Norfolk County Council

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Extraordinary Meeting

Date:	**Friday 6 November 2015**
Time:	**10.30 a.m**
Venue:	**Council Chamber, County Hall, Norwich**

Persons attending the meeting are requested to turn off mobile phones.

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Prayers
To Call the Roll

AGENDA

1. **To receive any announcements from the Chairman**

2. **Members to Declare any Interests**

   If you have a Disclosable Pecuniary Interest in a matter to be considered at the meeting and that interest is on your Register of Interests you must not speak or vote on the matter. It is recommended that you declare that interest but it is not a legal requirement.

If you have a Disclosable Pecuniary Interest in a matter to be considered at the meeting and that interest is not on your Register of Interests you must declare that interest at the meeting and not speak or vote on the matter.

In either case you may remain in the room where the meeting is taking place. If you consider that it would be inappropriate in the circumstances to remain in the room, you may leave the room while the matter is dealt with.

If you do not have a Disclosable Pecuniary Interest you may nevertheless have an Other Interest in a matter to be discussed if it affects:

- your well being or financial position
- that of your family or close friends
- that of a club or society in which you have a management role
- that of another public body of which you are a member to a greater extent than others in your ward.

If that is the case then you must declare such an interest but can speak and vote on the matter.

3. **Norwich Northern Distributor Road** Page **3**

Report of the Executive Director of Communities and Environmental Services and the Executive Director of Finance

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County Council

Item No 3

Report title:	**Norwich Northern Distributor Road**
Date of meeting:	**6 November 2015**
Responsible Chief Officer:	**Tom McCabe (Executive Director CES)** **Simon George (Executive Director Finance)**

Strategic impact

The Northern Distributor Road (NDR) is an essential piece of transport infrastructure that releases significant economic benefits for Norwich and Norfolk by reducing congestion and offering new access to key strategic employment and growth locations.

This piece of infrastructure enables growth through housing and jobs that will be a powerful boost for the economy of Norfolk. It draws on significant funding from Government and from pooled Community Infrastructure Levy (CIL) contributions from district partners in recognition of the economic benefits to the area. However the scale of the project is such that this still represents a large capital investment for NCC.

This report updates Members on the final target cost for the scheme and asks for approval of a mechanism to fund the budget shortfall.

Executive summary

There was an extraordinary Full Council meeting on 2 September 2015 solely to inform members of a £29.9m shortfall in funding for the NDR and seek a Council decision on how to proceed. Members approved funding for up to £9.9m (noting the contributions anticipated from the New Anglia Local Enterprise Partnership (NALEP) and the Department for Transport (DfT)). Since then, a legal challenge has been made to that decision which criticises the information presented to Members. Officers accept that some of the information presented was erroneous and this may have (inadvertently) misled or misinformed Members. Delays to the project increase our costs by around £0.5m per month.

To expedite the risk of a potentially protracted legal process and minimise the additional costs to this Council, it is considered to be prudent to set aside the previous decision taken. This allows Members a fresh opportunity to review information, acknowledging the criticisms that have been made and to take a wholly fresh decision.

DfT and the NALEP have indicated their intention to contribute £10m each, leaving the County Council to fund the remainder of the scheme to enable the project to commence, as planned, this autumn. The shortfall is estimated to be up to £10.4m which is contingent on instructing the works in November 2015.

Recommendations:

Members are asked to:

1. **Acknowledge the funding contributions made by DfT and the NALEP and agree an NCC contribution of £10.4m to meet the budget shortfall;**
2. **Approve the funding mechanism set out in this report to deliver the additional**

funds of £10.4m to support the NDR and approve an adjustment to the 2015-18 capital programme to reflect the additional budget requirement and funding as set out in this report.

3. **Subject to the approval by DfT of the NDR 'full approval' submission, the Council confirms the award of the Stage 2 construction works to Balfour Beatty, to set the project in motion for an anticipated November 2015 start.**

1. Introduction

1.1 The NDR is an essential element of the 'Transport for Norwich' strategy to improve infrastructure across Norwich, support economic growth and boost prosperity. The NDR will relieve congestion, facilitate improvements to journey time reliability, provide access to planned growth locations for housing and employment (as detailed in the adopted Joint Core Strategy) and provide improved access to Norwich International Airport from the strategic road network. The County Council has already spent £12.74m from 2012/13 to the end of 2014/15 in progressing the NDR to its current stage. Members have made important decisions to deliver the NDR as a dual carriageway road from the A47 Postwick junction to the A1067. A decision was also taken to progress the scheme via the Nationally Significant Infrastructure Project planning process. In August 2013 the Secretary of State for Transport designated the NDR as a project of national significance.

