

London Borough of Enfield

Operational Report

Report of Penny Halliday– Meridian Water Commercial Director

Subject: HIF – PCSA Variation

Director: Peter George – Development Director in consultation with the Executive Director of Resources and Director of Law and Governance

Ward Upper Edmonton

Key Decision: KD5400

Purpose of Report

1. The purpose of this report is to obtain approval to vary the scope of the Pre Construction Service Agreement (PCSA) to account for additional services that have been provided by Vinci Taylor Woodrow during the PCSA and prolongation of the programme period.
2. Furthermore, this report recommends the approval of (critical) enabling works to be carried out under the PCSA. This includes the instruction of drumshed demolition and archaeological trenching under the Pre Construction Service Agreement to mitigate any delays to entry into the main works contract while central government is carrying out their ongoing review on HIF funding.
3. It is also recommended to approve an allowance for additional scope items such as utility payments, additional design development and de-scoping work, as well as inflation and prolongation cost. These allowances cover critical items of work to maintain programme and allowances to cover potential cost movement as result of protracted funding decision by DLUHC. Any instruction is subject to further delegated authority by the Meridian Water Commercial Director.

Proposal(s)

4. Approve the settlement agreement with the first ranked Framework Contractor to complete the Pre Construction Service Agreement.
5. Authorise expenditure (as detailed in the Confidential Appendix A) in relation to the settlement agreement for the additional services provided and to authorise expenditure of 'prolongation costs' (also detailed in the confidential Appendix A).
6. Approve instruction of early enabling works, consisting of demolition and archaeological trenching under the Pre Construction Service Agreement and authorise the associated expenditure (detailed in the confidential Appendix A)
7. Authorise a cost allowance (see Confidential Appendix) for additional scope items to allow (critical) works to be carried out under the PCSA and mitigate any delays to entry into the main works contract, as well as inflation and prolongation cost as set out within the body of this report.

8. Delegate authority to the Meridian Water Commercial Director to approve instruction of additional scope items under the PCSA up to the value of the cost allowance set out under paragraph 15 of the Confidential Appendix.
9. Authorise the variation of the Pre-Construction Service Agreement to reflect the changes detailed in this report and authorise the delegated legal officer to complete settlement agreement / deed of variation.
10. Note that under KD5181 Cabinet delegated authority to approve variations to the Street Works PCSA to the Development Director (former Programme Director Meridian Water) in consultation with the Executive Director of Resources and Director of Law and Governance, subject to sufficient funds being available and satisfactory performance of the contractor.
11. Note that Cabinet approved (KD5085) expenditure to be forward funded from the Meridian Water Capital Programme initially and claimed in arrears from DLUHC (former MHCLG) on a quarterly basis in accordance with the terms in the GDA.
12. Note that Portfolio Member for Meridian Water authorised additional works expenditure to allow critical works on Street Works to continue whilst DLHUC complete the HIF funding review and the outcome of the funding decision is awaited.

Reason for Proposal(s)

13. Under the terms of the PCSA VTW is entitled to additional fees for the additional services provided and the 7-month prolongation of the PCSA period. The settlement offer is considered to be reasonable and represent value for money and has been recommended by Council's Cost Consultants on the project (Turner & Townsend).
14. Refusal to pay reasonable additional fees may be a breach of contract by LBE and VTW would be entitled to suspend services under the contract, which would result in significant disruption to the project delivery of SIW works.
15. The Drumshed demolition and archaeology works is considered to represents value for money due to the programme resilience provided to the approved planning dates, business case benefits and efficient use of available resources to package up multiple items of work against the targeted programme. See T&T recommendation report appended to confidential appendix.
16. Given the delays resulting from the budget pressures and uncertainty around the additional HIF funding award, a list of additional scope items has been identified that might need to be instructed after completion of the PCSA deliverables to maintain the SIW programme while central government is carrying out their ongoing review on HIF funding.
17. Instruction of enabling works under the PSCA helps to maintain the programme and avoids time and cost to demobilise the contractor and remobilise following the funding decision by central government, which is considered to cause significant additional cost and programme delays.

