
NEW JEDBURGH INTERGENERATIONAL COMMUNITY CAMPUS

Report by Service Director Assets and Infrastructure

EXECUTIVE COMMITTEE

4 SEPTEMBER 2018

1 PURPOSE AND SUMMARY

- 1.1 **This report is to seek authorisation to enter into on behalf of the Council a contract in connection with the Design, Build, Finance and Maintain (DBFM) of Jedburgh Intergenerational Community Campus.**
- 1.2 The report to Council on 27 June 2017 gave approval to commence to develop a project that would see the closure of all 3 schools in Jedburgh and the creation of a single community campus.
- 1.3 An Emergency Powers report on 22 February 2018 gave approval to commence an enabling works contract to maintain progress to an opening of March 2020.
- 1.4 The report to Executive Committee on 5 June 2018 gave further approval to extend the scope of the enabling works.
- 1.5 The Council project team, with the support from external advisors, have now concluded the preparatory work on the project and ready to proceed to Financial Close. The Project Documents as listed in Appendix A, which are not yet in final form and subject to further amendment, would be entered into on behalf of the Council.

2 RECOMMENDATIONS

2.1 It is recommended that the Executive Committee:

- (a) **Notes the progress of the project to date;**
- (b) **Notes the continued undertaking of works under the Design and Build Development Agreement ("DBDA") until Financial Close;**
- (c) **Following the consideration of the content of this report, and the progress of the works under the DBDA, approve the Council entering into the DBFM project.**
- (d) **Approve the delegation of the negotiation, finalisation and approval of the final terms of the Project Documents (as defined in Appendix A to this Report), to the Chief Legal Officer in consultation with the Chief Financial Officer;**
- (e) **Approve the Chief Legal Officer's use of their delegated authority under 21.3 of the Financial Regulations and under the Scheme of Delegation to execute, deliver and manage the performance of the Project Documents (as defined in Appendix A to this Report)(noting that the project is an approved project identified as a major procurement for the purposes of 21.3 of the Financial Regulations);**

- (f) Approve the subscription by the Council of £10 equity in DBFM Co and the investment by the Council of £310,541 (plus a 5% buffer) subordinated debt in DBFM Co; and**
- (g) Request that a certified copy is produced of an extract of the minute of the proceedings of this meeting as verification that approval has been granted.**

3 BACKGROUND AND RECENT PROGRESS

- 3.1 The report to Council on 27 June 2017 gave approval to commence the preparatory stages to deliver a new intergenerational community campus in Jedburgh. This community campus would see the closure of Jedburgh Grammar, Howdenburn and Parkside schools with the merger of all three into a single building. The report identified that the project would be delivered with Hub South East Scotland Ltd and would be shared revenue funded between Scottish Borders Council and Scottish Government through its delivery agency, Scottish Futures Trust.
- 3.2 Since June 2017, the project has been making progress. After early design work was completed, a planning application was made in September 2017. This was approved at the Planning and Building Standards Committee on 8 January 2018. Soon after this approval, the Council undertook ecological works to reduce potential risks by felling a significant number of trees affected by the project.
- 3.3 During 2017, the statutory process to allow closure of the three schools in the town and the opening of the new campus in accordance with the Schools Consultation (Scotland) Act 2010 was successfully completed.
- 3.4 To maintain the overall programme commitment of an opening in March 2020, the Council entered into an enabling works contract in April 2018. On 5 June 2018, the scope of the enabling works was extended to include the construction of foundations and steelwork that will form part of the school building.
- 3.5 Progress with this enabling works contract, managed using a Design and Build form of contract ("DBDA"), has been positive and in accordance with the agreed programme. The weather conditions so far this year have been welcome given that a large element of the enabling works has been an access road to the campus, bulk earthworks movement of soil within the school site and the construction of a large retaining wall. The foundations and steelwork for the building have now commenced. The enabling works contract is now currently forecast to complete on 1 October 2018.
- 3.6 Members approved the commencement of the DBDA contract on the basis that the capital currently being used to finance this contract is returned to the Council when Financial Close is reached early in October 2018.

