



PRCC.20 14/15
Committee Prosperous Communities
Date 2 Sept 14

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Subject: Memorandum of Understanding for Lincoln Eastern Bypass

Report by: Mark Sturgess, Chief Operating Officer

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Purpose / Summary: To outline the Memorandum of Understanding required to be signed by West Lindsey District Council, North Kesteven District Council and City of Lincoln Council to ensure the delivery and funding, through S106 agreements from relevant planning applications, of the Lincoln Eastern Bypass.

RECOMMENDATION(S):

- (A) That members request that the amendments in Section 3.1 are made to the MOU by Lincolnshire County Council;
- (B) That members delegate the signing of this MOU, subject to the above amendments being made, to the Chief Operating Officer in consultation with the Chair of the Prosperous Communities Committee.

IMPLICATIONS

Legal: The MOU has been overseen and amended by the relevant legal officers on behalf of WLDC.

Financial : fin ref 51/15

That the council will use reasonable endeavours to secure contributions to towards the Lincoln Eastern Bypass under S106 of the Town and Country Planning Act 1990 and where compliant with CIL regulation 122 from relevant planning applications in the area.

By supporting the LEB it is anticipated that future developments will come forward that will contribute towards the cost of the LEB, without this improvement to the transport infrastructure it is unlikely that these future development in the LEB area will be realised and therefore income streams (such as Council Tax, NNDR, New Homes Bonus etc) would not be generated.

Staffing : None as a result of this report

Equality and Diversity including Human Rights :

The Memorandum of Understanding relates to the delivery and funding of the Lincoln Eastern Bypass by Lincolnshire County Council. As such this report does not impact on Equality and Diversity, including Human Rights.

Risk Assessment : If WL do not sign up to this Memorandum of Understanding there is a risk that the funding from LCC will not be available to deliver the Lincoln Eastern Bypass which is important to growth in Central Lincolnshire.

Climate Related Risks and Opportunities :

Title and Location of any Background Papers used in the preparation of this report:

Memorandum of Understanding included as an Appendix.

Call in and Urgency:

Is the decision one which Rule 14.7 of the Scrutiny Procedure Rules apply?

i.e. is the report exempt from being called in due to urgency (in consultation with C&I chairman)

Yes

No

Key Decision:

A matter which affects two or more wards, or has significant financial implications

Yes

No

1 Introduction

- 1.1 As members are aware, the Lincoln Eastern Bypass is an essential component of Lincolnshire County Council's strategy to encourage growth and regeneration in and around Lincoln and hence for Lincolnshire as a whole. It will enable quicker north/south journeys around Lincoln and assist businesses in West Lindsey by providing better road transport links to the rest of the country.
- 1.2 The Lincoln Eastern Bypass is a pivotal part of the Lincoln Integrated Transport Strategy objectives and is an essential element in the continued growth and development of Lincoln. Lincoln currently suffers from a number of longstanding transport related problems and issues that have a significant impact on journey reliability, journey times and network reliability throughout the city. These, in turn, have a negative impact on the wider Lincoln economy and act as a restraint to the city and county's development aspirations.
- 1.3 If the Lincoln Eastern Bypass were not to be built the existing highway network constraints will reduce further development occurring around the city due to Lincolnshire County Council as the Highway Authority objecting to major development proposals both in policy development and at the detailed application stage. This would happen in this District as well as the City of Lincoln.
- 1.4 A scheme to deliver the Lincoln Eastern Bypass has been promoted and supported by Lincolnshire County Council since at least 2010. Contracts are due to be awarded for delivery in late 2014/early 2015. The project costs include direct contributions from Lincolnshire County Council, Department for Transport grant funding and developer contributions. The developer contribution costs are being underwritten to the extent of £34m by LCC. This Council has supported the development of improved transport links around Lincoln for a number of years as a way of supporting and encouraging economic growth in West Lindsey.

