

Ballycastle Shared Education Campus: Sports Facilities	13th March 2018
To: The Leisure and Development Committee For Decision	

Linkage to Council Strategy (2015-19)	
Strategic Theme	Resilient, healthy & engaged communities
Outcome	Citizens will have access to Council recreational facilities and protected natural environments which help them to develop their physical, emotional and cognitive health
Lead Officer	Head of Sport & Wellbeing
Cost: (If applicable)	Design cost indemnity financial cover yet to be determined

The purpose of this report is to update Members in relation to the need to indemnify DE for the design costs associated with the Council's facility requirements and to seek Member's approval (or amendments) for the principles contained within the attached Heads of Terms.

Background

In August 2017 Members approved an Outline Business Case (OBC) for proposed upgrades to the sports facilities at Ballycastle Shared Education Campus.

Summary of Preferred Option:

The preferred option in the approved OBC involved Council making a capital contribution to the school pitches and sports hall facilities to make them suitable for community use. Council enhancements include:

- Conversion of grass soccer pitch to 3G and floodlighting.
- Floodlighting to AstroTurf hockey pitch.
- Floodlighting to 3G GAA pitch.
- Upgrade of 3 court hall to 4 court.
- Upgrade of changing and ancillary accommodation.

Anticipated Council Investment: £2.3m (based on pre-tender estimates and current construction indices).

Anticipated Benefits: Community access to the enhanced sports facilities for community use during evenings, weekends and school holidays.

Next Steps

The approval of the OBC was not the final investment decision. It is only after the project is designed and procured that there will be sufficient cost certainty to allow the OBC to be updated to a Full Business Case (FBC) and a final investment decision considered by Council.

The approval of the OBC gave the education authorities sufficient confidence to progress the in-house concept design to include the Council's requested enhancements. However, if the Council's assumptions or risks were to change, to a material extent, during the development of the detailed designs and FBC, the Council has the opportunity to withdraw from the project at any time up to and including investment decision stage.

DE is progressing procurement for an Integrated Consultant Team (ICT) to design and manage the project through the various stages of its design and construction life cycle. The anticipated ICT appointment date is 1st May 2018 and a decision has to be made if the Council's requirements are to be included in the design commission or not. If Council's design requirements are included in the ICT commission and Council decides to withdraw from the project at any point after the appointment of the ICT, DE would incur nugatory costs in the form of a Compensation Event (CE) to redesign the facilities to exclude the Council's requested enhancements. The later that decision is made, the higher the likely cost.

DE has made it clear that it would only agree to commission the design of the sports facilities to the Council's specification on condition that Council indemnifies it against any nugatory redesign costs and associated statutory charges. The DE ICT procurement exercise itemises this potential redesign work and asked respondents to cost it in their submissions. DE anticipate that the preferred bidder will be known around mid-April. It is not until the tender evaluation process is concluded that the actual indemnity value will be known.

The requirement for a financial commitment from Council in advance of the ICT appointment was brought to Member's attention in the August 2017 report that recommended the OBC.

Heads of Terms

Over the intervening period officers, supported by SIB, have developed a non-binding Heads of Terms Agreement to set out the proposed terms of the design indemnity. This document (**Annex A**) has been agreed by DE and is currently with the Departmental Solicitors Office (DSO) for development into a formal and binding Agreement. If Council is to continue with an interest in this project through the design phase it will need to agree a version of this Agreement that satisfies the indemnity requirements of DE. This is required in advance of the ICT appointment.

Approving such an Agreement is not a final investment decision for the capital build but will constitute a binding commitment to cover the redesign and statutory approval costs if Council doesn't make the decision to investment in the future. This is very similar to a Council owned capital project where irrecoverable design costs are incurred (directly to Council in these cases) in advance of a final investment decision.

Proposed Timelines:

The funding for the Ballycastle Shared Education Campus will have the normal central government year-end spend targets and therefore adherence to programme is related to budget availability. The DE programme proposes the completion of the tender evaluation process on 9th April and the ICT appointment confirmed on 1st May. Depending on the level of compliance with this timeline, officers will bring a report back to Committee and Council with the final Draft Agreement and the maximum value of the proposed indemnity.

