

## PLYMOUTH CITY COUNCIL

**Subject:** Capital investment delivery for Marine Academy Plymouth and All Saints Academy, Plymouth.

**Committee:** Cabinet

**Date:** 18 October 2011

**Cabinet Member:** Councillor Samantha Leaves

**CMT Member:** Director of Services for Children and Young People

**Author:** Gareth Simmons (Programme Director for Learning Environments)

**Contact:** Tel: 01752 307161, gareth.simmons@plymouth.gov.uk

**Ref:**

**Key Decision:** Yes

**Part:** 1

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### Executive Summary:

1. In the autumn of 2010 the Department for Education (DfE) requested Partnership for Schools (PFS) to undertake a review of capital allocations to academies. Following the review, capital allocations of £11.5m for All Saints Academy, Plymouth and £9.5m for Marine Academy, Plymouth were approved in May 2011.
- 1.1. PFS have indicated that the funding allocated is reliant on the procurement being through the Academies Framework administered by Partnership for Schools, managed through the Council. This was reinforced through a meeting with the Director for Services for Children and Young People and the Director for Corporate Support on 21 May 2011.
- 1.2. As the Academies are separate organisations to Plymouth City Council there is no financial advantage to the Council in acting as the procurement agents. The condition liability of the schools falls to the Academies and the government so there is no direct reduction of liability that this investment would bring. However the wider benefit to the city that such an investment would bring to the Council is significant. The capital investment would improve the school environments and bring up to current legislation the building fabric.
- 1.3. The City Council is a co- sponsor of these Academies which means that it retains an influence and a responsibility to support these organisations as partners in the important objective of serving some of the most disadvantaged communities in the city. The Council has been fully involved in making the case to Government that these schools need capital investment to resolve long standing condition issues and to modernise their environments.
- 1.4. Both All Saints and Marine Academy have achieved substantial gains in attainment since becoming Academies but there remains much more to achieve. It is therefore recommended that the Council should support these projects by acting as the responsible body in the capital delivery and to therefore secure this investment for the city.

## **2. Corporate Plan 2011 - 2014:**

This programme aligns with and supports the following Corporate Priorities:

- Deliver growth and promote Plymouth as a thriving growth centre by creating the conditions for investment in quality new homes, jobs and infrastructure. The Academy Investment will improve education infrastructure that supports the growth of the city by supplying good quality education provision that meets need, and makes the city an attractive place to live and work. This paper brings to Cabinet opportunities for substantial investment into the City.
- Raise aspiration and the skills and expectations of Plymouth residents to ensure our young people achieve better qualifications and find high quality jobs. The investment this paper describes will significantly improve 12.5% of the secondary school infrastructure in the city.
- Reduce inequalities by reducing the large economic and health gaps between different areas of the city by improving the educational offered in these parts of the City. The proposals in this paper are targeted at narrowing the gaps in inequality of education that exists in the city.
- Provide value for communities and to become more efficient and joined up with partners and local residents to deliver services in new and better ways. These proposals seek to support the Academies that our partner organisations brokered to achieve the maximum value for the communities they serve.

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## **3. Implications for Medium Term Financial Plan and Resource Implications: Including finance, human, IT and land**

The overall cost of the two building projects will be met from within the Capital Grant funding of £21M

- 3.1. The sum of £300,000 can be top sliced from the allocations for the Council to use for procurement costs. Based on an analysis of costs this top slice will not be sufficient to fund the full costs of managing a project. However, it is anticipated these costs can be managed within the available resources with the support of the Academy Sponsors, who share the view that reduced expenditure in this area would be a false economy. The other sponsors are of the view that any liability of procurement costs above the top slice should be met by their organisations as it would be them who would bear the long term liability for the condition of the schools. In this way it is not expected that the Council will have to bear any costs above the £300k top slice from the projects.
- 3.2. In addition there would be the Council's staff time or expenses in gaining internal approvals, letting and monitoring the building or technical advisors contracts. A detailed assessment of this has been carried out which indicates a total of 210 days would be required. This would be the Council's contribution in support of the projects.
- 3.3. Acting as procurement agent, the Council will take on all liability for project over-run either in terms of timing or costs, including any contractual disputes. Against this, there is no indicated incentive for the Council in relation of retaining any surplus funding should a project be delivered under budget. However PfS have devised a client biased contract that offers a good deal of comfort that much of the delay risk is transferred to the contractor. It is of key importance that the specification, procurement and contract management is undertaken with appropriate rigour to ensure this transfer of risk is secured.

