
Executive

16 June 2022

Report of the Corporate Director of Place
Portfolio of the Executive Member for Finance and Major Projects

York Outer Ring Road (YORR) – Proposed A1237 (Rawcliffe to Little Hopgrove) Dualling – Update on progress and proposed utility diversions

Summary

1. The purpose of this report is to update Members about progress on the proposed YORR A1237 (Rawcliffe to Little Hopgrove) Dualling Scheme, (**‘the Scheme’**) and request delegated authority to proceed with procurement and implementation of utility diversions in order to de-risk the future construction phase of the scheme by avoiding costly delays.
2. Preparation of a planning application for the scheme is nearing completion and will be submitted imminently to the Local Planning Authority for validation and consideration.
3. Whilst the planning application is under consideration, other work streams will continue to be progressed; namely land acquisition, preparatory work in anticipation of a possible Compulsory Purchase Order (CPO), completion of the detailed design, development of the final business case and initial enquiries for procurement of a main contractor for the scheme.
4. One of the critical risks on the scheme is the diversion of utility apparatus affected by the proposals. On the A1237, there is a significant amount of utility apparatus present and in a number of situations this will need to be moved out of the way. Failure to do this in a timely manner will lead to a very high risk of delays and prolongation costs.
5. Therefore, a key task in 2022 is to engage with utility companies (also known as **“Statutory Undertakers”** (SU’s)) to ascertain what apparatus needs to be diverted to accommodate the scheme proposals. This piece of work is important in order to understand the extent of diversions

required and to identify which ones can be diverted at an early stage ahead of the main construction works.

6. Diverting SU apparatus ahead of the main works provides benefits by eliminating or reducing risks and delay damages during the construction stage of the scheme.
7. In accordance with the provisions of the New Roads and Street Works Act, 1991 (the “**NRSWA**”), initial discussions have already taken place with the SU companies to identify the necessary diversionary works. It is apparent that some diversions can be undertaken in advance of the main construction works. The project team is therefore seeking approval to procure and proceed with these diversions (and any others which arise) at the earliest possibility, commencing late summer of 2022.

Recommendations

8. The Executive are requested to:

- 1) Note that a planning application for the proposed scheme is about to be submitted.
- 2) Note the general progress and ongoing work on the scheme.

Reason: To inform Members of the progress on the scheme and to take into consideration for future decision making.

- 3) Give approval for Option 1, that is for the project team to identify, procure and undertake utility diversionary works within the existing highway in connection with the scheme, and where possible, in advance of the main works programme.

Reason: To comply with the provisions of the NRSWA 1991, and to maximise the opportunity to eliminate or reduce delay risks and resultant prolongation claims on the main construction programme.

- 4) Delegate authority to the Director of Transport, Environment and Planning (in consultation with the Director of Governance or her delegated officers) to procure and take all necessary steps to implement the diversions of the Statutory Undertakers’ apparatus, as required on the Scheme.

Reason: To grant the Director of Transport, Environment and Planning the authority to take such steps as are necessary to engage and negotiate with Statutory Undertakers for the efficient and timely delivery of utility diversions on the proposed scheme.

Background

9. The proposed scheme is making steady progress through the various stages and a significant milestone has been reached by the imminent submission of a planning application. Members will recall that this proposal is to upgrade the existing YORR A1237 to a dual carriageway from A19 Rawcliffe to A1036 Little Hopgrove. The assurance process and final approval for the release of funding is administered by West Yorkshire Combined Authority (“**WYCA**”).
10. For a scheme of this magnitude the planning application is a substantial piece of work supported by an Environmental Impact Assessment, overall presenting a complex procedure. The application is now about to be lodged with the Local Planning Authority for consideration.
11. Meanwhile, the project team are progressing other concurrent work streams; namely, completing the detailed design, developing the final business case, attempting to acquire land for the scheme, and engaging in preparatory work for a CPO should private treaty land acquisition not prove successful.
12. One of the other concurrent activities is to engage with Statutory Undertakers as required under the provisions of the NRSWA, 1991. This legislation sets out the steps to be taken by the highway authority and makes provisions when diversionary works may be required to apparatus owned by a Statutory Undertaker. There are approximately thirty-three (33) diversions required on the scheme. These are summarised in **Table 1** below.
13. Therefore, the main purpose of this report is to inform members that the process to identify where diversionary work is required has commenced, and specifically to seek approval to proceed with the procurement of all the necessary diversions works, at an early stage if appropriate, in order to de-risk the project.

