

REPORT TO: Cabinet

DATE: 16th December 2010

SUBJECT: ROK Building Ltd (in Administration)

**WARDS
AFFECTED:** Linacre, Litherland, Derby, Dukes, Kew, Norwood

REPORT OF: Peter Moore
Environmental and Technical Services Director

**CONTACT
OFFICER:** David Kay
Client Manager
Tel: 0151 934 4527

**EXEMPT/
CONFIDENTIAL:** No

PURPOSE/SUMMARY:

The report is to advise members of the position with regards to ROK Building Ltd (In administration), to advise on the options available for completion of the works and seeks authorisation to explore these options.

REASON WHY DECISION REQUIRED:

To enable the Environmental and Technical Services Director to act in order for the works to be recommenced and completed as soon as possible and in a manner most advantageous to the Authority.

RECOMMENDATION(S):

Cabinet is recommended to:

- (i) Note the situation arising through ROK Building Ltd entering administration and the potential implications for the Authority.
- (ii) Authorise the Director of Environmental and Technical Services and the Acting Head of Corporate Legal Services to investigate the options available for recommencement and completion of the contracts and report back to the Cabinet on the most advantageous proposals in due course.

KEY DECISION: No

FORWARD PLAN: Not Appropriate

IMPLEMENTATION DATE: Immediately following expiry of call in.

ALTERNATIVE OPTIONS:

All reasonable alternative options will be considered but only those options affording the Council the best opportunity to complete the outstanding works as quickly as possible and at no additional cost will be adopted.

IMPLICATIONS:**Budget/Policy Framework:**

There are currently capital provisions totalling £3,032,000 £1,895,870 and £780,260 in connection with the Southport Market, Lander Road Primary and Kew Woods Primary projects respectively.

Financial

It is not anticipated that the Authority will incur any additional costs over and above the current funding provision.

<u>CAPITAL EXPENDITURE</u>	2010/ 2011 £	2011/ 2012 £	2012/ 2013 £	2013/ 2014 £
Gross Increase in Capital Expenditure				
Funded by:				
Sefton Capital Resources				
Specific Capital Resources				
<u>REVENUE IMPLICATIONS</u>				
Gross Increase in Revenue Expenditure				
Funded by:				
Sefton funded Resources				
Funded from External Resources				
Does the External Funding have an expiry date? Y/N	N/A			
How will the service be funded post expiry?	N/A			

Legal: See below

Risk Assessment: Not appropriate

Asset Management: Not Applicable

CONSULTATION UNDERTAKEN/VIEWS

The Children’s Schools and families and the Leisure Services and Tourism Department have been consulted and any comments have been taken into account in preparing this report.

FD comment: The Interim Head of Corporate Finance & Information Services has been consulted and his comments have been incorporated into this report. (FD 574)

LD Comment: The Head of Corporate Legal Services has been consulted and his comments have been incorporated into this report. (LD0004/10)

CORPORATE OBJECTIVE MONITORING:

<u>Corporate Objective</u>		<u>Positive Impact</u>	<u>Neutral Impact</u>	<u>Negative Impact</u>
1	Creating a Learning Community		√	
2	Creating Safe Communities		√	
3	Jobs and Prosperity		√	
4	Improving Health and Well-Being		√	
5	Environmental Sustainability		√	
6	Creating Inclusive Communities		√	
7	Improving the Quality of Council Services and Strengthening local Democracy		√	
8	Children and Young People		√	

LIST OF BACKGROUND PAPERS RELIED UPON IN THE PREPARATION OF THIS REPORT

Children School’s and Families and Leisure Services and Tourism Capital Programmes

1.0 Background

- 1.1 Cabinet, at its meetings on 19th March 2009 and 5th August 2010 approved acceptance of tenders in respect of the St Peters House fit out, Southport Market refurbishment and the Kew Woods Primary classroom extension projects. (Minutes 298. 75. and 79. refers)
- 1.2 Cabinet Urgent Business Committee, at its meeting on 11th March 2010 approved acceptance of the lowest tender received in connection with the Lander Road Primary School extension and remodelling project. (Minute 23 refers)
- 1.3 In each instance the contractor approved for acceptance was ROK Building Ltd based in Rochdale.
- 1.4 Unfortunately the entire ROK Group were placed in administration on Monday 8th November 2010 and works on all of the Sefton Projects was suspended.

