

Public Report

Birmingham City Council

Report to Cabinet

11th December 2018



Subject: CENTENARY SQUARE PUBLIC REALM IMPROVEMENT
SCHEME: SETTLEMENT OF FINAL COSTS
Report of: CORPORATE DIRECTOR, ECONOMY
Relevant Cabinet Member: Cllr Ian Ward, Leader of the Council, Cllr Brett O'Reilly, Cabinet Member for Finance and Resources
Relevant O &S Chair: Cllr Sir Albert Bore, Resources
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Are specific wards affected?	☒ Yes	☐ No – All wards affected
If yes, name(s) of ward(s): Ladywood		
Is this a key decision?	☒ Yes	☐ No
If relevant, add Forward Plan Reference: 005624/2018		
Is the decision eligible for call-in?	☒ Yes	☐ No
Does the report contain confidential or exempt information?	☐ Yes	☒ No
If relevant, provide exempt information paragraph number or reason if confidential : <i>The exempt information excluded from this report relates to contractual terms, containing commercially sensitive data, so this has been extracted and is provided in the accompanying Private report.</i>		

1 Executive Summary

- 1.1 The Centenary Square Public Realm Improvement Scheme has been delayed from completion in October 2018 until July 2019. This delay is due to a number of factors – the majority relating to constraints and unforeseen issues experienced onsite, which are outlined in this report.
- 1.2 The project delay and unforeseen issues during the contract have resulted in an overspend of £3.8m being forecast for the project. Approval is now sought

for the City Council to fund this additional cost to enable the scheme to progress and reach completion by July 2019.

2 Recommendations

That Cabinet:

- 2.1 Approves the allocation of £3.800m from Corporate Capital Resources in settlement of the total final cost for the Centenary Square refurbishment project and to enable practical completion by July 2019.
- 2.2 Approves the increase in contract value with Bouygues UK Ltd (formally Thomas Vale Construction Ltd) by £3.615m to £13.530m and the contract term to July 2019.
- 2.3 Notes the variation to the approved capital cost of the project and approves the revised capital cost of £15.555m.
- 2.4 Authorises the City Solicitor to prepare, negotiate, execute and complete all relevant legal documentation to give effect to the above recommendations.

3 Background

- 3.1 The Centenary Square refurbishment project is part of a programme of schemes to transform the Westside of the City Centre. Featured within the Big City Plan and the Enterprise Zone Investment Plan 2012, the site is centrally located, and once completed will act as the gateway to the expanding Central Business District. It will seamlessly connect the Westside of the city centre which includes the Paradise Forum, Arena Central, Baskerville Wharf, Symphony Hall, International Convention Centre, Repertory Theatre and the Library of Birmingham.
- 3.2 Following evaluation by the Enterprise Zone Executive Board (EZEB) on 22nd February 2016, a £10.550m maximum capped grant from the Greater Birmingham and Solihull Local Enterprise Zone was approved for the project on 3rd March 2016.
- 3.3 On the 19th April 2016 Cabinet approved a Full Business Case for the Centenary Square Public Realm Improvement project and the appointment of Thomas Vale Construction Ltd (owned by Bouygues UK Ltd) under Lot 7 of the Constructing West Midlands Framework as Principal Contractor to undertake the design and construction works to deliver the scheme. The intended contract completion was October 2018.
- 3.4 On the 8th March 2017, a delegated authority decision approved the increase of the project budget to £11.550m to incorporate a £1m Arena Central Section 106 Town and Country Planning agreement. This was offered as a contribution toward the betterment of the highways infrastructure and drainage works as part of the Centenary Square Public Realm Improvement scheme. This was enhanced in June 2018 with an additional £205,456 provided by the

