

**Report for:** Cabinet 12 November 2024

**Title:** Establishment of multiple collaborative DPS and a framework

**Report authorised by :** Taryn Eves, Director of Finance

**Lead Officer:** Barry Phelps, Chief Procurement Officer  
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**Ward(s) affected:** N/A

**Report for Key/  
Non-Key Decision:** Non-Key

## **1. Describe the issue under consideration**

- 1.1. The Council operates one of the largest portfolios of Dynamic Purchasing Systems (DPS) in local government, with expenditure across the various categories exceeding £100m per Annum.
- 1.2. On 24 February 2025 the new Procurement Act 2023 (Act) will come into force. The Act will abandon the establishment of DPS's and replace DPS's with Dynamic Markets; however, the Act prohibits any form of pre-selection criteria (i.e. capability, financial, accreditation or legal standing etc.) for contracts below the relevant category regulatory threshold under the Dynamic Market. This means for any service-related categories it is not possible to use Dynamic Markets which has a significant impact on operations when procuring low value services, as services will need to undertake a process which is either open to the entire market and then undertake an assessment of capability, financial standing and any accreditation requirements at the point of tender or establish a framework agreement.
- 1.3. The changes proposed by the Act has had a significant impact on the procurement strategy for a number of categories which are typically of low value that the Council was intending to use the new Dynamic Market. In light of these changes, Strategic Procurement have recommended that the Council urgently implements a suite of DPSs under the current Regulations, prior to the Act being implemented in February 2025 to ensure continuation of such services.
- 1.4. The continued use of DPSs enables the Council to establish enrolment and accreditation criteria. (E.g. the Council requires suppliers to be Care Quality Commission (CQC) approved to an accreditation of at least Good ) in some care categories. This would be considered pre-selection criteria under the new Act and therefore is prohibited for below threshold procurements (i.e. most care related c£553k and other services c£179k) under the Dynamic Market provisions.

- 1.5. A significant advantage of using a DPS (or Dynamic Market) compared to a framework agreement is, suppliers can join at any time throughout the term of the DPS, whereas a framework agreement is generally closed to new suppliers.
- 1.6. Currently in excess of 90% of contracts let through the Council's DPS categories are awarded to small, medium sized enterprises (SMEs).
- 1.7. This report seeks approval to extend some of the expiring care related DPS's for a three-month period to allow the re-establishment of the current portfolio of DPS categories and additional categories for residential care and independent fostering agencies. Cabinet had previously approved in June 2020 the establishment of the home support, semi-independent and supported living DPSs up to a total value of £252m. It is projected that the additional three-month extension will bring the total aggregated spend up to circa £220m. This is within the original value approved by Cabinet and is therefore a time only extension.
- 1.8. The intention is to establish the DPS categories on a pan-London basis. This will enable collaborative procurements across the portfolio of categories and to support parity in prices. This could result in future savings.
- 1.9. The London Construction Programme (LCP) operate two construction related DPSs for professional services and minor works. These DPSs had an initial term through to April and June 2026 respectively, with the option to extend for up to a further 5 years. This report seeks approval to exercise the extension option in full to the latest permissible date under the Procurement Act 2023 transitional arrangements (as amended from time to time), currently 28 October 2028.
- 1.10. In addition to the establishment of the DPS categories, this report also seeks to procure a pan London legal alliance framework for the provision of legal services.
- 1.11. Haringey is part of a consortia with other London boroughs who have agreed to jointly establish a legal alliance framework agreement for the provision of legal services . The procurement and establishment of a legal alliance framework agreement has been running for some years and members of the consortia take turns in being the lead authority to establish the framework agreement and act as the contracting authority. Haringey have been asked to be the lead authority for the next iteration of the framework agreement which is due to be advertised at the beginning of 2025.
- 1.12. The Councils Contract Standing Orders (CSO) 7.04 a) requires approval from Cabinet where the Council intends to lead on a joint procurement activity with other contracting authorities, prior to commencing the procurement, if it is likely that the joint procurement is liable to result in a contract award that would involve a 'key decision' by the Council.
- 1.13. The establishment of the proposed suite of DPSs and frameworks, do not commit the Council to entering into a contract. Any call off from the DPS or

framework agreement will still be subject to the Councils' procurement, award and governance processes.

