

## Members' Library Service Request Form

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**REPORT TO:** Members' Library Service

**BY:** Head of Infrastructure

**SUBJECT:** Procurement of Expansion of PPP Secondary Schools

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## **1 PURPOSE**

1.1 To indicate the next steps and set out how the expansion of the secondary school estate will be procured in order to provide the additional accommodation required to meet the capacity and requirements of the increasing pupil rolls.

## **2 RECOMMENDATIONS**

2.1 That the Council notes the requirement to expand the secondary school estate to provide the necessary additional capacity arising from both established demand and future new housing development in East Lothian.

2.2 That the Council notes the limits and constraints on the options for procuring the secondary schools' expansion, both in terms of the Public Contracts (Scotland) Regulations 2015 (amended 2016) and the nature and complexity of the extension works. This means that there is a limit to the value of the further capital extension works which can be procured through Innovate, the PPP partner and a significant proposition and value of the expansion work will have to be procured separately from Innovate.

2.3 That the Council notes that there are significant legal requirements in relation to procuring the expansion of the PPP secondary school estate and that adequate timescale is required for this work. The Council is not in control of all aspects of this process which will require the preparation of substantial construction and legal documentation and may require to be supplemental to the PPP Contract. Having carried out this process before in respect of the expansion at Dunbar Grammar School, this is a lengthy, time consuming and costly process and it is likely to require input, oversight and approval from a number of legal and technical parties including in some cases, Innovate's Funder's and FM Supplier and their solicitors.

2.4 That the Council notes that the current programme for the expansion of the secondary schools is estimated as follows:

- Ross High School: completion by August 2020
- North Berwick High School: completion by August 2020
- Preston Lodge High School: completion by August 2023
- Knox Academy: completion by August 2025
- Dunbar Grammar School: LDP extension - completion by August 2026
- Musselburgh Grammar School: upgrading works (no expansion of capacity) – programme for completion by August 2020.

The above programme and dates will be regularly reviewed, updated as part of the Council's Budget process and detailed programmes will be developed for each school which will identify where phased completions and handover may be necessary to ensure capacity is in place to meet pupil projected numbers.

2.5 That the Council notes the principle that the main school extensions are procured as Design and Build contracts through the Hub South East Territory Partnering Agreement for the following reasons:

- The Council is a joint owner in Hub SE and has access to design teams and contractors which have been pre-selected through a competitive process. This means that the design, project management and contractor team are engaged at an early stage in the development process which enables them to work in partnership with the Authority to develop acceptable proposals which provide certainty in relation to cost, buildability and programme. This approach is also in line with one of CIPFA's recommendations contained in the 2016 Best Value Review of Strategic Asset and Capital Plan Management Service, that 'contractual arrangements including formal partnering contracts should be considered to maximise the potential for engagement where the partnering contractor is involved as part of the delivery team from an early stage'.
- Procurement of the main extensions by means of a Design and Build contract with Hub South East will provide the Council with competitive or benchmarked prices for the major part of the expenditure associated with the expansion of the secondary schools and thus provide a basis for demonstrating best value.
- The contractual and legal process for Hub projects is shorter, with specific timescales for acceptance of Stage proposals and costs set out in the Partnering Agreement.

2.6 Notes that other procurement options for the main extensions have been considered and ruled out for a number of reasons:

- Open procurement through OJEU either as Design and Build or Traditional contract: this requires a significant up front resource to prepare proposals and tender document in sufficient detail to seek competent tenders. The design team is appointed by the tendering contractors and is not involved at the critical early stages of consultation and design development with the stakeholders. In addition, the Council does not have sufficient in-house capacity to resource this process.
- Procurement of contractor via the Council's major works framework either as Design and Build or Traditional contract: this option is ruled out for the reasons set out above.

2.7 Notes that where necessary, some extensions and alterations may require to be procured through the PPP provider, Innovate. The reasons for this are as follows:

- Some extensions with more complex alterations and extensions may require to be embedded within the schools and in some situations will require the demolition of existing areas of the building: this will have significant impact on those parts of the school maintained and managed by FES as part of the PPP contract under the PPP Project Agreement. These will be described and specified separately from the new extension and carried out by the PPP contractor, thus allowing these works to be properly programmed and coordinated with the lifecycle works for which the PPP provider is already responsible.