Dependant on progress with the DE tender evaluation process, the decision is likely to be taken to either the April or May meeting cycle. If April, it may be necessary to release the Committee report in advance of the indemnity value being known and Members updated with this information at the meeting.

Ongoing Work on Phase II

Work is ongoing by AECOM and GM Design on the Ballycastle site evaluations to address the other facility needs. Once completed a report will come to Committee and Council.

Along with other projects, officers are exploring the opportunity to apply to a future Sport NI Multi-Facility Fund for up to £1m grant towards the phase two project in Ballycastle.

Information for noting

Members are encouraged to note the above (and attached) information with specific reference to:

- The non-binding Heads of Terms (**Annex A**).
- The timelines for approval.
- The design cost indemnity required by DE in advance of the appointment of the ICT on 1st May 2018 target date.
- The formal Agreement is currently under development by DSO and this, along with actual costs (when available), will be presented to either the April or May Committee cycle for decision.
- A potential source of grant funding for the proposed phase two project.

Recommendation

It is recommended that Members:

- **Approve the principles contained within the attached Heads of Terms or advise of any required amendments.**

Draft Heads of Terms

Between

Causeway Coast and Glens Borough Council
(CC&GBC)

And

The Department of Education (DE)

Regarding Potential Nugatory

Design Costs for the Community Use
Features of the Ballycastle Shared Education
Campus Project

Date: xxxxxxxx

1. Project Background

Shared School Campus Funding

In March 2016 a new shared school campus in Ballycastle was announced by the Department of Education to advance in planning. The project will see the co-location of Cross and Passion College with Ballycastle High School. These two schools are currently located directly opposite each other on the Moyle Road and have a long history of co-operation for the mutual benefit of all pupils. The plans for the shared school campus will result in the two schools' co-location on the current site of the High School and the creation of new schools' sports facilities on the current site of Cross and Passion College. The plans involve both schools retaining their own identities, management, Boards of Governors, names and uniforms.

Sport and Leisure Facility Need in Ballycastle

CC&GBC has responsibility for the development and management of services and facilities for leisure and recreation across the entire Borough. For many years public sport and recreation facilities have been provided at the old school buildings at Sheskburn House. This 60+ year-old building is well beyond its expected life and there has been much public interest in the development of new sport and leisure facilities for the town. The former Moyle District Council developed a business case for a new leisure centre at Quay Road but, at over £10m, this was cost prohibitive given the scale of the local population, likely income levels and resultant subventions required. The playing fields at Quay Road are also owned by the Council but over demand and poor drainage mean that these pitches do not adequately service the demand from the residents of the town and its immediate hinterland. The carpet on the Astroturf hockey pitch is over 10 years old and in urgent need of replacement.

A Partnership Opportunity

School sports facilities are designed and built to the standards set out in the DE School Build Handbook but these often fall short of the designs recommended by the governing bodies of sport for community or competitive use. Given the opportunity for mutual benefits, DE, the relevant school authorities and CC&GBC have been working together to develop a project that could result in a Council capital investment into enhanced school sports facilities with associated community access. The details of this arrangement are contained in a separate Draft Heads of Terms between the Council, the schools and their respective managing authorities which sets out how revenue costs would be apportioned and how and when community access would be managed.

DE and CC&GBC have agreed the community use design enhancements required to the normal school sports facilities and these are summarised in Section 3 of this Heads of Terms. By 1st May 2018 DE hopes to appoint a Design Team to develop the school design to planning application stage.

Council Decision Making Process

CC&GBC has considered and agreed an Outline Business Case (OBC) to invest around £2.3m in the project in order to realise the design enhancements set out in Section 3 of this draft Heads of Terms and detailed in the separate Heads of Terms referenced above. This OBC decision does not constitute a binding investment decision and this will not be possible until the school campus and associated facilities have been designed and the designs are exposed to a market competition for an Integrated Supply Team (IST). At this point, the total costs of the project (and the Council required

enhancements) will be much better understood. Once available, this cost information can then be included in a Full Business Case (FBC) and presented to Council for a final investment decision.

The Need to Share the Risk

Between 1st May 2018 (appointment of the design team) and the FBC Council decision, DE will incur design costs for the sports facility enhancements but Council retains the right to withdraw from the project. This situation creates a financial and time risk for DE and the entire project. It seems unreasonable to expect DE to carry all the risk associated with this anticipated partnership.