- 1.14. This report includes a recommendation, that given the non – financially binding nature of the proposed commercial arrangements, delegated authority be given to the Chief Procurement Officer to award the framework agreement for legal services to the successful bidders and admit suppliers to the DPS in accordance with the Public Contract Regulations 2015 (PCR). (Note; this does not include the award of any financially binding contracts, just supplier admission to framework and DPS).

## **2. Cabinet Member Introduction**

- 2.1. Haringey operates a number of Dynamic Purchasing Systems (DPS). The new Procurement Act 2023 will replace Dynamic Purchasing Systems with Dynamic Markets. However, the current proposal is that contracts valued below a regulatory threshold will not be able to have pre-selection criteria, making use of Dynamic Markets prohibitive for these smaller contracts.
- 2.2. Dynamic Purchasing Systems that are in place when the Procurement Act 2023 comes into effect in on 24 February 2025 will be able to operate until October 2028. This report seeks a short extension to some Dynamic Purchasing Systems already in place, whilst these can be re-established with revised criteria alongside additional new Dynamic Purchasing System categories on a pan-London basis. This will support the many SME's accessing lower value contracts through these systems.
- 2.3. In addition, Haringey has been asked to act as the contracting authority of the London-wide Legal Alliance Framework (the leadership of which rotates among the London boroughs who are party to the framework), and this report gives permission to do so.

## **3. Recommendations**

It is recommended that Cabinet:

- 3.1. In accordance with CSO 10.02.1(b) and Regulation 72 (5) of the Public Contract Regulations 2015 approves a three-month extension to the following DPS categories until 31 March 2025:
  - i. Home Support;
  - ii. Semi-Independent Living;
  - iii. Supported Living;
- 3.2. In accordance with CSO 7.04 (a) and Regulation 34 of the PCR's, the establishment of the following pan London DPS categories, along with any relevant sub-categories:

- i. Home Support;
  - ii. Semi-Independent Living;
  - iii. Supported Living;
  - iv. Residential Care
  - v. Independent Fostering Agencies
  - vi. SEND Transport
- 3.3. In accordance with CSO 10.02.1(b) approves the enactment of the extensions for the LCP professional services and minor works DPS up to the maximum period permitted under the Procurement Act 2023 Commencement No.3 and Transitional and Savings) Regulations 2024 (as amended from time to time), currently 27 October 2028.
- 3.4. In accordance with CSO 7.04 (a) and Regulation 33 of the PCR's, the establishment of a pan London legal services framework agreement.
- 3.5. Delegates authority to the Chief Procurement Officer to admit suppliers to the DPSs stated 3.2 above and to approve the award of the legal services framework agreement stated in 3.4 above to the successful suppliers following the completion of a compliant procurement exercises conducted in accordance with the Public Contracts Regulations 2015.

#### **4. Reasons for decision**

##### **Extension to current DPS Categories**

- 4.1. The extension to the existing care related DPS categories is to allow sufficient time to establish a suite of replacement DPSs in these categories prior to the commencement of the Procurement Act 2023 (currently 24 February 2025).
- 4.2. The extension to the LCP professional services and minor works DPS is aligned to the extensions that were set when originally establishing these DPS categories. These DPS's currently generate circa £700k p.a. in revenue, most of which relate to below threshold procurements. The Procurement Act currently prohibits or restricts the use of Dynamic Markets (replacing DPS) for the use of below threshold procurements. This would result in a loss of revenue and create a financial pressure of circa £600k p.a.
- 4.3. The LCP is utilised by over 60 Public Sector organisations (LCP members) and is regular route to market for their construction related procurement activity. Without securing this route to market, LCP members would need to seek alternate procurement routes. The LCP has the infrastructure and resources to continue providing quality services to its members and supply chain as per the business case approved by Cabinet in November 2023.

