

## EXEMPT OR CONFIDENTIAL REPORT

The following paragraph of Part 4b Section 10 of the constitution applies in respect of information given in **Appendix 1 and Appendix 2** of this report and it is therefore exempt from publication.

Members and officers are advised not to disclose the contents of this report:

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**Committee:** Cabinet

**Date:** 6th September 2021

Wards: All

**Subject:** Extension of concession contract for the provision of Bus Shelters, Free Standing Units and Associated 6 Sheet Advertising within Merton

Lead officer: Chris Lee – Director of Environment and Regeneration

Lead member: Martin Whelton – Cabinet Member for Housing, Regeneration and the Climate Emergency

Contact officer: Sue Keay – Principal Programme and Resources Officer

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### Recommendations:

- A. That Cabinet now approves the exercise of the right to extend the contract for a period of 2 of the potential 5 years available.
- B. That Cabinet notes the contract award report dated 11 November 2019 had a minor administrative error included in it and mistakenly agreed to award a contract to JC Decaux for a term of 10 years with a potential extension of 5 years, whereas the intention of the Council and tender documentation had proposed a 15 year contract term with a potential extension of 5 years and the contract has been issued on that basis;and
- C. That Cabinet retrospectively agree the award of the contract for the originally intended period of 15 + 5 years;

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## 1 PURPOSE OF REPORT AND EXECUTIVE SUMMARY

- 1.1. This report recommends that Cabinet approve a 2-year extension to the council's current 15-year contract with JC Decaux for bus shelter and on-street advertising in order to mitigate the council's financial losses arising from Covid19.
- 1.2. This report also recommends that Cabinet correct an error in the original November 2019 decision report. In the November 2019 report, the contract was cited as being 10 years with potential for a 5 year extension (10+5) whereas the intention of the Council and all of the procurement, assessment and the terms of the signed contract is for 15 years with potential for a 5 year extension (15+5). Officers would like to apologise for this error.



## 2 DETAILS

### Contract extension for 2 years to mitigate council's COVID-19 financial losses

- 2.1. Following a tender process during 2019 (carried out under OJEU) Council entered into a new contract with JC Decaux commencing on 1st January 2020.
- 2.2. Under the new contract that Cabinet approved on 19<sup>th</sup> November 2019 and as set out in the Cabinet report, JC Decaux have committed to an investment programme across the borough for the replacement and upgrade of 135 bus shelters. This investment also includes the installation of 50 high quality digital Free Standing Advertising Units (FSUs). The Council has a share of the advertising space on all of these screens at no cost.
- 2.3. The contract offers a Minimum Guarantee Revenue to the Council. This is based on the 50 digital FSU screens and 244 paper screens on the bus shelters. There is also additional income from a revenue share. Financial details can be found in confidential Appendix 1.
- 2.4. On-street advertising was a sector that was affected by the Covid19 lockdowns, with town centres and high streets closed, businesses not wanting to pay for advertising while closed and fewer people out on the street to observe advertising. Therefore, under the terms of the contract the council and JCDecaux agreed a rental reduction from April to July 2020 due to the impact of Covid on the out of home advertising market.
- 2.5. The planned installation date for the new screens was originally 1<sup>st</sup> July 2020, however this has been subject to delays for the following reasons:
  - 1) The impact of the first Covid19 lockdown on the Council's resources resulted in a delay to gaining planning consent for the new screens.
  - 2) Planning consent was only granted for 37 of the 50 locations, with 13 being refused. The installation of these 37 is now forecast for January 2022, which factors in supply chain delays caused by COVID (JCDecaux Digital Screens are sourced from USA and must then travel to France for assembly before delivery to UK).
- 2.6. Over the first 2 years of the contract it is estimated that the Council will receive significantly less income than the contract expectation due to these delays and the Covid19 related rental reduction. Details are in confidential Appendix 2.
- 2.7. JC Decaux are proposing to extend contract term by 2 years to help mitigate the mobilisation delays caused by COVID-19 and provide the Council with 15 full years of minimum guarantee payment. This is within the current contract terms as the contract in place is for a 15 year term with the option to extend for a further 5 years.
- 2.8. To further help mitigate loss for the Council, JCDecaux has submitted planning applications for a further 13 digital screens – to reach the contract target volume of 50. Installation of the additional 13 screens will be subject to the Council approving the contract extension and providing sufficient term for CAPEX payback. The additional 13 screens would be installed in mid-2022. Therefore, during Year 3 of contract, the Council's minimum

guarantee income is likely to increase and by Year 4 is expected to rise to the full annual contract value.

- 2.9. Officers are therefore recommending a 2 year extension to the 15 year contract as this will mitigate the financial losses to the council arising from Covid19.

Correcting the error in the original 19<sup>th</sup> November 2019 Cabinet report

- 2.10. In the November 2019 report to Cabinet which recommended the contract award, the JC Decaux contract was cited as being 10 years long with potential for a 5 year extension (10+5). The contract was signed and started in January 2020
- 2.11. However unfortunately this was incorrect. The intention of the Council and all of the procurement documents, the assessment of the tenders and the terms of the signed legal contract between Merton Council and JC Decaux were/ are for 15 years with potential for a 5-year extension (15+5). Officers would like to apologise for this administrative error which needs to be corrected .
- 2.12. It is recommended that Cabinet retrospectively approve the signed contract for 15 years with potential for a 5 year extension.

