

Item No.	Classification: Open	Date: 1 June 2023	Decision Taker: Director – Planning & Growth
Report title:		Gateway 3 – Variation Decision Peckham Rye Station Square Phase 1 - Approval of final account and settlement Agreement with Circet Ltd for Phase 1 contract	
Ward(s) or groups affected:		Rye Lane	
From:		Head of Sustainable Growth	

RECOMMENDATION(S)

1. That the Director of Planning and Growth approves the variation of the contract with Circet Ltd (formerly KN Networks Services Ltd) in the sum of £961,800 to reflect contract variations and the Settlement Agreement negotiated with Circet Ltd in order to complete the Works of Phase 1 Peckham Rye Station Square, as detailed in paragraphs 7 to 15 and paragraph 30 of this report, making a total contract value of £6,811,118.
2. That the Director of Planning and Growth notes any delay in signing this Gateway will put the new Practical completion of the 14 August 2023, as stated in the Settlement Agreement, at risk and expose the Council to further claims for extensions of time by Circet Ltd. The Settlement Agreement must be sealed no later than Thursday 1 June 2023.

BACKGROUND INFORMATION

3. The Council entered into a contract with Circet Ltd dated 12 September 2019 for the refurbishment and two storey extension and commercial/retail fit-out of 1-8 Blenheim Grove, railway arches and limited hard landscaping works and all associated works at Peckham Rye Station Square for a contract sum of £4,995,822.70.
4. Previous approvals for cost variations of £853,495.61 were granted for additional works to accommodate tenant requirements, further works on Network Rail property and necessary design changes. This took the contract sum to £5,849,318.31.
5. Originally, the Works should have been completed in December 2021 but due to scope changes and issues beyond the control of both parties Practical Completion was moved to March 2022. However, disputes started to arise over a series of issues and associated responsibilities which resulted in further delays programme overrun. These were then compounded by design and works defects resulting in significant water ingress in September 2022.

6. Overall, the disputes resulted in claims for extensions of time for loss and expense on Circet's side and Liquidated Damages on the Council's side.
7. The parties agreed to settle matters in relation to the above through a settlement agreement as detailed in the closed report

KEY ISSUES FOR CONSIDERATION

Key Aspects of Proposed Variation

8. The proposed variations are as follows
 - a) Amended contract sum and Settlement sum to £6,811,119
 - b) Completion of remedial works to rectify current water ingress
 - c) New Completion date of 14th August 2023 – works completion, handover and commissioning and vacant site.

Reasons for Variation

9. In 2020, disputes arose over variations in Council's and Contractor's cost values for materials, methodology and what constituted additional and de-scoped works via a vis the Contract. Both parties agreed to settle on an additional £961,801 to the Contract Sum.
10. In 2022, disputes arose between the parties pertaining to project delays, claims for extensions of time or loss and expense and defects works. Further details are enclosed in the Close report.
11. The Works were 85% complete and Phase 2 of the overall project had already been delayed by a year when, in January 2023, In the interests of further delays and costs an agreement was reached by the parties.
12. The parties agreed to a final contract sum and Settlement sum of £6,811,119, rectification of remedial works payable to the Contractor but only on completion of Works on a Practical Completion date of 14 August 2023.
13. The Contractor has drawn up an amended programme to take account of delays to date, completion and remedial works which has resulted in a new Completion date of 14 August 2023 which includes handover and commissioning and a vacated site ready for tenant fit-out.
14. This Gateway Report is covered by an Urgent Implementation submission to ensure that the Settlement Agreement is swiftly authorised so as to ensure the newly agreed Practical Completion date is not put at risk and thereby exposing the Council to further extension of time claims.

Alternative Options Considered

15. The alternative option considered was to follow Contract mechanisms of contractor termination and adjudication. Given the delays already incurred and the additional length of time and level of costs these alternatives would take it was deemed in the interests of all parties to be financially and contractually less of a risk to arrive at an agreement which will run alongside the Contract. Both parties would therefore still have contractual protections should the Agreement fail and the mechanisms within the Contract would then be triggered.

Identified risks for the Variation

16.

Risk No.	Risk Identified	Risk Level	Mitigation
R1	The Settlement Agreement does not provide any guarantees that the Contractor will achieve the new Completion date	Low	In order to hold the Contractor to the Practical Completion date of 14 th August the Contractor will not receive the Settlement sum payment until the Works are complete.
R2	The Settlement Agreement does not provide assurances that the Contractor could still argue costs and valuations beyond those agreed in the new contract sum.	Low	The Settlement Agreement runs alongside the Contract, the terms and conditions of which still hold in the event of further disputes

Policy framework implications

17. This scheme seeks to support the New Southwark Plan area Vision for Peckham which lays out plans for the area’s regeneration.

