

ERC cabinet astonishingly approve the give away £1.71 million of residents cash

Posted by Newsline - 06 Dec 2020 01:00

At a meeting of the Cabinet on 3rd December 2020 the councillors agreed to the Director of the Environments bleating request to agree to cover his and his staffs overspend and cash give away.

Andy Cahill came out with, in our opinion, excuse after excuse to cover the loss.

In summary we can describe it as follows, however you can watch the whole sorry claims made by Cahill on the East Renfrewshire Council Youtube channel.

The throwing away cash item comes at 38.45 minutes and ends at 54.38 minutes.

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Re: ERC cabinet astonishingly approve the give away £1.71 million of residents cash

Posted by RM64 - 26 Sep 2021 09:13

5.0 Gardiner & Theobalds Covid 19 Report (Herons: five new build contracts)

Please refer to GTQS Costs Review Sheet as attached.

5.1 The intention of this summary paper is to set out the detail of the Heron Brother's Extension of Time /Loss and Expense Claim which has arisen as a result of the Covid 19 virus and the direct impact that the resultant lockdown period has had on the 5nr sites that Heron Brothers are working on for ERC at Busby, Crookfur, Eaglesham, Glenwood and Overlee.

Further to having reviewed the detail of the claim this paper also sets out a recommendation to ERC for their consideration and approval.

On 1st September 2020 Heron Brothers emailed Gardiner & Theobald LLP to set out their final position with regard to the Extension of Time (EoT) claim/ proposed Minute of Agreement.

Heron Brothers stated that they are asking for a 20 week EoT on all 5 projects and payment by ERC of associated costs of £672,727.05 (excluding design team fees).

This equates to circa £135k per project or £6,700 per week per project.

Heron Brother's advised for information that the contract preliminaries are circa £14k-£15k per week per project.

The foregoing Extension of Time and costs are based on the summary of the Covid 19 related delays which are set out below.

Please note that this includes the shutdown period and the implications of revised working practices, in line with the introduction of the Coronavirus legislation and in particular the Health Protection (Coronavirus) (Restrictions) (Scotland) Amendment (No 2) Regulations 2020, which came into effect on 21 April 2020:-

Heron Brothers have advised ERC in recent weeks of the revised completion date for Crookfur which is now due to complete on 6th November 2020 and the revised completion date of 4th December 2020 which applies to Busby, Eaglesham, Glenwood and Overlee.

The basis for theses revised dates is set out below:-

Crookfur

□ Lockdown Period & Site Preparation- Start 24th March, Finish 15th June- 12 Weeks delay. Given previous discussions we have kept this at 11 weeks based on shutting sites week ending 27th March.

□ Site setup - Completion 19th June- 1 Week delay.

□ Contract completion date – 19th June i.e. 13 weeks on site remaining

□ Revised completion date based on shutdown plus 13 weeks remaining – 18th September

□ Expected completion date – 6th November 2020 i.e. 7 weeks delay, i.e. total 8 weeks delay, (Excluding shutdown)

All remaining sites

□ Lockdown Period & Site Preparation- Start 24th March, Finish 15th June- 12 Weeks delay.

Given previous discussions we have kept this at 11 weeks based on shutting sites week ending 27th March.

□ Site setup - Completion 19th June- 1 Week delay.

□ Contract completion date 17th July i.e. 17 weeks on site remaining

□ Revised completion date based on 17 weeks remaining – 16th October

□ Expected completion date – 4th December 2020 i.e. 7 weeks delay, i.e. total 8 weeks delay, (Excluding shutdown)

G&T have reviewed the programme which sets out the foregoing dates and taking account of the restrictions imposed by the Scottish Government and the impact upon productivity view these dates as being a fair reflection of the programme impact.

Heron Brothers have advised G&T that the actual costs incurred by them as a result of the Covid 19 issues are in excess of £672,727.05 and that this figure excludes the circa £400,000 of costs incurred by Heron Bros as a result of sub-contractor insolvencies.