1.2 Since those decisions, the project has been progressed through its statutory processes and a Development Consent Order (DCO) has been approved by the Secretary of State and cannot be challenged. The NDR is included within the Government's National Infrastructure Plan 2014, which sets out an expected start date in 2015 and completion in 2017.

1.3 The primary issue now, if the Council wishes to deliver the project in line with both its own strategy and the National Infrastructure Plan, is to resolve the funding shortfall and to agree to share the cost increase with the DfT and the NALEP, broadly on a sharing basis of one third each.

2. Legal Challenge

2.1 Full Council received a report at a special meeting on 2 September 2015. Since that meeting the decision taken has been the subject of a legal challenge by a local resident. Specific elements of the information presented in the reporting have been questioned. Since Members are being invited to make the decision afresh it is unnecessary to set out the full details. In summary, a main criticism was that the approach previously taken of trying to compare NDR cost increases with general road construction inflation contained factual errors which distorted the analysis presented such that Members were misinformed and unable to properly decide whether meeting the extra costs was a responsible use of public money. Officers have reviewed the information that was provided and confirm that some of the detail on inflation matters used to inform the analysis was incorrect. As a result Members did not have before them the full and accurate picture they could reasonably expect to make a decision. Although unintentional, this could have misled and misinformed Members.

2.2 It is important that expenditure decisions are made on a factually correct basis, with proper regard to the effect on the public purse. The errors identified above put that issue in doubt in relation to the decision made on 2 September 2015. Whilst only the Court can set aside a decision, it is open to the Council to reconsider any matter where the decision has not yet taken effect. Members are therefore invited to disregard the decision made on 2 September 2015 and the information that supported it, and to make a wholly fresh decision based on the considerations outlined in this report. Following legal advice, this is considered to be the most prudent approach to enable the NDR construction programme to proceed.

2.3 The legal challenge to the 2 September 2015 decision will not be contested and details have been submitted to the Court setting this out, together with a draft order to set aside the decision, signed by all parties.

3. Funding background and current position

3.1 The funding shortfall has occurred because the final target cost is higher than when costs were last assessed in 2013. The largest part of the cost increase is in relation to construction costs put forward by Balfour Beatty (BB), which they explain as due to a) changes in the scope of the project since 2013 and b) changes in the construction market.

a) Changes in scope. This covers design development (such as archaeological investigation, environmental works and supervision, and accommodation works for landowners), and design standards (which primarily include for enhanced environmental and construction constraints, bridge design, and drainage standards). Officers recognise that this would explain a proportion of the cost increase.

b) Market changes. The economic recovery has a direct impact on infrastructure project costs. The industry has moved out of the recession and construction costs have increased as strong growth has occurred. Demand for key resources has in turn led to supply constraints and escalating rates. This can be seen in skill shortages, reduced availability of plant and higher materials demand, all of which have contributed to higher prices in recently won work in the south-east. Although we are not in the south-east, the ripple effect does extend to East Anglia.

A large proportion of the crushed rock required for the scheme is not available in Norfolk and will have to come via rail from elsewhere (efforts made to source material from existing dis-used concrete runways in Norfolk have proved unsuccessful). Transportation via rail is constrained by limited rolling stock and line availability. In a buoyant marketplace this can further limit supply which increases the costs of materials.

3.2 Officers had previously sought to compare the NDR construction cost increase with general trends in road construction inflation. This was not a straight forward exercise because adjustments had to be made to try to compare like with like. Although advice was sought from costs consultants, the exercise did include some errors and there were some other areas where there was scope for argument and disagreement about what was the most appropriate comparison.

3.3 Having now reviewed the matter, officers no longer consider that such a comparative exercise is particularly meaningful because of the difficulties of ensuring that a true like for like comparison is being made. However, in broad terms officers confirm that the NDR cost increase cannot be explained as just being the result of general road construction inflation (which would generally reflect the market conditions factors referred to by BB). That said, there is a particular more local issue with the supply of crushed rock, due to the limited local supply and the costs associated with transportation constraints, which will have played a part in the increased costs now being put forward by BB.

3.4 Nonetheless, to test the overall reasonableness of the NDR cost increase, officers have undertaken a thorough and robust assessment of the estimates provided by BB. Prices are generally based on submissions from three sub-contract providers and suppliers, and the lowest or most beneficial prices have been used to develop the target cost. A high cost area that was not based on three prices was the pavement surfacing, which was benchmarked against comparisons with the term contract that NCC Highways service already holds with Tarmac and other available contract data. This has demonstrated that the costs provided for the NDR remain competitive given the dynamics that a project of this scale brings (such as provision of a materials site batching plant facility).

