

	<h2>CHIEF OFFICER IN CONSULTATION WITH COMMITTEE CHAIRMAN DELEGATED POWERS REPORT</h2>
Title	Pavilion Study Centre – Authorisation to enter into NEC Contract with John Graham Construction Limited (JGCL)
Report of	Executive Director of Children’s Services
Wards	Oakleigh
Status	Public, with separate exempt report
Enclosures	N/A
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Summary

The London Borough of Barnet (the Council) has started a project at the Pavilion Study Centre (PRU) to provide new fit for purpose accommodation which will enable the Council’s Alternative Provision to be broadened to meet emerging needs in the borough. The project is being delivered and funded through the Education Funding Agency’s (EFA) Priority School Building Programme under the Direct Delivery (with EFA Funding) model.

Previous decisions gave approval to enter into a Professional Services Contract (PSC) with John Graham Construction Ltd (JGCL), and then to vary that contract so that it included design and costing works to the end of Stage 4 plus some Stage 5 enabling orders.

JGCL have now confirmed a Contract Sum of £17,668,178.81 to deliver the re-provision of the PRU, including PSC costs. This report seeks approval for the Council to enter into a NEC contract with JGCL for re-provision of the PRU to allow for the construction works and to completion.

The report also seeks approval to enter into the related funding agreement with the DFE for £8,698,292.07.

Decisions

1. To approve award of the NEC Contract to John Graham Construction Ltd (JGCL) for re-provision of the Pavilion Study Centre PRU, for a price of £17,668,178.81.
2. To approve further payments to JGCL up to the specified value, as shown in the accompanying exempt report, for changes to the contract if required and containable within the overall budget
3. To provide authority to officers to implement the required NEC contract requirements and deliver monitoring arrangements.
4. Approval for the Council to enter into the related funding agreement with the DFE for £8,698,292.07
5. To provide authority to officers, in line with the scheme of delegation and in consultation the Executive Director of Children's Services, to approve and instruct changes in accordance with the NEC contract.
6. To Note progress to date and current project status.

1. WHY THIS REPORT IS NEEDED

- 1.1 The re-provision of the Pavilion PRU (Pupil Referral Unit) facility is a project being undertaken as part of the Council's Education Capital Programme. The facility offers a range of educational programmes for young people unable to attend mainstream schools for a variety of reasons, and the project will provide new fit-for-purpose facilities to meet the borough's widening needs.
- 1.2 In March 2020 following engagement with key stakeholders including the school staff, school governors, local residents and ward councillors, the Council submitted a planning application for the scheme which was approved at planning committee on 22 June 2020.
- 1.3 The design and costing element of the PRU re-provision has already been delivered via a NEC Professional Services Contract (PSC) with John Graham Construction Ltd (JGCL). Approval for this was gained via DPR in June 2019 for works up to Stage 3, and varied to include all of Stage 4 works and some enabling works from Stage 5 in August 2020. The approved costs of £2,240,091.03, are included within the total costs shown in 1.4 below.
- 1.4 To complete the project the Council need to enter into a further NEC contract which will be via call off of the Council's Strategic Partnering Agreement with JGCL to include the whole of the works and the aftercare period. This report is needed to gain approval to enter into this NEC contract to deliver the re-provision of the PRU, for a total cost of £17,668,178.81.

2. REASONS FOR RECOMMENDATIONS

- 2.1 The Council has a Strategic Partnering Agreement (SPA) with JGCL following a competitive tendering exercise, and under this agreement entered into a Pre-Construction Services (PSC) contract for the PRU works. The Council wishes to proceed further with this project and to do this it needs to enter into a new NEC contract to deliver the remainder of the project to completion. It is proposed to do this via further 'call off' from the SPA.
- 2.2 The works have already been designed and costed by JGCL, in a process that has included discussions with relevant stakeholders and agreement at Education Capital Board. Costs have been subject to rigorous review by the Council's technical team and can be contained within the overall programme budget

3. ALTERNATIVE OPTIONS CONSIDERED AND REJECTED

- 3.1 The current facility is in a poor state of repair. Therefore, the project is needed to allow a new fit for purpose building to facilitate alternative provision and meet emerging needs in the borough. For this reason any option to abort the project is not a viable consideration.
- 3.2 The Council has considered delivering the new provision on alternative sites. However, sites for alternative provision have very specific requirements and no alternative locations could be identified that would meet the needs of the school and provide any improvement to the time cost or quality of the currently proposed scheme.
- 3.3 Alternative procurement options have not been considered as the works have already been designed and costed by the Council's strategic construction partner JGCL.

