

Recommendation to approve the virement of £836,572 to pay the final accounts for the A1139 Junction 17-2 widening project

Councillor Peter Hiller, Cabinet Member for Growth, Planning, Housing and Economic Development

September 2016

Deadline date: 30th September 2016

Cabinet portfolio holder:	Councillor Peter Hiller, Cabinet Member for Growth, Planning, Housing and Economic Development
Responsible Director:	Simon Machen, Corporate Director Growth and Regeneration
Is this a Key Decision?	YES If yes has it been included on the Forward Plan: Yes Unique Key decision Reference from Forward Plan : KEY/27JUN16/02
Is this decision eligible for call-in?	YES
Does this Public report have any annex that contains exempt information?	YES This Annex should be treated as exempt in accordance with paragraph 3 of Schedule 12A of part 1 of the Local Government Act 1972, as it relates to the financial or business affairs of a person including the council.
Is this a project and if so has it been registered on Verto?	YES Verto Project no. PR001170

RECOMMENDATIONS

The Cabinet member is recommended to:

1. Approve the virement of the total sum of £836,572*, in consultation with the Cabinet Member for Resources and Digital Peterborough and the Corporate Director of Growth and Regeneration to the A1139 Junction 17 – 2 widening scheme project from the corporate public realm capital funding to settle the additional construction costs and fees as detailed in recommendations 2 and 3 below;
2. Approve the payment for construction costs in the sum of £638,000 to Balfour Beatty to complete the project works; and
3. Approve the payment for associated professional fees in the sum of £230,549 to AECOM for project management and supervision services.

*The two sums in recommendations 2 and 3 do not equate to the figure in recommendation 1 due to £31,977 remaining from the original £18 million budget.

1. SUMMARY OF MAIN ISSUES

- 1.1 This report seeks approval to pay the negotiated increased construction costs and associated professional fees for the A1139 Junction 17 – 2 widening scheme totalling £836,572 following completion of the works. The increased budget is made up of £638,000 of Balfour Beatty's additional costs plus £230,549 of AECOM's additional project management fees, less £31,977 (MHA) Framework Contract fee, PCC staff costs and other miscellaneous costs that remains in the original project budget.
- 1.2 Previous Cabinet Member Decision Notices in December 2013 (DEC13/CMDN/099) and February 2014 (FEB14/CMDN/13) and the Cabinet report in January 2015 (JAN15/CAB/11) authorised a revised target cost price with Balfour Beatty of up to £16.36m, increasing the project budget to £18m. The Council has since incurred additional construction costs and associated project management fees of £836,572 to complete the project resulting in a total project cost of £18.9 million.
- 1.3 The approval sought is to transfer £836,572 to the project budget which will allow the Council to meet its contractual obligations under its respective contracts with Balfour Beatty and AECOM.
- 1.4 The additional money required to pay the final costs is available in the corporate public realm capital fund (from funds not yet allocated to schemes), and therefore the Council's overall budget position is unaffected.

2. PURPOSE OF THIS REPORT

- 2.1 This report is for Councillor Peter Hiller, Cabinet Member for Growth, Planning, Housing and Development to consider exercising delegated authority under paragraph 3.4.8(a) of Part 3 of the Constitution in accordance with the terms of his portfolio at paragraph (b).
- 2.2 The virement limits approved by Council as part of the medium term financial strategy require that virements between £0.5 million and £1.0 million have Cabinet Member approval.
- 2.3 The attached report/background information is NOT FOR PUBLICATION in accordance with paragraph 3 of Schedule 12A of Part 1 of the Local Government Act 1972 in that it contains information relating to the financial or business affairs of a particular person, namely construction company Balfour Beatty and professional services provider AECOM. The public interest test has been applied to the information contained within the exempt annex and it is considered that the need to retain the information as exempt outweighs the public interest in disclosing it as to do so would reveal commercially sensitive market information or information of potential usefulness to competitors of the companies involved giving them an unfair advantage.

