

# Building Schools for the Future

London Borough of Haringey

## Procurement Business Case Volume 2 FINAL



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## **Glossary**

BSF	Building Schools for the Future
D&B	Design & Build
DBFO	Design, Build, Finance, Operate
DfES	Department for Education & Skills – the Department
FBC	Final Business Case
ICT MSP	ICT Managed Service Partner
JPMT	Joint Programme Management Team
LEP	Local Education Partnership
OJEU	Official Journal of the European Union
PBC	Procurement Business Case
PfS	Partnerships for Schools
PSC	Pupil Support Centre
PQQ	Pre Qualification Questionnaire
PUK	Partnerships UK
VfM	Value for Money
WLC	Whole Life Cost Model

# Building Schools for the Future

## Section 1 Executive Summary

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# Building Schools for the Future

## Section 2

### Context

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## 2. Context

### 2.1. BSF National Programme

The Department for Education & Skills (DfES) announced in March 2003 that all secondary schools in England would be re-provided over a 15 year period. This initiative is called Building Schools for the Future (BSF).

The principal objective of the BSF initiative is to see a step change in education provision. The BSF programme is not simply a building programme, but one that aims to drive transformational change into the way that secondary school education is delivered. Consequently, the BSF initiative fully embraces the inclusion and implementation of Information and Communication technology (ICT).

The DfES has created, with Partnerships UK (PUK), a new team called Partnerships for Schools (PfS) to manage this national programme. A key objective for PfS is to drive efficiencies into the procurement of the BSF investment. PfS is clear that these efficiencies can be delivered through standardisation of the process and, to achieve this, they have invested significant resources in developing a new model for local procurement called the Local Education Partnership (LEP).

The LEP model of procurement assumes that the local authority will jointly procure, alongside PfS, a private sector partner to deliver the BSF investment under a framework-type agreement. The private sector partner to the LEP will be granted exclusivity in the delivery of the BSF investment, both construction and ICT, for a period of up to 10 years.

Section 4.2 sets out the alternative options considered, the conclusion to adopt a joint Programme Management Team (JPMT) approach and the reasoning behind the decision.

### 2.2. BSF at the Local Level

The London Borough of Haringey (the Council), signed a 25 year PFI contract in 2000 – the Existing PFI contract. This Existing PFI contract was for the refurbishment, maintenance and operation of 7 of the Borough's Secondary schools and the purchase, remodelling, maintenance and operation of a facility to accommodate an additional new secondary school. The Council's private sector partner was Haringey Schools Services Limited (HSSL), a special purpose vehicle (SPV) owned by Jarvis PLC and funded by Barclays.

A number of changes have been implemented in respect of this contractual relationship:

- the completion of a refinancing of the project, together with a reduction in the number of senior lenders involved (the senior debt is now syndicated between Barclays and Nationwide);
- the building of an extension at Alexandra Park High School by a third party. Whilst the building work has been completed, the agreement as to the variation to the project agreement and of the FM costs of Jarvis in providing long term maintenance at the School remains outstanding; and

In addition to which Jarvis PLC has and continues to change its business/sector focus. It has sold its legal and beneficial interest in HSSL (as well as in all other SPVs in the UK) and now simply provides the FM Services as a contractor to HSSL. HSSL is now owned by the Secondary Market Investment Fund (SMIF) and Barclays Infrastructure Projects.

The Existing PFI contract has delivered much needed investment into the secondary Education buildings. However, this investment was largely focused on improving the condition of the buildings; and the investment does not address issues of suitability, particularly in the context of the aspirations for the transformation envisaged by the BSF programme. Consequently, the Council has undertaken a detailed review of the whole secondary estate and has identified the following activities to support a BSF programme:

- a new 6th Form Centre in the east of the Borough;
- a reduction in the forms of entry for the four Community Schools in the east from 9FE to 8FE and targeted investment in these facilities;
- a new 8FE community secondary school in the centre of the Borough;
- modernisation of facilities at the Voluntary Aided schools;
- further ICT and Post-16 investment and other targeted investment in the four community schools in the west of the Borough and their associated co-located special provision;
- Pupil Support Centre (PSC) (probably in a new facility); and
- ICT investment in the above facilities.

The BSF programme is proposed to be funded as part of Waves 2 and 4 to 6 of the national BSF programme. For the purposes of this Business Case, the above BSF activities are collectively termed the BSF Elements.

Table 1 summarises the anticipated expenditure profile in respect of Haringey's BSF programme.

**Table 1: BSF Programme Expenditure Profile**

<b>Years Ending 31 March</b>	<b>2006/07</b>	<b>2007/08</b>	<b>2008/09</b>	<b>2009/10</b>	<b>2010/11</b>	<b>Total</b>
	<b>£'m</b>	<b>£'m</b>	<b>£'m</b>	<b>£'m</b>	<b>£'m</b>	<b>£'m</b>
Combined Investment (Buildings and ICT)	[15.0]	[46.8]	[52.4]	[38.1]	[13.6]	<b>[165.9]</b>

This PBC seeks confirmation from PfS/DfES that funding will be available to match the envisaged expenditure profile. A key aspect of the Council's proposed procurement model is to procure design and contractors in such a way so as to have a continuous flow of projects. This will enable the procurement to be efficient and for the transformational change to be secured as quickly and effectively as possible.

The vision for each school will encompass the following key objectives:

- improved educational standards, including a focus on each school developing specialisms;
- ICT provision for all;
- wider inclusion of pupils with special needs, both educational and social;
- improved standards of behaviour;
- workforce remodelling (good places for a wider range of staff to teach and support pupils in new ways);
- increased use by the wider community, including an emphasis on sport and lifelong learning; and
- provision for multi-agency services to support social inclusion.

The Council has already made excellent progress to establish a new sixth form centre through a design and build programme, which will open in September 2007.

The Council has developed a detailed and transformational ICT vision and has defined the secondary school ICT output specification for the BSF programme. ICT was excluded from the original PFI contract, and it is now proposed to procure a fully managed ICT service for all the Council's secondary and special schools.

The Council recognises that the co-existence of the Existing PFI contract and the BSF initiative will lead to significant interface issues, both from a practical and a procurement perspective, that need to be identified and managed proactively to maintain the benefits of the current partnership with HSSL. These interface issues are considered further in Section 3.

### **2.3. Purpose of this PBC**

The Council has a successful partnership with HSSL for a large proportion of its secondary school estate. This Procurement Business Case (PBC) seeks to address both the practical and procurement interfaces that will inevitably arise between the PFI contract and the new BSF investment.

Consequently, this Procurement Business Case has the following objectives:

- to consider the procurement options open to the Council for the different Elements of the BSF programme (Section 3);
- to consider what procurement process to adopt so as to deliver the different Elements of the programme (Section 4);
- to set out a value for money (VfM) assessment, which then also considers the preferred procurement option against a LEP alternative (Section 5);
- to review and consider procurement risk and the identification of the mechanisms and approach for managing and/or mitigating these risks (Section 6); and
- to consider the likely stakeholder support for the proposed procurement route (Section 7).

There are two main outcomes sought from the preparation of the PBC. Firstly, the Council needs to satisfy itself that the procurement route selected will deliver VfM, particularly given the interface issues arising with the existing PFI contract. Secondly, the DfES requires justification that the proposed procurement route, if this should differ from a LEP procurement route, offers at least equal VfM as procurement using the LEP model. As such, this PBC is included as part of the documentation supporting the Council's Outline Business Case.

## 2.4. PBC Checklist

PfS has outlined the key aspects to be addressed in a PBC - these are set out in Table 2. The format of this PBC does not precisely follow the order of the aspects as identified by PfS, so Table 2 sets out which part of the PBC responds to each relevant aspect.

**Table 2: PfS PBC checklist**

<b>PfS Ref</b>	<b>Aspects to be Addressed</b>	<b>Council Response</b>
2a	Value for Money	Section 5
2b	National BSF Objectives	Section 4
2c	Local Objectives	Section 4
2d	Project Governance	Section 7
2e	Stakeholder Support	Section 7
2f	Market Interest	Section 6
2g	Risk Transfer	Section 5
2h	Legal Structure of the proposed model	Section 4
2i	Project Management Arrangements	Section 6
2j	Design	Section 4
2k	The Authority (and its involvement in the process)	Section 7
2l	Process Map for Subsequent Steps	Part of OBC Submission

# Building Schools for the Future

## Section 3

Procurement options for each Element

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### 3. Procurement Options for each Element

#### 3.1. Overview

The options appraisal for each Element of the BSF programme set out in this section is not a review of the site-by-site investment requirements – this is considered in detail in the Council’s Strategic Business Case (SBC). This section considers the different options available to deliver the proposed investment on each site.

The approach taken in this procurement option appraisal has been to:

- longlist all potential procurement options;
- undertake a qualitative appraisal of each option;
- shortlist those options that are practical, possible, (given the legal framework), and deliverable within the timescales for the BSF programme generally; and
- conclude which option(s) should be considered as part of determining what form of procurement process the Council should enter into.

As discussed in Section 2.2, there are a number of different Elements to the BSF programme – the potential options for procuring and funding each element are discussed in turn.

#### 3.2. 6th Form Centre

The Council considered a range of options for the delivery of this investment. Potential options that were considered are noted in Table 3, together with the outcome of the Council’s high-level option appraisal.

**Table 3: Options for Delivering the 6<sup>th</sup> Form Centre**

Ref	Option Considered	Council Appraisal of Option
1.	Deliver proposals as a DBFO variation to the Existing PFI contract.	<ul style="list-style-type: none"> <li>• this option would enable economies of scale to be secured by grouping the whole life management of the facility with the existing PFI contract;</li> <li>• to seek a design, build, finance, operate solution (DBFO) would require HSSL to take additional borrowings. The willingness and ability of HSSL to borrow using the existing special purpose vehicle is questioned and was viewed as a significant procurement risk;</li> <li>• the construction activities for the Existing PFI are largely complete and Jarvis Construction is no longer active in the Education PFI market. Consequently, a new building contractor would need to be procured in any event;</li> <li>• the legal acceptance of extending the Existing PFI contract is in question. The proposed capital cost of the 6<sup>th</sup> form centre may be approximately 40% of the capital value of the Existing PFI contract and the original OJEC notice did not include the North London Learning &amp; Skills</li> </ul>

Ref	Option Considered	Council Appraisal of Option
		<p>Council as a party to the contract; and</p> <ul style="list-style-type: none"> <li>a DBFO solution would require HSSL to borrow funds with a much shorter debt maturity than the original funding – as the contract is in its 5<sup>th</sup> year of operation.</li> </ul>
2.	<p>Deliver proposals as a separate, standalone PFI contract, outside of the Existing PFI contract</p>	<ul style="list-style-type: none"> <li>the school would not be able to take advantage of the economies of scale offered by having lifecycle, maintenance and operation undertaken by HSSL, as incumbent PFI provider, if this were the chosen option. However, HSSL would be able to bid for this contract;</li> <li>DfES have not offered PFI credits to fund this investment. There is a further complication in that not all of the funding would be through the Council, as the Learning &amp; Skills Council are part-funding this facility;</li> <li>a separate PFI contract would take a minimum of 15 months to procure, which would mean that the Centre would not be open in time to meet the Council's strategic aims; and</li> <li>HM Treasury guidance, on VfM grounds, is for a minimum capital value for PFI contracts of £20 million – the capital value of this facility is close to this minimum level, suggesting that a procurement through PFI may not be VfM.</li> </ul>
3.	<p>Deliver the proposals immediately as a separate D&amp;B contract, funded through grant or supported borrowing, with the completed asset being transferred into the existing PFI contract, for lifecycle, maintenance and operation, as a variation.</p>	<ul style="list-style-type: none"> <li>this would be a relatively straightforward procurement for a D&amp;B contractor;</li> <li>there should be economies of scale in including the new facility in the existing lifecycle and maintenance regime operated by HSSL;</li> <li>however, the Council's legal advisors have questioned the legality of including the lifecycle and facilities management of this facility in the Existing PFI arrangements. Consequently, the Council views this option to be a procurement risk.</li> </ul>
4.	<p>Deliver proposals immediately as a separate D&amp;B contract, funded through grant or supported borrowing, but with the completed asset <b>not</b> transferred into the existing PFI contract on D&amp;B completion.</p>	<ul style="list-style-type: none"> <li>this would be a relatively straightforward procurement for a D&amp;B contractor;</li> <li>no economies of scale would be secured as a result of the exclusion of the investment from the existing PFI arrangements, unless HSSL's contractors were successful in tendering for this contract; and</li> <li>uncertainty as to who would provide maintenance and asset management services, as all other secondary schools are managed by HSSL.</li> </ul>
5.	<p>Delay the commencement of investment and include with the other Wave 2 investments.</p>	<ul style="list-style-type: none"> <li>increased costs due to build cost inflation; and</li> <li>delay in introducing the facility will have a negative impact on the drive to improve educational attainment.</li> </ul>

These options were appraised in the context of the pressing need to have this facility available for occupation in 2007. Given this tight timetable, the Council rejected

Options 1, 2 and 5, as these options would not allow adherence to this timetable. Subsequently, the Council obtained approval from DfES to commence procurement of the 6th form centre immediately and for funding to be available from 2006/07.

The procurement of the scheme was as follows:

- (a) An OJEU notice was issued in March 2005 seeking a design and build solution of the facilities to a minimum BSF standard output specification. This BSF output specification incorporates the ICT vision by way of an input specification i.e. a set of requirements, as it dictates design and build;
- (b) The procurement sought a Design and Build (D&B) solution for a scheme that had reached RIBA stage D and (subject to actual receipt) detailed Planning approval;
- (c) The D&B contractors signed a contract based on the JCT Develop and Construct standard D&B contract;
- (d) The D&B contractor will hand over the completed buildings on a pre-agreed date; and
- (e) The inclusion of ICT infrastructure requirements in collaboration with the Council's current ICT partners and the ICT consultant.

The procurement of a partner to undertake the lifecycle and facilities management activities on this site has been the subject of considerable debate. Eversheds, the Council's legal advisor, has advised that there is a risk of challenge, albeit remote, should the existing PFI contract be extended to include for the provision of services on facilities that were not subject to the original PFI OJEC notice. Consequently, when considering the procurement approach for the BSF programme, the Council has focused on the need to harmonise the delivery of services across all the facilities, but, at the same time, to ensure these services are let competitively.

In concluding the procurement of the Sixth Form Centre, the Council has let a design and build contract for the construction of the Sixth Form Centre with the possible inclusion of the facility in a Borough-wide lifecycle and facilities management contract at a later stage. This is Option 4. Option 3 has been discounted as legal advice suggests HSSL cannot provide these services without a further round of competition.

### **3.3. Existing PFI Schools**

The Council has considered a range of options for the delivery of this investment. In considering these options, the facilities in the east and west of the Borough are grouped together, even though they may be procured in separate BSF waves, as the issues apply equally to all facilities in the Existing PFI contract. Potential options are considered in Table 4, together with the outcome of the Council's high-level option appraisal.

**Table 4: Investment in Existing PFI Schools**

Ref	Option Considered	Council Appraisal of Option
1.	<p>Deliver proposals as a DBFO variation to the Existing PFI contract.</p>	<ul style="list-style-type: none"> <li>• at this stage, it is unclear as to what level of investment is going to be available for these schools. However, it is likely that the investment would exceed 50% of the capital value of the existing PFI contract, with the potential for procurement challenge;</li> <li>• to seek a design, build, finance, operate solution (DBFO) would require HSSL to take additional borrowings. The willingness of HSSL to borrow using the existing special purpose vehicle, particularly given the likely start of the Wave 4 investment, is questioned and is viewed as a significant procurement risk;</li> <li>• the construction activities for the Existing PFI are largely complete and Jarvis Construction is no longer active in the Education PFI market. Consequently, a new contractor would need to be procured in any event;</li> <li>• a DBFO solution would require HSSL to borrow funds with a much shorter debt maturity than the original funding – as the contract is in its 5<sup>th</sup> year of operation and will be near its 10<sup>th</sup> year of operation by the time that the Wave 4 investment has been completed; and</li> <li>• the BSF policy is for only total new-build solutions to be funded by PFI credits – the proposed works to be undertaken on the Existing PFI schools will involve a blend of new build, remodelling and refurbishment.</li> </ul>
2.	<p>Terminate the Existing PFI contract and procure a new PFI partner to take on the existing obligations and to undertake the BSF investment</p>	<ul style="list-style-type: none"> <li>• the cost of terminating the existing PFI contract is considered too high – see Appendix 2. It is unclear as to how this termination sum would be funded;</li> <li>• terminating the existing PFI contract would unravel the risk transfer previously negotiated with HSSL – renegotiation of this risk transfer is likely to erode the value for money of the Existing PFI contract; and</li> <li>• BSF policy is for only total new-build solutions to be funded by PFI credits – the proposed works to be undertaken on the Existing PFI schools will involve a blend of new build, remodelling and refurbishment.</li> </ul>
3.	<p>Deliver proposals as a separate, stand-alone PFI contract, outside of the Existing PFI contract</p>	<ul style="list-style-type: none"> <li>• given the works would be undertaken on facilities in the Existing PFI contract, the interface issues of operating 2 PFI projects on the same site are considered insurmountable and not commercial;</li> <li>• this would lead to an unravelling of the risk transfer previously negotiated with HSSL – renegotiation of this risk transfer is likely to erode the value for money of the Existing PFI contract; and</li> <li>• the BSF policy is for only total new-build solutions to be funded by PFI credits – the proposed works</li> </ul>

Ref	Option Considered	Council Appraisal of Option
		to be undertaken on the Existing PFI schools will involve a blend of new build, remodelling and refurbishment.
4.	Deliver the proposals as a separate D&B contract, funded by grant. HSSL to manage the D&B works and continue to undertake the lifecycle, maintenance and operation under the terms of the existing PFI contract.	<ul style="list-style-type: none"> <li>• the appointment of HSSL in an agency capacity will be subject to procurement rules, should payment arrangements for this role breach procurement thresholds;</li> <li>• the D&amp;B contracts will need to be competitively tendered – in any event, HSSL no longer has a partner contractor; and</li> <li>• legal/procurement advice suggests that the lifecycle, maintenance and operation of the remodelled buildings can be undertaken under the existing PFI arrangements. This would deliver economies of scale.</li> </ul>
5.	Deliver proposals as a separate D&B contract, funded by grant. The works to be managed by an organisation different from HSSL, but with the completed asset transferring into the existing PFI contract on D&B completion.	<ul style="list-style-type: none"> <li>• a new partner that is not a public body appointed to manage these works would need to be appointed on the basis of a new competition;</li> <li>• the facilities may need to be removed from the Existing PFI contract whilst the D&amp;B works are to be undertaken. This will mean suspension of the existing PFI contract and issues as to cost and arrangements for continued operation of these sites – this is likely to be more difficult if there is a third party (not HSSL) managing the works; and</li> <li>• there will be interface issues between the new partner, managing the work on the Existing PFI schools, and HSSL. This may give HSSL the opportunity to renegotiate both price and risk transfer on the Existing PFI, thereby potentially eroding the VFM of the Existing PFI arrangement.</li> </ul>

Current advice from PfS is that the works to the existing PFI schools will be funded by Capital Grant. This means that any arrangements need to preserve the lifecycle and maintenance regime currently existing as there is no additional funding for the lifecycle of these buildings. Consequently, Options 4 and 5 have been taken forward for further consideration.

The key issue to resolve in taking forward Options 4 and 5 is the role of HSSL. It is in the interests of the project to retain the experience and expertise of HSSL, but in a manner which does not leave the Council open to dilution of risk transfer.

### 3.4. Voluntary Aided Schools

The Voluntary Aided schools in the Borough are not part of the Existing PFI arrangements.

The Council has considered a range of options for the delivery of BSF investment on the VA sites. Potential options are considered in Table 5, together with the outcome of the Council's high level options appraisal.

