



Derby City Council

**COUNCIL CABINET**  
**7 December 2016**

Report of the Cabinet Member for Communities  
and City Centre Regeneration

# ITEM 15

## **A52 Wyvern Transport Improvement Scheme – confirmation of funding, approval to purchase land and commence scheme construction.**

### **SUMMARY**

- 1.1 This report provides an update on scheme funding and the project risks that exist at present.
- 1.2 This report sets out the complex relationship between the different funding strands and the need to progress the scheme or risk the project failing. The report seeks approval to commence the scheme, purchasing land, placing advance works orders and purchasing key materials. The cost of these elements will be met by the £3.5 million pre compliance funding recently agreed by D2N2 Local Economic Partnership.

### **RECOMMENDATION**

- 2.1 Approval to increase the 2016/17 to 2018/19 Capital Programme by £4,315,182, from £10,008,000 to £14,323,182, funded from a combination of grants and contribution which are yet to be formally confirmed.
- 2.2 Approval to commence the scheme, taking into account the financial risks as detailed in the report and also at Appendix 1 Financial and Value for Money.
- 2.3 Subject to the further funding being confirmed, as set out in the report, to enter into the main works contract.

- 2.4 That the Strategic Director of Communities and Place be authorised, following consultation with the Cabinet Member for Communities and City Centre Regeneration and, as appropriate, the Director of Finance and Director of Governance to:
- 2.3.1 accept D2N2 LEP LGF 1 and HE's GHF funding, as set out in the report, when confirmed;
  - 2.3.2 enter into an agreement pursuant to section 278 Highways Act 1980 with the developers of the Derby Triangle site to secure funding for highway mitigation;
  - 2.3.3 enter into such ancillary documentation as may be necessary to implement those agreements detailed in 2.3.1 and 2.3.2 above, and
  - 2.3.4 review the progress of the scheme and, subject to funding being confirmed, to enter into a contract for the delivery of the main works.

## **REASONS FOR RECOMMENDATION**

- 3.1 To reflect the actual cost of the scheme and to recognise that grant funding, if confirmed, combined with previously committed Council funding will meet that cost.
- 3.2 The Scheme continues to be a significant transport priority for the Council. Considerable energy and work has been devoted to bringing the scheme to delivery and while some elements of funding remain to be confirmed a commitment by the Council to delivering the scheme will help unlock and secure those external contributions.
- 3.3 Delegating authority to progress these aspects of the scheme will ensure that, subject to grant funding confirmation, the scheme can be delivered within the timescales agreed with funding partners.



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### **SUPPORTING INFORMATION**

#### **4.1 Background**

In July 2013, the Derby, Derbyshire, Nottingham and Nottinghamshire Local Enterprise Partnership (D2N2 LEP) prioritised £6,720,000 of its indicative budget towards the A52 Wyvern Transport Improvement scheme (the Scheme). In February 2014, Cabinet approved the preferred option for the Scheme – a feasibility design for junction improvements to the A52 and Wyvern Way. This option will improve traffic flow on the A52 and within Wyvern and Pride Park addressing existing access and congestion issues and provide access to the Derby Triangle development.

4.2 Cabinet, having previously approved the principle and layout of the Scheme, approved the making of a Compulsory Purchase Order in November 2015. Planning consent for the scheme was granted in April 2016. In July 2016 Cabinet noted an increase to the Scheme cost to £14,906,000 and in October 2016 approved submission of pre compliance funding request of £3.5 million to D2N2 LEP.

4.3 In March 2016, the Council was invited to submit a bid to the £100 million Growth Housing Fund (GHF) administered by Highways England (HE). An urgent decision report, on 31 March 2016, requested approval of the submission of a £2.6 million bid and delegated approval to accept the funding, should the bid be successful, by the Strategic Director of Communities and Place.

