

**Executive Board – 19<sup>th</sup> September 2023**

<b>Subject:</b>	SEND Sufficiency Strategy 2023-28
<b>Corporate Director(s)/Director(s):</b>	Catherine Underwood – Corporate Director for People Nick Lee – Director of Education Services
<b>Portfolio Holder(s):</b>	Councillor Cheryl Barnard – Portfolio Holder for Children, Young People and Education
<b>Report author and contact details:</b>	Janine Walker – Head of SEND and Vulnerable Pupils, Education Division. <a href="mailto:Janine.walker@nottinghamcity.gov.uk">Janine.walker@nottinghamcity.gov.uk</a> Lucy Juby – Pupil Place Planning Manager, Education Division <a href="mailto:lucy.juby@nottinghamcity.gov.uk">lucy.juby@nottinghamcity.gov.uk</a>
<b>Other colleagues who have provided input:</b>	Tony Heath – Senior Solicitor – Contracts and Commercial <a href="mailto:Anthony.Heath@nottinghamcity.gov.uk">Anthony.Heath@nottinghamcity.gov.uk</a> Tom Straw – Senior Accountant - Capital Programme <a href="mailto:Thomas.Straw@nottinghamcity.gov.uk">Thomas.Straw@nottinghamcity.gov.uk</a> Paul Stevenson - Strategic Finance Business Partner - Education <a href="mailto:Paul.Stevenson@nottinghamcity.gov.uk">Paul.Stevenson@nottinghamcity.gov.uk</a> Sue Oliver – Procurement Category Manager for Places <a href="mailto:Sue.Oliver@nottinghamcity.gov.uk">Sue.Oliver@nottinghamcity.gov.uk</a>
<b>Subject to call-in:</b>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<b>Key Decision:</b>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<b>Criteria for Key Decision:</b>	
(a)	<input type="checkbox"/> Expenditure <input type="checkbox"/> Income <input type="checkbox"/> Savings of £750,000 or more taking account of the overall impact of the decision
<b>and/or</b>	
(b)	Significant impact on communities living or working in two or more wards in the City <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<b>Type of expenditure:</b>	<input type="checkbox"/> Revenue <input type="checkbox"/> Capital
If Capital, provide the date considered by Capital Board Date:	
<b>Total value of the decision: Nil</b>	
<b>Wards affected: All</b>	
<b>Date of consultation with Portfolio Holder(s): 2<sup>nd</sup> August 2023</b>	
<b>Relevant Council Plan Key Outcome:</b>	
Clean and Connected Communities	<input type="checkbox"/>
Keeping Nottingham Working	<input type="checkbox"/>
Carbon Neutral by 2028	<input type="checkbox"/>
Safer Nottingham	<input checked="" type="checkbox"/>
Child-Friendly Nottingham	<input checked="" type="checkbox"/>
Healthy and Inclusive	<input checked="" type="checkbox"/>
Keeping Nottingham Moving	<input type="checkbox"/>
Improve the City Centre	<input type="checkbox"/>
Better Housing	<input type="checkbox"/>
Financial Stability	<input type="checkbox"/>
Serving People Well	<input type="checkbox"/>

**Summary of issues (including benefits to citizens/service users):**

This report requests approval of the SEND Sufficiency Strategy 2023-28, in relation to the policy, principles and proposals for investing High Needs Capital received from the Department for Education (DfE), to increase and improve specialist SEND provision for children and young people with complex needs or who have an education, health and care plan (EHCP).

**Does this report contain any information that is exempt from publication?**

No

**Recommendation(s):**

- 1** To approve the SEND Sufficiency Strategy 2023-28 (Appendix A), in relation to the priorities, principles and proposals for investing High Needs Capital received from the Department for Education (DfE).
- 2** To endorse the Phase 1 schemes set out in Section 1.2, 1.3 and 1.4 below. Approval for the individual schemes will be sought through the Council's delegated decision making scheme.
- 3** To note that Phase 2 of the programme in Autumn 2023, will involve further engagement with other schools in areas of high need, via an 'Expression of Interest' process to align with the strategic principles and priorities. This will consider a prioritisation process, focusing on highest areas of need, quality of inclusive practice, physical space to expand and best value.
- 4** To authorise the procurement of any necessary contracts to carry out the programme of schemes using the High Needs Provision Capital Grant funding and delegate authority to the Corporate Director for People to award any procured contracts complying with the Council Constitution and Public Contract Regulations 2015.