**Table 5: Options for Delivering the Voluntary Aided School Remodelling**

Ref	Option Considered	Council Appraisal of Option
1.	Deliver proposals as a DBFO variation to the existing PFI contract.	<ul style="list-style-type: none"> <li>• the issues raised in Table 4 are also relevant here;</li> <li>• Eversheds has advised that there is a procurement risk in delivering this investment through the Existing PFI. Only St Thomas Moore school was included on the original OJEC notice and, as this school's governing body withdrew from the Existing PFI procurement, their participation would also potentially be subject to challenge; and</li> <li>• the BSF policy is for only total new-build solutions to be funded by PFI credits – the proposed works to be undertaken on the VA schools involve minimal new build.</li> </ul>
2.	Deliver proposals as a separate, standalone PFI contract, outside of the Existing PFI contract	<ul style="list-style-type: none"> <li>• the BSF policy is for only total new-build solutions to be funded by PFI credits – the proposed works to be undertaken on the VA schools involve minimal new build;</li> <li>• the total investment on the Voluntary Aided schools is expected to be below £15 million – HM Treasury guidance is for PFI projects to have a minimum capital value of £20 million; and</li> <li>• the schools would not be able to take advantage of the economies of scale offered by having lifecycle, maintenance and operation undertaken by HSSL, as incumbent PFI provider.</li> </ul>
3.	Deliver the proposals as a separate D&B contract, funded through grant or supported borrowing, with the completed asset being transferred, by way of variation, into the existing PFI contract, for lifecycle, maintenance & operation.	<ul style="list-style-type: none"> <li>• this would be a relatively straightforward procurement for a D&amp;B contractor;</li> <li>• there would be economies of scale in including the new facility in the existing lifecycle and maintenance regime; and</li> <li>• as stated above, the inclusion of the VA schools in the Existing PFI contract may be subject to procurement challenge.</li> </ul>
4.	Deliver proposals as a separate D&B contract, funded through grant or supported borrowing, but with the completed asset <b>not</b> transferred into the existing PFI contract on D&B completion.	<ul style="list-style-type: none"> <li>• this would be a relatively straightforward procurement for a D&amp;B contractor;</li> <li>• no economies of scale would be secured as a result of the exclusion of the investment from the existing PFI arrangements, unless HSSL's contractors were successful in tendering for this contract; and</li> <li>• uncertainty as to who would provide maintenance and asset management services, as all other secondary schools are managed by HSSL. However, this may suit the requirements of the VA Governing Bodies.</li> </ul>

In conclusion, it is unlikely that there will be PFI credits available for the VA schools and the investment will be funded by grant – this means that Options 1 and 2 should be discounted. The Council, acting on legal advice, considers the inclusion of the BSF investment as part of the Existing PFI arrangements to represent a procurement risk – this means that Option 3 should also be discounted. This leaves Option 4, the

letting of new contracts for the design and build of the BSF works and the inclusion of lifecycle and facilities management services in a wider Borough solution, as the preferred option.

### 3.5. ICT – Managed Service Partner

The Council recognises the importance that ICT will play in delivering the aspirations of the BSF programme. Accordingly, the Council has invested significant resources in developing its thinking on how best to deliver ICT-led educational transformation. The result of this work is a detailed ICT output specification for a managed service contract to be undertaken by an ICT Managed Service Partner (MSP).

The Council is of the opinion that the ICT procurement, albeit important, should not be the main driver of the overall BSF procurement approach. At this stage, it is important to note that the existing PFI contract does not include ICT – there is an interface between ICT infrastructure provision and the maintenance of the fabric, but this is more a procedural interface, rather than a service interface.

A key consideration for the Council is the timetable for the BSF programme. With the 6<sup>th</sup> form centre due to be operational in September 2007 and the later wave of investment not expected to be completed until after 2010, any ICT MSP procurement needs to take into consideration the proposals for ICT integration during this investment period. The Council is therefore seeking a partner who will have the requisite skills to lead this integration process.

At this stage, the Council is limiting the role of the ICT MSP services to the secondary school facilities but will draft the OJEU notice broadly so as to enable a broader range of services to be included at a later date should circumstances dictate.

The Council has identified a number of options for the procurement of the ICT MSP. These options are set out in Table 6 below.

**Table 6: ICT MSP Procurement Options**

Ref	Option Considered	Council Appraisal of Option
1.	Use Existing contract arrangements to deliver the BSF ICT MSP services.	<ul style="list-style-type: none"> <li>the Council does not have existing arrangements with an appropriate ICT provider.</li> </ul>
2.	Procurement of an ICT MSP independently from any of the other elements of the BSF programme.	<ul style="list-style-type: none"> <li>given the complexity of this BSF procurement, this option is logical and achievable.</li> </ul>
3.	Seek HSSL to procure an ICT MSP and deliver the ICT requirements to all of the schools covered in the BSF programme.	<ul style="list-style-type: none"> <li>ICT was not included on the original OJEC notice and any attempt to add ICT into the Existing PFI arrangements may contravene procurement legislation;</li> <li>HSSL has not demonstrated either the desire or the expertise to manage the ICT integration; and</li> <li>only schools in the original PFI OJEC notice would be available for consideration.</li> </ul>
4.	Procure a Private Sector Partner (PSP) to manage all elements of	<ul style="list-style-type: none"> <li>this would deliver the level of integration sought by PfS, through the</li> </ul>

Ref	Option Considered	Council Appraisal of Option
	the BSF programme – thereby requiring the PSP to come forward with an ICT MSP in its consortium.	<ul style="list-style-type: none"> <li>national model of procurement; and</li> <li>the interface with HSSL has been discussed in considering the other Elements of the BSF programme. This approach would involve unravelling the Existing PFI arrangements – this has been discounted on VfM grounds.</li> </ul>

In conclusion, the Council will need to procure an ICT MSP partner in such a way that the ICT MSP is able to integrate the ICT elements of the BSF programme in as efficient a manner as possible, given the procurement methodologies adopted to deliver the other Elements of the BSF programme. At this stage, Option 2 would appear to be the only appropriate option available. A key issue for the Council is to consider the timing of this procurement and the likelihood of buy-in from the schools. The Council has worked closely with PfS to develop its approach to procurement and have their support for the direction being followed.

### 3.6. New 8FE School & Pupil Support Centre (PSC)

At this stage, it is assumed that both of these facilities will be new-build facilities. Potential options are considered in Table 7, together with the outcome of the Council's high-level options appraisal.

**Table 7: Options for Delivering the 8FE New School and PSC**

Ref	Option Considered	Council Appraisal of Option
1.	Deliver proposals as a DBFO variation to the Existing PFI contract.	<ul style="list-style-type: none"> <li>Eversheds have advised that there is a procurement risk in delivering these facilities through the Existing PFI arrangements, as neither facility was envisaged or referred to in the original OJEC notice;</li> <li>the legal acceptance of extending the Existing PFI contract is in question. The proposed capital cost of the 8FE and PSC would exceed 50% of the capital value of the Existing PFI contract;</li> <li>to seek a design, build, finance, operate solution (DBFO) would require HSSL to take additional borrowings. The willingness and ability of HSSL to borrow using the existing special purpose vehicle is questioned and was viewed as a significant procurement risk;</li> <li>the construction activities for the Existing PFI are largely complete and Jarvis Construction is no longer active in the Education PFI market. Consequently, a new contractor would need to be procured in any event; and</li> <li>a DBFO solution would require HSSL to borrow funds with a much shorter debt maturity than the original funding – as the contract is in its 5<sup>th</sup> year of operation.</li> </ul>
2.	Deliver proposals as a separate, standalone PFI	<ul style="list-style-type: none"> <li>HSSL could bid for this contract. However, if they choose not to bid, or are unsuccessful in bidding</li> </ul>

Ref	Option Considered	Council Appraisal of Option
	contract, outside of the Existing PFI contract	<p>for this contract, then the Council would have an additional PFI contract to manage and a different set of FM operators providing services to schools in the Borough. The Council considers the resource implications of such an arrangement to be unsatisfactory;</p> <ul style="list-style-type: none"> <li>• procuring by way of a separate PFI would also exclude the facilities from any estate-wide lifecycle and FM proposals that may be delivered on other facilities to be procured under the BSF programme. However, any incumbent provider of these services on other facilities would be in a strong position to bid for this contract; and</li> <li>• HM Treasury guidance, on VfM grounds, is for a minimum capital value for PFI contracts of £20 million – the anticipated level of investment is above this level and therefore a VfM scheme could be delivered.</li> </ul>
3.	Deliver the proposals as a separate D&B contract, funded by grant, with the completed asset being transferred into the existing PFI contract, for lifecycle, maintenance and operation, as a variation.	<ul style="list-style-type: none"> <li>• this would be a relatively straightforward procurement for a D&amp;B contractor;</li> <li>• there would be economies of scale in including the new facility in the existing lifecycle and maintenance regime operated by HSSL; and</li> <li>• Eversheds has confirmed that there is a procurement risk in extending the Existing PFI arrangements to these additional facilities.</li> </ul>
4.	Deliver proposals as a separate D&B contract, funded by grant, but with the completed asset <b>not</b> transferring into the existing PFI contract on D&B completion.	<ul style="list-style-type: none"> <li>• this would be a relatively straightforward procurement for a D&amp;B contractor; and</li> <li>• uncertainty as to who would provide maintenance and asset management services, as all other secondary schools are managed by HSSL.</li> </ul>

Because the competition for the new school is not yet complete, we do not know at this time whether the school will be under the control of the LA or another sponsor. Consequently any options appraisals may need to be revised once this process has reached a conclusion. Whilst this will not affect the design and build process, the lifecycle and FM elements may need to be negotiated with the sponsor, should that not be the LA.

Assuming these two facilities are new-build facilities and that the timetable for the completion of the facilities is the same, it would make sense to procure a single building contractor to deliver the investment as a single contract, thereby securing economies of scale on the building works. It would also make for efficiencies if this design and build process can be an extension of the framework developed for wave 2 of the programme, assuming all partners of that stage are successful and have the capacity to deliver.

In conclusion, the new 8FE secondary school and Pupil Support Centre could be delivered as either a separate PFI contract or as a D&B contract, with lifecycle and maintenance being undertaken through buy-in to a Borough-wide solution. Consequently, Options 2 and 4 are considered further.

### **3.7. Facilities Management Services**

BSF guidance is not prescriptive as to which services a local authority should include as part of the procurement. For PFI projects, there will be a requirement for a minimum level of services, such that the projects comply with the Capital Finance Regulations for 'off balance sheet' treatment.

The Existing PFI contract includes all accommodation related services, with the exception of catering. From a practical perspective, it would make commercial sense for the providers of these services on the Existing PFI estate to provide these services to all the schools in the BSF programme. However, there are a number of issues that require consideration:

- HSSL currently sub-contracts the soft facilities management services (cleaning, caretaking, grounds maintenance and pest control) to Jarvis Accommodation Services (JAS). The future of JAS FM is unclear. However, HSSL has recently confirmed that they intend to continue to use JAS as FM service provider on the PFI schools;
- the first benchmarking exercise on the Existing PFI Contract has been completed;
- the procurement of a service provider for those BSF facilities that are not currently in the Existing PFI scheme will require a further level of competition; and
- the VA Governing Bodies may not wish to use the Council's procured contractor to undertake the FM services in their schools.

In conclusion, the procurement of a facilities management provider for the whole estate is preferable, as this will deliver consistency of service provision and economies of scale benefits. However, the achievement of this objective will depend on the outcome of the issues listed above.

### **3.8. Option Evaluation**

Previous sections have documented the Council's actions and intentions in terms of the procurement of:

- the 6<sup>th</sup> Form Centre;
- remodelling of the Existing PFI schools;
- the remodelling and refurbishment of the VA schools;
- ICT;
- the new 8FE school and PSC; and
- Facilities Management Services.

This section summarises the approach taken to evaluate these options.

The procurement options available to the Council can be evaluated on the basis of a number of high level critical factors. Failure against any of these factors should mean that the procurement option be dismissed. The factors considered are:

- (a) Is the procurement option legally acceptable such that the procurement will not be open to legal challenge?
- (b) Is the procurement option affordable to the Council taking into consideration the implications of the procurement on any existing contractual arrangements?
- (c) Will the procurement option lead to an investment programme that is capable of practical implementation, thus allowing the secondary schools to continue functioning as an educational establishment during the investment phase? and
- (d) Will the procurement option receive stakeholder support?

A high-level options appraisal has been undertaken for each procurement option, using the above 4 criteria – the results of this appraisal are set out in Appendix 3.

In conclusion, the options for procurement of the different Elements of the BSF programme that need to be taken forward to the next stage are:

**Table 8: Procurement Options – Results of High-level Evaluation**

Procurement	Shortlisted Options	
	Option(s)	Detail
The 6 <sup>th</sup> Form Centre	4	Immediate procurement of D&B solution with lifecycle and FM services to be provided by a contractor(s) separately procured under competition.
Remodelling of Existing PFI Schools	4	Procurement through new a D&B contractor, managed by HSSL, with lifecycle and FM services to be provided by HSSL; or
	5	Procurement through a new D&B contractor, not managed by HSSL, with lifecycle and FM services on the upgraded facilities to be provided by HSSL.
Remodelling and Refurbishment of the VA Schools	4	Procurement through a new D&B contractor, with lifecycle and FM services provided by a contractor(s) separately procured under competition.
ICT	2	Procurement of a single ICT MSP to coordinate ICT integration across all Elements of the BSF estate.
The New 8FE School and PSC	2	Procurement through a separate, standalone PFI contract, outside of the Existing PFI contract.
	4	Procurement through new D&B contractor with lifecycle and FM services to be provided by a contractor(s) separately procured under competition.
Facilities Management Services	-	The objective is to secure the services of a single FM contractor to deliver services across all of the BSF estate.

It may be appropriate to revisit some of the options, currently not shortlisted, at a later stage of the business planning cycle.

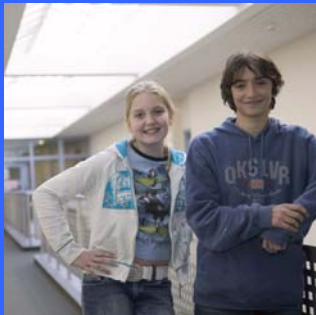
### **3.9. Conclusion**

The shortlisted options identified in Table 8 are the preferred options for the delivery of the different Elements of the BSF programme. Section 4 considers how these individual elements should best be procured as a package and the delivery mechanism that is best suited to deliver these objectives.

# Building Schools for the Future

## Section 4 Delivery Model

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## 4. Delivery Model

### 4.1. Overview

Section 3 considers how each of the different elements of the BSF programme should best be procured in isolation. Such an appraisal of the individual elements is not a standard approach for BSF – the requirement to consider each of the elements individually is largely driven by the need to integrate the BSF programme into the Existing PFI contract.

This section aims to clarify:

- the different delivery models available to the Council and to make an initial conclusion on which model is appropriate;
- how the proposed delivery model will interface with the Existing PFI contract;
- how the proposed delivery model will interface with the provision of ICT;
- a consideration of the legal and contractual issues;
- how the proposed delivery model will enable the local objectives of the BSF initiative to be met; and
- how the proposed delivery models will enable the national objectives of the BSF initiative to be met.

Section 4.2 considers the delivery mechanisms available to the Council.

### 4.2. Delivery Models – Options

The Council has identified the following potential delivery models:

- (i) A Local Education Partnership (LEP) – a procurement of a single partner to deliver all aspects of the BSF programme;
- (ii) A Joint Programme Management Team – with the Council and HSSL combining resources to deliver the BSF programme; and
- (iii) A Dual Programme Management Approach – with the Council appointing a procurement agent to procure the BSF investment on schools outside the Existing PFI programme and the Council working directly with HSSL to deliver the BSF investment on the schools in the Existing PFI estate.

In assessing each of these three models, each model has been evaluated against a number of key criteria. Table 9 summarises this high level appraisal.

**Table 9: Delivery Models - High Level Appraisal**

	<b>Evaluation Criteria</b>	<b>LEP</b>	<b>Joint Programme Management</b>	<b>Dual Programme Management</b>
1.	Retention of risk transfer arrangements on Existing PFI.	No	Yes	Yes
2.	Retain and develop ongoing partner relationships with HSSL	No	Yes	No
3.	Secure estate-wide efficiencies on lifecycle and facilities management by single contractor appointment across whole estate.	Yes	Yes	Possible
4.	Efficiencies through the procurement of a single partner to undertake capital works across the estate.	Yes	Yes	Possible
5.	Minimise the risk of duplication in roles and hence deliver an efficient and effective programme.	Yes	Yes	No
6.	Minimise the time and resources required to establish the delivery framework.	No	Yes	No

Taking each model in turn:

**A LEP Model** is considered to be inappropriate for the Haringey BSF programme for the following reasons:

- (i) to enable a LEP partner to take on responsibility for the PFI schools would require a change of ownership of the existing PFI SPV. As Appendix 2 sets out, the cost of replacing the existing investors would give rise to a significant annual cost. In addition, there is a risk that the banks supporting the PFI project would seek an exit, with further breakage costs;
- (ii) the Council is keen to preserve the risk transfer secured on the existing PFI arrangements. The replacement of the SPV with a LEP would place at risk the risk transfer secured on the Existing PFI, with the potential that either the BSF investment is refocused onto addressing condition issues or the lifecycle costs would increase over the life of the PFI concession. The Council recognises that it faces a similar risk in retaining HSSL in a partnership arrangement, but is more confident that better value for money will be secured by engaging with, rather than replacing, HSSL;
- (iii) the procurement of a LEP will take at least 18 months, whereas the Council is confident that the alternative delivery solution (the JPMT) can be more rapidly established, such that investment can be accelerated. This acceleration of investment will not only accelerate the achievement of educational transformation, but will also reduce the overall cost of the Haringey BSF programme, by avoiding build cost inflation;
- (iv) in the event that a LEP partner was appointed to take on the whole estate, notwithstanding the possible cost implications in (i) above, the BSF funding

required to meet standard BSF outputs would be considerably in excess of those currently set aside for the Haringey BSF programme. Potential LEP partners may recognise this disparity in funding between Haringey and other BSF programmes. This would either make the scheme unattractive to potential LEP partners or unaffordable at the bid stage; and

- (v) HSSL brings significant experience and knowledge of the PFI estate to the JPMT. If a new private sector partner was procured as the LEP, this experience and knowledge would be lost.

**A Joint Programme Management Approach** will enable the Council to deliver the BSF investment alongside the Existing PFI scheme. This approach will provide the Council with the opportunity to protect the risk transfer (or a significant element of it) that was negotiated on the Existing PFI project. In addition, through working in partnership with HSSL, the integration of the BSF investment on the schools in the Existing PFI estate can be undertaken in an efficient and constructive manner.

**A Dual Programme Management Approach** is an alternative to the Joint Programme Management Approach and can be adopted in the event that HSSL did not wish to or do not act as an appropriate partner. The main drawback with this model is that a third party is introduced into the Council–HSSL relationship – this may provide additional complexity and an erosion of the HSSL-Council relationship.

In conclusion, the Council considers a Joint Programme Management Approach is the most appropriate model, enabling the relationship with HSSL to be retained and developed. This model is considered further in the following sections.

#### **4.3. The JPMT – An Overview**

It is proposed to establish a Joint Programme Management Team (JPMT) to facilitate the delivery of the Council's BSF programme in a coordinated and consistent manner across the whole BSF estate.

The JPMT's role will focus on:

- (i) the capture of efficiencies and economies of scale through coordinated programme management and the appointment of specialist contractors to undertake works/services to all facilities in the BSF estate;
- (ii) the management and coordination of the BSF investment in those facilities that are subject to the existing PFI contract in such a way as to optimise this investment and, at the same time, retain the benefits of this pre-existing contractual relationship;
- (iii) the establishment of a team with the capacity and skills to deliver both the BSF investment and, potentially, investment across all education assets in the Borough;
- (iv) the development and delivery of a consistent BSF Output Specification across all facilities;
- (v) the appointment and management of an ICT Managed Service Partner (MSP) to deliver an ICT Managed Service across all facilities and to ensure that the ICT solution is integrated into the design process;
- (vi) the appointment and management of a Design Partner that will convert the BSF aspirations into deliverable outcomes; and

- (vii) to monitor HSSL's contractual obligations in respect of the existing PFI scheme.

#### **4.3.1. Legal Form**

It is not intended that the JPMT is to be constituted as a separate legal body.

The relationship between HSSL and the Council is governed by the existing PFI contract. It is intended to retain this contract, with amendments where appropriate. However, it is not intended that these amendments will materially alter the risk transfer secured on the existing PFI. Once the BSF investment is completed, the amended PFI contract should be sufficient to ensure that the PFI schools continue to be maintained and serviced to an appropriate output specification.

Consequently, it is the period during the implementation of the BSF investment that requires the development of new arrangements, including:

- (i) the role of the parties in determining what the BSF investment will be;
- (ii) the impact of the investment on the existing output specification and other contract terms;
- (iii) the arrangements (including the impact on the ability to service the existing PFI project) whilst the BSF investment is ongoing; and
- (iv) the procedures by which the upgraded facilities are accepted back into the PFI contract.