Relevance to the Council's Plan

18. The Strategic Infrastructure Works delivered through the HIF funding serve future development which is key to unlocking the development of Meridian Water and contributes to the priorities of the Council's Corporate Plan:
- a. *Good homes in well-connected neighbourhoods*
The Strategic infrastructure at Meridian Water is key to building more and better homes in Enfield. It is also key to delivering and driving investment to deliver growth in Enfield. Further to this, a key aim in the Council Plan is to Complete Government-funded strategic infrastructure works for Meridian Water, which include a major new road and public park, due for completion in 2023.
 - b. *Safe, healthy and confident*
The Strategic Infrastructure works underpin placemaking capability at Meridian water that will contribute to reducing reliance on cars and increasing walking, cycling and public transport at Meridian Water and it will also contribute to opportunities to visit and enjoy parks and open spaces.
 - c. *An Economy that works for everyone*
The Strategic Infrastructure Works at Meridian water are key to shaping the economy of Meridian Water and allowing the economic growth of Meridian Water to be filtered out to connecting areas throughout Enfield, attracting jobs, business growth and supporting Enfield residents and the local economy.

Background

Previous Decisions

19. In December 2018 the Council submitted a bid to the Department for Levelling Up, Housing and Communities (DLUHC, formerly MHCLG) for the Housing Infrastructure Fund (HIF) to deliver the first phase of strategic infrastructure works in Meridian Water. The Strategic Infrastructure Works comprise of rail enhancement works amounting to a value of circa £54m (HIF Rail Works) and strategic road and flood alleviation works for a value amounting to circa £116m (HIF Street Works).
20. On 12th February 2020 Cabinet approved (KD 5085) the entry by Council into the GDA and the drawdown of historic and preliminary funding to cover the period up to the main works start on site and discharge of all funding conditions. Approved expenditure is forward funded from the Council's MW Capital Programme Budget and claimed back from DLUHC HIF funding on a quarterly basis in accordance with the terms in the GDA.
21. Under delegated authority from Cabinet, the Meridian Water Programme Director in consultation with the Executive Director of Resources and the Director of Law and Governance accepted the terms and approved the entry into the GDA and all associated subsidiary documents (PL 20/072 O). On 30 October 2020 the Council entered the GDA with DLUHC for a total amount of £170m.
22. Following the confirmation of significant budget pressures on the Street Works due to exceptional inflationary pressures, DLUHC's and the Council agreed changes to the GDA, including increase Preliminary Funding and allow the Rail PCSA to be instructed and critical works on Street Works to continue.

23. These changes to the GDA were approved by the Leader (KD5459) early July 2022 to maintain momentum on both the Rail and the Street Works projects and allow critical works on the Street Works to continue whilst maintaining a balanced budget position until completion of DLHUC funding review. A draft side letter has been agreed to formalise the agreed changes and is expected to be signed shortly.
24. On 16th September 2020 Cabinet approved (KD5181) the entry by Council into a framework agreement with selected contractors and the entry by the Council into a Pre-Construction Services Agreement (PCSA) for value up to £6.5m for the delivery of Street Works.
25. Following procurement of the contractor framework, the Council negotiated with the first ranked framework contractor (Vinci Taylor Woodrow) for a pre-construction services agreement (PCSA) for the delivery of HIF Street Works and the agreement was entered in March 2021.
26. Approved recommendation by Cabinet delegates authority to approve variations to the PCSA to the Programme Director – Meridian Water in consultation with the Executive Director of Resources and Director of Law and Governance, subject to sufficient funds being available and satisfactory performance of the contractor.

