


<p>Chief Executive Decision Notice</p> <p>3 May 2022</p>	 <p>TOWER HAMLETS</p>
<p>Report of: Will Tuckley, Chief Executive</p>	<p>Classification: Unrestricted</p>
<p>Tower Hamlets Town Hall – Deed of Variation and contract budget adjustments</p>	

Restrictions	None
Reason for Seeking a Chief Executive Decision	<p>This decision is being taken as a Chief Executive decision rather than an Individual Mayoral Decision due to the need to urgently enter into a Deed of variation this week (election week) and the difficulties in arranging a Mayoral/Cabinet decision at this time.</p> <p>The Chief Executive is requested to exercise powers delegated to him under Paragraph 24, Rule 1(b) of the Constitution (Power to exercise Executive functions in an emergency or extreme urgency).</p> <p>Authorisation is required for the Corporate Director Place to enter into a Deed of Variation with the contractor to re-set the contract for the new Town Hall which will provide substantially greater certainty from both a commercial and programme basis for the completion of the new Town Hall.</p> <p>The decision is urgent and cannot wait till after the elections because there is a risk that the council may be exposed to additional costs with attendant risk of a delayed completion and occupation of the Town Hall.</p>

1. EXECUTIVE SUMMARY

- 1.1 The Chief Executive is requested to exercise an executive function under powers delegated to him by Paragraph 24, Rule 1(b) of Part B of the Constitution, due to emergency or extreme urgency, to authorise the Corporate Director of Place to enter into a Deed of Variation with the contractor to re-set the contract between the Council and BYUK to deal with an ongoing dispute in relation to existing building claims and other

commercial cost risks arising from COVID, Brexit, supply chain deliveries and inflation.

- 1.2 If the Deed of Variation is not signed urgently, the council may be exposed to additional costs with attendant risk of a delayed completion and occupation of the Town Hall. Negotiations on the contents of the Deed of Variation have been continuing since January 2022 and are now concluded. Timescales are now such that there is a risk that if the Deed is not signed imminently the Council will not be able to mobilise its fit out teams in time to benefit from the shared access agreements set out in the Deed and the contractor could choose to proceed under the existing contract and escalate their claims via the dispute mechanism with attendant financial risk of additional costs to the Council.
- 1.3 The Chief Executive will report this decision to the Mayor and formally present a report at the next meeting of Cabinet in June.

2. DECISION:


2.1 That the Chief Executive;

- a. Authorises the Corporate Director Place in consultation with the Director of Legal Services to enter into a Deed of Variation with BYUK and any other related agreements to secure a commercial settlement with the BYUK to avoid risk of further cost escalation:
- b. Approves both a supplementary capital budget provision of £1.1m and the formal allocation of the existing approved contingency of £8.4m revising the new Town Hall budget (which includes construction, design, CIL, surveys and professional fees) to £132.85m to cover all of the risks associated with the existing building, BREXIT, inflation, COVID and other matters at a value that is within 10% of the combined original contract sum and the contingency that was approved when the original contract was entered into.

APPROVALS - CE002 Deed of variation

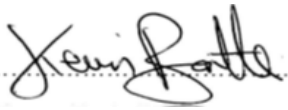
1. Corporate Director

I approve the attached report and proposed decision above for the submission to the Chief Executive.

Signed...  Date...03 May 2022.....


2. Chief Finance Officer or his/her deputy

I have been consulted on the content of the attached report which includes my comments.

Signed...  Date...03 May 2022.....

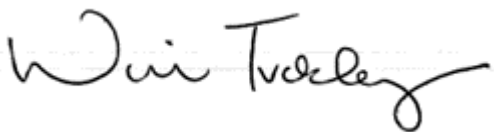
3. Director of Legal


I have been consulted on the content of the attached report which includes my comments.

Signed.....  ... Date...04 May 2022.....

4. Chief Executive.

I agree the decision proposed in the recommendations above for the reasons set out in paragraphs 1.1 to 1.3 in the attached report.