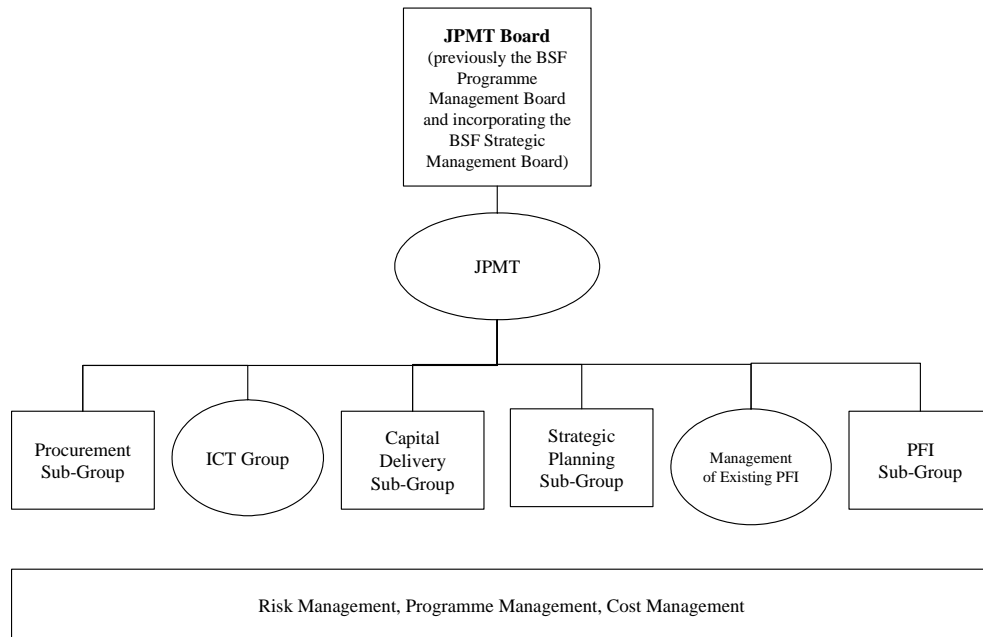
The arrangements required are broadly similar to those expected under a form of strategic partnering – whereby an existing partner is in place and the procuring partner requires (and expects) the cooperation of its partner to undertake additional investment. The Council has reviewed the BSF standard Strategic Partnering Specification and will seek to adopt elements of this agreement in developing a more project specific agreement.

## The JPMT

### JPMT Structure

4.3.2 The proposed structure and participating parties to the JPMT are as set out in Figure 1 below.

**Figure 1: Proposed Structure of the JPMT**



A detailed organogram, setting out membership of each of the sub-groups, is provided as part of the Outline Business Case (OBC).

### JPMT Board

4.3.3 The JPMT Board has the following representation:

- Andrew Travers – Finance Director, Haringey Council - Chairman;
- Gordon Smith – BSF Programme Director, Haringey Council;
- Justin Holliday – Assistant Chief Executive, Haringey Council;
- Kevin Bartle – Finance Manager, Children’s Services, Haringey Council;
- Lidia Lewis – Head of IT Services
- David Williamson – head of Secondary School Improvement and Transformation Manager;
- Sharon Shoemith – Director of Children’s Services, Haringey Council;
- a Partnerships for Schools representative;
- An HSSL representative; and

- a representative from Jarvis Accommodation Services (JAS) to attend, as necessary, in a non-voting capacity, to discuss issues relevant to the operation of the PFI contract.

4.3.4 The JPMT Board meets monthly or, if appropriate, on a more frequent basis. The Board's remit is as follows:

- approve investment proposals submitted by the JPMT;
- agree and source procurement budgets;
- approve selection of Design Teams, ICT MSP, Contractor Partners and other parties to the BSF programme, including advisors;
- ensure the JPMT is properly resourced;
- approve and adopt all business cases;
- mediate between different partners in the JPMT; and
- act as coordinator for stakeholder liaison.

### **The JPMT**

4.3.5 The JPMT meets every 2 weeks and is chaired by BSF Programme Director, Gordon Smith. Each of the sub-groups is represented on the JPMT, together with PfS and relevant Council officers. The remit of the JPMT includes:

- receiving/debating reports from the sub-groups;
- reporting to the JPMT Board;
- agreeing remit of the sub-groups;
- programme management;
- management of procurement budget;
- liaison with stakeholders;
- high level agreement of Strategic Plans; and
- ongoing review of risk management.

The JPMT will have delegated authority to make decisions on project scope as long as any decisions keep the BSF programme in line with the Business Case and Affordability parameters. Any decisions which require amendment to the project scope that results in amendment to the business case assumptions will require endorsement at BSF Board level.

4.3.6 The diverse range of participating parties comprising the JPMT have agreed to work together in a cooperative manner. All these parties recognise that the principal objective of the JPMT is to deliver sustainable improvements in Haringey's Education service. The parties also recognise that commercial arrangements exist between the Council and HSSL and that the positive contribution of HSSL to the JPMT should not

result in disadvantage to HSSL, financial or otherwise. As such, all parties agree, wherever possible and practical, to work on an open-book basis and to resolve any disputes in an equitable, timely and efficient manner.

4.3.7 The activities of the JPMT will be funded by the Council. This funding will extend to the direct costs, incurred by HSSL (and JAS as its subcontractor), in participating in the JPMT – for the purposes of this arrangement, direct costs means the salary and salary related on-costs of a pre-agreed level of resource (excluding overhead cost recovery). In addition to these direct resource costs, the Council will fund:

- 90% of any advisory fees (excluding VAT) incurred by HSSL and JAS as its subcontractor up to a fixed cap. Any fees incurred above this cap will be shared equally between the Council and HSSL.

The principles of cost are agreed. The size of the cap is to be negotiated and will be in the Deed of Variation.

In agreeing to this fee sharing arrangement, all parties agree to work together to minimise the total level of fees and to ensure that all advisors are incentivised to reduce the total level of fees charged to the BSF programme.

4.3.8 HSSL agrees to accurately and equitably distinguish between those costs that they would otherwise incur in managing the existing PFI contract and those costs that are wholly attributable to the participation in the JPMT or arise as a direct result of the BSF programme. Any costs identified as existing PFI management costs will not be reimbursed by the Council.

### **Decision Making**

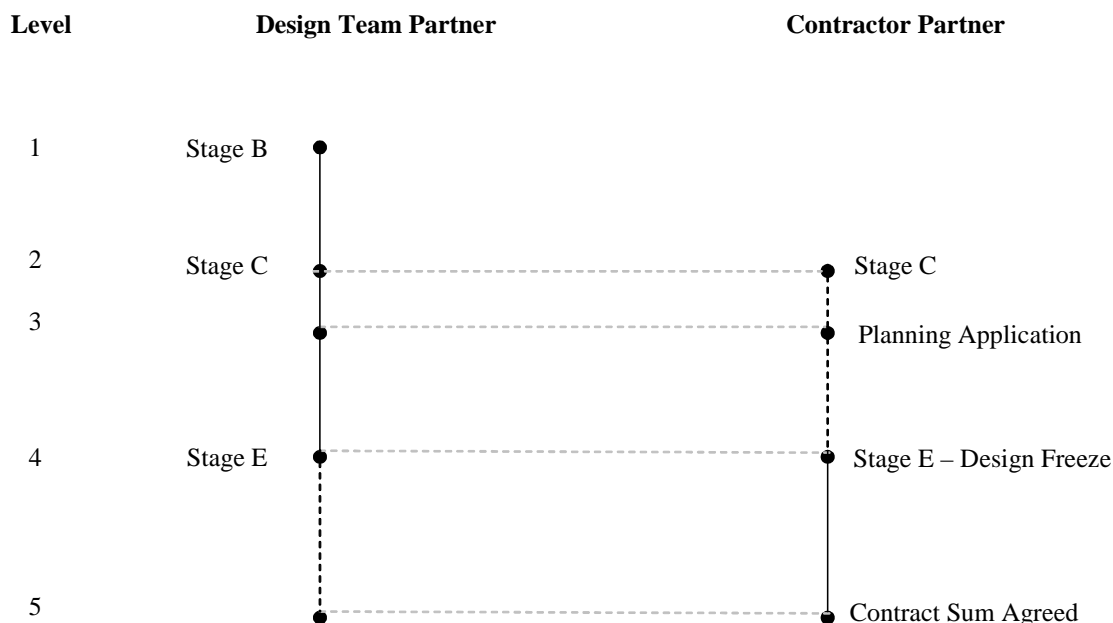
4.3.9 The JPMT has been established in order that all relevant parties have a voice and representation. The Council recognises that there will be conflict between the aspirations and needs of these parties. As client, the Council, through its position as Chair of the JPMT, will have the final decision on how the BSF investment is procured and implemented. In retaining this power to decide on how investment is implemented, the Council recognises that HSSL will require agreement from its funders and subcontractor under the terms of the existing PFI contract. This will be recognised in the Deed of Variation.

### **Design Development Process**

#### **Overview**

4.4.1 The Council is adopting a two-stage design process for the implementation of the BSF investment onto the PFI estate. The process is linked to the design stages as defined by RIBA. The deliverable at each stage will comprise a full report based on the RIBA definition. Figure 2 summarises this process:

Figure 2: Design Development Process



Key: Solid lines show accountability and dotted lines show participation in the process.

4.4.2 The key activities at each level in Figure 2 are as follows:

- Level 1 The DTP is selected based on their response to tender documentation. This tender documentation does not go beyond Stage B design.
- Levels 1 to 2 The DTP will work with the JPMT to develop the Stage B proposals to Stage C. Appropriate surveys of the existing buildings will be commissioned and undertaken at this stage.
- Levels 2 to 3 The selected CP collaborates with the DTP to refine the Stage C design. The refined design is submitted for planning approval.
- Level 4 The CP assumes design risk for the whole package. The CP will coordinate the design and hence will solve design queries between sub-construction design packages.
- Levels 4 to 5 The CP procures its sub-contracts and further refines the design. The DTP acts in a Design Monitor capacity during this phase.
- Level 5 A contract sum is agreed and a design & build contract is entered into between the CP and the Council. Target cost if refurbishment, lump sum if new build.

The process for the appointment of the DTP and CP are discussed in the following sections.

## The Design Team Partner

4.4.3 The Council has commenced procurement of a number of DTPs to form a Framework Panel. The following process has been adopted for this procurement:

- (i) An OJEU was issued on 7 March 2006;
- (ii) Responses to the OJEU and PQQ were received on 19 April 2006;
- (iii) A longlist of 17 organisations resulted. This longlist was required to respond to a set of tender documentation seeking pricing for individual designs under the Framework Agreement and a methodology statement for the sample schemes. The two sample schemes are for the Woodside High School and Saint Thomas More facilities;
- (iv) The evaluation of the proposals was undertaken by an Evaluation Working Group, chaired by the BSF Programme Director, comprising:
  - LBH Children's Services – David Williamson;
  - LBH CPG - David Mulford & Hilary Gillies;
  - Schools Representatives;
  - Architectural & Design Champion – Barron & Smith;
  - LBH's Technical Advisor – AYH; and
  - A representative of CABE.

The advice of HSSL is valued on all aspects of BSF whether this is based on the PFI estate or non-PFI estate.

- (v) Following this evaluation, 3 to 5 DTPs will be appointed onto a framework; and
- (vi) The Framework DTPs will partake in a mini competition, which will involve further clarification and evaluation of their responses to the sample schemes (see (iii) above). The responses to this mini competition will be submitted in early January 2007 and a preferred DTP for each of the sample schemes will be made by end January 2007.

4.4.4 The appointment of the DTPs on future schemes will be subject to a mini competition, involving the DTPs presenting a method statement and design proposal based on a local authority brief for future schemes and the conformation of price in accordance with the framework rates presented in 4.4.3 (iii) above.

4.4.5 The DTPs will be required to provide warranties to LBH, the relevant CP and to HSSL and its funders. The CP's warranty will cover all works and services. As the CP has a design and build role, their warranty is in respect of this and they are also taking responsibility for the DTP.

## **The Contractor Partners**

- 4.4.6 The Council has advertised for Contractor Partners (CPs) to apply to be selected onto a Haringey BSF CP Panel. There will be between 3 and 5 CPs selected onto this Panel. A PQQ will be issued to those organisations that respond to the OJEU notice. A longlist of CPs will be selected. The selection will be based on the PQQ responses. The selection criteria will be drawn-up by the JPMT and agreed by the JPMT Board. AYH will develop high level criteria and seek HSSL's approval prior to issue of the PQQs. The Council considers it unlikely there will a conflict between themselves and HSSL in terms of the criteria. The selection will be undertaken by an Evaluation Team formed of members of the JPMT.
- 4.4.7 A selected longlist of between 6 and 12 will be issued a suite of tender documents. The CPs will be required to provide a full build up of prices for the 2 sample schemes identified in 4.4.3 (iii) above. The tender documentation for the selection of the CP shortlist will include:
- (i) general bid instructions;
  - (ii) the Preferred Design Solution up approximately to Stage C of the two sample schemes;
  - (iii) the Relevant Output Specification for the Preferred Design Solution;
  - (iv) copies of any survey and warranty information, as appropriate;
  - (v) a D&B contract, based on the BSF Standard with relevant amendments;
  - (vi) a phasing and decant strategy. This will include a proposed operating statement, which will set out how the school will remain operational during the BSF programme; and
  - (vii) an ICT and FM brief.
- 4.4.8 The tender documentation will be assembled by AYH and the Council's legal advisers (Eversheds), will be subject to sign-off by the JPMT and ratification by the JPMT Board. This tender documentation will address the need to recognise that there will be a range of investment (new build, refurbishment and redecoration) on each facility and shall ensure the ability of the retained estate to meet the existing output specification is not compromised.
- 4.4.9 The responses to the tender documentation will be evaluated against evaluation criteria drawn-up by the JPMT and agreed by the JPMT Board. The evaluation will be undertaken by members of the JPMT. Between 3 and 5 CPs will be appointed to the framework panel. The proposed membership of this panel will be presented to the JPMT Board for approval and will constitute Haringey's BSF CP Panel.
- 4.4.10 The two CPs who rate highest in the evaluation process set out in 4.4.9 for each of the sample schemes will be awarded those projects and will be responsible for taking projects forward. Future projects will be awarded on the basis of a limited competition between all of the framework CPs based on:
- capacity to deliver;
  - performance on previous contracts awarded in the BSF programme;

- experience of the type of scheme offered; and
- other criteria that are agreed by the JPMT.

4.4.11 It is anticipated that the design and build contract to be adopted will be based on the framework Design & Build contract, as developed by PfS. The Council will enter into the contract with the CP, with appropriate warranties transferring to HSSL on handover of the upgraded facilities. The defects that are manifested at the end of the 12 months period will be corrected by the CP in accordance with normal protocol. HSSL will work with the Council to ensure that the Design & Build Contract issued will provide a security package acceptable to HSSL's subcontractor and funders.

4.4.12 There is no intent to make payments to the CPs prior to appointment of the framework. Payments to the CP, once works have commenced on a given scheme, will be in line with a payment drawdown schedule. The drawdown will be subject to certification by the Employer's Agent appointed by the Council. The Council will make payments directly to the CP.

## **4.5 Roles & Responsibilities of the JPMT**

The successful implementation of the JPMT is dependent on:

- clarity in roles and responsibilities, within the JPMT, from the outset; and
- appropriate and robust risk sharing arrangements between both the JPMT members and the Partner contractors.

There are two high level roles that the JPMT is required to fulfil:

- (i) the procurement of Partner contractors; and
- (ii) programme management and the activities required of a public sector organisation.

These are two very different roles, but roles which overlap significantly, particularly given the existence of the ongoing PFI contract. Each role is considered separately in the following sections.

### **4.5.1 Procurement of Designers and Contractors**

The JPMT will be responsible for procuring:

- (i) Design Team Partner(s) (DTPs);
- (ii) an ICT Managed Service Partner (MSP);
- (iii) Design & Build (D&B) Contractor Partner(s) (CPs);

And potentially:

- (iv) a Lifecycle and Hard Facilities Management (FM) contractor; and
- (v) a Soft FM partner(s).

Individual or consortia of contractors may put themselves forward as potential contractors for one or more of the above activities.

For each of the above procurements, it is important to consider which parties within the JPMT:

- are responsible for developing tender documentation;
- will be responsible for selection of the Partner contractor;
- will be the contracting party;
- will manage the contract and instruct the Partner contractor;
- will assume the risk of cost overruns and/or contractor failure; and
- will, in the case of advisory fees, assume the cost of these fees.

The following paragraphs seek to identify how these roles and responsibilities will be allocated.

#### **4.5.2 Design Team Partners and Education Visioning**

It is expected that the Design Team Partner(s) when selected from the framework, will sit on the JPMT. It is envisaged that the Education Visioning Team will be a member of the JPMT throughout the duration of the BSF investment phase and will be resourced internally.

**Table 10: Procurement Arrangements – Design Team Partner(s)**

	<b>Specification Developed by</b>	<b>Advertised in Name of</b>	<b>Selected by</b>	<b>Contracting Party</b>	<b>Instructed by</b>	<b>Costs Paid by</b>
Non-PFI Facilities	JPMT	LBH	JPMT	LBH <sup>1</sup>	JPMT	LBH <sup>2</sup>
Existing PFI Facilities	JPMT	LBH	JPMT	LBH <sup>1</sup>	JPMT	LBH <sup>2</sup>

**Notes to Table**

1. It is intended that the Design Team Partner(s) will design to RIBA Stage E, but that the Contractor Partner will assume design risk.
2. The design costs will be recovered as part of the BSF programme costs.

HSSL will be consulted, through the JPMT, on the selection of the Design Team Partner(s). The Council will take into account any representations made by HSSL during this selection process and in developing instructions made to the Design Team Partner(s) during the Design Development phase. However, the Council will make decision on which Partner(s) to select and will have full control over any instructions made to the Design Team Partner(s).

#### **4.5.3 ICT Advisor/MSP**

Given the timing of the BSF procurement, the Council intends to procure an ICT advisor to assist in developing initial designs for the sample scheme and to advise on the scoping and procurement of the ICT MSP arrangements. Table 11 sets out the envisaged responsibilities for the procurement of the ICT MSP.

**Table 11: Procurement Arrangements – ICT MSP**

	Specification Developed by	Advertised in Name of	Selected by	Contracting Party	Instructed by	Costs Paid by
Non-PFI Facilities	JPMT	LBH	JPMT	LBH	JPMT	LBH
Existing PFI Facilities	JPMT	LBH	JPMT	LBH	JPMT	LBH

As with the Design Partner(s), the Council will retain control over both selection and instruction of the ICT MSP/Advisor, but will seek advice and comment from HSSL in the JPMT Forum. The programmed timing of the ICT procurement will mean that the MSP will not be selected until the end of the design phases of the first school projects. It is therefore the intention to engage consultancy advice from the BECTA framework to inform the design work such that when the MSP has been procured, the school designs will already include the asset based requirements for the integration of ICT. Full liaison will be maintained at JPMT level to monitor progress of the ICT MSP procurement.

#### 4.5.4 Design & Build Contracts

Table 12 sets out the envisaged responsibilities of this procurement.

**Table 12: Procurement Arrangements – D&B Contracts**

	Develop Specification for 'Sample'	Advertised in the Name of	Selected by	Contracting Party	Managing Works	Risk for Cost Overruns Borne by
Non-PFI Facilities	JPMT	LBH	JPMT	LBH	JPMT	LBH
Existing PFI Facilities	JPMT	LBH	JPMT	LBH <sup>1</sup>	JPMT	LBH

#### Notes to Table

1. The Council will contract with the CP to deliver the BSF investment. However, any warranties in respect of the D&B contracts, relating to schools party to the Existing PFI contract, will be assigned to HSSL. The upgraded facilities will be handed back to HSSL, who will operate these facilities under the terms of a revised output specification.

HSSL will have a more involved role in the selection of the Contractor Partners than with the other Partner Contractor appointments. HSSL will be fully consulted on the development of the specification and other tender documentation and will participate in the development of the evaluation criteria and in the evaluation of tenders.

#### 4.5.5 Lifecycle & FM

It is desirable that the Lifecycle and Hard FM, Caretaker and Help Desk facility activities for all facilities should be delivered by the same contractor however the achievement of this objective is dependant on a number of factors.

Table 13 sets out the envisaged responsibilities for this procurement.

**Table 13: Procurement Arrangements – Lifecycle & Hard FM**

	Develop Specification	Advertised in the Name of	Selected by	Contracting Party	Managing Contract	Risk of Contractor Failure/ Lifecycle Fund Shortfall
Non-PFI Facilities	JPMT	LBH <sup>1</sup>	JPMT	LBH <sup>3</sup>	JPMT <sup>4</sup>	LBH
Existing PFI Facilities	JPMT	n/a <sup>2</sup>	n/a <sup>2</sup>	HSSL <sup>3</sup>	HSSL <sup>4</sup>	HSSL

**Notes to Table**

1. The OJEU notice will seek a partner to provide services to the non-PFI facilities only.
2. HSSL intend to retain JAS to deliver this service. In the event that the HSSL-JAS relationship changes, then there remains the opportunity to procure a single partner to deliver across all the BSF schools. In this scenario, HSSL would play a full role in the selection of the Partner Contractor.

**4.5.6 Soft FM Services**

It is the Council's objective that a single FM provider delivers the cleaning, pest control and grounds maintenance services of all the BSF facilities (with the possible exception of the VA schools). As with the Lifecycle and Hard FM procurement, the achievement of this objective is dependant on the outcome of the issues set out in Section 3.7. Table 14 sets out the envisaged responsibilities for this procurement assuming that, the existing arrangements on the PFI schools remain.

**Table 14: Procurement Arrangements – Soft FM Services**

	Develop Specification	Advertised in the Name of	Selected by	Contracting Party	Management of Contract	Risk & Contractor Failure
Non-PFI Facilities	JPMT	LBH <sup>1</sup>	JPMT	LBH	JPMT	LBH
Existing PFI Facilities	JPMT	n/a	JPMT	HSSL	HSSL	HSSL

**Note to Table**

1. An advert will seek a partner to provide services to the non-PFI facilities.

At this stage, it is likely that there will be separate contractors to service the PFI and non-PFI schools.

