LONDON BOROUGH OF BRENT

EXECUTIVE - 7 JANUARY 2004

REPORT FROM THE DIRECTORS OF CORPORATE SERVICES AND SOCIAL SERVICES

BRENT'S PARTICIPATION IN LOCAL NHS 'LIFT'

For Action | **Name of Wards** All

Above ✓ | **Below** ☐

Confidential Line with the exception of Appendix 10

Corp-03/04-49

1.0 SUMMARY

This report sets out progress with the development of the Local Improvement Finance Trust (LIFT) and seeks approval for a number of decisions relating to the authority's continuing involvement.

2.0 RECOMMENDATIONS

2.1 That the Executive agrees to sign up to the Strategic Partnering Agreement (SPA)[1] at financial close and the Council participate in the Strategic Partnering Board (SPB) and note that the Director of Corporate Services will initially be attending on behalf of the Council.

2.2 That the Executive agrees to the Council's participation in the Brent, Harrow & Hillingdon LIFT at Level 2[2].

2.3 That the Executive notes the terms of the Lease Plus Agreement (LPA)[3].

2.4 That the Executive notes and endorses the process that has taken place for the procurement of the LIFT private sector partner[4].

2.5 That the Executive notes the possible inclusion of Social Services schemes in Phase II and future phases of development.

2.6 That the Executive notes the potential for maximising the benefit of joint health and social care service arrangements through the provision of shared accommodation.

2.7 That the Executive notes the progress on the three initial schemes proposed by Brent Primary Care Trust, within Brent[5].

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[1] See Appendix 1 - Summary of the Strategic Partnering Agreement
[2] See 9.1 - Options for Level of Participation
[3] See Appendix 2 - The Lease Plus Agreement
[4] See Appendix 4 - The Procurement & Evaluation Process

2.8 That the Executive agrees to dispose of the freehold interest of Vale Farm House, Watford Road, Sudbury in accordance with the details set out in the confidential annex, and grant rights to park up to 20 cars in the adjacent car parks.

3.0 Financial Implications

3.1 There are no direct financial implications of agreeing this report. All ongoing currently identified costs for LIFT will be met from existing budgets.

4.0 Staffing Implications

4.1 There are no immediate staffing implications. However, for potential future phases of LIFT within Brent there is the likelihood that these will involve increased joint working between the Council and the PCT, and these arrangements would be likely to involve changed staffing and management. If any staffing implications should arise in the course of the LIFT partnership, the Executive will be formally notified.

4.2 In relation to the Council's participation in the Strategic Partnering Board, it is proposed that this role be undertaken initially by the Director of Corporate Services (with the Director of Social Services as back-up).

4.3 Input regarding the three initial developments and further possible schemes will come from Corporate Property, Brent Financial Services, Legal Services and Social Services.

5.0 Legal Implications

5.1 **The Strategic Partnering Agreement (SPA)**

5.1.1 The Strategic Partnering Agreement is an agreement between all participants within the LIFT scheme. The SPA also creates the Strategic Partnership Board (SPB) which oversees the Strategic Partnering Agreement (SPA) (and LIFTCo) and approves the Strategic Service Development Plan (SSDP).

5.1.2 The Council's Executive at its meeting on 10th March 2003 agreed that the Council provisionally indicates to participate in LIFT on an exclusive basis, subject to suitable caveats regarding exclusivity to be discussed with the LIFT project. A final decision was to be taken at the point of formal selection of a private sector partner and conclusion of the Strategic Partnering Agreement. Due to the possibilities for alternative funding for such schemes[6], the absence of a strategic programme for Social Services' buildings for the life of the Strategic Partnering Agreement and legal concerns regarding the framework nature of the Strategic Partnering Agreement, Members are being asked to agree that the Council signs up to the Strategic Partnering Agreement on a non-exclusive basis.

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[5] See Appendix 6 - Details of the Schemes Proposed for Development within Brent
[6] See 5.6

5.1.2 Non-exclusivity means that the Council has full flexibility in respect of future capital projects by not having to give LIFTCo “first refusal” on any new build or refurbishment. It has the option of reserving its right to include premises at a later date without any obligation to do so. If the Council were to sign up to the Strategic Partnering Agreement on an exclusive basis, this would mean that the Council would be required to submit any major capital projects during the 20 year term of the agreement, in respect of primary and community based health and social care, to the LIFTCo for the provision or procurement of Lease Plus Agreements in respect of such schemes.

5.1.3 There is a risk that during the lifetime of the Strategic Partnering Agreement, even if the Council wished to submit a new major capital project to LIFTCo, it may not be able to rely upon the current procurement process at that stage. The structure of the Strategic Partnering Agreement is akin to a framework arrangement. Where a binding contract is entered into, the parties agree that if services (or works or supplies) are required during the contract period, in this case 20 years, then the terms and conditions of the framework agreement will apply in respect of those services. In the case of the Strategic Partnering Agreement, if the Council wished to carry out any major capital project to provide primary or community based health and social care in its area, then it could submit such projects for LIFTCo’s consideration pursuant to the non-exclusivity provision.

5.1.4 A new Directive currently progressing its way through the European Parliament and Council, “Council Directive relating to the Co-ordination of Procedures for the Award of Public Works Contracts, Public Supply Contracts and Public Service Contracts”, includes provisions for framework agreements. The Directive, once finally agreed, will be implemented into UK law, probably in 2005. These provisions state that framework agreements should not exceed 4 years unless there are exceptional circumstances. Clearly, as with all LIFT projects the Strategic Partnering Agreement, which is for a period of 20 years, well exceeds this period.

5.1.5 The Council could include details about premises which may be part of the LIFT project at the commencement of the Strategic Partnering Agreement and this could reduce the need for separate procurement in respect of these premises. However, this is not proposed. If no specific details of potential premises are included then there may be an argument that the EU procurement rules may apply to premises subjected to Lease Plus arrangements particularly during later years of the Strategic Partnering Agreement. As this type of arrangement is relatively new, there are no guarantees it will be risk free.

5.1.6 For the LIFTCo projects, although the first tranche of premises being included in the LIFTCo project are clearly specified and will have been costed according to set criteria and the private sector partner’s proposals, the pricing of future schemes will not be as certain. This could imply that where future contract conditions are unclear, there could be an argument that a separate procurement procedure should be undertaken.

5.1.7 The arrangements for new major capital projects which arise during the life of the Strategic Partnering Agreement require that the approval criteria, which include value for money considerations, are ascertained at the time when the scheme is being considered by LIFTCo. Therefore, on signing up to the Strategic Partnering Agreement, the Council is not in a position to know whether or not particular capital projects will meet those criteria and whether or not value for money could be obtained for future schemes procured during the life of the agreement. By entering into the Strategic Partnering Agreement on a non-exclusive basis the Council is not committing to future projects and therefore reduces potential risk of challenge as decisions on whether to commit projects can be made at the appropriate time and with the benefit of knowing how the market reacts in similar scenarios.

5.2 **LIFT documentation**

5.2.1 Appendices 1 and 2 set out details of the main LIFT contract documents namely the Strategic Partnering Agreement and the Lease Plus Agreement. The LIFT contract documents have been developed as standard form agreements to be used for all LIFT projects. There is some scope for proposing variations to the standard documentation although it is envisaged that participants will sign up to the standard documentation, particularly approaching financial close (expected end of January 2004 for this project).

5.2.2 Whilst the Council is not considering taking shares in LIFTCo there is scope for the Council to take a shareholding at a later date subject to the other shareholders' consent. Such a shareholding would be executed by the Council entering into a Deed of Adherence and authority would be sought from the Executive prior to entering into such an agreement.

5.3 **Standing Orders**

5.3.1 Part 4 of the Council's Constitution provides that the Executive's approval is required for the Council to enter into a services contract where the services contract exceeds £500,000 in value.

5.3.2 Standing Order 89 requires the Executive to consider a report setting out all the relevant information to enable it to give such approval as it considers necessary.

5.3.3 Standing Order 104 requires that tenders for services contracts must be evaluated on the basis of the most economically advantageous offer to the Council. As the procurement of the private sector partner was led by the PCT, tenders were not actually invited or made to the Council although the Council was listed as one of the contracting authorities in the OJEC Notice. The Council has been involved in the evaluation of bids (in respect of technical, financial, partnering and employment evaluation) and selection of the preferred bidder. Members will however need to be satisfied that the Council's interests have been taken into account as appropriate in the procurement process.

5.3.4 Standing Order 74 requires that contracts exceeding £500,000 in value are required to be executed as a deed under seal in accordance with Standing Order 73(b) which requires attestation of the Council's seal. Therefore, the Council will be required to execute the Strategic Partnering Agreement as a deed.

