

DECISION-MAKER:	COUNCIL		
SUBJECT:	ACADEMIES: CAPITAL PROJECT		
DATE OF DECISION:	18 MARCH 2009		
REPORT OF:	CABINET MEMBER FOR CHILDREN'S SERVICES		
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STATEMENT OF CONFIDENTIALITY

None.

SUMMARY

This report updates the Council on the Academies Capital project and seeks approval for a number of actions to progress the projects. An Outline Business Case (OBC) is to be submitted to the Partnership for Schools (PfS) for each project. It will enable the capital funding to be confirmed and approval to be given to proceed with the delivery of the Academies via the PfS National Framework. The OBC submission will give undertakings on confidentiality, the use of the PfS documentation for procurement processes and contractual agreements, and financial matters. Once the OBC has been approved by Partnership for Schools, the procurement process will commence with the issue of the Pre Invitation to Tender to Contractors on the National Framework Panel. After evaluation this will be followed by the formal Invitation To Tender and the commencement of a design competition for the Mayfield Academy. At the conclusion of the Design Competition the process for the selection of the preferred Contractor to construct both the Oasis Mayfield and Oasis Lord's Hill Academies will commence.

RECOMMENDATIONS:

- (i) To add £1,025,000 to the Children's Services Capital programme for the Academies Capital project, to be funded from Council Resources as outlined in paragraphs 18 - 19.
- (ii) To delegate authority to the Executive Director of Resources, following consultation with the Cabinet Member for Resources and Workforce Planning, to undertake prudential borrowing to fund an element of this scheme, should the potential future capital receipt from the sale of the surplus land from the 3663 Food Warehouse either be insufficient or should the sale not take place.

REASONS FOR REPORT RECOMMENDATIONS

1. The recommendations are necessary to implement previous Cabinet and Council decisions to support and enable the construction of two new Academies using the National Framework for Academies Procurement and funding from the Partnership for Schools.

CONSULTATION

2. A Design User Group has met on a monthly basis to steer the project. Membership comprises representatives of the Council, Oasis Community Learning, Partnership for Schools, and DCSF. Interim meetings to ensure progress on key issues have also been convened between the main meetings attended by representatives of the Council, Oasis Community Learning and Partnership for Schools. Informal consultation is also ongoing with local residents and community and sports groups concerning the plans to construct the Lord's Hill Academy on the Lord's Hill Playing Fields.

ALTERNATIVE OPTIONS CONSIDERED AND REJECTED

3. The option of not taking the recommended steps to achieve Outline Business Case would cause significant delay to the projects and has therefore been rejected.

DETAIL

4. An Outline Business Case (OBC) is required by Partnership for Schools for both Oasis Mayfield and Oasis Lord's Hill Academies. This document is a comprehensive submission which uses a standard template to enable details to be provided about the proposed project in a number of Chapters. These deal with items such as Procurement Strategy, Design and Construction, ICT and Facilities Management. The OBC also seeks commitments from the Local Authority to the use of the suite of National Framework for Academies standard documents including a Memorandum of Understanding, a Confidentiality Agreement, a Development Agreement and A Design and Build Contract.
5. The Authority is the principal contracting authority under the Design and Build Contract and will be the primary driver in the successful and timely delivery of the Academy. The Authority is the 'framework user' described in the Memorandum of Understanding, the other party being PfS. The Memorandum of Understanding aims to establish the parties' respective obligations and commitments to each other as described in the document. It also contains a binding requirement on the Authority for confidentiality about its contents. The document is to be signed by the Chief Executive. It is to be submitted as part of the OBC documentation.
6. As part of the Local Competition Process the Authority will expect to receive fully priced detailed designs from each Contractor. Assessment of the detailed design and pricing submission will be assisted by the disclosure of information from PfS on elemental rates provided as part of the framework agreement by the individual Contractors. The Confidentiality Agreement obliges the Authority to hold the information provided in strict confidence, to use it only for the approved purposes, and not to disclose it to any other person other than as provided for in the Partnership for Schools document and as may be required by law. Key points to note in relation to the obligations imposed by the Confidentiality Agreement include:
 - those to whom the information is disclosed should be under confidentiality obligations no less onerous than the agreement itself and should also be under an obligation to return the information as it is

a requirement that the Council return it on request.

- there is also a limitation of liability clause which provides that PfS take no liability for defects in any of the information.
- the Authority will be giving an indemnity which exposes the Council to potential risk where a third party to whom the Council has given the information uses it in such a way as to expose PfS to an action by the contractor.

None of these issues are considered to be prohibitive to the signing of the Agreement but were brought to the attention of Cabinet in view of the obligations and liabilities they impose. The Confidentiality Agreement is to be signed by the Chief Executive in accordance with the decision of the Cabinet on 25th February 2009.

