

Subject:	Procurement of the next phase of Broadmarsh Public Realm Works
Corporate Director(s)/Director(s):	Sajeeda Rose, Corporate Director of Growth and City Development
Portfolio Holder(s):	Councillor David Mellen, Portfolio Holder for Strategic Regeneration and Communications
Report author and contact details:	Chris Deas, Director for Major Projects and Transport
Other colleagues who have provided input:	Steve Dickens, Programme Manager
Subject to call-in:	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Key Decision:	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Criteria for Key Decision:	
(a)	<input checked="" type="checkbox"/> Expenditure <input type="checkbox"/> Income <input type="checkbox"/> Savings of £1,000,000 or more taking account of the overall impact of the decision
and/or	
(b)	Significant impact on communities living or working in two or more wards in the City <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Type of expenditure:	<input type="checkbox"/> Revenue <input checked="" type="checkbox"/> Capital
Total value of the decision:	£2.1million
Wards affected:	All Wards
Date of consultation with Portfolio Holder(s):	6 th September and 8 th September 2021
Relevant Council Plan Key Theme:	
Nottingham People	<input checked="" type="checkbox"/>
Living in Nottingham	<input checked="" type="checkbox"/>
Growing Nottingham	<input checked="" type="checkbox"/>
Respect for Nottingham	<input checked="" type="checkbox"/>
Serving Nottingham Better	<input checked="" type="checkbox"/>
Summary of issues (including benefits to citizens/service users):	
Good progress has been made in introducing significant new public realm in the Broadmarsh Area. In order to progress further work in accordance with the Broadmarsh regeneration programme consideration has now been given to future stage of public realm delivery.	
This report sets out the proposed procurement route for the next stage of works.	
Exempt information:	
None	
Recommendation(s):	
<p>1 To approve dispensation (in accordance with Financial Regulation 3.29) from the need to conduct a tender process in accordance with Contract Procedure Rule 4.1.2, to instruct Thomas Bow (up to a value of £2.1m) to carry out public realm works at the northern section of Middle Hill and on Sussex St as an extension under the current works contract.</p>	
<p>2 Delegate authority to Corporate Director Growth and City Development, in consultation with the Corporate Director of Finance and Resources, to award and enter into the contract extension referred to in the recommendations.</p>	
<p>3 To note that further contracts to deliver Public Realm works on Collin Street, including a new pedestrianised link to Lister Gate will be required and procurement options for these works will be subject to a further decision.</p>	

1 Reasons for recommendations

- 1.1 These Recommendations are required in order to progress delivery of the next stage of public realm works in the Broadmarsh area.

2 Background (including outcomes of consultation)

- 2.1 Transforming Cities Funding (TCF) has been secured to deliver new public realm in the Broadmarsh area. The first phase of delivery is now well progressed on Sussex Street and Carrington Street through works contracted to Thomas Bow. Alongside these works, Galliford Try is also undertaking elements of public realm scheme in the areas immediately surrounding the new car park and bus station building whilst NCC's Highway Services are delivering works on Canal Street.
- 2.2 It is expected that all currently contracted public realm works will be completed by the end of 2021.
- 2.3 The Thomas Bow contract which was entered into in August 2020 is proving to be cost effective and is delivering the full scope of works within budget and to a high quality.
- 2.4 At the time of contract award the scope of works included in the current Thomas Bow contract was constrained by the ongoing redevelopment of the Broad Marsh shopping centre by Intu. Now that the Intu redevelopment has ceased and the site is under Council control further consideration has been given to how to progress the public realm activity.
- 2.5 It is proposed that the next stage of public realm work should incorporate work to transform the northern section of Middle Hill and an area on Sussex St which formerly formed part of the Intu shopping centre site. It is proposed that the most appropriate route to deliver this work is via an extension of the current contract with Thomas Bow.
- 2.6 There are several technical elements contained within the current Thomas Bow scheme which continue across the current scheme boundary and directly interface with these works proposed on Middle Hill and Sussex Street, including;
- Highway drainage;
 - Street lighting;
 - Irrigation systems;
 - Planting and plant bed formation;
 - Footpath paving;
 - Carriageway surfacing; and
 - Structural interfaces between amphitheatre steps and middle hill highway structure.
- Incorporating these works into Thomas Bow's current contract maintains a single contractor responsibility for materials continuity, warranties, quality of workmanship and in addressing any defects which may occur. Were they to be split across separate contracts (and contractors) there is significant potential for a less technically and commercially robust scheme to be delivered. This would present additional commercial, operational and reputational risk for the Council.
- 2.7 In addition, due to logistical and operational arrangements it would not be possible to let a contract for the additional works to Middle Hill and Sussex Street until the

current contract is completed (end of 2021). However if the work were to be added to the current contract it would be possible for the current and new works programmes to run concurrently from September/October 2021 taking advantage of existing site facilities and reducing the overall programme (and therefore cost) of these works. This would not only ensure works are completed at the earliest opportunity but also reduce overall costs for the Council.

