

DECISION TITLE: St John Henry Newman VA RC Primary School – New Build Project

Councillor Lynne Ayres, Cabinet Member for Children’s Service, Education, Skills and University

May 2020

Deadline date: June 2020

Cabinet portfolio holder: Responsible Director:	Cllr Ayres Cabinet Member for Education, Skills and University and Cllr Seaton, Cabinet Member for Resources Wendi Ogle-Welbourn. Executive Director People and Communities, Cambridgeshire County and Peterborough City Councils.
Is this a Key Decision?	YES If yes has it been included on the Forward Plan: YES Unique Key decision Reference from Forward Plan: KEY/13APR20/01
Is this decision eligible for call-in?	YES
Does this Public report have any annex that contains exempt information?	NO
Is this a project and if so has it been registered on Verto?	YES Verto number: PR002600

R E C O M M E N D A T I O N S

The Cabinet Member is recommended to:

1. Authorise the Council to act as the Responsible Body for the self-delivery of the procurement, design and build of a new primary school at Hampton and enter into a Memorandum of Understanding with the Department for Education to enable a feasibility study to be completed and a capital budget to be set by the DfE.
2. Authorise the Executive Director People and Communities to enter into a Pre-Construction Services Agreement (to include the completion of early works) and subsequently award the design and build contract to the successful DfE MMC1 Framework Panel Member.
3. Authorise the Head of Legal Services or delegated officers to enter into any legal documentation on behalf of the Council in relation to this matter, including the transfer of land to the Council for the purposes of the school.
4. Authorise the Head of Legal Services or delegated officers to enter into a Development Agreement with the DfE and the Roman Catholic Diocese of East Anglia (RCDEA), and grant a 125 year lease of the school playing field only to the RCDEA after the defects liability period has expired. Upon completion, the buildings and hard standing areas will be vested to the RCDEA pursuant to paragraph 20 of Schedule 6 to the School Standards Framework Act 1998.

5. Authorise the Executive Director People and Communities to enter into additional agreements if required by the DfE to facilitate the opening of the new school by the Roman Catholic diocese of East Anglia.
6. Authorise the Head of Finance to provide a Section 151 letter to confirm the Council's 10% contribution to the capital cost of the project.

1. PURPOSE OF THIS REPORT

- 1.1 1. This report is for the Cabinet Member for Children's Services, Skills and University to consider exercising delegated authority under paragraph 3.4.8 of Part 3 of the constitution in accordance with the terms of their portfolio at paragraph (h).

2. TIMESCALES

Is this a Major Policy Item/Statutory Plan?	NO	If yes, date for Cabinet meeting	N/A
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3. BACKGROUND AND KEY ISSUES

- 3.1 This report seeks the Cabinet Member's approval to the recommendations to enable a new school to be provided on the Hampton East development in Peterborough. The new three form entry Voluntary Aided (VA) Roman Catholic (RC) primary school will be known as St John Henry Newman Catholic Primary School and will open to reception and year 1 and 2 children in September 2022. At capacity, the school will accommodate 630 primary age children and 26 nursery places.
- 3.2 Construction of the Hampton township commenced in the 1990's in the west of the new development area. Hampton West is served by three primary schools. Housing construction is now concentrated in the east of the area where 3,050 dwellings are to be delivered. Hampton East is currently served by one primary school Hampton Lakes Primary which opened in 2019 temporarily at Hampton College pending completion of its new site and buildings due for completion in readiness for September 2020. Hampton Lakes Primary will accommodate 420 children at capacity and a 26 place nursery.
- 3.3 Under the terms of the Section 106 Agreement relating to the area, a further primary school is to be delivered at Hampton East to serve the remainder of the Hampton East development. The St John Henry Newman VA RC primary school will open in 2022. The school will be located on Aqua Drive in Hampton Water.
- 3.4 The Roman Catholic Diocese of East Anglia (RCDEA) made a successful bid into the DfE's Capital Fund for establishing new Voluntary Aided (VA) schools, which was launched in December 2018. The DfE's decision announced on 14 June 2019, was to approve in principle, capital funding to establish a three form entry VA RC primary school at Hampton Water. The capital fund meets 90% of the capital costs to deliver the new school. The Council will be required to fund the 10% balance of the capital costs. This will be covered by S106 monies which relate to the Hampton development.
- 3.5 Under the *DfE's Opening and Closing Maintained Schools, Statutory Guidance for Proposers and Decision Makers (DfE November 2018)*, the Council, as decision maker must make the decision to approve plans submitted by a proposers to open a new maintained school. The Council gave due consideration to the RCDEA proposal, which commenced in September 2019, to open a new VA RC primary school at Hampton East. Further details relating to the proposals and the process are detailed in the following decision taken in February 2020 which can be found here

<https://democracy.peterborough.gov.uk/ieDecisionDetails.aspx?ID=1697>. The Council approved the RCDEA's proposal to open the new school.

