

Birmingham City Council

Report to Cabinet

13th December 2022



Subject: New Build - Atlas Works Depot, Tyseley

Report of: Rob James, Strategic Director City Operations and
Paul Kitson, Strategic Director Place, Prosperity & Sustainability

Relevant Cabinet Member: Councillor Majid Mahmood, Cabinet Member Environment
Yvonne Mosquito, Cabinet Member, Finance and Resources

Relevant O & S Chair(s): Councillor Mohammed Idrees, Housing and Neighbourhoods
Councillor Akhlaq Ahmed, Resources

Report author: Lesley Steele, Property Services
Lesley.steele@birmingham.gov.uk

Are specific wards affected?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No – All wards affected
Tyseley and Hay Mills Ward		
Is this a key decision?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
If relevant, add Forward Plan Reference: 010720/2022		
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: This is exempt under Paragraph 3 of Schedule 12A of the Local Government Act 1972 as amended i.e. information relating to the financial or business affairs of any particular person (including the authority holding that information)		

1 Executive Summary

- 1.1 This report provides an overview of the increase in cost for the project due to the additional works identified since the works commenced on site in February 2022.

2 Recommendations

That Cabinet:

- 2.1 Notes the increase in the overall cost of the project from £13.99m to £16.24m
- 2.2 Approves the increase of the Prudential Borrowing (PB) from £2.25m to £4.50m over an extended payback period of 40 years.
- 2.3 Approves the increase in cost of the current contract with Morgan Sindall Construction Ltd for the construction of the new depot in the sum as set out in the Exempt Appendix 1.
- 2.4 Authorises the City Solicitor and Monitoring Officer (or their delegate) to execute and complete all necessary legal documents to give effect to the above recommendations.

3 Background

- 3.1 The Full Business Case (FBC) for the construction of a new depot to accommodate the relocation of the current Montague Street and Redfern Road Depots on the Atlas Works site was approved by Cabinet on 12th October 2021
- 3.2 Following the award of contract by Cabinet, Morgan Sindall Construction commenced works on site in February 2022, additional works with an increase in costs have been identified that were not foreseen during the tender process relating to extraordinary weather conditions, substantial water and drainage issues impacting on the remediation of the site and the cost of lowering and diverting utility and communication services at the new entrances to the site. The main items are detailed below:
 - 3.3 At the end of February 2022, Storm Eunice hit causing structural damage to the garages on the Kings Road Housing Depot site. The garages formed a boundary wall between the Atlas Works and Kings Road Housing Depot site. Following a structural survey, Morgan Sindall Construction raised major concerns that if they commenced piling in that area the garages were at risk of collapse. Housing approved the demolition of the garages which caused a 5 week delay to the programme. Also, with the removal of the garage walls, a new retaining wall, to address the drop in levels between the 2 sites had to be constructed.
 - 3.4 During the excavation of the site, it was identified that when the previous owner's demolition contractor demolished the buildings on the site, drainage connected to neighbouring properties was also removed. This has led to surface water from neighbouring properties dispersing onto the site from rainwater pipes and from underground drainage pipes. As a temporary solution a water tank and pump has

been installed to remove the water. Additional drainage including an attenuation tank has had to be designed and incorporated into the project.

- 3.5 Following extensive excavation of other areas of the site, ground water has been identified as a major issue, even during mild rainfall the site becomes saturated. Severn Trent Water Ltd have visited the site and have not identified any burst pipes within the Atlas Works site footprint however they have not discounted a burst pipe outside the boundary of the site. The water has been tested and has been identified as both storm and foul. Severn Trent Water Ltd have yet to identify the source but are investigating whether it may be from leaks from properties within the vicinity, levels in the immediate area, or a high-water table. The site is at a lower point than its surrounding neighbours and now that the original buildings on the site have been demolished, there is no barrier to stop excessive water accessing the site. The build-up of water has washed away the surface to the access road and car park. This will need to be reinstated and include cement stabilisation to the ground to the south of the site, consequently this has impacted on the programme with additional cost implications.
- 3.6 Costs requested by utility companies for the S278 Agreement (Highways Act 1980) works required to facilitate service diversions to form new entrances to the site [from Kings Road and Redfern Road] and the S104 Agreement (Water Industry Act 1991) requirement to install sewers to a standard at which Severn Trent Water Ltd will adopt, have come in excessively higher than the provisional sums included within the original cost plan. Negotiations with the utility companies is progressing to minimise costs.
- 3.7 There is a requirement as part of the disposal deal, for the Council to vacate Montague Street Depot by the 31st March 2023, when Homes England will take vacant possession of the site. Any further delays could impact on Homes England's programme. The construction works at the Atlas Works site are programmed to complete on the 20th January 2023. The building will then be fitted out with furniture and equipment following handover and the staff from Montague Street and Redfern Road Depots moved across to it.
- 3.8 The project contingency has been fully utilised and further funding is required to offset the cost of these additional works.

