

## Executive Board – 16 July 2024

<b>Subject:</b>	Transfer of Section 106 funds for the extension of Bus Service 50
<b>Corporate Director(s)/Director(s):</b>	Sajeeda Rose, Corporate Director of Growth and City Development
<b>Executive Member(s):</b>	Cllr Neghat Khan Executive Member for Strategic Regeneration, Transport and Communications.
<b>Report author and contact details:</b>	Mark Garlick <a href="mailto:mark.garlick@nottinghamcity.gov.uk">mark.garlick@nottinghamcity.gov.uk</a> ; 0115 876 4675
<b>Other colleagues who have provided input:</b>	
<b>Subject to call-in:</b>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<b>Key Decision:</b>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<b>Criteria for Key Decision:</b>	
(a) <input checked="" type="checkbox"/> Expenditure <input type="checkbox"/> Income <input type="checkbox"/> Savings of £750,000 or more taking account of the overall impact of the decision	
<b>and/or</b>	
(b) Significant impact on communities living or working in two or more wards in the City <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
<b>Type of expenditure:</b> <input checked="" type="checkbox"/> Revenue <input type="checkbox"/> Capital If Capital, provide the date considered by Capital Board Date:	
<b>Total value of the decision:</b> £835,415.53	
<b>Section 151 Officer expenditure approval</b> Has the spend been approved by the Section 151 Officer? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/a Spend Control Board approval reference number: <b>3485</b>	
<b>Commissioner Consideration</b> Has this report been shared with the Commissioners' Office? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Any comments the Commissioners wish to provide are listed below.	
<b>Wards affected:</b> Dales (part of the route is operating outside the City boundary and into Gedling Borough)	
<b>Date of consultation with Portfolio Holder(s): 14 June 2024</b>	
<b>Relevant Council Plan Key Outcome:</b>	
Clean, Green and Connected Communities	<input checked="" type="checkbox"/>
Keeping Nottingham Working	<input type="checkbox"/>
Carbon Neutral by 2028	<input checked="" type="checkbox"/>
Safer Nottingham	<input type="checkbox"/>
Child-Friendly Nottingham	<input type="checkbox"/>
Living Well in Our Communities	<input type="checkbox"/>
Keeping Nottingham Moving	<input checked="" type="checkbox"/>
Improve the City Centre	<input type="checkbox"/>
Better Housing	<input type="checkbox"/>
Serving People Well	<input type="checkbox"/>
<b>Summary of issues (including benefits to citizens/service users):</b>	
<b>Proposal</b>	
The proposal is to use Section 106 funds from a housing developer to provide a public transport route extension to NCT service 50 into the Teal Close development for up to four years, to enable public transport connectivity into the development. Robin Hood Cards will also	

be provided to 180 households under the s106 Agreement. These measures will enable sustainable travel habits to be developed and will support the Council's CN28 objectives.

Since there is no inherent likelihood of potential market entry by another operator for such a small and specific route extension, the passing on of the funding to NCT would not constitute a 'subsidy' for the purposes of the Subsidy Control Act 2022, and a compliant direct award can be made to NCT to operate the service under a 'de minimis' subsidy agreement.

## **Background**

Bus service 50 operates from the City Centre to Victoria Retail Park, via Daleside Road, Racecourse Park and Ride site, and the Colwick Industrial Estate.

The Council has received funding (£680,000 (plus indexation of £122,044.48) to support the extension of bus service 50 into the Teal Close development ("the Site") at Netherfield within Gedling Borough, as part of a Section 106 (Town and Country Planning Act 1990) Agreement with the developer of the Site, Persimmon Homes Limited (dated 30.06.2014). Spend of the funding will allow the existing service, which operates from the City Centre to Victoria Retail Park via Daleside Road, to serve the Site. The development is for up to 830 residential properties to be built.

Further funding of £30,000 (plus indexation of £3,371.05) also secured under the Section 106 Agreement will be spent by the Council as administrators of the multi-operator Robin Hood Card ticketing scheme to provide up to 180 Robin Hood Card passes to households within the development, each of up to 3 month duration.

The new service and Robin Hood Cards will encourage the early adoption of public transport modes over the private car for journeys into and out of Nottingham city centre.

