

MUNICIPAL YEAR 2019/2020 REPORT NO.

ACTION TO BE TAKEN UNDER DELEGATED AUTHORITY

OPERATIONAL DECISION OF:

Programme Director – Meridian Water in consultation with Director of Law and Governance, Executive Director – Place and Leader

Agenda – Part: 1

KD Num: 4782

Subject: MW Strategic Infrastructure – Contractor Procurement HIF non-rail

Wards: Upper Edmonton

Contact officer and telephone number:

Pauline Albers (020 8379 5511)

Email: pauline.albers@enfield.gov.uk

1. EXECUTIVE SUMMARY

- 1.1 In early December 2018 the GLA submitted, on behalf of Enfield Council, a funding application to Central Government for a total of £156m to build strategic infrastructure in Meridian Water. Confirmation on whether Enfield Council / GLA have successfully secured the HIF funding is awaited. Given the current position in central government, there is no certainty when the announcement will be made.
- 1.2 Should the funding be successfully secured, all capital works must be completed before the delivery deadline of March 2023, but Central Government have confirmed the possibility to extend the delivery deadline to March 2024. To ensure timely delivery of works ahead of the funding deadline, the Council adopted an accelerated programme of design and procurement and is seeking approval to procure a main contractor ahead of finalising the HIF funding agreement.
- 1.3 At its meeting on 25th July 2018, Cabinet delegated to the Programme Director of Meridian Water (in consultation with the Director of Law and Governance) the decision to authorise the contractor procurement procedure for HIF delivery works to comprise enabling works, utility provisions, flood alleviation works to deliver the Central Spine road, as well as remediation and earthworks at the central area of the development for early delivery of homes.
- 1.4 Following a detailed Options Appraisal, a Competitive Dialogue Process leading to a multiple supplier framework agreement has been identified as the preferred procurement route for the strategic road and flood alleviation works. This process best addresses the key issues that are related to the nature and complexity of the project which is the subject of this report.

2. RECOMMENDATIONS

It is recommended that the Programme Director – Meridian Water in consultation with the Director of Law and Governance:

- 2.1 Approves the commencement and undertaking of the procurement of a main contractor for the scope of works identified in the main body of this report, subject to sign off, of the procurement documents by the Director of Law and Governance and the Director of Finance.
- 2.2 Note that a separate report seeking authority to appoint the preferred tenderers to the Framework will be brought to Cabinet.

3. BACKGROUND

3.1 Introduction

- 3.1.1 In July 2018 Cabinet authorised a funding bid of £120m for the Housing Infrastructure Fund (HIF) and delegated the authority to approve the contractor procurement for the HIF delivery works to the Programme Director of Meridian Water in consultation with the Director of Law and Governance (KD4711). The Housing Infrastructure Fund is a government capital grant programme from the Ministry for Housing, Communities and Local Government (MHCLG) aimed to unlock housing sites and help deliver new homes.
- 3.1.2 In early December 2018 the final funding application was submitted to Central Government by the GLA on behalf of Enfield Council, after authority to submit was obtained from the Mayor of London and the Council's Executive Director of Place and the Director of Finance.
- 3.1.3 The final bid submitted asked for a total of £156m of HIF funding, which is slightly higher than the funding bid of £120m approved by Cabinet in July 2018. The funding ask was increased under delegated authority from £120m to a £156m following a steer from Central Government to increase the funding ask. The scope of works proposed for HIF funding includes rail enhancement works amounting to a value of circa £40m (which are outside the scope of this proposed procurement project) and strategic road and flood alleviation works for a value amounting to circa £116m. These works are required as a first phase of strategic infrastructure to unlock housing delivery in Meridian Water.
- 3.1.4 Confirmation from Central Government on whether Enfield Council / GLA have successfully secured the HIF funding is expected in later in 2019. However, given the current position in central government, there is no certainty when the announcement will be made.

- 3.1.5 Should HIF funding be successfully secured a report will be brought to an appropriate future Cabinet meeting to accept the HIF funds from Central Government and authorise entering into the funding agreement. If the Council secures no or a materially lower amount of HIF Funding than requested, the scope and phasing of the works will need to be reviewed and the procurement potentially paused. Any material changes to the scope as result of this exercise will be presented back to Cabinet for approval. Contractors have been informed about the fact that the procurement is dependent on securing external funding and no issues have been raised.
- 3.1.6 It should be noted that if the Council is unsuccessful in its bid, no alternative funding has been identified. Central Government contributions are essential to finance the upfront cost of putting in the infrastructure in Meridian Water and make sure that the project is financially viable.
- 3.1.7 Should the funding be successfully secured, all capital works must be completed before the delivery deadline of March 2023, but Central Government have confirmed the possibility to extend the delivery deadline to March 2024. Following a successful funding announcement, the Council will make a case to Central Government for the extension of the funding deadline to March 2024 and ensure this is negotiated and covered in the HIF funding agreement.
- 3.1.8 To ensure timely delivery ahead of the funding deadline the framework contract needs to be awarded by Spring 2020. This requires the Council to start the procurement process for the road and flood alleviation works ahead of a successful HIF funding announcement. A indicative procurement programme including critical path is attached to this report.
- 3.1.9 It should be noted that the Council will not start the second stage of the procurement, which involves the contractor to work up detailed proposals and pricing for the works, ahead of the successful funding announcement. It is at the end of the second stage that the Council will enter into the framework contract with the successful contractors and a separate report will be brought to Cabinet to approve the appointment of the successful contractors onto the framework. See the attached indicative procurement programme.
- 3.1.10 Furthermore, the recommended procurement approach doesn't commit the Council to instructing any works. In the event of no funding or part of the funding being secured the Council is not obliged to instruct any works at all or the Council could instruct only some works, subject to available LBE budget.
- 3.1.11 An earlier version of this report has been brought to a pre-scrutiny session on the 18th June 2019 for review and discussion. An overview

