

Dumbarton Campus: Report on Options

This report provides narrative to support the foregoing report. The peculiarities of the circumstances (i.e. the amendment of an existing project approved by the Council and the fact that the procurement is through PPP) mean that the Council's usual Options Appraisal Process has been amended.

Option 1

Continue with the Dumbarton Campus requesting BAM to submit a planning appeal. Split Financial Close, closing on 3 sites in January 2008 and the Dumbarton site in June – December 2008.

Why / When to Use?

1. Major design and operational issues are considered the best that can be achieved on the site within the development constraints and available resources.
2. When the grounds of refusal to the planning application are considered weak.

Advantages

1. This option retains what was generally believed to be a good design for the provision of Early Education and Childcare, Primary, Secondary and community facilities on one site, albeit on a tight campus.
2. Inclusion within the overall PPP project appears to offer the most economically beneficial build solution for Dumbarton Academy and the three Primaries, all other matters being equal.
3. Relatively few issues to be overcome in the planning appeal.
4. Some grounds for appeal; possibility of success.
5. Appeal can commence immediately.

Disadvantages

1. Council would be requesting a party to appeal against the Council's own decision. Negative public perception and possible adverse comment from Auditor.
2. BAM may not proceed with request. Certainly it can be anticipated that BAM will only accept if relieved of the risk associated with delays and the costs of conducting the appeal. This means all costs associated with a delayed or split close, including possibly attracting only c.75% of Revenue Support Grant (RSG), would be borne by the Council. (see Financial Implications No.1).
3. Inflationary and debt service costs generated by the delays to the programme are high. This applies both to the 25% of project value associated with the Dumbarton Campus and the 75% first tranche, which would now close in the New Year (see timescales below).
4. May be unable to sustain Bank or Scottish Government Support for period of appeal.

Timescales

1. The appeal could commence immediately.
2. Timescales for decision being received are dependent on choice of procedure. If Written Submission, best estimate is 4-6 months from lodging. If by way of a Public Inquiry, 12 months minimum.
3. Arrangements for Split Financial Close would now carry even the larger tranche into 2008. The estimated time for setting up such an arrangement is approximately six weeks. Additionally this will involve additional resources, putting back overall time to close the deal as a whole.
4. The delay in close is also likely to have an impact on the delivery date for the new St Peter the Apostle High School, with this amalgamating Secondary being scheduled for delivery during the summer holiday of 2009. The Council will either have to reconsider its position that it will only accept handover during a summer holiday (which could be educationally problematic) or delay handover until the following summer.

Financial Implications

1. There is a possibility that up to approximately 25% of the Revenue Support Grant (RSG) of £7.15 million per annum could be lost if the project is submitted to the Scottish Government as a four site project but the planning appeal fails. This would be a huge sum for the Authority to resource as it would mean that a c£100 Million project would have to be met with only 75% of the RSG funding previously offered by the Scottish Government. This could involve a funding gap in excess of the highest quoted to date being paid by the Council for only $\frac{3}{4}$ of the project being delivered.
2. Financial pressures come from 5 sources:
 - i. Additional Adviser costs for the Council; these have as yet to be quantified but will certainly run to tens of thousands.
 - ii. Costs associated with the appeal itself, which the Council would be expected to underwrite.
 - iii. Construction Tender Inflation, currently running at a figure in excess of 6%.
 - iv. Knock on effect on the programme involving a disproportionate increase in construction inflation and Debt Service costs, as target start and completion, and therefore payment/repayment dates move to meet the next suitable dates for handover (school term commencement dates).
 - v. Possible increases in Swap rates.
3. Approximate Costs for some of the above factors are provided. However, these must be regarded as provisional and in some cases speculative. Where not provided no reliable estimate is available. Actual costs will be dependent on such factors as the workload involved, the timescales, and prevailing inflation and Swap rates:-
 - i. Additional Legal, Financial and Technical Adviser costs for the Council. Approximately £25,000 per adviser for revising and checking documentation and for preparation for two financial closes should be allowed although it should be noted that this figure is speculative and may be insufficient. Internal Project Team Costs estimated at £60,000 minimum. Total allowed - £135,000.

- ii. Costs of appeal involve BAMs adviser fees and the additional costs of any works arising from conditions which the Inquiry Reporter may apply. No estimate is possible.
- iii. Construction Tender Inflation.
- First Tranche – 6 week delay on projected close. Results in minimum four weeks construction inflation after the 31st December 2007 deadline. Using 5.8 % (quoted by BCIS as Tender inflation projection Q1 2008) this is approximately £419,000 on to the Capital cost (c£94M * 5.8%* 4/52) and approximately £27,000 on to the First Year Unitary Charge.
 - Second Tranche (assuming June 2008 Financial Close). Using 5.2% (quoted by BCIS as Tender inflation projection for Q2 2008) this is approximately £780,000 on to the Capital cost (c£30M * 5.2%* 26/52) and £51K on to the First Year Unitary Charge.
 - Second Tranche (assuming December 2008 Financial Close). Using 6.8 % (quoted by BCIS as Tender inflation projection for Q4 2008) this is approximately £2M on to the Capital cost (c£30M * 6.8% for 1 year) and £130K on to the First Year Unitary Charge.
 - Note the two tranches together provide cumulative totals of approximately £1.2M for a June Close and £2.4Million for a December close for capital figures, translating to £78,000 and £157,000 respectively in Unitary Charge.
- vi. Knock on effect on the programme involves a disproportionate increase in construction inflation and Debt Service costs, as target start and completion, and therefore payment/repayment dates move to meet the next suitable dates for handover (school term commencement dates). The above figures in this section represent projected figures based on a straight addition of time onto the construction programme. The actual programme may produce variations in the site commencement and handover dates. The impact of the delay on final Target Service Availability Date and therefore debt service costs (BAM PPP begin repaying debt on the sums borrowed only on the final Service Availability Date being achieved, with debt accumulating prior to this date) requires to be considered. It is understood that this will be affected by a January Financial Close for the first tranche (it will push back the final handover date and thus shorten the debt repayment period). The additional costs of this shortened repayment period would require to be identified with BAM on the impact on the programme being determined; however, it is likely to be a six figure sum. Such Debt Service Costs associated with the Second Tranche are dependent entirely on the date of the planning determination and what conditions, which may impact on build times, are applied to any consent granted.
- vii. Swap rates have been volatile of late. The current falling rates contrast sharply with the experience previously of increases. It is not possible to predict the future rates.

