

# Birmingham City Council

## Report to Cabinet

7<sup>th</sup> September 2021



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**Subject:** **Delivery of the Transport Malls for the Commonwealth Games**

**Report of:** Rob James, Managing Director, City Operations

**Relevant Cabinet Members:** Cllr Ian Ward, Leader of the Council, Cllr John O' Shea, Street Scene and Parks, Cllr Tristan Chatfield, Finance and Resources

**Relevant O&S Chair(s):** Cllr Mariam Khan, Commonwealth Games, Culture and Physical Activity, Cllr Penny Holbrook, Housing and Neighbourhoods, Cllr Mohammed Aikhlaq, Resources

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Are specific wards affected?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No – All wards affected
If yes, name(s) of ward(s): Perry Barr		
Is this a key decision?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Forward Plan Reference: 009238/2021		
Is the decision eligible for call-in?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Does the report contain confidential or exempt information?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
If relevant, provide exempt information paragraph number or reason if confidential :		
3. Information relating to the financial or business affairs of any particular person (including the council)		

## **1 Executive Summary**

- 1.1 This report provides an update and makes recommendations on the procurement strategy and delivery approach for the transport malls at the Alexander Stadium site required for the Birmingham 2022 Commonwealth Games.
- 1.2 To support the passage of spectators, athletes, and officials to and from the Alexander Stadium in games-time, there is a requirement to provide temporary transport malls in Perry Park and for the subsequent reinstatement back to parkland following the Games. As temporary structures, the construction of the transport malls is the responsibility of the Commonwealth Games Organising Committee (OC). Following a review of the options, it has however, been identified by all parties (OC, Department for Digital, Culture, Media, and Sport, WMCA and the Council) that the most effective route to deliver the transport malls in time for Games is for the Council to modify the contract with McLaughlin & Harvey Construction Ltd, the stadium main build contractor.
- 1.3 A proposal to transfer responsibility for the delivery of the transport malls from the OC to the Council is made in this report, with a request for the Council to enter into a funding agreement with the OC to allow delivery to be undertaken through the modification of the contract between the Council and McLaughlin & Harvey Construction Ltd for the redevelopment of the Alexander Stadium site. It should be noted that responsibility for costs (including professional fees and works) and all commercial risks for the delivery of the works will remain with the OC.

## **2 Recommendations**

It is recommended that Cabinet:

- 2.1 Approves entering into a Funding Agreement with the OC under which the OC retains full responsibility for all costs and all commercial risks associated with the procurement and delivery of the temporary transport malls and the subsequent reinstatement of the park and associated facilities on completion of the Games.
- 2.2 Approves the modification of the contract with McLaughlin & Harvey Construction Ltd for the redevelopment of the Alexander Stadium site to include the delivery of the temporary Spectator Transport Mall and Games Family Transport Mall on Perry Park, with associated connections to the Athletes Road on the park and the highways network via Church Road and the reinstatement of the park following the Games, subject to the entering into of a Funding Agreement that suitably protects the Council's financial and commercial requirements as set out in recommendation 2.1.
- 2.3 Authorises the City Solicitor to execute and complete all necessary legal documents to give effect to the above recommendations.

### **3 Background**

- 3.1 The Alexander Stadium (the stadium) will host the opening and closing ceremonies as well as the athletics and para-athletics events during the Birmingham 2022 Commonwealth Games.
- 3.2 On 31<sup>st</sup> January 2020, the Council granted planning permission for the redevelopment of the stadium ahead of the Commonwealth Games. As part of this planning permission, outline consent was granted for the temporary overlay structures required to deliver the games, which included transport malls for both Games Family and spectators.
- 3.3 The transport malls are a critical part of the Games-time transport solution for people to arrive at and leave the stadium. With limited rail capacity and a stadium site constrained to both north and east, the stadium will be heavily reliant on buses as the primary mode of transport to and from the venue including city centre shuttle buses, park and ride buses and the new A34 Sprint route. The transport malls will provide facilities where large volumes of spectators and accredited guests can safely board and alight from shuttle buses, coaches, and other vehicles.
- 3.4 The provision of transport malls (for both spectators and accredited officials) in Perry Park is enshrined in the baseline plan for the Games. Following the decision in August 2020 to move away from the single site athletes' village in the Perry Barr, which included transport mall facilities, the OC have considered several alternative options taking into account the revised number of expected vehicle movements and cost considerations. Both Transport for West Midlands (TfWM) and the Council have made clear that options to partially close the either the A34 or Aldridge Road would not be supported given the substantial disruption and pressures this would place on the strategic road network.
- 3.5 Following lengthy discussions between Games stakeholders, it was agreed by all parties that constructing temporary transport malls in Perry Park remains the preferred option. On 22<sup>nd</sup> July 2021, the OC submitted a reserved matters planning application seeking approval of the detailed plans of the stadium for its use during the Games including the transport malls in Perry Park.
- 3.6 The transport malls are required to be completed by April 2022 in time for test events at the stadium in May 2022 ahead of the Games in July / August 2022.
- 3.7 In line with the other temporary structures and facilities at the stadium, the transport malls will be removed after the Commonwealth Games, and working with the Council's Parks team, the grassed areas and playground in Perry Park will be re-instated subject to any conditions set out as a part of the anticipated planning consent for the proposed works.
- 3.8 The works required include groundworks to level the site and providing hard standing areas with appropriate line markings and signage. Given the nature of the required construction works and the need to deliver the transport malls in a compressed timescale, the OC have been in discussion with the Council for support

