

**THE WELLINGTON ACADEMY**

**Executive Summary**

This report provides Cabinet with an update on progress in relation to the formation of The Wellington Academy and requests the necessary authority to be delegated to the Directors for Children and Education, and Transport, Environment and Leisure to proceed with the next critical steps of the project. The report outlines the legal agreements and finance necessary to progress the project, highlighting the key risks in moving forward.

**Proposal**

That Cabinet:

- (i) Notes the content of this paper and approves the submission of the Final Business Case (FBC) (as outlined in **Appendix A**).
- (ii) Authorises the Director for Children and Education to sign the Development Agreement (as outlined in paragraph 18(i).
- (iii) Subject to both of the above, authorises the Director for Transport, Environment and Leisure to award the Design and Build Contract (as outlined in paragraph 18(ii).
- (iv) Acknowledges the risk to the authority of a Judicial Review in relation to the planning application, and the financial risks thereof.

**Reason for Proposal**

To re-build Castledown Foundation School at Ludgershall as The Wellington Academy to open in September 2009 in existing buildings and in new buildings by March 2011.

**PARVIS KHANSARI**

Service Director, Major Projects  
Department for Transport, Environment  
Leisure

**STEPHANIE DENO VAN**

Service Director, Schools  
Department for Children and  
Education

## THE WELLINGTON ACADEMY

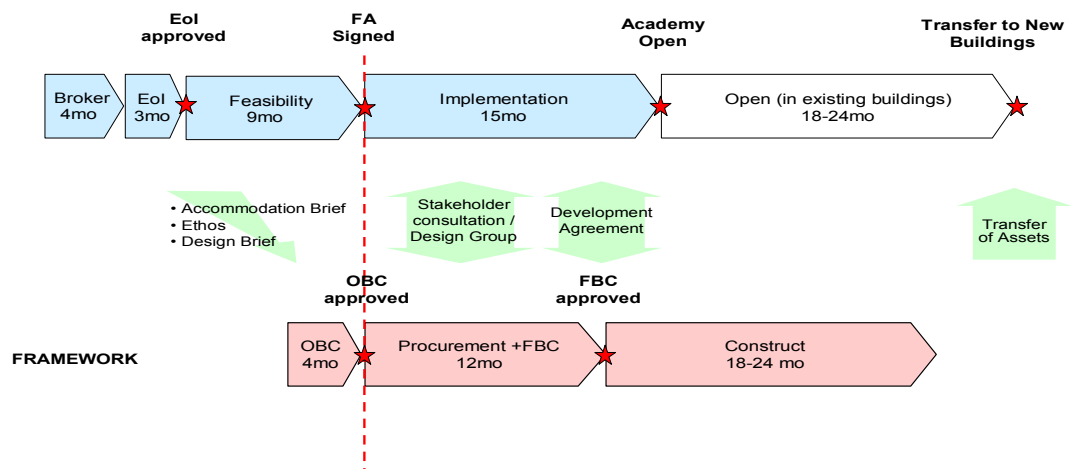
### Purpose of Report

1. To:
  - (i) Provide an update on the formation of the Wellington Academy at the end of the Final Business Case (FBC) and Contract Award stage.
  - (ii) Present the Final Business Case.
  - (iii) Seek approval for the finances required to continue with the formation of The Wellington Academy.
  - (iv) Proceed with the award of the building contract and signature of the Development Agreement in due course.

### Background

2. This report builds on previous reports to Cabinet on 27 February 2007 and 25 March 2008 and regular reports and updates to Children's Services Scrutiny Committee. The Wellington Academy which replaces Castledown Foundation School at Ludgershall entered the FBC and Contract Award stage in January 2009 and it will end in August 2009. A reminder of the procurement timeline is shown below.