**3 ALTERNATIVE OPTIONS**

Option	Advantages	Disadvantages
1. Do not extend or vary the contract (see Appendix 1 for financial details).	The Council would be able to tender for a new contract sooner (in 13 years time rather than 15 years) and may get a better offer, although we would have to be certain that the expected gain of going to market sooner would be at least the cumulative value of the expected losses related to the 13 screens. It is impossible to say at this stage what the out of home media market will look like in 13 years time.	This alternative option is not recommended as it would financially disadvantage the council over the next 13 years. The Council would receive a lower annual income based on 37 rather than 50 screens.
2. Vary/extend the contract	<p>The Council will receive at least the Minimum Guaranteed Rental over the contract term as JC Decaux will continue with their plan to upgrade the full complement of 50 digital screens.</p> <p>The current excellent relationship with the Council and JC Decaux would continue due to the mutual financial benefits of the contract extension.</p>	This is the recommended option
3. Carry out a separate procurement for the goods, services or works	This is not applicable at this stage as we are only 2 years into the contract. However, for the reasons listed in Section 2 and at the request of JC Decaux, the recommendation is to extend the contract at this point in time.	



## **4 CONSULTATION UNDERTAKEN OR PROPOSED**

- 4.1. As well as engagement with JC Decaux, consultation was undertaken internally with Merton's Finance, Legal and Commercial Services teams including the internal Procurement Board during the preparation of this report.
- 4.2. Consultation for the original contract award is detailed in the Cabinet Report of 19<sup>th</sup> November 2019

## **5 TIMETABLE**

- 5.1. Should councillors resolve the recommendation in this report, following the call in and standstill periods, the contract will be varied to include the 2 year extension and JC Decaux will proceed with the installation of the additional 13 screens.
- 5.2. The detailed mobilisation plan will be agreed between JC Decaux and officers, in consultation with the Highways team to grant the appropriate Street Works permits.

## **6 FINANCIAL, RESOURCE AND PROPERTY IMPLICATIONS**

- 6.1. Details of the annual income are set out in confidential Appendix 2. Following an agreed extension to the contract Future Merton's current income target (see Appendix 1) is expected to be achieved from financial year 2023-24 onwards.
- 6.2. If we do not extend the contract, there will be an annual shortfall against the income target.
- 6.3. It is anticipated that no additional resource is required for the implementation and future management of the contract.

## **7 LEGAL AND STATUTORY IMPLICATIONS**

- 7.1. The report contains recommendations that provide for the retrospective approval of the the term of 15 years with an additional option for a further sixty months extension as advertised in the procurement process. This would bring the approval in line with published procurement process and therefore also potentially achieve additional income to the Council . Additionally the recommendations include exercising two years of the available five years as an extension.
- 7.2. The necessary amendments to give effect to the extension proposed the recommendations are permissible under Regulation 43(1)(a) of the Concessions Contracts Regulations 2016 because the modifications have been provided for in the initial concession documents in clear, precise and unequivocal review clauses. As such the procurement documents provide for an initial term of 15 years and sufficient ability to extend for the two further years requested.
- 7.3. Additionally the concession tender documents included the pricing of up to 52 free standing units (FSU) advertising screens and therefore the reaching the proposed number of 50 does not expand the scope of the concession.
- 7.4. As such the risk of challenge to the modifications discussed in this report and the proposed extension would be very low and unlikely to succeed.

Formalisation of the variation can be undertaken by deed or under the terms of the concession agreement.

**Jonathan Miller, SLLP**

## **8 PROCUREMENT IMPLICATIONS**

- 8.1. The proposed extension is permitted under the Concessions Contracts Regulations as the contract was advertised as being for 15+5 years and the proposed extension is for only two years.
- 8.2. Extending the contract represents good value because it will make up for the shortfall caused by the pandemic and will allow the Council to meet its income targets for this contract

**Tom Davis, Category Manager (Place)**

## **9 HUMAN RIGHTS, EQUALITIES AND COMMUNITY COHESION IMPLICATIONS**

- 9.1. There are no human rights, equalities and community cohesion impacts connected with the decision to extend the contract.

## **10 CRIME AND DISORDER IMPLICATIONS**

- 10.1. There are no crime and disorder implications connected with the decision to extend the contract.

## **11 RISK MANAGEMENT AND HEALTH AND SAFETY IMPLICATIONS**

- 11.1. There are no crime and disorder implications connected with the decision to extend the contract.

## **12 APPENDICES – THE FOLLOWING DOCUMENTS ARE TO BE PUBLISHED WITH THIS REPORT AND FORM PART OF THE REPORT**

- Appendix 1 (Exempt): Financial information
- Appendix 2 (Exempt): Email from JC Decaux outlining their position, the delays experienced and the detail of the financial implications.

## **13 BACKGROUND PAPERS**

Link to Merton's Cabinet on 19<sup>th</sup> November 2019 - agenda item 6: report and minutes  
<https://democracy.merton.gov.uk/ieListDocuments.aspx?CId=146&MID=339>  
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