- 3.4. The VAT implications regarding the capital investment delivery will depend on the ownership of the grant and the land interest. Formal leases have been held pending confirmation of the nature of the capital investment programme and so the Academy currently occupies the site under a Tenancy at Will (TAW). This was put in place in September 2010 and may be subject to amendment to meet the needs of project delivery. The revised arrangements will continue until the refurbishment is completed. The Council would contract with the D&B contractor to carry out the works and the refurbished site would then be transferred to the Academy Trust under a 125 year peppercorn lease. The Council would then be making a non-business supply for VAT purposes and providing this is a 'true peppercorn' lease, i.e. there is no consideration, PCC should be able to recover the VAT it incurs on the design and build contract. If the lease is not a 'true peppercorn' this would adversely affect the Council's partial exemption position in terms of the Council's ability to recover VAT on its expenditure. It is recommended, therefore, that the Council "Opt to Tax" the academy site to mitigate this risk and to protect its VAT recovery position.
- 3.5. The procurement does not involve any TUPE transfer so there are no demands on HR resources, however there would be a necessity to call on limited advice from Procurement, Legal and Finance officers in obtaining and reviewing advice from external consultants. A full resource plan has been devised that demonstrates the work commitment of corporate support officers.

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#### **4. Other Implications: e.g. Community Safety, Health and Safety, Risk Management and Equality, Diversity and Community Cohesion:**

- 4.1. Schools are a key facility in their local communities and support wider cohesion in the area. An equality impact assessment has not been completed as the investment in school buildings would be designed to current building regulations which are fully DDA compliant. In addition, these are community facilities which are open to all; therefore issues surrounding discrimination on the basis of age, faith, gender, race, or sexual orientation are not applicable.
- 4.2. Capital investment into schools offers the opportunity for them to resolve many issues of health and safety and community safety that have become long standing in schools. The capital investment will resolve building condition issues that in the long term improve the building fabric that could lead to Health & Safety breaches.
- 4.3. A fully compliant risk register has been developed for the project.

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#### **5. Recommendations & Reasons for recommended action:**

##### **Recommendation**

1. That cabinet approves the Council being the procurement agent for the delivery of the design and construction programmes at the Marine Academy, Plymouth and All Saints Academy, Plymouth in accordance with the schemes approved by Partnership for Schools

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#### **6. Alternative options considered and reasons for recommended action:**

Careful consideration has been given to not acting as procurement agent and discussion has taken place with other authorities who have also been given this challenge by PfS, there are mixed views and other authorities have taken different courses of action. The ministerial view given to both sponsors has been one that the use of the Council as procurement agent is mandatory which implies that the investment into Plymouth would be lost if the Council chose not to act in this capacity.

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7. **Background papers:**
  8. [Investment for Children Cabinet Paper approved 11 November 2008](#)
  9. [Plymouth City Council Children's Services Strategy for Change Investment for Children](#)
  10. [Building Schools for the Future \(BSF\) Project Governance and BSF Cabinet Committee](#)
  11. Part II Memorandum of Agreement between sponsors and the Council (contains exempt information))
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**Sign off:**

Fin	ChS 0 356'' .	Leg	TH0 028	HR	NA	Corp Prop	CT 21/09/ 11	IT	NA	Strat Proc	JK/S PU/ CP/2 58/0 911
Originating SMT Member											