In recognition of the shared costs proposal and the target of reaching a Minute of Agreement with ERC applicable under the contract, Heron Brothers reduced their initial claim figure of £1.171m to £672,727.05.

Further to a detailed review by G&T this figure has been further reduced to £632,144.51.

Heron Brothers have further advised that in the spirit of reaching a compromise, and taking account of the guidance issued by the Scottish Government in the Scottish Procurement Policy Note (SPPN), that they have decided to limit their costs to £672,727.05.

This is set out on the attached GTQS sheet and has been offered by Heron Brothers with the intention of trying to facilitate a prompt agreement with ERC in this regard.

/5.2 Lockdown period

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Re: ERC cabinet astonishingly approve the give away £1.71 million of residents cash

Posted by RM64 - 26 Sep 2021 09:25

5.2 Lockdown period

In order to provide some further detail to ERC to assist in setting the foregoing in context Heron Brothers have confirmed that they turned down the opportunity to obtain additional government support during the lockdown that would have been available if they had furloughed additional project staff.

Heron project management staff carried on working with the design team and ERC team to maintain progress and in order to help mitigate project delays and cost overruns.

Throughout the lockdown period Heron Brothers project team along with design team and ERC project team have continuously worked on various design and project tasks which were undertaken to mitigate project delays and cost overruns. These tasks include the following:-

▣ Attended weekly client meetings (Heron, G&T, ERC)

▣ Attended progress meetings. (Heron, G&T, ERC)

▣ Attended design team meetings. (Heron, G&T)

▣ Liaised and met with Scottish Water regularly to mitigate the delays caused by Scottish Water issues (Heron, G&T, ERC)

▣ Carried out further testing works to help mitigate the delays caused by Scottish Water issues.

▣ Liaised with Sub-contractors to mitigate delays on return to work.

▣ Attended site to maintain generators, refuel, security checks

▣ Re-Programmed remaining works to mitigate delays on return to work.

▣ Evaluated issued change controls, liaised with the design team to finalise designs, issued designs to sub-contractors and collated costs for return to ERC.

Heron Brothers have stated that these measures have significantly reduced the impact of the delays caused as a result of the number of variations instructed.

In addition to the above it is also noted that Heron Brothers have also included within the attached cost breakdown sheet the details of the various other issues which have caused delays on the projects, namely:-

▣ Scottish Water Delays.

▣ Landscaping changes.

▣ Other change control issues arising.

Heron Brothers have stated that all of these issues have the potential to be Relevant Events and

Relevant Matters under the contract which Heron Brothers believe would give rise to a Loss and Expense Claim of actual costs incurred due to these delays.

5.3 Gardiner and Theobalds Recommendation

GTQS have reviewed the Heron Brothers submission in detail and have reduced the Heron Brothers claim figure of £672,727.05 to £632,144.51.

The following narrative sets out where the reductions have been achieved.

The initial review of the shutdown costs was carried out by GTQS in August 2020 and further to that Heron Brothers agreed to apply on 1st September 2020 with a claim figure of £305,327.05 for shutdown costs.

The Heron Brothers submission is based on an approximately 50% shared cost and also on the GTQS comments as covered in the GTQS Covid 19 Claim Review Sheet as attached.

The shutdown costs sections as submitted by Heron Brothers showed an initial cost of £452,126.24 which was then reduced to £305,327.05 following the GTQS' initial review.

Further to the submission of 1st September 2020 GTQS carried out a further review of the cost allocations on the detail as submitted by Heron Brothers and have reduced the submitted figure by circa £13,500 to £291,853.19.

With reference to the extended programme preliminaries costs Heron Brothers submitted their costs initially on the basis of relevant events related to change controls rather than Covid 19.

These relevant events if accepted would lead to an extension of time with costs based on loss and expense and with the main costs being on site preliminaries. Heron Brothers have presented these costs as actual preliminaries costs per week in their submission and the initial submission figure totalled £703,200.

