

Report to: **Cabinet**  
Date: **10 July 2013**  
Report By: **Director of Economy, Transport and Environment**  
Title of Report: **Update on the Bexhill Hastings Link Road (BHLR) Scheme**  
Purpose of Report: **To seek agreement to amend the Council's Capital Programme**

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**RECOMMENDATION: Cabinet is recommended to:**

- 1) Note the increase in costs associated with the construction of the BHLR;**
  - 2) Recommend to the County Council to vary the Capital program as set out in Appendix 4 with the effect of increasing the Council's capital contribution to the BHLR scheme by £7.19m for current construction costs, as well as provision for construction and protestor risks of £6.161m; and**
  - 3) Note that Department for Transport (DfT) final funding has now been confirmed in relation to Cabinet's decision in December 2012, delegating to the Director of Economy, Transport and Environment the authority and all necessary powers to vary the contract for the construction of the BHLR, and to authorise the commencement of phase 2 of the works to construct the BHLR once final funding has been confirmed**
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**1. Financial Appraisal**

1.1 The construction of the BHLR opens up 50,000 square metres of business space, generating hundreds of jobs and in addition enabling 2000 much needed new homes.

1.2 The current County Council approved budget for the scheme is £100.11m. The DfT confirmed their final funding approval of £56.85m for the BHLR scheme on the 3<sup>rd</sup> April 2013. This funding is conditional (see Appendix 1), and we are complying with their grant conditions including notification of changes in accordance with these conditions. The conditions also include delivery of a number of complementary highway improvement measures.

1.3 Since the budget was approved in February 2013 there have been a number of cost increases, triggering the contractor to withdraw his Target Cost on 1<sup>st</sup> May. These cost increases, which have been subject to independent external scrutiny, amount to £7.19m:

- An increase in construction costs of approximately £4.498m;
- Additional security costs and cost of protestor action £2.692m

1.4 With a scheme of this scale and complexity there are also other risks that need to be managed, which at this stage are estimated to total £6.161m (an increase of £1.444m for construction risk, £2m for the possible stabilisation of the railway cutting and a 2.5% general contingency sum of £2.717m.)

1.5 It is proposed that the capital programme be varied to provide for an increase in the BHLR budget and the creation of a BHLR contingency budget and that these are funded by:

- Using the provision allocated for the Wind Farm project
- Maintaining the original £11m over-programming agreed in the budget process, which has since reduced due to underspends and funding changes.
- Making use of reserves that had been planned for use in 2012/13 and which were ultimately not required.

1.6 We are not intending to cancel projects that are ready to take effect. The BHLR has been the subject of an equality impact assessment and has only a marginal equalities impact. Clearly if the money was not transferred to the BHLR, it could in principle be used for other projects. There are however, no other alternative capital projects which have been through the business case evaluation process currently waiting funding, which are in the same position to proceed.

1.7 Even with this cost increase the project remains in the same value for money category. A more detailed financial appraisal is contained in Appendix 4 including how the authority will manage any future financial risks.

## **2. Background**

2.1 The need for the BHLR is founded on the recognition, dating back over 40 years, of the need to regenerate the economy of the Hastings and Bexhill area; and that the lack of connectivity between the two towns and with other parts of the south east forms a major part of the economic and structural problems facing the area. The recent government Spending Review announcements make clear the link between infrastructure provision and growth. The original proposals for the Bexhill to Hastings Link Road and confirmation of the route of the road were approved by Cabinet in June 2004. Further details of the scheme are included in Appendix 1.

2.2 The BHLR is a key component of an established long term strategy to address the economic performance of one of the most deprived areas in the south east. It will unlock significant new employment generating development in a part of the area covered by the South East Local Enterprise Partnership (SELEP), delivering an estimated 3,500 jobs and over 2,000 new homes. SELEP as well as the local business community fully support the BHLR and significant levels of Growing Places funding has been allocated to support the provision of employment space to stimulate economic growth in the area. (see Appendix 1)

2.3 Employment and housing growth in North East Bexhill, for example, has strong policy backing in Local Plans, and commencement of the pre-construction work on the BHLR has already given confidence to the development market enabling SeaChange Sussex to submit a planning application for the Gateway road into the development area.

