

	<p>Financial Performance and Contracts Committee</p> <p>27 October 2020</p>
Title	Brent Cross
Report of	Director of Growth
Wards	All
Status	Public with accompanying exempt report (By virtue of paragraphs 3 and 5 of Schedule 12A Local Government Act 1972)
Urgent	No
Key	No
Enclosures	Appendix 1 – Plan: Council delivery works Appendix 2 – MHCLG Grant Agreement: Key Characteristics Appendix 3 – Updated milestones Appendix 4 – Delivery Partners Appendix 5 – BX Contracts List.
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Summary

This report provides an interim update on the delivery responsibilities and construction contracts that the council has placed (and needs to place) to meet its delivery obligations in respect of the Brent Cross (BX) project. It should be read in conjunction with the introductory report considered by the Committee in January 2020 and the latest quarterly progress report to the Housing and Growth Committee on 14 September 2020. This report provides an update on the individual contracts placed by the council in anticipation of a further report in December reviewing the financial performance and contracts going forward.

Officers Recommendations

The Committee is asked to note

- 1) The Train Operating Compound and replacement Sidings have now been completed and successfully handed back to Network Rail;
- 2) The Contracts placed and changes since January 2020 as set out in paragraphs 1.9 of this Report.
- 3) That the council working with Mace, Network Rail, HM Government (HMG) and its delivery partners are finalising the revised integrated programme. Once approved, this will form the baseline for future reporting and performance monitoring.
- 4) The Brent Cross West delivery team (now transferred to Mace) are undertaking a deep dive review on the anticipated final cost as set out in paragraph 1.15 of this report. This will be subject to an independent peer review within Mace due to take place in November and will be reported to this Committee in December.

1. PURPOSE OF REPORT

Introduction

- 1.1 The introductory report to this Committee in January 2020 provided an overview of the Brent Cross (BX) programme and explained the council's delivery obligations and the works delivery construction contracts placed and to be placed by the council across the Brent Cross West Thameslink Station (BXW) programme and Critical Infrastructure.
<https://barnet.moderngov.co.uk/documents/s57529/BXC%20Financial%20Performance%20and%20Contracts%20Committee.pdf>
- 1.2 These works are funded by the HM Government grant as explained in report to the Committee in January 2020. As required by the Grant Agreement with HMG, the council provides a monthly progress update report to the Government Assurance Board (attended by Ministry for Homes, Communities and Local Government – MHCLG, HM Treasury, Department of Transport, Greater London Authority, Transport for London and Homes England). The financial position of the project is monitored through the Assurance Board, and a review exercise is undertaken by the Board prior to authorising the drawdown of grant.
- 1.3 The purpose of this report is to provide an interim update summarising the contracts placed since January 2020 and issues that have had an impact on the programme ahead of the more detailed report on the monitoring and financial performance of these contracts to be referred to and reviewed by the Committee in December 2020. Reports are submitted to Policy & Resources (P&R) Committee as required, and a

quarterly update is provided to the Housing and Growth (H&G) Committee, with the last report on 14 September 2020 which can be accessed using the following link.
<https://barnet.moderngov.co.uk/documents/s59911/Brent%20Cross%20Cricklewood%20Report.pdf>

- 1.4 Whilst the Housing and Growth (H&G) and Policy and Resources (P&R) Committees looks forward setting the strategic direction, assessing price and risk, and agreeing funding, the Finance Performance and Contracts Committee looks backward and reviews performance, making recommendations to the H&G and P&R Committees and the council officers team on issues arising from the scrutiny of external providers. The next report to the Housing and Growth Committee is on 24 November 2020.
- 1.5 As can be seen from the quarterly updates and confirmed below, works across the site are progressing well. The updated milestones tracker is attached at appendix 3. It should be noted that all major contracts other than waste are now placed. The most significant contract remains the Implementation Agreement with Network Rail. This contract signed in 2019 includes the delivery of the south sidings which are now complete and in operation. The rail systems element is well advanced and will be substantially complete by early summer 2021. The site set up for the BXW station is now complete and Volker Fitzpatrick will start piling for the new station this month.
- 1.6 In relation to Brent Cross South, demolitions are well advanced and remediation works underway. The new Exploratory open space opened in August and is now being used by the local community, one of the first important steps to provide early benefit to the local community. Further information can be found on the BX website <https://transformingbx.co.uk/>



