

Nottingham City Council Delegated Decision



Nottingham
City Council

Reference Number:

4818

Author:

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Department:

Growth and City Development

Contact:

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Subject:

Changing Places Toilets UK Government Grant Funding

Total Value:

£115,000 (Type: Capital)

Decision Being Taken:

The decision being sought is;1) To accept Changing Places Toilet (CPT) funding of £115,000 from Department of Levelling Up, Housing & Communities (DLUHC) (£65,000 in 22/23 under Changing Places Fund Grant Determination 22-23 [No31/6222], with the remaining £50,000 to be paid in 23/24 under a further grant determination letter) and to spend the grant sums to build a CPT as follows; £25,000 in the undercroft of the Memorial Gardens in Victoria Embankment, £50,000 allocated to the National Justice Museum, £40,000 to Notts County Foundation in Portland Leisure Centre.2) To sign and return Grant Determination declarations for 22/23 and 23/24 to the Changing Places Fund team of DLUHC.3) To note works for the Victoria Embankment CPT were procured within the SCAPE Framework Construction Contract with Lindums authorised under Executive Board authority on 20th July 2021 minute reference 27.4) To delegate authority to the Director of Economic Development & Property to enter into grant funding agreements and appropriate property agreements with Notts County Foundation and National Justice Museum and approve for progression the design of the Victoria Embankment, Portland Leisure Centre and National Justice Museum CPT schemes.

Reasons for the Decision(s)

In July 2021 DLUHC published the Changing Places Fund Prospectus inviting councils to submit expressions of interest for funding to create new Changing Places Toilet facilities. Following the outcome of the Round 1 assessment process the government has announced that 191 unitary and district councils across England have been allocated £23.5 million of funding to increase the number and spread of Changing Places Toilet facilities across England. Following submission of an expression of interest seeking funding to deploy Changing Places Toilets within key locations across the City's Visitor Economy Sector; Nottingham City Council in partnership with Notts County Foundation and National Justice Museum have been awarded a Capital only grant from the Department of Levelling Up, Housing & Communities of £115,000 to support the creation of three new Changing Places Toilets. These will be located at: - Victoria Embankment (£25,000) - Portland Leisure Centre (£50,000) - National Justice Museum (£40,000). These locations serve thousands of residents and visitors each year and form a crucial part of the City's visitor and leisure economy. Enabling these attractions to become more accessible to residents and visitors, particularly those with disabilities, will increase access to sport, leisure, creativity and culture, supporting delivery of the following Council Plan priorities: - Theme Five Child Friendly City - Every child in Nottingham will get the best start in life, regardless of their circumstances. We will support local children to thrive academically, emotionally and physically, ensuring equality of opportunity for all. - Theme Six Health & Inclusive - Nottingham will be a healthy and inclusive city, where people take responsibility for their health and wellbeing and are supported to enjoy good health, live well and keep active throughout their lives. - Theme Eight Improve City Centre - Create a city centre that is an attractive, vibrant and safe place for everyone to live, work and spend time in. The project will be managed by Nottingham City Council and is delivered alongside two delivery partners National Justice Museum and Notts County Foundation. Over 250,000 severely disabled people do not have access to public toilet facilities that meet their needs. Changing Places Toilets (CPTs), unlike standard accessible toilets, have an adult changing bench and hoist facilities as well as extra space for carers. There are around 1,300 registered CPTs in England but demand for provision is outstripping supply and the number of CPTs needs to increase to improve access for severely disabled people and their carers. This decision is needed so that Nottingham City Council can increase the number of Changing Places Toilets in the city thus enabling a wider range of people to be able to attract visitor economy. Availability of Changing Places Toilets in Nottingham is minimal. Demand for Changing Places Toilets far outstrips supply, particularly in key locations (e.g. Council premises, Joint Service Centres, Public Leisure Facilities). The project is funded through £115,000 of capital grant funding from Government £65,000 in 22/23 under Changing Places Fund Grant Determination 22-23 [No31/6222], with the remaining £50,000 to be paid in 23/24 under a further grant determination letter. Local revenue match from Nottingham City Council was approved as part of Executive Board approval dated 20th July 2021 minute ref 27. The grant has been given to Nottingham City Council in a subsidy compliant way. As part of the project, the Council will give grant funding directly to third parties via the procurement of external providers to deliver the toilets at Portland Leisure Centre and National Justice Museum. External procurement to be carried out in accordance with the Council's contract procedures rules and public contract regulations 2015. The Victoria Embankment CPT works were covered in the Exec Board approval and have been included within the scope of works covered by the Lindums contract. The two external providers will be made as external grants. The project will be managed by experienced officers within Growth and City Development, a department with a successful track record of managing and delivering projects on behalf of Government. Under the 2014 to 2020 European Structural Investment Fund programme, Economic Development has successfully delivered £54 million of employment and skills provision without incurring any financial claw back from Government. The project has a limited financial risk, as the project is forward funded by Department for Levelling Up, Housing & Communities (DLUHC). Nottingham City Council will then fund delivery partners on a quarterly basis to deliver and manage the project. Using existing well tested reporting and management already in the City Council, the project risks will be well managed. The project commences November 2022 and will be completed by September 2023 with funding needing to be spent by September 2023 also. Full risk management plans will be developed,

