

# Nottingham City Council Delegated Decision



**Nottingham**  
**City Council**

Reference Number:	3963
Author:	Peter Wells
Department:	Commercial and Operations
Contact:	Peter Wells (Job Title: Infrastructure Asset Manager, Email: peter.wells@nottinghamcity.gov.uk, Phone: 01158761351)
Subject:	Additional funding for highway maintenance
Key Decision (decision valued at more than £1million):	Yes
Key Decision (decision affects 2 or more wards):	Yes
Total Value:	1,817,000 (Type: Capital)
Decision Being Taken:	<ol style="list-style-type: none"><li>1. To accept additional £1,817 million grant in capital funding from the Department for Transport (DfT) via the Transport Infrastructure Investment Fund.</li><li>2. To allocate funding to the programme as detailed in the decision.</li><li>3. To dispense with Contract Procedure Rules 4.1.2, in accordance with Financial Regulations (3.29, Operational Issues), to directly award the contract to Thomas Bow for the reasons detailed in the Reasons and Circumstances section of this decision.</li></ol>

**Reasons for the Decision(s)**

The reason for this decision is to note receipt of and approve the allocation of the additional capital funding towards the Council's 2020/21 Highways Maintenance Programme.

In May 2020 the Department for Transport (DfT), announced £1.7 billion funding to Combined Authorities and Local Highway Authorities through the newly created Transport Infrastructure Investment Fund.

The £1.7 billion is not all new funding but sets out all of elements of DfT funding. The funding for Nottingham can be found by visiting the webpage below

[www.gov.uk/government/publications/roads-funding-information-pack/roads-funding-information-pack#east-midlands](http://www.gov.uk/government/publications/roads-funding-information-pack/roads-funding-information-pack#east-midlands)

The additional Pothole and Challenge Fund allocation of £1.817 million does not form part of previous decision, therefore it requires approval to accept and allocate the funding in accordance with the grant conditions.

Funding is required to be spent by the end of the 2020/21 financial year (by 31st March 2021).

The funding will be used to repair surface deterioration and potholes on the highway network, in line with funding requirements and the proposed Highway Maintenance Programme. This will be split will be as follows;

Small scale patching - £617,000

Large scale patching - £600,000

Planned resurfacing works - £600,000

Total - 1,817,000

The works identified are in line with the criteria in which the funding has been awarded.

Reporting regarding how the funds are allocated and used will be placed online on the following page:

[www.nottinghamcity.gov.uk/improvinghighways](http://www.nottinghamcity.gov.uk/improvinghighways)

In addition to the above and for operational reasons Highway Services seek a dispensation to award the planned resurfacing works (£600,000) to Thomas Bow.

Highway Services have in place a number of Framework Agreements but it is considered most appropriate for operational reasons to make a direct award.

Using an NEC 3 target cost approach, will enable Highway Services to ensure value for money in the coordination and planning of these essential highway works which will be delivered in a single programme or package of works.

**By engaging Thomas Bow in a Target Cost Contract, Highway Services would ensure value for money as detailed below;**

**A target cost contract is a type of cost reimbursable contract under which the contractor is paid the 'actual cost' (usually defined in the particular contract) it incurs in carrying out the works, but subject to a target cost which is agreed by the parties at the beginning of the project.**

**By producing a bill of quantities, before engaging the contractor we can ensure that the target cost is realistic**

**Target cost allows for a pain and gain approach which can be shared with the contractor**

**Open book costing will ensure that the engineer/contract manager can assess the costs and ensure that only works carried out are invoiced for**

**By working with one contractor for all of these works will ensure**

**Continued quality of works, and materials used**

**Value for money by including all works, rather than individual**

**Better working relationships**

**Ensuring and monitoring of social value opportunities**

**In response to COVID-19 and the deferral of highway maintenance works for significant period this year, it is imperative that these works are delivered within the current financial year. The proposed delivery method outlined above will achieve this outcome.**

