



Derby City Council

COUNCIL CABINET
9 November 2016

ITEM 11

Report of the Cabinet Member for Communities
and City Centre Regeneration

Infinity Park Derby: Future Development

SUMMARY

- 1.1 This report seeks approval to enter into all contractual and other documentation necessary to deliver further initiatives and progress planning applications as a catalyst for accelerated development at Infinity Park Derby (IPD). These initiatives include:
 - the construction of an extension to Infinity Park Way within Infinity Park Derby (“T12 Phase 2 works”) – Appendices 2 and 3.
 - the installation of wayfinding signage within Infinity Park Derby by the developer.
 - the enhancement and realignment of Cuttle Brook - Appendix 3.
- 1.2 The T12 Phase 2 works and the brook works will accelerate the unlocking of additional employment land (including the Innovation Centre Phase 2 site) and will deliver significant environmental improvements on IPD. The proposals also help to deliver the proposed Southern Derby Integrated Transport Link Road (SDITLR), which is identified in the Derby City Local Plan, and will help bring forward the aspirations for the South Derby Growth Zone (para 4.1.1).
- 1.3 All of the T12 Phase 2 works, the onsite wayfinding signage and the brook works will be funded by Local Growth Fund (LGF)1 money secured from the Local Economic Partnership (D2N2).
- 1.4 It is necessary to submit an outline planning application for the emerging IPD masterplan and a detailed planning application to progress the brook enhancement and alignment works. A hybrid application is proposed to be submitted in this connection; the application itself will crystallise following consultation with Highways England and the Environment Agency. The IPD application will bolster market confidence and is key to the maintaining the site’s Enterprise Zone status.

RECOMMENDATION

- 2.1 To approve entering into all contractual and other legal documentation necessary to deliver the T12 Phase 2 works, the wayfinding signage and the brook works, delegating to the Strategic Director Communities and Place, following consultation with the Cabinet Member for Communities and City Centre Regeneration, authority to finalise the details of the contract documentation.
- 2.2 To approve the preparation and submission of a hybrid planning application being an outline planning application for the proposed development at Infinity Park Derby combined with a detailed application for the brook enhancement and realignment works, delegating to the Strategic Director Communities and Place, following consultation with the Cabinet Member for Communities and City Centre Regeneration, authority to finalise the details of the application(s) documentation.

REASONS FOR RECOMMENDATION

- 3.1 Cabinet approval is necessary to enter into the proposed contractual and other legal documentation required and to meet requirements of D2N2 for the release of their grant funding.
- 3.2 The mix of uses required to deliver the proposed Infinity Park Derby development requires the submission of a planning application. This has been the subject of involved discussion with the private sector development partner and landowner partners (Rolls-Royce and Harpur Crewe Estate) over many months and is presently the subject of detailed discussions with Highways England, whose representations will be a major consideration in determining the nature of the development.

A detailed planning approval will be required to progress the brook enhancement and realignment works.



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Report of the Strategic Director of Communities and Place.

SUPPORTING INFORMATION

4.1 Proposals:

4.1.1 T12 Phase 2 works: the nature and location of these works is shown on the attached drawings at Appendices 2 and 3. The available funding will facilitate the construction of that part of the road on the land shown coloured blue and green (that is, on land owned by the Council and to be acquired by the Council respectively). The new road will accelerate the unlocking of additional employment land (including the Innovation Centre Phase 2 site) and help deliver the proposed Southern Derby Integrated Transport Link Road (SDITLR), opening up the Infinity Park Derby for further expansion. This will accelerate the potential housing development of over 2,000 new homes at Wragley Way, Stenson Fields, create 5,000 additional new jobs and assist in the development of over 371,600 sq m (4m sq. ft.) of new employment floorspace.

Planning consent for T12 Phase 2 was granted on 20 May 2016 and negotiations are at an advanced stage to satisfy pre-commencement conditions.

4.1.2 Onsite wayfinding signage works: bespoke onsite signage and public artwork will give an identity to IPD and generally promote a high quality destination for businesses, helping to market and promote IPD. Detailed design proposals are presently being finalised by the private sector partner with a view to securing approvals for signage structures on highway land and to progress planning applications.

