



<b>Decision Maker:</b>	Leader of the Council
<b>Date:</b>	21st May 2021
<b>Classification:</b>	General Release
<b>Title:</b>	Request for approval to wind up Westminster Local Education Partnership (LEP)
<b>Wards Affected:</b>	All
<b>Key Decision:</b>	No
<b>Financial Summary:</b>	<p>The Council wishes to dissolve the Westminster Local Education Partnership (LEP) via Members Voluntary Liquidation.</p> <p>The LEP has, for all practical purposes, remained dormant since 2015 and has no remaining creditors or debtors and only a small cash balance. The Council as 10% shareholder has received a final dividend of £18,861 and will receive return of its nominal share capital of £100. The Council will need to contribute to legal and professional fees with the costs estimated at £3,000.</p>
<b>Report of:</b>	James Green, Director of Development and Gerald Almeroth, Executive Director – Finance & Resources

## 1. Executive Summary

- 1.1 The Council established the Westminster Local Education Partnership (the “LEP”) with Bouygues UK Ltd, as part of the requirements to receive funding via the Government’s Building Schools for the Future (BSF) programme, to renew the Council’s secondary estate in 2007/2008. The Westminster LEP is no longer in active use, as all of the works and services have been completed and there is no future requirement for repurposing the LEP, which still incurs annual costs, other than to close the company, hence this paper. The recommendation from the Finance Director of the LEP is that the company is closed.

## 2. Recommendations

- 2.1 It is recommended that the Westminster Local Education Partnership is wound up with a share of the funds remaining, after legal or professional fees, any creditors or other liabilities etc. are paid, to be returned to the Council.

- 2.2 That Cabinet passes a Special Resolution substantially in the form of the draft Special Resolution attached at appendix 1 to wind up the Westminster LEP.
- 2.3 That authority is delegated to the Executive Director of Finance and Resources to execute all necessary documentation once agreed, to implement the liquidation of the LEP, and novate or otherwise transfer to the Council the various contracts required to give effect to the proposals set out in this report.

### **3. Reasons for Decision**

- 3.1 After completion of all works and services required by the entity and with no future requirement for the entity, it is proposed to close the company.

### **4. Background, including Policy Context**

- 4.1 As part of the Government's funding obligations for the Council's Building Schools of the Future programme, the Council was required to establish a Local Education Partnership, known as a LEP. The LEP was a 10-year strategic partnership between Westminster City Council (WCC) and Bouygues UK Ltd through its subsidiary Bouygues Partnership for Education and Community Ltd (Bouygues) and the LEP is registered with Companies House at Becket House, 1 Lambeth Palace Road, London, United Kingdom, SE1 7EU.
- 4.2 Building Schools for the Future (BSF) was the name given to the British government's investment programme in secondary school buildings in England in the 2000's. The delivery of the programme was overseen by Partnerships for Schools (PfS), a non-departmental public body formed through a joint venture between the Department for Children, Schools and Families (DCSF) (formerly the Department for Education and Skills), Partnerships UK and private sector partners.
- 4.3 The BSF programme involved the decentralisation of funds to local education partnerships (LEPs) to build and improve secondary school buildings. The Council established a private sector LEP partner with BY Developments Limited to introduce capital and expertise to deliver the BSF programme to the secondary estate.
- 4.4 The Council was in Wave 3 of the DfES BSF programme, for 2007-8 funding. The DfES established Partnerships for Schools (PfS) as an arms-length agency to lead the BSF programme. Westminster's indicative benchmark capital allocation was set at £123.9 million. The final allocation was dependent on a satisfactory Education Vision for secondary provision, supported by the Strategic Business Case (SBC) and followed by the Outline Business Case (OBC) with all submissions being successful the project progressed to implementation and delivery.
- 4.5 Funding associated with BSF was not just limited to construction and equipment in new schools, but also improving facilities at existing schools, such as providing schools with direct capital funding to spend on buildings and Information and communications technology (ICT). The Council also received its ICT funding and established an ICT Managed Service with Capita across its secondary school estate
- 4.6 The Westminster LEP is no longer in active use and neither the Council nor Bouygues have any further use for repurposing it and the recommendation of the Finance Director of the LEP is that the company is closed.

