

# ESTATE MAJOR PROJECTS AUTHORITY COMMITTEE - MINUTES

**Venue:** Room 13, Education Centre,  
Sandwell General Hospital

**Date:** 30<sup>th</sup> August 2019, 15:00-16:30

**Members:**

Mr H Kang	(HK)	Non-Executive Director (Chair)
Mr M Laverty	(ML)	Non-Executive Director
Mr M Hoare	(MH)	Non-Executive Director
Mr A Kenny	(AK)	Director of Estates & NHP
Mr T Lewis	(TL)	Chief Executive
Ms D McLannahan	(DM)	Acting Director of Finance

**In Attendance:**

Mr W Grigg	(WG)	Project Manager of the Trust
Mr A Bell	(AB)	Trust Advisor

**Apologies:**

Mr R Samuda	(RS)	Trust Chairman
Cllr W Zaffar	(WZ)	Non-Executive Director

Minutes	Reference
<b>1. Introductions</b>	<b>Verbal</b>
The Committee members provided an introduction for the purpose of the meeting recording.	
<b>2. Welcome and declarations of interest</b>	<b>Verbal</b>
HK advised that he would chair the meeting in the absence of Mr R Samuda.	
<b>3. Apologies for absence</b>	<b>Verbal</b>
Apologies were received from Mr R Samuda and Cllr W Zaffar.	
<b>4. Minutes from the meeting held on 28 June 2019</b>	<b>EMPA (08/19) 001</b>
The Committee reviewed the minutes of the meeting held on 28 June 2019. TL advised that due to the confidential nature of the content that the italicised items in item 9 would be removed.	
<b>Action: Remove the italicised items in item 9 of the meeting minutes of 28 June 2019.</b>	
<b>5. Matters arising (action log)</b>	<b>EMPA (08/19) 002</b>
The Committee reviewed the action log and the following updates were provided: <ul style="list-style-type: none"> <li><i>EMPA (06/19) 004 - Circulate the cladding briefing to the Committee.</i></li> </ul> TL apologised for not circulating the Paper to the Committee and would do so soon. He reminded the Committee that there were three types of cladding used on Midland Met Hospital and all three had been tested. The expectation was: <ul style="list-style-type: none"> <li>one <i>would</i> fail the test (in the contract),</li> <li>second <i>may</i> fail the test (in the contract), and</li> <li>the third, <i>if</i> it failed the test, they would need to dip in to the reserves.</li> </ul> All other matters on the action log were either included on the agenda for discussion or had been completed, with the exception of:	

- *EMPA (06/19) 006 - Conduct an assurance process on the financial assumptions on each of the Lots and present the findings at the next Committee meeting.*

TL suggested that they cover that item in the appropriate agenda item.

## 6. Strategic Board Assurance Framework: Controls

EMPA (08/19) 003

TL noted that they had reviewed the SBAF at the last meeting and it was agreed that they had as much assurance on the final contractor as they would get. Internally they had adequate assurance but were limited to the actions of central government.

He advised in regard to SBAF ref 19 (reconfiguration) that subsequent to the meeting the reconfiguration in Respiratory Medicine prior to Christmas had been agreed with councillors and the CCG – which should impact the risk score by moving closer to amber. He suggested that it was in the Committee’s right to request data on the risk assessment of service instability and impact of service instability of reconfiguration, as they had not reviewed that since approximately October 2018. The review of current data would enable greater progress.

The Chair noted that both SBAF items were had them both as *Adequate* assurance and questioned if that was still the case. TL noted that at the last meeting they had decided to record:

- SBAF ref 19 as *Adequate*.
- SBAF ref 6, the Committee had had a debate if *Adequate* assurance would ever be reached due to its dependence on government.

The Committee agreed to mark both SBAF items as *Adequate*.

**Action:** Present current data on the risk assessment of service instability and impact of service instability of reconfiguration to the Committee.

## 7. Midland Met Hospital – progress update on plan to contract signature

EMPA (08/19) 004

TL invited Austin Bell to present the Paper.

AB stated that the plan was to get to contract signature hopefully toward the end of October - mid-November to commence construction in December 2019. That would enable possible build-out by mid-April 2022, and Trust would then undertake commissioning and open.

