

Notice of Non-key Executive Decision

Subject Heading:	Voluntary ex ante transparency notice (VEAT) Havering Wates JV LLP
Cabinet Member:	Councillor Damian White Leader of the Council
Report for :	Neil Stubbings Director of Regeneration Programme Delivery
Report Author and contact details:	Martin Fahy – Financial Analyst martin.fahy@havering.gov.uk 01708 432651
Policy context:	Havering Housing Strategy 2014-2017 HRA Business Plan 2017-2047 National Planning Policy Framework 2012 Draft London Plan 2017 Havering Local Development Framework and Romford Area Action Plan 2008 Romford Development Framework 2015 Havering Local Plan 2016-2031 (awaiting adoption).
Financial summary:	A decision to publish a VEAT Notice documenting the changes to the 12 Estates Joint Venture contract since the selection of the preferred bidder Wates Construction Limited in April 2018. There are no direct financial consequences linked to the decision to publish the VEAT Notice. Should a claim be raised against the Council, it would inevitably delay the delivery of the project and potentially render some or all of the changes to the contract ineffective. Based on the financial assessment and modelling conducted by the Council, the changes have been assessed as non-material.

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	However, this does not preclude a complainant taking a different view.
Relevant OSC:	Towns and Communities
Is this decision exempt from being called-in?	Yes - It is a non-key decision

The subject matter of this report deals with the following Council Objectives

Communities making Havering	<input checked="" type="checkbox"/>
Places making Havering	<input checked="" type="checkbox"/>
Opportunities making Havering	<input checked="" type="checkbox"/>
Connections making Havering	<input type="checkbox"/>

Part A – Report seeking decision

DETAIL OF THE DECISION REQUESTED AND RECOMMENDED ACTION

This report seeks approval from the Director of Regeneration, acting in consultation with the Monitoring Officer to:

- (i) Approve the use of the Voluntary Ex Ante Transparency Notice (VEAT) procedure, where in the circumstances and in consideration of the advice detailed in paragraphs 10.12 - 10.31 of **Appendix 4**;
- (ii) Approve the contents of the Voluntary Ex Ante Transparency Notice as set out at **Appendix 2** to represent the position of the Council; and
- (iii) Approve for the same to be published by Havering Council in respect of Havering Estate Regeneration Partner – Property/Asset JV Company.
- (iv) Authorise the use of the Contract Award Notice (CAN) procedure if necessary, to be documented in a subsequent Non Key Executive Decision after the contract variations as documented in **Appendix 2** have been entered into.

AUTHORITY UNDER WHICH DECISION IS MADE

Pursuant to the Cabinet meeting of 12 February 2020, authority is delegated to the Director of Regeneration, in consultation with the Monitoring Officer, to approve use of the Voluntary Ex Ante Transparency Notice (VEAT) and/or Contract Award Notice (CAN) procedures, to include approving its contents to represent the position of the Council, should the Director consider necessary or in his opinion appropriate and in the circumstances and in consideration of the advice detailed in paragraphs 10.12 - 10.31 of the exempt Cabinet Report of February 2020, attached here as **Appendix 3**.

STATEMENT OF THE REASONS FOR THE DECISION

The Council is confident in its analysis on the legal tests that the changes are not material, therefore it would be prudent to publish a VEAT Notice as a precautionary measure for the protection of both parties before the development is initiated.

BACKGROUND

Background

The London Borough of Havering (“the Council”) entered into a contract for a partner to form a long-term corporate joint venture (“JV”) property vehicle to secure investment and expertise to deliver Havering’s housing led regeneration strategy,

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entered into 27 April 2018 (“the Contract”). The opportunity was advertised in OJEU (2017/S 094-185114) and procured under the Concession Contracts Regulations 2016. Further details of the original Contract are in that OJEU Contract Notice at **Appendix 6**.

Since the incorporation of the JV between the Council and Wates Construction Limited, both JV partners have continued to work up the designs and costings for the 12 Estates programme. As part of this process, both JV partners have agreed the following non-material changes to the contract.

