

District Heating Annual Customer Report 2023/24

Date: 08/04/2024

Report of: Chief Officer for Climate, Energy and Green Spaces

Report to: Director for Communities, Housing and Environment

Will the decision be open for call in? Yes No

Does the report contain confidential or exempt information? Yes No

Brief summary

Leeds PIPES district heating network is established as a reliable, low cost, low carbon heat utility in the city. This is reflected in the large pipeline of potential customers which the project team is currently working with to deliver connections to the network.

For each customer, a process is followed from initial conversations through to commissioning of the system and ongoing operation and maintenance. Steps in the process include entering into contracts with the project's principal contractor and the customers themselves. For this to take place, decisions need to be taken by senior council officers.

This report outlines the pipeline of potential customers for the network in the financial year 2024/2025 and the associated decisions recommended to be taken for each customer, which will allow the network to continue its expansion and grow its customer base.

Recommendations

The Director for Communities, Housing, and Environment is recommended to:

- a) Approve the awarding of contracts for detailed design at sites included in Confidential Appendix 1 – 24/25 Leeds PIPES Customers, to the maximum values stated, to Vital Energi Utilities Ltd.
- b) Approve the entering into of Connection and/or Supply Agreements with the customers included in Confidential Appendix 1 noting that any variations to the standard council position in these agreements will be subsequently approved by the Chief Officer for Climate, Energy and Green Spaces under the established delegations.
- c) Approve the awarding of contracts to Vital Energi Utilities Ltd for the design and build of connections to sites included in Confidential Appendix 1, to the maximum values stated.
- d) Note that Confidential Appendix 1 is excluded from this report for reasons detailed at paragraph 40, in line with the Local Government Act 1972.

What is this report about?

- 1 The council's flagship Leeds PIPES District Heating Network (DHN) is operational and has been supplying heat generated at the Recycling and Energy Recovery Facility (RERF) since September 2019 to the initial customers connected to the network.
- 2 The project team now has a well-established process to be followed for new customers connecting to the network which is outlined to customers at the onset of discussions along with the expected timescales from commencement of negotiations through to works starting and completing on site.
- 3 Three steps in the process require the council to enter into contracts of varying values and lengths, and for the contracts to be entered into a decision needs to be taken. These steps are detailed below in chronological order with further detail provided in subsequent paragraphs on the approach to each.
 1. Detailed design contract awarded to Vital Energi Utilities Ltd
 2. Connection and/or Supply Agreements entered between the council and the customer parties
 3. NEC 3 contract awarded to Vital Energi Utilities Ltd for the works to connect the customer's building/site to the network

Detailed design

- 4 The detailed design contract allows design work to be undertaken which fixes the capital cost of the connection and sets the size of the connection, which in turn is used to determine the site standing charge and revenue for the council. As such, completion of detailed design allows the appropriate commercial agreements to be entered into with the customer.
- 5 Vital Energi Utilities Ltd is the council's Principal Contractor for the network and has successfully delivered Phases 1 and 2 of the DHN, as well as currently being under contract for Phase 3 which is due to complete in March 2024. They will also undertake the physical building connection works for these connections, as this forms part of their ongoing O&M contract, so are best placed to undertake design.
- 6 Vital Energi Utilities Ltd have indicated the maximum value of their detailed design work at sites which the project team expected to commence in 2024/25 financial year. This is outlined in detail in Confidential Appendix 1 and summarised in Table 1 and it is recommended that contracts are entered into for each of these sites to allow design to take place.
- 7 The T&Cs for the contract have been drafted by the Procurement and Commercial Services team, and the costs incurred by the council for these designs will ultimately form part of the connection fee that customers pay the council, once the Connection and Supply Agreements are signed and works completed.
- 8 The contract will be awarded in line with CPR 8.3 where it can be justified to the decision maker that there is no competition, with Vital Energi Utilities Ltd being the only supplier who can provide the works. Further justification for this is detailed at paragraph 42.

Connection and Supply Agreements

- 9 The commercial agreements to be entered into by the council and customer parties are the Connection and Supply Agreements.
- 10 The connection element gives the council the right to: access the site and complete the required works to make the connection; supply the site with heat; and, grants exclusivity of the supply of heat to the council.