The extension of service 50 is expected to commence with the completion of highway infrastructure within the development.

At the end of the four-year funding period it is expected that sufficient additional passenger numbers will be generated from the new housing development to ensure the commercial viability of the service going forward. At that point there should be no need to rely on further support for the service.

## **Funding of the current service**

The Monday to Saturday daytime service is operated commercially by Nottingham City Transport Ltd, with a direct award of up to £90,914 covering the period September 2023 to September 2025 (£45,457 per annum) to maintain daytime frequencies on the service, as part of the post covid bus service support.

The evening and Sunday services are operated by Nottingham City Transport Ltd under contract to the Council using funding from the Bus Service Improvement Plan. This contract is separate to the commercial (Monday to Saturday daytime) operation. It has been procured in line with Public Contract Regulations 2015 (PCR ). The contract expires on 30 November 2025 but can be extended up to 30 November 2027 without the need to re-tender. The cost of this contract is £84,916 per year or up to £339,664 over four years.

## **The Decision to be being taken:**

To authorise the spend of funding of up to £680,000 (plus indexation of £122,044.48) on the above contracts held with Nottingham City Transport Ltd to fund the service extension of service 50 into the Site.

Subject to continued compliance with the 'de minimis' rules the funding would be paid as four annual instalments, with the first made at the time that the highway infrastructure becomes available to the bus service for use, and on the anniversary of that date for three further years afterwards:

**Table 1**

Year	1 (2024)	2 (2025)	3 (2026)	4 (2027)	TOTAL
Payment (up to)	£200,511.48	£200,511.00	£200,511.00	£200,511.00	£802,044.48

The actual amount of the funding transferred will be based on the net cost of operating the service, which will need to be demonstrated by Nottingham City Transport Ltd, and may be less than the levels indicated in the table.

Any underspent money would need to be returned to the Developer, unless the Developer gave consent to this being retained by the operator(s) to further enhance the service.

**Does this report contain any information that is exempt from publication?**

**No**

**Recommendation(s):**

**1** Subject to compliance with the Service Subsidy Agreements (Tendering) (England) Regulations 2002 (as amended) (known as the 'de-minimis' rules), to agree the spend of up to £201,511.48 per year over four years, secured under and in accordance with the section 106 Agreement with Persimmon Homes dated 30.06.2014.

**2** To delegate authority to the Corporate Director for Growth and City Development to:

(i) directly award (subject to appropriate Contract Procedure Rule exemptions) and enter into a contract/s service subsidy agreement/s with Nottingham City Transport for the extension of the Monday to Saturday daytime commercial bus service route 50 to serve the Teal Close Development, of up to four years duration;

(ii) modify /extend existing tendered contracts with Nottingham City Transport in compliance with regulation 72 of the PCR 2015 for the extension of the existing evening and Sunday service, to serve the Teal Close Development of up to four years duration; and

(iii) apportion the section 106 funding proportionally, over the duration of the above contracts terms, in the amounts set out at Table 1.

(iv) spend up to £30,000 (plus indexation of £3,371.05) and issue up to 180 Robin Hood Card passes each of up to 3 month duration for households within the development.

**3** To note section 151 Officer spend approval has been obtained ( ref: 3485) and appropriate exemptions from the Council's Contract Procedure Rules to facilitate the direct

award of a contract/s to Nottingham City Transport Ltd under the Service Subsidy Agreements (Tendering) (England) Regulations 2002 (as amended) will be required.

## 1. **Reasons for recommendations**

1.1 To spend the available funding with Nottingham City Transport Ltd for the commercial service (Monday to Saturday before 19:00 hours) and for the contract bus service (evenings and Sundays), to allow the extension of bus service 50 into the Teal Close residential development at all times and days of operation, and to provide up to 180 Robin Hood Card passes to households. These measures will encourage increased use of public transport and thereby help ensure the sustainability of the development.

## 2. **Background (including outcomes of consultation)**

2.1 The bus service to be extended is Service 50, provided by Nottingham City Transport Ltd. In the short term a commercial bus operator would not see enough passenger demand to justify an extension into the Teal Close development. This funding will ensure that a service is provided and will provide a sustainable mode choice for residents before travel demands are formed.