4.1.3 Enhancement and realignment of Cuttle Brook: The environmental enhancements and the realignment of the brook (Appendix 3) have been encouraged by the Environment Agency; this provides a major opportunity to enhance a wildlife corridor, introduce wildlife areas and create cycle ways and walkways with seating to be enjoyed by workers on IPD and by the public generally. The design details here have yet to be finalised but the works also help by affording development sites with a more prominent frontage to Infinity Park Way; that is, providing an opportunity for high quality design on this key frontage.

4.1.4 Planning applications: The indicative masterplan for IPD is attached at Appendix 3. This proposes a mix of uses appropriate to the sites Enterprise Zone status and builds on existing planning approvals (Chellaston Business Park). The Council will lead on the application, working in partnership with the private sector developer partner and landowners. Viable, deliverable proposals will be encapsulated in the applications brought forward, embracing the extensive discussions had with Highways England and the Environment Agency. A planning approval for IPD will bolster market confidence and assist the marketing process generally.

A detailed planning approval is required to progress the brook works and this is integral to the IPD masterplan planning proposals. These works will only be commissioned by the Council once the planning application for the IPD masterplan has received a favourable determination.

4.2 Legal Documentation

4.2.1 Contracts: This report seeks approval to enter into the legal documentation necessary to deliver these works, these include:

- A transfer of the land required for the T12 Phase 2 works from Rolls-Royce to the Council (area coloured green on plan at Appendix 2). Working areas will be authorised by licence agreements between the Council's procured contractor and the relevant landowner.
- The Council entering into building contracts for (i) the T12 Phase 2 works and (ii) the brook enhancement and realignment works.
- The Council entering into an option to acquire additional land to facilitate the SDITLR works once these are agreed/funded (option area coloured red on the plan at Appendix 2).
- A grant agreement to be entered into with the private sector developer partner for the wayfinding signage works.

4.2.2 Agreements: Legal documentation has been/will be prepared by the Council's legal team (with support from Browne Jacobson LLP where necessary) with fees being reimbursed by grant. A precis of the key principles is as follows:

A. T12 Phase 2

The contract for the T12 Phase 2 work will be procured by direct award through the Midlands Highway Alliance MSF2 framework.

Conditions precedent to the Council awarding a contract for the works:

- All planning approvals to have been secured and pre-start conditions satisfied.
- All land required for new road, rights of support, other third party consents and licenses for contractors' working areas to be completed.
- The option for the Council to acquire the additional land to be completed and
- Final confirmation from the LEP to the Council that funding for the works has been secured (that is, Stage 2 criteria having been met).

B. Enhancement and realignment of Cuttle Brook:

- The Council will procure and commission a contract for the brook works which will be awarded via the most appropriate compliant route available at that time.
- Access onto the site by the contractor will be afforded by the land owner (Rolls-Royce) under licence.
- The Council will not acquire any interest in land or any asset here. The land will remain in the ownership of Rolls-Royce, which will be maintained by the private sector development partner under the pre-existing Estate Management arrangements for IPD.

C. Wayfinding signage works

- The private sector developer partner will procure the works contract and deliver the works with the benefit of grant.
- The private sector developer partner has produced initial proposals for wayfinding signage; these are presently being costed and worked up in detail.

The Council to enter into a grant agreement with the developer partner providing a capped grant (to be agreed – see para 4.3 below) with staged payments of grant made at milestones reflecting expenditure by the private sector development partner. The risk of cost overrun will rest with the private sector developer partner.

- The signage is proposed to be installed in the public highway at back of footways and on roundabouts - all design details to be agreed with the Council as planning and highway authority.

- The private sector developer partner will enter into a licence agreement with the Council which will provide that all signs are owned and maintained by the developer.