1. Forward funding, £45.4 million of Council funding is to be introduced in Phase 1 to support the agreed enhancements to the design, an increase in contingency, and a reduction of open market units, combined with an increased provision of affordable housing (net reduction 98 units). This change was approved on 12 February 2020 as part of the HWR LLP Business Plan and Budget 2020/2021 Report presented to Cabinet (Recommendation 3).
2. Removal of the Delta estate from the scheme (reduction of 430 units), linked to concerns on viability and its inclusion would not meet the agreed regeneration objectives of the Council. This change was approved on 12 February 2020 as part of the HWR LLP Business Plan and Budget 2020/2021 Report presented to Cabinet (Recommendation 7).
3. Two additional sites have been added, the first Chippenham Road which was approved for inclusion by Cabinet on 13 February 2019 (HWR LLP Business Plan and Budget 2019/2020 Report, Recommendation 5). Cabinet approved the inclusion of the second site Napier New Plymouth blue line on 12 February 2020 (HWR LLP Business Plan and Budget 2020/2021 Report, Recommendation 1). Both sites were earmarked as potential blue line opportunities in the procurement process (adding 519 units). The move to wholesale redevelopment of the Farnham & Hilldene estate, adding 477 units was highlighted as part of the wider Harold Hill development in the HWR LLP Business Plan and Budget 2019/2020 Report to Cabinet, para 4.2. Further work on site capacity studies have added an additional 138 units across the existing remaining red line estates. This combined with the agreed changes on Phase 1, have resulted in a net increase of 606 units. The changes to the programme were highlighted under para 4.3 of the HWR LLP Business Plan and Budget 2020/2021 Report and approved the capital budget under Recommendation 1.
4. Demolition contract, Waterloo, and Queen Street estates (£7.8 million). It has been agreed to bring forward the demolition of the Waterloo and Queen Street estates, to facilitate the agreed objective of expediting the delivery of this key development. This change was approved on 12 February 2020 as part of the HWR LLP Business Plan and Budget 2020/2021 Report presented to Cabinet (Recommendation 6). This change necessitates an amendment to the Development Agreement (“DA”).
5. Partner equity funding has increased by £58.3 million across all sites in the programme. This is in response to planning requirements increasing the number of affordable housing units. Whilst the gross requirement has increased by £58.3m, it

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has not resulted in an increase in the Council's peak net investment in the JV. The additional funding will be funded from capital receipts arising from the completion of the sites as development progresses. The additional equity commitment is match funded by the private sector partner. This increase in equity was approved on 12 February 2020 as part of the HWR LLP Business Plan and Budget 2020/2021 Report presented to Cabinet (Recommendation 1).

6. The Council is amending the DA to purchase 197 units in the Napier House and New Plymouth House development ("NNP") and is altering the payment from a fixed price per unit to a build contract sum approach. This was to address the viability concerns linked to the imposition of the COVID-19 lockdown and enable construction to the site to commence without significant delay. This was approved on 05 August 2020 as part of the HWR Covid-19 Options Paper Report presented to Cabinet (Recommendation 1).
7. Cabinet approved the 2020/21 HWR Business Plan, which made provision for decoupling the Phase 1 sites to permit the early development of the Napier New Plymouth (NNP) and Solar, Serena and Sunrise (SSS) estates. This was necessary given vacant possession conditions have been satisfied faster than anticipated on NNP and SSS. Under the original agreement, all three sites would have needed to start on site at the same time, which would have in effect delayed the delivery of NNP and SSS, pending completion of the vacant possession condition on the Waterloo and Queen Street estate. The approval of the HWR LLP Business Plan and Budget 2020/2021 Report (Recommendation 2) on 12 February 2020 ratified the decoupling of the Phase 1 sites. This change necessitates an amendment to the DA.

The changes along with the details and justifications for their incorporation in the VEAT notice are provided at attached **Appendix 3**.