2.2 The financial assistance being provided does not comprise a subsidy. There is no likelihood of any distortion of the market i.e. no genuine likelihood of any other provider bidding to operate this short extension of the route. This would involve the provision of a separate service, and the duplication of vehicle and driver resources at full cost, rather than as an add-on to what is there already.

2.3 There is inherently no genuine/ or more than hypothetical evidence or likelihood of potential market entry by another operator for such a small and specific route extension, the award of the agreement/ passing on of the funding would not constitute a 'subsidy' for the purposes of the Subsidy Control Act 2022 and therefore not require compliance with a subsidy control regime principles assessment.

2.4 The daytime service (Monday to Saturday before 19:00 hours) is operated commercially, with the evening and Sunday service provided as a tendered service under contract from the Council. The commercial journeys account for 78% of the departures on the service. This element is supported, at present, with £45,000 per year in funding for the post-Covid recovery period only. This is a 'de minimis payment' and brings the commercial element of the service up to break-even level, and does not fund any profit or indirect costs. Without this payment, Nottingham City Transport Ltd are very likely to reduce frequencies or withdraw the service and it would have to be put out to tender. This would be likely to lead to a higher price overall than the current arrangements.

2.5 The tendered evening and Sunday service commenced in December 2023 and is under contract with Nottingham City Transport Ltd until November 2025 (and can be extended on a 2+1+1 basis until November 2027) using funding from the Bus Service Improvement Plan.

2.6 The Section 106 funding will provide support for the extension of the bus service 50 into the Teal Close development at Netherfield. The site is within Gedling Borough but the funding has been provided to Nottingham City

Council as part of a Section 106 (Town and Country Planning Act 1990) Agreement with the developer of the site, Persimmon Homes Limited, to support bus services between the site and the centre of Nottingham and points along the route.

- 2.7 At the time the Section 106 agreement was first discussed, in 2014, the Victoria Park area of Netherfield was served by a Nottingham City Council bus service. This was replaced by the commercial bus route in September 2019, and therefore the funding has to be spent with Nottingham City Transport Ltd in line with the updated section 106 Agreement.

### **The 'de minimis' method of payment:**

- 2.8 This funding will be paid to Nottingham City Transport Ltd on 'de minimis' principles. The provisions in these regulations are commonly known as the 'de minimis' rules/exemptions, under which local transport authorities are in some cases excepted from the requirements to let bus support contracts through competitive tender.
- 2.9 The 1985 Transport Act (as amended by the 2000 Transport Act) introduced the provisions which govern the duties of local passenger transport authorities to secure local bus services where these would not otherwise be met. In the majority of cases these services have to be secured through competitive tender.
- 2.10 Local transport authorities with a forecast expenditure on bus service subsidies in any one year of £600,000 or more are permitted to spend up to 25% of this on 'de minimis' contracts; within this 25% there is no limit on the expenditure in any one year that may be incurred on an individual 'de minimis' contract or the amount of 'de minimis' contract expenditure in any year with a single operator. The maximum length of a 'de minimis' contract is five years, like that of a tendered contract.
- 2.11 Based on 2024/25 spend levels, the Council will be within the 'de minimis' thresholds outlined in the paragraph above. However, responsibility for procuring public transport services is expected to transfer to the East Midlands Combined County Authority (EMCCA) at some point during a transition phase up to March 2026. This may affect the Council's ability to meet its 'de-minimis' thresholds and so it will need to ensure future arrangements for paying the grant are legally compliant, as outlined in paragraph 7.6 below (legal colleague comments).

### **3. Other options considered in making recommendations**

- 3.1 To not accept the money from the developer, and not allow funding for the bus service. However, this would mean new residents would not have access to a public transport service, increasing the likelihood of travel habits which are not sustainable.

### **4. Consideration of Risk**

- 4.1 There is a risk that the Council does not comply with the terms of the Agreement made with the developer for the use of the funding. The Council

will ensure that it complies with the terms set out, and where appropriate, it will pass obligations through to the provider (NCT) through a Services Agreement. Such obligations will include written confirmation that the Provider will use the contribution for extending service 50 and for no other purposes, and liability to repay any part of the funding (including interest) which has not been spent or committed within five years of its receipt (by 17<sup>th</sup> June 2027).