In addition to the foregoing Heron Brothers, in their submission of 1st September 2020 proposed to facilitate a Minute of Agreement with ERC to limit their figure (£'s) for Loss and expense to approximately 50% of the actual cost incurred.

GTQS have further reviewed this figure and on the basis of the contract preliminaries at tender date have reduced the Heron Brothers 1st September 2020 submission cost of £351,600 by a further circa £19,000 to £332,391.32

The Heron Brothers submission also claims additional costs due to revised site operating procedures - travel to site, additional PPE, increased welfare facilities on site etc.

Further to review GTQS have reduced the claimed costs by 50%.

GTQS have reduced the claim of £15,800 to £7,900.

Overall the original claim after negotiations has reduced from £1.171m to the G & T recommendation of £632,144.51 excluding design Team fees for extended periods

Heron Brothers have submitted a further £400,000 in costs related to increased costs due to Sub-contractor insolvency.

N.B. These costs have been agreed as excluded from the Minute of Agreement and will NOT be pursued by Heron Brothers.

Taking the all of the above into consideration and to set matters in the context of claimed costs across all of the 5 facilities for 20 weeks then the proposed recommended figures equate to £6,321 per week versus contract preliminaries of an average of £14,500 per week i.e. circa 44.59% of the contract prelims cost/ week.

(Please note exclusions and assumptions on the cost summary section prepared by GTQS).

5.4 Final Recommendation on Loss and Expense

Collaborative Approach

Heron Brothers have sought to work with a spirit of collaboration throughout the ERC 2020 Project and indeed with ERC and all parties during the Covid-19 pandemic.

This collaborative approach has helped to build strong working relationships between Heron Brothers, ERC and the project team overall.

ERC have also welcomed this collaborative approach with Heron Brothers and the positive benefits that it has brought to the overall project.

By virtue of adopting a collaborative negotiation approach with G&T regarding the Covid-19 costs, the proposed Heron Brothers figure for loss and expense has been reduced from an initial cost of £1.2m, down to £630k.

It is Gardiner & Theobald's belief that this is a fair and reasonable figure.

The Scottish Government has advised that their objective for the construction sector during the Covid-19 crisis is to ensure that Scotland as a whole takes a responsible approach to the containment of Covid-19 whilst being in a position to quickly respond to both critical and longer term recovery requirements.

This will ensure that the construction sector retains the capability and capacity necessary to effectively recommence work and deliver the current and future project pipeline.

The foregoing collaborative approach and negotiation approach with ERC and Heron Brothers has aligned with this Scottish Government guidance.

If the above noted collaborative approach had not been adopted, then there was the risk that Heron Brothers would have resolutely stuck to their higher reclamation of costs figure of £1.2m with no room for negotiation.

Risks where ERC choose not to pay Heron Brothers

The Standard form of Building Contract contains a right of termination that the Contractor can exercise in the event that the Contractor is prevented from carrying out the whole or substantially the whole of the uncompleted works for a period of more than 2 months by reason of

(i) force majeure; or

(ii) change in law.

The Covid-19 situation meant that both of these would apply and that the right of the contractor to terminate would be triggered.

This was a significant reason that a discussion was opened up with Heron Brothers.

It was considered that there was a risk of them exercising their right to terminate and in doing so reducing their exposure to loss and expense by no longer having to be on standby on site.

This risk was due to the length of time that the Scottish Government advised shutdown of the Scottish construction industry.

If Heron Brothers had terminated the contract and walked away from the project it would have left ERC without a contractor to complete the remaining works.

This was a position that arose in many building contracts as it arises from the standard form wording and the unusual position of the country wide site shutdown.

Accordingly, ERC and Heron Brothers came to an informal agreement over the loss and expense that the ERC could consider sharing with Heron Brothers in order to ensure that Heron Brothers did not seek to exercise their right to termination.

The value of the sum also represented a figure which is half of the actual loss and expense incurred by

Heron Brothers:

£630k, a 50% share of the total loss and expense of £1.2m.