5.4 Vires

5.4.1 The Council may rely on the well-being powers in the Local Government Act 2000 ("the Act") for entering into the Strategic Partnering Agreement subject to the requirements of the Act, for example having regard to the Council's Community Plan[7].

5.4.2 The well-being powers under Section 2 of the Act allow local authorities to "do anything which they consider is likely to achieve the promotion or improvement of the economic, social or environmental well-being of their area, in relation to the whole or part of it" or "all or any persons resident or present in their area". Explicit powers are to:

- Incur expenditure;
- Give financial assistance to any person;
- Enter into arrangements or agreements with any person;
- Co-operate with, or facilitate or co-ordinate the activities of any person;
- Exercise on behalf of any person any functions of that person; and
- Provide staff, goods, services or accommodation to any person.

5.4.3 Section 2(5) of the Act states "the power under subsection (1) includes a power for a local authority to do anything in relation to, for the benefit of, any person or area situated outside their area, if they consider that it is likely to achieve one or more objectives of that section". Government Guidance on well being issued in March 2001 indicates this is a "key power in relation to the local authorities' partnership with the health sector". It therefore appears that entering into the Strategic Partnering Agreement would satisfy these requirements by the very nature of the project and the parties involved.

5.4.4 Of particular relevance is the power to enter into agreements with any person. This has the potential to be a very wide-ranging power. The new powers tie in very closely with other government initiatives on partnership working, for example the new pilot strategic partnerships and the government's consultation under Section 16 of the Local Government Act 1999 setting out proposals to change the legal framework to facilitate partnership working.

5.4.5 There are safeguards the Council can put in place to reduce any risk of possible vires challenge although as the Government has itself commissioned the projects and legal advice then any risk of challenge would appear to be minimised. The private sector partner (or funders) may require a certificate under Section 3 of the Local Government Contracts Act 1997. The certificate would set out the powers the Council is relying on in entering into the Strategic Partnering Agreement.

[7] See 7.2.4

5.4.6 It is likely that Lease Plus Agreements will be considered private finance transactions pursuant to Regulation 16 of the Local Authorities (Capital Finance) Regulations 1997, as amended, and therefore deemed to be credit arrangements for the purposes of Section 48(1) of the Local Government and Housing Act 1989. However, pursuant to Regulation 40(1) of the Regulations, a credit arrangement which is a private finance transaction may be excluded from the regulatory requirements and considered to have a nil credit cost provided certain requirements are met. The Director of Finance should consider the applicability of Regulation 40 in respect of any premises it intends including in the LIFT scheme.

5.5 Land Issues

5.5.1 It is envisaged that LIFTCo will set up wholly owned subsidiary companies in respect of particular phases/schemes. This is to enable a streamlined funding structure in respect of different projects as it is envisaged that funding may be provided by different lenders for each project.

5.5.2 Appendix 6 sets out the schemes proposed for development within Brent. The Watford Road, Sudbury site and the land adjacent to the Monks Park site will be sold to a wholly owned subsidiary of LIFTCo in accordance with the terms of the Initial Sale Agreements by the PCT, a set of standardised sale agreements for the initial LIFTCo transfers.

5.5.3 Future properties will transfer to wholly owned subsidiaries of LIFTCo subject to satisfying the approval process and planning requirements for new projects as set out in the Strategic Partnering Agreement. Properties will be transferred on the terms set out in the Pro Forma Sale Agreement.

5.5.4 Appendix 6 refers to the two proposals being considered for the Stag Lane site. One proposal includes consideration of an elderly care facility. If the Council is considering taking bed spaces in the facility this may not fall within the scope of the original OJEC Notice and further legal advice should be sought as part of the Council's consideration of this proposal.

5.5.5 The Council retains an interest in the Stag Lane site by way of an overage agreement. Legal advice is being considered on how the Council can protect its current interest in this land.

5.6 Prudential Borrowing Regime

5.6.1 Regulations for the new prudential borrowing regime, which will be implemented pursuant to Sections 1–20 of the Local Government Act 2003, were issued for consultation in July 2003. The consultation period ended in October 2003 and the target date for introduction of the new prudential borrowing regime is 1 April 2004. This new legislation may (subject to appraisal by the Council’s Director of Finance) provide an opportunity for the Council to borrow money (subject to affordability and centrally imposed limits) and develop future schemes outside the scope of the LIFT Project.

5.6.2 The Financial Issues[8] section of this report sets out the financial framework for calculation of the Lease Plus rental charges under a LIFT Project. It provides details of charges for office space for the first wave of the LIFTCo projects. Should the Council sign up to the Strategic Partnering Agreement it will be able, but not obligated to, submit any new capital projects to LIFTCo for consideration. When major capital projects are submitted for consideration by LIFTCo, the detailed approval criteria set out in Schedule 4 of the Strategic Partnering Agreement would apply. One of these criteria is that a scheme would have to secure value for money. If a scheme were rejected by LIFTCo because the approval criteria had not been met, then the Council would be able to procure such schemes itself.

5.6.3 The new prudential borrowing regime may offer an alternative way of funding such schemes. In the future, the Council may be able to borrow money and develop schemes itself as opposed to via LIFTCo. As the Council cannot foresee at this stage whether future schemes would secure value for money in the longer term, entering into the Strategic Partnering Agreement on a non-exclusive basis will allow the Council to consider value for money considerations and alternative sources of funding at the appropriate time.

5.6.4 At present, for entirely understandable reasons the Council is unable to set out clearly which schemes or major capital projects may arise throughout the 20 year term of the Strategic Partnering Agreement. As far as we are aware, no other local authority has yet entered into a LIFTCo arrangement on an exclusive basis. Other local authorities have decided to enter on a non-exclusive basis which provides more flexibility as to which schemes the authority may or may not consider to be subjected to the LIFT arrangement.

5.6.5 History tells us that the potential for local government or other public sector reorganisation during the next 20 years is significant . This might result in the Council's functions being changed in such a way that entering into a contractual arrangement for 20 years on an exclusive basis may not be advantageous.

5.6.6 The new prudential borrowing regime, the restrictions on use of framework agreements which will be brought in under the new Consolidated Directive referred to above and the uncertainty of whether LIFT will deliver the best financial mechanisms for Council schemes are all relevant considerations under the "Wednesbury" principles. In the light of these, it would appear to be a reasonable decision for the Council to consider that entering into the Strategic Partnering Agreement on a non-exclusive basis would pose a lesser risk than if it were to enter into it on an exclusive basis.

6.0 Introduction

6.1 On 10th March 2003, members received a first report on LIFT which included considerable background information. At that point in time, if the authority wished to be involved in the Brent Harrow and Hillingdon LIFT, it was required to give a provisional indication of likely level of involvement[9]. It was also

[8] See 10.0
[9] See 6.3

required to make arrangements to endorse the short-listing and selection of a preferred private sector partner.

6.2 The Executive indicated its desire to support the LIFT scheme on two counts.

- the desire of the authority to work in partnership with the PCT on initiatives to improve primary health care facilities
- the potential for the authority to use the LIFTCo in future to assist in meeting critical accommodation and service delivery needs.

6.3 Regarding the latter it gave a provisional indication of an intention to enter the LIFT at Level 3[10]. Members indicated that formal participation in LIFTCo, including signing the relevant agreements and final decision on the level of entry, would be made immediately prior to the process of formal conclusion of the LIFT agreement with the selected private sector partner (now scheduled for January 2004). This report is intended to advise members on making those decisions.

6.4 The March report asked Members to note the three sites identified by the PCT for Phase I schemes[11] [12]. The April meeting approved the sale of land at Vale Farm, Sudbury and Monks Park, Tokyngton to Brent PCT.[13]

6.5 Subsequent information has been provided and presentations regarding LIFT have been held to which all members were invited with good attendance.

7.0 LIFT Objectives

7.1 The Government published a ten-year plan in July 2000 for modernising and reforming the NHS. The modernisation and development of primary health and social care services is part of this plan. LIFT is an initiative from the Department of Health to develop and encourage a new market for the investment in primary and community health care facilities, particularly in inner city areas.

7.2 **Benefits to the Council and Options for Involvement**

7.2.1 The LIFT project may well provide the authority with access to capital funding sources not otherwise available thereby facilitating investment in areas such as Social Services, thereby addressing service priorities[14]. There is currently a major need for such investment identified in the authority's Capital Strategy and Asset Management Plan, but without identified funding sources.

7.2.2 Furthermore, the LIFT project will facilitate development of joint use properties between the authority and the NHS, thereby potentially providing enhanced service delivery to the public.