3.5 It is difficult to make direct comparisons for construction costs given the variation in scheme design, route length and topographical conditions. However, it is reasonable to base a high level comparison on the recently completed A11 dual carriageway project, as it was delivered by BB for the Highways Agency (now Highways England) and provides a relatively recent project comparator within close geographic proximity. The project cost per mile for that scheme was £11.5m at start of works in 2012. The project cost per mile for the NDR (excluding the committed Postwick Hub works) is £12.5m in 2015. These are simply total costs in both cases without any attempt to adjust for inflation. This assessment shows a general correlation as a broad bench mark (accepting that there are obviously material differences between the two projects). Whilst the NDR on this basis will cost more per mile, the differential is not considered to be excessive.

3.6 In the circumstances, and recognising the difficulties of making comparisons, officers are satisfied that the NDR costs remain reasonable and competitive, despite the increase in costs.

3.7 The key changes to the project costs are summarised in the following table. The figures provided are not changed from the 2 September report except for an additional £0.5m in the contingency allowance to take account of the possible cost increase due to the delay in starting construction.

Project costs table

	2013 (£m)	2015 (£m)	Notes
Construction Cost	77.8	104.2	These figures represent the pricing provided by BB after a systematic and structured approach to get the best value for money possible. The £104.2m figure is the target cost from BB.
Statutory Undertakers	8.7	8.3	Detailed work has enabled a reduced budget allocation for utility diversion works.
Land Cost	16.2	17.2	Land costs have changed as a consequence of slight increases in land values.
Preparation, Risk and Contingency	18.0	20.25	This includes an increase due to additional fees associated with the Development Consent Order process. There is also an allowance of £0.5m in the contingency due to the delay to the construction programme.
Supervision Cost	1.1	1.3	Slightly increased costs following a review and allowing for laboratory staffing.
Total NDR Budget	**121.85**	**151.25**	
Postwick Hub	26.7	27.7	£1.0m cost increase due to additional work largely due to specification/ legislative changes. This is the out-turn cost expected at completion of works.
Total Budget	**148.55**	**178.95**	

3.8 Since the shortfall emerged, officers have worked to find a solution and as a result, both DfT and the NALEP have indicated their intention to each provide a £10m contribution. This collaborative approach to resolve the shortfall is very welcome and much appreciated, and is in recognition of the strategic importance of the project to the East Anglia region.

Original Budget

3.9 The total budget of £148.55m has been previously approved by Cabinet and Committee at various meetings in 2 April 2012, 3 December 2012, 2 September

2013, 4 November 2013 and April 2014. The previously committed County Council contribution of £20.34m is funded from capital receipts.

3.10 In March 2014 the Greater Norwich Growth Board (GNGB) agreed to pool the majority of its Community Infrastructure Levy (CIL) income across greater Norwich to pay for strategic infrastructure, including a £40m contribution to the NDR. The GNGB is made up of Broadland, Norwich and South Norfolk councils with Norfolk County Council. A formal legal agreement has been signed by each council in relation to the terms of the funding contribution from CIL for the NDR. This contribution is not affected by the additional costs of the scheme.

Consequences of additional funding by NCC

3.11 The additional funding required from NCC to meet the extra cost of the NDR project can be provided by contributions from within the council's Highways and Transport Service, made up from the following sources:

- Funding from 2015/16 can provide (from in year savings) the additional £1m cost of the Postwick Hub junction works. This has primarily been made available by deferring a large bridge maintenance project for up to five years.

- Funding from accumulated Highways Service reserves will allow for £2m to be diverted to support delivery of the NDR.

- Funding from a £1.9m per annum contribution from the Highways Capital Programme for the next 3 years (£5.7m), and a £1.7m contribution in year 4, totalling £7.4m over the period.

3.12 Officers have also explored other options for funding the shortfall:

a) Use of un-earmarked capital receipts: There are currently none available. The bulk of recent capital receipts have already been hypothecated to the existing Council contribution to the NDR.

b) Borrowing: Assuming borrowed value of £10m and an asset life of 40 years, and the current PWLB 40 year rate of 3.2%, the annual revenue cost of borrowing would be £0.587m. This would be an additional cost that would need to be found on top of the council's existing £111m savings target.

3.13 Although allocating funding from the Highways and Transport capital programme to the NDR is not an ideal situation, the options presented are, on balance, considered reasonable given the scale of the continued investment in the highway asset and recommend the approach outlined in 3.11 above.

