

ITEM 5 - LATE REPORT

NORTH YORKSHIRE COUNTY COUNCIL

EXECUTIVE

18TH MARCH 2014

SUPERFAST NORTH YORKSHIRE PROJECT JOINT REPORT OF THE CORPORATE DIRECTOR STRATEGIC RESOURCES AND THE CHIEF EXECUTIVE NYNET

1.0 Purpose of Report

- 1.1 To approve a funding package for Phase 2 of the Superfast North Yorkshire Project.
- 1.2 To consider related issues and a prospective approach to Phase 3 of the Project.

2.0 Background

2.1 Following consideration of a report, regarding Phase 2, submitted to the Executive on the 29th October 2013 it was resolved that:

- (i) the additional funding of £3m offered by BDUK is accepted
- (ii) the additional funding of £2.275m offered by ERDF is accepted and a matching contribution of £3.1m funded from Corporate Miscellaneous within the 2013/14 Revenue Budget is made
- (iii) that these decisions are subject to a further report confirming that value for money is being achieved under the proposed additional spend with BT and subject to it being confirmed that the proposed grant and changes are compliant with state aid requirements

2.2 This report is submitted in response to (iii) above but also explores how the Superfast North Yorkshire (SFNY) Project might best develop a Strategy to achieve its overall Vision of “access to high quality broadband for 100% of the premises in North Yorkshire and the City of York by 2017”

3.0 Phase 1

3.1 Background

3.1.1 The County Council initially received £17.8m from BDUK and £8.7m from ERDF, a total of £26.5m, to finance the broadband aspect of the SFNY

project. Under State Aid guidelines these funds could only be used in the so called Intervention Area (IA) which contains 194,732 premises. The IA is defined as those areas of the County that will not receive superfast broadband as a result of any commercial investment by BT and Virgin.

- 3.1.2 A further £3m of ERDF is being spent on Business Support and £750k on Demand Stimulation the latter co-funded with BT.
- 3.1.3 Phase 1 of the SFNY Project will see 149,944 (77%) of the premises in the Intervention Area being fibre enabled to receive in excess of 25Mbs. If combined with the premises in the commercial areas that now have at least 25Mbs, the projection is that 87% of the premises in North Yorkshire will have access to superfast broadband by the end of 2014.
- 3.1.4 A further 44,788 premises (23%) in the Intervention Area will be guaranteed a minimum of 2Mbs, but will not receive superfast broadband speeds. This is referred to as the Universal Service Commitment (USC) and the BT cost model attached to the Phase 1 contract allocates £5m for this purpose.
- 3.1.5 BT is contractually obliged to complete all aspects of the broadband rollout by October 2014.
- 3.1.6 All aspects of the SFNY project are managed on behalf of NYCC by NYnet.

3.2 Progress to date

- 3.2.1 The BT contract is currently on track against the delivery plan, with 399 cabinets now delivered in the 14 months since the first cabinet went live in December 2012. This has enabled access to superfast broadband for 107,308 premises.
- 3.2.2 On average this rate of progress equates to more than 25 cabinets, or 7600 premises, being fibre enabled per calendar month.
- 3.2.3 To date, 71% of the 149,944 premises required to be completed by 31 October 2014 have been successfully delivered with access to superfast broadband and there is every expectation that BT will meet their overall contractual obligation.

3.3 Business Support

- 3.3.1 As a consequence of the ERDF funding, the Project is required to deliver a number of Business Support Outputs. SFNY has awarded the contract for the delivery of these outputs to Business Enterprise North East (**BENL**).
- 3.3.2 The key ERDF target is to deliver 550 Business Assists, (an Assist being defined as 12 hours of 'support') by 30 June 2015. The BENL contract will aim

to over achieve this by delivering 1050 Business Assists and in doing so provide a 'margin of comfort' in achieving the ERDF target.