## **3. Progress Update**

3.1 Good progress has been made with pre-construction work and preparation for phase 2 construction. These activities are described in Appendix 2. The form of contract being used and the contract mechanism is described in Appendix 1.

## **4. Protestor Action and Security Costs**

4.1 The initial site clearance work was subject to significant protestor activity resulting in contractor and security costs to date of £2.078m. These are described in Appendix 3. A

further allowance of £1.314m has been included in the latest forecast. The original budget included a risk provision of £700,000 for security costs, and therefore the revised forecast is a total increase in protestor action and security costs of £2.692m.

## **5. Risks**

5.1 The project is supported by a detailed risk register which recognises that risks change during the course of a project. The risk register allows various risk scenarios to be modelled and enables the project team to work with the contractor to mitigate the likelihood of these risks occurring. The risk register for the project details a number of risks that may now be realised during construction; the most notable risks are those detailed in Appendix 6. The project risk register is continually reviewed by the project team and updated at monthly progress and governance meetings.

## **6. Programme**

6.1 The contractor has been instructed to undertake pre-construction preparatory work in order to maintain the construction programme, taking particular account of the earth-moving season. The construction programme has, however, lost two weeks during the early environmental works to relocate certain species as a result of the prolonged winter weather. This is described in Appendix 7. The revised completion date is May 2015.

## **7. Contingency**

7.1 There remain a number of significant risks associated with the contract and given the nature of this cost reimbursable contract it is prudent to allow additional contingency within the overall approved budget. Under the “pain/ gain” form of contract adopted, the County Council is liable for 50% of actual allowable costs incurred over and above the Contract Target Cost, and accordingly a contingency of 2.5% has been included in the revised budget (£2.7m) to cover unforeseen eventualities (see Appendix 5).

## **8. Project Management**

8.1 The increased costs and risks underline the significance and importance of this project being effectively and efficiently delivered and the benefits being realised for East Sussex, our residents and businesses. The project has been effectively managed in accordance with all County Council requirements, but as the project moves forward it will be subject to enhanced project management, and reporting to the Corporate Management Team.

## **9. Conclusions and Reason for Recommendations**

9.1 Whilst this is a significant and complex project that has been subject to significant delays to date, it is also a vital component of the economic growth of the county. The Council has invested over £35m so far, including design of the road, gaining planning permission, land acquisition, preparatory works, site clearance and pre-earthworks construction activities. We continue to maintain regular contact with the DfT as a major sponsor of the road.

9.2 The delays to funding decisions and receipt of the Compulsory Purchase Orders, various legal challenges and protestor action have all led to delays and increased costs to the project. As a consequence of these delays it has not been possible to commence phase 2 of the contract and during this time the Contractor has had time to better understand the risks. These have now been reflected in the target cost. Significantly the Contractor’s cost for

earthworks activities and material costs have increased as a result of sub-contract tenders now received.

9.3 Cabinet is therefore recommended to recommend to the County Council to vary the Capital Programme and to increase the provision for the BHLR, as set out in this report. Should the County Council agree to amend the capital programme to increase the provision set out for the BHLR, it is the intention of the Director of Economy, Transport and Environment to exercise the delegation given by Cabinet in December 2012 and to agree the contract price and authorise the commencement of phase 2 of the construction works without delay. Once the contract price has been agreed and the instruction given to the Contractor to commence phase 2 works the County Council will be potentially liable for considerable termination costs should at a later stage the County Council decide to terminate the contract.

**RUPERT CLUBB**

Director of Economy, Transport and Environment  
2 July 2013

Local member(s): Cllr Michael Ensor, Cllr Michael Phillips, Cllr Kathryn Field

## **Appendix 1 – Description of the BHLR and the Benefits**

### **1.1 Scheme Description**

The Bexhill to Hastings Link Road (BHLR) is a scheme to construct a 5.6km long single carriageway road between the A259 in Bexhill and the B2092 Queensway in Hastings. The scheme has a long history dating back over 40 years. In the late 1970s the then Department of Environment was actively considering options for bypasses to Bexhill and Hastings and in 1985 the Bexhill and Hastings Western Bypass was put into the Government's road building programme. In December 1990 the DfT announced its preferred route for the Western bypass following public consultation in 1989.

