

MUNICIPAL YEAR 2018/2019 REPORT NO.

ACTION TO BE TAKEN UNDER DELEGATED AUTHORITY

OPERATIONAL DECISION OF:

Sarah Cary
Executive Director, Place

Agenda – Part: 1

KD No: 4750

Subject: HIF Works. Procurement of Ground Investigation Works, Testing and Reporting to inform design of infrastructure works.

Wards: Upper Edmonton

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1. EXECUTIVE SUMMARY

- 1.1 This report seeks authority to procure Ground Investigation work to support the delivery of the Housing Infrastructure Fund scope of works for Meridian Water.
- 1.2 The objective of Ground Investigation is twofold:- to provide information on geotechnical nature of the ground to inform design of below ground elements of the Development i.e. earthworks, substructures, foundations, services, and, secondly, to detail the nature and levels of any contamination and the remediation thereof.
- 1.3 This information is now required to assess the scope of HIF works and will also inform the Master Plan for the Meridian Water Development as a whole.
- 1.4 As part of their appointment on Meridian Water Development, the Arup Group is providing a Specification and other Tender Documents to be included in the tender package to be issued by LBE.
- 1.5 Under the Public Contracts Legislation 2015, Schedule 2, Activities Constituting Work, Division 45.12, this activity is classified as Construction Works and its value is below OJEU threshold. It will therefore be procured in accordance with LBE's Contract Procurement Rules, Item 3.5, row 4 of table therein.
- 1.6 To match HIF procurement requirements it is anticipated that an award for the G.I. Works will be made December 2018.
- 1.7 The estimated costs of the ground Investigation works exceed the current allocated budget. Cabinet approval for a revised Meridian Water budget reflecting the estimated costs will be sought.

2. RECOMMENDATIONS

It is recommended that the Executive Director – Place:

- 2.1 Grant approval to undertake a procurement process to appoint a Contractor to carry out Ground Investigation works as outlined in this report.
- 2.2 Appointment will be subject to confirmation of the Meridian Water budget at Cabinet.

3. BACKGROUND

3.1 Housing Infrastructure Fund

- 3.1.1 The Council is enabling the delivery of approximately 10,000 new homes over a 20-year period at Meridian Water. The development is located between Edmonton, Tottenham, and Walthamstow and ideally placed to deliver the spatial, sustainable growth, and economic resilience objectives of the London Borough of Enfield as one of the capital's largest regeneration opportunities.



Figure 1 Meridian Water 20 year vision CGI

- 3.1.2 In July 2017 Ministry for Housing Communities and Local Government (MHCLG) and Homes England announced £2.3bn government funding to local authorities on a competitive basis for infrastructure to support up to 100,000 new homes. The Housing Infrastructure Fund (HIF) forms part of the broader £23bn National Productivity Investment Fund announced by Chancellor Philip Hammond in his 2016 Autumn Statement. It was the biggest government investment programme in more than a decade. In February 2018, MHCLG announced the increased funding pot for HIF to £5bn.

- 3.1.3 Two funding streams were open to bids from local authorities in England: a Marginal Viability Fund to provide broadly-defined infrastructure funding to get additional housing sites allocated or existing sites unblocked, and a Forward Fund for a small number of strategic and high-impact infrastructure projects. Bids could be submitted for up to £10m for Marginal Viability proposals, and for up to £250m for strategic Forward Funding proposals. The Fund is available up to 31 March 2023 and, if the Council's bid is successful, any funding received must be spent by that deadline.
- 3.1.4 On 20th March 2018 the MHCLG confirmed that the GLA/Council had successfully passed the first stage of the Forward Funding bid process and that the Council's bid would be taken forward to the second stage. The second stage required a fully worked up Green Book compliant business case underpinned by detailed technical work.
- 3.1.5 To prepare for the second stage submission underpinned by detailed technical work, in January 2018, Ove Arup, a civil-engineering-led infrastructure design planning consultancy team had been procured (KD4620). The procurement was undertaken using a framework from the GLA/TfL called Architecture Design and Urbanism Panel (ADUP).
- 3.1.6 The deadline to deliver the HIF works by March 2023 is very tight so officers have developed a proactive strategy to initiate work that is on the critical delivery path now, prior to confirmation from MHCLG of whether the bid has been successful. This proactive strategy has been positively received by the GLA.
- 3.1.7 For example, essential works have commenced, including topographic surveys, flood investigation, transportation modelling and concept designs as to provide technical information in the business case and to ensure to meet the Funding delivery deadline.
- 3.1.8 Another key workstream that must be carried out is Ground Investigation, the objective of which is twofold:- to provide information on geotechnical nature of the ground to inform design of below ground elements of the Development i.e. substructures, foundations, services, flood control, earthworks etc and, secondly, to detail the nature and levels of any contamination and the remediation required thereof.

3.2 Scope

3.2.1 Infrastructure

3.2.2 Infrastructure and earthworks ground investigation specification, procurement and delivery

3.2.2.1 The tender package will include a technical specification, contract documents, bill of quantities, drawings, information pack and form of tender, produced by Arup (appointed under KD 4711) with input and review by LBE.

3.2.2.2 Tender will be issued by LBE. Arup support will include site visits with tenderers, tender queries and clarifications, LBE queries, technical and financial review of received tenders and advice to LBE on contractor appointment.

3.2.2.3 Arup will act as contract administrator and technical supervisor, supporting LBE during the works and remeasurement.

3.2.2.4 Short description of works:

1. Create site compound on currently vacant plot in Stonehill and execute various enabling works, i.e. clearing and reinstating site access controls, managing invasive plant species and other environmental considerations.
2. Execute boreholes, trial pits and trial trenches at approximately 160 locations (see Appendix A – Plan of Ground Investigation locations). All arisings removed from site and ground reinstated to as before.
3. Collect soil samples for laboratory testing to determine geotechnical properties, and types and levels of contamination.
4. Installation of 63 standpipes (using the boreholes) for gas and ground water monitoring.
5. Presentation of field and laboratory data as a factual report to inform design of a Remediation and Materials Management Framework for HIF infrastructure and remediation.

