

NPDO & HUB DBFM SCHOOLS ANNUAL PROGRESS REPORT

1. EXECUTIVE SUMMARY

1.1 This report summarises progress in relation to the Council's NPDO & Hub DBFM projects to the end of March 2021 and, in particular, provides an update on the current financial position of both Projects.

1.2 RECOMMENDATIONS

1.3 The Council is asked to:

1.3.1 Note the contents of this report; and

1.3.2 Agree the Executive Director with Responsibility for Legal and Regulatory Support brings forward a report to Policy and Resources and / or Community Services Committee(s) in 2021 on the final position in regard to the Change In Law Fund.

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2. INTRODUCTION

- 2.1 This report summarises progress in relation to the Council's NPDO & Hub DBFM projects to the end of March 2021 and, in particular, provides an update on the current financial position of both Projects.

3. RECOMMENDATION

- 3.1 The Council is asked to:
- 3.1.2 Note the contents of this report; and
 - 3.1.2 Agree the Executive Director with Responsibility for Legal and Regulatory Support brings forward a report to Policy and Resources and / or Community Services Committee(s) in 2021 on the final position in regard to the Change In Law Fund.

4. DETAIL**NPDO**

- 4.1 All five school sites within the NPDO Project, at Lochgilphead, Oban, Dunoon, Rothesay and Helensburgh, are operational.
- 4.2 The Procurement, Commercial & Contract Management Team (PCCMT) operates a monitoring framework and continues to utilise the system of liaison meetings and inspections along with assistance from Facility Services to assist in identifying issues in relation to service provision and building fabric within the facilities. Within that the PCCMT continues to attend the regular Board meetings of ABC Schools Ltd and meets regularly with the Schools and representatives from the Council's partners, ABC Schools Ltd and MITIE PFI, to monitor progress.

Hub DBFM

- 4.2 Both School sites within the Hub DBFM Project, at Oban and Campbeltown are operational.
- 4.3 The Procurement, Commercial & Contract Management Team (PCCMT) operates a monitoring framework and utilises a system of liaison meetings and inspections to assist in identifying issues in relation to service provision and building fabric within the facilities. Within that the PCCMT

meets regularly with the Schools and representatives from the Council's partners, Hub North Scotland Ltd and FES FM, to monitor progress.

5 BUDGET POSITION

- 5.1 At the Executive meeting in August 2008, the PCCMT was requested to provide, the Council with an annual report on the ongoing financial status of the NPDO project based on the assumptions prevalent at the time of reporting.
- 5.2 In April 2013 it was reported that, based on assumptions prevalent at the time, the project was affordable in each contract year.
- 5.3 As part of the 2012/13 budget setting process the Council agreed to remove the NPDO smoothing fund and apply the sums earmarked therein for other purposes. The Council also agreed to fully fund the NPDO budget on an ongoing basis. It is anticipated that, based on current assumptions, the NPDO will be able to operate within the budget allocation set by the Council and will be sustainable going forward. The budgetary position of the NPDO will continue to be reviewed and reported as part of the Council's budget monitoring process.
- 5.4 The Council has also subsequently agreed to fully fund the Hub DBFM budget on an ongoing basis. It is anticipated that, based on current assumptions, the Hub DBFM will be able to operate within the budget allocation set by the Council and will be sustainable going forward. The budgetary position of the Hub DBFM will continue to be reviewed and reported as part of the Council's budget monitoring process.

Future Pressures

- 5.5 Notwithstanding the above, there continue to be potential cost pressures which will continue for the life of both projects and affect their long term budgetary position. These will include fluctuations in the general Retail Price Index (RPI), utility tariff rates and Non Domestic Rates (NDR) where the Council takes the risk on changes to these. The current forecast assumes that these factors will increase in line with overall Council estimates but the actual annual impact of these pressures will be considered, with Strategic Finance, as part of the annual budget setting process.

6 EFFICIENCIES IDENTIFIED

NPDO

- 6.1 The PCCMT continue to monitor ongoing availability and performance deductions. Since April 2020, ABC Schools have required to make payment to the Council of approximately £12k by way of deductions. The PCCMT are currently withholding a further sum of £68k by way of disputed deductions accrued and are in ongoing discussions with ABC Schools to resolve this matter. In relation to this sum, the PCCMT continue to dispute

unitary charge invoices, as appropriate, following the contractual provisions, to enable discussions to settle the deductions considered due to the Authority. The PCCMT have also been able to release the sum of £72k accrued in respect of unbilled utilities for periods prior to the end of 2016. These sums now fall outwith the 5 year negative prescription period and are no longer lawfully recoverable.

- 6.2 The PCCMT have applied the provisions contained in the NPDO contract which enable the Council to share in the savings made by ABC Schools in the procurement of insurance for the project facilities. The saving achieved by the PCCMT and paid by ABC Schools during 2020/21 totalled £296k. The PCCMT will continue to liaise with ABC Schools to identify future efficiencies in this area where it is likely they can become available. While savings will be achieved again for 2021/22, it should be noted that insurance premiums for the coming year have increased significantly and this may impact significantly on the potential for insurance savings available for 2022/23 onwards.