A preferred route for the Eastern bypass was announced in June 1991 and together these two schemes provided a complete trunk road bypass to the Bexhill and Hastings urban areas. A Public Inquiry was held in 1995/1996 into the A259 Eastern and Western Bypasses. The alignment of the Western Bypass ran through the Combe Haven Valley and crossed the SSSI on a viaduct. At the same time the Bexhill Northern Approach Road (BNAR) was promoted by ESCC to give access to Bexhill from the Western Bypass via a dedicated junction. The alignment of the BNAR ran south from the proposed junction along the line of the disused railway to the existing A259.

Both bypass schemes were rejected in 2001 and at the same time the South Coast Corridor Multi-Modal Study (SoCoMMS) was commissioned to develop a transport strategy for the coastal corridor between Southampton and Ramsgate. This study recommended a single local road scheme be taken forward: the Bexhill to Hastings Link Road, and subsequently, in 2003, the Secretary of State for Transport invited ESCC to develop proposals for the construction of a local link road between Bexhill and Hastings. Six routes for a link road were developed, all of which followed the route of an old railway through the built-up area in Bexhill to just beyond the town's north east boundary where it would link up with the proposed North East Bexhill development. The options from this point to the junction with Queensway followed northern, central and southerly routes.

Consultations with the public and statutory bodies in 2004 led to the choice of a modified 'blue' route, involving less engineering and therefore reduced scheme costs. This route follows the route of the BNAR through Bexhill to link with the proposed North East Bexhill developments then skirts around the Combe Haven SSSI to the west and north of it before joining Queensway. In June 2004 Cabinet approved this route, triggering the current scheme.

The BHLR will link the outskirts of Bexhill and Hastings, providing access to areas that have been identified for regeneration in addition to easing congestion and improving air quality on the A259 at Glyne Gap. From its junction with the A259 at London Road the first 1.5km of the BHLR follows the route of the former Crowhurst, Sidley & Bexhill Branch Railway passing through the built up area of Bexhill, 500m of which lies in a deep former railway cutting.

The remaining length of the road continues through open countryside passing around the northern side of the Combe Haven Site of Special Scientific Interest (SSSI) and the southern edge of the Marline Valley Woods SSSI before crossing over Crowhurst Road and the Hastings to London railway line to join the B2092 Queensway just north of its existing junction with Crowhurst Road.

Along the rural section of the BHLR there will be new paths for walkers, cyclists and horse riders (the Greenway). These are designed to link to all the existing public rights of way and any paths that may be created as part of the Combe Haven Valley Countryside Park.

The sensitivity of much of the area through which the road passes has been recognised from the outset, and environmental impacts have been specifically mitigated and compensated for to ensure there would be no overall net loss of biodiversity in the area. Through consultation with Natural England the scheme also incorporates over 94 hectares of land for habitat creation as replacement for those habitats that will be lost.

## **1.2 Benefits**

The BHLR will secure the release of development land at North East Bexhill and facilitate the release of other land elsewhere in the Regeneration Area and the regeneration of Hastings and Bexhill for the public benefit. It is an integral part of a package of measures to support economic growth in the two towns and to improve accessibility to new employment opportunities and give access to the strategic employment sites in Bexhill. A planning application for a new road to access the proposed North East Bexhill Business Park from the BHLR has now been submitted to Rother DC by SeaChange Sussex.

