



**Report of** Head of Property Management  
**Report to** Director of Resources & Housing  
**Date:** 4<sup>th</sup> March 2020  
**Subject:** Approval to Waive CPRs 9.1 & 9.2 in connection with Responsive Drainage Repairs & Maintenance – Leeds City Council East & North East

Are specific electoral wards affected?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
If yes, name(s) of ward(s): Leeds East and North East wards including: Alwoodley; Burmantofts and Richmond Hill; Chapel Allerton; Cross Gates and Whinmoor; Gipton and Harehills; Harewood; Killingbeck and Seacroft; Moortown; Roundhay; Temple Newsam; Weetwood; Wetherby	
Has consultation been carried out?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Are there implications for equality and diversity and cohesion and integration?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Will the decision be open for call-in?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Does the report contain confidential or exempt information?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
If relevant, access to information procedure rule number: Appendix number:	

## Summary

### 1. Main issues

- The current Responsive Drainage contract delivers responsive drainage works to domestic properties within the East area of the city only. This contract DN199155 is due to expire on the 31<sup>st</sup> March 2020 with no further extensions available.
- Leeds City Council has a duty of care that all homes are of a good standard under the tenants & Landlords Act 1985 section 11. This will allow Leeds Building Services time to re-procure a new contract which will be managed by them starting April 2021.
- Currently South & West works of the same nature is delivered by Mears Ltd and will continue until 31<sup>st</sup> March 2021.
- Leeds Building Services (LBS) will take on the management of this provision from April 2021, however, whilst their strategy to deliver all responsive repairs including drainage works, across East & South of the city is being defined an interim arrangement is required to ensure consistency and safety for tenants within the east of the city.

- There is insufficient time available to undertake an effective, robust and compliant procurement exercise for a new Responsive Drainage Repair and Maintenance contract to start in April 2020.
- It is therefore recommended that Housing Leeds enter into a temporary contract, using the same specifications, terms and conditions and pricing as the current contract in the east of the City with Easaway Draincare UK Ltd T/A Easaway Environmental Easaway Draincare UK Ltd T/A Easaway Environmental Easaway Draincare UK Ltd T/A Easaway Environmental for a 12 month period 1<sup>st</sup> April 2020 to 31<sup>st</sup> March 2021, the anticipated expenditure during this 12 months period of £650,000

## 2. Best Council Plan Implications (click [here](#) for the latest version of the Best Council Plan)

- This will help with making sure housing is of a good standard making sure that the drains to homes are well maintained which contributes to a healthy and safe environment.

## 3. Resource Implications

- The maximum available period of extension of the current contract has been implemented which takes the end date up to 30<sup>th</sup> March 2020. If permission is not granted to waive Contracts Procedure Rules R 9.1 & 9.2 to seek to award the contract to Easaway Draincare UK Ltd T/A Easaway Environmental Easaway Draincare UK Ltd T/A Easaway Environmental, the Council will not have a contracted supplier to cover the East of the city.
- Consequently, this will cause issues with ensuring that drain clearance issues are addressed to tenants properties and may mean the need to employ organisations On a non-contract basis risking increased in prices and a lack of robust terms and conditions,
- This provision is funded by revenue from the Housing Revenue Account, the anticipated spend during the proposed 12 months is £650,000.
- Leeds Building Services is unable to deliver this provision in house, due to its specialist nature

## Recommendations

- a) The Director of Resources & Housing is recommended to approve the waiver of Contract Procedure Rules (CPR) 9.1 & 9.2 in order to put in place an interim contract for 12 months with Easaway Draincare UK Ltd T/A Easaway Environmental for the period 1<sup>st</sup> April 2020 to 31<sup>st</sup> March 2021, with an estimated value of £650,000.

### 1. Purpose of this report

- 1.1 To seek the authority of the Director of Resources & Housing to the waiver of CPR 9.1 & 9.2 to put in place an interim contract for 12 months with Easaway Draincare UK Ltd T/A Easaway Environmental. This allowing sufficient time to re-procure in a competition process to allow a new contract to start from 1<sup>st</sup> April 2021.