New Sidings Commissioned



Jerich Shed Demolition



BXS Exploratory Park

1.7 Key on site achievements over the year can be summarised as follows:

- Completion and handover to Network Rail of the Train Operating Compound=
- Commissioning the new South Sidings, allowing the Northern sidings to be removed to make way for the new station.
- Completion of the land transfer from Network Rail to the council (August 2020)
- Demolition of the Jerich Shed to make way for the new station (September 2020)
- Start site set up and Station Early works (October 2020)
- Agreed delivery programme with NR and Train Operating Companies and Volker Fitzpatrick (station contractor) that includes the major 72 hour rail possessions in April – June next year to undertake the realignment of the rail fast lines to make way for the station (NR weeks 1,5 and 9)
- The station remains on target to open in December 2022 (approved programme shows construction will complete in July 2022 to allow sufficient time for handover).
- Commencement of Highway Improvements at the Cricklewood Lane Southern Junctions (Cricklewood Broadway/Cricklewood Lane/Chichele Road and Cricklewood Lane/Claremont Road/Lichfield Road).

Key Challenges faced by the BX programme in 2020

A) As reported to the Housing and Growth Committee in Nov 2019 and March 2020, Network Rail had initially failed to secure the critical rail access to undertake mainline track slews to create the space for the station platforms. This critical access requires 72-hour possessions, which involves shutting the entire midland

main line (a very rare event), only achievable over a bank holiday and then only when east and west coast main lines remain open. As reported to the H&G Committee, this required the council working with HM Government and Network Rail (with the wider rail industry support) to identify alternative major possessions. Access is now secured and approved by Network Rail and the Train Operating Companies, and will take place during May / June 2021. This has had further consequences on the station construction programme that has to be re-planned by Mace BX delivery team and Volker Fitzpatrick (the station contractor) working with Network Rail.

B) Covid pressures – whilst the BX programme responded well to the rapidly developing situation from last March to put in place the necessary safety measures to ensure staff and contractors are working safely in line with guidelines issued by HM Government, this has had an impact on cost, programme, working practices, and supply chain delivery. The impacts and measures are being continually assessed and tracked to understand the impact on delivery in terms of both programme and budget.

1.8 Despite the above challenges, it is important to acknowledge that the project is in a good place – the BXW works are progressing well and remain on programme to open the station in 2022.

Contracts – completions / placed throughout 2020.

1.9 A summary of the main contractual developments is as follows. An updated diagram showing the delivery partners is attached at appendix 4 and updated contracts list at appendix 5.

A) Train Operators Compound – JGCL NEC 3 Option E: Cost Reimbursable (now in operational use)

Whilst the Train Operating Company Compound and Fuel Farm has been handed back to Network Rail and now occupied by the Govia Thameslink Railway and East Midlands Trains, this project has incurred additional costs. These costs, amongst others, relate to the higher levels of contamination in the ground beyond that indicated during ground investigations leading to substantially higher remediation costs; changes in scope and improved specification required by the NR/TOCS prior to handover, increased temporary works connected to the installation of the East Midlands Rail Fuel Farm and associated haul road to meet NR/TOC standards, acceleration costs and prolongation as a result of Covid 19. These costs have been partially mitigated by the agreement of Network Rail to reflect the additional scope increases required by NR / TOCs by a reduction in the agreed price for the Network Rail land, which was acquired in August 2020. Council officers are in the process of negotiating a settlement with the contractor supported by Mace and Currie and Brown and a full account will be provided to this Committee in December.