of the questions raised at the pre-scrutiny session is attached to part 2 of this report.

3.2 Work to date

- 3.2.1 A significant amount of work has been carried out to develop the HIF funding bid, which required a fully worked up and green-book compliant business case as well as site investigations and concept designs for the proposed works. The concept design, including the underlying technical investigations have been submitted to Central Government to support the bid and proof the deliverability of the project.
- 3.2.2 Further to the work required to develop the funding bid, work is being undertaken to develop the planning application for the HIF works, including developed design, transport modelling, flood modelling and survey work. These works are on the critical path to meet the HIF funding deadline and the proactive strategy to progress the planning application has been positively received by the GLA and Central Government as it strengthens the deliverability of the project and consequently the council's funding bid.
- 3.2.3 To carry out the beforementioned work a civil-engineering-led infrastructure design and planning team had been procured. The procurement was undertaken using a framework from the GLA/TfL called Architecture Design and Urbanism Panel (ADUP).
- 3.2.4 The proactive strategy to accelerate work that is on the critical path to deliver the HIF works by the funding deadline has been presented to Cabinet (KD4711) and the instruction of works and associated expenditure has been approved by the authorised officers (KD 4620 / KD4757). All costs are funded from within the existing Capital programme initially and will ultimately be reimbursed from the HIF funding. An overview of the cost related to this works is attached to part 2 of this report for information.
- 3.2.5 None of the above works should be abortive, as all of the work is required to develop the key infrastructure to unlock housing development in Meridian Water. The planning, design or enabling works carried out to develop the HIF bid or the planning application will reduce both the cost and the risk to be taken by future developers and therefore increase the attractiveness of the scheme to the market.
- 3.2.6 To manage the development of the planning application for the HIF works an external project management consultancy has been appointed. It is their responsibility to coordinate and manage all the different workstreams that feed into the planning application for the HIF works and ensure quality of the planning documents and timely submission of the application. The costs for project management are funded from within the existing Capital programme initially and will

ultimately be reimbursed from the HIF funding. An overview of the estimated project management cost is attached to part 2 of this report for information.

- 3.2.7 Furthermore, the scope of HIF works does include work located on privately owned land, which the Council will need to acquire to deliver the works. All land in Meridian Water is required for the delivery of the Meridian Water project and would have to be acquired by the Council at some stage to deliver the Meridian Water project. The land acquisition strategy currently prioritises land required for the HIF works to ensure land availability.
- 3.2.8 The Council has appointed a team of advisors to develop the land acquisition strategy and carry out negotiations with private landowners. Please find landownership map attached to part 2 of this report. All the land in Meridian Water is required for the delivery of the project, but the current land acquisition strategy prioritises land required for the HIF works.
- 3.2.9 Whilst the Council aims to acquire third party land by private treaty, it is acknowledged that the Council may be required to use its compulsory purchase powers to acquire the necessary parcels of land to deliver the HIF works. Consequently, the making of a Compulsory Purchase Order (CPO) is progressed in parallel to private treaty negotiations to ensure timely ownership of the land to deliver the HIF works.
- 3.2.10 Cabinet (KD4348) passed a resolution stating that the Council agrees, in principle, to use its compulsory purchase powers for acquisition of land necessary for the delivery of the Meridian Water regeneration scheme. A further report (KD 4832) will be brought to Cabinet to authorise the making of a compulsory purchase order required to deliver the HIF Works.
- 3.2.11 The work to prepare the making of a CPO as well as the negotiation with landowners is being progressed ahead of the HIF funding announcement. The estimated consultancy fees associated with the acquisition of land required to deliver the HIF works will be recovered from land receipts of the developable plots of land in Meridian Water once developers come forward to build out the plots. Delivery of the HIF works will positively influence the development value of the developable plots in Meridian Water, as the HIF works do unlock the land for development. An overview of the estimated associated with land acquisition cost is attached to part 2 of this report for information.

3.3 Procurement Team and Project Governance

- 3.3.1 The next stage of the HIF works involves the procurement of an infrastructure contractor. A team of external advisors has been

assembled to ensure the knowledge and expertise is available during this stage to prepare and carry out the procurement.

