

# CHESHIRE EAST COUNCIL

## Cabinet

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<b>Date of Meeting:</b>	11 <sup>th</sup> November 2014
<b>Report of:</b>	Director of Economic Growth and Prosperity
<b>Subject/Title:</b>	<i>All Change for Crewe</i> Sydney Road Replacement Bridge (Ref CE 14/15-10)
<b>Portfolio Holder:</b>	Councillor David Brown, Strategic Outcomes Councillor Don Stockton, Housing and Jobs

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### 1. Report Summary

- 1.1. As the largest town in the Borough, the role of Crewe in the economy of Cheshire East and the wider Cheshire and Warrington sub-region is crucial.
- 1.2. This has been recognised in the development of the *All Change for Crewe* programme, in which the Council and its partners have set out a long-term vision for the regeneration and economic growth of the town.
- 1.3. Over £50m of new investment in infrastructure schemes has already been secured from the public and private sector, which is a vital part of the plan for Crewe. This scheme adds to this success and makes the Council's strategic infrastructure programme the largest outside of the major conurbations in the UK.
- 1.4. Development is taking place in the north of Crewe and providing capacity improvements at Sydney Road Bridge will support this growth and enhance access to the key destinations; Bentley and Leighton Hospital.
- 1.5. Sydney Road Bridge (the "Scheme") crosses the West Coast Main Line (Crewe – Manchester line). The existing bridge is a narrow, signal controlled, single carriageway only structure. The Scheme seeks to increase capacity at this 'pinch point' by replacing the existing structure with a wider structure capable of taking 2-way traffic.
- 1.6. The Council have been working closely with Network Rail (NR) to inform option development and to develop a delivery strategy for the Scheme. This report highlights progress to date and seeks

approval to continue with the relationship with NR as the most effective way of taking forward the development of a preferred option through its business case and statutory processes, and then to secure its delivery.

## **2. Recommendations**

Cabinet is recommended to

- 2.1. Approve bridge replacement as the preferred solution for the next stage of project development. (Refer to the options plan attached.)
- 2.2. Approve the development of the Strategic Outline Business Case (SOBC) for the preferred options.
- 2.3. Authorise the Head of Strategic Infrastructure and the Director of Economic Growth and Prosperity, in consultation with the Portfolio Holder to:
  - Enter into an Implementation Agreement with Network Rail Infrastructure Projects (NR IP);
  - If required, authorise the publication of a Voluntary Ex-ante Transparency (VEAT) Notice in respect of the Implementation Agreement; and,
  - Enter into negotiation with NR over funding contributions.
  - Approve entering into a Basic Asset Protection Agreement (BAPA) with NR and any subsequent amendments to the BAPA as may be required as the scheme progresses.
- 2.4. Note the current estimate of scheme cost and the need for the Council to both forward fund an element of the project delivery costs and potentially fund any gap in the overall costs of the project.

## **3. Reasons for Recommendations**

- 3.1. There is a need to drive forward the development of this scheme as the DfT grant of £2.35m is dependent on delivery during the 2015 – 2019 period.
- 3.2. Promoting greater connectivity along the corridor supports the housing allocation in the Local Plan and access to key locations such as Bentley and Leighton Hospital.
- 3.3. To deliver a scheme of this complexity affecting the railway requires close partnership and involvement by NR to inform its design and delivery, which is secured through a BAPA. NR's recently procured Construction Framework is an exemplar vehicle which has all the leading UK contractors with rail expertise. Also, the existing structure is a NR asset with a future maintenance liability.

- 3.4. The scheme cost estimate has increased as a result of the rejection of the previously preferred and lower cost option by Network Rail on engineering and safety grounds. The now preferred solution of a replacement bridge is currently expected to cost circa £9m to construct, including land, fees and risk. The Approved Capital Programme currently includes a budget of £5m for this scheme and therefore this proposal will increase the budget requirement by an additional £4m.
- 3.5. Sydney Road Bridge crosses the West Coast Mainline (Manchester – Crewe line). This section of line does not lie on the currently proposed HS2 route and as such will not be affected by HS2 proposals.
- 3.6. This paper is intended to establish the principles of the scheme and funding viability, and to enable the project team to progress scheme development.