## Procurement Delivery Timeline



3. Progress during the FBC and Contract Award Stage has been intense with weekly meetings between Kier Moss Construction (the preferred bidder), and representatives from the Local Authority (LA) and the Wellington Academy Trust to develop the design of the school facilities and to cost the proposals to ensure affordability of the scheme within the available funding. In parallel to this the Education and Transition Groups have been working towards opening the new Academy in the existing school buildings in September 2009. The Project Steering Group has continued to meet on a monthly basis to report on progress and deal with any issues that arise.
4. At the end of the FBC and Contract Award stage the LA must submit the FBC document to Partnerships for Schools (PfS) for approval in July 2009. An Executive Summary of the Draft FBC is attached at **Appendix A**. The FBC shows how The Wellington Academy will be built for the available funding approved by the Department for Children, Schools and Families (DCSF) following submission of the Outline Business Case (OBC) in July 2008 and the additional funding allocated by the LA to the capital programme.
5. On approval of the FBC the LA will sign the Development Agreement with the Wellington Academy Trust. The Development Agreement will enable the LA to deliver the new school facilities designed to meet the requirements of the Academy. The Development Agreement must be entered into before the Contract Award.
6. Finally the LA will enter into a Lump Sum Design and Build (D&B) Contract with Kier Moss to build the new school facilities.

### **Main Considerations for the Council**

7. Submission of the Final Business Case commits the LA to the project and it is expected that on approval the LA will sign the Development Agreement with the Wellington Academy Trust and the D&B contract with Kier Moss.
8. The Commission for Architecture and the Built Environment (CABE) has been consulted on the scheme as a non-statutory planning consultee. A CABE Review Panel assessed the scheme as achieving an overall rating of “Good”, on a scale of Poor, Mediocre, Good or Excellent, with elements of excellence.

### **Environmental Impact of the Proposal**

9. This project qualifies for additional funding for zero-carbon schools. Ministers have set a target to reduce carbon emissions from new school buildings by 60% relative to 2002 building standards. Additional funding of £50 per square metre of floor area has been secured within the FAM to help meet this target and the preferred contractor has completed the carbon calculator tool to demonstrate compliance of its design.

10. Further detailed ecological reports have been undertaken since the last report. These identified that the site is a key habitat for both bats and reptiles. The preferred contractor has sought the advice of an ecology consultant and held meetings with the County Ecologist and has included appropriate mitigation measures in the planning application to manage the impact of the Academy on the local environment.

### **Risk Assessment**

11. The short term lease identified in paragraph 18 below brings with it certain liabilities and risks to the Council as landlord which previously would have been the responsibility of the school. The key risks are identified below:
  - (i) Under the short term lease, the Council will gain the duty to insure the buildings until the long lease is signed by the Academy Trust. The Council has a policy excess of £250,000 on its school buildings and therefore any claim between September 2009 and December 2012 will have to be funded by the Council up to the value of the excess.
  - (ii) The Council has completed condition surveys of the existing school buildings and services and is currently undertaking a programme of essential repairs and maintenance works to bring the existing school buildings up to a safe standard for occupation by the Academy in September 2009. £90,000 has been secured from Castledown School's Devolved Formula Capital budget in order to fund these works. However, any costs over and above this amount will have to be funded by the Council. A current estimate of the cost of the works to be completed is £250,000, which is contained within available funding (including the school's residual devolved formula capital).
12. Planning Permission has been sought for the new buildings and a decision is expected at Strategic Planning Committee on 15 July 2009. Once planning permission has been granted there is a risk of Judicial Review for a period of up to 12 weeks following the date of permission. It is expected that the contractor will start on site before this period expires. If a Judicial Review is initiated after the main contract has been awarded, the costs of any delay associated with this are the liability of the Council. The likely cost of such a delay is difficult to quantify, but could be up to £250,000 per month. The planning application for the Academy is not considered contentious and extensive pre-application consultation has been carried out. It is the opinion of the project team that the likelihood of a Judicial Review is very low.