3.6 The Council submitted a Self-Delivery Business Case to the DfE to procure, design and build the new school as the Responsible Body (to be the contracting party). The Business Case received approval on 14 April 2020. The Council will enter into a Self-Delivery Memorandum of Understanding with the DfE for the delivery of the new school, which sets out the roles and responsibilities for the respective parties for the duration of the project. A Project Delivery Grant letter from the DfE will confirm grant funding to cover the costs associated with delivering the project. The Council is then required to undertake a Feasibility Study which will inform the cost plan for the school build, to enable the DfE to set a capital budget.

3.7 The Council will procure the contract for the schools via the DfE Modern Methods of Construction Framework (MMC1). The MMC1 Framework is the presumed route for DfE funded school build projects and was launched in January 2020. It was procured under the Open Procedure of the Public Contracts Regulations 2015 (the "Regulations") and the Council is required to use the Framework as a condition for the external funding to be provided. The Framework structure is divided into two lots. Lot 1 for projects which are more than 6000m² and Lot 2 for smaller projects which are less than 6000m². The St John Henry Newman school project will be allocated a Lot 2 contractor. Projects are allocated to contractors via a performance based allocation mechanism. The benefit of this is a much reduced time and cost associated with the procurement and construction period. The project will adhere to the established DfE procedures and will utilise the standard suite of documents for procurement. The Council has satisfied itself with the terms and conditions within these documents and will sign the Framework Access Agreement.

3.8 A requirement of the Framework is for the Responsible Body to enter into a Pre-Construction Services Agreement with the appointed contractor for the pre-construction period. Following a period of design development and submission, review and evaluation of the contractor's proposals, the Council as the Framework User will enter into a JCT Design and Build Contract for the delivery of the works with the appointed contractor.

3.9 Programme:

In order to achieve an opening of September 2022, the key programme milestones are as follows:

- Approval of the Self Delivery Business Case by the DfE 14 April 2020
- DfE approval of the Feasibility Study July 2020
- Issue ITT mid-August 2020
- Appoint contractor and enter into a PCSA October 2020
- Submission of the contractors' proposals March 2021
- Planning decision by June 2021 (anticipated date)
- Approval of Works Funding Agreement June 2021
- Contract close June 2021
- Start on site July 2021 (anticipated date)
- Completion and handover July 2022

3.10 The process to transfer the land for the school to the Council under the terms of the Section 106 Agreement is currently underway. The transfer ensures that the site is fully serviced for the purposes of a school.

3.11 It is a requirement of the DfE that the Council and the DfE enter into a Development Agreement for the delivery of the school build. The Development Agreement will regulate the relationship between the DfE and the Responsible Body (the Council) and the RCDEA for the duration of the pre-construction and construction period until handover. It provides the basis upon which the RCDEA participates in the process for design finalisation, is

consulted in relation to construction and commissioning matters and has its interests recognised by the Responsible Body.

- 3.12 The Agreement also envisages the novation of the design and build contract to the RCDEA at a date immediately following completion of the Defects Liability Period. This ensures that the RCDEA then has a contractual relationship with the design and build contractor allowing any obligations and liabilities to be directly enforced against the contractor. This allows the Council to drop out of the contractual chain.

- 3.13 The Development Agreement also forms an Agreement for Lease with Occupational Licence confirming that a lease (with a 125 year term) will be agreed between the Council and the RCDEA upon completion of the new buildings following a 12 month defects liability period. As the school is voluntary aided, the lease will relate to the playing field only as the buildings and hard play areas will be vested to the Trustees of the RCDEA upon completion.

- 3.14 The budget for the project has been allocated in the Medium Term Financial Strategy (MTFS). The costs will be covered by Section 106 monies relating to the Hampton development.

- 3.15 The Council will be required to provide a Section 151 letter to the DfE to confirm the Council's contribution of 10% of the capital cost of the project. The Council's 10% contribution is less than if it were delivered outside of the VA Capital programme. The Section 106 Agreement set out the arrangements for funding the build without DfE capital grant, which would have been significantly more costly to the Council.

4. CONSULTATION

- 4.1 Key stakeholder departments with the Council are fully briefed on the proposals. These include Planning, Highways, Finance and Legal Services.
- 4.2 Ward Councillors have been briefed on the process and programme and will be kept updated for the duration of the project.
- 4.3 All local residents will be regularly kept informed of progress relating to the school build.
- 4.4 A public consultation event will be held (venue to be determined) for the new school designs to be on display. Ward Councillors will also be invited to this event. All comments made by the public in relation to the school designs will be collated and submitted to the Planning Department with the planning application.

5. ANTICIPATED OUTCOMES OR IMPACT

- 5.1 The Council will enter into a pre-construction services agreement with the appointed DfE MMC1 Framework Panel member for the design and build of the St John Henry Newman school. The Council as the Responsible Body will subsequently enter into a design and build contract with the appointed contractor, subject to planning approval and a value for money review by the Council's technical adviser and the DfE.
- 5.2 Subject to planning approval and DfE approval at key milestones as set out in the self-delivery process, the programme anticipates construction of the new school commencing in January 2021 (this is subject to confirmation by the appointed MMC1 Framework contractor), with a completion and handover date of July 2022.
- 5.3 The primary school will open for reception children, year 1 and 2 children only in September 2022. The school will grow incrementally each academic year. At capacity, the school will offer up to 630 primary places and 26 nursery places. The opening date for the nursery is under discussion.