Analysis

14. Whilst it would be possible to undertake utility diversions during the main construction works programme, a number of unnecessary and costly risks would highly likely be introduced. The main types of risk which exist when diversion works are done are listed below:

- i) Long lead in times (up to 6 months) for the statutory undertakers to mobilise affecting the start date and potentially delaying the progress of the main works.
- ii) Long lead in times (up to a year) for the procurement of apparatus and equipment e.g. specialist pipes and cables.
- iii) Long lead in times (up to a year) for the approval of shutdowns and outages of utility networks in order to complete a diversion e.g. the gas company do not allow shutdowns in wintertime.
- iv) Long lead in times when competing with other developers requiring diversionary works.
- v) Integration of the diversions within the main works creating additional interfaces/constraints delaying the main contractor's activities.
- vi) Risk that Statutory Undertakers will not deliver diversion works to the required programme. Utility companies are not contracted to the project, and therefore there is a high risk that their works are not completed in a timely manner.
- vii) Risk that the utility diversion works are more extensive/complex than anticipated. Utility records are notoriously inaccurate and when this happens more complex or extensive networks are often uncovered and revealed. This leads to a variation in the type or quantity of the planned diversion, again delaying the completion date and impacting on the main construction works.
- viii) Risk of time delays associated with the possible need to acquire third party land by the SUs to enable necessary utility diversions.

The proposed scheme is in a position where an opportunity now exists to eliminate or avoid these risks by diverting some of the apparatus before the start of the main works planned for summer 2023.

15. However whilst it is suggested that these risks can be reduced or eliminated, note that it is not possible to divert apparatus in advance of the main works in all cases.

16. As stated in paragraph seven of this report, the project team have already begun initial discussions with all the Statutory Undertakers affected by the proposals and have identified the diversions required across the whole of the scheme. These are summarised in **Table 1** below along with the preliminary costings.

Utility Company	No. of Diversions	Cost Estimate (exc VAT)	Discounted Cost ¹ (exc VAT)
Openreach	4	£954,703.05	£782,856.50
City Fibre	4	£575,660.11	£472,041.29
Northern Gas Networks	2	£130,747.27	£107,212.78
Northern Power Grid	10	£537,333.33	440,613.33
Mobile Phone Masts	2	£400,000 ²	£400,000 ²
Virgin Media	4	£279,030.24	£228,804.79
Yorkshire Water sewers	2	£872,046.77	£715,078.35
Yorkshire Water clean	5	£840,413.00	£689,138.66
Totals	33	£4,589,933	£3,835,745

Table 1 – YORR Utility Diversions & Costs

Note¹ - Discount applies where allowable under NRSWA Sharing of Costs Regulations.

Note² - Preliminary estimate and cost sharing under investigation.

17. The project team will continue to work with the Statutory Undertakers to establish the detailed requirements of each diversion. Once this is done orders could be placed to commence work, which Members should note involves a significant amount of pre-planning, not just physical works on the ground. Utility diversions are usually carried out by the Statutory Undertakers themselves working under their own contracts, supervision and standards.
18. The NRSWA 1991 and the Street Works (Sharing of Costs of Works) (England) Regulations 2000 provide supplementary instructions to enable the costs to be shared between the SU companies and highway authorities. If the proposed diversionary works are allowable under the sharing of costs principles, the highway authority is entitled to a discount of 18% on the total cost. The proposals for the Scheme fall in line to attract the discount and these costs are shown in **Table 1** above.¹ To enable the discount to be made the highway authority will need to make an advance payment for the diversion.²

Note¹ - Note that the two mobile phone mast relocations are still being investigated.