2. The Purpose of the Memorandum of Understanding (MOU)

- 2.1 The MOU assumes that developer contributions will be recovered through contributions under Section 106 of the Town and Country Planning Act 1990 and where compliant with the CIL Regulation 122 and/ or Community Infrastructure Levy contributions ("CIL") from development proposals towards the LEB;
- 2.2 The MOU provides a framework through which the Parties to this MOU – West Lindsey District Council, North Kesteven District Council and

City of Lincoln Council will aim to secure maximum contributions from contributions under Section 106 of the Town and Country Planning Act 1990 and where compliant with the CIL Regulation 122 in advance of the adoption of a Central Lincolnshire CIL;

- 2.3 The MOU is entered into by the parties to reflect the need to have a coherent, consistent and transparent approach to securing developer contributions by recognising that the LEB provides a strategic solution to city and area-wide transport issues which offer more cost effective transport solutions than scheme by scheme mitigation measures.

3. The Memorandum of Understanding

- 3.1 The MOU is attached as Appendix 1.

- 3.2 At the time of writing this report the following amendments have been made by LCC as follows:

- 5.1(a)WLDC, CITY and NKDC as local planning authorities will use all reasonable endeavours, where compliant with CIL Regulation 122, to secure
- 5.1(c) ... sought under section 106 of the Town and Country Planning Act 1990 and where compliant with CIL Regulation 122;
- Paragraph 5.1(g) The parties recognise the impact of not securing contributions towards the LEB on the long term deliverability of the infrastructure to support growth in and around Lincoln and **and it will be considered** in their decision making processes on individual planning applications.

4. Recommendations

- 1 That members request that the amendments in section 3.1 are made to the MOU by Lincolnshire County Council;
- 2 That members delegate the signing of this MOU, subject to the above amendments being made, to the Chief Operating Officer in consultation with the Chair of the Prosperous Communities Committee.

DATED

2014

Lincolnshire County Council (1)

West Lindsey District Council (2)

City of Lincoln Council (3)

North Kesteven District Council (4)

Memorandum of Understanding

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THIS AGREEMENT is dated 2014

PARTIES

The parties to this memorandum of understanding **MOU** are:

- (1) **LINCOLNSHIRE COUNTY COUNCIL** of COUNTY OFFICES, NEWLAND, LINCOLN, LN1 1YS (**LCC**).
- (2) **WEST LINDSEY DISTRICT COUNCIL** of MARSHALL'S YARD, GAINSBOROUGH, LINCOLNSHIRE DN21 2NA (**WLDC**).
- (3) **CITY OF LINCOLN COUNCIL** of CITY HALL, BEAUMONT FEE, LINCOLN, LN 1 1DD (**CITY**)
- (4) **NORTH KESTEVEN DISTRICT COUNCIL** of KESTEVEN STREET, SLEAFORD, LINCOLNSHIRE, NG34 7EF (**NKDC**)

1. BACKGROUND

- 1.1 LCC and WLDC and CITY and NKDC have agreed to work together on the project detailed in Annex A to this MOU (**Project**).
- 1.2 The parties wish to record the basis on which they will collaborate with each other on the Project. This MOU sets out:
 - (a) the key objectives of the Project;
 - (b) the principles of collaboration;
 - (c) the governance structures the parties will put in place; and
 - (d) the respective roles and responsibilities the parties will have during the Project.

2. KEY OBJECTIVES FOR THE PROJECT

- 2.1 The parties shall undertake the Project to achieve the key objectives set out in Annex A to this MOU (**Key Objectives**).
- 2.2 The parties acknowledge that the current position with regard to the Project is as detailed in the Annex A to this MOU.

3. PRINCIPLES OF COLLABORATION

The parties agree to adopt the following principles when carrying out the Project (**Principles**):

- (a) collaborate and co-operate. Establish and adhere to the governance structure set out in this MOU to ensure that activities are delivered and actions taken as required;
- (b) be accountable. Take on, manage and account to each other for performance of the respective roles and responsibilities set out in this MOU;
- (c) be open. Communicate openly about major concerns, issues or opportunities relating to the Project;
- (d) learn, develop and seek to achieve full potential. Share information, experience, materials and skills to learn from each other and develop effective working practices, work collaboratively to identify solutions, eliminate duplication of effort, mitigate risk and reduce cost;
- (e) adopt a positive outlook. Behave in a positive, proactive manner;
- (f) adhere to statutory requirements and best practice. Comply with applicable laws and standards including, data protection and freedom of information legislation.
- (g) act in a timely manner. Recognise the time-critical nature of the Project and respond accordingly to requests for support;
- (h) manage stakeholders effectively;
- (i) deploy appropriate resources. Ensure sufficient and appropriately qualified resources are available and authorised to fulfil the responsibilities set out in this MOU; and
- (j) act in good faith to support achievement of the Key Objectives and compliance with these Principles.

4. PROJECT GOVERNANCE

4.1 Overview

The governance structure defined below provides a structure for the development and delivery the Project.

4.2 Guiding principles

The following guiding principles are agreed. The Project's governance will:

- (a) provide strategic oversight and direction;
- (b) be based on clearly defined roles and responsibilities at organisation, group and, where necessary, individual level;
- (c) align decision-making authority with the criticality of the decisions required;

- (d) be aligned with Project scope [and each Project stage] (and may therefore require changes over time);
- (e) leverage existing organisational, group and user interfaces;
- (f) provide coherent, timely and efficient decision-making; and
- (g) correspond with the key features of the Project governance arrangements set out in this MOU.

4.3 **Project board**

- (a) The Project Board will provide strategic management at Project and work stream level. It will provide assurance that the Key Objectives are being met and that the Project is performing within the boundaries.
- (b) The Project Board will be the Central Lincolnshire Heads of Planning which consists of representatives from each of the parties. The Project Board shall have responsibility for the creation and execution of the project plan and deliverables, and therefore it can draw technical, commercial, legal and communications resources as appropriate into the Project Board.

4.4 **Reporting**

Project reporting shall be undertaken at three levels:

- (a) **Project Board:** Minutes and actions will be recorded for each Project Board meeting. Any additional reporting requirement shall be at the discretion of the Project Board.

5. **ROLES AND RESPONSIBILITIES**

5.1 The Parties shall undertake the following roles and responsibilities to deliver the Project:

- (a) In considering planning applications submitted ahead of the delivery of the Lincoln Eastern Bypass (“LEB”) WLDC, CITY and NKDC as local planning authority will use all reasonable endeavours, where compliant with CIL Regulation 122, to secure contributions towards the LEB under section 106 of the Town and Country Planning Act 1990 based on the formula set out at Annex A;
- (b) The formula at Annex A will be used by LCC Highways officers to inform their consultation response on highway capacity grounds in respect of planning applications received by WLDC, City and NKDC ahead of the implementation of a Community Infrastructure Levy

charging schedule in the administrative areas of WLDC, City and NKDC ("the CIL Charging Schedule");

- (c) In considering planning applications submitted ahead of the delivery of the LEB; NKDC, WLDC & City as far as they are able, will prioritise any LEB contribution sought in respect of such planning application above other contributions sought under section 106 of the Town and Country Planning Act 1990 and CIL Regulation 122;
- (d) WLDC, NKDC & City will agree a phased payment of contributions from developers secured under section 106 of the Town and Country Planning Act 1990 towards the LEB in conjunction with LCC;
- (e) WLDC, NKDC & City will use the MOU as a key document in pre-application discussions with developers to inform the negotiated position on contributions made under section 106 of the Town and Country Planning Act 1990;
- (f) LCC will be a counter signatory to any planning performance agreement's entered into with developers for schemes that will be subject to LEB contributions and LCC will be invited to any relevant pre-application meetings; and
- (g) The parties recognise the impact of not securing contributions towards the LEB on the long term deliverability of the infrastructure to support future growth in and around Lincoln and it will be considered in their decision making processes on individual planning applications.

5.2 For the purpose of the roles and responsibilities set out at 5.1 above:

- (a) the party that has responsibility for undertaking the particular task will be authorised to determine how to undertake the task acting in compliance with the Objectives and Principles at all times, and consulting with the other parties in advance; and
- (b) LCC will have the opportunity to review and provide input to the party responsible for undertaking a particular task before they take a final decision on it provided that any comments from LCC are given in a timely manner. Any derogations raised must be limited to raising issues that relate to specific needs that have not been adequately addressed by the party and/or concerns regarding compliance with the Key Objectives and Principles.

6. ESCALATION

6.1 If any party has any issues, concerns or complaints about the Project, or any matter in this MOU, that party shall notify the other party and the parties shall then seek to resolve the issue by a process of consultation. If the issue cannot be resolved within a reasonable period of time, the matter shall be

escalated to the Project Board, which shall decide on the appropriate course of action to take.

- 6.2 If any party receives any formal inquiry, complaint, claim or threat of action from a third party (including, but not limited to, claims made by a developer or requests for information made under the Freedom of Information Act 2000) in relation to the Project, the matter shall be promptly referred to the Project Board (or its nominated representatives). No action shall be taken in response to any such inquiry, complaint, claim or action, to the extent that such response would adversely affect the Project, without the prior approval of the Project Board (or its nominated representatives).

7. TERM AND TERMINATION

- 7.1 This MOU shall commence on the date of signature by all parties, and shall expire on the implementation of the CIL Charging Schedule.

8. VARIATION

This MOU, including the Annexes, may only be varied by written agreement of all Parties

9. CHARGES AND LIABILITIES

- 9.1 Except where otherwise provided, the parties shall each bear their own costs and expenses incurred in complying with their obligations under this MOU.
- 9.2 All parties shall remain liable for any losses or liabilities incurred due to their own or their employee's actions and no party intends that any other party shall be liable for any loss it suffers as a result of this MOU.

10. STATUS

- 10.1 This MOU is not intended to be legally binding, and no legal obligations or legal rights shall arise between the parties from this MOU. The parties enter into the MOU intending to honour all their obligations.
- 10.2 Nothing in this MOU is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party as the agent of the other party, nor authorise either of the parties to make or enter into any commitments for or on behalf of the other party.

11. GOVERNING LAW AND JURISDICTION

This MOU shall be governed by and construed in accordance with English law and, without affecting the escalation procedure set out in clause 6, each party agrees to submit to the exclusive jurisdiction of the courts of England and Wales.

Signed for and on behalf of
LINCOLNSHIRE COUNTY COUNCIL

Signature:
Name:
Position:
Date:

Signed for and on behalf of NORTH
KESTEVEN DISTRICT COUNCIL

Signature:
Name:
Position:
Date:

Signed for and on behalf of WEST
LINDSEY DISTRICT COUNCIL

Signature:
Name:
Position:
Date:

Signed for and on behalf of CITY OF
LINCOLN COUNCIL

Signature:
Name:
Position:
Date:

Annex A. The Project

Background

1. The LEB is part of the joint vision to make Lincoln and the surrounding communities better places in which to work and live, and is an essential component of LCC's strategy to encourage growth and regeneration.
2. The LEB is a pivotal part of the Lincoln Integrated Transport Strategy objectives being an essential element in the continued growth and development of Lincoln. Lincoln currently suffers from a number of longstanding transport related problems and issues that have a significant impact on journey reliability, journey times and network reliability throughout the city. These, in turn, have a negative impact on the wider Lincoln economy and act as a restraint to regeneration and the city's development aspirations.
3. Without the LEB being built the existing highway network constraints will preclude any further development occurring and result in LCC as the Highway Authority objecting to major development proposals around the City, both in policy development and at detailed application stage.
4. A scheme to deliver the LEB has been promoted and supported by LCC with contracts to be awarded for delivery in late 2014/ early 2015. The project costs include direct contributions from LCC, DfT grant funding and developer contributions. The developer contribution costs are being underwritten to the extent of £34m by LCC.
5. It cannot be assumed that without a clear mechanism to ensure reasonable endeavours are used to recover this £34m that LCC would underwrite these costs

