

WEST DUNBARTONSHIRE COUNCIL**Report by the Executive Director of Infrastructure and Regeneration****Infrastructure, Regeneration and Economic Development Committee****16 March 2016**

Subject: Our Lady and St Patrick's High School Replacement: Authority to Proceed to Financial Close

1. Purpose

1.1. The purpose of this report is:

1.1.1. To inform the Committee of the scope, nature, commercial terms and financial consequences of the proposed Design Build Finance and Maintain Contract ("DBFM").

1.1.2. To seek approval from Committee for officers to proceed to Financial Close of the contract.

2. Recommendations

Members are requested:

2.1. To note the progress to date on the development of the new Our Lady and St Patrick's High School (OLSP);

2.2. To note the nature of the proposed design and build, finance maintenance agreement ("DBFM") and ancillary documents as listed in paragraph 2.8 of this report and to acknowledge that these documents facilitate the delivery of educational facilities as incidental to the discharge of the Council's function as education authority in accordance with the statutory provisions conferring this function are Sections 1, 6 and 17 of the Education (Scotland) Act 1980, as amended, and Section 123 of the Local Government (Scotland) Act 1973, as amended;

2.3. To agree that the Council has the statutory powers to enter into the DBFM and ancillary documents in pursuance with such statutory provisions;

2.4. To note the financial implications of the proposed DBFM identified at 4.8 to 4.15 below, and that these will be built into future budgeting processes;

- 2.5.** To note the expected build cost of the school of £25.910m will be funded through revenue funding from the Scottish Government over the 25 years life of the DBFM contract;
- 2.6.** To note that the Council will invest up to £0.296m by way of subordinated debt, in the project, and that the Council will invest £1, being 10% of the shares in Holdco;
- 2.7.** To agree that Authority be granted to the Head of Legal, Democratic and Regulatory Services to agree the final terms of the DBFM in consultation with relevant officers and agree the execution, delivery and performance of the Contract Documents (as described in paragraph 2.8 below);
- 2.8.** To agree that Peter Hessett, Head of Legal, Democratic and Regulatory Services, Alan Douglas, Manager of Legal Services, Sally Michael, Raymond Lynch and Nigel Ettles, all Section Heads within Legal Services, or their successors in office, be authorised to execute the DBFM and ancillary documents listed below in Paras 2.8.1 – 2.8.9, on behalf of the Council;
 - 2.8.1. the Funder Direct Agreement;
 - 2.8.2. the Contractor's Collateral Agreement;
 - 2.8.3. the Service Provider Collateral Agreement;
 - 2.8.4. the Independent Tester Contract;
 - 2.8.5. the Insurance Proceeds Account Agreement;
 - 2.8.6. the Key Subcontractor Collateral Warranties;
 - 2.8.7. the Professional Team Collateral Warranties;
 - 2.8.8. the Intercreditor Agreement; and
 - 2.8.9. any additional documentation relating to the Contract to which West Dunbartonshire Council is required to be a party (the "Contract Documents").
- 2.9.** To note that, the DBFM and the Funder Direct Agreement shall be certified contracts within the meaning of Section 2 of the Local Government (Contracts) Act 1997 (the "1997 Act") and shall meet the certification requirements within Section 3 of the 1997 Act and that the said Peter Hessett, Alan Douglas, Sally Michael, Raymond Lynch and Nigel Ettles, are duly authorised to sign and issue the certificate in terms of the 1997 Act.
- 2.10.** To confirm the Contract has met all approval requirements such that when executed and delivered by the Council, the project documents will form binding contracts, fully enforceable against the Council.

- 2.11. To agree that Stephen West, Head of Finance and Resources and Craig Jardine, Capital Investment Programme Manager, be confirmed as the Council nominated director and alternate director respectively, to the boards of directors of hWS Project Co (No. 4) Limited and Hold Co (No.4) Limited.

3. Background

- 3.1. In February 2013, the Council took the decision to build a new OLSP.
- 3.2. The works have been procured through Hub West Scotland who is acting as the Council's development partners, with Scottish Government funding 100% of the construction cost through a revenue payment model the 25 year lifetime of the DBFM contract, with the Council funding some associated costs from its capital programme.
- 3.3. It should be noted as part of the Scottish Government funding conditions the Council is required to procure the school through hub West Scotland using the DBFM model. This has been explained in previous reports.
- 3.4. At the Education Services Committee meeting dated 26 June 2014, it was agreed to proceed with constructing the new OLSP on the Bellsmyre site and to seek to deliver the same opening date of August 2016.
- 3.5. Initially the Scottish Government had indicated that its funding would cover 67% of the capital build costs through a revenue stream and the Council would fund 33% from the Capital Budget. However, while the design work for the new site was being progressed, the Scottish Government announced that the revenue funding contribution from Scottish Government for this project had increased from 67% to 100%.
- 3.6. Subsequently an issue arose around the updated European System for Accounting 2010, known as ESA 10, which further delayed further the project pending a resolution. This issue impacted on all DBFM projects and meant that they could not proceed to Financial Close until the matter was resolved.
- 3.7. A report to Council on 16th December 2015 advised the resolution of the issue and the steps to be taken to make the project compliant with the new rules.

