

# CHESHIRE EAST COUNCIL

## Cabinet

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<b>Date of Meeting:</b>	4 <sup>th</sup> March 2014
<b>Report of:</b>	Head of Environmental Protection and Enhancement and Head of Legal Services and Director of Economic Growth and Prosperity
<b>Subject/Title:</b>	All Change for Crewe – High Growth City  Crewe Green Link Road South: Submission of DfT Final Funding submission; authority to proceed to Phase 2: Detailed Design and Construction; and, agreements and approvals necessary to facilitate commencement of Phase 2: detailed Design and Construction (Forward Plan Ref. CE 13/14-61)
<b>Portfolio Holder:</b>	Councillor David Brown Councillor Peter Raynes

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### 1. Introduction

- 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* regeneration programme, in which the Council and its partners have set out a long-term vision for the regeneration and economic growth of the town. This has focused on the significant assets that create such a strong proposition for investment, which is based on the town as:
  - a uniquely well connected place, in terms of its national and local rail and road networks
  - a leading advanced engineering and manufacturing centre, built on a rich industrial heritage and a track record of innovation and growth by globally recognised brands, such as Bentley, Morning Foods and 20:20 Mobile.
  - a relatively unconstrained location with major strategic sites identified for employment and housing growth
- 1.3. Through the *All Change for Crewe* programme, millions of pounds of new investment have been secured from the public and private

sector, which is crucial to delivering regeneration and growth. This includes:

- Bentley committing over £800m to support the production of new models at its Crewe HQ, securing over 4,000 jobs in Crewe and creating 1,000 more within the company and its supply chain.
- £26.5m to deliver the Crewe Green Link Road South, the subject of this report, which is central to the Council's major programme of new strategic infrastructure across the borough, which is currently the largest outside of a major conurbation in the UK. This programme also includes over £9m towards the cost of crucial improvements between Crewe and the M6, including junction improvements and widening of the A500 and £2.7m to support the creation of the Basford West spine road.
- £3.5m towards the 'Smarter Ways to Travel project, providing a range of initiatives to support sustainable ways of travel across Crewe, focused on linking people to jobs.
- And, most recently, plans announced by the Council to invest over £15m to construct a new Lifestyle Centre that incorporates leisure, library and care services at the heart of Crewe town centre

1.4. Beyond these successes, there is recognition that the town has an even more crucial role to play in stimulating the economic growth of the sub-region. Building upon current and emerging plans for investment in rail and road infrastructure, including HS2 connectivity at Crewe the town has the potential for super-charged growth at the heart of *High Growth City* (HGC), creating up to 60,000 new jobs, including up to 15,000 around Crewe and a further £3bn increase in the area's productivity (GVA). The delivery of this growth is multi-faceted, and will need the support of all partners, including the Council, the Cheshire & Warrington Enterprise Partnership (LEP) through its new Local Growth Fund resources and, crucially, the private sector. These plans include:

- The development of the Basford employment sites, which are crucial to the sub-region, providing the base for thousands of new jobs, straddling the West Coast mainline, the proposed route of HS2 and, potentially, a new fully integrated Hub Station.
- Building upon the commitment of Bentley, to create an Automotive Research, Development and Supply Hub, accompanied by a rail centre of excellence and supported by a bespoke Growth Accelerator programme and strategic logistics centre.
- This will be enhanced further by a focus on *High Growth City* becoming a national centre of excellence of engineering and manufacturing skills allied to the automotive and rail infrastructure sectors. This will include delivery of the proposed University Technical College in Crewe and could be extended if Crewe is selected as the base for the new £20m Rail Engineering College

required by 2017 to provide 2,000 apprentices with the skills required to build the new HS2 line.

- Alternative Energy projects - the Council is progressing plans for a new Deep Geothermal energy project located close to Bentley and a proposed new residential scheme, which has the potential to generate significant reductions to the cost of energy. Linked to this energy innovation and an emerging new Energy Strategy, plans are progressing for a new R&D facility in close proximity, to support the development of key skills and business incubation brokerage.

1.5. *Crewe Green Link Road South* (CGLRS) is therefore identified as a key project within the Council's major programme of new strategic infrastructure across the borough, which is currently the largest outside of a major conurbation in the UK. CGLRS will enable draw down of Department for Transport investment of £15.7m and will deliver benefits in terms of unlocking economic growth, delivering highway network efficiency improvements, and also providing environmental benefits.

1.6. The proposed road will also help facilitate the delivery of employment and housing at the Basford sites and deliver wide-reaching transport benefits to the local highway network, including improving access to Crewe railway station.

