

CITY COUNCIL - 13 JULY 2009

REPORT OF THE PORTFOLIO HOLDER FOR TRANSPORT AND AREA WORKING

NOTTINGHAM EXPRESS TRANSIT (NET) PHASE TWO

1 SUMMARY

- 1.1 Government decisions are expected very shortly regarding approvals to proceed to the procurement stage of the NET Phase Two project. These approvals are dependent on confirmation that the local funding contribution can be met and all the necessary legal powers will be available to secure delivery of the project.
- 1.2 There has been recent speculation in the media that the new County Council administration may withdraw support. This creates a risk to the project and, in order to provide reassurance to Government, it is necessary for the City Council to confirm it is prepared to proceed alone.
- 1.3 The report seeks approval for this and to authorise the Corporate Director for Environment & Regeneration to take all necessary and appropriate actions to enable the procurement to proceed.

2 RECOMMENDATIONS

- 2.1 It is recommended that Council:-
 - (1) note with regret the possibility of the County Council withdrawing from the project but agree to seek to continue the successful working partnerships with the County on this and many other transport and other projects and strategies important to the city area and region;
 - (2) note that the affordability of the scheme is dependant upon the existing annual general fund revenue commitment of £1m + 4% per annum over the life of the project, which is currently built into the existing Medium Term Financial Plan.

- (3) in the event of the County Council withdrawing from the project:-
- (a) approve the additional local funding commitment for the project, should the County Council determine not to provide its contribution and subject to all necessary Government approvals;
 - (b) approve the continued funding of scheme development costs, noting that they can be contained within existing allocations and external income as set out in the exempt appendix;
 - (c) approve the amended Council contribution, arising from the anticipated withdrawal of County Council funding, required to meet the local funding contribution towards overall scheme costs (inclusive of optimism bias contingency), summarised in the exempt appendix;
- (4) authorise the Corporate Director of Environment and Regeneration, in consultation with the Portfolio Holder for Transport and Area Working, to take all necessary and appropriate actions to protect the City Council's position and enable the procurement to proceed.

3 REASONS FOR RECOMMENDATIONS (INCLUDING OUTCOMES OF CONSULTATION)

- 3.1 From the outset, the NET project has been a joint promotion by the City Council and Nottinghamshire County Council. However, recent media reports indicate that the County Council may withdraw its support for the NET Phase Two project.
- 3.2 The Promoters' Joint Agreements, which govern the responsibilities of the two councils in relation to the development of the NET system provide for the possibility of withdrawal by one of the councils but includes a requirement to work co-operatively together to deal with such severance with the intention that the remaining council is able to continue with the project. If detailed negotiations on the transfer of outstanding matters prove substantially more difficult than anticipated, this may take a number of months to achieve. If this occurs, the proposed commencement of procurement post award of Conditional Approval will be delayed until the issue is resolved so that bidders do

not suffer from any uncertainty. The financial impact of such project delay is set out in the business case and falls within the proposed overall budget ceiling.

- 3.3 Discussions are continuing with the County Council to seek a resolution to the situation. However, if an agreement can not be achieved, it will be necessary for the City to commit to proceed alone if the necessary confirmation is to be given to Government that the project remains affordable and deliverable. Without this, it is likely that final government approvals will not be given, procurement cannot start and project benefits would not be realised.
- 3.4 The Outline Business Case for NET Phase Two has been submitted to the Secretary of State for approval (“Conditional Approval”) for the project to proceed to procurement. In addition to Department for Transport approval, the project must pass consideration of deliverability by HM Treasury Project Review Group (PRG). The current intention is that NET will be considered by PRG on 21 July. It is essential, prior to that date, that the City Council is able to confirm to Government that the City is prepared to proceed as sole promoter, if necessary, and meet the full local funding requirement.
- 3.5 If, in the event of the County discontinuing its support, the scheme did not proceed, the City and County Councils would have incurred abortive costs totalling around £32m. Should the City Council decide to fund the entire local contribution, it would need to find an additional £2m per annum over the life of the NET Phase Two concession. It is anticipated that this could be financed by the City Council from its current projected funding sources, which overall, during the life of the NET Phase Two concession includes a contingency amount. Subject to the caution expressed in the Financial Implications below, this affordability includes agreed commitments for the Nottingham station Hub and continued support for the Link bus network, but not its expansion, for which other funding will be sought.

4 OTHER OPTIONS CONSIDERED IN MAKING RECOMMENDATIONS

- 4.1 The continuation of the successful partnership arrangement with the County Council remains the preferred option and every effort will be made to achieve this.
- 4.2 In the meantime, the project’s continued progress requires the adoption of an option that enables the City Council to proceed as the

sole promoter.

5 **BACKGROUND**

- 5.1 The concept of a light rail network in the Greater Nottingham conurbation has been a fundamental element of the development strategy in South Nottinghamshire for 20 years. Building on the success of Line One, routes to Clifton via Wilford and Chilwell via the QMC and Beeston (Phase Two) have been identified which will offer a step change in the public transport provision in the congested and well populated south-west and western part of the Greater Nottingham conurbation. The routes have been developed following extensive public consultation and technical development work carried out over a number of years.
- 5.2 The alternatives, options, benefits and impacts of the NET Phase Two scheme have been subject to very extensive public consultation and were debated at length at the Transport and Works Act Order (TWAO) Public Inquiry in November/December 2007. The Inspector's Report and response of the Secretary of State concluded that "***a compelling need for the scheme in the public interest***" had been established. The Public Inquiry Inspector concluded, and the Secretary of State agreed, that "***bus-based options would not provide the benefits of NET Phase Two***". The Inspector acknowledged that the scheme would inevitably have some negative impacts on those living and working in the areas affected by it and on some ecologically sensitive sites but he considered that the comprehensive range of mitigation measures proposed reduced those impacts to an acceptable minimum. The Inspector concluded and the Secretary of State is satisfied "***that the residual adverse impacts of the scheme are substantially outweighed by the public benefits it would bring***".
- 5.3 The TWAO was made by the Secretary of State in May 2009 and provides for both or either one of the two councils to activate its provisions.

