

## **NORTH SOMERSET COUNCIL DECISION**

**DECISION OF:** THE DIRECTOR OF DEVELOPMENT AND ENVIRONMENT



**DECISION NO:** 20/21 DE 132

**SUBJECT:** METROWEST PHASE 1 – PROFESSIONAL SERVICES SUPPORT THROUGH THE DCO EXAMINATION CONTRACT AWARD

**KEY DECISION:** YES

**REASON:** It entails expenditure of more than £500,000.

### **BACKGROUND:**

MetroWest Phase 1 (the Project) proposes to upgrade the existing local train service for the Severn Beach Line and the Bath Spa to Bristol Line (Phase 1A) and re-open the Portishead rail line with stations at Portishead and Pill (Phase 1B). The Project is being promoted by North Somerset Council and the West of England Combined Authority (WECA) on behalf of the authorities across the West of England including; Bath & North East Somerset, Bristol City and South Gloucestershire Councils. The Project forms part of a wider MetroWest programme to deliver strategic enhancements to the local rail network over the next 10 years.

The project has been a priority for the Council since it was mobilised in 2013. The project is technically complex and must complete multiple formal processes which are triggered by primary legislation. The benefits of the project are very wide ranging and will bring 50,000 residents of the district within the immediate catchment of the national rail network.

The core element of MetroWest Phase 1 in respect of infrastructure is Phase 1B, the reopening to passenger services the Portishead Branch Line railway. Phase 1B is a Nationally Significant Infrastructure Project (NSIP) and therefore requires a DCO for powers to build and operate the railway.

The powers sought through the Development Consent Order (DCO) will be for the Council, acting as DCO Scheme promoter on behalf of itself and WECA. The powers to operate and maintain the new railway will in due course be transferred to Network Rail, together with the land required for the operation and maintenance of the new railway. The Council will be responsible for compensation for land acquisition and the costs of impacts on statutory utilities' apparatus.

This report seeks authorisation to award contracts for professional services through the DCO examination, which is expected to start in October 2020 and conclude around April 2021.

## **DECISION:**

1. The Executive delegated authorisation to the Director of Development & Environment on 29<sup>th</sup> April 2020, to award contracts for professional services to support the continuation of the Development Consent Order (DCO) process and pending successful outcome of the DCO, through to project completion. This Director Decision is to authorise contract awards for support through the DCO examination as follows; Network Rail up to £1.960M (amendment of existing contract), Arup up to £0.04M (direct award contract), Womble Bond Dickinson up to £1.3M (amendment of existing contract), Jacobs up to £0.8M (direct award contract) and Ardent up to £0.25M (direct award contract). The direct award contract for Arup, Jacobs and Ardent are in accordance with clause 6.3.3 and 6.3.4 of the Council's Contract Standing Orders, as evidenced in this decision notice. The estimated cost of the four contracts is £4.35M and will be met from the project capital budget of £7.159M for 2020/21, approved by the Council at its meeting of 19<sup>th</sup> February 2019.

## **REASONS:**

*Rail engineering technical support and rail industry technical processes* – these will continue to be provided by Network Rail as the owner and operator of the existing national rail network, with some additional support to be provided by Arup. The technical support to be provided by Network Rail includes (but is not limited to) the following:

- Supporting and assisting the Project Team through the DCO examination including providing written responses to questions by the Examining Authority, providing railway engineering technical support and the wider rail industry interface and attendance at DCO topic specific hearings.
- Providing additional documentation or revisions to documentation as required by the Examining Authority.
- Providing support for the completion of Statements of Common Ground and interfaces with statutory bodies.

This technical support is provided through Development Services Agreement (DSA) between the parties and is updated periodically as required.

Some additional support is needed from Arup as they produced the railway Approval in Principle design. The scope of Arup's support includes:

- undertaking minor alterations to drawings and plans,
- possible support for providing written responses to technical queries from the Examining Authority (Planning Inspectors) relating to the railway design and possible support by attending some DCO hearings.