4. POST DECISION IMPLEMENTATION

- 4.1 It is anticipated that following authorisation, the construction programme will commence on 26 October 2020. The programme is scheduled to last 29 Months.
- 4.2 The table below sets out the key dates for the project

Programme Activity	Anticipated Period
RIBA Stage 5 (construction)	October 2020 – January 2023
RIBA Stage 6 (close out)	June 2022 (school), Dec 2022(sports pavilion), January 2023 (playing field)
RIBA Stage 7 (in use)	July 2022 (school), January 2023 sports pavilion)

- 4.3 Project progress will be reported monthly to Education and Families Capital Board. Part of the responsibility of this board is to ensure programme delivery, cost assurance and risk monitoring. Financial monitoring returns will also have to be submitted to the DfE at regular intervals, in line with the grant funding agreement.

- 4.4 The council will enter into a funding agreement with the DFE that commits the DFE to providing £8,698,292.07. The agreement also commits the Council to delivering the project and funding the remaining costs.
- 4.5 Before works can begin, approval is also needed for a temporary access licence, which is being sought under a separate delegated powers report, as per clause 5.2.10 below.

5. IMPLICATIONS OF DECISION

5.1 Corporate Priorities and Performance

- 5.1.1 The Corporate Plan 2019-24 has an outcome 'A pleasant, well maintained borough that we protect and invest in' under which one of the priorities is 'Investing in community facilities to support a growing population, such as schools and leisure centres'.
- 5.1.2 The Corporate Plan 2019-24 has an outcome 'Our residents live happy, healthy, independent lives with the most vulnerable protected' under which one of the priorities is 'Ensuring we have good schools and enough school places so that all children have access to a great education'.
- 5.1.3 The project to redevelop the PRU helps support both these priorities.

5.2 Resources (Finance & Value for Money, Procurement, Staffing, IT, Property, Sustainability)

- 5.2.1 The value of the NEC contract is £17,668,178.81 plus VAT. This figure covers delivery of the re-provided PRU, including PSC activities, and can be contained within the overall project budget when taking into consideration construction costs, PM and technical team fees, IT costs, legal and statutory fees, relocation costs and a contingency sum. If this scheme was not to go ahead these costs will need to be treated as revenue.
- 5.2.2 The project is to be funded from the Alternative Provision budget, which is currently £21,437,811, as approved at Policy and Resources Committee in September 2020. This total includes DfE grant funding as part of the Priority Schools Building Programme (PSBP2). If the costs increase beyond this allocated budget the costs would initially be funded from the Basic Needs allocation of £2,904,354, until Authority is sought from Policy and Resources Committee (P&R) to increase the PRU budget and allow relevant costs to be reattributed to the scheme budget. This is to ensure compliance with council capital regulations which do not allow spending over and above that agreed by P&R.
- 5.2.3 Under the NEC form of contract the values of risk items excluded from the contract are excluded from the contract sum and contained on a risk register. As identified risks occur the values are instructed into the contract through variations known as compensation events.
- 5.2.4 Construction projects will often carry risk and require amendments to be considered as the projects develop and further information becomes known. This is particularly the case with below ground obstructions and conditions. The NEC contract allows for these

circumstances through the contract terms.