B) The transition of the BXW Station Delivery team from Re to Mace (August - September 2020)

The council and Re mutually agreed to progress a revised delivery arrangement for the BXW project. Following the H&G Committee's approval In March, council officers working with Re agreed and implemented a Transition Plan. This included identifying

a new home for the BXW team as well as the exit arrangements with Capita and ensuring clear arrangements in place for document control. Through the TFL project management framework, the council invited consultants to bid in a mini-competition to provide a new home for the existing BXW Team and support the council in the provision of advisory and assurance services within the rail construction sector for the BX development. Three bids were received on 24 June 2020. The Housing & Growth Committee subsequently confirmed Mace as the preferred bidder on 6 July 2020. The contract was signed on 14 August 2020. The transition is now almost complete. The council and Mace have worked closely to resolve logistical and TUPE issues associated with the transfer, and are finalising the governance, financial and reporting processes. Similarly, the council and Re are also in the process of settling the final contract account. The link to the report to the Housing and Growth Committee (including the Addendum report) are attached here.
<https://barnet.moderngov.co.uk/documents/s59211/Brent%20Cross%20Cricklewood%20Report.pdf>
<https://barnet.moderngov.co.uk/documents/b35417/BXC%20update%20report%20addendum%2006th-Jul-2020%2019.00%20Housing%20and%20Growth%20Committee.pdf?T=9>

C) Delivery of the entire Brent Cross West Station Eastern Entrance Box (SEEB) by Volker Fitzpatrick (due to conclude in November 2020)

In July, the Housing and Growth Committee confirmed "...that the Deputy Chief Executive in consultation with the Chair of this Committee be authorised to agree the revised delivery arrangements for the SEEB and authorise on behalf of the Council, that it enters into the required legal agreement with Brent Cross South Limited Partnership (BXS) to allow the Council to deliver the SEEB and make the necessary amendments to the Station Contract with Volker Fitzpatrick"

Through the regular engagement between the BXS (responsible for delivery of the eastern entrance box) and BXW (responsible for the fit out), it became apparent that there are clear programme benefits in the SEEB being delivered by one party in its entirety given the large number of interfaces. These interfaces range from design integration around systems that work across packages (CCTV, Communications, Fire Safety) to the physical complications of multiple contractors operating in and around each other on site.

Consequently, council officers and BXS have been exploring options and agree that the council would be best placed to deliver the SEEB given that it already has a team mobilised and on site. The council's BXW team has the capacity and ability to manage the SEEB works and the mechanism to deliver through the existing contract with Volker Fitzpatrick. This contract was procured via an OJEU-compliant procedure and is a 'works contract' for the purposes of the Procurement Contracts Regulations 2015 (the PCR). The council's legal advisors GWLG has confirmed that the council can make the necessary changes to the contract to facilitate this arrangement. The council, Mace and BXS together with VF are progressing this arrangement to enable the detailed design of the entrance box to commence in December.

Housing & Growth Committee on the 6th July
(<https://barnet.moderngov.co.uk/documents/s59211/Brent%20Cross%20Cricklewood%20Report.pdf>)

d) Replacement Hendon Waste Transfer Station a) transfer of the project management functions from Re/BXW to the council's BX central team; and b) procurement of a contractor to deliver main works contract through an OJEU procurement (procurement due to conclude Q1 2021)

The project management of the delivery of the Waste Transfer Station project has been transferred from the Re/BXW delivery team to the council's central Brent Cross team effective from April 2020. This reflects the close working relationship required with the council's Environment and Waste team, who manage the interface with NLWA and LEL and have direct experience in waste sites. The council is better placed to manage this internally especially given that the cost and funding risk sits with the council.

In respect of the programme, the former Selco building at Geron Way has now been demolished and ground remediation works completed ahead of construction. The council has initiated an OJEU procurement process for the construction of the new facility in summer 2020. Four bids have now been received in response to the Selection Questionnaire and are currently being evaluated. The procurement is due to complete in Q1 2021 (calendar year).