- Sheepcote St / Broad St / Oozells Section 106 agreement, increasing the project budget to £11.755m. This is the current status of the project budget.
- 3.5 The project started onsite in April 2017 and was programmed to complete in October 2018. The project is now forecasted to complete by July 2019.
- 3.6 The delivery of this scheme is complex and has numerous constraints. Difficulties relate to the centrality of its location in the city, broad network of owner/occupier stakeholders and wider construction projects in progress in the immediate vicinity which include major event/conference centres. A summary of these constraints is summarised as follows:
- 3.6.1 Construction required to be delivered in 15 phases as foot traffic through the square was to be maintained 24/7.
 - 3.6.2 Fire exit doors to surrounding venues needed to be available for emergency access 24/7.
 - 3.6.3 The scheme is constructed over a railway tunnel, with a Network Rail agreement for tunnel monitoring in place.
- 3.7 In September 2017, five months after the project commenced onsite, the Principal Contractor, now called Bouygues UK Ltd, reported a six month delay to completion, supported by a substantial number of contractual claims.
- 3.8 From this date a number of further issues and constraints were experienced onsite in addition to those outlined in 3.6. These are summarised as follows:
- 3.8.1 The underground plant room was redesigned and constructed using a specialist system to accommodate additional Network Rail requirements. These requirements were to remove the risk to the tunnel below and to gain approval to proceed with the works. The changes did not incur additional costs, but had a major impact on the project programme timetable.
 - 3.8.2 With two water attenuation tanks and a plant room below ground level, 20% of Centenary Square had to be excavated to a depth up to 7m. During construction a number of unknown ground obstructions were discovered which included parts of the canal basin and foundations of an Old Mill. These obstructions had to be removed along with any contaminated land.
 - 3.8.3 The discovery of substantial foundations to the existing Hostile Vehicle Protection measures.
 - 3.8.4 Western Power Distribution changed the requirement for all existing power running through the square to be diverted around Cambridge Street and Paradise Circus Queensway upon reviewing the final design. Statutory undertakers would not comment or provide full approvals until the contractor was actually in contract, which made it impossible to forecast this change.

- 3.8.5 Areas that were under the control and within the boundary of the contractor were impacted by adjoining contractors. The Midland Metro Alliance, for example, delayed works while they rebuilt a retaining wall with a working area impinging on the site.
- 3.8.6 Events at surrounding venues impacted on the construction programme – e.g. the Conservative Party Conference in September/October 2018, had been accommodated in the original project programme. However due to the project delays the contractor had to re-phase or pause construction as access to the site had been cut off for several days.
- 3.9 In July 2018, the Project team, led by the Project Delivery Manager, concluded a major financial review including estimated costs against a substantial number of contractual claims. This review confirmed a potential overspend of £4.5m, of which £2m remained in dispute with the contractor.
- 3.10 In September 2018, under the terms of the contract, all disputed claims were agreed between the Contractor and the Project Delivery Manager, which enabled the final project overspend of £3.8m to be reported with more certainty. The agreement also includes a significant contribution from the Contractor and a contingency for the remainder of the contract, all predicated upon a completion being achieved in July 2019.
- 3.11 Lessons Learned:
- Projects being delivered in the Centre of a busy public area and built in several phases to allow full access across the site at all times, should have a 6 months stage review. This review would take into account the budget, programme and scope of works. Additional funding should be built into the Full Business Case to allow an increase in funding, if required at the review stage.
 - Where project costs are to be incurred to accommodate events and later decisions of the council, the cost impact on the original project should be included in those subsequent decisions and added to the project budget.
 - The West Midlands Partnership Contract has failed to deliver this project within budget and programme. The detailed lessons learned from this project are being included in the review of the partnership, which is already in progress.
 - Public realm contracts which include groundworks below 2 metre depth should include a 20% contingency.
 - Working over a railway tunnel, which requires a Network Rail Agreement, should include a 10% contingency.
 - Diversions of utilities must be undertaken before contracts begin.

4 Options considered and Recommended Proposal

- 4.1 **Do nothing** - It is not feasible to suspend individual elements of the project as it functions as one complete project (e.g. lighting, drainage, granite etc.), the

majority of which is either partially completed or procured. This option would also lead to significant negative impacts to the public, adjacent developments and owner/occupiers.

- 4.2 **Reduce scope** – The council is currently 60% through this contract so the potential for changing scope is technically available. However, it would be costly to re-enter into a revised contract and consultation on design changes to gain a financial benefit at this stage would not be feasible.
- 4.3 **Complete proposed scheme** – This will provide a new world class public square, befitting of the Council's aspiration for this location and completing the centrepiece development for the wider investment plans for this area of the city. This is the recommended option.