4 STAGE 2 SUBMISSION – COMMERCIAL CLOSE

- 4.1 The Report to Council on 27 June 2017 identified that delivery of the project would be in conjunction with Hub South East Scotland Ltd. Projects of this nature involve setting commercial parameters at the start of the project, preparing designs and costs and then checking them against the financial parameters at 2 distinct stages (Stage 1 and Stage 2). In June 2017, the financial parameters were set at;

Heading	Cost (£)
Construction Costs including main contractors preliminaries, overheads and profit, risk & inflation	31,087,658
Stage 1 Design Fees	298,064
Stage 2 Design Fees	700,285
Surveys	62,862
Hubco Development Portion and Fee	785,107
Total	32,933,976

- 4.2 In October 2017, a Stage 1 design and commercial submission was made that was broadly in line with the above financial parameters. Overall, the project was forecast to cost £31,587,568 but with construction inflation being held as a reserved item. It was acknowledged that this Stage 1 submission was in advance of the market testing process with the sub-contractors and suppliers of the individual works packages for the building contract. This market testing process has been ongoing from December 2017 through to July 2018 as part of Stage 2. During the period from mid 2017 to mid 2018, there has been significant movement in the cost of construction related materials and supplies.
- 4.3 The Stage 2 submission, being the final commercial offer from Hub South East Scotland Ltd, was made to the Council on 13 July 2018. The conclusion of the market testing process has had to be extended to allow for clarifications to the market testing returns to ensure value for money was being achieved. In some instances, this has involved changing the scope of the design to minimise cost.
- 4.4 A summary of the commercial submission made by Hub South East Scotland Ltd is as below;

Heading	Cost (£)
Construction Costs including main contractors preliminaries, overheads and profit, risk, inflation and post contract design fees	31,111,687
Stage 1 Design Fees	283,429
Stage 2 Design Fees	995,097
Surveys	52,439
Hubco Development Portion and Fee	482,615
Total	32,925,267

- 4.5 On the face of it, the Stage 2 submission is within the affordability cap set by Council on 27 June 2017 as noted in section 5.1 above. Unfortunately, the construction inflation pressures that was seen during the Stage 2 market testing process means that the only way of achieving this total has been by removing elements of the project that are able to be delivered by the Council direct using capital funding.
- 4.6 Members are reminded that the Council has allocated a capital budget for the project. In June 2017, a budget of £3.7M was set. Initially, this capital was able to forward fund the significant design costs incurred by the design team from late 2016 to summer 2018. Scottish Futures Trust encouraged the Council to do this at the time of their award as a principle of their funding. In February 2018, the capital financial plan also consolidated the capital cost for the Jedburgh 3G pitch within the overall campus project given that this synthetic pitch was being delivered within the campus project.
- 4.7 Setting aside the design costs incurred to the point at which financial close is reached, the Council will now deliver a range of associated elements of the project outwith the DBFM project using capital. It is confirmed that all of the elements as listed below do not trigger any capital contribution rules associated with revenue based funded projects.

1	Off site roadworks
2	Off site improvements to grass pitch at Howdenburn
3	Pedestrian Crossing at Oxnam Road
4	Relocation of Parkside PS to Howdenburn PS (August 2019)
5	Relocation of all schools to new campus (March 2020)
6	IT Equipment
7	AV Equipment
8	Loose Furniture
9	Core Path Improvements
10	Project Office Costs
11	Off site Safer Routes to School Works

- 4.8 The overall stage 2 submission is currently being checked and reviewed by Officers in conjunction with the appointed external financial and technical advisers to the project. It is stated within this report that the Stage 2 submission is generally compliant with what was expected to be submitted and that the submission is capable of being accepted. There are a number of clarifications however which will be reviewed with Hub South East Scotland Ltd prior to reaching Financial Close.
- 4.9 Given that the project is for both the construction and maintenance of the building, the Stage 2 submission also includes costs to the Council to provide facilities management and lifecycle replacement of the fabric of the building. It is noted within this report that the costs associated with these elements of the project are broadly within the caps set in June 2017, being £15/m² for facilities management and £13/m² for lifecycle replacement, both at a Q1/2013 price base.
- 4.10 It is also noted in this report that a condition of funding from the Scottish Government / Scottish Futures Trust is that the project is tested/controlled through their own governance processes. The project has successfully completed a gateway Key Stage Review at the completion of the Stage 2

process. It is noted that as far as the eligible elements of the project are considered, the project demonstrates value for money in terms of the area metric within the building and the cost metric associated with that area. In this way, Scottish Government have ensured that their funding investment to the project represents value for money.