**1. Reasons for recommendations**

- 1.1 This report seeks approval of the SEND Sufficiency Strategy 2023-28 and 'in principle' approval for Phase 1 early design works, subject to a separate financial approval process via Capital Board (already approved 12 July 2023) and individual schemes to be approved through the Council's delegated decision making scheme. This report also notes the intention to undertake Phase 2 of the programme in autumn 2023, which will involve further engagement and work with other schools in the highest areas of need, to identify suitable schemes which will deliver the aims and priorities of the SEND Sufficiency Strategy.
- 1.2 Early design works will be undertaken on the Phase 1 schemes. These are to create specialist SEND provisions at two secondary schools, to meet the needs of pupils with Autism and other complex needs, at The Fernwood School and Nottingham Girls Academy. These proposals would create between 24–30 specialist places in mainstream secondary provision, some of which may be commissioned by the LA to accommodate children and young people beyond the immediate catchment area, subject to the SEND requirements of the individuals.
- 1.3 Further schemes have been identified to create specialist SEND provisions at three primary schools, to meet the needs of pupils with Autism and other complex needs, at Milford, Glade Hill and Rise Park Primary Schools. These proposals would create between 12-18 extra places, some of which may be commissioned by the LA to accommodate children and young people beyond the immediate catchment area, subject to the SEND requirements of the individuals.

1.4 The final Phase 1 scheme is to increase special school provision at Rosehill School by approximately 80 places, for children and young people with Autism and other complex learning needs.

## 2. Background

2.1 As is the case nationally, Nottingham is experiencing considerable growth in the numbers of young people identified as having special educational needs and/or disabilities and there is insufficient capacity to meet this growing need in primary, secondary and special school settings in the coming years. At the current time, virtually all places in special schools and Specialist Resourced Provisions within mainstream school (SRPs) are currently full.

2.2 Nottingham City Council has been allocated local authority High Needs capital funding from the DfE for the period 2021-22 to 2023-24, to support the provision of new high quality places for children and young people with special educational needs and disabilities and those requiring alternative provision (AP). At June Executive Board the Council formally committed £1.925m, with a further £1.145m endorsed by Capital Board since then in July and August. This now leaves an uncommitted balance of £14.893m.

2.3 The draft SEND Sufficiency Strategy 2023-28 was initially presented to Corporate Leadership Team (CLT) and Capital Board in December 2022, with agreement secured to consult on the draft strategy with parents, carers, young people schools and settings. The purpose of the Strategy is to outline the SEND context in Nottingham City to provide an understanding of need. It includes data and evidence to inform the Strategy and to support the Council's decision making as it seeks to fulfil its sufficiency duty and deliver high quality inclusive provision.

2.4 Consultation on the draft SEND Sufficiency Strategy 2023-28 was undertaken from 25th January to 28<sup>th</sup> February 2023. The Strategy set out the policy, principles and proposals for investing High Needs Capital funding received from the Department for Education (DfE), to increase and improve specialist SEND provision for children and young people with complex needs or who have an education, health and care plan (EHCP). The Strategy also outlined key priorities and broadly proposed schemes, to increase the number of high quality inclusive places and improve existing provision, to support schools to be inclusive and to meet growing demand. Initial expressions of interest were also invited.

2.5 It aims to enable children and young people to access high quality education in their local area, close to their home and community, whilst providing best value for any investment. It will target increased provision in key areas where pressures exist. For children with the most complex needs the LA, working closely with providers, aims to develop a range of specialist resourced provisions in mainstream schools and additional special school capacity.

2.6 The findings of the consultation are included in Appendix B. They showed that there was a high level of support for the proposals set out in the draft strategy. Respondents generally felt that the policy, priorities and proposed schemes presented to achieve the priorities were the right ones, while commenting that how they are implemented is key.