The BHLR is a key component of an established long term strategy to address the economic performance of the Hastings and Bexhill area. The area is recognised as being in the top 10% of most deprived communities within the England. It will unlock significant new employment generating development in a part of the area covered by the South East Local Enterprise Partnership (SELEP) suffering high levels of social and economic deprivation. SELEP fully supports the BHLR (see below) and has allocated significant levels of Growing Places Funding to support the provision of employment space to stimulate economic growth in the area. The local business community also strongly support the BHLR, recognising that access to facilities and connectivity is essential to business growth. Employment and housing growth at North East Bexhill, for example, has a strong policy backing in Local Plans, and offers the largest contribution to employment growth, with capacity to deliver an estimated 3,500 jobs and housing growth of over 2,000 new homes. In March of this year the Chairman of the SELEP, John Spence wrote to the Secretary of State for Transport in support of the Link Road:

“I write to express the South East Local Enterprise Partnership’s (SELEP) support for the Bexhill to Hastings Link Road scheme and to emphasise the need for an expedited final decision, to ensure the release of these funds to East Sussex County Council, as committed by the Chancellor in his Budget Statement last year.

In March 2012, Government announced £56 million of support for the Bexhill to Hastings link road, to facilitate economic regeneration in a deprived area of the South East. Hastings is the most deprived town in South East England and has high public sector dependency being equal 23rd highest in terms of reliance of the 354 English local authorities.

Although there has been economic progress made in Hastings, the BHLR is a key requirement to enable this work to continue; it is integral to the objectives of the Five Point Plan for regenerating Hastings and Bexhill. SELEP is keen to see this development continue as part of our wider efforts to secure the most enterprising economy in England but specifically this scheme is directly aligned with the SE LEP priority of delivering ‘business critical infrastructure’, recognising that access to facilities and connectivity in every sense of the word is essential to business growth.

We wish to highlight the need for continued transport improvements in Hastings and Bexhill as the key to further regeneration of the area. Through its Growing Places Funding (GPF) SE LEP has invested significantly to support the provision of employment space to stimulate local growth in the Hastings economy and financing the link road is required to support this

investment and unlock further key sites for business expansion. We would ask you to release this final commitment of funding to East Sussex County Council in support of the local enterprise and growth agenda.”

Furthermore, the BHLR will achieve reductions in traffic congestion along the existing A259 between Bexhill and Hastings, on rural roads to the north of the two towns and through Crowhurst and Battle. Journey times will be improved, bus services are expected to be more reliable and accidents involving motor vehicles are forecast to reduce. Air quality along the A259 will also improve as a result of reduced traffic and less congested conditions.

### **1.3 Form of Contract**

The BHLR is being built under an early contractor involvement (ECI) form of contract for the design and construction of the link road and is based on the NEC3 Option C Form of Contract. A two phase contract was awarded to Hochtief Vinci Joint Venture (now trading as Hochtief Taylor Woodrow) in June 2009. Phase 1 of the contract is for the design of the scheme and agreement of the Contract Target Cost. Phase 2 is the construction phase.

The contract is a cost reimbursable contract in which the contractor is reimbursed his actual costs plus an agreed percentage for overhead and profit. A target cost has been included to incentivise the contractor (and ESCC) to reduce cost, to work together to manage risk and introduce efficiencies. At the end of the contract any savings or cost over-run ie the difference between actual cost and target cost are shared equally between the contractor and ESCC.

### **1.4 DfT Conditions**

The DfT final funding approval is conditional on a number of measures being put in place, which include:

- complementary highway improvement measures:
  - improvements to the existing mini roundabouts at the Queensway / The Ridge West junction
  - improvements to the existing mini roundabout at the Harrow Lane / The Ridge junction
  - A259 bus priority measures
  - Provision of a new bus service that will use the BHLR
- Provision of additional biodiversity measures
- Submission of progress reports on the development in northeast Bexhill
- Development and implementation of a plan to ensure local unemployed people are given appropriate support so they are well placed to compete for the employment opportunities generated

All of these conditions are being progressed including the employment of local labour. The grant award is also conditional on the Council advising of certain changes set out below:

- Until completion of construction and payment of the final grant claim, the Authority must inform the Department within 28 days in the event of any of the following:
  - any significant issues arising which are likely to result in a delay of 3 months or over in the completion of the scheme, or likely to result in underspend of more than £1m below allocation in any financial year;
  - any significant change in the scope of the Scheme;
  - any increase of more than £1m or 5% (whichever is the higher) of the estimated total scheme cost

