
PEDESTRIAN HEART - BUDGET

**Responsible Cabinet Member(s) – Councillor John Williams, Leader, and
Councillor David Lyonette, Regeneration and Planning Portfolio
Responsible Officers - Ada Burns, Chief Executive and John Buxton, Director of
Development and Environment**

Purpose

1. To seek approval for further funding for the Pedestrian Heart scheme, including a contingency provision to cover future risks.

Summary

2. The Pedestrian Heart scheme will enhance the town centre and enable it to compete more effectively with other leading shopping centres in the area.
3. The scheme is uniquely complex because of the need to strike a realistic balance between cost effective delivery and the needs of businesses, public transport operators and users and pedestrians. The discovery of the gas main on the High Row added significant additional complexities to the project. Nevertheless Members are now able to see the new town centre unfold as sections are completed and the planned date for total completion is Summer 2007, with rapid progress visible at the present time.
4. Notwithstanding the good progress being made on site, the Chief Executive and Director of Corporate Services were alerted to more fundamental weaknesses in the financial and operational management of the scheme in the late spring. An independent review was commissioned from Clarus Consulting, and the findings of this review, together with the results of detailed financial appraisals, have informed the contents of this report.
5. Members are being asked to agree the release of an additional £578,000 (7.3% of the approved budget for the project) to fund confirmed cost increases that will occur over the remaining life of the project.
6. In addition it is requested that a contingency sum of £750,000 is earmarked to cover future risk. Given the complexity of this project, this sum represents a prudent approach to financial control. It has been arrived at after detailed scrutiny of the scope to omit elements or amend the detail of the scheme. The team managing the scheme will focus on managing risk to limit the utilisation of the earmarked sum.
7. The increased costs arise from three factors : the contractual arrangements for the main works and for project management, the complexity of the scheme, and the discovery of the gas main.

Background

The Main Pedestrian Heart Works

8. The Pedestrian Heart works impact on all of the primary shopping streets in the Town Centre, with the intention of making the Town Centre pedestrian friendly.
9. This is a high quality scheme, with extensive use of natural materials, substantial re-engineering and the introduction of a number of attractive features.
10. The scheme was originally costed at £6.952m. Over half of this sum is coming from the Government's Regional Development Agency, One North East. This reflects the regional significance that Darlington is seen to have in improving the prosperity of the North East. The original contribution from Darlington Borough Council was £3.415m, including Local Transport Plan funding.
11. At the commencement of the works the Council allocated an additional £300,000 to support a number of elements including traffic management and business liaison. This represented under 5% of the budgeted funding.
12. In January following the discovery of the gas main works in the core area were halted. A report to Council was expedited to agree additional funding to meet the anticipated costs of the diversion works and reprogramming. Council agreed in March to allocate an additional £640,000.

Contractual Arrangements - Main Contract

13. At the suggestion of the co-funders, One North East, and Gillespies, the main construction contract was let on the basis of a partnership agreement. This form of contract enables contractors to get involved at an earlier stage, bringing their skills to bear on the design, and seeks to incentivise all parties to keep costs down and work in partnership. Partnership contracts are now seen as best practice throughout the industry. The key area of change is in the assessment and payment of costs and forward looking to identify risks. A detailed explanation of how the NEC-ECC Option D Target Cost with Bill of Quantity Contract (the partnership agreement) works is attached at **Appendix 1**. The key elements for Members information are:-
 - (a) There is a target price for the contract based on priced Bills of Quantity but it is in essence a "cost plus" contract. The costs can only be varied from the priced Bills in a similar manner to earlier forms of contract.
 - (b) The contract can and will be varied during its life as with "traditional" contracts and the target cost changes with each agreed variation.
 - (c) There is an agreed percentage split between contractor and client in respect of any proposed savings to the target cost or any cost over runs that occur outside of the agreed variations.
14. Before the initiation of this scheme Darlington had very limited experience of such contracts. Whilst officers did not seek professional advice on the possible implications of the new form of contract beyond that provided by the external design consultants, training was provided by

an appropriately qualified and experienced individual. Their lack of experience led to some poor decision making by the project team. Members were not briefed that this represented a significant departure from previous contracting practice.