Variants

1. Variants foreseeable at this stage have been included in the above commentary. As the actual proposal remains that which was submitted for Planning Approval, there is little scope for physical variation driven by the Authority.

Legal Impediments

1. There are no direct legal impediments, although it may be considered that to support or request an appeal against its own Planning Committee may be seen as perverse or ill advised, opening up scope for Ombudsman investigation and/or Judicial Review. Although it is the view of the project's Legal Adviser that such an action would be unlikely to succeed, the Council bears risk from Judicial Review under the Contract, and this may have significant cost implications for the Council.

Policy Considerations

1. The principal Corporate Plan Themes affected are:
 - Regeneration and the local economy
 - Health and well-being
 - Safe and strong communities
 - Sustainable environments
 - Education and lifelong learning
 - An improving council

Recommendation

1. **In light of the additional costs, the uncertainty, the impact on education and the difficulties in being seen to go against the decision of the Committee, it is recommended that this Option should not be pursued.**

Option 2

Continue with the Dumbarton Academy campus, requesting BAM to submit a planning appeal. Financial Close delayed until conclusion of Planning Appeal (est. June or December 2008)

Why / When to Use?

1. Major design and operational issues are considered the best that can be achieved on the site within the development constraints and available resources.
2. When the grounds of refusal are considered weak.
3. When a split Financial Close looks overly complicated or is not supported by BAM's funders.

Advantages

1. This option retains what was generally believed to be a good design for the provision of Early Education and Childcare, Primary, Secondary and community facilities on one site, albeit on a tight campus.
2. Inclusion within the overall PPP project appears to offer the most economically beneficial build solution for Dumbarton Academy and the three Primaries, all other matters being equal.
3. Relatively few issues to be overcome in the planning appeal.
4. Some grounds for appeal; possibility of success.
5. Appeal can commence immediately.

Disadvantages

1. Council would be requesting a party to appeal against the Council's own decision. Negative public perception and possible adverse comment from Auditor.
2. BAM may not proceed with request. Certainly it can be anticipated that BAM will only accept if relieved of the risk associated with delays and the costs of conducting the appeal.
3. Inflationary costs generated by the delays to the programme are extremely high. (see timescales below).
4. Council exposed to fluctuations in volatile Swap rates.
5. Unlikely to be able to sustain Bank or Scottish Government Support for period of appeal.
6. If the Bank do remain involved they are likely to adjust their rates upwards.

Timescales

1. The appeal could commence immediately.
2. Timescales for decision being received are dependent on choice of procedure. If Written Submission, best estimate is 4-6 months from lodging. If by way of a Public Inquiry 12months minimum.
3. Financial Close would be likely on or around June or December of next year
4. The delay in the project would allow re-examination of the build programme and may allow advantageous handover dates.
5. Overall project could be delayed for up to a year.

Financial Implications

1. Financial pressures come from 5 sources:-
 - i. Additional Adviser costs for the Council; these have as yet to be investigated but will certainly run to tens of thousands.
 - ii. Costs associated with the appeal itself, which the Council would be expected to underwrite.
 - iii. Construction Tender Inflation projected to run at approximately 6% for most of the period in question.
 - iv. Knock on effect on the programme may involve a disproportionate increase in construction inflation and Debt Service costs, as target start and completion, and therefore payment/repayment dates move to meet the next suitable dates for handover (Term dates).
 - v. Possible increases in Swap rates.
2. Approximate Costs for some of the above factors are provided. However, these must be regarded as provisional and in some cases speculative. Where not provided, no reliable estimate is available. Actual costs will be dependent on such factors as the workload involved, the timescales, and prevailing inflation and Swap rates:
 - i. Additional Legal, Financial and Technical Adviser costs for the Council. Approximately £15,000 per adviser for revising and checking documentation and retention of services. Internal Project Team Costs estimated at £90,000 minimum. Total £135,000.
 - ii. Costs of appeal involve BAMS adviser fees and the additional costs of any works arising from conditions which the Inquiry Reporter may apply. No estimate is possible.
 - iii. Construction Tender Inflation.
 - Inflation (assuming June 2008 Financial Close). Using 5.2 % (quoted by BCIS as Tender inflation projection for Q2 2008) this is approximately £ 3.2M onto the Capital cost (c£124M * 5.2%* 26/52) and £210K onto the First Year Unitary Charge.
 - Inflation (assuming December 2008 Financial Close). Using 6.8 % (quoted by BCIS as Tender inflation projection for Q4 2008) this is approximately £8.4M on to the Capital cost (c£124M * 6.8% for 1 year) and £550K on to the First Year Unitary Charge.
 - iv. Knock on effect on the programme involves a disproportionate increase in construction inflation as target start and completion, and therefore payment/repayment dates move to meet the next suitable dates for handover (school term commencement dates). The above figures in 2(ii) of this section represent projected figures based on a straight addition of time onto the construction programme. The actual programme may produce variations in the site commencement and handover dates. The impact of the delay on final Target Service Availability Date and therefore debt service requires to be considered, although, because there is no drawdown until financial close, assuming the Bank were prepared to hold to funding rates, this would be a lesser factor to be considered.