**4.5.7 Programme Management & Sponsor Activities**

General arrangements for Programme Management are dealt with in Volume 1 of the OBC, Section 5 'Readiness to Deliver'.

In addition to the contractor procurement activities, the JPMT will undertake a wide range of activities that will require different levels of participation from HSSL. Table 15 summarises these activities:

**Table 15: JPMT Programme Management & Sponsor Activities**

Ref	Activity	Responsibility	Comment
1.	Business Case development and liaison with PfS/DfES	LBH	HSSL will be advised of progress and will provide appropriate input into costings to enable pricing of business cases
2.	Stakeholder Liaison: <ul style="list-style-type: none"> <li>Non-PFI facilities;</li> <li>Existing PFI facilities.</li> </ul>	LBH Joint	HSSL will be party to stakeholder consultation on the Existing PFI facilities.
3.	Stakeholder Approvals	LBH	Obtaining approvals for the BSF investment will be LBH's responsibility for all facilities.
4.	Processing of Outline and Final Planning Applications, as appropriate for: <ul style="list-style-type: none"> <li>Non-PFI facilities; and</li> <li>Existing PFI facilities</li> </ul>	LBH Joint	
5.	Benchmarking Procedures for Soft FM	Joint	This will be a joint exercise, with due recognition of the provisions of the Existing PFI contract.
6.	Utilities Management: <ul style="list-style-type: none"> <li>purchasing arrangements for all facilities.</li> </ul> Volume Management (risk) on: <ul style="list-style-type: none"> <li>Non-PFI facilities; and</li> <li>Existing PFI facilities</li> </ul>	Joint  LBH HSSL	Purchase of utilities should be open book and subject to compliance with wider Council procurement initiatives  Schools will assume this risk. As per existing PFI arrangements.
7.	Insurance During the BSF Investment phase: <ul style="list-style-type: none"> <li>Non-PFI facilities; and</li> <li>Existing PFI facilities</li> </ul> Post BSF Investment: <ul style="list-style-type: none"> <li>Non-PFI facilities; and</li> <li>Existing PFI facilities</li> </ul>	LBH  HSSL  LBH HSSL	Building contractor will take out appropriate insurance  This will be interfaced with the CP insurance scope to be specified in the CP framework agreement.  Likely to be incorporated into wider Council policy As per existing PFI arrangements

Ref	Activity	Responsibility	Comment
8.	Client-side Contract Management and Monitoring: <ul style="list-style-type: none"> <li>• Non-PFI facilities; and</li> <li>• Existing PFI facilities</li> </ul>	 LBH LBH	Monitoring of performance across all facilities will be the responsibility of LBH. This will be conducted in an open and transparent way through the JPMT.
9.	Strategic Development of sites and submission of bids for capital to fund future co-location of services	Joint	Both parties will be responsible for discussing and assisting in the development of bids for targeted capital

The 'Responsibility' column specifically allocates roles within the JPMT. The emphasis here is on joint working and collaboration and **not** the removal of accountability from respective parties.

#### 4.6 Legal & Contractual Issues

A number of legal and contractual issues have been identified in respect of the proposed formation and remit of the JPMT. These issues are set out in table 16.

**Table 16: Legal & Contractual Issues**

	<b>Legal Consideration</b>	<b>Initial Advice/ Status</b>
1.	Is it appropriate for HSSL to act as an advisor and consultee in the JPMT and can HSSL be remunerated for this role?	Legal advice suggests that HSSL can be appointed to work alongside the Council in the JPMT and can receive appropriate remuneration for this role.
2.	In the event that the Council procures the new 8FE school and the PSC through PFI, would HSSL and/or the contractors selected by JPMT be able to bid to become the Council's PFI partner for this work?	The Council is satisfied that, should a PFI procurement be pursued for these facilities, that an open and transparent procurement would enable HSSL to bid for this work without the risk of challenge. However, at this stage, it is not envisaged that a PFI procurement will be adopted.
3.	Funder approval for the impact of the BSF investment on the existing PFI scheme will be required.	SMIF informs the Council that this issue was discussed as part of the acquisition of HSSL. Funder approval for the approach outlined in this PBC will be secured in due course.
4.	Given the Council does not have certainty of lifecycle funding for the non-PFI facilities, what length of contract will the Council seek in respect of the lifecycle, Hard FM and Soft FM services?	The tender documentation will seek clarity on how to optimise the contractual arrangements. The Council remains committed to a whole life approach to all the BSF assets.
5.	What contract term is envisaged for the ICT MSP?	This will be determined once the ICT specification is finalised and may be subject to further consideration through a competitive dialogue with potential partners.
6.	The Design & Build Partner Contractors will be appointed on the basis of some form of framework arrangement so that future investment can be undertaken by this contractor without the need for further procurement. Will these contractors be granted exclusivity? What term will the framework arrangement be?	It is the intention to introduce as much flexibility into the appointment as possible, such that the award of future work can be undertaken with maximum efficiency without the loss of the benefits of continuous improvement through partnering and, at the same time, retaining competitive tension.

The legal and contractual issues set out in are subject to ongoing review and consideration. At this stage of the Business Planning process, the Council has not identified any legal or contractual issues which would prevent it from proceeding with the envisaged JPMT model for delivery of the BSF investment.

The interface issues and the contractual method anticipated for dealing with them are summarised and set out in Table 17.

**Table 17: Interface Issues Contractual Arrangements**

Party	LBH	HSSL	DTP	D&B	ICT	FM
LBH		Deed of Variation to PA	Appointment under DTP Framework Agreement	Appointment under D&B Framework Agreement	Appointment under ICT MSP agreement	Appointment under ICT MSP agreement
HSSL	Deed of Variation to PA		Collateral Warranty	Collateral Warranty or Interface Agreement (1)	Collateral Warranty or Interface Agreement (3)	N/A
DTP	Appointment under DTP Framework Agreement	Collateral Warranty		Collateral Warranty	Collateral Warranty	N/A
D&B	Appointment under D&B Framework Agreement	Collateral Warranty or Interface Agreement (1)	Collateral Warranty		Collateral Warranty or Interface Agreement (2)	Collateral Warranty or Interface Agreement (4)
ICT	Appointment under ICT MSP agreement	Collateral Warranty or Interface Agreement (3)	Collateral Warranty	Collateral Warranty or Interface Agreement (2)		Collateral Warranty or Interface Agreement (5)
FM	Appointment under FM Agreement	N/A	N/A	Collateral Warranty or Interface Agreement (4)	Collateral Warranty or Interface Agreement (5)	

#### 4.7 Accounting Issues

The Council has commenced a review of the accounting implications of the BSF programme.

#### 4.8 Meeting Local Objectives

The Executive Summary of the Council's SBC sets out 5 strands of strategic focus on which transformational change is based. Strand 5 – The Haringey School – is relevant to this appraisal. Table 17 sets out the desired outcomes for Strand 5 and how the JPMT Model assists in the delivery of these objectives.

**Table 17a: Meeting Local Objectives**

Outcomes	Will the JPMT Deliver the Outcome?
Build a new 6 <sup>th</sup> Form Centre in the east of the Borough by September 2007	This is currently in the Capital Delivery Phase and due to complete by August 07
Make an early and significant investment to transform the provision and use of ICT	The appointment of the ICT partner is viewed as a priority and procurement will commence in 2006
Enable secondary schools to provide extended services	By linking all schools into a common programme through the formation of the JPMT, this outcome should be achieved
Reduce the forms of entry in east of the Borough schools so that they can better meet the complex needs of young people that they serve	This outcome is programmed in as a Phase 1 scheme. The formation of the JPMT will enable a rapid appointment of a design team to commence detailed feasibility studies
Begin Phase 1 development of BSF 'keys to success' schools and establish an inclusive Learning Campus	The JPMT will work on identifying the form and nature of the Learning Campus
Include all other schools in Phase 2 of BSF	The JPMT enables the PFI schools to be accommodated into the BSF programme
Build a new school to open in September 2010 with Year 7 students	The JPMT will consider the most appropriate timing and procurement process for this facility
Include all Special schools within mainstream secondary schools by 2008	The inclusion strategy will be adopted by the JPMT and will form part of the design development process
Establish resourced provision attached to two secondary schools for students who are blind or partially sighted, and for those who have autistic spectrum disorders	This strategy will be adopted by the JPMT and included in the design development process
Develop on-site support units in all schools to enable more students with social, emotional and behavioural difficulties (SEBD) to received multi-agency support	This strategy will be adopted by the JPMT and included in the design development process
Develop the current off-site provision for students with severe and complex SEBD to provide highly specialised services to a smaller number of students	This strategy will be adopted by the JPMT and included in the design development process
Increase the number and range of specialisms in Haringey secondary schools, with facilities shared by other schools	The JPMT will work with Stakeholders to deliver the designed specialisms. The JPMT may be in a position to promote vocational training and seek Partner Contractors to propose appropriate initiatives as part of the partner selection process
Establish up to two training schools to provide initial teacher training and continued professional development	The JPMT will procure appropriate contractors under framework agreements, such that these additional premises can be efficiently delivered without the need for a further procurement

## 4.9 Meeting National Objectives

Page 12 of the launch document for BSF sets out what the BSF initiative is seeking to achieve. Table 18 identifies these objectives and makes comment as to how the Integrated Procurement Model assists in the delivery of these objectives:

**Table 18: National Objectives of the BSF Initiative**

	Objective	Will the JPMT Deliver the Outcome?
1	Reform in the way that funding is allocated	This objective is being met by the approach to funding the BSF initiative, as managed by PfS.
2	Reform in the way that we achieve education transformation	The delivery against the outcomes set out in 4.8 will achieve the desired transformation
3	Reform in the way that we design schools	The JPMT will appoint a Design Team(s) who will work in partnership with the JPMT to develop solutions for the remodel and refurbishment schemes.
4	Reform in the way that we procure schools buildings and facilities	The BSF programme itself is reform in procurement. The JPMT Model seeks to use the existing relationship with HSSL to ensure that the BSF programme can sit alongside the Existing PFI programme.
5	An historic opportunity for people to agree a clear and innovative vision for education across their area	The development of the SBC has enabled stakeholders to buy into and inform this vision. Being a Borough-wide initiative we have a clear unity of purpose plus mutual duty.
6	Achieve a step-change in the quality of school buildings for every secondary pupil	The BSF output specification will facilitate this.
7	Move away from 'patch and mend' to 'rebuild and renew'	The Council has already moved away from patch and amend through its existing PFI programme, which focused on delivering and sustaining improvements to the condition of the participating schools. BSF moves this on to address issues of suitability and sufficiency of accommodation across the entire secondary estate. The JPMT Model allows efficiencies in procurement in that the condition issues remain addressed by retaining the PFI contract.
8	Create an environment in which to achieve education transformation and innovation	The BSF process – linking the SBC to the project outcomes – will encourage innovation and transformation through the JPMT.

In summary, the Council considers the JPMT Model will facilitate the achievement of the national objectives of the BSF programme.

## 4.10 Market Interest

The Council has a longlist of some 17 organisations who have been invited to tender for the Design Team Partner framework agreement.

In respect of the Design & Build contractors, the JPMT will undertake much of the design and programme development work. As such, the bid costs involved in achieving partner status as a contractor on this BSF will be low and, consequently, it is expected that there will be significant interest from a range of service providers. In

particular, the Council is aware of significant interest from medium sized regional building contractors. This interest is evidenced by the high number of contractors who applied to be on the Council's recently procured contractor panel also indicated their interest in the BSF programme. The Council is confident that the clear appetite in the market for the work will be evidenced by healthy competition during the CP framework procurement thus obviating the need for a bidder's day or similar.

#### **4.11 Conclusion**

The Council is confident that the JPMT Model is the most appropriate model for delivering the Council's BSF programme and that the relationship with HSSL is such that this model is capable of successful implementation and will deliver value for money against alternative models.

A Draft Implementation Protocol has been prepared and included as Appendix 5 to this PBC. This document sets out in more detail, the basis of the relationship between the Council and HSSL, thus establishing the ground rules under which the two parties will work together in the JPMT.

# Building Schools for the Future

## Section 5 Value for Money

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## 5. Value for Money

### 5.1. Overview

This section considers whether the proposed procurement of the BSF investment through the JPMT will deliver VFM. This VFM is considered at two levels:

- firstly, whether the procurement approach is one that is likely to enable the Council to deliver an efficient procurement with optimal risk transfer and optimal outcomes - a Qualitative VFM Assessment; and
- secondly, to assess whether the JPMT Model will deliver better VFM than an alternative Local Education Partnership (LEP) procurement – a Comparative VFM Assessment.

Each of the VFM assessments – the Qualitative and Comparative assessments - are discussed further in the following sections. In addition, Section 5.4 considers how the Council will deliver continuous improvement and VFM into the procurement process.

### 5.2. Qualitative VFM Assessment

The Qualitative assessment of VFM is based on Treasury Guidance – HM Treasury Value for Money Assessment Guidance – August 2004. This guidance is for PFI projects, so there is no specific requirement for the Council to complete such an assessment. However, the approach taken by the guidance is appropriate to the BSF programme, particularly as the BSF investment for Haringey is so closely linked to the existing PFI contract.

**Table 19: HM Treasury Qualitative VFM Appraisal**

Review Focus	Is a JPMT Model Procurement Appropriate?
<b>Viability</b>	
Achievement of objectives & Outputs	<p>The contractual outputs/requirements will be based on existing best practices and the responses to these outputs and requirements will be capable of robust assessment.</p> <p>The contracts envisaged will be based on the achievement of set requirements of a standard BSF output specification. Each contractor selected will be selected on their ability to work with other partners selected to undertake other BSF related services. For example, partners undertaking refurbishment and remodelling works will be required to liaise with and respond to the requirements of the lifecycle partner. These relationships will be facilitated through the JPMT.</p>
Operational Flexibility	<p>It is the Council's objective to secure operational flexibility through the appointment of a single service provider to undertake each specific service over the whole BSF estate. The service provider will be contracted directly to HSSL for the PFI schools and to the Council for the non-PFI schools. If the appointment of a single provider is not achieved, then consistent contracts will be negotiated and all service providers will be subject to a consistent benchmarking process.</p>

Review Focus	Is a JPMT Model Procurement Appropriate?
Equity, Efficiency & Accountability	<p>The services will be secured and delivered in such a way as to mirror the existing PFI contractual arrangements. The JPMT Model will seek to deliver efficiencies across the whole estate, for example, through the joint procurement of contractors to service the whole life needs of both the PFI and the non-PFI estate.</p> <p>The ethos of the JPMT will be one of transparency between the participating parties. The JPMT is considered to be the appropriate forum to enable both the Council and HSSL to be accountable for their respective responsibilities.</p>
<b>Overall Viability</b>	<p><b>The S151 Officer is satisfied that, at this stage of the procurement, the JPMT Model will deliver a procurement that is based on a clear and transparent procurement process and that the contracts to be negotiated will deliver the appropriate level of flexibility within the existing strategic and regulatory framework</b></p>
<b>Desirability</b>	
Risk Management	<p>A key role of the JPMT will be to manage risks. By involving HSSL in the development of the design solutions on the PFI schools, the Council is seeking an open and transparent methodology for the pricing, allocation and management of the risk. The JPMT will adopt the rigour of risk management processes used on PFI schemes, but with a more equitable and open allocation of these risks to the parties best placed to manage them.</p>
Innovation	<p>Clarity on the financial constraints on the procurement will result in innovation being focused on deliverable outcomes. The design development approach to be adopted will facilitate a culture of continuous improvement and, at the same time, enable a longer design development period which will allow designers to work with all stakeholders in the push to deliver innovative solutions.</p>
Service Provision	<p>It is the Council's intention to procure partners to undertake all of the accommodation services, with the exception of catering. This should deliver efficiencies and continuity of service.</p> <p>Catering is excluded from the existing PFI scheme on the basis that schools value the existing scheme and that Best Value is being seen to be delivered on this service.</p>
Incentive & Monitoring	<p>The desired outputs of the BSF programme, in respect of the accommodation and ICT services, are capable of being articulated through a contract and these outputs will be both unambiguous and measurable.</p> <p>The services can be assessed against an agreed standard across the whole BSF estate. It is the intention to have a performance regime for both PFI and non-PFI assets.</p>

Review Focus	Is a JPMT Model Procurement Appropriate?
Lifecycle Costs & Residual Value	<p>The Council intends to develop a lifecycle and maintenance regime for all of the BSF assets. This regime will mirror the existing arrangements for the PFI schools albeit with some flexibility to enable schools to procure a level of service that fits within their budgetary constraints. It is also the Council's aspiration that specific services will be undertaken for all schools by the same contractor.</p> <p>The integration of the design and build phases with lifecycle and whole life asset management will be managed by the JPMT.</p> <p>It is intended to obtain prices and service methodologies for a contract term running to 2025.</p>
Price Certainty	<p>Through the adoption of robust project development techniques, the JPMT will develop tender documentation and partnering arrangements which will deliver a high degree of price certainty on each element of the BSF investment programme.</p>
<b>Overall Desirability</b>	<p><b>The S151 Officer is satisfied that, at this stage of the procurement, the benefits of the JPMT Model procurement should optimise risk and reward and so deliver an efficient, VfM procurement.</b></p>
<b>Achievability</b>	
Transaction costs & In-house Capacity	<p>Both the Council and HSSL are committed to ensuring that the JPMT is adequately and appropriately resourced/supported.</p> <p>Appropriate budgets have been set aside to fund the operations of the JPMT.</p>
Market interest & Competition	<p>The proposed subcontracts will be attractive to a range of private sector contractors. As the procurement disaggregates the services, the Council envisages that there has been significant interest in the procurement from regional contractors and operators. This interest will lead to healthy competition.</p>
Risk Transfer	<p>It is the intention that the JPMT Model ring fences the risk transfer on the existing PFI contract and, at the same time, will encourage contractors to deliver a consistent standard of service across the non-PFI schools. Detailed discussions have commenced with HSSL to ensure that risk transfer is optimised.</p>
Fit with Existing Partnering Arrangements	<p>The JPMT Model sits alongside and develops on the existing relationship with HSSL, to the benefit of the project as a whole.</p> <p>The JPMT Model has also been developed to enable the Council to undertake more of the project/programme management itself, as the BSF programme progresses, if circumstances dictate.</p>
<b>Overall Achievability</b>	<p><b>The S151 Officer is satisfied that, at this stage of the procurement, the delivery of the BSF programme through a JPMT Model is achievable, given the Council's in-house resources and the attractiveness of the proposals to the market.</b></p>

The Council is confident that the JPMT Model is the most appropriate vehicle through which to secure value for money on its BSF programme. This value will be secured through strong project management and appropriate and commercial risk transfer.

### 5.3. Comparative Appraisal

In order for a meaningful quantitative VFM appraisal to be undertaken, there needs to be an alternative model against which to compare the JPMT Model. A LEP procurement would offer an alternative model.

This comparative appraisal calculates an annual cost to the Council, over 20 years – the Incremental Annual Cost. This Incremental Annual Cost is the additional cost that the Council will need to bear should it seek to establish a LEP and, in so doing, trigger a voluntarily termination or similar restructuring of the existing PFI contract. In assessing whether an alternative model would secure better VFM than the JPMT Model, the alternative model would have to deliver VFM benefits at least equivalent to the Incremental Annual Cost.

The methodology adopted to calculate the Incremental Annual Cost is summarised in Table 20. The detailed calculations are included as Appendix 2.

**Table 20: Calculation of the Incremental Annual Cost**

<b>Cost Category</b>	<b>Calculation</b>	<b>Incremental Annual Cost £m</b>
Break Costs of the existing PFI	<p>See Appendix 2.</p> <p>The Break costs are based on the following principles:</p> <ul style="list-style-type: none"> <li>the whole PFI contract is voluntarily terminated;</li> <li>the break assumes a current interest rate swap at 4.5%;</li> <li>the junior debt and share capital is valued at the project IRR of 6%;</li> <li>redundancy costs are assumed to be £100,000 – this would need to be confirmed; and</li> <li>loss of profit for sub-contractors, assume payout would be for next 5 years (Jarvis FM are entitled under their subcontract to damages payable as if a repudiatory breach of contract had occurred; so this may well understate their claim).</li> </ul> <p>The total compensation due to terminate the existing PFI is estimated at £52.5 million. The cost of servicing a PWLB loan for this amount at 4.5% is an annual cost of £4.0 million.</p>	4.0
Cost of whole life services	<p>See Appendix 2.</p> <ul style="list-style-type: none"> <li>Lifecycle: the remaining lifecycle fund in the PFI model is compared against the lifecycle cost as prescribed by PfS for BSF projects. The difference between the two funds is then annualised over the remaining 20 years of the PFI concession;</li> <li>Reactive maintenance service: the current annual allowance in the HSSL model is compared to the m<sup>2</sup> rate typically used in current PFI projects; and</li> <li>Other: the Council has not revisited the utilities and insurance aspects, as any calculation would be highly complex. However, it is clear that any re-letting of the PFI contract would see increase in both these costs.</li> </ul>	1.2
<b>Costs of Procurement</b>	<ul style="list-style-type: none"> <li>The Council has not recognised any incremental cost between procuring a new partner and the establishment of the JPMT. The rationale for this</li> </ul>	1.0

<b>Cost Category</b>	<b>Calculation</b>	<b>Incremental Annual Cost £m</b>
	position being that it is likely that the Council will need to pay SMIF a fee for participating in the JPMT. However, it is not anticipated that the payment to SMIF will be as much as the LEP set-up costs.	
<b>Total Annual Incremental Cost</b>		<b>5.2</b>

In conclusion, any alternative to the JPMT would need to deliver VFM benefits equivalent to £5.2 million (2005 values) per annum for 20 years, or, a benefit, in capital investment terms, in excess of £50 million. As the Council considers the JPMT model itself would deliver VFM benefits by minimising procurement costs, the potential for any alternative model to deliver the level of benefits required to cover the Incremental Annual Cost is viewed as remote.