Signed..... Date...04 May 2022

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<p>Report of: Will Tuckley Chief Executive.</p>	<p>Classification: Unrestricted</p>
<p style="text-align: center;">Tower Hamlets Town Hall – Deed of Variation and contract budget adjustments</p>	

Executive Summary

The Chief Executive is requested to exercise an executive function under powers delegated to him by Paragraph 24, Rule 1(b) of Part B of the Constitution, due to emergency or extreme urgency, to authorise the Corporate Director of Place to enter into a Deed of Variation with the contractor to re-set the contract between the Council and BYUK to deal with an ongoing dispute in relation to existing building claims and other commercial cost risks arising from COVID, Brexit, supply chain deliveries and inflation.

If the Deed of Variation is not signed urgently, the council may be exposed to additional costs with attendant risk of a delayed completion and occupation of the Town Hall. Negotiations on the contents of the Deed of Variation have been continuing since January 2022 and are now concluded. Timescales are now such that there is a risk that if the Deed is not signed imminently the Council will not be able to mobilise its fit out teams in time to benefit from the shared access agreements set out in the Deed and the contractor could choose to proceed under the existing contract and escalate their claims via the dispute mechanism with attendant financial risk of additional costs to the Council.

The Chief Executive will report this decision to the Mayor and formally present a report at the next meeting of Cabinet in June.

Recommendations

That the Chief Executive;

- a. Authorises the Corporate Director Place in consultation with the Director of Legal Services to enter into a deed of variation with BYUK and any other related agreements to secure a commercial settlement with the BYUK to avoid risk of further cost escalation:

- b. Approves both a supplementary capital budget provision of £1.1m and the formal allocation of the existing approved contingency of £8.4m revising the new Town Hall budget (which includes construction, design, CIL, surveys and professional fees) to £132.85m to cover all of the risks associated with the existing building, BREXIT, inflation, COVID and other matters at a value that is within 10% of the combined original contract sum and the contingency that was approved when the original contract was entered into.

1. REASONS FOR THE DECISIONS

- 1.1 A Chief Executive Decision is required in this instance to ensure appropriate approvals are in place to agree a Deed of Variation to agree a revised contract sum that covers all items of dispute with the contractor including claims in relation to the scope of work on the existing building; costs and programme delays associated with COVID; supply chain and inflation issues arising from BREXIT and/or the war in Ukraine; and, all other matters under the terms agreed as follows:

“On signing the Deed of Variation Bouygues UK Ltd will be releasing and forever discharging any and all actions, claims, liabilities, rights, demands and set-offs that it, its parent, group companies, subsidiaries, assignees or any of them ever had, may have or hereafter can, shall or may have against the Employer under or in relation to the Construction Contract or in respect of the subject matter thereof whether or not such claims are known or could have been known as at the date of this Deed save in respect of any Changes instructed after the date of this Deed.”

- 1.2 The Executive is currently engaged with election preparations and the Chief Executive has delegated powers under Paragraph 24 Rule 1(b) of the Constitution to exercise Executive functions in an Emergency or Extreme Urgency, including the power to authorise the Corporate Director Place to enter into a Deed of Variation that will deal with disputed matters and risks associated with the remaining works with the contractor. There is increasing uncertainty in current market conditions with impact of Covid, Brexit and the war in Ukraine which pose further economic risk on availability and cost of goods and services including inflation.
- 1.3 A revised completion date of 31 August is being agreed as part of the Deed of Variation – with an early access plan also agreed to allow for the Council’s fit out programme to progress in the event that the practical completion is delayed beyond 31 August.

2. ALTERNATIVE OPTIONS

- 2.1 In reaching an agreement the Council would avoid the risk of incurring

substantial costs in preparing for and conducting a formal dispute. Under this scenario the Council could not plan to commence its fit out and mobilisation programme until late 2022 and as a result staff moves would be delayed into 2023.

- 2.2 If the Deed is not signed then the existing contract will stand. There are three key risks associated with this option:
1. There is a risk of BYUK and the Council entering into a dispute on the existing building claims that could be costly.
 2. There is increasing uncertainty in current market conditions with the impact of Covid, Brexit and the war in Ukraine which pose further economic risk on availability and cost of goods via inflation. Such pressures could delay the completion date of the building and add to the commercial pressure on the contractor to seek recovery of costs; and,
 3. If the Deed is not signed, then the Council's fit out and mobilisation programme will not be able to be commenced until there is certainty on the date of practical completion. This could push occupation back into late Spring 2023 which would threaten continuity of services as the current lease at Mulberry Place expires in April 2023.
- 2.3 The Deed of Variation allows the Council to mitigate the risk of incurring additional costs/delays as above.