Council officers have been working with the North London Waste Authority (NLWA), to reorganise its waste operations so as not to interfere with the delivery of the Brent Cross West Station and BXS. The likely means by which this will be achieved is by the redirection of waste by road to an interim facility at the Carey's Seneca Resource Recovery facility in Neasden in NW London. This will allow the decommissioning of the existing Hendon Waste Transfer Station (HWTS) and the railway siding that serves HWTS by Easter 2021. NLWA were already progressing this option to meet their own requirements as part of contingency planning for Edmonton. The council and NLWA has agreed a contingency option to operate the existing HWTS as a road to road operation from the end of September 2021 if the lease at Seneca does not progress allowing the decommissioning of the railway siding, thereby releasing the logistical conflict with the delivery of BXS. This is now documented in the form of a very recent Variation to the Settlement Agreement between the council and NLWA originally signed in 2017. This approach provides greater flexibility on timing to deliver the replacement waste transfer station, removes the dependencies between with the BXW and BXS programmes and mitigates against potential acceleration cost increases due to constrained delivery times. It also enables the council, working with the contractor, to implement efficiencies into the scheme design that do not impact operations.

- 1.10 Other than procuring the main works contractor to construct the replacement waste transfer station (which is due to be let in Q1 2021 (calendar year), all other significant contracts are now let.

Financial Performance and Monitoring

- 1.11 Progress on delivery of the scheme and budgets are reviewed monthly within the council, both at operational level and by a Steering Group chaired by the Chief Executive with the Deputy Chief Executive and Director of Finance. They are also regularly reported to HM Government through a monthly Government Assurance Board as described in the introductory section of this report. Regular reports are

provided to Members through the council's committee structure. Updates are provided to each meeting of the Housing and Growth Committee.

- 1.12 The report to the Financial Performance and Contracts Committee in January 2020 recognised that the programme has been subject to a number of significant events driving change and potential increased costs, as set out in the report above. Covid 19 has added to these pressures.
- 1.13 Subsequent to this, the council together with the BXW delivery team set efficiency targets to mitigate these pressures. An efficiency plan to deliver the targets has looked at all possibilities to reduce cost without detriment to the quality or operational needs of the new station. The efficiency focus is being pursued at three levels;
 - a. Process and Value Engineering challenge of the physical works.
 - b. Challenging and changing the procurement strategies (as outlined above)
 - c. Challenging Network Rail to reduce their costs and take greater ownership of their part in the cost pressures.
- 1.14 Significant progress has been, with some efficiencies already identified, in part as a result of the contractual changes over the past year. Work continues across all three fronts to deliver the efficiency target. A full update will be provided in the December paper.
- 1.15 As described above, the council is working with Mace, Network Rail, HM Government (HMG) and its delivery partners to finalise the revised integrated programme taking into account the changes to the rail possessions now agreed with Network Rail, the impact of Covid 19 (both to working practices and the contractor supply chain) and further development on the construction methodology. This is being used to inform a deep dive review of the anticipated final cost (AFC) taking into account the completion of the TOC compound and Fuel Farm contracts by John Graham Construction Limited (JGCL) and the completion of the Sidings works through Network Rail alongside the developments described above.
- 1.16 The council has asked Mace to commission a separate peer review of the BXW cost position which will be independent of the project team. Mace will utilise their own in-house rail expertise and resources, part of their wider remit in their assurance role. This should provide the council and its public sector partners greater confidence in the final cost forecast.
- 1.17 The council BX team has also been working with the Audit team and PWC on an assurance review of the BX programme. This will focus on the BXW transition and ensuring that the require finance processes are in place going forward to manage the council delivery contracts.

2 REASONS FOR RECOMMENDATIONS

- 2.1 To provide an interim update to the Committee ahead of the review in December.

