

## THE ROYAL BOROUGH OF KENSINGTON AND CHELSEA

### CABINET MEETING – 22 FEBRUARY 2007

#### REPORT BY THE EXECUTIVE DIRECTOR FOR FINANCE, INFORMATION SYSTEMS AND PROPERTY AND THE EXECUTIVE DIRECTOR FOR FAMILY AND CHILDREN'S SERVICES

#### SIGNING OF THE FUNDING AGREEMENT FOR CHELSEA ACADEMY

Cabinet is asked to delegate authority to Anne Marie Carrie, Executive Director of Family and Children's services, in her capacity as a director of the Chelsea Academy Trust to sign the Chelsea Academy Funding Agreement, on behalf of the Royal Borough of Kensington and Chelsea in its capacity as a co sponsor.

Cabinet is also asked to approve funding towards the current predicted capital overspend (arising from a delay to the project) in accordance with the agreement between the Secretary of State and the project sponsors, and delegate authority to Cllr Merrick Cockell to authorise additional funding, should it be required once detailed analysis of the temporary accommodation requirements is complete.

Cabinet is further asked to approve the granting of a lease to the Chelsea Academy Trust for a term of 99 years at a peppercorn rent.

**FOR DECISION**

#### **1. INTRODUCTION**

- 1.1 The Royal Borough of Kensington and Chelsea is co-sponsoring a new Church of England Academy on Lots Road, Chelsea. The other co-sponsor is the London Diocesan Board for Schools. The academy will cater for 810 11-16 year olds and 250 sixth form students.
- 1.2 The project is currently at the feasibility phase. Designs have reached RIBA Stage D and a detailed planning application is expected to be submitted in April 2007.
- 1.3 The Secretary of State for Education and Skills and Directors of the Academy Trust aim to sign the funding agreement for Chelsea

Academy on 21<sup>st</sup> March 2007. This will mark the completion of the feasibility phase and represents a legally binding agreement between these parties to open the Academy on a specified date. In order to maintain the current project programme it is necessary to sign the Funding Agreement on this date.

- 1.4 On entering into the funding agreement the Council is also required to grant a lease of the Ashburnham site to the Chelsea Academy Trust.
- 1.5 The Academy building was due to be completed in time for a September 2009 opening. The Department for Education and Skills (DfES) set a capital cash limit of £38 million for this programme. Recently it has been accepted that since the site will not be available until the end of May 2008, the new building will not be ready until July 2010, opening in September 2010. In recognition of this delay the project will incur additional costs over and above the capital cash limit of £38 million. Although estimates are available, the details of the costs and how they will be apportioned between the DfES and sponsors is currently being determined.
- 1.6 The Academy will open in temporary accommodation in September 2009 for 162 Year 7 students. The Academy will operate in this temporary accommodation for one academic year before moving to its new building in July 2010.
- 1.7 The Cabinet is requested (i) to authorise Anne Marie Carrie, Executive Director of Family and Children's Services to sign the Funding Agreement on behalf of the Council, (ii) to approve the Council's contribution towards the overspend costs and (iii) delegate authority to Cllr Merrick Cockell to approve any changes to these costs, should they arise following further analysis of the temporary accommodation requirements.

## **2. BACKGROUND**

- 2.1 In February 2003 Cabinet approved the development of the Academy option for a new secondary school in Chelsea, with the Council acting as a sponsor.
- 2.2 In May 2004 Cabinet agreed to proceed with the establishment of the Academy and in November 2004 approval was given for the submission of the Expression of Interest and proposal to establish an Academy on the basis of the Council acting as a partner with the London Diocesan Board for Schools (LDBS) as sponsor. In January 2005, the Secretary of State for Education and Skills approved the Expression of Interest and funding was released for a

feasibility phase to conclude with the submission of a Funding Agreement to the Secretary of State.