Heron Brothers have kept to their word and have continued on site following the Scottish Government's approval to do so, moving the various works towards practical completion.

If ERC were to decide at this point not to pay the lower sum, Heron Brothers would be driven to raise a claim with an adjudicator and would argue that a loss and expense payment had been agreed.

ERC's potential risk here would be the full loss and expense claim, rather than the negotiated smaller sum.

Finally, Heron Brothers closed the Site and incurred loss and expense as a result of complying with Scottish Government guidance.

It is understood from informal consultation with ERC's legal advisers CMS in this regard, that it is not reflective of market experience that an adjudicator would be willing find in favour of a client in this instance, where the Contractor suffered as a result of complying with the Scottish Government guidance.

Accordingly, it is likely that if Heron Brothers were to seek to challenge ERC's decision in an adjudication, this would result in ERC having a decision made against them and having to pay the full £1.2m figure.

The recommendation to ERC is therefore to accept the Heron Brothers negotiated figure of £632k for loss and expense claims as a result of Covid-19.

5.5 Covid Settlement Figure

Given the foregoing and taking account the Scottish Government Guidelines on Covid 19 and in addition the possible route for Heron Brothers to use Scottish Water variations as a route to claim an extension of

time with full costs, G&T are of the view that the proposed revised figure of £632,144.51 represents an equitable share of the costs arising from Covid 19 and represents reasonable value for money when measured against the contract preliminaries cost per week.

On this basis G&T recommend that ERC Technical Services seek agreement to this figure from ERC Senior Executive and arrange for the drafting of a Minute of Agreement between ERC and Heron Brothers.

/5.6 Covid19 cost summary table

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Re: ERC cabinet astonishingly approve the give away £1.71 million of residents cash

Posted by RM64 - 26 Sep 2021 09:39

5.6 Covid19 cost summary table

HERON BROS PROJECTS/ Covid shutdown (12 weeks)/Covid programme impact (8wks)

Busby nursery class/ 43,000/ 68,000

Crookfur Family centre/ 54,000/ 67,000

Eaglesham nursery class/ 65,000/ 67,000

Glenwood family centre/ 78,000/ 71,000

Overlee/ 51,000/ 68,000

Sub total/ 291,000/ 341,000

TOTAL £632,000 is the settlement claim to be agreed

5.6 Covid Elements breakdown

Covid Shutdown Costs

Site Staff less furloughed staff costs

Security

Site Hoarding, Fencing & Barriers

Site Portakabins 4 No

Canteen 1no.

Welfare Accommodation 1no.

Storage containers 1no.

Scaffolding

diesel generator

Insurances

Covid Programme Impact (Prelims)/ over a 5 weeks period (claimed) {NB - actual in excess of between 22 to 31weeks}

Supervision

Accommodation & Travel

Attendances

General Plant

General Labour

Skips

Site Set Up Contractor

Site Security

Site Hoarding, Fencing & Barriers

Health & Safety

Temporary Power

Cleaning

Insurances

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Forum Note: The above table contained no figures/amounts and appears as it did in the document.
redacted ??

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/ 6.0 Scottish water report (Herons: five new build contracts)

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Re: ERC cabinet astonishingly approve the give away £1.71 million of residents cash

Posted by RM64 - 26 Sep 2021 09:59

6.0 Scottish water report (Herons: five new build contracts)

A Pre development enquiry (PDE) form for each site has been with Scottish Water since June 2018.

It took 20 months to get a final response which was a blanket refusal for surface water connections into combined sewers for all five sites.

Early years designs were completed more than 2 years ago when it was still acceptable to connect to combined sewers.

We received planning approval based on this proposal.

But Scottish water have since taken a hard line approach which has misled the design team and other Councils with busy early year's expansion programmes.

6.1 Scottish Water normal criteria

1.Rainwater is stored on site – this is impractical at education facilities as there is not much demand for non-potable water

2.Infiltration on site through soil – all our sites are on clay or rock so this is not possible as there is a lack of permeability

3.Drain to a watercourse – not considered feasible due to the high costs and programming restraints. Complexity of crossing private land/ wayleaves/ roads/ wooded area with TPOs and pumping required.