- 3.3.2 A project management consultancy (Stace LLP) has been appointed to manage the contractor procurement, which includes programme management, quantity surveying and Health and Safety. The project management consultancy will oversee the production of the procurement documents, ensure the quality of the procurement document, lead on the competitive dialogue and evaluation process and review contractors' costs and recommendations. They will also oversee the works of the rest of the team and ensure the procurement is carried out in accordance with programme.
- 3.3.3 A civil engineering-led multi-disciplinary team (Ove Arup) has been appointed to prepare all the technical procurement documents, including the specification and technical drawings. They will also review and respond to any technical queries regarding the contractor procurement.
- 3.3.4 The procurement is carried out in close collaboration with the Council's internal Legal and Procurement teams and with the legal support of Trowers & Hamlins LLP. This to ensure the procurement process is carried out in compliance with the Public Contracts Regulations (2015) and the Council's Contract Procedure Rules.
- 3.3.5 Furthermore, financial advisors (Ernst&Young LLP) have been appointed to provide the required financial input and review of the procurement documents, including the drafting of financial assessment criteria, financial evaluation of tenders and any involvement required during the negotiations with a successful contractor.
- 3.3.6 The team of external advisors is closely aligned with the Council's in-house teams; the Meridian Water team, as well as the Council's legal, procurement and finance teams. A responsibility matrix is attached to this report setting out how roles and responsibilities are divided within the procurement team.
- 3.3.7 The Council has a comprehensive project organisation and robust governance structure in place to provide oversight and direction for the next stage of the HIF project, including the contractor procurement. The description of the project governance and project structure as submitted in the HIF Business Case is attached to this report.
- 3.3.8 The Meridian Water Team will carry out a review of the project management arrangement in place with the aim of strengthening the team and ensure the right capacity and capability is available to manage the delivery of the works, including the pre-construction and construction phases of the project.

3.4 Tendered Scope of Works

3.4.1 The road and flood alleviation works put forward for HIF funding comprise significant infrastructure works across the Meridian Water site and form the first phase of strategic infrastructure works required to unlock housing in Meridian water:

- 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.

3.4.2 Please see attachment 1 for a diagram and overview of the infrastructure and associated works proposed for the Housing Infrastructure Fund.

3.4.3 The scope of works put forward for HIF funding has been worked up to the level of a Developed Design (RIBA Stage 3) and has been costed by an independent cost consultant. A cost plan is attached to part 2 of this report. The Developed Design will be included in the tender documentation.

3.4.4 At this stage of the project, some extents of the works are uncertain, and an appropriate contingency allowance has been included in the cost plan to cover the associated risk. The uncertainties are related to essential pieces of design information that are forthcoming:

- Ground Investigation Survey;
- Flood Alleviation Strategy;
- Transport Modelling;
- Full planning consent.

3.4.5 To confirm the exact scope of flood alleviation works and the extent of site remediation and earthworks required a full ground investigation (GI) survey must be completed and a Flood Alleviation Strategy must be agreed with the Environment Agency. The GI survey is expected to be completed in December 2019 and the Flood Alleviation Strategy in autumn 2019.

3.4.6 Similarly, some uncertainties remain in the design development of the scheme until detailed transport modelling has been completed and planning consent obtained. Transport modelling is anticipated to be

completed in September 2019 and planning consent is expected in December 2019.

- 3.4.7 To ensure timely delivery ahead of the funding deadline the procurement process needs to commence prior to completion of the full set of design information. The preferred procurement route set out in paragraph 3.5 addresses the timing issue of some of the design information and allows the forthcoming design information to be considered during the second stage tender and ahead of contract finalisation spring 2020.
- 3.4.8 In addition to the strategic road and flood alleviation works put forward for HIF funding, it has been identified that further phases of strategic infrastructure works could be required to fully develop Meridian Water.
- 3.4.9 At this stage of the Meridian Water project the further phases of strategic infrastructure works haven't been fully scoped out. However, it is expected that further works could be required within the delivery timescales of the HIF works. Consequently, the procurement of an infrastructure contractor should provide the flexibility to cover any additional strategic infrastructure works if and when required.

3.5 Procurement Process and Contract Approach

- 3.5.1 The estimated value of strategic road and flood alleviation works exceeds the current EU threshold for works. Several OJEU compliant procurement routes have been considered and, following consultation with Stace, Trowers & Hamlins LLP and the Council's internal Legal and Procurement teams, a Competitive Dialogue Procedure leading to a multiple supplier framework agreement has been identified as the preferred procurement route (see section 4 for detail on the alternative options considered). A procurement options report is attached to part 2 of this report.
- 3.5.2 Competitive Dialogue is permitted under the Public Contract Regulations 2015 and allows contracting authorities to engage with the market as part of the formal tender process. It is particularly useful for complex projects where the restricted or open procedures are unlikely to be suitable.
- 3.5.3 The framework approach allows the Council the flexibility to instruct specific works and services as and when they are required and doesn't commit the Council to instructing the individual works packages until a call-off contract has been signed. Trowers and Hamlins LLP have advised that the Framework approach is suitable for the scope of works, given that the funding, the exact design and the land acquisition will not have been confirmed at the point of commencing the procurement.

