SUMMARY

1.1 On 18 March 2008, Council Cabinet approved in principle the Local Education Partnership (LEP) being used as the procurement model for the Building Schools for the Future (BSF) investment programme.

1.2 The report in March stated that further detailed information will follow for Cabinet to consider in relation to the scope of services to be included in Derby’s LEP.

1.3 A number of cross department workshops have now been held to consider the scope of services to be included in the LEP, and to consider the implications of the inclusion of services other than those directly relating to the BSF programme. This included discussion on the services included in LEPs already in existence in earlier BSF authorities.

1.4 There have also been detailed LEP discussions with Partnerships for Schools, the body responsible for delivery of the national programme.

1.5 This report sets out the recommendations following detailed cross department discussions.

RECOMMENDATION

2.1 To approve the inclusion in the notice of the Official Journal of the European Union (OJEU) advertising the Building Schools for the Future programme the scope of services for which the Local Education Partnership (LEP) will be given exclusivity, namely the provision of:

- Building Schools for the Future (BSF) funded capital works to schools within the BSF programme procured under both Private Finance Initiative (PFI) and Design and Build (D and B) contracts
- Maintenance and facilities management (FM) services for schools procured under the BSF PFI contracts
- A managed service to deliver Information and Communication Technology (ICT) to the schools within the BSF programme (including those which are not subject to BSF funded capital works).
2.2 To approve the inclusion in the notice in the Official Journal of the European Union (OJEU) advertising the programme a statement to the effect that the LEP might be invited to carry out the following services (but will not be granted exclusivity):

- Capital works funded by the Primary Capital Investment Programme
- Non BSF funded works on BSF school sites
- The provision of ICT services to primary schools.

REASONS FOR RECOMMENDATION

3.1 At its meeting held on 18 March 2008, Cabinet approved in principle the Local Education Partnership (LEP) procurement model for the Building Schools for the Future (BSF) investment programme, which included an integrated managed service to deliver ICT to schools within the BSF programme as part of the LEP.

3.2 It is now necessary to determine the scope of the LEP and the services over which it will be granted exclusivity.

3.3 A series of cross department workshops have been held to consider the implications of the inclusion of services other than those directly involved in the BSF programme. There was a consensus to make the above recommendations.

3.4 The inclusion of the three items listed in para 2.2 as part of the OJEU notice allows the option for the Council to negotiate with the LEP to provide these additional services if it offered value for money without the need to embark on a new procurement process.

SUPPORTING INFORMATION

4.1 At its meeting held on 18 March 2008 Cabinet considered a report on the implications of forming a Local Education Partnership (LEP) with a private sector partner to deliver the Building Schools for the Future programme, including details on the following:

- The government’s default model for unlocking the £205 million capital investment for Derby as part of the Building Schools for the Future Programme (BSF) is the Local Education Partnership.
- The LEP model includes the requirement for a managed service for ICT for those schools in the BSF programme.
- The LEP’s rights of exclusivity to deliver the BSF programme.
- The role of the LEP and its duration.
- The contractual structure of the LEP.
- Shareholders, shareholdings and the directors of the LEP.
- The role and membership of the Strategic Partnering Board.
- A summary of the legal, financial, personnel and equalities implications of the proposal.
4.2 At this meeting Cabinet approved in principle:

- The Local Education Partnership (LEP) procurement model for the Building Schools for the Future (BSF) investment programme
- An integrated managed service to deliver ICT to schools within the BSF programme as part of the LEP

4.3 Since the last report to Cabinet, two cross department workshops have been held to explore further the role of the LEP and to consider the implications of the inclusion of additional services within the LEP. The first one in May 2008 was lead by the Regional Project Director from Partnerships for Schools (PfS) and was also attended by the BSF external legal and financial advisers. The workshop considered the implications of including various services in the LEP in addition to those relating to BSF. The services discussed were:

- other Children and Young People Services capital projects
- other Council services
- LEP offer to external agencies e.g. the Primary Care Trust (PCT) and or the Further Education (FE) sector
- wider ICT involvement

4.4 Some of the issues discussed in these workshops were:

- Does the Council need a partner (like the LEP) to deliver the particular service in question, or is the Council able to obtain best value by procuring it traditionally without a partner?