1.7. It seeks to achieve this by :

- (a) Facilitating the full development of the proposed Basford East Strategic Employment Site ("Basford East"). Basford East is a major development opportunity and is allocated within the adopted Crewe and Nantwich Replacement Local Plan under Policy E3 as a regional and strategic employment allocation. In the emerging CEC Local Plan Basford East is allocated for mixed use development, with the potential for 1000 homes and 19 hectares of B1 Office Space, with up to 5 hectares of B2 floor space.
- (b) Improving access to the Basford West Strategic Employment Site ("Basford West"). This site has planning permission and can be expected to create up to 1,900 permanent jobs and 1,392 construction jobs over the next 5 – 10 years, and provide approximately 300 homes.
- (c) The Scheme is also a key objective for the Cheshire and Warrington Local Enterprise Partnership

## **2. Report Summary**

2.1. This report seeks approval to submit the Final Funding application to the Department of Transport (DfT) to release funding towards the

construction of the Crewe Green Link Road South scheme (the "Scheme").

- 2.2. The Project Steering Group has carried out an assessment of the Target Cost submission for Phase 2: Detailed Design and Construction, which has been provided by the appointed Contractor as part of the current Phase 1 activities.
- 2.3. The report also seeks approval to proceed to Phase 2: Detailed Design and Construction, subject to final funding approval being received from DfT and endorsement from the Executive Monitoring Board (EMB).
- 2.4. This report seeks approval of a revised scheme funding profile including the funding the Council is required to 'forward fund' in advance of the potential availability of developer (S106) contributions to the scheme.
- 2.5. This report seeks approval to enter into agreement with landowners and to undertake limited advance engineering and ecological mitigation works in advance of the final funding decision from the DfT.
- 2.6. Approval is sought to enter into agreement, including payment of compensation, with landowners for land required for great crested newt mitigation necessary to meet Natural England requirements to grant a protected species licence and facilitate delivery of the Scheme.
- 2.7. This report seeks approval to declare the contract for land purchase with the Duchy of Lancaster unconditional and to proceed to purchase the required Crown land and to trigger the existing land option with Network Rail and to proceed to enter into the Transfers (as required), Easement, Dedication Agreement and Licence for street furniture all in relation to land owned by Network Rail.
- 2.8. The report seeks approval of the revised estimate from Network Rail for professional fees forecast to be incurred in the management of Network Rail's interests in this scheme, including technical approvals and oversight during construction of the railway underbridge including track access fees.
- 2.9. Approval is also sought to enter into contract with Network Rail Works Delivery Unit (WDU) to undertake specialist rail related construction activities as part of the construction of the new railway underbridge to be constructed as part of the Scheme.
- 2.10. The report also seeks to delegate authority for any changes required to the terms and conditions, fees, compensation, or other details of any of the above to the Director of Economic Growth and

Prosperity and Head of Legal Services, and in consultation with the relevant Portfolio Holder.

2.11. The following documents are provided in support:

- Annex A – Scheme Outturn Forecast & Funding Summary

### **3. Recommendations**

- 3.1. That the Target Cost for Phase 2: Detailed Design and Construction of the Scheme of £16.640m, which was agreed by the Project Steering Group on 30<sup>th</sup> January 2014, is approved.
- 3.2. That the DfT Final Funding application, which is based on the Target Cost and Scheme Outturn Forecast of £26.5m developed and agreed by the Project Steering Group, is approved and submitted to the DfT.
- 3.3. That, subject to confirmation of DfT approval of the Final Funding application, and the prior endorsement of the business case from the Executive Monitoring Board (EMB) the Council issue a Notice to Proceed to Construction which would mark the start of Phase 2 of the existing Contract with Morgan Sindall, and comprises the Detailed Design and Construction of the Crewe Green Link Road South.
- 3.4. That the Director of Economic Growth and Prosperity in consultation with the Portfolio Holder for Assets and The Head of Legal Services be authorised to exercise the Council's existing agreements in respect of the land agreements in place with the Duchy of Lancaster and Network Rail, including payment of any outstanding option fees. If necessitated by the programme for start of works the authority permits notices to be served in advance of the DfT Final Funding confirmation being received.
- 3.5. That delegated authority be given to the Director of Economic Growth and Prosperity in consultation with the Portfolio Holder for Assets and the Head of Legal Services to negotiate and finalise legal and financial terms for legal agreements allowing early access to Crown land and instruct completion of such legal agreements for the purpose of carrying out advance environmental mitigation measures including limited low level vegetation clearance and erection of newt fencing and subsequently newt trapping and relocation, erection of tree protection fencing, and installation of bird and bat boxes.
- 3.6. That delegated authority be given to the Director of Economic Growth and Prosperity in consultation with the Portfolio Holder for Assets and the Head of Legal Services to negotiate and finalise legal and financial terms and instruct completion of a legal

agreement or agreements for acquisition of additional land to accommodate great crested newt (GCN) mitigation habitat to satisfy Natural England (NE) requirements to grant a European Protected Species Licence (EPSL).

