

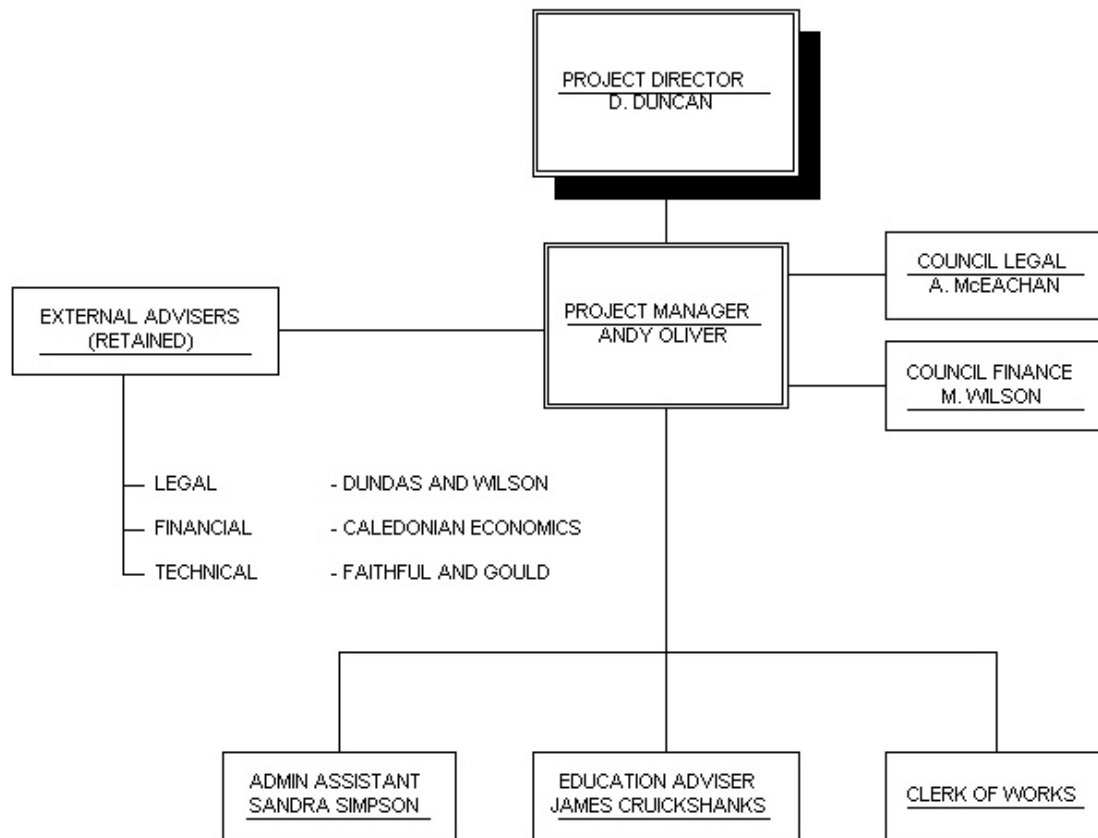
**The Moray Council
Building for Learning PPP Project**

Pre-Financial Close Key Stage Review and Final Business Case

1 Pre-Financial Close Key Stage Review

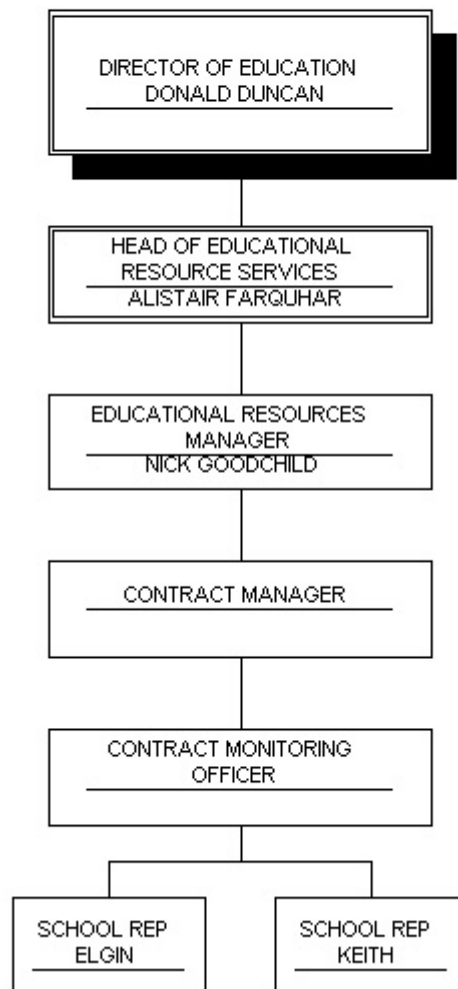
- 1.1 The key stage review is a structured review based on a number of set questions. The template is published on the Scottish Government website at <http://www.scotland.gov.uk/Topics/Government/Finance/18232/12271>
- 1.2 The focus of this final review is the construction and subsequent operation of the Schools and the purpose of the review is to assist Authorities in considering what needs to be put in place in terms of staffing and resources ahead of the construction and operational stages of their PPP projects, to support and manage their PPP contract going forward.
- 1.3 There are two distinct management and monitoring phases to be considered, construction and operation, and the Council has proposed different structures to manage the project at these times.
- 1.4 During the Construction phase, the project team will be largely as it is now, but with the addition of a part time Clerk of Works to help oversee the Works. It is not formally the responsibility of the Council to do so, but it is felt prudent that we take reasonable steps to ensure that the work is properly carried out, as the schools will pass back to the Council at the end of the Contract Period. The structure proposed is:

PPP PROJECT TEAM DURING CONSTRUCTION



- 1.5 During the Operational phase, the 30 year period after the Schools are built, the responsibility is better described as Contract management, and the responsibility should then pass to those who currently manage the rest of the Educational Service's property portfolio. Existing roles may have to be amended to meet the needs and demands of the PPP Contract, but the structure will look thus:

PPP CONTRACT MONITORING TEAM



- 1.6 There are 2 main posts associated with the monitoring of the contract; the Contract Manager will actually have a major role (defined in the Project Agreement) to meet with the Contractor's Representative regularly to monitor the delivery of services, process the payment of the monthly contractor's invoice including applying any deductions for service failures, and also to process any required changes to the services required throughout the Contract Period. The postholder needs therefore to have knowledge of the duties and obligations within the Contract, and an appropriate level of financial and legal awareness. The Contract Monitoring Officer will visit the schools regularly and will check the performance of the services and liaise with the schools to ensure that any issues are promptly addressed. It is not believed necessary for either of

- these posts to be full time, so it may be suitable to allocate these tasks to existing staff.
- 1.7 Meetings with the Contractor will take place regularly during the construction of the schools, and there will be regular meetings after the schools are built to monitor the delivery of services to the schools by the Contractor. Any concerns or issues will be addressed at these meetings and a list of agenda items is described.
 - 1.8 The continued involvement of the members of the existing project team helps by maintaining continuity, and allows time for existing staff who will be responsible for those additional tasks required after construction to receive suitable training.
 - 1.9 The resources for these staff structures were reported to the Children's and Young People's Committee on 17 February 2010.
 - 1.10 The key stage review also discussed the Payment Mechanism for the project. The Payment Mechanism is the means by which the Contractor is financially penalized for any failure in Performance of a service or in Availability of an area and is calibrated by allocating a value in Service Units to each area (room) of the schools, and the sum deducted is in proportion to the number of rooms affected over the total Service Units in the project. There are multipliers that are used in cases of repeat or continuous failure in certain areas, and at exam times when some spaces become even more important.
 - 1.11 The Contract is based on the Scottish Standard Schools Contract v3 along with an agreed list of derogations. All derogations have been agreed with the Scottish Futures Trust and have to be backed by "golden rule" (i.e. they have been accepted on named previous contracts) or be accepted as "project specific". This was done in the previous key stage review, and there is an updated commentary that describes the latest position from the previous discussions with SFT. The Standard Schools Contract SSSC V3 referred to above has also required to be amended to take account of the NPD structure-related drafting and a separate list of derogations records the Council and SFT's positions on them.
 - 1.12 The Council is developing a School manual jointly with the Contractor, which will become a "user's manual" or guide for staff and other users at the schools. This will explain the respective duties and obligations of the Council and the Contractor, and explain how to report any perceived fault in the building or in delivery of any of the required services. This manual will also explain how any fault reported should be addressed and the timescales for doing so. It is also planned to cascade awareness of

progress on construction to school user groups and the wider public through press and direct publicity, progress photographs, etc.