3 ALTERNATIVE OPTIONS CONSIDERED AND NOT RECOMMENDED

3.1 None.

4 POST DECISION IMPLEMENTATION

4.1 None.

5 IMPLICATIONS OF DECISION

5.1 Corporate Priorities and Performance

5.1.1 The comprehensive regeneration of Brent Cross Cricklewood is a long-standing objective of the council and a key regeneration priority of the Mayor of London.

5.2 Resources (Finance and Value for Money, Procurement, Staffing, IT, Property, Sustainability)

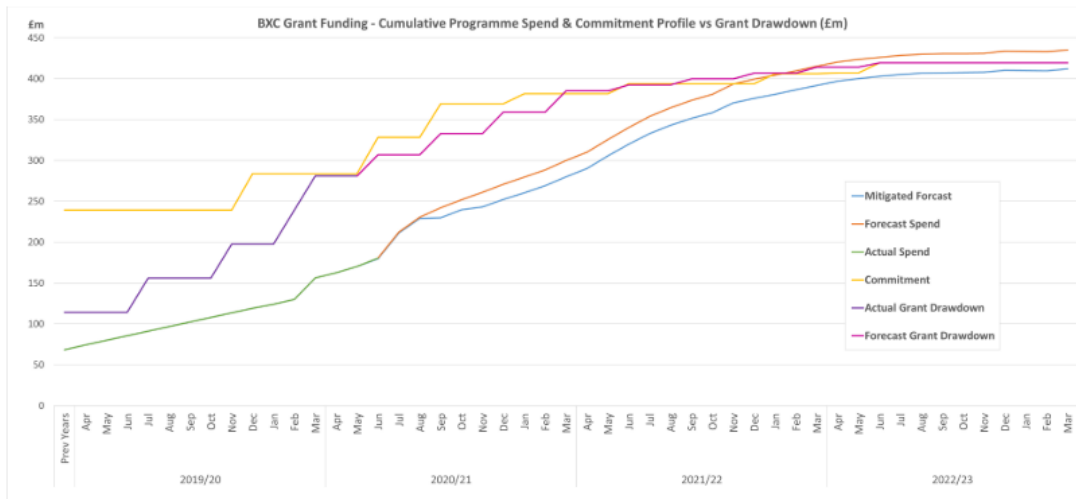
Budget Monitoring

5.2.1 Budget, performance and risk information across the BXC programme is reported to Housing and Growth Committee. The outcomes set out in the Council's Corporate Plan, Barnet 2024, include outcomes for the borough focus on place, people and communities:

- a pleasant, well maintained borough that we protect and invest in
- our residents live happy, healthy, independent lives with the most vulnerable protected
- safe and strong communities where people get along well.

5.2.2 The council has put in place procedures to ensure the effective monitoring of the comprising senior officers of the council, including the Chief Executive, Deputy Chief Executive (Project Sponsor) and the Director of Finance, receives a detailed report each month setting out the financial performance of the BXC Programme. This report includes a breakdown of the performance against the approved budgets and details of the individual Officers responsible for managing the budgets included within the BXC Programme.

5.2.3 The graph below shows the cumulative programme spend and commitment profile against the profile approved as part of the RFA and underpinned the subsequent Grant Agreement. It is anticipated that this will be reprofiled once the revised integrated programme has been agreed and endorsed by the rail industry and public-sector partners and deep dive on the anticipated final cost completed.



Land Acquisitions

5.2.4 The approved budget for land acquisition to facilitate the BXC programme is £63.13m, furthermore, there was expenditure on advanced acquisitions of £4.06m. This is in addition to the BXW budget. Actual spend to date is £53.485m. The current forecast for 2020/21 is £13.558m.

Brent Cross West Thameslink Station

5.2.5 The approved budget in the capital programme is £364.473m, in line with the MHCLG Funding Agreement. Actual spend to date is £174.555m. The current forecast for 2020/21 is £117.856m.