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[10] See 9.1 - Options for Level of Participation
[11] Appendix 7 - Details of the Schemes Proposed for Development within Brent
[12] Appendix 8 - Extract from Minutes of Meeting of the Executive 10 March 2003
[13] Appendix 9 - Extract from Minutes of Meeting of the Executive 7 April 2003
[14] See 10.0 - Financial Issues

7.2.3 For the authority, the objectives and potential benefits of the LIFT project support key Corporate Strategy objectives in the following areas:-

Supporting Children and Young People

- Provide children and families in our most deprived communities with access to better health services ………..

Promoting quality of life and the green agenda

- Work with our partners in the health sector to reduce health inequalities experienced by the most vulnerable communities in Brent.

Regeneration and priority neighbourhoods

- To ensure a consistently high quality of life for all residents of Brent – incorporating …………… healthy living.

7.2.4 In addition, the LIFT objectives support those of the Council's Community Plan. The Plan was devised in consultation with Brent residents and objectives were identified under the following themes:

- health and social care
- local housing
- environment and transport
- regeneration and employment
- crime prevention and community safety
- education and lifelong learning

7.2.5 The LIFT scheme presents an opportunity to access capital investment to improve and expand a whole range of social care facilities in the Borough. Detailed plans have yet to be drawn up, however future phases may offer the opportunity to co-locate social services with primary care staff. This will support and expand joint working arrangements and allow social services staff to be more locally based.

7.2.6 Planning for subsequent phases has commenced, and the LIFT partnership has the potential to bring real benefits to Brent in providing the finance for capital projects. Brent PCT is actively working on potential future schemes.

7.2.7 For the Council this could include:

- The re-provision of Knowles House
- The development of a joint team with a resource centre and assessment facility for children with disabilities
- Developments in Brent Mental Health Service – day care, crisis services
- Key worker accommodation
- Relocation for fieldwork teams currently concentrated in one part of the Borough
- Redevelopment of our learning disability day centres
- Accommodation for any future combined Children's Trust

8.0 The LIFT Structure

8.1 **National**

8.1.1 Partnerships for Health (PfH) is a joint venture between Partnerships UK and the Department of Health and has been created to develop central policy and models which can be used by LIFT projects throughout the country. PfH will invest money into LIFT to be used for the base costs of the project and the acquisition of sites for the first tranche schemes, and will also help attract additional private funding.

8.1.2 LIFT schemes were identified in waves; regions with high healthcare needs and social deprivation being given priority. The Brent Harrow & Hillingdon LIFT forms part of the third wave.

8.2 Local

8.2.1 At a local level, each LIFT is a Public Private Partnership between PfH, the local health community and the private sector in the form of a selected private sector partner.

8.2.2 The private sector partner is selected through a procurement process. This process has been completed for the Brent, Harrow & Hillingdon LIFT and a partner selected[15].

8.2.3 A company called a "LIFTCo" will be incorporated and have the following shareholding structure:

20% local stakeholders - eg PCT, GPs, possibly local authorities
20% Partnerships for Health
60% private sector company

8.2.4 LIFTCo will fund a Public Sector Director. The appointment will be made by public advertisement and managed through the NHS appointment procedure.

8.2.5 The Strategic Service Development Plan (SSDP) sets the local vision for services and identifies the Phase I schemes to be delivered through LIFTCo and forms the basis upon which the private sector partner is selected. The plan will be updated annually to incorporate further priorities. For 2004, a review team is being formed and will be lead by the LIFT Project Director[16]. The Phase I schemes are as follows:

- Monks Park, Brent
- Alexandra Avenue, Harrow
- Northwood Health Centre, Hillingdon
- Vale Farm, Sudbury, Brent
- Roberts Court, Kingsbury, Brent

[15] See 8.4.1 for details of appointed Private Sector Partner
[16] See Appendix 5 - Review of the Strategic Service Development Plan (SSDP)

Further details of the Phase I schemes for development in Brent can be found in Appendix 7.

A Strategic Partnering Agreement (SPA) is then entered into between LIFTCo and the various participants in the local health and social care economies which then work together over the longer term on future schemes. The PCTs are required to undertake regular benchmarking exercises to ensure LIFTCo's competitiveness.

8.3 The Brent, Harrow & Hillingdon LIFT

8.3.1 Organisations involved and represented on the Project Board[17] are:

PCTs
Local Authorities
North West London Strategic Health Authority
Central and North West London Mental Health Trust
North West London Hospitals Trust
Hillingdon Hospital Trust
London Ambulance Service

8.3.2 The Brent Harrow & Hillingdon (BHH) LIFT Project Board is led by the PCTs and in the first phase envisages the development of five new centres at a total estimated cost of around £25m. Three of the centres will be in Brent which represents a significant investment in health facilities for the area from which major sections of the population will benefit[18]. Equity on first tranche schemes will be provided by the three PCTs in equal shares, however, subsequent share issues will be open to other Participating Authorities including Brent. The value of holding shares may be considered later, particularly if the Council has significant involvement in a future LIFT scheme.

8.3.3 Enabling funds have been agreed by the Private Finance Unit to assist the PCTs with the costs of site acquisition and other project preparations for the first phase schemes.

8.3.4 A local Strategic Service Development Plan has been prepared and published. The first annual review of the Plan will commence in the first quarter of 2004.

8.4 Procurement of Private Sector Partner

8.4.1 An OJEC notice was issued on 20 December 2002 seeking a private sector partner. A Bid Evaluation Team was set up which selected firstly a long list of potential bidders by 17 February 2003. Following presentations, the Evaluation Team recommended a short list of three bidders which was endorsed by the Project Board on 18 March 2003. The three short listed parties were issued with a 90 Day Invitation to Negotiate on 31 March 2003. An exhaustive evaluation and negotiation process was then undertaken

[17] See Appendix 6 - Terms of Reference for LIFT Project Board
[18] See Appendix 8

leading to a unanimous recommendation to the Project Board of the appointment of GSL/Babock Brown as preferred bidder on 5 September.

8.4.2 The evaluation team was composed of representatives from each of the Project Board organisations, utilising specialist staff who between them covered the areas of finance, legal, technical and partnerships, organised in evaluation teams. Brent was directly involved through the attendance of staff in the each of the evaluation teams[19].

8.4.3 Specialist input to the evaluation process was provided by:

Partnerships for Health (General LIFT)
Ernst & Young (Finance)
Beachcroft Wansborough (Legal)

Their role was to provide expert opinion to the participants in the evaluation process.

9.0 Rationale for Recommendations

9.1 **Options for Level of Participation**

9.1.2 The Council has the option to participate in the LIFT scheme at different levels:

- **Level 1** - The Council can simply take space in the buildings. It will pay an all-inclusive regular charge per square metre for serviced accommodation for a specified period[20]. In reality the effect of involvement at this level is that the Council has the ability to be closely involved in taking space at the outset of the project or, if it is vacated during the life of the scheme, by other occupants. It is similar to taking space on a conventional lease except that the per square metre charge is all-inclusive covering full maintenance and repair and is therefore outside capital control regulations.

- **Level 2** - This option gives the Council the right to include future arrangements for construction for social care premises in the LIFT **but without an obligation to do so**. To enter at this level and above the Council must sign the Strategic Partnering Agreement (SPA). In addition, the Council has the option to take shares in the LIFTCo.

- **Level 3** - Under this option the Council is **obliged to put all new schemes** covered by the OJEC through the LIFT, this is termed 'exclusivity'. However the authority can choose to define specific schemes or types of schemes to which such exclusivity would apply. It would not apply to any developments falling outside this definition. The Liftco would still have to satisfy value for money and other requirements, and if it failed, the authority would be able to use normal procurement routes.

[19] A more detailed synopsis of the procurement and evaluation process can be found in Appendix 4
[20] See Appendix 2 - The Lease Plus Agreement

- **Level 4** - This would involve the Council becoming a minority shareholder. A shareholding is likely to be acquired by transferring assets into the LIFTCo. This option can be combined with Level 2 or 3, but can also be "standalone", ie share options could be taken without agreeing to the transfer of schemes into LIFT.

The ability to include future social care premises requirements within this arrangement may well provide significant benefits to the authority and if possible the authority would wish to be able to do this. However, it would not be wise to enter into an arrangement obliging us to put all such requirements through this arrangement and this should be avoided. In addition there are detailed legal considerations regarding this agreement, which need to be taken into account[21]. On this basis officers are recommending that the authority enter the agreement at Level 2.

10.0 Financial Issues

10.1 **Financial Advantages**

10.1.2 The main financial advantage to local authorities of entering into a LIFT agreement is that the capital expenditure involved will not score for capital finance purposes, and there is no need for up-front credit cover. This means that the capital programme would not have to be reduced elsewhere as a result of any schemes carried out through LIFT, therefore helping the authority to maximise the capital programme.