3.2.2.5 Estimated cost for this work is £900,000.00. This exceeds sum in current 4 year baseline budget for this work but submission to Cabinet of next Meridian Water Budget will be updated to reflect this and no awards for this G.I. work will be made prior to Cabinet approval of Meridian Water budget. These costs can be recovered through HIF Award, should the bid be successful. The overall cost can be broken down into a sum of £171,000.00 for prelims (which we are largely committed to after start on site) and weekly expenditure of £60,000.00.

3.2.2.6 This DAR is to approve procurement process only. Decision to proceed with works will be covered by a further DAR incorporating tendered costs.

3.2.2.7 Intention is to issue tender on London Tenders Portal October 2018 with an award being made December 2018, leading to mobilisation and start on site by mid December. Works on site will take 12 weeks, followed by monitoring and testing for 12 weeks at end of which the final report is issued. Interim reports issued throughout previous 24 weeks.

4. ALTERNATIVE OPTIONS CONSIDERED

4.1 Do not carry out G.I. works and proceed at risk with design, procurement and implementation of HIF works and Meridian Development generally without the information provided by Ground Investigation.

4.2 Without this information, design of all elements below ground level, and the major earthworks, would be based on guesswork, and levels of contamination would be unknown. This would result in programmes being open ended and final costs unquantifiable. These works are essential preparation and no Designer or Developer would contemplate involvement in HIF and Meridian Water without the information supplied by Ground Investigation.

4.3 Notwithstanding the HIF award in February 2019, LBE will still require this G.I. information to inform their own development plans for Meridian Water.

5. REASONS FOR RECOMMENDATIONS

To meet the programme for procurement and delivery of HIF.

6. COMMENTS OF OTHER DEPARTMENTS

6.1 Financial Implications

The current approved budget for 2018-19 contains £750,000 designated for HIF Road site investigations. A provision of a further £150,000 of funding is to be included in the budget proposal to be submitted for Cabinet approval. As per 3.2.2.5, no decision to appoint the Contractor will be made prior to the Cabinet decision on the Meridian Water budget approval.

This expenditure is recoverable through the HIF grant, should the HIF application be successful.

6.2 Legal Implications

Dated 26th September 2018, based on draft received 26th September 2018.

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- 6.2.1 Section 111 of the Local Government Act 1972 gives a local authority power to do anything which is calculated to facilitate, or is conducive or incidental to, the discharge of any of its functions (including economic development functions). The Council also has a general power of competence in s.1 (1) of the Localism Act 2011. The recommendations set out in this report are consistent with the Council's powers.
- 6.2.2 The estimated value of the contract is below the current Public Contracts Regulations threshold. However, the Council must comply with (i) the overriding principles of fairness, transparency, proportionality and non-discrimination; and (ii) all requirements of its Constitution and its Contract Procedure Rules ("CPRs"). To ensure a clear audit trail, the procurement must be managed through the E-Tendering Portal. Officers should be mindful that at a minimum of least 5 quotations for the works are to be received, at least two of which from a local provider (where practicable).
- 6.2.3 It is noted that there is currently insufficient budget allocated for the proposed works. The CPRs provide that no tender/quotation invited, unless provision is made in the annual budget or is otherwise agreed by the officer with appropriate delegated authority and such is in accordance with the Council's Financial Regulations. No contract may be awarded unless there is sufficient budget available for the works being procured and appropriate delegated authority to award the contract.
- 6.2.4 Given the value of the proposed contract, officers should consider whether the appointed contractor will be required to provide sufficient security to manage risk. Evidence of the form of security required, or why no security was required, must be stored and retained on the E-Tendering Portal for audit purposes.
- 6.2.5 As the anticipated contract value exceeds £250,000, the authority to procure is, and any subsequent decision to award will be, a Key Decision and officers must comply with the Council's Key Decision procedure.
- 6.2.6 The Council must comply with its obligations with regards to obtaining best value under the Local Government (Best Value Principles) Act 1999.
- 6.2.7 All legal agreements arising from the matters described in this report must be approved in advance of contract commencement by the Assistant Director of Legal and Governance Services.

6.3 Property Implications

There are no Property Implications at this stage other than ensuring Specification makes clear that Contractor is responsible for compliance with all licenses granted and that reinstatement of G.I. locations is to as before condition.

6.4 Procurement Implications

The procurement must be undertaken in accordance with the Council's Contract Procedure Rules (CPR's) and the Public Contracts Regulations (2015).

The procurement, award and future management of the contract must be managed through the London Tenders Portal.

7. KEY RISKS

ID	Title	Risk Description	Mitigation
01	Access to freehold and tenanted properties to carry out works	Tenant refuses to agree to access for drilling works. Tenant agrees access but withdraws on day of works.	Intensive management of liaison process by Council's Property Management Agents (Glenny) who have long established relationships with tenants, supported by the ARUP Supervising Engineer, LBE Officer and (when appointed) full time Contractor's Project Manager. Method statements and programmes that minimise impact on day to day operations will be agreed with tenants before any work takes place. Some G.I. locations are inside freeholder sites within the Meridian Development area and access to those will be negotiated by Meridian Water Team with support on formal process and agreements from LBE Legal and Property Services
02	Contractor failing to complete	Contractor commences on site but fails to complete final Report	A dedicated Supervising Engineer and Contracts Administrator from Arup will be commissioned to monitor the investigation activities.
03	Cost	Incorrect cost estimate	Stace Consultants have been appointed to review cost estimations for HIF delivery works including all costs associated with site investigation activities.
04	Cost	Additional costs incurred due to additional bores identified as necessary after initial works plus relocation of some	Appropriate contingency incorporated in budget.

		locations due to unforeseeable ground conditions	
05	Health & Safety	Much of the work is within tenants' demises and areas accessible to the public	Tender assessment based on 60/40 split between quality/price with quality emphasis on H&S and tight management

8. INTERNAL DEPARTMENT IMPLICATIONS/CONSULTATION

All internal departments have been consulted and comments integrated.

