

REPORT TO: Cabinet

DATE: 14th April 2011

SUBJECT: Lander Road Primary School – Building Works

WARDS AFFECTED: Litherland

REPORT OF: Peter Morgan
Strategic Director – Place

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**EXEMPT/
CONFIDENTIAL:** No

PURPOSE/SUMMARY:

The report is to update members on the position with regards to the appointment of a replacement contractor for the completion of the Lander Road CP school project.

REASON WHY DECISION REQUIRED:

To provide financial underwrite of the funding necessary to complete the project and allow the works to recommence as soon as possible.

RECOMMENDATION(S):

Cabinet is recommended to:

- (i) Approve an increase of £195,559 in Capital Funding underwrite for the Lander Road Primary School project until such time as funding anticipated through a claim against the performance bond may be realised. The additional funding requirement will be met from within the existing Children’s Services Capital Programme provision.
- (ii) Subject to (i) above, authorise the Head of Corporate Legal Services to terminate the existing contract with ROK Building Ltd and enter into a formal contract with the second lowest original tendering contractor in the maximum sum of £783,654.
- (iii) note that the Chair of the Scrutiny and Review (Cabinet; Performance and Corporate Services) has been requested to consent, under Rule 17 of the Scrutiny Procedure Rules, to the call-in period being waived in respect of this matter.

KEY DECISION: No

FORWARD PLAN: Not Appropriate

IMPLEMENTATION DATE: Immediately following this meeting subject to authorisation to waive call in.

ALTERNATIVE OPTIONS:

All reasonable alternative options will be considered with priority being given to those affording the Council the best opportunity to complete the outstanding works as quickly as possible and at no additional cost.

IMPLICATIONS:

Budget/Policy Framework: There is currently a provision of £1,895,870 in the Children’s Schools and Families Capital Programme in connection with the Lander Road Primary School project.

Financial

Although advice is such that the majority of the extra cost necessary to complete the works will be recovered from the administrator or as a claim against the bond it will be necessary to provide a funding underwrite of £195,559 until such time as the works are completed. The additional funding requirement will be met from within the existing Children’s Services Capital Programme 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: The key risk is that the Council will not be able to claim the full value of the bond and will have to fund any gap from existing capital resources in the CSF capital programme.

Asset Management: Completion of the building works in a timely manner is essential to make best use of the Council's asset

CONSULTATION UNDERTAKEN/VIEWS

The Children's Schools and Families Department have been consulted and any comments have been taken into account in preparing this report.

FD comment: The Head of Corporate Finance & Information Services has been consulted and has no comments on this report. (FD 730)

LD Comment: The Head of Corporate Legal Services has been consulted and his comments have been incorporated into this report. (LD 00092/11)

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 Schools and Families Capital Programme

1.0 Background

- 1.1 ROK Building Ltd, who had been engaged to carry out various contracts on behalf of the Authority, entered administration on 8th November 2010.
- 1.2 Members will recall that reports advising of this, and providing updates of progress, have been presented to Cabinet at its meetings on 16th December 2010, 27th January and 17th February 2011.
- 1.3 At the meeting on 17th February 2011 Cabinet approved proposals for re-commencement of the works on the Southport Market and Kew Woods Primary School projects
- 1.4 At the same meeting Cabinet also approved proposals for the re-commencement of the Lander CP School project subject to certain conditions being met. Although these conditions have now essentially been met the circumstances, and potential risk to the Authority, are such that it is necessary to provide a further update and to seek additional authorisation before proceeding.

2.0 Impact of the delayed building programme on the school

- 2.1 The delay to the building work at the school is having a significant impact on the school's ability to properly deliver its curriculum requirements and much teaching and learning has to take place in an unsuitable environment. There is a significant reduction in the facilities available to staff and pupils as approximately 1/3 of the school site is mothballed pending a decision on the recommencement of building work.
- 2.2 As well as the adverse impact on the pupils and their education the mothballed building site is having a detrimental effect on the local neighbourhood and there have been a number of thefts of stored building materials.
- 2.3 At a meeting on 18th March the Strategic Director was presented with a petition of 437 signatures from parents of pupils, staff and local residents as a show of "support for the building work at Lander Road Primary School to recommence as our children are suffering". At the meeting with the Cabinet Member and Strategic Director, which was attended by staff, parents Governors and Ward Councillors, the background and latest position was outlined and staff and parents provided practical examples of the impact the delay in completing the work was having on the pupils in the school.

2.0 Contractual and Financial Issues

- 2.1 Provided the Authority takes reasonable steps to mitigate any costs arising it is entitled to utilise monies held against ROK Building Ltd and to make a claim against the performance bonds, in order to cover any increased costs incurred in completion of the works. Any costs that cannot be met in this way will however have to be met by the Authority.

- 2.2 Capita Symonds have established a cost of £783,654 for completion of the works with the second lowest original tendering contractor. Taking this, and other costs associated with the delay and re-engagement exercise into account the total scheme cost is expected to exceed the current funding allocation by some £205,853.
- 2.3 Capita Symonds have satisfied themselves that this cost is reasonable and that the Authority will therefore be entitled to seek maximum recovery, the specifics being as follows:

Total additional Cost		£205,853
Met from monies held against ROK Building Ltd	£10,294	
Met through a claim against the performance bond	£152,194	£162,488
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Balance to be met by Sefton		£43,365

- 2.4 However the initial view of the bondsperson is that they do not accept any liability in respect of this project.
- 2.5 Although it is believed that this view is demonstrably wrong, and may indeed be simply an initial standpoint taken to illicit a favourable compromise agreement, this does perhaps demonstrate that the process to secure a favourable outcome of a claim against the bond will not necessarily be straightforward.
- 4.0 Proposals to Proceed**
- 4.1 Clearly it is desirable to proceed to re-commence and complete the outstanding works as soon as possible in order to mitigate any further impact upon the operation of the school as outlined in section 2.0 above.
- 4.2 However, neither the administrator nor the bondsperson are required to agree a settlement with the Authority at this stage. Indeed legal advice is that the bondsperson is entitled to hold from the Authority all of any justified claim against the bond until the works are completed and the final costs established.
- 4.3 It will therefore be necessary to consider undertaking to complete the works without the funding, or even the reassurance on funding, that agreement with the administrator or bondsperson would have brought.

- 4.4 The authority would appear to have little option other than committing to complete the project works and at the same time instructing Capita Symonds to pursue a claim against the bond with all vigour in order to maximise the amount of any claim and mitigate any financial impact upon the Authority.
- 4.5 Based upon the advice of Capita Symonds it is anticipated that all but £43,365 of the additional cost likely to be incurred by the Authority should be met. It should be noted however that there is an element of risk that not all of the anticipated funding will be forthcoming.
- 4.6 In the event that not all anticipated funding is realised the Authority will investigate the reasons why this has not been possible and may need to seek recovery from other sources.

5.0 Financial Implications

- 5.1 Although it is anticipated that the vast majority of the funding necessary to complete the project will be provided from monies held against ROK and through a claim against the bond this will not be confirmed until after the works are completed and the justification of the Authority's claim established.
- 5.2 It will therefore be necessary to provide a funding underwrite of £195,559 to complete the works, this being the total additional cost less the monies currently held against ROK.
- 5.3 The additional funding requirement both initially and following final agreement with the administrator and bondsperson will be met from within the existing Children's Services Capital Programme provision.
- 5.4 In the event that specific additional financial resources are required in order to pursue the claim against the bond through legal avenues a further report will be made to Members setting out the associated financial implications.