10.1.3 At present, there are no resources within the capital programme to fund social care projects which could be provided through LIFT. A new prudential code will be introduced shortly, to take effect from April 2004, and this may relax the restrictions on capital borrowing, but the Government is likely to retain powers to impose limits on individual authorities. The LIFT programme will be exempt from these, and therefore the advantages of LIFT will remain, as there will be a continued need to access alternative sources of capital funding.

10.1.4 Another advantage is that procurement costs would be reduced because any new schemes would be referred to LIFTCo initially. If the proposals from LIFTCo were acceptable there would be no need to go for a full tendering process with all the associated costs and time involved.

10.1.5 Under a LIFT project, an annual "lease plus" rental charge is calculated to cover the period of the agreement (usually 25 years). This takes into account the capital and associated costs, and the costs of maintaining the buildings over this period. The consortium chosen as the preferred provider for the three projects in the first wave of the LIFTCo (all health authority primary care centres) has quoted an annual rental charge of £245 per square metre (psm). This would exclude "pass-through" costs for utilities, rates and insurance, which would probably add about another £50 psm.

10.1.6 This charge relates to the provision of brand new buildings of a fairly high standard with specified requirements, so it is difficult to compare the costs to

[21] See 5.0 - Legal Implications

other similar buildings. Office space rented by the Council typically costs about £170 to £200 psm but this is for accommodation of a lower quality, and a less specialised nature. The figure of £245 psm is a relatively high one, but the opportunity to rent appropriate accommodation from other sources is likely to be limited due to specific design and layout requirements to cater for the needs of groups such as the elderly or disabled. These may be difficult to achieve with ordinary buildings, and would probably involve high adaptation costs, although this possibility would need to be explored on a case by case basis.

10.2 **Alternatives to LIFT**

10.2.1 An alternative method of procurement, which has been used by the Council, has been the use of Public Finance Initiative (PFI) schemes. These are used for larger schemes, and the government has indicated that projects with a capital value of under £20m are unlikely to be given PFI approval in future (due to the high costs and long time scales associated with finalising PFI schemes). This would rule out the authority being able to successfully apply for PFI credits whilst acting on its own. However, as the problems of bidding costs and time would not be relevant with LIFT, because a private sector partner has already been chosen, an exception would be made to the above threshold if an application was made from an authority acting through a LIFT arrangement. Therefore there would be an opportunity to apply for PFI credits for the capital element of rentals if schemes were procured via a LIFT project.

10.2.2 There is no separate allocation of PFI credits for local authority involvement in LIFT projects, and any proposals would be assessed and prioritised against all other competing projects. The most likely sources of support would be the DoH Social Services PFI allocation and the ODPM PFI Joint Service Centre Programme. Each of these currently has under £200m of PFI credits available over a three-year period, which would not allow for a high number of projects nationally.

10.2.3 Local authorities can apply for PFI support for a bundle of schemes part way through the life of a LIFT project, providing none of the schemes are already operational. However, any application would have to be for a detailed programme of schemes, with the total capital costs calculated up-front, with a detailed business case to support the need for the schemes. Because of the need to compete for a limited national pot of PFI credits, any business case would have to be very well prepared to make a persuasive case.

10.2.4 If Brent were to secure any projects through later phases of LIFT, the annual lease plus costs would depend on the details of the building to be provided. The £245 psm for the first wave of schemes is therefore only an indication of what this cost might be. Once a rental has been agreed, the charge would increase in line with the annual increase in the RPI, thereby exposing the LIFTCo to any costs above inflation. Therefore, the risk of a large increase in costs during the life of the project would be significantly reduced. This would exclude the additional “pass through” costs (energy, rates and insurance). The leaseholder has the right to deduct penalties for availability failures (where part of the facility is unavailable for access, health and safety reasons etc) or failure events (where the whole facility is out of action).

10.2.5 Another alternative could be to simply rent accommodation from the open market. However, as explained in 10.1.6 above, LIFT provides an opportunity for the provision of space which has been specifically designed to meet the requirements of the building users.

10.2.6 In terms of the affordability, this could only be determined when detailed proposals have been drawn up for individual schemes, and the scheme submitted to LIFTCo, and an annual rental charge figure proposed by it. It is possible that new schemes could relieve cost pressures elsewhere in the social care budget.

10.2.7 Any schemes put through LIFT by the authority would still have to meet value for money and other requirements. If these were not met, the Council would still be able to use normal procurement routes. Therefore, by signing up to the LIFT scheme, the authority would not be committing itself to risks in terms of having to pay above the odds for any new facilities. Any costs quoted by LIFTCo could be market-tested to ensure that they provided good value for money[22].

[22] The unitary charge would have to be tested by reference to the market place and the cost of renting similar premises at that particular point in time.

11.0 BACKGROUND INFORMATION

Paper: 'Options for Involvement of Local Authorities in NHS Lift' - Bevan Ashford	7 June 2002
LIFT – A Strategic Service Development Plan for Brent, Harrow & Hillingdon	December 2002
Minutes and papers for LIFT Project Board	4 October 2002 15 November 2002 13 December 2002 17 January 2003 14 February 2003 18 March 2003 25 April 2003 23 May 2003 13 June 2003 23 July 2003 15 August 2003 5 September 2003 26 September 2003 17 October 2003 21 November 2003 14 December 2003
NHS Lift Project – Report to Executive	10 March 2003
Responses to the ITN by the three short-listed parties	June 2003

Details of documents

Any person wishing to inspect the above papers should contact

Bernard Diamant
Director of Corporate Services
Corporate Services
Room 114, Brent Town Hall
Wembley
Middx HA9 9HD
Tel. No. 020 8937 1400

Bernard Diamant
Director of Corporate Services

Jenny Goodall
Director of Social Services

Appendix 1

NHS LIFT
Summary of Strategic Partnering Agreement

Draft date: 22 January 2002

1 This is the agreement entered into by LIFTCo and the PCT/HA/LA stakeholders in the health and social care economy ("Participants").

2 The agreement sets out how the parties act together over the long term in a collaborative, partnering, non-adversarial and open manner in achieving the objectives of the local Lift.

3 The agreement establishes a framework within which the Participants and the other local health and social care stakeholders work with each other and with LIFTCo to provide integrated solutions within the area covered by the Lift. It includes an exemplar of a successful LIFT as an aim. All parties are incentivised to co-operate and be open about their strategic goals and aspirations so that they can jointly agree how best to achieve such targets.

4 The principles underpinning the SPA include the establishment of:

- a close working relationship between the parties, respecting each others roles and responsibilities
- best value for money operational performance within agreed timescales
- business and cultural processes to enable the parties to agree and achieve mutual objectives (set out in the SSDP and LIFTCo Business Plan)
- monitoring to identify and overcome partnering weaknesses, and develop strengths
- early identification and resolution of differences and disputes with 'no surprises'
- senior co-ordinators from LIFTCo and each Participant to support and promote the SPA
- transparent information and data sharing
- the commitment of the parties to continuous improvement against qualitative and quantitative targets reviewed by the Strategic Partnering Board (SPB).

5 The term of the SPA is [20] years. This may be extended by [5] years by any one or more Participant. For Participants not wishing to continue the SPA expires at the end of the initial term. Certain protections in the SPA continue in force beyond the term until the end of the last associated Lease Plus Agreement ("LPA").

6 Initial properties are transferred to LIFTCo in accordance with the SSDP and future properties are transferred on the approval of new projects. There are separate sale agreements with each vendor. LIFTCo is responsible for planning matters.

7 The SPA property transfer terms include:

- consideration may be in cash, loan notes or equity stake (or in combination)
- the possibility of negative transfer value
- VAT provisions as appropriate
- lease back provisions where appropriate
- overage payment provisions where appropriate

LIFTCo pays overage to the vendor if planning permission is granted, within [10] years of the transfer, for part or all of the property. The overage payment is [50%] of the enhanced value resulting from the planning approval. LIFTCo and the vendor agree the enhanced value or it is referred to independent valuation. LIFTCo does not dispose of or enter a lease of 21 years or longer for the property without the new owner/lessee complying with the overage provisions.

8 New projects are identified and approved in accordance with the following process:

- LIFTCo works with the Participants and other members of the SPB to develop the SSDP and to identify and prioritise new projects and decide how to bundle the projects to ensure affordability and flexibility
- LIFTCo assists the Participants to produce an outline proposal
- the affected Participants agree the proposal
- the SPB approves the proposal (taking account of representations from LIFTCo and the Participants) subject to meeting the Participants requirements and consistency with the SSDP
- LIFTCo develops at its own cost a detailed submission to the SPB, including:

    - a draft LPA
    - detailed plans and drawings
    - site acquisition
    - planning approvals
    - financial model and lease payments
    - evidence that the new project is affordable, provides value for money and still meets the Participants requirements (together the approval criteria)

- if the SPB rejects the submission for failure to meet the approval criteria LIFTCo and the affected Participants try to produce a new submission; if rejected again by the SPB for failure to meet the approval criteria neither party has any obligation to further develop the project and the Participants may procure the project without involving LIFTCo
- if the SPB otherwise rejects the submission, the Participants pay LIFTCo for the
- associated partnering services and the Participants may not proceed with the facilities

- if the SPB approves the submission LIFTCo develops the new project LPAs and obtains
- and complies with all consents
- the Participants notify LIFTCo if the new project is affected by adverse planning
- conditions, funding changes, etc.

