



APPENDICES 1 AND 2 NOT FOR PUBLICATION
Exempt / Confidential under Rule 10.4 (3)

Report of the Deputy Chief Executive

Executive Board

Date: 23rd January 2008

Subject: Leeds Building Schools for the Future – Submission of the Final Business Case and Execution of the Contract for the New School for West Leeds and Wortley

Electoral Wards Affected:
Farnley and Wortley

Specific Implications For:

Equality and Diversity

Community Cohesion

Narrowing the Gap

Eligible for Call In

Not Eligible for Call In
(see paragraphs 2.6 and 2.7)

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, of 14 secondary schools. On 24th January 2007, Members gave their approval to the establishment of the Leeds Local Education Partnership (the LEP), to the Final Business Case and to the final scoping and financial implications for Phase 1 of the City Council's BSF Programme, comprising six of the 14 schools. Phase 1 of the Programme reached Financial Close on 3rd April 2007 and work is now currently underway in constructing and refurbishing those schools.
2. On 22nd August 2007 Members of Executive Board approved the submission of the Outline Business Case for Phases 2 and 3 of the Council's Wave 1 Building Schools for the Future (BSF) Programme to the Department for Children, Schools and Families and to Partnerships for Schools.

3. The completion of the procurement of Phase 1 of the BSF Programme on 3rd April 2007 involved the formal establishment of the 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 schools in Phases 2 and 3 and for future projects in the Secondary School estate. The New School for West Leeds and Wortley is being procured through the Private Finance Initiative through this procedure and the remaining schools in Phases 2 and 3 will also be procured through the New Projects Procedure as conventional Design and Build contracts.
4. With regard to the New School for West Leeds and Wortley, 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 original programme for this school to be delivered by September 2009 is being maintained.
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 New School for West Leeds and Wortley, which is programmed to be completed on 25th February 2008.

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 New School for West Leeds and Wortley following Members approval of the Outline Business Case for Phases 2 and 3 of the Council's Wave 1 BSF Programme on 22nd August 2007. The Outline Business Case is scheduled to be reviewed by Partnerships for Schools week commencing 14th January 2008, and a verbal update will be provided for Members on the outcome of this review at this meeting of the Executive Board.
- 1.2 Members are requested to note and agree the final scoping of the New School for West Leeds and Wortley summarised in Section 3.2 to this report.
- 1.3 Members are also requested to note and agree the financial submission from the LEP amounting to £3.973m at April 2011 prices and agree that this will remain the City Council's Affordability ceiling through to Financial Close at the end of February 2008 but to note that the City Council takes the risk / benefit of interest rate changes up to Financial Close and if the recent favourable downward movement in interest rates in this market is maintained to Financial Close the cost is likely to be less than £3.973m.
- 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, addressed in the recommendations as set out in Section 7 of this report.

2.0 Background Information

- 2.1 The building of a new secondary school in West Leeds together with the rebuilding and refurbishment of six schools in Phase 1 and the significant refurbishment of a further seven schools in Phases 2 and 3 (subject to the new status of Intake High School), will deliver an estimated capital investment, including ICT, of £286m to the City Council. The BSF Wave 1 Programme is the largest procurement undertaken in the history of the City Council. Members will recall that the time taken to procure the Project from the approval of the Outline Business Case in May 2005, through to Financial Close for Phase 1 in early April 2007 is the shortest of any BSF Project to date.
- 2.2 Members of Executive Board approved the arrangements for the establishment of and Council participation in the Leeds Local Education Partnership (the LEP). 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 Phases 2 and 3 of the BSF Programme, as well as other projects 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.