- 3.7. Authority is sought to the undertaking of advance environmental mitigation works in advance of the final funding approval from DfT, as is required in order to meet the programme for construction of the Scheme. And that delegated authority be given to the Director of Economic Growth and Prosperity to approve the advance works which will include, but may not be limited to: erecting newt fencing across the site including localised vegetation clearance to facilitate it, trapping great crested newts (GCN), and relocating them in accordance with an EPSL for which an application has been prepared ready for submission; installation of bird and bat boxes on land adjacent to the scheme, subject to agreement with landowners; and, erection of tree protection fencing.
- 3.8. That Cabinet approve a revised estimate of Network Rail's professional fees associated with the development and delivery of the Scheme, including fees incurred before the DfT Final Funding approval stage, reviews of submitted information and technical approvals, track access, and (some limited) post-completion monitoring, and formal approval of such is provided to Network Rail.
- 3.9. That, if required for commercial or programme reasons, the Council enter into Contract direct with Network Rail Works Delivery Unit (WDU) to deliver specialist elements of the underbridge construction. This may require amendment to the existing contract with Network Rail or new contract to transfer liabilities for the NR works to the Contractor for the Scheme, Morgan Sindall. Agreement of the terms and conditions of each agreement to be delegated to the Director of Economic Growth and Prosperity and the Head of Legal Services.
- 3.10. That the authority to make any changes to the DfT Final Funding Application, Target Cost, NR fees estimate, scope of advance environmental mitigation works, terms and conditions of land agreements/undertakings and any other agreements required to facilitate the advance works or construction, is delegated to the Director of Economic Growth and Prosperity and the Head of Legal Services in consultation with the Portfolio Holder, if required.
- 3.11. That Cabinet approves a revised funding profile for the Scheme including possible increase to the Council's Local Transport Plan (LTP) contribution and pursuant to the Cabinet decision of May 2013 the Cabinet re-affirms its commitment to provide a maximum of £8.8m of funding to cover the expected, but contingent, developer contributions to the scheme and that the risks and alternative reimbursement options are noted.

- 3.12. That Cabinet notes that the Compulsory Purchase Order (CPO) for the Scheme has been confirmed by the Secretary of State (SoS) and are now free from challenge, and that in accordance with the Cabinet decision of 20<sup>th</sup> August 2012 land acquisition is to be progressed using a combination of General Vesting Declaration and Notice to Treat / Notice of Entry.
- 3.13. That further to the Cabinet decision of 20<sup>th</sup> August 2012 where approval was granted Cabinet authorises the appointment of appropriate consultants to assist and advise in the preparation and presentation of the Councils case in the event that the question of compensation be referred to the Upper Tribunal (Lands Chamber).

#### **4. Reasons for Recommendations**

- 4.1. To secure up to £15.7m of DfT funding and to deliver the Crewe Green Link Road South major road scheme to support economic growth.
- 4.2. The Target Cost has been developed by the Project Team. It has been informed by refinement of the existing design and in the case of high risk elements such as the railway underbridge, detailed design has been progressed through engagement with Network Rail, including obtaining approvals of Forms 1 and 2 and progressing Form 3. This has enabled the risk associated with construction to be reduced giving the Project Steering Group greater confidence that the Target Cost can be achieved.
- 4.3. A Target Cost Verification Report has been produced by Jacobs acting as Client's Agent. The assessment involved a detailed review of Morgan Sindall's Target Cost submission and the associated design prepared by their designer, Mott MacDonald. The Report has been reviewed, commented on and approved by the Project Steering Group on 30<sup>th</sup> January 2014.
- 4.4. The programme for agreement of Target Cost, DfT Final Funding approval, and subsequently start of detailed design and main works on site is on the critical path of the Scheme programme. As such, in order to progress the scheme, it is essential that the DfT Final Funding application <sup>is</sup> submitted for consideration and approval as soon as possible.
- 4.5. The DfT Final Funding application Scheme Forecast includes preparatory fees to-date, forecast of internal and external professional fees through to scheme completion, the Target Cost for Phase 2, land costs, and risk.

