

Open Report on behalf of Richard Wills, Executive Director for Environment and Economy

Report to:	Councillor R G Davies, Executive Councillor for Highways, Transport and IT
Date:	20 January 2016
Subject:	Lincoln Eastern Bypass - Authority to Enter into Contract with Network Rail
Decision Reference:	I010498
Key decision?	Yes

Summary:

This report outlines the background to and recommends the entering into of a contract in the form of an Implementation Agreement with Network Rail to allow for the timely delivery of the bridge that takes the Lincoln Eastern Bypass under the Lincoln to Spalding railway line.

Recommendation(s):

That the Executive Councillor:-

- 1) approves in principle the entering into by the Council of an Implementation Agreement with Network Rail for the construction of the bridge that takes the Lincoln Eastern Bypass under the Lincoln to Spalding railway line.
- 2) delegates to the Executive Director for Environment and Economy, in consultation with the Executive Councillor for Highways, Transport and IT, authority to negotiate the final form of and enter into the Implementation Agreement and all other legal documentation necessary to give effect to the decision set out in paragraph 1 of this report.

Alternatives Considered:

1. Do not enter into the Implementation Agreement and await confirmation of the Orders for the scheme by the Secretary of State, and confirmation of funding approval by the Department for Transport.
2. Do not enter into the Implementation Agreement with Network Rail and include the delivery of the bridge within the contract for the main works.

Reasons for Recommendation:

A key possession of the railway has been booked for February 2017. Delaying this Implementation Agreement will mean that this possession will be lost. This will have a significant impact on the delivery of LEB. There is insufficient time to include these works in the main contract whilst maintaining the February 2017 possession.

1. Background

- 1.1 As part of promoting Lincoln Eastern Bypass (LEB), there is a requirement to construct a bridge on the Lincoln to Spalding railway line to allow LEB to pass under the railway. A plan of the route is shown at Appendix A.
- 1.2 Originally it was intended that the Council would design and deliver this bridge as part of the main works construction contract, with design carried out in house. As the bridge will ultimately be owned and maintained by Network Rail they are always keen to ensure that any asset they own meets very specific requirements. It has therefore not been possible to reach agreement through Network Rail's design approval processes on the form of the bridge and some specific design details. In addition the timescales for delivery by these means caused a potential conflict with the possession of the railway that was booked for February 2017. For further details of possessions refer to Section 3 below.
- 1.3 It was therefore decided to commission Network Rail to procure a Design and Build contract to deliver this bridge outside of and potentially in advance of the main scheme, with a break clause at the end of the design period to allow the Council to assess and approve the cost estimate produced as part of that process. Given that the internal design and approval processes for Network Rail are less onerous than those when they engage with an external party it was felt that this would ultimately be a solution with a better chance of early delivery to maximise the benefits to the main contract. This reduces the risk of achieving an acceptable design within a reasonable time period for the bridge.
- 1.4 The Council have been fully involved in the procurement process undertaken by Network Rail. After a competitive procurement process involving 4 tenderers Network Rail awarded the design element of the contract to BAM Nuttall in the autumn of 2015. The award of the construction element is currently scheduled for 1 March 2016.

2. Description of Works

- 2.1 The bridge will be a 30m span steel structure supported on 4 piled foundations. Once the piles are installed, to construct the works the railway is closed and the track will need to be removed, some of the embankment excavated and the bridge is then slid into place to sit on the piles. The track is then reinstalled to allow the line to reopen and the remaining embankment

is then removed to allow finishing works to take place. The span of the bridge is designed to allow for the future dualling of LEB which remains a long term aspiration for the Council.

3. Access to Railway

- 3.1 Any works on the railway are scheduled through what is known as a possession. There are two types of possession; one known as a 'Rules of the Route' possession for minor works that do not significantly interrupt the railway and one known as a 'disruptive possession' which closes the railway for a period of time. Both sets of possessions require booking in advance and require discussion with train operators (both passenger and freight) to limit the impact on their services. A disruptive possession will generally require the rerouting of services or for passenger trains these can sometimes be replaced by temporary bus services. The Council will be required to cover the costs of any compensation paid to train operators for this disruption. A disruptive possession has been booked for 3 days in February 2017 to carry out the installation of the bridge.
- 3.2 Disruptive possessions generally need to be booked at least two years in advance and are only usually available at certain periods of the year, for instance over Bank Holiday weekends and during school holidays outside of the summer period.
- 3.3 It should be noted that the Lincoln to Spalding line is the diversion route for the East Coast Main Line (ECML).

4. LEB Delivery Programme

- 4.1 The logic of constructing this bridge early is twofold. Firstly and most importantly this will ensure that Network Rail's contractor meets the timescale for the disruptive track possession booked for February 2017. Secondly this approach will protect the planning permission for the LEB which is due to expire on 10 June 2016 (the start on the construction of the permanent access track used temporarily by the bridge works is deemed sufficient to discharge the planning permission).
- 4.2 The original intention was that this bridge (and indeed the rest of the scheme) would be delivered following confirmation by the Secretary of State that the Orders to acquire land for the scheme are acceptable. This is following the Public Inquiry held in August 2015.
- 4.3 At the time of writing this report (December 2015), no decision has been made on the Orders and it is not expected until early 2016. This therefore means that a decision may be needed on commencing the bridge in the knowledge that there is a risk that the Orders will not be confirmed.
- 4.4 It is proposed that tenders for the main works are not issued until Orders have been confirmed, on the basis that this will give more confidence to the market that the scheme is progressing. As a result a construction contract is

unlikely to be awarded in sufficient time to tie in with the possession booked for February 2017.

- 4.5 The immediate decision is to enter into an Implementation Agreement ensuring that Network Rail knows that the Council will fund the bridge construction if Network Rail enters into the construction phase of its contract. As discussed above, the award of the construction contract is expected to be 1 March 2016 which may allow the Council to know the results in relation to the Orders before the contract is signed and hence make a further decision on whether to proceed. Any cancellation of the scheme would result in the Council paying Network Rail (or their contractor) any costs they have incurred up to that point. It should be noted that in the event the Orders are unsuccessful, the route of LEB will still be protected and is unlikely to change from its current line. Should the decision be taken to restart the Orders process, there would be some merit therefore in delivering the bridge well in advance of the LEB. However, if the LEB were not ever to proceed to construction the cost of the bridge will have been incurred for no benefit.

5. Proposal

- 5.1 The legal mechanism for engaging with Network Rail to construct the works is via a document known as an Implementation Agreement. Network Rail have estimated that the cost to the Council of delivering the bridge will be as outlined below and this is the value included in the Agreement. This value includes Network Rail fees, and a value of the risk should certain events occur, following a workshop held in December, and attended by officers from the Council.
- 5.2 The costs are as follows:

Contract	Estimated Maximum Cost	Comments
Implementation Agreement (Emerging costs basis)	£10,156,223	'Not to be exceeded' price.
Risk	£1,526,433	Includes a number of risks which are unlikely to happen but need costing nevertheless
Industry Risk Fee	£201,124	Standard percentage applied to IA cost
Network Rail Fee Fund	£502,811	Standard percentage applied to IA cost
Total Max Cost	£12,386,591	

- 5.3 Without the signing of the Implementation Agreement Network Rail will not have authority to enter into a construction contract with BAM Nuttall and it would be unlikely that the timescales for the disruptive possession would be met. Network Rail needs this authority before they go to their Investment Panel on 1st February.
- 5.4 The Implementation Agreement is based on what is known as an 'Emerging Cost', ie the Council will only pay what is expended. As such it is considered that the value in the Agreement is an upper limit and is likely to reduce. Costs will be invoiced to the Council on a monthly basis for work carried out.
- 5.5 At present the value submitted by Network Rail is a 'not to exceed' value, further work is being carried out to refine the currently conservative design with the intention of submitting a final price in early February 2016.

6. Interaction with Main Works

- 6.1 Delivery of the bridge in advance of the main works will give some advantages and cost efficiencies to offset the cost of the bridge. The main reason for this is that there is a significant amount of earthworks material to be excavated to the south of the bridge that is needed to build the embankments that take the bypass on another bridge over the River Witham to the north. As can be seen from the plan at Appendix A, the area between the Lincoln to Spalding and Lincoln to Market Rasen railway lines is effectively 'landlocked' as there are no public highways available to access the area. Without this early access under the railway the construction of this section of the bypass could prove to be challenging and hence expensive.
- 6.2 Delivering these bridge works early will mean that they will be in advance of the Department for Transport (DfT) granting their contribution to the scheme of just under £50M. DfT have confirmed that this is not an unusual situation as local authorities often need to commit monies in advance; however they have noted that the risk of committing monies in advance of DfT granting funding (or potentially not granting) lies with the Council.

7. Other Advantages

- 7.1 Early possession of the railway minimises the cost of LCC paying compensation to operators because the volume of train traffic (both freight and passenger) is expected to increase on the route in the future and hence there will be greater disruption to operators should the possession be delayed. Given that the route is the diversion line for ECML this also increases the risk of later possessions not being available.
- 7.2 The start date and duration of construction through this process will be shorter and hence minimise the risk of inflationary costs for construction. In addition early delivery of this bridge could shorten the construction programme of the main works.

8. Human Rights and Procurement Implications

- 8.1 The County Council in proposing to construct the LEB has considered the applicability of the Human Rights Act 1998 (HRA) and in particular the European Convention On Human Rights Article 1 of the First Protocol, which provides that “every person is entitled to the peaceful enjoyment of his possessions” and “no one shall be deprived of his possessions except in the public interest and subject to conditions provided for by law”.
- 8.2 The Scheme will facilitate sustainable development and remove traffic from key routes in the city centre. On balance it is therefore believed that the Scheme is overwhelmingly in the public interest. The decision to enter into an Implementation Agreement is part of the delivery of the Scheme and covered by the same Human Rights justification.
- 8.3 There are not considered to be any procurement implications arising out of the entering into of an Implementation Agreement. The works contract in these circumstances is the one entered into between Network Rail and its contractors which has been awarded as a result of a procurement exercise.