#### **4. Wards Affected**

- 4.1. Crewe East

#### **5. Local Ward Members**

- 5.1. Councillors Margaret Martin, David Newton and Chris Thornley (Crewe East)

#### **6. Policy Implications**

- 6.1. The Scheme supports the Council's policy for sustainable development and jobs growth as set out in the emerging Local Plan.

#### **7. Implications for Rural Communities**

- 7.1. The scheme would reduce the relative attractiveness of alternative rural lanes that avoid the capacity constraints at the existing bridge, which provides access to this corridor from the east at Maw Green.

#### **8. Financial Implications**

- 8.1. In order to secure the requisite NR technical specialist input into the development of the Scheme it will be necessary for the Council to enter into the Basic Asset Protection Agreement (BAPA) with Network Rail. This agreement provides commitment for the Council to cover Network Rail's professional fees and an initial budget of £75,000 has been included within the proposed agreement.
- 8.2. As the scheme develops it may be necessary to revisit the NR fees budget allowance within the BAPA to ensure NR's ongoing input. It

is proposed that any proposed increase in this budget would be discussed and agreed with the Chief Operating Officer prior to the budget being formally revised.

- 8.3. For the financial year 2015/16 the scheme development requirements are expected to increase and an increased allowance is expected to be required – currently an allowance of £1.0m would appear to be prudent.
- 8.4. Currently signed developer S.106 agreements committing contributions totalling £2.38m have been agreed in respect of housing developments (Maw Green and Coppenhall East) along the Sydney Road corridor, that have so far secured outline planning permission. The timescales for realisation of this funding are not yet known.
- 8.5. A further £2.35m of funding has been contributed to the Scheme from Department for Transport (DfT) devolved major scheme pot via the Cheshire and Warrington Local Transport Body (LTB). This funding is to be used for the delivery (construction) of the scheme.
- 8.6. A further £0.05m contribution has been committed by the Council from the Local Transport Programme (LTP) grant allocation toward the development of the Scheme.
- 8.7. Given that the timescales for realisation of the agreed S106 contributions is unknown allied to the fact that the LTB contribution can only be drawn down for delivery, it will be necessary for the Council to 'forward fund' the development of the Scheme to the point of delivery. Currently it is estimated that forward funding is not expected to exceed £3m.
- 8.8. The outturn cost of the Scheme has increased to circa £9m due to the change to the preferred option. The current funding gap is estimated to be circa £4m. The actual Scheme outturn cost, and hence the actual funding gap, will be developed as the Scheme development progresses.
- 8.9. It is expected that additional Developer S106 / CIL contributions toward the Scheme can be secured from other proposed housing developments along this corridor. Also, a contribution toward the Scheme cost would be expected from NR if, as is expected to be proposed by NR, the Council were to take ownership and maintenance liability for the replacement structure from NR.
- 8.10. The requirement for additional funding from the Councils capital resources will be subject to Council approval as part of the Capital Programme Planning and Approval process.