9 LIFTCo procures design and construction of new projects and delivers the new lease plus services under an LPA.

10 The SPA sets out the partnering services to be provided by LIFTCo (or its sub-contractors) to the Participants, including:

- estate planning services
- estates and facilities management advice
- IT advice
- urban regeneration advice
- property developments expertise advice
- property acquisition and disposal expertise
- identifying opportunities for service improvement

11 LIFTCo and the Participants work together to ensure that existing service providers and their employees are treated fairly as a consequence of the operation of the SPA and LIFTCo endeavours (where practicable and consistent with the SPA objectives) to employ those persons where it becomes responsible under the SPA or a LPA.

12 LIFTCo has the exclusive right to provide the partnering and lease plus services to the Participants for all their premises which are transferred to LIFTCo and all new build and other major capital projects, the strategy for which is set out in the SSDP. Any Participant may request LIFTCo to provide the following to it on terms to be agreed, subject to competition, where required by law:

- FM services
- further premises etc not included in the SSDP
- lease plus services for acute care
- lease plus services for GP owned premises.

13 LIFTCo recovers its partnering services costs as part of its general business overheads through its Lease Plus payments and includes an appropriate proportion of its accrued partnering services costs in each new project cost. Non-payment of proper amounts is an event of default. Interest is due on late payments. The right of set-off applies. VAT is payable as appropriate.

14 Each Participant appoints a representative. LIFTCo treats any act of the representative as an act of the Participant. LIFTCo appoints a representative. The Participants treat any act of the representative as an act of LIFTCo.

15 LIFTCo demonstrates value for money on new projects (not partnering services) in one of two ways:

- market testing its supply chain on each new project
- market testing its supply chain for the first new project after a specified interval and periodically thereafter.

16 Where the latter approach is taken, for new construction projects, LIFTCo demonstrates VFM with reference to the original competitive tender rates, the last market test schedule of rates, and local and national cost trends (including on other Lift projects). Where possible, for new refurbishment projects, LIFTCo demonstrates VFM via comparison with similar local or national projects (including on other Lift projects). LIFTCo records and benchmarks capital, maintenance and repair costs and demonstrates (excluding inflation) lower cost and/or greater VFM over time. Market testing is at LIFTCo's cost.

17 The parties agree market testing tender information and evaluation criteria. The market testing risk allocation remains as for the existing provider. LIFTCo selects (subject to Participants objection) the tenderers on the basis of financial standing and experience and ability. LIFTCo's associates and supply chain members can tender subject to approval of all shareholders under the SHA. LIFTCo manages the tender process and selects and appoints the preferred tenderer on the basis of VFM for the Participants (subject to no dispute from the Participants). The Participants agreement is required if there is only one tenderer.

18 The relationship between LIFTCo and the Participants is governed by the SPB, which meets quarterly. The SPB comprises one representative from each Participant, one representative from LIFTCo and representatives from other local primary and social care stakeholders as agreed by the Participants. The parties appoint an independent, non-executive and non-voting chairman. The SPB appoints the Participants' LIFTCo director. The SPB formally reviews the operation of the SPA [annually].

19 The SPB reviews financial performance and operating performance under the SPA and LPAs. It approves the annual SSDP and approves new projects (but the LIFTCo representative has no vote on new projects). The SPB agrees requests for structural alterations. Decisions are only binding on affected Participants if their representative has supported the decision.

20 LIFTCo insures. If LIFTCo notifies property damage has become an uninsurable event the SPB and LIFTCo attempt to reach an agreed position. If they fail there are rights in the LPAs for LIFTCo to terminate them (subject to the tenants' rights to assume responsibility for the consequences of the uninsurable risk}.

21 LIFTCo licenses the Participants to use the intellectual property rights vested in LIFTCo for defined purposes and attempts to secure intellectual property rights vested in third parties.

22 LIFTCo and tenants work together in respect of TUPE and employment matters as appropriate.

23 Participant events of default are:

- any Participant materially breaching LIFTCo's exclusivity
- any Participant preventing or materially delaying an approved new project (unless in accordance with the SPA)
- expropriation, sequestration, nationalisation or requisition of LIFTCo's assets
- non-payment above a defined amount.

24 LIFTCo's rights on the occurrence of Participant event of default are:

- suspension of provision of the partnering services until the Participants demonstrate their capability of performing their obligations
- subject to notice and failure to remedy by the Participants, immediate termination and associated compensation or compensation for the default (without termination)
- where LIFTCo opts to continue, on the occurrence of [more than one event in any 12 month period] monthly payment for the partnering services. In the case of LIFTCo exercising its right to compensation for the default (without termination), the defaulting Participant shall pay compensation to LIFTCo for the partnering services costs incurred but not recovered at that time.

In the case of LIFTCo exercising its right to terminate, the defaulting Participant shall pay compensation to LIFTCo for the partnering service costs incurred but not recovered, plus anticipated loss of profits for the next new project expected by the SSDP and those on the 'lost' project for both LIFTCo and its supply chain members, plus the supply chain members redundancy costs.

25 LIFTCo events of default are:

- termination of a LPA for abandonment
- termination of a LPA for failure to complete the works by the long stop date
- the deduction percentage (for poor performance or non-availability taken across all of the LPAs) exceeding the set threshold for successive periods
- the facility deduction percentage (for poor performance or non-availability under a single LPA) exceeding the set threshold for successive periods
- material breach of the SPA
- failing to provide all or a substantial part of the partnering services
- criminal investigation, prosecution or conviction of any LIFTCo party under health and safety legislation, unless the party is replaced
- failure to comply with the SPA in respect of assignment, sub-contracting and changes in control
- failure to make appropriate payment to a Participant
- the deduction percentage (for poor performance or non-availability taken across all of the LPAs) exceeding the set threshold for successive periods

- the facility deduction percentage (for poor performance or non-availability under a single LPA) exceeding the set threshold for successive periods
- insolvency.

26 Participant's rights on the occurrence of LIFTCo event of default (at LIFTCo's cost) are:

- for events 1 to 5, either require LIFTCo to replace the supply chain provider, or, require LIFTCo to remedy the default, or, require LIFTCo to put forward a programme to remedy the default; if the programme is unacceptable, require LIFTCo to replace the supply chain member
- where LIFTCo fails to replace the supply chain provider, end LIFTCo's exclusivity
- for events 6 to 12, end LIFTCo's exclusivity.

27 Where the Participants are entitled to end LIFTCo's exclusivity more than once in any consecutive three year period they may serve notice of an SPA Material Default which triggers a forced share sale under the Shareholders Agreement ("SHA").

28 Force majeure provides no relief or compensation for any party.

29 LIFTCo sub-contracting is subject to Participant consent. Participant assignment is permissible where there is statutory change subject to legal and financial capacity to undertake the obligations.

30 Additional parties may be added to the SPA by agreement subject to procurement legislation.

31 Parties attempt to resolve differences and disputes by amicable negotiation; failing that, the parties consider mediation. Disputes can be referred to binding adjudication.

Appendix 2

The Lease Plus Agreement

The following is an extract from the Brent Harrow and Hillingdon NHS LIFT Memorandum of Information, Partnerships for Health, Oct 2002.

Requirements for Premises and Services

LIFTCos are expected to provide serviced accommodation suitable for use by health and social care professionals and practitioners to deliver services. The accommodation may be provided from new, refurbished or existing premises. The LIFTCo is expected to enter a “Lease Plus” agreement with the occupants of the accommodation. A Lease Plus is, in may respects, taking to a conventional lease, but there is the additional requirement on the LIFTCo as landlord to take the responsibility for the repair, maintenance and insurance of the premises throughout the term. The responsibility for the whole lifecycle of the management of the asset feeds through to a payment mechanism that provides for no payment if accommodation is not available, for example because accommodation is inaccessible. Where the required standards are not met, b8t the failure does not prevent the facility being usable, then, once defined responses and rectification time have passed, the tenant will have a right to remedy the failure at the LIFTCo’s expense.