- The DfT shall be entitled to cease or suspend payment of Section 31 grant, or to require the repayment of all or part of the grant already paid in any of the following circumstances:
  - If at any time it appears to the Department that there has, or may have been, any failure by the Authority to observe any of the Grant Conditions;
  - In the event of any change in the scope or total estimated cost of the Scheme that could have a material impact on the Scheme's value for money category;
  - If any statement made or document produced by the Authority in support of the funding bid or grant claims for the scheme is found to be false or incorrect in material particular;
  - In instances where costs have been incorrectly capitalised.

We are complying with the DfT grant conditions, including notification of changes, and the DfT is being kept informed of progress against these conditions as well as general scheme progress.



## **Appendix 2 - Progress Update**

2.1 Since the last update to Cabinet, there has been substantial progress on the Bexhill to Hastings Link Road project. Compulsory purchase orders have been enacted, final DfT funding approval has been received, the planning conditions have been discharged, and pre-construction preparatory work has commenced.

2.2 The land required for the BHLR was subject to Compulsory Purchase Orders, and these were enacted on the 14<sup>th</sup> December 2012 and on the 7<sup>th</sup> January 2013

2.3 This enabled preparatory works on site to be undertaken with the approval of the Council's Head of Planning, including vegetation clearance (including trees), environmental surveys and environmental mitigation works (including work with protected species requiring licences from English Nature for badgers, great crested newts and dormice), archaeological surveys, statutory undertakers diversions and temporary fencing of the site perimeter.

2.4 All pre-commencement planning conditions were approved by the Council's Head of Planning by the 11th April 2013 including the pre-commencement conditions imposed in the Section 106 Agreement between the Council and Rother District Council / Hastings Borough Council, triggering the 'Commencement of Development'.

2.5 Pre-construction has started with the demolition of buildings along London Road, in Bexhill and construction of the haul road to take construction traffic along the length of the link road. Work continues with the contractor instructed to undertake necessary pre-construction activities on a monthly basis in advance of the commencement of Phase 2 of the construction.

2.6 Detailed design of the road and the mitigation works that commenced in August 2012 is now nearing completion.

2.7 As part of the scheme delivery we have put in place an engagement team which has been the main point of contact for the public and interested parties. This team has already held a number of construction exhibitions in May 2013 in three locations (Bexhill, Hastings and Crowhurst), which were well attended. This team will be strengthened once we instruct Phase 2 and will be based in the main site offices at Upper Wilting Farm.

2.8 More recently UK Power Networks has commenced work in Crowhurst Road to divert a high voltage power cable that crosses the mainline railway and route of the BHLR.



### **Appendix 3 - Protestor Action and Security Costs**

3.1 Tree clearance works in particular were subject to very significant and aggressive protestor activity which attracted much local and national press attention. The protestors stated aim (in the press and on websites) was to delay the road construction and to cause sufficient delay and additional cost to deter the future road building programme announced by the government.

3.2 The tree clearance was carried out without delay to the construction programme but at a considerable additional cost to the project of £2.078m to date, as a result of security and additional contractor costs. Security firms specialising in protestor control were required to remove people from tunnels, trees and lock-ons in order to allow the work to continue. Up to 100 security staff were required at any one time during these protests including night time patrols and 24 hour occupation of the buildings planned for demolition.

3.3 Sussex Police have been involved in facilitating peaceful protest throughout and in ensuring that the Council was able continue with its lawful work. There have been 28 arrests made to date. Liaison between the police, the Council, the Contractor and specialist security through a Gold/Silver/Bronze command system that was set up and will continue for as long as necessary.

3.4 Protestor activities have continued since the tree clearance works were completed but have been limited to amongst other things applying pressure to the Department for Transport (DfT) not to approve funding for the scheme, organised walks through the Combe Haven valley and letter writing / website communication.