## **Establishment of New DPS**

- 4.4. The establishment of the proposed new DPS does not place any contractual obligation on the Council to award any call off contracts against the DPS and is therefore not a Key Decision.
- 4.5. Where it is intended by the Council to commission works or services, these would be undertaken in accordance with the Council's Contract Standing Orders (CSO). Where this involves a Key Decision, Cabinet/Member approval will be sought in accordance with relevant CSO provisions.
- 4.6. The establishment of new DPS for the care categories enables the services to revisit the accreditation and enrolment criteria, to enable new regulatory operational, capability and quality considerations.
- 4.7. The new DPS's will enable suppliers to join at any time during the term of the DPS and be able to procure both below and above threshold contracts. The use of DPSs are one of the most efficient compliant processes available under the current PCRs.
- 4.8. Currently over 90% of contracts awarded via the DPS categories are to SME organisation, with circa 40% of these being within Haringey and neighbouring boroughs.
- 4.9. The new DPS's will be established on a pan London basis. This supports the Council's strategy of promoting collaborative working across London, with particular focus on neighbouring boroughs. The objective being to work with colleagues across London to achieve parity in prices for the same services and reduce competition amongst local authorities which drives up prices. Working collaboratively will help establish a more strategic approach and potentially result in some savings.
- 4.10. There will be an opportunity to generate income through the application of a levy, when other local authorities access these pan London arrangements. Strategic Procurement already has the infrastructure and resources to support these arrangements and is successfully operating the LCP on a similar basis.

## **Legal Alliance Framework Agreement**

- 4.11. Haringey is a member of the London Borough Legal Alliance (LBLEA) consortia. The consortia rotate every 3-4 years with the lead contracting authority being responsible for establishing the next generation of legal services framework agreement for the consortia. Haringey has been approached to lead on the next framework which is due to commence the procurement process in early 2025.

4.12. Kennedy Cater (KC) are the LBLA chosen partner to provide the legal and procurement support in establishing the LBLA legal frameworks. As KC will undertake most of the procurement and framework management activity, there is minimal resource required from the Council's strategic procurement team in supporting the establishment of the framework.

4.13. Any cost incurred by the Council will be recoverable through the levies applied to services commissioned through the framework.

## **5. Alternative options considered**

### **Do Nothing**

#### **(DPS Categories)**

5.1. This would mean the current portfolio of DPS's would expire and alternative routes to market would need to be found. Depending upon the alternate route to market, this could result in a significant increase in effort to manage these procurements both within the service areas and Strategic Procurement.

#### **(Legal Alliance Framework)**

5.2. The LBLA consortia would need to find another member of the consortia to lead on the procurement of the new framework. This may have reputational consequences given the consortia's agreed approach to rotating the responsibility of establishing the legal framework amongst consortia members.

### **Establish Frameworks**

5.3. As an alternative to the DPSs, the Council could establish frameworks for these categories instead.

5.4. Establishing frameworks, take significantly longer than establishing a DPS, which requires more resources. When establishing a framework, the supply chain is 'fixed for the term of the framework and new suppliers are not permitted to join the framework. Suppliers can join a DPS at any time.

5.5. There is an option under the new Act to establish 'Open Frameworks'; however, these are not open in the sense that the name suggests. An 'Open Framework' is a series of frameworks which are essentially opened periodically (i.e. every year, three years etc.). When using the Open Framework approach, existing suppliers would need to re-apply for the framework, alongside any new potential suppliers. This in effect is potentially the same effort as reestablishing a new framework every time you open the framework up.

5.6. The volume of suppliers varies depending upon each category; however if we consider our existing DPS categories, the supply chain ranges from circa 50 suppliers to over 150 suppliers in each category. To maintain a similar level of

supply chain is not really feasible through a framework, as this would require significantly more effort to manage the suppliers and their performance.

- 5.7. The Council does not have capacity to establish the volume of frameworks along with the sub lots contained within each framework prior to the Act coming into effect in February 2025. The transparency requirements under the Act have been significantly increased and now cover the entire commercial lifecycle of a contract. The impact of this will require substantially more administration in complying with the Act, compared to that of the current DPS and PCRs.

### **Dynamic Markets**

- 5.8. The new Act has provisions for Dynamic Market, which was originally intended to replace DPS; however, a Dynamic Market cannot be used for services that are below the regulatory threshold (the proposed categories are all care related (light touch regime) c£553k excluding VAT). With the exception of any block booking arrangements, most of the services that would need to be procured via the Dynamic Market would be below threshold.
- 5.9. An alternate solution would need to be found for below threshold procurements in these categories, which would be another route to market as stated under these alternate options considered in this report.