IMPACT ON COUNCIL PRIORITIES

9. IMPACT ON COUNCIL PRIORITIES – CREATING A LIFETIME OF OPPORTUNITIES IN ENFIELD

9.1 Good homes in well-connected neighbourhoods

Meridian Water will deliver fairness for all by providing homes of different tenures, types and sizes to meet the diverse need of the community. In addition, it will create well managed open spaces making Meridian Water a key destination and a place where people want to live, work and play. The decision to terminate the master developer procurement process will enable these benefits to be delivered more quickly and with the potential for a better return for the tax payers of Enfield.

9.2 Growth and Sustainability

Meridian Water will deliver new homes, jobs and infrastructure: both major new physical and transport infrastructure and social infrastructure including medical facilities, schools, nurseries, community centres, parks and gardens. Clean and green energy will be provided by the Lee Valley Heat Network, which will ensure that the development is environmentally sustainable.

9.3 Build our local economy to create a thriving place

The new neighbourhood at Meridian Water will be designed to foster social cohesion through a series of physical and social interventions, such as direct pedestrian, cycle and other connections into existing neighbouring community for example Angel Edmonton; and position new community facility to encourage a mixed use by both existing communities and future new residents. The new Meridian Water station and public realm will serve as a hub where existing and new communities will mingle and interact.

10. EQUALITY IMPACT IMPLICATIONS

Equality and diversity considerations will continue to be integrated into the development and delivery work for Meridian Water to make sure they are embedded in the decision-making process and to avoid costly design changes. Corporate advice has been sought regarding equalities and whilst there are no Equalities implications in agreeing the recommendations outlined in this progress report. It is recommended that as part of the review of the Meridian Water Project, the Meridian Water EQIA be reviewed and updated to embed Equalities and Diversity in the future procurement, design and delivery of the project. In addition to this it should be noted that any contracts awarded should include a duty on the successful applicant to assist us with meeting our obligations under the Equalities Act 2010.

11. PERFORMANCE MANAGEMENT IMPLICATIONS

Delivery of a comprehensive regeneration scheme at Meridian Water is a corporate priority within the council's Business Plan for 2016-2018. Completion of the Masterplan and the delivery of phased infrastructure improvements including increased rail services, station improvements and new homes will help to meet the strategic priority: "a borough that attracts inward investment and supports sustainable regeneration and growth."

12. HEALTH AND SAFETY IMPLICATIONS

The Meridian Water Project bringing widespread improvements in transport, accessibility, and comprehensive remediation of contaminated brownfield sites will have positive health and safety benefits for the local community and the future residents, workers and leisure users at Meridian Water.

13. PUBLIC HEALTH IMPLICATIONS

A regeneration neighbourhood at Meridian Water will have far reaching public health benefits particularly from the promotion and expansion of public transport, namely a more frequent rail service, an expanded bus network and integrated walk and cycle routes. This together with extensive green space, water fountains and a positive urban environment will continue to well-being at Meridian Water. The development will include all necessary public health and community services from health clinics to nurseries

Background Papers

None.

Appendix A - G.I. Locations



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ACTION TO BE TAKEN UNDER DELEGATED AUTHORITY

OPERATIONAL DECISION OF:

Executive Director
Place

Contact officer and telephone number:
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Agenda – Part: 1	KD Num: 4619
Subject: Willoughby Lane – Remediation Works Related Activity	
Wards: All	

1. EXECUTIVE SUMMARY

- 1.1 In order to facilitate the delivery of homes for Phase 1 – Meridian Water the Council is undertaking remediation activities on the Willoughby Lane and Meridian Way sites. Approval is sought for services and works as part of the remediation budget approved by Cabinet in KD 4229.
- 1.2 QDS Contracting Limited (formerly Hydrock Contracting Ltd) (“Hydrock”) and Cognition Land and Water Ltd (“Cognition”) have been undertaking critical soil and groundwater remediation works, respectively (approved via KD 3973, KD 4440 and KD 4438). Hydrock went into administration in March 2018 before completing Phase 1 of the remediation works at Willoughby Lane.
- 1.3 This Report sets out the operational decisions have been taken since March 2018 to award various works and services to Cognition that were left outstanding following Hydrock’s insolvency.
- 1.4 Further approval is now sought for a continuation of CDM PC role which meets the Council’s CDM duties and includes covering the site’s security until a replacement main contractor is secured. This appointment would be a direct award.

2. RECOMMENDATIONS

It is recommended that the Executive Director Place:

- 2.1 authorise the appointment of Cognition Land and Water to undertake the CDM / Principal Contractor role and bioremediation trials as set out in this report
- 2.2 authorises entering into a new NEC 3 contract with Cognition Land and Water for the delivery of 1) Emergency Works, 2) Bio remediation trials, 3) Bio remediation works and 4) CDM – Principal Contractor role
Part 2 to set out value of each element
- 2.3 Delegate authority to the Director of Law and Governance to approve any legal agreements as required by the subject matter of this report.