4.2.3 Other obligations of the parties:

(i) The Council's obligations:

- To secure Local Growth Fund (LGF) 1 funding for the works/initiatives. Note – the works' contracts and the grant agreement will not be awarded until final confirmation of the LEP funding has been received.
- To manage and monitor the grant funding to meet D2N2's requirements.
- To prepare all design for the T12 Phase 2 and brook works.
- To secure planning approval for the T12 Phase 2 works – planning application ref no. 11/15/01379 relates. Note: the planning application submitted includes for the road construction through to the proposed roundabout at the pylons to the west. The grant secured will facilitate only constructing a section of this roadway; the Council will seek to secure additional funding for these works.
- To secure detailed planning approval for the brook enhancement and realignment works.
- To award the T12 Phase 2 and brook works' contracts. The T12 Phase 2 works' contractor will be procured through the Midlands Highways Alliance MSF2 framework, an OJEU-compliant framework which has been accepted by D2N2 as eligible for LGF funding. This will facilitate early contractor involvement.
- To keep the developer and landowner partners advised of progress by reference to a programme (to be agreed) for the T12 Phase 2 and brook works.
- To construct the T12 Phase 2 road works to adoption standards.
- To agree with the developer partner revisions to the existing earthworks, drainage and levels strategies prepared for IPD appropriate to accommodating the subject works.

Additionally, the Infrastructure Delivery Agreement for IPD obligates the Council to submit the outline planning application for the IPD development – Masterplan at Appendix 3 relates. The detailed information for this planning application will be worked up by the Council over the next few weeks.

(ii) The Developer's obligations

- To consent to the transfer to the Council of the land required for the construction of the works.

- To consent to landowners entering into the option for the additional land required for SDITLR
- To review the existing earthworks, drainage and levels strategies prepared for IPD and to agree appropriate revisions to these strategies having regard to the T12 Phase 2 and brook works
- On the award of the contract for the works, to make a contribution of £25,000 (twenty five thousand pounds) toward the Regeneration Services budget to facilitate them pursuing other projects.

(iii) The Landowner's obligations

- To convey to the Council the land required for the works and to grant rights of support for embankments; the transfer and rights to be at £nominal consideration in recognition that the Council will covenant to use the land only for highways purposes.
- To make available appropriate and adequate working areas, access rights for construction activities and a site for a contractors compound (areas to be agreed).
- To enter into the option agreement for the additional land.

4.3 Financial Arrangements

The total cost of these projects, £2.24m, will be met by LGF1. There is a risk to the Council of overrun on the T12 Phase 2 and the brook works; project officers will ensure that there is sufficient risk budget to cover this. Any overruns on delivering the wayfinding signage will met by the private sector development developer.

T12 Phase 2: the total grant available to the Council for T12 Phase 2 is £1.79m which breaks down as follows.

Construction costs inc for risk and inflation	£1,378,000
Commutated sums	£ 112,000
Project management, other fees and statutory approvals	£ 300,000

Wayfinding signage: The funding available to deliver the wayfinding signage is £250,000 (maximum). The Council will retain a “top-slice” of this money (details to be agreed) to cover its fees for project management, other project costs and legal fees. The remainder of the funding will be the grant provided to the developer partner to fund the costs incurred by them in delivering the project – the grant will be capped at this amount and should the project costs exceed the grant available then the cost overrun will be met by the private sector development partner and, similarly, any savings achieved will be retained by the Council.

Enhancement and realignment of brook: The funding available to deliver the brook enhancement and realignment works is £200,000 as follows:

Cost estimate for works inc risk	£156,000
Planning and other fees	£ 44,000

4.4 **Key Risks**

The key risks for the Council (which attach to the T12 Phase 2 and to the brook works) are as follows:

- Risk of cost overrun – the Council has a contingency in the T12 Phase 2 works budget of £100,000 (10%) for this risk. A detailed cost plan, addressing risks etc. will be worked up for the brook works as detailed designs are finalised.
- Design risk - finished road levels must be agreed relative to proposed IPD development platforms; that is, for the road to effectively service the Innovation Hub Phase 2 site, adjacent IPD development plots and to join up with SDITLR. Further, the option area must be capable of accommodating the SDITLR roadworks in the future (note SDITLR will involve road widening works and must not prejudice services previously installed).
- Risk of clawback – some/all of the relevant LGF1 funding may be required to be repaid by the Council if the agreed LGF1 outputs are not met.
- Risk that D2N2 will not release grant - the Council will evidence that all contracts and permissions are in place to meet the grant payment criteria. All criteria will be satisfied before the Council awards contracts.

