



**Decision of Cabinet Member for  
Finance Cllr McLennan**

**Report from the Director of Finance**

**Authority to vary the contract for the provision of legal counsel for the Forward Borrowing Project with Bevan Brittan LLP to provide the additional work arising from entering into the capital markets.**

<b>Wards Affected:</b>	All
<b>Key or Non-Key Decision:</b>	Non-key decision
<b>No. of Appendices:</b>	Appendix 1: Detailed Financial Costings (contains exempt information) Appendix 2: EY Project Advance Forward Borrowing Strategy Review (contains exempt information) Appendix 3: EY considerations re PWLB (contains exempt information)
<b>Open or Part/Fully Exempt: (If exempt, please highlight relevant paragraph of Part 1, Schedule 12A of 1972 Local Government Act)</b>	Part Exempt (Appendices contain exempt information under Para 3 of Part 1 Schedule 12A of the 1972 LGA)
<b>Background Papers:</b>	None
<b>Contact Officer(s): (Name, Title, Contact Details)</b>	Minesh Patel Director of Finance 020 8937 4043 Minesh.Patel@brent.gov.uk  Daniel Omisore Deputy Director of Finance 020 8937 3057 Daniel.Omisore@brent.gov.uk

## 1.0 Purpose of the Report

1.1 This report concerns the contract with Bevan Brittan LLP to provide legal counsel for the Council as part of the forward borrowing exercise. This report

requests individual Cabinet Member approval to vary the contract for the additional work arising from entering into the capital markets in accordance with paragraph 13 of Part 3 of the Constitution.

## **2.0 Recommendation(s)**

That the Cabinet Member for Finance, having consulted with the Leader:

- 2.1 Agrees to vary the contract for the provision of legal counsel with Bevan Brittan to enable them provide the additional work arising from entering into the capital markets at a contract sum detailed within Appendix 1 (containing exempt information), in accordance with paragraph 13 of Part 3 of the Constitution.

## **3.0 Detail**

- 3.1 In July 2019 the Council invited potential advisors to bid for legal advisory services (Lot 2) in relation to the execution of the Council's borrowing strategy, which was endorsed by Cabinet in 2018. At the time, the legal work required was to cover the provision of legal opinion on the Council's authority to agree the loan, provide input into negotiations, establish a set of closing protocols, liaise with our treasury advisors and internal legal team as appropriate and to oversee the transaction to secure the most advantageous terms for the Council. This work was also expected to naturally follow on from the results of (Lot 1) which was a confirmation and setting of the strategy itself.
- 3.2 The recommendations arising from the strategy work suggested that it would be most advantageous for Brent to seek a forward funding solution, which was not necessarily envisaged at the time of the original tender. This was something that was flagged by Bevan Brittan LLP (BB) at the initial kick off meeting.
- 3.3 As noted above the tender response was scoped and priced to be specific about BB's input into finding and agreeing a forward borrowing facility with a single lender. It did not necessarily envisage the Council going out to the capital markets. Traditional bank loans are normally produced by the Lender in a standard form and the negotiating points are usually limited to project specific issues. As such, BB would not normally expect significant dialogue with the lenders advisors as simple evidence of properly delegated authority to sign the documentation normally fulfils their drawdown Conditions Precedents.
- 3.4 In comparison, their involvement in the capital markets is expected to be more involved. They will be required to prepare draft documents in a market that is relatively immature and as a result anticipate the need to negotiate a number of changes. Furthermore, the eventual form of a Agreement will need to be adapted to suit a local authority. Because of this there is likely to be considerably more involvement from their regulatory team in order to a) get investors comfortable with the regulatory issues around Local Authority "insolvency" and b) agree appropriate approvals that will be much more in depth

than those for a regular loan, including a separate certificate required from the Section 151 officer.

- 3.5 It is also worth noting that a significant proportion of the uplifted costs covers the provision of a legal opinion (which BB have recently provided on the recent public bond issue with another London Authority). An opinion for a matter of this nature is uncapped and therefore increases the risk to BB as well as requiring a substantial amount of negotiation as well as internal sign-off.
- 3.6 In accordance with paragraph 13 of Part 3 of the Constitution, the Cabinet Member has consulted the Leader in connection with the Recommendations.
- 3.7 The individual Cabinet Member is asked to give its approval to these proposals as set out in the Recommendations and in accordance with the Constitution.

#### **4.0 Financial Implications**

- 4.1 Details of the original contract award and revised uplift estimates of the legal work required to complete the PP transaction have been included within (exempt) Appendix 1
- 4.2 The uplift will be funded from the council's capital existing financing budget. It is worth noting that the council has an overall capital borrowing requirement of £200m plus, whilst this initial offering will only be for £40m. Therefore, in the event that the council wish to go back out to the market in the future (which is very likely) it is anticipated that (Legal Advisory) cost savings would arise for subsequent issues on the same terms particularly if the investor remains the same.

#### **5.0 Legal Implications**

- 5.1 The additional work identified will increase the contract value by more than 50% of the original contract value. Clause F3 of the contract provides that the Council may require changes to the services which may also result in the contract price variation.
- 5.2 Based on the contract value mentioned above which is below the threshold for services under the European Procurement Legislation, the contract and the variation are not subject to the European Procurement Legislation but the variation is subject to the provisions of the Council's constitution in respect of approval.
- 5.3 Under Paragraph 9.5(3)(b)(f) of Part 3 of the Constitution, variation of contracts may be agreed without the need for Cabinet approval, provided that the variation would not be in breach of the European Procurement Legislation; does not substantially alter the terms and conditions of the contract; there is sufficient existing budgetary provision and provided that in the case of any variation, the total value of the variation is less than £1m; and if the total value of the variation

is more than £50k it is not more than 50% of the original contract value or such the relevant Cabinet Member shall be consulted prior to a decision and may request that the decision instead be referred to them.

5.4 Paragraph 13 of Part 3 of the Constitution also provides that Individual Cabinet Members have delegated to them, authority to agree variation of contract where the total value of the variation is more than 50% of the original contract value. As the Individual Cabinet Member for Finance, it is considered that you have the authority to approve the variation of the Council's contract with Bevan Brittan.

## **6.0 Equality Implications**

6.1 The proposals in this report have been subject to screening and officers believe that there are no equality implications.

## **7.0 Consultation with Ward Members and Stakeholders**

7.1 N/A

## **8.0 Human Resources/Property Implications (if appropriate)**

8.1 N/A

## **9.0 Public Services (Social Value) Act 2012**

9.1 N/A

## **Related Document**

Cabinet Report: Brent Council Borrowing Strategy 2018/19 – 2020/21 12<sup>th</sup> September 2018.

**Report sign off:**

***Minesh Patel***  
Director of Finance