

Derby Street Lighting PFI: Approval of Final Business Case and Commercial and Financial Close

SUMMARY

- 1.1 Arrangements for the negotiation of and signing the Project Agreement, (PA), between the Council and Connect Roads Derby Limited (Balfour Beatty) are now approaching a conclusion.
- 1.2 At the time of preparing this report, it is anticipated that signing of the PA will take place on Wednesday 4 April 2007. Any changes to those arrangements will be reported to Cabinet at its meeting.
- 1.3 There is a comparatively small number of issues which will need to be resolved with Balfour Beatty to the Council's satisfaction before the PA is finally signed. Where appropriate, these are referred to in the report.
- 1.4 Subject to any issues raised at the meeting, I support the following recommendation.

RECOMMENDATION

- 2.1 That, subject to satisfactory resolution of any outstanding issues referred to in the report of the officers, two of the authorised signatories of the Council, after consultation with the Corporate Director of Resources or the Assistant Director – Corporate Finance over the final proposed cost, be authorised to sign the Project Agreement between Derby City Council and Connect Roads Derby Limited relating to the Council's Street Lighting Private Finance Initiative Project, and such other documents as listed below:
 - Project Agreement
 - Senior Lender's Direct Agreement
 - Sub-Contractor Direct Agreement
 - Independent Certifiers Appointment
 - Admission Agreement.

- 2.2 That the following documents be signed on behalf of the Council by either the Council's Corporate Director of Resources or the Assistant Director – Corporate Finance:
- Local Government (Contracts) Act 1997 Certificate in respect of the Project Agreement
 - Local Government (Contracts) Act 1997 Certificate in respect of the Funder's Direct Agreement.
- 2.3 That in addition to the above, those same signatories be authorised to sign on behalf of the Council such other documents and take any other action as may be necessary to give effect to the Project.
- 2.4 That the appropriate officers be authorised to resolve any outstanding issues referred to in the report of the officers, in order that those issues can be incorporated within the Project Agreement as necessary without a requirement to submit a further report to Council Cabinet.
- 2.5 That should those issues not be resolved to the satisfaction of officers acting on behalf of the Council, arrangements for signing the Project Agreement should not be concluded, and that a further report be presented to Council Cabinet at the earliest possible meeting.
- 2.6 That further reports on the implementation and progress of the Project, as undertaken by Connect Roads Derby Limited in conjunction with the Council, be submitted to future meetings of Council Cabinet.
- 2.7 That to enable the negotiations to be concluded, authority is sought to agree the Contract with the base annual Unitary Charge within the affordability envelope as discussed in confidential section, variable upwards only by the items noted in the confidential section of the report, and to delegate authority for approval to the Corporate Director of Resources or the Assistant Director – Corporate Finance.

REASON FOR RECOMMENDATION

- 3.1 Everything possible should be done to minimize the risk of delays in signing of the PA, in order to contain the Council's costs and help to ensure implementation of the Project in accordance with the Project Plan and Timetable.
- 3.2 The nature of this Project means that sustaining progress with implementation could be dependent upon seasonal and associated weather conditions. Any delays at this stage could therefore be compounded and extended in subsequent stages of the Project, thereby delaying the benefits to the residents of the City.



DERBY CITY COUNCIL

**COUNCIL CABINET
20 MARCH 2007**

Report of the Corporate Director – Resources and the Corporate
Director for Regeneration and Community

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and Commercial and Financial Close**

SUPPORTING INFORMATION

- 1.1 At the Cabinet Meeting on 14 March 2006, approval was given to the selection of Balfour Beatty as Preferred Bidder for the Street Lighting PFI Contract.
- 1.2 The scheme is designed to install over 27,000 new columns, illuminated traffic signs and bollards during the first five years of the project, and to install a further 3,600 new columns during the remaining years of the contract.
- 1.3 The new lighting is to be designed in accordance with current European Standards and will be predominantly white light, with high pressure sodium lighting being used only on major traffic routes.
- 1.4 The scheme is designed to maintain the lighting equipment for the 25 year contract period, and for all equipment to have a minimum of 5 years life at the end of the contract.
- 1.5 By means of contractual method statements, the service provider is required to work with the Council in providing a good customer service standard, assistance in Best Value reviews and improvement to performance indicators.
- 1.6 Programming of the works will be undertaken by agreement with the Council, to ensure that works are fully coordinated between different departments of the Authority. The Council will only have a limited influence on the programming of the works, and the Contractor will prioritise the column replacement programme to take into account:
 - a. areas where the existing columns are structurally deficient and in danger of collapse
 - b. areas which have a high incidence of night time crime and fear of crime
 - c. areas with a high night time road traffic accident record
 - d. areas which are making an independent contribution to the funding of the PFI.

