

Record of operational decision

Decision title:	To appoint the incumbent wetland construction partner through the NEC4 contract provisions to complete subsequent phases of work and complete the Luston Wetland Scheme
Date of decision:	13/12/2022
Decision maker:	Service Director Environment and Highways
Authority for delegated decision:	<p>A cabinet member decision was taken on 10 August 2020 authorising land purchasing and lease negotiations with landowners to progress acquisition, design, construction and management of up to 8 suitable sites:</p> <ul style="list-style-type: none"> • That the approved £2m allocation in the Council’s 2020/21 capital programme from the New Homes Bonus is authorised for the land purchase, design, construction and management of the integrated wetlands • The Assistant Director for Regulation, Environment & Waste be authorised to take all operational decisions necessary to implement the scheme including the required land acquisitions and leases. In accordance with the cabinet member decision dated 10 August 2020. <p>(The Assistant Director for Regulation, Environment & Waste post has since been superseded by the role of Service Director Environment and Highways)</p> <p>https://councillors.herefordshire.gov.uk/ieDecisionDetails.aspx?ID=7049</p>
Ward:	Bircher
Consultation:	N/A
Decision made:	To instruct works through the existing NEC4 contract with JN Bentley Ltd up to a maximum total of £1,016,910, in order to secure completion of remaining phases of construction activity necessary to bring the Luston wetland scheme into operation.
Reasons for decision:	<p>The integrated wetlands programme makes a valuable contribution to the environmental and economic priorities set out within the County Plan 2020-2024, unlocking housing development and associated economic activity while safeguarding and improving the water quality of the River Lugg. The Luston wetland as a pilot scheme represents a successful collaboration between the council and a range of stakeholders, and establishes a model for future phosphate mitigation schemes both in Herefordshire and beyond.</p> <p>Following an open procurement process a contract was placed for the initial construction phase of the Luston wetland in 2022. Due to the need to meet ambitious expenditure milestones as part of Local Enterprise Partnership (LEP) grant funding conditions, it was necessary to move to the</p>

construction phase while elements of the design were still in development, and while regulatory approvals with no direct precedent were still being worked through. In order to secure the grant, contractor procurement went ahead based on the design as far as it had progressed at that stage.

Subsequent stages of design addressed the absolute certainty of phosphate reduction levels required to underpin the principle of the offsetting scheme, and a cautionary approach was essential at every level in order to satisfy the statutory requirements for such a scheme. The design development was also required to respond to the evolving requirements of the regulatory bodies with regard to performance projections, flood risk and drainage. Of most significance was a resulting increase in the water holding capacity of the wetland lagoons, which leads to a greater volume of bulk excavation in the construction phase. In tandem with this, Environment Agency requirements regarding flood risk have impacted previous proposals to retain surplus soil on site, meaning the bulk of the excavated material being loaded and removed off-site to a licensed location.

Options for the further phases of construction work dictated by the developed design included separating off elements of the work (in particular the bulk excavation and disposal) and procuring these works separately, or utilising the established provisions of the NEC4 form of contract to employ the existing contractor, JN Bentley, with support from the appointed quantity surveying consultant to assess value for money.

The following conclusions emerged from robust consideration:

1. It would not be practical or economic to have two separate contractors working in tandem on the same site, and so a subsequent phase would have to be deferred until completion of the original phase.
2. Deferring those works as in (1) would extend the project outside of the grant expenditure deadlines, so that a grant allocation of £1m is likely to be lost.
3. Unit rates for the bulk earthworks and disposal had been obtained from the contractor in the competitive tender and included in the original contract. These rates can be applied to the subsequent phase on a re-measurement basis, ensuring value for money in those works relevant to those rates. Reference to rates for the same work in similar more recent procurements has demonstrated that the contract rates in place remain competitive against the market.
4. Separating the work into distinct phases would be expected to be more costly overall since there would be a need to pay contractor site establishment, plant and equipment costs twice, whereas combining the phases carries economies of scale in using and overlapping the site establishment, plant and equipment provisions already in place.

The original phase contract value was £363,382, plus enabling works of £67,462 agreed during the procurement process, making a value at commencement of £430,844. This reflects the extent of design information

	<p>in place at the time of the initial contract, due to the stage of design and approval reached at that point. The largest proportion of the cost forming the subsequent phase comes from additional bulk excavation, handling and disposal, along with the contractor establishment costs associated with a longer period on site.</p> <p>The final cost of delivering the wetland scheme falls within the established budget. With the wetland-based phosphate offset scheme being the first of its kind, project development costs were anticipated and the £1m LEP grant funding was allocated to cover the additional project development costs not recoverable through the sale price of the phosphate offset credits resulting from the scheme.</p>
Equality Considerations	The construction of wetlands supports sustainable housing growth in the north of the county which will benefit all sections of the community. In addition to this the council will seek to provide education opportunities and the provision of public access for the enjoyment of all.
Highlight any associated risks/finance/legal/equality considerations:	<p>Ancillary costs (e.g. extended contractor preliminaries associated with a longer contract period) will need to be negotiated. However the NEC4 form of contract provides a mechanism for this, and professional support is in place from an industry quantity surveyor.</p> <p>Health and safety risk would be considered lower by avoiding the need for co-ordination between two contractors across work phasing.</p>
Details of any alternative options considered and rejected:	<p>Not to undertake the additional work to make the wetland operational; this would mean a failure to achieve the project aims of phosphate reduction, failure to implement the offsetting scheme and the cost recovery this generates and the surrender of £1m grant funding. The Luston wetland scheme taken through to completion is projected to unlock 1,112 new homes currently unable to complete the planning process.</p> <p>To procure separately the subsequent earthworks and disposal phase; this would extend the project timeline as noted in previous sections, with £1m grant funding likely to be withdrawn as a result. It would also be expected to be more costly overall.</p>
Details of any declarations of interest made:	None

(Note: publication of this decision has been delayed until such time as it would not compromise commercial negotiations with suppliers involved)

Signed..... Date: 26 February 2024