- 2.3 Phase 1 was completed on 3rd April 2007 together with the formal establishment of the LEP and the City Council entering into a Strategic Partnering Agreement with the LEP. The completion of the procurement of Phase 1 of the BSF Programme on 3rd April 2007 involved the formal establishment of the 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 schools in Phases 2 and 3 and for future projects in the Secondary School estate. The New School for West Leeds and Wortley is being procured through the Private Finance Initiative through this procedure and the remaining schools in Phases 2 and 3 will also be procured through the New Projects Procedure as conventional Design and Build contracts. The New School for West Leeds and Wortley is being procured through the Private Finance Initiative through this procedure and the remaining schools in Phases 2 and 3 will also be procured through the New Projects Procedure as conventional Design and Build contracts.
- 2.4 The New School for West Leeds and Wortley will be the first project procured under these New Project Procedures. The work will comprise the replacement of the existing Wortley and West Leeds High Schools. Negotiations relating to design, scope and price through the LEP with Interserve (part of the Environments for Learning Consortium) are at an advanced stage and the original programme for this school to be delivered by September 2009 is being maintained. The Project is now at the Final Business Case (FBC) stage. The DCSF and PfS must approve the FBC for the DCSF to issue a Promissory Note prior to Financial Close and Contract signature. This Promissory Note secures the release of the Notional Credit Approvals and commitment of PFI Credits leading to the payment to the Council of the PFI Revenue Support Grant once services commence in September 2009. 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 Members at their meeting on 19th December confirmed an amendment to the Outline Business Case for Phases 2 & 3 on the basis that Intake High School should now form part of a new Phase 4, once the status of the school, whether as an Academy or a High School in Leeds, has been confirmed.
- 2.6 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 PFI Contract is programmed for 25th February 2008, and this timescale is crucial to provide sufficient construction time for the building of the New School for West Leeds and Wortley in time for this school to become operational in September 2009. 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.
- 2.7 However, officers are mindful of the general public interest in permitting proper scrutiny, given the significance of the Project. The recommended 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 school). 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 relating to the New School for West Leeds and Wortley, and in particular within the PFI Project Agreement.

3.2 **The Scope of the Project.** Members of Executive Board, at their meeting on 22nd August 2007, 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 New School for West Leeds and Wortely.

School	Summary of Proposed Project Scope
<p>New School for West Leeds and Wortley</p> <p>Procurement through PFI</p> <p>Service commencement September 2009</p>	<p>Combined current school capacities of existing Wortley and West Leeds High Schools – 1,966.</p> <p>Proposed new School capacity 1,380, comprising 1,200 pupils aged 11 to 16; 150 pupils aged 16 to 18; 30 Generic Special Needs pupils</p> <p>Proposed 100% New Build</p> <p>The new building is based on a courtyard design, the entrance of which is situated in the south east corner of the site with direct access from a new site entrance on Heights drive. To the east side of the courtyard there is a three storey teaching block – its height will be a prominent marker of the school to the south and east without being too close to housing on Congress Mount. The Sports Hall and facilities are on the north of the site and the dining area centrally located between the courtyard and the sports field enabling it to be the social hub of the school. The west side of the courtyard has Design and Technology on the ground floor and Science above. The south side contains a two storey music and drama centre with the assembly hall at the eastern end.</p> <p>Detailed designs will be available to view at the meeting.</p>

3.3 **The Works Period** (construction period) runs from contract signature, programmed for 25th February 2008, to completion of the school by the end of August 2009.

- 3.4 **The Service Period** for the School is programmed to commence on 1st September 2009. Service completion 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 and during the procurement of Phase 1 of the BSF Programme.
- 3.9 **Stakeholders** in this project are identified as:
- The existing Wortley and West Leeds High 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 are located)

- Department for Children Schools and Families
- 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 the two existing 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 further 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 at Sport England Stakeholder Group meetings consisting of representatives from Sport England, LCC Learning and Leisure, Education Leeds and LCC PPPU. There has also been regular liaison between Education Leeds and LCC Learning and Leisure.

3.13 Subject to the approval of the final designs, which were submitted to Plans Panel on 23rd November 2007, the construction work necessary to create the new school accommodation will be located on the playing field of the current main West Leeds school site. When the new school becomes operational the existing school buildings will be demolished and the land will be reinstated as playing fields and hard play areas.

3.14 This project involves an amalgamation of two schools into one so there will be a loss of the facilities existing indoor facilities at the Wortley site. However the new school will contain a sports hall and gymnasium to a better specification than the current facilities in the two existing schools.

3.15 Following consultation with the Development Department, it can be confirmed that there are no outstanding playing field issues on this project.