5 COUNCIL APPROVAL OF THE PROJECT DOCUMENTS

- 5.1 The report to Council on 27 June 2017 identified that the new campus was possible as a result of a funding award by the Scottish Government as part of the 'Scotland's Schools for the Future Programme'. The funding award is being administered by Scottish Futures Trust (SFT), a delivery company owned by the Scottish Government. A condition of funding was that the project had to be delivered using the public/private development company Hub South East Scotland Limited.
- 5.2 For Design, Build, Finance and Maintain projects such as that required for Jedburgh, the contract will be entered into using standard form SFT documents available for use by public agency bodies. Funding for the project is by way of private finance organised and managed by DBFM Co following a national funding competition by SFT. The Project Documents therefore cover an overarching Project Agreement and several subordinate documents, agreements and warranties. A full list of the documents is included within Appendix A to this report.
- 5.3 The contract will be between Scottish Borders Council and a special purpose vehicle company referred to as DBFM Co which will be set up for the duration of the project. The nature and structure of the use of special purpose vehicles such as DBFM Co has changed in recent years linked to clarifications of European accountancy rules (known as ESA10). At that time, this had the impact of stalling the delivery of Kelso HS for a period. It may be of benefit to Members to be provided with a guidance note issued by Scottish Futures Trust in June 2015 that covers the principle of the structure of Design, Build, Finance and Maintain projects. This is contained within Appendix B to this report.
- 5.4 The Project Documents have been prepared with the assistance of three advisors to the Council covering Technical, Legal and Financial. Confirmation has been given to the Council that the Project Documents will be prepared from standard form unless otherwise agreed and that they are representative of current market provisions across similar schools projects in Scotland.

6 DELEGATED AUTHORITY

- 6.1 The Scheme of Delegation as approved by Council on 29 March 2018 and as amended on 31 May 2018 allows for the Chief Legal Officer to execute formal Agreements. For the avoidance of doubt and by way of this report, Members approve that the Design, Build, Finance and Maintain (DBFM) Agreement constitutes a formal Agreement in accordance with the Scheme of Delegation and delegate to the Chief Legal Officer the power to agree the final form of the Project Documents listed in Appendix A to this report.
- 6.2 The Scheme of Delegation also allows for the Chief Financial Officer to approve the terms of purchasing works and service supply contracts (point 2, page 10 of the Scheme of Delegation). For the avoidance of doubt and by way of this report Members delegate to the Chief Financial Officer the power to agree the terms of purchasing within the Project Documents listed in Appendix A to this report.
- 6.3 The Financial Regulations as agreed by Council on 29 June 2018 identifies at 21.3 that any major procurement or contract which is of a significant amount and of strategic relevance to the Council must be authorised /

signed by the Chief Legal Officer. For the avoidance of doubt and by way of this report, Members delegate to the Chief Legal Officer the power to sign the Project Documents listed in Appendix A to this report.

7 SUBORDINATED DEBT & EQUITY INVESTMENT

- 7.1 Council approved a Treasury Strategy on 20 February 2018. Within this Treasury Strategy, approval was given to increase the Council limit for investments in the subordinated debt of "DBFM Co". For the avoidance of doubt and by way of this report, the Members approve a share equity purchase of £10 and subordinated debt investment of up to 10% of the available subordinated debt investment in DBFM Co. The current financial model shows that this is £310,541. This subordinated debt investment will be made at the construction completion date for the project, forecast for March 2020. The equity investment will be made at Financial Close.

8 LOCAL GOVERNMENT (CONTRACTS) ACT 1997

- 8.1 In terms of clause Section 3 of the Local Government (Contracts) Act 1997, the Council requires to certify the purpose for which it is entering into the DBFM Project Agreement and the Funders Direct Agreement (both of which form part of the Project Documents) and its powers to do so, as well as its compliance with the terms of the Local Authorities (Contracts) (Scotland) Regulations 1997. Such a certificate must be executed by a Proper Officer on behalf of the Council and for the avoidance of doubt, and by way of this report, Members approve that Chief Legal Officer, in accordance with the current Scheme of Delegation, has the authority to do so.