3. TIMESCALE

Is this a Major Policy Item/Statutory Plan?	NO	If Yes, date for relevant Cabinet Meeting	N/A

4. BACKGROUND

Strategic importance of the scheme

- 4.1 Whilst Peterborough's parkways have served the city well there are now significant capacity issues on the network given the levels of recent and planned growth. Over the last ten years significant funds have been invested in upgrading the A1139 through Peterborough. However, the section between Junction 17 of the A1(M) and Junction 2 of

the A1139 was identified as a pinch point, resulting in frequent congestion during peak hours. As such further improvements were required to unlock planned and consented growth in this location and areas to the east of the city.

4.2 The A1139 Junction 17 – 2 widening scheme is one of the largest and most complex road schemes that the Council has undertaken and it forms a critical part of the infrastructure necessary to grow the city. Without the scheme the city's growth potential would be significantly curtailed given the impact on the A1(M) junction and the capacity restrictions of the A1139. One example of this is Great Haddon which is a key strategic urban extension located south west of the city adjacent to the A1139 and the A1(M). When completed this site will deliver:

- Almost 6,000 new houses
- 11,500 m² retail space and community facilities, including three primary schools and a secondary school.
- 214,000 m² employment space as part of the Great Haddon employment area.
- Approximately 7,400 new jobs.

Without the implementation of these improvements to the A1139 Highways England would not have supported the planning application for this key strategic development.

4.3 It is acknowledged that the project has experienced a number of unforeseen issues that have been beyond the control of both the Council and the principal contractor. However, the project has already begun to deliver its specified outcomes of reducing congestion, increasing capacity and more notably unlocking growth in this area of the city. For example: House of Fraser have been given planning permission to develop a 69,667 square metre distribution centre in the south of the city, generating up to 1,000 jobs and associated income from business rates; the Council has approved a 39,302 square metre distribution warehouse for a frozen foods logistics company and; granted outline planning permission for a manufacturing company, up to 38,175 square metres in size.

4.4 As set out in previous Cabinet reports, it is also important to add that if the widening scheme had not been delivered, this section of the heavily trafficked A1139 would have required major structural maintenance work within a three to four year period. Costs for this maintenance were estimated at £9 million and would have caused significant traffic disruption whilst the works were undertaken. Attempts were made to secure Government funding for this maintenance in 2010/2011 with the submission of a major scheme business case. However the bid was unsuccessful. If the Council had simply waited and incurred this structural maintenance work cost then this would not in itself have met the Highways England requirements set out above.

Sources of funding

4.5 The Council has delivered a major £18.837 million highway improvement scheme for £8.637 million (approximately forty-six per cent of the total project cost). In addition, a strategically important part of the network has been upgraded for less than it would have cost to undertake the necessary maintenance to keep it in good condition in its previous form, estimated at £9 million in the long term.

4.6 The economic benefits of the scheme will far outweigh the £8.637 million that the Council will have paid towards the £18.837 million project, in terms of job creation, investment in the community and the additional income the Council will receive from business rate growth. The £8.637 million Council contribution is made up of £3.6 million corporate funding, £0.6 million (MTFS) 2014/2015 Parkway lighting budget, £3.6 million of the £4.5 million virement approved in the February 2015 and the £0.837 million for which approval is being requested now.

- 4.7 The strategic importance of the scheme was recognised by both Government and the Greater Cambridge Greater Peterborough Local Enterprise Partnership (LEP) and the Council secured significant funding towards the cost of the scheme including: £4.5 million Local Pinch Point grant from the Department for Transport (DfT), £1.5 million grant and £3 million loan from the Growing Places Fund through the LEP. Additionally £3.3 million of S106 funding was secured from the Great Haddon development.

Original budget:

Funding Sources	Value
Local Pinch Point grant (DfT)	£4.5m
Growing Places Fund grant (LEP)	£1.5m
Growing Place Fund loan (LEP)	£3.0m
Section 106 developer contribution (Great Haddon) <i>(expected in 2018/2019)</i>	£3.3m
Sub total	£12.3m
Loan repayment in 2018/2019	(£3.0m)
Council funding	£3.6m
Original scheme budget	£12.9m

Revised budget:

Funding Sources	Value
Local Pinch Point grant (DfT)	£4.5m
Growing Places Fund grant (LEP)	£1.5m
Growing Place Fund loan (LEP)	£3.0m
Section 106 developer contribution (Great Haddon) <i>(expected in 2018/2019)</i>	£3.3m
Sub total	£12.3m
Loan repayment in 2018/2019	(£3.0m)
Council funding	£3.6m
Original scheme budget	£12.9m
2014/2015 Parkway lighting budget transfer	£0.6m
Sub total	£13.5m
Cabinet report virement (February 2015) <i>(includes £0.9m additional DfT funding)</i>	£4.5m
Budget being sought as part of the CMDN	£0.837m
Revised scheme budget	£18.837m