3.16 **Early/enabling works** - The programme to achieve completion of construction to enable the New School for West Leeds and Wortley to be operational for September 2009 assumes full commencement of works by the beginning of March

2008. However (although final details are being confirmed) the programme also assumes that some mobilisation/enabling works (e.g. 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 Resources and the Assistant Chief Executive (Corporate Governance) 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.

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. Authority to enter into a contract is reserved to Members of Executive Board.

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

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.

5.0 Legal and Resource Implications

5.1 The negotiations on Financial and Legal matters are reaching their conclusion. Appendix 2 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 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 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, 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.

Members will note from Appendix 1 to this report that work is currently underway and is expected to lead to the provisional assessment of the Director of Resources 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.

5.3 **Legal Implications and Powers:** Appendix 2 gives information on the Project Agreement which will be required and the key legal issues. The following paragraphs identify the principal powers enabling the contract to be signed. The final report to the Deputy Chief Executive will contain full detail of the Council's powers to enter into the contract.

5.3.1 Project Agreement 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.

5.4 **Final Report and Authorisation:** Because some elements of the detailed contract 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 DLA Piper Ruddick, in relation to this project. This report is anticipated to

- i. Confirm in detail 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.

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 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** 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 New School for West Leeds and Wortley 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 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.

Third Party Use – One of aims of the scheme is to develop links with the community and encourage community use of the new facilities outside of the core hours of the contract through the extended schools agenda.

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 over £280m 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 September 2008 and September 2010. This Project represents the largest procurement undertaken by the City Council.
- 6.3 The affordability implications of this Project to the City Council are reported in Appendix 1, which is confidential to this report.
- 6.4 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, 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 25th February 2008. Once the review of the FBC has been completed, and subject to their approval, DCSF 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 PfS and DCSF following the meeting of this Executive Board
- 6.5 Financial Close and Contract signature will in turn see the commencement of the start of construction for the New School for West Leeds and Wortley and following successful construction will lead to the school being in beneficial use by September 2009.

7 Recommendations

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

- 7.1 To approve the submission of the Final Business Case to the Department for Children, Schools and Families and to Partnerships for Schools. The Final Business Case covers the New School for West Leeds and Wortley, as part of Phase 2 of the City Council's BSF Wave I Programme and financed through the Government's Private Finance Initiative.
- 7.2 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 contract of £3.973m, as set out in Appendix 1.
- 7.3 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, grant delegated powers to the Deputy Chief Executive (or in his absence the Director of Resources) to make any necessary amendments to the Final Business Case, and give final approval to the completion of the Project, including (but not by way of limitation) the terms of the following:

- i. The Project Agreement
- ii. The Funders Direct Agreement
- iii. The Pensions Admission Agreement
- iv. Arrangements to appoint an independent certifier to assess the quality of the contractors' work
- v. Appropriate collateral warranties and
- vi. Governing body agreement with the Temporary Governing Body of the New School for West Leeds and Wortley

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

subject to

- (A) DCSF approval of the Final Business Case
- (B) the Deputy Chief Executive (or in his absence the Director of Resources) 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 Resources) from the Council's external legal advisers, as described in paragraph 5.4 of this report and

- (D) The Director of Resources (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 1 of this report.
- 7.4 Approve that the Director of Resources, 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.
- 7.5 Approve that, in respect of certification under 7.4, and subject to the advice of the Assistant Chief Executive (Corporate Governance), a contractual indemnity be provided to the Director of Resources (or the Chief Officer – Financial Management, as appropriate) in respect of any personal liabilities arising from the certification.
- 7.6 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 Assistant Chief Executive (Corporate Governance) (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 to give effect to Members' resolutions and the delegated decisions referred to in these recommendations.
- 7.7 Grant delegated powers to the chair of the Education PFI/BSF Project Board (in consultation with the Director of Resources and the Assistant Chief Executive (Corporate Governance)) to:
- 7.7.1 authorise preparation, mobilisation, and enabling works to be carried out in advance of 1 March on appropriate terms;
- 7.7.2 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.
- 7.8 Consider what further steps may be taken in relation to scrutiny, taking account of the matters referred to in paragraphs 2.6 and 2.7 of this report.