

*Please note Part 2 report is now confidential appendix.*

## London Borough of Enfield

### Operational Report

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**Subject:** Meridian Water Housing Infrastructure Fund – Approval to Enter into a Stage 3 Basic Asset Protection Agreement (BAPA) with Network Rail for the Strategic Rail Infrastructure Works

**Executive Director:** Sarah Cary, Executive Director - Place

**Ward:** Upper Edmonton

**Key Decision:** 5237

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### Purpose of Report

1. Meridian Water Housing Infrastructure Fund (HIF) – Approval to Enter into a Stage 3 Basic Asset Protection Agreement (BAPA) with Network Rail (NR) for the Strategic Rail Infrastructure Works (SRIW).

### Proposal(s)

2. **Authorises and approves the engagement of the BAPA with Network Rail (NR).**
3. **Authorises expenditure for the scope of services and contingency costs set out within the body of this report.**
4. **Authorises the fees as set-out in the Confidential Appendix of the report.**

### Reason for Proposal(s)

5. A Basic Asset Protection Agreement (BAPA) is the mechanism by which a 3<sup>rd</sup> party engages with Network Rail as statutory owner and maintainer of the railways in the UK. Due to this, Network Rail is the only entity that can carry out the tasks required by the Meridian Water rail project as per the scope of services summarised in Appendix 2 and detailed in the formal Agreement. The nature of the agreement means the London Borough of Enfield is the client and Network Rail is the supplier

6. Entering a BAPA with NR is required to enable the Council to achieve its objective of a further increase in train capacity beyond what was delivered in June 2019, to allow for a minimum of four trains per hour (TPH), but with an aspiration of up to six TPH and to fulfil its obligations in the HIF grant agreement to be entered into with the Ministry of Housing Communities and Local Government.
7. The increase in train frequencies is one of a number of measures required to enable regeneration of the Meridian Water site and is a planning precondition for the proposed housing volumes proposed in the current master plan. The proposal will also enable housing development, boost local economy and employment, and contribute to health and wellbeing of local communities.
8. Network Rail as infrastructure owner and maintainer, any new/altered or decommissioned infrastructure must be intrinsically involved in the project.
9. The Council needs to commence the SRIW in time in order to claim funding. It is a requirement of HIF funding secured by the Council is spent by March 2024.
10. The expenditure for the tasks set out within this report are to be funded from within the existing Capital Programme initially and the amount spent by March 2024 will be reimbursed from the HIF funding on a quarterly basis.
11. **Relevance to the Council's Corporate Plan**
  - a) **Good homes in well-connected neighbourhoods**

The recommendation in this report does recommend the approval to engage NR in a BAPA. The HIF Rail Works will unlock new housing development in Meridian Water.
  - b) **Safe, health and confident communities**

The HIF Rail Works will include ecological and diversity assessments in line with Network Rail standards. The rail works will contribute to the achievement of long-term carbon emission goals, through improved energy efficiency, helping others make more carbon efficient journeys, which reduces the need to use a car. These works can also contribute to the health and wellbeing of the existing and future communities in the area.
  - c) **An economy that works for everyone**

The delivery of strategic rail 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.

## **Background**

- 12.** In July 2018, Cabinet approved the scope of HIF, a central government funding programme enabling a delivery of strategic infrastructure at the Meridian Water scheme (see Housing Infrastructure Fund Cabinet Report dated 25 July 2018 (KD 4711)). It also approved planning strategy for HIF delivery works and delegated authority to the Programme Director – Meridian Water to authorise procurement procedure.
- 13.** In early December 2018 a funding bid for the HIF was submitted to central government by the GLA on behalf of Enfield Council. The HIF 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.
- 14.** The scope of works proposed for HIF funding includes rail enhancement works (HIF Rail Works) and strategic road and flood alleviation works (HIF Site Works). These works are required as a first phase of strategic infrastructure to unlock housing delivery in Meridian Water.
- 15.** In August 2019 Central Government announced that the Council's bid had been successful. The detailed terms and conditions of the grant agreement have now been agreed and the grant agreement was entered into between the Council and MHCLG on 30<sup>th</sup> October 2020.
- 16.** In order for the Council to claim the maximum amount of HIF Grant available to it, all SRIW must be completed before the delivery deadline of 31st March 2024. To ensure timely delivery ahead of the funding deadline, the Council is commencing with the necessary procurements in advance of confirmation that all conditions to funding have been satisfied.
- 17.** In respect of the delivery of the rail infrastructure, a need has been identified to engage NR. NR is the owner, operator and infrastructure manager of Britain's main railway network. It runs, maintains and develops the core physical infrastructure of the network and has to ensure efficient management of the assets over the short, medium and long-term.
- 18.** The HIF GDA requires the Council to satisfy various conditions before it is permitted to draw down funding including (but not limited to) obtaining necessary approvals for the rail infrastructure works including an Basic Asset Protection Agreement (BAPA) with Network Rail (NR). The Council must therefore enter into the BAPA as a pre-condition to funding availability.