with potential procurement / delivery options that offer the necessary delivery certainty and cost effectiveness. Key options considered were either for the works to be procured through the OC's temporary overlay turnkey provider (with the works likely to be sub-contracted), or for the Council to seek to modify the existing contract with McLaughlin & Harvey Construction Ltd to incorporate the temporary transport malls. It has been agreed by all parties (OC, WMCA, DCMS and the Council) that the best route to ensure delivery in time for Games is for the Council to modify the contract for the development of the stadium to include the works for the transport malls. This will mitigate against risks to both cost and schedule associated with other potential procurement and delivery options.

- 3.9 To ensure the required allocation of responsibility for costs and commercial risks is in place, a separate Funding Agreement between the OC and the Council is required. This will ensure that financial and commercial risks remain with the OC, in line with the existing arrangements for temporary overlay works as set out in the Host City Contract. The entering into of this agreement is proposed to be a pre-condition to the proposed modification of the contract with McLaughlin & Harvey Construction Limited.

#### **4 Options considered and Recommended Proposal**

- 4.1 A detailed assessment has been undertaken between the OC, WMCA (including TfWM) and the Council to examine alternative options to providing a Games-time transport solution for the stadium. Alternative approaches considered included city centre shuttle buses and/or Games Family vehicles setting down and picking up on the A34 southbound carriageway (in addition to the park & ride buses) or using the Aldridge Road and/ or parcels of adjacent land. These options were discounted based on the extensive adverse impact on the wider highways network, safety and customer experience, which are the key criteria guiding decisions as agreed with the Commonwealth Games Transport Integration Group (TIG).
- 4.2 Design options for the transport malls in Perry Park were considered by the OC in December 2020, including several potential surfacing solutions. The use of a traditional road construction specification was the preferred option as it was cost effective in delivering a solution to meet the anticipated vehicle movements. The design intent is to maximise the percentage of recycled material used within the construction and then to further recycle material at the point of removing the malls.
- 4.3 The OC, DCMS and the Council also considered procurement options and concluded that a contract modification to the main build contract between the Council and McLaughlin & Harvey Construction Ltd provides both schedule and cost advantages over the option to procure the works via the OC as the contracting authority.

## **5 Consultation**

- 5.1 The recommendation to modify the main build contract between the Council and McLaughlin & Harvey Construction Ltd was endorsed by Commonwealth Games Capital Programme Executive Board, Commonwealth Games Finance Directors Group and Commonwealth Games CEO Group in July 2021.
- 5.2 Public engagement has been undertaken by the OC and there is ongoing dialogue with Ward Councillors and relevant Council departments including Highways and Parks on the proposed layout of the malls within Perry Park. All proposals have been well received to date.

## **6 Risk Management**

- 6.1 A thorough review of the risks associated with delivering the transport malls has been undertaken and has informed the proposal to transfer delivery responsibility from the OC to the Council.
- 6.2 The active identification and management of risks associated with the transport malls, will continue throughout the life of the project until completion of reinstatement works following the Commonwealth Games.
- 6.3 The transport malls will be included in future Quantitative Risk Assessments using industry standard techniques to establish likely cost and schedule risk exposure.
- 6.4 It has been agreed that the OC will retain town planning responsibilities and associated planning risk through the process of determination and closing out of conditions.
- 6.5 It has also been agreed in principle that the OC will retain the design and commercial risk on the project and a Funding Agreement detailing costs, contingency, payment terms and governance arrangements has been developed in support of the transfer of scope from the OC to the Council.