15. The split between client and contractor on this scheme (Birse) for savings and costs was set at 90% client and 10% contractor. It is recognised that a more appropriate split would have been 50/50 which has been applied subsequently to the contract for the Dolphin Centre refurbishment. Such a split gives the contractor far more incentive to become engaged in the contract and deliver cost savings and negate cost over runs.
16. The other key issue relating to the main contract is the financial management of risk. In a “traditional” contract more of the financial risk is transferred to the contractor who will either inflate the contract price, or make claims. In a partnership agreement with a 90/10 split the Council was clearly taking most of the risk. This being the case a substantial contingency provision should have been made at the outset. Given the complexity of the project an appropriate contingency could have mitigated the need to seek this additional funding. Members should have been made aware of this at the time of approving the scheme.

Contractual Arrangements-Design and Project Management

17. The Council appointed Gillespies as the lead for the project design team at a meeting of the Tender Panel on 16 September 2003. Gillespies are supported by Faber Maunsell (engineers), Kinslers (Quantity Surveyors) and Equation Lighting (street lighting and feature lighting). The appointment followed a full analysis of expertise and price of each of the tenderers on a “balanced scorecard” basis. Gillespies have substantial experience of town centre improvement projects.
18. Gillespies original appointment is based on the brief issued with the notice for Expressions of Interest and they were required to provide a complete urban design service. Development and Environment had a significant input to the design stage of the project and has the lead for the project on behalf of the Council
19. Gillespies were of the view that the project management for the construction contract would be best undertaken by a civil engineering firm but, in order to do so, additional fees were requested. Gillespies were reminded that their tender included the contract administration so no additional fees could be claimed.
20. Because of the disruption caused by the gas main diversion works it was only in May that Officers became aware that progress on site was below expectations. A meeting was held with the relevant Directors from Birse, and Partners from Gillespies to ascertain the causes of the delays and agree actions for improvement.
21. Notwithstanding some improvement in progress on site, it became apparent at this point that Birse were projecting a significant escalation in costs. An independent review was commissioned, to report to the Chief Executive, Director of Development and Environment and Director of Corporate Services. Specialists in project management Clarus Consulting reported at the end of June.
22. Gillespies accepted a change of contract project manager with Clarus Consulting being appointed to take their place with effect from the third week of August.

23. The project is being managed in accordance with the contract terms outlined at the tendering stage with Birse and Gillespies. There are, however, no signed contracts between the Council and either Gillespies or Birse, although this has not had any impact on the management of the project.

Project Complexity

24. In delivering the scheme the team have encountered a number of problems. Principal amongst these was the discovery of the gas main in January of this year and the subsequent needs and constraints that this placed on the programme. However there have been difficulties relating to the design and to the environment that are described in more detail below. The majority of the additional costs that are summarised at **Appendix 2** are attributed to those problems.
25. The current works are changing the number of levels along the High Row from three to two. The transition between the two levels is to be by a single flight of steps, disability compliant ramps being built into the steps, a water feature built into the steps and very large planters for trees, shrubs and bedding plants also built into the transition area between the two levels.
26. Tight tolerances have to be incorporated into the scheme as it was envisaged that several areas would be worked on simultaneously and all areas have ultimately to fit together. This is crucial when some areas are being progressed by constructing one half of the carriageway and a pavement then swapping to the second half and second pavement (Blackwellgate is an example). This has had to be done to maintain traffic routes for servicing businesses. In part of Northgate, where the local shops have agreed, the carriageway is being constructed in one phase and there is a total ban on traffic. The pavements will be constructed when the carriageway re-opens. This has been quicker and simpler to construct.
27. Not only do the levels change from High Row to West Row (west/east) but they also change north/south. The change in levels in two dimensions causes added complexity and the water feature requires even tighter tolerances as the water feature only has a maximum flow depth of 10 millimetres. The water feature will have a width of 30 metres and for the maximum flow to occur over the full width of seven steps it is clear that the steps must be perfectly level. This is not at all easy to achieve as the water feature is not independent but is an integral part of the new High Row steps. In addition the steps, water feature and planters all have built in feature lighting and it has proved to be more time consuming in setting out and constructing the extensive interconnected ducting required for cabling within these than originally estimated.
28. At the time of tendering, the works were considered to be primarily repaving, with the civil engineering works as being ancillary to achieving the new paving and features. Whilst the repaving is still the prime output for the contract, it is now recognised that the primary works are actually the civil engineering which are considerably more complex and time consuming than envisaged at the start of the works.
29. The contractor's early proposals for undertaking the works were acceptable and were based on the idea of a 'rolling train' of work in each of the main parts of the town centre. This has proved to not work as effectively as anticipated for much of the core works for a number of reasons:
- (a) Integrating the construction of large underground structures for the planters and water feature impacts on the paving and safety zone around the works;