4.Discharge to a separate storm sewer – not feasible as there is not a separate system nearby

5.Discharge to a combined sewer – this is the most realistic option and attenuation tanks installed to store and gently release water into combined sewer.

Scottish Water refused design proposals for the storm drain to discharge into the combined sewers on all five sites.

Blyth and Blyth (B&B) reviewed the Scottish water design criteria list and discounted them with the exception of option 5 for the reasons as outlined. Other solutions have since had to be agreed with Scottish Water

6.2 Offset options

If we can remove an equivalent amount of surface water from another part of the sewer catchment area to enable a zero net detriment to the sewer catchment area we may be given access into the combined sewer.

This was explored and the sites verbally agreed for this option have been:

Crookfur family centre – broomburn drive into burn

Eaglesham Nursery class – cheapside street into burn

Busby nursery class - no additional works

However as part of the offset option agreement it has been agreed with SW to demolish existing Overlee pavilion and Glenwood nursery which will take pressure off the sewer catchment area.

The above solutions have verbally been agreed with Scottish Water.

These works will incur extra over costs as outlined in table below.

6.3 Take drain to a watercourse

This is the alternative option put forward by Blyth and Blyth engineers.

This was explored and the sites agreed with Scottish Water for this option have been:

Overlee family centre – drain taken to watercourse

Glenwood family centre – drain taken to watercourse

The above solutions have now been verbally agreed with Scottish Water.

These works will incur extra over costs as outlined in table below.

6.4 Scottish Water summary table

HERON BROS PROJECTS/ Scottish water works

Busby nursery class/ 70,000

Crookfur Family centre/ 175,000

Eaglesham nursery class/ 135,000

Glenwood family centre/ 116,000

Overlee/ 80,000

TOTAL/ 576,000 is the costs to carry out works

Notes These works have been carried out in accordance with the Engineers drawings and in strict adherence with Scottish Waters requirements. This work involves laying hundreds of meter of drainpipes which reflect the high civil costs.

7.0 Financial Summary Report

7.1 Original capital fund allocation

Was made up of several sources of funding listed below

▣ 17/18 budget Allocation (Phase 1) £2,560,000

▣ 18/19- 20/21 (phase2) £22,092,000

▣ Maidenhill Fund Transfer £250,000

▣ Roads Capital Plan £700,000

▣ Crookfur Pavilion Upgrade £805,000

▣ Overlee Pavilion upgrade £905,000

▣ Early Years Crookfur/Overlee Master planning £60,000

▣ This totals £27,372,000

Across the seven projects the total overspend equates to approx. 7% of the total present development budget of £27,322,000.

N.B. It should be noted that the Master planning budget allowance of £60,000, was reduced by £50,000 to only £10,000, by Accountancy Services in November of 2019 and that the present Capital Funds Allocation stands at £27,322,000.00p, reduced from the original fund allocation of £27,372,000.00p.

7.2 Carolside and Cross Arthurlie Extensions

As well as the five new builds being delivered by Heron we have had two nursery extensions which make up the 7 early years’ projects and the following table summarises extra over costs incurred by all seven contracts.

The two extensions have also been subject to Covid delays and extra over costs as shown in the summary table.

These projects have been managed in house by Technical services and are:

Cross Arthurlie nursery – Fleming builders

Carolside extension – TCS

7.4 Table summary of total overspend at seven early years projects

The following table brings together all additional costs and Covid claims as outlined in report and indicates a total over spend forecast as follows:

Table Footnotes:

7.5 At Crookfur there was a loss and expense claim awarded to Heron relating to the legal disputes between Parklands and the Council early on in contract hence the £53k overspend.

7.6 At Glenwood design team agreed an offset solution with Scottish Water who agreed the existing Glenwood nursery should be taken off the grid and demolished on completion of replacement nursery. This SW solution was not known at design stag.

