

REPORT TO: POLICY AND RESOURCES COMMITTEE - 11TH FEBRUARY 2002

REPORT ON: PUBLIC PRIVATE PARTNERSHIP - FEASIBILITY STUDY ON COMPANY STRUCTURES

REPORT BY: DIRECTORS OF SUPPORT SERVICES AND FINANCE

REPORT NO: 126-2002

1.0 PURPOSE OF REPORT

- 1.1 The purpose of this report is to obtain authority to employ consultants to carry out a feasibility study of the suitability of different types of joint venture companies which could be utilised for the proposed Public Private Partnership (PPP) for schools.

2.0 RECOMMENDATION

- 2.1 That the Director of Support Services be authorised to commission the Council's legal and financial PPP consultants to carry out a feasibility study.
- 2.2 The consultants should consider the advantages and disadvantages of the various possible structures, and the feasibility of the Council proceeding to utilise one of them for its PPP. The study should establish:
- 2.3 That it is feasible for the Council to enter into a requirement for the PPP Bidders to enter into a Joint Venture with the Council. The consultants should advise on any legal issues and the financial costs of this to the Council by way of equity etc. in the Company.
- 2.4 Whether it is possible for the Council to enter into a Joint Venture with other partners to bid for the PPP contract on the basis that the Council and Tayside Contracts would be sub-contracted to undertake various services for the Joint Venture Company and any profits generated by the Company would be returned to the Council or invested in Dundee's education services. The consultants should advise on any legal issues, the costs of equity in the Company, financial risks and rewards and the cost of preparing a bid for the PPP contract. The consultants should also advise on potential partners for this type of Joint Venture Company.
- 2.5 Whether there would be any advantages or disadvantages if the Joint Venture Company was a non-profit distributing company, rather than a normal private company structure with profits distributed through a Shareholders Agreement.
- 2.6 Areas to be considered also include value for money for the Council, and the financial and tax implications for the company; the potential for provision of services by the Council to the company and the consequential effect on risk transfer and subsequently on balance sheet treatment; the likely acceptability of the various structures to the Scottish Executive; and the "bankability" of the various structures for the financiers.

3.0 FINANCIAL IMPLICATIONS

- 3.1 The Council has been awarded £305,000 by the Scottish Executive for the costs of the development work for the PPP, and the costs of carrying out a feasibility study will be able to be met from this funding.

4.0 LOCAL AGENDA 21 IMPLICATIONS

- 4.1 None.

5.0 EQUAL OPPORTUNITIES IMPLICATIONS

5.1 None.

6.0 REPORT

6.1 Following approval by the Project Board set up by the Education Committee, the Outline Business Case for the PPP project was submitted to the Scottish Executive on 14th December 2001, and a decision on whether the Council's case has been approved is expected by April 2002. In the meantime, there is scope for maintaining progress by carrying out preparatory work so that if a decision is taken in due course to proceed with a PPP, there would be as little delay as possible in taking the project forward.

6.2 In recent PPPs, Councils have invited bids from a number of consortia (Special Purpose Vehicles - SPVs) which comprise of a number of partners usually contractors and funders. The successful SPV leases the schools/sites from the Council, refurbishes/builds the PPP schools, and operates them for the period of the lease, usually 30 years.

6.3 However there are a number of possible alternative structures for a PPP which would allow the Council to maintain a minority interest in the SPV, and create more of a partnership approach than the traditional contract between 2 separate parties. The Council has experience of setting up joint venture companies with private sector partners for Baldovie in particular, but also for the Arts Centre, the Ice Rink, and the Economic Development and Cultural companies.

6.4 There are constraints on the Council's powers to set up companies as they must have a minority interest to avoid expenditure being counted as its own section 94 capital expenditure, and under the principles of a PPP, expenditure must be "off balance sheet" for the Council and the costs and the associated risks of the project must clearly fall to the private sector and not be underwritten by the Council. Accordingly a joint venture company must be structured to avoid contravening these rules.

6.5 There are different forms of company, such as a company with shareholders, a non profit distributing organisation, which could also be limited by shares or limited by guarantee, or other structures such as industrial and provident societies, or charitable trusts. The non profit distributing organisation model is being considered by at least one other Council for its schools PPP, and would involve transferring ownership of the school properties to the company rather than leasing them. In that particular case however, there would be no Council representation on the company.

7.0 CONSULTATIONS

7.1 The Chief Executive and the Director of Education have been consulted in the preparation of this report.

8.0 BACKGROUND PAPERS

8.1 No background papers as defined in Section 50D of the Local Government Scotland Act 1973 (other than any confidential or exempt information) were relied on to any material extent in preparing the above report.

Signature
Director of Support Services

Date

Signature
Director of Finance

Date