There were a number of key workstreams:

- Procurement and cost
- Risk and opportunity (contingency)
- MEP validation (mechanical, electrical & plumbing)
- Legal and commercial
- Mobilisation.

At a summary level, the procurement, risk and opportunity, legal and mobilisation were all tracking to plan.

MEP validation was under more pressure as it was complex. Discussions with Balfour Beatty would be held on how to take some of those issues forward, and how they may change their approach. Fundamentally for the Trust, getting Balfour Beatty to take on the design and responsibility of MEP was a common part of the procurement – a forward-looking MEP had to sit with Balfour Beatty in its entirety.

The Chair questioned what was the need from the Trust for Balfour Beatty to achieve confidence with MEP. AB advised that the Trust had had it designed up to a level. The Balfour Beatty engaged designer would check it, check the Trust’s TCRs and form a view if it was correct or not. In parallel, Balfour Beatty were doing design work to get ready for the start of the Midland Met site. There would be a contract that included two schedules:

1. The Trust's requirements,
2. Balfour Beatty's response in terms of what they would deliver.

In the Trust's risk and opportunities, a risk of design changes had been factored in. The £267m was the not to exceed figure. TL advised that there was £26m within the £267m (net) for risk and opportunities.

The Chair questioned if there would be any quality deterioration in order to hit a certain figure. AB confirmed that there would be absolutely no deterioration of the clinical functionality of the hospital.

TL noted the table at 5.1 in the Paper. He stated that they would be okay if there was exit flow from Status C). If at the end of the process there were still a lot of items in Status C, that would feel very uncomfortable. TL advised that on Wednesday they had arrived at a position with Balfour Beatty that from next week there would be an in/out workstream rather than simply placing items in Status C.

AB noted that ultimately Balfour Beatty were spending the Trust's money and they would not recover that money until they were in contract, until that point, they were at risk. Balfour Beatty were validating stuff that was quite old and the Trust had already agreed to make changes.

AB noted the timetable and their current position:

- The majority (80%) of the work packages returning to the system, no red-flags identified.
- The legal/commercials should be confirmed.
- The final two commercials matters were with Balfour Beatty; caps and the Interface Agreement.

The Chair queried the supply chain associated with Brexit issues. AB advised that the supply chain was mostly UK-based.

TL noted that they had discussed labour risks with Balfour Beatty. Balfour Beatty were comfortable about that risk – their view was that labour risk was around competing construction work in the local patch. However, if they hit the timeline as described in the Paper, they would be at the front of the queue. The Chair noted that the Commonwealth Games works were also a consideration.

AB noted that looking forward, Board approval would be sought at the beginning of October working toward construction signature at the end of October. The Chair queried the approval process. TL advised that the Full Business Case, which was approved at the June Board, was considered to be the only matter that required government approval. They were optimistic that the Department of Health would write across to Treasury by early week beginning 2 September, and Treasury approval would be the only approval outstanding. He noted that there was an expectation that the approval letter would possibly make observations of ongoing regional involvement in the Midland Met Hospital governance structure, or similar.

It was questioned if it had been discussed whether completion in time for the Commonwealth Games would apply extra pressure. TL advised that it had featured in all of the conversations. The delay in approval was making the timeline tighter. The expectation was that they would start with a programme that included a 5-week float, which was deemed proportionate to the size of the project. Most of the pressure would be in the balance between the practical completion of the building in April, and the opening in June. There was a well thought through assets programme from January, and there was quite a lot they could do in advance in regard to testing.

TL advised that in terms of the commercials, they had agreed on both the interface and the liability.

The NAO enquiry was raised. TL noted that the NAO had conducted Trust employee interviews and were expecting to write up at the end of September, issue to participants for comments in October, to launch in parliament at the end of October and the public accounts hearing in early December. The Trust would seek to get approval in advance of that report.

MH queried if the Trust was doing the same as Balfour Beatty in ensuring they had the right people at the right time. AB confirmed that they had, and fundamental to the Trust side, had appointed managers/companies to oversee the contract.

AB stated that there was one material issue with validation, in which they had agreed a way forward. He noted that Order D was about achieving the start date and hit the ground running. That was the basis of Order D – to secure things in the market. In reality the exposure was quite modest:

- a) wrangling over the price of the Order (which may reduce it by a couple of million), and
- b) there is a cancellation – the order may be cancelled.