Lease Pluses will generally be entered into by individual tenants of a LIFTCo, for example, individual GPS, dentists and pharmacists, PCTs, local authorities or voluntary sector occupants. Flexibility of leases is an important objective of the LIFT initiative, and the LIFTCo will be expected to be able to offer flexible lease terms - for example, leases of only 5-10 years because individual GPS are due to retire in those timescales - where for example;

a) an individual tenant is a relatively small part of a total development with other tenancies in place;

b) A group of premises is being delivered by the LIFTCo, so that the risk of voids is spared across a portfolio of properties;

c) The nature of the partnership, as reflected in the Strategic Partnering Agreement and the working of the Strategic Partnering Board, and the demand for local premises, is such that the LIFTCo can have confidence in its ability to find future occupants for premises if existing tenants require flexibility on term;

d) Alternatively, a GP can agree a longer lease, with the lease to be assigned to replacement practitioners for the remaining term of the lease;

e) In either case - a short lease to a practitioner, or a longer lease with assignment to a successor - if replacement practitioners are not immediately available, a PCG may agree to take an assignment of the lease agreement until a successor tenant can be found. This will protect the landlord's rental income without putting the PCT in a position as head tenant. However, exceptionally, it may be necessary for a PCT to take a head lease[23], and sublet to practitioners or successors. Where GPS are practising under the Personal Medical Services (PMS) contract and employed by a PCT, a PCT will take a lease for the area to be occupied by its employees.

A LIFTCo will also be encouraged to identify other potential occupants or users of facilities, or other commercial opportunities that may help make a development financially viable or enhance its profitability. Other occupants or uses may be from within the health and social care community, enhancing the integration of services offered by the new facility, or otherwise where this is not incompatible with the core service.

A LIFTCo may also be expected to offer flexibility in the sense of an ability to adapt premises and respond to changing requirements. There are general requirements in the Strategic Partnering Agreement to achieve flexibility and adaptability, that will be reflected in individual premises specifications, whilst the Lease Plus enables tenants to seek changes from the LIFTCo. Major structural changes are treated as, in effect, akin to a new project, and therefore are dealt with under the Strategic Partnering Agreement, not under an individual Lease.

For individual premises requirements, the service standards and requirements of individual Strategic Partnering Boards, and of the same Strategic Partnering Board for different premises, will vary, for example with the purposes for which the accommodation is required. Some local health and social care communities may also choose to transfer to the LIFTCo their existing estate of health centres and clinics, requiring management and maintenance of them to a different defined standard than that which will apply to new premises. An output specification will be made available defining the standards to be satisfied.

Lease rental levels on individual premises will be the subject of approval by the Strategic Partnering Board

Individual lease terms may survive the expiry of the SPA, for example where they are only entered into for 10 or 15 years into the term of the SPA. The SPA provides for some of its clauses to survive the expiry of the agreement to deal with this eventuality.

Remedies, Defaults and Termination Issues

In relation to defaults by a LIFTCo as landlord, the draft Lease Plus Agreements envisage proportionate deductions from payment where required accommodation is not available or required standards are not met. In extreme cases, where more material defaults arise or defaults continue or are not rectified, other remedies are required as follows:

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[23] NB: The PCT's have agreed to take headleases in all first phase schemes for the BHH LIFT

a) An individual lease can be terminated for abandonment or a failure to complete development by the long stop date, and the tenant can purchase the site for the lower of open market value or the purchase price

b) Default by a tenant under an individual Lease Plus would arise primarily through non-payment, the consequence being termination of the Lease

c) Where the Participants breach the SPA, for example through material breach or breaching the exclusivity provision, the LIFTCo can choose whether to terminate or continue, and can claim limited compensation

d) Where the LIFTCo is in default under the SPA, including termination of individual leases, different remedies arise depending on the severity of the event, with escalation through the following remedies:

    i) Replacement of supply chain;
    ii) Loss of exclusivity; and
    iii) Forced sale of shares for their market value

Appendix 3

The Strategic Partnering Board (SPB)

It will be the responsibility of the SPB to consider all projects proposed to be put through LIFT and decide whether or not approval should be given. Through the SPB all supply chain agreements with LIFTCo will be authorised in writing by the Participants.

1.0 The Role of the Council's Representative

1.1 The role will be to effectively perform with other members of the SPB the tasks identified below:

1.1.2 **General**

- Set initial objectives with LIFTCo
- Establish an operational support structure for the Participant relations with LIFTCo including development of the SSDP and payment of the LPAs (Lease Plus Agreements).
- Performance Monitoring – receiving written reports from LIFTCo and acting using the remedies in the SPA if there is a problem
- Ensure VFM for new projects (benchmarking) and existing supply chain via market testing.
- Management of the partnering and monitoring elements of the Partnering Key Performance Indicators
- Extension to the SPA

1.1.3 **New Projects**

- **Stage 1 Approval**
  LIFTCo provides the Partnering Services to assist in the development of the SSDP and prioritisation of the schemes. New project proposals go to the SPB. The SPB will then grant Stage 1 Approval (if it is consistent with SSDP, meets affected Participant's Tenants' Requirements and is voted for by affected Participants). SPB will receive a New Project Final Submission including fully worked up Tenant's Requirements, detailed design work, site acquisition, project plan, financial model and affordability assurance.

- **Stage 2 Approval**
  NB: There are various provisions to take account of where the SPB is not satisfied regarding any aspect of the New Project Final Submission.

- Ensuring exclusivity clauses are observed
- Nominate Participant Representative to work with LIFTCo's Representative
- Various operational duties related to the commissioning of new projects.
- Various supervisory duties in the case of Participant default, termination etc.

2.0 Chair of the Strategic Partnering Board

2.1 The SPA requires the appointment of a non-executive, independent Chair agreed by all parties.

2.2 The Chair will be responsible for ensuring that the SPB fulfils the role established for it in the SPA and detailed above.

2.3 It would be beneficial for the Chair of the SPB to have the following skills and experience:

- An understanding of the governance arrangements of the public sector participants (PCTs, Local Authorities and Mental Health Trust);
- Experience of capital projects;
- Supply chain management;
- Experience of contract monitoring through Key Performance Indicators;
- Experience of property development and urban regeneration;
- Political skills;
- Experience of partnership working.

3.0 Composition of the Strategic Partnering Board

3.1 As noted above the SPB is made up of representatives from the Participants, LIFTCo and Stakeholders. Each Participant and the LIFTCo Board member would have one vote and decisions are by majority vote. Stakeholders are non-voting representatives.

3.2 Over the last few months the Contracting Authorities for the purpose of the OJEC Process have been considering their involvement in the project, their intent to sign up to the SPA and the level of that involvement.

3.3 Decisions by the Contracting Authorities for the purpose of the OJEC process regarding their intent to sign up to the SPA will determine the number of Participants on the SPB. With regard to LIFTCo, it is intended that one of the five directors of the Company should sit on the SPB. Decisions will need to be made on the number of stakeholder representatives included on the SPB. Advice in this respect is for “a reasonable number” of representatives within the local primary and community based health and social care community. It is envisaged this may include a representative from each of the Local Medical Committee (LMC), the Local Dental Committee (LDC) and the Local Pharmaceutical Committee (LPC).

4.0 General Skills/Abilities/Attributes of SPB Members

- Facilitating and championing collaborative working between the public and private sectors.
- Understanding of property issues, specifically legal, planning, financial and contract law.
- Understanding of structure of primary and community care provision and incentives within existing arrangements.
- Performance management.

- Knowledge and understanding of the population and environment in BHH LIFT area.
- Change management experience and the ability to work with a range of cultures.
- Understanding and experience of supply chain management, especially obtaining best value from suppliers.

Appendix 4

The Procurement & Evaluation Process

Set out below is a summary of the procurement and evaluation process.

1.0 Procurement

1.1 Bidders selected following receipt of Pre-Qualification Questionnaire, Interview Stage Document and the conducting of Bidder interviews, three Bidders were short-listed and invited to negotiate.

1.2 The aim of the evaluation process was:

- To ensure the evaluation and selection process conformed with all statutory and regulatory requirements;
- To ensure the evaluation and selection process conformed with best practice and the requirements of the NHS LIFT initiative
- To select the Preferred Bidder to go forward to the final phase of the procurement process prior to contract award

1.3 The Bidders selected to respond to the ITN issued on 31 March 2003 were:

Group 4 Falck/Babock & Brown (now GSL/Babock & Brown)
ExcellCare
PC2

1.4 The short-listed Bidders were asked to complete and return compliant Bids by 12 noon on 30 June 2003. All bids were opened by the Director of Finance of each PCT, together with the LIFT Project Director, who was responsible for ensuring that all Bids were accurately recorded within the lead PCT's tender register.