4.2 There is an expectation that budgets for public transport services will transfer to EMCCA during a transition period (1<sup>st</sup> April 2024 – 31<sup>st</sup> March 2026), which could mean the Council no longer satisfied the thresholds required for payments to be made under the 'de minimis support agreement. The Council will need to ensure it is legally compliant following any change (see section 7 below), by considering alternative contractual arrangements in conjunction with the EMCCA and developer.

**5. Best Value Considerations, including consideration of Make or Buy where appropriate**

5.1 Building a short extension onto the existing commercial service is considered to be the most efficient method of provision, with no duplication. The commercial service currently provides 78% of all journeys on the service and the extension of the route from Victoria Park into Teal Close will account for only 16% of the overall route mileage.

5.2 To tender separately for the additional service, rather than extend the existing provision on Nottingham City Transport Service 50. This would lead to a duplication of provision, at significant additional costs.

**6. Commissioner Comments**

The Commissioners are content with this report.

**7. Finance colleague comments (including implications and value for money/VAT)**

7.1 The decision to use Section 106 funding (£680,000 + £122,044.48 indexation) to support the extension of Bus service 50 into the Teal Close development is supported.

7.2 The timeframe for the extension of bus service 50 is yet to be confirmed as the highway requires to be adapted for bus use.

7.3 The funding would be transferred to Nottingham City Transport Ltd in 4 yearly instalments once satisfactory adaptation has taken place.

7.4 The full amount of S106 contribution owed to the Council was received on 17<sup>h</sup> June 2022 as follows:

<b>Contribution</b>	<b>Agreed</b>	<b>Index</b>	<b>Total</b>
Service 50 Contribution	680,000.00	122,044.48	802,044.48
Travel Pass Contribution	30,000.00	3,371.05	33,371.05
<b>TOTAL</b>	<b>710,000</b>	<b>125,415.53</b>	<b>835,415.53</b>

7.5 **Schedule 12** of the Variation Agreement contains the covenants that the City Council has made with the developer and the Borough Council. Essentially, they commit the City Council as follows:

- To pay the Service 50 Contribution to the Provider towards the provision of the Service 50 Extension;
- That we must first receive written confirmation from the Provider to use the contribution for this purpose and for no other purposes;
- That we must provide this written confirmation to the developer or the Borough Council on request (no more than one request in any six month period);
- If any part of the contribution has not been expended or committed for expenditure within 5 years of the date of receipt, then if requested by the party having made the payment, we must pay that amount back together with interest.

7.6 On approval, the Council will need to secure the written confirmation from the Provider as set out in Schedule 12, after which the Council may make arrangements to pay over the Service 50 contribution to the Provider.

7.7 In addition to the above, a further £33,371.05 (£30,000 plus indexation) was received on the same date. This is to be used to provide up to 180 Robin Hood Scheme passes to households within the development to encourage adoption of the new bus route, and aligns with the clean city objective. The use of these monies will be monitored by Public Transport staff, within Nottingham City Council to ensure no overspend. This will be reflected in the budget and forecast for the service area, and updated on relevant documents such as the grant register, also liaising with Finance who hold the S106 funds until spend is made to ensure transfer of funds are made to the Service. The conditions for the Travel Pass Contribution are as follows:

- To use the Travel Pass Contribution towards the provision of free access to public transport for residential occupiers of the Development (according to the detailed rules set out in the schedule);
- If any part of the contribution has not been expended or committed for expenditure within 5 years of the date of receipt, then if requested by the party having made the payment, we must pay that amount back together with interest;
- That we must provide evidence of the expenditure to the developer on request (no more than one request in any six month period).

Advice provided by Paul Rogers, Finance Business Partner (G&CD) 29/02/2024 and by Sarah Baker, Senior Commercial Business Partner (G&CD) 11/04/24

## 8 **Legal colleague comments**

8.1 Under section 63 of the Transport Act 1985, as amended by the Transport Act 2000, English local authorities outside London have a duty to provide subsidised bus services where there are no commercial services and where they think it appropriate. A bus subsidy contract is a contract for a public passenger transport service as defined in section 63 (10) of the 1985 Transport Act.

