

---

**RELEASE OF FUNDING FOR THE  
DARLINGTON EASTERN TRANSPORT CORRIDOR**

---

**Responsible Cabinet Member - Councillor Nick Wallis, Highways and Transport Portfolio**

**Responsible Director - John Buxton, Director of Development and Environment**

---

**Purpose of Report**

1. To seek the release of funding for the construction of the Darlington Eastern Transport Corridor [DETC] as soon as the Department for Transport [DfT] upgrade the status of the scheme from Conditional to Full Approval.
2. To inform Members of the proposed construction timetable.
3. To seek approval to include the Highways Agency as Joint Client in the Works Contract.

**Information and Analysis**

4. As Members will be aware significant progress has been made on the delivery of the DETC. Briefly the scheme has planning approval, the required land has been obtained, the statutory procedures such as Compulsory Purchase Order, Side Roads Order, DEFRA Licence have been carried out along with the detailed design and Highway Agency approval for the works on the Trunk Road. The tender process is now underway and currently a number of contractors are tendering for the work for a projected start on site at the end of December 2006/beginning of January 2007. The precise start date cannot be finalised until a contractor has been appointed and a construction programme for the scheme agreed. It is also influenced by the financial approval processes that have to be carried out by DfT. However, the dates given above are considered to be realistic and achievable.
5. As present the DfT have conditionally approved the sum of £12.04m for the scheme. The projected cost of the scheme is likely to be £12.50m. The DfT have attached several conditions to the allocation, including that the Council makes a financial contribution and that the total scheme costs need to be confirmed by tender. These are normal DfT requirements.
6. Briefly the £12.50m is made up as follows:-

Client Costs (land, utilities, site investigation, materials, testing, landscaping)	<b>£m</b> £1.700
Design and Administration	£1.100
Construction Works	£9.050
Contract Management	£0.650
Total:	<u>£12.500</u>

These costs include risk assessment based allowances and contingencies.

7. Regarding the Council's contribution of £460k, this will be achieved by not claiming back some of the eligible capital funding already approved and spent in developing the scheme so far for items such as design/preparation fees and land acquisition. No additional Council funding is being requested by this report. Regarding the confirmation of the tender sum, this is a key step as far as DfT is concerned and is also something that is essential from the Council's point of view since the £12.04m is the upper limit on the DfT allocation and any additional funding above this would need to be provided, or otherwise secured, by the Council if full scheme approval was to be granted.
  
8. Because of the magnitude of the works the contract is being managed through the European Union (EU) procurement rules for public works. Furthermore, because the scheme includes works to the Trunk Road A66 for which the Highways Agency [HA] are the highway authority, the contract evaluation process is being carried out jointly with the HA. The contract for the works is the Engineering and Construction Contract (ECC), as published by the Institution of Civil Engineers, and tenders have been invited on the basis of both quality and target price using a two-envelope system. Briefly the quality envelopes will be opened first and assessed with the financial envelopes securely stored, unopened, until the quality assessments are completed. Each of the tenders that meet the quality requirements will have their financial submissions assessed. Those not meeting the quality requirements will have their financial submissions returned unopened. This procedure is used by the HA on a regular basis for contracts of this nature. A brief summary of the tender programme is set out below.

### **Summary of Tender Programme**

Tenders returned by	:	13 October 2006
Quality evaluation completed by	:	20 October 2006
Financial assessments completed by	:	3 November 2006
Tendering Panel approval by	:	7 November 2006
Full scheme approval submission by	:	8 November 2006
Full scheme approval by	:	5 December 2006