4. Main Issues

Project Scope

- 4.1. The final scope of the project in terms of the schools and associated facilities ("the Project") is as follows:

Our Lady and St Patrick's High School: incorporating a denominational secondary school built for 1000 pupils located on a site in Bellsmyre, Dumbarton, as shown on the plan forming Appendix 1 of this report. The school will incorporate sports and social facilities, and these will be available for community use out of school hours. The facilities provided will include synthetic (3G) floodlit all weather football and hockey pitches, 3 outdoors games courts, a fitness suite, aesthetic gym, small gym, large games hall (which can also be used with retractable bleacher seating for social/performance events) and a flexible social space incorporating performance space.

4.2. Under the terms of the Project Agreement, a special purpose vehicle, in the form of a limited company, called hWS Project Co (No. 4) Limited (referred to in the project documents and in this report as "DBFMCo") will be established by hub West Scotland ("hub") to deliver the construction and facilities management services which comprise the project. A holding company "HoldCo" will also be created to ensure the overall contract structure complies with the current funding requirements for such project. It is recommended that the Council purchases a share in this company as referred to previously. Appendix 2 illustrates the project structure. DBFMCo will have responsibility for the delivery of the following works and services (known as Hard FM):

- Helpdesk;
- Energy and Utilities Management;
- Utilities (Gas, Water, Sewerage, Drainage) connections maintenance - note that the Authority will be responsible for procuring the utilities;
- Mechanical, Electrical, Heating, Ventilation and Air Conditioning;
- Fire Safety and Other Emergency Services;
- Health and Safety Services (including all statutory inspections);
- Environmental Services;
- Life Cycle Maintenance;
- Facilities Management Equipment; and
- Testing and Inspection of Equipment.

4.3. It should be noted that the Council are required to retain the following elements due to DBFM Standard Form of Contract as agreed by SFT as part of the Central Repairs budget;

- Floorcoverings; and
- Decoration.

4.4. Although this will not be required for a number of years, future maintenance for these elements and any costs associated with malicious damage will be factored into the Central Repairs Budget.

Nature of Funding and Ownership of the Asset

- 4.5. Payment from the Council, for the provision of the school over the 25 year contract period, to the DBFMCo is in the form of a revenue payment. The Council is not permitted to invest any capital in the construction of the school under the revised guidance to comply with ESA10. The payment is based on the availability of the premises for use by the authority. This payment rolls together all of the costs routinely associated with the construction and provision of the above services into a single payment to the DBFMCo known as the Service Payment.
- 4.6. Subject to the Council complying to the Scottish Government Conditions of funding (4.35 below), this revenue expenditure is supported by Scottish Government funding over the 25 year contract period.
- 4.7. The school remains in the ownership of the Council during the 25 year contract, with no lease or other property claim by DBFMCo.

Consultation, Communication and School Views

- 4.8. From the outset of the project, extensive and effective consultation and communication with all relevant stakeholders has been key. Examples of this consultation include:
- Project was notified to parents initially in February 2014 and a statutory consultation public meeting was held March 2014.
 - Stakeholder consultation- User groups were established by Council officers and the school. These groups included S1-S3 pupils, S4-S6 pupils, feeder primary school pupils, parents' council, Archdiocese and Council departments (Education/ Asset Management/ FM/ Catering/ Libraries) – workshops were held and prior to these workshops a focus questionnaire was issued to all group representatives. Comments received were noted and acted on as appropriate.
 - Public consultation- as part of the planning process a public exhibition was held on 24 September 2014, it was advertised in 2 local newspapers and also neighbouring properties were lettered inviting them to attend. Event was held in the Cutty Sark Centre which is a central part of the local community. Plans of the school together with a 3D model were displayed and representatives from Council, Architect and BAM construction were present throughout to brief attendees and address any questions they may have.

Public were also invited to complete and submit comments for the design team to review.

- The following bodies were consulted on the proposals as part of the formal planning application; SEPA on a range of environmental issues, sportscotland on proposed sports provision, West of Scotland Archaeology and Council Services (Estates, Environmental Health and Roads).
- Parent Council and representatives of the teaching staff have visited Eastwood secondary school which is the reference build for this type of school.
- Meetings have been held with parent council/ parents including an open meeting on the evening of the 27 January 2015, with representatives of the Architects, BAM and the Council in attendance, Plans and 3D model were on display before, during and afterward the meeting within the school. The Architect gave a presentation on the design proposals and comments/questions invited from those present.
- Extended consultation done with the school senior management team, individual Principal Teachers, science/ technology technicians and Council libraries regarding layouts and adjacencies to finalise details.
- Extended consultation with Council FM catering services regards the proposed kitchen and servery/hospitality kitchen/sandwich bar layouts to ensure they met current and future requirements.
- Ongoing consultation with Council Roads Department/BAM regards the required roads notices.

Financial Issues

- 4.9.** As noted above, the revenue funding provided to the Council by the Scottish Government is intended to cover the expected cost of construction, priced at £25.910m which covers the design and construction of the school and all associated facilities.
- 4.10.** In addition, the Council has allocated £0.250m in 2016-17 and £0.300m in 2017-18 in the approved Capital Plan to cover for costs not directly linked to the construction of the new school, including: the demolition of the existing school; some minor external works; and Council project advisors fees.