**Thomas Bow have previously been engaged on delivering highway surfacing works and are in a unique position to deliver this programme as both a local Contractor and an NCC wholly owned Company.**

<b>Other Options Considered:</b>	<b>Option 1 - do not accept the award. This was rejected as it would result in the Council missing out on the additional funding to address highway maintenance works.</b>
<b>Background Papers:</b>	<b>None</b>
<b>Published Works:</b>	<b>None</b>
<b>Affected Wards:</b>	<b>Citywide</b>
<b>Colleague / Councillor Interests:</b>	<b>None</b>
<b>Dispensation from Financial Regulations:</b>	<b>Yes</b>
<b>Consultations:</b>	<b>Those not consulted are not directly affected by the decision.</b>
<b>Crime and Disorder Implications:</b>	<b>None</b>
<b>Equality:</b>	<b>EIA not required. Reasons: EIA not required. Reasons: This decision does not relate to a new or changing policy, service or function. It is for additional funding for an existing service.</b>
<b>Social Value Considerations:</b>	<b>Social value forms part of the Invitation to Tender for Nottingham and Derby Highway Framework. Social value is given a weighting in our quality assessment scoring process, which was used as part of the selection process for the contract award. Existing Frameworks are used to support the delivery of our highway maintenance programmes. In addition, we support the work being undertaken by the Employer Hub by levying a retrospective rebate on all contracts awarded by Nottingham City Council. This will take the form of a 1% rebate on the value of invoices raised during a calendar quarter, to be paid quarterly in arrears.</b>
<b>Decision Type:</b>	<b>Leader's Key Decision</b>
<b>Subject to Call In:</b>	<b>Yes</b>
<b>Call In Expiry date:</b>	<b>01/09/2020</b>

**Advice Sought:**

**Legal, Finance, Procurement**

**Legal Advice:**

There are no legal concerns arising with regard to the acceptance of the DfT grant. The Council will be required to use and be accountable for the funding in accordance with any grant terms.

A dispensation may be awarded for operational reasons under Financial Regulation 3.29 and those reasons have been set out in the report. The proposed award is below the OJEU threshold for works and therefore there are no significant legal issues arising regarding the award from a procurement law perspective for this proposal. A formal contract must be put in place to ensure appropriate monitoring of the performance of the contractor.

Advice provided by Naomi Vass (Senior Solicitor) on 24/07/2020.

**Finance Advice:**

The Council has been awarded £1.817m DfT Capital Grant; Pothole & Challenge Fund and the decision seeks to accept and spend this grant. This aligns with the Highways 20/21 business plan.

The Highways & Infrastructure service will need to put in place robust financial & performance monitoring arrangements to ensure compliance of grant conditions to minimise grant clawback, particularly around meeting tight timescales of the grant award and potential slippage due to COVID19.

The Council's capital programme will need to be updated to reflect the increase in grant funding and associated expenditure.

Dispensation to Contract Procedure rule 4.1.2 under Financial Regulation 3.29; Operational Issues is supported as per the reasons stated by the author. Advice provided by Tania Clayton Perez 29/07/2020.

**Procurement Advice:**

There are no direct procurement issues with this decision, as the value of the works falls below the OJEU threshold, and so a dispensation to Contract Procedure Rule 4.1.2 under Finance Procedure Rule 3.29 on operational grounds allows for a direct award to be made. However, care must be taken to ensure that the aggregated value of work awarded to Thomas Bow does not breach the threshold and put the Council at risk of challenge under the Public Contracts Regulations. Advice provided by Jonathan Whitmarsh (Lead Procurement Officer) on 09/07/2020.

**Signatures:**

**David Mellen (Leader/ PH Regeneration, Schools, Communications)**

**SIGNED and Dated: 21/08/2020**

**Katherine Kerswell (Interim Chief Executive)**

**SIGNED and Dated: 19/08/2020**

**Laura Pattman (Strategic Director of Finance) - Dispensation from Financial Regulations**

**SIGNED and Dated: 19/08/2020**

**Chief Finance Officer's Comments:**