Critical Infrastructure

5.2.6 These works are funded from the £59.9m core critical infrastructure budget which includes £55m being provided as part of the MHCLG Revised Funding Agreement for Brent Cross Cricklewood. Actual spend to date is £20.438m. The current forecast for 2020/21 is £23.822m.

MHCLG Funding Agreement

5.2.7 The funding provided as part of the MHCLG Funding, covering both BXW and Critical Infrastructure, is £419.473m. The total contractual commitments at the end of August 2020 is £355.367m. The Council has submitted drawdown requests against the grant totalling £333.001m, of which all has been paid to date.

5.3 Social Value

5.3.1 The Public Services (Social Value) Act 2012 requires people who commission public services to think about how they can also secure wider social, economic and environmental benefits. Before commencing a procurement process, commissioners should think about whether the services they are going to buy, or the way they are going to buy them, could secure these benefits for their area or stakeholders. As set out in the council's Contract Procedure Rules, commissioners should use the Procurement Toolkit, which includes Social Value guidance. The Contract Management Toolkit should also be used to help ensure that contracts deliver the

expected services to the expected quality for the agreed cost. Requirements for a contractor to deliver activities in line with Social Value is being monitored through the contract management process.

5.4 Legal and Constitutional References

5.4.1 Section 151 of the Local Government Act 1972 states that: “without prejudice to section 111, every local authority shall make arrangements for the proper administration of their financial affairs and shall secure that one of their officers has responsibility for the administration of those affairs”. Section 111 of the Local Government Act 1972 relates to the subsidiary powers of local authorities to take actions which are calculated to facilitate, or are conducive or incidental to, the discharge of any of their functions.

5.4.2 Section 28 of the Local Government Act 2003 (the Act) imposes a statutory duty on a billing or major precepting authority to monitor, during the financial year, its income and expenditure against the budget calculations. If the monitoring establishes that the budgetary situation has deteriorated, the authority must take such action as it considers necessary to deal with the situation. The definition as to whether there is deterioration in an authority’s financial position is set out in sub-section 28(4) of the Act.

5.4.3 The council’s Constitution, Article 7 Committees, Forums, Working Groups and Partnerships, sets out the functions of the Financial Performance and Contracts Committee as being Responsible for the oversight and scrutiny of:

- The overall financial performance of the council
- The performance of services other than those which are the responsibility of the: Adults and Safeguarding Committee; Children, Education and Safeguarding Committee; Community Leadership and Libraries Committee; Environment Committee; and Housing and Growth Committee.
- The council’s major strategic contracts including (but not limited to):
 - Analysis of performance
 - Contract variations
 - Undertaking deep dives to review specific issues
 - Monitoring the trading position and financial stability of external providers
 - Making recommendations to the Policy and Resources Committee and/or theme committees on issues arising from the scrutiny of external providers
- At the request of the Policy and Resources Committee and/or theme committees consider matters relating to contract or supplier performance and other issues and making recommendations to the referring committee
- To consider any decisions of the West London Economic Prosperity Board which have been called in, in accordance with this Article.

5.4.4 The council’s Financial Regulations can be found at:

<https://barnet.moderngov.co.uk/documents/s47388/17FinancialRegulations.doc.pdf>

5.5 Risk Management

5.5.1 The council has an established approach to risk management, which is set out in the Risk Management Framework. Risks are reviewed quarterly (as a minimum) and any

high (15 to 25) level risks are reported to the relevant Theme Committee and Policy and Resources Committee.

5.5.2 Budget, performance and risk information across the BXC programme is reported to Housing and Growth Committee.

<https://barnet.moderngov.co.uk/documents/s59911/Brent%20Cross%20Cricklewood%20Report.pdf>

5.5.3 Risk management has been applied across all levels of the programme. Owners and mitigation plans are identified, and risks are measured against impact and likelihood to give an overall rating. High rating risks are escalated and reported through the defined reporting procedure with top risks reported to BXC Governance Board.