early risks have been identified: Risk 1: Underperformance leading to financial clawback Mitigation to Risk 1: Clawback remains the responsibility of NCC as the recipient of the funds and will work with partners to closely monitor outputs and deliverables. This will ensure any underperformance is also monitored and recorded. NCC will have the right to withhold funding or request the return of any overpaid funding under individual grant agreements or service contracts as applicable. Risk 2: There is a risk in that the project needs to be operational by September 2023 with procured delivery partners who have recruited and trained staff plus links with primary care providers etc. Mitigation to Risk 2: To achieve that, work to recruit staff and procurement activity to start as soon as the outcome is known including the appointment of external procurement support if needed. The risk is that there may not be sufficient time or resource in place to achieve this requirement in the early parts of the project however, existing project management teams within Economic Development will manage the project until such time as new staff are recruited. To further mitigate any risk, the delivery of the Victoria Embankment CPT will be managed by the Major Projects team who will develop risk management plans, regularly monitor performance, compliance, income and expenditure. This is as well as putting in place clear escalation procedures to ensure any potential risks are identified and mitigated early.

Other Options Considered: To not accept this total amount of £115,000 of capital funding would mean the three additional Changing Places Toilets would not be delivered. This would have a negative impact on the Council's ability to deliver some key Strategic Council Plan commitments. Ongoing cleaning, repair and maintenance costs including the costs of service and/or maintenance agreements are excluded from the capital grant. A funding agreement with Notts County Foundation and National Justice Museum to be raised to cover allocating the grant money and their revenue match expectations e.g. ongoing maintenance costs. The existing lease agreements will need to be varied to account for the new facilities and to give permission to alterations under the lease plus ongoing maintenance costs in case of reallocation of the lease.

Background Papers: None.

Published Works: The Changing Places Toilet on the Victoria Embankment memorial garden forms part of the Victoria Embankment Memorial Gardens National Lottery Heritage Fund Restoration project which was submitted to Executive Board on 20 July 2021.

Affected Wards: Castle, Meadows

Colleague / Councillor Interests: None.

Consultations: Those not consulted are not directly affected by the decision.

Crime and Disorder Implications: None as a result of the decision to be taken.

Equality: Please login to the system to view the EIA document: CPT Equality Impact Assessment-2021-form-2 - Final version 21.12.2022.docx

Social Value Considerations: The Victoria Embankment CPT will be included in the wider works being carried out in the area. This included developing a disabled toilet the CPT funding will enable this to be improved to a CPT.

Relates to Council Property Assets: Yes

Decision Type: Portfolio Holder

Subject to Call In: Yes

Call In Expiry date:

24/01/2023

Advice Sought:

Legal, Finance, Procurement, Equality and Diversity, Property

Legal Advice:

Contract and Commercial Team:

The Changing Places Fund forms part of the National Disability Strategy launched in 2021. The Strategy made a public commitment to make £30 million capital funding available over 3 years to unitary and district councils in England with the objective to increase both the number and geographic spread of Changing Places Toilets (CPTs) and to provide them in venues of greatest need.

The decision concerns acceptance of funding and entry into a grant funding agreement with DLUHC, under s31(5) of the Local Government Act 2003; further Grant Agreements with partner organisations which flow through grant conditions which DLUHC requires compliance with; and contracts to procure the required works.

The prospectus relating to the scheme confirms that the LA has discretion to deliver the CPT through, direct grants to third parties or procurement of external providers. Local authorities providing funds to third parties should assure themselves that any grant payments are in compliance with subsidy control rules. A formal assessment as to whether any grants comprise a subsidy and if so whether any award can be permitted in accordance with the subsidy control principles will be required. Grants, if awarded are not governed by the Public Contract Regulations 2015 and so whilst a tender process will not be required, a fair open process must have been followed to identify who is permitted to receive the funding. Procurement of any necessary contracts for the delivery of the design and build must be carried out in accordance with the Council's Contract Procedure Rules and, where appropriate, Public Contract Regulations 2015 and any contracts must also comply with any pertinent Grant Agreement conditions and must indemnify the Council if by the providers' acts and/or omissions bring the Council into breach of the grant conditions, thus triggering the requirement for clawback of grant funding from the Council.