- 4.6. A Quantified Risk Assessment has been completed to cover unforeseen costs and is included within the Scheme outturn forecast and the DfT Final Funding application.
- 4.7. Given that the Target Cost for Phase 2 has been agreed by Project Steering Group it is proposed that the Council issue a Notice to Proceed to Construction to the Contractor, Morgan Sindall, for the Phase 2 works, subject to approval of the DfT Final Funding application and also EMB Scheme endorsement.
- 4.8. The Duchy of Lancaster agreement stipulates a 20 working day notice period prior to completion after serving notice in respect of the land we want to acquire, subject to confirmation of planning permission (received January 2013) and DfT final funding approval (expected April / May 2014). Although it is anticipated that there will be sufficient time following DfT funding confirmation to serve notice and complete the Duchy agreement to permit land entry for the start of main works at the start of July, this will need to be monitored and if necessary may require that notice is served in advance of DfT confirmation.
- 4.9. The Network Rail option agreement stipulates a 40 working day notice period prior to completion after serving notice in respect of the easement, dedication agreement, the licence for street furniture and land we want to acquire (via transfer), subject to the requisite railway consents being obtained (Network Rail internal approvals). There is the option to reduce this notice period subject to agreement between the parties. The Council have approached Network Rail to enquire about reducing the notice period to 20 days, to bring it in-line with the Duchy agreement, which our programme indicates would mean notice could be served following DfT Final Funding approval. In the event that the current (40 working day) notice period persists this would require notice to be served at the start of May 2014 at the latest to avoid causing delay to the start of the main works on site, which are due to commence at the start of July 2014. As such the authority is sought here to serve notice prior to receipt of DfT confirmation.
- 4.10. Negotiations are being progressed with the Duchy of Lancaster with the object of agreeing early access to the land covered by the existing conditional contract in advance of that contract being completed, for the purpose of undertaking GCN mitigation activities comprising limited vegetation clearance, fencing, trapping and relocation, and to enable the erection of requisite tree protection fencing. The advance newt mitigation works must commence (limited low level vegetation clearance and erection of newt fencing) as soon as possible following the granting of the EPSL by NE, which is expected in April / May 2014, to permit sufficient time for trapping prior to the proposed start of main works on site at the start of July 2014.



- 4.11. Changing and conflicting advice from NE has resulted in a sub optimal level of land for GCN mitigation being included in the CPO. This situation was complicated further by the fluid proposals for the adjacent Basford East development site which NE must have regard for in their decisions. The Contractor's ecological consultants have reviewed the position and the Council is now confident of the requirements. An agreement with NE on an appropriate level of GCN mitigation is a key requirement to commence works on site.
- 4.12. It is therefore important for the Council to enter into separate agreement, including payment of compensation, for the land required to meet with NE requirements to enable them to grant an EPSL in order to deliver the GCN mitigation strategy to enable construction of the Scheme to programme.
- 4.13. It will be necessary to undertake some specific elements of advance environmental mitigation works in advance of any site clearance or the start of main works on site. This work is required to enable the main scheme to be delivered to programme and delays in undertaking this work could have significant adverse impact on the programme. Approval is sought for those elements of advance mitigation works that will need to be progressed in advance of DfT Final Funding approval and are therefore to be undertaken at the Council's risk. Elements include, but are not limited to, great crested newt (GCN) fencing, trapping and translocation, installation of bird and bat boxes on adjacent land (subject to landowner agreement), and erection of requisite tree protection fencing.
- 4.14. It has been necessary to progress negotiations with landowners with a view to reaching agreement for the placement of bird and bat boxes in appropriate trees on Duchy and Co-Op land. These boxes are required to mitigate for loss of trees due to the road construction, in accordance with Best Practice guidelines.
- 4.15. A Network Rail professional fees estimate was agreed by the Portfolio Holder in February 2013. This estimate was prepared based on the construction programme and scope of construction works at that time. The construction programme and scope has since been developed and updated by the contractor for the Scheme, Morgan Sindall. Although the construction periods are broadly similar the current programme has meant some variation in the scope and timings of rail related works and as a result the Network Rail professional fees estimate for management and facilitation has been revised. It will be necessary for the Council to approve this revised fees estimate and confirm this back to Network Rail in advance of the Scheme progressing to Phase 2.