Hub DBFM

- 6.3 The Hub DBFM Schools at Campbeltown and Oban became operational during 2018/19. The PCCMT will monitor the contractual performance of Hub North Scotland (O&C) Ltd and FES FM in a similar manner to the NPDO Schools and will monitor ongoing availability and performance deductions. Since April 2020, Hub North Scotland (O&C) Ltd have required to make payment to the Council of approximately £36k by way of deductions. The PCCMT are currently withholding a further sum of £341k by way of disputed deductions accrued and are in ongoing discussions with Hub North Scotland (O&C) Ltd to resolve this matter. In relation to this sum, the PCCMT continue to dispute monthly service payment invoices, as appropriate, following the contractual provisions, to enable discussions to settle the deductions considered due to the Authority.
- 6.4 The PCCMT will continue to seek and apply efficiencies from within both the NPDO contract and the Hub DBFM contract to ensure the correct level of service delivery and to manage any adverse budgetary impact on either budget. The PCCMT will also continue to identify any efficiencies, in the first place, for the short and longer term mitigation of any cost or budget pressures.

7 REFINANCING – NPDO only

- 7.1 The NPDO contract includes provisions whereby the costs of financing the project can be 're-financed' so that ABC Schools can obtain more favourable bank terms and interest rates than those achieved when the contract was signed. Where such a refinancing occurs, the Council is entitled to 50% of any gain generated, with the outgoing lender receiving the remainder.
- 7.2 As reported to Members on 25th June 2015 the junior lender in the project proposed a sum payable to the Council of £1.75M in full and final

settlement of the matter of refinancing the junior debt only. The sum of £1.65M was received in 2015/16 with the final balance of £100k being received in June 2016.

8 CHARITABLE SURPLUS – NPDO only

8.1 The financial model for the project does not envisage surpluses being available until very late in the life of the project. To date no charitable surpluses have become available. The Council is continuing to monitor the position with ABC Schools and will report should this profile change.

9 CHANGE IN LAW – NPDO only

9.1 The NPDO contract project agreement (PA) includes provisions regarding the capital costs of funding any change in law requirements. This fund has never been required therefore the it is proposed that the Council enter into a variation to alter the provisions of the PA so that risk for general changes in law that require capex would move from the current risk-share between the Council and SPV, to the Council alone. The risk for general changes in law that don't require capex would remain with the SPV.

9.2 Current and proposed risk share is:

Risk	Current Responsibility	New Responsibility
General Change in Law not requiring capex	Contractor (and likely passed to FM)	Contractor (and likely passed to FM)
General Change in Law requiring capex	Shared. Contractor's share set out in schedule 10.	Authority risk.
Specific and Discriminatory Changes in Law	Authority risk.	Authority risk.

The intention of this change would be to enable the Council to benefit financially from the sums currently contained in the Change in Law Reserve Fund identified in the Financial Model to the Project. This could be achieved either by payment of the sum contained within the Change of Law Reserve to the Council or; by reduction of the unitary charge over time to reflect the variation, though a one off payment is preferred as this would negate any alteration to financial modelling which could be costly.

9.3 The accumulation fund to date is approximately £1.8M. The payment of the fund to the Council would be in exchange for the risk transfer outlined above, a risk that the Council currently bears in relation all other property that it owns.

- 9.4 We have had informed discussions with ABC Schools and the Scottish Futures Trust and they have expressed no concerns, nor identified any issues over the principal of the variation.
- 9.5 At the Council meeting of 24 September 2020 the Council agreed to take forward the NPDO Change in Law variation with a view to achieving one off sums for the Council. It was noted that there will be a requirement for the Council to ring fence a portion of the sums achieved to provide for future NPDO/Hub contract management requirements.
- 9.7 Discussions are ongoing with regards to the CIL variation and particularly the treatment of VAT. It is anticipated that these will conclude during 2021/22 financial year.

10 CONCLUSION

- 10.1 The NPDO project that was signed in July 2006 was affordable and achieved Value for Money. Changes to the general economic environment since that date, particularly in regard to utilities, higher than modelled RPI and higher than anticipated NDR have previously had an adverse effect on the affordability position. Efficiencies identified by the PCCMT through the NPDO contract to date have improved the affordability position.
- 10.2 It is anticipated that, in the medium term and based on current assumptions, the NPDO & Hub DBFM will continue to operate within the scope of the budget agreed.
- 10.3 The PCCMT will continue to monitor the contractual performance of both projects to identify efficiencies where appropriate, ensure that Schools receive a value for money service and work with all partners and stakeholders to address any budgetary and contract issues as they arise.

11 IMPLICATIONS

- 11.1 Policy – None at present
- 11.2 Financial – It is anticipated that based on current assumptions, the NPDO & Hub DBFM will continue to operate within the scope of the budget agreed. The CIL variation has a potential to achieve one off monies of £1.8M. It should be noted that there will be a requirement for the Council to ring fence a portion of the sums achieved to provide for any future maintenance obligations in the Hub Schools contract.
- 11.3 Legal – The matter of contractual and legal risk in the contract will continue to be monitored.
- 11.4 HR – none at present
- 11.5 Equalities/Fairer Scotland Duty – It is not anticipated that any of the recommendations in this report will have a potential negative impact on any

particular group or discriminate on the basis of age, disability, gender, race, sexual orientation, pregnancy and maternity or religion and belief.

11.6 Socio-economic Duty – none at present

11.7 Risk – Legal, financial and budgetary risks will continue to be closely monitored.

11.8 Islands – none at present

11.9 Customer Services – none at present.

**Executive Director – With responsibility for Legal & Regulatory Support
Argyll and Bute Council:**

Douglas Hendry

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For further information please contact:

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