- 3.5.4 Furthermore, the competitive dialogue procedure allows the Council the opportunity to engage and negotiate with bidders on key details prior to entering into the framework agreement. The approach therefore offers the opportunity to address the outcome of the Transport Assessment and the Flood Alleviation Strategy during the dialogue stage. However, it has been agreed that this will not be a protracted dialogue, but a 'lean' process (refer to paragraph 5.2)
- 3.5.5 Moreover, the market engagement with potential bidders has flagged potential reluctance of the market to accept what bidders would perceive as 'onerous contract terms'. In order to ensure that any tender approach does not inadvertently discourage bidders by including terms without the ability to enter into dialogue or discuss them first with Enfield, the preferred procurement process should ensure that onerous contract terms could be raised and dealt with in a procurement compliant and commercial manner and do not represent a barrier to bidders.
- 3.5.6 In compliance with the Public Contract Regulations (2015) a Prior Information Notice has been published on the London Tenders Portal and a procurement information event was organised on 26th April 2019 to gauge market interest. Further market engagement has taken place with several leading suppliers who have expressed an interest in the opportunity to bid for the works, including participation in a competitive dialogue process.
- 3.5.7 The tender documents will set out the Council's known design and construction requirements and request bidders to provide proposals on the outline design, supply-chain costings, and a breakdown of profits, overheads and fees etc. The Council will enter into framework agreement with successful bidder and the pre-construction services and work packages will be called off from the framework under a call-off contract that is based on the NEC4 form of contract.
- 3.5.8 In compliance with the Contract Procedure Rules, a Business Case was presented to the Procurement and Commissioning Review Board on 25th October 2018. The Board approved the procurement and agreed the proposed lean Competitive Dialogue Process.
- 3.5.9 The procurement process will be further developed in consultation with Trowers & Hamblins LLP, Stace project management and the Council's legal and procurement team to ensure that the process is compliant and run efficiently and in accordance with the challenging delivery programme. The technical tender documents, including the design documents and specification will be provided by the Council's multi-disciplinary team.
- 3.5.10 The following main procurement documents are being prepared for this procurement:
- Prior Information Notice (PIN);

- Selection Questionnaire (SQ);
- Contract Notice;
- Memorandum of Information (Mol);
- Invitation to Participate in Dialogue and Submit Final Tenders (ITPD);
- Contract Documents; and
- Financial and Technical Documents

The PIN and Mol are attached to this part 1 of this report. The draft SQ and draft Contract Notice are attached to part 2 of this report.

3.6 Cost and Funding Contractor Procurement

- 3.6.1 An independent cost consultant has produced a cost plan of the HIF works, which has been reviewed by the cost consultants from Stace. The cost plan is based on the developed design (RIBA stage 2/3) drawings and information from the design team. A summary of the cost plan and the cost reconciliation by Stace is attached to part 2 of this report.
- 3.6.2 During the procurement stage of the project the detailed technical designs will be drawn up in collaboration with the recommended contractor and a final price will be agreed. The project team will continuously review the cost plan during the next detailed design stages and until a final price has been agreed with the successful contractor.
- 3.6.3 In addition to the strategic road and flood alleviation works put forward for HIF funding, it has been identified that further phases of strategic infrastructure works could be required to fully develop Meridian Water.
- 3.6.4 At this stage of the Meridian Water project the further phases of strategic infrastructure works haven't been fully scoped out and costed. However, the framework agreement procured should allow the flexibility to cover any further strategic infrastructure works that could be required within the delivery timescales of the HIF works.
- 3.6.5 It is therefore recommended to procure a framework with a slightly greater value than the estimated value of the HIF works. This will allow the Council to instruct any strategic infrastructure works in addition to the HIF works through the framework agreement without having to undertake a separate procurement exercise. The proposed value of the framework agreement is set out in part 2 of this report.
- 3.6.6 The expenditure to deliver the HIF works is to be funded from the Housing Infrastructure Fund. Confirmation from Central Government on whether Enfield Council / GLA have been successful in securing the HIF funding is expected in later in 2019.

- 3.6.7 It should be noted that the Council will only start the first phase of the procurement, which involves the shortlisting of contractors based on the selection questionnaire, ahead of the HIF funding announcement. The second stage of the procurement, which involves the contractor to work up detailed proposals and pricing for the works will start following the funding announcement. See the indicative procurement programme attached.
- 3.6.8 The procurement programme is developed to ensure the flexibility to respond and review the scope of works subject to HIF announcement before entering detailed negotiations with the shortlisted contractors. It is at the end of the second stage that the Council will enter into framework contract with the successful contractors. A separate report will be brought to Cabinet to approve the appointment of the successful contractors onto the framework agreement.
- 3.6.9 If the Council is unsuccessful in its bid or secures a materially lower amount of HIF funding than requested, the phasing / scope of the works will need to be reviewed and the procurement potentially paused. Any material changes to the scope as result of this exercise will be presented back to Cabinet for approval. For any works that cannot be funded through the HIF funding a further budget approval will be sought from Council.
- 3.6.10 A further report will need to be presented to Cabinet to accept the HIF funds from the Ministry for Housing Communities and Local Government should funding be successfully secured. The report will clearly set out the terms of the funding agreement and approve any forward funding commitment by the Council if required.
- 3.6.11 If the terms of the funding agreement require the Council to forward fund the works, budget will need to be made available from the Meridian Water Capital Programme. Any requirements for the Council to forward fund the works will be addressed in the aforementioned Cabinet report and approval sought to make funds available.

