

# CHESHIRE EAST COUNCIL

## REPORT TO: CABINET

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<b>Date of Meeting:</b>	25 <sup>th</sup> June 2012
<b>Report of:</b>	Strategic Director – Places & Organisational Capacity
<b>Subject/Title:</b>	Middlewich Eastern Bypass & Midpoint 18
<b>Portfolio Holder:</b>	Councillor Menlove Portfolio Holder for Environment and Councillor Macrae Portfolio Holder for Prosperity and Economic Regeneration

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### 1.0 Report Summary

- 1.1 Following the Government's proposed allocation of £4.1m from its Regional Growth Funding to Pochin Developments Ltd to support the development of the Middlewich Eastern Bypass, Cheshire East Council has been requested to act as the grant recipient and accountable body to receive and manage the grant.
- 1.2 This report sets out the context of this proposal and the benefits of supporting the delivery of this scheme.

### 2.0 Decision Requested

- 2.1 To agree that the Council shall act as the grant recipient for this project and to accept the terms of a conditional grant offer letter from the Secretary of State for Business, Innovation and Skills (BIS), subject to the satisfactory advice of the Borough Solicitor.
- 2.2 To delegate authority to the Strategic Director (Places & Organisational Capacity), in conjunction with the Portfolio Holder, to accept the final grant offer letter, subject to the satisfactory advice of the Borough Solicitor and independent Due Diligence advice.

### 3.0 Reasons for Recommendations

- 3.1 The proposed development is expected to deliver significant benefits to the borough, including:
  - a) Enabling the creation of 143,000 sq m of new business premises and around 2,800 jobs.
  - b) Environmental benefits arising from traffic being diverted away from Middlewich Town Centre, thereby improving conditions for residents, businesses and visitors.
  - c) Reduction in congestion on the A54 link to the M6, particularly the section between Leadsmithy Street and Pochin Way.

- 3.2 The project will be at no cost to the Council, other than a modest amount of officer time in administering the grant and legal conditions. All costs associated with external legal advice, etc will ultimately be met either by Pochin Developments Ltd, either directly or through the Regional Growth Fund grant, as appropriate.
- 3.3 There are no significant risks to the Council in administering the grant, since all the fundamental terms of the funding agreement the Council enters into with BIS will be mirrored in the funding agreement the Council will have in place with Pochin Developments Ltd.

#### **4.0 Wards Affected**

- 4.1 Middlewich, Brereton Rural

#### **5.0 Local Ward Members**

- 5.1 Cllrs Paul Edwards, Simon McGrory, Michael Parsons and John Wray

#### **6.0 Policy Implications including - Carbon reduction - Health**

- 6.1 The grant will enable to construction of the Middlewich Eastern Bypass which will have the benefit of:
- a) opening up a major new development site (Midpoint 18) which will be capable of delivering up to 2,800 new jobs.
  - b) improving the environment and thereby health conditions, through reduced air pollution in Middlewich town centre and reduced emissions through reduced journey times in and around Middlewich.

#### **7.0 Financial Implications (Authorised by the Director of Finance and Business Services)**

- 7.1 The grant of £4.1m has been identified by Pochin Developments Ltd (PDL) as the maximum amount of gap funding required to complete the Middlewich Eastern Bypass. All other costs associated with construction of the road will be borne by PDL.
- 7.2 The grant offer letter specifies the terms and conditions under which the grant will be paid, including the following:-
- Receipt of a Confirmatory Due Diligence Report, certified by an independent accountant;
  - Receipt of a satisfactory Project Delivery Plan;