The Council, in recognising the benefits of the national LEP model, has sought to develop the JPMT Model in such a way as to at least deliver the objectives of the LEP procurement. Appendix 4 sets out the Council's response to the PfS paper on the Justification for the LEP, dated March 2005 and issued to a number of Wave 1 authorities. In completing this analysis, the Council is confident that the JPMT Model will deliver at least equal, if not better, VFM than the LEP model. This assertion, together with the Incremental Annual Cost issue identified above, supports the Council's decision to proceed with the procurement using the JPMT Model.

#### **5.4. VFM Management**

The Council will strive to deliver continuous efficiencies in the way that it procures the BSF programme. Steps have been taken, and will continue to be taken, to introduce the following processes to meet this objective:

- design and build costs will be subject to ongoing benchmarking against other Council activities and PfS benchmarking indices;
- the JPMT will conduct workshops with its partners on emerging design and construction techniques. These workshops will draw on the experiences of HSSL (SMIF) on other schemes nationally;
- the JPMT will seek its supply chain of contractors to meet regularly, to identify areas for continuous improvement and to develop incentivised models to deliver this improvement;
- the ICT MSP will be asked to review the facilities management activities with a view to implementing ICT-driven efficiencies; and
- the selected contracting partners will be offered, on a non-exclusive basis, other contracts – this extension of their mandates should encourage realisation of economies of scale.

VFM management will become a standing agenda item on the BSF Project Board meetings. The Council will instil into all its partners the requirement to continuously review the way that they approach the investment programme.

## **5.5. Conclusion**

The Council is confident that a well managed procurement approach will deliver value to the public purse. The focus is very much on establishing a structure in which roles and responsibilities are clear and where the benefits of the existing partnership with HSSL are retained and enhanced.

Given this focus on partnering, the Council is clear that it would not make commercial sense to terminate or otherwise materially amend the existing PFI arrangements. Although the relationship with HSSL is governed by a PFI contract, the Council views the existence of the PFI contract as complementary to the BSF programme, and not a barrier to achieving the objectives of the BSF programme.

# Building Schools for the Future

## Section 6

### Risk, Risk Management & Project Management

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## 6. Risk, Risk Management & Project Management

### 6.1. Overview

Effective risk management is the key to delivering a robust, VfM investment programme. In developing its procurement strategy, the Council has drawn upon its experiences of a range of major investment programmes, including its existing education PFI project.

This section summarises the key risks in that they have identified during the development of the JPMT and the completion of this PBC. The section goes on to document the procedures in place to allow the Council to capture project risks & to manage and mitigate against these risks and to identify Project Management arrangements generally.

### 6.2. Procurement Risk

Table 21 summarises the high level risks of the Haringey BSF procurement and the steps taken to mitigate and/or manage these risks:

**Table 21: Procurement Risk and Mitigation/Management**

	<b>Perceived Procurement Risk</b>	<b>Management/Mitigation</b>
1.	JPMT is inadequately resourced, such that the projects are not delivered to the programme	The Council has appointed a senior individual as Programme Director to lead their input on the JPMT. In addition, two further full time secondments have been made to the JPMT. HSSL has also identified staff resources to support the JPMT. The Council is committed to developing its existing in-house capacity as part of the wider objective to manage Borough wide assets. Current and proposed arrangements for managing the programme are set out in section 5 of volume 1 of the OBC
2.	The integration of ICT is not achieved through the procurement of an ICT MSP separate from other activities	The early appointment of an ICT MSP is viewed as a beneficial approach. The MSP will be able to play an active role in the design development process. The Council views this role as a catalyst to delivering BSF transformation, with their membership of the JPMT as a key requirement.
3.	The whole life costing approach is frustrated by the appointment of separate partners for the capital investment and lifecycle activities	A key role of the JPMT is to integrate the different partners, similar to the role played by an SPV in a traditional PFI project. As such, the participation of HSSL on the JPMT will add considerable value and will greatly assist in delivering this integration. In addition, the partner selection process will major on the ability of organisations to deliver whole life solutions.
4.	By establishing the JPMT, HSSL is in a position to amend the risk profile of the existing PFI contract, thereby eroding the VfM of this contract	The operation of the JPMT will need to be on an open book basis. The Council is confident that HSSL's involvement will create value from the BSF investment. Both parties acknowledge that there are finite resources available for these facilities.  The Draft Implementation Protocol (Appendix 5), establishes the mechanism for determining the scope of investment on the PFI schools. This document, once

	<b>Perceived Procurement Risk</b>	<b>Management/Mitigation</b>
		agreed, will dictate how this will translate into a revised output specification.
5.	The Council and HSSL (through the JPMT) do not reach agreement on the choice of partner contractors	The evaluation process will be open and transparent with evaluation criteria agreed by the JPMT before bids are received. Partners will be required to provide collateral warranties appropriate to both the Council and HSSL. As the Council's and HSSL's objectives are aligned, it is improbable that this situation will occur. In the event that it does, the JPMT Board will need to consider any objections and act accordingly.
6.	The BSF investment in the existing PFI schools does not deliver savings in lifecycle that should release funding from the existing PFI scheme to the benefit of the BSF programme	The Implementation Protocol (Appendix 5) addresses this issue in detail.
7.	No market interest from contractors	The Council has recently made appointments to its contractor panel. There was significant market interest in this panel. The JPMT Model means a low entry cost for contractors which will make this scheme attractive.
8.	Economies of scale on the BSF investment are not achieved due to the procurement at contractor level, as opposed to an integrated partner level	The economies of scale on the BSF programme nationally will largely be secured at the contractor level. The selection of contractors will focus on the ability and appetite of these contractors to deliver continuous improvement and value management. The JPMT Model allows regional contractors to build capacity and a track record, which will enable them to participate on other London-wide capital programmes.
9.	Stakeholder Approval for the BSF programme is not secured	A key role of the JPMT will be to engage closely with all relevant stakeholders from the start of Design Development through to operation of the BSF facilities. The JPMT model has been specifically designed to optimise this stakeholder liaison process.

The Council has reviewed and considered the key procurement risks and is confident that the risks are all capable of management and or mitigation.

### **6.3. Risk Management & Risk Mitigation**

In order to ascertain the risks that could affect the BSF programme generally, the Council has allocated the responsibility for risk identification and risk management to the JPMT Board.

Section 6 of the Strategic Business Case sets out the Council's risk assessment methodology, risk logs and their current assessment for the programme level. The Council's risk management processes will ensure that, as the programme and procurement develops, other risks may be identified, and then allocated to Strategic, Programme or Project level.

The JPMT Board has the task of ensuring that risk management is being actively pursued. It will be on the agenda at each monthly meeting of the JPMT Board. A monthly written report will be submitted to the JPMT Board indicating action taken to reduce/remove risks. The JPMT will monitor the ongoing Risk Register, considering Strategic and Programme risks. The JPMT Board will be tasked to mitigate or remove particular risks. Programme and Project level risks will be monitored fortnightly. If a risk has the potential to cause a major problem to the process, then it will be referred to the JPMT Board for a decision on action to deal with that risk. For all risks, an individual risk and control assessment sheet will be kept. These are fluid documents, which will change to reflect the current circumstances and actions to mitigate/remove the risk.

Site-specific risk logs will be developed as part of the D&B procurement process.

The Council views the Gateway Review Process as an important part of the overall risk management process. This regular, formal, independent review of the progress of the procurement and of the Council's risk management procedures is viewed as a valuable addition to the Council's existing procedures.

## **6.4. Project Management**

### **6.4.1. Experience**

The Council can demonstrate significant experience in delivering a substantial education PFI project. The project commenced in 1998 and was completed in Summer 2003. The management and governance arrangements for the project demonstrate the capacity to deliver a large scale capital project managed on a multi-site basis. The building and refurbishment phase of the PFI arrangement is now complete. External validation of the process can be found in an Audit Commission Review "Overview of PFI Schools Management arrangements Haringey London Borough Council" (October 2003).

Key members of the Project Teams responsible for the delivery of these initiatives are available to support the delivery of the BSF programme.

### **6.4.2 Advisors**

The Council will engage advisors as appropriate. Currently, the following advisors have been engaged:

- BSF Programme – Partnerships for Schools and DfES;
- Technical Advisers - AYH
- Programme Management – MACE
- ICT and Education – PLACE;
- Legal – Eversheds; and
- Financial – ABROS.

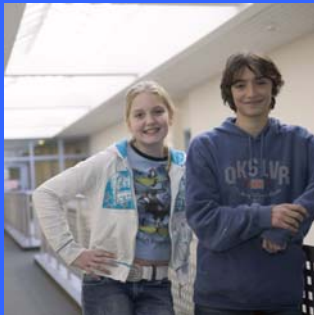
## **6.5. Conclusion**

The Council has already started to implement rigorous risk management procedures. The experience and capacity of the Project Team, supported by external advice and strong project management procedures, should enable the procurement risks to be effectively managed and mitigated.

# Building Schools for the Future

## Section 7 Stakeholder Support

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## **7. Stakeholder Support**

### **7.1. Overview**

There has been extensive consultation with all stakeholders on the BSF proposals. Details of the current status of this consultation process is set out in the SBC. This section of the PBC focuses specifically on the stakeholders support for the JPMT model.

### **7.2. Council Decision Making Process**

Senior Officers have been closely involved in the development of the JPMT model. This PBC has been endorsed by the BSF Strategic Management Board, as part of its remit to approve and issue the Strategic and Outline Business Cases.

### **7.3. Council Support**

The Council is committed to supporting the existing HSSL relationship. The JPMT model has the support of the Council's senior executive.

### **7.4. School Support**

The schools are keen to have a single point of service delivery across the whole BSF estate. The PFI schools are satisfied with the service provided by HSSL. Schools also welcome the opportunity to be subject to a single ICT vision.

### **7.5. SMIF/HSSL Support**

SMIF has given its in principle support for the establishment of the JPMT and to joint working arrangements with the Council.

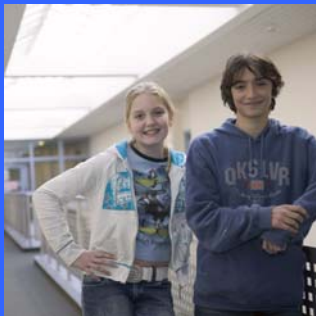
### **7.6. Conclusion**

All relevant stakeholders have given their support to the JPMT Model. There is a willingness from all parties to accelerate the partner procurement and to commence BSF investment at the earliest opportunity.

# Building Schools for the Future

## Appendix 1 Legal Advice

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Andrew Travers	Date	15 August 2005
Haringey London Borough Council	Your Ref	
Alexandra House	Our Ref	LUPTONJ/046735-010027
10 Station Road	Direct Dial	0161 831 8270
Wood Green	Direct Fax	0161 831 8888
London N22 4TR	E-mail	jameslupton@eversheds.com

Dear Andrew

### **Procurement of BSF Partner**

I refer to our meeting on 18 July 2005 where we discussed the possibility of awarding contracts to HSSL and extending the scope of the existing contractual framework within which the majority of Haringey Secondary Schools are currently maintained.

You asked for a definitive view as to:

- whether the Council could extend the scope of the existing arrangement with HSSL in order to incorporate a number of additional facilities including the new college facility, the new secondary school facility and the VA school facilities; or
- whether any further procurement processes would need to be undertaken prior to conclusion of this matter.

Reference was made at the meeting to the original Official Journal notice and the scope of the original procurement as to whether it was sufficiently broad to enable the envisaged works and services to be incorporated within it. We also briefly talked about the briefing note provided to the Council on linked issues back in Oct/Nov 2003.

### **Can the Council extend the scope of the existing contract with HSSL?**

First of all it should be noted that procurement law is not an exact science. Because of the purposive nature of the Directives it is often difficult to be certain as to whether a particular course of action would or would not give rise to a successful challenge. Moreover, as the various elements of this scheme are capable of being delivered separately it will be necessary to establish whether the existing relationship can be extended to deliver each of those elements in turn and if not, what alternative solutions can be put in place to deliver such elements of the scheme.

As already indicated there are perhaps three distinct categories of requirements envisaged under the BSF project:

1. Variations to the existing facilities (being new works, changes to lifecycle and additional services);
2. Additional new premises, with lifecycle and services (the new school); and
3. Refurbished and new elements to the VA Schools and the College (involving new contracting authorities not envisaged under the original procurement - the VA School and the North London LSC).

Before dealing with the distinct categories of activity envisaged it is perhaps worth revisiting the scope of the original procurement.

The Official Journal Notice was published on 19 September 1998 and advertised a potential contract for property management services, building cleaning service, ground maintenance services, building repair and maintenance amongst other services with an estimated value in the region of £7m per annum. The awarding authority in this particular instance was Haringey London Borough Council and the notice contained information relating to the intention to award a PFI contract for the provision of new secondary school facilities and/or refurbishment of existing ones with subsequent facilities management services in the Borough of Haringey.

The actual contract awarded was for the above services for just 8 of the maintained schools within the responsibility of the Council, with both VA schools opting out of the procurement. The contract duly provided a mechanism for variations to be made as it was always envisaged that the Contractor would need, over a 25 year contract, some flexibility to manage the schools portfolio.

### **Variations to the Existing Facilities**

Dealing first with the variation to the existing arrangement in respect of the existing premises (number 1 above). This would appear to have been envisaged from the original procurement, which provided a certain amount of flexibility.

However, the fact that further services might have been contemplated in a procurement does not simply allow for such to be contracted in all cases. The position is somewhat more complex.

Various scenarios can occur. In some instances, the original procurement expressly provides that at certain points in the future additional services will be provided, i.e. such services could be more or less identified at the time and to that extent need not be treated any differently from the initial services contracted for.

In other cases, the foresight of the contracting authority is not so clear, but nevertheless it assumes that additional services may be required in the future, over and above those contemplated with certainty at the start, and therefore leaves open the door for such services from the original supplier without further procurement, but within limits. Those limits may depend upon the degree to which the contracting authority has signposted its intentions. If it has been clear in the original contract

notice and original procurement documents as well as within the contract, this provides a stronger basis than simply allowing within the contract itself for variations to permit additional services. In this instance, the Council would fall into the latter scenario and therefore the scope to call for additional services is more limited. There is no hard and fast rule to apply, although one might reasonably come to a view that up to 10% of the original contract value would not be unreasonable, but that figures approaching 50% would most certainly be unreasonable.

One might finally have a scenario where further services or works are not contemplated at all at any point in the original procurement or in the contract itself. Where this is the case, there is little scope for such additions, except to the extent that such are considered to be de minimis. The Council has no need to avail itself of such limited latitude since it can rely to a greater (although still limited) degree upon the fact that additional services were contemplated in the contract at the schools within the contract.

In respect of additional services at the existing schools, therefore, there would appear to be scope for the Council to commission the same from HSSL, provided that the extent and scope are not of a scale so great that the original procurement can be said to be changed.

If the view is taken that this provides insufficient scope, the Council would have to see whether it could rely upon a specific derogation within the procurement regime, such as to allow it to rely upon the negotiated procedure without the need for prior publication of a notice.

The only possible derogation applicable in this case, permitting use of the negotiated procedure without following a competitive process, is for unforeseen services additional to the original services which have become necessary and cannot for technical or economic reasons be provided separately from the services provided under the original contract without great inconvenience to the Council. Derogations such as this however, cannot be used lightly, 'negotiation without publication of a notice' is only permitted in exceptional circumstances. In this regard the derogations permitting use of the negotiated procedure will be construed narrowly and against the person seeking to rely upon them (*Italy v Commission* cases).

It is therefore a pre-requisite, to use of the derogation, that the Council can demonstrate that the possibility of major capital funding, of the nature envisaged, was unforeseen at the time of the original procurement and that following the difficulties which arose in the negotiation of the Alexandra Park School variation it has perhaps become apparent, that to provide the additional services separately will, for technical or economic reasons, cause great inconvenience to the Council.

### **The New School**

The New School is to be built under a conventional (i.e. not PFI) contract. Thereafter, the Council will have a need to ensure that onward FM services and additional life cycle maintenance are adequately provided. It is likely that the works for this facility will be procured, either by HSSL as agent of the Council or directly by the Council (an assumption is made that, if the agency route is followed, those

services likewise fall within the scope of the original procurement). This procurement would be undertaken in accordance with the EU procurement regime and therefore no right of challenge would be likely to arise (assuming that the procedure is correctly followed). However, with regard to the additional life cycle and soft services there is perhaps a need to consider whether they can fall under the original procurement (e.g. as a within scope or de minimis variation) or alternatively whether the Council can demonstrate that the relevant derogation applies. The relevant considerations as to whether such additional services can be commissioned under the scope of the original procurement have been considered earlier in this note of advice. However, there is one crucial additional factor, which is that the location for the services is at a school outside of the bounds of the original procurement and one not even in existence at that time. Whilst this is not fatal to the possibility of its inclusion, it must be recognised that a less strong case can be made for inclusion on the back of the original procurement than for additional services at the existing premises. This issue is considered further in the "Risk" section of this note of advice. If the additional services do not fall within the scope of the original procurement and, furthermore, do not fall within the terms of the negotiated procedure derogation (because the technical or economic inconvenience to the Council is not sufficiently great) then strictly speaking (and taking a belt and braces approach) there will be a need to return to the market to fully comply with the procurement regime.

This analysis demonstrates that we have tried to point a way to a legal justification for not having a separate procurement for the additional service, but that we have been unable to give a cast-iron assurance. Again, therefore, the matter becomes one of risk analysis, which is considered later in this advice.

A further consideration, from a practical perspective, is that it will be necessary to establish whether HSSL is willing (or able with the funders permission) to allow a new school and the associated risks to be added to the risks that it is responsible for. It should be noted that there is perhaps less need for the deal to be concluded in the same manner as before and life cycle may be adopted on the basis that the Council can, in the future, opt out of the provision of such services (e.g. where the risk transfer does not offer value for money). The risk profile may therefore be more acceptable as this is a new build facility.

### **The New College Building and the refurbished VA Schools**

In a similar fashion to the new school building it may be possible to add this category of work to the HSSL obligations. However, the key difference is that whilst the notice provides some flexibility it perhaps does not mention the Voluntary Aided Schools which are in their own right a contracting authority or the North London Learning Skills Council which is also a contracting authority. It will be a matter for each of those parties as to whether they are willing to enter into a long term service arrangement that has not been subject to a public procurement in its own right.

Whilst we are not strictly in a position of advising those bodies, we would have to say that, insofar as the building of new premises is concerned, it would not be permitted to rely upon the original procurement (given that the Council itself intends that its New School is to be newly procured, one could hardly expect the LSC and VA Schools to take a more relaxed view). Insofar as subsequent services are

concerned, then it is difficult to make the legal case for inclusion within the original procurement. Only St. Thomas More has any connection with the original procurement and, even then, we would say that, having chosen to withdraw, it is not in a position to reopen its interest in a now-completed procurement.

### **Risk of Challenge and Impact**

On the basis that there remain arguments for and against the proposed course of action it is perhaps worth considering the risk of successful challenge to the process. In this regard it should be noted at a very basic level that there have been very few challenges brought in the UK to date. At a particular level, in this instance, there are a number of situations where, to varying degrees, a case can be made to support either the view that additional services fall within the scope of the original procurement (subject to reasonable limits) or, as an alternative, that reliance can be made upon the derogation justifying use of the negotiated procedure. Neither of these options are risk-free in that, as we noted at the beginning of this note of advice, neither instance permits a categorical black-and-white “yes” or “no” answer.

Furthermore, where it appears that neither of the above cases apply, then the risk of proceeding without procurement increases yet further.

These risks can be assessed. The assessment needs to look at the likelihood of challenge and the impact of challenge. The impact will always be high as it could derail any subsequent procurement or contract. The likelihood is less certain. In some cases, particularly that relating to additional services at the existing schools, one can legitimately ask oneself whether a variation of a contract to a reasonable degree is likely to attract the attention of any potential challenger or scrutineer, as such arrangements would be private to the parties and not particularly visible. One might categorise the risk there as “low”. At the other end of the scale, one might suggest that for a VA school to undertake new building works in reliance upon the original notice would be high risk, given the visibility of such activities, their genuine “newness” and the fact that it was not a party to the original procurement in the first place. The award of contracts, for both hard and soft services required at the VA schools and sixth form facility, would fall somewhere between the two extremes.