9. Other Legal Considerations

Equality Act 2010

- 9.1 The Council's duty under the Equality Act 2010 needs to be taken into account by the Executive when coming to a decision.
- 9.2 The Council must, in the exercise of its functions, have due regard to the need to:
- Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010;
 - Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - Foster good relations between persons who share a relevant protected characteristic and persons who do not share it: Equality Act 2010 section 149(1). The relevant protected characteristics are age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; sexual orientation: section 149(7).
- 9.3 Having due regard to the need to advance equality of opportunity involves having due regard, in particular, to the need to:
- Remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;
 - Take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;

- Encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.
- 9.4 The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities.
- 9.5 Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to tackle prejudice, and promote understanding.
- 9.6 Compliance with the duties in this section may involve treating some persons more favourably than others.
- 9.7 A reference to conduct that is prohibited by or under this Act includes a reference to:
- (a) A breach of an equality clause or rule
 - (b) A breach of a non-discrimination rule
- 9.8 It is important that the Executive Councillor is aware of the special duties the Council owes to persons who have a protected characteristic as the duty cannot be delegated and must be discharged by the Executive. The duty applies to all decisions taken by public bodies including policy decisions and decisions on individual cases and includes this decision.
- 9.9 To discharge the statutory duty the Executive Councillor must analyse all the relevant material with the specific statutory obligations in mind. If a risk of adverse impact is identified consideration must be given to measures to avoid that impact as part of the decision making process.
- 9.10 An impact analysis has not been undertaken specifically in relation to the construction of the bridge. Such construction is governed by detailed and stringent design requirements.
- 9.11 In terms of the scheme itself, all design complies with national design standards including the relevant requirements and guidance in relation to accessibility. Potential impacts at the level of the scheme itself therefore have been mitigated through the design.

Child Poverty Strategy

- 9.12 The Council is under a duty in the exercise of its functions to have regard to its Child Poverty Strategy. Child poverty is one of the key risk factors that can negatively influence a child's life chances. Children that live in poverty are at greater risk of social exclusion which, in turn, can lead to poor outcomes for the individual and for society as a whole.

- 9.13 In Lincolnshire we consider that poverty is not only a matter of having limited financial resources but that it is also about the ability of families to access the means of lifting themselves out of poverty and of having the aspiration to do so. The following four key strategic themes form the basis of Lincolnshire's Child Poverty strategy: Economic Poverty, Poverty of Access, Poverty of Aspiration and Best Use of Resources.
- 9.14 The Strategy has been taken into account in this instance and while there are no direct impacts, the scheme is expected to have a beneficial impact on the economy of Lincoln and the wider county and will therefore contribute to addressing economic poverty generally and therefore that of children.

Joint Strategic Needs Assessment (JSNA) and Joint Health and Wellbeing Strategy (JHWS)

- 9.15 The Council in exercising its functions must have regard to both the JSNA and the JHWS.
- 9.16 Consideration has been given to the JSNA and the JHWS and as can be seen from the Objectives of the scheme set out below, especially Objectives 1 and 2, the scheme has significant benefits for both the health and wellbeing of people in Lincoln.
- 9.17 The Objectives of the scheme are:

Objective 1: To support the delivery of sustainable economic growth and the Growth Point agenda within the Lincoln Policy Area through the provision of reliable and efficient transport infrastructure.

Objective 2: To improve the attractiveness and liveability of central Lincoln for residents, workers and visitors by creating a safe, attractive and accessible environment through the removal of strategic through traffic (particularly HGVs).

Objective 3: To reduce congestion, carbon emissions, improve air and noise quality within the LPA, especially in the Air Quality Management Area in central Lincoln, by the removal of strategic through traffic (particularly HGVs).

10. Conclusion

- 10.1 Notwithstanding the risks of entering into an Implementation Agreement before confirmation of Orders, there are compelling reasons to enter into the contract with Network Rail as construction of the bridge will allow early access for the main works to the area north of the railway line and secure planning permission for the scheme.

11. Legal Comments:

The Council has the power to enter into an Implementation Agreement. The risks of doing so are addressed in the Report as are the legal matters to which the Executive Councillor must have regard.

The decision is consistent with the Policy Framework and within the remit of the Executive Councillor if it is within the budget.

12. Resource Comments:

The budget to undertake the works as outlined in the detail of this report is included in the currently approved capital programme.

13. Consultation

a) Has Local Member Been Consulted?

N/A

b) Has Executive Councillor Been Consulted?

Yes

c) Scrutiny Comments

The report will be considered by the Highways and Transport Scrutiny Committee at its meeting on 18 January 2016. Any comments from the Committee will be presented to the Executive Councillor for consideration when taking the decision.

d) Policy Proofing Actions Required

N/A

6. Appendices

These are listed below and attached at the back of the report

Appendix A	Plan of Route showing location of bridge
------------	--

7. Background Papers

No background papers within Section 100D of the Local Government Act 1972 were used in the preparation of this report.

This report was written by Lee Rowley, who can be contacted on 01522555587 or lee.rowley@lincolnshire.gov.uk.

This page is intentionally left blank