## **Scope of Services**

19. Network Rail shall provide the Services set out in Appendix 2 of this report and the Council shall pay Network Rail's all reasonably and properly incurred costs for doing so. Network Rail estimates the cost of carrying out the Services shall be the Estimated Cost [as set out in the Confidential Appendix to this report] and while Network Rail is required to use reasonable endeavours to carry out the Services for such amount but the Council must pay all Network Rail Costs reasonably and properly incurred by Network Rail even if they exceed the Estimated Cost. Network Rail shall provide the Council with regular reports on the progress of the Services (including any changes to their estimated cost)
20. A 10% contingency has been added for the engagement to allow for an increase in the Estimated Costs.
21. NR will be required to fulfil duties for each of the project stages. For the full scope of services, refer to Appendix 2.

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**GRIP Stage 3 - 4**

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- Review of agreed GRIP deliverables
- Review of agreed engineering deliverables.
- Review of "areas to be considered in further detail" as per the Network Rail's response Letter to the DfT.
- Possession booking for further surveys and supporting WPPs
- Attendance at engineering/PM meetings
- Stakeholder support
- Attendance at design reviews
- Develop Asset Management Plan

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**Procurements Process**

22. Effective competition is prevented by government or statutory control.

**Main Considerations for the Council**

23. Following award of the contract, NR will work in collaboration with the team to drive the delivery of the SRIW under the contractual arrangements of the agreement and within the context of the Council's vision and objectives.
24. Given the funding deadline of March 2024 to deliver the SRIW, it is key to engage NR to support the SRIW. As timely delivery is of importance, the activities of NR should be persistently conducive to adequately resource and administer the project aimed at 'on time' and 'on budget' delivery of the services.
25. It is aimed to get NR engaged before, or at the time the design and PMO teams start, to enable NR to complete any requirements in a timely manner.
26. As explained in Relevance to the Council's Corporate Plan, this appointment is instrumental to unlocking development that contributes to the Council's priorities.

27. There will be regular reviews with NR, in relation to scope and cost once this contract is in place (see Confidential Appendix).

### **Contract**

28. Network Rail is a statutory undertaker responsible for the maintaining and operating the UK railway infrastructure and associated estates. The Council has an obligation to consult and gain approval from Network Rail as the statutory body to approve designs and work methodologies proposed to be implemented on the rail network
29. The Basic Asset Protection Agreement is the mechanism by which the Council engages with Network Rail to ensure the proposed design is acceptable and that any impact of the new infrastructure has been properly assessed and approved to be integrated into the network.
30. The Basic Asset Protection Agreement stipulates the hours and rates of the Network Rail engineers (Rail Asset Managers) who are responsible for reviewing the design as well as the conditions under which they operate.
31. The Agreement is almost identical to the previous Agreements entered into between Network Rail and Enfield Council. However, the total amount of those Agreements were below the Key Decision threshold.
32. Within the document there is a provisional sum of £80,000 for Network Rail to undertake land registration activities for a parcel of land within the project site. Network Rail has advised they will not undertake land registration activities until they are satisfied the parcel of land is unencumbered legally and physically. The commencement of Stage 3 means the project designers can survey the parcel of land and advise Network Rail of any unforeseen obstructions or nuisances that would frustrate the registration of the parcel of land. In the very unlikely event the surveys reveal an issue, the mitigation would be to allow for the risk to be dealt with during construction in line with normal practices.
33. It is envisaged that the survey works will be complete early in January 2021 and upon satisfactory findings Network Rail will activate the registration process.

