

CITY OF
WOLVERHAMPTON
C O U N C I L

Cabinet Meeting

Wednesday, 7 September 2022

Dear Councillor

CABINET - WEDNESDAY, 7TH SEPTEMBER, 2022

I am now able to enclose, a public version of the report considered on Wednesday, 7th September, 2022 meeting of the Cabinet.

Agenda No	Item
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7	Amendment to Capital Programme (Pages 3 - 8)
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If you have any queries about this meeting, please contact the democratic support team:

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CITY OF WOLVERHAMPTON COUNCIL	Cabinet 7 September 2022
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Report title	Amendment to Capital Programme	
Decision designation	AMBER	
Cabinet member with lead responsibility	Councillor Stephen Simkins: Inclusive City Economy	
Key decision	Yes	
In forward plan	No	
Wards affected	All Wards	
Accountable Director	Claire Nye, Director of Finance David Pattison, Chief Operating Officer Richard Lawrence, Director of Regeneration	
Originating service	Regeneration	
Accountable employee	Julie Bell-Barker	Head of Projects & Works
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	Email	Julie.bellbarker@wolverhampton.gov.uk
Report to be/has been considered by	N/A	

Recommendations for decision:

The Cabinet is recommended to:

1. Approve the virement from the Capital Corporate Provision for Future Programmes to the Civic Halls Refurbishment programme as outlined in the report.
2. Approve the use of the Covid contingency for Civic Halls Refurbishment for general project purposes.
3. Authorise the Council entering into a Deed of Variation with AEG Presents to incorporate the additional works outlined in the report.

1.0 Purpose

- 1.1 The purpose of the paper is to explain the emerging changing pressures across the Civic Halls Refurbishment project due to changes in circumstances with both AEG's scope of fitout and building condition issues.

2.0 Background

- 2.1 The Civic Halls are essential to the economic well-being of the city centre, generating millions of pounds every year for the local economy. It is also critical to how we are re-inventing and re-imagining our vibrant city centre for the future.
- 2.2 The venue has brought millions of visitors to our city over the last 82 years and the refurbishment programme will guarantee this for another century. The Council's partnership agreement with AEG will facilitate the success of the venue.
- 2.3 The approved capital programme includes a budget of £43.1 million which includes a specific contingency of £5 million for Covid related pressures.
- 2.4 On the 15 August, approval was given, through an Individual Executive Decision Notice (IEDN), to a temporary supplementary budget of up to £10 million to facilitate payments to the contractor through the pain / gain mechanism in the construction contract. On completion of the contract, Willmott Dixon (WD) will be required to repay the Council.

3.0 Progress and the AEG Fitout

- 3.1 The works being undertaken by Willmott Dixon is progressing at pace and the Council's expected completion date for Willmott Dixon's work and their handover of the building is due shortly.
- 3.2 In order to ensure that the overall programme is delivered and that value for money is achieved it is proposed that a limited package of works, which was originally to be undertaken by WD, is transferred to AEG. This work relates to the fit out of the catering kitchens and all of the bar area. It should be noted that the final finishes of the bars were always going to be undertaken by the end operator, namely AEG.
- 3.3 By transferring the works, AEG can take over the occupancy of the building promptly and ensure the seamless fit out and finish of areas that are critical to the AEG brand.
- 3.4 The transfer of works also enables a reduction in programme risk as AEG and the Council have a shared mutual goal and focus to open the building as soon as possible.
- 3.5 The current estimated cost of the AEG work package is £2.2 million, which includes construction costs, professional fees and risk allowance. To ensure best value the Council has obtained assurance from its cost management advisers Faithful & Gould that AEG are using rates which are aligned with current market conditions.