- v. Swap rates have been volatile of late. The current falling rates contrast sharply with the experience previously of increases. It is not possible to predict the future rates.

Variants

1. Variants foreseeable at this stage have been included in the above commentary. As the actual proposal remains that which was submitted for Planning Approval, there is little scope for physical variation driven by the Authority.

Legal Impediments

1. There are no direct legal impediments, although it may be considered that to support or request an appeal against its own Planning Committee may be seen as perverse or ill advised, opening up scope for Ombudsman investigation and/or Judicial Review. Although it is the view of the project's Legal Adviser that such an action would be unlikely to succeed, the Council bears risk from Judicial Review under the Contract, and this may have significant cost implications for the Council.

Policy Considerations

1. The principal Corporate Plan Themes affected are:
 - Regeneration and the local economy
 - Health and well-being
 - Safe and strong communities
 - Sustainable environments
 - Education and lifelong learning
 - An improving council

Recommendation

1. **In light of the very high additional costs associated with Construction inflation, the uncertainty, and the impact on education and the difficulties in being seen to go against the decision of the Committee it is the project team's belief that this option and options 4, 6 and 8 represent the least attractive options available to the Council. It is therefore recommended that Option 2 should not be pursued.**

Option 3

Rescope the Project to Include Dumbarton Academy and Primaries but not the Bowling Club. Resubmit Planning Application. Move forward with a split Financial Close

Why / When to Use?

1. When the Bowling Club is perceived as the only real impediment from a planning perspective and there is a route to remove them.

Advantages

1. This option retains what was generally believed to be a good design for the provision of Early Education and Childcare, Primary, Secondary and community facilities on one site, albeit on a tight campus.
2. Inclusion within the overall PPP project appears to offer the most economically beneficial build solution for Dumbarton Academy and the three Primaries, all other matters being equal.

Disadvantages

1. The Brock Bowling Club has an absolute right to continue in occupation of the site until expiry of their lease.
2. Bowling Club has been offered relocation options elsewhere in the Dumbarton and with the exception of the Townend Road site, which was considered prohibitively expensive, they have considered the sites unsuitable.
3. Bowling Club have refused offers of compensation to terminate the lease. If this line is pursued further there may be negative public perception and possible adverse comment from Auditor/Ombudsman and Courts.
4. Any application without Bowling Club agreeing to removal would be worthless.
5. The Bowling club would either require a financial compensation package to be prepared or would have to agree an alternative site which would involve another planning application being approved for its relocation.
6. BAM may not proceed with request. Certainly it can be anticipated that BAM will only accept if relieved of the risk associated with delays and the costs of resubmitting the bid. This means all costs associated with a delayed or split close, including possibly attracting only c.75% of Revenue Support Grant would be borne by the Council. (see Financial Implications No.1).
7. Inflationary and debt service costs generated by the delays to the programme are high. This applies both to the 25% of project value associated with the Dumbarton Campus and the 75% first tranche, which would now close in the New Year (see timescales below).
8. Doubts exist over ability to sustain Bank or Scottish Government Support for period of new application.
9. Heightened risk of Judicial Review if the new proposal does not adequately address the concerns expressed in respect of the previous application. In terms of the Project Agreement, the Council is substantially at risk from costs in respect of Judicial Review.

Timescales

1. Preparation of a plan involving the removal of the Bowling club could commence immediately. A draft layout exists from the time when the Bowling Club was to be relocated to Townend Road. This would require to be amended to adequately address the other reasons for refusal.
2. Assuming some form of agreement can be reached, the Timescales for decision being received and / or agreement to have the Bowling Club off site are dependent on whether further objections are received and whether it is for one application (no Bowling Club provision) or two (Bowling Club relocated). Best possible anticipated timescale for resolution would be four months, with a minimum of six months being more likely.
3. If no agreement is possible the only remaining option would be to pursue a Compulsory Purchase Order. It is considered that the Council would be unlikely to obtain Scottish Government consent and even if it were forthcoming the timescale is one year at the absolute minimum.
4. Arrangements for Split Financial Close would now carry even the larger tranche into the new year. The estimated time for setting up such an arrangement is approximately six weeks. Additionally this will be an additional resource requirement, putting back overall time to close the deal as a whole.
5. The delay in close is also likely to have an impact on the delivery date for the new St Peter the Apostle High School, with this amalgamating Secondary being scheduled for delivery during the summer holiday of 2009. The Council will either have to reconsider its position that it will only accept handover during a summer holiday (which could be educationally problematic) or delay handover until the following summer.
6. If Judicial Review action is raised, the approximate timescale for a hearing is one year, during which the Council could be liable for the costs of delay.