3. BACKGROUND

3.1 The Site

- 3.1.1 The Willoughby Lane site was formerly used to produce town gas. The site is to be redeveloped for housing, with areas of public open space and a new railway station. The first phase of construction is intended to commence on the Willoughby Lane site in 2019, / 2020 with further phases to follow.
- 3.1.2 The site's historic use as a gasworks has resulted in contamination presence, for which there are remediation strategies to return the sites into beneficial use. A site investigation and remediation budget for the Willoughby Lane site was approved as part of the wider Meridian Water budget in February 2016 (Key Decision: 4229).
- 3.1.3 A remediation contractor framework was procured, and Hydrock was selected from this framework to carry out soil remediation. Hydrock were also undertaking time and weather critical bioremediation trials due to 5000m3 of grossly contaminated soils that would have hindered development of the site. Bioremediation was not part of the original Hydrock contract. On 13th March 2018, Hydrock went into administration prior to completing Phase 1 of the soils remediation works and the bioremediation trials. The Administrators

immediately took all staff and equipment off-site and ceased work. This action by the Administrators left the site in an unsafe state with various work in progress exposed and potentially dangerous with areas of standing water and other risks.

- 3.1.4 In addition to the contract with Hydrock, Cognition have been contracted to deliver the remediation of shallow groundwater (via Key Decisions: 3973 and 4440).

3.2 Previous Decisions

- 3.2.0 Summarised below are the elements of works and services to be covered within the new contract. For some elements decisions have already been made and approval granted.

- 3.2.1 Emergency Works – The scope of works deemed necessary for Cognition to undertake as emergency works included: ensuring open water was fenced off with some planned backfilling, tackling key trip hazards that trespassers could be impacted by in the event and bioremediation trials. (Operational Decision April 2018)

- 3.2.2 Bioremediation Trials - QDS Contracting were undertaking time and weather critical bioremediation trials due to 5000m³ of grossly contaminated soils that would have hindered development of the site. Due to the programme pressure, in particular the need to start bioremediation during summer 2018 as prompted by the letter of concern from Environment Agency (see Part 2), Cognition were deemed as the only practical and sensible option to complete the trials as they had control of the site and employed the necessary skill. Use of Cognition reduced labour and equipment cost together with any overhead and profit element that the Council would have incurred had the work done by another contractor.

- 3.2.3 Bioremediation Works – In March 2018 officers were advised that these works should be competitively tendered in accordance with the Council's Contract Procedure Rules. However, in a letter dated 3 July 2018 the Environment Agency raised concerns of a risk of recontamination if untreated stockpiles were left on the site over the 2018/19 winter period. The Environment Agency recommended that soil remediation was started as soon as possible during the summer period. (See letter in Part 2) The bioremediation works were deemed essential to complete as the main bioremediation activity needs to happen in summer months for it to be most effective – with the soils needing to be re-used on-site by approximately November 2018 to enable rail station access works to commence to programme and prevent costly removal from site (up to an estimated £1.3m. (KD 4689)

- 3.2.4 CDM PC

As well as approving Cognition to perform the Emergency Works detailed in 3.2.1 above, the Operational Report in April approved appointing Cognition for an initial period of three months (March – June 2018) to perform the CDM PC

role at the same time as Emergency works were approved as to two items were inter-dependant.

Appointing Cognition as the designated CDM Principal Contractor was deemed an urgent necessity to meet the Council's statutory obligations as client with respect to health and safety. Cognition formally accepted the role and have continued to discharge the role in a satisfactory manner. Cognition were also instructed to oversee site security in order to prevent potential traveller incursions. The site was considered a high risk without adequate 24/7 security. With Cognition previously discharging the CDM / PC role as part of their shallow groundwater remediation, ahead of QDS Contracting site occupation, and with Cognition being in residence on site, it was considered most practical and sensible to appoint them in the role previously held, that is, as CDM / PC.

3.3 Replacement of Hydrock

- 3.3.1 Following an intensive evaluation of several possible options to replace Hydrock it has been decided to undertake a restricted procurement to find a suitable and competent contractor to undertake the outstanding works and provide an overarching warranty covering all works from the beginning of the project. It is proposed to start procurement for a new remediation contractor by way of competitive tender in November 2018 with a contractor appointed by the end of January 2019.

3.4 Extension of CDM PC Role

- 3.4.1 The CDM PC role was initially set to cover the period until the end of June 2018 when, it was hoped, a replacement for Hydrock would have been appointed. Failure to secure a new contractor within the timescale has required and further period of CDM PC until end January 2019 when a replacement through the above-mentioned procurement will be achieved.
- 3.4.2 Should remediation continue beyond January 2019 an extension of CDM PC role would be required until September 2019. An alternative approach for CDM PC is being considered whereby remediation works may be suspended until a development partner is appointed and that would not require an extension of the CDM PC role until September 2019. Cognition would be responsible for site security and this could be competitively tendered. This approach assumes that ground water remediation has been completed (estimated for completion January 2019).
- 3.4.3 It is therefore recommended to appoint Cognition to perform the CDM PC role for a further period from June 2018 to January 2019[, with an option to extend such appointment to September 2019.]

3.5 Scope of Work

- 3.5.1 Emergency works -**
Bio Remediation trials – preparing stockpile, creation of windrows to facilitate remediation, treatment with microorganism, testing treated soil for efficacy of bio remediation.
- 3.5.2 Bio remediation –** the optimum season for bioremediation when the microorganisms are active is May to October. Bioremediation can take a full six months to render soils suitable for use (i.e. safe). Following advice from Wood, if the bioremediation works is tendered at this stage, due to the timescales involved it would not start until improved weather returns in 2019 (i.e. above 10 degrees). Bioremediation commenced this summer, as it would represent a programme risk delaying the developer who is due to arrive in the latter half of 2019 and also impact the rail station opens in May 2019; the bioremediation process is odorous and, although controlled, it is advisable to be undertaken with limited human receptors. The Environment Agency have recommended that the bioremediation is undertaken this summer (2018) and do not want the stockpile remaining on site over winter.
- 3.5.3 CDM / PC role -** The Principal Contractor's main duty is to plan, manage, monitor and coordinate health and safety during this phase, when all construction work takes place.
- 3.5.4** A separate NEC 3 contract will be enacted with similar terms and conditions to that already in place with Cognition to avoid any delay.
- 3.5.5** This report recommends continuation of the CDM / PC role and consolidation of the aforementioned activity being undertaken by Cognition into one new contract.
- 3.6 Terms and Conditions**
- 3.6.1** The Terms and Conditions for these Cognition works, and services will be aligned to the existing shallow ground water contract.
- 3.6.2** The new contract will define the Works Information as a series of appendices to the NEC 3 contract. Entering into a new contract for the scope of works has been chosen as the appropriate. Initially a variation of the original contract was to be entered. However, as bioremediation was not part of the original tender a new contract was deemed more appropriate.
- 3.7 Cost**
- 3.7.1** The detailed cost can be found in Part 2 of this report:
- 3.7.2** Should the works achieving regulatory requirements not commence this summer Enfield could be liable to a fine by the EA and soil removal cost of circa £1.2m.