## **8. Background**

- 8.1. In June 2010 the Secretary of State stopped the Building Schools for the Future (BSF) programme and Plymouth's case for investment of the secondary schools was therefore denied. However, those schools that were sponsored academies and a part of the programme of capital renewal were not fully stopped but instead paused. The Department for Education (DFE) requested Partnership for Schools (PfS) to review the capital allocation to academies against a background of a reduction in available expenditure for academies from £1.4 billion to £800 million. In all, 75 academies across the country were subject to a site assessment against a condition based criteria devised by PfS. Seventy one academies were given allocations on 20 December 2010. All Saints Academy, Plymouth (ASAP) and the Marine Academy Plymouth (MAP) were allocated £10.6 million and £8.6 million respectively. This means that the city was successful in arguing the case for some investment to those schools that were part of its original BSF proposals.
- 8.2. The academy sponsors (of which Plymouth City Council are co-sponsors of both academies) appealed against their allocations and these were revised following submissions to Ministers. The current capital allocated were approved in May 2011 are: ASAP, £11.5 million and MAP £9.5 million. After some time all 71 academies nationally have been given the authority to proceed.

## **9. PfS preferred procurement**

- 9.1. Ministers have signed off the allocations on the basis that the delivery of this capital investment is procured through the Academies Framework administered through PfS. In the discussions between PfS and sponsors of Marine Academy Plymouth and All Saints Academy Plymouth in May 2011, PfS have indicated that the funding allocated is reliant on the procurement being through this route and managed through the Council. This was reinforced through a meeting with the Director for Services for Children and Young People and the Director for Corporate Support on 21 May 2011.

Reasons given by PfS for the Council delivering these projects are as follows:

- Both All Saints and Marine Academy, Plymouth are similar projects involving refurbishment of buildings which were built at the same time by the Council, there would be economy of scale of a single procurement.
  - A single delivery project of £21 million will be more attractive to a framework contractor than single procurements of £9.5 million and £11.5 million leading to greater competition for the work.
  - A single procurement lead by the Council could be added to if funding for a UTC was approved.
  - Delivery by the Council removed the risk of overspend from Ministers to a Council level. Councils have a greater reputation in delivery on time and on budget than academy sponsors.
- 9.2. It is therefore concluded that unless the Council agree to undertake this work the investment for these schools would be lost to the city.

## **10. PfS framework**

- 10.1. The Academies Programme has delivered new and refurbished academies through a national framework for over five years. This is a framework of contractors with a standard suite of documents that can deliver primary, secondary and post 16 education facilities. A new Contractors Framework was launched in 2010 to allow for greater volume and scope and is now being used for Free Schools and UTCs as well as academies.

- 10.2. Since July 2010 PfS have been working to improve its processes mirroring the department's Sebastian James Review with the aim of further increasing efficiency and effectiveness of the framework. These new models have been tested at the Doncaster Campsmount School, cutting costs by 30 per cent and procurement times by 50 per cent. Other examples across the country are also delivering the reductions in procurement time using this slimmed down process.
- 10.3. The preferred model of delivery is for a Local Authority to act as the procuring agent for the Academy Trust using its experience and skills to manage effectively the design and construction programme. The majority of the project risk is taken by the Design and Build contractor with only residual risks held by the Council. The sponsor leads the design development and jointly signs off the agreed project with the Council before the scheme is approved at central level and moves the contract award. The Council can top slice £150,000 for a single project to cover the majority of its costs. Future schools projects can be top sliced by £75,000. For Plymouth it would, therefore, receive £225,000 upfront to enable its delivery of All Saints and Marine Academy Plymouth. Both academies have objected to a batched approach to procurement and PfS finally confirmed on the 13 July 2011 that they would allow each academy to be a separate procurement, however still using the Council as agent. This means that it allows a total of £300k to be top sliced from the budget for delivery costs.

## **11. Objective benefits**

- 11.1. As the Academies are separate organisations to Plymouth City Council there are no clear financial benefits to the Council in acting as the procurement agents. The condition liability of the schools falls to the Academies and the Government so there is no direct reduction of liability that this investment would bring. However the wider benefit to the city that such an investment would bring to the Council is significant. The capital investment would improve the school environments and bring up to current legislation the building fabric. The clear advantages in meeting the Council's objectives in raising aspiration and contributing to the growth of the city, by enabling significant capital investment into the education infrastructure is a clear benefit.
- 11.2. In addition to the above the Council is the co- sponsors of these Academies which mean that it retains an influence and a responsibility to support these organisations as partners in the important object of serving some of the most disadvantaged communities in the city. The Council has been fully involved in making the case to Government that these schools need capital investment to resolve long standing condition issues and to modernise their environments.
- 11.3. In 2009/10 the Council was fully committed to supporting these Academies in capital delivery through the BSF programme and the risks of procurement and delivery very clearly rested with the Council at this time, the Academies Act 2010 has changed the nature and reasons for schools becoming academies and changed the financial incentives. However the fundamental objectives and reasons the Council brokered sponsors for both ASAP and MAP remain unchanged. Both ASAP and MAP have achieved substantial gains in attainment since becoming Academies but there remains much more to achieve. It is difficult to argue that the Council should not continue to support these projects by acting as responsible body in the capital delivery.

