



MOPAC

MAYOR OF LONDON
OFFICE FOR POLICING AND CRIME

Live Fire and Skills House Deeds of Variation

MOPAC Investment Advisory & Monitoring meeting 03 October 2023

Report by Vince Fihosy on behalf of the Chief of Corporate Services

Part 1 – This section of the report will be published by MOPAC. It is classified as OFFICIAL – PUBLIC

EXECUTIVE SUMMARY

Decision PCD1153 on 30 May 2022, approved the construction of the Live Fire & Skills House at Gravesend, noting that a variation would be agreed with Services Support Gravesend Ltd (the PFI Company) to suspend the site from the PFI.

The Skills House facility is located on the northeast corner of the Gravesend training centre, which is owned and operated by the PFI Company under the terms of a PFI agreement which runs until 2028. It was agreed between MOPAC and the PFI Company that the optimum way to manage the risk of construction and operation is to separate the Skills House facility from the rest of the PFI, placing the risk of delivery with MOPAC and saving MOPAC the costs that would be due to the PFI Company. An amendment to the PFI Agreement and a land transfer is required to achieve these objectives.

Recommendation

The Deputy Mayor for Policing and Crime via the Investment Advisory and Monitoring meeting (IAM), is asked 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 via:
 - 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).

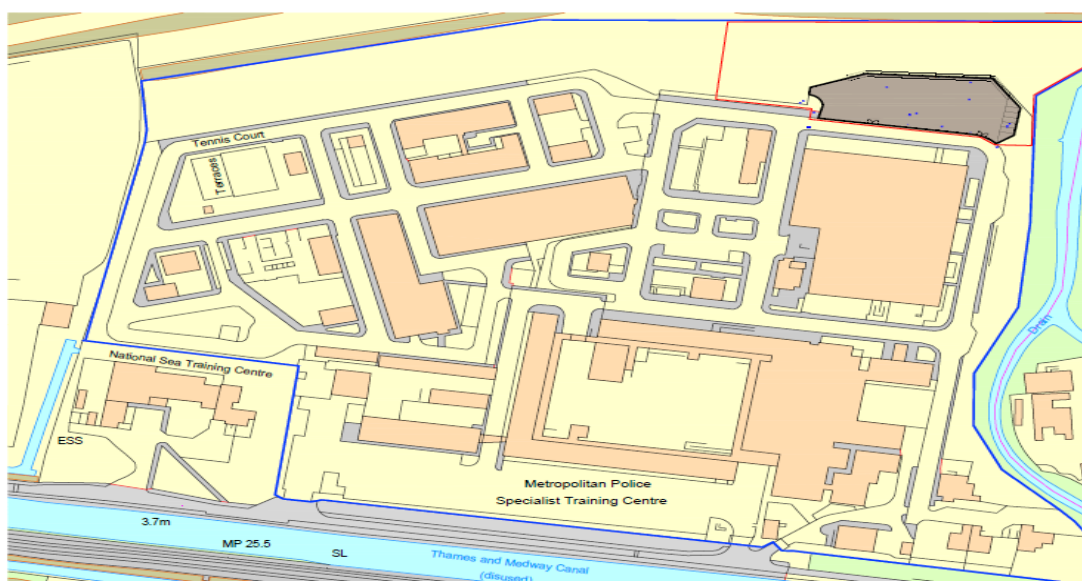
Time sensitivity

- 5. A decision is required from the Deputy Mayor by 27 October 2023.

Non-confidential facts and advice to the Deputy Mayor for Policing and Crime

Introduction and background

- 6. Decision PCD1153 on 30 May 2022, approved the construction of the Live Fire & Skills House at Gravesend, noting that a variation would be agreed with Services Support Gravesend Ltd (the PFI Company) to suspend the site from the PFI.
- 7. The Skills House facility is located on the north east corner of the Gravesend training centre, which is owned and operated by the PFI Company under the terms of a PFI agreement which runs until 2028.
- 8. Decision PCD1153 approved the construction of the LFASH and noted that a variation would be agreed with Services Support Gravesend Ltd (the PFI Company) to suspend the site from the PFI. In negotiation with the PFI supplier it has been agreed that this will be implemented via the drafted Deed of Variation and the Land Transfer Deed.
- 9. The drawing below depicts the site location plan for this project. The area within the red line is the section of land to be removed from the scope of the PFI. The MPS training centre owned and operated by the PFI Company is included within the blue line. As can be seen, the Skills House site is only accessible from the public highway through the PFI Company's land (or via surrounding land owned by other landowners).