## **7 Compliance Issues**

### **7.1 How are the recommended decisions consistent with the City Council's priorities, plans and strategies?**

- 7.1.1. Redeveloping Alexander Stadium to host the Commonwealth Games is recognised as a significant contributory factor in supporting the legacy aspirations for the stadium and the regeneration of the wider Perry Barr area. Successfully delivering the Games will create employment opportunities, drive investment, and deliver facilities that will nurture and support health and well-being.
- 7.1.2. The decision within this report will contribute greatly to Birmingham's reputation as a city capable of hosting major international events, help the city make its permanent mark on the global stage, showcase the city's assets, and enhance the city's international reputation.

#### 7.1.3. Birmingham Business Charter for Social Responsibility (BBC4SR)

McLaughlin & Harvey Construction Ltd is a certified signatory to the BBC4SR and has produced additional commitments proportionate to the value of this modification. These actions continue to be monitored and managed during the period of the contract.

McLaughlin & Harvey Construction Ltd is committed to delivering the stadium redevelopment at net carbon zero, complementing the Council's route to the same city-wide target.

## 7.2 Legal Implications

7.2.1. Under S.111 Local Government Act 1972, the Council has power to undertake works which are calculated to facilitate, or are conducive or incidental to, the discharge of any of their functions.

7.2.2. The Council has a best value duty under the Local Government Act 1999 to improve the efficiency, economy, and effectiveness of the services that it delivers.

7.2.3. The arrangements set out in this report are in compliance with the powers of general competence as set out in Section 1 of the Localism Act 2011.

## 7.3 Financial Implications

7.3.1. The costs of any temporary overlay, including the provision of temporary transport malls at the Stadium, rest with the OC. As such, any costs incurred by the Council (including both works and associated professional fees) will be fully funded by the OC.

7.3.2. It is anticipated that all costs and associated reimbursements will be incurred and accounted for in 2021/22, with no net financial impact on the Council.

## 7.4 Procurement Implications

7.4.1. The award of the contract for the development of the Alexander Stadium was approved the Acting Director, Neighbourhoods in conjunction with the Assistant Director, Development and Commercial (or their delegate), the Interim Chief Finance Officer (or their delegate) and the Acting City Solicitor (or their delegate) on 5th March 2020.

7.4.2. Regulation 72(1)(c), Modification of Contracts During their Term, of the Public Procurement Regulations (PCR) 2015, allows provision for contracts to be modified without the need for a new procurement procedure where all of the following conditions are fulfilled:

- i. the need for modification has been brought about by circumstances which a diligent contracting authority could not have foreseen;
- ii. the modification does not alter the overall nature of the contract;
- iii. any increase in price does not exceed 50% of the value of the original contract.

7.4.3. This contract modification is compliant with PCR 2015, Regulation 72 on the basis the works were to be previously undertaken by the OC and it was unforeseen the Council would be responsible for delivering the works. The modification is for works of the same nature as detailed in the Official Journal of the European Union Contract Notice and falls within the 50% threshold of the value of the original contract.

## **7.5 Human Resources Implications**

7.5.1. The Council is providing support, skills and expertise from within existing resources. Where there is a gap in these resourcing requirements, external resources and services have been engaged. These include Programme/Project and Commercial Management.

## **7.6 Public Sector Equality Duty**

7.6.1. A relevance test to decide whether the planned procurement for the development of Alexander Stadium has any relevance to the equality duty contained in Section 149 of the Equality Act 2010 of eliminating unfair/unlawful discrimination and to promoting equality and human rights was conducted on 3rd May 2018, reference EA002844. The screening identified that there was no requirement to assess this further and completion of an Equality Assessment form was not required. The test has been subsequently reviewed and the same continues to apply.

## **8 Background Documents**

- Alexander Stadium: Full Business Case to Cabinet dated 26<sup>th</sup> June 2019
- Alexander Stadium Planning Application 2019, incl. outline of OC reserved matters dated 10<sup>th</sup> October 2019.
- Commonwealth Games Organising Committee Reserved Matters Planning Application, dated 22<sup>nd</sup> July 2021

### **List of appendices accompanying this report:**

Appendix 1 General Arrangement Site Plan showing temporary transport malls on Perry Park

Appendix 2 Exempt Appendix B – Delivery of the Transport Malls for the Commonwealth Games

Appendix 3 Environment and Sustainability Assessment