Procurement route

- 4.8 The procurement mechanism selected to award the construction contract was a standard target cost contract awarded through the Midlands Highway Alliance (MHA) Medium Schemes Framework 1 Contract (MSF1). This framework contract is based upon the NEC3 Engineering and Construction Contract. Formed in 2007, the MHA was the first partnership of its kind in the UK. The MHA is a formal collaboration of nineteen local authorities, including Peterborough City Council, seeking a more effective way to deliver highway services. Leicestershire County Council is the 'host' authority.
- 4.9 The use of a target cost contract is common in the construction industry. It provides a genuine estimate of all the recoverable costs, materials, labour and profit as well as identifying a value for risk items that are to some extent unknown at the point of agreeing the target cost. It is not intended to be a non-negotiable figure and indeed is likely to increase as additional works are added. There are often unforeseen items that occur during the construction of a scheme that change the scope of the original works. These works are referred to as 'Compensation Events' and are discussed, costed and if agreed

change the value of the project target cost. The use of a target cost contract facilitates a 'pain/gain' mechanism and encourages both parties to actively manage the contract due to the potential benefits and risks of delivering a project below or over the agreed target cost. The pain or gain is shared between both contractor and client and is calculated by comparing the actual costs with the most recently revised and agreed target cost.

- 4.10 The alternative to a target cost approach is a fixed price contract but this option is significantly more complex to negotiate and all risks are included in the contractor's price. This approach has a number of disadvantages including:
- For major infrastructure schemes this can increase the cost by some 30%, with any compensation events for items beyond scope or not included in the risk register borne by the client.
 - The procurement process itself adds time and cost to the process.
 - The Council would have been at risk of losing external DfT funding for the project due to the time constraints in which the funding had to be spent.

The contract and previous Council approvals

Professional Services (project design and supervision)

- 4.11 The MHA has entered into a Professional Services Partnership (PSP) contract with AECOM (formerly URS Infrastructure and Environment Limited) a global integrated infrastructure services company to deliver multidisciplinary professional design services. Under the contract AECOM supports the nineteen councils that are members of the MHA on highway projects across the Midlands.
- 4.12 Under the MHA Framework agreement AECOM were selected by the Council to design and thereafter to project manage and supervise the A1139 A1(M) Junction 17 to Junction 2 widening scheme. The decision was approved by CMDN in October 2013 (OCT13/CMDN/080).

Construction

- 4.13 A Cabinet Member Decision Notice (CMDN) to appoint Balfour Beatty/Birse Civils Limited as the construction contractor for the scheme was approved in December 2013 (DEC13/CMDN/099). This CMDN gave authorisation to award a contract for construction for the target cost sum of up to £11 million.
- 4.14 In January 2014, Balfour Beatty submitted an indicative target cost of £13.92 million to deliver the scheme. Following a detailed assessment of pricing the scope of the project was reduced to ensure affordability in line with the budget of £12.9 million. Subsequently Balfour Beatty submitted a revised target cost price of £11.94 million. A second CMDN to appoint Balfour Beatty as the construction contractor for the target cost sum of up to £12 million was approved in February 2014 (FEB14/CMDN/13). Balfour Beatty were awarded a contract through the Midlands Highway Alliance's (MHA) Medium Schemes Framework 1 Contract (MSF1) utilising Option 3: Target contract with activity schedule.
- 4.15 The MSF1 Contract enables a Commissioning Authority (CA) to award work packages with a value of up to £12 million. The OJEU notice for the Framework Contract defines the scope of work as the execution of highway, civil and municipal engineering projects including highway improvements and highway infrastructure works. The original award value is based on an initial target price and is subject to the change mechanism permitted under the NEC3 Engineering and Construction Contract (Option C: Target contract with activity schedule) whereby the works information can be changed through the implementation of Compensation Events.