It is difficult to see any way around the time risk for DE, in the event that the Council withdraws from the project. However, it should be possible to create an agreement that protects DE from the financial risk of redesign and/or new planning and building control approvals to exclude the Council required enhancements, should it decide to withdraw.

The call to tender for the design team is based on a schedule of accommodation that includes the Council's required enhancements. In addition, tender respondents have been required to cost the risk of a redesign to exclude the Council's enhancements in the event that Council fails to approve the FBC for the capital investment.

2. Purpose of this Heads of Terms

The purpose of this Heads of Terms is to agree the basis for a legal Agreement (the AGREEMENT) by which Council will indemnify DE for the redesign and statutory fee costs if Council decides to withdraw from the project at FBC stage. The maximum value of this indemnity will be equivalent to the redesign costs quoted in the tender from the successful design team plus any associated planning or building control fees.

3. Community Use Design Enhancements

The design enhancements required by Council to facilitate community use include inter alia:

- The addition of flood lighting to a 3G full sized GAA pitch
- The addition of flood lighting to an Astroturf hockey pitch
- The conversion of a full sized grass soccer pitch to 3G and the addition of floodlighting and fencing
- The increased dimensions of the indoor sports hall from 3 court to 4 court
- The increase of the team changing rooms to governing body/Sport England recommended dimensions
- Improved: officials', reception, storage, inclusive and first aid accommodation

4. Council Target Costs

Council has made an indicative commitment of around £2.3m to achieve community access to these facilities. These indicative costs are inclusive of design team costs, professional fees, statutory approvals, OB and contingency. This should be considered the target price for Council's involvement in the project.

It is likely that adherence to this target price will increase the likelihood of a positive funding decision on the FBC.

5. Management of the Design Development

The AGREEMENT should set out the requirement for Council representation in the oversight of the design development for the elements of the project that Council will manage during community access periods and/or for which Council is investing in design enhancements.

6. Principles of the Agreement

The Agreement should capture the following elements/principles:

- Council will indemnify DE in respect of and reimburse DE as required for evidenced redesign and statutory approval costs associated with a decision not to proceed with the project
- DE will need to evidence that this cost is a legitimate cost before it will be reimbursed by Council
- The maximum value of the reimbursement will be equivalent to the figure itemised in the initial submission from the successful tenderer plus notified costs of any revised planning and building control approvals
- Council will play a role in the management of the design where it relates to elements or enhancements that it will fund and/or manage for community use
- Decisions related to the design of the parts of the facilities to be accessed by the Council will be decided by agreement between the Parties.
- £2.3m (inclusive of design team costs, professional fees, statutory approvals, OB and contingency) will be considered the target cost for the Council-funded portion of the project. All parties will apply best endeavours to ensure a value for money design solution.

7. Next Steps and Timelines

Following signature of this Heads of Terms the AGREEMENT will be drafted by the CC&GBC legal advisors who will liaise directly with the DE legal advisors. Once a Draft Agreement is endorsed by both legal teams it will be subjected to the relevant approvals process in CC&GBC and DE respectively.

For CC&GBC this will involve approval by the Leisure and Development Committee and Full Council. Respective meetings, and therefore opportunities for consideration and approval of the Agreement, take place on the second and fourth Tuesday of each month. Information must be available to Officers to have papers prepared and finalised at least 10 days in advance of these meetings to allow the item to secure a place on the relevant agenda. Council will need to approve the Agreement and the financial commitment in advance of the target date for the appointment of the design team; 1st May 2018. As a result, the Council meeting cycle in April 2018 will be the last opportunity for Council to approve the agreement and achieve the target design team appointment date. Once approved by Council and outside of a 5 day 'call-in period' without challenge, the Agreement can be signed by a senior Council official.

For DE, the approvals process will involve approval by the Investment Decision Maker (IDM) following endorsement of this Head of Terms by the Project Board.

In order to facilitate the appointment of the design team in line with the project timelines, Officials and legal advisors in CC&GBC and DE should aim to have a final draft of the legal Agreement completed and agreed by 16 March 2018.