### **Safeguarding Implications**

34. The recommendations in this report do not have any safeguarding implications.

### **Public Health Implications**

35. The NR commission does not have any significant public health implications.

## **Equalities Impact of the Proposal**

**36.** Corporate advice has been sought although there are no direct equalities implications arising from the decision to commission Network Rail for the SRIW, an equality impact assessment has been undertaken for the decision to approve the SRIW (Diversity Impact Assessment (DIA)/ Revised January 2019 // Version 5)

**37. The potential Negative impact**

- The feasibility design noted that one of the options may require the removal of the ramp from the Ponders End station footbridge to platform 1 and replacing it with a lift
- The replacement of the ramp with a lift will affect those passengers who cannot use the stairs safely
- The lift may leave some people, who currently use the ramp, feeling more vulnerable than at present
- The temporary diversion will be investigated in more detail in the following GRIP stages

**Mitigation**

- Step-free access both for public footpath users and station users will be maintained. The replacement of the ramp to platform 1 with a lift may result in quicker, easier journeys for some people with reduced mobility.
- The use of CCTV to cover the lift will be investigated in GRIP 3, alarm buttons will be provided, and the lift will be illuminated and placed so as to be as visible as possible from the platform.
- Providing a lift with 2 sets of doors, so that people do not have to reverse out, is preferred where practicable.
- At the start of GRIP 3, following the appointment of the designer, surveys of the bridge will be undertaken to determine if there are any existing deficiencies with the bridge such as staircase compliance i.e. nosings and risings. The designer will also check the structural integrity of the bridge to understand if any remedial work would be required to the bridge.

## **Environmental and Climate Change Considerations**

**38.** It should also be noted that the appointed Consultant will project manage the SRIW contractor with the evaluation Criteria for the HIF contractor role including questions on Sustainability and Climate Change will be included in the rail contractor appointment. In addition, the overall Meridian Water development is being designed to be carbon positive, with whole life carbon emissions being reduced over time and offsetting being put in place.

## **Risks that may arise if the proposed decision and related work is not taken**

**39.** Council will not satisfy pre-conditions to HIF funding.

40. Council's housing and employment objectives could be put at risk if infrastructure necessary to unlock development is not delivered in time.

**Risks that may arise if the proposed decision is taken and actions that will be taken to manage these risks**

41. Network Rail as statutory owner and maintainer of the railways in the UK is the only entity that can carry out the tasks as per the Agreement. The nature of the agreement means the London Borough of Enfield is the client and Network Rail is the supplier. This Agreement will be administered in accordance with the terms of the Agreement and as such normal escalation processes will be undertaken for underperformance by the Supplier.
42. It should be noted throughout 2019 and 2020 there has been an excellent working relationship between the 2 entities on this project including the pre-existing Basic Services Agreement, BAPA 2 and Stage 3 Bridging BAPA, which were all accomplished on programme. With proactive and effective management, the project will monitor performance in line with best practice and maintain programme.
43. Although NR must use reasonable endeavours to stay within the Estimated Costs, LBE will be under an obligation to pay all costs reasonably and properly incurred even if they exceed the estimated costs.
44. The failure to obtain consents on time may impact on project and liability limitations and caps may be insufficient to cover LBE's losses in such circumstances.

**Financial Implications**

45. See Confidential Appendix

**Legal Implications**

MD 19<sup>th</sup> November 2020 (based on report received on 18<sup>th</sup> November 2020 at 20:09)

46. The Council has the power under s.1(1) Localism Act (2011) to do anything individuals generally may do providing it is not prohibited by legislation and subject to Public Law principles. There is no express prohibition, restriction or limitation contained in a statute against use of the power in this way. The Council therefore has sufficient powers to enter into the contract as proposed in this report.
47. Section 149 of the Equality Act 2010 requires the Council to have due regard to (i) the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010; and (ii) the need to advance equality of opportunity between persons who share a protected characteristic and persons who do not share it. Officers have confirmed in this report that there are no equalities implications in agreeing the recommendations in this report. Further advice should be obtained throughout the delivery of the strategic rail infrastructure works

programme to ensure that where required equality impact assessments are completed, updated and duly considered by the Council.

