

Cabinet

Date of Meeting: 15 January 2019

Report Title: Middlewich Eastern Bypass – Delivery Strategy

Portfolio Holder: Cllr Don Stockton - Portfolio Holder - Environment

Senior Officer: Frank Jordan - Executive Director - Place

1. Report Summary

- 1.1. It has been a long held ambition of the Council and Middlewich residents to secure the delivery of a bypass to relieve traffic congestion in the Middlewich town centre.
- 1.2. The Council has responded to the concerns of residents and businesses by seeking means to secure the delivery of the Middlewich Eastern Bypass by taking control of delivery of the bypass from the private sector in 2015 and commencing an intense programme of works since then to achieve that objective.
- 1.3. Middlewich is identified in the Local Plan Strategy as a key service centre hosting four strategic sites for employment and housing. The Scheme supports the economic growth agenda of the Council by facilitating the delivery of 1,950 new houses and 6,500 additional jobs in Middlewich and its environs as well as relieving traffic congestion in Middlewich town centre.
- 1.4. This report carries forward previous Cabined approvals by seeking delegated authority for the Executive Director – Place to take all steps considered necessary and/or expedient to deliver the Scheme.

2. Recommendations

That Cabinet:-

- 2.1. note that the Executive Director – Place will in accordance with the approved processes, draw down on the budget allocation within the Capital Programme Addendum in order to deliver the Scheme reverting to Cabinet

only in the event that the Executive Director - Place or the Finance and Communications Portfolio Holder identify a material shift in the costs and/or risks associated with the Scheme.

- 2.2. delegates to the Executive Director – Place (insofar as such delegations are required) in consultation with the Finance and Communications Portfolio Holder authority to take all steps the Executive Director – Place considers to be necessary or expedient to deliver the Scheme which, for the avoidance of doubt, shall include (but not be limited to):-

- 2.5.1 taking all necessary steps to secure DfT Grant Funding

- 2.5.2 exercising all statutory planning and highways powers including the service of notices and the making, confirmation and implementation of all orders including Compulsory Purchase Orders and Side Road Orders

- 2.5.2 entering into any contracts, licences, undertakings or other agreements including Phase 1 (pre-construction) and Phase 2 (main construction) contracts under the SCAPE framework to secure all services needed to deliver the Scheme

3. Reasons for Recommendations

- 3.1. The proposed approach will enable the Council to proceed with the development and delivery of the Scheme, including preparation of a Target Cost contract for the main works, to ensure achievement of the programme and timely draw down of the Local Major Scheme grant from DfT.
- 3.2. There is local public support for the proposals, as demonstrated by the Middlewich Bypass Preferred Route Consultation (April 2018). Through this consultation, over 90% of respondents indicated that the proposed Scheme was a priority for improving transport in the town.
- 3.3. The Scheme is consistent with the Cheshire & Warrington Strategic Economic Plan and is a key element of the HS2 Growth Strategy for the Constellation Partnership. It is also a key infrastructure requirement of the recently adopted Local Plan Strategy for Cheshire East Council.

4. Other Options Considered

- 4.1. The various options for the bypass which were assessed informed the recommendation of the preferred option, as approved at Cabinet in September 2017.
- 4.2. Consideration has been given to various procurement options to secure the services of a suitably qualified contractor. It is considered that the

recommended approach is most likely to reduce risks to key project milestones whilst ensuring that the Council can be assured of fully market-tested prices. Meanwhile, as construction cost inflation could expose the Council to further financial risks, there is a strong case for early contractor engagement to mitigate the risks that additional local funding contributions would be necessary to meet these additional costs.

