

Digital Innovation and Efficiency Committee

Item No.

Report title:	Better Broadband for Norfolk Programme update
Date of meeting:	6 March 2018
Responsible Chief Officer:	Tom McCabe - Executive Director, Community and Environmental Services
Strategic impact The Better Broadband for Norfolk (BBfN) Programme is working to extend access to Superfast broadband across Norfolk, beyond the reach of commercially funded deployments. Since the first BBfN cabinet was implemented in July 2013 access to Superfast broadband (24Mbps+) in Norfolk has increased from 42% to 90% of properties. Coverage is expected to reach 95% of Norfolk properties, by the completion of the current rollout at the end March 2020. The Government estimates every £1 invested in Next Generation Access broadband infrastructure generates a return on investment of £12.	

Executive Summary

This paper describes two new opportunities which support the council's stated aim to achieve access for 100% of Norfolk properties.

- Re-investment of BBfN contract rebates to provide further broadband infrastructure
- DEFRA Rural Broadband Grant to provide access to broadband infrastructure for rural businesses

During 2016, Broadband Delivery UK (BDUK) negotiated a new EU State Aid decision. Any further investment of public subsidy in Norfolk to increase access to broadband infrastructure must meet the requirements of this new State Aid decision.

Recommendations:

Members are asked to agree:

- 1. The procurement approach described in section 2**
- 2. Delegated authority to the Executive Director of Community and Environmental Services in consultation with the Chair and Vice Chair of Digital Innovation & Efficiency Committee to enter into contract(s) with the successful bidder(s) for the provision of NGA broadband infrastructure.**
- 3. To make a recommendation from the Digital Innovation & Efficiency Committee to the Policy & Resources Committee, and then to Full Council for the £11 million of forward funding for the next stage of BBfN.**

1. Proposal

- 1.1. The State Aid decision that the first two BBfN contracts were approved under has expired.

During 2016, the UK Government's BDUK team negotiated a **new broadband State Aid scheme**. All projects including future BBfN contracts must meet the requirements of this new State aid 'umbrella scheme' approved by the European Commission which sets out the criteria for compatible projects:

http://ec.europa.eu/competition/state_aid/cases/263954/263954_1760328_135_4.pdf.

Some key State Aid requirements include:

- 1.1.1 A **new procurement** is required. This must be preceded by a public consultation in accordance with the State Aid scheme.
- 1.1.2 Public subsidy can only target broadband coverage to areas which are not otherwise planned to get **Next Generation Access (NGA)** coverage in the next three years. These are areas that do not, or will not, receive speeds of at least 30Mbps are mapped through a public consultation process. This State Aid public consultation process allows broadband infrastructure providers to identify properties that already have access, or where fully funded plans exist to provide access. This avoids applying subsidy in areas which already have coverage.
- 1.1.3 Infrastructure must be capable of delivering access speeds over 30Mbps and a "step-change" in capability – including at least a doubling of speeds. **Solutions must be NGA qualifying technologies**, e.g. FTTP, HFC (docsis 3), FTTC, and Fixed Wireless Access (configured appropriately). This means that technology that forms part of any bid received as part of the proposed procurement will be evaluated and must meet the requirements described in this detailed technical specification: <https://www.gov.uk/government/publications/2016-nbs-tech-guidelines>
- 1.1.4 Infrastructure providers must provide **wholesale access** to the passive and active network. This must be made available to third parties
- Applies to *new and existing* infrastructure used in the intervention area
 - New infrastructure *must enable additional capacity* to be made available for future demand (where technically and legally feasible)
 - Prices based on those available in more competitive areas
 - This access must be provided for at least 7 years after implementation is complete (indefinitely for passive assets)
- 1.1.5 Contract(s) cannot be let without prior BDUK approval. BDUK performs rigorous assurance of State Aid compliance and that Value for Money has been achieved, including national benchmarking against other county contracts.
- 1.2. Two different **opportunities** to expand NGA broadband coverage across Norfolk have arisen which if pursued will need to comply with the 2016 State Aid decision :
- Further **rebates** based on higher than expected levels of Take-up, available via protection against over-subsidy contained within the initial and current

BBfN contracts

- Potential **DEFRA** Rural Broadband Grants to provide access for businesses where no NGA solution is planned.

1.2.1 The Government has announced a national total of £645 million underspend from the initial BDUK contracts and Gain-share **rebates** which is available for investment in further NGA broadband infrastructure. BDUK has estimated Norfolk's share of this funding as £28.84 million. This includes:

- £12.4 million underspend from the first BBfN contract, the majority of which has already been committed via the second BBfN contract
- £16.44 million Gain-share rebate from the current BBfN contracts. £5.3 million of which has already been committed via the second BBfN contract, leaving potential Gain-share of £11.1 million to re-invest in providing access to NGA broadband infrastructure within the 'Final 5%' of Norfolk properties that will not have access to Superfast broadband.
- The total Gain-share amount is a BDUK forecast of the sum that will be due at the end of the State Aid protection period in 2023. The final Gain-share rebate will not be confirmed until the end of the State Aid protection period in 2023.