2.0 The Bid Evaluation Team (BET)

2.1 A BET was set up, chaired by the Project Director. The BET was tasked with carrying out a detailed evaluation of responses submitted by the Bidders and making a recommendation as to the Preferred Bidder to the Project Board. Each contracting authority had to nominate at least one member to the BET. Partnerships for Health carried out an overall procurement regulatory role throughout the selection procedure.

2.2 Professional advisers were procured to ensure that necessary expertise was applied to the process, particularly with regard to the following issues:

- Technical (architect, quantity surveyor/engineer/FM)
- Investment; and
- Property advice

3.0 Bid Evaluation

3.1 The BET was divided into Evaluation Sub-Groups, in order to evaluate different elements of the Bids, as follows:

Technical
Financial
Legal & Commercial
Employment
Partnering

3.2 The Sub-Groups:

- read the bids in detail
- provided a forum for consultation with Scheme Teams
- collated questions for clarification by Bidders and attend relevant Bid Period meetings
- provided a consensus score for relevant sections of the Bids
- prepared evaluation reports

3.3 The evaluation of the bids consisted of a two-stage process:

1. General Compliance Check (Completeness of Bids)
2. Detailed Evaluation (weighted scoring matrix)

4.0 **Evaluation Criteria**

4.1 The Bid Evaluation considered the ability of the bidders to demonstrate competence, robustness and competitiveness in the following areas:

4.2 **The LIFTCo Partnership**

- The proposed approach to long term partnering
- The Management & Administration of LIFTCo: structure, funding, people
- The Bid Period

4.3 **Partnering Services**

- Proposals for the Trance 1 sample schemes
- Proposals for membership of the Strategic Partnering Board
- Proposals for estate management
- Understanding and assistance with service planning
- Estate planning
- Property development
- Supply chain management
- Long term value for money
- Performance monitoring
- Partnering services schedule of rates

4.4 **The Lease Plus Services**

- Construction
- Hard FM

4.5 **Legal & Commercial**

- Draft documentation , best value for money and risk allocation
- Variant Bids for compensation on termination of the SPA due to contracting authority default
- Flexibility of lease periods
- Funds Direct Agreement
- Site acquisitions for future schemes

4.6 **Employment**

- Best employment practice
- Approach and policies in relation to equal opportunities

4.7 **Financial**

- Affordability and best value
- NPV assessment
- Financial robustness
- Long-term financing proposals for subsequent phases

5.0 Scoring Matrix

5.1 A scoring matrix was used to generate a ranked list of Bids, and was weighted as follows:

Category	Weighting
The LIFTCo Partnership	12%
Partnering Services	36%
Lease Plus Services	10%
Legal & Commercial	10%
Employment	2%
Financial	30%
Total	**100%**

5.2 The Evaluation Sub-Groups were required to reach a consensus on the scores to be awarded to each Bidder.

5.3 Evaluation Sub-Groups submitted scored final reports for all sections of each Bid on 29 August 2003, together with a rationale for the scores given.

5.4 The LIFT Project Director submitted an evaluation report to illustrate the process following in the selection of the Preferred Bidder together with a draft prepared Preferred Bidder Letter to the Project Board for ratification on 5 September 2003.

6.0 Bidder Presentations

6.1 Each bidder gave a presentation of their bid to the BET. A presentation was also given to Directors of the PCTs and interested parties from other participants.

Appendix 5

Review of the Strategic Service Development Plan (SSDP)

On 21 November 2003, the BHH LIFT Project Board agreed to the establishment of an SSDP Review Team as identified in 2.3. It was further agreed that the Board should received regular update reports on progress on the SSDP review.

1.0 Introduction

1.1 In response to the Government's 10-year plan for modernising the NHS and particularly to the proposal to promote this modernisation within the Primary Care sector through its LIFT programme, Brent, Harrow & Hillingdon PCTs, in conjunction with partner organisations, published its vision for health and social care in their localities in the form of a Strategic Service Development Plan in November 2002. This was used to inform the private sector of intentions throughout the procurement process.

1.2 As the project moves toward financial close a review of the SSDP is needed to ensure that it provides the right basis for decisions on future scheme developments and service modernisation.

1.3 The current SSDP is structured to provide the following:

- Strategic Context and Drivers for Change
- Current Position and the Case for Change
- Vision and Principles for development
- Stakeholder Support and Involvement

It also contains sections on the approach to LIFT, Partner Appointment, Project Management and Financial Analysis and Affordability. These relate to the mechanics of LIFT operation. There has been significant development in these areas, which will require updating.

1.4 The four bullet points above are crucial to the ongoing development of the SSDP and fundamental to the Business Plan and support for future developments. Preparation of the current Business Plan in support of the LIFT programme in the Brent, Harrow and Hillingdon area includes a commentary on changes to the SSDP since formulation. This appears to relate principally to actual changes in site details and cost information etc. and it is appropriate to conclude for this purpose that there is no significant change. However in a full review of the SSDP careful reconsideration of these four bullet points will be required.

1.5 There are, however, areas that were only briefly mentioned in the initial SSDP that need development e.g. the limited reference to GP provision and the absence of any strategic planning to address issues that would be identified. (All the first tranche schemes promote sizeable Primary Care developments and with the exception of Northwood do not contain a significant GP presence.)

1.6 There was also little real interaction and dialogue with partners about their plans and developments and how these could be included and developed through LIFT actions. Various working groups formed since the initial SSDP have addressed this point and any review of the SSDP needs to capture intent and involvement of all partners to the process.

1.7 There is also no disguising the fact that real consultation and involvement of stakeholders and users was very limited. This was a product of the process and the timescale involved but clearly this is something that needs to be addressed in the review.

1.8 There is also the need to consider an overall LIFT approach to the three Boroughs rather than, as the present SSDP tends to read, three separate approaches being brought together. This will not be an easy task but key elements could be missed if a fully co-ordinated approach is not adopted.

2.0 Plan for Review

2.1 There are now service modernisation groups in existence, LA co-ordination groups and specific groups, such as Communications and Finance work-streams. However, an SSDP review team can better concentrate its activity with regard to service modernisation, drawing information from other groups already operating.

2.2 The review needs to be undertaken with appropriate contribution from our partners and therefore the team must contain LIFTCo representation.

2.3 The review team will be headed up by the Project Director, Geoff Easton, and each of the Participating Authorities have been invited to nominate a representative. The team will also include the GP Champion for LIFT, Michael Levitan (Local Pharmaceutical Committee), Finance Support and LIFT Project Co-ordinator. Including partner representation this would be a team of around 15. Representatives should be involved in one of the groups mentioned in 2.1 above.

2.4 The team would meet monthly but it is likely that key representatives would be given specific pieces of work to contribute and the various other groups mentioned in 2.1 would be fully consulted for input from their areas. A work plan would be drawn up at the first meeting which it is hoped will take place in December 2003.

2.5 A timetable for the production of a revised SSDP will be identified in the work plan. It is important that the review is undertaken as soon as possible so that the inclusion of possible Phase 2 schemes can be properly assessed by the SPB. A provisional indication of May/June 2004 has been given by the Project Director.

2.6 Annual review of the SSDP is a key activity of the Strategic Partnering Board (SPB). The LIFT Project Board is effectively acting as a shadow SPB until such time as the SPB is formed. It will be important therefore for the Project Board to receive regular update reports on the SSDP review's progress and to make decisions as appropriate on issues referred from the review team.

2.7 In terms of stakeholder consultation, as a minimum, it will be necessary for Boards/Cabinets of Participating Authorities to endorse the revision to the SSDP and this is likely to be most successfully achieved through a series of presentation/seminars to the appropriate bodies prior to Board/Cabinet consideration.

2.8 The SSDP Review Team is likely to remain in existence following the first review in order to maintain a cycle of annual reviews.

Appendix 6

Terms of Reference for the
Brent Harrow & Hillingdon LIFT Project Board

The project board is the high level decision making group within the procurement process and was formed by the participant and key stakeholder organisations involved in the Brent Harrow & Hillingdon LIFT. Each of the participant organisations nominated a Project Board member and agreed that the Project Board could undertake the role and fulfil the key tasks as outlined below. Each organisation gave authority to the Project Board to make key decisions on its behalf.

1 Role of the Project Board

The role of the Project Board is to:

- oversee and be accountable for the delivery of the LIFT project, procurement of the private sector partner and establishment of LIFTCo
- maintain ownership of the aims and objectives of the LIFT project across all participants and key stakeholders;
- set, agree and direct the work of the project team and sub-groups in accordance with the management structure agreed by the Project Board; and
- monitor the progress of the project against the agreed timetable to ensure that the aims and objectives of the LIFT project are realised and that the critical path and key milestones achieved.

