

Ballycastle Shared Education Campus: Sports Facilities Agreement to indemnify Department of Education (DE) for design team costs	10th April 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 seek Member's approval for the Agreement to indemnify Department of Education (DE) for design team and associated costs if Council should decide to withdraw from the project at or before investment decision stage.

1. Background

In August 2017 Members approved an Outline Business Case (OBC) for proposed upgrades to the sports facilities at Ballycastle Shared Education Campus. In March 2018 Members approved the principles of the Agreement attached at **Annex A**, as contained in a non-binding Heads of Terms.

2. 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). It is estimated that if Council was to independently develop facilities of this scale the construction costs alone would be in the region of £6m.

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

3. The Indemnity Proposal

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, Council has the opportunity to withdraw from the project at any time up to and including investment decision stage.

DE is currently out to 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 brief 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 the higher the likely cost.

DE 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 requirement for a financial commitment from Council in advance of the ICT appointment has been brought to Members' attention since August 2017.

The 'actual' cost of a Council withdrawal will not be fully known unless/until the project proceeds through design and the Council then decides to withdraw. The bidders are being asked to provide detailed costs for activities at each stage which would provide a framework for negotiating a CE should the eventuality occur but the 'actual' figure would not be known until that negotiation was complete.

In order to allow the ICT to be appointed, DE has agreed that this indemnity will be capped at a **maximum value of £100,000**. For avoidance of doubt, in the event that Council withdraws from the project, DE will seek to recoup from Council the actual costs of redesign and statutory fees only up to a maximum value of £100,000.

4. Typical Costs to Investment Decision Stage

Development costs to get capital projects to investment decision stage are normally in the region of 3% to 5%. If Council was the independent project promoter for this project with a total construction value of £6m, the costs to get to investment decision stage could be up to £300k. Even with the partnership approach only requiring a Council investment of circa £2.3m, the costs to investment decision stage would normally be expected to be in the region of £70k to £115k.

The proposed indemnity cap of £100k is therefore within the normal range of pre-investment decision costs that we would expect to commit on a project of this scale.

5. The Agreement

Officers, supported by SIB, developed a non-binding Heads of Terms to set out the proposed terms of the design indemnity. The principles contained in the Heads of Terms were agreed by Committee and Council in the March meeting cycle and have now been converted into the proposed Agreement at **Annex A**. The development of this Agreement has been overseen by Council's in-house solicitor and the Departmental Solicitors Office (DSO). DE has confirmed that the Agreement satisfies its requirements.

Approving this Agreement is committing Council to a maximum cost of £100k should it decide to withdraw from the project at or in advance of an investment decision. This is very similar to a Council owned capital project where irrecoverable design costs are incurred (directly by Council) in advance of a final investment decision.

6. 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 leading to the ICT appointment on 1st May. This appointment will not include Council's proposed design enhancements (for community use) in the absence of approval of the indemnity Agreement.

7. Tax Efficiency

Based on specialist VAT advice and confirmation from HMRC the most tax efficient solution for the project currently appears to be a joint construction contract between DE/Council and a contractor.

8. Recommendations

It is recommended that Members approve the following:

- **The maximum indemnity figure of £100k.**
- **The Agreement attached at Annex A.**

**Agreement
Between
Causeway Coast and Glens Borough Council
(the Council)**

And

**The Department of Education (DE)
Regarding Potential Nugatory
Design Costs for the Community Use
Features of the Ballycastle Shared Education
Campus Project**

Date: TBC

FINAL VERSION

Parties to the Agreement

This Agreement is between the Causeway Coast and Glens Borough Council (“Council”) and the Department of Education (“DE”).

Project Background

Shared School Campus Funding

In March 2016 a new shared school campus in Ballycastle was announced by DE 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

The Council 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 the Council 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 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 the Council have agreed the community use design enhancements required to the normal school sports facilities and these are summarised in Section 4 of this Agreement. By spring 2018 DE hopes to appoint an Integrated Consultant Team (ICT) to develop the school design and manage the construction project.

Council Decision Making Process

The Council has considered and agreed an Outline Business Case (OBC) to invest around £2.3m into the project in order to realise the design enhancements set out in Section 4 of this Agreement 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 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 appointment of the IST will be made following confirmation of the Council's decision.

The Need to Share the Risk

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

This Agreement aims to protect 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 provide a sufficient breakdown of their fee proposals to determine the cost of a redesign to exclude the Council's enhancements in the event that Council fails to approve the FBC for the capital investment.

1. Purpose of this Agreement

The purpose of this Agreement is for Council to indemnify DE for the redesign and statutory fee costs if Council decides to withdraw from the project at FBC stage. The actual value of this indemnity will be the figure established from the costs tendered by the successful ICT design team, plus associated planning and building control fees. However, in order to allow the ICT to be appointed without undue delay, it is agreed that this indemnity will be capped at a **maximum value of £100,000**. For avoidance of doubt, in the event that Council withdraws from the project, DE will seek to recoup from Council the actual costs of redesign and statutory fees only up to a maximum value of £100,000.

2. 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 Astro turf 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

3. 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.

4. Management of the Design Development

Council will have 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.

5. Principles of this Agreement

Once signed by both organisations, this Agreement will commit both parties to the following principles:

- Council indemnifies (and will reimburse) DE for evidenced redesign and statutory approval costs associated with a decision not to proceed with the project.
- DE will provide Council with evidence that any claimed costs are legitimate costs that have been actually and reasonably incurred before it will be reimbursed by Council
- The maximum value of this indemnity is £100,000 (One hundred thousand pounds). 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 to this Agreement.
- £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.

6. Dispute Resolution

If a dispute, doubt or question shall arise between the parties concerning the construction, meaning or effect of this Agreement or any provision herein contained or the respective rights or liabilities hereunder or otherwise in respect of the Agreement then the relevant parties agree to use their best endeavours to resolve such in the spirit of good faith and cooperation and in default of such resolution shall refer the matter to mediation by a mediator accredited by the Centre for Effective

Dispute Resolution (CEDR), to be appointed in default of agreement by the Chief Executive or Deputy Chief Executive of CEDR. In the event of the Parties failing to agree an outcome they agree to ask the mediator concerned to express a view as to the most acceptable outcome. In the event of there being no resolution upon conclusion of mediation, the parties may by mutual agreement refer the matter to be decided by an Arbitrator agreed between the parties and failing agreement on the identity of the Arbitrator, by one appointed by the Chair or other appropriate office-holder of the Irish Branch of the Chartered Institute of Arbitrators and the parties agree to be bound by the decision of the Arbitrator in the event of such referral and that the costs of such Arbitration shall be borne equally by the parties.

7. Signatures:

By signing this agreement the representatives of Causeway Coast and Glens Borough Council and The Department of Education confirm that they have the necessary approvals and authority to enter into this binding Agreement.

Date:	Name:	Organisation	Position:	Signature:
	Richard Baker	Causeway Coast and Glens Borough Council.	Director, Leisure and Development	
	Philip Irwin	Department of Education.	Director, Investment and Infrastructure	