The VEAT notice provides further information on the details of the contract changes which are set out in 'II.2.4 Description of the procurement' in the voluntary ex ante transparency notice Appendix 1.

It relates to the London Borough of Havering's contract opportunity advertised under OJEU Notice 2017/S 094-185114. Further details of the original Contract are set out in that OJEU Notice at **Appendix 6**.

The Director of Regeneration upon the expiration of the standstill period will consider the need to issue a Contract Award Notice (CAN) after the contract variations as documented in the VEAT Notice at **Appendix 2** are entered into. The decision will be documented in a Non Key Executive Decision.

OTHER OPTIONS CONSIDERED AND REJECTED

Rejected – **Do nothing**. No notification to the market. Complainants would have the opportunity to lodge a claim against ineffectiveness for a period of up to six months after entering contract for the works. The remedy of ineffectiveness would render the onward performance of the agreement unenforceable which would have a significant

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operational and commercial impact if granted once construction has commenced. This would be accompanied by a civil court fine, which is required to be effective, proportionate and dissuasive.

Given the potential significant reputational and cost risk to the Council, it is therefore appropriate and prudent to publish the VEAT notice, in advance of entering contract. The publication of the notice would provide complainants to lodge a claim against of ineffectiveness for a period of up to 10 days after the publication of the VEAT.

PRE-DECISION CONSULTATION

Consultation with the Chief Executive and Director of Legal and Governance (Monitoring Officer).

NAME AND JOB TITLE OF STAFF MEMBER ADVISING THE DECISION-MAKER

Name: Martin Fahy – Financial Analyst

Designation: Regeneration

Signature:

Date: 14/10/2020

Part B - Assessment of implications and risks

LEGAL IMPLICATIONS AND RISKS

This report seeks authority from the Director of Regeneration, in consultation with the Monitoring Officer, to approve use of the Voluntary Transparency Notice (VEAT) procedure and to approve the contents of the VEAT notice to represent the position of the Council, should the Director consider necessary or in his opinion appropriate in the circumstances.

This is in accordance with the authority delegated to the Director of Regeneration by the Cabinet at its meeting of 12 February 2020, in accordance with Part 3 of the Constitution and section 9E (3) of the Local Government Act 2000.

Further legal comments are contained in exempt Appendix 1.

FINANCIAL IMPLICATIONS AND RISKS

The publishing of the VEAT notice would not create any direct financial implications for the Council. The financial implications of the various changes documented in the VEAT have been assessed and documented in the Business Plan refresh report, which was approved by Cabinet Report in February 2020, along with Havering and Wates Regeneration Covid-19 option Report, which was approved by Cabinet in August 2020.

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Further financial implications are contained in Exempt Appendix 1

**HUMAN RESOURCES IMPLICATIONS AND RISKS
(AND ACCOMMODATION IMPLICATIONS WHERE RELEVANT)**

None.

EQUALITIES AND SOCIAL INCLUSION IMPLICATIONS AND RISKS

None.

BACKGROUND PAPERS

None.

APPENDICES

Appendix 1 – Exempt Appendix (Legal and Financial Implications).
Appendix 2 – Draft VEAT Notice
Appendix 3 – Draft VEAT Notice, supplement document
Appendix 4 – Cabinet Report of 12 February 2020 (with exempt agenda)
Appendix 5 – Cabinet Report of 05 August 2020 (with exempt appendix 1)
Appendix 6 – OJEU Contract Notice (2017/S 094-185114)

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Part C – Record of decision

I have made this executive decision in accordance with authority delegated to me by the Leader of the Council and in compliance with the requirements of the Constitution.

Decision

Proposal agreed

Details of decision maker

Signed



Name: Neil Stubbings – Director of Regeneration Programme Delivery

Date: 14/10/2020

Lodging this notice

The signed decision notice must be delivered to the proper officer, Debra Marlow, Principal Democratic Services Officer in Democratic Services, in the Town Hall.

For use by Committee Administration

This notice was lodged with me on _____

Signed _____