- Confirmation from PDL of their legal commitment to contribute £17.9m to construct the Middlewich Eastern Bypass required to deliver the project;
  - Confirmation that the private sector funding of £17.9m has been secured by PDL.
- 7.3 The conditions of the grant require quarterly monitoring reports to be submitted throughout the fifteen year monitoring period. The final monitoring report for the year should be submitted in January and must be followed by an annual report from an independent accountant, submitted no later than the 14<sup>th</sup> of February of that financial year. The costs of which will be borne by PDL.
- 7.4 Grant may be varied, withheld or subject to repayment if progress is not deemed to be satisfactory, job targets are not achieved or grant claimed is above the level permitted under State aid law. These conditions will be mirrored in the agreement with PDL to ensure that the Council is not subject to any risk of grant shortfall.
- 7.5 PDL must fully demonstrate that these conditions have been met, grant will only be paid over to PDL when it has been received by the Council from BIS. This will ensure cashflow is not adversely affected and the Council will not be subject to the risk of non-payment of grant.
- 7.6 The Council owns land which it will be required to transfer to PDL or dedicate as highway for nil consideration (as referred to in 8.2). The value of this land is currently being established and will be subject to review in line with Finance and Contract Procedure Rules.
- 7.7 The Council would be liable for Part 1 claims but will be seeking the Standard Indemnity from PDL and will recover all legal administrative costs.
- 7.8 The Council will become responsible for the ongoing maintenance costs once the 12 months defect period has expired following adoption as it would with any other road adopted within the Borough.
- 8.0 Legal Implications (Authorised by the Borough Solicitor)**
- 8.1 The Council, by paying the grant to PDL, will be giving financial aid to an undertaking carrying out an economic undertaking. If the aid were to be determined to be unlawful State aid then repayment of grant together with interest could be called for. As a precaution, the Council and PDL have obtained advice jointly, from a specialist State aid solicitor, that the risk of an adverse State aid complication arising in this case is very low.
- 8.2 As stated above the Council will enter into legal arrangements with PDL under which obligations imposed by BIS on the Council, other than administrative obligations, will be passed on to PDL. Similarly risks to the Council especially in terms of variation or withholding of or claims for repayment will be mirrored in the Council – PDL agreement(s). If the Council is to dispose of any land to facilitate the project, then it will have to obtain the best consideration

reasonably obtainable, unless it can rely on the General Disposal Consent (England) 2003. A separate approval will be required for any such disposal.

## **9.0 Risk Management**

- 9.1 The merits of the proposal have been rigorously appraised by the Head of Development and Head of Highways & Transport and the legality of receiving and giving the grant has been considered by the Borough Solicitor. The only identified risks to the Council are of BIS calling for repayment of grant monies due to the job target not being achieved or satisfactory progress not being made towards reaching the job target, and PDL not being solvent or being otherwise unable to repay the grant clawed back from the Council, or the bypass not being completed and BIS claiming back the grant from the Council. There is a 15 year monitoring period in relation to the job creation and repayment is calculated according to the jobs shortfall. In order to mitigate against the risk, financial checks will be made in respect of PDL at this stage and consideration given to the possibility of obtaining a group company guarantee or other security.
- 9.2 Furthermore, BIS require the Council to appoint independent accountants to undertake Due Diligence assessment of the project and the delivery plan, including job creation. This is now in the process of being procured by the Council (with costs to be met by PDL) and will form the final determining factor in the BIS's decision to offer the grant
- 9.3 The key secondary risks relate to:
- a) the viability risks to PDL, who may incur debt and interest charges if they are unable to recoup income associated with the bypass and development in the timeframe they envisage. Financial checks on the company will be undertaken to mitigate this but, ultimately, it will not impact on the delivery of the bypass itself.
  - b) the fact that a significant employment site will become available at around the same time as a strategic employment site at Basford East, Crewe. This could have some consequences to the pace of its development. The Council will continue to work with all developer interests to mitigate the risks of this, through promotion of these sites and targeting different types of businesses at each, reflecting the respective strengths of each location.
- 9.4 The offer letter advises making regular claims to reduce the risk of not receiving the grant funding, our desire is to draw down and pay at the end of the construction period. Officers will endeavour to clarify whether the single drawdown is acceptable to BIS before finalising the grant letter and accepting the offer.

## **10.0 Background and Options**

- 10.1 Midpoint 18 is a successful 450 acre sub-regional employment site located to the east of Middlewich town centre.