5 Consultation

5.1 Internal

- Contractual reports were produced within the contract by Acivico and quarterly monitoring reports completed for the Enterprise Zone Board (Project funder).
- Change Control was managed by Acivico within the contract, and there has been no change to the scope of the project.
- Officers from Corporate Procurement, City Finance and Legal Services have been involved in the preparation of this report.
- All Stakeholders have been advised on the progress of the scheme. Regular briefings have been held with the Leader of the Council.
- Regular briefings/presentations have also been made to the Economy Directorate Management Team on latest progress throughout the scheme. However it has been difficult to quantify the total budget pressure until recently when negotiations with the contractor were concluded.

5.2 External

- Consultation was undertaken as part of the original project approval by Cabinet on 19th April 2016.

6 Risk Management

- 6.1 A copy of the updated Risk Register for the project to take it through to July 2019 is attached at Appendix 1. This register is regularly reviewed and updated by the Project Delivery Manager.

7 Compliance Issues:

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

- 7.1.1 Completion of a newly refurbished public accessible Centenary Square is consistent with the strategic outcome outlined in the Council Plan 2018-2022 – Birmingham is a great city to live in, particularly Priority 8: we will enhance our status as a city of culture, sports and events. The project is consistent with the Big City Plan and Enterprise Zones Investment Plan 2013/4 to 2022/23 and Economic Zones Prospectus.

7.2 Legal Implications

- 7.2.1 Investment in economic development and infrastructure works to improve the City is made pursuant to the general power of competence contained in Section 1 of the Localism Act 2011.

7.3 Financial Implications

- 7.3.1 The additional capital expenditure of £3.800m will be funded from Corporate Capital Resources. The sum of £3.615m will be used to extend the contract with Bouygues UK Ltd in order to complete the refurbishment of Centenary Square, with the balance of £0.185m being used for fees and services. An estimated £2.000m of the increased budget will be spent in 2018/19 and the remaining £1.800m in 2019/20.
- 7.3.2 There are no additional revenue implications arising from this report because there have been no changes to the scope or design of the project.

7.4 Procurement Implications

- 7.4.1 The potential for undertaking a further mini competition for an alternative Contractor to undertake these works has been assessed and it was concluded that undertaking such an exercise was impractical from a technical, timing and business continuity perspective.

The recommended proposal to extend the contract until July 2019 is in accordance with Regulation 72 (c) of the Public Contract Regulations 2015 ("PCR 2015"). The requirements of Regulation 72 (c) PCR 2015 are satisfied as:

- (a) The need for modification was brought about by circumstances (as set out in paragraph 8.3) which the Council acting diligently could not have foreseen;
- (b) The proposed extension does not alter the overall nature of the contract; and
- (c) The increase in price does not exceed 50% of the original contract value.

7.5 Human Resources Implications (if required)

7.5.1 There are no Human Resource implications to this report.

7.6 Public Sector Equality Duty

7.6.1 An Equality Assessment was previously undertaken in relation to the Centenary Square scheme (Ref EA001151). This assessment recognised that whilst there will be a wide range of positive impacts from the Centenary Square Improvement Scheme, due to the transformational nature of the proposals for the site, there will be some initial negative impacts during construction. In order to mitigate the negative impacts as much as possible, all stakeholders including the public and local businesses have been kept informed and consulted throughout the whole implementation period.

8 Background Documents

- 8.1 Big City Plan
- 8.2 Enterprise Prospectus 2012
- 8.3 Cabinet Report – Centenary Square Public Realm Improvement Scheme: Full Business Case and Contract Award, *19th April 2016*
- 8.4 Delegated Authority Report – Centenary Square Public Realm Improvement Scheme: Funding Update, *8th March 2017*
- 8.5 Birmingham Audit Final Audit Report: 0077/071 Centenary Square – Open Book Accounting
- 8.6 List of Appendices accompanying this Report:
 - 1. Project Risk Log
 - 2. Equality Analysis