2 Final Business Case

- 2.1 The Final Business Case is the justification for the project from the Council's point of view, and describes the procurement process and outcome, and the Value for Money benefits for the Council
- 2.2 A summary of the background to the project outlines the project history from its beginning in December 2001 when the Council first decided to submit an application for funding support for a PPP Project, until the final scope was approved by the Council in November 2007. This rescope project for the replacement of Elgin Academy and Keith Primary School has received conditional funding support of £3.58m a year towards the projected annual Unitary Charge of £4.7m a year at 2013 prices. The appointment and membership of the Project Board and the project team is described, and the Council's external advisers are named.
- 2.3 The review of the Updated Business Case noted that the Council was required to develop the project as an NPD model, and to use the competitive dialogue procedure in the procurement, as opposed to the negotiated procedure that was the standard method used in previous PPP Projects. The review also noted the position on staffing issues that the Council had agreed upon, which was that janitors working in the schools affected would transfer to the external provider, but that the Council's DSO would welcome the opportunity to prepare a price to undertake cleaning and any other works directly, rather than through a Mandatory Variant Bid.
- 2.4 The procurement strategy was developed and derived through market testing with contractors and advisers who had been involved in other procurements, and especially those lessons from other examples of projects that had used competitive dialogue. It was agreed that we would seek to select a maximum of 3 or 4 contractors to bid for the project, would require only 1 interim submission, at which point we would deselect bidders and complete the procurement with only 2 bidders. Following an advertisement in the Official Journal of the European Union (OJEU) on 30 June 2008, we received applications from 3 consortia who then completed our pre-qualification questionnaire and after evaluation these 3 companies were selected to take part in the procurement:
 - NYOP Education Moray Ltd;
 - Moray Educational Partnership;
 - PMC Education (Moray) Ltd.

- 2.5 Invitations to Participate in Dialogue were sent to the 3 companies in October 2008, and dialogue commenced with each. The documentation included details of what information was required at interim submission and Final Tender, and how the submissions would be evaluated. The project team and its advisers met regularly with bidders to discuss and develop their proposals, and separate meetings were held for technical and commercial subjects. All these meetings took place in Edinburgh so as to minimise bidders' costs. Additionally, the Council had set up Reference Groups of teachers, Parent Council and Community Council representatives to represent school and community interests within the project procurement, and these groups were afforded direct access at meetings with the bidders (chaired by the Project manager) in order that the designs for the schools should be properly representative of the local community.
- 2.6 During the dialogue with bidders, the Council was required to change documentation on the contract to comply with changes made to the national standard form of public contract (SoPC4), which required extensive discussion with the Scottish Futures Trust as the changes required were not compatible with the Scottish Form of the Standard Schools Contract and the NPD model. The project has also to take account of the changes in accounting standards which have recently been introduced, where the Council's accounts must now comply with IFRS rules. This impacts on the final sign-off of the Balance Sheet position of the project and we are in discussion direct with the Scottish Government representative responsible for that, so that the council can receive the confirmation from the Government that the funding support will be provided.
- 2.7 Following the Interim Submission, Moray Educational Partnership was deselected because their risk adjusted price was significantly higher than the others, and NYOP and PMC were taken to the final stages. Final technical and commercial discussions then took place, with a further opportunity for bidders to meet with the Reference Groups. The Council further assisted bidders by requiring only the minimum documentation in paper format, with the bulk being supplied on CD Rom, which allowed a later cut-off date before completing their submissions, and easier distribution of the material among the evaluation team. The evaluation followed the methodology within the documentation, and the outcome was that INPP was appointed Preferred Bidder on the basis of the best overall Quality/Price Ratio. INPP had changed their name during the process from NYOP, and had submitted all necessary additional and updated information required for the Council to approve the change.
- 2.8 INPP had to undergo a further change to their membership when an Administrator was appointed to oversee the affairs of Operon. The

Council's rules for the procurement allowed the consortium to replace a member at any time subject to following laid down procedures. The Council also sought procurement law advice from D&W to ensure that substitution of the sub-contractor could be done without breaching procurement regulations. This was done, and the place of Operon within the consortium has now been taken by FES FM Ltd who will now be responsible for the janitorial, cleaning and other maintenance, and lifecycle costs for the contract.

