Officer Decision Record - Executive Decision

If Key Decision: Decision Ref. No.

B000/24

If not a Key Decision write n/a above

OFFICER DECISION RECORD i

Officer Key Decisions are subject to the Council's Call-In Procedure (Annex 9 of the Council's Constitution https://www.hertfordshire.gov.uk/about-the-council/freedom-of-information-and-council-data/open-data-statistics-about-hertfordshire/who-we-are-and-what-we-do/who-we-are-and-what-we-do.aspx)

Subject: For Hertfordshire County Council to agree the claim for settlement of unforeseen construction costs arising from the Bishop Stortford High School Rebuild Project

Type of Decision: Executive/Non-Executive

Key Decision (Executive Functions only): Yes/No

Executive Member/Committee Chairman: Cllr Bob Deering

Portfolio (Executive Functions only): Resources and Performance

Officer Contact: Helen Maneuf

Tel: 01438 845502

1. Decision

For Hertfordshire County Council to agree the settlement proposed by ISG (24-06-24) in relation to the costs overruns incurred as a result of unforeseen ground conditions. The settlement payment will require an additional allocation of funding of £4.022m.

The settlement payments and scheduling are as follows:-

£3,475,436 by 10 July 2024 and £1,529,069 by 31 July 2024

In full and final settlement of the claim by ISG in respect of the issues and heads of claim set out in their letter of Monday 1st July 2024 arising from the delayed construction of the Bishops Stortford school.

2. Reasons for the decision

ISG Ltd was engaged/contracted by HCC for a project to rebuild Bishop Stortford High School and it is currently in the final stages and envisaging practical completion in the next few months.

Completion of the contract was delayed due to the discovery of ground water on site which had not been picked up in the original site survey commissioned by HCC.

The contract provides for remedies in the event of delays and negotiations as to the precise nature and value of the costs have been ongoing for many months with HCC supported by expert advice on costs provided by MACE and expert legal advice provided by Counsel.

In 2022, Cabinet considered a report which set out the problems caused by the unforeseen site conditions and the fact that there would be additional costs incurred by HCC due to contractual payments for the contractor due to delays arising. At that point an amount of £7.65m was allocated on the basis of best estimates.

However, having undergone subsequent review over the intervening period, that figure has subsequently increased and in order to settle the claim at this point and on the preferential settlement terms, will require an additional allocation of £4.022m and this will be allocated from the schools Basic Need Grant as to which the Chief Finance Officer has confirmed there are sufficient funds available.

ISG is keen to progress the matter to conclusion and within the last two weeks has indicated that in the absence of settlement, it intends to initiate an adjudication process under the terms of the contract. ISG also made an offer to settle on terms which if agreed by 5th July 2024, would, according to HCC's costs advisor, constitute a discount of approximately £1m on the amount likely to be awarded against HCC if the matter progresses to adjudication (and would also avoid the costs of adjudication itself).

The decision is for HCC to agree a final settlement of all heads of claim under ISG's without prejudice offer 01-07-24, and to allocate an additional £4.022m to cover this.

3. Alternative options considered and rejected

The alternative is to refuse to agree the settlement and progress the matters through the adjudication process. However, this would have adverse costs consequences for HCC.

4. Consultation (see Summary of Requirements below)

Was any Councillor consulted? Yes

Yes/No (delete as applicable)

If yes:

(a) Comments of Executive Member/Committee Chairman (delete as applicable)

Views were sought from the Executive Member for Resources Cllr Deering, who concluded that HCC had taken expert legal and costs assessment advice which indicates that the offer is financially advantageous for HCC and as such there is a compelling reason to expedite the process through the use of Special Urgency procedures available under the Constitution.

Cllr Deering first considered the settlement proposal at a meeting on 27 2024 June when the options were presented to HCC's Chief Finance Officer, Steven Pilsworth. Although Cllr Deering considered the legal costs of adjudication were minimal in the context of the whole claim, his provisional view was that the offer represented the best outcome as it was presented to him but he sought assurance that there would be appropriate governance of the decision making process given the value of the transaction and also the need to consult the Executive Leader.

On the 3 July 2024 Cllr Deering met with the interim Executive Director for Resources, and on 4 July 2024 Cllr Roberts and Cllr Deering met with the Interim CEO, Director of Law & Governance and Chief Finance Officer. Having reviewed the position all were satisfied that:-

- i) The offer itself represented the best option for HCC.
- ii) The offer was in jeopardy unless a decision could be made under the Special Urgency' provisions and whilst this wasn't ideal, it was necessary in the circumstances to avoid significant additional costs to HCC.
- (b) Comments of other consultees

Councillors consulted: Cllr R Roberts Cllr David Andrews Cllr Steve Jarvis Cllr Nigel Bell Cllr Ben Crystal

- 5. Any conflict of interest declared by a councillor who has been consulted in relation to the decision N/A
- 6. Following consultation with the Executive Member/Committee Chairman, I am proceeding with the proposed decision.

Signed: Helen Maneuf

Title: Interim Executive Director of Resources

Date: 5 July 2024

Copies of record to:

- All consultees
- hard & electronic copy (if required to be made available for public inspection) to Democratic Services Manager - Room 213 County Hall.ⁱⁱ

Summary of Requirements to Inform/Consult Councillors

Significance of Proposed Action	Controversial	Relevant Councillor(s) to be Consulted
Technical/Professional/ Routine	No	No need to inform or consult councillors
Technical/Professional/ Routine	Yes	Executive Functions: Consult relevant Lead Executive Member and, where appropriate, Local Councillor Non-Executive Functions: Relevant Committee Chairman and, where appropriate, Local Councillor
Local	No	Executive Functions: Inform Lead Executive Member and Local Councillor Non-Executive Functions: Inform Local Councillor
Local	Yes	Executive Functions: Consult Lead Executive Member and Local Councillor Non-Executive Functions: Consult Local Councillor
General or County-wide	No	Executive Functions: Consult relevant Lead Executive Member (s) Non-Executive Functions: Consult relevant Committee Chairman
General or County-wide	Yes	Executive Functions: Consult relevant Lead Executive Member (s) and the Leader of the Council Non-Executive Functions: Consult relevant Committee Chairman/Leaders all Political Groups