## 9. Legal Implications

- 9.1. Two options are being considered to commission the infrastructure works. The first is that the Council enter into a direct agreement with Network Rail Infrastructure Projects (NR). A works contract with a contract value of £4.332m or more is subject to the Public Contracts Regulations 2006.
- 9.2. If the Council enters into the agreement without undertaking a procurement exercise the award of contract could be challenged by a third party. If the challenge is successful the court can award damages, set the contract aside leaving the Council without a contract for the works and potentially having to indemnify NR. A challenge can be brought by anyone, however in practical terms only parties that might seek to benefit bring claims. NR will only allow the delivery of works on its land by companies on its own approved list and has an ultimate veto over a contractor selected by the Council.
- 9.3. The Public Procurement Regulations make provision for the publishing of a VEAT Notice to advertise to the market an intention to award a contract directly without making a call for competition. However these direct awards can only be made where explicit justification is given. The permissible justifications are set out in regulation 14 as follows:
  - (1) A contracting authority may use the negotiated procedure without the prior publication of a contract notice in accordance with regulation 17(3) in the following circumstances-
    - (a) in the case of a public contract-
      - (i) when a contracting authority is using the negotiated procedure in accordance with regulation 13(a) and invites to negotiate the contract every economic operator which submitted a tender following an invitation made during the course of the discontinued open procedure or restricted procedure or competitive dialogue (not being a tender which was excluded in accordance with regulation 15(11), 16(7) or 18(10)); and
      - (ii) subject to paragraph (2), in the absence of tenders, suitable tenders or applications in response to an invitation to tender by the contracting authority using the open procedure or the restricted procedure but only if the original terms of the proposed contract offered in the discontinued procedure have not been substantially altered in the negotiated procedure;
      - (iii) when, for technical or artistic reasons, or for reasons connected with the protection of exclusive rights, the public contract may be awarded only to a particular economic operator;

- (iv) when (but only if it is strictly necessary) for reasons of extreme urgency brought about by events unforeseeable by, and not attributable to, the contracting authority, the time limits specified in-
  - (aa) regulation 15 for the open procedure;
  - (bb) regulation 16 for the restricted procedure; or
  - (cc) regulation 17 for the negotiated procedure;

- 9.4. Points (a)(iii), (a)(iv), and (aa) above are the justifications that the Council might seek to rely on. Although the Council does not fit comfortably within these justifications, issuing a VEAT Notice is a way of flushing out potential challenges and would protect the Council's position. A challenge can be received anytime during the first six months of a Contract but by following the VEAT Notice approach the window for challenge will be reduced to 30 days. Assuming no challenge is received within 30 days the Council can proceed to award and then issue the Contract Notice.
- 9.5. Another consideration in making a direct award of contract is ensuring that the contract value is good value. A direct award will also breach the Council's own internal procedures and a waiver of the rules will need to be sought.
- 9.6. The second option is for the Council undertake its own EU compliant tender or call off from a Framework Agreement that the Council is legally entitled to call off. The time to undertake such an exercise will be at least 52 days for an Open Procedure or 77 days under a Restricted Procedure. A mini competition can be conducted in a narrower time frame.

## **10. Risk Management**

- 10.1. There is reputational risk with the Cheshire and Warrington Local Enterprise Partnership (LEP) and DfT around the late or non-delivery of the Scheme. CEC is developing a strong reputation on delivery with Crewe Rail Exchange already completed and 3 other schemes on-site. CEC needs to continue this trend going forward.
- 10.2. Endorsement (Gate 1) will be sought from EMB in early 2015 following preparation of the draft Strategic Outline Business Case (SOBC) for the Scheme, and preparation of the draft Risk Log and Delivery Strategy. A high level paper will be submitted to EMB in November 2014.
- 10.3. In addition to demonstrating the Scheme's expected 'value for money' and strategic benefits, the SOBC will be used to challenge on risks to the Scheme and give confidence that the Scheme can be delivered to programme and within budget.