9 FUNDING

- 9.1 The report to Council on 27 June 2017 identified that Scottish Government provide funding support in the form of revenue support covering 2/3rds of eligible project costs. This funding was fixed, that is no allowance for further fluctuations in inflation, at £17,891,303. An additional £260k was later given by Scottish Government to cover a range of low carbon/environmental performance improvements intended to be implemented to the building. A financial model has been submitted within the Stage 2 submission that identifies that overall the Council's share of the 1/3rd of eligible costs and the full cost of the ineligible abnormal costs results in a forecast of £13M capital equivalent contribution to the project.
- 9.2 Members are specifically made aware that the fixed revenue funding element of the project has had an influence on the Council's share of the project funding. At the time of award from the Scottish Government in June 2017, their funding was based on an area metric and a cost metric based on that area. The cost metric did allow for inflation but only that based on the prevailing conditions at that time. In June 2017, the Building Cost Information Service (BCIS) All In TPI rate was 289. The forecast at that time from June 2017 to Quarter 1 2018, being the commercial submission, was that the All In TPI would fall to 288, in other words deflation.
- 9.3 In the end, the commercial submission was not made until quarter 2 2018. More importantly though, the All In TPI rate in June 2018 now sits at 315, in other words inflation. On the face of it, this has placed a project pressure in the order of £1.5M for which the Scottish Government does not carry any risk for. This risk sits with the Council and places a pressure on the revenue based unitary charge payment. It is noted within this report that Officers have asked SFT on behalf of the Scottish Government if they would be willing to recognise the change in BCIS indices in relation to their funding. The reply unfortunately was that the funding was fixed in June 2017, based on the information to hand at that date and that no increase

in SG funding would be made. The Council have been informed that this is a fixed funding principle which applies across the entire Schools of the Future programme.

- 9.4 It is noted that the funding for the project is through private finance for which unitary charge payments are made by both Scottish Government and the Council over the 25 year concessionary period. Based on the above capital equivalent costs, the Council's yearly contribution to the unitary charge is expected to be in the order of £1M out of the overall Annual Service Payment of £2.934M. This covers the main debt repayment and those of the facilities management and lifecycle costs. Members will note that payment of these revenue costs is not liable until Completion, scheduled for March 2020 and for which the current revenue plan has made allowance for.
- 9.5 It is further noted in this report that the private finance will be fixed at Financial Close by way of swap rates through financial markets. In a situation where the Council should be placed in a 'no worse' situation, the Council's element of the funding is set at an equivalent Public Works Loan Board rate. For the avoidance of doubt, recommendation 3.1(c) is intended to provide the Chief Financial Officer with a control mechanism to suspend/defer the Financial Close in the event that the PWLB rate has fluctuated outwith ordinary movement parameters.
- 9.6 The Council will continue to use capital funding for the elements of the project that have been taken out and for which will be delivered directly by the Council as identified in 5.7 above.

10 PROGRAMME

- 10.1 The Council project team, Hub South East Scotland Ltd and their Tier 1 contractor, BAM Construction Ltd have worked hard since June 2017 to develop a programme that sees the school complete and open to pupils and the community by 31 March 2020. This was a principle of the funding award from the Scottish Government in June 2017.
- 10.2 Action was taken to preserve that opening date earlier this year by the use of an enabling works contract. This, together with reaching Financial Close by early October 2018, will ensure that the Council has made a demonstrable effort to ensure that the school is complete and able to open within that timescale.
- 10.3 Members will appreciate that there are some logistics around this opening, most notably that it is expected that the winter term is likely to finish on Friday 3 April 2020. Consideration will need to be given to the implications of opening the new community campus just prior to the planned Easter holiday period.

11 IMPLICATIONS

11.1 Financial

- (a) The Council approved the 2018/19 revenue and capital plan in February 2018. Within this plan, at a high level, it is noted within this report that allowance has been made for both the capital and revenue costs associated with the project. In capital terms, this allocation has and will continue to be used to cover early design costs and the implementation of goods and works that will not form part of the revenue financed project. These costs will generally cover those elements up to the Completion Date forecast for March 2020.

- (b) From March 2020, revenue allowance has been made with the current financial plans for costs associated with the project over its concessionary period of 25 years.
- (c) The project overall is seen as performing within both capital and revenue parameters.

11.2 Risk and Mitigations

- (a) All planning consents and permissions required to commence construction have been secured. Planning consent was obtained in January 2018 and all of the pre-commencement conditions have been cleared. Building warrant for the early construction stages such as foundations, drainage and structural frame has been obtained.
- (b) All land related risks have been addressed.
- (c) The statutory consultation process required under Education legislation to relocate the school has been addressed.
- (d) The financial risk for the project has been mitigated through the commercial discussions with Hub South East Scotland Ltd and its appointed Tier 1 contractors. The mitigation action taken at this stage has seen elements of the project delivered directly by the Council.
- (e) Mitigation of the financial risks on the project has resulted in the Council having to accept some of the delivery risk that can affect the opening of the school such as loose furniture, IT related equipment and offsite works. A project plan will be developed to monitor and control these risks during the overall construction process.