- 4.11.** The Council has received a financial model which demonstrates how the funding regime of the DBFMCo works and this identifies the Service Payment which will be made by the Council. The key elements of this are as follows:
- The current estimate of the Service Payment is an average charge of £2.602m per year for the 25 year period, though the final value for this will depend on the rate of interest available at the time of financial close;
 - As noted above, the Scottish Government will provide revenue funding to pay for the capital cost of construction which is expected to be an average of £2.263m per year for the 25 year period. It should be noted that the Scottish Government Funding will vary depending on the final Gilt Rate; and
 - The Council's cost therefore, for funding the hard facilities management and lifecycle maintenance over the life of the contract at an average of £0.339m per year for 25 years.
- 4.12.** It should be noted that the Service Payment will be subject to an inflationary uplift each year based on the Retail Price Index, the model assumes a 2.5% inflationary uplift on 15.24% of the Service Payment each year. The proportion of the Service Payment subject to uplift will vary depending on the final Gilt Rate. This reflects the relative stability of the DBFM model in that most of the costs are fixed costs (based on the construction cost of the school and anticipated maintenance and lifecycle maintenance regimes).
- 4.13.** In terms of the running costs of the new build school compared to the existing school it is anticipated that the new school will cost £0.039m less than the existing school. The difference in cost relates to the costs of operating the school facility and no change to the school's employee establishment is anticipated.
- 4.14.** The main difference in cost between the two schools relates to the new school having a higher non-domestic rates cost, lower energy costs and less ongoing repairs works (as these are covered in the Service Payment).
- 4.15.** In addition it is worth noting that the existing school premises, in the latest conditions survey, required £2.300m worth of backlog maintenance works. This cost would likely have been required to have been spent to continue to operate the current school building into the future. It should also be noted that the value of Lifecycle Maintenance built into the contract is expected to be £4.166m – which if the school was to be funded by traditional methods would still fall to the Council to fund.

- 4.16.** The total revenue impact is therefore a £0.300m increase, which will require to be built into budgets as from financial year 2017/18.

Programme

- 4.17.** If Financial Close is achieved by 31 March 2016 the Construction contractor, BAM Construction Ltd. will begin work on site early April 2016. The construction period will be 18 months, with handover prior to the end of September 2017, allowing occupation on or around the October Break period 2017.

Operational Phase Arrangements for School and Community Use

- 4.18.** Once the school is handed over and become operational, a new management regime will apply for the school in which it is essential that all parties involved have clear and clearly understood roles and responsibilities.
- 4.19.** Central to the day-to-day management of the school will remain with the Council, but repairs and maintenance and related matters impacting on availability or usability of facilities, will be managed through the DBFMCo's Helpdesk. The Council has extensive experience in using this facility under the current Schools PPP.
- 4.20.** It will be the responsibility of the school to report promptly to the Helpdesk any faults or problems relating to the building and, where applicable, grounds.
- 4.21.** It will be the responsibility of the contractor to respond to reported problems and faults within timescales which are predetermined within the Payment Mechanism. Failure to respond within the set timescales will result in financial penalties for the contractor; repeated failure could result in warning notices being issued and ultimately to the termination of the contract. It should be noted, however, that the principal purpose of the timescales, deadlines and penalties within the Payment Mechanism is to incentivise the contractor to deliver a high quality service rather than to increase the likelihood of contract termination.
- 4.22.** The contractor will deliver Hard FM services as described at 4.2 above.
- 4.23.** All soft Facilities Management, including catering, cleaning and janitorial services will be delivered by the Council's in-house teams. Interface arrangements have been established to ensure that a seamless service is delivered to the schools.

- 4.24.** Every effort has been made to maximise the possibilities for community use of the school. This will include internal and external sports facilities and other internal areas will be accessible to the community in line with Education Department Letting Policy.
- 4.25.** The Council will be responsible throughout the 25 year operational lifespan of the contract for monitoring the performance of the contractor. This will be done by the Council's Corporate Asset Management team. The Council has a right to appoint a member to the Board of Directors of DBFMCo, and HoldCo to assist with scrutiny and oversight of their activity. These appointments are addressed in Paragraph 2.11 of the recommendations.
- 4.26.** The following features of the new school should be noted:
- the school is fully accessible and compliant with current DDA legislation. One teaching room of each subject will be equipped with height adjustable furniture and fittings and an induction loop. There will be lifts, ramps and numerous DDA toilets;
 - space standards for classrooms and social areas are an average of 10.1 square metres per pupil;
 - requirements for flexibility built into the authority's requirements ensure that these schools will be able to keep pace with future curricular demands with the minimum of physical disruption;
 - a wide range of sporting facilities including all weather pitches, games hall, gyms, fitness suite and outdoor games court;
 - a vocational facility including ICT suit, construction skills area and hospitality kitchen;
 - allotment garden and outdoor teaching spaces;
 - a contractual framework which incorporates a change mechanism which requires the DBFMCo to respond timeously and fully to required changes by the Council, whether of a service or construction nature;
 - recorded and measurable performance standards, backed up by a significant and robust system of financial penalties, which allow the Council to ensure that what is paid for is delivered;
 - fully costed and funded reactive, pre-planned and lifecycle maintenance over the lifetime of the contract; and

- service delivery and facilities management guaranteed through the Payment Mechanism, which requires the DBFMCo to deliver high quality services throughout the concession period on pain of significant financial penalty.