- 5.4 Approval of the Development Agreement will allow the Council to enter into a design and build contract with the appointed contractor in order for the work to commence on site as programmed.
- 5.5 Upon expiry of the 12 month defects liability period, the buildings and hard standing will be vested to the RCDEA and the Council will enter into a 125 year lease with RCDEA for the playing field, which will remain in the Council's ownership.

6. REASON FOR THE RECOMMENDATION

- 6.1 The Local Authority has a statutory duty to provide school places. There are significant pressures on the city to provide school places in the areas most in need. A review of demographic data, build out and occupation rates for new dwellings at Hampton East has informed the decision to open new schools upon land subject to a Section 106 Agreement.

As a result of the above and the Council's approval of the RCDEA's proposal to open a new VA primary school, the proposed scheme will:

- provide up to 630 new primary school places and 26 nursery places for children living in the Hampton East area
- the school will open on an incremental basis offering places to reception and year 1 and 2 children only in September 2022
- to be delivered following the RCDEA's successful application submitted to the DfE's VA Capital Programme for establishing new Voluntary Aided (VA) schools and the Council's decision to approve the RCDEA's proposal to open a new VA Roman Catholic school in Hampton East
- a contractor to design and build the school in line with the DfE Output Specification for School will be procured via the DfE MMC1 Framework
- 90% of the capital cost of the delivery of the school build will be grant funded by the DfE. The Council will fund the remaining 10% (see paragraphs 3.14 and 3.15)

7. ALTERNATIVE OPTIONS CONSIDERED

- 7.1 The following options were considered and rejected:

To do nothing. This option was rejected due to the Local Authority's statutory duty to provide sufficient school places and approval of the RCDEA's proposal to open a new three form entry VA primary school. Demography analysis, build out and occupation rates for the new dwellings at Hampton East demonstrate a need for the additional school and nursery places from September 2022. Land for the school was identified in the Hampton Section 106 Agreement.

To tender outside of the DfE MMC1 Framework. This option was rejected due to the DfE presumption in favour on Responsible Bodies self-delivering new schools to use DfE Frameworks. The DfE MMC1 Framework and the more traditional DfE Contractors Framework were both considered. Both Frameworks were established specifically for the delivery of school projects and offer specialist advice to framework users. Panel Members are approved by the DfE for school build delivery as set out in the Output Specification for schools. The MMC1 Framework has been developed in order to create further efficiencies in school build deliver in terms of time, cost, quality and environmental impact. It also offers a shorter pre-construction and construction period to ensure the programme for delivery of this school can be met for a September 2022 opening.

8. IMPLICATIONS

Financial Implications

- 8.1 The budget has been allocated in the Medium Term Financial Strategy. The budget will cover the Council's 10% contribution to the capital cost of the school and will be funded by Section 106 monies relating to the Hampton development. The DfE will confirm the capital budget for the project upon completion and approval of the feasibility study.
- 8.2 The costs associated with the feasibility study, design and build contract sum (including the PCSA), ICT, legal and technical adviser fees and project delivery are covered by capital grant from the DfE (subject to planning approval for the schools schemes and approval of the Works Funding Agreement).
- 8.3 Finance Business Case BCSC0558 approved on 14 January 2020 by Head of Finance – People Directorate.

Legal Implications

- 8.3 The DfE MMC1 Framework was procured under the Open Procedure of the Public Contracts Regulations 2015 and the Council is permitted to use the framework. The Council is entering into the agreement pursuant to its powers contained in section 2 of the Local Government Act 2000, section 14 of the Education Act 1996, section 22 of the Schools Standards and Framework Act 1998 and section 111 of the Local Government Act 1972 in order to enable investment in certain educational services and facilities.

Equalities Implications

- 8.3 The design of the new building must be compliant with all relevant legislation and building regulations to ensure accessibility and use for all.

Carbon Impact Assessment

- 8.4 An assessment has been completed and was approved on 19 May 2020.
- 8.5 The school will be built to current standards in line with the DfE capital funding requirements and Output Specification. Whilst it would be theoretically possible to go further in regard to designing the schools to ensure that their carbon impact is minimised, the funding does not allow for this in this instance. The MMC1 Framework has been established in order to support the government's movement towards off-site built schools, which result in a reduction in carbon impact for school build delivery.

9. DECLARATIONS / CONFLICTS OF INTEREST & DISPENSATIONS GRANTED

- 9.1 None

10. BACKGROUND DOCUMENTS

- 10.1 School Organisation Plan 19-20 <https://www.peterborough.gov.uk/residents/schools-and-education/school-organisation-plan>
- 10.2 Medium Term Financial Strategy

11. APPENDICES

- 11.1 None