



HSE Board Briefing Template

Subject: To seek agreement on the approval and logistics process to allow the HSE enter into a Public Private Partnership (PPP) for delivery of 7 Community Nursing Units.

Submitted for meeting on: 14 June 2022 (EMT), 16 June 2022 (ARC), 29 June 2022 (Board)

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Why is this information being brought to the Boards attention?

Approval of HSE Board will be required as the value of the contract will exceed €10 million. The process to execute the Project Agreement is complex from a logistics perspective and requires preplanning.

Is there an action by the Board required, if so please provide detail?

This proposal was previously approved at EMT and ARC, it is recommended that the HSE Board approve the transaction The CNU PPP project is expected to achieve financial close in August 2022.

However due to the nature of the PPP arrangement some steps are required in advance of the final approvals (for all parties to the PPP arrangement) to ensure the Project continues to progress. In that context it is recommended that Board members consider the following and approve:

- i. The form of approval required by the Project Lenders to secure lender consent to finance the Project.
- ii. The arrangements for approving the transaction and signing/sealing of contract documents.

Please indicate which of the Board's objectives this relates to;

- The development and implementing of an effective Corporate Governance Framework, incorporating clinical governance and a performance management and accountability system; **X**
- Developing a plan for building public trust and confidence in the HSE and the wider health service; **X**
- Ensuring the HSE's full support for and implementation of the Government's programme of health reform as set out in the Sláintecare Implementation Strategy;
- Exercising effective budgetary management, including improving the value achieved with existing resources and securing target saving, with the objective of delivering the National Service Plan within Budget. **X**

Brief summary of link to Board objectives.

All CNUs included in the PPP bundle provide replacement beds for some of the poorest CNU accommodation currently in operation by the HSE. Most of the facilities being replaced are former workhouses and do not meet the requirements established by HIQA as the regulator.

Background - provide context in order to ensure that the Board fully understand the issue.

On 29 January 2021 the HSE Board approved the appointment of the Preferred Tenderer (PT) to allow the CNU PPP Project to proceed to the next stage. The PT appointment progressed following the Board meeting with an expected date then of financial close in August/September 2021. However the appointed PT (BAM PPP PGGM Infrastructure Coöperatie U.A.) advised it could no longer stand by its Fixed Price in July 2021. The second ranked tenderer EquiSisk was appointed in September 2021. In February 2022 a consortium comprising the European Investment Bank (EIB) and Nord LB were appointed as the “Lenders” to the Project by PPP Co. This was approved by the Project Board following a recommendation by the NTMA acting as the State’s financial advisors to the Project. Currently the Project is targeted to reach financial close in August 2022

Form of Approval to Secure Lender Consent to Finance the Project

In addition to the approval for the transaction by the HSE Board to allow the Financial Close process to be completed in August 2022, there are a number of other due diligence actions required which include the following:

1. Lenders will expect to receive the standard form of approval used for other PPP projects in Ireland. This comprises a standard form of wording (see Appendix 1) and, in due course, the extract from the Board minutes approving the transaction.
2. Lenders have requested that the draft form of wording referred to above be provided for review by their committees and legal advisors for their interim approval meeting scheduled to take place 22 July 2022.
3. The Lenders request identification of named individuals in the draft form of wording who will be authorised to undertake necessary actions to give effect to the transaction following Board approval (see Appendix 1).

Also required are executed copies of the *Ministerial Letters of Support* – a standard form approved by DPER.

Approving the Transaction & Signing/Sealing of Project Agreement (contract)

Achieving financial close and the signing/sealing process for the Project Agreement will be complicated logistically due to the nature of the PPP arrangement and the multiple stakeholders involved. It requires all parties including HSE, PPP Co., Lenders, Works subcontractor, Services subcontractors, design and professional teams to execute all documents (which run to hundreds, with HSE being party to approximately 20) on the same day. It is proposed that the final signing/execution of documents will, for practical reasons, take place in the offices of the HSE’s legal advisors (Philip Lee, Dublin 4).

The date for completing financial close tends to continually move in the weeks in the run up to closure so parties are required to be available at very short notice (as little as 24 hours) to complete the execution process. Due to the anticipated uncertainty around a ‘fixed’ financial close date, a number of recommendations are set out below to assist the logistics and meeting the financial close date once set, most likely in August.

Highlight any implications that the Board should be made aware of in its consideration such as;

- **Current status**
The Board are requested to approve the transaction and enter the Project Agreement.
- **Budget**
Capital Contributions and Unitary Payments arising from the transaction are provided for in Capital Plan.
- **Resources**
EquiSisk is to be responsible for recruiting all staff required to manage and deliver the facilities management services for the duration of the 25-year concession period.
The HSE will transfer existing staff from the CNUs being replaced to the new facilities to provide

patient care (nursing, healthcare assistants and other clinical staff).

- **Impact to delivery of services**

This proposed CNU development will meet the (HIQA) National Quality Standards for Residential Care Settings for Older People and comply with the Health Act 2007.

- **Corporate Plan**

Aligned with HSE Corporate Plan & Service Plan.

- **Sláintecare**

Aligned with Sláintecare objectives on delivery of services.

- **Social factors (e.g., impact on specific area such as the elderly, disabilities)**

There will be significant improvements for residents in the enhanced environment.

- **Technological factors**

Not applicable.

- **Legal factors**

The contract has been procured in accordance with EU procurement directives and DPER guidelines for PPP contracts. The Project Agreement is the standard suite of documents developed by NTMA for PPP projects.

- **Communications**

Given the scale and nature of the proposal the contract award will potentially invite public comment. A communication will be prepared accordingly.

Conclusion

- Not Applicable.

Recommendation

- **Form of Approval to Secure Lender Consent to Finance the Project**

It is recommended that:

1. The Board considers and confirms in principle the draft form of wording set out in Appendix 1 for recording approval of the transaction in due course – this draft being subject always to final approval by the Board at the time the Board approves the transaction. (*The Board should note this draft has been reviewed and recommended by the HSE's legal advisors.*)

- **Approving the Transaction & Signing/Sealing of Project Agreement (contract)**

Given the challenges of predicting a 'fixed' date for financial close and the likely requirement for documents to be signed at short notice (24 hours), it is recommended that the Board considers:

1. Applying the seal and one signature (Board member) to the relevant execution pages of the documents following the Board meeting of 27 July 2022, once transaction is approved.
2. As signing the contract documents is a reserved function of the Board delegating the role of second signatory to the Chair and Deputy Chair of the Project Board (one of whom will sign, two people are requested for availability purposes) who will be authorised by the Board to apply the second signature.
3. Following the completion of recommendations one and two above:
 - a. Documents will be transported to the HSE's legal advisor's offices to be held until the day of financial close.

Once confirmation is provided by the Project Board and the HSE's legal advisors that it is appropriate to execute the documents on the basis of the approval given by the Board, the second signature will be applied on the day of financial close in accordance with two above.