



London Borough of Enfield

Title:	Meridian Water HIF Main Contract Award and HIF Funding Ask
Report to:	Cllr Caliskan, Leader of the Council
Date of report:	20 July 2023
Directors:	Sarah Cary, Executive Director of Housing, Regeneration and Development. Penny Halliday, Director of Meridian Water
Report Author:	Pauline Albers (Regeneration Manager) Pauline.Albers@enfield.gov.uk
Ward(s) affected:	Upper Edmonton
Key Decision Number	KD5570
Classification:	Part 1 & 2 (Para 3)
Reason for exemption	Information relating to the financial or business affairs of any particular person (including the authority holding that information).

Purpose of Report

1. This report seeks approval to accept an additional £25m of Housing Infrastructure Fund (HIF) from Department for Levelling Up, Housing and Communities (DLUHC) and allocate the remaining Rail Works budget to the Street Works project to enable the full scope of the Street Works to be delivered.
2. This report seeks approval to vary the HIF Grant Determination Agreement (GDA) entered into on 30 October 2020 to reflect the changes that have been agreed with DLUHC, including the increased funding amount and exclusion of the Rail Works from the scope of the GDA.
3. This report seeks approval to enter the Main Works Contract for the delivery of the Street Works with the first ranked framework contractor Vinci Taylor Woodrow in accordance with the call-off provisions of the framework. The framework agreement to be used is for the delivery of Infrastructure Works to support the development at Meridian Water and is a framework agreement set up by Enfield Council.

Recommendations

- I. Accept £25m of additional HIF funding from DLUHC and allocate the additional amount to the HIF Street Works budget.
- II. Approve to vary the Housing Infrastructure Fund Grant Determination Agreement entered into on 30th October 2020 ('the GDA') to facilitate the implementation of recommendations I and III of this report
- III. Approve the increase of the Street Works budget to reflect the additional funding secured and re-allocate the remaining Rail Works budget to the Street Works following termination and final accounts of all commitments against the Rail Works budget;
- IV. Approve the award of the Main Work Contract to Vinci Taylor Woodrow to deliver the Street Works in accordance with the terms of the Framework Agreement and associated call-off provisions;
- V. Authorise expenditure as detailed in part 2 of this report for the delivery of the Street Works, including risk, inflation and miscellaneous design and construction allowances;
- VI. Delegate authority to instruct any changes to scope or approve compensation events under the NEC4 main works contract up to amount specified in part 2 of this report in accordance with delegations set out in part 2, Appendix D;

Background and Options

4. In December 2018 the Council submitted a bid to the Department for Levelling Up, Housing and Communities (DLUHC, formerly MHCLG) for the Housing Infrastructure Fund (HIF) to deliver the first phase of strategic infrastructure works in Meridian Water. The Strategic Infrastructure Works comprise of rail enhancement works amounting to a value of circa £54m (HIF Rail Works) and strategic road and flood alleviation works for a value amounting to circa £116m (HIF Street Works).
5. On 12 February 2020 Cabinet approved (KD 5085) the entry by Council into the GDA and under delegated authority from Cabinet, the Meridian Water Programme Director in consultation with the Executive Director of Resources and the Director of Law and Governance accepted the terms and approved the entry into the GDA and all associated subsidiary documents (PL 20/072 O). On 30 October 2020 the Council entered the GDA with DLUHC for a total amount of £170m.
6. On 16 September 2020 Cabinet approved (KD 5181) the entry by Council into a framework agreement with selected contractors and the entry by the Council into a Pre-Construction Services Agreement (PCSA) for the delivery of Street Works. Following Cabinet approval and consultation with members of Cabinet the Council entered a PCSA with the first ranked contractor Vinci Taylor Woodrow in March 2021.
7. The Council has made considerable progress on the delivery of the HIF programme since entry into the Grant Determination Agreement (GDA) for the Housing Infrastructure Fund (HIF) with the government Department for Levelling Up, Housing and Communities (DLUHC) in October 2020. On both HIF funded projects key approvals have been obtained, designs progressed, and contractors engaged under Pre-Construction Service Agreements following completion of the contractor procurements on both projects.
8. Exceptional inflationary pressures have caused significant budget pressure across the HIF Programme impacting both the Street and Rail Works projects
9. Enfield Council has reported a budget pressure on the Street Works since late 2021, which has increased incrementally in the period thereafter.
10. The budget pressure on the Rail Works became apparent in October 2022, following receipt of the contractors' pricing for the main works.
11. Due to the budget pressures on both projects, main works contracts haven't been awarded as planned, causing significant programme delays against the key milestones in the GDA and pushing project completion dates past the end date of the HIF Funding Availability Period (31 March 2024).
12. Enfield Council has been in conversation with DLUHC on additional (inflation) funding and extension of the HIF Availability Period since early

2022. DLUHC have confirmed that HIF funded schemes across the country are experiencing budget pressures as result of inflation cost increases and DLUHC commenced a national funding review in June 2022 to inform a decision on how to best address the inflation pressures across the HIF programme.