3.5 There has been however continued, sustained and what appears to be targeted damage being experienced on site against, in particular, closed badger setts and great crested newt trapping fences. Security has been increased and incidents are being reported to the police. Some of this damage is difficult to attribute directly to protestor action rather than just vandalism.

3.6 A legal challenge against the Council undertaking works on the BHLR, including undertaking tree clearance, was made to the High Court by a member of the newly formed protest group, Bexhill Link Road Resistance (BLINKRR). The basis of the court action was that they considered that work on site contravened planning law and that the work would adversely affect the site of the Battle of Hastings. The application for a judicial review was refused on the 5<sup>th</sup> March 2013 with costs awarded to the Council. The claimant subsequently requested an oral hearing and this was set to be heard on the 12<sup>th</sup> April 2013. However, the claimant fully withdrew his action on the 11<sup>th</sup> April 2013. The Council are seeking costs.

3.7 Objections have also been made to the application for non-material amendments to the scheme. The non-material amendments were designed to make savings to the scheme's capital cost whilst fully maintaining the function of the road. The Council informed those with an interest in the amendment in December 2012 and in addition advertised them in the press and on notices on the site. No objections were received within the stated time period. However, 51 objections were subsequently made in April / May 2013. The non-material amendments will be considered by the Planning Committee on 10<sup>th</sup> July.



## Appendix 4 - Financial Appraisal

4.1 The latest estimate of the total cost of the BHLR scheme is £113.460m. The budget approved by County Council in February is based on expenditure of £100.109m, and this therefore represents an additional cost of £13.351m. .

4.2 The principle changes are as follows:

- an increase in the contractor's target cost of approximately £4.739m;
- The effect of protestor action and associated security costs now total an additional £2.692m
- additional provision for construction risks of £1.444m
- the addition of a provisional risk item of £2.0m for the stabilisation of the railway cutting; and
- the inclusion of a 2.5% contingency risk sum of £2.7m.

4.3 The changes and total cost of the scheme is summarised in the table below:

	Estimated Scheme Cost as at FFB	Total Forecast	Cost movements
<b>Scheme Costs</b>			
Construction cost	67.568	72.307	4.739
Other construction related costs	14.904	14.865	-0.039
Land, compensation and Part 1	13.733	13.531	-0.202
<b>Total cost excl risks</b>	<b>96.205</b>	<b>100.703</b>	<b>4.498</b>
<b>Risks &amp; Contingencies</b>			
Quantified Risk Assessment ('Monte Carlo')	3.204	4.648	1.444
Protestor Action Risk	0.700	3.392	2.692
Railway Cutting Stabilisation		2.000	2.000
Directors contingency (@2.5%)	0.000	2.717	2.717
<b>Total risks &amp; contingencies</b>	<b>3.904</b>	<b>12.757</b>	<b>8.853</b>
<b>Total Cost to ESCC</b>	<b>100.109</b>	<b>113.460</b>	<b>13.351</b>
DfT Grant	-56.850	-56.850	
Third Party contributions (SEEDA)	-0.201	-0.201	
<b>Net cost to ESCC</b>	<b>43.058</b>	<b>56.409</b>	<b>13.351</b>
<b>County Council Approved Budget</b>			
Gross Expenditure	100.109	100.109	
Less external income	-57.051	-57.051	
<b>Net Budget</b>	<b>43.058</b>	<b>43.058</b>	
<b>Additional budget requirement</b>		<b>13.351</b>	

4.4 In order to meet the difference between the approved budget and the latest forecast a review has taken place of funding opportunities and the following is proposed:

- That the funds allocated to the Renewable Energy Project in the Capital Programme (£8.2m) are vired to the BHLR. The renewable energy project was established as a potential method of generating additional revenue to support infrastructure provision. The capital costs of this proposal would be significant and at this stage there are no sites identified or subsequent planning consents. It is reasonable to assume that if a site became available then it could take at least five years before construction commenced. Even if changes to the subsidy structure for renewable power remained attractive, a scheme is some years away. The proposal is a high risk option with the level of return uncertain following the recently published electricity market reform.
- The use of funds that had been planned for use in 12/13 that were ultimately not required (£3.3m)
- Maintaining the level of over-programming which was agreed in the budget by Members as this has subsequently reduced due to underspends and funding changes

4.5 The grant award is conditional on the Council advising the DfT of certain changes in accordance with the conditions outlined in Appendix 1.4. The first of these reports advising the DfT of these changes was submitted on 27<sup>th</sup> June 2013.

