

To: Council
Date: 17 July 2023
Report of: Head of Law and Governance
Title of Report: Decisions taken under Part 17.9 of the Constitution

| Summary and recommendations | |
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| Purpose of report: | Council is asked to note the decision taken by the Executive Director (Development) under the provisions in Part 17.9 of the Constitution. |
| Recommendation: That Council resolves to: | |
| 1. Note the decision taken as set out in the report. | |

| Appendices |
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| None |

Introduction and background

1. This report updates Council on a decision taken by the Head of Paid Service (Chief Executive) under the provisions in Part 17.9 of the Council's Constitution.
2. Where the provisions under Part 17.9 are used the Constitution requires that the decision must be reported to the next ordinary Council meeting with the reasons why it was urgent.

Decisions taken under Part 17.9

3. The following decision has been taken under the provisions in Part 17.9 of the Constitution. Council is asked to note the decision.
4. This report does not include decisions taken under the provisions of Part 17.9 of the Constitution that have previously been reported to Council.

| ITEM 1 | ENTERING INTO DEVELOPMENT SERVICES AGREEMENT WITH NETWORK RAIL REGARDING COWLEY BRANCH LINE PACE PHASE 2 |
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| Oxford City Council entering into a Development Services Agreement (DSA) with Network Rail Infrastructure Limited, in order to deliver the detailed design stage of work for the Cowley Branch Line, known as PACE Phase 2 in rail industry terminology. The estimated cost of this contract is £3,261,145 and is funded according to the terms of a Collaboration Agreement, a separate decision. The | |

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| DSA sets out the terms by which Network Rail will progress the Cowley Branch Line rail and station infrastructure to detailed design stage, with Oxford City Council as customer and oversight provided from all local funders through a Programme Panel. | |
| Date of decision: | 29 March 2023 |
| Decision taker | <p>Executive Director (Development)</p> <p>Decision taken in consultation with:</p> <ul style="list-style-type: none"> • Councillor Louise Upton, Cabinet Member for Health and Transport • Councillor Ed Turner, Deputy Leader (Statutory) – Finance & Asset Management • Carolyn Ploszynski, Head of Regeneration and Economy • Nigel Kennedy, Head of Financial Services • Susan Sale, Head of Law and Governance |
| Was the decision taken under emergency or urgency rules? | <p>Constitution 17.9</p> <p><i>A decision to be taken cannot be called in if the Chair of the Scrutiny Committee, upon being consulted, agrees that:</i></p> <ul style="list-style-type: none"> • <i>the decision to be taken is both urgent and reasonable and</i> • <i>the delay caused by the call-in process would not be in the interests of the Council or the public.</i> <p><i>If the Chair of the Scrutiny Committee is not available, the Lord Mayor must agree that the decision to be taken is urgent and reasonable. If the Lord Mayor is not available, the Deputy Lord Mayor, Chief Executive or Monitoring Officer must agree.</i></p> <p><i>Decisions to which this rule applies must be identified on the notice of decision.</i></p> <p><i>Decisions to which this rule applies must be reported to the next ordinary Council meeting with the reasons why they were urgent. If the next meeting is within seven days of the decision being taken the decision taker will report to the next meeting after that.</i></p> |
| Is this a Key Decision? | Yes |
| Reasons for decision | <p>This contractual approach is the standard template used by Network Rail when it undertakes work on behalf of third parties.</p> <p>The item had been notified on the Forward Plan for the required 28 days; the officer decision was initially published on 24 March 2023 and the call-in period elapsed at the close of 28 March 2023, with no call-in request having been received from members. However, after the decision notice was published Network Rail alerted the Council that they had made a rounding error in the draft DSA meaning that the £3,260,000 published in the original decision notice was incorrect and Network Rail</p> |

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| | <p>advised that the DSA could only be signed if the revised estimated cost of £3,261,145 was set out in the contract.</p> <p>This key decision, with the correct estimated contract value, was required to be taken and implemented urgently as the DSA needed to be executed and entered into within the current 2022-23 financial year, in order for the Network Rail estimated costs contained within the contract to be valid. The draft DSA contained an explicit assumption that the contract must be entered into in March 2023 for its terms to be valid; in particular, the overall cost is made up of hourly rates for Network Rail staff and contractors, which change at the start of the 2023-24 financial year. If the DSA is entered into in the 2023-24 financial year, the total contribution of the Council and landowners would increase and cause all local decision-making to be restarted. Therefore, if the DSA is was entered into in March 2023, the Cowley Branch Line 'Design Phase' was at risk.</p> |
| Alternative options considered: | <p>There has been no prior call for competition as:</p> <ul style="list-style-type: none"> a. competition is absent for technical reasons – Network Rail have progressed the Outline Business Case and are in communication with the Department of Transport on its content and the subject matter of the agreement is intrinsically linked to the work already undertaken; and b. no reasonable alternative or substitute exists – the standard documentation of Network Rail has to be used. |
| Wards significantly affected | <p>Littlemore, Cowley, Northfield Brook, Blackbird Leys, Temple Cowley</p> |

Financial issues

5. The amendment to the estimated value of the DSA did not incur any financial risk to the Council. The DSA was an emerging costs contract with in-built contingency and all parties were aware that the Council is contractually bound to ensure Network Rail prioritises working within the established (and maximum locally approved) £3.26m budget, including the use of contingency where required, rather than use the Programme Panel to seek approval for any overall budget increase beyond the £3.26m budget.
6. The decision was made in order to correct a rounding error on the part of Network Rail and to ensure that the Council could secure hourly rates for Network Rail staff and contractors at the 2022-23 financial year level.

Legal issues

7. At its meeting on 14 December 2022, Cabinet delegated authority to the Executive Director (Development), in consultation with the Council's Section 151 Officer, the Head of Law and Governance, and the Cabinet Members for Health & Transport and for Finance & Asset Management to agree financial contributions and terms, and then enter into all relevant funding agreements and contracts in respect of the Cowley Branch Line Local Funding for Full Business Case.

8. The urgency provisions used to take the decision outlined in this report are set out in Part 17.9 of the Council's Constitution. In accordance with Part 17.9 of the Constitution, the Chair of the Scrutiny Committee, Cllr Dr Christopher Smowton agreed that the taking of the decision was both urgent and reasonable, and that the delay caused by the call-in process would not be in the interests of the Council or the public.

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Background Papers: None