2.0 Current Situation

- 2.1 The works at St Peters House were essentially completed in late November 2009. The period of defects liability is shortly due to expire and there are a small number of defects arising, which the Authority will want to see made good.
- 2.2 The works on all three of the other projects have commenced but were some way from completion, the works contract values and contractually agreed completion dates are as follows:

Scheme	Contract Value	Completion Date
Southport Market	£1,966,039	23/09/2011
Lander Road Primary School	£1,521,936	06/06/2011
Kew Woods Primary School	£633,646	04/03/2011

- 2.3 The funding for works at Lander Road School is partially provided through a Primary Capital grant, which must be expended by August 2011. The works are also quite intrusive on the operation of the school and clearly a prompt recommencement of the works here would be advantageous.
- 2.4 The funding for the works to the Southport Market is not time limited and while the works are relatively self-contained it would be advantageous if the recommenced contract were to be completed ahead of the busy Christmas period trading in late 2011.
- 2.5 The funding for the works at Kew Woods is again not time limited and as the works are self-contained the current suspension does not present immediate difficulties. It would however be advantageous if the works were completed prior to the end of the school summer term in July 2011.

- 2.6 The appropriate actions have been taken since the 8th November to secure the sites and thereby to protect the Authority's interest in connection with the works completed to date.
- 2.7 The provider of performance bonds, which can allow the Authority to recover additional costs up to 10% of the contract values has been advised.
- 2.8 Payments due to be released to ROK Building Ltd have been withheld in accordance with the provisions of the contract and no further payment will be made before matters are fully resolved.

3.0 Options for Completion of the Works

- 3.1 The Authority has a right under the contract to terminate the employment of ROK Building Ltd, as they have become insolvent.
- 3.2 However the initial indication from the appointed administrators was that they were exploring options to sell the ROK Group as a single entity and as a going concern. As such a proposal would provide the Authority with the best opportunity for the works to be recommenced quickly and completed at no additional cost the option to terminate the contracts has not thus far been acted upon.
- 3.3 Unfortunately it would now appear that although some elements of the group have been sold these do not include the arm of the business that was undertaking the works for Sefton. While it will still be appropriate to consider any proposals that are put forward by the administrator it is also necessary now to consider alternative options for completion of the works.
- 3.4 The Authority is holding payment for works completed by ROK Building Ltd prior to their administration. This, and the performance bond, can be utilised to ensure that the Authority does not incur any additional costs in completing the works.
- 3.5 The authority is however obliged, with limited latitude, to ensure that the works are completed at a minimum additional cost thereby maximising the amount recoverable by the administrator and minimise any call on the performance bond.
- 3.6 The normal manner in which this is demonstrable without obtaining further tenders, which would clearly delay recommencement, is to explore the costs for completion with the contractors who submitted tenders in the original complete tender submission.
- 3.7 Without making any commitment at this stage the Authority's technical service provider, Capita Symonds, have commenced provisional discussions with the relevant contractors.

4.0 Financial Implications

4.1 Capita Symonds have provisionally assessed the amount of payment due to ROK Building Ltd for the works carried out prior to their administration but currently withheld by the Authority. This is as follows:

Southport Market	£119,939
Lander Road Primary School	£67,480 to be confirmed
Kew Woods Primary School	£38,731
St Peters House	£37,028

4.2 These payments will be held until such time as the final cost to the council is established and payments only released to the administrators after any additional costs incurred by the Authority are deducted.

4.3 In the event that the above, withheld, payments are not sufficient to meet the additional costs incurred then, in all but the St Peters House project, there is also an opportunity to seek recourse to the performance bonds.

4.4 It is not currently anticipated therefore that the Authority will incur any additional costs over and above the current funding provision.

5.0 Proposed Way Forward

5.1 It is proposed that all reasonable options for recommencement of the works should be considered, including those that may still be put forward by the administrator.

5.2 In order to fully consider the options available, and identify those that provide the most advantageous solution, it will be necessary to authorise officers to enter into negotiation and provisionally agree an arrangement with the prospective replacement contractors.

5.3 Any proposed arrangement will look to ensure that the works to be recommenced as quickly as possible and completed without any additional cost to the Authority. The Administrator and bondspersons will be asked to agree and support the proposals.

5.4 These final proposals will be reported to Members at the earliest possible opportunity and, if possible, a further update will be provided on the day at this meeting.

5.5 Members are requested to note that it may be necessary to obtain authorisation quickly in order to ensure that the over riding time constraints, as outlined in paragraph 2.3 to 2.5 are achieved and it may therefore be necessary to ask for the matters to be considered at an Urgent Business Cabinet meeting.

6.0 Recommendation

Cabinet is recommended to:

- (i) Note the situation arising through ROK Building Ltd entering administration and the potential implications for the Authority.
- (ii) Authorise the Director of Environmental and Technical Services and the Acting Head of Corporate Legal Services to investigate the options available for recommencement and completion of the contracts and report to Members on the most advantageous proposals in due course.