3.8 Cost Certainty

- 3.8.1 Cost estimates are presented Part 2 of this report. Cognition have agreed to a fixed price for the bio remediation. Other activity e.g. CDM PC will be based on a bill of quantities and assessed monthly by Wood with valuations of time and materials. The bill of quantities represents current market rates and provide value for money. Wood are using benchmarking and their industry knowledge to control cost for Enfield.

4. ALTERNATIVE OPTIONS CONSIDERED

4.1 Emergency works

- 4.1.1 With the departure of Hydrock at the beginning of March the Willoughby lane site was left unoccupied and potentially unsafe should a member of the public trespass onto the construction site. Several open deep-water excavations required draining and fencing with suitable warning signs. Other parts of the site need to be made safe as work in progress had been abandon by Hydrock.
- 4.1.2 To protect the public and others on site (Cognition and Volker Fitzpatrick staff) urgent works were required and Cognition being on site were instructed to carry out such work. In the circumstances there was not time to procure through a competitive tendering process.
- 4.1.3 Cognition were well placed to provide the works as it was closely associated with their existing activity, therefore they employed staff with the necessary knowledge and skill. Volker Fitzpatrick were engaged on the site delivering station public realm works and could have been requested to provide the emergency works. However, their activity to complete the new station building was time critical and would have possibly meant diverting resource [and a possible delay in the programme].

4.2 Bio Remediation trials

- 4.2.1 This work is required to ascertain the efficacy of various microbiological organisms to remediate hydrocarbon contaminated soil was started in February / March 2018 by Hydrock about the time they were entering administration. In order not to lose momentum and the benefit of those trials Cognition, being on site were asked to continue the trials. The trials were also required to inform the specification for the tendering of the bio remediation works. Delay in completing the trials would have delayed specification for the bio remediation work, this was time critical as it was intended to start and complete the works during the optimum period for this type of work, that is the warm summer months when ambient temperatures are above 10°C.

4.3 Bio Remediation

- 4.3.1 Bioremediation was outside the scope of the Hydrock and Cognition remediation contracts and therefore competitive tendering of the bio remediation work was required. The bio remediation trials identified suitable

solutions and in March 2018 Enfield's Procurement team recommended competitive tendering for this package of work. The value of works was estimated at circa £400,000.

- 4.3.2 Prior to starting the procurement the Environment Agency wrote to Enfield recommending the bio remediation be started immediately as a waiting would potentially lead to further contamination during the winter period and render Enfield liable for a breach of waste regulations. The alternative to bio remediation would have been to remove the stock pile – approximately 5,000 m³ to land fill at an estimated cost of £1.25 m – this being classed as hazardous waste. Necessity to start the remediation process was two-fold. First to take advantage of the warm weather for the bio remediation process to work – ambient temperatures above 10°C. Second by leaving the stock pile in place risked contaminating already remediated soil if left until the onset of autumn and winter with forecast heavy rain.

- 4.3.3 To mitigate the various risks Cognition were approached to undertake the work. It should be noted that preparation for remediation was carried out by Cognition as part of the emergency works due to the way the stock pile had been left by Hydrock.

4.4 Construction Design and Maintenance (CDM) Principal Contractor (PC) role

- 4.4.1 Hydrock were appointed Principal Contractor upon taking control of the Willoughby Lane site in 2017. With their departure in March 2018 a designated PC was required to support the client role for Health and Safety compliance. Cognition being on site were the logical successor and a competitive tendering exercise was not started as it was expected that a successor to Hydrock would be appointed within a reasonable time. Initially Cognition agreed to carry on the role for three to four months. Prior to Hydrock starting on site Cognition had performed the PC role and were therefore suitably qualified.
- 4.4.2 Under the Construction (Design and Maintenance) Regulations 2015 (CDM) the client (Enfield) is required to appoint a Principal Contractor (PC) to manage the construction phase on projects with more than one contractor. The Principal Contractor's main duty is to plan, manage, monitor and coordinate health and safety during this phase, when all construction work takes place. If a PC is not appointed and an accident occurs on site then it is the Client who will be prosecuted by the Health and Safety Executive. Appointing a PC mitigates this risk for Enfield. Enfield have considered performing the role in-house but lacks the required expertise.
- 4.4.3 Continuation of the CDM / PC role is necessary until a replacement for Hydrock will be appointed through a compliant procurement process and a development partner is appointed. Timing of the PC role is also dependant on a development partner being sourced for Phase 1 and if an appointment for that role is not completed early 2019 the CDM / PC role will need to be extended until end September 2019. Procurement by way of competitive

tendering will start in November for new remediation contractor and in October for a development partner to deliver Phase 1 (Meridian One)

- 4.4.4. Throughout this whole period March 2018 to January 2019 Cognition are or will be working on site undertaking the ground water remediation under a discrete NEC 3 contract. Appointing another contractor through a competitive tender would mean that Enfield would be expected to pay additional site preliminaries for the new contractor, overheads and profits and other associated costs. Such an approach would not provide value for money. Starting a procurement process now and to get a suitable contractor into contract would take some three to four months, that is end December 2018. The duplicated preliminary and overhead costs would amount to £6,000 per month or £180,000 over the 30-week period. With a similar level for any extension until September 2019.