13. Early conversations with DLUHC indicated that inflation funding would likely become available to address the issue of inflation cost increases across the HIF funded schemes and a decision on additional funding was originally expected in September 2022.
14. In July 2023 the Council received confirmation of DLUHC's decision to allocate the remaining Rail Works budget to the Street Works project, meaning Rail Works are on pause, and to award £25m additional funding to enable the full scope of the Street Works to be delivered. A letter confirming DLUHC's decision is attached to part 2 of this report.
15. To restart the Rail Works in the future, Enfield Council expect emerging government funding streams to become available to bid on. Alternative funding sources, such as from site delivery partners and other grants will be explored at the same time. Pausing the Rail Works does impact on the timing to increase the train frequency at Meridian Water station.

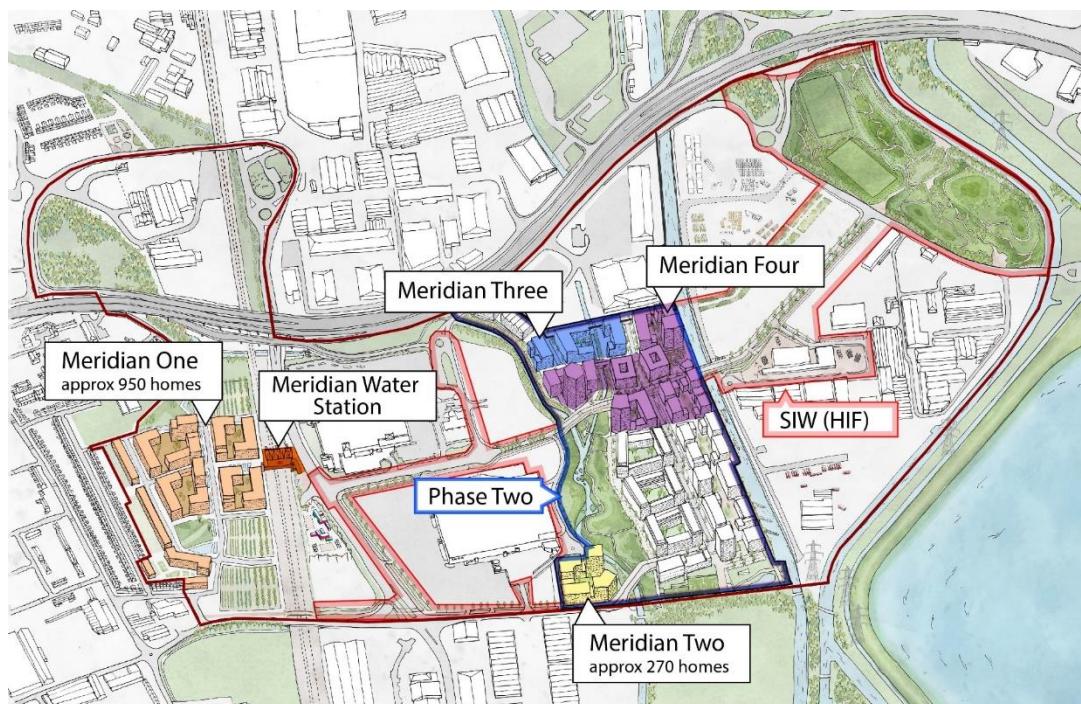


Figure 1: Meridian Water – development plots

GDA and Required Amendments

16. The main provisions of the GDA include both standard conditions for all HIF Forward Funding schemes as well as bespoke conditions for the Meridian Water project. If the Council fails to meet any of the conditions precedent or the project milestone dates, DLUHC may terminate the grant agreement,

withhold additional funding and potentially clawback any funding already paid. The key contractual terms were set out in the Cabinet report authorising entry into the GDA (KD5085).