- 3.3.3 By the end of February 2014, 421 Business Assists have been delivered, significantly ahead of the forecast of 370. The current forecast shows BENL projected to hit the ERDF target of 550 by August 2014.
- 3.3.4 In relation to the Output measurements of 126 Jobs created and a GVA increase of £25m, BENL are on track against their contract targets.
- 3.3.5 Significantly the rollout has so far increased the proportion of ERDF eligible businesses with access to superfast broadband from 22% to 36%
- 3.3.6 A recently commissioned independent report carried out by Regeneris Consulting demonstrated a very high satisfaction rate amongst SMEs participating in the Business Support programme. In addition, the report confirmed that the increase in superfast connectivity, as a result of the SFNY project, is seen by local SMEs as a major contributor to economic growth in the County over the next ten years.

3.4 Demand Stimulation

- 3.4.1 The jointly funded Demand Stimulation programme is yielding good results. Current national take-up of superfast broadband is just over 14% after three years of superfast being available. In comparison, the take-up in the Intervention Area currently stands at 14.5% after only 14 months. This number rises to over 17% when adjusted to remove cabinets available for less than 50 days. There is also evidence now emerging of a greater propensity in semi urban and rural areas, to take up superfast broadband once it is available; this is probably due to the fact that the digital divide between these areas in the past and now is greater than in adjoining urban areas (ie the speed uplift as a result of SFNY in urban areas is less marked)
- 3.4.2 Based on this data the forecast is that 20% take up will be achieved in June/July 2014, with a potential to achieve 30% take up as early as April 2015. This forecast takes into account the fact that the BT rollout is essentially now in the rural areas where the propensity for take up is greater.
- 3.4.3 This encouraging situation is significant as take-up greater than 20% activates the Overage mechanism in the contract whereby 'excessive' profits are clawed back from BT. Take up of 30% would yield approximately £3.5m in claw back over the contract term which would flow back to NYCC for possible reinvestment in later stages of the project.

4.0 Phase 2 proposal

4.1 Funding

- 4.1.1 The report considered by the Executive on 29th October 2013 explained how a 'pot' of £8m might be created to spend with BT on additional superfast

coverage. This 'pot' comprises £3m from BDUK, £2m from ERDF and £3m from NYCC and was approved in principle subject to a satisfactory outcome from the negotiations with BT regarding the number of additional premises that would gain access to superfast broadband.

- 4.1.2 The terms negotiated with BT (**see paragraph 4.2 below**) have now been approved by BDUK and ERDF subject to formal approval of the £3m contribution from NYCC.
- 4.1.3 Subsequent to the October 2013 report, and whilst discussions have been ongoing with BT, BDUK has announced additional funding allocations under the Superfast Extension Programme (SEP). The basis of the SEP allocation is explained in detail in **paragraph 5 below**. For the reasons explained in that paragraph it is considered that the proposal in this report regarding the £8m can proceed within the parameters of BDUK's recent SEP announcement.
- 4.1.4 The funding package approved in principle in October 2013 also included:
 - (i) £275K of ERDF revenue grant for Business Support
 - (ii) £100K of NYCC funding for the net additional project management costs that NYnet would incur in progressing Phase 2.

4.2 **BT Proposal**

- 4.2.1 Following lengthy negotiations with BT since October 2013, BT have now proposed that they will connect a further 17,700 premises delivering 11,100 premises above 25Mbs. For the Intervention Area this will see 97% (188,404) of premises connected to fibre broadband with 83% (161,044) above 25Mbs; this is equivalent to 89% in the combined IA and commercial areas. Because this additional spend with BT effectively reduces the cost to BT of fulfilling their USC obligation BT has released £2m (of the £5m referred to in **paragraph 3.1.4 above**) to augment the additional funding of £8m.
- 4.2.2 BT have indicated that within this funding envelope a further 5000 premises may be uplifted to above 25Mbs using Fibre to the Remote Node (FTTRN). FTTRN is a variant of Fibre to the Cabinet (FTTC) but using small cabinets that can be attached to telegraph poles etc. This approach enables fibre to go deeper into rural areas, on a more cost effective basis, than otherwise would be the case using FTTC or FTTP. BT is still developing the FTTRN product in anticipation of it 'solving' their problem of getting fibre based broadband into more deeply rural areas.
- 4.2.3 If the FTTRN technology can be successfully deployed in North Yorkshire the further 5000 premises referred to would increase the above 25mbs coverage to 85% (166,044 premises) in the Intervention Area and 90% in the combined IA and commercial areas.