- 8.2 Services are tendered and let to commercial operators in return for payment from the council. The powers of local authorities to subsidise public passenger transport services are subject to the detailed tendering provisions laid down in sections 88-92 of the 1985 Act, and in the Service Subsidy Agreements (Tendering) (England) Regulations 2002 (SI 2002/2090), as amended. Section 89 of the Transport Act 1985 requires the Council to seek competitive tenders before entering into agreements to make payments for local bus services.
- 8.3 Under the Service Subsidy Agreements (Tendering) (England) Regulations 2002 (as amended) various agreements that provide for the payment of service subsidies as part of the provision of a local service are excluded from the tendering through competition requirements of section 89(1) of the Transport Act 1985. These are known as 'De-minimis' subsidy agreements.
- 8.4 Without de minimis, the requirements of the tendering process are in some circumstances either disproportionate to the outcome or an inappropriate way of achieving a practicable result. The authority is required (Transport Act 2000) to select the tender "solely by reference to what in their view is the most effective and economic application of the funds at their disposal for the payment of service subsidies" – i.e. best value taking into account, for example, quality and network benefits in the policy and budgetary context. The Transport Act 2000, which replaces the 1985 Act requirement not to inhibit competition, states that the authority must "have regard to the interests of the public and of persons providing public passenger transport services in their area." In other words, the Authority must consider the operators as well as the public in order to take full advantage of the market for the supply of bus services.
- 8.5 Nottingham City Council is understood to be a Local Authority with forecast expenditure on bus service subsidies in 2024/2025 of £600,000 or more and will be able to spend up to 25% of this on de minimis contracts (Regulation 3A); within this 25% there is no limit on the expenditure in any one year that may be incurred on an individual 'de minimis contract' or the amount of de minimis contract expenditure in any year with any single operator.
- 8.6 It should be noted that the regulation provides a definition of forecast expenditure - 'the amount that an authority expects to spend on service subsidies in a financial year'. In determining what their forecast expenditure is for the coming year, the Council will need to consider the amount they expect to spend on bus subsidy contracts rather than the source of these funds. Longstanding guidance on the de-minimis regime advises to ensure the forecast expenditure is verifiable by a suitably qualified individual in the Council. This will ensure the forecast expenditure is reliable and give assurance to bus operators and third parties that any contract is not unlawful and will act to minimise the risk of challenge. "For any service subsidy agreements that remain in force for more than 12 months, the amount of subsidies payable in any one year under the agreement in future years cannot exceed 25% of the forecast expenditure, current at the time the agreement was made". It should be noted that due to the uncertainty over Council's the control of the public transport budget, and the likely transfer to the EMCCA this would mean that other than in 2024/25 the Council may be unable to comply with the expectation in the regulation on forecast expenditure for the period 2025-2028. In those circumstances, the Council should not risk



committing to a contract length extending beyond 2024/25 initially. Thereafter, if a transfer of budgetary responsibility occurs, the Council will need to consider other contractual arrangement under which assurance of continuing compliance with the 'de-minimis' regime can be given to ensure the lawfulness of the future payments. A contractual warranty provided EMCCA would likely be required.