1.2.2 The **DEFRA** Rural Broadband Grant, £30 million national fund is available to Local Authorities who currently lead the roll out of NGA broadband infrastructure in their local area (those who are already delivering the BDUK supported programme, including BBfN).

- Bids will be considered for up to 100% of capital costs, all eligible supplier capital costs, including equipment, installation and project team. Local Authority costs are not eligible.
- Bids are sought no later than 31st May 2018 to establish NGA (30Mbps+) infrastructure for business properties in "the final 5%", where there is a defined business need, to enable economic growth. A specific list of businesses that meet DEFRA criteria has been developed with County and District Economic Development teams
- DEFRA has confirmed that for those counties like Norfolk that do not have a recently signed broadband contract covered by the new 2016 State Aid Notification, a procurement is unlikely to be viable based just on DEFRA funding alone. A procurement that combines the use of Gain-share rebate and DEFRA funding would be considered a good option.
- DEFRA funding is dependent on a successful bid and funding will be allocated on a first come, first served basis. DEFRA funding must be spent by the end of March 2020.

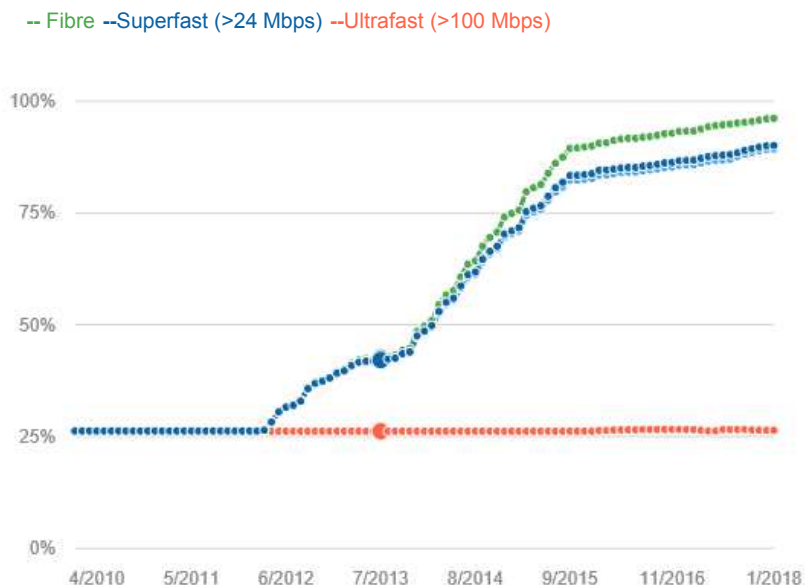
2. Evidence

2.1 Consistent with the Government's objective to achieve access to Superfast broadband (24Mbps+) for 95% of UK properties, for both previous BBfN contracts, Norfolk councillors agreed that to achieve the greatest coverage possible, for the investment available, the Council would not identify specific locations for upgrade as this would have led to less coverage; instead, the Council specified the following:

- To seek the highest possible levels of Superfast Broadband (24 Megabits per second +)
- Implementation takes place in the most efficient technical order to deliver the maximum possible coverage

2.1.1 Both the initial and second BBfN contracts were let as call-off contracts under the national Broadband Delivery UK (BDUK) Framework contract. This ensured both met EU State Aid requirements, complied with procurement legislation and achieved value for money.

2.1.2 As demonstrated in this chart from the independent Think Broadband website coverage in Norfolk has reached 90%:



<http://labs.thinkbroadband.com/local/index.php?area=E10000020>

The initial BBfN contract delivered on time and under budget.

The current BBfN contract is on track, with access to Superfast broadband expected to reach 95% of Norfolk properties by the end March 2020.

2.2 To comply with State Aid requirements the proposed **procurement** must consider some key areas which are subject to BDUK approval before procurement can commence:

- **Procurement approach**
- **Delivery Model**
- **Lotting Strategy**

2.2.1 BDUK has a well-developed **procurement approach** with a set of contract documents which are compliant with the requirements of the 2016 State Aid decision.

Although the State Aid decision allows for various procurement approaches, BDUK templates have been designed for an Open procedure, with an “Expression of Interest” step instead of PQQ. It is proposed to use these BDUK contract document templates for this proposed new procurement.

Norfolk County Council's Head of Procurement confirms this route is preferred. NCC procurement will manage the activities required to support the OJEU process.