### 2. Background information

- 2.1 Easaway Draincare UK Ltd T/A Easaway Environmental are the Council's current contractor for the provision of drain clearance works for the East & North East of the city. The contract commenced on 10th August 2016 and is due to conclude on 31<sup>st</sup> March 2020. The contract is currently managed by the Responsive Repair team in Housing.
- 2.2 The current contract is due to expire at the end of March 2020, however a similar service is provided in the rest of the City by Mears Ltd via use of sub-contractors. These arrangements are likely to finish between April 2021 & September 2021 dependent on the LBS growth strategies.
- 2.3 Going forward from April 2021 Leeds Building Services will have a replacement contract in place to deliver this specialist provision in the East & South of the city in line with the decision of the Council's Executive Board IN October 2019 to deliver responsive repairs within those areas.
- 2.4 This proposed waiver report in relation to the East of the City will ensure continuity of this service in that area until Leeds Building Services have provision in place to take over the management of this provision in their areas of responsibilities.

### **3. Main issues**

- 3.1 The current contract with Easaway Draincare UK Ltd T/A Easaway Environmental is due to expire 31<sup>st</sup> March 2020 and there are no extensions available. A review of the services to be delivered directly by Leeds Building Services has recently been completed. It has been assessed that, due to specialist nature of drainage services, LBS is unable to deliver this workstream. However, this has left insufficient time to procure a new service provider from 1<sup>st</sup> April 2020.
- 3.2 The current contractor (Easaway) has met all the KPI's and have performed the service to a satisfactory standard. They continue to provide a good service and it is felt for continuity of service delivery and best value it would be better to maintain them to deliver in the East of the city for the next 12 months whilst LBS prepares a longer term solution as part of the LBS growth ambitions.
  - 3.2.1 It is felt that as Housing Leeds will only require this provision for a further 12 months, undertaking a full procurement exercise may not be the most economical approach as the provision is subject to TUPE, this may not be considered a viable opportunity for contractors within the market pace considering its short term nature, this may lead to reduced interest or significant increase in prices.

### **4. Corporate consideration**

#### **4.1 Consultation and engagement**

- 4.1.1 Leeds Building Services have been consulted on this approach, and the proposal for LBS to take responsibility for the management of this provision from 2021 across its area of responsibility.

#### **4.2 Equality and diversity / cohesion and integration**

4.2.1 The current EDCI which was put in place when the current contract was first done would still apply until the new contract starts on the 1<sup>st</sup> April 2020.

### **4.3 Council policies and the Best Council Plan**

4.3.1 Leeds City Council has a legal duty to undertake the necessary repairs and maintenance of drainage to dwellings where they are the landlord.

#### Climate Emergency

4.3.2 This will help in regard to reducing unwanted waste which overflows and can cause unsightly mess which in turn often requires unnecessary visits to homes and therefore unnecessary CO2 emissions. The drainage contract also drives blockages to be rectified on the first visit, without the need for an initial visit by a plumber, and therefore this removes the need for unnecessary visits and travel.

4.3.3 In addition, the Leeds Climate Commission have proposed a series of science based carbon reduction targets for the city so that Leeds can play its part in keeping global average surface temperatures to no more than 1.5c.

### **4.4 Resources, procurement and value for money**

4.4.1 The maximum available period of extension of the current contract has been implemented which takes the end date up to 30<sup>th</sup> March 2020. If permission is not granted to waive Contracts Procedure Rules R 9.1 & 9.2 to seek to award the contract to Easaway Draincare UK Ltd T/A Easaway Environmental, the Council will not have a contracted supplier to cover the East of the city.

4.4.2 Consequently, this will cause issues with ensuring that drain clearance issues are addressed to tenants properties and may mean the need to employ organisations on a non-contract basis risking increased prices and a lack of robust terms and conditions,

4.4.3 This provision is funded by revenue from the Housing Revenue account, the anticipated spend during the proposed 12 months is £650,000.

4.4.4 Leeds Building Services are unable to deliver this provision in house, due to its specialist nature

### **4.5 Legal implications, access to information, and call-in**

4.5.1 This is a key decision which is subject to call in as the value of this waiver exceeds £500K. This requirement has been included on the list of forthcoming decisions and the 28 day period expired on 14<sup>th</sup> February 2020.

4.5.2 The value of the direct award detailed within this report is below the threshold for the application of the Public Contracts Regulations 2015 for the procurement of public Works contracts and therefore it is not subject to the full EU procurement rules. However, the Council's CPRs 9.1 and 9.2 require competition for procurements valued over £100K and the invitation of at least four written tenders. A waiver of these CPRs is required to award a contract direct to Easaway Draincare UK Ltd T/A Easaway Environmental.