2.8 Notes that the risk for the design and build and any impact on service availability of the existing school may transfer to the Council during the period of the construction of the school extension (but see 6.1 below). This risk is mitigated by appointing Hub South East with the project design team and contractor early in the process so that the design interface risks can be understood through discussion with Innovate and FES and a strategy agreed between all parties to minimise these.

2.9 Notes that the CDM Regulations 2015 place statutory obligations on the Council as Client. These include:

- Ensuring that suitable management arrangements are made for the project, and that the roles, functions and responsibilities of all members of the project team are clear and understood.
- Appointing a Principal Designer to plan, manage and monitor health and safety in the pre-construction phase of the projects, including eliminating or controlling foreseeable risks and ensuring other designers carry out their duties.
- Appointing a Principal Contractor to co-ordinate, plan, manage and monitor the construction phase of the projects. There must be one Principal Contractor with responsibility for coordinating all other contractors on site. This is a particularly important responsibility for the Council in relation to these works, where there is likely to be two

design teams contracted to different contractors (Innovate / FES and Hub SE) for different works.

- 2.10 Notes that the risks associated with compliance with the CDM Regulations for the schools' expansion are mitigated by the appointment of Hub SE to carry out the major new build extensions and Innovate East Lothian to undertake the more complex alterations and internal works. FES is a partner in Innovate East Lothian, and is also responsible for the delivery of facilities maintenance, management and lifecycle services to the PPP project. FES is also appointed to HubSE supply chain as Mechanical and Electrical Services Contractor. The appointment of both Innovate and Hub SE early in the process allows adequate consideration of key shared issues, such as provision of site and welfare accommodation and coordination of deliveries and vehicle and plant movement. It also facilitates the co-ordination of works to the services, e.g. shutting off power in specific areas without disruption elsewhere in the schools. FES was appointed by HubSE as services contractor for the new Wallyford Primary School, and this allowed the M & E services design to be developed efficiently in parallel with other building elements.
- 2.11 Notes that it is highly likely that the Council will need to enter into Supplemental Agreements in relation to the incorporation of the new accommodation into the Secondary School Project Facilities with Infrastructure Management Limited (Innovate) in terms of the PPP Project Agreement
- 2.12 Notes that officers will review the provision of Facilities Management services for the new and altered accommodation secondary schools regularly to ensure Best Value continues to be achieved.

### **3 BACKGROUND**

- 3.1 The Council has been aware of the potential requirement to expand its secondary schools estate. It is clear that the capacity of five of the Council's six secondary schools require to be extended over the next six years. Pupil roll projections were prepared to establish the nature and extent of the additional capacity required arising as a consequence of new housing developments in the county including those sites already completed or committed together with those sites included within the proposed Local Development Plan. The approved capital plan identifies budgets totalling £34,562,000 for extending Ross High School, North Berwick High School, Knox Academy, Dunbar Grammar School and Preston Lodge High School. There is also a budget allocation of £500,000 for upgrading the facilities at Musselburgh Grammar School.
- 3.2 A guiding principle in the development of the expansion proposals is to provide space which is fit for delivering the education curriculum in the most economically advantageous way. Additional capacity across all schools will require new teaching spaces, including for the more practical subjects such as Science, Home Economics, STEAM, CDT, Art, Drama, Music and PE. The

design solution for extending the schools is prepared taking into account Education best practice requirements for accessibility, zoning and flexibility to suit a modern learning environment. The extended schools also provide additional core accommodation for dining, social, toilets and staff accommodation as required.

3.3 The detailed design of the school extensions is being progressed in collaboration with all stakeholders including Education advisors and the school communities. All schools will require a range of interventions including new build and internal alterations. Design development is being undertaken taking into account the significant legal complexity of expanding within a PPP school campus, and this would be simpler if such expansion could be separated from the existing buildings. This would require stand-alone buildings within the school grounds, or on a site separate from the school. This approach will be taken if and where it is feasible, for example where there is sufficient campus land to accommodate separate development, and where any impact on the operation of the school and provision of education curriculum is acceptable. In most schools, however, this option is not open for consideration because there is no land available within or adjacent to the school.