Skills House site location plan

10. A previous decision permitted the MPS to offer the PFI Company the ability to demand an indemnity against costs they may incur arising from the works needed to connect the Skills House facility with the main services on the PFI site. This letter of Indemnity was required to enable MOPAC to complete key construction activity prior to the legal documents (Deed of Variation) discussed in this paper being completed. The ability for the PFI Company to demand such an indemnity will fall away once the Deed of Variation recommended by this paper has been executed.

Issues for consideration

11. This request comprises three principle elements:

- a. The agreement of a Deed of Variation to the existing PFI Agreement that enables the construction and operation of the Skills House facility
- b. The transfer of the land on which the Skills House sits (outlined in red on the plan above) back into MOPAC's ownership from the PFI Company
- c. The implementation of a contract for the maintenance and cleaning of the Skills House, either by a further Deed of Variation to the PFI agreement or via a direct contract.

12. The legal documents have been developed with and agreed by MOPAC's legal advisors. The operational protocols included in the agreement are implemented via a non-binding Interface Protocol which has been reviewed and agreed by all relevant stakeholders.

The Deed of Variation ((a) above):

13. The Deed of Variation puts in place the mechanism to vary the existing PFI contract to allow the construction and operation of the LFASH facility, recognising that the land on which the facility is located will be owned by MOPAC but that access and egress to the site will be across the PFI site.

14. The principal changes to the PFI contract incorporated by the Deed of Variation enable all necessary access and egress to the LFASH facility across the PFI site, for people, goods, services and operations. The Deed sets out how the PFI Agreement will function in regard the LFASH site and how the PFI Provider will be recompensed for additional costs it may incur arising from the actions or inactions of Authority visitors.

15. The overarching position is that the PFI Company remains in a "no better, no worse" position than if the variation was not being made to the PA. The indemnities and obligations on the Authority in the Deed of Variation are uncapped which is normal in such variations. 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 and the lenders will not approve the transaction.

16. This principle replicates that in the existing Project Agreement. The Deed of Variation includes an obligation on the PFI Supplier to "use reasonable endeavours to mitigate any liability, loss, claim, damage, cost, charge or expense" they may incur or suffer in relation to which MOPAC is obliged to indemnify them.

17. The Deed establishes that there will be an Interface Protocol to set out how MOPAC and the PFI Supplier will work together throughout the construction and operation of the LFASH, and to manage the risks that both parties undergo. This Interface Protocol is non-contractual, is agreed between the parties and will be updated from time to time to respond to local site needs; however the Deed places an obligation on both parties to take reasonable measures to comply with it.
18. The possible areas in which this indemnity may result in costs to MOPAC are set out below. We do not envisage that any of these obligations will result in cost impacts that cannot be covered with existing approved budgets:
- a. Losses flowing from the construction of the LFASH and the services connections thereto. In general these losses are covered by insurances, held either by the LFASH contractor or by the PFI. These insurances will be unaffected by the completion of these legal agreements. The maximum expected risk arising from these losses is c. £250k which is covered by the contingencies remaining in the LFASH approved budget.
 - b. 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. These are process based arrangements that will be locally managed on an ongoing basis. While there is scope for relatively minor costs to flow from such breaches, it is not likely that such costs will run to more than a low level (a maximum of c. £100k over the remaining duration of the PFI agreement).
 - c. Costs arising from any disruption to the electrical, water or data services on the main site as a result of the LFASH. The risk for this is highest during construction and such losses are included at 4.9 (a) above. Once the services are installed, it is very unlikely that the LFASH will affect the operation of the main site and, even if impacts were met, they would not be significant nor long term.
 - d. Any increases in insurance premiums for the Gravesend site as a result of the construction of the LFASH (the PFI Company has already discussed this with their broker and the current advice is that there will be no additional premiums).
19. MOPAC will manage these risks via the operation of Interface Protocol, by obligations placed via our subcontracts, by the putting in place of appropriate insurances and by robust local management. We intend to appoint the existing PFI maintenance contractor to maintain the LFASH in order that the obligations to manage interfaces placed in one single supplier who is able and required to manage the works. The optimum approach to appoint that contractor is currently under consideration – either it will be via a contract placed via a compliant framework, or (subject to a subsequent paper seeking approval from MOPAC), via a further Deed of Variation to incorporate these services into the PFI.
20. The Deed of Variation ((a) above) will cease to have effect upon expiry of the PFI contract in January 2028, at which time all of the Gravesend site returns to MOPAC and the rights and obligations established under the Deed will fall away.