4.16 Cabinet Member Decision Notice (FEB14/CMDN/13) also authorised the transfer of £600,000 from the 2014/2015 Parkway Lighting budget (allocated in the 2013 Medium Term Financial Strategy) to the A1139 Fletton Parkway Junction 17 A1(M) – Junction 2 widening scheme budget thereby increasing it to £13.5 million.

Cost increases during construction

4.17 Contractor mobilisation commenced in February 2014 with physical site works commencing shortly after. Between February 2014 and January 2015 progress on site was good; however a number of significant issues were identified including:

- The discovery of extensive amounts of contaminated soil throughout the area of the scheme.
- The very poor condition of the drainage which resulted in the need for extensive repair work.
- The need for major road surface crack repairs throughout the scheme.
- The replacement of sub-standard road construction at the tie-in point at the east end of the scheme between junctions 2 and 3, to facilitate integration with the central reserve works.

4.18 These issues resulted in a significant increase in the defined or ‘actual’ costs of construction project and in December 2015 Balfour Beatty issued a revised target cost for completion of £16.36 million. A Cabinet report was prepared and presented in January 2015 to provide details of the increased costs of construction, associated design and third party fees (JAN15/CAB/11). It recommended an increase of the scheme budget by £4.5 million to £18 million (based on a value of £16.36 million for additional construction costs plus £1.64 million for design, supervision and other project related costs). The recommendation was approved by Cabinet in February 2015 and the virement of £4.5 million was authorised to increase the project budget to £18 million. A bid was made to the Department for Transport for grant funding towards covering the additional cost, and an additional grant of £0.9m was received.

Revised Budget Breakdown	Cumulative Value
Original scheme budget	£12.9m
Transfer from Parkway Lighting budget (MTFS) 2013	£0.6m
Cabinet Report virement (February 2015) <i>(includes £0.9 million additional DfT funding)</i>	£4.5m
	£18.0m

4.19 The values used in the Cabinet report were based on the calculated target cost value and agreed construction programme duration that were known at that time. Following the agreement to increase the budget to £18 million further issues became apparent on site that continued to increase the value of the construction works, extend the programme and increase the ongoing design and supervision costs.

Cost increases beyond the approved £18 million budget

4.20 Since the scheme commenced a number of significant issues have occurred which have resulted in legitimate Early Warning Notices and Compensation Events by the contractor. These have resulted in cost increases over the original project budget which could not have been foreseen.

4.21 The construction issues and additional professional services resource detailed have had the effect of exceeding the revised £18 million project budget by a total of £836,572. The details of this expenditure can be found in the Exempt Annex.

The additional construction issues that were identified after February 2015 included:

- The existing road construction was not as anticipated with concrete intruding into the road layout. Therefore additional work was required to improve the road layout and accommodate the new combined drainage units.
- A section of existing pavement on the westbound carriageway was starting to heave. To avoid having to go back and carry out works at a later stage, causing further traffic disruption, this pavement had to be replaced.
- Traffic management restrictions imposed by the Council and Highways England meant that the contractor could not carry out the works under full road closure as would normally have been permitted. These restrictions were necessary and unavoidable.
- Use of existing duct crossing could not be achieved as ducts did not extend beneath the carriageways and therefore new ducts had to be constructed. Ducts carry cables beneath the road.
- The existing ground conditions were not strong enough to accommodate the new safety barriers, therefore new concrete foundations had to be laid.
- Existing drainage gullies were in poor condition and therefore had to be replaced.
- Discovery of Cotoneaster (invasive species) that required treatment and disposal.

The detailed figures associated with the above works are included in an exempt annex as making them public would compromise the commercial interests of the principal contractor Balfour Beatty. It should be noted that as a result of the budget being exceeded the 'pain / gain' element of the Target Cost Contract has been activated and as such the 'pain' has been shared by all parties, details of which are contained within the exempt annex.

- 4.22 These works on site extended the length of the project by an additional nineteen weeks, therefore incurring additional supervision and project management costs. Given the complexity of the project and the proximity to completion it was considered important to maintain consistency and good constructor / supervisor relationships by continuing to employ the services of AECOM to remain on site for the remaining duration of the scheme to supervise the additional works.

Financial probity

- 4.23 Between January and July 2015 the project was subject to a full and thorough internal Council audit exercise with a final report produced in July 2015. The audit team reported that while the project had been subject to a number of issues which had increased the costs, these were due to 'unforeseen circumstances' which had been accurately reported to Cabinet. The conclusion stated contract management processes were reasonable, and unforeseen circumstances had impacted on the project. The overall audit opinion was 'Significant Assurance' which means that Cabinet had received accurate information throughout.

Proposed funding solution

- 4.24 The additional money needed to pay the final costs for this project is identified within existing budgets, therefore it will not affect the Council's overall budget position.
- 4.25 The Cabinet report of 2 February 2015 proposed that £1.33 million of corporate public realm capital funding which had been held back as a contingency, should be transferred to the scheme as part of the funding solution. It also advised of a bid to the Department for Transport (DfT) for additional grant funding to cover the abnormal contaminated soil costs on site.
- 4.26 The Council received £900,000 from the DfT in response to the bid, meaning that £900,000 of the contingency identified could be returned to the Public Realm budget. It is now proposed that this contingency funding is used to cover the additional costs set out in this

report. The Council will not need to borrow more than outlined in the Medium Term Financial Strategy (MTFS).

Overall budget position

- 4.27 Following the approval of the Cabinet report in February 2015 the budget available to deliver the project was increased to £18 million. This allowed for expenditure of £16.36 million for construction and £1.64 million for design, supervision, utilities and third parties, staff fees and other associated project costs.
- 4.28 Within the £1.64 million projected in February for design, supervision and other project related costs, projected fees for utilising the Midlands Highway Alliance (MHA) Framework Contract, Council staff costs and other miscellaneous costs were over estimated by £31,977. This figure remains available in the revised £18.0 million scheme budget.
- 4.29 The additional construction costs incurred following the February 2015 Cabinet Report total £638,000. The additional professional service support costs total £230,549. A detailed breakdown of these figures is provided in the exempt annex. The information is kept confidential to protect the business interests of the principal contractor Balfour Beatty and professional services provider AECOM.
- 4.30 The additional budget required to pay final accounts and to close out the project is £868,549 less £31,977. Therefore, this report recommends the transfer of funds totalling £836,572.

Description of costs	Value
Total additional project costs (<i>Balfour Beatty</i>)	£638,000
Total additional supervision fees/project management costs (<i>AECOM</i>)	£230,549
MHA Framework fee, Council staff and other costs (<i>over-estimated</i>)	-£31,977
Total value of virement required	£836,572

5. CONSULTATION

- 5.1 The scheme was included in the Peterborough Long Term Transport Strategy (2011-2026) and Local Transport Plan 3 (2011-2016). Extensive consultation was carried out before publication of these documents to obtain the views of interested parties, including stakeholders and members of the public. The specific scheme was widely consulted on within the Council and is included in the MTFS, has an approved business case and environmental screening approval. Consultation with external stakeholders includes Highways England, LEP, DFT and utility service providers. On the 7 November 2013 a public engagement event was held in Orton Library and a further event was held in Serpentine Green shopping centre on the 12 November 2013.
- 5.2 The virement limits approved by Council as part of the Medium Term Financial Strategy require that virements between £500,000 and £1m have Cabinet approval. Consultation with the Cabinet Member for Resources has been undertaken and he supports this recommendation.

6. ANTICIPATED OUTCOMES

- 6.1 It is anticipated that upon the Cabinet Member's approval of the virement of £836,572 the Council will be able to settle the final accounts and close out the project.

7. REASONS FOR RECOMMENDATIONS AND ANY RELEVANT BACKGROUND INFORMATION

- 7.1 The virement of £836,572 is recommended in order to prevent any further escalation of costs and the need to seek further budget to close down the project. Working relationships between all the parties to date have been amicable with carefully negotiated discussions regarding the construction contract pain/gain share.
- 7.2 If the recommendation is not approved it is likely that the Council will be forced to enter into adjudication proceedings under the dispute resolution procedure identified in the NEC3 Contract. This could potentially incur not only the additional construction and supervision costs but also the expense of the legal proceedings themselves. In this eventuality the funding required is likely to significantly exceed the £836,572 currently being sought.