### **Alternate Frameworks and DPS**

- 5.10. There are currently very few alternate frameworks or DPS's that Haringey would be able to access for these services. This is primarily because other authorities tend to establish arrangements for their own use, or there are other regional groups (i.e. west London Alliance) that establish arrangements for authorities within their region only.
- 5.11. If utilising another DPS the Council would be incurring fees that would go to the DPS operator. Where a framework is used, there is generally a fee which is payable by the supplier for any contracts awarded to it. These fees generally range between 3% and 5%.
- 5.12. Capacity may be an issue in accessing other frameworks and DPSs, as it is likely other local authorities may also be trying to utilise the same route to market. This runs the risk of the supply chain not being able to respond to an increased volume of tenders and may also lead to reduction in quality of service and increased prices due to increased demand.

### **Procure Services Individually**

- 5.13. In the absence of a DPS, Framework or Dynamic Market, the services would need to be procured on an individual basis (or via a block booking arrangement). This is the least efficient option operationally and would require additional resources to manage the increased workload.

- 5.14. Provisions under the Act prohibit any form of pre-selection criteria for below threshold procurements, this would mean that for most of the services referenced in this report, each opportunity would be advertised openly. The impact of this would potentially increase the volume of responses received, some of which will likely be from suppliers who may not be qualified to undertake the services. However, the assessment of suppliers capability, qualifications, experience and financial standing, would not be undertaken until evaluating the tenders.
- 5.15. In addition, the Act has significantly increased transparency requirements, including for below threshold procurements which require a below threshold notice to be issued, alerting any potential supplier to the opportunity. This could result in providers outside the borough and surrounding areas being successful, which may cause issues in providing care and accommodation for residents in Haringey.
- 5.16. Individually procuring these services does not provide best value for money.

## **6. Background information**

### **DPS Categories**

- 6.1. Haringey Council operates one of the largest portfolios of DPS in local government, with in excess of £100m of spend per year.
- 6.2. The DPS has been designed to be “SME friendly” and promote local community wealth building, with over 90% of the contracts awarded going to SMEs. Suppliers can join the DPS at any time during its term, provided they meet the accreditation and enrolment criteria.
- 6.3. Each supplier must maintain their accreditation status throughout the duration of the DPS. This is monitored by the Dynamic Markets team, where a supplier fails to maintain the accreditation (i.e. insurances, health, and safety certificates etc.) they are suspended until such time they have rectified the failures. This is key to ensuring we have a robust supply chain that meet the minimum standards required by the Council for the delivery of the relevant services.
- 6.4. Significant efficiencies are achieved each year through the use of the DPS (based on statistics supplied by adam, our DPS service provider). For the 3 DPS requiring a short extension these are estimated to be:
- Procurement: 50%= saving of 286 hrs
  - Finance: 85% (presuming all functionality within SProc.net is used) = saving of 1,455 hrs
  - Contract Management: 70% = saving of 330 hrs
  - Hours per annum saved = 2071

- 6.5. The incoming Act has not retained the current provisions for a DPS, instead it has introduced a Dynamic Market as a replacement to the DPS. It was originally understood that below threshold procurements would be permitted under a Dynamic Market; however, this has recently been clarified by the Cabinet Office that only below threshold for works contracts with a value above c£179k (excluding VAT) could be procured via a Dynamic Market instead of the actual regulatory threshold of c£4.47m for works. This is the only specific exception permitted by the Cabinet office; therefore, all other thresholds remain as per the PCRs (i.e. services c£179k and Care related (light touch) £553k excluding VAT).
- 6.6. Following this clarification by Cabinet Office of the below threshold restrictions, Strategic Procurement consulted with the relevant service areas on the impact and the route to market options. It was concluded that the DPS provided the most flexible route to market with the least impact on service operations, compared to provisions within the incoming Act.
- 6.7. Strategic Procurement and the service areas have developed a programme of work that will enable the establishment of multiple DPSs stated in this report, with revised accreditation criteria considering changes in legislation and operational requirements. These DPS's will be established prior to the new Act coming into effect in February 2025.
- 6.8. In June 2020, Cabinet approved the establishment of home support, semi-independent and supported living DPS's. These are due to expire on 31 December 2024. A 3-month time only extension is required to enable Strategic Procurement to re-establish these DPS's.
- 6.9. During the consultation with the service areas in relation to the constraints on the route to market under the new Act, it was identified that additional DPS categories should be established to ensure the procurement process remained as efficient as possible and ensuring new suppliers can join at any time, so as to maintain a healthy supply chain.
- 6.10. In 2019 Cabinet approved the establishment of the LCP DPS for professional services and minor works. The initial term of the DPS's were for a period of 7 years with the option to extend up to a further five years.
- 6.11. The LCP DPS's are utilised by over 60 public sector organisations across London and the home counties, generating over £700k p.a. in revenue for the Council.