- 4.7 Officers from the Council's Finance and Development teams, along with representatives from Bouygues UK have established the process for closing the LEP and its liquidation, including the actions required to deal with the LEP's remaining liabilities. Deloitte have been engaged to act as liquidators and Pinsent Masons have been engaged to provide legal advice to the JV. Both the engagements were made through the majority shareholder BY Development Ltd rather than the LEP itself.
- 4.8 The Council along with Bouygues (the majority shareholder) following the advice of the jointly appointed advisers Deloitte's and Pinsent Masons, will make all decisions to undertake the necessary tasks and to follow the governance requirements, as set out within the company's memorandum and articles of association and required by statute .
- 4.9 The legal responsibilities of the LEP fall on its two directors (One director from each Shareholder) and ultimately, they must make sure that all the necessary steps have been taken to mitigate any risks. The LEP directors are Cllr Tony Devenish (WCC) and Gerald Farque (BYD). After discussion with the advisors, it was proposed that the Council and Bouygues would follow the process of a members' voluntary liquidation ,releasing the current LEP directors from their obligations and ensuring that the Council has the benefit of the 12-year limitation periods that remain on any contracts by way of novation or assignment of those contract to the council.
- 4.10 Once the declaration of solvency has been made by the directors of the LEP the resolution to wind up the company can be passed and the liquidators, Deloitte will take over management for the Company, at which point the powers of the directors' will cease It is expected there will be minimal, if any, further requirements of the directors. The expectation is that the liquidation will be completed by Deloitte within 6 to 9 months, the main time requirement coming from the need to obtain approval from HMRC before the liquidation can be formally completed.

## **5. Financial Implications**

- 5.1 The LEP balance sheet has been realised, ensuring all assets have been converted to cash and all recorded liabilities settled. The residual reserves balance has been paid out to the shareholders by way of a dividend, the dividend received by Westminster is £18,886. The remaining cash balance relating to the nominal share capital of the LEP has also been paid to the shareholders in the form of short-term loans until the liquidation is finalised, the amount in Westminster's case is £100.
- 5.2 The bank account of the LEP has been closed. Once the liquidation is finalised the liquidators will formally distribute the nominal share capital to the shareholders by way of offset against the short-term loans to shareholders mentioned above.
- 5.3 Fees involved in the liquidation process are expected to be in the region of £10k for Deloitte and £20k for Pinsent Masons and are expected to be borne by the shareholders in proportion to their share ownership of the LEP being 90% Bouygues, 10% WCC. For the Council, based on estimate and shareholding, the estimated cost of this is £3k. The intention of the shareholders is to finance their shares of the fees involved from the dividends received.

## **6. Due Diligence Matters**

- 6.1 There are several contracts which the LEP is or was a party to. As mentioned above the Council and Bouygues have engaged Pinsent Masons to ensure that all obligations and

liabilities under these contracts are satisfied or the risks adequately considered prior to winding up the LEP. Pinsents have undertaken a review of the Sample and Batch One schools which represents over 50% of the Westminster BSF programme. The legal documentation used throughout the programme was standardised Partnerships for Schools BSF contracts, with only project specific derogations accepted. It is important to note that none of the schools in the Westminster BSF programme were procured using PFI and so there are no continuing Special Purpose Vehicle (SPV) and facilities management obligations.

- 6.2 As a result of the due diligence, the parties have agreed that the following legal documents should be entered into:
- i. Master deed of novation re D&B Subcontracts between (1) LEP (2) WCC (3) BYUK *note: this collapses the structure of the D&B Contracts between WCC and the LEP and the D&B Subcontracts between the LEP and BYUK by terminating the D&B Contract and having WCC step into the LEP's position in the D&B Subcontract. This preserves the 12 year latent defect liability of BYUK in favour of WCC (albeit a collateral warranty between BYUK and WCC was already in place).*
  - ii. Master deed of novation re parent company guarantees ("PCG") in respect of D&B performance (1) LEP (2) WCC (3) Bouygues Construction SA *note: the LEP had the benefit of a PCG from Bouygues Construction pursuant to each D&B Subcontract and this novation preserves this security in favour of WCC*
  - iii. Legal Opinion in respect of Bouygues Construction SA *note: this is a formal opinion produced by a French law firm confirming that Bouygues Construction are a validly incorporated company under French law and it is within their constitutional powers to transfer the benefit of PCG to WCC.*
  - iv. Master deed of novation re ICT services between (1) LEP (2) WCC (3) Capita IT Services (BSF) Limited *note: Ramesys (now Capita) entered into ICT Services contracts on a number of the schools for the provision of Managed Services and infrastructure. Again, the benefit of their remaining liability under statute is being novated across to WCC. The last ICT services were performed in September 2014.*
  - v. Novation notification letter in respect of CDM Coordinator services (1) LEP (2) WCC (3) BYUK (4) Sweet (UK) Limited *note: the CDM Coordinator role was previously appointed by the LEP and so this is being novated across to WCC.*
- 6.3 Pinsent Masons have reviewed copies of the executed documentation and have confirmed that everything is in order. In terms of other documentation where no action is required, the Council are already an appointing party to the Independent Certifier's appointment and have the benefit of collateral warranties from the professional team across all the schemes.
- 6.4 All the recommendations and matters raised by Pinsent Masons in that report and addendum have been considered and acted upon and that the matters identified as being matters in respect of which the Council did not want legal advice remain as such.