- 4.16. Network Rail Works Delivery Unit (WDU) has also provided a fees estimate for provision of specialist construction activities which form part of the proposed underbridge construction works. In the event that Morgan Sindall select NR WDU to undertake any part of the specialist activities, these works would be invoiced direct to CEC and will reduce the agreed Target Cost by the same amount. It would also be necessary for the Council to contract direct with Network Rail WDU and appropriate legal agreement or contract or amendment to the existing contract with Morgan Sindall would be necessary to pass liabilities for the Network Rail WDU works, including certification of payments, to the Contractor.
- 4.17. Between the time of this report and the time of submission of the DfT Final Funding application some modifications may be required to the funding contribution requested. In order to protect the programme for the funding application and ultimately the scheme construction it is recommended that the authority to make modifications to the application, within the limits of the current approved funding proposal, is delegated to the Director of Economic Growth and Prosperity in consultation with the Head of Legal Services.
- 4.18. In Cabinet resolution of May 2013 Cabinet confirmed its agreement in principle to underwriting the anticipated but contingent S106 / developer contributions to the scheme. Since this time the Scheme design has been developed and this has resulted in a Target Cost for the detailed design and construction that has increased from the previous summer 2012 estimate. The Scheme Forecast Outturn has been reassessed based on the Target Cost and it has been concluded that the approved level of forward funding of up to £8.8m is still appropriate albeit with a smaller allowance for risk. However, a Quantified Risk Assessment (QRA) has been developed to include unforeseen costs for the Scheme, including significant programme delay, and this has been included in the forthcoming DfT Final Funding application Scheme Outturn Forecast. This QRA indicates that if, for example, the Scheme was to experience delay to programme such that Network Rail track access (possessions) were missed at Christmas 2014 the Scheme would likely incur cost that might result in the Council having to increase its LTP contribution and/or forward funding to the Scheme. It is estimated that the maximum forward funding that would be required is £9.6m.
- 4.19. In the event that S106 contribution estimates at current or higher levels as outlined above (refer to 4.18) are not realised then it will be necessary for the Council to increase its LTP contribution (currently £1.3m) to the Scheme or identify alternative funding sources.
- 4.20. The Council is to make a GVD in respect of the land needing to be compulsorily acquired to complement that secured by the Council

by agreement and that Notice to Treat and Notice of Entry will be served in relation to land required temporarily for scheme construction and related purposes and also the new rights required for construction and maintenance of the scheme.

- 4.21. The CPO for the Scheme was confirmed with modifications in November 2013, and notice of this confirmation was published in December 2013. The period of challenge expired 29<sup>th</sup> January 2014, with no challenges received. Land acquisition is now to be progressed using a combination of General Vesting Declaration and Notice to Treat / Notice of Entry. Negotiations with two landowners have been unsuccessful and it is expected that the value of compensation will need to be determined by the Lands Tribunal if not settled by agreement. It may therefore be necessary for the Council to present evidence its case in relation to compensation at the Tribunal and incur costs arising from such proceedings if negotiations are ultimately unsuccessful.

## **5. Wards Affected**

- 5.1. Haslington

## **6. Local Ward Members**

- 6.1. Cllr John Hammond  
6.2. Cllr David Marren

## **7. Policy Implications**

- 7.1. The investment accords with the Local Transport Plan Implementation Plan (2011-2015) policy B2 – Enabling development.
- 7.2. This decision will contribute towards the delivery of Crewe Green Link Road South which will have a beneficial effect on congestion, road safety, accessibility and reduction of carbon emissions over the urban Crewe highway network.

## **8. Financial Implications**

- 8.1. Sufficient budget provision is available within the approved Capital programme to cover the Contractors tendered Phase 2 fees for completing the detailed design and construction of the Scheme, and other professional fees and costs expected to be incurred in delivery of the Scheme.
- 8.2. The Target Cost for Scheme construction has increased when compared to the previous construction estimate. The previous estimate was undertaken in summer 2012 by a 3<sup>rd</sup> party contractor advising on buildability issues. This increase is the result of the

design development undertaken during Phase 1: Target Cost development, and the increased scope of Network Rail requirements. The Scheme outturn forecast total is still within the original budget projection.

- 8.3. It should be noted that the Construction Contract includes a 'pain / gain' mechanism. A Target Cost is agreed, and then the Contractor is paid his audited actual costs, as defined by the Contract. If the Target is not met, any difference is shared in accordance with the Contract. For sums between 95% and 105% of the target, the share is 50:50, meaning that CEC would keep half of any saving, but equally would pay half of any overspend. For sums outside that range, the Contractor receives a smaller share of savings, and has to absorb a larger share of overspends, in accordance with the table below:

Percentage of Target Cost	Shares	
	CEC	Contractor
Less than 85%	100	0
85 - 95	75	25
95 - 105	50	50
105 - 110	25	75
Greater than 110	0	100