13. The Council is obliged to deliver the project through the PfS National Framework. This method of procurement remains relatively untested nationally and the Council does not have any direct experience of its operation. The D&B contract will be signed between the Council and the preferred bidder, Kier Moss. This contract seeks to pass a large amount of risk to the Contractor but some residual risks remain with the Council. Where these risks occur, the Council would be required to fund the financial impact. It should be noted that the Financial Agreement Model (FAM) does not include any allowance for contingency. A risk review has been undertaken by the Council's professional team in conjunction with the contractor to identify the risks of the project. Those risks which have a possible financial implication to the Council are summarised below:
- (i) Additional asbestos found within the buildings which was not identified during the type 2 asbestos surveys.
  - (ii) Any abnormal ground conditions or archaeological discovery found under "Dark Land" i.e. ground under the existing buildings which cannot be inspected.
  - (iii) Delays to the building contract caused by not complying with Planning Conditions to be discharged by the Council.
  - (iv) Off-site works – unforeseen utilities reinforcements exceed the capital allocation of £500k.
  - (v) Delayed opening of new buildings due to the Academy Trust or its ICT Contractor resulting in an extension of time claim by the Contractor.
  - (vi) Post contract design changes raised by the LA or Academy Trust resulting in additional costs.

### **Financial Implications**

14. The funding provision to establish The Wellington Academy is outlined as follows:

	£
FAM (DCSF Funded)	32.11 million (inc £1.7M for ICT)
Off-site works in Wiltshire's capital programme	0.50 million
Resources in Wiltshire's capital programme	0.89 million
Additional funding in Wiltshire's capital programme	0.64 million
<b>Total Planned Costs</b>	<b>34.14 million</b>

15. The FBC confirms the affordability of the scheme within this known funding envelope.

### **Legal Implications**

16. The Council's involvement in an Academy project requires it to enter into a number of legal agreements which are summarised below:
- (i) **Development Agreement** – a contractual commitment between the Council and The Wellington Academy Trust, which obliges the Council to construct the new Academy buildings. This has been reviewed by the Council's external solicitors and is considered not to be an onerous document. This document commits the Council to enter into a D&B contract with the preferred bidder.
  - (ii) **Design and Build Contract** – a standard contract that has been drafted by Partnerships for Schools. The Council is unable to amend the contract in any way, other than to "fill the gaps", due to the effect this would have on the legality of the framework procurement process.
17. A complex arrangement of land transactions has taken place in order to deliver the Academy. The existing Castledown School is a foundation school and as such the governing body owned the school site. The transfer of the site to the Council was completed in April 2009 and Castledown School remains in occupation of the site under a short term lease until August 2009.
18. Ultimately the Academy Trust will occupy the site under a long-term lease. The key principle here is that the Council will continue to own the land that the Academy occupies. This will enable the Council to retain the ability to operate the school in the unlikely event that the Academy Trust ceases to operate. The various land transactions to be completed during the remainder of the project are summarised briefly below:
- (i) Short-term lease between the Council and The Wellington Academy Trust from September 2009 until the end of the defects liability period.
  - (ii) Occupation of the new buildings by the Wellington Academy Trust under licence during the defects liability period following completion of the new buildings.
  - (iii) Long-term lease between the Council and the Wellington Academy Trust for 125 years from completion of the defects liability period.

## **Options Considered**

19. The previous stages of the project have included the competitive selection of the recommended design and construction team through a design-based competition and a rigorous pre-tender evaluation. Alternative methods of procuring the project have been previously precluded by Partnerships for Schools, requiring the Authority to use the PfS contractors' framework. More detailed technical options related to the building solution have been considered extensively throughout the design stage to ensure that the objectives of the Academy and the Council are delivered through the process.

## **Conclusion**

20. Cabinet are asked to note the contents of the report and consider the Proposal set out at the front of this report.

### **PARVIS KHANSARI**

Service Director, Major Projects  
Department for Transport, Environment  
and Leisure

### **STEPHANIE DENOVA**

Service Director, Schools  
Department for Children and Education

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**The following unpublished documents have been relied on in the preparation of this Report:**

## **Appendix A – Executive Summary of the Draft Final Business Case**