3.4 As far as is practicable, major extensions will be designed as separate blocks and linked to the school by means of a corridor. This means that they can be constructed with less impact on the existing footprint of the main school building, can be procured separately from the PPP provider but will still meet the key HMI agreed educational requirements that the design and layout of the school, and the way the buildings work in combination with the grounds, should -

- deliver a safe and secure environment, with ease of movement throughout the building
- be a design that enables efficient use of management time to support all staff
- promote staff and pupil wellbeing and make a positive contribution to the activities in which they engage.

By extending the existing footprint of the school, rather than constructing separate buildings, the ethos of the building is extended to the new areas and core capacity is increased. Leadership and management support is better integrated: there is greater collaboration, shared practice and interdisciplinary learning. Feedback surrounding temporary, stand-alone units suggests that staff feel isolated and disconnected from the ethos and flow of the main school. Teachers identify barriers to collaboration and behaviour support. All schools will require additional accommodation for specialist subjects such as science, and the siting of faculties is essential to enhance collaboration and ensure that opportunities for shared practice and Inter Disciplinary Learning. Pupil management and security is also easier to organise in an extension to the main school rather than a stand-alone building.

## REVIEW OF PROCUREMENT FOR EXPANSION OF THE PPP SECONDARY SCHOOLS

3.5 The six secondary schools were refurbished and extended under a PPP contract in 2002 with a final contract value of £54,500,000. The contract is valid until 2035. The Council's Legal and Procurement team has advised in accordance with the Public Contracts (Scotland) Regulations 2015, that the value of additional works which can potentially be procured through the PPP project agreement is limited to 50% of the original contract value, i.e. £27,250,000, unless and provided that additional spend can be justified, it may be possible to exceed this value, if it can be demonstrated that it is the only feasible option.

3.6 The following table sets out the estimated total budget required to provide the secondary school capacities needed to accommodate the housing development included in the proposed 2016 LDP (a).

Secondary Schools	LDP Budget Costs	Required to be procured through PPP	Potential to procure separately
Dunbar Grammar School	£2,950,000	£100,000	£2,850,000
Knox Academy	£6,590,000	£500,000	£6,090,000
Musselburgh Grammar School	£500,000	£500,000	£0
North Berwick High School	£7,280,000	£4,610,000	£2,670,000
Preston Lodge High School	£8,410,000	£2,780,000	£5,630,000
Ross High School	£8,832,000	£3,132,000	£5,700,000
	<b>£34,562,000 (a)</b>	<b>£11,622,000 (b)</b>	<b>£22,940,000 (c)</b>

<b>PPP committed expenditure 2004 -2017</b>		
Dunbar GS - Phases 1 and 2		£10,331,000
Total PPP Change Controls approved to 2017		<u>£1,123,183</u>
		<b>£11,454,183 (d)</b>
Total anticipated capital expenditure through PPP to 2025 (b)+(d)		<b>£23,076,183 (e)</b>
Value of PPP Contract	£54,500,000	
50% value of PPP contract	£27,250,000 (f)	
Residual to end of PPP contract		£4,173,817

The indicative design proposals have been reviewed to establish which parts of the schools' extensions could potentially be constructed by contractors other than the PPP contractor (c). All schools will require a level of more

complex alterations and extensions which are embedded within the school and will need to be procured through Innovate, the PPP contractor (b). The total value of works which has been procured or committed to date through the PPP contractor by means of Change Control or Supplementary Agreement is £11,454,183 (d). This includes the major expansion of Dunbar Grammar School. The total anticipated expenditure which will require to be procured through the PPP provider is £23,076,183 (e). This is within 50% of the original value of the PPP contract - £27,250,000 (f).

The table and values will be updated as the proposals for expanding the schools are progressed.