- Will the inclusion of additional services in the exclusivity of the LEP make the partnership more attractive to the market?

- How to resource the inclusion of wider services and how to assess potential private sector partners on wider services whilst needing to maintain the focus on the need to deliver the BSF programme?

- The wider implications for including additional services e.g. the Transfer of Undertakings Protection of Employees (TUPE) transfer of staff and likely impact on existing Council services.

- Funding streams need to be clear from the start.

- Stakeholders must formally sign up for any service likely to be included in the scope of the LEP.

- OJEU notice needs to be clear on likelihood of bidders receiving additional work and whether it will be offered exclusivity. This is important to ensure clarity during the competitive dialogue process, as bidders must be clear on the services the Council is asking them to bid for.

- Potential bidders may need to be convinced that wider services advertised will materialise.

- Guidance received from PfS outlines that BSF must remain the main focus of the LEP.
4.5 A further workshop was held in early July with cross department officers and external advisors where the implications of wider participation in the LEP were discussed in more detail. It was concluded that:

- There was an acknowledged desire to keep the LEP focused on BSF, and this would reduce uncertainty for potential bidders.
- Bringing in other services/partners would increase the complexity and cost of the LEP and would also increase the complexity of managing it.
- Monitoring the work of the LEP would require additional resources.
- It could also be difficult to benchmark some of the services which would make it more difficult to prove that value for money was achieved.
- Frameworks were already in place for other capital works and services outside of BSF.
- Where schools had a delegated budget and autonomy for services provision, their approval would be needed to provide additional services through the LEP (for example, Facilities Management in non PFI schools).

4.6 In addition, the workshop also considered the effect of the current development in Corporate ICT including the FM contract, which has recently been tendered with the new contract due to run from April 2009 initially lasting 7 years with the potential for extension up to 6 years.

It was acknowledged that if the LEP was able to use the successful Corporate contractor for the ICT element of the service then it would reduce the complexity and risk of the LEP ICT service. It was also recognised that this is not possible in the BSF competitive dialogue process as the bidder will have its own supply chain for BSF. It is however important for the potential interface issues between the Corporate ICT contract and BSF ICT providers to be clearly defined and resolved at an early stage. Most BSF programmes have involved similar interface issues.

4.7 There was a consensus that the LEP should be offered exclusivity on the following services:

- Building Schools for the Future (BSF) funded capital works to schools within the BSF programme procured under both Private Finance Initiative (PFI) and Design and Build (D and B) contracts
- Maintenance and facilities management (FM) services for schools procured under the BSF PFI contracts
- A managed service to deliver Information and Communication Technology (ICT) to the schools within the BSF programme (including those which are not subject to BSF funded capital works)
4.8 There was also consensus that the notice in the Official Journal of the European Union advertising the programme should include the services included in 4.7 and in addition that the successful bidder might be invited to carry out the following services but not granted exclusivity:

- Capital works funded by the Primary Capital Investment Programme
- Non-BSF funded works on BSF school sites. This may include one off projects where future funding can be secured independently of the BSF programme and may also include projects which will enhance the benefit of the BSF capital investment.
- The provision of ICT services to primary schools

This would then allow the Council the option to negotiate with the LEP to provide these additional services if it offered value for money without the need to embark on a new procurement process.

OTHER OPTIONS CONSIDERED

4.1 The cross department workshops discussed whether there was a need to widen the scope of the LEP to include other Council services, but considered that there were already satisfactory arrangements in place.