5. Background

- 5.1. At the meeting on 12 September 2017, Cabinet resolved to prepare a planning application for the Preferred Route option. Following the Cabinet resolution in September, the Council has progressed technical work to prepare for the submission of a planning application, including;
 - (a) Detailed designs for the highway
 - (b) Environmental surveys, impact assessments and proposed mitigation plans
 - (c) Production of a transport assessment
 - (d) Flood risk assessments and development of a drainage strategy
 - (e) Geotechnical and ground condition studies
 - (f) Engagement with Network Rail, Environmental Agency and the Canals & Rivers Trust
 - (g) Pre-application discussions with Cheshire East and Cheshire West & Chester Council planning officers
 - (h) Engagement with affected landholders and occupiers
- 5.2. In November 2018, a planning application for the bypass was submitted to both Cheshire East Council and Cheshire West & Chester Councils, as the relevant local planning authorities, as a small part of the Scheme straddles the administrative boundary. This application is expected to be determined by both authorities in March 2019.
- 5.3. Development of the Scheme has proceeded through close engagement with the land interests and wider stakeholders. A full Statement of Community Engagement has been prepared to accompany the planning applications. In addition, the Council has appointed specialist land agents to proceed with landowner engagement with a view to acquiring all necessary land and rights by negotiation.
- 5.4. To continue to proceed with the project programme, the Council will need to undertake further work to ensure that the following matters are addressed:
 - 5.4.1. A market-tested cost estimate for the main works to be included in the Final Business Case to be submitted to DfT in order to draw down capital grant funding

5.4.2. Necessary advance works are completed in sufficient time to ensure ecological mitigations and utilities diversions are completed without undue delays

5.4.3. A suitably-qualified supply chain is put in place, including local companies as far as is possible, to ensure timely commencement of the main works.

6. Procurement Route

6.1. At its meeting in August 2018, the Council's Commissioning and Procurement Project Board considered a Procurement Options Report and endorsed the use of a SCAPE framework as the procurement method for the scheme.

6.2. SCAPE is a public-sector owned organisation that has in place a number of national procurement frameworks.

6.3. Through this arrangement, the Council would enter into a 2-stage Delivery Agreement, with that Agreement utilising the NEC X23 clause whereby the Council can walk away in Stage 1 (Pre-construction) without commitment to carry out Stage 2 (Construction).

6.4. Furthermore, the following options exist with regard to the degree of design advice that can be requested from the contractor:

6.4.1. Early Contractor Involvement (ECI) where advice is afforded to the design team in terms of project planning and buildability by the contractor. Using this option the Council will independently appoint the Designer.

6.4.2. Design and Build Contract where the Scheme is designed by the contractor as part of the awarded contract;

6.5. This report recommends that the decision on the degree of design advice to be requested from the contractor is delegated to the Executive Director - - Place.

6.6. Following authorisation to enter into a contract in the form of a 2-stage Delivery agreement via the SCAPE framework, work will proceed in 2 distinct stages, as follows:

Stage 1 - Pre-construction

6.6.1. The pre-construction phase will enable the necessary advanced works and investigations to be completed to provide all essential requirements for a Full Business Case submission to DfT. In

addition, the pre-construction phase will include procurement, through mini-bids, of advance works to enable the Scheme's main construction. These advance construction works are expected to include:

- Utilities diversions
- Environmental and ecology habitat creation
- Geotechnical investigations
- Site compound preparation
- Site clearance and preparation
- Construction traffic management planning

6.6.2. Task orders will be raised for each element in turn, with the results of mini competitions through the SCAPE supply chain being considered before appointment of contractors. At this stage, the estimated budget for pre-construction works is approximately £1.6million.

6.6.3. If the Target Cost derived through SCAPE is unacceptable, the Council has the right not to proceed further with the Delivery Agreement at this stage.

Stage 2 - Main Construction

6.6.4. Completion of the pre-construction phase will provide the Council with a current Target Cost for the main construction phase. If this is acceptable and following independent assurance on costs, the Council has the option to instruct the preferred contractor to commence the Main Construction works.

6.6.5. The main works phase would commence only after DfT's approval of the Full Business Case and release of capital grant funding from the national Large Local Major Schemes programme. In addition, works will proceed only when all consents are in place including all necessary acquisitions relating to land and rights required for the Scheme. Should the acquisition of land and rights require the Council to exercise its powers of compulsory purchase, the Delivery Agreement is sufficiently flexible to respond to a revised programme of activities.

7. Implications of the Recommendations

7.1. Legal Implications

- 7.1.1. In resolving to make Orders for the Scheme the Council would be proceeding under its powers under the Highways Act 1980 authorising the compulsory purchase of land and the rights required to deliver the Scheme, together with improvements, stopping up of highways, rights of way and private means of access and providing replacement of private means of access.
- 7.1.2. There are well understood legal requirements that must be met before compulsory purchase powers can be used, and appropriate due diligence will be undertaken at all relevant stages to ensure those requirements are met.
- 7.1.3. Likewise, there are a number of requirements around the other exercise of statutory powers and entering into agreements etc... Appropriate due diligence will be undertaken and legal advice sought and followed at the appropriate time.
- 7.1.4. Legal Services and Procurement are content that the SCAPE framework is an appropriate vehicle for letting the construction contract.