- 11 The supply element sets the terms under which the supply will be provided, sets the variable and standing charges and the indexation methodologies for said charges, and outlines the process to be followed if there are any instances of interruption to the supply.
- 12 The council anticipate that the majority of customers will enter into a combined Connection and Supply Agreement covering both elements. In instances that the party taking heat does not own the property, the freeholder will be required to enter into the Connection Agreement, and the customer taking heat (usually the building operator) will be required to enter into the Supply Agreement. This is due to the freeholder being the party which is able to grant the council the right to make the connection and provide the supply of heat.
- 13 Template agreements have been drafted by Addleshaw Goddard LLP with the input of Procurement (Legal) Services. The intention of the project team is for customers to sign up to the templates however, there will be some room for negotiation on certain clauses. If any of these points vary significantly from the standard council position, this will need to be subsequently approved by the Chief Officer for Climate, Energy and Green Spaces under the established delegations prior to entering into contract with the customer.
- 14 The Connection and Supply Agreements provide the guarantee to the council that the customer will pay the connection fee, and as such once the agreements are signed the council is able to proceed to contract award for the connection works.

NEC3 Contracts for Connection Works

- 15 Upon completion of detailed design, its acceptance by the customer, and signing of the Connection and/or Supply Agreements the next stage in the process needs to commence: contract award for works to connect the site to the PIPES network.
- 16 As outlined previously, throughout the lifetime of the PIPES project, the principal contractor Vital Energi Utilities Ltd has undertaken the design and build for each phase of the network, as well as individual customer connections. The existing O&M contract with the contractor allows for connection works to be carried out as Additional Works.
- 17 The contract awarded for the works takes the form of an NEC3 design and build contract. Procurement and Commercial Services have drafted a template NEC3 for the purpose of these contracts which the project team intends to continue to use moving forwards. Such contracts have been used for over 10 connections to the network.

Customers for 2023/24

- 18 Leeds PIPES is now successfully established as a reliable, low carbon, low-cost heat network in the Leeds. The reputation of the network has grown rapidly since its inception and the project team are continually receiving enquiries from potential customers who are interested to understand the practicalities and economics of a connection to the network.
- 19 The project team has identified the pipeline of sites for which decisions need to be taken in this financial year, to ensure our work can tie up with the customers' own programmes for construction and dates for heat being required. The customers, the decisions required, and the maximum associated values in relation to contracts recommended to be awarded, are detailed in Confidential Appendix 1 – 24/25 Leeds PIPES Customers, which accompanies this report. A summary table of the works recommended is below:

Number of sites	Number detailed design contracts to be awarded	Number CSAs to be entered into	Number connection contracts to be entered into	Total maximum value of detailed design contracts	Total maximum value of NEC 3 connection contracts
34	24	34	30	£298,000	£18,175,109

Table 1 – Summary of Confidential Appendix 1 – 23/24 Leeds PIPES Customers

20 Programmes for multi-year construction projects such as those included in Confidential Appendix 1 can often be unreliable and as such, it is envisioned that not all decisions taken this year will be able to be implemented this year. Where this is the case, the decision will be included in the subsequent year's report.

What impact will this proposal have?

- 21 Approval of the recommendations of this report will ensure the council can quickly and flexibly enter into contracts with Vital Energi Utilities Ltd and customer parties over the 2024/25 financial year. The design work, Connection and Supply Agreements, and NEC3 design and build contracts are all critical elements of the Leeds PIPES customer journey from the initial expression of interest through to connections being realised and revenue being generated for the council.
- 22 The number of customers outlined in this report is extensive and demonstrate the ambition of the council for the Leeds PIPES network, working with key stakeholders across the city in parallel to deliver continued extensions to the network. This growth will raise the profile of the network in the city and further prove the viability of PIPES connections to potential customers and demonstrate its benefits, as the council looks to continue its expansion of the network in the coming years.
- 23 Through receiving a connection, customers see a reduction in their overall energy costs for the term of the heat supply, as well as realising a significant reduction in their carbon emissions.
- 24 Equality impact assessments have been completed at various stages throughout the development of the DHN, with the last one being to support the March 2024 Executive Board report. This assessment concluded that the DHN will have a positive impact on equality as it will support the compassionate city equality objective by reducing fuel poverty, helping to increase life expectancy, improves mental health and wellbeing and reduces health inequalities.