It was within the Trust's vires but would need to go to the Board for approval as it was distinct from the overall contract. There were other ways of doing it, but those would involve delay or require external approval. The exposure increases if approval was not achieved by December.

## 8. Hard FM Procurement Process

EMPA (08/19) 005

WG noted that the paper included three supporting papers from their advisors:

1. Appendix 1 – detailed the process in the various steps to achieving approval.
2. Appendix 2 – explained the nuances between the contract award point and service commencement.
3. Appendix 3 – talked to the Lifecycle principles for Midland Met Hospital and Retained Estate.

He noted the evaluation process and provided a summary of Table 2.1, which set out the steps for dialogue:

- i. Close dialogue early-September (TL and DM).
- ii. Call for tenders, evaluation by the Trust and advisors.
- iii. Present to moderation table at the October Board meeting.
- iv. Preferred external bidder, would close dialogue on the Retained Estate.

Hard FM procurement (external bidder and the internal business case, prepared by the Trust's Estate Team) would follow the same process. Presented to an evaluation committee (presentation, scored and scrutinised) with slightly different scoring used between external and inhouse bids (as set out in the paper). Like-for-like comparison mechanisms was queried. TL noted that it was important for the Committee to review and amend that process, if necessary before they arrived at that evaluation point in the process.

- v. On 1 November an evaluation and moderation session would be undertaken to enable a decision at the December Board meeting. Early decisions for both would allow alignment for Midland Met FM and construction for Midland Met to start challenging the Construction Manager and allowed the inhouse Estates Team certainty of what would happen (TUPE transfer, staffing).

TL noted that both were called moderation panels and one would assume that would be the same process; however, what they were doing for Lots 1, 2 and 4 was the Committee that's listed would challenge the moderation score of their inhouse team, whereas the second process there would be a challenge to scores but also a presentation by the two bidders. There was no legal requirement to do that, however it was more emotionally intelligent to do so as there was an inhouse bid. In that regard, he noted that it was not a good idea that the identical panel selecting Lots 1, 2 and 4 were selecting Lot 3. He suggested that the Committee consider the bid panel composition informally over the next week to discuss and confirm by Thursday to enable to update the Board on Thursday.

It was questioned if the estates inhouse bid team had the support and resources required to put in a credible bid. TL requested assurances around the Team's commercial smarts and professional services experience. It was advised that the inhouse bid team had the same opportunity to space and dialogue as the external bidders, had engaged with a technical advisor, had bid writing support and financial support where required/requested. TL stated that they need AK to assure them on the Team's ability for Lifecycle and that they are offered support in Lifecycle and they should have the same opportunities as external bidders.

AB noted the Lifecycle Arrangements:

- Lot 2 (MMH) included Hard FM service and the Lifecycle replacement service.
- Obligation to keep the new hospital in state care position *Condition B* – whether that was doing the maintenance or drawing down from the lifecycle fund when due.
- Retained Estate included a Lot 4 service for Lifecycle replacement works – committed to £15m (additional to baseline) asset replacements, likely to be undertaken over 5-7 years.

DM noted that:

- Work done on joining up the commercial side and competitive dialogue with their assumptions around accounting treatments.
- The more complicated accounting treatments were Lifecycle and capital treatments.
- The revenue budgets would be treated in the same way as normal with the underlying expenditure plans and contractual side joining up with that.

DM provided an overview of the tabled agenda item Hard Facilities Management Paper. Noted points were:

- The Midland Met Hospital, as it was new, would have lumpier sums than the Retained Estate Lifecycle.
- May have to rephrase the planned capital programme spend, in line with expected Lifecycle capital spend.

There was a discussion about having the same Escrow process for Lot 2 and Lot 3. TL requested to ensure that the inhouse team had suitable financial advice to ensure fairness in the process.

It was noted that there were three bidders for Hard FM.

**Action:** The Committee to review and amend the scoring process for Hard FM to ensure like-for-like comparisons in the bidders, to be completed before the evaluation point in the process.

**Action:** The Committee to consider the bid panel composition informally over the next week to discuss and confirm by Thursday 5 September to enable an update to the Board at the September Board meeting.