5. REASONS FOR RECOMMENDATIONS

- 5.1 Only Cognition can undertake the work in timescales required. To discharge planning conditions related to the development and ensure that the future developer's programme is not impacted, remediation must be effectively completed to an approved standard and validated by suitably qualified persons. The resulting suitable for use and safe development of Willoughby lane will increase the value of the site by mitigating the environmental risks and removing physical constraints to development.

6. COMMENTS OF THE DIRECTOR OF FINANCE, RESOURCES AND CUSTOMER SERVICES, AND OTHER DEPARTMENTS

6.1 Financial Implications

See Part 2

6.2 Legal Implications

Dated 20th September 2018

Based on draft report circulated on 14th September 2018

- 6.2.1 Section 111 of the Local Government Act 1972 permits local authorities to do anything which is calculated to facilitate, or is conducive or incidental to, the discharge of their functions. The Council also has a general power of competence under section 1(1) of the Localism Act 2011 to do anything that individuals may do, provided it is not prohibited by legislation and subject to Public Law principles.
- 6.2.2 The Construction (Design and Management) Regulations 2015 (the "CDM Regulations") set out the Council's statutory obligations in respect of managing construction projects, including the allocation of sufficient time and other resources to ensure that construction work (including of the sort being carried out on the Willoughby Lane site) can be carried out without risks to the health and safety of any person affected by the project and that minimum

welfare facilities are provided on site. Regeneration officers have confirmed that there is more than one contractor currently working on the Willoughby Lane site and it is reasonably foreseeable that more than one contractor will be working on the project throughout the duration of the proposed extension to Cognition's CDM PC role. As previously noted should remediation work be suspended that the option of site security could be implemented thus removing the need for an extension of CDM PC role. The Council is therefore required to appoint: a Principal Designer for the Pre-Construction Phase and a Principal Contractor during the Construction Phase. The Principal Contractor is required to plan, manage and monitor the pre-construction phase and co-ordinate matters relating to health and safety. The Principal Contractor also has duties to consult and engage with workers to ensure their health, safety and welfare. If the Council fails to appoint such roles, the Council is required to fulfil the duties of Principal Designer and Principal Contractor set out in the CDM Regulations. The Council must take reasonable steps to satisfy itself that anyone fulfilling the role of Principal Designer and Principal Contractor has the skills, knowledge and experience and organisational experience and organisational capability to fulfil that role.

- 6.2.3 The Council has a fiduciary duty to look after the funds entrusted to it and to ensure that its Council tax and rate payer's money is spent appropriately. The Council must carefully consider any project it embarks to ensure that it is making decisions based on a proper assessment of risk and rewards/outcomes. The Council must keep a clear audit trail of its decision to award these services to demonstrate that best value has been, and will continue to be, obtained.
- 6.2.4 Any procurement must be conducted in accordance with the Council's Constitution, including the Contract Procedure Rules, and the Public Contracts regulations 2015.
- 6.2.5 As the anticipated contract value exceeds £250,000, this is a Key Decision and the Council must comply with the Key Decision procedure.
- 6.2.6 The contractor must be required to provide sufficient security in the form of a parent company guarantee, performance bond or similar. Where the contractor cannot provide sufficient security, but the Council has no acceptable alternative provider or has decided to accept the level of risk, the Executive Director of Finance, Resources and Customer Services must approve the award.
- 6.2.7 All legal agreements arising from the matters described in this report must be approved in advance of contract commencement by the Director of Law and Governance. The contracts must be executed under seal and originals retained by Legal Services for secure storage.
- 6.2.8 Further legal implications are provided in the Part 2 Report.

6.3 Procurement Implications

- 6.3.1 Procurements must be undertaken in accordance with the Council's Contract Procedure Rules (CPRs) and the Public Contracts Regulations 2015. Procurement confirm that best value must be obtained in procurements but also that compliance by the council with legislative and statutory regulations is necessary, in particular with discharging the council's obligations under the CDM Regulations 2015.
- 6.3.2 Due to the administration of Hydrock and the security and safety of the site and surrounding areas it has been necessary to maintain CDM services and other urgent works in connection with the remediation. This has subsequently led to the requirement by the client to let contracts to maintain regulatory Health and Safety requirements and comply with the statutory requirements of the Environment Agency.
- 6.3.3 Procurement notes the request to appoint Cognition for this contract and confirm that all necessary insurances and Parent Company Guarantee or other security will be in place under the contract.
- 6.3.4 Further procurement implications are provided in Part 2 of the report.

6.4 Property Implications

- 6.4.1 Strategic Property Services (SPS) supports the proposed strategy to remediate the Willoughby lane site to bring forward Phase 1 of the Meridian Water scheme (Willoughby Lane and Meridian Way)..

Whilst it is noted that the contractors are remediating the site on a fixed price contract, careful consideration will need to be given to identification of standards required and validation of these standards to be achieved which ideally should be output based and independently verified rather than the adoption of a prescriptive methodology for remediating the site.

This places the risk with the contractor who is best placed to manage this risk and encourages the most efficient route for remediation.

SPS assumes that all appropriate warranties will be put in place with contractors and consultants to protect the Council's interests following completion of the works and a suitable retention in place pending satisfactory receipt of these warranties.

7. KEY RISKS

- 7.1 The key risks for Enfield are: -

- 7.2 **Operational Risk** – the developer is set to take over the site in spring / summer 2020. If soil is not remediated by that time they occupy the site it could cause delay.

Mitigation – Bio remediation in 2018 reduces the risk of delayed occupation materialising.

- 7.3 **Statutory Risk** – Failure to remediate the untreated soil during 2018 could render Enfield liable to prosecution and fine by the Environment Agency. Failure to appoint a Principal Contractor could render Enfield liable to prosecution by Health and Safety Executive.

