



DERBY CITY COUNCIL

COUNCIL CABINET
30 OCTOBER 2007

ITEM 10

Cabinet Member for Children and Young People

Lakeside Community Primary School: Private Finance Initiative Children's Centre

SUMMARY

- 1.1 Arrangements for the negotiation of and signing the Deed of Variation to the existing Project Agreement between the Council and Derby School Solutions Ltd (DSS) relating to the Grouped School Private Finance Initiative (PFI) Project, are now approaching a conclusion.
- 1.2 At the time of preparing this report, it is anticipated that Financial Close (Contract signature) will take place on Wednesday 28 November 2007, subject to the Final Business Case (FBC) having been approved by the Department for Children, Schools and Families (DCSF). Any changes to those arrangements will be reported to Cabinet at its meeting.
- 1.3 There are a comparatively small number of issues needing to be resolved with DSS to the Council's satisfaction before the contract is signed. Where appropriate, these are referred to in the report.
- 1.4 Subject to any issues raised at the meeting, I support the following recommendation.

RECOMMENDATION

- 2.1 That, subject to satisfactory resolution of any outstanding issues referred to in this , report, two of the authorised signatories of the Council, after consultation with the Corporate Director of Resources over the final proposed cost, be authorised to sign the Deed of Variation, (which may otherwise be known as an Amendment and Restatement Agreement), between Derby City Council and Derby School Solutions Ltd, relating to the Council's Children's Centre Private Finance Initiative Project at Lakeside Community Primary School, and such other documents as listed below:
 - Sub-Contractor Direct Agreement
 - Independent Certifiers Appointment
- 2.2 That the following documents be signed on behalf of the Council by the Council's Corporate Director of Resources:

- Local Government (Contracts) Act 1997 certificate in respect of the Deed of Variation/Amendment and Restatement Agreement

- 2.3 That in addition to the above, those same signatories be authorised to sign on behalf of the Council such other documents and take any other action as may be necessary to give effect to the Project.
- 2.4 That the appropriate officers be authorised to resolve any outstanding issues referred to in this report, in order that those issues can be incorporated within the Deed of Variation/Amendment and Restatement Agreement as necessary without a requirement to submit a further report to Council Cabinet.
- 2.5 That should those issues not be resolved to the satisfaction of officers acting on behalf of the Council, arrangements for signing the Deed of Variation/Amendment and Restatement Agreement should not be concluded and that a further report be presented to Council Cabinet at the earliest possible meeting.
- 2.6 That to enable the negotiations to be concluded, authority is sought to agree the terms of the Deed of Variation/Amendment and Restatement Agreement with the increase in the annual Unitary Charge within the affordability envelope as described in the confidential section of this report, variable upwards only by any items noted in the confidential section, and to delegate authority for approval of any upward variation to the Corporate Director of Resources.

REASON FOR RECOMMENDATIONS

- 3.1 Everything possible should be done to minimize the risk of delays in signing of the Deed of Variation/Amendment and Restatement Agreement in order to contain the Council's costs and ensure implementation of the Project in accordance with the Project Plan and Timetable.
- 3.2 The nature of this Project means that sustaining progress with implementation could be dependant upon seasonal and associated weather conditions. Any delays at this stage could therefore be compounded and extended in subsequent stages of the Project, thereby delaying, or possibly fundamentally jeopardizing the benefits to the children concerned.

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SUPPORTING INFORMATION

- 1.1 At its meeting on 1 August 2006, Council Cabinet approved the submission of a formal bid to the (then) DfES (now DCSF) seeking PFI Credits of some £2.150m to support the creation of a Phase 2 Children's Centre within the site of Lakeside Community Primary School, one of the five schools forming part of the original Grouped Schools PFI Project.
- 1.2 Lakeside Community Primary School incorporates, as an integral part of the new building, a Behaviour Support Unit for pupils with behavioural, emotional and social difficulties. The expertise which lies behind the development and operation of this Unit, combined with the School's very strong and well established community ethos, has led parents to view the School's approach to inclusion in a very positive light. Pupils are exceptionally well supported in the Unit and remain within a mainstream school environment without the need to transfer to specialist provision. In that respect the new Centre will operate alongside the existing Unit, complementing, enhancing and extending the provision available to meet the outcomes linked to Every Child Matters, through the delivery of targeted services to children, families and the wider local community.
- 1.3 The Council's bid was one of a comparatively small number approved nationally, and since that approval was given, officers from across the Council and the School, together with the Council's external advisers and Derby School Solutions Ltd (Vinci- the contractor for the Grouped Schools Project), have been engaged in developing and negotiating virtually all aspects of the specification and operation of the Centre.
- 1.4 As part of that process, Norwest Holst (the construction arm of Vinci), submitted a Planning Application for the Centre, registered on 30 July 2007, and it is anticipated that by the time of this meeting, formal and final approval will have been given to the application, and Planning permission secured.
- 1.5 The Project is being procured as a variation to the Project Agreement relating the original Grouped Schools PFI Project. This follows the requirements of the DfES (now DCSF) bidding round for PFI credits. The variation will be documented by way of a Deed of Variation/Amendment and Restatement

Agreement entered into by the Council and Derby School Solutions Ltd. The Project Plan and Timetable envisages that the Deed of Variation/Amendment and Restatement Agreement will be signed by both parties on Wednesday 28 November 2007.