4.27. The OLSP design has, from the outset, aimed to build in maximum flexibility and responsiveness into the building specification and the service provision requirements. If, at some point in the future, it becomes necessary to alter the physical layout of the school, or to change aspects of contract which are covered by the DBFM Agreement, this can be achieved using the Change Mechanism, though this would result in a charge to the Council and may require a report to a future Committee approving the additional spend.

Handback

4.28. The planned concession period for the contract is 25 years from the date of the first service availability. During that period the facilities will need to be kept in a good state of repair by the DBFMCo.

4.29. Additionally, however, the contract recognises that the specification provided to BAM required a design life considerably in excess of the 25 year period and accordingly reflects this by placing an obligation on the DBFMCo to maintain the facilities in a state such that, at the expiry of the concession, it is anticipated to have a minimum lifespan of 20 further years.

Legal and Contractual Framework

4.30. A key requirement of the process to date and the final negotiations will be to ensure that sufficient risk associated with the construction, finance and operation of the contract is transferred to ensure that the contract appears off the balance sheet of the Council and value for money is achieved.

4.31. The principal legal documentation associated with the contract which the Council enters into comprises the DBFM Agreement itself and the documents listed in Para's 2.8.1 to 2.8.9 though it should be noted that there are in excess of 60 principal documents which require to be prepared in advance of Financial Close, running to many thousands of pages.

4.32. The DBFM Agreement governs our contractual relationship with the DBFMCo. It captures the positions agreed by the Council and the DBFMCo in relation to the construction of the schools and the operation of the services. It follows the most recent SFT issued form, incorporating the ESA 10 amendments referred to in the report to Council dated 16 December 2015 together a number of Project Specific Amendments agreed between the Council and hub. The Council's In-house and external Legal Advisers are satisfied that the DBFM

Agreement has been developed to provide a robust and deliverable framework for the delivery of the project, and will ensure that any necessary amendments between now and financial close do not materially depart from this position.

- 4.33.** All legal advisers are also satisfied that the project has been procured within the appropriate legal framework of European, UK and Scottish legislation and that the Council has the power to enter into all necessary agreements.
- 4.34.** Finally, in relation to the legal framework, it should be noted that the recommendations in paragraphs 2.1 to 2.11 in are in a format required by the Lender and to meet statutory requirements. Accordingly if Committee wishes to approve the contract then these provisions should not be altered.

Scottish Government Governance and Best Value Requirements

- 4.35.** The Scottish Government has set out a number of requirements which the Council requires to comply with in order to access the revenue funding to support this project, including:
- The project requires to be procured using the standard DBFM contract and any variance from this requires to be agreed by SFT and any variations which relate to the underlying principles of the standard form DBFM contract require approval by Scottish Ministers;
 - Prior to entering the procurement phase the Council must satisfy Scottish Government and SFT that construction costs and operating costs have been minimised and a whole life cost analysis has been undertaken;
 - The Council requires to have a project director; a dedicated, qualified and sufficiently resourced project team to lead the delivery of the project; and a project governance structure – all linking to the Council’s overall governance arrangements;
 - The project requires to follow appropriate Key Stage Reviews and Post Project Evaluation;
 - The Council requires to meet the requirements of SFT’s guidance on Value for Money for revenue funded investment programme;
 - The Council and Scottish Government require to confirm prior to Financial Close that the project will deliver the programme goals and is affordable, procured through efficient and effective procurement, cost effective, and deliver the School Estate Strategy’s nine guiding principles and objectives;

- The Council must consider that the project complies with the ESA10 guidance as being outwith the scope of the public sector;
- The Council must fund the Service Payment elements relating to the Hard FM and Lifecycle maintenance costs;
- Funding will only be provided on successful completion of construction and commencement of operations;
- The Council may only use the Scottish Government funding for the purposes of the OLSP project;
- Targets and Milestones against which progress in achieving the objectives include:
 - Completion of grant application process including Scotland's Schools for the Future Achieving the Programme Goals workshop;
 - Delivery of OLSP new school by an agreed date;
 - Use of DBFM procurement route as agreed between SFT and Council; and
 - Sustainability targets (BREEAM and EPC) agreed between Council and SFT.
- Only eligible costs can be claimed against the funding provision;
- Any refinancing Gain received by the Council in terms of the DBFM contract is to be accounted to the Scottish Government and Council must notify Scottish Government as soon as it becomes aware of any entitlement to any Refinancing Gain; and
- Council must put in place effective project management procedures and monitoring of the DBFM contract during construction and operational periods and must co-operate with Scottish Government and SFT throughout and keep them up to date on progress and developments in a timely manner, providing them with any information requested in relation to the project and the performance of obligations under the DBFM contract.

