

DMPC Decision – PCD 1522

Title: Live Fire and Skills House Deeds of Variation

Executive Summary:

This paper seeks approval for changes to the existing Private Finance Initiative (PFI) arrangement at Gravesend to reflect the development and operation of the the Live Fire and Skills House training facility. The costs are contained within the existing MPS budgets.

Recommendation:

The Deputy Mayor for Policing and Crime is recommended to approve :

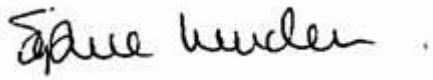
1. The Deed of Variation to the existing PFI Agreement between MOPAC and Services Support (Gravesend) Limited (SSGL) to provide the rights and obligations on both parties to that Agreement needed to allow the construction and operation of the Skills House facility for the remaining duration of the PFI Agreement.
2. The Surrender Deed, which has the effect of allowing the current lease from MOPAC to be surrendered by SSGL in regard the land on which the Skills House is located, and to the incorporation of covenants needed to allow all necessary rights for MOPAC over the remaining PFI site.
3. The execution by the Chief Executive of MOPAC of the Conditions Precedent Confirmation that the documentation attached to the confirmation have not been further amended.
4. To enable procurement of the FM services, either:
 - a) The execution by the Chief Executive of MOPAC of a further Deed of Variation for the provision of maintenance services for the LFASH facility over the period until the PFI contract expires in January 2028 at a sum of up to £321k per annum as included in the approved FBC (£1.3M total); or
 - b) Delegated authority to the Director of Commercial Services to enter via a compliant procurement route into a contract for maintenance services for the LFASH facility over the period until the PFI contract expires in January 2028 at a sum of up to £321k per annum as included in the approved FBC (£1.3M total).

Deputy Mayor for Policing and Crime

I confirm I have considered whether or not I have any personal or prejudicial interest in this matter and take the proposed decision in compliance with the Code of Conduct. Any such interests are recorded below.

The above request has my approval.

Signature

A handwritten signature in black ink that reads "Spivey Under". The signature is written in a cursive style and is placed on a light gray rectangular background.

Date

26-10-23

PART I - NON-CONFIDENTIAL FACTS AND ADVICE TO THE DMPC

1. Introduction and background

- 1.1. MOPAC approved the development of the Live Fire and Skills House (LFASH) in May 2022, PCD1153. The decision recognised that a deed of variation would be required to complete the project. In September 2023 MOPAC approved a Letter of Indemnity to enable the connection of the Skills House to gas, electricity and water services, PCD1509.

2. Issues for consideration

- 2.1. This decision seeks approval for deeds of variation to the existing PFI arrangement for the transfer of land that the Skills House sits on (and its surrounding land) from the PFI contractor to MOPAC, the permission for MOPAC/MPS staff, officers, and contractors to pass through the retained PFI land to access the LFASH, and an indemnity from MOPAC for any damage/liability by those staff, officers, contractors affecting the PFI operation. The deed includes the indemnification as approved in the Letter of Indemnity PCD1509.
- 2.2. The PFI provider has an obligation to take all reasonable measures to mitigate any losses arising from damage/liability by MPS staff, officers and contractors.
- 2.3. A interface protocol to set out how the MPS and the PFI provider will work together in respect of LFASH has been drafted to mitigate the risks.
- 2.4. The decision also seeks approval for the negotiation and approval by way of deed of variation for the provision of maintenance services for the Skills House by the existing PFI contractor, or the approval to initiate procurement for the maintenance services by a third party.

3. Financial Comments

- 3.1. The estimated maximum costs associated with the potential indemnity is £250,000 in relation to the connection of services and £100,000 over the remaining term of the PFI contract for losses or costs arising from a failure of MOPAC or their suppliers to operate in accordance with the agreed interface arrangements or the land access arrangements. If incurred these costs will be met from within the existing MPS budgets.
- 3.2. The estimated costs for the maintenance services is £321,000 p.a., £1,300,000 until the expiry of the PFI contract. These costs were approved as part of the Skills House Full Business Case and will be met from within the existing MPS budgets.

4. Legal Comments

- 4.1. MPS Directorate of Legal Services confirms that the MOPAC can lawfully and compliantly execute the Deeds as recommended.