How does this proposal impact the three pillars of the Best City Ambition?

Health and Wellbeing

Inclusive Growth

Zero Carbon

- 25 The Leeds PIPES DHN is a major strategic priority for the city and supplying heat to new customers as proposed directly support the council's three Key Pillars:
- The network will provide lower cost heating to the new connections, helping to improve competitiveness and reduce fuel costs for each customer.
 - The network reduces reliance on gas boilers in dense urban areas, helping to improve air quality and improving health.
 - The network directly reduces CO2 emissions from heating, which is otherwise difficult and expensive to improve, helping the city to achieve net zero ambitions.

What consultation and engagement has taken place?

Wards affected:

Have ward members been consulted?

Yes

No

- 26 The Leeds PIPES DHN project is a strategic priority for the council, and its continued expansion has been approved on several occasions by Executive Board. The decision to proceed with the construction of Phase 4 of the Leeds PIPES DHN was subject to extensive consultation and engagement with elected members and senior officers, which provided a range of scenarios

setting out the positive impact of connecting new customers to the network. The proposals for the Phase 4 extension of the network were approved by Executive Board on 13 March 2024.

- 27 Consultation has taken place with PACS and Democratic Services regarding the approach of this report. The project team were advised in 2022 and 2023 that to reduce the number of reports and decisions required for the project, multiple decisions could be wrapped up into one Key Decision report, if the decisions are re-sought each financial year rather than being open ended timescale wise. The project team thus brought a Key Decision report forward for the 23/24 financial year outlining the pipeline of customers for Leeds PIPES for the coming year, and to get approval to enter various contracts to allow the network to add customers. This approach is being taken again this year with this decision report.
- 28 The project team and Vital Energi Utilities regularly meet with and consult Highways services within the council on any works planned to take place on the adopted highway, to ensure appropriate notice is given regarding any potential disruption to traffic. Consultation will continue to take place on any and all works coming to site throughout the year, as well as with any residents or businesses in the area who may be impacted by works.

What are the resource implications?

- 29 Construction of the network as approved on the basis that the council would attract additional customers to the network. The proposed commercial connections and works associated with this detailed in this report help to support the business case for the network in line with the council intention, generating revenue via the variable and standing charges paid each month by the customers receiving heat.
- 30 The council fund the detailed design by Vital Energi Utilities Ltd for each connection at risk with the costs to be reimbursed by the customer upon signing of the Connection and Supply Agreements. The council do not instruct this work until Heads of Terms have been signed with the customer and thus far, no customers have withdrawn their interest in the connection following the signing of HOTs.
- 31 There are no capital costs associated with each of the connections. The connection fee is paid in two parts by the customer: 50% upon signing of the Connection and Supply Agreements and 50% upon commissioning of the Plate Heat Exchangers. This is a standard position for heat networks across the country. The connection fee fully covers the cost of the connection which is paid by the council to Vital Energi Utilities Ltd.

What are the key risks and how are they being managed?

- 32 Not approving the recommendations to appoint Vital Energi Utilities Ltd to the detailed design and connection contracts and subjecting the work to tender would mean there is a risk associated with having another contracting party involved with the works, which may result in delay, contractual disputes, and technical issues on the network or at connections. It potentially may also invalidate guarantees provided by Vital Energi Utilities Ltd on the whole DHN network if another contractor were to carry out the works.
- 33 Specifically with regard to the detailed design contracts, the key risks relate to costs and quality issues with detailed design:
- a) Cost: the risk is that the council does not recoup the costs for detailed design it has taken on at risk. This is mitigated by the council entering into Heads of Terms prior to proceeding with detailed design.
 - b) Design quality: Mitigated by numerous factors including Vital Energi Utilities Ltd being a trusted partner of the council which has successfully delivered all Leeds PIPES related works in Leeds so far, including design elements at each individual connection. The council

has a good relationship with customers at each site in the report which will ensure prompt sharing of critical information. The specification of the contract will be based on standard outputs for RIBA design stages 3 and 4 in line with previous design exercises undertaken successfully by Vital Energi Utilities Ltd.