2.2.2 There are four main **Delivery Models** which have been considered

Model	Description
Gap funding model	The Supplier receives a subsidy for the minimum amount necessary to deliver the project whilst making an acceptable rate of return. The network is retained by the supplier. The subsidy is subject to claw-back mechanisms.
Concession to build, operate and transfer	Local Body contracts with a Supplier to finance, build and operate the infrastructure. Ownership of the network at the end of the contract reverts to the Local Body.
Joint Venture	The Local Body and a Supplier form a Joint Venture to design, build and operate the network. Both parties own equity in the entity and split the risks and rewards of ownership.
Public Sector owned infrastructure	The Local Body funds and owns the wholesale network. They may decide to contract suppliers to design, build and operate the network or do this internally.

The recommended Delivery Model is “gap funding”. This means:

- Subsidy only funds the cost to deploy the infrastructure, minus the revenue the infrastructure generates in the seven years following its implementation.
- State Aid rules protect against over subsidy via the “Claw-back” rebate mechanism which Norfolk has already benefitted from via its first BBfN contract
- All other models place more risk on Norfolk County Council and are not attractive to potential bidders

2.2.3 The following Lotting Strategies have been considered:

Approach one - one contract to provide a solution for as many properties as possible
Benefits:

- Achieves lowest per property cost and therefore maximum coverage
- Single supplier delivers access for a minimum contracted number of properties
- Single deployment plan provides a single efficient rollout plan
- Rollout order can be changed if delays occur in one area, to ensure overall delivery stays on track

<ul style="list-style-type: none"> - The cost to deliver the DEFRA sub-set of premises can be identified separately <p>Dis-benefits:</p> <ul style="list-style-type: none"> - Limited number of supplier that can deliver a programme of this scale - No ability for councillors to prioritise specific individuals or communities
<p>Approach two - Two contracts:</p> <ul style="list-style-type: none"> - Approach one plus; - Second contract covering the scope of the DEFRA bid <p>Benefits:</p> <ul style="list-style-type: none"> - Maximum of two suppliers providing most of the benefits of approach one - Clearly defines the businesses which will gain access via DEFRA funding and the cost <p>Dis-benefits:</p> <ul style="list-style-type: none"> - Limited number of supplier that can deliver a large programme (lot one) - Supplier that attended Market Engagement meetings have said this option is unattractive
<p>Approach three - Seven lots, one for each District Council area</p> <p>Benefits:</p> <ul style="list-style-type: none"> - Councillors are able to choose the criteria against which funding is allocated between Districts, but not prioritise further within each lot <p>Dis-benefits:</p> <ul style="list-style-type: none"> - Less overall coverage across Norfolk due to reduced economies of scale of multiple smaller lots - Higher overhead costs to manage multiple suppliers and contracts and higher delivery risk - Rollout timescales likely to be longer

The recommended Lotting Strategy is approach one. This option:

- Maintains the current approach to achieve the maximum NGA coverage for the available funding
- Sets the minimum speed required at 30Mbps which supports the objective to achieve maximum coverage, as to set the minimum speed higher would have the result of providing less coverage overall
- Avoids lotting at District level which would provide less overall coverage across Norfolk. Easier to deploy districts could benefit whilst the most rural lose out
- Avoids a DEFRA only lot that would provide less coverage, and that none of the suppliers that attended the Market Engagement sessions favoured
- Avoid suppliers bidding for only a sub-set of the Intervention Area, with the hardest to reach areas attracting no bids
- Supports the three of the four suppliers attending Market Engagement meetings that identified a Single Norfolk wide Lot as preferable
- Provides for on-going management of a single contract that is Norfolk wide and which represents the lowest risk of non delivery whilst minimising Norfolk

County Council costs

- Avoids prioritisation of certain properties which would reduce the overall level of coverage. Alternatives are available, for instance the Government's Full Fibre Initiative which Norfolk intends bidding for. This would provide grants to businesses for the introduction of Full Fibre solutions

2.2.4 One to **One Market Engagement meetings** were offered to eight potential bidders. This is a BDUK requirement.

During these meetings State Aid requirements were discussed including procurement approach, Delivery/Funding Models and Lotting Strategy, each bidder was also asked if it was likely to bid. This resulted in the following feedback

- All bidders supported the Gap Funding Delivery/Funding Model
- Three of the four felt that a single Norfolk wide lot is most appropriate. One supplier preferred District level lots
- Three of the four suppliers are likely to bid. One felt its technology is not NGA compliant and therefore it would be unable to bid

2.3 The following Norfolk County Council team is in place to complete the proposed procurement:

- Better Broadband for Norfolk – Karen O’Kane
- Economic Development – Emma Taylor
- Finance – Roland Rivington
- GIS (ICT) – James Wharfe
- NPLaw - Mike Garwood
- Procurement – Sarah Hardy