- 11.4. By delivering these projects there is considerable influence that the Council gains in the contracting market due to the large scale of such a delivery. This would assist considerably in the delivery of other infrastructure projects in the growth agenda. Soft market testing with the contractor base indicated that local construction market would prefer the Council to manage the procurement and see advantages in contracting with a Local Authority as opposed to the academy Sponsors.
- 11.5. The relationship with sponsors and the future sponsors of a UTC is of consideration. The influence the Council retains through the delivery of these projects is of considerable benefit to the relationship between parties and organisations. This will contribute to the mutual support of the partner organisations that will build a stronger collaborative partnership that will benefit the long term development of the city.

## 12. Financial position

- 12.1. As the Academies are separate organisations to Plymouth City Council there is no financial advantage to the Council in acting as the procurement agents. The condition liability of the schools falls to the Academies and the Government so there is no direct reduction of liability that this investment would bring. However the wider benefit to the city that such an investment would bring to the Council is significant. The capital investment would improve the school environments and bring up to current legislation the building fabric. There are clear advantages in meeting the Council's objectives in raising aspiration and contributing to the growth of the city by enabling significant capital investment into the education infrastructure.
- 12.2. The sum of £300,000 can be top sliced from the allocations for the Council to use for procurement costs. The analysis below shows that this top slice will not be sufficient to fund the full costs of managing a project. However, it is anticipated these costs can be managed within the available resources with the support of the Academy Sponsors, who share the view that reduced expenditure in this area would be a false economy.
- 12.3. The technical advice and project management required has been tendered through the Office of Government Commerce (OGC) and will be a fixed sum of £227,789. This gives some comfort that the total procurement costs will be about £350k. An assessment of the costs are as follows:

• Project Management	£30,083	(fixed price contract)
• Technical Advisors	£197,706	(fixed price contract)
• Legal Consultant	£16,100	
• ICT Consultant	£21,600	
• Surveys	£58,900	
• Contingency	£25,611	
Total	£350,000	

13. The Council has experience of delivering similar scale projects through its own construction frameworks with delivery costs well below £300k however the reducing capacity of corporate support functions, such as legal and finance, due to diminishing revenue budgets will provide a challenge when compared to resourcing other key project requirements such as the Energy to Waste plant, although it is acknowledged that some of the Council's commitment to large investment projects are coming to an end and there is a need to retain staff with the skills in managing such infrastructure projects if the growth agenda is to be realised.

- 13.1. The procurement does not involve any TUPE transfer so there are no demands on HR resources, however there would be call on limited advice from Procurement, Legal and Finance officers in obtaining and reviewing advice from external consultants. A full resource plan has been devised that demonstrates the work commitment of corporate support officers.
- 13.2. Acting as procurement agent, the Council will take on all liability for project over-run either in terms of timing or costs, including any contractual disputes. Against this, there is no indicated incentive for the Council in relation of retaining any surplus funding should a project be delivered under budget. However PfS have devised a client biased contract that offers a good deal of comfort that much of the delay risk is transferred to the contractor. It is of key importance that the specification, procurement and contract management is undertaken with appropriate rigour to ensure this transfer of risk is secured.
- 13.3. The VAT implications regarding the capital investment delivery will depend on the ownership of the grant and the land interest. Formal leases have been held pending confirmation of the nature of the capital investment programme and so the interest in the land remains with Council, since the Academy occupies the site under a tenancy at will. This was put in place in September 2010 and will continue until the refurbishment is completed. The grant, therefore, belongs to the Council as the land owner. The Council would contract with the Design and Build contractor to carry out the works and the refurbished site would then be transferred to the Academy Trust under a 125 year peppercorn lease. The Council would then be making a non-business supply for VAT purposes and providing this is a 'true peppercorn' lease, ie there is no consideration, The Council should be able to recover the VAT it incurs on the design and build contract. If the lease is not a 'true peppercorn' this would adversely affect the Council's partial exemption position in terms of the Council's ability to recover VAT on its expenditure. It is recommended, therefore, that the Council "Opt to Tax" the academy site to mitigate this risk and to protect its VAT recovery position.
- 13.4. The ministerial view given to both sponsors has been one that the use of the Council as procurement agent is mandatory which implies that the investment into Plymouth would be lost if the Council chose not to act in this capacity.