Purpose of the MOU

1. The MOU assumes that developer contributions will be recovered through contributions under Section 106 of the Town and Country Planning Act 1990 and/ or Community Infrastructure Levy contributions ("CIL") from development proposals towards the LEB;
2. The MOU provides a framework through which the Parties to this MOU will aim to secure maximum contributions from contributions under Section 106 of the Town and Country Planning Act 1990 in advance of the adoption of a Central Lincolnshire CIL;

3. The MOU is entered into by the parties to reflect the need to have a coherent, consistent and transparent approach to securing developer contributions by recognising that the LEB provides a strategic solution to City wide transport issues which offer more cost effective transport solutions than scheme by scheme mitigation measures.

Contribution methodology

1. A formula has been developed based on the previous CIL viability evidence base to establish a property/ roof tax for calculating contributions under section 106 of the Town and Country Planning Act 1990 to ensure full recovery of costs to LCC's costs for the LEB.
2. The formula based approach is predicated on an assumption that Transport Assessments for individual schemes without the LEB in place will demonstrate the need for mitigation works that would be more costly than the formula based calculation for LEB contributions. Where mitigation works are required by a Transport Assessment for individual schemes without the LEB in place a discount mechanism will be applied.

Formula

- scheme / unit floor area x the number of liable units x the relevant CIL rate.

Assumptions

- Previously calculated potential CIL rates are valid
 - City of Lincoln and North Kesteven Rural: £45
 - Sleaford and West Lindsey Rural: £35
 - Lincoln Strategic Urban Extension Sites: £25;
- average property floor area 100sq m;

Policy context

1. The Policy context for each of the parties to this MOU to take this approach is contained within their saved Development Plan policies. These policies all seek to ensure that development proposals will not be permitted that would prejudice the implementation of the LEB. The current business case for delivery of the LEB assumes developer contributions will contribute to £34m of the costs of the scheme. The granting of permissions that would prejudice the recovery of that developer contribution would prejudice the delivery of the LEB which would then result in large scale new development being unlikely to be sustainable around the eastern side of the city given the likely impacts on the highway network and it's capacity;

2. If development that could contribute to the LEB is to be considered favourably this would be likely to include a Transport Assessment and mitigation measures required in isolation to make the scheme acceptable which in themselves could then preclude the business case for the LEB and/ or result in abortive within highway works

West Lindsey District Council	<p>POLICY ECON 13 – LINCOLN EASTERN BY - PASS</p> <p>Planning permission will not be granted for development proposals which will prejudice the implementation of the road scheme for the Lincoln Eastern By-Pass, identified on the Proposals Map.</p>
City of Lincoln Council	<p>POLICY 14: Strategic and Major Road Proposals</p> <p>Land required for the construction of the Eastern By-pass will be safeguarded and planning permission will not be granted for any development which would hinder the construction of that road.</p>
North Kesteven District Council	<p>POLICY T1 - Accessibility to developments</p> <p>Planning permission will be granted for developments that will generate or attract significant numbers of journeys, only if:</p> <ol style="list-style-type: none"> 1. Adequate and effective measures are taken to facilitate access by all modes of transport, with particular emphasis on enabling and promoting safe and convenient access by public transport, walking and cycling; or 2. The site's location and the infrastructure serving it are satisfactory, or can be made satisfactory, as part of the development. <p>POLICY T7</p> <p>Planning permission will be granted for developments that would not prevent or hinder the planned provision or improvement of desirable transport infrastructure. In particular, land required in connection with the construction and operation of the proposed Lincoln Eastern By-pass (as shown on the Proposals Map) will be safeguarded from any development that would prejudice the provision of that road.</p>
Lincolnshire County Council	LTP 4 and Lincoln Transport Strategy

Comment [CL1]: Insert appropriate wording