Key Challenges

27. The budget pressure on the Street Works has increased incrementally since the start of the project. The latest interim cost estimate prepared by the Council's Cost Consultant showed a significant budget pressure on Street Works, mainly due to exceptional inflation cost. Value Engineering and de-scoping items identified can only partially ease the budget pressure.
28. Conversations have started with DLUHC to obtain additional HIF funding for the cost overruns. LBE have provided information to support this and DLUHC is carrying out a national HIF funding review, which will inform their decision to allocate any further funding. The outcome of the funding review was expected in November this year, but latest information from DLUHC identified that a funding decision will not be taken before March 2023.
29. As result of budget pressures and delays to the DLUHC funding decision uncertainty remains on the surety of the total price of the Street Works being contractable in the HIF funding envelope. This in turn prevents the Council from entry into the main works contract and start the works on site. Delayed start on site is impacting project completion date, and is expected to impact the project cost.
30. It should be noted that the delayed start on site for the Street Works will impact the completion date, which is likely to exceed the HIF funding deadline of March 2024. It is expected that DLUHC will decide favourably to extend the funding deadline to March 2026 following completion of the funding review. Delay to completion of the Street Works is expected to impact delivery of Phase 2 in Meridian Water, specifically Meridian 2, 3 and 4.
31. The team is exploring the option to radically de-scope the Street Works and enable delivery within the existing funding envelope to enable a meaningful start on site and limit further delay the programme. However, it is expected that this will have a significant impact on the housing outputs agreed in the GDA and would therefore require DLUHC's approval.

32. The strategy is therefore to continue discussions with DLUCH around securing the full funding ask and delivering all the housing objectives, whilst also presenting alternative options considering prevailing uncertainties. A funding ask and updated business case was submitted to DLUHC in December 2022, and senior officers in the Council are lobbying government for additional funds.

Grant Determination Agreement

33. The GDA distinguishes between different categories funding: (i) Historic Expenditure; (ii) Preliminary Expenditure; and (iii) the main grant funding. The Council's ability to claim funding is subject to various conditions being satisfied.
34. The first set of conditions (pre-commencement conditions) were satisfied prior to entry into the GDA and enabled the Council to claim all historic expenditure incurred in the period between submission of the Expression of Interest (September 2017) and entry into the GDA (October 2020), as well as preliminary expenditure, covering all cost up to the start on site.
35. Additionally, there is a set of conditions precedent (pre-draw down conditions) to funding claims for the actual works which constitute more than 80% of the total HIF funding amount. In summary, these conditions require the Council to evidence that necessary approvals and consents (planning, CPO, statutory stakeholder approvals) are in place to commence construction of the main works.
36. The expenditure related to the recommendations put forward in this report fall within the category of preliminary funding and could be claimed back in arrears on a quarterly basis.

Main Considerations for the Council

PCSA Settlement Agreement

37. The Council entered a PCSA with the first ranked Framework contractor Vinci Taylor Woodrow (VTW) on 16/03/2021. Under the PCSA, the Contractor progressed, developed, designed, and procured all work packages with specialist subcontractors.
38. During the PCSA period the contractor performance has been assessed by compliance with the KPIs included within the PCSA form of contract. Contractor performance has been challenging at times, predominantly due to resourcing issues with the supporting design team.
39. The team has however now achieved submission of the final design submissions which are undergoing review and the team is committed to providing a high standard of design in readiness for construction. The VTW team has taken a pragmatic approach to acceptance of risk in preparation of the contract offer, which bodes well for the construction stage and have actively engaged in assessing strategies for the progression of the scheme in the context of funding and timing uncertainty.
40. The PCSA stage is now almost complete and the Council has received a price offer for the delivery of the Street Works from VTW. Notwithstanding the value engineering and de-scoping items that had been identified ahead of receipt of the

contract price offer, the contract price offer is significantly over budget mainly due to extraordinary inflationary pressures.

41. The approved PCSA contract was scheduled to be completed in March 2022. However, the completion of PCSA scope of works took longer than expected and is now scheduled to complete in early 2023 for the reasons set out below:
 - Extensive PCSA design development period requiring additional services, including addressing historical design issues;
 - Undertaking of on-site delivery of works (critical early works) to mitigate the project risks and support the wider development programme;
 - Enhanced involvement on planning strategy, de-scope, affordability assessment and implementation planning; and
 - Repeated commercial activities to address expiration of subcontractor offers and inflation approach.
42. Following extensive negotiation, VTW have made a final settlement offer for the historical claim and revised PCSA programme based on a completion date of early 2023. Value of claims and the value proposed settlement offer is set out in Confidential Appendix A of this report.