- 4.2.4 Because the FTTRN proposal is not substantive at this stage BT will, before 30 September 2014, confirm the number of premises that will receive above 25mbs from FTTRN/FTTC/FTTP under Phase 2.
- 4.2.5 SFNY will then have the option of either accepting the revised number of premises, or continuing the roll out of Phase 2 using FTTC/FTTP.
- 4.2.6 If SFNY choose to stop, no further payment is made to BT under the Phase 2 change request, and all other contractual obligations with respect to Phase 1 remain in place (including the USC obligation for properties with < 2mbs and the use of satellite technology being limited to 3895 premises)
- 4.2.7 Before 30 September 2014, BT will also confirm the additional number of >25mbs, and fibre connected, premises that could be reached, using the USC £3m, were SFNY to remove the cap on satellite provision for those not receiving 2mbs.
- 4.2.8 BT will therefore provide two models for consideration by SFNY, one that maximises >25mbs coverage using the £8m, and one that, using the USC £3m, maximises the number of premises that could benefit from an uplift above 2Mbs via fibre connections.
- 4.2.9 Key to the issue about the USC, and the use of the £3m pot, is that based on the current Phase 2 proposition initial analysis suggests that there will still be up to 18,000 premises that BT will have to serve that are below 2mbs.
- 4.2.10 The existing deadline date for completing the USC is October 2014. However as this report explains there are important decisions to be made in October 2014 once BT has provided the additional information referred to in **paragraph 4.2.4 et seq.** In practical terms this leaves no time for BT to complete the USC work as originally planned under Phase 1; this matter is further complicated by the potential impact of the SEP allocation. This aspect of the USC issue is considered further in **paragraph 7.4** below.
- 4.2.11 SFNY regards itself to be in a strong negotiating position, as to complete the remaining USC, within the stringent terms of the current Phase 1 contract will mean that BT will have to pre-install significant equipment in order to be paid. It may therefore be possible to negotiate further uplift to >25mbs using this leverage when BT submits its FTTRN proposal in September 2014.
- 4.2.12 Finally the potential additional numbers of premises referred to in **paragraphs 4.2.1/4.2.2** may be affected by the negotiations that need to take place with the City of York Council following the decision by BDUK to earmark part of the SEP allocation for use in the City of York (see **paragraph 5.1** for further details)

4.3 Value for money

- 4.3.1 Appendix 1 contains a summary of the public subsidy/premise with the Phase 2 coverage, as detailed in **paragraph 4.2** above, included.

- 4.3.2 Thus if Phase 2 achieves an additional 11100 > 25mbs premises the overall average public subsidy/premise is £213.85 to which NYCC has made a direct contribution of £18.63.
- 4.3.3 Alternatively if Phase 2, due to FTTRN, achieves 16100 >25mbs premises the overall average public subsidy/premise is £207.41 to which NYCC has made a direct contribution of £18.07
- 4.3.4 In addition the average subsidy/premise provided via the NYnet 100 company for project management of the SFNY project to date is approximately £11.30

5.0 Superfast Extension Programme (SEP)

5.1 BDUK allocation

- 5.1.1 On the 24th February 2014 BDUK announced the allocation of its £250m SEP pot established in the Spending Review 2013. The Government anticipates that this will help deliver superfast broadband to 95% of UK premises by 2017.
- 5.1.2 The allocations are based on data modelling “that has taken into account the number of premises in each area which are likely to be without access to superfast broadband speeds following current private and publicly funded rollout, and the estimated costs of a solution.”
- 5.1.3 The allocation to North Yorkshire is £7.6m however three factors need to be taken into account
- (i) the £7.6m includes the £3m previously allocated in 2013 (**see paragraph 4.1.1**)
 - (ii) the £7.6m includes £280k for the City of York Council (CoYC)
 - (iii) the drawdown of the allocation requires a £ for £ match
- 5.1.4 Local authorities have until 20th March 2014 to return their initial Expressions of Interest in taking up the allocation and until the 30th June 2014 to submit formal requests for funding.
- 5.1.5 In theory therefore the £7.6m if matched creates a ‘pot’ of £15.2m to be spent in North Yorkshire and the City of York areas.
- 5.1.6 Taking into account the allocation to CoYC the maximum funding requirement for NYCC is as follows:

	Allocation		Pot
	£m	x2	£m
BDUK	7.600		15.200

-CoYC	<u>-0.280</u>	<u>-0.560</u>
=NYCC	<u>7.320</u>	<u>14.640</u>

5.1.7 The £8m for Phase 2 explained in **paragraph 4.2** effectively counts against the £14.640m shown above because BDUK have accepted that the 'over matching' to create that pot (ie £3m NYCC + £2m ERDF matched to £3m BDUK) can be offset by an 'under matching' for the remaining £6.640m. Thus the residual NYCC matching contribution will be:

	£m
BDUK allocation	7.320
- (£3m +£2m)	<u>-5.000</u> (of the £8m pot)
=Balance	<u>=2.320</u>

5.1.8 There is no formal request at this stage for NYCC to commit to providing this additional match above the £3m already provided for Phase 2. The development of a Strategy to get to 100% coverage (see **paragraph 7 below**) will work on the basis that the match will be requested if and when necessary.

5.1.9 There is also no absolute requirement that the match needs to be provided exclusively by NYCC. If the 'fettering' principle comes into play (see **paragraph 7.4 (ii) below**) then it would seem appropriate to invite Borough/District Councils to contribute particularly if they would wish to secure superfast coverage in particular locations within their areas (eg rural Business Parks). A number of Districts have already indicated their willingness, in principle, to participate in this way.

5.2 City of York consequences

5.2.1 This situation with the £8m proposal is now made complicated by the allocation made to CoYC. Assuming CoYC provide the match and want to spend the funds quickly on BT coverage they will have to use the BT contract/State Aid construct established by SFNY. The alternative is for CoYC to undertake a separate procurement, arrange State Aid etc.

5.2.2 Two issues arise

- (i) the premises coverage offered by BT for the £8m includes premises in the CoYC area. For CoYC to 'access' this arrangement BT will have to split the 11100/16100 premises between NYCC and CoYC so that CoYC can assess how much of their allocation is required or how much this

allocation falls short of that required. The net result will be that the £8m package will need to be adjusted for the outcome of this discussion with CoYC.

- (ii) to date CoYC has not contributed to the project management costs of SFNY although approximately 9% of the premises that will get >25mbs under Phase 1 are in the CoYC area. These project management costs are accumulated in the NYnet 100 accounts and currently total £1.2m (excluding Demand Stimulation which is not carried out in the CoYC area). In addition there will be additional project management costs going forward for Phase 2 etc

5.2.3 It is therefore proposed that:

- (i) NYCC agrees in principle that CoYC can utilise the SFNY contract with BT to spend their allocation, and
- (ii) accepts this may require consequential adjustment to the coverage achieved by the £8m package referred to in **paragraph 4.2**, but
- (iii) with the proviso that CoYC make an appropriate contribution to the past, present and future costs of the SFNY Project Team, the level of this contribution to be agreed by the Chairman of the SFNY Advisory Board.

6.0 BDUK Innovation Fund

6.1 In addition to the allocation of the £250m SEP funds BDUK has established a competitive Fund of £10m to set up pilot projects to test innovative solutions to deliver superfast broadband services to the most difficult rural areas of the UK.

6.2 The Fund

- (i) will be supplier led
- (ii) will embrace different technologies across varying terrains
- (iii) will be seeking local bodies to act as 'host areas' for the supplier pilots

6.3 It is proposed that SFNY offers to be a 'host area' for the purposes of the Fund. Given its knowledge, understanding and analysis of the issues involved with the 'last 5%' SFNY is well placed to help BDUK with at least one of these pilot projects.