#### **14. Legal position**

- 14.1. Whilst changes have been introduced by the Academies Act 2010, the Council does retain power to act as a procurement agent in the type of arrangements proposed.
- 14.2. As the Academies are now separate organisations to the Council, there will be the need to transfer collateral and other warranties from the consultants, contractors and manufactures of the works. The Council would not hold a residual role following the completion of the works as the Academy will retain responsibility for the on going repair and maintenance of the property as set out the standard 125 year academy lease.
- 14.3. In order to avoid any disputes between the parties there has been a Memorandum of Agreement (MOU) between the Academy Trusts, their sponsors and the Council, that sets out the expectations of each party. There is also standard Development agreement between the Council and the Academy Trust that is drafted by PfS that clearly sets out the transfer of the completed building works to the Academy Trust.
- 14.4. Partnership for Schools have also set out a standard MOU between the Council and them selves that formally sets out the agreement that the Council will follow PfS processes and use all of their standard documents.



## **15. Governance**

- 15.1. The contractual liability rests with the Council as the direct contracting party, therefore the control of the contract and its procurement through the government's Academy Framework also rests with the Council. In this respect the project is like any other that the Council is delivering and its governance will be arranged in the same way as other projects including being governed by the Council's decision making structures, standing orders and financial regulations.
- 15.2. However it is recognised that, what is delivered and indeed the long term value from the investment, are the interests of the academy trusts. For this reason the academy trusts and the Sponsors are very insistent that they have a high degree of transparency to the procurement and to the technical advisors who will be offering advice on the value of the contractor's proposals.
- 15.3. Both academy trusts have set out how their organisations and their own governance structures will engage with the Council. Both academy trusts have appointed experienced people to represent their organisations one from the academy trust and one from the sponsoring organisation and these will be closely involved in the project.

## **16. Risks and benefits**

- 16.1. For the sake of absolute clarity the following are the risks and benefits of undertaking the role as procurement agent for these projects:
  - The procurement top slice may not be sufficient to meet the cost of the procurement, especially if it is delayed in some way. This risk is mitigated by an agreement with both sponsors.
  - The building contracts will contain some risk of compensation events, this risk is mitigated by the use of PfS client biased contracts that mean that the scope of the works is at greater risk than project cost over run. This risk is also mitigated by robust governance in place that controls the expenditure and risk management throughout the project delivery.
  - There is a risk that the relationships with the partners and the Academies are strained by the challenges of getting a project that delivers within the constraints of the funding envelope.. This risk is mitigated by the arrangement that has been reached with sponsors that they should provide professional support with experience of technical and procurement matters as representatives to the project board.
  - There is also the reputational risk if the Council choose not to undertake the role as procurement agent, in this circumstance it is possible that the funding might be lost and also future funding could be in jeopardy if the Council are not able to support delivery.

Considering the benefits the following will be achieved if these projects are supported:

- There would be a £21m investment into two of the cities schools that would address a considerable back log of condition issues and offer them the opportunity to remove old and unwanted buildings on the sites.
- It offers the opportunity for the city to raise aspirations in parts of the city that need inward investment to value children's opportunities that will ensure that the work force of the future are able to make better contributions to Plymouth's economy.
- It offers the opportunity to place the Council in a position of influence in the construction marketplace to drive out the benefit of jobs in the construction industry to Plymouth's economy.