- (b) The structures are more complex than had been originally estimated from the plans available at tender stage and Bills of Quantity and are taking significantly longer to construct;
- (c) There is a need to keep traffic routes open throughout almost all the core area for servicing and daytime bullion deliveries;
- (d) There has been a greater need to balance the requirements of the contractor for large continuous work areas with sustaining town centre shops and businesses while the works are undertaken;
- (e) There are a larger number of work areas than originally planned by the contractor.

Minimising the impact on business and bus operators

30. From the outset the programme has been designed and kept under constant review to examine ways in which people can continue to use the town centre for shopping, business and leisure. However undertaking work to meet the requirements of businesses and bus operators has meant that at times the programme has been delayed or required contractors to work at weekends, nights and Bank Holidays thus incurring extra costs.

Utilities and services

31. The service diversions for the utilities have been more extensive than envisaged at the time estimates were prepared and the costs have been greater than the provisional sum allowances contained within the Bills of Quantity.

32. The street lighting is being considerably improved. However there have been increased costs as a result of delays in finding enough space amongst all the underground services for the foundations for the columns and in the manufacture and supply of the lighting columns.

33. The overall increase related to the complexity of the design and delivery within a town centre environment is projected to be £250,635.

Darlington Borough Council Costs

34. Of necessity the Council has put more resources than planned into the project with a senior member of staff over-seeing the project, greater levels of engagement with businesses and the community at large. There was also an increased element of fees incurred on chronological lighting prior to the withdrawal from the scheme.

Gas Main Impact

35. The gas main re-programming has led to more work areas being open than is ideal and this has stretched the engineers and site staff of Birse as each work area has to be safe and supervised. Birse currently have twelve different work areas open.

36. The re-programming resulted in delays in getting detailed design information ready for the contractors. Detailed work on design had been programmed for the original sequence of work but with the changes brought by the gas main a new sequence was agreed and needed to be designed.

37. The additional cost attributable to the impact of the gas main is £260,400 over and above the sum agreed by Council in March.

Future Contingency

38. Taking into account the experience of the works to date a reassessment of the future risks has been undertaken. Risk is something that might happen in the future. In this form of contract the design team use their best endeavours to both mitigate risk and put a financial cost to the risks that they believe might occur. At this stage in the life of the project it is recommended that a contingency provision of £750,000 is made for the remaining life of the contract. A schedule of the risks identified is attached at **Appendix 3**.

Legal Issues

39. Members are aware of the considerable contractual/legal issues that were raised as part of the scrutiny committee review into the gas main issue and this continues to cast a shadow over the scheme as its full impact has emerged and we better understand the financial impact of the significant reprogramming that has resulted. The need to improve the project management of the scheme also has legal implications that need to be resolved and some of the additional cost pressures that are included in the additional £578,000 need to be reviewed to ascertain whether the liability rests with the Council or whether these costs sit with other parties under the contract. Such legal considerations are not straightforward and can take a significant amount of time and cost. In the first instance, this challenge is through appropriate management of the contract. If any dispute does arise with the parties the Borough Solicitor, together with officers associated with the scheme, will need to assess the cost/benefit of pursuing in the first instance arbitration, and as a last resort legal proceedings.