Contract management and monitoring

18. MACE (the Employers Agent) and the Sustainable Growth Manager will be closely monitoring progress of works, delivery against the new scheme programme and Completion date, cost plan and invoice submission to ensure compliance with the Settlement Agreement. The regular programme of site meetings, delivery and cost plan meetings have been retained and will continue as before.

19. The Head of Sustainable Growth will also be kept updated.

Community, equalities (including socio-economic) and health impacts

Community impact statement

20. The new Station Square will offer a new sense of arrival, destination, pride of place and inclusive public realm. Phase 1 includes space of community organisation to work with local groups and young people and Phase 2 will provide space for local market traders.

Equalities (including socio-economic) impact statement

21. An EQIA was carried out as part of the brief for this scheme and shows the scheme to provide opportunities for local businesses, jobs and residents and visitors alike.

Health impact statement

22. Peckham is a dense urban area and needs open spaces for the physical and mental well-being of its residents. Phase 1 also provides a larger units for existing amenities and local services to expand into.

Climate change implications

23. Peckham is a dense built environment and needs new open spaces that can provide additional greenery. The scheme itself is designed to BREEAM Good-Excellent standards

Social Value considerations

24. The scheme provides for new local jobs and businesses, a better public realm incorporating measures to design out crime and the scheme itself uses contractors who provide apprenticeships and pay London Living Wage.

Economic considerations

25. The improvement of the station area will help to attract new investment into the area and envisioned in the New Southwark Plan Area Vision for Peckham. This will bring opportunities for the growth for local jobs and businesses

Social considerations

26. The scheme will open the door to inward investment in the local economy and provide much-needed jobs, services and further amenities for all residents in Peckham.

Environmental/Sustainability considerations

27. As Peckham's population grows the increase in new public space, amenities and services will help to make this growth sustainable thereby

ensuring the quality of the built and natural environment is fit to serve the people of Peckham in the future.

Financial Implications

28. The contract value excluding VAT is:

	Cost excluding VAT
Original contract sum (1)	£4,995,823
Final Contract Sum and Settlement	£6,811,119

29. The lifetime budget for this project i.e. Peckham Rye Station project (cost code - R-4020-0064) is £11,220,613. Previous year's expenditure is £9,634,935 leaving a remaining budget at 1st April 2023 (23/24) of £1,585,678.

30. Contract expenditure to date is £5,823,792 leaving a remaining contract forecast, including the Settlement figure, of £987,326.53

31. Based on these figures/forecast the final costs associated with this contract are fully affordable within the current approved budget envelope.

Investment Implications

32. Completion of Peckham Station Square Phase 1 has been delayed for almost 2 years. This in turn, has delayed the delivery of Phase 2 and 3 and the rents the Council ought to have been accruing from the new units from 2023.

Legal Implications

33. Please refer to the concurrent of the Assistant Chief Executive – Governance and Assurance

Consultation

34. Extensive consultation took place in 2015 and included local businesses, community groups and representatives over various forms – a series of workshops, community events, online comments – which all informed the design of the scheme to be delivered.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Strategic Director of Finance (CAP23/012)

35. This report is requesting the Director of Planning and Growth to approve the variation of the contract with Circet Ltd (formerly KN Networks Services Ltd) in the sum of £6,811,119 to reflect contract variations and the Settlement Agreement negotiated with Circet Ltd in order to complete

the Works of Phase 1 Peckham Rye Station Square, as detailed in paragraphs 7 to 15 of this report and to note the other recommendation.

36. The strategic director of finance notes that the cost of the contract will be contained within existing departmental capital budgets for the “Peckham Rye Station” project allocated under the Council’s capital programme, as mentioned in financial implications.
37. Staffing and any other costs connected with this report to be contained within existing departmental revenue.

Head of Procurement

38. This report seeks approval of variation to the contract with Circet Ltd (formerly KN Networks Services Ltd) to reflect additional costs as detailed within paragraphs 29-31 for completion of works and associated Settlement Agreement (payable upon completion) as pertaining to phase one of Peckham Rye Station Square. The report is accompanied by an Urgent Implementation submission.
39. Rationale for the requested variation is contained within paragraphs 9 – 14 (the legal basis for the variation is detailed within succeeding paragraphs 43 – 47). The report is also aligned with the council’s Contract Standing Orders (CSOs) which dictate that decision must be taken by the relevant chief officer, or under their delegated authority, in line with the department’s scheme of management.
40. Headline risks associated are contained within table contained at the end of paragraph 18, and note that approval of the variation does not provide assurance vis a vis completion of the works within time or budget; albeit payment of the sum linked to the Settlement Agreement is conditional (upon completion).
41. Proposed methodology for performance/contract monitoring is detailed within paragraphs 20 – 21.
42. The Community, Equalities, Health Impact, Climate Change, Social Value, Economic and Environmental / Sustainability statements are unchanged from the original Gateway 2 report.