- 8.7 Bus Service Route 50 is operated commercially by Nottingham City Transport Ltd (NCT) as the bus service provider/operator at present during the daytime (Monday to Saturday before 19:00 hours), alongside an additional tendered contract for evenings (Mon- Sat after 19:00 and Sundays). The route does not currently extend into the Teal Close estate. The proposed service would change because of the extension into the Teal Close estate, as it would rectify a gap in public transport service provision for the development in question. Subject to the above 'de-minimis' thresholds being complied with, a service subsidy contract/s or agreement/s could be awarded for the short Teal Close route extension on the basis of the justification in the report for the proposed term, as a full, tender would not achieve a practical result and represents an effective and economical use of funding. This would in effect comprises a direct award to Nottingham City Transport as the current provider of this route. This would also be permissible under the Council's own Contract Procedure Rules (Article 18. 94 and Art 18 Appendix A exemption procedure) subject to the necessary exemption from usual procurement procedure form being approved.
- 8.8 The existing tendered contract (for the Mon- Sat evening and Sundays Service), can be extended as already provided for in the contract and service specification procurements documents, up to Nov 2027. An extension of the route is also possible as this is also provided for in the contractual procurement documents. The extension must be dealt with/ carried out in accordance with the clause 36 contract variation procedure. As a Public Service Contract procured in accordance with the Public Contract Regulations 2015, any modification may be made lawfully without a new procurement procedure (reg 72 (1)(a) ) "where the modifications, irrespective of their monetary value, have been provided for in the initial procurement documents ( i.e. the contract) in clear and precise and unequivocal review clauses, which may include price revision clauses or options, provided that such clauses (i) state the scope and nature of possible modifications or options as well as the conditions under which they may be used, and (ii) do not provide for modifications or options that would alter the overall nature of the contract or framework agreement."
- 8.9 By apportioning funding arising from the s106 agreement, subject to compliance with the relevant thresholds and grounds specified above, the City Council would be able to subsidise the extension of the Route 50 bus service to fill the gap in provision, without tendering separately for the contract on the proposed extension to route 50 into the Teal Close Estate The regulations also now require the maximum length of any de minimis contract to be 5 years. The proposed contract and subsidy agreements are understood to be within this parameter.
- 8.10 The subsidy in this instance is to be funded through developer contribution (planning obligations), secured under a s106 Planning Agreement (as varied under s 106 A of the Town and Country Planning Act 1990 (as amended) when the City Council entered into a Deed of Variation on the 8 June 2022

("the s106 Agreement"). The contributions were deemed to be necessary to make the development acceptable in planning terms; directly relate to the development; and are fairly and reasonably related in scale and kind to the development under the provisions of section 122 of the CIL regulations 2010, as a condition of the award of planning permission. The s106 Agreement included a number of obligations, the contributions relevant to this report are the "Service 50 Contribution" and the "Robin Hood Card Contribution". The developer was required to pay the "Service 50 Contribution" to the City Council in 4 instalments (3 instalments of £170,000 plus indexation as set out in the s106 Agreement within 10 days of the 22 June 2022, and a final instalment of £170,000 plus indexation as set out in the s106 Agreement payable prior to occupation of any dwelling on the Teal Close site after 31 March 2022).

- 8.11 The agreement initially requires payment by the Developer of the Service 50 Contribution (plus indexation) to the Council as Local Planning Authority, but these must then be paid by the City Council to the bus service provider/s towards the extension of the Route 50 Bus Service to serve the Teal Close development (subject to being otherwise lawful). Details of the compliant route are outlined above.
- 8.12 The s106 Agreement also required the developer to pay £30,000 plus indexation towards free access to public transport for residents of the development, namely that the City Council will provide on demand and on the production of necessary proof of eligibility as set out in the s106 Agreement, Robin Hood Travel Cards valid for 3 months duration, to up to 180 eligible residents ("Robin Hood Card Contribution"), and it is noted that £30,000 plus indexation of £3,371.05 was received by the City Council on 17 June 2022.
- 8.13 The City Council received all 3 instalments of the Service 50 Contribution, namely £170,000 plus indexation of £122,044.48 on 17 June 2022, making a total Service 50 Contribution of £802,044.48 received. It is understood that none of the Service 50 Contribution or the Robin Hood Card Contribution has, prior to this report, been expended or committed for expenditure and is therefore available for allocation.
- 8.14 The City Council is liable to repay any part of the Service 50 Contribution and or the Robin Hood Card Contribution which has not been expended or committed for expenditure within 5 years of the date of receipt, together with interest to the date of the refund. Any unspent or uncommitted part(s) of the Service 50 Contribution and or Robin Hood Card Contribution which have not been expended or committed for expenditure by 17 June 2027 could therefore be clawed back from the Local Authority (with interest). In the circumstances, similar obligations in relation to the Service 50 Contribution should be passed/ flow through to the Provider (NCT) under the subsidy service agreement, to ensure NCT uses the contributions for the intended purposes.
- 8.15 Given the detailed information provided as to the extension of the route confirming there is inherently no genuine/ or more than hypothetical evidence or likelihood of potential market entry by another operator for such a small and specific route extension, the award of the agreement/ passing on of the funding would not constitute a 'subsidy' for the purposes of the Subsidy Control Act 2022 and therefore not require compliance with a subsidy control regime principles assessment.