8. ALTERNATIVE OPTIONS CONSIDERED

- 8.1 The alternative option to accepting the current negotiated figure for the construction contract in full and final payment of all sums payable by the Council and to pay outstanding professional fees for design and supervision would be to invoke the dispute resolution procedure (W1) as defined under the contract. This might escalate the issue into further protracted legal negotiations and adjudication.

9. IMPLICATIONS

- 9.1 If the virement of £836,572 is not approved and legal proceedings commence it is likely that the Council will incur greater costs than those requested at present. Additionally, beyond the financial implications there is no guarantee that legal proceedings would find favour with the Council's position which could lead to potential issues when procuring future contracts.

10. LEGAL IMPLICATIONS

Construction contract

- 10.1 The Council's contract with Balfour Beatty for the widening scheme is made on an 'NEC 3 target price' form of contract. The main difference between an NEC target price contract and a traditional design and build contract is that a target price contract is not a fixed price contract. As such, the target price may change - increase or decrease to allow the Council and Balfour Beatty to share the financial gains or risks arising under the contract. The aim is that it gives the contractor an incentive to finish on time and stick to the budget to share in the gains. However, if there are overrun actual costs, the risk of these costs are also shared. Where these actual costs qualify as a 'compensation event' payable to the contractor, the Council is responsible to pay for these costs under the terms of its contract with Balfour Beatty.
- 10.2 The works are complete and practical completion was achieved. Following practical completion Balfour Beatty is entitled under its contract to submit its application for its final accounts to be assessed as payable by the council's appointed project manager, AECOM. AECOM has assessed that Balfour Beatty's final account should increase the final contract value from £16,360,000 to £16,998,000 which includes £638,000 payable under the NEC 3 contract comprising of compensation events, costs and proportionate pain/gain share.

Project management contract

- 10.3 The Council appointed URS Infrastructure and Environmental Limited (now known as AECOM) as the site supervisor and project manager for the widening scheme under the MHA Framework Alliance.

Procurement implications

- 10.4 The Council must also consider its obligations under the Public Contract Regulations 2015 (PCR) when there is an increase in the contract price of a framework contract procured under the PCR. Regulation 72(1) of the PCR provides for permitted price changes under the contract or framework without the need to procure. Pursuant to regulation 72(1)(a) of the PCR, there are no procurement implications for the increased construction costs because the NEC target price contract with Balfour Beatty includes a price revision clause or option allowing the target price to be revised to take into account actual costs incurred in undertaking the works.
- 10.5 Additionally, AECOM's fee for the associated professional management and supervision services were awarded via the Council's existing corporate maintenance contract without the need for a competition, so there is also no procurement implication.

State aid

- 10.6 On the basis that the additional constructions costs and professional fees are due and payable under their respective contracts with Balfour Beatty and AECOM, there are no state aid implications.

11. FINANCIAL IMPLICATIONS

- 11.1 Financial implications are referred to throughout section four of this report. The additional scheme costs of £836,572 can be contained within the Council's current capital programme for Growth and Regeneration, utilising the contingency funding that was initially identified as set out in paragraph 4.25.

12. DECLARATIONS / CONFLICTS OF INTEREST & DISPENSATIONS GRANTED

- 12.1 None.

13. BACKGROUND DOCUMENTS

Used to prepare this report, in accordance with the Local Government (Access to Information) Act 1985) and The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012

October 2013 Cabinet Member Decision Notice to award a contract to URS Infrastructure and Environment Limited relating to the duties of site supervision and contract administrator for the A1139 Fletton Parkway Junction 17 A1(M) to Junction 2 Widening Scheme:

<http://democracy.peterborough.gov.uk/ieDecisionDetails.aspx?ID=843>

December 2013 Cabinet Member Decision Notice to appoint Balfour Beatty/Civils Limited as the construction contractor for a target cost scheme of £11m:

<http://democracy.peterborough.gov.uk/ieDecisionDetails.aspx?ID=867>

February 2014 Cabinet Member Decision Notice to appoint Balfour Beatty/Birse Civils Limited as the construction contractor for a target cost of up to £12m:

<http://democracy.peterborough.gov.uk/ieDecisionDetails.aspx?ID=898>

January 2015 Cabinet Report to approve the completion of additional works necessary to complete the widening scheme and authorise the virement of £4.5m to the project budget:

<http://democracy.peterborough.gov.uk/ieDecisionDetails.aspx?ID=1044>