- 5.2.5 The NEC contract identifies specific risks accepted as excluded as this position would normally cover circumstances where the full extent of cost cannot be known until works have commenced. These items are treated as client risks so that the price paid equates to the actual cost if a risk should occur. Therefore, the projected costs sit outside of the contract sum unless the risk materialises.
- 5.2.6 The risk register contains all identified risks that are excluded from the contract sum. Risks are assessed on an assumption of potential cost and considered against the likelihood of the risk occurring. This assessment produces a weighted value for each risk. The assessment of the risk values at this stage is as shown in the exempt report. As further site information becomes available the risk allowances will be adjusted accordingly.
- 5.2.7 It is unlikely for all recorded risks on a construction project to occur. It can be expected that from the risk that do occur, the actual costs will vary both positively and negatively against the individual allowances for each risk but this should balance out when all risks are considered on aggregate. Therefore, the value of contingency allowances will not be sufficient to deal with a scenario where all risks occur to their full extent. Contingency allowances for this project are show in the exempt report
- 5.2.8 In consideration of the likelihood to instruct changes to the contract in order to deal with emerging project risks, this report is also seeking approval to cover the amount specified in the exempt report for changes to the contract if required, and if the value can also be contained within the overall budget. Approval is sought for the full cost, but the final cost may be lower than the total shown, and the costs will only be required if the risks materialise.
- 5.2.9 These works fall under the Strategic Partnering Agreement (SPA) that the Council has with JGCL to deliver its Capital Programme during 2015-2020. The SPA procurement was approved by Policy and Resources Committee on 02 September 2015 to deliver its Capital Programme for a period of 5 years (with the option to extend up to a maximum of 2 years) with a value of up to £150 million. The aims of which are to:
- Reduce procurement cost;
 - Improve value for money;
 - Secure a partnership ethos;
 - Achieve tighter cost control; and
 - Achieve more efficient delivery times
- 5.2.10 There is no constitutional requirement to undertake further procurement for the individual projects within the Strategic Partnering Agreement. This report seeks authorisation to call off that Agreement, and as such there is no need to return to committee.
- 5.2.11 The NEC3 Engineering and Construction Contract, provides for changes to be instructed if necessary during the contract. The nature of construction works means that changes may be required as works progress, with associated costs, resulting in reductions or increases in the contract value. The project team includes commercial leads that will be able to provide assessment and appropriate scrutiny of cost where an event occurs. Any

changes would be subject to appropriate project governance (via the Education and Families Capital Board, where necessary) and adequate contingency funding remaining in the approved project budget

5.2.12 The current Pavilion Study Centre is being re-provided in the same location. No staffing issues have been identified or are envisaged.

5.2.13 IT works are included as part of the contract. The system will be a DfE compliant network IT that can be linked to the Council IT network if required.

5.2.14 The project has obtained planning permission for the proposed works.

5.2.15 A temporary alternative access route into the site has been negotiated with an adjoining owner, because the existing access route is narrow and the resulting constraints on construction traffic would have increased construction costs. The project is dependent on this alternative access, which has been formalised under a Licence Agreement with the relevant landowner. Approval to enter into the Licence Agreement is being sought in a separate Delegated Powers Report.

5.2.16 Sustainability issues have been considered as part of the design. The building will achieve a min. BREEAM rating of 'Very Good'. The building will have Sustainable Urban Drainage Systems (SUDs), photovoltaics and electrical vehicle charging points

5.3 **Social Value**

5.3.1 The strategic partner procurement was carried out in accordance with the Public Services (Social Value Act) 2012.

5.4 **Legal and Constitutional References**

5.4.1 The procurement process for the SCPA was conducted using the Competitive Procedure with Negotiation (Regulation 29) of the Public Contracts Regulations 2015 (the "Regulations")

5.4.2 The authorisation and acceptance of the SCPA procurement was in accordance with Article 17 (Authorisation and Acceptance Threshold) Full DPR (Chief Officer in consultation with the Thematic Committee) of the Council's Contract Procedure Rules.

5.4.3 Bevan Brittan were instructed to advise in the setting up of the SCPA and have also been instructed to advise on and prepare the legal documentation required in order to place a call-off Contract for the sites under the SCPA.

5.4.4 As the SCPA has been procured in accordance with Regulations, where the Council uses the SCPA to call-off a works contract in accordance with the terms and scope of the SCPA, such a contract would be in compliance with the Regulations.

5.4.5 These and the other work requirements together with values were specifically identified within the Full Delegated Powers Decision of the 14th October 2016 to award the SCPA (see background papers). Accordingly, within their delegated powers under Article 9 and Article 10 Table B of the Council's Constitution s Chief Officers can agree to enter into the call-off contract within budget under the Strategic Partnering Agreement.

5.5 Risk Management

5.5.1 The NEC Contract highlights the process of risk management and mitigation. JGCL will take all reasonable steps to minimise risks that could have an adverse effect on cost, programme or quality of works, and will report to the LBB Project manager and technical Lead all possible areas of risk.