- 8.16 It is understood the service subsidy agreements of this nature are drafted for the service by external legal advisers due to their complexity.

Richard Bines, Solicitor - Contracts and Commercial Team – Legal Services  
28.03.2024

Tamazin Wilson, Senior Solicitor – Planning and Environment Team – Legal Services (re s106 Contribution) 19.04.24

## 9 Procurement comments

- 9.1 Procurement supports this request to use Section 106 Agreement funding of up to £680,000 (+ £122,044.48 indexation) to support the extension of Route 50 bus into Teal Close by way of varying the existing contract in place with Nottingham City Transport (CPU 6013) under 'de minimis' rules and by way of Regulation 72(1)(a) of the Public Contract Regulations 2015 as the Route 50 extension into Teal Close was already provided for in the tender specification and contract therefore, a tender process is not necessary.
- 9.2 This proves to be the most economical and effective option as the requirements of the tendering process are an inappropriate way of achieving a practicable result due to lack of competition.
- 9.3 This would also be permissible under the Council's own Contract Procedure Rules (Article 18. 94 and Art 18 Appendix A exemption procedure) subject to the necessary exemption from usual procurement procedure form being approved.
- 9.4 Procurement also supports the Section 106 Agreement funding of £30,000 (plus indexation) towards Robin Hood Card passes for up to a period of three months to encourage early adoption of public transport modes into Nottingham city centre.

Advice provided by Louise Dobson, Lead Procurement Officer

## 10 Crime and Disorder Implications (If Applicable)

- 10.1 There are no significant crime and disorder implications. The extended bus route into the Teal Close development will allow people to board and leave the service closer to their homes, including in the evenings.

## 11 Social value considerations (If Applicable)

- 11.1 In the absence of the s106 funding, the bus service would continue to terminate at Victoria Park Way and not continue into the Teal Close development. The service would be provided only between Nottingham city centre and Victoria Park Way.
- 11.2 This would mean a longer walk to the service from the development and would limit its growth as a service for the area.
- 11.3 The extended service will operate within 400m of more new residential properties. This will encourage sustainable travel as an option from the outset. The service will give frequent access to the city centre, Victoria Retail Park, Waterside and jobs and other facilities on the route. Interchange will also be available with other public

transport services and this will be further facilitated by the use of Robin Hood Cards by the residents of the development. In the central area, Service 50 follows a full circular route around the East Side, Victoria Centre, Old Market Square and Broad Marsh (close to Nottingham Railway Station).

**12 Regard to the NHS Constitution (If Applicable)**

12.1 None

**13 Equality Impact Assessment (EIA)**

13.1 Has the equality impact of the proposals in this report been assessed?

No   
An EIA is not required because this is an improvement to the existing bus service 50, due to its extension, with no detrimental effects on existing users. Some users will benefit from this provision.

Yes

**14 Data Protection Impact Assessment (DPIA)**

14.1 Has the data protection impact of the proposals in this report been assessed?

No   
A DPIA is not required because there is no personal data collection involved.

Yes

**15 Carbon Impact Assessment (CIA)**

15.1 Has the carbon impact of the proposals in this report been assessed?

No   
A CIA is not required because this is covered by Executive Board, 18 October 2022, Greater Nottingham Bus Service Improvement Plan and Programme 2022/23 – 2024/25. The service will have a positive impact on the Council's Carbon aim to become Carbon Neutral as the service will be operated solely by electric buses.

Yes

**16 List of background papers relied upon in writing this report (not including published documents or confidential or exempt information)**

16.1 Deed of Variation to S106 agreement dated 8 June 2022, in connection with an Agreement and Planning Obligation dated 30 June 2014 made under Section 106 of the Town and Country Planning Act 1990 (as amended) and relating to land at Teal Close, Netherfield in the County of Nottinghamshire. Planning Application Reference: 2020/0189 (Gedling Borough Council)

**17 Published documents referred to in this report**

17.1 None