- 8.4. The worst case is where actual costs exceed 110% of the Target. In this instance CEC would be liable to pay the Contractor 103.75% of the Target Cost. (i.e. Half of the first 5% overspend, and one quarter of the next 5% overspend, with no further payments for further overspend). It is possible that CEC would be required to 'cashflow' some payments in excess of the 103.75% figure, but would be able to recover these from the Contractor at a later date.
- 8.5. It should also be noted that CEC carry a number of risks under the Construction Contract, and that if those risks occur, or CEC give instructions changing the scope of the works, the Target Price is liable to be changed in accordance with the Contract. The payment is then calculated based on the revised Target Price.
- 8.6. The DfT are, subject to the Final Funding submission, committed to contribute 59.3% of the overall scheme cost, up to a maximum of £15.724m, based on the Best and Final Bid (BAFB) Scheme cost of £26.504m.
- 8.7. By serving notice on the Duchy of Lancaster declaring the contract for purchase of Crown land unconditional the Council would commit itself to the purchase and become liable for payment of the purchase price (less the consideration paid to date) 20 working days later. By serving notice to trigger the Network Rail option the Council would commit itself to completing the land agreements with Network Rail and become liable for payment of the option fee plus

indexation (less the option fees paid to date) 40 working days later or within a shorter period of time if agreed with Network Rail in advance. The details and values associated with these agreements are confidential at this time. Completion would fall in FY 2014/15 and these fees have been accounted for / can be accommodated by the Capital scheme budget. Approximately 59% of the fees will be recoverable from DfT funding.

- 8.8. It is anticipated that the proposed advance environmental mitigation works on Duchy land can be negotiated to be undertaken at no cost to the Council. However, if compensation or agreement fee is required then this is anticipated to be nominal. It will be necessary for the Council to pay the Duchy's reasonable professional fees associated with reaching agreement in this regard.
- 8.9. The terms and conditions of the agreement with a landowner / landowners for the land required for newt mitigation habitat are currently being negotiated. However, it is proposed that the land will be leased from the landowner for a term of 150 years as is required by NE to demonstrate the long term security of the land as newt habitat and it is anticipated that there will be an option or contract providing for lease completion to follow DfT final funding confirmation, which is expected in May 2014. As such the Council will not be liable to pay rent or premium in the unlikely event that DfT funding is not confirmed. The Council will be liable for the landowners professional fees associated with negotiating and agreeing the agreement for lease and the associated lease,. The terms and conditions of the final land agreement will be confidential. Approximately 59% of the fees and agreed compensation will be recoverable from the DfT.
- 8.10. A number of advance environmental works are required to be undertaken in the spring of 2014 in advance of the main construction works commencing in summer 2014, and in advance of the DfT final funding confirmation. Cabinet authority to forward fund these works is required. These works will need to be agreed through the Change Control process. Costs for these works are estimated as follows:

<b>Advance works</b>	<b>Timing</b>	<b>Cost Estimate (£)</b>
Great Crested Newt Mitigation	April / May 2014*	55,000
Bird and Bat box installation	Spring 2014	10,000
Tree protection fencing	May 2014	30,000
<b>Total (in advance of DfT funding)</b>		<b>95,000</b>
*Subject to granting of EPSL by Natural England		

- 8.11. As with the other Phase 1: Target Cost development works, the cost of these works can be accommodated within the Capital Budget for financial years 2013/14 and 2014/15.
- 8.12. In order to undertake the placement of bird and / or bat boxes on land adjacent to but outside the Scheme boundary agreements must be reached with landowners. Terms of these agreements are currently being negotiated. Upon completion of the agreements it is expected that nominal compensation payment will be required. The exact details of the agreement and compensation arrangements will be confidential.
- 8.13. Sufficient budget provision is available within the approved capital programme to cover NR's forecast fees in the 2013/14 and 2014/15 financial years.
- 8.14. In the unlikely event that DfT funding is not approved then the Council will be liable to cover the cost of NR fees incurred. The fee estimate produced by NR includes costs of advice, approvals, supervision, possessions charges, post completion monitoring, and 5% contingency.
- 8.15. In total the revised Network Rail estimate is £860,000, an increase of £235,000 from the previous estimate. Approximately half this increase is attributed to the cost of track access (possessions), the estimate for which has been tailored to the current programme. The estimate also includes for a temporary speed restriction which will be required during construction, and increased supervision requirement. These revised figures are included within overall scheme costs presented in this report.
- 8.16. The revised total scheme estimate is included within the previously advised total Scheme outturn forecast. Final approval, and thus liability for the full estimated costs will only accrue after a final Council decision to proceed with the scheme is taken. It is important to note that Network Rail is a not-for-profit organisation and the Council will only pay actual costs for expense incurred.
- 8.17. In the event that Network Rail WDU are to be contracted directly by CEC to deliver specific elements of the works required during construction of the railway underbridge the works cost estimate will be agreed by the Director of Economic Growth and Prosperity , if necessary in consultation with the Portfolio Holder.
- 8.18. The cost of any works contracted directly to CEC for the Scheme construction would result in a corresponding reduction (less any contract management fees) in the Target Cost which currently includes for all construction elements.