We cannot give one absolute opinion on these risks. They are for the Council to determine, dependent upon its own view of risk-taking and the facts and circumstances of each case. We can point out relevant considerations in any given instance, but we cannot substitute our own judgement for that of the Council.

### **Would any further procurement process need to be undertaken?**

As set out above, there is an intention to return to the market in respect of the various works packages, which are required in this scheme. Partly for VFM reasons and partly because HSSL does not appear to have capacity or ability to provide this type of work. At this point in time, that procurement role can either be through HSSL as agent (which gives them some ownership of the process and perhaps makes it easier to transfer or maintain the existing risk profile) or by the Council (ensuring sufficient consultation and protection is afforded to HSSL).

As already identified perhaps the greater challenge from a procurement perspective are the services and the life cycle arrangements for the new facilities. As stated above these do not easily fit into the existing arrangements and there is a need to ensure that any contract provides good value for money. This could be achieved through advertisement, as HSSL has an opportunity to win such work in the same way that any other bidder would. As we have discussed they should be able to take the benefit of some economies of scale. There is a consequential risk however, that the Council may end up with a different provider or that the funder does not permit HSSL to bid for the work (it was never envisaged that the SPV would be able to bid for other work - in the funder's eyes it is not a trading company, merely a vehicle for the ringfencing of liability and they may not wish to erode this by permitting it to trade).

### **Conclusion**

As can be seen from the above, this is not a particularly straightforward issue and is not one for which there is a relevant precedent.

The least risky route which would, in our view, appear to comply with the procurement rules and not give a third party a right of challenge would be to adopt the integrated model (essentially have one arrangement for the existing PFI scheme and one for the new facilities properly procured by the Council). However, it is acknowledged that this approach may not give the Council the benefits in terms of a joined up approach and economies of scale.

Essentially therefore it comes down to a decision by the Council, the North London LSC and a lesser degree the VA Schools as to whether the benefits of awarding this work to HSSL without competition outweigh the risks of doing so. However, in making this decision the Council should bear in mind the likely risk of successful challenge.

I trust this answers your question, but if you have any queries or wish me to expand any of the points above please do not hesitate to contact me.

Kind regards

Yours sincerely

James Lupton

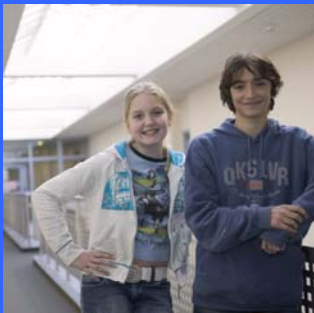
Associate for and on behalf of Eversheds LLP

# Building Schools for the Future

## Appendix 2

### Costs of Terminating Current PFI Contract

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**Haringey Schools PFI - estimated compensation on Council termination  
@ 1/10/05**

Clause 37 of PA refers back to clause 36 - components are:

- 36.1.1 amount of senior debt
- 36.1.2 redundancy payments at SPV level  
"amounts payable to the Sub-Contractors under the Project Documents as a direct result of such termination"
- 36.1.3 All payments due to equity and sub-debt from date of termination, discounted at the Project IRR to the termination date

36.1.1	Debt balance	41,405,840
	Break costs	5,347,467
36.1.2	Redundancy (estimate)	100,000
	Loss of profit (estimate at 5yr FM profit, but may be more)	2,102,755
36.1.3	Equity & sub-debt	3,003,600
	Advisors fees (both sides)	500,000

**Estimated compensation on Council termination** **52,459,662**

PWLB annual debt cost of above at	4.5%	4,032,897
Annual shortfall in funding if full borrowing support received (includes assumptions on scaling factor and reference rate)		709,122

***Incremental annual lifecycle calculation:***

Schools area (sq metres) at contract close	80,296	
PFS reinstatement cost	114,144,779	
PFS lifecycle allowance @ 40%	45,657,912	
Above pro-rated from 25 to 20 years	36,526,329	
Deduct lifecycle allowance in current model (unindexed)	16,440,483	
Gives estimated lifecycle shortfall compared to PFS	20,085,846	
Divide by remaining contract period of 20 years		1,004,292

***Incremental reactive maintenance calculation:***

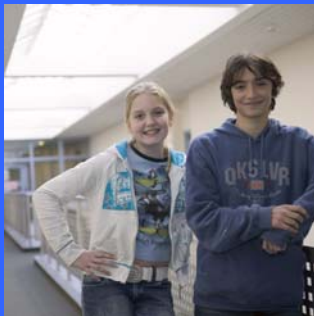
Current PFI market estimate @ £10/m	802,960	
Less annual allowance in current model (indexed up by 5 yrs)	558,457	
Estimated shortfall if contract re-let		244,503

# Building Schools for the Future

## Appendix 3

### Procurement Option Appraisal

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## Procurement Option Appraisals

3.1 The tables below show the various procurement options for each of the main project strands.

**Table 22: 6th Form Centre**

Option	Detail	Legally Acceptable?	Affordable?	Practically Implementable?	Supported by Stakeholders?
1.	Deliver proposals as a DBFO variation to the existing PFI contract.	No (Not on Initial OJEU)	No (No PFI Credits)	No (Timing)	No (Timing)
2.	Deliver proposals as a separate, standalone PFI contract, outside of the existing PFI contract	Yes	No (No PFI Credits)	No (Timing)	No (Timing)
3.	Deliver the proposals immediately as a separate D&B contract, funded through grant or supported borrowing, with the completed asset being transferred into the existing PFI contract, for lifecycle, maintenance and operation, as a variation.	No (Not on Initial OJEU)	Yes (subject to Council funding lifecycle)	Yes	Yes (albeit not tested)
4.	Deliver proposals immediately as a separate D&B contract, funded through grant or supported borrowing, but with the completed asset <b>not</b> transferred into the existing PFI contract on D&B completion.	Yes	Yes (subject to Council funding lifecycle)	Yes	Yes (albeit not tested)
5.	Delay the commencement of investment and include with the other Wave 2 investments.	Yes	Yes (subject to Council funding lifecycle)	Yes	No (Timing)

**Table 23: Existing PFI Schools**

<b>Option</b>	<b>Detail</b>	<b>Legally Acceptable?</b>	<b>Affordable?</b>	<b>Practically Implementable?</b>	<b>Supported by Stakeholders?</b>
1.	Deliver proposals as a DBFO variation to the existing PFI contract.	No (Too large for a variation)	No (No PFI Credits)	Yes (but may give rise to an erosion of risk transfer)	Yes (albeit not tested)
2.	Terminate the existing PFI contract and procure a new PFI partner to take on the existing obligations and to undertake the BSF investment	Yes	No (break costs too high – funding not identified)	No (would erode VFM on existing contract)	No (no appetite to remove HSSL)
3.	Deliver proposals as a separate, standalone PFI contract, outside of the existing PFI contract	No (ownership /occupation issues)	No (No PFI Credits)	No (Interface issues too complex)	No (Timing)
4.	Deliver the proposals as a separate D&B contract, funded through grant or supported borrowing. HSSL to manage the D&B works and continue to undertake the lifecycle, maintenance and operation under the terms of the existing PFI contract.	Yes	Yes	Yes	Yes
5.	Deliver proposals as a separate D&B contract, funded through grant or supported borrowing. The works to be managed by a new partner, but with the completed asset transferring into the existing PFI contract on D&B completion.	Yes	Yes	Yes? (there may be interface issues)	No (albeit not tested)

**Table 24: Voluntary Aided Schools**

Option	Detail	Legally Acceptable?	Affordable?	Practically Implementable?	Supported by Stakeholders?
1.	Deliver proposals as a DBFO variation to the existing PFI contract.	No (Not on Initial OJEU)	No (No PFI Credits)	No (Timing)	No (Timing)
2.	Deliver proposals as a separate, standalone PFI contract, outside of the existing PFI contract	Yes (subject to confirmation that PFI credits available to VA sector)	No (No PFI Credits)	No (Timing)	No (Timing)
3.	Deliver the proposals as a separate D&B contract, funded through grant or supported borrowing, with the completed asset being transferred, by way of variation, into the existing PFI contract, for lifecycle, maintenance and operation.	No (Not on Initial OJEU)	Yes (subject to Council funding lifecycle)	Yes	Yes (albeit not tested)
4.	Deliver proposals as a separate D&B contract, funded through grant or supported borrowing, but with the completed asset <b>not</b> transferred into the existing PFI contract on D&B completion.	Yes	Yes (subject to Council funding lifecycle)	Yes	Yes (albeit not tested)

**Table 25: ICT MSP Procurement Options**

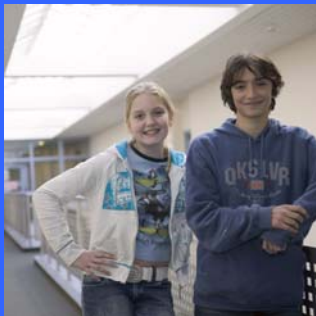
<b>Option</b>	<b>Detail</b>	<b>Legally Acceptable?</b>	<b>Affordable?</b>	<b>Practically Implementable?</b>	<b>Supported by Stakeholders?</b>
1.	Use Existing contract arrangements to deliver the BSF ICT MSP services.	No (no appropriate OJEU issued)	N/a	No (no contractor exists)	N/a
2.	Procurement of an ICT MSP independently from any of the other elements of the BSF programme.	Yes	Yes (subject to scope)	Yes (subject to management of interfaces)	Yes
3.	Seek HSSL to procure an ICT MSP and deliver the ICT requirements to all of the schools covered in the BSF programme.	No (no appropriate OJEU issued)	N/a	N/a	N/a
4.	Procure a Private Sector Partner (PSP) to manage all elements of the BSF programme – thereby requiring the PSP to come forward with an ICT MSP in its consortium.	Yes	No (would need to terminate existing PFI)	No (would need to terminate existing PFI)	No (would need to terminate existing PFI)

# Building Schools for the Future

## Appendix 4

Achieving the LEP Objectives

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The following table analyses how the Council's preferred procurement route meets the various objectives of LEPs.

Ref	LEP Objective/Justification	Council Response
1.1	Creating a step change in the quality of education environments, with for the first time, a real focus on educational outcomes – importantly encouraging a shared responsibility across the partnership of public and private sectors	The Business Planning process for the Pathfinder Wave 1 and Wave 2 authorities has been to encourage local authorities to clearly state its educational vision prior to entering into the procurement of the LEP. As such, the ability for the selected LEP to materially influence the vision, particularly on the first wave of investment, is limited. The Council has invested significant resources in developing its education vision and will secure sign-off of this vision from the Department before procurement of the Partner contractors. In addition, the early procurement of the ICT MSP will facilitate a coordinated approach to the delivery of the ICT vision with the wider education vision. <b>Conclusion</b> – the Council does not consider the additional complexity of procuring a partner to develop the education vision further would add any significant value.
1.2	Significantly improving the procurement route for delivery of a programme of new and improved facilities and at the same time achieving both time and cost savings whether through PFI or conventional D&B routes	The JPMT model has been developed to enable the benefits of the existing PFI contract to be retained. In so doing, the procurement of the BSF investment is through an efficient process which envisages a more rapid timetable than the LEP procurement. The appointment of partners for the capital investment, based on sample schemes, embraces the approach promoted by PfS. <b>Conclusion</b> – the proposed JPMT approach, especially given the acknowledgement that to break the existing PFI contract would be a time consuming exercise, is viewed as an efficient procurement process adopting, wherever possible, the principles underpinning the LEP procurement.

Ref	LEP Objective/Justification	Council Response
1.3	Achieving economies of scale from the size of the procurements envisaged whether this be at a national or local level	Economies of scale will be delivered through the JPMT model as the JPMT model seeks to unify the service delivery across all the BSF estate. <b>Conclusion</b> – the Council considers the JPMT model will deliver equal levels of economies of scale as a LEP model.
1.4	Returning value through innovation, whether as a result of design, construction initiatives, FM delivery or financial structuring allowing better value to be realised	The envisaged innovation in design and construction is expected to be developed through the JPMT procurement. As part of the procurement, potential Partner organisations will be asked to demonstrate how they will deliver, innovation, including linkages to the ICT MS Contract. As the funding of the schemes is expected to be by way of traditional funding, the scope for funding innovation is limited. <b>Conclusion</b> – the opportunities to deliver innovation will be identified and captured as part of the JPMT procurement.
1.5	The LEP as part of a national programme will be able to realise enhanced value from programme level efficiencies whether through the adoption of standard documents to funding initiatives	The national programme efficiencies noted related to standardised documentation and funding initiatives. The Council intends to utilise standardised documentation where this is considered appropriate. The standardised approach to benchmarking of costs will be a particular relevance to the JPMT model. As previously stated, the fact that the schemes are funded through traditional funding, reduces the scope for funding efficiencies. <b>Conclusion</b> – the Council will employ standardised documentation, wherever possible, so as to access the efficiencies of a national procurement programme.
1.6	Investment – offering a chance for Local Authorities to invest directly in their own projects and to realise investment value from such an investment	The Council does not seek to realise a financial return on its investment in the BSF initiative. The Council and the participating schools are investing all available resources into this initiative and are content that a return on these resources should be applied to the delivery of the Education Vision. <b>Conclusion</b> – the Council does not seek to have an investment in the BSF delivery vehicle.

Ref	LEP Objective/Justification	Council Response
1.7	Provide a cost effective delivery vehicle that can adapt to the level of procurement activity at any given time, with the potential to become integral to an Authority's regeneration and estate development strategies	<p>The Council is keen to retain an in-house team that will be able to manage the significant level of ongoing investment in Haringey. The experience gained from the delivery of a number of PFI and PPP investment programmes means that there is a body of expertise that has a vested, long-term interest in delivering efficient procurement on behalf of the Council. The Council recognises that support, in certain specific disciplines, will need to be procured externally from time-to-time, but has developed excellent relationships with a number of practitioners to enable this resource to be called off efficiently and cost effectively. Furthermore, the existing, good working relationships with HSSL will provide a strong stable partnership for a further 20 years.</p> <p><b>Conclusion</b> – the Council is confident that the combination of HSSL and the in-house team, supplemented by the ICT MSP, will provide an appropriate long-term solution for project delivery.</p>
2.1	The LEP structure and associated documentation for its management requires the PSP to be active in the formulation and understanding of the education vision for the Authority. This active involvement addresses one of the private sector complaints about conventional procurement/PFI to date in the education market, namely that they come to the table too late and the preferred outcome has been determined by the public sector	<p>As noted in our response in 1.1 above, the Council is not convinced that the current LEP procurement enables the LEP to influence the Education Vision. <b>Conclusion</b> – the Council will seek to secure the benefits of private sector thinking through the design process and the early engagement of the ICT MSP.</p>
2.2	by bringing the public and private sectors together on the delivery side (as shareholders in the LEP company), it emphasises that the contribution and commitment of both is necessary to deliver the programme objectives	<p>The Council is confident that, through the combination of the existing partnership arrangements with HSSL, the procurement of an ICT MSP and the procurement of a number of contracting partners, the partnering ethos will be delivered without the need for shareholding arrangements. The contribution will be secured through each party's participation in the process and the commitment for the major elements of the investment will be secured by the contracting partners incentive to perform well and thereby secure incremental work as the programme develops.</p> <p><b>Conclusion</b> – the partnership ethos can be secured without the</p>

Ref	LEP Objective/Justification	Council Response
		Council's participation in a corporate vehicle, as evidenced in the existing PFI contract.
2.3	by bringing together an integrated, experienced and relevant supply chain, the myopic mentality of viewing services, including construction and ICT provision as entirely separate worlds can be overcome with a recognition that the need is to focus on how they work together to address educational outcomes	The early procurement of the ICT MSP and their expected involvement as a member of the JPMT through the partner procurement will ensure that ICT investment is fully integrated. The requirement for the design teams to demonstrate their understanding and interpretation of the Education Vision will provide comfort that the remodelled assets deliver the vision. <b>Conclusion</b> – integration will be delivered through the procurement and handover procedures.
3.1	The granting of exclusivity to a PSP has a number of benefits in terms of procurement as well as presenting a number of challenges. By granting exclusivity to a development partner, the Local Authority will through effective use of the provisions of a Strategic Partnering Agreement reduce project procurement time by a minimum of a year (in particular as a result of having interests aligned and working together on project delivery, the streamlined nature of approvals and the use of standard procurement documentation), when compared to a standalone PFI-style procurement	Exclusivity will be granted at the subcontractor level, if it is deemed appropriate. The JPMT expects to secure contracting partners that will be able to deliver continuous improvement on their service delivery. The fact that both the Council and HSSL's owners have wider portfolios to service will further incentivise the subcontractors to perform. <b>Conclusion</b> – exclusivity will be earned through the subcontractors.
3.2	In addition to the significant improvement in procurement timelines, the exclusivity granted for a minimum of ten years allows the PSP to manage and develop effectively their supply chain as well as eradicating bid-costs from overall procurement costs during this period. These are significant and their elimination should result in real reduction in project costs	The JPMT model seeks a range of partners with strong local presence. The fact that each aspect of the service (capital management) is to be separately procured means that supply chains themselves are being procured for a specific service. <b>Conclusion</b> – exclusivity is more relevant for specific services. This is reflected in the JPMT model.
3.3	The scope of the procurement opportunity needs to be realised as well, as the current scope of the standard OJEU allows it to use the LEP to its maximum advantage in procuring initiatives in new building and a wide range of services. This offers the LEP up as the efficient procurement vehicle for:	

Ref	LEP Objective/Justification	Council Response
3.3.1	Further developments to the Secondary School estate	Any further developments to the secondary school estate will be managed by the JPMT allowing effective investment across both the PFI and non-PFI schools.
3.3.2	Provision of libraries and provision of Joint Services Centres	The various Partner contractors will be procured under framework arrangements and will be able to undertake other works as appropriate.
3.3.3	Natural development partner for an Academy Trust	The various Partner contractors will be procured under framework arrangements and will be able to undertake other works as appropriate.
3.3.4	Integrator with the Children's Trust for the Authority and the opportunities that that presents for wider working with other Council services	The various Partner contractors will be procured under framework arrangements and will be able to undertake other works as appropriate.
3.3.5	Wider estate development or reorganisation of the Authority's	The various Partner contractors will be procured under framework arrangements and will be able to undertake other works as appropriate.
3.3.6	Further development of the primary school estate	The various Partner contractors will be procured under framework arrangements and will be able to undertake other works as appropriate.
3.4	The challenge for any Local Authority in entering into a programme whereby it grants exclusivity of procurement is the validation of value for money and that it is complying with its own obligations to its wider stakeholders. For this reason, the Strategic Partnering Agreement between the LEP and Local Authority sets down clearly the basis for validation of further schemes as well as the implications for failing to deliver the objectives to the Authority	Elements of the Standard Strategic Partnering Agreement are relevant to the JPMT model and will be adopted. <b>Conclusion</b> – VfM will be continuously approved.
4.1	Marriage - parties are forced to work together from day one and through aligned interests will develop a better and quicker understanding of each other needs and how the necessary	The Council takes comfort from the client-provider relationships that operate so effectively on the existing PFI contract. The Council is incentivised to deliver through its public sector ethos

Ref	LEP Objective/Justification	Council Response
	changes in education outcomes can be achieved. The seat at the Board table enshrined in the arrangements for the Authority will act to modify behaviour on both sides and align interests effectively and for the long term with it is hoped the effective eradication of adversarial behaviour	and the partner contractor will be incentivised to deliver as its will secure repeat business if it performs. <b>Conclusion</b> – alignment of interests in the long-term will be delivered through the further development of the arrangements with HSSL.
4.2	Transparency of working – the important point about the LEP is that it is the LEP that has the exclusivity, not the PSP; and so wherever new projects are being developed and supply chains being established to deliver them, the Authority’s seat on the LEP Board gives it transparency over how the development is priced, and how the supply chain is put in place	The JPMT model provides greater transparency than the existing PFI. By working together on both the PFI and non-PFI estate, the Council and HSSL will develop a better understanding of each others requirements. <b>Conclusion</b> – the JPMT model aligns the Council and HSSL across all schools in the BSF estate.
4.3	One of the most important rights the Authority has under the Shareholders’ Agreement is the right to approve the appointment of a PSP affiliate company in the supply chain where market testing is carried out, or where the arrangement is deemed not to be wholly on an arms length basis. This level of transparency is achieved very practically in the LEP structure; in a contractual partnering environment, this would be largely restricted to relying on theoretical ‘open book accounting’ mechanisms. The flip side to this is, of course, that having the transparency means a much greater chance of developing trust and understanding on both public and private sector sides, and so leading to a better working relationship	By jointly procuring subcontractors, the objectives of the LEP are taken even further. <b>Conclusion</b> – the JPMT Model overcomes potential conflicts of interest as adequately as the LEP model.
4.4	Long-term - the joint participation establishes a relationship, not the reliance on contracts, to achieve delivery and importantly given the length of the exclusivity provisions the use of a corporate vehicle reduces significantly potential for challenges for procurement breaches	The LEP structure is governed by contracts (Shareholders Agreements, Strategic Partnering Agreements, PFI contracts, Procurement Agent Contracts etc). The Council is unclear as to why a corporate vehicle reduces the potential for challenge. <b>Conclusion</b> – the Council has taken legal advice and is confident that the JPMT procurement will not be successfully challenged.
4.5	Ability to maintain procurement - should the PSP default on their obligations, the terms of the SPA allow the procurement	There is no PSP default risk in the JPMT model. <b>Conclusion</b> – this risk is avoided in the JPMT model.