Financial Implications

1. There is a possibility that up to approximately 25% of the Revenue Support Grant (RSG) is lost if project is submitted to the Scottish Government as a four site project but the planning appeal fails. This would be a huge sum for the Authority to resource as it would mean that a c£100 Million project would have to be met with only 75% of the RSG funding previously offered by the Scottish Government. This could involve a funding gap in excess of the highest quoted to date being paid by the Council for $\frac{3}{4}$ of the project being delivered.
2. Financial pressures come from 5 sources:-
 - Additional Adviser costs for the Council. These have as yet to be investigated but will certainly run to tens of thousands.
 - Costs associated with the application(s) or the agreement to remove, which the Council would be expected to underwrite.
 - Construction Tender Inflation is running at approximately 6%.
 - Knock on effect on the programme involves a disproportionate increase in construction inflation and Debt Service costs, as target start and completion, and therefore payment/repayment dates move to meet the next suitable dates for handover (school term commencement dates).
 - Possible increases in Swap rates.
3. Approximate Costs for some of the above factors are provided, however these must be regarded as provisional and in some cases speculative. Where not provided no reliable

estimate is available. Actual costs will be dependent on such factors as the workload involved, the timescales, and prevailing inflation and Swap rates:-

- i. Additional Adviser costs for the Council. Approximately £25,000 per adviser for revising and checking documentation and for preparation for two financial closes. Internal Project Team Costs estimated at £60,000 minimum. Total £135,000. Note this includes design review and / or advice on any deal with the Bowling Club.
- ii. Costs of application involve BAM's adviser fees and the additional costs of any works arising from conditions which the Inquiry Reporter may apply. No estimate is possible.
- iii. Construction Tender Inflation.
 - First Tranche – 6 week delay on projected close. Results in minimum four weeks construction inflation after the 31st December 2007 deadline. Using 5.8 % (quoted by BCIS as Tender inflation projection for Q1 2008) this is approximately £419,000 on to the Capital cost ($c£94M * 5.8\% * 4/52$) £27,000 on to the First Year Unitary Charge.
 - Second Tranche (assuming June 2008 Financial Close). Using 5.2 % (quoted by BCIS as Tender inflation projection for Q2 2008) this is approximately £780,000 on to the Capital cost ($c£30M * 5.2\% * 26/52$) and £51,000 on to the First Year Unitary Charge.
 - Second Tranche (assuming June 2009 Financial Close following judicial review). Using 10.8 % (quoted by BCIS as Tender inflation projection for period to Q2 2009) this is approximately £3.2M on to the Capital cost ($c£30M * 10.8\%$) and £210,000 on to the First Year Unitary Charge. Note this is not a likely scenario, but may be a possibility given the range of reasons offered for refusal.
 - Note the two tranches together provide cumulative totals of approximately £1.2M for a June 2008 Close and £3.6Million for a June 2009 close for capital figures translating to £78K and £237K respectively in Unitary Charge.
 - The above figures have used the higher end of the range of timescales assuming either a 6 month period resolving planning and / or a judicial review occurring. Note in respect of Judicial Review whilst unlikely to succeed, if successful, the Council would be exposed to possibly huge costs.
- iv. Knock on effect on the programme involves a disproportionate increase in construction inflation and Debt Service costs, as target start and completion, and therefore payment / repayment dates move to meet the next suitable dates for handover (Term dates). The above figures in this section represent projected figures based on a straight addition of time onto the construction programme. The actual programme may produce variations in the site commencement and handover dates. The Impact of the delay on final Target Service Availability Date and therefore debt service costs (BAM PPP begin repaying debt on the sums borrowed only on the final Service Availability Date being achieved, with debt accumulating prior to this date) requires to be considered. It is understood that this will be impacted

on by a January Financial Close for the first tranche (it will push back the final handover date and thus extend the debt service period). The additional costs of this extended borrowing period would require to be identified with BAM on the impact on the programme being determined, however it is likely to be a six figure sum on the unitary charge. Such Debt Service Costs associated with the Second Tranche are dependent entirely on the date of the planning determination and what condition, which may impact on build times) are applied to any consent granted.

- v. Swap rates have been volatile of late. The current falling rates contrast sharply with the experience previously of increases. It is not possible to predict the future rates.

Variants

1. One possible Variable for this option is to reduce the numbers of the primary schools amalgamating on the site to two. This could have the following effects:
 - i. Reducing the extent of the development of the development on the site, although not particularly significantly;
 - ii. Reducing operational traffic;
 - iii. Reducing the efficiency of the solution in terms of addressing overcapacity and poor school buildings;
 - iv. Reducing income from capital receipts;
 - v. Increasing the timescale for the second tranche financial close and accordingly costs, as Statutory Consultation would have to precede any formal decision to change the primary school provision;
 - vi. Increasing adviser costs on the Technical side as a new design would require to be devised for the primary school element.

Legal Impediments

1. There are no direct legal impediments, although unless the fresh application fully addresses the terms of refusal the Council will remain exposed to a heightened risk of high costs through Judicial Review.. Although it is the project's Legal Adviser's view that such an action would be unlikely to succeed, the Council bears risk from judicial review under the Contract, and it may have significant cost implications for the Council.

Policy Considerations

1. The principal Corporate Plan Themes affected are:
 - Regeneration and the local economy
 - Health and well-being
 - Safe and strong communities
 - Sustainable environments
 - Education and lifelong learning
 - An improving council.