- 8.19. Since the DfT BAFB the Scheme design and estimate has been further refined, however an outturn cost of £26.5m including Qualified Risk Assessment (QRA) is still expected and will be presented to DfT in the Final Funding application submission.
- 8.20. Other than a DfT contribution of £15.7m and CEC LTP contribution of £1.6m, contributions to the scheme are expected from both the Basford West and Basford East developments. However, it was agreed by Cabinet Resolution (May 2013) that Cabinet agree in principle to forward fund the anticipated but contingent developer (S106) contributions to the scheme up to a combined maximum value of £8.8m.
- 8.21. The Scheme Forecast Outturn has been reassessed based on the Target Cost and it has been concluded that the approved level of forward funding of up to £8.8m is still appropriate albeit with a smaller allowance for risk. However, a Quantified Risk Assessment (QRA) has been developed to include unforeseen costs for the Scheme, including significant programme delay, and this has been included in the Scheme outturn forecast for the forthcoming DfT Final Funding application. Based on this DfT Scheme outturn forecast if, for example, significant programme delay occurs the Scheme will likely incur cost that might result in the Council having to increase its LTP contribution and/or forward funding to the Scheme. It is estimated that the maximum forward funding that would be required is £9.6m.
- 8.22. A signed revised S106 agreement with the Basford West developer has recently been concluded, which (calculated at current price indices) should deliver a contribution of approximately £3.3m. This funding will be triggered by commencement of development at the Basford West site, which is expected to be in the form of works commencing on the Basford West Spine Road.
- 8.23. The Basford East (or other developer) contribution required would be the difference between the final scheme cost, DfT contribution, direct Council funding (through Local Transport Plan (LTP) resource for which £300k is proposed in financial year 2014/15 subject to Portfolio holder approval) and any Basford West funding achieved.
- 8.24. In the event that the forecast S106 contributions to the scheme are not realised then the Council may need to increase its LTP contribution or identify alternative funding sources.
- 8.25. The Capital Programme for 2013-16 reported a budget for the scheme of £20.6m. Prior year spend relating to this scheme amounts to £0.9m. The Capital budget provision has now been updated following submission by the Contractor of the draft Target Cost for Phase 2, to match the DfT Best and Final Funding bid total

of £26.5m The current capital budget includes an allocation of £5.87m for developer contributions. The allowance may need to be updated once the expected forward funding contribution required is known following the final approval of the Target Cost for the scheme and / or the use of additional LTP resource explored.

- 8.26. The required forward funding of the developer contributions will have an impact on cash flow for the Council and therefore will result in a loss of investment income. There is also an element of risk that the required developer contributions from the Basford East and West sites will not be realised and will require direct funding from the Council's own capital resources.
- 8.27. Land tribunal - estimate of costs to rebut landowner's claims and prepare a case at land tribunal is £50,000 to £100,000. Scheme costs include all land costs as assessed by professional and independent surveyors. Difference in costs between landowner valuation and CEC valuation of land is several million pounds. CEC advice is that this is completely unreasonable and that a settlement closest to CEC valuation is likely to be achieved through land tribunal.

## **9. Legal Implications**

- 9.1. Cabinet resolved in May 2013 that the decision to submit the DfT final funding application and proceed with Phase 2 works (Scheme detailed design and construction) was subject to Cabinet approval when the Target Cost was known and the extent of developer residual funding established.
- 9.2. The construction of the Crewe Green Link Road South is approved in the Council's Three Year Plan. The Council has undertaken a legally compliant procurement exercise and has appointed Morgan Sindall. The contractual terms provide a 2 phased approach and the Council is not obliged to proceed to the construction phase should it so decide.
- 9.3. The Duchy agreement stipulates that two pre-conditions are satisfied before serving notice. These are: confirmation of planning permission having been granted; and, confirmation that the Council will have the necessary funding for the Scheme which could include DfT funding. The scheme was granted planning permission in January 2013. DfT final funding approval is not expected until April / May 2014. However, if required the Council can declare the contract unconditional and serve notice of intention to complete in advance of the DfT final funding approval.
- 9.4. In respect of the Network Rail option agreement, the Council will seek to vary the terms of the agreement to agree a reduced notice period of 20 working days to complete. This will put the agreement



in line with the Duchy agreement and it is expected that DfT funding would be confirmed before serving of the notice. The only pre-condition on completion of any Transfers required from Network Rail is that the requisite (Network Rail internal) railway consents conditions are in place.