Enabling Works

43. The Council's Project Management Consultant Turner & Townsend (T&T) recommend bringing forward the drumshed demolition and phase 1 of the archaeological trenching to be instructed under the existing PCSA agreement, using VTW as the incumbent supplier. The approach to bring forward the Drumshed demolition and Phase 1 Archaeological trenching mitigates against programme delay impacting planning conditions and key phasing dates. A positive value for money assessment supports the delivery of the works by VTW, enabling strategic resilience against key programme constraints. The associated expenditure and T&T recommendation report are included in Appendix A.
44. It is important to note that the recommendation has been made to progress with traditional demolition of the Drumsheds. Traditional demolition does result in recycling of materials, albeit as scrap metal and not in reuse of the asset in its existing form.
45. The project team has considered different routes to re-use of the Drumsheds:
 - Dismantling and sale of Unit 2;
 - General reclamation of materials for onward sale.The options considered would increase the project cost and given the significant budget pressures on the project these are not considered viable. Memo detailing the options and the commercials is appended to part 2 of this report.
46. Bringing forward the Drumheads demolition will enable commencement of the development to be achieved. This is critical to achieve in advance of 21.07.23 which is the date at which the SIW planning permission will lapse, should the development not be recorded as having commenced. If the planning permission were to lapse a new consultation period and application would be required, which would have significant programme implications for delivery of the SIW and would put the wider delivery of the Meridian programme at risk.

47. Furthermore, instructing the Phase 1 archaeology trenching ahead of the main works programme will enable the project to comply with the requirements of Greater London Archaeological Advisory Service (GLAAS). GLAAS is part of Historic England and is a statutory consultee and they have stated an expectation for investigative works to take place prior to commencement of construction activities that impact the ground. The works have been phased to bring forward only those items where practicable to do so and this has been agreed with GLAAS.

Allowance for Additional Scope Items

48. Furthermore, T&T have identified a list of additional scope items which may need to be instructed after completion of the existing PCSA deliverables to maintain the SIW programme whilst central government is carrying out their ongoing review on HIF funding. This report recommends the approval of a cost allowance for these items and delegation to the Meridian Water Commercial Director to approve future change request when required up to the value set out in confidential Appendix A.
49. The cost allowances detailed in Confidential Appendix A are for enabling works and services that would be required before any of the main construction works can start on site. This includes allowances for trial holes, statutory utility payments, early contractor engagement for the delivery of the primary substation, design changes, de-scoping if full funding request isn't agreed by DLUHC, as well as further contingency and risk allowances.
50. Most of these items were originally envisaged to be included in the scope for the Main Works contract (NEC4). The approval of a cost allowance will enable these works / services to be carried out under the PCSA subject to delegated approval when required in order to mitigate any further programmes delays and to maintain the SIW programme while central government is carrying out their ongoing review on HIF funding.

Budget and Total Revised Expenditure / Allowances

51. The cost related to the settlement agreement, the enabling works, as well as the additional cost allowances can be covered from the budget in the Meridian Water Capital Programme for HIF Street Works.
52. The PCSA costs, including the items identified as (critical) enabling works are eligible for HIF funding and can be claimed back in arrears on a quarterly basis from DLUHC in the form of preliminary funding.
53. Conversations have started with DLUHC to obtain additional HIF funding for the exceptional inflation cost. LBE has been providing information to support this and DLUHC is carrying out a national HIF funding review, which will inform their decision to allocate any further funding. The outcome of the funding review is not expected until March 2023.

Contract

54. The variation set out in this report will be instructed under the existing PCSA and all terms and conditions will remain in full force. The changes will be finalised in the

form of Deed of Variation or other formal legal document in consultation with legal team.

55. The variation set out in this report are not envisaged to make the PCSA materially different or extend the scope of the original PCSA. The original PCSA included a mechanism to instruct enabling works and enabling works are clearly mentioned as part of the PCSA deliverables schedule.
56. Liaison has taken place with procurement and legal teams and the legal and procurement implications are set out in paragraphs 63 – 79 and in the confidential appendix.