6.4 Although no direct or matching financial contribution is required the 'host' role will require some input from the SFNY Project Team but this is considered

marginal relative to the additional coverage that may be secured and/or knowledge gained re alternative technologies etc.

7.0 Phase 3 considerations

7.1 Assuming that Phase 2 (£8m) takes place using FTTRN, with or without the CoYC related adjustment, there will still be approximately 28,000 premises in the Intervention Area that will not have access to at least 25mbps and of these up to 18,000 will have <2mbs.

7.2 From a resource perspective the following funds could be available to SFNY to secure further coverage after Phase 2.

- (i) £6.640m of unused BDUK allocation (assuming NYCC/other Councils provide the additional match referred to in **paragraph 5.1.7**)
- (ii) £3m USC pot
- (iii) any overage claw back received to date
- (iv) any unused Performance Reward Grant (approximately £400K)

In addition SFNY will incur additional project management costs to implement a Phase 3. These will be incorporated in any subsequent request for release of funding.

7.3 SFNY therefore needs to develop a Strategy for what happens after Phase 2, using the above funding, that will achieve 100% coverage by the end of 2017.

7.4 Necessary consequences/considerations will include:

- (i) how successful is FTTRN and can it, cost effectively, extend coverage beyond that achieved by Phase 2.
- (ii) should 'fettering' be used to steer investment to communities/locations that might not otherwise be fibred by BT
- (iii) the USC commitment will effectively have to be extended from October 2014 to at least May 2015 if SFNY is to retain any flexibility for bettering the outcome for the USC properties by using any of the remaining BDUK allocation (£6.6m) and/or the £3m USC pot.
- (iv) if the USC £3m is deployed before the £6.6m SFNY may have a problem of double subsidy (ie the £6.6m would inevitably overlay superfast provision onto the deployed USC technology)
- (v) the outcome of the Open Market Review (OMR) exercise is still to be considered by the SFNY Advisory Board. It may indicate areas of superfast provision beyond those in the known commercial areas and/or provided under SFNY Phase 1.

- (vi) similarly the outcome of the Extended Market Engagement (EME) exercise into alternative technology suppliers is still to be considered by the SFNY Advisory Board. If the BT technology reaches a point where it can no longer be considered cost effective, within the funds available, SFNY will have to look at wireless /satellite solutions. Do companies exist that can provide such solutions to superfast standards, on a sustainable basis, over wide areas and dispersed populations, such as North Yorkshire?
- (vii) SEP funding and its match can only be used to create superfast access.
- (viii) the thresholds in the current State Aid approval, and BT contract, will not necessarily be sufficient to cover all the potential additional spend, above £8m, referred to in **paragraph 7.2 above**. Work to resolve these issues will need to continue in parallel with the development of any Strategy so that the latter is deliverable once Phase 2 is completed.

8.0 Legal Implications and Risk Assessment

- 8.1 A Risk Assessment has been undertaken as to whether the additional funding can be legitimately spent with BT under the existing contract and grant agreements.
- 8.2 The existing State Aid approval secured by NYnet permits additional State expenditure up to a total of £40m. Combined with the £26.5m already committed the Phase 2 £8m brings the total to £34.5m, well within the State Aid limit in place for SFNY.
- 8.3 The existing BT Services Contract allows SFNY to utilise additional funding under change control. External Counsel has confirmed this is compliant within the terms of the public procurement regulations.
- 8.4 The existing ERDF Funding Agreement also permits a variation of this magnitude to be undertaken without recourse to a new Funding Agreement. The additional obligations required by DCLG in terms of Business Support are entirely manageable within the existing Business Support contract with Business Enterprise Group and given the current 'over performance' of Business Enterprise Group, represents little additional risk exposure for the grant
- 8.5 Importantly in respect of ERDF, broadband access to business premises must be deployed before the June 2015 deadline for defrayment of public funds. The prospective timelines for Phase 2 discussed with BT will ensure that ERDF drawdown is maximized.