4.5 The Scheme has been prioritised by the D2N2 LEP for £6,720,000 funding from the Local Growth Fund 1 programme. This is subject to a successful Stage 2 application, supported by a full business case. A Stage 2 application can only be made when all third party land required for the scheme has been acquired. A Compulsory Purchase Order has been made in tandem to negotiations and it is anticipated that objections to the order will be withdrawn before a Public Inquiry scheduled February 2017. If the objections are withdrawn the CPO will be confirmed in March 2017, if objections are not withdrawn and it is not possible to acquire land through negotiation there will be a delay to the programme, it is anticipated that following an Inquiry a CPO would be confirmed June 2017.

- 4.6 In October 2016 Cabinet were asked to approve changes in the LEP LGF1 funding arrangements to ensure delivery of the Scheme as programmed over 2016/17 and 2017/18. £3.5 million of the £6.72 million LGF1 funding will be drawn down and is intended to be spent in 2016/17. LGF1 funding is subject to claw back and should the scheme fail to progress or fail to deliver the expected outcomes, (which include delivery of a new jobs target - expected to be delivered by the development of the adjacent Derby Triangle site), the Council could be asked to return some or all of the grant with interest added. At the point at which LGF1 monies are committed by the Council the balance of scheme funding will not be secure.
- 4.7 A further bid for funding was made in March 2016 to the Growth Housing Fund (GHF) administered by Highways England (HE). The GHF is intended to support road schemes that can be completed by 2021 that unlock housing and mixed use development sites and are on or near the Strategic Road Network.
- 4.8 Following discussions with the developers of the Derby Triangle site Highways England have progressed the Scheme to full assessment for £2,600,000 funding through the Growth Housing Fund. A decision on this funding is expected early 2017.

#### 4.9 **Programme**

To ensure that the Scheme remains on track and to ensure access to D2N2 LEP LGF1, the initial £3.5 million LGF1 funding needs to be spent in 2016/17 and the remaining £3.22 million spent in 2017/18. The main construction works have been programmed to start by June 2017, in order to meet this start date advanced works will need to commence February 2017. To achieve this it is expected that orders will need to be placed early January 2017. The decision to place orders for advance works is regarded as a key check point for the project.

- 4.10 Procurement of the advanced works, acquisition of land and the purchase of materials can commence with the costs being met from the £3.5 million LGF1 grant funding. Commitment to these costs now will entail risk. The remaining funding for the project will not be confirmed prior to this initial expenditure being made. If the scheme does not ultimately progress, the Council could be subject to clawback of these monies.
- 4.11 Commitment to the full scheme costs will be effectively made on appointment of the main contractor. The appointment can only be made when the full costs associated with the contract is guaranteed. As each source of funding is approved the risk to the scheme is reduced. The key check point to allow for the appointment of the main contractor is the award of LFG1 funding. It is anticipated that LGF1 funding will be confirmed by June 2017, by which time confirmation on Growth Housing Funding and a funding commitment from the developer should also be confirmed (subject to the issues with this funding set out in this report). After these funding sources have been approved some but not all risks to the project will be removed. Even if these funding elements are in place, an element of corporate borrowing will be necessary to facilitate contract payments under the main works contract.

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| <b>OTHER OPTIONS CONSIDERED</b> |
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- 5.1 A detailed study of all the highway solutions to existing problems and issues is set out in detail in the Options Appraisal Report.
- 5.2 A further alternative option would be to not progress the A52 Wyvern Transport Improvement scheme. However, this would not address the road injury collision risks, congestion and delays which affect road users on this strategic route into the city. It would have severe implications for the robustness of the core strategy and the city's ability to support future economic growth. Failure to progress the project would also create challenges for D2N2 and would undermine the city's reputation for successful project delivery potentially placing future funding requests at risk.