Safeguarding Implications

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

Public Health Implications

58. There are no public health implications arising directly from this decision.
59. However, the infrastructure works proposed to be funded by this grant help encourage residents to prioritise walking and cycling. The infrastructure designs are grounded on an urban structure that improves the environment and to encourage healthy lifestyle. The utilities corridor is also designed to provide specs for smart technologies, introduce suitable energy infrastructure to help residents save energy bills and improve air quality. In addition, the development of good quality housing and economic development will contribute towards improvement in health and wellbeing for communities.

Equalities Impact of the Proposal

60. There are no equalities impact arising from the decision in this report.
61. Impact on parties currently operating on the land where the SIW will take place was analysed through Equalities Impact Assessment (EQIA) in relation to the CPO. The initial EQIA was conducted in December 2019 internally by the Council, with a subsequent extensive review by external consultant Ottaway Strategic Management in March 2020. Both assessments identified no direct negative impact of the CPO. Please see KD 4832 (January 2020) Cabinet and (July 2020) Operational reports for details.
62. A predictive EqIA was completed on the Meridian Water Masterplan in 2018 and found that the scheme will have a positive impact on groups sharing protected characteristics, creating a sustainable community in Meridian Water that is connected to the surrounding communities in Edmonton and promoting social equity and reduce inequalities. The EqIA demonstrated that the scheme will deliver social, economic, health, educational, physical, and environmental infrastructure that meets the needs of different groups and reduces inequality across a number of domains, including housing, health, and employment.

Environmental and Climate Change Considerations

63. There are no environmental implications arising directly from this decision.

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

64. Not approving the recommendations set out in this report will result in having to pause Street Works, until the budget pressures on the Street Works have been resolved and additional HIF funding by DLUHC is confirmed. This will have direct and indirect impacts on the delivery of strategic aims at Meridian Water. Impacts of having to stop / pause the Street Works are set out below:
65. **Programme Impact:** The team will need de-mobilised upon completion of the PCSA and will re-mobilise following positive outcome of the DLUHC funding review, resulting in a significant delay to the programme and risk of DLUHC withdrawing the funding.
66. **Budget Impact:** Pausing Street Works is expected to result in additional cost related to inflation, as well as de-mobilisation and re-mobilisation cost of both project teams. In addition, pausing the projects could result in further exceptional costs if it must re-procure Main Contractor and re-do the work carried out by the existing Street Works contractor under the PCSA.
67. **Planning Impact:** The planning permission for the Strategic Infrastructure Works will lapse if commencement of the development is not achieved by July 2023. The enabling works identified in this report would constitute development and project team Contractor is in discussion with the LPA to agree an enabling works package that would constitute commencement of the development in planning terms, which would safeguard the planning approval. Not approving the recommendations in this report would prevent enabling works to be instructed and risk losing the existing planning consent.

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

68. **Risk:** Delay or other breach of GDA - non-compliance with the Council's obligation under the GDA, such as delay to the Infrastructure Milestones could result in breach of contract and in the worst-case scenario termination of the agreement and further funding being withheld or all/ some funding being claimed back.
Mitigation: Existing project management arrangements are in place to manage the project and ensure timely delivery of Infrastructure Milestones. Close engagement with DLUHC is ongoing through monthly progress meetings and if required agreement will be sought from the DLUHC for a waiver or extension.
69. **Risk:** Finish preliminary HIF funding - HIF preliminary funding covers all cost up to the start on site and based on current projections, the preliminary funding pot is likely run out by April/May 2023.
Mitigation: Continuously monitor the expenditure against the preliminary funding available and carry out thorough assessment before any new instructions are agreed. Liaise with DLUHC to minimise the delay to the funding decision and potentially negotiate increase of the preliminary funding pot to cover any preliminary expenditure past April / May 2023.
70. **Risk:** Cost overruns - If project costs exceed the funding provided, the Council will need to fund the cost overruns on the project.
Mitigation: Project management arrangement are in place to closely monitor the project and the project cost. Carry out further VE and de-scoping to bring the project back to a contractable price within the HIF funding envelope. Continue to liaise with DLUHC on additional HIF funding for exceptional inflation pressures. In parallel, work is undertaken by the Meridian Water Team to look at options for alternative funding, including SIL, s106 and external funding schemes to fund any elements that would be proposed for VE and de-scoping.