- 10.4. In the event that the SOBC indicates a low BCR (Benefit Cost Ratio) and also the wider economic benefits (GVA) are considered to be less than expected it will be necessary for the Council and the LTB to review the Scheme and consider whether there is a case for continuing with Scheme development.
- 10.5. Significant risk exists with constructing a complex scheme such as this in a constrained site and over the West Coast Mainline. It is considered that the most effective way of managing that risk will be by partnering with NR IP to develop and deliver the Scheme. In this way NR can bring their vast experience and expertise in similar schemes to bear and thereby reduce the risk to CEC.
- 10.6. Should the Council decide to enter into an Implementation Agreement with NR IP, the Council will effectively be open to challenge as this would be classed as a direct award of a scheme with contract value likely to exceed the £4.33m threshold for Public Contracts Regulations 2006. In accordance with the Regulations, this risk can be mitigated to some extent by the publication of VEAT Notice, which is used to advertise to the market an intention to award a contract directly without making a call for competition. More details are provided above in Section 9.
- 10.7. It is considered that the likelihood of challenge of a direct award to NR IP would be very low as for project development up to award of contract for works the Council already has the ability to procure this directly from Jacobs through its Highways Contract. For the delivery of works, all the key contractors that would be appropriate or technically capable of delivering this scheme would have tendered for a place on the NR IP Framework, and further, the contractors with whom NR IP and the Council would be prepared to work with are those that have won a place on the Framework.
- 10.8. Should the Council conclude that entering into an Implementation Agreement with NR IP is not appropriate then the Council will need to progress its own tender or call off from an appropriate Framework Agreement. This will inevitably result in additional cost to the scheme and also have an impact on the programme. A minimum of 6 months delay relating to appointment of NR IP is anticipated. This will reduce the time the Contractor has to develop the Scheme if the Delivery programme is not to be adversely affected.
- 10.9. Any agreement or contract award for the development and delivery of this Scheme will need to include a break clause to protect the Council's position over a range of scenarios – including: insufficient funding to deliver the scheme; or, simply a decision to not proceed with the scheme because it is considered to be too expensive, or any other reason.

- 10.10. The requirement for additional land to construct, operate and maintain the Scheme is yet to be determined, and will only be concluded during preliminary design once a Contractor / designer has been appointed. If additional land is deemed to be required then all reasonable endeavours will be made to acquire the land or right by agreement. However, if the land cannot be achieved by voluntary means the Council will need to implement and use its statutory powers. This process would have significant programme implications, with potentially up to a 1 year required to complete acquisition, assuming that a compulsory purchase order (CPO) would be acceptable. The amount of land is anticipated to be relatively modest and only affecting a few properties.
- 10.11. There is a risk that the costs to the Council of the Scheme increase during the design and delivery process. The funding gap is currently estimated to be in the order of £4m against an estimated total scheme cost of circa £9m. Partnering with NR IP and early contractor involvement is seen as an effective way of mitigating against project cost increase on delivery and should also assist in the negotiation of a NR contribution. Further Local Growth Fund (LGF) bids and development S106 negotiation will also be used to minimise the Council's exposure to costs.

## **11. Background and Options**

- 11.1. Sydney Road is located on the north east side of Crewe. It is a Classified 'B' Road which acts as a distributor route serving the north side of Crewe and connecting it to key destinations such as the Bentley Factory and Leighton Hospital.
- 11.2. Traffic flows on Sydney Road are restricted by the narrow, Network Rail (NR) owned Sydney Road Bridge, which currently operates a single-way traffic system controlled by traffic lights at either end of the bridge. The bridge crosses the West Coast Mainline (Crewe – Manchester). The Council has received planning applications for new developments along the Sydney Road corridor. The developments would increase road traffic and the Council needed to understand what improvement measures could be implemented to improve capacity at the bridge. Some Developer S106 funding contributions, and DfT LTB (Local Transport Body) funding have already been secured by the Council for a scheme to improve the road capacity at the railway crossing.
- 11.3. It is proposed to improve highway capacity over Sydney Road Bridge by construction of a new replacement bridge structure at this location in order that two-way traffic is made possible.
- 11.4. A Strategic Outline Business Case (SOBC) is currently being developed for the Scheme, which is expected to demonstrate the strategic economic benefits of this scheme and provide an

indication of the expected value for money / BCR (Benefit Cost Ratio).