4.36. The project team has indicated that the Council is complying with these conditions and it is Council's intention to continue to operate in compliance with the above throughout the project timeline.

Many of the above have already been confirmed through Key Stage Review processes and the Future Achieving the Programme Goals workshop.

Financial Close

- 4.37.** The Financial Close of the project occurs when all commercial and technical positions have been agreed between the parties. It is at this point that the project finances are drawn down and the final financial terms are fixed.
- 4.38.** The cost of the funding for the project is fixed according to the prevailing Gilt Rate on the day immediately before the anticipated financial close. Whilst this rate really only materially effects the funding which will be provided by Scottish Government for the construction elements, in order to ensure Best Value for the wider public purse, the Council will not be able to reach financial close unless the Gilt Rate falls within an acceptable range.
- 4.39.** In a project such this which is run through the DBFM contract the project is primarily funded by a senior funder. In this case the senior funder is Aviva Public Private Finance.

Council Investment Opportunity

- 4.40.** As has been noted above, under the terms of the ESA10 approved style of DBFM contract, the Council has the option to invest in the capital of the HoldCo. There are restrictions on the level of investment in the HoldCo that the Council can take up. This is set at 10% of the subordinated debt investment. In addition, as noted above, the Council will invest £1 in shareholding in the HoldCo.
- 4.41.** As per the Council's Treasury Strategy, the Council is permitted to invest in such projects subject to the approval of the Leader of the Council, the Leader of the Opposition, the Chief Executive and the Head of Finance and Resources.
- 4.42.** All parties noted at 4.39 have agreed that the Council should invest in this project up to the value of £0.296m.

Outstanding Issues

- 4.43.** While almost all educational, technical, financial, legal and commercial issues have been agreed between the relevant parties, there remain a number of outstanding issues which require to be addressed before Financial Close.
- 4.44.** Most of these outstanding issues are routine in nature and will not materially affect the affordability or commercial viability of the project.

4.45. The most significant outstanding issues, are:

- Issues relating to responsibility for any pipes, cables etc. that may be under the site;
- Final confirmation of contractual rate of Hard FM Services; and
- Final contract documents not received yet.

5. People Implications

5.1. There will be no TUPE transfer under the current DBFM structure.

5.2. It should be noted that the Capital Investment Team, Legal Services and Finance will be heavily involved from a resource perspective in the run up to and after Financial Close.

5.3. The DBFM contract will be monitored by the Corporate Asset Management Team in line with current procedures for the PPP contract.

6. Financial Implications

6.1. The financial implications are outlined in 4.9 to 4.16 above and the Service Payment structure is illustrated in Appendix 3 to this report, which shows the anticipated revenue charge to the Council over the term of the contract (the Service Payment) and the break-down of the Service Payment illustrating the anticipated Scottish Government funding and the remaining portion for the Council to fund.

6.2. It should be noted that the final cost to the Council of this project cannot be specified at this point. The final cost will be determined by the Financial Close process described above. Appendix 3 provides details of the implications for the Council of achieving Financial Close should the expected Gilt Rate vary by up to 10% above or below the expected rate.

6.3. As noted above the Service Payment is subject to an inflationary uplift each financial year and it is also noted that the Scottish Government revenue funding to the Council is a constant sum (an average) each year. This will result in the Council receiving more funding from the Scottish Government than it needs in the early years of the contract and insufficient funding in the later years of the project (though on average the funding provided will be as agreed).

In order to manage the cashflow and budgetary impact of this, the Head of Finance and Resources will make arrangements to operate an earmark regime which will gather the “over-funding” in the early years and release these over the later years of the contract thereby removing any budgetary impact in later years.

7. Risk Analysis

Failure to reach Financial Close by 31 March 2016

- 7.1.** It should be noted that failure to reach Financial Close by 31 March 2016 is likely to result in inflationary uplift to the capital value and/or delay in delivery of handover of the new facility. The financial impact is estimated as £0.260m to £0.300m per additional quarter based on current construction industry inflation rates. Officers from the Council are focused on concluding all necessary works to ensure to reach Financial Close by 31 March 2016.

Outstanding Commercial Matters

- 7.2.** Some commercial and legal points remain outstanding at the time of writing this report. Discussions remain ongoing and every opportunity will be taken to find a mutually acceptable solution. Final positions on any such issues will be confirmed with Council senior management before being signed off.
- 7.3.** There is a risk that lack of resource on the part of hub delays progress and threatens the proposed date of financial close. The Council and SFT both stress on an on-going basis the necessity of sufficient resource being applied and will resist any responsibility cost or delay arising from any shortfall on the part of hub.

Delayed programme and/or subsequent cost increase

- 7.4.** There are several risks associated with the capital works programme which may have an impact on either the date of delivery of the completed new school to the Council; or an increase in the capital cost of construction; or a combination of both of these factors.
- 7.5.** It is always possible that once the project gets started that issues arise which delay the project, e.g. unexpected ground conditions, significant periods of adverse weather, etc. In planning the project the build timeline includes allowances for interruptions due to weather conditions and in generating the capital cost of construction BAM have undertaken significant site investigations into ground conditions therefore risks should be minimised.