7.7 Education have revisited list of equipment over 7 projects. There was a provision sum included at early design stage but this has been insufficient. Costs relate to IT infrastructure and laptops plus consumables

7.8 There has been extra over professional fees relating to the administration and management of seven projects which covers the period of lockdown and delayed programme. Plus in-house management fee charges.

7.9 A provisional sum allowance of £50k has been included to cover outstanding works relating to Scottish Water which up to now have been extensive

7.10 ADDITIONAL FUNDING & AGREEMENT REQUIRED

This paper has been issued to project team members in draft format but now includes the latest legal recommendation under section 5.4.

The ERC project team asked their SMT to seek approval from Council to meet the costs of the proposed financial settlement as recommended by the project management team for the following amount and this was approved by Cabinet in December 2020.

EXTRA SOURCE OF FUNDING REQUIRED	£1,795,000
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Re: ERC cabinet astonishingly approve the give away £1.71 million of residents cash

Posted by RM64 - 26 Sep 2021 10:43

Mahon, Gerry Foi - Appeal Early Years08/09/2021

Heron Bros e-mail.docx

1 of 3

From: Grant Sim

Sent: 14 December 2020 14:27

To: MacFarlane, John

Subject: Fwd: ERC 2020 Provision - Further wording Re G&Y Covid 19 Loss & Expense Recommendation

Hi John,

Trying to send the email to Christine again now. For some reason the last one left out the text.

Cheers

Grant

Begin forwarded message:

From: Grant Sim

Date: 14 December 2020 at 06:57:06 GMT

To: Christine Worthington

Subject: ERC 2020 Provision - Further wording Re G&Y Covid 19 Loss & Expense Recommendation

☐ Morning Christine,

Can you do me a favour and pull together a couple of paragraphs to send to ERC (John and Tom) on the basis of what we discussed last Friday on our call.

The reason I ask is that I have [redacted?]

. I did draft something on Friday afternoon which was along the following lines:-

“Heron Brothers have sought to work with a spirit of collaboration throughout the ERC 2020 Project and indeed with ERC and all parties during the Covid 19 crisis. This collaborative approach has helped to build strong working relationships between Heron Brothers, ERC and the project team overall.

ERC have also welcomed this collaborative approach with Heron Brothers and the positive benefits that it has brought to the project.

By virtue of adopting a collaborative negotiation approach with G&T re the Covid 19 costs the Heron Brothers figure has been reduced from £1.2m down to £630k and it is G&T's belief that this is a fair and reasonable figure.

The Scottish Government has advised that their objective for the construction sector during the Covid 19 crisis is to ensure that Scotland as a whole takes a responsible approach to the containment of Covid 19 whilst being in a position to quickly respond to both critical and longer term recovery requirements. This will ensure that the construction sector retains the capability and capacity necessary to effectively recommence work and deliver the current and future project pipeline.

The foregoing collaborative approach and negotiation approach with ERC and Heron Brothers has aligned with this Scottish Government guidance.

If this approach had not been adopted then there was the risk that Heron Brothers would have resolutely stuck to their higher reclamation of costs figure of £1.2m with no room for negotiation.

There is also the risk that if the £630k figure is rejected by ERC then Heron Brothers will have no option but to go to adjudication over a formally presented loss and expense claim for the higher figure of £1.2m. It is understood from informal consultation with ERC's legal advisers CMS in this regard, that there are very few, if any, adjudicators who would be willing to find in favour of the client body given the foregoing Scottish Government guidance.

The recommendation to ERC is therefore to accept the Heron Brothers negotiated claim figure of £632k.”

I can't remember the exact figures off the top of my head but could you review the foregoing and if ok send it John and Tom.

I'm not sure if I'm around for a call at lunchtime as I may be [redacted?] . Hope this is useful.

Thanks

Grant

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Re: ERC cabinet astonishingly approve the give away £1.71 million of residents cash

Posted by RM64 - 26 Sep 2021 10:56

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