- 2.9 The time between appointment of Preferred Bidder to financial close of the project is primarily the time required to achieve planning consent, as the documentation and other discussions are more advanced as a result of the competitive dialogue process. Applications were submitted in late November and were approved at a Special Meeting of the Planning and Regulatory Services Committee on 3 March 2010, although the written consents are still awaited.
- 2.10 A description of the NPD is provided which details the objectives and characteristics of the Company, and notes that while NPD is required to pay any surpluses to a Qualifying Charity, the project team is seeking to retain any surpluses for the Council's benefit, as a consequence of the change in accounting rules noted at 2.6 above.
- 2.11 The Council has tracked the affordability position throughout the project life, and believes that the project is affordable for the Council within the parameters agreed. The Council had set an affordability limit of £4.7m for the First Full Year Unitary charge (2012/13) within the agreed Updated Business Case based on its believed costs at the time. This was funded as follows:

Funding	£'m
Scottish Government Revenue Support	3.58
Existing School budgets	0.48
Revenue budget	0.64
	£4.7

There are many factors that can influence the costs to the Council and although some are within the Council's control to a degree, many others are not. The unprecedented upheaval in the financial markets since the limit was set has presented enormous challenges, with interest rates and margins generally at a higher level than before. The Council has agreed a buffer to allow for the day to day movements in interest rates that will

happen around the time that the project closes and the project team is optimistic that the project can be closed at a level that is within this buffer.

The actual unitary charge payable by the Council will be influenced by a number of factors. These include:

- Actual levels of inflation (as part of the unitary charge will index annually)
- Utilities costs – the cost of utilities is a Council risk although the volume of utilities used at each project school is a shared risk
- Contract variations which may be requested by the Council; and
- Areas of the contract where risk sharing has been agreed as the most appropriate value for money position

2.12 The project has to undertake a Value for Money appraisal to demonstrate to the Scottish Government that the NPD project is better value than what is known as the Conventional Procurement Assessment Model (CPAM). There is a defined methodology for carrying out this assessment, which includes the following factors against the output specification required by the Council and against which the Bidders developed their bids:

- Capital cost of buildings
- Lifecycle costs over the full concession period
- Operating costs
- Risk uplifts and optimism bias
- Finance cost to the Council (where borrowing would be required)
- Tax adjustment

The outcome of the appraisal is that the project has been demonstrated as representing Value for Money

2.13 A check has been made of the benefits that the Council wished to see at the outset of the project and how the project has delivered what had been expected. This was set against the Council's aims for the educational service, and the outcome is noted below:

2.14 Promote learning as a life long process; support people in achieving their full potential; provide safe, happy and welcoming learning environments and provide access to services for all. This is being promoted in a number of ways to ensure that the establishments are representative of and

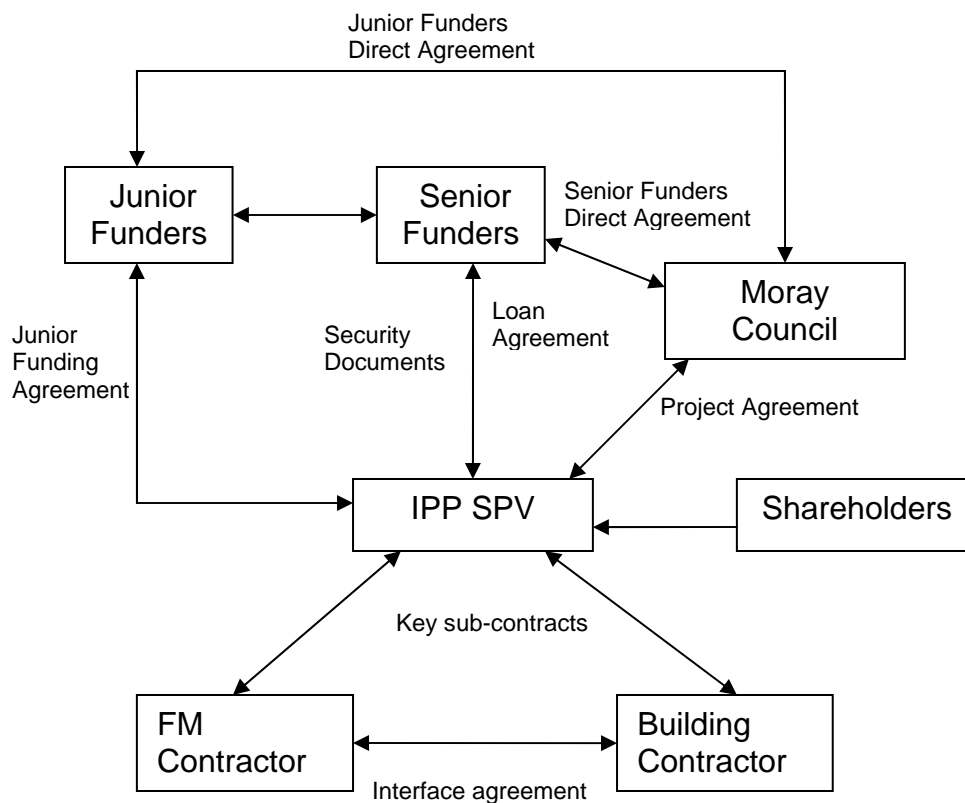
accessible to all - whatever their gender, religion, race, culture, background, ability or disability. The practical expression of this will include;

- Building designs that allow for a range of activities and flexible use during the day, in the evenings, and at weekends.
- Buildings and grounds that are fully DDA compliant.
- Establishments that are welcoming and stimulating places that pupils and the wider community will make their own.
- The promotion and delivery of learning programmes and leisure activities that both widen access to learning and encourage lifelong learning.
- Provision at each of the schools for ASN pupils that will enable them to access education to the best of their ability, including a MICAS base.

2.15 Raise achievement and attainment; recognise and share success. This is being addressed within the project schools by the creation of buildings and grounds that are fit for purpose and that provide stimulating spaces for intellectual, creative, physical and social activity. Specific features that will make a contribution to the improvement of attainment include:

- Class bases in all schools that are generous in size; that are well equipped and that benefit from excellent levels of natural light and natural ventilation.
- Schools that have a modern ICT infrastructure (hard wired and wireless) capable of supporting curricular needs. This will help to increase the range and quality of learning experiences.
- Buildings that make a major contribution to the health promoting agenda. Both schools will have full on-site kitchens to enable the production of nutritious meals as well as dedicated dining spaces to facilitate the consumption of these in pleasant surroundings. Both schools will have dining halls and will not require gyms to double as dining rooms and this will help schools to meet targets in relation to the amount of physical activity undertaken by pupils.

- The provision, at Elgin Academy, of flexible teaching spaces that will enhance the learning opportunities of pupils.
- 2.16 Work in partnership with other services and agencies and the wider community. The project establishments make a major contribution to joined-up working. Particular features that are of importance include:
- The inclusion of a Locality Team Base at Elgin Academy.
 - The provision of dedicated community facilities at each of the schools
 - The provision of timetabled space within the schools for community and other use outwith normal school hours.
- 2.17 Continuously improve the quality of the services provided; Ensure "Best Value" in everything we do: The chart at 1.4 above indicates the structure that will oversee the Project through the construction phase, and their relationships to the Project Board.
- 2.18 An overview of the Project Agreement is provided, giving the basis for the Agreement and the contractual framework and the key contractual relationships as follows:



Note that IPP SPV is the Project Company set up by the Preferred Bidder INPP to manage the project on NPD principles.

- 2.19 The principal funding agreements between the various parties are described, as are the principal subcontracts and supporting guarantees, and the key points of the Project Agreement as detailed:
1. construction of an all-weather pitch at Keith Primary School which:
 - a. only forms part of the project for construction (services are the responsibility of the Council once completed)
 - b. is paid for by way of a one-off lump sum by the Council;
 2. construction of certain grass pitches at Keith Primary School which only form part of the project for construction (services being the responsibility of the Council once completed);
 3. an agreed provisional sum for dealing with asbestos and a mechanic for IPP SPV's risk in respect of asbestos to be limited; and
 4. limited risks for IPP SPV in respect of planning becoming subject to judicial review.

2.20 The key points of the funding structure are as follows:

The project is financed by a combination of senior and junior debt.

The preferred provider of the senior debt to the project is the General Practice Finance Corporation Limited, part of the Aviva group. GPFC has previously funded a number of NHS, LIFT and Building Schools for the Future (BSF) schemes.

The funding will be provided from within Aviva's pension business and is provided on terms priced against an underlying benchmark gilt rate plus applicable margin. The appropriate gilt rate will be benchmarked immediately prior to financial close when the overall price of the debt will be finalised.

The senior debt is provided via one drawdown with the funding placed on deposit until it is required during the construction period. The institution with which the funds will be deposited will be confirmed prior to financial close.

The junior funding will be provided by International Public Partnerships (IPP) with a fixed coupon of 12%.

The anticipated ratio of senior and junior funding is around 92:8.

2.21 The corporate structure of the NPD is also described, with the shareholdings and director appointments. These and the memorandum and articles of association are based on the form provided by the Scottish Futures Trust; amendments made thereto during competitive dialogue have been agreed with the Scottish Futures Trust.

2.22 The project timetable is as follows:

- Financial close is targeted as April 2010
- The construction programme is summarised below:

<u>School</u>	<u>Start Date</u>	<u>Availability</u>
Elgin Academy	May 2010	December 2011
Keith Primary	July 2010	October 2011