71. **Risk:** Cost Inflation – Inflation in the current climate is unpredictable and rising month on month.
Mitigation: Continue to liaise with DLUHC on additional HIF funding for exceptional inflation pressures. The team is exploring the option to radically de-scope the Street Works and enable delivery within the existing funding envelope to enable a meaningful start on site and not further delay the programme.
72. **Risk:** Additional HIF funding is not secured, and the main works are not delivered or significantly delayed resulting in the demolition of the drumshed to be abortive.
Mitigation: Demolitions works will be instructed following approval of this report, but the actual demolition of the drumsheds will not start until March / April, as demolition requires a 3 month period for the contractor to mobilise. By the time the actual demolition works start the Council should have (more) certainty on additional HIF funding, providing opportunity to pause or stop the works. However, it should be noted discussions with the LPA are ongoing to agree that the demolition would constitute commencement of the development in planning terms, which would safeguard the planning approval, which is due to expire in July 2023.

Financial Implications

73. See Confidential Appendix A.

Legal Implications

Legal Implications provided by MP on 18/11/22 based on version of report circulated on 24/11/22 and the current version circulated on 16/1/2023 has been approved by DB on 18/11/2023

74. S.1 Localism Act (2011) provides the Council with the power to do anything an individual may do, subject to certain limitations. This is referred to as the "general power of competence" (GPOC). A local authority may exercise the GPOC for its own purpose, for a commercial purpose and/or for the benefit of others. The Council therefore has sufficient powers to (i) vary the scope of the PCSA and (ii) negotiate, reach settlement and enter into any subsequent settlement agreement(s), as proposed in this report.
75. Under s.111 Local Government Act (1972) local authorities may do anything, including incurring expenditure or borrowing which is calculated to facilitate or is conducive or incidental to the discharge of their functions.
76. The Council must comply with all requirements of its Constitution. The decision being sought under this report constitutes a Key Decision (KD) therefore, the Council must be mindful of and adhere to its KD process, at all times.
77. The Council must continue to ensure value for money in accordance with the Best Value Principles under the Local Government Act (1999).
78. The Council must continue to be mindful of the availability of funding under the GDA being subject to the various conditions summarised therein (see also KD5459) and is reminded that failure to comply with such conditions may result in DLUHC terminating the agreement, withholding grant funding and/or demanding repayment of any grant already paid.
79. Officers are reminded that any additional instructions issued to VTW before confirmation of availability of funding will be undertaken at the Council's risk. Officers

must ensure continued compliance with obligations in the HIF grant agreement relating to the delivery of infrastructure works.

80. Officers must ensure that variations to the PCSA scope (forming the subject matter of this report or otherwise) are consistent with the Council's contractual obligations in respect of (i) the agreements directly associated with this project and (ii) other activity at Meridian Water, as well as the Council's overarching obligations and responsibilities, in connection with the Meridian Water project as a whole.
81. All legal agreements (including but not limited to the Deed of Variation concerning (i) changes and settlement reached between the parties as a result of prolongation and (ii) additional scope to include critical enabling works) entered into in consequence of the approval of the recommendations set out in this report must be approved in advance of commencement by Legal Services on behalf of the Director of Law and Governance.

PCSA Settlement Agreement / Variation to PCSA as a Result of Prolongation to Programme Period & Additional Scope Items to allow Critical Enabling Works

82. The Council must also comply with all requirements of its Contract Procedure Rules (CPRs), Procurement Manual (PM) and the *Public Contract Regulations (2015) (PCRs (2015))* specifically in terms of modifications to contracts during their term. Officers are advised that CPR 18 is adhered to, along with its corresponding paragraph in the PM, which reminds officers:

- (i) that any variations to contracts must be in line with the CPRs and properly recorded (uploaded onto the portal);
- (ii) that variations must be within the core delivery of the contract;
- (iii) that agreeing variations could be seen as anti-competitive and there is a risk of challenge from other suppliers;
- (iv) variations must first have budget approval;
- (v) demonstrate best value;
- (vi) have approval to proceed and;
- (vii) must be in line with the existing contract.