- 11.5. In 2012 the Council commissioned Jacobs to undertake a feasibility options study to create 2-way traffic working over Sydney Road Bridge and recommend a preferred option. The report concluded that of five options considered a new bridge to carry westbound traffic, constructed immediately to the south of the existing bridge which would be retained to carry eastbound traffic and services was the preferred option.
- 11.6. The feasibility was revisited in 2013 when the Council expressed a desire to progress the Scheme. This work highlighted that the vertical highway alignment over a replacement bridge could be significantly worse than the already sub-standard alignment over the existing bridge, generating the need for further work including: development of the preliminary highway design to investigate highway alignment constraints, issues and options; topographical survey of nearby similar 'hump-back' bridges (local precedent); and, undertake a Stage 1 Road Safety Audit (RSA).
- 11.7. During initial engagement by the Council, NR expressed concern regarding the Council's preferred option. NR subsequently confirmed that due to the age and condition of the existing bridge structure; a permanent structure adjacent to a retained existing structure (the Council's previously preferred option); or, re-use of the existing bridge's foundations, but with a new wider bridge deck, will not be acceptable. NR only considers a replacement bridge solution to be acceptable.
- 11.8. Other key constraints that were identified by the Project Team and NR include, but are not limited to the following:
  - Road closure duration
  - Available Network Rail possessions
  - Existing carriageway [horizontal and vertical] alignment and dimensions, and tie-ins to existing accesses
  - Land and 3<sup>rd</sup> Party land requirements
  - Clearance over Network Rail asset (track and overhead line equipment)
  - Services (gas, electric, telecomms, water) to remain or for diversion
- 11.9. Given these constraints Jacobs undertook additional feasibility work which has identified two possible options: an on-line bridge replacement (noted as Option C); and, a phased on-line bridge replacement (noted as Option D), both of which represent a replacement of the existing structure with an entirely new bridge structure (refer to the Options plan attached).

11.10. A 3<sup>rd</sup> party civil engineering contractor, Jackson Civil Engineering, was appointed in September 2014 to undertake a buildability review of the two identified options (Options C and D) and also to work up preliminary construction cost estimates and programmes. The headline findings of this work are summarised as follows:

11.11. Option C Summary - On-line Bridge Replacement  
Advantages

- Minimum area of additional land required
- Better Horizontal alignment
- Lower cost than Option D

Disadvantages

- Long Road Closure (circa 6 months)

11.12. Option D Summary - Phased On-line Bridge Replacement  
Advantages

- No long road closure

Disadvantages

- Higher Cost relative to Option C
- Poorer Horizontal alignment
- Greater area of additional land required

11.13. The findings are currently under review and challenge by the Project Team and a conclusion on the preferred solution will be drawn in due course.

11.14. The Network Rail Basic Asset Protection Agreement (BAPA) includes an allowance for professional fees expected to be incurred by NR officers in supporting scheme development (a separate agreement will be required between the Council and NR for scheme delivery). It is essential that the Council enter into the BAPA to ensure appropriate and timely input from NR. As the scheme develops and the scope of the requisite NR input becomes clearer it might be necessary to revisit the scope of this agreement and NR fees budget.

11.15. The bridge is currently owned and maintained by NR. It is expected that if a replacement structure is promoted by the Council at this location NR will request that ownership and associated liability for maintenance of the structure is passed to the Council. It is expected that in return the Council could expect a contribution toward the scheme cost from NR.

11.16. Two distinct options are currently being considered; the Council enter into an Implementation Agreement with NR IP to deliver the Scheme using a Contractor from their recently procured (OJEU compliant) Construction Framework; or, the Council self deliver the scheme by appointment of a Contractor using a tender or by calling on an appropriate framework agreement.