11.3 Equalities

There are no Equalities or Diversity issues associated with this report

11.4 Acting Sustainably

The contract obligations within the Project Documents place a requirement on DBFM Co to deliver community and other key performance benefits. This will be monitored by the Council during the construction and operational phases of the project.

11.5 Carbon Management

The project has benefitted from additional funding from Scottish Government to provide for improved low carbon and environmental performance measures within the school such as additional insulation and increased use of photovoltaic panels. This has allowed the project to be enhanced beyond that required under building standards regulations.

11.6 Rural Proofing

This report does not relate to new or amended policy or strategy and as a result rural proofing is not an applicable consideration.

11.7 Changes to Scheme of Administration or Scheme of Delegation

No changes to the Scheme of Administration or Delegation are required as a result of this report.

12 CONSULTATION

- 12.1 The Chief Financial Officer, the Monitoring Officer, the Chief Legal Officer, the Chief Officer Audit & Risk, the Chief Officer HR, and the Clerk to the Council are being consulted and their comments will be incorporated into the final report.

Approved by

Martin Joyce
Service Director Assets & Infrastructure

Signature.....

Author(s)

Name	Designation and Contact Number
Steven Renwick	Projects Manager, 01835 826687

Background Papers:

Previous Minute Reference: Scottish Borders Council 27 June 2017
Emergency Powers 22 February 2018
Executive Committee 5 June 2018

Note – You can get this document on tape, in Braille, large print and various computer formats by contacting the address below. Corporate Management Support Support can also give information on other language translations as well as providing additional copies.

Contact us at Corporate Management Support, Council HQ, tel 01835 824000.

APPENDIX A

PROJECT DOCUMENTS

The following documents which are not yet in final form and which are subject to further amendment would be entered into on behalf of the Council in connection with the Project (references to defined parties being as defined in the DBFM):

a)	The revised "Standard Form DBFM Agreement (hub DBFM Projects Version 2.5: June 2018 ("DBFM Version 2.5") as revised to incorporate: (I) the Norddeutsche Landensbank ("Nord/LB") and Scottish Futures Trust ("SFT") agreed derogations to the hub Standard Form Project Agreement for DBFM Projects (the "Nord-Derogations"); (II) any relevant project specific amendments; and (III) and other amendments agreed between the Authority and DBFM Co. entered into between (1) Scottish Borders Council and (2) DBFM Co for the design, build, finance, and maintenance of a new community building for the Jedburgh Area.
b)	A Funder's Direct Agreement to be entered into among (1) Scottish Borders Council; (2) the Security Trustee; and (3) DBFM Co
c)	A Building Contractor Collateral Agreement entered into among (1) Scottish Borders Council; (2) the Contractor; (3) DBFM Co; and (4) the Security Trustee
d)	An Architect Collateral Warranty entered into among (1) Scottish Borders Council; (2) the Contractor; and (3) the Architect
e)	A Mechanical and Electrical Engineer Collateral Warranty entered into among (1) Scottish Borders Council; (2) the Contractor; and (3) the Mechanical and Electrical Engineer
f)	A Structural Engineer Collateral Warranty entered into among (1) Scottish Borders Council; (2) the Contractor; and (3) the Structural Engineer
g)	An Independent Tester Contract entered into among (1) Scottish Borders Council; (2) DBFM Co; (3) the Independent Tester; (4) the Security Trustee; and (5) the Contractor
h)	A Facilities Management Contractor Collateral Agreement entered into among (1) Scottish Borders Council; (2) the Service Provider; (3) DBFM Co; and (4) the Security Trustee
i)	An Intercreditor Deed entered into among (1) Scottish Borders Council; (2) Sponsors; (3) DBFM Co; (4) Holdco and (5) the Security Trustee
j)	A Noteholder Support Agreement among (1) Sponsors; (2) DBFM Co; and (3) Holdco
k)	An Insurance Proceeds Account Agreement among (1) Scottish Borders Council; (2) Funder; (3) DBFM Co; and (4) the Account Bank
l)	Any additional documentation relating to the Project to which Scottish Borders Council is required to be a party;

together the "Project Documents".

APPENDIX B

**BRIEFING FOR HUB TERRITORIES: REVISED STRUCTURE FOR DESIGN BUILD
FINANCE & MAINTAIN PROJECTS, SCOTTISH FUTURES TRUST, JUNE 2015**