- 34 Specifically with regard to the connection contract and Connection and Supply Agreements, the very low risk of failing to receive payment from the customer is mitigated by signing the Connection and Supply Agreements prior to entering into contract with Vital Energi Utilities for the works. Entering into the agreements gives the council legal protection against non-payment.
- 35 Given the inherently uncertain nature of programmes for multi-year construction projects, there is no guarantee that the decisions taken in this year's report will be implemented this year. If this is the case for any sites, the decision will be included in the subsequent year's report.

What are the legal implications?

- 36 Whilst this report seeks approval for entering into the Connection and/or Supply Agreements with the customer parties, if the customer requests any variations to the standard council position on the agreements prior to signing, these will be approved by the Chief Officer for Climate, Energy and Green Spaces under the established delegations prior to entering into the agreement(s).
- 37 The Consultancy Contract T&Cs and the NEC 3 Design and Build contract have been approved by Procurement and Commercial Services on multiple occasions over previous years. They will continue to be consulted over the course of the year to ensure contracts are up to date and relevant.
- 38 Vital Energi Utilities Ltd will fulfil the roles of Principal Contractor and Principal Designer under the Construction Design and Management Regulations (2015) for the connection works.
- 39 The Connection and Supply Agreements have been drafted by Addleshaw Goddard LLP with input from the council's Procurement Legal service, to ensure the council has the necessary protections. These Agreements are now in template form with very little room for negotiation offered by the council to prospective customers.
- 40 The information contained within confidential Appendix 1 to this report is designated as exempt from publication in accordance with paragraph 10.4(3) of the Access to Information Rules and Schedule 12A(3) of the Local Government Act 1972 on the grounds that it contains information relating to the financial or business affairs of any particular person (including the authority holding that information). The appendix contains pricing information underpinning the Council's commercial offer to customers, which if disclosed could damage the commercial interests of the Council. Disclosure of this information would seriously harm the Council's negotiating position when discussing heat sales with potential customers. Therefore it is considered that the public interest in maintaining the content of confidential appendix 1 as exempt outweighs the public interest in disclosing the information.

Options, timescales and measuring success

What other options were considered?

- 41 Do nothing: This option is discounted as it negates the purpose of the Leeds PIPES network which is to generate revenue for the council which can be reinvested into the network's continued expansion.
- 42 Go out to competitive tender for detailed design work and/or the connection works: This option is discounted for a number of reasons:

- a) By going out to market we open up the risk of there being multiple parties being involved in the project from a design and build perspective. One company having sole accountability for the performance of the network and building connections reduces the risk to the council of debates arising over where fault lies for issues.
 - b) A procurement exercise for this work will take a significant amount of time to undertake, at a time when the network is rapidly expanding and customers, including the ones covered by this report, are keen to move as quickly as possible to connect their sites to the network.
 - c) Other contractors will require additional time to undertake design/complete works given their unfamiliarity with the scheme.
 - d) Vital Energi Utilities Ltd are already in contract for the Operation and Maintenance of the Leeds PIPES network which allows for contracts to be awarded for connections as Additional Works
- 43 Enter into Connection and Supply Agreements with customers, and detailed design and NEC3 contracts with Vital Energi Utilities Ltd for design and construction works: This option is recommended to be proceeded with for the reasons outlined in this report and drawbacks associated with the alternative options outlined above.

How will success be measured?

- 44 Success will be measured by the various agreements and contracts being entered into with customers and Vital Energi Utilities Ltd.
- 45 The future connection of the site will increase the volume of heat supplied to customers on the DHN, help to reduce carbon emissions in the city, and further raise the profile of the DHN demonstrating to potential customers that connecting to the network can deliver a range of benefits.
- 46 An annual report is provided to Executive Board which includes the financial performance of the network over the previous year.

What is the timetable and who will be responsible for implementation?

- 47 The various contracts and agreements will be entered into over the course of 24/25 financial year.
- 48 The Senior Project Manager within the Climate, Energy and Green Spaces service will be responsible for the implementation of the recommendations of this report.

Appendices

- Confidential Appendix 1 – 24/25 Leeds PIPES Customers

Background papers

- None