- 7.6. Should there be an unexpected issue which results in a cost increase then the risk is to the DBFMCo and this risk is covered later in this report.
- 7.7. Should the unexpected event result in a delay in the delivery of the handover of the facility beyond the programmed completion date, there may be a subsequent impact on the October 2017 occupation date. This will be mitigated by close project management by Council officers and hub West Scotland.
- 7.8. The DBFM contract contains appropriate provisions that encourages the Contractor to deliver the facility on programme.

Funding and Indexation Risk

- 7.9. As indicated above the Service Payment is payable by the Council to the DBFMCo and the Council will receive additional Scottish Government funding to support the build costs of the school. The Scottish Government funding noted above is based on the financial model which assumes a rate of inflation for the annual uplift of the Service Payment over the 25 years of the contract. Because the Scottish Government funding is fixed according to the financial model, there is therefore a risk to the Council that the actual rate of inflation is higher than modeled.
- 7.10. As stated above, the model assumes a 2.5% inflationary uplift on 15.24% of the Service Payment each year. This reflects the relative stability of the DBFM model in that most of the costs are fixed costs (based on the construction cost of the school and anticipated maintenance and lifecycle maintenance regimes). This provides some protection in terms of this risk. Clearly the Council has no control over the rate of inflation, though recent experience shows that there is a potential up-side in this risk area as well as a potential down-side. The Council's ongoing budgetary process will monitor this and budget appropriately throughout the contract term.

Sustainability of DBFMCo

- 7.11. There is a possibility that the funder's advisers may raise issues in respect of technical, legal or financial matters in the run up to financial close. The Council will only agree to amendments to agreed positions where it can be demonstrated either they reflect the prevailing position in the market; they have no detrimental effect on the Council's interests or enhance the Council's position.

- 7.12. There is a risk that the DBFMCo operating model is not sustainable over the 25 year contract term. This is primarily a risk to the DBFMCo, though there is potential for service disruption or cost increase to the Service Payment should the rates of payment prove not to be sustainable. The Council will continuously monitor the quality and financial capacity of the DBFMCo and will have a representative on the Board of this and the HoldCo.

Sub-debt Investment Risk

- 7.13. As detailed in the report the Council has agreed to invest up to £0.296 in the subordinated debt of the DBFMCo and there are risks associated with this investment. The main risk is associated with any increase to the cost of construction of the school and as noted above there have been mitigations already put in place to reduce the risk of a cost overrun. As an example, should the construction cost increase by 10% then the anticipated return on the Council's investment will reduce from around 10% to around 5%.
- 7.14. There are a range of other smaller value risks associated with this investment e.g. a 6 month construction delay would reduce the return from around 10% to around 9.5%. During the operational phase an increase in the rate of inflation from 2.5% to 4.5% would reduce the return from around 10% to around 9.7%; failure of the FM provider and a possible reduced income for the DBFMCo would be likely to reduce the return from around 10% to around 9.6%.
- 7.15. As with any investment there is always a downside risk and always the potential upside gain and it is therefore also possible that the investment return could be higher than initially expected.
- 7.16. As can be seen from the above analysis the most significant level of risk is associated with an increase in construction costs, however, even in the scenario above with a 10% increase in cost the resulting reduction in return still gives a return which is significantly higher than the Council can currently access elsewhere.

8. Equalities Impact Assessment (EIA)

- 8.1. This project will improve the quality of educational experience for young people attending OLSP and there are therefore no negative impacts relating to equality issues. Indeed, the project will ensure that all mainstream secondary pupils in West Dunbartonshire experience education in establishments of similar standards and quality. This was confirmed by an Equalities Impact Assessment carried out previously for the Education Committee, this assessment has been revisited and is still valid for this report.

9. Consultation

- 9.1.** This project has been the subject of extensive discussion by the Strategic Asset Management Group and the Corporate Management Team as well as by Council and the Educational Services Committee.
- 9.2.** The Head of Regeneration & Economic Development, Legal Services, the Section 95 Officer and the Capital Investment Team have been consulted on the content of this report.

10. Strategic Assessment

- 10.1.** The project to construct a new OLSP will make a significant contribution to the delivery of the Council's strategic priorities of Economic Regeneration and Improved Outcomes for Children and Young People. It will also complete the full regeneration of West Dunbartonshire Council's mainstream secondary estate within a 7 year period.

Jim McAloon
Head of Regeneration and Economic Development
10 March 2016

Persons to Contact: Craig Jardine,
Capital Investment Programme Manager, Council
Offices, Garshake Road, Dumbarton, Tel.: 01389
737829.
e-mail: craig.jardine@west-dunbarton.gov.uk

Alan Douglas, Manager Legal Services,
Council Offices, Garshake Road, Dumbarton,
Tel. 01389 737899.
e-mail: alan.douglas@west-dunbarton.gov.uk

Stephen West, Head of Finance and Resources,
Council Offices, Garshake Road,
Dumbarton, Tel. 01389 737191
e-mail: stephen.west@west-dubarton.gov.uk

Appendices:

Appendix 1: Site Location Plan
Appendix 2: Structure Chart
Appendix 3: Financial Implications

Background Papers:

Council Report 6 February 2013: 10 Year Capital Programme.