- 6.12. Whilst the LCP could consider migrating to the Dynamic Market provisions under the Act, this would jeopardise a large element of the revenue stream, as contracts below £179k (excl. VAT) are not permitted via a Dynamic Market.

### **LBLA Framework**

- 6.13. The Council is a member of the LBLA consortia who collaboratively establish a framework for legal services. Members of the consortia rotate responsibility for being the lead authority on establishing the framework for the provision of legal services.

- 6.14. Kennedy Cater (KC) have been supporting the consortia for the past two iterations of the legal services framework. This involves, preparing the procurement documentation, supporting the procurement process, evaluating tender submissions, managing the framework, collecting and distributing levies.

The lead authority is to act as the contracting authority, quality assure the procurement documents and administer the procurement process in accordance with the PCR's.

- 6.15. The programme requires the procurement process to commence early 2025, so as to allow sufficient time to establish the framework for commencement in 2026.

- 6.16. The LBLA legal services framework is widely used by local authorities across London, with Haringey being one of the main users of the framework. The framework attracts significant interest from legal firms due to the usage by local authorities and therefore generally attracts very competitive rates.

- 6.17. A 4% levy is applied to the framework, this is used to recover cost for establishing and managing the framework, with any surplus being distributed to members of the consortia. The Council will recover in full costs for any capacity and resources to support the establishment of the framework.

## **7. Contribution to the Corporate Delivery Plan 2022-2024 High level Strategic outcomes'?**

- 7.1. The new suite of DPS's will support a number of Corporate Priorities:

- Alignment with Procurement Strategy;
- Promotion of local businesses and SMEs;
- Supporting children and young people;
- Supporting adults, health and welfare of our residents;

- Promoting an inclusive economy across the borough and London;
- Promotion of Social Value Act through the suite of contracts contained within the procurements;
- Creating a suite of procurement tools to support development, growth and regeneration in the borough and across London;
- Payment of London Living Wage, use of local labour and promotion of apprenticeships;
- Efficiency gains through the use of collaborative procurement with other local authorities and public sector organisations.

## **8. Carbon and Climate Change**

- 8.1. The use of the DPS can support reduction in carbon footprint through enabling a location-based approach, so that suppliers do not need to travel extensive distances to deliver their services.
- 8.2. Where services involve transportation (i.e. SEND passenger transport), suppliers are encouraged to use greener modes of transport (i.e. electric, hybrid, low emission vehicles), which is recognised during the procurement process.

## **9. Statutory Officers comments (Director of Finance ( procurement), Assistant Director of Legal and Governance (Monitoring Officer), Equalities)**

### **Finance**

- 9.1. This report advises Cabinet of the intention for the Council to lead on the development and implementation of the procurement strategy to establish a suite of DPS and a legal services framework.
- 9.2. Whilst establishing these DPS's and the legal services framework, it does not in itself place any obligation on the Council to enter into any contracts. Where the Council does enter into contracts procured via these arrangements, these will be subject to the relevant financial due diligence prior to the award of each contract.
- 9.3. It is noted from the report there will be full cost recovery of any expenditure related to the Council's costs in establishing the legal framework.

### **Procurement**

- 9.4. The Chief Procurement Officer has been fully consulted in relation to this report and supports the recommendations in paragraph 3 above.