The key risk re the Wayfinding signage is also one of cost overrun but this is the private sector developer partner’s risk.

Generally:

- Aborted cost risk. The LEP requires that all schemes are fully designed, with a detailed implementable consent in place and a contractor procured (albeit not appointed) prior to a final funding agreement being entered into. Members recognised that there are significant costs to be incurred in getting to the point required by the LEP and have authorised a provision of up to a maximum of £500k in a worst case scenario. It was also recognised that if the funding is withdrawn, for any reason, then the costs incurred up to that point will potentially be wasted. Whilst most grant funding regimes require applicants to take a degree of aborted cost risk the LEP has taken an unusually extreme interpretation of this risk.
- Risk Registers will be prepared and maintained for these projects to monitor, reduce and mitigate risks.

4.5 Provisional programme dates

T12 Phase 2 works:

- Design finalised – November 2016.
- Contractor procured – December 2016.
- Contracts signed – December 2016.
- Pre-commencement planning conditions discharged – January 2017.
- Construction works commence – January 2017.

Onsite Wayfinding signage works (to be carried out by the developer).

- Planning application to be submitted – November 2016.
- Planning application determined – February 2017.
- Construction works commence – March 2017.

Enhanced and realignment of brook.

- Planning application to be submitted – February 2017.
- Planning application determined – May 2017.
- Works start – June 2017.

Planning Application

- Finalise details of planning application - timescale to be agreed.
- Submit Hybrid planning application - timescale to be agreed.

OTHER OPTIONS CONSIDERED

5.1 Do nothing

These projects sit within a programme of IPD projects funded by LGF1, all of which contribute to the overall objectives and outputs of the LGF1 programme and the wider IPD development. The general rationale for the projects is that they will accelerate IPD development.

Without the subject projects, market interest may stall and it would be difficult to deliver the overall outputs of IPD.

5.2 Do the minimum

The projects propose doing the minimum as restricted by the level of grant.

We can only afford to construct the T12 Phase 2 as far as the proposed access to the Innovation Centre Phase 2 site. We would like to continue the new road westward as far as the planned roundabout, in order to connect to the Southern Derby Integrated Transport Link (SDITL) in future. This will be pursued if additional grant was to be made available.

This report has been approved by the following officers:

Legal officer	Emily Feenan, Principal Lawyer
Financial officer	Martyn Marples, Director of Finance
Human Resources officer	David Cox, Head of Human Resources
Estates/Property officer	Jane Sowerby-Warrington, Head of Strategic Asset Management and Estates
Service Director	Greg Jennings, Director of Regeneration, Property & Housing
Strategic Director	Christine Durrant, Strategic Director of Communities and Place

For more information contact:	David Marshall, Principal Regeneration Manager.
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Background papers:	tel: 01332 642062 email: david.marshall@derby.gov.uk Cabinet Report 18 March 2015 - progress report and approval of associated works. Cabinet Report 9 Dec 2015 financial matters (approval to accept the LGF1 grant)
List of appendices:	Appendix 1- Implications Appendix 2 - Plan showing T12 Phase 2 works, extent of land to be acquired and the option land. Appendix 3 - Indicative Masterplan for IPD showing location of Phase 2 works and brook works.

IMPLICATIONS

Financial and Value for Money

- 1.1 The total cost of these projects, including fees re the planning application for the brook works, to be funded by the Local Economic Partnership (through the Local Growth Fund, {LGF}) is £2.24m. The LGF allocations to this project (amongst others related to Infinity Park Derby) have been approved by the LEP Board and are part of the “Growth Deal” between the government and the LEP. Without LGF funding the project would not proceed.