- 1.6 This will allow construction work to begin on site on Monday 7 January 2008, with the Centre becoming operational no later than Monday 4 August 2008. It should be noted that the Early Years 'areas' of DCSF, both nationally and locally, will not countenance an operational date later than this, and it is therefore imperative that all those involved work closely together to ensure the Project Plan and Timetable is adhered to.

OTHER OPTIONS CONSIDERED

- 2.1 None.

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Background papers:	None
List of appendices:	Appendix 1 – Implications

IMPLICATIONS

Financial

1. The Financial implications are included within the Private section of the confidential report, which includes commercially sensitive data related to the Project.

Legal

- 2.1 The Council entered into a PFI project agreement with Derby School Solutions Limited (the "Contractor") on 30 November 2004 in relation to the original schools PFI project. That project agreement was amended and restated at financial close, which occurred on 23 December 2004. The project agreement was modelled on the then current DfES standard form contract.
- 2.2 Under the original project agreement (in clause 54 (Authority and Contractor Changes)) a procedure was set out for dealing with variations to the original agreement. It is under this variation procedure that the Lakeside Children's Centre will be procured and implemented.
- 2.3 The original OJEU Notice, published in the Official Journal on 10 April 2003, is drafted sufficiently widely to capture this addition to the project without the need for a further tendering process. The wording is as follows:

"The Council reserves the right to include design, build, financing, operation and maintenance of additional/alternative schools under the contract, and the Council and The Governing body of the Merrill College reserve the right to require further capital works and/or associated services to be undertaken pursuant to the terms of the contract"

Accordingly, the Council's external legal advisers (Eversheds) have advised that the project does not need to be the subject of a separate procurement under the EU procurement rules. Moreover, the terms of the DfES (now DCSF) bidding round for PFI credits stipulated that projects should be implemented by way of variations to existing operational projects.

- 2.4 The variation to the project agreement will be achieved by way of a deed of variation (the "Deed"). The Deed will be an amendment and restatement agreement (which will incorporate the amended original project agreement showing any alterations made to it as tracked changes). It is envisaged that the Deed will cover the following areas:
 - the Contractor's obligations to construct the new facilities in accordance with a new output specification agreed between the parties;
 - the Contractor's obligations to provide facilities management and other services to the new facilities;

- changes to the payment mechanism to reflect the inclusion of the new facilities (such changes being agreed by the Council in conjunction with its external financial and technical advisers); and
- any other commercial matters.

Under the last bullet point, it is currently anticipated that the Deed will be used to make a few minor corrections to the original site plans for the main Grouped Schools Project, which have been commercially agreed between the parties but not formally documented to date. These include formally bringing the former Sinfin Youth Centre land within the scope of the main Grouped Schools Project for the purposes of facilities management services.

- 2.5 The Deed will not alter the risk profile of the original project. The risk profile in relation to the variation works and services will remain identical to that applicable to the original works and services and the deal will remain, therefore, in accordance with the standardised contract documentation on which the original Project Agreement was based.
- 2.6 The Governing body of the Lakeside Community Primary School (the “Governing Body”) will be contributing to the unitary charge for Lakeside Children’s Centre. It may therefore be necessary to amend the existing Governors’ Agreement between the Council and the Governing Body to secure funding for this variation from the Governing Body.
- 2.7 The Council has the legal power to enter into the Deed. These powers are conferred on the Council by paragraph 9, Part 1 of Schedule 2 of the Children Act 1989, section 2 of the Local Government Act 2000 and section 111 of the Local Government Act 1972. The Council will be required by the Contractor to provide a Local Government (Contracts) Act certificate in relation to the Deed (in the same way that it did for the original Project Agreement).

Personnel

- 3.1 There will be no transfer of Local Authority staff to DSS Ltd under the terms of this Deed of Variation.
- 3.2 The arrangements for the facilities management of the Centre (e.g. cleaning, caretaking, security etc) will be undertaken by DSS Ltd, reflecting the terms of the existing Project Agreement, whilst the additional costs of those arrangements are included in the financial profile described above.

Equalities impact

- 4.1 Children's Centres are available to all children and families who live in the identified area. Services on offer from within the children's centre and on an outreach basis will aim to reach all children and families within this area. Early years outcomes duties have a focus on reducing the gap between those families who are more disadvantaged and others. A key aim is to target disadvantage and provide a better start for young children and to support their families.

Corporate priorities

- 5.1 Supporting everyone in learning and achieving.