The contract between Network Rail and Arup for the railway design has now ended, therefore a new contractual arrangement is required to secure Arup's support. The contract will be through the Crown Commercial Service, Management Consultancy Framework Agreement RM3745. Formal authorisation is sought to commission rail engineering technical support from Arup, through a direct award contract to support the DCO process, in order for the project to achieve development consent, under section 6 of the Councils Contract Standing Orders.

*Legal Services* – The project is particularly complicated due to the multiple consenting processes and because it entails delivering a major investment on an asset base not owned by NSC / WECA. Consequently, the project requires significant specialist legal support, which also entails complex commercial and contractual arrangements. Secondly, the project entails complex consenting processes and compulsory acquisition of land, giving rise to a much greater level of technical detail and scrutiny through the DCO and Habitats Regulation Assessment (HRA) process, than would ordinarily be required for a conventional major project. Thirdly, the HRA process is particularly complex due to the interface with the Avon Gorge SAC and the impacts on ancient woodland and endangered ecology. As a result of this, some additional legislation has been triggered by the project known as ‘Imperative Reasons for Overriding Public Interest (IROPI)’, as part of the HRA process. This will necessitate very close working between the Womble Bond Dickinson Team, the Jacobs Team and the NSC/WECA Team to make the case to the Planning Inspectors both in written form and verbally through the DCO Pre-examination and Examination.

The legal support to be provided by Womble Bond Dickinson includes (but is not limited to) the following:

- supporting and assisting the Project Team through the DCO examination, including leading on technical legal matters relating to the draft Order and associated powers being sought,
- supporting and assisting Counsel through the DCO examination in respect of the HRA and IROPI,
- co-ordinate the prompt and smooth transference of information across all the work streams within NSC/WECA and its other professional advisers.

This support is provided through an existing contact.

*Land Agent* - the council require the following professional services for the following reasons. The Examining Body will require the content of the DCO application documents to be explained both in writing and at hearings. The project’s land requirements which includes permanent acquisition of land, temporary acquisition of land and acquisition of land rights, directly affects over 100 land owners. The Book of Reference which totals 2,465 pages, sets out the interests of land to be acquired along with the interests of those likely to be affected by the project in respect noise and vibration, gathered over several years.

The technical support to be provided by Ardent includes (but is not limited to) the following:

- Progressing essential land agreements with land owners which are needed to demonstrate the delivery project in accordance with the DCO Application documents.
- Assisting the project legal team (WBD) with property legal matters and property transactions.
- Providing documentation for the start of the DCO examination and for the land hearings.

Ardent were commissioned in 2015 via an OJEU competitive tender, to provide property and land assembly services for the development and delivery of the project. The contract with Ardent expired in May 2020. The timescales for the development and delivery of the project have increased due to the technical complexity of the project and due to factors outside of the control of the project team. Formal authorisation is now sought to continue to commission property and land assembly services from Ardent through the DCO examination, through a direct award contract, under section 6 of the Councils Contract Standing Orders.

*Environment Impact Assessment Team* – MetroWest triggers a number of challenging and legislative heavy processes relating to environmental impacts. It will be necessary to explain to the Examining Authority the content of the Environmental Statement (ES) and the vast number of associated technical documents, that comprise the DCO Application. This is highly complex due to the interface with the Avon Gorge SAC and the impacts on ancient woodland and critically endangered ecology. Jacobs undertook the environmental impact assessment and are the authors of the ES and HRA which forms a key part DCO Application.

The technical support to be provided by Jacobs includes (but is not limited to) the following:

- Supporting and assisting the Project Team through the DCO examination including providing written responses to questions by the Examining Authority and attendance at DCO topic specific hearings.
- Providing technical support for Counsel through the DCO examination in respect of the HRA and IROPI.
- Providing additional documentation or revisions to documentation as required by the Examining Authority.
- Providing support for the completion of Statements of Common Ground.

Jacobs were commissioned in 2014 through the former WoE framework contract, to provide environmental impact assessment services. The WoE framework contract with Jacobs expired on 31<sup>st</sup> December 2019 and Jacobs were not successful through the procurement of the replacement contract. Formal authorisation is now sought to continue to commission environmental impact assessment services from Jacobs, through a direct award contract to support the DCO process, in order for the project to achieve development consent, under section 6 of the Councils Contract Standing Orders.

Section 6 of the Councils Contract Standing Orders “**Suspension of and Exceptions to Contract Standing Orders**” sets out the circumstances where an exception can be made.

Clause 6.3.1 to 6.3.4 states:

*The following are considered acceptable reasons for seeking an exception:*

*6.3.1 quantifiable and significant cost and efficiency savings can be achieved through seeking an alternative route;*

*6.3.2 reasons of extreme urgency mean that normal time limits cannot be met, including as a result of unforeseen emergency or disruption to Council services. This may include for example, storm damage to public buildings. Not having sufficient time to tender may not in itself constitute urgency.*

6.3.3 the Council would otherwise be exposed to immediate and significant financial, legal or reputational risk that has been identified in the relevant risk register;

6.3.4 only one supplier is objectively able to provide the works, services or goods in question..."

An exception is justified under clause 6.3.3 because the Council would be exposed to immediate and significant financial and reputational risk in relation its Development Consent Order application to re-open the Portishead Branch Line and under clause 6.3.4 an exception is justified because that there is effectively only one supplier able to provide the professional services outlined in this report, in the required timescales. An exception to the Councils Contract Standing Orders is justified as set out in this report.

The Executive delegated authorisation to the Director of Development & Environment on 29<sup>th</sup> April 2020 to award contracts for professional services as per the following extract from the formal minutes:

**Resolved:**

*(1) that the Director of Development & Environment, in consultation with the Head of Legal and Democratic Services and the Interim Director of Finance and Property be delegated authority to procure and award contracts for the following professional services to support the continuation of the Development Consent Order (DCO) process and pending successful outcome of the DCO, through to project completion:*

- (a) rail engineering technical support and rail industry technical processes up to £2.0m*
- (b) legal services up to £2.9m*
- (c) land agent up to £0.9m*
- (d) Environmental Impact Assessment services up to £1.9m*

*The above contracts form part of the estimated total project cost of £116.4m and will be funded as profiled in the financial section of the report. The contracts of engagement will have break clauses at key milestones within the project, should the council not be in a position to proceed as outlined in section 4 of the report;*

**Contract Management**

James Willcock (MetroWest Phase 1, Programme Manager) will be the contract manager. The North Somerset Council Supply of Services Standard Contract Terms and Conditions will be used for the Ardent and Jacobs contract, the Crown Commercial Service, Management Consultancy Framework Agreement RM3745 will be used for the Arup contract and the existing contracts will be used for the Network Rail and Womble Bond Dickinson support. Regular contact will be kept with all contractors on progress of the work packages, to monitor performance in relation to the estimated cost and delivery timescales.

**Implementation of contracts**

The contracts will be implemented from October 2020 to April 2021. Further contracts will be required for Land Agent services and Environment Impact Assessment services following the DCO examination up to Full Business Case Approval.

## **OPTIONS CONSIDERED:**

The option to utilize other contractors for Land Agent services and Environment Impact Assessment services has been considered.

Land Agent – to utilize another contractor there would need to be substantial handover process on a land owner by land owner basis. Given there are 100 land owner transactions, there is not sufficient time for this to be achieved without exporting significant DCO consenting risks onto the project promoters (NSC & WECA). It would also require Ardent support which itself would lead to further costs. Furthermore, different personnel could result in different methods being used or issues with the quality or completeness of the work, resulting in an inconsistent approach in the overall land assembly process. This could increase the risk that the project is unsuccessful in making the case for the compulsory acquisition of land, where this is needed. Without all of the land, it may not be possible to deliver the project at all or without re-design, re-consenting and associated additional timescales and additional cost.

Environment Impact Assessment services – to utilize another contractor there would need to be substantial handover process on an environmental discipline by discipline basis. There is not sufficient time for this to be achieved without exporting significant DCO consenting risks onto the project promoters (NSC & WECA). It would also require Jacobs support which itself would lead to further costs. Furthermore, different personnel could result in different methods being used or issues with the quality or completeness of the work, resulting in an inconsistent approach in the overall dataset for the Environmental Statement and Habitats Regulation Assessment.

At the DCO examination it will be necessary to explain to the Planning Inspectors the content of the Environmental Statement and the vast number of associated technical documents, that comprise the DCO Application. This necessitates very detailed knowledge and understanding of the DCO application documents and this effectively means the only people that have this intellectual knowledge and understanding are the authors of the documents. Furthermore, the process of environmental impact assessment, which is set out in the project Environmental Statement and Habitats Regulation Assessment, is highly complex due to the interface with the Avon Gorge SAC and the impacts on ancient woodland and endangered ecology. As a result of this, some additional legislation has been triggered by the project known as ‘Imperative Reasons for Overriding Public Interest (IROPI)’, as part of the HRA process. This will necessitate very close working between the Womble Bond Dickinson Team, the Jacobs Team and the NSC/WECA Team to make the case to the Planning Inspectors both in written form and verbally through the DCO Pre-examination and Examination.

## **FINANCIAL IMPLICATIONS:**

The estimated capital out-turn cost of the project is £116.4M, as set out in detail in the project Outline Business Case in December 2017, of which £20.758M has been spent to date, up to the end of June 2020. The project budget sources and spend are set out in the table below.

Project Budget

<b>Funding Source</b>	<b>Total Funding Secured</b>	<b>Spend to date 19-20 Month 11</b>
Local Growth Funding (Prep Costs Award 2015)	£8,846,000	£8,846,000
Local Growth Funding (Prep Costs Award 2018)	£1,700,000	£1,700,000
Local Growth Funding (Prep Costs Award 2019)	£500,000	£500,000
Local Growth Funding (Prep Costs Award 2019)	£11,650,719	£4,591,214
<b>Total Local Growth Funding</b>	<b>£22,696,719</b>	<b>£15,637,214</b>
Economic Development Funding (Swapped with LGF)	£30,703,281	£0
Contributions to date by four Councils	£4,413,000	£4,413,000
NSC additional contribution Dec 17	£5,860,000	£707,935
WECA contribution Dec 17	£5,860,000	£0
NSC additional contribution	£15,000,000	£0
DfT Contribution via CP6 Rail Network Enhancements Pipeline	£31,900,000	£0
<b>Total</b>	<b>£116,433,000</b>	<b>£20,758,149</b>

To date £15.637M of Local Growth Funding (LGF) has been spent on preparation costs, the remainder has been allocated from local contributions from the authorities. The Council authorised the spend of £7.159M for 2020/21 of Local Growth Funding at its meeting of 19<sup>th</sup> February 2019, to complete work feeding into the Final Approval Business Case. This will take the Local Growth Funding spend to £22.696M.

Upon securing the DCO, completion of detailed design (GRIP5) and procurement of construction, the Final Approval Business Case will be submitted in mid 2022 to the Council and to co-funders (including WECA & the Department for Transport) for approval to proceed with awarding construction contracts and to implement the project. The forecast spend profile for the 2020/21 to be funded from LGF is currently under review and likely to be significantly less than the £7.159M allocated budget, due to the likely delay to the DCO examination, caused by the corona virus. The current assessment of spend for 2020/21 is set out in the table below.

#### Forecast Spend for 2020/21

<b>Cost centre</b>	<b>2020/21 Estimate</b>
KDT501 - Design - Rail	£1,990,000
KDT502 - Environment	£710,000
KDT503 - Modelling & Appraisal	£40,000
KDT504 - Design - Highways	£450,000
KDT505 - Commercial & Procurement	£60,000
KDT506 - Local Communications	£12,000
KDT507 - Legal & Planning	£1,912,498
KDT509 - Programme Management	£0
KDT510 - Project Management	£680,000
KDT511 - Land	£280,000
<b>Total</b>	<b>£6,134,498</b>

## **LEGAL POWERS AND IMPLICATIONS**

The Development Consent Order has a range of legal implications which are set out in the report to Council at its meeting of 25<sup>th</sup> June 2019.