48. The Council must comply with all requirements of its Constitution (including its Contract Procedure Rules) and the Public Contracts Regulations 2015 in respect of the entry into contract with Network Rail. The Contract Procedure Rules and Public Contracts Regulations 2015 permit the Council to enter into the BAPA with Network Rail without competition on the basis that Network Rail enjoys an exclusive right.
49. It is proposed that the fees due to Network Rail will be reimbursed to the Council out of HIF grant funding to be made available by MHCLG. Although the Council's bid for HIF funding was successful and a grant agreement was, availability of the majority of funding remains subject to satisfaction by the Council of various conditions. It is a condition to funding availability that the Council obtains necessary approvals for the rail infrastructure works including entry into a Basic Asset Protection Agreement (BAPA) with Network Rail (NR). Any contract entered into, or any expenditure incurred by the Council prior to receiving formal confirmation that any preconditions to funding have been met, is at the Council's own risk.  
The Council must comply with the terms of the BAPA including but not limited to the requirement to take out and maintain public liability insurance to the value of £50,000,000. While an estimated value for the cost of NR's services has been provided and NR must use reasonable endeavours to stay within the cost estimate, the Council will be responsible for meeting all costs reasonably and properly incurred by NR, even if over the estimated amount. The Council must therefore ensure that sufficient contingency allowed in the budget and authority report to cover potential cost overruns.
50. 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. Given the anticipated contract value, the contract must be sealed and retained by Legal Services for safekeeping.
51. The anticipated contract value exceeds £500,000. Therefore, this is a Key Decision, and the Council must comply with its Key Decision procedure.

### **Workforce Implications**

52. A rail project lead is in place and the Meridian Water HIF Team restructure has been approved. This report does not therefore necessitate any additional resource.

### **Property Implications**

53. There are no specific property implications arising directly from this report however if there are any future reports arising as a result of these proposals they will need to be further reviewed.

## Other Implications

### Options Considered

54. Network Rail is the owner, operator and infrastructure manager of Britain's main railway network. There is no alternative to consider.

### Conclusions

55. Strategic Rail Infrastructure Works (SRIW) are required in the early stages of the programme to unlock further development Meridian Water scheme. The proposal will enable housing development, boost local economy and employment, and contribute to health and wellbeing of local communities.
56. It is key that the arrangement with NR is in place to ensure the required level of support to deliver complex SRIW.

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Date of report 14/10/2020

### Appendices

- **Appendix 1 – Confidential Appendix**
- **Appendix 2 – Network Rail’s Scope of Services**

## Appendix 2 – Network Rail Scope of Services

- (a) Services of a Network Rail sponsor and asset protection project manager along with supporting resources to manage the Network Rail stakeholder interfaces, to support and provide guidance to the Customer;
- (b) Provision of Network Rail specialists to undertake a review of GRIP 3 and GRIP 4 deliverables produced by the Customer as agreed in the GRIP product index;
- (c) Procurement and management of five track possessions and isolations;
- (d) Issue of access permits and track visitor permits for intrusive surveys;
- (e) Review of method statement/risk assessments/ health and safety plans/ asset management plans/ environment plans/ safety management plans/ construction phase plans, possession strategies, possession requests and work package plans for surveys;
- (f) Provision of safety staff to assure safe systems of work that could affect the network;
- (g) Provision of Network Rail representatives to attend Project steering groups and Project board meetings;
- (h) Agreement of future stage GRIP products and engineering deliverables for the proposed next phase of the Project;
- (i) Production of a cost estimate for the proposed next phase of the Project;
- (j) Discussion and preparation of any draft agreements required for the proposed next stage of the Project;
- (k) Undertake quality assurance of the Customer's timetable and performance analysis;
- (l) subject to the Land Purchase Agreement, facilitation of the acquisition and registration of the Land in connection with this Project;
- (m) project engineers for relevant engineering disciplines to undertake duties under the Standard NR/L2/INI/02009 as required;
- (n) provision of available Network Rail record drawings and services information;
- (o) supporting the asset management plan process;

- (p) monitoring and reporting on Network Rail's performance against the Service Level Obligations;
- (q) Provide a four weekly periodic progress report;
- (r) Provide a four weekly periodic cash flow register;
- (s) Review and comment on GRIP stage 3 and 4 designs;
- (t) Approval of compliant GRIP stage 3 and 4 designs.