- 2.8 Overall, taking account of the programme and technical continuity benefits noted above the project's commercial advisors note that instructing these works can offer savings in the region of £350-£500k.
- 2.9 An instruction to the current contract would work under the existing terms and contractual conditions. This approach accords with procurement legislation however it requires dispensation from the Council's financial regulations.

3 Other options considered in making recommendations

- 3.1 **Do nothing:** The project would not be delivered in accordance with the Broadmarsh public realm programme.
- 3.2 **Open Tender, or mini competition under NCC's highways framework for the works on Middle Hill and Sussex Street:** This option has been rejected as it would establish a less than optimum delivery programme and introduce additional and commercial risks over and above the chosen route.
- 3.3 **Wait until Design work on Collin St and Lister Gate can conclude and let all remaining works as a single contract.** This option has been rejected as it would also establish a less than optimum delivery programme, potentially impacting on the ability to deliver the full scheme within the TCF funding window and it also introduces additional and commercial risks over and above the chosen route.

4 Finance colleague comments (including implications and value for money/VAT)

- 4.1 Dispensation from financial regulations is required for reasons set out above. The Project Sponsor for the Broadmarsh Public Realm project is required to ensure that they are able to evidence that by extending the current contract the Council is meeting its Value for Money requirements as detailed within the body of the report.
- 4.2 The capital works included within this decision is already incorporated within the Council's approved capital programme. Therefore, the capital programme will not be amended following the approval of the enclosed recommendations.
- 4.3 As this decision does not amend the Capital Programme as the Capital Scheme is already previous approved this decision does not require further endorsement from the Capital Board.

Tom Straw – Senior Accountant (Capital Programmes). 01/09/2021

- 4.4 The decision to award a contract to Thomas Bow on a direct award basis is based on weighing up the benefits of undertaking a competitive process against the additional cost and time in setting up a new contractor to work alongside an existing contractor. On balance and without setting a future

precedent, a waiver of Financial Regulations to permit a direct award to Thomas Bow Limited is justified.

Clive Heaphy – Corporate Director of Finance and Resources. 04/08/2021

5 Legal and Procurement colleague comments (including risk management issues, and legal, Crime and Disorder Act and procurement implications)

- 5.1 A dispensation may be granted for operational reasons in accordance with Financial Regulation 3.29. The circumstances and reasons for the dispensation have been set out by the report author. Legal Services are advising and supporting on the Broadmarsh Shopping Centre and can confirm that at the time of the award of the original contract with Thomas Bow, the Council was unable to clearly determine the extent of the control the Council would have over the redevelopment of the site and how this may impact on any public realm requirements.
- 5.2 The Council is under a duty to seek Best Value and this should be taken into consideration as part of the granting of any dispensation. Again the report clearly sets out how the proposed variation to the existing contract would satisfy any Best Value duty, including avoiding any duplication of costs for set up and an established supply chain and a quality of service delivery.
- 5.3 The original contract value was below threshold for the purposes of the Public Contracts Regulations 2015 and therefore this is a proposed variation of a below threshold contract. In applying the principles of Regulation 72 of the PCR and specifically Regulation 72(1)(b) this proposal meets those requirements. There are no significant legal concerns with regard to the proposals set out in this report and subject to the decision makers being content that the operational reasons and Best Value considerations are met then this is supported by Legal Services.

Naomi Vass – Team Leader - Contracts, Employment and Education 26/8/21

- 5.4 Based on the legal comments set out above and on the understanding that the required works were unforeseen at the time of the original contract and have arisen since the collapse of INTU, the procurement team have no further comments regarding this award.
- 5.5 However, considering that the original contract was a direct award by dispensation and that the aggregated value is above the value at which the Public Contract Regulations apply procurement would recommend that no further extensions are allowed.

Sue Oliver – Procurement Category Manager for Places. 27/08/2021.

6 Strategic Assets & Property colleague comments (for decisions relating to all property assets and associated infrastructure)

- 6.1 N/A

7 Social value considerations

- 7.1 The location and scale of the Broadmarsh site is such that progressing with the next phase of Public Realm works at the earliest opportunity is important to the population of the City and wider region.

8 Regard to the NHS Constitution

- 8.1 N/A

9 Equality Impact Assessment (EIA)

- 9.1 Has the equality impact of the proposals in this report been assessed?

No



An EIA is not required because:

The decision does not set out proposals for changes to a policy, service or function.

Yes



Attached as Appendix x, and due regard will be given to any implications identified in it.

10 List of background papers relied upon in writing this report (not including published documents or confidential or exempt information)

- 10.1 None

11 Published documents referred to in this report

- 11.1 None