- 4.2. MOPAC's legal advisors have confirmed that this is an entirely usual request from Project Companies and PFI leaders in transactions of this nature. Without these protections SSG (PFI) and the lenders will not approve the transaction.
- 4.3. DLS confirms that the DMPC can approve the recommendations under the following Scheme of Delegation and Consent provisions
- a. 4.16 With respect to acquisitions, to approve:- All requests to grant or surrender a lease
 - b. 4.13 To approve all unforeseen variations and extensions to contracts with an original value of £500,000 or above, when the variation or extension is greater than 10% of the original value and/or is for a period of more than 12 months
 - c. 4.13 All requests to go out to tender for contracts of £500,000 or above
 - d. 4.14 To reserve the right to call in any MPS proposal to award a contract for £500,000 or above
 - e. 7.23 Consent to Director of Commercial Services - the award of all contracts, with the exception of those called in through the agreed call in procedure
- 4.4. The MOPAC to MPS Scheme of Delegation paragraph 5.22 states that the MOPAC Chief Executive must: "sign and to affix the common seal of MOPAC once they have been properly approved, to those contracts, agreements or transactions which need or are considered by MOPAC to need to be executed by way of deed, including all documents which grant or convey an interest in land or under which no consideration passes."
- 4.5. PCD778 approved Amendments to the Financial Regulations, Contract Regulations and the Scheme of Consent and Delegation, to enable the Chief Finance Officer, in addition to the Chief Executive Officer, to apply MOPAC's seal

33. **Commercial Issues**

- 4.6. The preferred route for provision of the maintenance and cleaning of the new facility up until the expiry of the current PFI agreement is via a negotiated agreement with the existing FM provider, Bouygues. MPS are in negotiation with the existing PFI Supplier and with the existing FM provider to seek to agree this.
- 4.7. MOPAC retains the ability to appoint an external supplier should it not be possible to reach an appropriate and demonstrably value for money agreement with the incumbent. Once the optimum procurement route is finalised (either via a further Deed of Variation or via a direct call off via a compliant framework) and following verification that the negotiated solution demonstrates value for money, the necessary arrangements will be implemented, subject to the approval by the Deputy Mayor of the decision set out at recommendation 4.

5. **GDPR and Data Privacy**

- 5.1. MOPAC will adhere to the Data Protection Act (DPA) 2018 and ensure that any organisations who are commissioned to do work with or on behalf of MOPAC are fully compliant with the policy and understand their GDPR responsibilities.
- 5.2. The MPS assure that the project does not use personally identifiable data of members of the public, so there are no GDPR issues to be considered.

6. **Equality Comments**

- 6.1. MOPAC is required to comply with the public sector equality duty set out in section 149(1) of the Equality Act 2010. This requires MOPAC to have due regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations by reference to people with protected characteristics. The protected characteristics are: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
- 6.2. The MPS assure that there are no equality or diversity implications arising from this proposal.

7. **Background/supporting papers**

- Appendix 1 MPS Report - Live Fire and Skills House Deeds of Variation

Public access to information

Information in this form (Part 1) is subject to the Freedom of Information Act 2000 (FOIA) and will be made available on the MOPAC website following approval.

If immediate publication risks compromising the implementation of the decision it can be deferred until a specific date. Deferral periods should be kept to the shortest length strictly necessary.

Part 1 Deferral:

Is the publication of Part 1 of this approval to be deferred? NO

If yes, for what reason:

Until what date:

Part 2 Confidentiality: Only the facts or advice considered as likely to be exempt from disclosure under the FOIA should be in the separate Part 2 form, together with the legal rationale for non-publication.

Is there a **Part 2** form – YES

ORIGINATING OFFICER DECLARATION	<i>Tick to confirm statement (✓)</i>
Financial Advice: The Strategic Finance and Resource Management Team has been consulted on this proposal.	✓
Legal Advice: The MPS legal team has been consulted on the proposal.	✓
Equalities Advice: Equality and diversity issues are covered in the body of the report.	✓
Commercial Issues Commercial issues are covered in the body of the report.	✓
GDPR/Data Privacy GDPR compliance issues are covered in the body of the report .	✓
Drafting Officer Alex Anderson has drafted this report in accordance with MOPAC procedures.	✓
Director/Head of Service: The interim MOPAC Chief Finance Officer and Director of Corporate Services has reviewed the request and is satisfied it is correct and consistent with the MOPAC's plans and priorities.	✓

Chief Executive Officer

I have been consulted about the proposal and confirm that financial, legal and equalities advice has been taken into account in the preparation of this report. I am satisfied that this is an appropriate request to be submitted to the Deputy Mayor for Policing and Crime.

Signature

Sanakuchford.

Date 16/10/2023