4. Alternatives and options

4.1 Since the recommended decision involves the expenditure of a large amount of public money, officers have considered alternative options. Alternatives are summarised as:

a. Continue to deliver the project taking into account the increased costs set out in this report. This option will mean the identified benefits, assessed and agreed through the DCO process and agreed by the Secretary of State, will still be delivered and the current programme targets met that are included in the National Infrastructure Plan. This is the recommended option.

b. Carry out a new procurement exercise. This will delay the start of the works as a procurement process will take at least six months to complete. This would push the start of construction back to Autumn 2016 because of the limited time window when certain ecological mitigation works can be undertaken. It is not possible to state with confidence that such a process would produce a materially lower cost for the works and there would be a risk that the cost could increase. This option would therefore introduce uncertainty as to the outcome, as well as delaying the time when the benefits of the NDR would be realised.

c. Consider a different scale of project, such as stopping at A140 (or some other variant) to reduce project costs. The DCO process entailed a lengthy consideration and evaluation of alternatives (including stopping at the A140) and neither the Examining Authority nor the Secretary of State considered there was a better credible alternative in operational terms. Notwithstanding this conclusion, DfT officials did ask for consideration of the option of stopping at the A140 before agreeing to contribute to the shortfall. Such an option could not be delivered within the powers given by the current DCO, and was seen by officers as a non-starter. However, it was a criticism made in the legal challenge that this option should have been considered by Members because a revised DCO would be a possibility. It is therefore now put forward for consideration.

   The traffic effects of such a scheme would obviously be very different to those of the NDR, especially in the vicinity of the A140 itself and for the residential areas and settlements to the west. Whilst there is now legislative provision to make 'material changes' to the project in the approved DCO it is likely that changes necessary at the scale required to save substantial project construction costs would result in a likely significant delay to establish a revised DCO. The evidence base would need to be updated and most of the procedural steps would remain (the option of omitting a DCO examination is not something the Council could assure and the Secretary of State could not decide that point until considering all the representations made). There could be no assurance that a revised DCO would be made because a lesser scheme would have a different balance of benefits and dis-benefits to those of the approved NDR. Even if a revised DCO was made, this option would create significant uncertainty around construction delivery and the unknown start date and potential need to re-procure could place any existing funding provision at risk. The same type of considerations would arise for any other variant scheme to the approved NDR.

d. Stop the delivery of the NDR project. However, all of the benefits that the NDR project will provide, as tested and approved at the examination in public for the DCO, would not be achieved. It would place significant uncertainty around the Joint Core Strategy housing and employment targets and would fail to enable the delivery of the wider Transport for Norwich plan. The investment already made by the County Council to deliver the NDR would also be abortive and lost.

4.2 Of the options set out above, only option a) will enable the delivery of the project that meets the current planned timescales. Other options will place the existing funding at risk and therefore the delivery of the project. This will impact on the Council's ability to meet its wider strategic priorities, in particular in providing good infrastructure and creating real jobs. Delivery of the NDR will also signal that Norfolk is open for business and is investing in the infrastructure necessary to support good jobs, good homes, and good transport. It will also show that Norfolk is playing its part in delivering the national infrastructure objectives set out by the Government. Whilst the Council is being asked to make a substantial public investment, and must take a balanced view, bearing in mind its responsibilities to Council Taxpayers, the recommendation is to endorse option a) because the overall benefits that can be secured justify proceeding with the NDR and accepting the additional cost involved.

5. Issues and Risk

5.1 NCC is not obliged to enter into the construction phase of the NDR contract with BB. The contract is structured so there are two stages, with stage 1 being Early Contractor Involvement. Stage 2 is only progressed if both parties can agree a target price for the works. This has been used for the Postwick Hub works.

5.2 The contract target cost is not a 'fixed price' and it can go up or down during the construction period. However the contract is incentivised with both parties sharing any savings if the project is below the target price, or sharing costs if it is above the target price. A further incentive is being written into the NDR contract to provide a share of any savings made by completing the project below the overall budget.

5.3 The NCC budget includes provision for construction phase risk and contingency. This has also been considered following learning from the delivery of the Postwick Hub project. In planning the delivery of the NDR project, the experience from this is being applied and includes the early delivery of utility diversion works, advance works for archaeology and environmental mitigation, all ahead of the main construction works commencing. There are risks to achieving the delivery of these early works if the construction is not instructed in November 2015 and this could create consequential risks to the project construction costs.

BACKGROUND INFORMATION

Cabinet decisions on funding and Dual carriageway decision
Cabinet meetings:

2nd April 2012 – Minutes here (item 12) , Report here – Report number **3**.
3rd December 2012 – Minutes here (item 10), Report here – Report number **39 (page 4)**
2nd September 2013 – Minutes here (Item 10), Report here – Report Number **1 (page 67)**
4th November 2013 – Minutes here (item 14), Report here – Report Number **20 (page 89)**
14th April 2014 – Minutes here (item 14), Report here – Report number **14 (page 244)**

All of above are referred to in the report.

Officer Contact

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

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