- 1.7 The area, which has been selected to be the first area to be relit, is the Derwent New Deal area, and this is likely to be followed by areas with a large proportion of properties managed by Derby Homes. The draft programme of works for the first 6 months is attached as Appendix 2 to this report, and the detailed programme for the first 12 months will be the subject of a further Cabinet report. There will be a full consultation and communication exercise with residents, members and stakeholders for the proposals during the design period and the contractor will be available to respond to any queries concerning the lighting design solution. As the design is being carried out to the new European Standards, the scope for moving columns is very limited, and it may not be possible to accommodate requests from residents to move columns to an alternative location.
- 1.8 The Council will retain an in house monitoring team, whose primary function will be to coordinate all the proposed works with the proposed development work being undertaken by the City Council. All proposed development schemes which have a lighting element must be reported to the Council's monitoring team at an early stage in the process, to ensure that there is full compatibility with the PFI programme. It is proposed that the monitoring team will also have a customer liaison function and will provide the first point of contact between residents, the Council and the contractor.
- 1.9 Due to affordability constraints, it has not been possible to provide additional lighting in areas that are currently unlit. Any additional lighting required in these areas will have to be funded outside of the PFI. This funding will not only need to include the capital cost of additional columns, but will also need to identify revenue funding for future maintenance liabilities and energy usage for the period of the PFI contract.
- 1.10 Attachments to columns will be permitted under the PFI, however the size and number of attachments will be strictly limited. Permitted attachments will include such items as road signs, litter bins etc. Any existing attachment will automatically be replaced, but any new attachment will only be permitted with the approval of the contractor. This approval will not be withheld unreasonably, but no attachment will be permitted without the agreement of the contractor. Any attachment that is erected without permission will be removed, and any damage caused to the column will be recharged to the offending party.
- 1.11 Arrangements are being put in place to ensure that attachments for advertising and WiFi are accommodated within the contract.
- 1.12 Energy costs are an important element of the PFI and all new equipment will be the most energy efficient available to minimize the impact of rises in energy costs. Additionally, the contractor has produced a profile of energy consumption over the 25 year period, and the contractor will be responsible for any energy consumption over the agreed energy profile. The cost of energy remains the responsibility of the City Council.
- 1.13 Discussions are ongoing with Balfour Beatty to ensure a smooth transition of the customer contact from Balfour into Derby Direct once the migration of Streetcare services into Derby Direct has been completed.

OTHER OPTIONS CONSIDERED

2. To defer seeking Cabinet approval to sign the Project Agreement until all outstanding issues are fully resolved.

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Background papers: None
List of appendices: Appendix 1 – Implications
Appendix 2 – Draft programme of works Milestone 1

IMPLICATIONS

Financial

1. The Financial implications are included within the Private section of the confidential report which includes commercial data for the Project.

Legal

- 2.1 The Council is entering into the contract under powers contained in sections 2 – 5 Local Government Act 2000, Section 111 Local Government Act 1972, the Local Authorities (Contracting Out of Highway Functions) Order 1999 (made under the Deregulation and Contracting Out Act 1994) and section 97 Highways Act 1980.
- 2.2 The Council will be required to issue certificates to the contractor and its funder under the Local Government (Contracts) Act 1997 as to the powers relied upon by the Council. These certificates provide protection to the contractor and the funder in the event of a successful challenge that the Council has acted beyond its legal powers. The Council will be required to compensate the parties in accordance with the contractual provisions should such a situation arise. Regulations under the Act require the certificate to be signed by a Chief Officer or Deputy Chief Officer and copies must be served on the Council's Monitoring Officer and external auditors. It is intended that these certificates will be signed by the Corporate Director of Resources.
- 2.3 The procurement has been carried out in accordance with EU procurement requirements.
- 2.4 As part of the Private Finance Initiative the procurement and contract documentation is subject to extensive guidance from and the requirements of central government. The contract documentation has been based on model documentation issued by government and any derogations from the model form will require approval. Experienced external legal advisers have been retained throughout the procurement process to act for the Council on the preparation and negotiation of the formal contract.