Mitigation - Appointing Cognition in a timely manner significantly reduces any risk that may fall upon the Council.

8. INTERNAL DEPARTMENT IMPLICATIONS/CONSULTATION

Internal Place services should be consulted in all cases as appropriate.

9. IMPACT ON COUNCIL PRIORITIES

9.1 Fairness for All

- 9.1.1 Meridian Water will deliver fairness for all by providing homes of different tenures, types and sizes to meet the diverse need of the community. In addition, it will create well managed open spaces making Meridian Water a key destination and a place where people want to live, work and play. The decision to terminate the master developer procurement process will enable these benefits to be delivered more quickly and with the potential for a better return for the tax payers of Enfield.

9.2 Growth and Sustainability

- 9.2.1 Meridian Water will deliver new homes, jobs and infrastructure: both major new physical and transport infrastructure and social infrastructure including medical facilities, schools, nurseries, community centres, parks and gardens. Clean and green energy will be provided by the Lee Valley Heat Network, which will ensure that the development is environmentally sustainable.

9.3 Strong Communities

- 9.3.1 The new neighbourhood at Meridian Water will be designed to foster social cohesion through a series of physical and social interventions, such as direct pedestrian, cycle and other connections into existing neighbouring community for example Angel Edmonton; and position new community facility to encourage a mixed use by both existing communities and future new residents. The new Meridian Water station and public realm will serve as a hub where existing and new communities will mingle and interact.

10. EQUALITIES IMPACT IMPLICATIONS

- 10.1 Equality and diversity considerations will continue to be integrated into the development and delivery work for Meridian Water to make sure they are embedded in the decision-making process and to avoid costly design changes.
- 10.2 Corporate advice has been sought regarding equalities and whilst there are no Equalities implications in agreeing the recommendations outlined in this report. It is recommended that as part of the review of the Meridian Water Project, the Meridian Water EQIA be reviewed and updated to embed Equalities and Diversity in the future procurement, design and delivery of the project. In addition to this it should be noted that any contracts awarded should include a duty on the successful applicant to assist us with meeting our obligations under the Equalities Act 2010.

11. PERFORMANCE MANAGEMENT IMPLICATIONS

- 11.1 Delivery of a comprehensive regeneration scheme at Meridian Water is a corporate priority within the Council's Business Plan for 2016-2018. Completion of the Masterplan and the delivery of phased infrastructure improvements including increased rail services, station improvements and new homes will help to meet the strategic priority: "a borough that attracts inward investment and supports sustainable regeneration and growth."

12. HEALTH AND SAFETY IMPLICATIONS

- 12.1 The Meridian Water Project bringing widespread improvements in transport, accessibility, and comprehensive remediation of contaminated brownfield sites will have positive health and safety benefits for the local community and the future residents, workers and leisure users at Meridian Water.

13. PUBLIC HEALTH IMPLICATIONS

- 13.1 A regeneration neighbourhood at Meridian Water will have far reaching public health benefits particularly from the promotion and expansion of public transport, namely a more frequent rail service, an expanded bus network and integrated walk and cycle routes. This together with extensive green space, water fountains and a positive urban environment will continue to well-being at Meridian Water. The development will include all necessary public health and community services from health clinics to nurseries.

Background Papers

None

MUNICIPAL YEAR 2018/2019 REPORT NO.

ACTION TO BE TAKEN UNDER DELEGATED AUTHORITY

OPERATIONAL DECISION OF: Executive Director Place

Agenda – Part: 1

KD Num: 4758

Subject:

**Approval to Accept a Surrender of the
existing Lease and the Grant of a new 99
Lease for the Brimsdown Sports Ground
Wards: Enfield Highway**

Cabinet Member consulted: Cllr Oykenner

Contact officer and telephone number:
Steve Jarman (Principal Asset Management Surveyor) 020 8379 3199
Email: Steve.Jarman@enfield.gov.uk

1. EXECUTIVE SUMMARY

- 1.1 The Brimsdown Sports Ground extends to approximately 19 acres but has ceased to be used as a sports facility in recent years.
- 1.2 The sports ground is held under an existing lease by Goldsdown Sports Ltd which has 19 years unexpired. A previous Director of the company allowed for a vast amount of soil to be brought onto the site without the Council's consent, under the guise of re-modelling and improving the pitches.
- 1.3 Subsequently it emerged that some of the imported material was contaminated and the then sole Director of the company had sold the controlling shares in the company to a new owner.
- 1.4 The new owner proposes to carry out a major redevelopment of the site, including the remediation of the site, to create an academy quality football and sports facility for which planning permission has now been granted.
- 1.5 In order to obtain investment funding for the redevelopment, the tenant requires a new 99 year lease.

2. RECOMMENDATIONS

- 2.1 That the Executive Director Place approves the surrender of the existing lease in conjunction with the granting of a new 99 year lease to the existing tenant company, Goldsdown and Brimsdown Sports Ltd at a market rent.