Recommendation

- 1. In light of the additional costs, the uncertainty, and the impact on education, it is suggested that with Option 3 neither the principal Option nor the variant should be pursued.**

Option 4

Rescope the Project to Include Dumbarton Academy and Primaries but not the Bowling Club. Resubmit Planning Application. Financial Close delayed until receipt of unchallenged Planning Permission (est. June 2008 or June 2009)

Note that the arguments against this approach are the same as those for rejecting Option 2. There are no advantages over Option 3 so the Option is not narrated further here.

Recommendation

- 1. In light of the very high additional costs associated with Construction inflation, the uncertainty, and the impact on education it is the project team's belief that this option and options 2, 6, and 8 represent the least attractive options available to the Council. It is therefore recommended that Option 4 should not be pursued.**

Option 5

Rescope the Project to Include Dumbarton Academy but not the Primaries, EECC or Bowling Club. Resubmit Planning Application. Move forward with a split Financial Close

Why / When to Use?

1. When the removal of the Bowling Club and the Primaries/EECC appear to offer a good planning reason for granting a revised application on the site.
2. Where it is considered that the redevelopment of the Secondary Estate is the Council's paramount consideration.

Advantages

1. More comprehensively addresses the reasons for planning refusal than Option 3.
2. May be some advantage from benefit of changes to the SWAP rate between tranches.

Disadvantages

- 1 The Brock Bowling Club has an absolute right to continue in occupation of the site until expiry of their lease.
- 2 Bowling Club has been offered relocation options elsewhere in the Dumbarton and with the exception of the Townend Road site, which was considered prohibitively expensive, they have considered the sites unsuitable.
- 3 Bowling Club have refused offers of compensation to terminate the lease. If this line is pursued further there may be negative public perception and possible adverse comment from Auditor/Ombudsman and Courts.
- 4 Any application without Bowling Club agreeing to removal would be worthless.
- 5 The Bowling club would either require a financial compensation package to be prepared or would have to agree an alternative site which would involve another planning application being approved for its relocation.
- 6 BAM may not proceed with request. Certainly it can be anticipated that BAM will only accept if relieved of the risk associated with delays and the costs of resubmitting the bid. This means all costs associated with a delayed or split close, including possibly attracting only c.75% of Revenue Support Grant would be borne by the Council. (see Financial Implications No.1).
- 7 Inflationary and debt service costs generated by the delays to the programme are high. This applies both to the 25% of project value associated with the Dumbarton Campus and the 75% first tranche, which would now close in the New Year (see timescales below).
- 8 Doubts exist over ability to sustain Bank or Scottish Government Support for period of new application.
- 9 Fails to address the needs of the 3 Primary Schools and the Early Education and Childcare Centre previously within the project. Capital funds will be required to address these in the future.
- 10 Will add to the Council's net contribution/the affordability gap, as the primary schools were net contributors to the project through capital receipts from land sales, administrative savings and reduction in excess capacity.

Timescales

1. Preparation of a plan involving the removal of the Bowling club could commence immediately. A draft layout exists from the time when the Bowling Club was to be relocated to Townend Road. This would require to be amended to incorporate the new design for the Academy Only campus and thus adequately address the other reasons for refusal.
2. Assuming some form of agreement can be reached, the Timescales for decision being received and / or agreement to have the Bowling Club off site are dependent on whether further objections are received and whether it is for one application (no Bowling Club provision) or two (Bowling Club relocated). Best possible anticipated timescale for resolution would be four months, with a minimum of six months being more likely.
3. If no agreement is possible the only remaining option would be to pursue a Compulsory Purchase Order. It is considered that the Council would be unlikely to obtain Scottish Government consent and even if it were forthcoming the timescale is one year at the absolute minimum.
4. Arrangements for Split Financial Close would now carry even the larger tranche into the new year. The estimated time for setting up such an arrangement is approximately six weeks. Additionally this will be an additional resource requirement, putting back overall time to close the deal as a whole.
5. The delay in close is also likely to have an impact on the delivery date for the new St Peter the Apostle High School, with this amalgamating Secondary being scheduled for delivery during the summer holiday of 2009. The Council will either have to reconsider its position that it will only accept handover during a summer holiday (which could be educationally problematic) or delay handover until the following summer.
6. If Judicial Review action is raised, the approximate timescale for a hearing is one year, during which the Council could be liable for the costs of delay.

Financial Implications

1. There is a possibility that up to approximately 17% of the Revenue Support Grant (RSG) of £7.15 Million per annum would be lost if the project is submitted to the Scottish Government as a four site project but the planning appeal fails. This would be a huge sum for the Authority to resource as it would mean that a c£100 Million project would have to be met with only c83% of the RSG funding previously offered by the Scottish Government. This could involve a funding gap in excess of the highest quoted to date being paid by the Council for 80% of the project being delivered.
2. Financial pressures come from 7 sources:-
 - Lack of savings and Capital Receipts from the primaries.
 - Additional Adviser costs for the Council; these have as yet to be quantified but will certainly run to tens of thousands.
 - Costs associated with the application(s) or the agreement to remove, which the Council would be expected to underwrite.
 - Construction Tender Inflation is running at in excess of 6%.
 - Knock on effect on the programme involves a disproportionate increase in construction inflation and Debt Service costs, as target start and completion, and therefore payment/repayment dates move to meet the next suitable dates for handover (school term commencement dates).
 - Possible increases in Swap rates.
 - The removal of the Primary element of the project.