**This report has been approved by the following officers:**

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| <b>Legal officer</b><br><b>Financial officer</b><br><b>Human Resources officer</b><br><b>Estates/Property officer</b><br><b>Service Director(s)</b><br><b>Other(s)</b> | Emily Feenan, Principal Lawyer<br>Amanda Fletcher, Head of Finance, Communities and Place<br><br>David Buckland<br>David Gartside, Director of Strategic Partnerships, Planning and Transportation                           |
| <b>For more information contact:</b><br><br><b>Background papers:</b><br><br><b>List of appendices:</b>  | Tara McKenna 01332 641755 tara.mckenna@derby.gov.uk<br><br>Cabinet Reports: November 2015, Compulsory Purchase; July 2016, Revised scheme costs; October 2016, D2N2 LGF funding arrangement<br><br>Appendix 1 – Implications |

## IMPLICATIONS

### Financial and Value for Money

- 1.1 The report requests approval to progress with the scheme prior to all funding sources being formally secured. This presents a significant financial risk to the Council as external funding may not materialise as expected or within the required timescales.

The majority of anticipated funding is dependent upon achieving certain outcomes and is interlinked with each other. So if one funding stream is not secured it is likely to impact on receiving other elements of the funding profile.

Mitigation of these risks will be achieved by making cost savings where possible and the scope of the project will be reviewed if all the funding is not secured.

As the grants and external funding are formally approved, it is intended to update the capital programme to reflect the funding profile.

- 1.2 The main works are programmed for 18 months on site starting by June 2017. Without the advanced works and land purchase in place Stage 2 LEP funding cannot be secured, this will in turn delay the start of the main works. The impacts of the delay on site could require working over the 2018/19 winter period; this will reduce efficiency and will increase scheme costs.
- 1.3 The timing of the release of funding associated with the S278 developer agreement has not yet been determined and the Council may be required to fund highway works ahead of any payment.

### Legal

- 2.1 The risks of proceeding with the Scheme, without having secured the full funding required are set out in the Report.
- 2.2 Legal Services (with support from external advisers where required) are engaged in Project delivery, advising on State Aid and procurement implications arising, the terms of works contracts and planning implications.
- 2.3 Section 278 Highways Act 1980 provides that a highway authority may, if they are satisfied it will be of benefit to the public, enter into an agreement with any person for the execution by the authority of any works which the authority are or may be authorised to execute, or for the execution by the authority of such works incorporating particular modifications additions or features or at a particular time or in a particular manner on terms that that person pays the whole or such part of the costs of the works as may be specified in or determined in accordance with the agreement.

## **Personnel**

- 3.1 A Project Board and Project Team have been set up to manage delivery of the A52 project.

## **IT**

- 4.1 None arising from this report.

## **Equalities Impact**

- 5.1 The major scheme business case required to bid for LGF1 funding administered by D2N2 LEP requires a detailed appraisal for social distributional impacts of the Scheme.

## **Health and Safety**

- 6.1 The major scheme business case required to bid for LGF1 funding administered by D2N2 LEP will require detailed appraisal of environmental and safety impacts.

## **Environmental Sustainability**

- 7.1 An Environmental Statement was submitted and considered during the planning process.

## **Property and Asset Management**

- 8.1 The scheme requires the acquisition of third party land and temporary access arrangements for the construction works to be undertaken.

## **Risk Management and Safeguarding**

- 9.1 Commencing the £14,906,000 Scheme in advance of confirmation of the funding package is a significant risk to the Council. Effort will be made to save on this cost estimate and there may be some potential to make some small scale reductions in the scope of the project should funding not be confirmed. The specific funding risks are:
- D2N2 LEP LGF1 funding – failure to comply with LEP funding commitments could place LGF funding at risk and result in the project not being taken forward.
  - Developer contribution – there is a risk the development will not go ahead.
  - If the full development does not go ahead and outputs are not achieved there is a risk the LEP will clawback LGF1 funding.
  - Highways England Growth Housing Fund – this funding is dependent on detailed assessment – there is a risk the scheme will not get full approval.

## **Corporate objectives and priorities for change**

10.1 Derby City Council 'A Different Council' Our Council Plan 2016-2019. The Scheme supports the vision that Derby is a place where jobs and businesses are growing and we have the infrastructure to create a city for the future. It also supports the priority outcome:

- Improving housing, supporting job creation and regeneration.