- 9.5. The recommendations in this report fully align with the Council's Procurement Strategy, which is to maximise the use of Framework Agreements and Dynamic Purchasing Systems and to promote collaborative procurement with other public sector organisations in London to achieve efficiencies and value for money.
- 9.6. Following consultation with the relevant service areas, Strategic Procurement recommends the adoption of the category strategy outlined in this report. This approach is the most efficient strategy considering the needs of the service, the commissioning strategy and the constraints relating to below threshold procurements under the incoming Act.
- 9.7. Strategic Procurement confirm the proposed extension of the DPS categories for home support, semi-independent living and supported living are compliant with Regulation 72 (5) of the PCRs and CSO 10.02.1 b).
- 9.8. The establishment of the DPS categories will be led by Strategic Procurement and will comply with Regulation 34 and Part B (light touch regime) of the PCRs.
- 9.9. Strategic Procurement confirms the delay in the implementation of the Procurement Act 2023 until 24 February 2025 and therefore the current PCRs continue to apply and therefore it is permissible to establish a DPS prior to the implementation of the Act.
- 9.10. When establishing the LCP professional services and minor works DPS the initial term was for a 7-year period to April 2026 and June 2026 respectively, with an option to extend these DPS's up to a further 5 years. It is not possible to fully utilise the full 5-year extension option due to constraints within the Procurement Act 2023 Commencement No.3 and Transitional and Savings Provisions) Regulations 2024 (as amended from time to time), which currently prevent these types of DPS having a term beyond 27 October 2028.
- 9.11. The establishment of the LBLA framework will be led by Strategic Procurement and supported by Kennedy Cater and will comply with Regulation 33 of the PCRs.
- 9.12. Whilst establishing the proposed framework and DPSs does not in itself place any obligation on the Council to enter into any contracts; however, it is extremely likely due to the nature of the services, a number of contracts procured from the framework and DPSs are likely to involve a key decision. For this reason, there is a requirement to comply with CSO 7.04 (a).

**Assistant Director of Legal & Governance (Monitoring Officer)**

- 9.13. The Assistant Director and Governance (Monitoring Officer) has been consulted in drafting this report.
- 9.14. Pursuant to Contract Standing Order 10.02.1 b) the Cabinet has authority to approve the recommendations 3.1 and 3.2 in this report (extensions of existing DPSs).
- 9.15. The extensions referred to in recommendations 3.1 and 3.2 in this report are in accordance with Regulation 72(5) of the Public Contracts Regulations 2015.
- 9.16. This report seeks to establish a suite of Dynamic Purchasing Systems in accordance with Regulation 34 of the Public Contracts Regulations 2015. The procurement to establish these Dynamic Purchasing Systems must commence prior to the implementation of the Procurement Act 2023, currently scheduled for 24 February 2025 (as amended).
- 9.17. Haringey is a member of the London Borough Legal Alliance Framework consortia and currently procure legal services from the legal services framework agreement. Each consortia member is expected in turn to act as the contracting authority and establish a legal services framework agreement. It is Haringey's turn to act as the contracting authority for the next iteration of the legal services framework agreement. Kennedy Cater has been selected by the consortia to support the establishment and operation of the framework agreement. This framework agreement will be established in accordance with Regulation 33 of the Public Contracts Regulations 2015.
- 9.18. Pursuant to Contract Standing Order 7.04 a) the Cabinet has authority to approve the recommendations 3.2 and 3.4 in this report
- 9.19. The Cabinet has power under the Local Government Act 2000 (S.9 (E) (Discharge of Functions) to delegate authority in respect of the recommendations in para 3.2 (admit suppliers to the DPS) and 3.4 (award of the legal services legal alliance framework agreement) to an officer of the Council. Further reports will need to be presented to the Chief Procurement Officer at the time when the arrangements for the DPS and the legal alliance Framework Agreement need approval.
- 9.20. The Assistant Director and Governance (Monitoring Officer) sees no legal reasons preventing Cabinet from approving the recommendations in this report.

### **Equality (Draft)**

- 9.21. The Council has a public sector equality duty under the Equalities Act (2010) to have due regard to:

- Eliminate discrimination, harassment and victimisation and any other conduct prohibited under the Act;
- Advance equality of opportunity between people who share those protected characteristics and people who do not;
- Foster good relations between people who share those characteristics and people who do not.

9.22. The three parts of the duty applies to the following protected characteristics: age, disability, gender reassignment, pregnancy/maternity, race, religion/faith, sex and sexual orientation. Marriage and civil partnership status applies to the first part of the duty.

9.23. The proposed framework and suite of DPSs does not represent a significant change to the existing framework and DPS's, and there are no known equality issues with the proposal, therefore an EQIA is not required. Each scheme commissioned through the frameworks and DPSs will be subject to its own EQIA where applicable.

**10. Use of Appendices**  
**N/A**

**11. Background papers**  
**N/A**