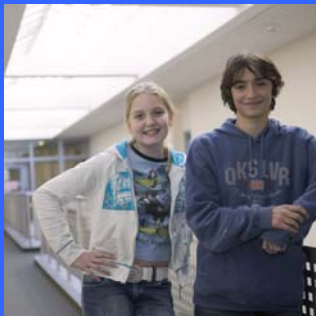
Ref	LEP Objective/Justification	Council Response
	opportunity to be maintained through the replacement of the PSP in the LEP Co. This would not be possible solely under a partnering style arrangement	
4.6	Assistance to neighbouring authorities - an unexplored area at present, whereby neighbouring authorities may wish to partner the lead Authority and use the services of the LEP in delivery of new facilities/services in their area. This would save significant procurement cost as well as generating further return for LEP Co	The Council would not wish to add complexity to the existing successful partnering arrangements with HSSL. However, the Council does envisage its partner contractors (including ICT) may be potential partners in other BSF programmes in London. <b>Conclusion</b> – cross boundary working at the subcontractor level is a possibility.
4.7	Agreements in place - Partnership for Schools has spent significant amounts of resource developing standardised agreements and as such the majority of development work has been done at no cost to Authorities in this area. An alternative approach would require ground up reworking and require approval from DfES/PfS prior to proceeding to the market	The main agreement for the long-term management of the assets is the existing PFI contract that has already been negotiated. The Partner contracts for the non-PFI schools and ICT will follow BSF standard where appropriate. <b>Conclusion</b> – the Council is confident that the contractual interfaces will be efficiently managed and excessive time and cost in contract negotiations avoided.
5.1	The Partner establishes a local presence at the heart of the education community of the Authority	<b>Conclusion</b> – HSSL already has this presence. The ICT MSP will develop this over time.
5.2	The integration of the Supply Chain allows considerable advantages to flow with a particular focus on the local community	The Haringey area has already a well developed, integrated supply chain in place to service the existing sub-regional activity. <b>Conclusion</b> – the JPMT will tap into these existing supply chain arrangements.
5.3	The LA director sitting on the LEP board will have a key role in shaping behaviour and influencing decisions in the LA's favour and in particular guiding the development and management of the LEP Co Business Plan.	The JPMT (with appropriate Council representation) will assume this role. Conclusion – the Council is satisfied that the JPMT model will enable more influence and more collaborative working than the LEP model.
5.4	All of the SPVs will be managed by the LEP, dramatically increasing the Authority's awareness of issues in the relevant schools as they develop and importantly guiding the most appropriate response	The JPMT will lead on school liaison.

Ref	LEP Objective/Justification	Council Response
5.5	By creating additional contract layers, including the introduction of a corporate vehicle, additional costs such as audit/tax/admin. will be incurred. This marginal cost is anticipated to run at £50,000 per annum, which over the assumed ten year life would equate to a NPV of £420,000 discounting at 6%	<b>Conclusion</b> - The Council seeks to avoid these additional costs by using HSSL staff where appropriate in the JPMT and by building up a strong in-house presence on the JPMT.
5.6	This additional cost however should be offset against: Accelerated procurement on capital projects – assuming two projects at £10m each, construction inflation at 6% and a procurement saving of 12 months, then a cash saving of £1.2m results	JPMT will have the appropriate resources to respond to this volume of work. <b>Conclusion</b> – the JPMT model should enable the expected procurement efficiencies in the LEP Model to be exceeded.
5.7	Multiple schemes will have only a marginal administrative cost impact, contrasting with the incremental nature of standalone vehicles	The Council follows the example of the LEP Model by avoiding standalone vehicles. Indeed, the handover of projects to HSSL will further minimise administrative costs. <b>Conclusion</b> – the JPMT Model should deliver efficiencies in excess of that envisaged by the LEP Model.
5.8	Returns produced from the LEP investment, marginal in this instance, through the assumption that an Authority will not invest in project or LEP risk capital	The Council does not seek a return on its investment. Any resources invested, are to the benefit of the project. <b>Conclusion</b> – the Council does not seek an investment in the delivery vehicle.
5.9	Such savings being a function of the size and number of development opportunities presented and taken on by the LEP	See response to 6.8 above.

# Building Schools for the Future

## Appendix 5 Implementation Protocol

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## This Document

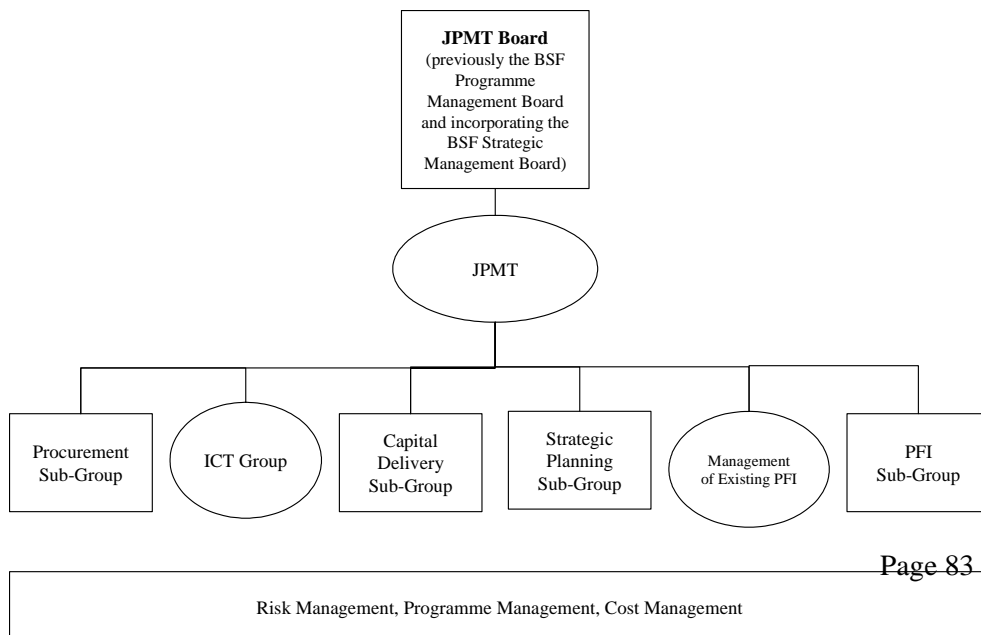
- 1.1.1 This Implementation Protocol establishes the processes which Haringey Council (the Council or LBH) and Haringey Schools Services Limited (HSSL) agree to follow in scoping and delivering investment onto those secondary school sites in Haringey that are currently subject to a PFI contract. This investment is funded through the Building Schools for the Future (BSF) programme.
- 1.1.2 It is the intention that this Protocol will form the basis of an agreed position which will subsequently be used as the basis for the drafting of a Deed of Variation to the PFI contract.
- 1.1.3 The Council has established a Joint Programme Management Team (JPMT) to manage the BSF Programme and have invited HSSL to have representation on this body. Both parties recognise the benefits of working in partnership to deliver the BSF investment and so secure sustainable improvements to those schools subject to the PFI contract.
- 1.1.4 This document forms part of the Procurement Business Case (PBC) prepared by the Council. The PBC sets out the rationale for the proposed procurement of the BSF programme.
- 1.1.5 References to HSSL shall be deemed to include both HSSL and its subcontractors where relevant.

## The JPMT

### JPMT Structure

- 2.1.1 The proposed structure and participating parties to the JPMT are as set out in Figure 3

**Figure 3: Proposed Structure of the JPMT**



2.1.2 A detailed organogram, setting out membership of each of the sub-groups, is provided as part of the Outline Business Case (OBC).

### **JPMT Board**

2.2.1 The JPMT Board has the following representation:

- Andrew Travers – Finance Director, Haringey Council - Chairman;
- Gordon Smith – BSF Programme Director, Haringey Council;
- Justin Holliday – Assistant Chief Executive, Haringey Council;
- Kevin Bartle – Finance Manager, Children’s Services, Haringey Council;
- Lidia Lewis – Head of IT Services
- David Williamson – head of Secondary School Improvement and Transformation Manager;
- Sharon Shoesmith – Director of Children’s Services, Haringey Council;
- a Partnerships for Schools representative;
- An HSSL representative; and
- a representative from Jarvis Accommodation Services (JAS) to attend, as necessary, in a non-voting capacity, to discuss issues relevant to the operation of the PFI contract.

2.2.2 The JPMT Board meets monthly or, if appropriate, on a more frequent basis. The Board’s remit is as follows:

- approve investment proposals submitted by the JPMT;
- agree and source procurement budgets;
- approve selection of Design Teams, ICT MSP, Contractor Partners and other parties to the BSF programme, including advisors;
- ensure the JPMT is properly resourced;
- approve and adopt all business cases;
- mediate between different partners in the JPMT; and
- act as coordinator for stakeholder liaison.

## **The JPMT**

2.3.1 The JPMT meets every two weeks and is chaired by BSF Programme Director, Gordon Smith. Each of the sub-groups is represented on the JPMT, together with PfS and relevant Council officers. The remit of the JPMT includes:

- receiving/debating reports from the sub-groups;
- reporting to the JPMT Board;
- agreeing remit of the sub-groups;
- programme management;
- management of procurement budget;
- liaison with stakeholders;
- high level agreement of Strategic Plans; and
- ongoing review of risk management.

The JPMT will have delegated authority to make decisions on project scope as long as any decisions keep the BSF programme in line with the Business Case and Affordability parameters. Any decisions which require amendment to the project scope that results in amendment to the business case assumptions will require endorsement at BSF Board level.

2.3.2 The diverse range of participating parties comprising the JPMT have agreed to work together in a cooperative manner. All these parties recognise that the principal objective of the JPMT is to deliver sustainable improvements in Haringey's Education service. The parties also recognise that commercial arrangements exist between the Council and HSSL and that the positive contribution of HSSL to the JPMT should not result in disadvantage to HSSL, financial or otherwise. As such, all parties agree, wherever possible and practical, to work on an open-book basis and to resolve any disputes in an equitable, timely and efficient manner.

2.3.3 The activities of the JPMT will be funded by the Council. This funding will extend to the direct costs, incurred by HSSL (and JAS as its subcontractor), in participating in the JPMT – for the purposes of this arrangement, direct costs means the salary and salary related on-costs of a pre-agreed level of resource (excluding overhead cost recovery). In addition to these direct resource costs, the Council will fund:

- 90% of any advisory fees (excluding VAT) incurred by HSSL and JAS as its subcontractor up to a fixed cap. Any fees incurred above this cap will be shared equally between the Council and HSSL.

The principles of cost are agreed. The size of the cap is to be negotiated and will be in the Deed of Variation.

In agreeing to this fee sharing arrangement, all parties agree to work together to minimise the total level of fees and to ensure that all advisors are incentivised to reduce the total level of fees charged to the BSF programme.

- 2.3.4 HSSL agrees to accurately and equitably distinguish between those costs that they would otherwise incur in managing the existing PFI contract and those costs that are wholly attributable to the participation in the JPMT or arise as a direct result of the BSF programme. Any costs identified as existing PFI management costs will not be reimbursed by the Council.

### **Decision Making**

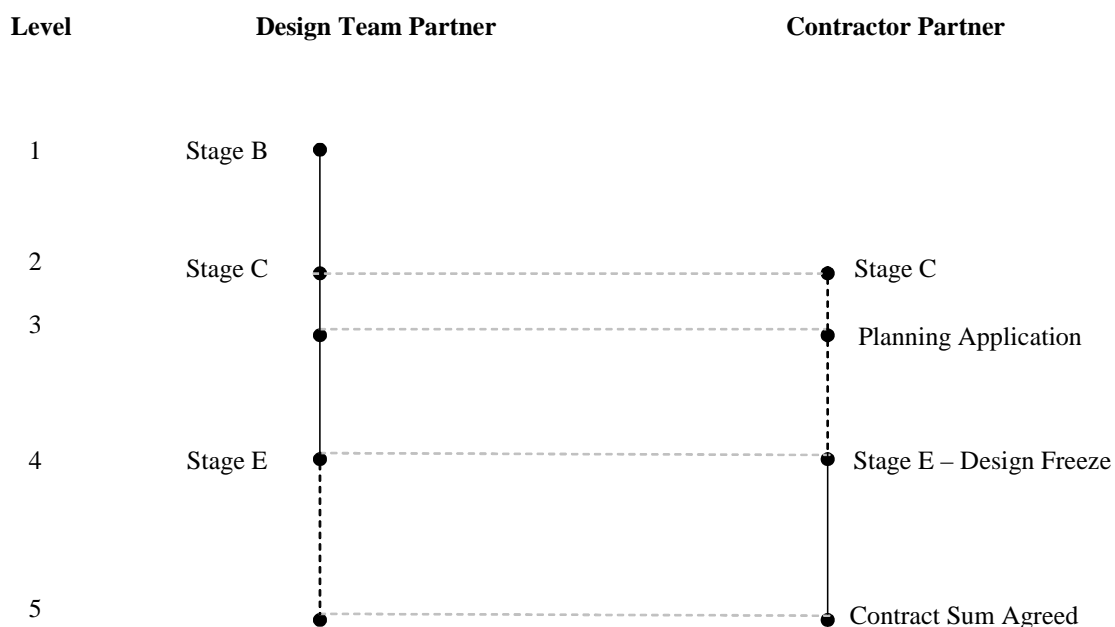
- 2.4.1 The JPMT has been established in order that all relevant parties have a voice and representation. The Council recognises that there will be conflict between the aspirations and needs of these parties. As client, the Council, through its position as Chair of the JPMT, will have the final decision on how the BSF investment is procured and implemented. In retaining this power to decide on how investment is implemented, the Council recognises that HSSL will require agreement from its funders and subcontractor under the terms of the existing PFI contract. This will be recognised in the Deed of Variation.

### **Design Development Process**

#### **Overview**

- 3.1.1 The Council is adopting a two-stage design process for the implementation of the BSF investment onto the PFI estate. The process is linked to the design stages as defined by RIBA. The deliverable at each stage will comprise a full report based on the RIBA definition. Figure 4 summarises this process.

Figure 4: Design Development Process



Key: Solid lines show accountability and dotted lines show participation in the process.

3.1.2 The key activities at each level in Figure 4 are as follows:

- Level 1 The DTP is selected based on their response to tender documentation. This tender documentation does not go beyond Stage B design.
- Levels 1 to 2 The DTP will work with the JPMT to develop the Stage B proposals to Stage C. Appropriate surveys of the existing buildings will be commissioned and undertaken at this stage.
- Levels 2 to 3 The selected CP collaborates with the DTP to refine the Stage C design. The refined design is submitted for planning approval.
- Level 4 The CP assumes design risk for the whole package. The CP will coordinate the design and hence will solve design queries between sub-construction design packages.
- Levels 4 to 5 The CP procures its sub-contracts and further refines the design. The DTP acts in a Design Monitor capacity during this phase.
- Level 5 A contract sum is agreed and a design & build contract is entered into between the CP and the Council. Target cost if refurbishment, lump sum if new build.

The process for the appointment of the DTP and CP are discussed in the following sections.

### **The Design Team Partner**

3.2.1 The Council has commenced procurement of a number of DTPs to form a Framework Panel. The following process has been adopted for this procurement:

- (i) An OJEU was issued on 7 March 2006;
- (ii) Responses to the OJEU and PQQ were received on 19 April 2006;
- (iii) A longlist of 17 organisations resulted. This longlist was required to respond to a set of tender documentation seeking pricing for individual designs under the Framework Agreement and a methodology statement for the sample schemes. The two sample schemes are for the Woodside High and St Thomas Moore facilities;
- (iv) The evaluation of the proposals was undertaken by an Evaluation Working Group, chaired by the BSF Programme Director, comprising:
  - LBH Children's Services – David Williamson;
  - LBH CPG - David Millford & Hilary Gillies;
  - Schools Representatives;
  - Architectural & Design Champion – Barron & Smith;
  - LBH's Technical Advisor – AYH; and
  - A representative of CABA.

The advice of HSSL is valued on all aspects of BSF whether this is based on the PFI estate or non-PFI estate.

- (v) Following this evaluation, 3 to 5 DTPs will be appointed onto a framework and
- (vi) The Framework DTPs will partake in a mini competition, which will involve further clarification and evaluation of their responses to the sample schemes (see (iii) above). The responses to this mini competition will be submitted in early January 2007 and a preferred DTP for each of the sample schemes will be made by end January 2007.

- 3.2.2 The appointment of the DTPs on future schemes will be subject to a mini competition, involving the DTPs presenting a method statement and design proposal based on a local authority brief for future schemes and the conformation of price in accordance with the framework rates presented in 3.2.1 (iii) above.
- 3.2.3 The DTPs will be required to provide warranties to LBH, the relevant CP and to HSSL and its funders. The CP's warranty will cover all works and services. As the CP has a design and build role, their warranty is in respect of this and they are also taking responsibility for the DTP.

### **The Contractor Partners**

- 3.3.1 The Council has advertised for Contractor Partners (CPs) to apply to be selected onto a Haringey BSF CP Panel. There will be between 3 and 5 CPs selected onto this Panel. A PQQ will be issued to those organisations that respond to the OJEU notice. A longlist of CPs will be selected. The selection will be based on the PQQ responses. The selection criteria will be drawn-up by the JPMT and agreed by the JPMT Board. AYH will develop high level criteria and seek HSSL's approval prior to issue of the PQQs. The Council considers it unlikely there will be a conflict between themselves and HSSL in terms of the criteria. The selection will be undertaken by an Evaluation Team formed of members of the JPMT.
- 3.3.2 A selected longlist of between 6 and 12 will be issued a suite of tender documents. The CPs will be required to provide a full build up of prices for the 2 sample schemes identified in 3.2.1. (iii) above. The tender documentation for the selection of the CP shortlist will include:
- (i) general bid instructions;
  - (ii) the Preferred Design Solution up approximately to Stage C of the two sample schemes;
  - (iii) the Relevant Output Specification for the Preferred Design Solution;
  - (iv) copies of any survey and warranty information, as appropriate;
  - (v) a D&B contract, based on the BSF Standard with relevant amendments;
  - (vi) a phasing and decant strategy. This will include a proposed operating statement, which will set out how the school will remain operational during the BSF programme; and
  - (vii) an ICT and FM brief.

- 3.3.3 The tender documentation will be assembled by AYH and the Council's legal advisers (Eversheds), will be subject to sign-off by the JPMT and ratification by the JPMT Board. This tender documentation will address the need to recognise that there will be a range of investment (new build, refurbishment and redecoration) on each facility and shall ensure the ability of the retained estate to meet the existing output specification is not compromised.
- 3.3.4 The responses to the tender documentation will be evaluated against evaluation criteria drawn-up by the JPMT and agreed by the JPMT Board. The evaluation will be undertaken by members of the JPMT. Between 3 and 5 CPs will be appointed to the framework panel. The proposed membership of this panel will be presented to the JPMT Board for approval and will constitute Haringey's BSF CP Panel.
- 3.3.5 The two CPs who rate highest in the evaluation process set out in Section 3.1.2 for each of the sample schemes will be awarded those projects and will be responsible for taking projects forward as set out in Section 3.1.2. Future projects will be awarded on the basis of a limited competition between all of the framework CPs based on:
- capacity to deliver;
  - performance on previous contracts awarded in the BSF programme;
  - experience of the type of scheme offered; and
  - other criteria that are agreed by the JPMT.
- 3.3.6 It is anticipated that the design and build contract to be adopted will be based on the framework Design & Build contract, as developed by PfS. The Council will enter into the contract with the CP, with appropriate warranties transferring to HSSL on handover of the upgraded facilities. The defects that are manifested at the end of the 12 months period will be corrected by the CP in accordance with normal protocol. HSSL will work with the Council to ensure that the Design & Build Contract issued will provide a security package acceptable to HSSL's subcontractor and funders.
- 3.3.7 There is no intent to make payments to the CPs prior to appointment of the framework. Payments to the CP, once works have commenced on a given scheme, will be in line with a payment drawdown schedule. The drawdown will be subject to certification by the Employer's Agent appointed by the Council. The Council will make payments directly to the CP.

## **BSF–PFI Interface - Overview**

### **Objectives**

- 4.1.1 The integration of the BSF investment into existing PFI estate will require all parties to work closely together to:

- minimise disruption to the ongoing operation of the facilities;
- maximise the impact that the BSF investment has on the delivery of improved facilities and services; and
- enable HSSL to manage its risk position such that it can continue to receive a unitary charge for an appropriate level of service delivery during the investment period, and, on handback, is not disadvantaged by changes in risk profile.