3. Approximate Costs for some of the above factors are provided. However, these must be regarded as provisional and in some cases speculative. Where not provided no reliable estimate is available. Actual costs will be dependent on such factors as the workload involved, the timescales, and prevailing inflation and Swap rates:-
- i. Additional Adviser costs for the Council. Approximately £22,000 per adviser for revising and checking documentation and for preparation for two financial closes. Internal Project Team Costs estimated at £60,000 minimum. Total £126,000. Note this includes design review and/or advice on any deal with the Bowling Club.
 - ii. Costs of application involve BAM's adviser fees and the additional costs of any works arising from conditions which the Inquiry Reporter may apply. No estimate is possible.
 - iii. Construction Tender Inflation.
 - First Tranche – 6 week delay on projected close. Results in minimum four weeks construction inflation after the 31st December 2007 deadline. Using 5.9 % (quoted by BCIS as Tender inflation projection as at Q1 2008) this is approximately £419,000 on to the Capital cost ($c£94M * 5.8% * 4/52$) and £27,000 on to the First Year Unitary Charge.
 - Second Tranche (assuming June 2008 Financial Close). Using 5.2 % (quoted by BCIS as Tender inflation projection for 2008) this is approximately £520,000 on to the Capital cost ($c£20M * 5.2% * 26/52$) and £34,000 on to the First Year Unitary Charge.
 - Second Tranche (assuming June 2009 Financial Close following judicial review). Using 10.8 % (quoted by BCIS as Tender inflation projection for period to Q2 2009 this is approximately £2.2M on to the Capital cost ($c£20M * 10.8%$) and £140K on to the First Year Unitary Charge. Note this is not a likely scenario, but may be a possibility given the range of reasons offered for refusal.
 - Note the two tranches together provide cumulative totals of approximately £900K for a June 2008 Close and £2.6Million for a June 2009 close for capital figures translating to £61K and £167K respectively in Unitary Charge.
 - The above figures have used the higher end of the range of timescales assuming either a 6 month period resolving planning and / or a judicial review occurring. Note that in respect of Judicial Review, whilst unlikely to succeed, if it were successful, the Council would be exposed to possibly huge costs.
 - iv. Knock on effect on the programme involves a disproportionate increase in construction inflation and Debt Service costs, as target start and completion, and therefore payment/repayment dates move to meet the next suitable dates for handover (school term commencement dates). The above figures in 2(ii) of this section represent projected figures based on a straight addition of time onto the construction programme. The actual programme may produce variations in the site commencement and handover dates. The Impact of the delay on final Target Service Availability Date and therefore debt service costs (BAM PPP begin repaying debt on the sums borrowed only on the final Service Availability Date being achieved, with

debt accumulating prior to this date) requires to be considered. It is understood that this will be impacted on by a January Financial Close for the first tranche (it will push back the final handover date and thus extend the debt service period). The additional costs of this extended borrowing period would require to be identified with BAM on the impact on the programme being determined, however it is likely to be a six figure sum. Such Debt Service Costs associated with the Second Tranche are dependent entirely on the date of the planning determination and what condition, which may impact on build times) are applied to any consent granted.

- v. Swap rates have been volatile of late. The current falling rates contrast sharply with the experience previously of increases. It is not possible to predict the future rates.
- vi. The removal of the Primary element means the removal from the project of substantial administrative savings and capital receipts.

Policy Considerations

1. The principal Corporate Plan Themes affected are:
 - Regeneration and the local economy
 - Health and well-being
 - Safe and strong communities
 - Sustainable environments
 - Education and lifelong learning
 - An improving council

Variants

1. Variants foreseeable at this stage have been included in the above commentary. As the actual proposal remains that which was submitted for Planning Approval, there is little scope for physical variation driven by the Authority.

Legal Impediments

1. There are no direct legal impediments, although unless the fresh application fully addresses the terms of refusal the Council will remain exposed to a heightened risk of high costs through Judicial Review. Although it is the view of the project's Legal Adviser that such an action would be unlikely to succeed, the Council bears risk from judicial review under the Contract, and it may have significant cost implications for the Council.

Recommendation

1. **In light of the substantial additional costs to the project, the uncertainty and the impact on education it is recommended that Option 5 should not be pursued.**

Option 6

Rescope the Project to Include Dumbarton Academy but not the Primaries, EECC or Bowling Club. Resubmit Planning Application. Await Planning Permission before closing.

Note that the arguments against this approach are the same as those for rejecting Option 2. There are no advantages over Option 5 so the Option is not narrated further here.

Recommendation

- 1. In light of the very high additional costs associated with Construction Inflation, the uncertainty and the impact on education it is recommended that Option 6 should not be pursued.**

Option 7

Rescope the Project to Include Dumbarton Primaries but not the Academy and the Bowling Club. Resubmit Planning Application for an alternative site. Move forward with a split Financial Close

Why / When to Use?

1. When another suitable site has been identified for the Primaries. Removes the issues surrounding the Crosslet Road Site.

Advantages

1. Gives an opportunity for the project to address the obvious overcapacities and poor buildings in the Primary Sector in Dumbarton.
2. Inclusion within PPP project appears to offer the most economically beneficial build solution for the three Primaries, all other matters being equal.
3. Involves a lesser net contribution to the Unitary Charge by the Council.
4. Maximises capital receipts and administrative savings for the project.
5. Removes the issue of the Bowling Club entirely from the PPP Project.