Proposed use of an appropriate SCAPE (Direct Award Single Supplier) Framework for the building of the Victoria Embankment CPT is supported, subject to this achieving best value. The NEC suite of construction contracts utilised in this context are fully compliant with the Public Contract Regulations 2015 - this approach and form of contract is supported by Legal Services. Best Value is achieved as the construction partners on the Frameworks have evidenced that they are the best that industry has to offer. The use of the SCAPE framework contractor will ensure a OJEU compliant procurement process that abides by UK procurement law and is configured to achieve value for money, efficiency and local economic impact. A quick to market, sole source pre-qualified contracting mechanism, allows the project to start as soon as possible, without the need for a lengthy tendering process. SCAPE will continue to actively audits each project and framework partner, ensuring receipt of value for money and an excellent level of service. An embedded social value process for each project, covering job creation, local labour spend and community engagement is provided for within the SCAPE contracts.

Richard Bines, Solicitor, Contracts and Commercial Team, Legal Services 08.11.2022.

Conveyancing Team - See attached legal advice note

Advice provided by Richard Bines (Solicitor) on 14/12/2022.

Advice documents: DDM Changing Places Toilets 2 Conveyancing Comments.docx

Finance Advice:

As detailed in the body of this report the grant is to provide 3 changing places facilities within Nottingham. One of the sites is Victoria Embankment which is managed by Nottingham City Council and has a current scheme in the capital programme, these works will be added to the overall project and as such any financial risk will have to be managed within the projects overall budget. The other sites are managed by external organisations therefore the capital expenditure will be treated as REFCUS, an agreement between the Council and the external organisation is required to ensure that the external organisations meet the grant conditions

All parties are required to have the Changing Places Toilets for 3 years with grant funding being received for the management, cleaning and maintenance during this period. There is no revenue budget for this after the initial 3 years, in relation to the Victoria Embankment the project manager has confirmed these costs can be contained within existing budgets. The Council has no control over the other sites once the 3 year period has finished.

This scheme has been endorsed by the capital board, so following the approval of this decision the capital programme will be amended accordingly.

Advice provided by Tom Straw (Senior Accountant - Capital Programmes) on 01/12/2022.

Property Advice:

There is no objection to the principle of the recommended decision, but the council needs to ensure that it does not accrue any risk from the terms of the grant not being fully met by other parties receiving the funds, or taking on the responsibility for the ongoing repair and maintenance of the facilities in future years. Appropriate mechanisms will need to be put in place with the lessees of/ the subject properties to ensure that the new facilities are maintained to the grant funders standards. It is understood that such arrangements are not yet in place or fully agreed, and it is not recommended that works begin or funds released until such time as they are.

Property colleagues will need to work closely with the decision author and Legal Services to ensure that appropriate agreements are put in place with the tenants of the buildings that the CPT's are being created in.

Advice provided by John West (Business Partner, Strategic Asset Management) on 19/12/2022. Advice provided by John West (Estates Surveyor) on 19/12/2022.

Procurement Advice:

There are no significant procurement issues with the decisions being sought; items (1), (2), & (4) relate solely to grant funding and management of the scheme, and thus have no direct procurement implications. It is understood that the appointment of contractors for works at the National Justice Museum and Portland Leisure Centre will be the responsibility of their respective tenants, and as the payments in respect of the scheme take the form of grant funding these are outside the scope of the Public Contracts Regulations 2015.

The Victoria Embankment element of the scheme will be delivered by Lindum Group Ltd under an existing contract awarded using the Scape Regional Construction Framework Lot 4: North East. Use of third-party framework arrangements is permitted under Article 18.43 of the Constitution, and the Scape frameworks are considered to be compliant with public procurement legislation. In the event that a different approach is taken, any appointment(s) made must be in accordance with Contract Procedure Rules and the Public Contracts Regulations 2015, and the Procurement Team should be consulted to ensure that this happens.

Advice provided by Jonathan Whitmarsh (Lead Procurement Officer) on 17/11/2022.

**Equality and Diversity
Advice:**

EIA was completed for this proposal. Comments have been provided on EIA. A little more clarity is required in terms of how people will access and use this facility to ensure that there is no negative impact on any protected groups. Will sign off once these comments have been addressed within the EIA.

Advice provided by Nasreen Miah (Equality & employability consultant) on 22/11/2022. All comments have been addressed within EIA. Has taken on board impact on protected groups and general public. Happy to sign this off.

Signatures

Rebecca Langton (PH Skills, Growth and Economic Development)

SIGNED and Dated: 17/01/2023

Sajeeda Rose (Corporate Director of Growth & City Development)

SIGNED and Dated: 13/01/2023