- 10.2 Pochin Developments Ltd were granted outline planning permission in June 2008 for a mixed use development including B1, B2 and B8, appropriate leisure and tourism (including hotel) uses, the completion of the southern section of the Middlewich Eastern Bypass, and associated landscaping works.
- 10.3 The bypass itself and an initial development plot have received detailed planning permission. Key to this permission was the condition that buildings could not be occupied until the whole of the bypass has been opened to traffic.
- 10.4 It is proposed that the development will be accessed via an extension to Pochin Way as a 2.2km section of road passing through the site extending to Booth Lane to the south. The scheme would provide economic and transport benefits to Middlewich and the wider area, although it has never been an identified strategic Local Transport Plan (LTP) priority.
- 10.5 The key outcomes of the scheme are expected to be:
- Creation of 143,000m<sup>2</sup> of business development and around 2800 jobs.
  - Environmental benefits as traffic routes away from Middlewich Town Centre improving conditions for residents and visitors and enhancing the retail experience.
  - Reduction in congestion on the A54 link to the M6, particularly the section between Leadsmithy Street and Pochin Way.
- 10.6 Midpoint 18 is not considered to be a strategic regional site but it has sub-regional importance and has been identified as one of thirteen sites with strong potential to facilitate the future economic growth of the Cheshire and Warrington sub-region. The site itself is attractive as a distribution location owing to its strategic road links, but needs the development of the full site to reach its full potential.

## **Delivery Issues**

- 10.7 Midpoint 18 is in an enviable location close to Junction 18 of the M6 and, despite the recession, there continues to be strong interest from occupiers, which is evident through recent deals at Midpoint, as well as other locations in the borough (e.g. Expert Logistics in Crewe, Waters Corporation in Wilmslow). It has to be recognised however that the scheme may compete as a distribution location with Basford West in Crewe, which has been identified as a strategic priority for the Council in terms of its role in the All Change for Crewe regeneration programme.

## **Land Assembly & Interests**

- 10.8 The delivery of the Middlewich Eastern Bypass and the development of land at Midpoint 18 remains dependent on the assembly of land ownerships across the site. Currently the land proposed for Phase 3 of Midpoint 18 is occupied by a number of different landowners including Pochin (the developers of Midpoint 18) and Bovale (who have acquired the Centura Foods land holding).

## **Financial Appraisal and Funding**

- 10.9 Although this is private sector led, even at the height of the market the scheme was not financially viable without public sector subsidy. In 2007, an informal grouping of developers, former Cheshire County Council and North West Development Agency (NWDA) officers and the main developers (Pochin and Bovale) put together proposals for a public-private funding package.
- 10.10 The total cost of the Bypass, including the railway and canal crossings, is in the region of £22million which was to be funded primarily through a developer/landowner contribution of almost £13million. In support of the private sector funds, circa £3million was identified through former Cheshire County Council's LTP2 budget and a funding proposal was made to the North West Regional Development Agency (NWDA) for £6million. Subsequently the scheme was withdrawn from the grant application process as a tripartite agreement between the Council, developers and the NWDA was not reached.
- 10.11 As soon as the Government announced the phased closure of NWDA, funding has not been available from this source. The final year of LTP2 designated funding was in 2010/11 but, with no secure delivery commitment for the bypass at this time, funds were refocused elsewhere. There was no subsequent allocation for this scheme in LTP3 for Cheshire East.
- 10.12 In 2010, the Council appointed a consultancy team led by AECOM to undertake an independent appraisal of the proposal and the development of a delivery strategy for the bypass. This report has been critical in informing the Council's position and the wider business case for investment, and has been used in the justification for funding through PDL's Regional Growth Fund bid.

## **Alternative means of delivery**

- 10.13 The Council has been in informal dialogue over the past 18 months with a separate developer with a view to developing a bypass and associated employment. This, however, was significantly less well developed, as it required a different route and was without ground investigations, construction costs and planning consent. Whilst this

could be an alternative means of delivering the similar benefits, it bears greater risks overall, particularly in terms of timescale for delivery.

10.14 In terms of public grant funding for such schemes, RGF remains the only mechanism of this kind. The project is not eligible for ERDF or Evergreen funding in the foreseeable future.

## **11.0 Access to Information**

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

Name: Jez Goodman  
Designation: Economic Development & Regeneration Manager  
Tel No: 01270 685906  
Email: [jez.goodman@cheshireeast.gov.uk](mailto:jez.goodman@cheshireeast.gov.uk)

## **Appendix 1**

Middlewich Action Plan - Regional Growth Fund Round 2 Programme Bid, submitted by Pochin Developments Ltd (1 July 2011).