2 Key Tasks of the Project Board

The key tasks of Project Board are to:

- receive reports of the project against the project programme and timeline;
- approve amendments and further iterations of the SSDP and the information contained in it, in particular the financial analysis and scheme details for the second tranche schemes*;
- consider and approve the recommendations of the evaluation team in relation to:
  - interview evaluation and forming of shortlist
  - Invitation to Negotiate (ITN) evaluation
  - selection of Preferred Bidder*
  - consideration of final Bid and financial close*; and
  - consideration of contract signing*.
- consider and approve the communications and Public Relations (PR) strategy/plan for the project;
- consider and approve the project resources and other related issues; and
- consider and approve Enabling Fund expenditure and any future bids.

*These key tasks are those which should go back to participant organisations for formal Board/Cabinet approval. It is envisaged that it is only these key decisions that will require this.

5 **Members of Project Board**

The members of the Project Board came from the participant organisations and key stakeholders as follows:

- Chair (Project Sponsor);
- LIFT Project Director;
- Chief Executive (or their nominee) from each of the PCTs;
- 1 senior representative from each of the local authorities
- PfH Project Director
- 1 representative from Local Medical Committee
- 1 representative from Local Pharmaceutical Committee
- 1 representative from Local Dental Committee
- Senior representative from Strategic Health Authority; and
- PR/Communications lead.

6 **Frequency of Meetings**

The Project Board meets monthly in line with the critical path of the programme and timeline and ensures that it met as decisions were needed to be made so that recommendations of the Evaluation Team were endorsed in a timely manner.

7 **Delegated Authority**

The members of the Project Board had delegated authority from their parent organisation to enable them to make key decisions and drive the procurement process to a successful outcome within the required timescale.

Appendix 7

Details of the Schemes Proposed for Development within Brent

1.0 Proposed Sudbury Primary Care Centre, Watford Road, Sudbury

1.1 Here the Council owns the land. It is proposed that this be sold to Brent PCT at market value. Terms have been negotiated by the Manager, Corporate Property An estimate of potential capital receipt is attached in Appendix 10.

1.2 The LIFT Project Board agreed this location presents a unique opportunity to create an environment that will support a modern and integrated healthcare model for the local population. It will be a one-stop facility and will aim to encourage community involvement and provide flexible facilities that enable service development with community involvement. The new centre will focus on the following activities:

- GP Facilities
- Diagnostics such as ECG & ultrasound
- Minor operations
- Retinal screening
- Diabetes Clinics
- Interpreting Services
- Podiatry
- Sexual Health (incl family planning)
- Mental Health Services
- Dietetics
- Heart failure clinics
- CHD rehabilitation
- Child Health
- Social Services support officers
- Health Promotion
- Citizens Advice Bureau & other advice services

1.3 The new centre would aim to work closely with the leisure facilities at Vale Farm and offers a great opportunity to link health issues more closely with active leisure activities.

1.4 The site comprises of a large detached Victorian House split into 4 flats. The house is located on a total site area of 1443 m^2 (0.36 acres). The new centre would have a gross internal floor area of 1,860m^2 (0.46 acres).

1.5 The site has good local access to public transport and this means of access would need to be strongly promoted.

1.6 The proposal was given outline planning consent on 12 November 2003, subject to conclusion of S106 negotiations. The planning application must be approved by the Government Office for London (GOL) as it represents a departure from the Council's adopted Unitary Development Plan (UDP).

2.0 Proposed Kingsbury Primary Care Centre, Stag Lane, Kingsbury

2.1 Part of the former Roberts Court elders' home site. This site was sold by the Council to Network Housing Association some 4 years ago as part of a transfer of Elders' Homes. Although the Council no longer owns the site the authority does have a vested interest in it via an overage agreement on future disposal. If the whole or part of the site required for the development of a primary care centre is sold at market value, the Council should expect to receive a capital payment for its share of overage value.

2.2 There are two proposals for the site:

- **The development of a new primary care centre** with a floor area of 1780m2 on a site of 2,000m2. It is anticipated that the following services will be provided:

- GP Facilities
- Ante Natal care
- Specialist Dental Services
- Diabetes & Heart Failure clinics
- Minor Surgery
- Integrated Children's services team
- Pain management Clinic & Physiotherapy
- Diagnostics such as ECG and ultrasound

- **The development of an elderly care facility**. Discussions are in the early stages between Willow Housing (a subsidiary of the Network Housing Group), Social Services, the PCT and the LIFT Project Director with regard to the remaining 2/3 of the site. Discussions surround the viability of an elderly care facility.

2.3 Outline planning consent has been granted for both the above proposals, subject to conclusion of S106 negotiations.

3.0 Proposed St Raphael's Primary Care Centre, Monks Park, Tokyngton

3.1 The Council does not own the building on the site. It does however own the adjacent toilet block. The PCT will be constructing a café/kiosk (design to be finalised) on the Council's land in return for which an easement will be granted over the adjacent library access-way owned by the Council.

3.2 It is proposed that the centre would be 3 storey and provide 1,500m^2 of accommodation. The primary care service will include:

- Health Education
- Diagnostic services-ECG
- Phlebotomy
- Chronic Disease Management Team
- Dietetics
- Multi-disciplinary teams will include:
  - district nurses
  - health visitors
  - school nurses
  - social workers
  - GPs

3.3 The property backs onto Monks Park which is currently being re-designed to improve the local environment.

3.4 Outline planning consent was approved for the proposed development on 4 June 2003, subject to conclusion of S106 negotiations. A revised, detailed application was subsequently received on 24 November 2003 and will be presented to the February Planning Committee.

Appendix 8

Extract from Minutes of the Meeting of the Executive 10 March 2003

14. **NHS 'LIFT' Project**

Members considered the report which detailed the preferred sites for the first phase of new primary care facilities to be built in Brent under the LIFT scheme. Councillor Coughlin stated that this was a new and innovative project between the boroughs of Brent, Harrow and Hillingdon to attract capital funding. He circulated a motion proposing that the Council provisionally indicate to participate in the project at Level 3. Bernard Diamant (Director of Corporate Services) referred to the tendering process and a selection process would be taking place on 18 March to decide on the three bidders to go through to the next stage. He drew members' attention to the 3 sites chosen by the Primary Care Trust as potential sites for new facilities. The potential sites for the Primary Care Centres are at Sudbury, Watford Road, Kingsbury, Stag Lane and St Raphael's, Monks Park and members expressed support for the projects identified in Brent. The Strategic Development Plan would be circulated to all members for information.

Additional information had been circulated as an annexe to the report marked not for publication because it contained a category of exempt information as specified in paragraph 9, Schedule 12A of the Local Government Act 1972, namely:-

Any terms proposed or to be proposed by or to the Authority in the course of negotiations for a contract for the acquisition or disposal of property or the supply of goods or services.

Given that the land for the proposed Sudbury and St Raphael's Primary Care Centres is Council owned this additional information provided an estimate of the potential capital receipt that could be expected upon disposal by the Council. It also included details of the Council's financial interest in the site for the proposed Kingsbury Primary Care Centre. There would be a need to dispose of the Council's interests in this land to LIFT Co to make the project a success.

RESOLVED:-

(i) that the Council provisionally indicate its intention to participate in the LIFT project at level 3, subject to suitable caveats regarding 'exclusivity' to be discussed with the LIFT project, with a final decision to be taken at the point of formal selection of the Private Sector Partner and conclusion of the Strategic Partnership Agreement.

(ii) that the Executive delegate authority to the Director of Finance to agree the shortlist of bidders based on the Evaluation Report to be submitted to the LIFT Project Board on 18 March 2003, and any other matters he might reasonably take into account.

(iii) that Members note the three sites in Brent identified by the PCT as preferred sites for the first phase of new primary care facilities to be built under the LIFT Scheme.

Appendix 9

Extract from Minutes of the Meeting of the Executive
7 April 2003

15. **Sale of Two Council Properties to Brent Primary Care**

Councillor Coughlin introduced a report seeking Member approval to the sale of two properties to Brent PCT to facilitate the NHS Local Improvement Finance Trust (LIFT) project.

RESOLVED:-

(i) that the of sale of land at Vale Farm, Watford Road, Sudbury and Monks Park, Tokyngton to Brent Primary Care Trust on terms to be agreed as noted in the Detail to this report, subject to there being no objections to the disposal of the open space, be agreed;

(ii) that the disposal of the additional land (paragraph 6.5.4 of the report refers) be agreed, provided that the Manager of Corporate Property Services is satisfied that the capital receipt to be received for the additional land represents best consideration that could be achieved;

(iii) that the Manager of Corporate Property Services be authorised to agree the prices and terms of sale but that the sale price will be for a sum of not less than £850,000 in the case of Vale Farm;

(iv) that it be noted that the proposed disposal of open space will need to be advertised as disposals of land classified as public open space and any objections or representations will be reported back to members.