17. Changes will be required to the GDA to reflect the exclusion of the Rail Works and associated (pre-drawdown) conditions, milestones, and housing outputs, as well as the increased funding amount. The team has started liaison with DLUHC on the necessary GDA amendments with the support and involvement of the LBE legal team.
18. Under the GDA the Council is required to fulfil a set of conditions precedent (pre-draw down conditions) to funding claims for the actual works which constitute more than 80% of the total HIF funding amount. In summary, these conditions include requirements on the Council to evidence that sufficient funds are in place and that necessary approvals and consents (planning, CPO, statutory stakeholder approvals) have been obtained to commence construction of the main works.
19. Part of the pre-draw down conditions relate to the Rail Works project and will need to be excluded from the GDA. The Council have made significant progress to satisfy the pre-draw down conditions and have submitted evidence to discharge these conditions. DLUHC is still in the process of reviewing all evidence submitted and the Council is closely liaising with DLUHC to close out the conditions relevant to the Street Works. It should be noted that all these conditions will need to be discharged before the Council can draw down any of the main works funding.
20. Key Milestone dates in the GDA will need to be updated to exclude milestone related to the Rail Works and reflect the latest programme dates for the delivery of the Street Works. Indicative milestones dates are reflected in the table below and will need to be reviewed to align with the Contractor's programme that will be included in the Main Works agreement:

No.	Key Milestone	Baseline Date	Actual Forecast /
1	Date of Planning Approval Street Works	22/07/2020	22/07/2020 (A)
2	CPO Confirmation	30/09/2021	22/07/2021 (A)
3	Contractor Appointment Street Works (PCSA)	16/03/2021	16/03/2021 (A)
4	Start on Site Street Works	31/01/2022	31/10/2023
5	Practical Completion Street Works	31/03/2024	31/10/2025

21. The total Housing Outputs that the Council committed to under the GDA was based on both Rail and Street Works to come forward. Following exclusion of the Rail Works the contractual housing commitments under the GDA will be reduced.

Scope of the Strategic Infrastructure Works

22. The strategic road and flood alleviation works put forward for HIF funding comprise significant infrastructure works across the Meridian Water site (see Appendix A for indicative SIW Plan):

- Strategic highways and junctions, including the Central Spine road;
 - Strategic bridges including bridges over the brooks, the Lee Navigation Canal and over the railway next to Leaside Road;
 - Strategic flood management works including the re-profiling of the section of the Lea Valley Regional Park and canalised brooks and specific green corridors and local park within the site;
 - Strategic utilities and drainage and off-site connections and reinforcement;
 - Enabling works, including demolition, site clearance, bulk earth-moving and construction of temporary accesses to existing businesses.
23. The scope of the Street Works is envisaged to be delivered as per the original intent.

Contract

24. In March 2021 the Council entered a framework agreement for the delivery of the Strategic Infrastructure Works in Meridian Water. Vinci Taylor Woodrow (VTW) has been appointed as the first ranked framework contractor, meaning that all services and works to be funded by the HIF grant will be awarded to VTW as the first placed framework contractor.
25. The Main Works contract for the delivery of the Street Works will be awarded in accordance with the call-off arrangement under the framework agreement, which did stipulate the use of a NEC 4 contract, option A.
26. Option A is a lump sum fixed price contract (such price being capable of adjustment if and to the extent that any "compensation events" arise). The fixed price is calculated by reference to an activity schedule which is included within the contract and breaks down the price into elements or activities of works to be undertaken by the contractor.
27. LBE legal have provided comment on the contract terms of the proposed NEC4 contract, which was included as part of the original procurement exercise. Brown Jacobson are currently providing legal support to complete the contract.
28. It was identified by the supply chain that it would not be possible to price and fix inflation into the tendered price offer due to very high and variable market inflation indices. Forecast indices and market data became unreliable and unusable to forecast inflation into the pricing.
29. The proposed solution was to use the NEC4 standard option clause X1 – price adjustment for inflation. This clause defines the various terms that are used later to calculate the amount that is added to the amount due to allow for inflation. The calculation is made at each assessment date, and uses

the latest index available at the time of the assessment. The assessment uses the standard industry BCIS published indices.

Main Works Contract Cost

30. VTW submitted their contract offer in November 2022 and due to the ongoing delay of the DLUHC Funding Decision, the main contractor has been requested to re-submit their contract offer, which was received in early July 2023. Details of the contract price is detailed in part 2 of this report.

Budget and Funding

31. The full amount of the remaining Rail Works is allocated to the Street Works budget, including the newly secured HIF funding. Details of budget allocations are set out in part 2 of this report.
32. It should be noted that all contracts related to the delivery of the Rail Works project have been terminated and final accounts agreed, except one, which is expected to be closed out imminently.
33. This is sufficient to cover the Main Works cost, as well as inflation, risk and miscellaneous design and construction allowances.
34. Note that the expenditure is to be funded from the Street Works budget (C020151) and reimbursed from the Housing Infrastructure Fund in arrears on a quarterly basis. It should be noted that all GDA pre-draw down conditions will need to be discharged before the Council can draw down any of the main works funding.