Education Services Committee 26 June 2014: Results of Statutory Consultation on the proposal to locate the new Our Lady and St Patrick's High School on the site currently occupied by the high flats in Bellsmyre.

Council Report 31 August 2014: "Regenerating Learning" – Schools Strategy: Regenerating Learning.

Council Report 16 December 2016: Resolution of ESA10 and changes to Hub arrangements.

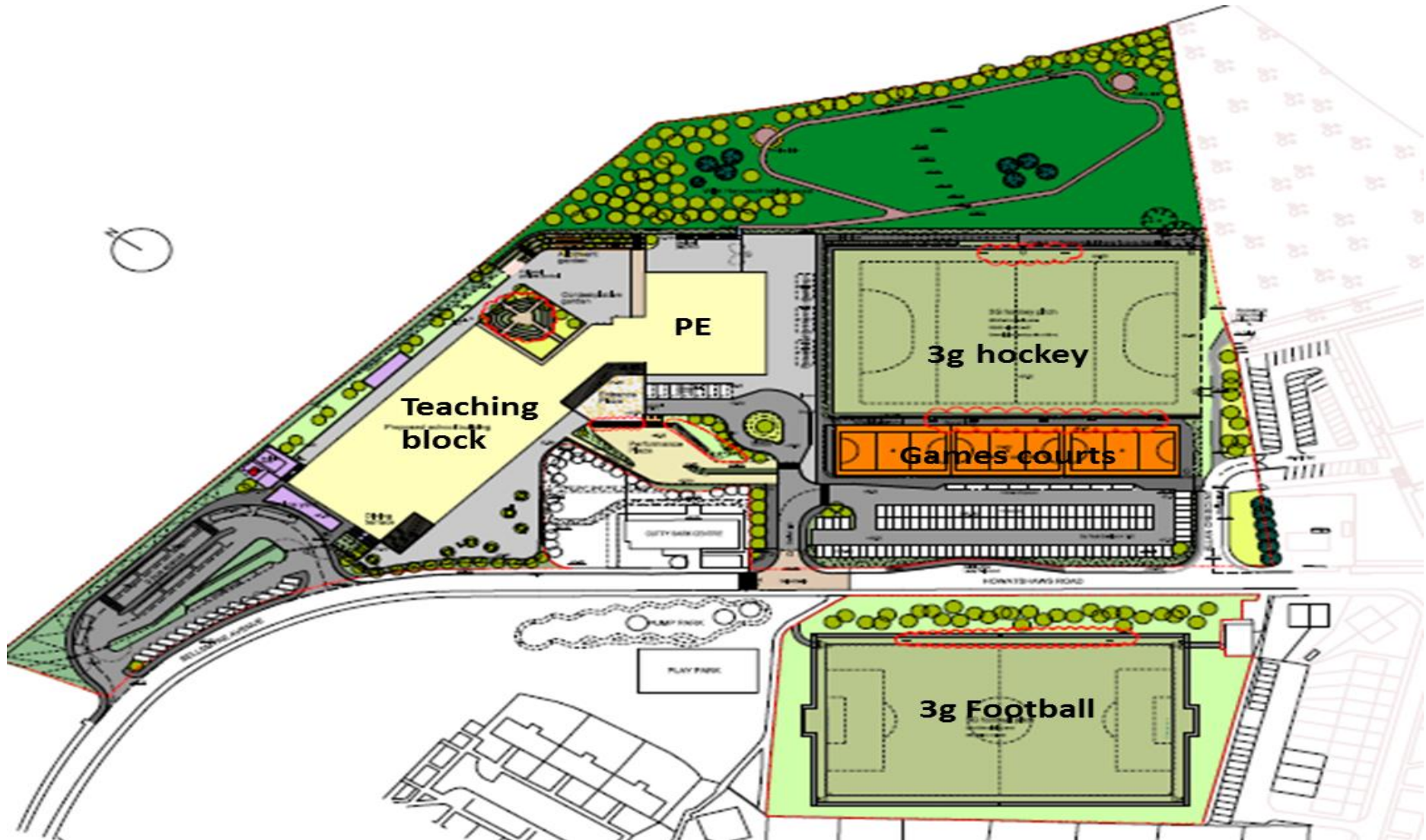
Council Report 24 February 2016: General Services 10 Year Capital Plan: Refresh and Review of Long Term Affordability.

Council Report 24 February 2016: Prudential Indicators 2015/2016 to 2025/2026 and Treasury Management Strategy 2016/17 to 2025/2026.