2.7 81% of respondents agreed with the plan to increase and enhance facilities in mainstream schools to ensure that young people with SEND have the best environment and resources to meet their needs, close to home within their local community. Also respondents agreed with our aim to build on the special school expansions and additional Specialist Resourced Provisions within mainstream school, which have already been delivered in recent years.

- 2.8 Capacity and funding were the most commented on themes in the consultation. Most respondents agreed that there is a clear need for more specialist provisions in mainstream schools, for the many children who require a tailored curriculum and learning environment, but are not in need of the level of provision in special schools. It was widely thought that giving parents/pupils more choice in terms of suitable provision and facilities that meets their child's needs in their local community, will be hugely positive. There was also significant support for additional specialist capacity in special schools.
- 2.9 During and following the consultation, some expressions of interest were made by schools, including representations from primary, secondary and special. This identified potential schemes to create additional capacity and provision for children and young people with SEND. Those we have now identified in Phase 1 of the programme, have been explored and discussed with the school leadership teams, are deemed to align with our inclusion priorities and would deliver additional capacity which is accessible for pupils in areas of highest need.
- 2.10 Individual project costs, funded by the High Needs Capital, will vary depending on size, site and complexity of provision. Phase 2 schemes need further work and costing once we know more detail on what Phase 1 is likely to cost. Phase 2 will engage further with schools to establish their plans for delivering appropriate provision. It will also consider additional themes and development areas emerging from the consultation including improving existing provision through specialist SEND staff training.
- 2.11 Any professional fees for external lawyers to draft relevant contracts with academies will also need to be funded within the High Needs Capital budget, as we do not have in-house construction law expertise.

### **3 Other options considered in making recommendations**

- 3.1 To do nothing- dismissed. It is apparent from the work carried out as part of the development of the SEND Sufficiency Strategy and the subsequent consultation, that there is an urgent, significant and increasing need for additional capacity for pupils with special educational needs and disabilities both within mainstream and special schools. The consultation was supportive of this and the identified Phase 1 schemes address this requirement, before further schemes will be brought forward in Phase 2.
- 3.2 Efficient commitment of the funding will result in better value for money due to the impact of inflation. Any delay to this will result in delays to creating much needed specialist provision for pupils with significant need.

### **4 Consideration of Risk**

- 4.1 Risks of not approving a sufficiency strategy to invest the high needs capital funds: we will be unable to meet the needs of the growth in the numbers of young people identified as having SEND and there is insufficient capacity to meet this growing need in primary, secondary and special settings in the coming years. National research and recent reviews into safeguarding disabled children identify the inherent risks in children attending residential provision a long distance from home. Nottingham has few children placed in these settings and this proposal will enable this to continue. Additionally, without this investment, there will be an increase in revenue costs as the number of expensive out-of-city placements increases.
- 4.2 It is likely that there will be further High Needs Capital allocations by the DfE to LAs beyond 2025. However, funding beyond 2025 is contingent on the outcomes of future Spending Reviews and additional capital funding beyond this period cannot be guaranteed; it is therefore critical that prudent decisions are taken now to ensure the sustainability of the system for the longer term.

## **5 Best Value Consideration, including consideration of Make or Buy where appropriate.**

5.1 The strategy aims to develop a financially sustainable system for the longer term, including reduced transport costs, in the context of significant cost inflation - identified through ongoing monitoring of costs.

5.2 In addition to our High Needs capital allocation, we will take a strategic approach to allocating funding and maximising best value for any investment. This will incorporate the use of S106 funding linked to housing developments where it can be aligned to specific proposals, as is the case for four of the six Phase 1 schemes set out in 1.2, 1.3 and 1.4.

5.3 Without the investment in maintained provision for young people with SEND, there will be an increasing need to commission independent and non-maintained provision. These placements are often at significant additional cost and are often not located close to home where young people are able to be part of their local community.

## **6 Finance Comments**

### **6.1 Capital Comments:**

6.2 Nottingham City Council has been allocated **£17.963m** of Higher Needs capital funding from the DfE for the period 2021/22 to 2023/24. The approvals to date and pending approvals will reduce the uncommitted balance to **£14.893m**. As per the grant conditions this grant can only be used on capital expenditure and cannot be reallocated to fund abortive revenue costs.