7.2. Finance Implications

- 7.2.1. The approved budget for Middlewich Eastern Bypass is £5.84m, with spend to date of £2.63m. Following a review of the project budget as part of the ECI Feasibility Report, it is considered there are sufficient funds in this financial year, to be taken forward into FY19/20 to complete Stage 1 of the delivery agreement (the pre-construction works).
- 7.2.2. As the project proceeds, there will be a requirement for the Council to continue to forward fund the scheme, pending completion of the Final Business Case and release of DfT capital grant. Cabinet is asked to note that current estimated expenditure on the Scheme will be included in the Medium Term Financial Strategy as part of the Capital Addendum, which is to be reported to Cabinet in February 2019.
- 7.2.3. The addendum includes projects that have been added to the programme owing to their strategic importance to the Council. Pending the completion of detailed business case that will need to demonstrate the strategic impact of the scheme, an expenditure profile and funding sources or associated return on investment. The

Portfolio Holder for Finance & Communications and the S151 Officer will provide the additional approval for these schemes.

- 7.2.4. If forward funding is considered to be appropriate then a business case would be submitted to the Portfolio Holder for Finance and Communications and the S151 officer for the release of funding from the addendum. At this stage, it is expected that any further forward funding applications would relate only to acquisition of land and property assets required for the scheme, where it is advantageous to the Council to secure these through negotiation.
- 7.2.5. A detailed cost estimate has been prepared using specialist engineering and property consultants. This has recently been reviewed as part of the Feasibility Report, providing further assurance on the project budget. The following table summarises the main cost elements for the Scheme (preferred option). No prior expenditure is included in these values, which should be considered cost estimates to completion from 1st April 2017.

Scheme Element	Estimated Outturn Costs (2017 Q1 prices)
Construction incl. Preliminary works	£33.10m
Site supervision costs	£2.03m
Land acquisition & Part 1 Claims	£5.30m
Statutory utilities	£0.75m
Design fees	£5.33m
Inflation allowance	£4.24m
Risk Allowance	£7.73m
Total	£58.48m

- 7.2.6. The programme maximises reliance on local funding sources, referred to as the Local Contribution, from both Cheshire East Council and third party (developer) sources. To ensure that these funding sources are viable and to avoid adversely impacting on future development, the local funding contribution was set at 20% of total Scheme costs.

Therefore, the funding mix, as endorsed by Cabinet in April 2017, is as follows:

Funding Source	Value £ (2017 Q1 prices)
DfT Grant	£46.78m
Local Contribution	£11.70m
Total Scheme costs	£58.48m

- 7.2.7. At this stage, third party contributions are estimated based upon committed or current S106 developer agreements (or equivalent). Over time, the proportion of third party funding is likely to change in response to development activity within the local area. For this reason, the local funding contribution is presented as a combination of both Council and third party funding. Any change in either element will have a direct impact on the funding obligation arising from the other source.
- 7.2.8. Cabinet should note that, if no S106 contributions are secured towards the scheme, the Council will be exposed to meeting the full local contribution of £11.7m. The Council will be required to underwrite the whole of the estimated level of developer contributions to the scheme as there can be no absolute guarantee that all assumed contributing developments will have happened at the time of contract award.
- 7.2.9. In September 2017, it was agreed that the Council would continue to seek alternative funding sources including developer contributions, which could be used towards the contribution of £11.7million. This approach will be retained, ensuring that any call on Council resources is minimised.
- 7.2.10. In the scenario where a Full Business Case is submitted, but grant funding is not approved by DfT and the scheme cannot progress, the Council will be exposed to funding all the costs to that point of scheme development, including the purchase of land or assets acquired by negotiation in advance of the decision. Any such land acquired would have a realisable value. In this scenario, based on current scheme estimates and forecasts, this is a maximum estimated financial

exposure of approximately £5.84m which would need to be funded from revenue.

7.3. Policy Implications

- 7.3.1. The need for the Scheme is clearly established in the Cheshire East Local Plan Strategy, identifying from the outset the need to improve transport connections to deliver the Plan, including the proposed Middlewich Eastern Bypass.
- 7.3.2. By providing additional highway capacity to cater for additional traffic from development, the Scheme would support the Local Plan Strategy and the objectives of the Constellation Partnership. The Scheme is thus considered to be in line with local policy and essential for the delivery of the future economic growth plans of Cheshire East Council.

7.4. Equality Implications

- 7.4.1. All public sector acquiring authorities are bound by the Public Sector Equality Duty as set out in section 149 of the Equality Act 2010. In exercising their compulsory purchase and related powers (eg powers of entry) these acquiring authorities must have regard to the effect of any differential impacts on groups with protected characteristics.
- 7.4.2. In deciding to proceed with the CPO the Council must pay due regard to its Public Sector Equality Duty (PSED) as set out in section 149 of the Equality Act 2010.
- 7.4.3. In summary, the Council must, in the exercise of its functions, have due regard to the need to:
 - (a) eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act;
 - (b) advance equality of opportunity between people who share a protected characteristic and those who do not;
 - (c) foster good relations between people who share a protected characteristic and those who do not.
- 7.4.4. The protected characteristics are:
 - (a) Age
 - (b) Disability
 - (c) Gender reassignment
 - (d) Marriage and civil partnership
 - (e) Pregnancy and maternity

- (f) Race
- (g) Religion/belief (including non-belief)
- (h) Sex
- (i) Sexual orientation

7.4.5. It should be noted that a significant area of land close to the CPO boundary is owned by members of the Gypsy & Traveller communities. However, as indicated below in the consideration of any Human Rights implications, any person who has a land interest acquired from them is entitled to fair compensation based on equivalence (i.e. they should be no better or worse off than they were before the acquisition took place). The public benefits that flow from the delivery of the Scheme which are noted elsewhere in this report are considerable, and overall, the decision to proceed with the CPO should have a positive/neutral impact when it comes to the PSED.

7.5. Human Rights Implications

- 7.5.1. In deciding whether to proceed with a Compulsory Purchase Order (CPO) and a Side Roads Order (SRO), Members will need to consider the Human Rights Act 1998 and Article 1 of the First Protocol and Article 8 to the European Convention on Human Rights. There is a small area of the front garden of a property directly affected within the proposed CPO land.
- 7.5.2. Article 1 protects the rights of everyone to the peaceful enjoyment of their possessions. No person can be deprived of their possessions except in the public interest and subject to national and international law.
- 7.5.3. Article 8 protects private and family life, the home and correspondence. No public authority can interfere with this interest except if it is in accordance with the law and is necessary in the interests of national security, public safety or the economic well-being of the country.
- 7.5.4. Members will need to balance whether the exercise of these powers are compatible with the European Convention on Human Rights. In weighing up the issues it is considered that the acquisition of land which will bring benefits to the residents and businesses that could not be achieved by agreement and this outweighs the loss that will be suffered by existing landowners. The CPO and SRO will follow existing legislative procedures.

- 7.5.5. All parties have the right to object to the making of the Orders and attend a public inquiry arranged by the Secretary of State. Parties not included in the CPO may be afforded that right to make representations to the inquiry if the inspector agrees.
- 7.5.6. The decision of the Secretary of State can be challenged in the High Court, an independent tribunal, for legal defects. Those whose land is acquired will receive compensation based on the Land Compensation Code and should the quantum of compensation be in dispute the matter can be referred to the Lands Tribunal for independent and impartial adjudication.
- 7.5.7. The Courts have held that this framework complies with the Convention on Human Rights. Accordingly, a decision to proceed with the recommendation on the basis that there is a compelling case in the public interest would be compatible with the Human Rights Act 1998.

7.6. Human Resources Implications

- 7.6.1. It shall be necessary to ensure that sufficient resource is allocated in Assets, Highways, Legal, and Planning Services to support delivery of the Scheme. If additional temporary resources are required these will be met from the project budget.