5.5.2 A risk register will be maintained by JGCL as per the monitoring requirements and circulated to core staff for review. The risk register will include; new risks, steps taken to prevent/mitigate these (and previously identified) risks, and those which have been successfully prevented and mitigated against (which can be removed from the risk register although a record will still be kept).

5.5.3 JGCL will provide the London Borough of Barnet with an early warning notice, outlining the details of any risk and its potential impact.

5.5.4 As outlined above, ECPB will monitor programme delivery, cost assurance and risk monitoring. This, and the project team will monitor all aspects of the build to ensure continued assessment of the finances, appropriate design and health and safety throughout.

5.5.5 It is considered that any issues involved are unlikely to raise significant levels of public concern or give rise to policy considerations.

5.6 Equalities and Diversity

5.6.1 There are no equalities implications arising directly from the decision set out in this report and the awarding this contract does not compromise the Council in meeting its statutory equalities duties.

5.7 Corporate Parenting

5.7.1 N/A

5.8 Consultation and Engagement

5.8.1 A formal consultation is not required in relation to this contract.

5.8.2 Engagement has taken place with the schools to develop the design to define and confirm requirements in relation to the proposed works. In addition, engagement has taken place with the Education Funding Agency (EFA) and Sport England throughout.

- 5.8.3 An engagement event has been held at the school to invite residents within close proximity to the site to review the designs prior to the planning submission.
- 5.8.4 To inform the decisions set out above there has been on-going engagement with the relevant project stakeholders and further advice has been sought from the Council's appointed advisors in relation to procurement and legal issues.

5.8 **Insight**

- 5.8.1 N/A

6. **BACKGROUND PAPERS**

- 6.1 The Policy and Resource Committee agreed at the 02 September 2015 meeting under item Agenda 8: Aggregated Procurement.
<https://barnet.moderngov.co.uk/ieListDocuments.aspx?CId=692&MId=8347&Ver=4>
- 6.2 The Award of Contract to John Graham Construction was authorised by the Council's Chief Executive via Delegated Powers on 14 October 2016
<https://barnet.moderngov.co.uk/ieDecisionDetails.aspx?ID=6423>
- 6.3 On 13 May 2020 and 22 June 2020 Planning Committee approved the planning application for Pupil Referral Unit Advanced Infrastructure and the main Pupil Referral Unit respectively
<https://barnet.moderngov.co.uk/ieListDocuments.aspx?CId=703&MId=10178&Ver=4>
<https://barnet.moderngov.co.uk/ieListDocuments.aspx?CId=703&MId=10127&Ver=4>
- 6.4 Delegated Powers Report dated 25 June 2019, published 22 May 2020, gave authorisation to enter into an NEC Professional Services Contract (PSC) with John Grahams Construction Limited
<https://barnet.moderngov.co.uk/ieDecisionDetails.aspx?ID=7490>
- 6.5 Delegated Powers Report dated 11 August 2020 gave authorisation to vary the NEC Professional Services Contract (PSC) with John Grahams Construction Limited
<https://barnet.moderngov.co.uk/ieDecisionDetails.aspx?ID=7514>

7. DECISION TAKER’S STATEMENT

7.1 *I have the required powers to make the decision documented in this report. I am responsible for the report’s content and am satisfied that all relevant advice has been sought in the preparation of this report and that it is compliant with the decision-making framework of the organisation which includes Constitution, Scheme of Delegation, Budget and Policy Framework and Legal issues including Equalities obligations. The decision is compliant with the principles of decision making in Article 10 of the constitution.*

8. OFFICERS DECISION

To approve award of the NEC Contract to John Graham Construction Ltd for re-provision of the Pavilion Study Centre PRU, for a price of £17,668,178.81.

To approve further payments to JGCL up to a value of £1.7m for changes to the contract if required and containable within the overall budget

To provide authority to officers to implement the required NEC contract requirements and deliver monitoring arrangements.

To provide authority to officers, in line with the scheme of delegation and in consultation with the Executive Director of Children’s Services to approve and instruct changes in accordance with the NEC contract.

To Note progress to date and current project status.

Chairman:
Has been consulted

Signed

Date:

Chief Officer:
Decision maker having taken into account the views of the Chairman

Signed

Chris Munday
Executive Director of Children & Young People

Date: 04 November 2020