4.6 In a scheme of this complexity and size along with the reliance on external funding; the Council is mindful that further financial risks will continue to exist, most notably:

- Further unforeseen costs are incurred during construction. The current estimates have regard to a risk assessment and this has been reviewed by the Project Board and is believed to reflect the best estimated position as known. This will be monitored and further reports will be forthcoming as necessary.
- The grant is not forthcoming across the two years. The Project Board are aware of and ensuring that grant conditions are being complied with and the Director of ETE is maintaining contact with the DfT to avoid any such issues.

Should a further increase be required over and above the contingency sum allowed after being reviewed by the cost control arrangements; the Council will look to manage this through existing resources both revenue and capital, reporting to Cabinet and County Council as appropriate.

4.7 The County Council has acquired a number of properties and associated agricultural land affected by the route of the BHLR, some of which will be disposed of upon completion of the road or leased for agricultural purposes. We estimate that the market value of this land, upon completion of the road, will be in the region of £4.0m

## **Appendix 5 – Contract Target Cost and the Phase 2 Construction**

5.1 The delays to funding, various legal challenges, receipt of the CPOs, in addition to protestor action have all led to increased costs and delays to the project. As a consequence of these delays it has not been possible to authorise commencement of Phase 2 of the construction works and the contractor, whilst starting preparatory work on site, has had time to reevaluate risks and costs. These have now been reflected in his revised target cost. Significantly the contractor's costs for earthworks activities and material costs have increased considerably as a result of subcontract tenders now received.

5.2 Phase 1 of the contract awarded to the link road contractor required a Contract Target Cost to be drawn up and agreed between the contractor and ESCC prior to the commencement of Phase 2 of the construction works.

5.3 Negotiations to agree the Target Cost for the works with the Contractor have been protracted. Agreement had been substantially reached in 2011. However, the scheme was shelved when the government decided to review its spending priorities. Negotiations recommenced when the scheme was re-instated after the government's budget announcement in March 2012 and have continued since then. The contractor revised his target cost in the autumn of 2012 and this formed the basis of the final funding application to the DfT.

5.4 Since then the project has experienced a number of delays, notably the receipt of DfT funding approval, DfT / DCLG confirmation of the CPOs, obtaining protected species licences, legal challenges to the High Court and protestor activity. These delays have made it difficult to agree the Target Cost, construction programme or to estimate risk, but agreement of the Target Cost had been expected by the end of April 2013.

5.5 However, the Contractor informed the project team on the 1<sup>st</sup> May 2013 that his current Target Cost was no longer sustainable because of significant sub-contractor cost increases, and needed to be revised. Whilst this is not desirable, it is within the Contractor's rights under the contract to revise his target cost before the commencing Phase 2 of the construction works. The Council's project team and commercial consultants have fully scrutinised the contractor's costs through audits of sub-contractor costs, identification of disallowed costs, and by value engineering of the design and construction methodology.

5.6 It is in the Council's interest to conclude the Target Cost negotiations as quickly as possible and to formally commencing phase 2 of the construction. Until the target cost is agreed and phase 2 of the construction is commenced, there is a high level of uncertainty over risk allocation between the Council and the Contractor with further risk of additional costs falling exclusively to the Council.

5.7 The Contractor resubmitted his Target Cost on 12<sup>th</sup> June 2013 in the sum of £65.568m (£72.307m including indexed inflation).