3. BACKGROUND

- 3.1 The sportsground is owned freehold by the Council. The total site area is some 19.53 acres split by a footpath into two sports areas; eastern and western fields, originally with a main pavilion, various outbuildings, parking and access road. The eastern field is approximately 13 acres and the western field is 6.5 acres.
- 3.2 In 2007, a company was formed between Enfield Town FC and Brimsdown Sports and Social Club as "Goldsdown Sports Ltd", to be the body that became the tenant under a new lease. This effectively meant that both the benefits and the liabilities of the lease rested with the company. The Directors of Goldsdown Sports were originally both from Brimsdown Sports and Social Club and Enfield Town FC and the Council had no say in the agreement between the parties, or in the identity of the Directors put forward by each side.
- 3.3 By about 2011/12, Enfield Town FC had decided to move to a new home, namely the QEII Stadium in Donkey Lane and ceased any involvement at Brimsdown. At this time, the Directors of Goldsdown Sports who were linked with Enfield Town FC, stood down but in other respects, the tenant company remained in place.
- 3.4 During the ensuing period, other Brimsdown linked Directors left, leaving an individual as the sole Director of Goldsdown Sports. Without reference to the Council as Landlord, or as the Planning Authority, he allowed multiple lorry loads of "soil" to be imported onto the site, thus raising the general level of the land, together with the forming of earth bunds around the periphery. The Council became aware of this activity in July 2013 and on 6 August 2013 a formal "Stop Notice" was served by the Council's Planning Enforcement team to prevent the unauthorised importation of any further material and the continuation of the breach of planning regulations. It was also made clear to the Director that because of the magnitude of the increase in the level of the land, planning permission would be required.
- 3.5 The Director had told officers that his aim was to make good and improve the raised grass pitches to a high-quality football academy standard. However, it became apparent that the imported material contained contaminants and the remediation of the site would need to be resolved as part of the planning process. The contractors brought in by the Director, ceased activities and a large part of the site which had included pitches previously, remained covered with the imported material and a great deal of work was still needed to resolve the contaminants issue and to properly restore the pitches. In the event, the director did not lodge a planning application.

- 3.6 The Council later learned that the shares in Goldsdown Sports had been sold by the Director to a new person, who became the controlling hand of the tenant company on 28 July 2014. However, this also meant that any liabilities under the lease would still sit with the tenant. The Council's legal advice at this time confirmed that as the share transaction did not constitute an assignment of the lease to a party other than Goldsdown Sports Ltd, there was not a requirement for the tenant to obtain landlord's consent. The tenant company name has more recently been changed to Goldsdown and Brimsdown Sports Ltd.
- 3.7 Following the acquisition of the company, the new Director planned a major redevelopment of the site to include a floodlit artificial pitch, enclosed multi-use games areas, a new clubhouse with function room and car parking. A planning application was duly submitted in respect of the proposed new scheme and this included a proposal for the required remediation of the site.
- 3.8 Planning permission has now been granted (TP 16/05432/FUL).

4. ALTERNATIVE OPTIONS CONSIDERED

- 4.1 Not to approve the surrender of the existing lease and the grant of a new 99 year lease would inevitably prevent the creation of a major new sports facility in the Borough, as the unexpired term of the existing lease would not be sufficient to underpin the tenant's external funding.
- 4.2 Not to approve the new lease would result in the loss of increased revenue.
- 4.3 Not to approve the new lease may cause the tenant to seek to terminate the existing lease, so that the site would revert to the Council.

5. REASONS FOR RECOMMENDATIONS

- 5.1 The granting of the new lease is essential in facilitating the multi-million pound development of a high quality sports facility in the Borough.
- 5.2 As part of the scheme, the remediation of the contamination to the site will be carried out by the tenant saving the Council very significant potential expenditure.
- 5.3 The development which will be available to the public, will enhance the sports provision and provide a new facility, particularly for local families to use.

6. COMMENTS FROM OTHER DEPARTMENTS

6.1 Financial Implications

6.1.1 See Part 2 Report

6.2 Legal Implications

6.2.1 In accordance with the Council's Property Procedure Rules, given the cumulative value of the lease, approval of the award of the Lease will be required from the Executive Director (Place).

6.2.2 The formal granting of the lease should be in a form approved by the Director of Law and Governance.

6.2.3 The recommendations contained within this report are within the Council's powers and duties.

6.2.4 Award of leases should be made in accordance with the Council's Property Procedure Rules.

6.2.5 The normal procedure, to grant the lease, under the Council's Property Procedure Rules would require a competitive bidding process, however, this transaction falls within an allowable exception to the rule. The grant of the new lease has been arranged with the current tenant, Goldsdown and Brimsdown Sports Ltd, who has an existing lease running until 31st March 2037; with protected rights of occupation.

6.3 Property Implications

6.3.1 See Part 2 Report

7. KEY RISKS

7.1 If the proposed development does not proceed, the Council could be faced with very significant cost in dealing with the remediation of the land if the new lease is not granted.

8. INTERNAL DEPARTMENT IMPLICATIONS/CONSULTATION

All internal Place services have been consulted as necessary.

9. IMPACT ON COUNCIL PRIORITIES – CREATING A LIFETIME OF OPPORTUNITIES IN ENFIELD

9.1 Good homes in well-connected neighbourhoods

Ensuring all residents have access to services they need is essential. The granting of this lease will help deliver a new multi-million pound high quality sports facility as a focus in the north east of the Borough which will be open to all.

9.2 Sustain strong and healthy communities

The granting of the lease will allow the delivery of sustainable services for our residents now and in the future. The provision of a new high-quality sports and community facility will contribute to the health of the community.

9.3 Build our local economy to create a thriving place

Our residents and communities are at the centre of what we do. The new lease and proposed facilities will have a positive impact on the health and well-being of our local communities and support the council's aim of creating a thriving community. There will be employment generated during the construction phase, when there will be opportunities for apprentices and staffing will be required when the facility is completed.

10. EQUALITY IMPACT IMPLICATIONS

- 10.1 Corporate advice has been sought in regard to equalities and an agreement has been reached that an equalities impact assessment is neither relevant nor proportionate for the approval of this report to grant a new 99 Year Lease.
- 10.2 However, it should be noted that any contracts awarded should include a duty on the successful applicant to assist us with meeting our obligations under the Equalities Act 2010.

11. PERFORMANCE AND DATA IMPLICATIONS

The payment of rent and any monies payable under the terms of the lease will be monitored, as will the tenant's company's specific liabilities under the lease and the continued community use of the facility.

12. PUBLIC HEALTH IMPLICATIONS

Redeveloping land that has fallen into disuse together with the remediation of contaminated land will improve the look and feel of the borough. For the sport usage of the land to fulfil its full potential to improve health, especially through physical activity attention will need to be paid to attracting people to sport who would not otherwise be active.

Background Papers

None