- 2.3 A Project Steering Board was established to oversee this feasibility phase. Membership of this board was extended to representatives of both sponsors and the DfES. Cllr Merrick Cockell and Mrs Anne Marie Carrie were elected Members in their capacity as representatives of one of the two co-sponsors, the Royal Borough of Kensington and Chelsea.
- 2.4 In February 2006 Cabinet approved revised sponsorship arrangements for Chelsea Academy, with both the Council and LDBS acting now as co sponsors. This approval included agreement that the Council makes a £2 million initial contribution to costs or the on-going development of the school through a formula to be settled with the DfES and the Church of England (LDBS).
- 2.5 In accordance with DfES Academy policy, sponsors will make a significant contribution to the costs of the new school building and the Government will provide the balance. The £2 million contribution from the Council will be matched by a £2 million contribution for the LDBS. Running costs are met in full by the DfES.
- 2.6 In approving the February 2006 report, Cabinet accepted that the Council was not ruling out making a contribution to any extra costs, subject to assurances that the Chelsea Academy will be funded as generously as any other Academy in central London. Since then, the DfES Academies Unit has confirmed that the capital cash limit for the Chelsea Academy is £38 million.
- 2.7 Additional costs have arisen because the completion of the Academy building has been delayed from July 2009 to July 2010. This delay is in part a result of the complexities of obtaining vacant possession of the Heatherley site.
- 2.8 The year delay means that over and above the capital cash limit of £38million, funding will be required to cover inflation costs for construction, additional design fees and costs associated with providing temporary accommodation for 162 year 7 students during the 2009/10 academic year.
- 2.9 Although estimates are available, the details of the costs and how they will be apportioned between the DfES and sponsors is currently being determined. A meeting between the sponsors and Lord Adonis, the Parliamentary Under-Secretary of State for Schools, was held on Monday 5 February. The Council expects to receive a letter from Lord Adonis shortly confirming the

arrangements for funding additional expenses over and above the agreed £38 million capital cash limit.

- 2.10 Council officers anticipate that this letter may confirm that the inflation costs will be funded by the DfES whilst the remaining costs for temporary accommodation and additional design fees will be shared 50:30:20 between the DfES the Royal Borough of Kensington and Chelsea and the London Diocesan Board for Schools, respectively. This is in accordance with clause 44 of the Funding Agreement which states that "(g) if the parties agree that additional capital expenditure to establish the Academy, other than that specified in clause 44(a) may be incurred then the parties shall divide such additional costs between them in such proportions as may be agreed between them."
- 2.11 The anticipated costs to the Royal Borough of Kensington and Chelsea are detailed within appendix 1. Cabinet is asked to note that these costs are correct at the time of writing this report but may be subject to change as details of the provision of temporary accommodation are determined. It is possible that the final costs associated with funding will not be confirmed before the signing of the Funding Agreement on 21 March. Cabinet is therefore asked to delegate authority to Cllr Merrick Cockell, Leader of the Council, to approve additional funding, should it prove necessary, over and above that detailed within Appendix 1.
- 2.12 The feasibility phase will shortly be concluded and subject to the Secretary of State for Education and Skills' approval of the proposals we propose to sign the Funding Agreement on 21 March 2007. The successful completion of this project requires that the Funding Agreement be signed on this date.
- 2.13 The Funding Agreement is signed by the Academy Trust and Secretary of State. This document contains all the formal information necessary for the opening and funding of the new Academy - and is a binding contract between the Secretary of State and the Academy Trust for an Academy to open on a specified date.
- 2.14 The Funding Agreement includes a Memorandum and Articles for the new company, the Academy Trust. This document has been signed by The Mayor and Burgesses of the Royal Borough of Kensington and Chelsea, acting by its Executive Director of Family and Children Services, Anne Marie Carrie.
- 2.15 The Funding Agreement has to be signed by two Directors of the Academy Trust. If a sponsor signs the Funding Agreement, they must have been formally appointed as a Director of the Academy

Trust prior to signing (see 2.14). All Directors of the Academy Trust are required to have had enhanced clearance following a Criminal Records Bureau (CRB) check.