The Surrender Deed ((b) above):

21. The Surrender Deed transfers the legal ownership of the area of land outlined in red on the plan above from the PFI Company back into MOPAC ownership. Additionally it provides rights in regard the remaining PFI owned land (the rest of the Gravesend site) for MOPAC and anyone authorised by it to:
- a. Cross the PFI land on foot or by vehicle to access the LFASH site
 - b. Park on the PFI site
 - c. Connect into the water, gas and electricity services on the PFI site and to access those connections for maintenance purposes
 - d. To reroute or repair the services connections across the PFI site.

The Conditions Precedent ((c) above):

22. The Conditions Precedent documentation sets out and confirms the delegated authority by which the Chief Executive of MOPAC is empowered to complete the Deeds on behalf of MOPAC. This is a normal requirement of PFI Project funders who wish to have assurance that the legal documents are correctly completed.

Timeline

23. The timeline for the activities set out in this paper is shown below:

	Aug-23	Sep-23	Oct-23	Nov-23	Dec-23	Jan-24	Feb-24	Mar-24	Apr-24
Main Skills House Construction Works	[Bar]								
Issue of letter offering an on demand indemnity	[Bar]								
Connection Works Construction			[Bar]						
Handover of Skills House to MPS					▲				
Approval to complete Deed of Variation	[Bar]								
Completion of all legal documents				[Bar]					
Procurement of FM Services	[Bar]								
Final MPS fitout and preparation for training					[Bar]				
Skills House Training becomes operational								▲	

Next steps

24. Following approval of this paper the 3 legal documents will be completed and sealed allowing the land transfer to take effect.
25. 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. However, 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 2.1d above.

26. The PSD Project Team will ensure that MOPAC has appropriate insurances in place including:
- a. Public/Products Liability, Employer's Liability, Professional Indemnity and Contractor's All Risks in respect of the Skills House Works, all procured by the Skills House construction contractor (these are all already in place);
 - b. Appropriate property damage insurance for the LFASH on a full reinstatement basis (this is being arranged via the MPS insurance team)
 - c. Public Liability in respect of the Skills House Services, arranged by the Skills House FM Contractor (this will be put in place as part of the procurement of the FM contract)
 - d. Third party liability cover for the ongoing maintenance and occupation in relation to the Skills House Facility and Skills House Site (this is being arranged via the MPS insurance team).

Financial Comments

27. There are no additional financial implications to this request over and above those already agreed under the approved FBC. This decision will allow the award of an FM contract, either direct or via a change to the PFI arrangements, with a maximum impact of £321k per annum (£1.3M in total). There are no other expected changes (either up or down) to the PFI payments regime.

Legal Comments

28. External solicitors working on behalf of MOPAC have negotiated the documentation with solicitors acting (a) for the PFI Company and (b) for the PFI Company's funders. The PFI Company and its funders require MOPAC to put them in a "no better, no worse" position than had this proposal not been implemented. This approach is standard for variations of this nature.
29. Financial Regulation 9.12 states that "The common seal of MOPAC can only be affixed by the Chief Executive Officer, the Chief Finance Officer or, with the Chief Executive Officer's approval, delegated to another MOPAC officer. The seal must not be affixed without the transaction having been approved by the DMPC or another individual in accordance with the Scheme of Consent and Delegation."
30. MOPAC Financial Regulation 11.14 states that: "All contracts, agreements or transactions: in respect of which there is no consideration; or which grant or convey an interest in land; or where it is determined by MOPAC there is a particular need for the seal to be attached must be in writing and executed as a deed under seal."
31. 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."