Key Risks

35. **Risk:** Delay or other breach of GDA - non-compliance with the Council's obligation under the GDA, such as delay to the Infrastructure Milestones could result in breach of contract and in the worst-case scenario termination of the agreement and further funding being withheld or all/ some funding being claimed back.
Mitigation: Existing project management arrangements are in place to manage the project and ensure timely delivery of Infrastructure Milestones. Close engagement with DLUHC is ongoing through monthly progress meetings and if required agreement will be sought from the DLUHC for a waiver or extension.
36. **Risk:** Cost overruns - If project costs exceed the funding provided, the Council will need to fund the cost overruns on the project.
Mitigation: Project management arrangement are in place to closely monitor the project and the project cost. Further value engineering and de-scoping work will be carried out to bring the project back to a contractable price within the HIF funding envelope. In parallel, work will be undertaken by the Meridian Water Team to look at options for alternative funding, including CIL, s106 and external funding schemes to fund any elements that would be proposed for value engineering and de-scoping.

Preferred Option and Reasons for Preferred Option

37. This enables the delivery of the Street Works, which unlock key plots in Phase 2 of Meridian Water for housing development, which already has an outline planning permission for 2,300 homes and minimises delay in marketing of these sites.

Relevance to Council Plans and Strategies

38. The Strategic Infrastructure Works delivered through the HIF funding is key to unlocking the development of Meridian Water and contributes to the priorities of the Council's Corporate Plan:

a. Good homes in well-connected neighbourhoods

The Strategic infrastructure at Meridian Water is key to building more and better homes in Enfield. It is also key to delivering and driving investment to deliver growth in Enfield. Further to this, a key aim in the Council Plan is to complete government funded strategic infrastructure works for Meridian Water, which include a major new road and public park.

b. Safe, healthy and confident communities

The Strategic Infrastructure works underpin placemaking capability at Meridian water that will contribute to reducing reliance on cars and increasing walking, cycling and public transport at Meridian Water and it will also contribute to opportunities to visit and enjoy parks and open spaces.

c. An Economy that works for everyone

The Strategic Infrastructure Works at Meridian water are key to shaping the economy of Meridian Water and allowing the economic growth of Meridian Water to be filtered out to connecting areas throughout Enfield, attracting jobs, business growth and supporting Enfield residents and the local economy.

Financial Implications

39. In October 2020 the Council entered into the Grant Determination Agreement (GDA) for the Housing Infrastructure Fund (HIF) with the government Department for Levelling Up for a grant of £170m (54m HIF Rail Works and £116m HIF Street Works).
40. This report seeks approval to accept the additional funding of £25m and approve required changes to the GDA as well as reallocating remaining HIF rail budget to SIW.
41. This report also seeks to enter into the main works contract with VTW as detailed in part 2.
42. Any use of contingency will require additional approval.

43. The parties understand and agree that the HIF Funding by MHCLG under this Agreement is not consideration for any supply for Value Added Tax (VAT) purposes whether by the Grant Recipient or otherwise.
44. If, notwithstanding the agreement and understanding of the parties, it is determined that the HIF Funding is consideration for a supply for VAT purposes, the HIF Funding shall be treated as inclusive of any VAT.
45. All sums or other consideration payable to or provided by the Grant Recipient to MHCLG at any time will be deemed to be exclusive of all VAT payable and where any such sums become payable or due or other consideration is provided, the Grant Recipient will pay to MHCLG all the VAT payable upon the receipt of a valid VAT invoice.

Legal Implications

Powers

46. The ongoing development of Meridian Water is within the powers of the Council because:
 - i. Section 1(1) of the Localism Act 2011 introduced the “general power of competence” for local authorities, defined as “the power to do anything that individuals generally may do” and which expressly includes the power to do something for the benefit of the authority, its area or persons resident or present in its area”. The generality of the power conferred by subsection (1) is not limited by the existence of any other power of the authority which (to any extent) overlaps the general power. Therefore, this power may be relied on in support of the recommendations. This will include the power to vary the GDA and enter into the contract with Vinci Taylor Woodrow.
 - ii. In addition to the general power, Section 111 of the Local Government Act 1972 enables the Council to do anything which is calculated to facilitate, or is conducive to or incidental to, the discharge of any other of its functions, whether involving expenditure, borrowing or lending money, or the acquisition or disposal of any rights or property. This further supports the lawfulness of the recommended approach.
 - iii. The Council has powers under the Housing Act 1985 (by Section 9) to provide housing accommodation and therefore is a legitimate function to which section 111 would attach.
47. Accordingly, the Leader is advised that the adoption of the recommendations lies within the powers of the Council.