Assistant Chief Executive – Governance and Assurance

43. This report seeks the approval of the Director of Planning and Growth to the variation of the contract in the sum of £961,800 for the completion of the Phase 1 works relating to the Peckham Rye Station Square and includes settlement agreement as outlined in paragraph 1 of this report.
44. The key aspects of the variation and the reasons why the variation is necessary are outlined in paragraphs 8 to 14 of this report.

45. The procurement of the works contract was not subject to the tendering requirements of the Public Contract Regulations 2015 (PCR15) due to its value, and the variation value also fall below the PCR15 threshold.
46. The identified risks for the variation are highlighted in paragraph 16. Paragraph 14 of this report highlights the reason for seeking the use of the Urgent Implementation procedure. In accordance with Rule 20 of the council's Access to Information Procedure Rules, the decision to use this procedure can only be taken if agreement is obtained from the Chair of the Overview and Scrutiny Committee that the decision proposed is reasonable and should be treated as a matter of urgency. If the Overview and Scrutiny Committee is unable to act, then the agreement of the Mayor of the council has to be sought. In the Mayor's absence this will default to the Deputy Mayor.
47. Any delays to the authorisation of this Gateway report and the Urgent Implementation submission by which it is covered will put the newly agreed practical completion date of 14th August at risk thereby exposing the council to extension of time claims.
48. Contract Standing Order 2.3 requires that no steps be taken to vary a contract unless the expenditure involved has been included in approved estimates, or is otherwise approved by the council. Paragraphs 28 to 31 of this report confirms the financial implications of this variations.

PART A – TO BE COMPLETED FOR ALL DELEGATED DECISIONS

Under the powers delegated to me in accordance with the council's Contract Standing Orders, I authorise action in accordance with the recommendation(s) contained in the above report (and as otherwise recorded in Part B below).



Signature

Date 1st June 2023

Designation Director of Planning & Growth

PART B – TO BE COMPLETED BY THE DECISION TAKER FOR:

- 1) All key decisions taken by officers
- 2) Any non-key decisions that are sufficiently important and/or sensitive that a reasonable member of the public would reasonably expect it to be publicly available (see 'FOR DELEGATED DECISIONS' section of the guidance).

1. DECISION(S)

As set out in the recommendations of the report.

2. REASONS FOR DECISION

As set out in the report.

3. ALTERNATIVE OPTIONS CONSIDERED AND REJECTED BY THE OFFICER WHEN MAKING THE DECISION

The alternative option considered was to follow Contract mechanisms of contractor termination and adjudication. Given the delays already incurred and the additional length of time and level of costs these alternatives would take it was deemed in the interests of all parties to be financially and contractually less of a risk to arrive at an agreement which will run alongside the Contract. Both parties would therefore still have contractual protections should the Agreement fail and the mechanisms within the Contract would then be triggered.

4. ANY CONFLICT OF INTEREST DECLARED BY ANY CABINET MEMBER WHO IS CONSULTED BY THE OFFICER WHICH RELATES TO THIS DECISION *

There is no conflict of interest declared by the Lead Member

* Contract standing order 6.6.1 states that for contract Variations with an Estimated Contract Value of £100,000 or more, the lead contract officer (LCO) must consult with the relevant cabinet member before the decision is implemented.

5. NOTE OF ANY DISPENSATION GRANTED BY THE MONITORING OFFICER, IN RESPECT OF ANY DECLARED CONFLICT OF INTEREST

If a decision taker or cabinet member is unsure as to whether there is a conflict of interest they should contact the legal governance team for advice.

n/a

6. DECLARATION ON CONFLICTS OF INTERESTS

I declare I was informed there are no conflicts of interest.

BACKGROUND PAPERS

Background Papers	Held At	Contact
None		

AUDIT TRAIL

Lead Officer	Stephen Platts, Director, Planning and Growth Jon Abbot - Head of Sustainable Growth	
Report Author	Georgina Barretta – Sustainable Growth Manager	
Version	Final	
Dated	1 June 2023	
Key Decision?	Yes	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER		
Officer Title	Comments Sought	Comments included
Strategic Director, Finance	Yes	Yes
Head of Procurement	Yes	Yes
Assistant Chief Executive – Governance and Assurance	Yes	Yes
Cabinet Member	Yes	Yes
Date final report sent to Constitutional Team		1 June 2023