Disadvantages

1. No site identified as yet. Any site would be subject to ground investigation and may have planning issues of its own.
2. Need for statutory consultation on the site of the new school; would take a minimum of four months.
3. Fails to address the needs of the Secondary School estate in Dumbarton. The Secondary School Estate is viewed as a corporate priority.
4. BAM may not proceed with request. Certainly it can be anticipated that BAM will only accept if relieved of the risk associated with delays and the costs of resubmitting the bid. This means all costs associated with a delayed or split close, including possibly attracting only c.90% of Revenue Support Grant would be borne by the Council. (see Financial Implications No.1).
5. Inflationary and debt service costs generated by the delays to the programme are high. This applies both to the 10% and the 90% which would now close in the new year (see timescales below).
6. Doubts exist over ability to sustain Bank or Scottish Government Support for period of new application.

Timescales

1. Preparation of plans can only commence on identification of a suitable site.
2. Thereafter full plans would have to be prepared and submitted. The preparation of full plans suitable for submission for planning would be six months minimum.
3. Timescales for decision being received are dependent on whether objections are received. Best possible anticipated timescale for resolution would be four months, with a six months being possible.

4. Arrangements for Split Financial Close would now carry even the larger tranche into the new year. The estimated time for setting up such an arrangement is approximately six weeks. This will also be an additional resource requirement, putting back overall time to close the deal as a whole.
5. The delay in close is also likely to have an impact on the delivery date for the new St Peter the Apostle High School, with this amalgamating Secondary being scheduled for delivery during the summer holiday of 2009. The Council will either have to reconsider its position that it will only accept handover during a summer holiday (which could be educationally problematic) or delay handover until the following summer.

Financial Implications

1. There is a possibility that up to approximately 10% of the Revenue Support Grant (RSG) is lost if project is submitted to the Scottish Government as a four site project but the planning appeal fails. This would be a huge sum for the Authority to resource as it would mean that a c£100 Million project would have to be met with only 85% of the RSG funding previously offered by the Scottish Government. This could involve a funding gap in excess of the highest quoted to date being paid by the Council for 85% of the project being delivered.
2. Financial pressures come from 6 sources:-
 - Additional Adviser costs for the Council. These have as yet to be investigated but will certainly run to tens of thousands.
 - Site investigation costs.
 - Costs associated with the application which the Council would be expected to underwrite.
 - Construction Tender Inflation is running at in excess of 6%.
 - Knock on effect on the programme involves a disproportionate increase in construction inflation and Debt Service costs, as target start and completion, and therefore payment / repayment dates move to meet the next suitable dates for handover (school term commencement dates).
 - Possible increases in Swap rates.
3. Approximate costs for some of the above factors are provided, however these must be regarded as provisional and in some cases speculative. Where not provided no reliable estimate is available. Actual costs will be dependent on such factors as the workload involved, the timescales, and prevailing inflation and Swap rates:-
 - i. Additional Adviser costs for the Council. Approximately £30,000 per adviser for checking and revising plans and for preparation for two financial closes. Internal Project Team Costs estimated at £60,000 minimum. Total £150000.
 - ii. Costs of application involve BAM's adviser fees and the additional costs of any works arising from conditions which the Inquiry Reporter may apply. No estimate is possible.
 - iii. Construction Tender Inflation.
 - First Tranche – 6 week delay on projected close. Results in minimum four weeks construction inflation after the 31st December 2007 deadline. Using 5.8 % (quoted by BCIS as Tender inflation projection for Q1 2008) this is approximately £419,000 on to the

- Capital cost ($c£94M * 5.8% * 4/52$) and £27K on to the First Year Unitary Charge.
- Second Tranche (assuming September 2008 Financial Close). Using 6 % (quoted by BCIS as Tender inflation projection for Q3 2008) this is approximately £450000 on to the Capital cost ($c£10M * 5.2% * 39/52$) and £29K on to the First Year Unitary Charge.
 - Note the two tranches together provide a cumulative total of approximately £869K for a September 2008 Close for capital figures translating to £56K in Unitary Charge.
 - The above figures have used the higher end of the range of timescales assuming a 10 month period for resolving statutory consultation and planning.
- iv. Knock on effect on the programme involves a disproportionate increase in construction inflation and Debt Service costs, as target start and completion, and therefore payment / repayment dates move to meet the next suitable dates for handover (Term dates). The above figures represent projected figures based on a straight addition of time onto the construction programme. The actual programme may produce variations in the site commencement and handover dates. The Impact of the delay on final Target Service Availability Date and therefore debt service costs (BAM PPP begin repaying debt on the sums borrowed only on the final Service Availability Date being achieved, with debt accumulating prior to this date) requires to be considered. It is understood that this will be impacted on by a January Financial Close for the first tranche (it will push back the final handover date and thus extend the debt service period). The additional costs of this extended borrowing period would require to be identified with BAM on the impact on the programme being determined, however it is likely to be a six figure sum. Such Debt Service Costs associated with the Second Tranche are dependent entirely on the date of the planning determination and what condition, which may impact on build times) are applied to any consent granted.
- v. Swap rates have been volatile of late. The current falling rates contrast sharply with the experience previously of increases. It is not possible to predict the future rates.