Exercise of Powers

48. In reaching a decision, the decision maker should consider whether the decision to (i) accept the additional HIF funding and approve consequential amendments to the GDA, (ii) pause the Rail Works project and focus on delivery of the Street Works, and (iii) award the Main Work Contract to Vinci Taylor Woodrow is a prudent course of action, having regard to the

Council's general fiduciary duties. It must also reach a decision by reference to all relevant considerations, disregarding irrelevant ones, and be satisfied that the recommended course of action is a rational course of action for the Council. The Report details the justification for the recommendations, financial implications involved, and risks. Equally, the report explains the rationale for the recommended course of action (and other funding options covered in part 2 of this report).

49. A relevant factor in reaching decisions is that an amended GDA will be adopted, with revised conditions. This report (at paragraph 39) notes that the GDA includes terms that enable DLUHC to terminate the grant agreement, withhold additional funding and potentially clawback any funding already paid and also sets out the mitigation to these risks. All grant conditions under the GDA must be complied with including any pre-commencement conditions (if relevant) and any conditions required in order to draw down the funding.

Procurement

50. In relation to the award of the contract to Taylor Woodrow, the council is required to comply with the council's constitution, the contract procedure rules and the Public Contracts Regulations 2015 ('PCR 2015'). As this is an award from a framework agreement, the framework agreement must have been established in a legally compliant way in accordance with regulation 33 of PCR 2015. The process for the award of the contract under the framework agreement must be in accordance with the procedures laid down in the framework agreement, and the terms of the contract to be awarded shall be in accordance with what is specified under the framework agreement.

Subsidy control

51. Officers must be mindful to ensure that the funding secured from DLUHC is used in a compliant way in accordance with the Subsidy Control Act 2022 and any other relevant related guidance, legislation or regulations.

Property Implications

52. The property implications are to be found throughout this report.

Equalities Implications

53. The Council has a duty to promote equality, diversity and inclusion, and it recognises the issue of diversity specifically within the construction sector.
54. An Equalities Impact Assessment (EQIA) by Ottaway Strategic Management Ltd was commissioned by the Council to consider the impacts of the Meridian Water (Strategic Infrastructure Works) Compulsory Purchase Order. The EQIA concluded that there are no direct negative equality impacts identified against any of the protected characteristics. However, there are some groups with protected characteristics who are

likely to experience proportionately higher consequences of the regeneration of Meridian Water and these are:

- White other staff, including Eastern European, Turkish and Greek;
- BAME Staff;
- Women in properties in third party ownership; and
- Older members of the workforce potentially less able to re-engage in the labour market if their jobs are lost to the relocation programme.

55. The EQIA proposed several mitigation measures to address these indirect impacts which the Council intends to implement including the implementation of effective equalities monitoring by the Council and development and construction partners. The EQIA also acknowledges significant potential positive impacts of the regeneration of Meridian Water (including for example, new homes, social infrastructure and employment growth) and that these benefits will likely impact on all the aforesaid groups having protected characteristics.

56. An EQIA was also prepared by the Council's Strategic Planning Team to support the ELAAP submission. The planning application for Phase 2 and more recently the approval of the Meridian West Supplementary Planning Document was also subject to an EQIA. No substantive negative impacts to persons or groups with protected characteristics were identified.

Environmental and Climate Change Implications

57. There are no environmental implications arising directly from this decision. Increasing the train regularity at Meridian Water station is important for providing good public transport links and reducing reliance on private fossil fuel car use, but we understand and agree with this report to first prioritise unlocking the new homes to be built.

Other Implications

Procurement Implications

61. This procurement of the overarching framework for this scheme was carried out in accordance with the Council's Contract Procedure Rules (CPR's) and the Public Contracts Regulations 2015. The proposed call-off is in accordance with the overarching Framework Contract (see paragraph 37).
62. This contract has social value elements using the TOMs (themes outcomes and measures). It is the responsibility of the Contract Manager/Service Department to ensure that the social value elements of the contract are delivered, and evidence uploaded into the Social Value Portal by the supplier.
63. The uploading of call-off the contract must be undertaken on the London Tenders Portal including arrangements for the future management of the framework. The Contracts Register must also be updated accordingly.

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Appendices

Appendix 1: Indicative plan of Strategic Infrastructure Works