5.5.4 As with all major programmes there is the risk that costs will increase during programme delivery. The BXT budget is under review to take account of the contract award on the station as well as progress on the TOC and Rail Systems and Sidings contracts. This risk is being actively managed.

5.5.5 The IA contract between the council and NR is an Emerging Cost contract. As indicated in previous reports, all emerging cost contracts entered into require strong contract management to ensure all costs incurred are reasonable. As part of the signed IA the council has open book access to all of Network Rail's financial information relating to invoiced costs incurred on the programme. This extends to Network Rail contractors where an emerging cost contract is in place. The council has the right (subject to notice and personal safety) to access the site and attend meetings. In this regard, the regular senior level meetings between Network Rail and the council/Mace delivery are continuing to review the costs each month. Similarly, there is an on-site presence by the council/Mace delivery team monitoring programme and work achieved, particularly during track possessions.

5.5.6 The most important control mechanism for the council is to employ experienced staff who will provide diligent review and challenge of the NR cost base and reject any costs which are not reasonably and properly incurred. The council's Client and Mace Thameslink delivery team comprises professionals used to working on the railway within Network Rail and are experienced in delivering large railway projects. The challenge to NR will need to operate at several levels, including:

- a. A full-time site presence that stays abreast of issues that arise on site, and monitors the detail and impact of any events, or failure to meet programme milestones, quality standards etc. The site team/person will also systematically log these events/issues and share this information with NR.
- b. Whilst it will always be difficult to isolate costs associated with NR/Contractor failure, from genuine cost, it is important that NR are discouraged from passing on contractor valuations without themselves challenging whether a deduction should be made to take account of notified failures.
- c. Attendance at key NR meetings. This is in addition to the role set out in (a), targeting any issues which may not have been picked up by the site-based teams, but for the same purpose as (1).
- d. A strong commercial challenge that scrutinises and interrogates any unexpected

costs which emerge during the pre-invoice (valuation) process and repeats this when the main invoices are submitted.

5.5.7 In order to promote and retain a collaborative working relationship, whilst discussing challenging topics, the Council and NR have instigated a Project Board attended by Senior managers from both organisations where project issues can be openly debated in a strategic context. This Board meets fortnightly to discuss contemporary issues, and acts as the level 2 escalation stage for any formal disputes. This group seeks to keep NR actively engaged in, and jointly accountable for both project successes and challenges

5.6 Equalities and Diversity

5.6.1 The Equality Act 2010 requires organisations exercising public functions to demonstrate that due regard has been paid to equalities in:

- Elimination of unlawful discrimination, harassment and victimisation and other conduct prohibited by the Equality Act 2010.
- Advancement of equality of opportunity between people from different groups.
- Fostering of good relations between people from different groups.

5.6.2 The Equality Act 2010 identifies the following protected characteristics: age; disability; gender reassignment; marriage and civil partnership, pregnancy and maternity; race; religion or belief; sex and sexual orientation; marriage and civil partnership.

5.6.3 To assist in meeting the duty the council will:

- Try to understand the diversity of our customers to improve our services.
- Consider the impact of our decisions on different groups to ensure they are fair.
- Mainstream equalities into business and financial planning and integrating equalities into everything we do.
- Learn more about Barnet's diverse communities by engaging with them.

This is also what we expect of our partners.

5.6.4 This is set out in the council's Equalities Policy, which can be found on the website at: <https://www.barnet.gov.uk/your-council/policies-plans-and-performance/equality-and-diversity>. The Council has complied with all Equalities Act legislation as appropriate throughout the project.

5.7 Corporate Parenting

5.7.1 This is not applicable for this report.

5.8 Consultation and Engagement

5.8.1 An update is set out in the report to the Housing and Growth Committee on 14 September 2020.

5.9 Insight

5.9.1 This is not applicable for this report.

6 BACKGROUND PAPERS

6.1 None.