40. Although there are no signed contracts between the parties, this has not had any impact on the management of the project. The Council will continue to rely on the contract terms agreed at the tender stage to ensure that appropriate challenge is made to any cost increases. Draft contracts are currently with Birse and the Council for signature.

Financial Implications

41. Set out below is a summary of the overall financial implications of the scheme:-

	£
Original Scheme funding including fees	6,952,000
Additional funding approved	300,000
Funding of Gas Main	640,000
Total funding approved	7,892,000
	£
Projected outturn cost including fees	8,470,000
INCREASE IN THE PROJECTED OUT-TURN	578,000
- ADD earmarking a contingency for potential future risks	750,000

Additional detail of the additional costs is set out at **Appendix 2**.

42. The estimated additional resources needed to be either approved or earmarked for the scheme at £1.328m, is a significant sum in terms of the Council's available capital resources (£3.5m) over the next three years, and every effort will be made to limit the sums actually required to be spent. If this sum of money were needed in full this will considerably reduce Members' ability to fund new initiatives in future years. Members also need to be aware that the

available resources in future years are dependant on the sale of assets at an estimated value of £9.2m. Should the assets not realise the estimated value within the timescales planned the Council may need to utilise Prudential Borrowing to cover any shortfall in capital resources. Should Prudential Borrowing be needed this will increase revenue expenditure for approximately 25 years by £100,000 per £1m borrowed.

Conclusion

43. The Pedestrian Heart Scheme reflects the ambitions of the Council to maintain a competitive edge for Darlington's centre, working to ensure continued prosperity for the town and its population. The delivery of the scheme has proven extremely challenging and officers are asking for additional funding to cover known cost increases and a contingency for potential additional financial risks whilst at the same time looking to establish whether the Council is fully liable for the full financial implications as set out in the report.
44. There are clearly a number of important lessons to be drawn from the experience of managing a contract of this complexity and scale. Some of these have already been taken and are being implemented in relation to subsequent schemes such as the Dolphin Centre refurbishment. Funding has been agreed to strengthen the senior project management capacity and expertise within the Development and Environment department.
45. In relation to the scheme itself management has been strengthened with the appointment of a new firm to manage the contract. An Assistant Director from Community Services with substantial experience of capital project management is overseeing the work of Clarus Consulting and there are regular reports to the Director of Development and Environment, Chief Executive and Director of Corporate Services. Reporting to leading members with portfolio responsibilities for this scheme is also being improved.
46. To give further assurance the Chief Executive has instigated a comprehensive review of how capital projects are managed from inception to delivery. The review will pay particular attention to the Pedestrian Heart project in determining where and what action needs to be taken to ensure that the problems encountered on this scheme are not replicated in future capital programmes.
47. Given the range of matters impacting on the scheme and the importance of securing improved assurance going into the future, it is recommended that Resources Scrutiny Committee be asked to take the lead role in overseeing the review and improvement planning described above.
48. Resources Scrutiny led an effective investigation into the circumstances surrounding the discovery of the gas main and have already therefore developed an understanding of key elements of this project. It is therefore suggested that an investigation of the project and oversight of the broader capital project management review would be of assistance in delivering improved assurance in the future.
49. Recommendations
 - (a) That £586,000 be approved and released to fund the anticipated increase in the final out-turn cost of the Pedestrian Heart project.

- (b) That £750,000 be approved and released as a contingency against future risks of the Pedestrian Heart project.
- (c) That Resources Scrutiny Committee be asked to review the project to date, and to give oversight to a review of future capital project management.

Reasons

- 50. To ensure sufficient funding is in place to cover the anticipated out-turn cost of the project and provide a prudent level of contingency for future risks of the project.
- 51. To ensure that best practice is adopted in the management of the Council's capital projects.

John Buxton
Director of Development and Environment

Background Papers

Cabinet Reports 16th November 2004, 18th January 2005, 15th February 2005, 15th March 2005, 11th July 2006

Council Reports 10th March 2005, 23 March 2006