4 Options considered and Recommended Proposal

- 4.1 Do nothing and not modify the contract – this is not option as the works are required to be completed to meet the fixed deadline for the disposal deal.
- 4.2 To reduce the scope by value engineering the project specification and design – this has been carried out previously and it is not possible to identify further savings from this approach.
- 4.3 To modify the contract by increasing the value and that of the prudential borrowing sum – this is the recommended proposal to enable the completion of

the development without impacting on the programme or the service's revenue budget.

5 Consultation

- 5.1 A briefing note updating the group on the current position was presented to the Officers pre agenda for Capital Board on 23rd September 2022. The group advised that on confirmation of additional costs a draft Cabinet report be presented to the Capital Board.
- 5.2 This report was presented to Capital Board on the 9th November 2022 who supported it going forward.
- 5.3 Local Ward Members have been consulted on this report.

6 Risk Management

- 6.1 The main risk is a further delay to the programme would add additional cost to the project and impact on Montague Street and Redfern Road Depots relocating to the new building before the 31st March 2023. Also, a delay on vacating Montague Street Depot would impact on Homes England taking vacant possession of the Montague Street site on the contractually agreed date of the 31st March 2023. In order to mitigate this risk approval is required to extend the PB period to enable the modification of the contract with Morgan Sindall Construction.,

7 Compliance Issues:

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

- 7.1.1 The proposal supports the Birmingham City Council Corporate Plan 2022-2026 by contributing to the Council's Key Priorities, specifically A Bold Green Birmingham contributing to ensure the city's clean and supporting the aspiration for the City Council to be net zero-carbon by 2030.
- 7.1.2 The proposal supports the Waste Strategy 2019 – 2034 by working towards improving air quality by locating new facilities within the Tyseley Environmental Enterprise Zone footprint. Also, there is an aspiration to connect to the Tyseley Incinerator site, whilst it is still operating for the provision of energy converted from waste products.
- 7.1.3 An Environmental Sustainability Assessment was submitted as part of the 'Full Business Case - New Build Depot for the Relocation of Montague Street and Redfern Road Depots (Atlas Works)' and approved at Cabinet on the 12th October 2021.
- 7.1.4 Birmingham Business Charter for Social Responsibility (BBC4SR):
Morgan Sindall Construction Ltd is a certified signatory to the BBC4SR and has provided additional commitments proportionate to the modified contract.

7.2 Legal Implications

- 7.2.1 S1 of the Localism Act 2011 contains the Council's general power of competence, which is circumscribed only to the extent of any pre-commencement restrictions on or any specific post-commencement restrictions of that power, and S111 of the Local Government Act 1972 contains the Council's subsidiary powers to do anything, whether or not involving the expenditure, borrowing or lending of money, or the acquisition or disposal of any property or rights, which is calculated to facilitate, or is conducive or incidental to the discharge of any of its functions.

7.3 Financial Implications

- 7.3.1 The report seeks to increase the capital budget for the project and fund the increase through additional service funded prudential borrowing. The project is now estimated to cost £16.24m which is an increase of £2.25m from the original estimate of £13.99m – detail of the additional costs is set out in Exempt Appendix 1. The project is funded from capital receipts of £11.74m and service prudential borrowing of £4.50m as per table below.

	Original	Revised	Difference
Capital Cost	£13.99m	£16.24m	£2.25m
Funded by:			
Capital Receipts	£11.74m	£11.74m	-
Prudential borrowing	£2.25m	£4.50m	£2.25m

- 7.3.2 Borrowing will be repaid over a 40 year period reflecting the useful life of the asset. The cost of borrowing is £0.179m per annum and funded within the existing service revenue budget.

7.4 Procurement Implications (if required)

- 7.4.1 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.

The contract modification is compliant with PCR 2015, Regulation 72(1)(c) on the basis that the modification was unforeseen as described in paragraphs 3.2 to 3.7

above, does not alter the overall nature of the contract and the increase in price does not exceed 50% of the value of the original contract.

- 7.4.2 Since the award of the contract, Morgan Sindall Construction Ltd have provided a satisfactory service in accordance with contractual requirements despite the requirement for the increase in the estimated spend. On this basis and for the reasons stated above, it is recommended that the value of the contract is modified.

7.5 Human Resources Implications (if required)

- 7.5.1 Professional services to support the project will be provided by Property, Finance, Procurement and Legal Officers who will be engaged to deliver this proposal with technical support for the construction from Acivico Ltd.

7.6 Public Sector Equality Duty

- 7.6.1 A copy of the Equality Act 2010 – Public Sector Duty statement together with the initial equality assessment screening ref EQUA549 were appended to the Cabinet Report and FBC approved at Cabinet on the 12th October 2021.

8 Background Documents

- 8.1 Cabinet Report and Full Business Case New Build Depot for the Relocation of Montague Street and Redfern Road Depots (Atlas Works) 12th October 2021.
- 8.2 Cabinet Report Financial Monitoring Report 2021/22 Quarter 3 (up to 31st December 2021) 8th February 2022.

List of appendices accompanying this report:

Appendix 1 - Exempt information
Appendix 2 - Environmental Sustainability Assessment
Appendix 3 - EQUA549