3. DETAILS OF THE REPORT

- 3.1 On 27th June 2017, the Mayor in Cabinet gave budget approval for the new Town Hall Project (formerly named Civic Centre Project) adopting a capital estimate of £105m for its design and construction. At this meeting Cabinet also agreed an additional sum of £10m towards a council held risk contingency for the project to cover 'unforeseen' and 'uncontrollable' risks such as inflation beyond that forecast, post-Brexit changes to the market or major changes to the project brief.
- 3.2 An IMD in Nov 2018 provided a budget approval of £123.35m for the new Town Hall Delivery Project. Within the approved £123.35m budget £109.5m related to the value of the JCT Contract for the works and £5m related to the estimated value of risk items that formed part of the works but for which firm prices were not available at the time the contract was entered into. The balance of £8.85m covers design costs to RIBA Stage 3, CIL and the cost of the Employers Agent and Cost Consultancy team.
- 3.3 In December 2018 London Borough of Tower Hamlets entered into a JCT Design & Build contract at the value of £109.5m with principal contractor Bouygues UK (BYUK) for the construction of a new Town Hall on the site of the Old Royal London Hospital on Whitechapel Road in London. The part of the former Royal London Hospital that is to be retained as part of the development is an 18th century Grade II listed building.

- 3.4 From August 2020 onwards, the Council has been in discussion with BYUK in relation to the allocation of responsibility for risk, primarily in relation to the retained building and the changes required to the design as a result of discoveries following the asbestos strip out works. From March 2020 the project has operated during, and has been impacted by, the Covid pandemic – including a four-week shut down, shortages of labour and a need to re-sequence works on site, taking due regard of Government guidance to act reasonably both from a programme and cost perspective with contractors.
- 3.5 In January 2022, as part of the setting of the 2022 capital programme an £8.4m contingency was approved to cover COVID, inflation and project risks known at that time.
- 3.6 An agreement was made in principle to deal with disputed matters and to agree a revised programme date as a result of both the additional complexities of the project in relation to the retained building and Covid in January 2022. A Deed of Variation is to be agreed to re-set the contract which will remove items of dispute between the Council and BYUK including all matters related to the existing building claims. The negotiation of the detail of the Deed of Variation has taken many weeks whilst both BYUK and the Council confirm fit out requirements, agree detailed commercial issues and agree their legal drafting. The substance of those negotiations was completed on 3 May 2022.
- 3.7 A new target practical completion date of 31 August is being agreed as part of the Deed of Variation together with an agreement to provide access from this date for the Council's fit out programme to progress in the event that completion is delayed beyond 31 August. A mixture of supply chain delivery issues and the ongoing shortages of labour as a result of the pandemic threaten the delivery of this date. The drafting of the Deed of Variation allows this risk to be managed in a way that should minimise potential disruption to the Council's mobilisation programme and allow moves to be planned and completed before the end of the calendar year. If the Deed is not signed, then the Council's fit out and mobilisation programme will not be able to be commenced until there is certainty on the date of practical completion. This could push occupation back into late Spring 2023 which would threaten continuity of services and potential future additional costs as the current lease at Mulberry Place expires in April 2023.
- 3.8 A capital budget towards the capital cost of the new Town Hall project together with associated supplementary budget provision for other costs received Cabinet approval in June 2017 and a subsequent IMD in November 2018 provided a capital budget approval of £123.35m for the new Town Hall Delivery Project. Within the approved £123.35m budget, £109.5m related to the value of the JCT Contract for the works and £5m related to the estimated value of risk items that formed part of the works but for which firm prices were not available at the time the contract was entered into. This provided a total construction contract budget of £114.5m. The balance of £8.85m covers design costs to RIBA Stage 3, CIL, surveys and the cost of the Employers Agent and Cost Consultancy team.

- 3.9 The overall capital budgetary allocation for the Town Hall was effectively £131.75m given the £8.4m contingency held specifically for this scheme. The allocation had been made to cover COVID, inflation and project risks.
- 3.10 The Chief Executive is requested to approve both a supplementary capital budget provision of £1.1m and the formal allocation of the existing approved contingency of £8.4m revising the new Town Hall budget (which includes construction, design, CIL, surveys and professional fees) to £132.85m to support a settlement agreement with the contractor.