Note² - The highway authority make an advance payment of 75% of the 82% discounted rate.

19. Therefore, the overall recommendation is to proceed with the procurement of utility diversions across the whole of the proposed scheme and seek the 18% discount on costs. Furthermore where possible, diversionary works which can be undertaken in advance of the main contract works will be identified and procured to avoid or reduce costly delay risks as described above in paragraph 14 of this report.

Options

20. In order to make a decision it is useful to be aware of the options which apply as follows:
21. **Option 1** – Approve the recommendation sought by the project team to procure utility diversions affecting the Scheme, and to proceed with those diversions which are possible to be completed ahead of the outcome of the anticipated planning application and the construction stage.
 1. The advantages of this approach are to de-risk the project for all of the critically high risks listed in paragraph 14 above.
 2. The disadvantage of this approach is that if the scheme does not go ahead, the funding expended may be abortive. However, there may be a case to say that if the scheme were to be resurrected in the future, the diversions would still be needed.
22. **Option 2** – Wait until planning approval is forthcoming and the judicial review period has concluded with an outcome which enables the implementation of the Scheme, and then proceed with the diversionary works affecting scheme, and where possible undertake some diversions ahead of the main works programme. The current programme is based on a planning submission in June 2022 and a decision by December 2022, but the latter cannot be guaranteed.
 1. The advantage of this approach is to gain surety that the Scheme has planning approval to go ahead, the relevant judicial review period would have expired without any impediment to the Scheme, and therefore costs of utility diversions should not be abortive.

2. The disadvantage of this approach is that the time frame to plan and undertake diversionary works would be reduced to around six months. This amount time would severely limit the amount of advance diversionary work that could be undertaken.
23. **Option 3** – Wait until the planning approval is forthcoming, the judicial review period has concluded with an outcome enabling implementation of the Scheme, either the private treaty land acquisitions are completed and/or the anticipated CPO process is concluded successfully, enabling commencement of the construction works contract, and to carry out the diversionary works in co-ordination with the main contractor's programme.
1. The advantage of this approach is that if construction work has been enabled to commence, all approvals and funding will be in place, and therefore there would be no threat of abortive work.
 2. The disadvantage with this approach is that it exposes the council to all of the critical risks listed in paragraph 14.
24. **Option 4** – This is a variation on Options 1 and 2 above. This option is to engage with SU companies at an early stage to undertake all the pre-planning work to enable the diversionary works to be designed up and ready to commence, but to hold back on the notice to proceed with the actual diversions until planning approval is forthcoming.
1. The advantage of this approach is that all pre-planning work with the SU companies can be commenced at the earliest opportunity, and if planning approval is not forthcoming the more expensive physical works will not have been started.
 2. The disadvantage of this approach is similar to Option 2 in that the available time to do the work will be significantly reduced, and many of the critical risks will remain and be carried forward to the construction phase.

Council Plan

25. The scheme proposals are embedded in the Council Plan 2019-23. The implementation of this programme of highway improvements will be an integral part of the key priorities to “create homes and a world class infrastructure; well paid jobs and an inclusive economy; getting around sustainably; a greener and cleaner city; safe communities and culture for all and an open and effective Council”.
26. As such the Scheme is a key element of the York Local Plan and completion contributes to the early delivery of homes and access to jobs, and crucially removal of traffic from York city centre and outlying villages beyond the A1237.
27. Improvements to transport infrastructure such as reduced journey times are key drivers for improved productivity and unlocking sites for homes and jobs. This in turn leads to economic growth and the increase in wealth, helping local businesses to thrive.
28. The provision of cycling and walking infrastructure for the orbital pedestrian and cycling route is a key feature of the Scheme and provides major benefits to enable communities to get about sustainably. The Scheme has been designed considerately to sit within the landscape and provide a net gain in planting of woodland areas. The objective is that they will be more species rich to increase bio-diversity with the inclusion of wildflower planting for pollinators and the creation of habitats.
29. Residents, stakeholders and road users were consulted about the scheme proposals in 2020 to ensure that consideration of the potential impact of decisions in relation to health, communities and equalities has been made.