Personnel

- 3.1 A PFI procurement means the transfer of staff to the private sector, under TUPE arrangements. The staff affected by the transfer have been consulted during the process and their pension rights have been safeguarded by the Council's insistence on the Preferred Bidder getting Admitted Body Status to the LGPS

- 3.2 The number of posts scheduled to transfer under TUPE is 13, comprising 12 at Stores Road, and one from the client based in Regeneration and Community. Of the 12 designated posts at Stores Road, one is currently vacant and there are no plans to fill it.

Equalities impact

- 4.1 The impact of the Project should benefit those living in areas being improved both in terms of the degree of lighting and the effect on crime levels.

Corporate Priorities

5. The Project will help to support the Quality of Life in Derby's neighbourhoods and also help to deliver excellent services, performance and value for money.

Appendix 2

Draft programme of works - Milestone 1 (December 2007)

In developing the first year CIP programme the stock is prioritised for first replacement in the following order:

1. areas where the existing columns are structurally deficient and in danger of collapse
2. areas which have a high incidence of night time crime and fear of crime
3. areas with a high night time road traffic accident record.
4. areas which are making an independent contribution to the funding of the PFI.

Street Name	Area
Ashover Road	Allestree
Dawsmere Close	Breadsall Hilltop
Athlone Close	Breadsall Hilltop
Attlebridge Close	Breadsall Hilltop
Chatteris Drive	Breadsall Hilltop
Cheveley Court	Breadsall Hilltop
F/P Link Fincham Close, Seascale Close & Chatteris Drive	Breadsall Hilltop
Fincham Close	Breadsall Hilltop
Keyhaven Close	Breadsall Hilltop
Lathbury Close	Breadsall Hilltop
Mansfield Road	Breadsall Hilltop
Old Mansfield Road	Breadsall Hilltop
Perth Street	Breadsall Hilltop
Ramsdean Close	Breadsall Hilltop
St Andrews View	Breadsall Hilltop
Stowmarket Drive	Breadsall Hilltop
Walsham Court	Breadsall Hilltop
Woodhurst Close	Breadsall Hilltop
Yarwell Close	Breadsall Hilltop
Buckingham Avenue	Chaddesden
Cumberland Avenue	Chaddesden
Hampshire Road	Chaddesden
Hillcrest Road	Chaddesden
Kinross Avenue	Chaddesden
Mayfield Road	Chaddesden
Northwood Avenue	Chaddesden
Shetland Close	Chaddesden
Stirling Close	Chaddesden
Westmorland Close	Chaddesden
Ashover Road	Chaddesden
Anglesey Street	Chaddesden
Atlow Road	Chaddesden

Bangor Street	Chaddesden
Beaufort Street	Chaddesden
Berkshire Street	Chaddesden
Berwick Avenue	Chaddesden
Bute Walk Footpath	Chaddesden
Canterbury Street	Chaddesden
Cardigan Street	Chaddesden
Clinton Street	Chaddesden
Cornwall Road	Chaddesden
Cowsley Road	Chaddesden
Cut Lane F/P	Chaddesden
Denbigh Street	Chaddesden
Devon Close	Chaddesden
Dorset Street	Chaddesden
Durham Avenue	Chaddesden
Essex Street	Chaddesden
Francis Street	Chaddesden
Grandstand Road	Chaddesden
Hereford Road	Chaddesden
Hollington Close	Chaddesden
Huntingdon Green	Chaddesden
Kent Street	Chaddesden
Kerry Street	Chaddesden
Lanark Street	Chaddesden
Lindsey Close	Chaddesden
Lothian Place	Chaddesden
Madison Avenue	Chaddesden
Max Road	Chaddesden
Monmouth Street	Chaddesden
Moray Walk Footpath	Chaddesden
Nairn Avenue	Chaddesden
Norwich Street	Chaddesden
Pembroke Street	Chaddesden
Peterborough Street	Chaddesden
Radnor Street	Chaddesden
Renfrew Street	Chaddesden
Ringwood Close	Chaddesden
Ripon Crescent	Chaddesden
Roe Farm Lane	Chaddesden
Roxburgh Avenue	Chaddesden
Selkirk Street	Chaddesden
Shropshire Avenue	Chaddesden
Somerset Street	Chaddesden
St Mark's Road	Chaddesden
Suffolk Avenue	Chaddesden
Sussex Circus	Chaddesden
Tewkesbury Crescent	Chaddesden
Truro Crescent	Chaddesden

Walpole Street	Chaddesden
Wiltshire Road	Chaddesden
Winchester Crescent	Chaddesden
Worcester Crescent	Chaddesden
Mansfield Road	Derby North