- 3.6 Faithful & Gould have undertaken a detailed evaluation of AEG costs, bench marking against current market rates and market conditions, their conclusion is that AEG's rates are aligned with market conditions.
- 3.7 The Council, through its cost management advisers will continue to review, monitor and where required, challenge AEG's costs throughout the delivery of the programme. The Council will also agree 'open book' accounting with AEG to enable full cost transparency.
- 3.8 The Council will agree a Deed of Variation with AEG Presents Limited to the Agreement for Lease which would allow the transfer for the responsibility of works to AEG.

4.0 Building Condition Issues

- 4.1 The Contract between the Council and Willmott Dixon is an NEC3 Option C (Target Cost) Contract which is subject to a pain/gain share mechanism by reference to an agreed Target Cost. The Target Cost was £19.1 million.
- 4.2 The terms of payment are largely governed by clause 50 of the Contract under which the Project Manager (Faithful + Gould) assesses the amount due to Willmott Dixon, the amount will be for:

The Price for Work Done to Date;

Plus other amounts to be paid to the Contractor;

Less amounts to be paid by or retained from the Contractor (including Disallowed Costs).

- 4.3 Under the terms of the Contract the Council will continue to pay Willmott Dixon in accordance with paragraph 4.2. At completion of the project, the pain/gain mechanism under Clause 53 will be utilised. In summary, If the final Price for Work Done to Date is equal to the target at completion, then there is no pain or gain to be assessed. If the final Price for Work Done to Date is less than the target at completion, then there will be a gainshare payable to the Willmott Dixon. If the final price for Work Done to Date is more than the target at completion, then there will be a painshare payable to the Council. At the completion of the works, if Willmott Dixon has exceeded the target cost (and subject to the impact of any Adjudicator's findings on Compensation Events) then the Council will be entitled to recover specified amounts.
- 4.4 Compensation Events may entitle the Contractor to additional time and additional costs. Throughout the construction WD have submitted a large number of Compensation Events which if agreed have the impact of increasing the target cost in the contract.
- 4.5 The approved capital budget included a sum of general contingency which was assessed by the Council's advisors Faithful and Gould (F&G) to be adequate at the time of letting the contract to WD. This contingency was used in the first instance to cover the costs of CEs submitted.
- 4.6 The approved budget also included a specific Covid Contingency of £5 million. At the time of writing, CEs totalling £2.3 million have been attributed to Covid. This leaves a

balance of £2.7 million, however we are continuing to review costs that could be attributed to Covid.

- 4.7 F&G have advised the Council that the current forecast cost of submitted CEs along with additional associated project fees creates an overall budget pressure of approximately £2 million. There have been a number of large CEs for items which could not have been reasonably foreseen at the time of letting the contract, most notably in relation to the lamination of steels (concealed within brickwork), works to the parapet walls (concealed within brickwork), substantial increase to foundations due to poor ground conditions etc.
- 4.8 The budget pressure of £2 million is in addition to the sum payable to AEG for the transfer of works and also the full utilisation of the Covid contingency.
- 4.9 There are a number of areas relating to the CEs which the Council continues to challenge, these include scrutinising the scope, the cost and the programme. However, in order that we can legally continue to progress the project it is necessary to ensure that the council has adequate budget provision to cover the potential additional costs. It is therefore proposed that a transfer of budget is approved from the approved Capital Corporate Provision for Future Programmes to cover the additional costs and that approval is also given to allow any remaining funds in the Covid Contingency to be transferred to the main budget for the Civic Halls restoration.
- 4.10 The Council has, throughout, sought to protect its position legally and it will continue to do this in relation to the current CEs and the proposed movement of works to AEG. The Council's position remains that the removal of work from Wilmott Dixon should reduce the cost payable to Wilmott Dixon however as stated above it needs to ensure that any costs that the Council is due to pay can potentially be met from the budget should that be needed even if ultimately the additional budget is not required.

5.0 Reasons for decisions

- 5.1 The proposals in this report will ensure that the Council can legally proceed with the restoration project and maintain programme delivery whilst legal processes are undertaken.