Implications

Financial Implications

30. The combined scheme of dualling and junction improvements had a total budget of £71.5m. This was funded by the West Yorkshire +Transport Fund £38.4m, Department for Transport grant £25.2m and CYC prudential borrowing £8m. To 31st March 2022, £10.3m has been spent which included the remodelled Wetherby Road roundabout completed in 2018/19. There is therefore £61.2m remaining for the Scheme to complete land acquisition, design and construction.

31. The proposed utility diversions shown above are estimated to cost in the order of £3.85m (including 18% discount) and it is anticipated at this stage these can be accommodated in the overall budget. The utility costs are to be funded by the West Yorkshire Transport Fund element of the funding package and therefore at no direct cost to the council. However Members should note that we are now at a point where there is very little contingency left. Therefore when the planning approval and requirements are known a full cost review will be undertaken and brought back to Members to seek the final construction budget.

Human Resources

32. The Major Transport Project Team will be the primary resource for this project. Support is provided by Legal Services, Property Services, Procurement and Finance. External advisors have been appointed where appropriate to provide additional resource and expertise.

One Planet Council / Equalities

33. The One Planet Council Better Decision Making Tool has identified the following areas which can be explored further during the design and development of the whole YORR improvement programme:

- Greater consideration of renewable materials during construction.
- Consideration about the reduction of crime where subways are proposed.
- Enhanced Landscaping.¹
- Use of Public Art to provide attractive spaces for residents.
- Enhanced Active Travel

¹ Notes on Better Decision Making Tool:

Commitment to a Landscape Strategy and inclusion of additional planted areas (Community Woodland) has now been included in the Scheme.

34. An equalities impact assessment has been undertaken and can be found at **Annex A**.

Legal and Procurement Implications

35. Under the NRSWA 1991, in particular, Section 84, provisions are made for statutory undertakers and highway authorities to work together to

move utility apparatus below on or above an existing highway, when affected by major works (as defined by Section 66(3) of the NRSWA).

The Scheme falls within the definition of major works.

36. A set of regulations under NRSWA, the Street Works (Sharing of Costs of Works) (England) Regulations 2000, give instructions about payment for the diversions and arrangements for sharing costs. The principle is that the highway authority will pay 82% of the costs, and the Statutory Undertaker 18% of the cost. To benefit from this discount, the highway authority must pay 75% of the 82% in advance of the diversionary works. Note that the prices quoted in **Table 1** above are estimates, and not the final outturn costs.
37. In terms of Procurement Law:
 1. Based on the amounts set out in **Table 1** above, the values of each of the discounted and non-discounted diversionary works packages fall below the current public works procurement threshold set out in the Public Contracts Regulations 2015 (PCRs) of £4,447,447 (exc. VAT).
 2. Even when aggregated together:
 - the total discounted works figure falls below this threshold; and
 - although the total non-discounted works figure exceeds this threshold, each diversionary works package forms its own separate and distinct public works contract. So even though the works are all part of the Scheme, they do not need to be aggregated together for the purposes of the public procurement rules under Public Contract Regulations 2015.
 3. As such, the diversionary works fall outside of the full procurement regime under Part 2 of the PCRs, and so there is no requirement to advertise or carry out a competitive tender.
 4. Further, each of these works packages are not required to be subject to any kind of competitive tender or request for quotations under the Council's Contract Procedure Rules set out in Appendix 11 of the Council's constitution, as Contract Procedure Rule 26.10.1 specifically states that the Contract Procedure Rules do not apply to

contracts for the execution of mandatory works by Statutory Undertakers.

There are therefore no procurement law implications or any issues under the Council's constitution with directly awarding the Statutory Undertakers these diversionary works as proposed in this report.

38. The works are funded in part by external grants from the West Yorkshire+Transport Fund and the Department for Transport. Use of the funding must be in line with the relevant grant funding terms and conditions, and any formal variations to the funding terms and conditions to facilitate these works will require advice from Legal Services.