6.3 Following the formal approval of this decision the uncommitted element of the Higher Needs funding will be added to the planned element of the General Fund Capital Programme and released to the approved programme following formal approval of the specific projects.

6.4 As this decision has £nil value it does not require endorsement from the Capital Board, the subsequent approvals will require endorsement prior to obtaining formal approvals.

Tom Straw – Senior Accountant (Capital Programmes), 24<sup>th</sup> August 2023.

### **6.5 Revenue Comments:**

The SEND capital strategy is supported by the medium financial plan of LA's Dedicated Schools Grant (DSG) High Needs revenue budget. With further review of the High Needs budget, there are sufficient earmarked reserves of £3.9m from the LA's 2023/24 high needs block in order to support these costs as and when required. With new provisions being planned and gradually filled to capacity, this will be used for other short term purposes in the DSG budget.

In continuing to get value for money from the High Needs budget the SEND capital strategy is a key pivotal point to achieve this. It is essential that there are sufficient local places for the growing number of high needs pupils to avoid costly out of area provision in independent/non-maintained provision.

Paul Stevenson – Strategic Finance Business Partner (Children's and Education), 30<sup>th</sup> August 2023

## **7 Legal Comments**

- 7.1 This report seeks endorsement of the SEND Sufficiency Strategy, ‘in principle’ approval for early design works, subject to a separate detailed financial approval process via Capital Board and agreement to undertake Phase 2 via an Expression of Interest process.
- 7.2 In the proposed use of the DfE High Needs capital funding, the Council must ensure it complies with any conditions attached by the DfE to the use of such funding. With the support of Procurement colleagues, any procurement process must comply with the Council’s constitution and relevant legal requirements.
- 7.3 The investment should allow the Council an opportunity to meet its statutory needs by enhancing available specialist provision if that is identified as being appropriate to meet a child’s needs, as assessed via an EHC Plan or otherwise.
- 7.4 In undertaking an Expression of Interest process for Stage 2, the Council will need to ensure its decisions align with the SEND Sufficiency Strategy and follow the principles of good decision-making, for example only be evidence and fact based, taking into consideration relevant factors and disregard irrelevant factors, etc.
- 7.5 As noted, whilst Legal Services can support with some of the contractual arrangements that may be required, where the contracts relate to construction activity, those contract will need to be sourced from external law firms who possess that expertise. Legal Services is happy to support colleagues using a process to identify and instruct an external law firm. One option would be to use the EMLawshare framework following a mini-competition or, with justification a direct award. Colleagues should factor both the costs and time required for a process into their planning.

Anthony Heath, Senior Solicitor, Contracts and Commercial, 28th July 2023.

## **8 Procurement Comments**

- 8.1 If approved Procurement will work with the client to ensure that best value is met, and that all procurement activity associated with the 3 schemes is compliant with the terms of the grant and with NCCs Contract Procedure Rules.

Sue Oliver – Procurement Category Manager for Places, 26<sup>th</sup> July 2023.

## **9 Social Value Considerations**

- 9.1 The potentially proposed SCAPE framework procurement route for three of the schemes contains a number of social value key performance indicators, such as diverting waste from landfill, local spend and local employment targets by which the schemes will be measured.
- 9.2 The remaining three Phase 1 schemes will be delivered through the academies and as part of the funding agreement there will be social value indicators included.

## **10 Equality Impact Assessment (EIA)**

- 10.1 An EIA is attached as Appendix C and due regard will be given to any implications identified in it.

## **11 Data Protection Impact Assessment (DPIA)**

- 11.1 A DPIA is not required because this programme of works will have limited data collected.

## **12 Carbon Impact Assessment (CIA)**

- 12.1 A full CIA has not been carried out at this stage as there are a number of categories with unknowns and uncertainties, which means the score is potentially quite inaccurate at this time. As agreed with the Carbon Neutral Policy Manager, a full CIA will be undertaken once more is known about the implementation of the strategy.

### **13 List of Background Papers**

- 13.1 Executive Board report: SEND capital programme schemes, 23 June 2023.

### **14 Published documents referred to in this report**

- 14.1 None