3.7 Cost of Undertaking the Procurement

- 3.7.1 As set out in paragraph 3.3 of this report the preparation and undertaking of this procurement requires external expertise. To ensure the right knowledge and experience is available to undertake and advise on this procurement the following external advisors have been appointed:
- Trowers&Hamblins;
 - Ernst & Young;
 - Stace Project Management;
 - Ove Arup.

3.7.2 The costs of undertaking this procurement is set out in part 2 of this report.

4. ALTERNATIVE OPTIONS CONSIDERED

4.1 Existing Frameworks

4.1.1 The team did identify the SCAPE and the London Development Panel Framework as suitable frameworks to use for the procurement. However, both are deemed sub-optimal solutions to procure the main contract for the strategic road and flood alleviation works.

4.1.2 The SCAPE framework is a single contractor construction framework. A key disadvantage of utilising the Scape framework is the lack of early competition in the selection process, which could result in cost escalation. Furthermore, a single supplier framework requires the Council to re-procure the works in the situation of default or poor performance. The preferred procurement route setting up the Council's own framework via a dialogue process, will give the Council greater control over the pricing mechanism and help to achieve value for money.

4.1.3 A further disadvantage of the SCAPE Framework is the uncertainty on the delivery team that would be offered, giving the Council no guarantee on quality of the team. The process set by the SCAPE framework to work up preliminary proposals and funding agreement could take a minimum of 3 months to complete. Consequently, this reduces the perceived time advantage of contractor selection from the Scape Framework.

4.1.4 The London Development Panel (LDP) Framework offers development and construction services and 29 well-established providers are on the framework. The key disadvantage regarding the use of this framework arises from the fact that the providers on the framework are developers, house builders, contractors and Registered Providers. This would imply that the infrastructure contractor will be appointed through a developer partner, who will apply on-costs and further drive up the price, restrict the choice of contractors and restrict LBE's direct contact with the infrastructure contractor.

4.2 Restricted Procedure

4.2.1 A restricted procedure is compliant with the Public Contracts Regulations 2015 and is considered suitable to procure the strategic road and flood alleviation works. Whilst it is a relatively swift process (usually taking between 6-8 months to complete), a restricted procedure would not allow any engagement, dialogue or negotiation with bidders.

4.2.2 Given the status of the essential design information, the potential reluctance of the market to accept contract terms without negotiation and the desirability to continue the design development in conjunction with the main contractor, the tender documents will need further refinement or negotiation with bidders. Therefore, this tender process is deemed unfit to procure the scope of works in the current circumstances.

4.3 Single Stage Tender

4.3.1 A single stage tender would require LBE to work up a full Technical Design (RIBA Stage 4) and issue a traditional tender package for a lump sum fixed price.

4.3.2 This procurement process would provide a greater degree of cost certainty than a two-stage process, however it is deemed unsuitable given the stage of design development and the challenge to finalise the works prior to the funding deadline. The extended design period could significantly delay the design and construction programme.

4.3.3 Additionally, this approach would make the transfer of design risk to the contractor much more difficult and does not offer the desired flexibility for the market to adapt or develop suitable solutions or the possibility to dialogue on potentially onerous contract terms, which could deter bidders.

4.4 Disaggregation of the Infrastructure Works

4.4.1 There is a possibility of disaggregating the infrastructure works into a series of separate contracts, for example:

- Demolition, Site Clearance and Earthworks Contract
- Site Remediation Contract
- Roads and Bridges Contract

4.4.2 Disaggregation has the advantage of allowing 'specialist contractors' to deliver work packages individually at a competitive price but there would also be several disadvantages. These are:

- LBE would be responsible for any overruns on each individual contract in respect of successor contracts (albeit that this could be mitigated by utilisation of delay damages).
- There would be multiple mobilisation and de-mobilisation periods for separate contractors resulting in a longer construction period.
- The cost of multiple mobilisation and de-mobilisation periods could negate any price advantage secured via the use of multiple contracts.
- Successor contracts could be delayed by defects resulting from earlier contracts.
- There would be multiple design and construction responsibilities/liabilities spread across several separate contractors.

- The liability for defects could be ‘blurred’ by overlapping contracts and LBE could be dealing with several separate contractors for any defects identified.

4.4.3 By comparison the use of a single contractor to deliver the infrastructure works has the following advantages:

- There will be a seamless transfer (and works could overlap) between the separate work packages.
- There is a single point of design and construction responsibility for all of the works.
- Any programme overruns on individual work packages remains the responsibility of the single contractor.
- There will be one point of Health & Safety responsibility for the whole site.

On balance, disaggregating the works would present a higher project delivery risk to LBE than delivery through a single contract.

4.5 Single Contract for all of the Works

4.5.1 A two stage single contract approach has been considered, but deemed unsuitable for the project, given the uncertainties of land ownership and confirmation of the extent of HIF funding. The scope of works includes work located on privately owned land. If land is not made available on time through acquisition, CPO or other contractual arrangements, the full scope of works will need to be reviewed, which could result in significant variations to the scope of works. Significant changes to the tendered scope of works does pose a risk to the Council of legal challenge and/ or significant compensation payments for works not carried out.