Award of Contract by : 6 December 2006

Signature of Contract by : Christmas 2006

9. Once the contract has been awarded the appointed contractor will need to mobilise resources ready to commence work on site. Payments under the Contract cannot be made until the Contract has been signed.
10. Whilst the management of the tender process is within the Council's control, the DfT release of funding is not. There are two main steps in the funding release, Government Office approval and the approval by the Minister and this is expected about four weeks from submission.
11. As mentioned earlier in the report, the DfT have attached a number of conditions to the approval of the scheme. The financial conditions have been outlined above and the others are set out below in summary form, with all of them either having been discharged or in the process of being discharged.
  - (a) That the full scheme be implemented in accordance with the proposals submitted for re-appraisal in 2005/06.
  - (b) That details are submitted of the tender exercise and any resulting changes to the proposed scheme.
  - (c) That confirmation of the key elements of the scheme are as stated in the re-appraisal.
  - (d) That a statement is submitted on our approach to monitoring and evaluation.
  - (e) That confirmation of total scheme costs is submitted, together with proof of funding including that the DfT contribution is no more than £12.04m.
  - (f) That Government Office for the North East (GONE) is kept informed of progress.
  - (g) That the evaluation material is made available to the DfT.
  - (h) That the scheme be promoted using Government approved branding for infrastructure schemes.

In addition to the above, the approval process requires that all of the Statutory Processes have been completed.

12. DfT have set out a scheme funding profile that includes the DETC scheme spending £6m in the current financial year. This profile was established more than a year ago by DfT when they were expected to give conditional approval. However this was not forthcoming until 12 May 2006 which delayed the start of the tender process and hence impacts on the scheme construction programme and the realistic available spend. However, in recognition of this DfT have advised that providing a substantial proportion of this financial year's allocation will be spent on the scheme, this condition can be considered as being discharged. It is anticipated that the spend in 2006/07 will be of the order of £3m taking into account construction costs, advance statutory utility payments, part recovery of Council costs and

fees to date for design and development of the scheme and land acquisition.

13. In order to expedite the construction of the works subject to full approval being granted by Ministers, Members are asked to release the sum of up to £12.04m allocated by DfT so that the Tendering Panel may award a contract to the successful tenderer, in accordance with Standing Orders. The development of the scheme to this stage has required the Council to commit £1.2m of its own capital funding. All of this excluding the £460k contribution mentioned in para 7 will be recovered from the £12.04m which is conditional on full approval being given to the scheme by Ministers. Whilst the Council will lead the management of the contract, since the funding will be awarded to Darlington Borough Council, the scheme does include works on the Highway Agency's road network (Trunk Road A66) and hence the contract will need to be awarded in association with the Highways Agency.
14. A joint client approach to the works contract is necessary in order to afford both highway authorities (the Council and the Highways Agency) the fullest liability protection from the contractor. This will be obtained by executing the contract under seal with both authorities as client. Linked with this approach is the Section 278 agreement and joint employer agreement currently being drafted.
15. A project manager for the contract is to be appointed who will have the qualifications and experience relevant for this post, in particular expertise in the project management of Engineering and Construction Contracts. The estimates for the contract management include for this appointment. There will be monthly review meetings between the project team and the client to cover all issues relevant to the project.
16. In compiling the conditional funding submission for the scheme to GONE allowances have been built into the various rates for risk and this will also be the case in the Full Scheme Approval Submission. This is to take account of possible post contract award cost increases. Furthermore, the contract will include a capping percentage figure which limits the Council's liability for finding extra costs over and above the awarded target cost for the works as follows:

Post contract award cost increase:	Funded by:
Up to +10%	Extra cost shared 50:50 between DBC and Contractor
Over +10%	Extra cost borne by Contractor

Any savings below the agreed target cost to be shared on a 50:50 basis with the Contractor. Delay damages are also included in the contract in order to help expedite the completion of the works to the agreed construction programme. A Risk Workshop will also be held upon the appointment of the Contractor.

17. In the event that full approval for the scheme is not forthcoming, for example if the scheme costs exceed the available resources despite 're-engineering' of the scheme and an agreed funding package with GONE cannot be negotiated, then the DBC funding of £1.2m already spent on the scheme could not be recouped. As mentioned previously, Ministers give final approval for the funding and if this approval takes longer than programmed, DfT have advised that they will re-profile the project funding.