4. EQUALITIES IMPLICATIONS

- 4.1 See 3rd November 2015 Cabinet report - <http://democracy.towerhamlets.gov.uk/documents/g6202/Public%20reports%20pack%2003rd-Nov-2015%2017.30%20Cabinet.pdf?T=10>

5. OTHER STATUTORY IMPLICATIONS

- 5.1 In January 2022, the business case for the New Town Hall was updated from that in 2017 - in close liaison with the Finance Team. This work re-presented the business case to reflect the Council's financing strategy and the latest know position in relation to:
- forecast outturn costs – these are higher than those estimated at the time of the business case being written as a result of the extent of works required to the existing building (including roof replacement works) and the impact of the pandemic on the programme.
 - savings in rent on existing sites – including both the rental costs of Mulberry Place which are lower than estimated when the business case was written and savings in rental costs from THH;
 - operational cost savings – which are higher than originally estimated as a result of the planned estate consolidation; and,
 - financing costs – the costs the Council will incur in relation to both capital repayment and interest costs through the Public Works Loan Board.
- 5.2 **Outcomes:**
- The updated business case has been reported and scrutinised by the Project Board. It continues to show that the project delivers a positive Net Present Value (NPV) in line with that approved by the Cabinet in 2017. The updated business case shows an NPV of £38m compared to an NPV of £17m reported in 2017. The basis upon which the business case has been presented is different to that in 2017 and, in particular, the low cost of finance currently available helps to boost the NPV substantially. It is therefore important to note that the two numbers cannot be compared on a like for like basis; the key

message is that the NPV remains positive, and the original business decision continues to represent value for money.

5.3 In Summary:

The Project Board has considered how the annual costs of financing the new town hall will compare to the current revenue costs of the rented estate. The rental savings from Mulberry Place, and from THH, together with the reduction in running costs and the rental that is planned to be generated from the new town hall total £5.3m. This exceeds the annual capital and interest costs of financing the cost of project of £4.3m.

5.4 This demonstrates that it is better value for the Council to build and finance the new Town Hall than it will be to rent from year one. Over the long-term life of the Town Hall rents will, of course, go up whilst the capital financing costs can be fixed – this means that the value for money benefits will increase over time.

5.5 Finally, in restoring and extending the historic Royal London Hospital site the Council is moving from renting space from a private landlord to creating a valuable asset which it will own for the long-term benefit of residents of the Borough.

6. COMMENTS OF THE CHIEF FINANCE OFFICER

6.1 The approved capital programme includes a provision of £123.350m for the New Town Hall Project in total. The approved capital programme also includes a contingency sum of £8.400m. Permission is sought to now utilise this contingency sum for the New Town Hall project. This will have no impact on the current financing position of the council's approved capital programme.

6.2 Permission is also sought for a further £1.1m growth to the New Town Hall project budget. This will need to be financed from additional borrowing, which will result in future increased borrowing cost pressures on revenue budgets, estimated at £44k per annum.

6.3 Subject to the recommendations being approved, the new total budget for the New Town Hall project will be £132.850m.

7. COMMENTS OF LEGAL SERVICES

7.1 This decision is urgent on the grounds that delay to the programme might jeopardise the agreement relating to the close out of the risk elements with the contractor. Also, as identified in the report early completion of the Deed of Variation is required to secure the projected completion date

7.2 The Chief Executive has power to take the decision under Paragraph 24 Rule 1(b): Emergency or Extreme Urgency for the reasons set out in the report. In

accordance with the Constitution, a written report is to be submitted to the Mayor in June, setting out the decision taken and the reason for it including the reasons for emergency or extreme urgency.

7.3 Entering into the deed of variation is the most economic, efficient, and effective way to deal with the unallocated risk elements therefore complies with the Council's statutory Best Value Duty

7.4 There are no specific legal equalities issues arising from this report

Linked Reports, Appendices and Background Documents

Linked Report

NONE

Background Documents – Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2012

27th June 2017 Cabinet report -

<https://democracy.towerhamlets.gov.uk/documents/g7730/Public%20reports%20pack%2027th-Jun-2017%2017.30%20Cabinet.pdf?T=10>

IMD 2018

[Tower Hamlets Council - Agenda for Mayor's Executive Decision Making on Thursday, 29th November, 2018](#)

Officer contact details for documents:

Or state N/A