**Action:** AK to assure the Committee on the inhouse bid team's ability for Lifecycle by the next EMPA meeting.

**Action:** AK to provide the inhouse bid team the appropriate financial advice required for their bid.

## 9. Forward look on programme of non-MMH activities

EMPA (08/19) 006

AK noted that there were circa 8-10 issues that came out of the forward-looking projects in this year's portfolio with other projects that did not have sufficient work done. He noted some projects:

- Corporate Governance and Clinical Coding (City) – project now completed. By mid-next week the Corporate Governance and Clinical Coding functions would be moved over to Sandwell from City.
- BTC issues:

- T&O and Fracture – the estate work had been completed and the deep clean to be undertaken next week.
- Siemens scanner had been put in place in outpatient (City) main spine.
- Oral Surgery – would follow the Fracture Clinic.
- Neonatal – an extension of the Unit, on track for completion prior to Christmas.
- Had integrated the Children’s Unit and PAU.
- Beginning to look at Respiratory Medicine.
- GP surgery – had to do more enabling works to ensure adequate access and issues with underground works. Would commence on 9 September.
- Car parks had come along way, and were close to taking the works to the market.

### FOR INFORMATION

#### 10. Land related matters – Midland Met CPO

EMPA (08/19) 007

TL noted that a report had been requested in regard to the works undertaken on the site historically, and to see if there were any areas of the site that had any outstanding issues that would potentially cause problems to the Trust. That had been addressed by the appointment of Capsticks. Capsticks had reported back that the Trust had absolute Title to the land in which Midland Met Hospital was being built, although there were one or two areas that they could choose to address along the way.

TL noted that the question was that, if the Trust *own the land* but hadn’t *paid for the land* – what were the potential remedies ‘owners’ could seek against the Trust and how would the Trust remedy that?

AK advised that there were a small number of lots that needing to find a way forward. There were outstanding offers on land; four areas in total, 2 of which were entrances, a substation and a some further smaller lots (none of which they could identify an owner).

**Action:** To seek advice from lawyers on the potential risks to the Trust for doing something vs nothing in regard to land titles and their legal recommendations.

#### 11. Homes England – land lease update

EMPA (08/19) 008

AK noted that in 2017 the Trust had transferred its surplus land at City Hospital to Homes England. An arrangement was introduced with Homes England for the Trust to take a lease from them whilst Midland Met Hospital was built. Due to delays, there would be a need for the Trust to seek further lease from Homes England and for that to take place, would bring the Trust’s new position to 31 December 2022.

TL questioned if there was any reason that Homes England would reject a new lease from January 2020 to December 2022. AK confirmed that there was no reason to reject it based on conversations with his counterpart at Homes England. TL requested that AK organise for a new lease contract to be presented at the October EMPA meeting for signature.

AK stated that one part of the overage issue was in regard to what would be left over once Homes England had recouped their costs. TL confirmed it was a net sum and requested that a tracking cost from Homes England be included, alongside the Lease, in their Note Paper that was signed and confirmed Homes England would extant tracking costs.

**Action:** AK organise for a new lease contract to be presented at the October EMPA meeting for signature.

**Action:** AK to organise for that a tracking cost from Homes England be included, alongside the Lease, in their Note Paper that was signed and confirmed Homes England would extant tracking costs.

**12. NEC4 Learning presentation**

**EMPA (08/19) 009**

Noted.

**13. NAO Terms of Reference**

**EMPA (08/19) 010**

The Paper was noted. TL provided a short update:

- There had been productive conversations with the NAO.
- His perception was that the NAO's interest was predisposed to accounting and money.
- In October, the NAO would present their draft for factual accuracy review.

**OTHER ITEMS**

**14. Meeting effectiveness / matters to raise to the Trust Board**

**Verbal**

The follow matters were identified to raise to the Trust Board:

- MMH update, and
- HFM update.

**15. Any other business**

**Verbal**

No other business to note.

**16. Details of Next Meeting**

There would be an additional meeting prior to the October Board meeting, details to be determined.

The next regular meeting will take place on Friday, 25 October 2019 from 15:00 to 16:30 in Room 13, Education Centre, Sandwell General Hospital.

**Action:** Arrange an EMPA Committee meeting prior to the October Board meeting.

Signed .....

Print .....

Date .....