83. *Reg.72 PCRs (2015)* outlines several changes that can be made to already awarded public contracts, without triggering the requirement to conduct a fresh tender process. The variations proposed by the Council will only need to satisfy **one** of the various Reg 72 'tests', to not be deemed 'material'.

84. The existing PCSA permits additional services, works and orders providing the stipulations outlined in clause 5 are adhered to, by the parties.

85. See Confidential Appendix

Workforce Implications

86. Not applicable

Property Implications

87. There are no specific property implications arising directly from this report however it is anticipated that there may be future Property Imps as the HIF works progress and construction starts. Any future reports arising as a result of these proposals will need to be further reviewed and when property transactions are included Strategic Property Services will comment on those individual deals and reports at that time.

Other Implications

Procurement Implications

88. The variations to the PCSA Contract must comply with the Councils Contract Procedure Rules (CPR's) and the Public Contracts Regulations (2015).
89. The Public Contracts Regulations (2015) (Regulation 72) allow for variations to the original contract which have become necessary under certain conditions.
90. As set out in the Council's CPRs (detailed in the Procurement Manual) the variation must also:
- Have budget approval
 - Demonstrate Best Value
 - Have appropriate approval to proceed
 - Be in line with the existing contract

The variation must be uploaded to the Contracts Register.

Options Considered

91. The options considered with regards to the fee settlement agreement are:
- **Do Nothing.** It is considered that VTW is entitled to additional fees and LBE has already incurred cost liability under the contract and/or common law. Refusal to pay reasonable additional fees may be a breach of contract by LBE and VTW would be entitled to suspend services under the contract, which would result in significant disruption to the project delivery of SIW works. This option is therefore not recommended.
 - **“Continue to dispute the fee under dispute resolution”** - it is considered that the proposed settlement is within the acceptable range of LBE assessment. While it may be possible to achieve some betterment under these proceedings, the LBE costs to run these proceedings would be significant and in general not recoverable. This would offset any potential further betterment on the fee negotiation and result in significant disruption to the project delivery of SIW works. This option is therefore not recommended.
92. The options considered with regards to the instruction of additional (critical) enabling works under the PCSA are:
- **Do Nothing.** This option would mean that no additional (critical) enabling works are instructed under the PCSA and that all enabling works are carried out under the main works contract. This would require the contractor to demobilise and remobilise following the funding decision by central government causing significant additional cost and programme delays. This option is therefore not recommended.

Conclusions

93. This report recommends to vary the scope of the Pre Construction Service Agreement (PCSA) to account for additional services that have been provided by Vinci Taylor Woodrow during the PCSA and prolongation of the programme period

94. It is considered that VTW is entitled to additional fees and LBE has already incurred cost liability under the contract and/or common law. Refusal to pay reasonable additional fees may be a breach of contract by LBE and VTW would be entitled to suspend services under the contract, which would result in significant disruption to the project delivery of SIW works.
95. It is considered that this offer represents value for money for acceptance by the Council because
 - a. The settlement offer represents a significant reduction against their initial claim;
 - b. VTW prolongation costs are below the PCSA contract rate;
 - c. The offer has been reviewed and recommended by Turner and Townsend (T&T), the Councils' external PM/QS consultant and Contract Administrator of PCSA.
96. In addition, this report recommends the approval of further expenditure for additional scope items to allow (critical) enabling works to be carried out under the PCSA and mitigate any delays to entry into the main works contract while central government is carrying out their ongoing review on HIF funding.
97. The additional scope items are all part of the enabling works that would be required before any of the main construction works can start on site. These works were originally envisaged to be included in the scope for the Main Works contract. To mitigate any further programmes delays and to maintain the SIW programme while central government is carrying out their ongoing review on HIF funding it is recommended to approve additional expenditure to allow (critical) enabling works to be carried out under the PCSA and minimise delays and protect planning application expiry date.

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Appendices

- Confidential Appendix A

Background Papers

The following documents have been relied on in the preparation of this report: