

## RECORD OF DECISION MADE UNDER DELEGATED AUTHORITY

### **PART 1 – PUBLIC DOCUMENT**

Any interest to declare/or conflict and any dispensation granted: None

#### **SERVICE DIRECTORATE: COMMERCIAL**

##### **1. DECISION TAKEN**

- 1.1 Approval of capital expenditure of up to £84,000 (£56,000 for daytime work, £84,000 if night-time work) for the replacement of an access road off Bury Mead Road, Hitchin (subject to no call in of that decision).
- 1.2 Approval for the replacement work to be commissioned through Stevenage Borough Council's Provision of Minor Civil Works Term Contract.

##### **2. DECISION TAKER**

- 2.1 Councillor Ian Albert, Executive Member for Finance & IT (for 1.1).
- 2.2 Steven Crowley, Service Director – Commercial (for 1.2).

##### **3. DATE DECISION TAKEN:**

- 3.1 5<sup>th</sup> June 2020.

##### **4. REASON FOR DECISION**

- 4.1 To replace access road to ensure safe and secure access for NHDC's tenants, sub-tenants, occupiers and their customers.

##### **5. ALTERNATIVE OPTIONS CONSIDERED**

- 5.1 Repair rather than replace the access road. This option is rejected because it will not ensure long-term safety and security of access and is likely to be less economic.
- 5.2 Leave the access road in its current poor condition. This option is rejected because the road is hazardous and NHDC has contractual lease obligations to put the road in a serviceable condition.

##### **6. CONSULTATION (INCLUDING THE EFFECT ON STAKEHOLDERS, PARTNERS AND THE PUBLIC)**

- 6.1 Initial consultation has taken place with Councillor Ian Albert, Steven Crowley, Service Director – Commercial and with Ian Couper, Service Director – Resources.
- 6.2 NHDC's tenants will be formally notified by letter of the replacement work prior to its commencement.
- 6.3 All users of the road will be notified of the work by signage erected on site prior to commencement.
- 6.4 Hertfordshire Highways have been consulted as the access road adjoins Bury Mead Road, which is an adopted public highway.

## **7. FORWARD PLAN**

- 7.1 This decision is not a key Executive decision and has therefore not been referred to in the Forward Plan.

## **8. BACKGROUND/ RELEVANT CONSIDERATIONS**

- 8.1 NHDC owns the freehold interest in land off Bury Mead Road, Hitchin under Title Number HD451658. Most of the land is leased out by NHDC to three tenants. The land is in turn sub-leased to several sub-tenants and occupiers.

- 8.2 A single-width road over NHDC's land provides vehicular and pedestrian access to these tenants, sub-tenants, occupiers and their customers. The road provides the sole access and exit route so is busy on a daily basis, albeit less so during the current Government Covid-19 lockdown measures. The access is not adopted public highway.

- 8.3 NHDC is obliged by the three leases to put the access road in good condition. This obligation is formally triggered when at least one of the tenants notifies NHDC that the road is not in good condition. NHDC was recently notified as such by one of its tenants. The road is now in poor condition with wide, deep potholes and general degradation. The condition is hindering vehicle movements over the road and presents hazards to pedestrians.

- 8.4 NHDC's Building Surveyor is of the opinion that the access road requires wholesale replacement, to include its base and surface, rather than ad hoc ongoing repairs. The replacement is expected to have an estimated lifespan of 8 years.

- 8.5 The estimated cost of replacement depends on whether the work is undertaken in the daytime or during the night. The estimates are:

- (i) £56,000 (daytime).
- (ii) £84,000 (night-time).

The night-time cost is higher due to the higher labour cost, need for extra equipment such as floodlighting and the longer duration of the work.

- 8.6 All reasonable efforts will be made to programme the work in the daytime. These efforts will include seeking the cooperation of NHDC's tenants or exercising appropriate rights available to NHDC, for example rights reserved in the leases. This in order to temporarily close the road to facilitate the replacement work.

- 8.7 The current quieter period being experienced should help galvanise cooperation as usage of the access road has significantly reduced for the time being.

- 8.8 NHDC intends to commission Stevenage Borough Council to manage and undertake the work via their Minor Civil Works Term Contract since the estimated value of the work is below £75,000 (if carried out in the day). Once the budget is authorised and a date for the work is settled, work can commence at short notice as the necessary materials, equipment and labour are available.