4.5.3 Awarding a contract direct to Easaway Draincare UK Ltd T/A Easaway Environmental without competition could leave the council open to a potential claim

from other providers, to whom this contract could be of interest, that it has not been wholly transparent. In terms of transparency it should be noted that CPRs suggests that contracts of this value should be subject to a degree of advertising. It is up to the Council to decide what degree of advertising is appropriate. In particular, consideration should be given to the subject-matter of the contract, its estimated value, the specifics of the sector concerned (size and structure of the market, commercial practices etc.) and the geographical location of the place of performance.

- 4.5.4 The Director of Resources & Housing has considered this and, due to the nature of the Works being delivered, the geographical location, and the relatively short length of the contract, is of the view that the scope and nature of the Works is such that it would not be of interest to contractors in other EU member states. In awarding the contract to Easaway Draincare T/A Easaway Environmental without competition, there is a potential risk of challenge from other providers who have not been given the chance to tender for this opportunity, although this risk is considered low due the reasons set out in this report.
- 4.5.5 Should we not implement this waiver and establish a temporary contract it will leave Leeds City Council as a landlord vulnerable to unauthorised spend when dealing with any drainage issues until a new contract is in place which will take an extra twelve months. The council would be neglecting its duty of care as outlined in the Tenants & Landlords Act 1985 Section 11. Leeds City Council has a legal duty as a landlord to make sure all properties are of a lettable standard.
- 4.5.6 Whilst there is no legal obstacle preventing the waiver of CPR 9.1 & 9.2, the above comments should be noted by the Director of Resources & Housing and in making the final decision should be satisfied that doing so represents best value for the Council.

## **4.6 Risk management**

- 4.6.1 A contract management plan is already in place with our current supplier. They have been performing to a good standard and are meeting the KPIs it is felt that the current contract management plan would stay in place until April 2021.
- 4.6.2 Leeds City Council has a legal duty under the Tenants and Landlord Act 1985 (section 11) to make sure all properties which they own are of a good lettable quality and this includes the maintenance and repairing of the drainage system.
- 4.6.3 Tenants could suffer from ill health effects should the drains either block or collapse and this will impact on how they are able to live and manage. If drains are left blocked it would give off an unpleasant smell and eventually could lead to homes being flooded with dirty and unclean water.
- 4.6.4 If Leeds City Council does not have a contract in place they would be vulnerable to legal action from tenants should the drains and pipes block or not maintained to a high standard especially as the new Homes Fit for Habitation Act 2018 comes into effect in March 2020.
- 4.6.5 If a waiver of CPR 9.1 & 9.2 is not sought then Leeds City Council will not have a contract in place to cover the East & North East of the city. This will either lead to use of suppliers who have not been through a vetting process, increased costs, and terms and conditions incongruent to that of the Council.

## **5. Conclusions**

- 5.1 Easaway Draincare UK Limited T/A Easaway Environmental are the current contractor in the East and North East of the City and it is felt that as they are meeting the current requirements. It is proposed to continue to use them until LBS take over the management of this provision. This will allow Easaway Draincare UK Ltd T/A Easaway Environmental to continue with the current areas and will not leave Leeds City Council without a contracted supplier to clear and maintain the drains within the North & North East of the city.

If we let the contract expire this will leave the council liable for any costs which tenants incur for the responsive repairs and maintenance of their drains and as such the council would not have any control on how much a tenant or the council will be charged for the works. The council would also be neglecting its duty of care as outlined in the Tenants & Landlords Act 1985 Section 11.

## **6. Recommendations**

- 6.1.1 The Director of Resources & Housing is recommended to approve the waiver of Contract Procedure Rules (CPR) 9.1 & 9.2 in order to put in place an interim contract for 12 months with Easaway Draincare UK Ltd T/A Easaway Environmental for the period 1st April 2020 to 31st March 2021, with an estimated value of £650,000.

## 7. Appendix 1

### What is your reason for waiving CPRs?

There is a genuine, unforeseeable emergency meaning there is no time to go through a procurement process e.g. to deal with the consequences of extreme weather.	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
To purchase supplies or services on particularly advantageous terms due to liquidation/administration.	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Requirement to put a contract in place with a current provider whilst a review of the services is completed.	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Ran out of time to undertake a new procurement exercise	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Other (please provide summary here)	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No