Variants

1. As per Option 3, a variant whereby the numbers of the primary schools amalgamating on the site to two may be considered. This could have the following effects:
 - i. Reducing the size of site required, although not significantly;
 - ii. Reducing operational traffic;
 - iii. Reducing the efficiency of the solution in terms of addressing overcapacity and poor school buildings;
 - iv. Reducing income from capital receipts.

Legal Impediments

1. There are no direct legal impediments. The proposal of a new site removes the risk of judicial review in respect of the Crosslet Road site and it is assumed that planning procedures will be fully compliant with legislation.
2. In terms of the statutory consultation process in terms of the Education Acts, assuming the processes are followed fully, there is no reason to suppose there would be any legal impediment.

Policy Considerations

1. The principal Corporate Plan Themes affected are:
 - Regeneration and the local economy
 - Health and well-being
 - Safe and strong communities
 - Sustainable environments
 - Education and lifelong learning
 - An improving council

Recommendation

1. **Whilst this option and the variant produces a more cost efficient model within the project than the retention of the Dumbarton Academy, and meets a number of the objectives of the Schools PPP Project, it fails to address the requirements of the Dumbarton secondary school estate and would involve significant delays to the Financial Close of the second tranche of the project leading to significant costs. It is therefore recommended that Option 7 should not be pursued.**

Option 8

Rescope the Project to Include Dumbarton Primaries but not the Academy and the Bowling Club. Resubmit Planning Application for an alternative site. Await Planning Permission before closing.

Note that the arguments against this approach are the same as those for rejecting Option 2. There are no advantages over Option 7 so the Option is not narrated further here.

Recommendation

- 1. In light of the very high additional costs associated with Construction inflation, the uncertainty, and the impact on education and the difficulties in being seen to go against the decision of the Committee it is the project team's belief that this option and options 2, 4, and 6 represent the least attractive options available to the Council. It is therefore recommended that Option 8 should not be pursued.**

Option 9

Remove the Dumbarton schools and EE&CC from the scope of the PPP Project.

Why / When to Use?

1. When it is considered overall, that the Planning reasons for refusal are too difficult to overcome without significant risk to the project, and that the timescales and costs associated with the Dumbarton Campus threaten the entire project.

Advantages

1. Provides the quickest route to financial close, with the least risk in terms of costs and delivery to the remaining parts of the project.
2. Significantly lowers the requirement for a net Council Contribution to the Affordability Gap; it should be noted that, depending on the prevailing SWAP rate, the Affordability Gap could be zero under this option.
3. Previously indicated funding levels for the project may, if matched outside PPP, assist in funding new schools.
4. Single financial close reduces costs.
5. No requirement for additional design work and/or Planning Permission:
6. Project maximises but does not exceed Revenue Support Grant maximum level on current projections.
7. BAM its their funders are prepared to proceed on the basis of this option.

Disadvantages

1. Does not address the problems of overcapacity and building condition in the Dumbarton Primary and Secondary estate.
2. Does not achieve policy aim of addressing the Secondary School estate as a priority.
3. Significant abortive costs due.
4. Funding uncertain for projects outwith PPP.

Timescales

1. Provides the best opportunity of Financial Close and/or site start in this calendar year or early in 2008.
2. Meeting of Council on 28th November 2007 would provide clarity to allow project scope to be finalised.

Financial Implications

1. Under this option the possibility of Contractor inflation is minimised as there are unlikely to be any substantial delays in arriving at Financial Close for the entire project.
2. Under this option the Council is likely to receive 100% of the Revenue Support Grant (i.e. £7.15 Million per annum). This is because the capital value of the remaining 3 campuses would still amount to £100 million, the basis on which the original RSG offer was made. Under any option involving a split Financial Close, and where there remained any doubt about the deliverability of the school(s) involved in the second Close, it is certain that the Scottish Government would hold back a proportion of the

RSG and would be unlikely to release the second tranche if the schools involved in the second Close were not delivered. Under Option 9, however, the full RSG would be made available to the Council, despite the fact that only three campuses are involved.

3. Based upon current swap rates the Unitary Charge payable to BAM in 2012/13 will be around £10.46m. The Council will also be paying the DSO approx £900k per annum for FM.
4. Using a combination of RSG, capital receipts and revenue savings the above figures would mean that the Council Contribution is likely to be considerably less than the figures previously reported and there is a possibility that no contribution will be required.

Policy Considerations

2. The principal Corporate Plan Themes affected are:
 - Regeneration and the local economy
 - Health and well-being
 - Safe and strong communities
 - Sustainable environments
 - Education and lifelong learning
 - An improving council

Variants

1. Variants foreseeable at this stage have been included in the above commentary.

Legal Impediments

1. There are no legal impediments.

Recommendation

1. **In light of the following factors:**
 - **the difficulty of overcoming the reasons for the rejection of the planning application for the Dumbarton campus within a reasonable timescale;**
 - **the educational and financial advantages to the Council in achieving Financial Close on the PPP project at the earliest possible date, preferably before the end of 2007;**
 - **the possibility of including Dumbarton Academy in a future Phase 2 of the Schools' Regeneration Project;**
 - **the problems and disadvantages associated with options 1 – 8 above;****it is recommended that Option 9 be adopted, that the Dumbarton campus be removed from the schools' PPP project, and that the project should proceed to Financial Close on the basis of three campuses (Vale of Leven Academy, Clydebank High School and St Peter the Apostle High School/St Eunan's Primary School and EECC).**