7.7. Risk Management Implications

- 7.7.1. Key risks to the Council continue to relate to the affordability of the Scheme and this will be addressed through the continued development of the funding strategy.
- 7.7.2. The Council will be required to accept all responsibility for cost increases beyond the cost envelope stated in the Business Case that is approved for funding by DfT. This decision is at the Full Business Case stage, which is currently anticipated in late 2019.
- 7.7.3. Risk management issues are unchanged from previous Cabinet reports. A risk register has been produced in the preceding stages of the project development and this will be reviewed and updated through the current stage of works. Capital cost risks are informed by a comprehensive Quantitative Risk Assessment, with a risk allowance of £7.7million included in the Scheme costs. For appraisal purposes, a level of Optimism Bias is applied to uplift estimated costs by 44%, in accordance with DfT guidance, to ensure that the value-for-money of the Scheme is not overstated.

- 7.7.4. This Scheme is close to the Cheshire Brine Compensation Board area and as such will need to be subject to additional Ground Investigations works than are typical for a Scheme of this nature. A programme of additional ground investigations has been included in the pre-construction delivery stage of the SCAPE contract.
- 7.7.5. A major risk for any highway Scheme is land assembly and any substantive delay to this is likely to adversely impact on the project program to include submission of the planning application and the start of construction.
- 7.7.6. Robust governance arrangements for the Scheme have been operating within the Strategic Infrastructure project management framework and a risk register and issues log are in place, which include monitoring and effective control of identified risks and issues.
- 7.7.7. The assumed funding from Section 106 agreements is not all secured so there remains a funding risk. Mitigation of this risk is underway via close working with the planning team and negotiations with developers to ensure that sufficient contribution will be secured. There is also a risk of contributions not coming forward even though they have been secured in S106 Planning Obligations. The securing of S106 contributions is a decision of the Local Planning Authority and these projections are subject to the decision of the Local Planning Authority when it considers the relevant planning applications. Based upon the award letter received from DfT in November 2017, the Council is exposed to all scheme costs beyond the £46.7m capital grant.
- 7.7.8. Section 7.2.12 outlines the Council's financial exposure in the scenario where the scheme is developed to Full Business Case submission, but grant funding is not approved by DfT and the scheme cannot therefore progress to construction.

7.8. Rural Communities Implications

- 7.8.1. The planning application provides a comprehensive Environmental Assessment, which will take into account the effect on the rural community. This assessment will include impacts such as noise, air quality, visual impact plus the Scheme's effects of Public Rights of Way and Non-motorised users i.e. pedestrians, cyclists and equestrians. Delivery of the Scheme will take full account of any conditions or licenses deemed necessary by the planning process.

7.9. Implications for Children & Young People

7.9.1. The Delivery Agreement included a comprehensive framework to capture local Social and Community Value throughout the project. Opportunities to engage with local schools and colleges will arise as the Scheme progresses for education and training purposes. The means by which young people can be encouraged to participate in the consultation process will be considered as part of the Consultation & Engagement Plan.

7.10. Public Health Implications

7.10.1. The recommendations have no immediate impact on public health. Issues associated with noise and air quality will be assessed as part of the programme of works associated with preparing an Environmental Assessment to accompany the planning application.

7.10.2. All on-site ground investigation works will be planned and completed with reference to a comprehensive Risk Assessment and Mitigation Strategy, which will take full account of potential impacts on residents, road users and the general public.

7.10.3. The Scheme will have environmental benefits, through reducing traffic congestion, improving travel times and reliability and encouraging multi modal forms of transport such as cycling and walking.

8. Ward Members Affected

8.1. Middlewich and Brereton Rural wards are affected;

- Cllr Simon McGrory
- Cllr Michael Parsons
- Cllr Bernice Walmsley
- Cllr John Wray

7.2 The project team have provided periodic updates to both Middlewich Town Council and Moston Parish Council during the development of the proposals.

9. Consultation & Engagement

9.1. Public consultation on the Preferred Option for the Scheme has taken place between 19th March and 29th April 2018. A comprehensive report on the outcomes of this consultation has been prepared to support both the Planning Application and the Full Business Case to Government.

- 9.2. Statutory consultations with affected parties are to take place as part of the planning determination by both Cheshire East and Cheshire West & Chester planning authorities.

10. Access to Information

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

- Appendix A – Redline Boundary Plan
- Procurement Options Report [hard copy available at Cabinet or can be downloaded electronically from the Middlewich Eastern Bypass website:-
https://www.cheshireeast.gov.uk/highways_and_roads/roadworks/major-projects/middlewich-eastern-bypass/middlewich-eastern-bypass.aspx]

11. Contact Information

- 11.1. Any questions relating to this report should be directed to the following officer:

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