

capital programme does not provide for it, and E4L have confirmed that further Council investment would not improve the funder or sponsor financing terms currently offered.

- 7.4 The particulars of this proposed City Council investment are that at the LEP level the Council would invest 10% of the pure equity in the LEP, currently amounting to £528. Also, the Council would invest further in the LEP, together with the other LEP sponsors, by way of making 10% of the shareholder loans to the LEP in order to fund the LEP's working capital. This currently amounts to £26,000 on the basis of the E4L model and the total proposed investment of £26,528 is within the £50,000 provision made for this purpose in the Council's capital programme. If new projects developed by the LEP are not approved as proposed, then additional loans might be required by the LEP, and it is proposed that any Council contribution to these be capped so that the entire Council investment by way of equity and loans not exceed £50,000.

Recommendations

It is recommended that

1. The report is noted;
2. Approval for the arrangements for the establishment of and Council participation in the Leeds LEP as proposed by this report be confirmed;
3. The arrangements for the discharge of the Council's functions in relation to the Leeds Local Education Partnership as set out in the report and the delegations in **Annex 1** to the report are approved;
4. The Council participate as a shareholder in the Leeds LEP, and invest:
 - (1) 10% of the pure equity in the LEP, which at the date of this Board meeting is anticipated to be £528;
 - (2) 10% of the proposed shareholder loans to the LEP in order to fund the LEP's working capital, amounting to £26,000 on the basis of the E4L model;
 - (3) If additional shareholder loans are required by the LEP in order to fund the working capital of the LEP, 10% of such loans, subject to the entire Council investment by way of equity and shareholder loans not exceeding £50,000.
5. The Deputy Chief Executive (or in his absence the Director of Corporate Services) may authorise any further action necessary to implement the arrangements set out in this report, including any amendments to the proposals in this report which do not affect the substance of those proposals.
6. Consider what further steps may be taken in relation to scrutiny, taking account of the matters referred to in paragraphs 1.2 and 1.3 of the report.

Annex 1

Amendments to the Responsibilities and Delegations for Projects that fall within the scope of the Council's Governance and Management Arrangements for PPP/PFI Projects as approved by Executive Board on 13th October 2005

1. Matters reserved for Executive Board Decision

- 1.8 In relation to the Council's participation in the BSF Leeds Local Education Partnership (LEP), only the extent of City Council investment in the LEP, by way of equity or shareholder loans, and the extent of any City Council investment in any subsidiary of the LEP.

6. Director of Corporate Services - Delegations

To the Director of Corporate Services

- 6.1 In relation to the Council's participation in the LEP, all functions in connection with the Council's participation in the LEP not reserved for Executive Board decision, including
- Subscribing for shares in the LEP and making shareholder loans to the LEP in accordance with the decisions of Executive Board
 - The nomination, appointment, removal and change of the 'A Director' to the LEP Board, and of any Alternate Director
 - Nomination of an Observer to the LEP Board
 - Consent to Shareholder Consent Matters or other matters before the Board of the LEP where the 'A Director' to the LEP Board has declared a conflict of interest
 - Shareholder representation at general meetings, and appointment of proxies
 - Other approvals and decisions under or in connection with the shareholders agreement, the articles of association of the LEP or the terms of any shareholder loan made by the Council to the LEP
 - Receipt of formal notices.

7. Chief Executive – Delegations

To the Chief Executive (or his/her nominee)

- 7.1 In relation to the Council's participation in the LEP, the second informal stage of the Dispute Resolution Procedure under the shareholders agreement.

8. Council's Director on the LEP Board - Delegations

To the Council's duly appointed 'A Director' on the LEP Board (provided the 'A Director' under the shareholders agreement is duly nominated by the Council and has not been required to be removed from office by the Council)

- 8.1 Any matter before the Board of the LEP where the 'A Director' has not declared a conflict of interest.

9. Director of Legal and Democratic Services – Delegations

To the Director of Legal and Democratic Services

- 9.1 Approval of the indemnity to be given to the Council's 'A Director' on the LEP Board.

10. Director of Children's Services – Delegations

To the Director of Children's Services

- 10.1 In relation to the BSF Strategic Partnering Agreement (SPA), all functions in connection with the Council acting as party to the SPA not reserved for Executive Board decision or delegated to

the PPP/PFI Co-ordination Board or the relevant Project Board (the Education PFI/BSF Project Board), including

- Acting as the City Council's Representative
- Monitoring the performance of the LEP and overseeing compliance with the Council's obligations
- Any decision to establish a Strategic Partnering Board.

10.2 In relation to BSF PFI Contracts and Design and Build Contracts, all functions in connection with the Council acting as party to those contracts not reserved for Executive Board decision or delegated to the PPP/PFI Co-ordination Board or the relevant Project Board (the Education PFI/BSF Project Board), including

- Acting as the City Council's Representative
- Monitoring the performance of the contractor and overseeing compliance with the Council's obligations.