The North Somerset Council Supply of Services Standard Contract Terms and Conditions will be used for the Ardent and Jacobs contract and the existing contracts will be used for the Network Rail and Womble Bond Dickinson support.

## **CLIMATE CHANGE AND ENVIRONMENTAL IMPLICATIONS**

The project has substantial climate change, environmental and socio-economic benefits. Further information is included within the DCO Application which is available from:

<https://infrastructure.planninginspectorate.gov.uk/projects/south-west/portishead-branch-line-metrowest-phase-1/?ipcsection=docs>

## **CONSULTATION**

As part of the formal pre-application requirements the Council prepared two Statement of Community Consultation and consulted in line with the provisions of the document, in accordance with the requirements of the 2008 Planning Act. It has also engaged in extensive "informal" consultation with affected stakeholders and interested parties.

Communities, stakeholders, land owners, statutory bodies and affected parties are required to be consulted during the pre-application stage. The project took the opportunity to undertake two stages of consultation. Stage 1 consultation on re-opening the Portishead Branch Line was undertaken between June and August 2015 and Stage 2 consultation was undertaken between October and December 2017, with an extension of time for a small number of statutory bodies into 2018. Stage 2 was the formal DCO consultation and this included statutory bodies, land owners, government agencies and departments, and parties directly affected by the proposals. Wider stakeholders including local community groups, non-statutory bodies and the wider public etc, were consulted in both Stage 1 and Stage 2, in accordance with the project's Statements of Community Consultation.

The response to the consultations was very high with almost 2,000 separate responses received over both stages and the level of support for the scheme is also very high with 95% of community respondents fully or mainly in support of the proposals. Further information on the project consultation is set out in the DCO Consultation Report which is a DCO application document and is available from:

<https://infrastructure.planninginspectorate.gov.uk/projects/south-west/portishead-branch-line-metrowest-phase-1/?ipcsection=docs>

## **RISK MANAGEMENT**

Risks at the project and programme level are managed through the WoE Strategic Rail Board, which reports to the WoE Joint Committee. While at this stage there remains potential for the scheme costs to increase as the scheme design and technical work progresses, this risk applies to all major transport schemes up to completion of the design, consents / approvals and the tendering of the construction works. As the project is a third party railway project the principal risks of implementing the proposals have to be met by the Council and WECA as the co-promoters. The Council and WECA each have a 50% share of the risks and there is a total risk allowance of £22M, within the project capital budget.

It will be necessary for the Council to enter into an Implementation Agreement, an Asset Protection Agreement, a Property Agreement and Bridge Agreements with Network Rail by late 2020. This does mean the Councils risk exposure will increase in relation to the estimated spend of £6.134M for 2020-21, resulting in a total projected spend of £26.793M by March 2021. However, achieving the DCO consent and completing GRIP 5 detailed design will take the project to a point where it is ready to be implemented subject to approval of the Final Approval Business Case.

**EQUALITY IMPLICATIONS**

Have you undertaken an Equality Impact Assessment? Yes

This is included within the DCO Application which is available from:

<https://infrastructure.planninginspectorate.gov.uk/projects/south-west/portishead-branch-line-metrowest-phase-1/?ipcsection=docs>

**CORPORATE IMPLICATIONS**

A transport network that promotes active, accessible and low carbon travel is a key priority in the Corporate Plan. The project will play a significant role in Supporting the aim of creating a thriving and sustainable place.

**APPENDICES**

None

**BACKGROUND PAPERS**

Report to Executive 29<sup>th</sup> April 2020 MetroWest Phase 1 Update – Budget, Professional Services Contracts and Procurement Approvals

Report to Council 25<sup>th</sup> June 2019 MetroWest Phase 1 Submission of Development Consent Order Application and Associated Approvals

Report to Council 19<sup>th</sup> February 2019 MetroWest Phase 1 Progress on the Submission of the Development Consent Order Application and Associated Approvals

SIGNATORIES:

DECISION MAKER(S):



Signed: .  
Growth. In accordance with DE 2

..... Assistant Director Placemaking and

Date: ..14/09/2020.....

With technical advice provided by:

Head of Major Projects and MetroWest Phase 1 Programme Manager