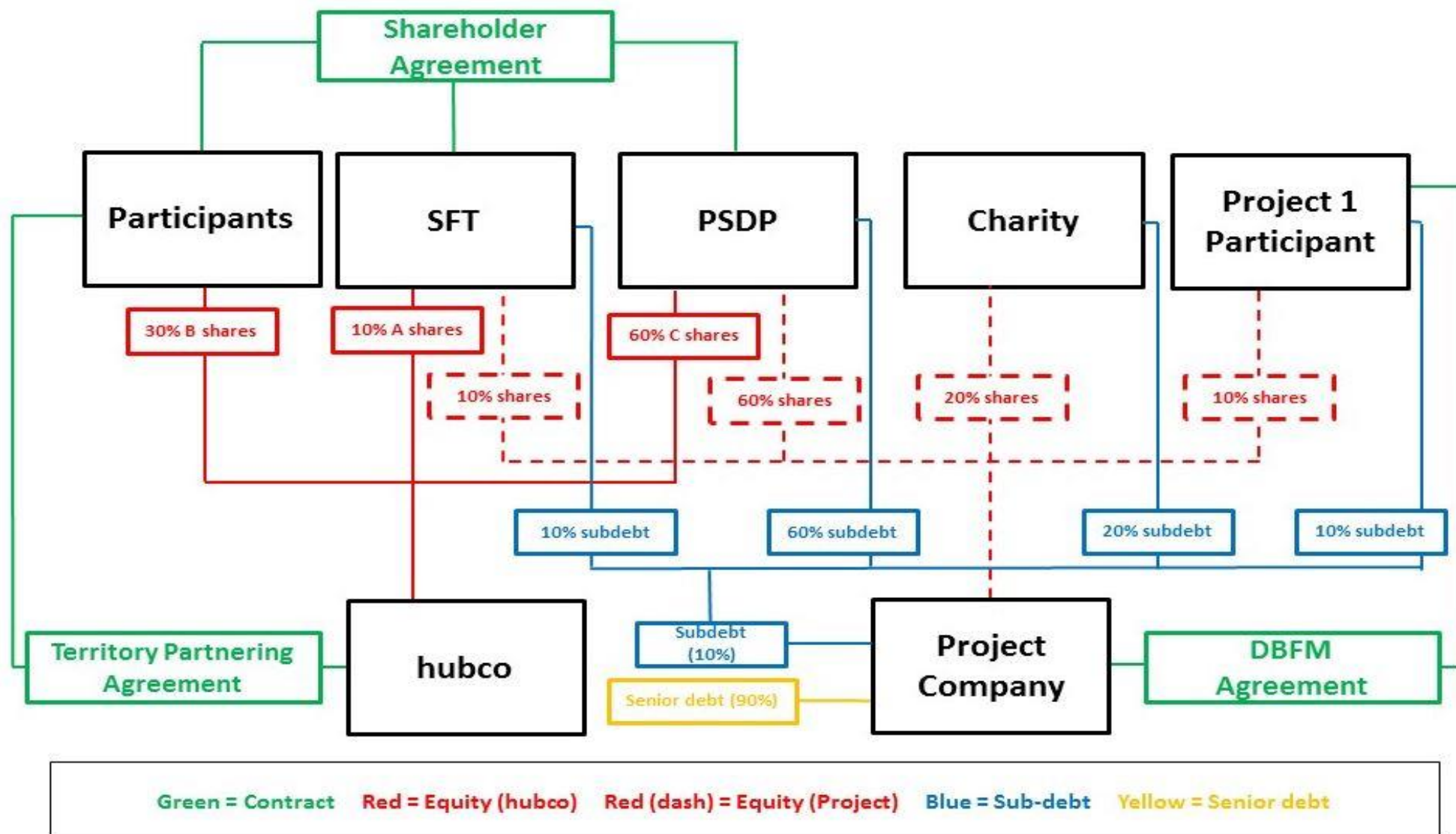
Revised Equality Impact Assessment dated 11 March 2016

Wards Affected:

Number 1, 2 and 3



hub structure – ESA10 revision



OLSP Summary of Service Payment to DBFMCo

Year	Total Service Payment	SG Funding	WDC Element
2017/18	1,287,865	1,181,361	106,504
2018/19	2,458,154	2,263,239	194,914
2019/20	2,468,437	2,263,239	205,197
2020/21	2,478,976	2,263,239	215,737
2021/22	2,489,780	2,263,239	226,540
2022/23	2,500,853	2,263,239	237,614
2023/24	2,512,203	2,263,239	248,964
2024/25	2,523,837	2,263,239	260,598
2025/26	2,535,762	2,263,239	272,523
2026/27	2,547,985	2,263,239	284,746
2027/28	2,560,514	2,263,239	297,274
2028/29	2,573,355	2,263,239	310,116
2029/30	2,586,518	2,263,239	323,279
2030/31	2,600,010	2,263,239	336,771
2031/32	2,613,839	2,263,239	350,600
2032/33	2,628,014	2,263,239	364,775
2033/34	2,642,543	2,263,239	379,304
2034/35	2,657,436	2,263,239	394,196
2035/36	2,672,701	2,263,239	409,461
2036/37	2,688,347	2,263,239	425,108
2037/38	2,704,385	2,263,239	441,145
2038/39	2,720,823	2,263,239	457,584
2039/40	2,737,673	2,263,239	474,433
2040/41	2,754,943	2,263,239	491,704
2041/42	2,772,646	2,263,239	509,406
2042/43	1,322,403	1,081,874	240,529
Average	2,601,600	2,263,239	338,361