Crime and Disorder

39. The project team have held early discussions with the Police Architectural Liaison Officer particularly with regard to potential crime and disorder issues at subways. No objections were raised.

Information Technology

40. There are no Information Technology implications.

Property

41. Property Services are involved in this project acting as land managers for the Council. However, in terms of this report there are no property implications.

Other

42. There are no other known implications

Risk Management

43. In compliance with the Council's risk management strategy a risk register is maintained for the project. The main risks concerning planning approval, land acquisition and utility diversions have been documented in previous reports and these are still the biggest risks to the Scheme. In terms of the purpose of this report these risks could lead to delay,

financial loss, damage to the Council's image and reputation and failure to meet stakeholders' expectations.

44. The top three risks currently affecting this project are:

- a. Risk associated with not obtaining planning approval. Mitigation for this risk is ongoing by working with all consultees and key stakeholders including planning authority and politicians to tease out the issues which will affect consideration of the planning application.
- b. Risks associated with land acquisition. There is a high risk that some landowners may potentially be unwilling to sell land to the Council by private agreement, or in a timely manner. This presents a programme risk potentially prolonging the time to complete the project, increase costs or lose the secured funding. In order to mitigate this risk, preparation of a CPO in parallel to land negotiation is being progressed as referred to elsewhere in this report.
- c. Risks associated with utility diversions. These risks are listed above in paragraph 14 of this report, and if they happen can lead to delays for delivery of the overall Scheme. The delays in themselves will have a cost to the project but very often these will lead to prolongation claims from other suppliers who are held up by the delay. The range of additional costs can range from a few thousand pounds per week to tens of thousands of pounds per week. If this leads to a programme delay, there are reputational risks which also need to be managed. The industry standard for mitigation is to engage with Statutory Undertakers at an early stage and if possible, undertake diversions before the main construction works commence in order to eliminate the risks.
- d. The scheme risk register lists three utility category risks with a range of estimated costs from 'most likely' to 'maximum'. The estimated 'most likely' cost to the project is £0.9m, whilst the 'maximum cost' is estimated to be £2.8m to deal with the risks. Acceptance of the recommendations in this report will contribute to managing the utility risks within these limits.

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Report **Date** 6th June 2022
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Wards Affected:

Rawcliffe & Clifton Without, Rural West York, Haxby & Wigginton;
Huntington & New Earswick, and Strensall.

For further information please contact the author of the report

Annexes

Annex A – Equalities Impact Assessment

Background Papers:

Executive Report 13th July 2017 2020 – Proposed York Outer Ring Road Improvement – Approach to Delivery.

Decision Session Transport & Planning 15th March 2018 – YORR Improvements – Proposed A1237/B1224 Wetherby Road Junction Upgrade.

Decision Session Transport & Planning 13th September 2018 – YORR – Proposed A1237 Monks Cross Junction Upgrade.

Decision Session Transport 29th August 2019 – YORR – Proposed A1237 Clifton Moor Junction Upgrade.

Executive Report 26th September 2019 – YORR Update.

Executive Report 13th February 2020 - York Outer Ring Road (YORR) Improvements – Proposed Phase 1 Dualling from A19 Rawcliffe to A64 Hopgrove.

Executive Report 25th June 2020 - YORR Phase 1 Dualling - Procurement Strategy, Approach to Public Engagement and Landscaping.

Executive Report 18th March 2021 - York Outer Ring Road Phase 1 Dualling - Resolution in principle to promote a Compulsory Purchase Order and associated Side Roads Order.

Executive Report 30th September 2021 - York Outer Ring Road (YORR) – Phase 1 Dualling – Evaluation of the Consultation Process and Resolution to Submit a Planning Application.

List of Abbreviations Used in this Report

WYCA – West Yorkshire Combined Authority

YORR – York Outer Ring Road

CYC – City of York Council

WY+TF – West Yorkshire Plus Transport Fund

DfT – Department for Transport

CPO – Compulsory Purchase Order

SU – Statutory Undertaker

NRSA – New Roads & Street Works Act, 1991

PCRs – Public Contracts Regulations