- 5.4 The Inquiry Inspector accepted that the scheme would bring very clear regeneration benefits. Major economic regeneration initiatives such as the Southside Regeneration area, NG2 and Medipark are strongly linked with NET Phase Two and would provide highly skilled jobs. Potential new development in Beeston Town Centre and other areas along the proposed NET Phase Two routes will also benefit from the scheme. The project is also closely aligned with the Nottingham Station Hub and A453 improvement projects. The new lines also provide opportunity for sustainable development in the south of the area to meet the Regional Spatial Strategy requirements.
- 5.5 In the current financial climate NET Phase Two will play a major part in providing confidence to take Nottingham through the current difficulties and provide for a stronger and even more vibrant and sustainable future. The Centre for Economic and Business Research, in evidence to the TWAO Inquiry, has estimated that NET Phase Two could generate up to 10,000 jobs in Greater Nottingham. Delay now would create market uncertainty, reduce investment confidence and extend the impacts of blight.
- 5.6 The excellent record of partnership working between the two councils is backed by legal agreements (the Promoters' Joint Agreements) which deal with operational arrangements in respect of Line One, governance issues, funding shares, and joint promotion of Phase Two. The most recent agreement (dated June 2008) provides for the possibility of withdrawal by one of the councils but includes a requirement to work co-operatively together to deal with such severance with the intention that the remaining council is able to continue with the project. Before either one of the councils withdraws its support it would be necessary to terminate the agreement, in accordance with the provisions set out in that agreement. Following termination, the withdrawing council is obliged under that agreement to cooperate to bring about the timely transfer of all matters to the remaining council in order to enable that council to proceed alone.
- 5.7 NET Phase Two will be a Private Finance Initiative (PFI) concession arrangement to be funded 75% by central Government and 25% by local contributions. The City and County Councils had agreed that the development costs not funded from grant, etc, will be shared 65:35 but the ongoing contributions during the life of the concession (i.e. up to 2030) will be shared 80:20. The intention is that the majority of the City Council's share of the balance of the availability payments over and above the combined PFI grants will be funded from the Workplace Parking Levy (WPL).

6 FINANCIAL IMPLICATIONS (INCLUDING VALUE FOR MONEY)

- 6.1 The City Council's contribution to NET Phase Two, Nottingham Hub and ongoing funding for the Link bus network are intended to be financed from a combination of income raised by the Workplace Parking Levy and an existing revenue commitment of £1m (raising by 4% per annum) contained within the existing Medium Term Financial Plan. The withdrawal of County Council funding will require an additional allocation of WPL funding to NET Phase Two of £49m (in cash terms) over the life of the concession. This has the potential impact of reducing the opportunity to expand the Council's Link Bus network, although sufficient funding will remain to maintain the existing or a modified network. The City Council's share of the proposed Nottingham Hub scheme will remain fully funded. Should NET Phase Two not go ahead, then the WPL will not be introduced and there will be no ongoing funding available for the Link bus network.
- 6.2 The impact of the City Council becoming the sole promoter for NET Phase Two is that a significantly higher proportion of the WPL income will be needed to fund the Council's contribution. Given that this is the first levy of its kind in this country, there is a degree of uncertainty over the amount of income it will raise. Any impact will continue to be forecast and analysed up to and beyond its introduction. The Council will continue with its previously successful attempts to secure further external funding to mitigate this contribution.
- 6.3 Although the City Council will have to bear the County Council's future contributions to development costs, these can be absorbed through the City Council retaining all external grant support claimable at future project milestones, and from existing NET reserves.
- 6.4 A delay to the procurement of NET Phase Two would have cashflow implications. A re-structuring of borrowing and the use of prudential borrowing for ongoing development costs may be necessary to ensure that annual cashflow is managed within existing earmarked reserves.
- 6.5 Further financial information is provided in the appendix, which is exempt from publication due to the commercial sensitivity of the information contained within it.

7 RISK MANAGEMENT ISSUES (INCLUDING LEGAL IMPLICATIONS, CRIME AND DISORDER ACT IMPLICATIONS AND EQUALITY AND DIVERSITY IMPLICATIONS)

- 7.1 The risks attached to the potential withdrawal of County Council support for the scheme are described in the report.
- 7.2 The commentary and recommendations in this report are consistent with a legal analysis of the respective positions of the Councils.

8 LIST OF BACKGROUND PAPERS OTHER THAN PUBLISHED WORKS OR THOSE DISCLOSING CONFIDENTIAL OR EXEMPT INFORMATION

- 8.1 Centre for Economic and Business Research report: Transport and Works Act Order Inquiry documents NET.P4/A and NET.P4/E.
- 8.2 Promoters Joint Agreements dated 31 March 2000 and 9 June 2008.

9 PUBLISHED DOCUMENTS REFERRED TO IN COMPILING THIS REPORT

- 9.1 Transport and Works Act Order Inspector's report on The Nottingham Express Transit System Order: Report to the Secretary of State for Transport and the Secretary of State for Communities and Local Government (Robert M Barker, 2008).

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