4.6 Single supplier framework

4.6.1 A further approach considered for this procurement is a single supplier framework. A single supplier framework does offer the Council the flexibility to instruct specific works and services as and when they are required and doesn’t commit the Council to instructing the individual works packages until a call-off contract has been signed.

4.6.2 However, a single supplier framework does introduce a loss of competition once the contractor is appointed to the framework agreement and therefore risk of cost escalation. The contractor can become complacent which could affect performance / service delivery and result in potentially higher priced call-off work packages. Furthermore, a single supplier framework requires the Council to re-procure in case of default, which risk can be mitigated by the use of a multi-party framework.

5. REASONS FOR RECOMMENDATIONS

- 5.1 The multiple supplier framework approach is suitable for the scope of works, given that the funding, the exact design and the land acquisition will not have been confirmed at the point of procurement. The framework approach allows the Council the flexibility to instruct specific works and services as and when they are required and doesn't commit the Council to instructing the individual works packages until a call-off contract has been signed.
- 5.2 The Competitive Dialogue process leading to a multiple supplier framework agreement addresses the four key issues for the procurement process:
- Status of essential design development information;
 - Status of the funding decision;
 - Ability to negotiate contract terms; and
 - Status of the land acquisition.
- 5.3 The Competitive Dialogue process allows forthcoming design information to be considered and can be structured to allow Enfield to refine the specification within the limits of the OJEU rules. The process also offers the possibility to flag onerous contract terms and negotiate with bidders in a procurement compliant and commercial manner.

6. COMMENTS FROM OTHER DEPARTMENTS

6.1 Financial Implications

See part 2 of this report.

6.2 Legal Implications

Dated 19th July 2019 (based on draft report circulated on 17th July 2019)MD

- 6.2.1 The Council has sought advice from external legal advisors Trowers & Hamlins LLP in relation to the procurement of the strategic infrastructure works. Officers should continue to seek specialist legal advice when appropriate throughout the procurement process.
- 6.2.2 Pursuant to section 8 of the Housing Act 1985, the Council is required to consider the housing conditions and needs in its area with respect to the provision of further housing accommodation. The Council has the power under section 13 of that Act to lay out and construct public streets or roads and open spaces on land acquired by it for housing purposes. Furthermore, section 1 of the Localism Act 2011 provides the Council with the power to do anything an individual may do, subject to a number of limitations. This is referred to as the "general power of

competence". A local authority may exercise the general power of competence for its own purpose, for a commercial purpose and/or for the benefit of others. It is therefore considered that the Council has sufficient powers to procure a contractor to undertake the works described in this Report.

- 6.2.3 Any procurement must be conducted in accordance with the Council's Constitution, including the Contract Procedure Rules, and the Public Contracts Regulations 2015. At its meeting on 25 October 2018 the Procurement and Commissioning Review Board approved the procurement. Given the specialist nature of the works, any procurement should be carried out in conjunction with the Council's Highways and Corporate Maintenance and Construction departments.
- 6.2.4 It is intended that the strategic infrastructure works will be funded from the Housing Infrastructure Fund (HIF). A decision in relation to the Council's bid for funding is awaited from central government and there is no certainty about when any such announcement might be made. Officers must continue to review the conduct and scope of the procurement which is the subject matter of this report in light of any funding announcement or delays in connection with it. If successful in its bid, any funding agreement must be reviewed to ensure that the terms and conditions of funding are acceptable to the Council and are consistent with any contracts (including the infrastructure works) it has procured (or is in the process of procuring) in connection therewith.
- 6.2.5 It is proposed that the Council procure a framework of contractors to deliver the infrastructure works. Frameworks are permitted by and governed by Regulation 33(2) of the Public Contracts Regulations 2015. A framework is considered suitable for this procurement because of the likely variable scope of the works, given that funding and design will not have been confirmed at the point of procurement. In order to avoid any loss of profit claims from framework contractors, the framework agreement must be drafted so as to ensure that there is no obligation on the Council to offer any particular works packages. The contract documents, including the framework agreement, must also clearly and unambiguously set out the process by which works packages will be awarded, the circumstances in which contracts with the first ranked contractor may be terminated, and the procedures for calling-off works packages.
- 6.2.6 It is proposed that the works are procured by way of a "lean" competitive dialogue procedure. A competitive dialogue procedure may only be used if (a) the needs of the Council cannot be met without adaptation of a readily available solution; (b) they include design or innovative solutions; (c) the contract cannot be awarded without prior negotiation because of the specific circumstances related to the nature, complexity or legal and financial make-up because of risks attaching to them; (d) the technical specifications cannot be established with sufficient precision. This report sets out the rationale for use of the

competitive dialogue procedure. A note justifying its use must be retained for use in the report required pursuant to Regulation 84 of the Regulations. In conducting a competitive dialogue procedure, the Council must comply with the requirements of Regulation 30 of the Regulations (*Competitive Dialogue: General and selection of participation*).