7. The Development Agreement has been formulated by PfS and, although not mandatory, it is the recommended format. If there are to be variations, these must be approved by Oasis Community Learning, HMRC (Her Majesty's Revenue & Customs), and Partnership for Schools. The proposer of the variations must be responsible for everyone's (including PfS) legal costs in agreeing any variation.
8. Within the suite of National Framework for Academies standard documents Building Contracts is a Design and Build Contract which will be signed by the Council and the Contractor. As part of setting up the Framework Panel of six Contractors, each Contractor has provided unqualified statements of acceptance of the Building Contract Terms. As a consequence, neither the Authority nor the Contractor is permitted to make any changes to any building contract (other than scheme specific areas highlighted in the document). There are no particular concerns with the contract documentation other than to note that the bond expires earlier than the Council would normally require.
9. The planning application in respect of the Academies is to be submitted by the Authority. The OBC requires the Authority to satisfy itself that all appropriate procedures have been followed and will be followed. It will therefore confirm that it is prepared to bear the risks of a judicial review arising from a planning application for an academy on the site as proposed in the OBC.
10. The OBC requires the Executive Director of Resources (as Section 151 Officer) to confirm that an affordability position has been established with which the Local Authority is comfortable as the Contracting Authority for the two Academies. The management of the project within the funding cap set by PfS and the Department for Children, Schools and Families (DCSF) is to be confirmed, together with assurances that no further funding will be sought by the Authority, save for matters pertaining to the contract beyond its control. The Authority is also to agree with PfS the payments to be made for each financial year over which construction takes place, and to confirm that it will have sufficient funds to meet its contractual commitment.
11. Once the Outline Business Case has been approved by the Partnership for Schools (PfS) and endorsed by the Department for Children, Schools and Families (DCSF) the scheme will move into the Local Competition Stage. The

Authority will issue a Preliminary Invitation to Tender (PITT) with a letter inviting all Panel Members on the National Framework for Academies to take part in the Local Competition. After evaluation of the submission and interview, the Authority will select a shortlist of two to take part in the Design Competition for the construction of the Oasis Mayfield Academy. The Final ITT will be issued at this time. The two short listed contractors will be given three months to develop their bids and during this period will be given regular access to the Design Group and key users. After evaluation of their submission a preferred bidder will be selected for approval by the Council. Upon conclusion of the process the successful contractor will also be appointed to design and build the Oasis Lord's Hill Academy.

FINANCIAL/RESOURCE IMPLICATIONS

Capital

12. Partnership for Schools has issued the City Council with a Funding Allocation Model for the two Academy rebuilds. The model uses a similar methodology to Building Schools for the Future to calculate how much funding will be provided by Partnership for Schools.

13.

	Mayfield £m	Lord's Hill £m
Buildings	9.023	11.643
Site Costs	1.025	1.397
Abnormals with life cycle	0.509	0.582
Professional Fees	1.362	1.703
Furniture and Equipment	0.738	1.018
ICT Infrastructure	0.203	0.203
ICT Hardware	1.305	1.305
Total before Inflation	14.165	17.851
Additional Inflation to funding start	1.062	1.368
Less amount drawn down for project management costs	(0.200)	(0.200)
TOTAL	15.027	19.018

14. The costs of construction are currently being estimated to establish affordability prior to OBC submission. Submission of the OBC is subject to the affordability being within the Funding Allocation derived from the FAM, as outlined above (£34.045m).

15. We have been advised by PfS that cost allowances provided within the FAM are to be reduced nationally to reflect the current market position. The impact on the project should however be cost neutral as the Framework Contractors will be required to deliver the project within the allowances approved by PfS and they will be able to take advantage of the decreasing costs in the marketplace.
16. Costs not covered by DCSF funding
The following capital costs which may occur are not covered by the DCSF funding as a matter of course, and may need to be funded from Council resources:

	Estimated cost
Section 106 and 278 costs (as may be required to secure planning permission)	£225,000
Infrastructure costs (e.g. potential relocation of any mains services such as sewers, cables, etc. that are not currently identified through plans or surveys)	£50,000
Relocation of the Helicopter landing area from its current position adjacent to the proposed Academy boundary	£25,000
Environmental improvements to the playing fields as a whole (for improved drainage)	£175,000
Relocation of "Down to Earth"	£50,000
Potential works to improve existing subway access (see para 17)	£500,000
TOTAL	£1,025,000

These costs are indicative only and will still be subject to the outcome of the planning process.

