
**DARLINGTON EASTERN TRANSPORT CORRIDOR – INDEPENDENT
INVESTIGATION**

Purpose of Report

1. Arising from a significant projected increase in the project cost for Darlington Eastern Transport Corridor (DETC) Construction Contract, Cabinet asked for an independent investigation to be undertaken.
2. Consultants EC Harris were commissioned in November 2007 to undertake a review of the scheme. In particular they were asked to examine:
 - (a) The factors contributing to the projected overspend on the contract
 - (b) The decision made to agree a change to the road level
3. This review is now complete and a copy of the report is attached at **Appendix 1**.
4. The outcomes of the investigation are summarised in the following section of this report.

Information and Analysis

Background

5. The contract started on site in Spring 2007 and the road is due to open by June 2008. The increased costs were reported to Cabinet in November 2007 and a revised budget was agreed. While current projections for the final cost are well within the revised budget, the final outcome will not be known until the contract finishes. The additional budget approval for the scheme will be financed from within the Council's overall capital resources.

Factors Contributing to Project Overspend

6. In terms of the projected increase in cost of the road, the most significant reasons arise from a delay in the project starting on time. There were also issues arising from the various estimates for the individual elements of the work, which were either not included or at considerable variance from actual cost.
7. In more detail, the Council followed appropriate procedures in selecting tenderers and appraising the bids, with assistance from the Highways Agency. However, because of the delay in getting the licence to track the Great Crested Newts on parts of the site of the road, there was significant potential for delays to arise in the project due to the need for protection measures. While these issues were recognised and negotiations took place with the successful tenderer about the delays, these negotiations were not successfully closed before the contract was awarded, leaving the potential for claims for additional cost open.

8. Consideration should also have been given to retendering the work on the basis of a new construction commencement date after newt protection measures were complete. This would have provided certainty over the price for the works.
9. In mitigation, it would appear that that the requirement by the Department for Transport (DfT) to incur significant expenditure during the financial year 2006/07, had a bearing on the decision not to retender the scheme at the time.
10. The majority of the additional cost of the scheme is due to the delays in commencing works due to the Great Crested Newts and the knock on delays arising from this particularly in respect of the statutory bodies being unable to undertake their work as planned.
11. As mentioned earlier, the only opportunity to mitigate costs arising from a delayed start was prior to the contract award and more in depth actions might have been taken to fix those costs. This might have required an alteration to the formal contract and may in any case have resulted in additional cost due to the contract period being later and the impact of winter working etc. However, at least the costs would have been certain had this happened.
12. The other matter that has had an implication in terms of increased costs is in connection with the budgets for the project. While generally the early scheme budgets were based upon reasonable data consistent with the normal approach, there were omissions from the budget which should have been included. The technical investigation by EC Harris did not discover the reasons why these were not included but these omitted costs represent a substantial increase in the overall scheme cost. In particular, insufficient allowances were made in the later budgets for items such as the service diversions and delays to the scheme.
13. The scheme budget did include an allowance for risk/contingency although this appears to have been effectively committed prior to the start of the construction contract in the negotiations with the successful tenderer around potential delay costs. This meant that the contingency was no longer available to meet the cost of any changes after the contract award. This is despite the fact that it should have been known that there would be significant changes to the scheme due to the delays identified prior to entering the contract.

Decision to Agree a Change in Road Levels at Coombe Drive

14. The final major issue picked up in the report concerns the road levels at Coombe Drive. It is clear the road level at Coombe Drive was altered, effectively increasing the height of the road by 2 metres. This was the result of an engineering decision undertaken to construct the road within the land available for the scheme. The issues involved include elements of specialist planning law which EC Harris was unable to give any advice upon.
15. This matter has been considered by the Borough Solicitor, whose division includes a specialist planning lawyer. In consultation with planning officers who have the view that the variance was de minimus the Borough Solicitor considers that the approach taken is legally sound and that it is not considered necessary that additional specialist legal advice is sought.

Other Matters

16. In addition to the principle areas covered by the investigation there are some supplementary areas where recommendations arise from the EC Harris work. These cover:

- (a) Making sure that relevant information is collected to support the planning discussions taken and that procedures are developed for dealing with planning matters arising on future developments.
- (b) Evaluating whether early design stage fees are eligible for grant funding.
- (c) Appropriate training is implemented where there is limited experience of contracts that are proposed to be used, or professional advice is sought to advise on more onerous elements that might effect the Council's liabilities.
- (d) Ensuring that adequate allowances are made in early budget estimates and that these are updated as and when further information becomes available to cover potential cost increases from statutory services.

Legal Implications

17. 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

18. 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.

Conclusion

19. Clearly, within any major capital project there are risks to be managed that may nevertheless result in increased and unforeseen costs. In this case it would appear that there were weaknesses in three areas:
- (a) In the arrangements operating within the Department of Development and Environment to review and check the budget for the scheme as it was worked up from 2004 (although the scheme originates as long ago as 1990).
 - (b) An error of judgement in how the management of the Great Crested Newts should be handled within the tendering process.
 - (c) While not an error in planning law, insufficient attention was paid to the views of residents affected by the amended road levels in Coombe Drive.
20. The cumulative impact of some of these weaknesses has resulted in the projected overspend reported to Cabinet.
21. The investigation has not explored the disciplinary implications of the issues identified and it might normally be expected that a disciplinary investigation would follow. However, the decision has been taken not to take disciplinary action for the following reasons. The investigation undoubtedly suggests systems and capacity weaknesses and errors in judgement but there were extenuating circumstances. The Officers involved in the scheme changed over years, in a number of instances they were employed from agencies and there were absences as a result of ill health at critical points. These capacity and systems issues have been addressed within the recent re-organisation of the Council that took place in

November 2007.

22. This large scale restructuring exercise effectively brought together a variety of construction professionals from two departments (Development and Environment and Community Services). Specifically with reference to Highways works, a new senior second tier post of Assistant Director – Highways was created to strengthen the management structure with consequential restructuring beneath this post. At the same time all other Capital Projects were brought under the control of an existing Assistant Director with significant experience of construction. These new management arrangements are now being embedded with strengthened procedures and practices.
23. In addition a variety of actions have already been taken to deal both with any remaining issues throughout the remainder of the contract and to minimise the risk of similar difficulties in the future.
24. Following work by Scrutiny last year and also problems on this scheme, a review of the management of Capital Works was commenced with the support of Scrutiny and this is due to conclude shortly. However, a number of specific actions, identified as part of this process were taken very quickly and have been implemented.
25. The main outcome of the capital projects review will be a documented procedure, including a comprehensive budget spreadsheet and various control points at key stages, with appropriate governance arrangements, to ensure that information is up to date and decision making is taken within a formal framework and with the appropriate advice.
26. This would have meant that decisions on the issues around effective budgeting, tendering and award of the contract of the DETC would have been subject to full consultation, and advice, and taken on an informed basis where all the financial estimated consequences were identified.
27. The Capital Projects Review will also include a more robust and consistent approach to management of risk, advice on the types of contract to use and access to advice on new forms of contract, plus arrangements for continual professional development for construction related professionals.
28. A revitalised Asset Management Group, chaired by the Director of Corporate Services, will monitor the performance of capital programmes and compliance with the new procedures and protocols.

Recommendations

29. It is recommended that:
 - (a) The EC Harris report be noted.
 - (b) Resources Scrutiny Committee's views be forwarded to Cabinet.

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