32. The drafted Deed of Variation should be executed as a Deed because it relates to conveying interest in land. The Deed of Variation should be executed as Deed because it is an agreement without consideration.
33. The Conditions Precedent Confirmation can be signed by MOPAC. In this document MOPAC confirms that the documentation attached to the confirmation, relating to the execution of Deeds by MOPAC, have not been further amended. It is not itself a Deed and does not need to be executed as such.
34. DLS confirms that the MOPAC can lawfully and compliantly execute the Deeds as recommended at Para 1 and Para 2, sign the agreement at Para 3 and award FM contracts as set out at Para 4.
35. 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

Commercial Issues

36. In support of this Request for approval, and specifically, Action Requested at Para 4, and delegation by MOPAC to the Director of Commercial Services for further contract action for the award of FM maintenance services for the new LFASH, it is confirmed that a compliant route for appointing a Skills House FM Contractor for FM maintenance services will be in compliance with the agreed strategy and outcome of further negotiations with the existing on-site FM supplier or an alternative supplier as may be required.
37. **London Anchor Institutions' Charter**¹. As part of their appointment onto the MPS frameworks, the delivery partners the MPS have used to deliver this project have committed to take specific actions to address the objectives of the LAIC. As part of the Framework Management approach, the linkage between individual appointments and actions taken and the effectiveness of those actions in delivering the above commitments will be reviewed and assessed. The contracts will encourage the use of London supply chain specific initiatives including: apprenticeship levies; adherence to modern slavery and London Living Wage obligations; social value impact opportunities.

¹ <https://www.london.gov.uk/coronavirus/londons-recovery-coronavirus-crisis/anchor-institutions-charter>

Environmental Comments

38. The Skills House FBC approved under Decision PCD 1153 includes a set of measures that have been taken to contribute to delivery of the Mayor's NZC2030 aspirations. These include low energy lighting, cavity wall insulation and solar film. The FBC also identified an expected travel saving of 445,000 miles per annum as a result of providing ARV training at Skills House; these savings will be delivered during the operation phase.

Equality Comments

39. 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.
40. The MPS assure that there are no equality or diversity implications arising from this proposal.

Privacy Comments

41. The MPS is subject to the requirements and conditions placed on it as a 'State' body to comply with the European Convention of Human Rights and the Data Protection Act (DPA) 2018. Both legislative requirements place an obligation on the MPS to process personal data fairly and lawfully in order to safeguard the rights and freedoms of individuals.
42. Under Article 35 of the General Data Protection Regulation (GDPR) and Section 57 of the DPA 2018, Data Protection Impact Assessments (DPIA) become mandatory for organisations with technologies and processes that are likely to result in a high risk to the rights of the data subjects.
43. There are no privacy issues identified through the Data Protection Impact Assessment (DPIA) completed for this work. The project does not use personally identifiable data of members of the public, so there are no GDPR issues to be considered.
44. The Information Assurance and Information Rights units within MPS will be consulted at all stages to ensure the project meets its compliance requirements.
45. Under the requirements of the Surveillance Commissioners Code for CCTV, Data Protection Impact Assessments (DPIA) will be required for any adaptations/amendments undertaken on the Live Fire Skills House CCTV system. These assessments are well understood and are part of the contractual delivery of any CCTV works.

Real Estate Implications

46. The delivery of the Live Fire Skills House was the subject of previous approvals. This decision enables the completion of that project in line with the programme and budget commitments previously made.

Background/supporting papers

47. None

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Part 2 – This section refers to the details of the Part 2 Decision Paper which is NOT SUITABLE for MOPAC Publication.

The Government Security Classification marking for Part 2 is:
OFFICIAL-SENSITIVE [COMMERCIAL]

Part 2 of Live Fire Skills House Letter of Indemnity decision paper as part of Programme 11 Transforming the Estate is exempt from publication for the following reasons:

- Exempt under Article 2(2)(c) of the Elected Local Policing Bodies (Specified Information) Order 2011

The paper will continue to be exempt unless, on review, non-publishable sensitive data is redacted. To be reviewed no earlier than 1st September 2028.