## **LEGAL**

- 3.7 Supplemental Agreements to the PPP Project Agreement will not be required for the expansion of the secondary schools if such expansion is removed from the footprint of the current school (e.g. if we carve out the area of expansion) and if Innovate are not to deliver the FM. However, if it is otherwise, then a Supplemental Agreement will be required. However, the complexity and content will be variable depending on the nature of the proposed Works. Works instructed directly to Innovate East Lothian Ltd. will be managed through the Change Control process of the Project Agreement or through a Supplemental Agreement (if such results in a change to the footprint and an impact on the FM Costs) with Innovate as appropriate. See Appendix A
- 3.8 All expansion project works are initiated by the Council and Innovate will not accept any risk arising from these works. However, some risks can be temporarily carved out of the PPP Contract so that the Council is not liable to pay for FM services that are not being delivered and the PPP contractor is not liable for services interrupted by the works. This is the usual solution. Hub SE will pick up risk liabilities for damages or interrupted services as a result of negligent works. Hub SE carries project risk insurance so it is important to identify what the potential risks are as part of the design approach. A risk register will be prepared and agreed with all stakeholders at the outset of each school expansion project.
- 3.9 The Council is not in control of the timescales associated with completing the legal agreements and obtaining approval from Innovate and their lenders. Innovate have advised that at least a year should be allowed for the process of preparing the Supplemental Agreements (SAs). The SAs will be drafted in terms similar to those agreed for the expansion of Dunbar Grammar School (procured via Innovate) and the SEN extension to Ross High School (procured via a separate contractor), completed in 2007.

## **QUALITY CONTROL**

- 3.10 The expansion works will require the appointment of an Independent Certifier jointly with Innovate East Lothian.



- 3.11 The Authority's Requirements form part of the original PPP Project Agreement. Any additional project-specific requirements will be prepared, in conjunction with Education and the schools, regardless of the procurement route.
- 3.12 A Clerk of Works will be appointed from the Council's capital projects' team to carry out regular inspections during the construction phase and will report to the Team Manager - Design and Programme Management, accordingly.
- 3.13 The Council is a participant in Hub South East, the public sector's development partner and has worked successfully with Hub South East on a number of schools' projects. Procurement through HUB allows the full design team and contractor to be engaged to work collaboratively from the early stages of project development including being involved with developing the brief, programming of project stages, identifying risk, and benchmarking costs. This ensures that contractors have relevant experience and successful delivery of school extensions within operational schools. It also provides assurance of quality control and Health and Safety systems

## **PROJECT GOVERNANCE**

- 3.14 The project will be managed on behalf of the Council by the Strategic Asset and Capital Plan Management (SACPM) service. Regular project development meetings will be held throughout the duration of the project attended by project team members from SACPM and Education. Technical specification, oversight, cost planning and valuation management will be provided by SACPM and Engineering Services. Monthly Reports will be prepared and issued to key Education and Finance officers in the Council, highlighting the status of project quality, cost and programme.

## **4 POLICY IMPLICATIONS**

- 4.1 None

## **5 INTEGRATED IMPACT ASSESSMENT**

- 5.1 The subject of this report does not affect the wellbeing of the community or have a significant impact on equality, the environment or economy.

## **6 RESOURCE IMPLICATIONS**

- 6.1 Financial - Capital Cost: The approved capital plan identifies budgets totalling approximately £34,562,000 for extending Ross High School, North Berwick High School, Knox Academy, Dunbar Grammar School and Preston Lodge High School over the period from 2018/19 to 2027/28. There is also a budget allocation of £500,000 for upgrading the facilities at Musselburgh Grammar

School. These costs will be updated and refined throughout the project plan period.

Revenue Cost – additional operational revenue costs will be incurred on completion of the expansion of the school. Additional costs for supply/maintenance of IT equipment, school resources, staffing and other costs will also be required.

6.2 Personnel - The expanded school estate will have a proportionate requirement for additional teaching and non-teaching staff.

6.3 Other - nil

## 7 BACKGROUND PAPERS

7.1 Report to East Lothian Council, Dunbar Grammar School – Procurement of Facilities Management Services for the New Extension 16<sup>th</sup> February 2017, by Douglas Proudfoot.

<b>AUTHOR'S NAME</b>	Liz McLean
<b>DESIGNATION</b>	Service Manager: Strategic Asset and Capital Plan Management
<b>CONTACT INFO</b>	<a href="mailto:lmclean@eastlothian.gov.uk">lmclean@eastlothian.gov.uk</a> Ext: 7353
<b>DATE</b>	12 March 2018

**APPENDIX A**