17. There is a potential requirement as part of planning considerations to widen and improve the existing subways under Romsey Road and Lower Brownhills Way to provide improved access for pedestrians to the recreation ground and academy sites. This could have a potential cost of £500,000 (details of costings yet to be established). Discussions are ongoing with planning to establish the priority for these additional works.
18. There are a number of unallocated capital receipts (the estimated capital receipts are for properties that have not yet been sold) and other funding sources which are recommended to be used to fund these costs as shown in the table below. In addition there is some unspent Devolved Formula Capital Grant returning to the local authority from the four secondary schools that closed in August 2008 as part of Learning Futures.

Funding source	Amount
Balance of Highcrown Street capital receipt	£295,000
Balance of Studland Road capital receipt (estimated)	£35,000
Balance of Vermont Depot capital receipt (estimated)	£140,000
Modernisation Capital Grant	£240,000
Devolved Formula Capital Grant from closing secondary schools	£78,000
Share of future capital receipt from sale of surplus land at the 3663 Food warehouse (or prudential borrowing)*	£237,000
TOTAL	£1,025,000

* See paragraph 19 - 21 below.

19. In January approval was given by Cabinet to purchase the 3663 Food Warehouse in order to facilitate the redevelopment of the new entrance to the Oasis Academy Mayfield. This sale is progressing, with an anticipated completion date of 23rd March, following which the warehouse will be demolished, and a new access road to the Academy site will be created on part of the cleared site.
20. There will remain an area of the land footprint obtained through the purchase of 3663 Food Warehouse, which will be surplus to requirements. The land is currently classified within the Local Plan as for industrial use, and the estimated future capital receipt on that basis is in excess of the £237,000 shown in paragraph 18.
21. However, should the future sale of the surplus land at the 3663 Food Warehouse not be completed for any reason, then the £237,000 will need to be met from prudential borrowing.
22. The estimated £806,000 cost of project management and procurement are being funded from within the Children's Services capital programme, as approved by Council in July 2008. £400,000 of these costs are funded by top slicing the funds allocated by Partnership for Schools as shown in the table above. This budget does not include the costs of any additional legal costs to the Council that may be incurred as a result of the procurement process, rights of way issues or input to the planning process.

Revenue

23. Children's Services have engaged a part time project officer to oversee the project on behalf of the City Council liaising with Oasis Community Learning, Partnership for Schools, Capita Symonds and the building contractor. This post is funded from the Children's Services portfolio budget.

Property

24. On completion of the construction phase of the new academies and the relocation into them by the current academies under a 125 year lease, three

of the four sites currently used by OCL will be available for reuse or disposal.

LEGAL IMPLICATIONS

Statutory power to undertake proposals in the report:

25. The Council has the power to assist the development of the Academies on land provided by the Council, including acting as contracting Authority by virtue of s.2 Local Government Act 2000 as, having had regard to the provisions of the Community Strategy, the provision of facilities for the Academy will improve the social, economic and environmental well being of the schools and local communities by providing improved school and community facilities for the inhabitants of Southampton. Assisting the development of the Academies is also permitted by virtue of primary functions contained within the Education Acts 1996 – 2005 and the School Standard & Framework Act 1998.
26. The disposal of an interest in land by way of occupational license or lease is authorised by virtue of s.123 Local Government Act 1972

Other Legal Implications:

27. PfS requires a warranty from the Authority in relation to the information contained in title searches on both sites for the Academies. This means the Authority must satisfy itself as to the position, nature, extent and adequacy or otherwise of all easements, services, and any other rights within the boundaries of the sites.. All contractual, property and other associated legal documentation related to this proposal will be subject to further legal review as the project progresses.

POLICY FRAMEWORK IMPLICATIONS

28. The creation of two new Academies and the associated building works are part of a major transformation of education in the City which is intended to raise standards of achievement and other outcomes for children and young people, and to contribute towards economic development and regeneration. It is fully consistent with the objectives of the Community Strategy and the Children and Young People's Plan.

SUPPORTING DOCUMENTATION

Appendices

1.	Summary of terms PfS Development Agreement
2.	

Documents In Members' Rooms

1.	PfS National Framework – Template Document Outline Business Case
2.	PfS National Framework – Template Document – Memorandum of Understanding
3.	PfS National Framework – Template – Confidentiality Agreement
4.	PfS National Framework – Template – Academy Development Agreement
5.	Outline Business Case – Section 151 Letter
6.	Outline Business Case – LA Support Letter

Background Documents

Title of Background Paper(s)

Relevant Paragraph of the Access to Information Procedure Rules / Schedule 12A allowing document to be Exempt/Confidential (if applicable)

1.	None	
2.		

Background documents available for inspection at:

FORWARD PLAN No: N/A

KEY DECISION

YES

WARDS/COMMUNITIES AFFECTED:

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