- 8.6 The BDUK offer letter adds no further stipulations for the use of BDUK funding relative to the current agreement. The BT proposal has also passed the BDUK value for money test.
- 8.7 The life of the Project Team in NYnet can be extended to manage Phase 2.
- 8.8 There are, therefore, no legal or grant approval restrictions to accepting this additional funding and spending £8m of it at this stage with BT to secure additional superfast broadband coverage in North Yorkshire.

9.0 Financial Implications

- 9.1 If the £8m Phase 2 is to proceed, subject to adjustments for the CoYC position, the funding commitment for NYCC is £3m match funding plus £100K for SFNY project management costs.
- 9.2 Based on the October 2013 report these are provided for in the Corporate Miscellaneous Revenue Budget and will be paid to NYnet, as managing agent for the SFNY project, as a cash sum.
- 9.3 The County Council currently has a loan arrangement with NYnet which is capped at £10m. The current value of the loan at the end of February 2014 is circa £6.8m. The Recommendations included within this report will not cause the loan to exceed the £10m limit.

10.0 Recommendations

- 10.1 In relation to the proposed Phase 2 of the SFNY project the Executive is recommended to:
- (i) formally accept the £3m of BDUK funding
 - (ii) formally accept the £2.275m offered by ERDF
 - (iii) to confirm, on value for money grounds, a matching contribution of £3m to be funded from Corporate Miscellaneous and, consequentially
 - (iv) to confirm a sum of £100k payable to NYnet to meet the net additional costs of project management for Phase 2, also to be funded from Corporate Miscellaneous
 - (v) accept the offer from BT to spend the £8m for Phase 2 as detailed in **paragraph 4.2** and that in addition:
 - (a) agrees in principle that CoYC can utilise the SFNY contract with BT to spend their SEP allocation, and
 - (b) accepts that this may require a consequential adjustment to the coverage achieved by the £8m, but

- (c) with the proviso that CoYC make an appropriate contribution towards the past, present and future costs of the SFNY Project Team, the level of this contribution to be agreed by the Chairman of the SFNY Advisory Board, and
- (d) that a further report be submitted regarding the coverage to be achieved by Phase 2 once the SFNY Advisory Board has considered the various models (as referred to in **paragraph 4.2**) that will be submitted by BT in September 2014, and
- (e) that this report provides an analysis of the options for using the remaining USC pot for the benefit of those premises still with less than 2mbs.

10.2 The Executive approves the submission by SFNY, on behalf of NYCC, of an Expression of Interest, and any subsequent formal requests for SEP funding, to BDUK as detailed in **paragraph 5.1.4**.

10.3 The Executive approves SFNY offering itself as a 'host area' for the purposes of the BDUK Innovation Fund.

10.4 Regarding a prospective Phase 3 for the SFNY project the Executive

- (i) notes the possible requirement for a further matching contribution, not to exceed £2.32m, together with a consequential need to fund any additional project management costs that will be incurred by SFNY.
- (ii) authorises SFNY to approach Borough/District Councils, in due course, to establish if they would wish to contribute to Phase 3 of the SFNY project and if so on what basis.

Author and Presenter of report John Moore, Chief Executive, NYnet Ltd

Date 10th March 2014

Appendix 1

Subsidy per Premise if Phase 2 with BT				
	Phase 1		Phase 1 + Phase 2 - 11,000 Premises	
	Funding (£)	Subsidy per premise (£.p)	Funding (£)	Subsidy per premise (£.p)
Funding Body				
BDUK	17,840,000	118.65	20,840,000	129.40
ERDF	8,600,000	57.35	10,600,000	65.82
NYCC	-	-	3,000,000	18.63
Total	26,440,000	176.33	34,440,000	213.85
			Phase 1 + Phase 2 - 16,100 Premises	
			Funding (£)	Subsidy per premise (£.p)
Funding Body				
BDUK			20,840,000	125.40
ERDF			10,600,000	63.84
NYCC			3,000,000	18.07
Total			34,440,000	207.41