

EXECUTIVE MEMBER DECISION



REPORT OF:	Executive Member for Finance and Governance Executive Member for Children's Young People and Education
LEAD OFFICERS:	Director of Finance and Customer Services Director of Children's Services and Education
DATE:	3rd January 2020

PORTFOLIO/S AFFECTED:	Finance and Governance Education	Children's Young People and Education
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WARD/S AFFECTED:	All
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SUBJECT: Building Schools for the Future (BSF) Strategic Partnering Agreement (SPA) Extension
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1. EXECUTIVE SUMMARY

Under Building Schools for the Future (BSF), programmes were delivered through the procurement of a private sector partner to enter into a Strategic Partnering Agreement (SPA) as a Local Education Partnership (LEP). The Council, in conjunction with Bolton MBC, entered into a ten year SPA with the Local Education Partnership (LEP) for the delivery of its BSF programme, as well as creating a procurement vehicle for future delivery. The current SPA expires on the 12th January 2020 and the Council wishes to extend the SPA for a further 5 years under the same terms of the Agreement.

2. RECOMMENDATIONS

That the Executive Members:

Approve the extension of the current BSF SPA for a further five year period until 12th January 2025 and authorises that the Director of Finance and Customer Services to issue the extension notice on behalf of the Council.

3. BACKGROUND

Under Building Schools for the Future programmes were delivered through the procurement of a private sector partner to enter into a Strategic Partnering Agreement as a Local Education Partnership (LEP). The Council undertook a joint procurement with Bolton MB Council through the Competitive Dialogue procurement procedure to appoint the Balfour Beatty Investments (now Amber Infrastructure Limited) as their preferred partner. Both Councils entered into the SPA on the 12th January 2010. The LEP model was the 'Partnerships for Schools' recommended delivery vehicle for the delivery of the BSF programmes.

Procurement was based on two sample schemes plus future waves or phases of investment, based on these sample schemes and contract documentation. The exclusivity over future delivery of investment phases by the LEP was reliant on delivery of key performance targets. The LEP delivery model anticipated substantial procurement savings by negating the need for individual procurements

for each scheme.

The programme initially focused solely on secondary schools over two phases, although it was anticipated that the LEP's remit would expand to incorporate the potential primary school capital programme. The Councils OJEU notice and contractual documentation allowed for other services to be within the LEP's remit, on a non-exclusive basis, to complement the Council's wider vision of urban regeneration and strategic partnering, however the Council would only use the LEP for these wider projects if it represented the best value for money option in comparison to a procurement process.

Since entering into the SPA, the LEP has successfully delivered the Councils BSF Programme which consisted of three PFI new builds and four significant remodels, including one 90% new build scheme. As well as the Council's secondary school estate, the LEP was commissioned to deliver St Silas' Primary School and the Council's accommodation project at 10 Duke Street. The use of the LEP negated the need for going through further procurement processes and resulted in efficiencies. The LEP has also been called upon to provide feasibility studies for other projects within the Council, including potential options for the future of the Tower block. Any decision to utilise the LEP will always be on the basis of it representing value for money to the Council.

Since the completion of the construction aspects of the BSF Schemes, the LEP now continues to operate and manage the PFI Schemes (Phase 1 and Phase 2), each of which have been entered into for a period of 25 years.

Following the cancellation of its BSF Programme, Bolton MBC was not able to deliver its schemes via the LEP. However despite this, Bolton MBC has remained as a partner within the LEP to ensure that should it require the use of the LEP for any services, then it is able to do so, maximising on the efficiencies of the initial procurement process.

As a shareholder in the LEP both Councils will continue to receive dividends should the LEP be used, and profits made under the LEP Shareholders agreement.

4. KEY ISSUES & RISKS

The SPA has been in place for ten years and the Council and the LEP wish to complete the required paperwork for the SPA to be extended for a further five year period. This extension will simply allow both Councils to carry on utilising the LEP for the next 5 years, for the same services it has had the option to do so for the last 10 years. This would mean that the Council can continue to use the LEP (where it represents value for money) to deliver education led projects (and other projects on a non-exclusive basis), as defined by the scope of the original OJEU notice, as the LEP would remain a pre-procured option for the Council to use.

To allow the extension to take effect, both Blackburn with Darwen BC and Bolton MBC must issue their notice to extend prior to the 12th January 2020 to comply with the terms of the SPA.

Whilst Bolton MBC has not used the LEP's services to date, the legal advice provided to the LEP is that the preferred approach to extension is to obtain the consent of all parties to the original SPA. Bolton MBC are currently working through their own approvals processes for the extension. Whilst this is the preferred manner in which to extend, the drafting of the SPA also allows for Blackburn with Darwen BC to extend the SPA even if Bolton MBC decide not to do so.

The cost to the Council of extending the SPA for a further 5 years is nil (£0). There are no further costs attached to extending the SPA by 5 years as the LEP will continue to exist in any case, with the usual payments for the BSF PFI Schemes running through the LEP from the two connected PFI Project Companies.

There is merit in extending the SPA as it will allow the Council to call upon the services covered by the original LEP OJEU / in the SPA, such as construction works for education facilities should they be required. The Council's Growth Team is considering some new projects for which it may wish to consider using the LEP, and whilst these conversations are in the early stages, the extension would allow this to happen without the need for further procurement.

The LEP have recently extended a number of the SPAs over the last 2 years with other Council partners across the country and the process is a simple one, which does not require external legal advice.

The process to extend is set out in Clause 3.2 of the SPA which stipulates that the Council send a letter to the LEP requesting an extension by the required date (then a reply from the LEP confirming it agrees to the request).

It should be noted that there is no detriment to the Council even if we have no LEP new projects in mind as yet; this process simply allows the option for the Council to use the LEP in the future for another 5-year period, taking the procurement option to 12th Jan 2025.

5. POLICY IMPLICATIONS

There are no specific policy implications associated with this report.

6. FINANCIAL IMPLICATIONS

There are no specific financial implications associated with this report.

7. LEGAL IMPLICATIONS

The extension is in accordance with the terms of the legal documentation and there are no other legal implications of this report.

8. RESOURCE IMPLICATIONS

There will be no additional resource requirements as a result of this report and the management of the LEP will continue as currently.

9. EQUALITY AND HEALTH IMPLICATIONS

Please select one of the options below. Where appropriate please include the hyperlink to the EIA.

Option 1 Equality Impact Assessment (EIA) not required – the EIA checklist has been completed.

Option 2 In determining this matter the Executive Member needs to consider the EIA associated with this item in advance of making the decision. (*insert EIA link here*)

Option 3 In determining this matter the Executive Board Members need to consider the EIA associated with this item in advance of making the decision. (*insert EIA attachment*)

10. CONSULTATIONS

None.

11. STATEMENT OF COMPLIANCE

The recommendations are made further to advice from the Monitoring Officer and the Section 151 Officer has confirmed that they do not incur unlawful expenditure. They are also compliant with equality legislation and an equality analysis and impact assessment has been considered. The recommendations reflect the core principles of good governance set out in the Council's Code of Corporate Governance.

12. DECLARATION OF INTEREST

All Declarations of Interest of any Executive Member consulted and note of any dispensation granted by the Chief Executive will be recorded and published if applicable.

VERSION:	1
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CONTACT OFFICER:	Rizwana Karim
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DATE:	20 th December 2019
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BACKGROUND PAPER:	
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