5.8 The main increases to the contractor's target cost relate to increases in subcontract tender prices for the earthworks and ground treatment elements of the contract in particular, compared to earlier subcontract enquiries. Other increases in cost relate to material prices such as imported stone for the construction of the haul road, bitumen and steel prices. All of these price increases have been scrutinised by the project team and the Council's independent commercial consultant Mott McDonald and all prices have been sought by the contractor through commercial tenders. In essence these are market driven price increases and are legitimate 'actual' costs allowed under the contract.





## Appendix 6 - Risks

6.1 Risks are reviewed on an ongoing basis by the Project Manager where they are subsequently reviewed monthly by the project board. It is considered that the original risk allowance of £3.204m for construction risk and £700k for the risk of protestor action are now insufficient.

6.2 Risk of protestor activity has increased significantly since the Council's submission to the DfT for Final Funding Approval in December 2012 when approximately £700k had been allowed. To date, £2.078m has been spent on security and additional contractor costs associated with protestor action. It is estimated that a further £1.314m is required to continue with the current low level of embedded security. Sussex Police have advised that protests could continue through to the end of the project. However, based on the reduced protestor activity at the moment, we believe that £1.314m is adequate. The total cost of protestor action / security is therefore forecast to be £3.392m ie an additional £2.692m.

6.3 The risk of Contractor claims for additional costs has increased. Up to the end of May 2013, the Contractor had issued 255 Early Warning Notices under the contract with an estimated additional cost of approximately £6m. Not all of these will be the Council's risk and all are being vigorously challenged by the project team. However, it would be prudent to make an additional allowance for this risk, which is included in the £1.44m increase in Quantified Risk Assessment.

6.4 The route of the BHLR follows the line of the former railway line and in a 500m long railway cutting to the north of Ninfield Road. The initial design of this section of road assumed the side slopes of this cutting were adequate and no additional stabilisation was anticipated. However a recent land slip in this vicinity has heightened the risk of further slope failure and as a consequence the contractor's design consultant, Jacobs, has put on record their significant concerns about the long term stability of the slopes in this cutting and what they believe to be a significant risk to users of the new road. ESCC project team is seeking an independent view, but in light of the severity of the Jacobs' report it is prudent at this stage to make a provisional allowance in the project budget for some stabilisation works, and a preliminary estimate of £2.0m has been included.

6.5 There are risks to the construction of the link road, in particular the ground conditions across the Combe Haven Valley are challenging for road building; the valley is extremely wet and overlaid with several metres of peat. However more southerly routes explored in 2004 would have taken the route across the SSSI and would have entailed significant engineering costs, in the form of tunnels and viaducts. The methodology adopted by the contractor requires a high degree of specialist ground treatment, the risks for which are reflected in the project risk register, but is dependent on carrying out the earthworks in two seasons with a period of consolidation in between.

6.6 A detailed risk register has been maintained for construction and protestor risks and provides for a post analysis risk figure of £8.04m. (£4.648m for construction risks and £3.392m for protestor/security risk). This figure includes a low level of embedded security to deal with protestor risks, but excludes any provision for the stability of the railway embankments. The risk register assesses the risks using a recognised simulation resulting in a minimum risk value £3.68m and a maximum of £16.7m. The most likely scenario being a risk outturn of £8.04m which has been included in the forecast costs, plus a further £2.0m for stabilisation of the railway cutting, if needed.



## **Appendix 7 – Programme**

7.1 The latest target cost submission by the contractor indicates a two week delay to their contract programme, caused by weather delays affecting the translocation of protected species. This would alter the programme completion date to May 2015.

7.2 It was always envisaged that Phase 2 of the construction works would be agreed in January 2013 to coincide with the compulsory purchase timescales and to enable work to take place over two earth-moving seasons. Delays to the award of final funding and protestor action meant that Phase 2 could not be agreed. As delays to the programme would incur additional costs due to inflation, and have disproportionate impacts on completion dates, and to realise the economic benefits of the road the Council has been instructing the Contractor on a monthly basis to undertake necessary works to maintain the programme. To date, the Council has instructed the Contractor to undertake specific preparatory pre-construction work and to enter into subcontracts for works up to the middle of July 2013 to ensure we don't miss this year's earth-moving season.