- 6.2.7 Given the value of the proposed works, to comply with the Council's Contract Procedure Rules, the contract documents must require the chosen bidder to provide sufficient security e.g. by way of guarantee from a parent company or ultimate holding company where finances are acceptable, or by way of performance bond, retained funds or cash deposit. The contract documents must also include adequate insurance, liability and indemnity provisions. Officers are advised to seek specialist advice in this regard, e.g. from the Council's Legal, Insurance and Finance departments.
- 6.2.8 Given the value of the proposed works and the costs to be incurred by the Council in respect of conducting the procurement, the Council's Key Decision procedure must be followed for this authority to procure and for any subsequent contract award.
- 6.2.9 The Council must ensure value for money in accordance with the overriding Best Value Principles under the Local Government Act 1999.
- 6.2.10 Officers must ensure that the phasing of the infrastructure works forming the subject matter of this report is consistent with the Council's contractual obligations in respect of other development activity at Meridian Water as well as the Council's obligations as landlord.
- 6.2.11 In the absence of private treaty, and subject to Cabinet's approval, it is proposed to use the Council's compulsory purchase powers to acquire sites necessary for the implementation of the strategic infrastructure works. Under s226(1)(a) of the Town and Country Planning Act 1990 (as amended) (the Act) a local authority has a general power to make a compulsory acquisition of any land in their area to facilitate the carrying out of development, redevelopment or improvement in relation to the land. In order to exercise the s226 powers, the local authority must demonstrate that the proposed development/improvement is likely to contribute towards the promotion or improvement of the economic, social or environmental wellbeing of their area. Further legal implications relating to the CPO will be contained in the relevant Cabinet report dealing with such matters. Any works phasing plan will need to consider the Council's land ownership and the timetable for any acquisitions.

6.3 Property Implications

The recommendations in this report do not have any property implications.

6.4 Procurement Implications

- 6.4.1 All procurement must be carried out in accordance with the Council's Contract Procedure Rules, and the Public Contracts Regulations 2015.
- 6.4.2 A Prior Information Notice (PIN) was issued by Enfield Council on 5 April 2019 whereby interested parties were invited to attend a Market Engagement event on 26 April. This PIN is attached to Part 1 of this report.
- 6.4.3 The Procurement & Commissioning Hub is taking an active role in this procurement to ensure compliance with the Council's Contract Procedure Rules, and the Public Contracts Regulations 2015.
- 6.4.4 The award and future management of the contract must be managed through the London Tenders Portal.
- 6.4.5 Stace is acting as the Client Lead on the project, carrying out the Project Management and Programme Management role including preparation of tender documents. In relation to the tender documents the role of procurement is to ensure compliance with the 2015 Public Contract Regulations and providing challenge to the route to market to ensure best outcomes
- 6.4.6 Stace carried out Options Appraisals on the procurement strategy and the final version recommended a Competitive Dialogue multi-party framework under a Restricted Procedure. The work would be called off in packages with the top ranked appointed contractor using a Tier 1 and Tier 2 contractual arrangement
- 6.4.7 Procurement has inputted throughout the procurement by:
- I. Providing challenge regarding:
 - the appropriate route to market
 - the operation of the framework agreement
 - the contractual arrangements for the works
 - challenging the input of the Project Manager
 - II. Providing advice regarding:
 - the post award contract management and
 - sub-contractor/contractor payments
 - III. Suggesting recommendations regarding scope of included work beyond the HIF procurement
 - IV. Streamlining the shortlisting process for applicants by the use of Constructionline

- V. Suggesting recommendations on post appointment market engagement events between the chosen contractor and potential local SMEs

6.4.8 Stace has produced a Risk Register with a mitigation plan against each item. We believe that careful cost management will be required going forward to ensure that the scheme comes within budget. Stace has confirmed that if the project is over budget, they will value engineer the scheme. A high level of project management will also be required post contract to monitor and contain costs. An appropriate design contingency will be required together with a contingency to cover the unforeseen events. We recommend that the risk register and change control process continues to be monitored throughout the project.

7. KEY RISKS

7.1 **Risk: The Housing Infrastructure Fund is not or only partially secured.**

Confirmation from Central Government on whether Enfield Council / GLA have been successful in securing the HIF funding is expected in later in 2019. Should none or only part of the HIF funding be secured, the tendered works and the chosen procurement process will need to be reviewed the procurement potentially paused.

Mitigation: The schemes that successfully secure HIF funding will be announced during the procurement process. The Council can terminate the procurement if no funding is secured. If the amount of money assigned by the MHCLG is materially lower, the scope of works for the strategic road and flood alleviation works will need to be reviewed. The recommended procurement approach allows the Council the flexibility to instruct specific works and services as and when they are required and doesn't commit the Council to instructing the individual works packages until a call-off contract has been signed.

7.2 **Risk: Inability to select a bidder**

The procurement process, contractual terms or specification deter contractors to bid for this opportunity or invite excessive risk pricing as the process, terms or specification are considered as too onerous and non-market friendly.