6.0 Financial implications

- 6.1 The approved capital budget for the Civic Halls restoration is 38.1 million. The following table provides the breakdown of funding.

	£m
Borrowing	11.5
Capital receipts	20.0
Grant	6.6
Total	38.1

- 6.2 In 2020, in response to the impact of Covid on the construction industry, a specific Covid Contingency of £5 million was approved. As detailed in the Section 4, approval is sought to allow this budget to be used on non-covid items relating to unforeseen issues.
- 6.3 As detailed in Section 2 of the report, on the 15 August, approval was given, through an IEDN, to a temporary supplementary budget of up to £10 million to facilitate payments to the contractor through the pain / gain mechanism in the construction contract. On completion of the contract, Willmott Dixon (WD) will be required to make a repayment to the Council.
- 6.4 As detailed in the body of the report there is a need to increase the project budget to cover the costs for AEG and the financial pressure on the contract, it is therefore proposed to increase the budget for the project by £5 million. As explained, the council is challenging the budget pressure for a number of reasons and therefore the increased budget may not be required when final accounts are settled. However, in order that the project can progress it is important that the budget provision is made to cover the potential additional costs.
- 6.5 Taking the recommendations of this report into account, the total potential borrowing requirement for this project is £19.2 million. An analysis of the income generated, indicates that the borrowing costs of the project will be met over the medium term.
[CN/02092022/N]

7.0 Legal implications

- 7.1. The continuous delays to the project and the vast number of Compensation Events (CE's) submitted by Willmott Dixon have led the Council to ensure appropriate advice is obtained in order to protect the Council's legal position. The Council need to continue to comply with the terms of the Contract including making payments due to Willmott Dixon as assessed by the Project Manager. The Council has taken a robust approach in holding Willmott Dixon to account through enforcing the terms of the Contract.
- 7.2 The Council and AEG Presents entered into an Agreement for Lease (AfL) on 5 November 2021 following the conclusion of a procurement process under the Public Contract Regulations 2015. The Council must ensure that completion of the refurbishment in addition to handover conditions occur before the Handover Longstop Date otherwise AEG could terminate the AfL.
- 7.4 AEG are required under the AfL to provide various fit-out works to Civic Halls following the completion of the refurbishment by Willmott Dixon. The refurbishment of Civic Halls has been challenging due to various issues. The transfer of the package of works from Willmott Dixon to AEG falls within the safe harbours of Regulation 72 of the Public Contract Regulations 2015 (Modification of contract during their term).
- 7.5 The Council will agree a Deed of Variation with AEG Presents Limited to the AfL which would allow the transfer for the responsibility of works to AEG. The Council and AEG have agreed a 'target cost' for these additional works which includes construction costs,

professional fees and risk allowance. In order to satisfy the Best Value Duty imposed upon local authorities, the Council has obtained assurance from its advisers Faithful + Gould that AEG are using rates which are consistent within the market. The Council, through its advisers will continue to monitor this throughout the delivery of the programme. The Council will also agree 'open book' accounting with AEG. The Council will pay in accordance with the Contractor's cash flow and in advance of AEG paying the relevant sum.

[SZ/05092022/P]

8.0 Equalities implications

8.1 This report deals with the need for authority to make changes to the contract and budget approval, the equalities implications of the project have been carefully scrutinised in a number of other reports relating to the project as a whole and continue to be looked at carefully by the Council.

9.0 City Assets

9.1 AEG have signed an Agreement for Lease for a 25 year period, this includes full responsibility for their maintenance and repairs of the building.

10.0 Schedule of background papers

10.1 Individual Executive Decision Notice, August 2022 – Temporary Supplementary Budget

10.2 Cabinet, 17 February 2021 - Outcome of the Procurement Process to Appoint an External Operator for the Civic Halls

10.3 Special Urgency Decision, 29 June 2020 – Budget Amendments

10.4 Full Council, 31 January 2018 - Civic Halls Improvements and Full Restoration