### **Contractual Issues**

4.2.1 It is the Council's intention to deliver the BSF investment through a Deed of Variation. This Deed of Variation will:

- (i) require HSSL to grant access to the Council (and its contractor parties) onto the PFI school sites to carry out construction works;
- (ii) where appropriate, allow the whole school, or parts thereof, to be removed from the PFI contract whilst BSF works are undertaken;
- (iii) enable a Works Phase Output Specification to be implemented. This will establish the level of service to be provided, to what facilities (including temporary facilities) during the capital investment period;
- (iv) require HSSL to provide a price for the delivery of this Works Phase Output Specification;
- (v) require HSSL to provide an estimated price for the delivery of FM services post implementation of the BSF investment, the process for agreeing the price will be set out in the Deed of Variation – this exercise will be undertaken prior to contract signature with the CP on each site and will be based on delivery of the service to a BSF Output Specification and Payment Mechanism (amended for site specific issues);
- (vi) require HSSL to engage in accepting a school, or relevant part thereof, back into the PFI contract on completion of the BSF works. It is the Council's intention that a school will not be required to achieve a BSF Output Specification until final completion of the BSF investment on that school. An Employers Agent will be appointed to sign-off completion of the BSF investment. The Council and HSSL will jointly agree an appropriate brief for the Employers Agent as part of the Deed of Variation; and;
- (vii) HSSL to provide a price for the delivery of the FM services to that school once the BSF investment in that school has been completed and signed-off. HSSL to advise on whether this pricing exercise is best completed at handback of all the facilities.

4.2.2 This Deed of Variation and the processes articulated within it, will be subject to the dispute resolution procedures (DRP) currently existing within the PFI Project Agreement.

## Capturing the Benefits of the BSF Investment

- 4.3.1 The investment of c£60 million into the PFI estate will impact on the risk profile of the existing PFI arrangements. Table 27 summarises the likely impact of the investment:

**Table 27: Impact of BSF on PFI**

Ref	Risk/Price	Perceived Impact
1.	Lifecycle	Capital investment should reduce backlog maintenance and upgrade/materially replace ageing assets with new. The replacement cost of assets may increase as the assets will be of a higher standard.
2.	Maintenance	Assets will be handed back in a better condition, requiring less maintenance.
3.	Latent Defects	A number of latent defects will be removed through replacement of assets. The investment may accelerate the crystallisation of defects. Defects on new investment will be subject to standard warranties.
4.	Utilities	The investment will use more energy efficient materials and equipment. This should materially reduce utilities usage. A higher intensity of ICT may increase loading, albeit more modern equipment will be more energy efficient than that currently used.
5.	Insurance & Security	New facilities will have improved fire prevention and improved security features. The higher intensity of ICT equipment will require careful security planning.
6.	Facilities Management Costs (cleaning, grounds maintenance)	Post handback, the overall floor area will be largely consistent with current floor areas. Finishes will be new in many areas and of modern materials. The investment should have little impact on FM service delivery.

- 4.3.2 In summary, in the Council's opinion, it is expected that the BSF investment will have a positive impact on the ability of HSSL to deliver their service. As such, the Council will seek HSSL to introduce a more up-to-date Output Specification and Payment Mechanism and considers the introduction of these new contractual arrangements should be capable of delivery within the financial envelope of the existing PFI arrangements.

4.3.3 In order for both the Council and HSSL to satisfy themselves this significant investment programme is deliverable within the financial parameters of the existing PFI arrangements, the following process is proposed:

- (i) HSSL/JAS will be required to provide a detailed life cycle model in support of the current total lifecycle allowance in the financial model - total £15.9m.
- (ii) HSSL, as part of the JPMT, will participate in the design development process. As such, HSSL will be able to advise the DTPs on specific issues within the current estate and will be consulted on the proposed design solutions and use of materials. This process will assist the JPMT in developing a design solution that optimises educational transformation and whole life management of the asset. As noted in 2.4.1, the Council will have the ultimate say in the investment decision, but will need to take into account the potential financial consequences of any representations from HSSL;
- (iii) On completion of the Stage E designs, Jarvis Accommodation Services (JAS), through HSSL, will be required to:
  - provide a price for the provision of interim services on the site during the Works Phase. A Works Phase Output Specification will be developed for each site. This will include the provision of services to any temporary accommodation; and
  - provide a cost for providing the FM service to the site post handback and at this stage, agree in principle to accept subject to satisfactory completion of the works as proposed. This pricing will price to a BSF Output Specification and Payment Mechanism (amended for site specific issues). This will require JAS to analyse its existing cost base out between individual sites. This estimate will be supported by a set of detailed assumptions. For the purpose of this exercise, FM Services will include cleaning, grounds maintenance, fungal & pest control and buildings & equipment management, school keeping and security only. All other components of the Unitary Charge (with the exception of insurance will remain as per the existing PFI arrangements.

This exercise will enable the Council to estimate the likely impact of the BSF programme on the PFI Unitary Charge. For the avoidance of doubt, the only amendments that will be accepted to the existing FM Service price will be amendments that are evidenced to have arisen directly as a result of the BSF investment;

- (iv) Concurrent with (iii) above, HSSL/JAS will be required to update the profile of the lifecycle model (as per (i) above) to reflect the changes, if any, in the renewal of the assets. The pricing of the asset renewal within the lifecycle model, provided any replacement as part of the investment is on a like for like basis, will remain unchanged;

- (v) The information provided in (iii) and (iv) above will then be combined with the pricing exercise undertaken by the CP to confirm, or otherwise, whether the proposals are affordable to the Council and whether any re-scoping of the design is required;
  - (vi) On handback, HSSL will be asked to confirm their price for the provision of the FM services (as defined in 4.3.3 (iii) above). The Council would not expect this FM price to vary from the price given in 4.3.3 (iii) above, unless there are amendments to reflect pre-agreed variations, which would be subject to a formal change mechanism; and
  - (vii) Also, on handback, JAS will revisit the lifecycle profile and will be asked to confirm the impact of the BSF investment on the lifecycle programme and the Unitary Charge.
- 4.3.4 The process in 4.3.3 above will enable both the Council and HSSL to assess the impact of the BSF programme on risk and price. This rigorous, open-book process should mean that decisions can be made through the JPMT without the need to revert to DRP. In the event that the parties do not agree, then the DRP arrangements in the Project Agreement will apply.

## **BSF–PFI Interface – Works Phase**

### **Amendments to Contractual Arrangements – Overview & Process**

- 5.1.1 HSSL will grant the Council (together with its employees, agents and contractors) access to the PFI school sites to enable the capital investment to be completed. There will be no charges levied by HSSL in granting this access.
- 5.1.2 The Unitary Charge in respect of the services provided to the PFI schools will continue to be paid by the Council to HSSL. In the event that the cost of services to be provided by HSSL varies from the existing Unitary Charge, then the Unitary Charge will be amended accordingly.
- 5.1.3 An Excusing Cause to protect HSSL from failures caused by the activities of the CP will be included in the Deed of Variation.
- 5.1.4 The provisions set out in this section only apply to those facilities where works are ongoing. Schools will be required to meet existing Output Specification prior to BSF investment and will need to meet an amended Output Specification on handback of the upgraded school (see Section 6).

### **Phasing & Programming**

- 5.2.1 As part of the Design Development process set out in Section 3.1.2, the DTP and CP will develop a detailed programme so that the schools will remain operational during the Works Phase. HSSL, as a member of the JPMT, will be closely consulted on these developments.

- 5.2.2 A revised accommodation schedule will be finalised by the JPMT. The schedule will clearly state how the school is to remain operational during the Capital Works Programme and the responsibilities of all parties in achieving this aim.
- 5.2.3 The FM services to be provided by HSSL will need to be revised to reflect the changing nature of the site during the Capital Works Period. This is discussed further in Section 5.5.1.

### **Temporary Accommodation**

- 5.3.1 The requirement for temporary accommodation on any given site will be determined during the detailed design phase.
- 5.3.2 HSSL will liaise with the JPMT to agree a detailed specification for the temporary accommodation.
- 5.3.3 The DTP, in discussion with the school, will provide HSSL with appropriate information as to the size and configuration of any temporary accommodation.
- 5.3.4 The CP will be responsible for procuring and delivering any temporary accommodation to the school site.
- 5.3.5 The CP will be responsible for the installation of the temporary accommodation. A handover protocol, including the connection to services, will be agreed between the CP and HSSL.
- 5.3.6 HSSL will be responsible for providing facilities management services to this temporary accommodation. The services specification for this accommodation will form part of the Works Phase Output Specification.
- 5.3.7 The CP/HSSL will be responsible for insuring the temporary accommodation.
- 5.3.8 There will be an agreed set of handback condition requirements.
- 5.3.9 The CP will be responsible for any reinstatement of the school site after removal of the temporary accommodation.
- 5.3.10 All costs of the hire of the temporary accommodation will be funded by the Council, directly or via the construction contract.

### **Decanting**

- 5.4.1 The JPMT will develop a detailed Decanting Procedure for each school site.
- 5.4.2 Decanting will be undertaken by the Council, in conjunction with the schools, and will be funded by the Council.

### **FM Services**

- 5.5.1 The JPMT will review the existing Full Services Phase Output Specification and will make appropriate amendments to reflect that there will be an ongoing works programme. A Works Phase Output Specification be developed, specific for each school site. This Output Specification will be agreed with HSSL, prior to the commencement of works on each site.
- 5.5.2 The Works Phase Output Specification will be agreed 2 months in advance of the targeted start-on-site date.
- 5.5.3 In accordance with 4.3.3 (iii), HSSL will be required to price for the delivery of the FM services during the works phase. This pricing will be open book.

### **Payment Mechanism**

- 5.6.1 The existing PFI Payment Mechanism will be reviewed by the JPMT in conjunction with the development of the Works Phase Output Specification.
- 5.6.2 Any deductions arising from the application of this revised Payment Mechanism will accrue during the Works Phase. The Council recognises that the delivery of services during the Works Phase will be challenging and the Works Phase Output Specification and Payment Mechanism will reflect this.

### **CDM & Health & Safety**

- 5.7.1 The JPMT will produce, with the CP, Site Schedules as part of the final design process. These schedules will form part of the work in 5.2.2. Site Schedules will clearly separate the Works Site Areas from Operational School Areas over the phased building programme.
- 5.7.2 A definitive CDM boundary will need to be agreed and maintained throughout the contracted works period. Where HSSL or CPs need access across boundaries, then Permit to Work arrangements will be put in place.
- 5.7.3 HSSL will continue to be responsible for the security and health and safety aspects in the Operational School Areas as demarcated on these Site Schedules. There should be no adjustment to the Unitary Charge to reflect the continued provision of this service.
- 5.7.4 The CP will be responsible for the security and health and safety aspects in the Works Site Areas and will also be responsible for the erection of appropriate security measures on the borders between the Operational School Areas and Works Site Areas.

### **Insurances & Security**

- 5.8.1 The Council is in the process of reviewing the most efficient mechanism for insuring the estate during the Works Phase.
- 5.8.2 At this stage, the following principles are proposed:

- (i) HSSL will continue to provide insurances to the Operational School Areas, including, where appropriate, any temporary accommodation. This insurance will need to recognise the ongoing Works Programme and provide appropriate cover under standard arrangements. Insurance cost increases specifically stemming from either insuring the temporary accommodation or maintaining the existing cover during the course on the works on site will be met by the Council after deducting any savings arising from the requirements not to insure the Works Site Areas during the construction phase;
- (ii) The CP will insure the Works Site Areas, with the insurance recognising the existence of the Operational School Areas and providing appropriate cover under standard arrangements; and
- (iii) The JPMT will oversee the insurance arrangements to ensure that the whole site is appropriately covered and that premia are optimised.

5.8.3 The security of the Works Site Areas will be the responsibility of the CP. The security of the Operational School Areas, in accordance with the Works Phase Output Specification, will be the responsibility of HSSL. Specific advice will be taken to ensure that any insurance interface is appropriately managed.

### **Utilities**

- 5.9.1 HSSL will continue to be responsible to the provision of utilities for the Operational School Areas during the works programme unless affected by the actions of the CP. There will be no adjustment to the Unitary Charge to reflect the continued provision of this service.
- 5.9.2 The CP will be responsible for the provision of its own utilities. In the event that the CP increases HSSL's utility costs, then HSSL will be reimbursed by the CP.

### **Defects**

- 5.10.1 HSSL will continue to be responsible for the rectification of any defects that occur in Areas which are not affected by the BSF Works Programme, unless it is proven that these liabilities crystallized as a direct result of the BSF works.
- 5.10.2 In the event that, as a direct result of undertaking of the BSF Works Programme, a defect is identified that requires rectification, and where this defect has, to that date, remained latent, then a third party surveyor will be appointed to determine whether this defect would have manifested itself prior to the end of the PFI concession or not. If the surveyor concludes that it would have manifested itself, then HSSL will fund the rectification (this funding to be the full cost discounted at Project IRR by number of years between actual rectification date and anticipated manifestation date as determined by third party surveyor), otherwise the Council will fund the rectification. The rectification of the defect will form part of the BSF Works Programme. If this gives rise to a dispute then the matter would be referred to DRP.

- 5.10.3 In the event that, as a direct result of undertaking of the BSF Works Programme, a defect is identified that requires rectification, and where this defect has been identified in the asset management plan for that site, then HSSL will be responsible for funding the rectification of the defect. If the defect is in an area that is part of a Works Site Area or will be part of a Works Site Area, then the rectification of this defect will form part of the BSF Works Programme. If the defect is in an Area that will not form part of a Works Site Area, then HSSL will be responsible for undertaking the rectification.
- 5.10.4 Subject to Section 3.3.6 HSSL will continue to assume defects risk under the terms of the PFI Project Agreement once the upgraded facilities have been accepted by HSSL and the BSF Output Specification adopted.

### **Third Party Income**

- 5.11.1 Schedule 16 of the existing PFI Project Agreement sets out a Minimum Annual Contribution in respect of Out of Hours Use which HSSL makes to each Governing Body. HSSL to propose drafting appropriate school by school schedules to cover the JAS TPI contribution to HSSL (which will presumably set out both gross and net income). In addition the Financial model factors in a level of subsidy to the Unitary Payment in excess of this. HSSL will schedule these contributions out on a school by school basis for inclusion in the variation.
- 5.11.2 The Council recognises that the achievement of these Third Party Income Contributions will be put at risk during the Capital Programme Phase for each school and that ultimately the Council wish to remove TPI from the scope of the PFI. As such one month prior to the construction commencement on each school, and for those schools where no BSF works will be undertaken on the commencement of construction operations on the last PFI school, the Financial Model will be re-run to omit the TPI contributions therein and the Unitary Payment will be increased by the amounts omitted. The parties will in good faith seek to agree as part of the variation a schedule of rates/methodology that deals with the practical aspects of service support that the Council and schools may require from HSSL/JAS such as cleaning and opening/closing of schools but the Council/Schools shall not be obligated to utilise HSSI/JAS for the provision of these services.

### **Payment Provisions**

- 5.12.1 Any adjustments required to the Unitary Charge or any other payments, arising from the principles set out in this section will be calculated and agreed prior to the commencement of works.
- 5.12.2 If an unforeseen event occurs during the Works Phase that gives rise to an unforeseen liability to a party that is not exposed to that liability under the existing PFI contract arrangements, then the party in question will inform the JPMT, at the earliest opportunity, of such a liability arising. The JPMT will then make representations to the JPMT Board, which will act reasonably in assessing the liability and determining the responsibility for the liability.

## **Hand-back Arrangements**

### **Amendments to Project Agreement – Overview & Process**

- 6.1.1 The Deed of Variation will be drafted in sufficient detail such that the Project Agreement will not need amendment.

### **Hand-back arrangements**

- 6.2.1 On completion of the BSF Works, the Employers Agent (EA) will confirm acceptance of the BSF works by complete phases or as a single facility. The EA will have a duty of care to both the Council and HSSL. The terms of appointment of the EA will warrant that the facilities meet the revised Output Specification.
- 6.2.2 As part of the design development process, HSSL will have advised the Council as to the cost of providing services to the Operational School Areas. Due to site constraints and the phased nature of the BSF works programme on any given site, the Operational Schools Area may change during the Works Phase and, consequently, there will be a series of handover dates. In the Council's view, it is not anticipated that the cost of providing the FM services will differ materially during the Works Phase, as broadly the same area will need to be serviced throughout the Works Phase.
- 6.2.3 A detailed handover protocol will be developed for the final handover date – the date at which a whole site is handed back to HSSL. At this point, HSSL will:
- (i) agree to adopt an amended Output Specification and Payment Mechanism (as adapted for site specific issues);
  - (ii) provide a revised price for the provision of FM Services to this site, as set out in 4.3.3 (vi);
  - (iii) in providing the revised price in (ii) above, to review the impact of the BSF investment on the lifecycle profile (see Section 4.3.3 (vii)) and advise the Council as to the impact on the Unitary Charge of the benefits that the BSF investment has had on the lifecycle programme. The Council expects the benefits to be recognised, in full, by a reduction in the Unitary Charge.

## **Participation Fee**

### **Overview**

- 7.1.1 The Council recognises that HSSL has committed to providing resources to assist the JPMT in delivering the BSF programme. The Council has committed, in Section 2.3.3 of the Protocol, to fund certain costs related to HSSL's participation in the JPMT.
- 7.1.2 In addition, the Council has agreed to share a proportion of HSSL's current overspend on insurance costs. The proposed mechanism for this is set out in Section 7.2.1. In return for this, the Council expects:

- (i) HSSL agreeing to the principles set out in the Protocol and to secure sign-up to these principles, in particular to the revised Output Specifications and payment mechanisms, from subcontractors and funders by 31 October 2006;
- (ii) to agree the pricing implications of any outstanding variations by 15 December 2006; and
- (iii) executing the Deed of Variation by 15 December 2006.

### **Insurance Pricing**

7.2.1 The Council proposes the following sharing mechanism in respect of insurance costs:

- (i) the current financial model has an insurance cost of £323,067 (the Modelled Annual Insurance Cost);
- (ii) to the extent that the Actual Annual Insurance Cost (as advised and evidenced by HSSL) exceeds £323,067, then:
  - (a) the Council will reimburse HSSL in full for any amounts that the Actual Annual Insurance Cost exceeds the Modelled Annual Insurance Cost up to £40,000; and
  - (b) should the Actual Annual Insurance Cost exceed the Modelled Annual Insurance Cost by more than £40,000 i.e. £363,067 (the Upper Insurance Cost Threshold), then the Council will reimburse 50% of any amount that the Actual Annual Insurance cost exceeds the Upper Insurance Cost Threshold, such that the total annual reimbursed sum in 7.2.1 (ii) (a) and 7.2.1 (ii) (b) is capped at £90,000 per annum.
- (iii) to the extent that the Actual Annual Insurance Cost is lower than the Modelled Annual Insurance Cost by more than £40,000 i.e. £283,067 (the Lower Insurance Cost Threshold), then HSSL will reduce the Unitary Charge by a sum equivalent to 50% of the amount that the Actual Annual Insurance Cost is lower than the Lower Insurance Cost Threshold.

7.2.2 This arrangement will commence immediately following the execution of the Deed of Variation. Monetary sums in 7.2.1 are in January 2007 values and are to be indexed by RPI.

7.2.3 In future years, any adjustments arising from the application of Section 7.2.1 will be made by way of a lump sum payment in the month immediately following the payment of the Actual Annual Insurance Cost.

## **Wider BSF Programme**

### **JPMT – HSSL Relationship**

- 8.1.1 The BSF programme also includes works on two Voluntary Aided schools, the provision of a new 6<sup>th</sup> Form Centre, the provision of a new 8FE school and a Pupil Support Centre. These schemes are on sites outside of the existing PFI relationship.
- 8.1.2 The Council will be delivering these schemes through the JPMT. As such, the Council welcomes any constructive advice that HSSL are able to provide in respect of these schemes. However, HSSL will not form part of the decision making in respect of the procurement of these works and will receive no payment in respect of these activities.
- 8.1.3 The JPMT will manage the existing PFI contract. HSSL may be obliged to either leave or to not attend meetings of the JPMT where the JPMT is active in undertaking its monitoring role in respect of the PFI contract.

### **Estate Vision**

- 8.2.1 The Council recognises the benefits of having a single supplier for the delivery of facilities management services across the whole BSF estate. As such, the Council expects HSSL to play an active and cooperative role in achieving this aim.
- 8.2.2 The procurement of facilities management contracts for those facilities not party to the PFI contract will be subject to public sector procurement rules. HSSL agrees to conduct its arrangements with its existing subcontractors in such a way as to secure, wherever possible, the efficiencies that might accrue, should the whole BSF estate be serviced by a single contractor(s).
- 8.2.3 Notwithstanding 8.2.2 above, HSSL agrees to fully cooperate in any benchmarking exercise conducted on the BSF estate.