2.4 BDUK approval is required at specific stages of the proposed procurement, key gateways include:

- **BDUK Checkpoint B2** – State Aid consultation period completed and ready to commence procurement – end April 2018. This date is dependent on suppliers completing responses to the State Aid consultation on time.
- It is vital that the scope of the Intervention Area which defines at property level the areas where public subsidy can be used to provide NGA broadband infrastructure is defined accurately. This means if supplier responses are not adequate further time may be required.
- **DEFRA decision** – end April 2018. Before making a final decision DEFRA requires confirmation that any business property within the scope of the bid has been confirmed as within the State Aid Intervention Area (Checkpoint B2 above).
- **BDUK Checkpoint C** – Ready to contract- end October 2018. This

checkpoint takes place at the end of BDUK assurance processes and confirm that the contract will be State Aid compliant and that Value for Money will be achieved.

3. Financial Implications

3.1. Total public subsidy for the initial and second BBfN contract is:

	Initial BBfN contract	BBfN SEP contract	Total
BDUK	£15,440,000	£9,210,000	£24,650,000
Breckland DC	£0	£950,000	£950,000
Broadland DC	£0	£560,000	£560,000
Kings Lynn and West Norfolk Borough Council	£0	£500,000	£500,000
New Anglia Local Enterprise Partnership	£0	£5,000,000	£5,000,000
Norfolk County Council	£15,000,000	£1,000,000	£16,000,000
North Norfolk District Council	£0	£1,000,000	£1,000,000
South Norfolk District Council	£0	£570,000	£570,000
Total Public Subsidy	£30,440,000	£18,790,000	£49,230,000

Protections within the initial and SEP BBfN contracts mean if Take-up of services using the new infrastructure is higher than expected, a unit margin is recovered for each additional property that takes a fibre service, over the number specified in contract – known as Gain Share rebate.

BDUK estimate that by the end of the State Aid protection period in 2023 a further £11.1 million rebate will be due. The final Gain-share rebate will not be confirmed until the end of the protection period in 2023

The maximum level of funding for the proposed procurement must be confirmed within the State Aid consultation document, it cannot be increased later.

It is recommended that Norfolk County Council borrow to fund this proposed new contract prior to the receipt of anticipated Gain-share rebates from BT. This decision should be taken recognising that, if the total Gain-share rebate is less than expected, it may be insufficient to cover the repayment of borrowings.

This risk is low as the calculated Gain-share rebate is based on existing levels of Take-up which have already been achieved. The risk is that people who are currently using a Superfast broadband service will stop doing so. Norfolk County Council can drive up levels of Take-up using proactive marketing which has already begun.

If Norfolk's £2 million DEFRA bid is successful, DEFRA funding must be spent by the end of 2020.

The potential funding sources and likely timings are shown in this table, although the final contract will determine the payment schedule:

Funding Source	2019/20	2020/21	2021/22	Total
DEFRA	£2,000,000	£0	£0	£2,000,000
Borrowing against future Gain-share rebate	£2,000,000	£4,000,000	£5,000,000	£11,000,000
Total	£4,000,000	£4,000,000	£5,000,000	£13,000,000

It is recommended that the following funding is allocated:

- £11 million raised via borrowing in anticipation of expected rebates that will be due under the terms of current BBfN contracts. There remains a small risk that Take-up levels will recede and therefore the eventual rebate will be less than that predicted
- Up to £2 million based on a bid to the DEFRA Rural Broadband Grant
- There is the potential for further contract rebates / underspends, above the expected £11 million. To be able to use these to fund further broadband coverage a maximum sum must be defined during the procurement process. Therefore a further £5 million of potential additional funding will be identified within the procurement. This means if this additional funding becomes available it can be committed via contract change control via the proposed new contract

4. Issues, risks and innovation

- 4.1. Risks have been identified and managed using the Corporate Risk Management Framework. The BBfN Steering Group reviews programme risks and proposed mitigations at its quarterly meeting.
- 4.2. The environmental impact of the contractor proposals and, specifically, what steps the contractor will take to minimize the environmental impact of the programme are assessed as part of Norfolk's procurement processes.

5. Background

- 5.1. County Councilors identified that the lack of broadband infrastructure disadvantages parts of Norfolk both economically and socially. This is identified in the Council's Economic Growth Strategy as key infrastructure to support economic development.
- 5.2. Better Broadband for Norfolk contracts are managed within nationally agreed contract management and assurance processes.

Officer Contact

If you have any questions about matters contained in this paper or want to see copies of any assessments, eg equality impact assessment, please get in touch with:

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