- 8.9 If night-time working is required to undertake this work, NHDC will obtain 3 quotes through its Standard Quotation process in accordance with the Contract Procurement Rules. It is more feasible to call off from the above Framework agreement. If this cannot be agreed within this framework then the decision to award will be reviewed by the Service Director.

## **9. LEGAL IMPLICATIONS**

9.1 Section 5.7 of the Financial Regulations states:

“If an urgent or unanticipated capital need arises, this will be dealt with under the urgency powers delegated to the Chief Executive and the proposal then referred to the Cabinet, and then Full Council, at the earliest opportunity. However the Executive Member for Finance and IT can approve in year changes to the Capital Programme up to a limit of £100,000 per project. Any requests for use of this approval should be made via the Chief Finance Officer.”

9.2 The decision under 1.1 is an Executive Decision taken by the Executive Member for Finance & IT under the powers delegated to him to approve in year changes to the Capital Programme up to a limit of £100,000.

9.3 It is intended to commission Stevenage Borough Council to manage and undertake the replacement work via their Minor Civil Works Term Contract. The Term Contract allows for works orders to be placed where the estimated order value is below £75,000. The works are within Hertfordshire and will be managed and undertaken on NHDC’s behalf by Stevenage Borough Council. The proposed contract award therefore complies with the requirements of the Term Contract and NHDC’s Contract Procurement Rules.

9.4 The Openness of Local Government Bodies Regulations 2014 (No. 2095) require officers undertaking non-executive decisions to record (amongst other things) an award of a contract that materially affects the Council’s position in a written delegated decision. At NHDC this is any award of a contract or financial decision, that is or is likely to be above £50,000. This contract award is above £50,000 and therefore has to be confirmed by the relevant officer taking the decision.

## **10. FINANCIAL IMPLICATIONS**

10.1. NHDC’s tenants served by the access road could decide to withhold paying rent to NHDC if the road remains in poor condition. The current annual rent payable by the three tenants to NHDC totals circa £54,000.

10.2. The condition and serviceability of the access road is a material influence on the rental values of the three leased sites. If the access road remains in poor condition, this will reduce prospects for rental uplift at future rent reviews of those sites.

10.3. The cost of replacing the access road is estimated at £56,000 if carried out in the day. Based on the current total annual rent payable, the cost should achieve payback in just over 1 year.

## **11. RISK IMPLICATIONS**

11.1 NHDC fails to secure the cooperation of its three tenants to undertake the work in the day, or disputes ensue over the effectiveness of its rights. This scenario will likely mean NHDC has to resort to night-time working. This will incur the significantly higher cost of £84,000 and will require NHDC to obtain 3 quotes through its Standard Quotation process in accordance with the Contract Procurement Rules, thus delaying work.

11.2 Until the access road is replaced, its poor and hazardous condition will persist and may worsen still. The risk of NHDC receiving claims for compensation from tenants for breach of lease, or claims from those sustaining physical injuries on the road or claims for damage to vehicles will remain higher up to the point of replacement.

11.3 There is a risk of having to resort to the costlier night-time working option if the work cannot be undertaken during the current less busy period.

**12. EQUALITIES IMPLICATIONS**

12.1 In line with the Public Sector Equality Duty, public bodies must, in the exercise of their functions, give due regard to the need to eliminate discrimination, harassment, victimisation, to advance equality of opportunity and foster good relations between those who share a protected characteristic and those who do not.

12.2 The current poor condition of the road makes it more difficult for people with disabilities to traverse, especially wheelchair users. The replacement will overcome these issues by providing a more even and secure road surface. Please refer to the Equality Analysis at Appendix A for further information.

**13. SOCIAL VALUE IMPLICATIONS**

13.1 The Social Value Act and “go local” policy do not apply to this decision.

**14. ENVIRONMENTAL IMPLICATIONS**

14.1. There are no known Environmental impacts or requirements that apply to this report.

**15. HUMAN RESOURCE IMPLICATIONS**

15.1 There are no human resource implications arising from this report.

**16. BACKGROUND PAPERS**

16.1 None.

**17. APPENDICES**

17.1 Appendix A – Equality Analysis.

**NOTIFICATION DATE**

Signature of Executive Member Decision Taker (for 1.1)  .....

Date 05/06/2020 .....

Signature of Service Director – Commercial (for 1.2).....  .....

Date .....05/06/2020.....

**Please Note: that *unless urgency provisions apply* EXECUTIVE decisions cannot be implemented until 5 clear working days have elapsed after the decision has been taken to allow for scrutiny call-in.**

**Call-in does not apply to NON-EXECUTIVE DECISIONS**