Mitigation: Early market engagement with potential bidder to flag up any issues that could discourage bidders or cause risk pricing and to explain the flexibility of the procurement process. The drafting of the contract documentation takes on board the outcomes of the early market engagement in the decision on the preferred procurement approach.

7.3 **Risk: Lengthy procurement process**

The overall time-frame on the Competitive Dialogue process causes an excessively lengthy process resulting in the Council being unable to appoint a main contractor on time and deliver the strategic road and flood alleviation ahead of the funding deadline.

Mitigation: Stace project management has been appointed to carefully manage the Competitive Dialogue Process with the help of Trowers & Hamlins LLP and the Council's internal Procurement and Legal teams. Dialogue will be limited to a small number of specific issues and a clear overall timetable will be set and communicated in the tender documents.

7.4 **Risk: Land in private ownership**

The scope of works includes works located on privately owned land. If land is not made available on time through acquisition, CPO or other contractual arrangements the full scope of works can't be carried out or delivery of works will be delayed.

Mitigation: It is recommended to set up a Framework Agreement, which allows the Council to call off specific works and services if and when required and does not commit the Council to instructing works until call-off contract is signed. This allow the Council to only instruct work if and when land is available for the delivery of the proposed works.

7.5 **Risk: Planning consent not obtained or delayed**

Planning consent needs to be obtained prior to start of the main works. If the planning consent is delayed or not obtained timely delivery of the works and consequently the HIF funding is at risk.

Mitigation: Hold Pre-Application meetings with LBE Planning Department. Prepare Meridian Water Masterplan diagrams, infrastructure plans and Transport Assessment to demonstrate that the planning application for the infrastructure works can be justified as a stand-alone application. Ensure that the supporting strategic transport modelling will be available prior to planning committee in November 2019.

7.6 **Risk: Limited suitable suppliers**

Due to the nature and value of the tendered scope of work a limited number of suppliers is capable and/or willing to tender for the work, resulting in insufficient tender responses.

Mitigation: Early market engagement with potential bidder to identify willingness of the market to tender for the works and issues that could discourage bidders to tender. The design of the procurement process and drafting of the contract documentation takes on board the outcomes of the early market engagement in the decision on the preferred procurement approach.

7.7 Risk: Uncertainty on design information

At this stage of the project, some extents of the works are uncertain. The uncertainties are related to essential pieces of design information that are forthcoming: Ground Investigation Survey, Flood Alleviation Strategy, Transport Modelling and Full planning consent.

Mitigation: An appropriate contingency allowance has been included in the cost plan to cover the associated risk. Preliminary reports and design information will be shared with the contractor during the tender period to reduce uncertain items to the minimum.

8. INTERNAL DEPARTMENT IMPLICATIONS/CONSULTATION

Not appropriate.

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

9.1 Good homes in well-connected neighbourhoods

The recommendations in this report do provide the authority to start procuring a main contractor to finalise the strategic road infrastructure and flood alleviation works. The construction of these key pieces of infrastructure will unlock new housing development in Meridian Water.

9.2 Sustain strong and healthy communities

The scope of works does include several green spaces linking up with existing green spaces in the area and thereby enhancing the value of the local green infrastructure. Next design stages of the strategic infrastructure will give full consideration as to how the proposed works can contribute to the health and wellbeing of the existing and future communities in the area.

9.3 Build our local economy to create a thriving place

The delivery of strategic road and flood alleviation works will unlock the Meridian Water area and significantly increase accessibility of the site, especially by public transport. It is expected that increased accessibility will support local businesses, as well as attract new jobs and business growth in the area supporting Enfield residents and the local economy.

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.

10.2 It should be noted that projects or workstreams deriving from this may be subject to a separate Equalities Impact Assessment (EqIA).

Therefore, any projects or workstreams will be assessed independently on its need to undertake an EqlA to ensure that the Council meets the Public Duty of the Equality Act 2010.

11. PERFORMANCE MANAGEMENT IMPLICATIONS

Once the main contractor is appointed the performance of the main contractor will be overseen by a project management consultancy on behalf of the Meridian Water Team.

12. HEALTH AND SAFETY IMPLICATIONS

The recommendations in this report do not have any health and safety implications. Pre-Construction Health and Safety Information will be included in the tender information.

13. PUBLIC HEALTH IMPLICATIONS

Meridian Water is poorly connected by public transport, walking and cycling and although the site lies adjacent to the North Circular Road and Meridian Way, a strategic north-south route, the central and eastern part of the site have no direct connection to the proposed railway station, the most important piece of new infrastructure. The intervention proposed for the development should address these site constraints and design-in foundations to prioritise walking and cycling. The infrastructure designs should be grounded on an urban structure that improves the environment and to encourage healthy lifestyle. The utilities corridor should also be designed to provide specs for smart technologies, introduce suitable energy infrastructure to help residents save energy bills and improve air quality.

Background Papers

APPENDIX 1.1	Indicative Procurement Programme
APPENDIX 1.2	Responsibility Matrix
APPENDIX 1.3	Extract HIF Business Case - Project Governance and Structure
APPENDIX 1.4	Proposed Scope of Works
APPENDIX 1.5	Prior Information Notice
APPENDIX 1.6	Memorandum of Information