



Report of the Deputy Chief Executive

Executive Board

Date: 14th March 2007

Subject: Leeds Building Schools for the Future

Electoral Wards Affected:

All

Specific Implications For:

Equality and Diversity

Community Cohesion

Narrowing the Gap

Eligible for Call In

Not Eligible for Call In

1. Executive Summary

1.1 The main purpose of this report is to:

- (a) Provide Members with an update on the progress towards Financial Close.
- (b) Inform Members of the decision of the Deputy Chief Executive, the Director of Corporate Services in consultation with the Director of Legal and Democratic Services to enter into an Early Works Agreement with the Interserve Project Services Limited on behalf of the Preferred Bidder, the Environments for Learning (E4L) Consortium.
- (c) Request Members to agree to a revision to the City Council's maximum affordability threshold for the PFI element of Phase 1 of the BSF Programme due to the concerns over possible increase in interest rates up to the date of Financial Close.
- (d) Request Members to note the reason for and agree the increase in cost of the two Design and Build schools in Phase 1.

2. Eligibility for Call In

- 2.1 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 of the approvals of Executive Board in relation to the Project. Entry into the various agreements is now programmed for 23rd March 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 these schools to become operational from 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.
- 2.2 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 schools).

3. Background

- 3.1 Members of Executive Board, at their meeting on 24th January 2007 considered two reports, the first concerning the submission of the Final Business Case and Execution of the Contracts and the second relating to the Leeds Local Education Partnership.
- 3.2 With regard to the first report, Members agreed to the recommendations to grant delegations to specified officers of the Council to enter into the Contracts subject to (in summary):
- (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 then reported;
 - (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;
 - (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.
- 3.3 Members also granted 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:
- (a) Authorise preparation, mobilisation, and enabling works to be carried out in advance of 1st March 2007 on appropriate terms;

- (b) 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 28th February 2007.

3.4 The paragraphs below provide an update to the current position relating to the Programme, in particular the signing of the Contracts and requests further approvals from Members relating to the revision of the affordability threshold for the PFI element of Phase 1 and to note the reason for and agree the additional cost of the two Design and Build schools in Phase1.

4. Update on the Progress to Financial Close.

4.1 The reports to Members on 24th January 2007 anticipated that Financial Close for Phase 1 would take place by 28th February 2007. The revised date for Financial Close is now forecast to be 23rd March 2007. The principal reason for this 3 week delay is that there a number of technical and commercial matters that needed to be concluded and agreed with both the E4L Consortium and Partnerships for Schools prior to Financial Close. Good progress has been made with the E4L Consortium relating to agreeing the outstanding commercial issues.

4.2 This delay in reaching Financial Close has necessitated consideration of how to protect the construction programme and the dates for the opening of Phase 1 schools. The Chair of the City Council's Education PFI/BSF Project Board (under the delegations referred to above) gave approval to an "Early Works Agreement" with the E4L Consortium. This agreement allows the E4L Consortium to commence building works at the school sites in advance of Financial Close in order that the construction is not delayed and the effect such delay would likely to have on the handover of the schools prior to the commencement of the Autumn Term in 2008.

4.3 The main risk to the Council of this Agreement is that, if Financial Close has not been reached by 30th September 2007, the City Council will be required to pay E4L for the works undertaken in March 2007, capped at £2.756m, but based on actual costs incurred, and subject to open book verification. E4L will have made extensive commitments in bid costs and enabling works to the end of March 2007 and these costs are at their risk should the parties fail to reach Financial Close and could not have been expected to take the additional costs risk of starting construction on site.

5. Financial Issues.

5.1 At their meeting on 24th January, Members of Executive Board reaffirmed the affordability threshold for the PFI element of Phase 1 amounting to a first full year Unitary Charge in 2010/11 amounting to £12.952m. Members will recall from Appendix 1 of the report that this affordability threshold is based upon an interest SWAP rate of 5.2%, which at that time was some 40 to 45 basis points (i.e. 0.4 to 0.45 per cent) higher than the prevailing interest SWAP rate. The reason for this was to hedge against possible interest rate rises and increases in the Unitary Charge due to unexpected commercial issues arising close to Financial Close. The market interest rate will be applied at Financial Close. Interest rates have been increasing during February and, at the end of February the interest SWAP rate was approximately 5%. Whilst this is still lower than provided for in the Council's

affordability threshold, the margin has reduced and there is now a concern that an adverse movement in interest rates could take the actual Unitary Charge at Financial Close above the Council's affordability threshold. It is recommended, that the affordability threshold be increased to £13.148m to allow for an interest SWAP rate of 5.5%. Since the movement in interest rates is subject to the market, and outside the influence of either the City Council or the E4L Consortium, this is a precautionary and prudent measure, to allow the Deputy Chief Executive to sign the Contract on behalf of the City Council on the due date should there be such an adverse movement in interest rates. For the sake of clarity this proposal is not as a result of any revision of commercial issues with E4L, those costs in the Financial Model not having materially changed during the Preferred Bidder period.

- 5.2 Members, at their meeting on 24th January 2007, noted the bid submission for the two Design and Build schools from the E4L Consortium amounting to £30.934m and this sum has been provided for in the City Council's Capital Programme, substantially financed by £26.18m of Capital Grant from DfES. The position towards Financial Close is higher, by £947,192 than the approved sum in the Capital Programme. This is primarily due to a requirement by Education Leeds for additional temporary accommodation at Cockburn High School over that previously provided for and compliance with Planning requirements for perimeter fencing surrounding both of the schools. Members are requested to approve the incurring of this additional capital expenditure.
- 5.3 It is intended that Members of Executive Board will receive a report at their next meeting concerning the Outline Business Case for Phases 2 and 3 of the Council's Building Schools for the Future Programme. Seven of the eight schools in these phases will be traditional design and build, and as such will be substantially financed through Capital Grant, with the balance funded through the City Council's Capital Programme. Although, at the time of writing this report, final funding figures have not been confirmed, officers of the Council have received firm indications from Partnerships for Schools this funding will be an improvement on the level currently reflected in the Council's Capital Programme. It is therefore anticipated that the additional cost of £947,192 can be financed through this additional resource and this position is supported by the Chief Executive of Education Leeds.

6. Recommendations

- 6.1 Members of Executive Board are requested to note:
- (a) The contents of this report and progress towards Financial Close;
 - (b) The decision of the Chair of the Education PFI/BSF Projects Board to enter into an Early Works Agreement with Interserve Project Services Limited on behalf of the E4L Consortium;
- 6.2 Members of Executive Board are requested to approve:
- (a) A revised PFI affordability threshold of £13.148m, being the first full year Unitary Charge in 2010/11 to protect the programme against further adverse upward movement in interest rates;

- (b) The incurring of additional capital expenditure, above the current Capital Programme provision of £30.934m, amounting to £947,192 on Cockburn and Temple Moor High Schools.