- 2.16 Accordingly, Cabinet is asked to delegate authority to Anne Marie Carrie to sign the Funding Agreement on behalf of the Royal Borough of Kensington and Chelsea, in her capacity as a director of the Academy Trust.
- 2.17 Proposed heads of terms for the lease of the Ashburnham site to the Chelsea Academy Trust have been provisionally agreed with the Trust's advisors, although the detail is still being worked through. The agreed terms provide for a 99 year lease, contracted out of the Landlord and Tenant Act 1954, at a peppercorn rent. The use will be restricted to School and Community in line with other academy leases. The Academy Trust will be responsible for repair and there will be restrictions on assignment and sub-letting.

### **3. NEED**

- 3.1 The Academy cannot proceed from feasibility to implementation until the Secretary of State for Education and Skills and the directors of the Chelsea Academy Trust have signed the funding agreement.
- 3.2 The Academy will open in temporary accommodation in September 2009 for one academic year. These costs will not be included within the capital cash limit of £38 million and therefore will be funded in accordance with the arrangements set out in 2.10.

### **4. OPTIONS**

- 4.1 The Cabinet can decide to;
  - 4.2.1 Delegate authority to Anne Marie Carrie to sign the Chelsea Academy Funding Agreement on behalf of the Royal Borough as a co-sponsor of the Academy, on the 21 March 2007;
  - 4.2.2 Approve the current estimated funding contribution to overspend as set out in appendix 1;
  - 4.2.3 Delegate authority to Cllr Merrick Cockell, as a member of the Chelsea Academy Project Steering Board to authorise additional expenditure, should it be required following further analysis of the temporary accommodation requirements;

- 4.2.4 Approve the granting of a 99 year lease at a peppercorn rent to the Chelsea Academy Trust; or
- 4.3 Not proceed with the signing of the Funding Agreement for the Chelsea Academy.

## **5. FINANCIAL IMPLICATIONS**

- 5.1 As co-sponsor, the Council is committing to contribute £2 million to the capital costs of the Academy.
- 5.2 In accordance with clause 44 of the Chelsea Academy Funding Agreement, Cabinet is asked to approve the provision of funds to cover additional capital expenditure to establish the Academy, as detailed within appendix 1.
- 5.3 These costs cover inflation, temporary accommodation and additional design fees resulting from the year delay to the project programme.
- 5.4 Cabinet is asked to note that these costs are correct at the time of writing this report but may be subject to change once the exact requirements for the provision of temporary accommodation are determined.
- 5.5 The figures proposed in Appendix 1 can be contained within the draft Capital Programme to be presented to Cabinet and Council. The amount will be reviewed as figures are clarified.

## **6. LEGAL IMPLICATIONS**

- 6.1 The Funding Agreement is made under section 482 of the Education Act 1996, as substituted by the Education Act 2002, between the Secretary of State for Education and Skills and the Academy Trust.
- 6.2 The signing of the Funding Agreement does not itself commit the Council legally. However, the Council has agreed to be a shareholder in the trust, and provide a director.

## **7 PERSONNEL IMPLICATIONS**

- 7.1 Should the Funding Agreement be signed and the Academy go ahead, its staff will be appointed by the Trust; the Royal Borough

will not carry employment or other responsibilities for these staff, save in the role of sponsor.

## **8. EQUALITIES IMPLICATIONS**

8.1 There are no equalities implications arising from this report.

## **9. RECOMMENDATION(S)**

9.1 The Cabinet is recommended to

9.1.1 Delegate authority to Anne Marie Carrie, Executive Director of Family and Children's Services, to sign the Chelsea Academy Funding Agreement, on behalf of the Royal Borough of Kensington and Chelsea in its capacity as a co sponsor as set out in 4.2 (and appendix 1)

9.1.2 Approve the current expected additional contributions to overspend as set out in 4.3 and delegate authority to Cllr Merrick Cockell, Leader of the Council to authorise additional expenditure accordingly as set out in 4.4.

9.1.3 Approve the granting of a 99 year lease, contracted out of the Landlord and Tenant Act 1954, at a peppercorn rent, to the Chelsea Academy Trust.

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### **Background papers:**

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