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Background papers: Local Education Partnership Cabinet report 18/3/2008

List of appendices: Appendix 1 - Implications

Appendix 2 Glossary
## IMPLICATIONS

### Financial

1.1 The financial implications of forming a LEP were reported to Cabinet on 18 March 2008. There are no further financial implications of approving the scope of the LEP as part of the recommendations outlined in this report.

### Legal

2.1 As the LEP model is developed, there will be a number of legal issues which need to be addressed including:

- effect of the Council’s interest in the LEP on its status for the purposes of Part V Local Government and Housing Act 1989 (local authority interests in companies)
- governance arrangements to be included in the LEP’s Memorandum and Articles of Association
- relationship between the shareholders, and how they are going to work together
- relationship between the LEP and the Council

It is intended to use guidance and standardised agreements issued by PfS in dealing with these issues.

2.2 The wording of the OJEU notice will need to reflect the Council’s intention to keep its options open on extending the scope of the LEP as recommended in this report.

2.3 The Council is about to let a long term contract for IT services across the Council (through an OJEU competitive dialogue process). There will need to be careful consideration of the interface between this contract, and the BSF schools ICT managed service contract. Detailed Corporate and Departmental discussions are already underway.

2.4 There will be significant legal implications in establishing the LEP, and forming the LEP company. There will be further reports to Council Cabinet in due course.

### Personnel

3.1 There will be personnel implications in considering the scope of services to be included in the LEP, for example, cleaning, caretaking, grounds maintenance, security and ICT implications for a managed service to those schools within the BSF programme, together with the potential for staff transfer.
3.2 There will be full consultation as the Council considers which services are undertaken by the LEP. In general, TUPE will apply to any staff transferring to the private sector partner.

3.3 As part of the ongoing consultation process an event has been arranged for the ICT technicians from those schools involved in the BSF programme on 12 September 2008. A further consultation event for the school maintenance and facilities management staff at the proposed new PFI schools has been arranged for 22 September 2008.

**Equalities Impact**

4.1 The BSF programme will provide significant levels of capital funding to improve and modernise school buildings. It is intended that all schools will be Disability Discrimination Act (DDA) compliant on completion of the programme. The overall objective transforming secondary education will embrace narrowing the gaps in opportunity and achievement.

**Corporate objectives and priorities for change**

5.1 This report supports the Council’s key priorities in supporting everyone in learning and achieving, making us proud of our neighbourhoods and giving excellent services and value for money. BSF should also be a catalyst for community regeneration.
## GLOSSARY

<table>
<thead>
<tr>
<th>Acronym</th>
<th>Definition</th>
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<tbody>
<tr>
<td>BSF</td>
<td>Building Schools for the Future – The government’s programme to transform secondary education in the country</td>
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<td>DDA</td>
<td>Disability Discrimination Act</td>
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<td>D and B</td>
<td>Design and Build – A form of contract for building works</td>
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<td>FE</td>
<td>Further Education</td>
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<tr>
<td>FM</td>
<td>Facilities Management – the management of buildings and premises including maintenance, caretaking and cleaning etc</td>
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<td>ICT</td>
<td>Information and Communication Technology</td>
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<td>LEP</td>
<td>Local Education Partnership – A Public private Partnership between a local authority and a private sector entity, in a legal form prescribed by PfS, that will deliver the BSF programme in each local education area</td>
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<tr>
<td>OJEU</td>
<td>Official Journal of the European Union – All public sector procurements above a certain threshold must be published in this journal</td>
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<td>PCT</td>
<td>Primary Care Trust</td>
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<td>PFI</td>
<td>Private Finance Initiative – A form of Design, Build, Finance and Operate contract favoured by the government for essentially new build schools</td>
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<td>PfS</td>
<td>Partnerships for Schools – A body set up by government with delegated powers to control and deliver the BSF programme</td>
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<tr>
<td>TUPE</td>
<td>Transfer of Undertakings Protection of Employees – A set of rules determined by government to safeguard the conditions of service for public sector employees transferred to the private sector</td>
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