The element of fees to progress the IPD planning application is identified as a commitment to be met from the existing T12 budget.
- 1.2 There is no direct Council capital commitment to this project. There is a significant commitment of Council officer time, which is costed on a fee basis and is recoverable from the LGF grant. Note – whilst the risk of cost overrun will be mitigated by the risk contingency provision in the budget, the Council will be responsible for any cost overrun, other than for the Wayfinding works, in the event of the contingency being exceeded.
- 1.3 An HM Treasury Green Book-compliant Business Case and Value for Money (VFM) assessment was completed by the Council, to support the LGF application. The IPD project as a whole (of which this project is one part) was found to be good value for money, with a very high benefit cost ratio.
- 1.4 The LEP will release the grant funding once the Council can evidence that all contracts and permissions are in place.
- 1.5 The funding allocated to these projects was agreed with the LEP following the bidding process; subsequently minor variations to the allocations have been endorsed through Capital Programme monitoring.

Legal

- 2.1 The Council's Principal Lawyer will prepare contracts/grant agreements with support from Brown Jacobson LLP, who have a long standing association with the agreements entered by the Council with the IPD landowners and developer partners over recent years.

- 2.2 The allocation of £2.24m grant funding from the Local Economic Partnership to the Council to deliver these works is compliant with State Aid legislation. The projects fall within Article 56 of The General Block Exemption Regulations (GBER Aid for Local Infrastructure Projects). Article 56 provides that financing for the construction or upgrade of local infrastructures which concern infrastructure that contribute at a local level to improving the business and consumer environment and modernising and developing the industrial base are permitted (subject to certain caveats) under the European treaties. The works proposed meet the requirements of Article 56 and therefore do not raise State Aid concerns. Furthermore, by requiring land to be transferred into the Council's ownership before commencement of works, the Council has further mitigated against the risk of a State Aid challenge in respect of these projects.
- 2.3 The contracts for works to be awarded by the Council will be procured using EU compliant framework(s). The grant for the wayfinding works will be made on the basis of the Council's standard form grant agreement.
- 2.4 The Council will not enter into the T12 Phase 2 and/or the brook works contract until all other relevant facilitating agreements are completed and funding has been secured.

Personnel

- 3.1 LGF money will be used in part to fund consultancy advice and fees carried out in house. Initially this expenditure will be at risk, until the grant flows, but otherwise there are no Personnel implications arising out of this project.

IT

- 4.1 There are no IT implications.

Equalities Impact

- 5.1 The contracts for works to be awarded by the Council will embrace the Council's Equal Opportunities policies and practices.

Health and Safety

- 6.1 As above, the contracts for works to be awarded by the Council will embrace the requirements of the Council's Health and Safety policies and practices.

Environmental Sustainability

- 7.1 The proposed enhancements to the Cuttle Brook are introduced after extensive consultations with the Environment Agency and planners; the works will secure major public open space improvements for workers on IPD and for the public generally.

Property and Asset Management

- 8.1 Whilst the recommendations will lead to the Council acquiring land at IPS, this land will be incorporated into the Highway. Consequently the future costs relating to the future maintenance of the land will be met from the Highways maintenance budget.

No other assets are provided and owned by the Council but the developer partner will maintain, repair and renew the wayfinding signs and the brook enhancements.

Risk Management and Safeguarding

- 9.1 The IPD Project Delivery Board (the Council officers) will oversee the delivery of the works having regard to the contracts for works to be awarded by the Council, the obligations in the grant agreements and the agreed programmes. This process will help monitor, reduce and mitigate risks.

The key risks to the Council are identified in the report at para 4.4 above. The project team will maintain and regularly review comprehensive risk registers.

The primary risks that the Council are taking would be those resulting from the Council's design negligence and/or clawback risk for failure to deliver the LGF1 outputs. All risks with the grant agreement are with the private sector developer partner.

Corporate objectives and priorities for change

- 10.1 This Programme will contribute towards creating for the people of Derby:
- An inspiring working life by improving skills and creating jobs
 - An inspiring place to live by improving inner city areas