6.5 Please note however that:

- Several of the consultants have become insolvent in the intervening years;
- We were unable to find the professional team warranties (architect – David Miller, structural - Terrell and M&E - Silverline) for the Lisson Grove scheme. NB Silverline are now insolvent.

## **7. Legal Implications**

7.1 Pinsent Masons provided a due diligence report and addendum which considered the implication arising from the proposal to wind up the LEP.

7.2 While Bi Borough Legal services have not seen the bible of documents that make up the contractual relationship between the council and the LEP and therefore cannot comment on them or the approach taken, we understand that these have been reviewed and reported on by Pinsent Masons with any relevant issues considered by the officers of the Council and Bouygues UK.

7.3 It is proposed that a number of contracts be novated from the LEP to the Council, so as to ensure that the Council obtains the benefit of any remaining limitation periods under those contracts. Since the Bi Borough Legal services has not seen the bible of contract documents, we cannot comment on the suitability of the novation agreements or any of the other proposed agreements. As stated above, we understand that officers of the Council and the Bouygues UK have worked with Pinsent Masons to consider the relevant issues. Council officers should verify that those agreements comply with the approach advised by Pinsent Masons and that they are in a form proposed by Pinsent Masons to protect the Council's interests.

7.4 Whilst Bouygues as the majority shareholder in the LEP ordinarily has sufficient votes to pass the Special Resolution to wind up the LEP article 3 of the LEP's Articles of Association provide that in addition to the Special Resolution of the LEP as Special Resolution of each of the shareholders is required without which the LEP can't be wound up. In essence, this means that a Special Resolution of the Council is required for the LEP to be wound up.

7.5 The report does not suggest any conflict of interest, that will require Bi Borough Legal Services to provide advice. However, in the event that there is any divergence in the views or interests of the two shareholders, such a conflict may arise and, in that case, the Bi Borough Director of Law should be consulted.

## **8. Next steps**

8.1 Assuming the recommendation to close the LEP is approved there will be a number of activities and timeframes for the team to consider before formal dissolution is complete. Below are a list of indicative tasks and timeframes. Tasks can run concurrently. So using the longest timeframe we would expect formal dissolution within a maximum of 12 months of declaration of solvency, but within a likely timeframe of 6-9 months.

- Board meeting, resolutions and Declaration of Solvency. – Late April 2021
- Statutory filings and notifications of the appointment of the liquidators at Companies House in accordance with legislation. – Within 14 days of appointment

- Agreement and settlement of creditor claims (if any). – Notice for creditors to submit claims expires approximately 1 month after appointment.
- Obtain statutory (HMRC) and non-statutory clearances. – Currently between 6 and 9 months.
- Distribution of surplus assets to shareholders. – After clearance has been granted.
- Notice to members of draft final account. – Following distribution of remaining assets but within 12 months of appointment so that no Annual Progress Report is required.
- Receipt of signed consent or 8 week time lapse.
- Liquidators' final account filed at Companies House. – Within 2 weeks of consent or the 8 week notice period expiring.
- Dissolution approximately three months following the final requisite filings at Companies House.

## **9. Consultation**

- 9.1 None other than Children's Services will be notified and they will update all the secondary schools in the Council's secondary estate, if this paper is approved.

**If you have any queries about this Report or wish to inspect any of the Background Papers please contact: Iain Emmerson [iemmerson@westminster.gov.uk](mailto:iemmerson@westminster.gov.uk) and Dai Williams [dwillia@westminster.gov.uk](mailto:dwillia@westminster.gov.uk)**

For completion by the **Leader of the Council**

**Declaration of Interest**

I have <no interest to declare / to declare an interest> in respect of this report

Signed: \_\_\_\_\_ Date: \_\_\_\_\_

NAME: \_\_\_\_\_

State nature of interest if any .....

.....  
*(N.B: If you have an interest you should seek advice as to whether it is appropriate to make a decision in relation to this matter)*

For the reasons set out above, I agree the recommendation(s) in the report entitled **Request for approval to wind up Westminster Local Education Partnership (LEP)** and reject any alternative options which are referred to but not recommended.

Signed .....

Leader of the Council

Date .....

If you have any additional comment which you would want actioned in connection with your decision you should discuss this with the report author and then set out your comment below before the report and this pro-forma is returned to the Secretariat for processing.

Additional comment: .....  
.....  
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If you do not wish to approve the recommendations, or wish to make an alternative decision, it is important that you consult the report author, the Head of Legal and Democratic Services, Strategic Director Finance and Performance and, if there are resources implications, the Strategic Director of Resources (or their representatives) so that (1) you can be made aware of any further relevant considerations that you should take into account before making the decision and (2) your reasons for the decision can be properly identified and recorded, as required by law.