## Outcome of Consultation

18. The DETC has been the subject of consultation in many forums, including the consultation process for both the first and second Local Transport Plans for Darlington. It has also been the subject of the processes for Planning, Compulsory Purchase and Side Roads Orders. The benefits to local people, in terms of economic prospects and environmental improvements, are widely recognised [as outlined in the second Local Transport Plan, the Council intends to 'lock in' the benefits to the DETC through environmental improvements on neighbouring roads, such as traffic calming at Haughton Green].

## Financial Implications

19. The total estimated cost of this scheme is £12.500m. Department for Transport (DfT) funding of up to £12.040m has been approved, conditional on tenders for construction works and all other costs being within the projected cost. A further condition is that the Council makes a financial contribution of £0.460m.
20. Cabinet has approved the release of £0.933m of capital resources for this scheme. Tees Valley Regeneration has made a £0.100m contribution.
21. Expenditure to date is £1.2m. These costs, excluding the Council contribution of £0.460m should be recovered from the DfT funding.
22. As the Council's contribution to the scheme is projected to be £0.460m, approximately half of the resources approved to date by Cabinet should be recovered: -
- |                                   |         |
|-----------------------------------|---------|
| (a) Resources approved by Cabinet | £0.933m |
| (b) DBC contribution to scheme    | £0.460m |
| (c) Resources to be recovered     | £0.473m |
23. These resources would become available to the Council for capital investment. It is, however, suggested that at this point, taking into account the risks inherent in this scheme, capital spending plans do not assume the availability of these resources.
24. If tenders exceed the projected cost and DfT's conditional funding is withdrawn, the Council's costs to date of £1.2m will not be recoverable, leaving a shortfall of £0.2m to be funded by the Council, in addition to the £0.933m approved to date.
25. The scheme carries a financial risk of post-contract cost increase. The risk-sharing arrangement of the construction contract is described in paragraph 16. A contract value of, say, £9m would have a financial risk to the Council of £0.450m (£9m x 10% x 50%).
26. There is also a financial risk that other costs listed in paragraph 6 could increase above the projected levels. These costs will be managed under the project management arrangements described in paragraph 15.

## **Legal Implications**

27. This report has been considered by the Borough Solicitor for legal implications in accordance with the Council's approved procedures. There are no issues which the Borough Solicitor considers need to be brought to the specific attention of Members, other than those highlighted in the report.

## **Section 17 of the Crime and Disorder Act 1998**

28. The contents of this report have been considered in the context of the requirements placed on the Council by Section 17 of the Crime and Disorder Act 1998, namely, the duty on the Council to exercise its functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area. It is not considered that the contents of this report have any such effect.

## **Council Policy Framework**

29. The issues contained within this report do not represent change to Council policy or the Council's policy framework.

## **Decision Deadline**

30. For the purpose of the 'call-in' procedure this does represent an urgent matter since the Council has to be able to quickly respond to the expected DfT announcement of full approval for the scheme.

## **Key Decisions**

31. This is a key decision since it concerns a major infrastructure scheme with a potential budget of over £12m, which affects the whole eastern section of Darlington.

## **Recommendations**

32. It is recommended that:
- (a) Members approve the release of £12.040m for the construction of the Darlington Eastern Transport Corridor, subject to full approval being granted by the Department for Transport.
  - (b) Members approve that the Council and the Highways Agency enter the Works Contract jointly.

## **Reasons**

33. The recommendations are supported by the following reasons:

- (a) To expedite the start of construction of the Darlington Eastern Transport Corridor in accordance with the conditions attached to the scheme approval.
- (b) To satisfy the highways Agency requirement to be protected against Contractor Liability for the maximum period (12 years).

**John Buxton**  
**Director of Development and Environment**

## **Background Papers**

- (i) Darlington Eastern Transport Corridor, NATA assessment 2000.
- (ii) Darlington Eastern Transport Corridor, Revised Business Case 2005 and associated explanatory notes.

John Ray : Extension 2746  
cc