11.17. Some of the key benefits of delivery by NR IP are as follows:

- NR IP has unparalleled experience of the management of rail industry stakeholders and rail interfaces resulting in a lower project risk profile for the Council; particularly when working in proximity to high-profile areas of the network, as is the case for this scheme;
- NR IP have unparalleled experience in delivery of railway overbridge projects; approximately 70 new bridges per year;
- CEC do not need to expend time, effort and risk in gaining rail industry knowledge and expertise;
- Significant cost and programme savings to the Council in terms of management, procurement and commercial management cost through IP management of the process and utilisation of their recently procured Framework;
- Saves the expense of a standalone NR Asset Protection (ASPRO) contract as included within NR IP project management costs;
- By undertaking the ASPRO functions, approvals for temporary works designs and working methods affecting the railway infrastructure would be more efficient in terms of time and cost.;
- Supply chain efficiencies and less aggressive commercial behaviours resulting in positive impact on the risk profile; and,
- Option to stop – the Council will have full visibility of the projected scheme delivery cost and have the option to curtail the contract should the project prices exceed the budget.

11.18. The significant benefits NR IP offer in terms of expertise and experience, reduction in project risk, programme efficiencies, and cost savings, could not be achieved by the Council if it promoted its own tender for a Contractor for the Scheme. As such, it is considered that the preferred option is for the Council to enter into an Implementation Agreement with NR IP to develop and deliver the Scheme.

11.19. Should the Council conclude that entering into an Implementation Agreement with NR IP is the appropriate delivery mechanism for this scheme then the Council may also conclude that a Voluntary Ex-Ante Transparency (VEAT) Notice should be published to mitigate against potential challenge. Refer to Section 9 for further details.

11.20. Regardless of the delivery strategy adopted for the Scheme, a 'break clause' will be incorporated to permit the Council the opportunity to halt the scheme if the Scheme estimate is too costly, or for any other reason the Council no longer wishes to proceed to the next phase of detailed design and construction. The decision on whether to proceed to the next phase; detailed design and construction, will be subject to a future Cabinet authority.

- 11.21. The requirement for either temporary or permanent 3<sup>rd</sup> party land to construct a new structure is still to be established, and will only be confirmed during preliminary design when highway extent and the method of construction are considered. It is proposed that officers or appointed consultants will commence engagement and negotiation with 3<sup>rd</sup> party land owners as necessary to raise awareness of proposals and to seek to acquire the rights or title to land to deliver this scheme, by agreement. If negotiations prove not to be positive, it might be necessary for the Council to implement use of its Compulsory Purchase Powers to undertake the acquisition of land required to deliver this Scheme.
- 11.22. Planning permission will be required for a replacement structure at this location. At present it is considered that that an Environmental Impact Assessment (EIA) will not be required, however, this is yet to be confirmed by the Environment Agency. The planning application will involve pre-application discussions with affected parties.
- 11.23. Some funding has been secured from the LTB and from Developer S106 commitments from proposed developments along the Sydney Road corridor. This funding was secured based on the previous preferred option that has since been discounted by NR in favour of a bridge replacement solution. As a result the estimated Scheme cost has increased, and additional funding is required.
- 11.24. The funding gap is currently estimated to be circa £4m, against a Scheme Cost estimated to be circa £9m. Cabinet approval to consider the use of the Council's capital resources to meet this funding gap is sought by this report. It is anticipated that the majority of these monies may be recouped from potential funding contributions from developer S106 / CIL funding, other funding sources such as LGF, and also from a NR contribution toward the Scheme (expected in return for the Council taking over ownership and maintenance liability for the structure). This is explored further in Sections 8 and 10.
- 11.25. The timescales for triggering the agreed S106 contributions is currently unknown, therefore this report seeks approval for the Council to 'forward fund' these contributions to enable the development of the Scheme to progress.
- 11.26. The following Appendices are provided in support of this report:
- Appendix A – Replacement Bridge: Options sketch plan (Options C and D)

## **12. Access to Information**

- 12.1. The background papers relating to this report can be inspected by contacting the report writer:

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