- 9.5. An additional legal agreement will need to be agreed with the Duchy of Lancaster for the purpose of permitting access to the Crown land in advance of the contract being declared unconditional to enable advance environmental mitigation works including but not limited to GCN fencing, trapping and relocation, and tree protection fencing to be undertaken.
- 9.6. That delegated authority be given to the Director of Economic Growth and Prosperity in consultation with the Portfolio Holder for Assets and the Head of Legal Services to negotiate and finalise legal and financial terms for legal agreement or agreements to purchase and / or lease some land outside the boundary of the CPO order to be used for delivery of a GCN habitat mitigation strategy.
- 9.7. It is anticipated that the eventual agreement referred to above will be a variation of an existing agreement that was reached with a landowner at the time of the CPO public inquiry. This included land that was earmarked for GCN mitigation land, but which following subsequent advice from NE is considered to be insufficient to satisfy NE requirements for GCN mitigation for the scheme to enable grant of an EPSL.
- 9.8. Any environmental work undertaken prior to confirmation of funding will be at the Council's risk. An estimate of value is summarised in section 8 above. The cost of this work can be accommodated within the capital budget for FY 2014/15. The work requires commissioning in compliance with the Council's Contract Procedure.
- 9.9. Legal agreement or agreements will need to be entered into with affected landowners for the purpose of undertaking installation of bat and bird boxes on land adjacent to but outside land secured for the Scheme and also for protection of the bat and bird boxes once in place.
- 9.10. In the event that it is necessary for CEC to contract directly with Network Rail WDU to deliver specific specialist elements of the works required to facilitate the construction of the railway underbridge, it will be necessary to have a corresponding agreement or amendment to the existing contract with the Contractor, Morgan Sindall, to transfer all liabilities for management of the works from CEC to the Contractor

- 9.11. There cannot currently be any certainty that developer (s106) contributions or Community Infrastructure Levy (CIL) will be available to part fund the scheme. The High Speed 2 (HS2) project will necessitate changes to development proposals at Basford West and the Basford East landowners will review their masterplans and proposals. These changes, reviews and revised masterplanning and development proposals could delay receipt of developer contributions and could reduce the quantum of the contributions anticipated. The National Planning Policy Framework advises local planning authorities to be flexible where revisions to s106 contributions are sought, in order to prevent planned development being stalled.
- 9.12. Legal advice will be required to ensure that anticipated s106 contributions can be justified robustly under regulation 122 of the CIL Regulations 2010 (as amended) and the Council must be mindful that (a) any committed s106 contribution will only be received if and when the relevant developer decides to implement its planning consent and any specified payment conditions triggered and that contributions must be used in accordance with the provisions of the relevant s106 agreement (b) after the earlier of April 2014 and the adoption of the CIL schedule the number of s106 contributions there can be to the project will be limited to five in respect of obligations entered into on or after 6 April 2010.
- 9.13. The CPO for the Scheme was confirmed with modifications in November 2013, and notice of this confirmation was published in December 2013. The period of challenge expired 29th January 2014, with no challenges received. Land acquisition is now to be progressed using a combination of General Vesting Declaration and Notice to Treat / Notice of Entry. It is anticipated that Land Entry will be secured in late March 2014. Negotiations with two landowners have been unsuccessful and it is expected that value of compensation will be decided at land tribunal. It is therefore necessary to present and evidence the Council's case at Lands Tribunal. the value of compensation will need to be determined by the Lands Tribunal if not settled by agreement. It may therefore be necessary for the Council to present and evidence its case in relation to compensation at the Tribunal and incur costs arising from such proceedings if negotiations are ultimately unsuccessful

## **10. Risk Management**

- 10.1. Endorsement will be sought from EMB prior to proceeding to Phase 2. This will be used to challenge on risks to the Scheme and give confidence that the Scheme can be delivered to programme and within budget.
- 10.2. Delay in the agreement of Target Cost could delay the start of Phase 2: Detailed Design and Construction and this could in turn

put at risk the Network Rail track access (possession) programme, which commences with the first track access in October 2014.

- 10.3. In order to de-risk the construction programme and also enable development of a more robust Target Cost some of the Phase 2 detailed design has been undertaken during Phase 1 (current phase). In order to maintain programme it may be desirable to move further activities into Phase 1, e.g. advance environmental mitigation works, and these are set out elsewhere in this report.
- 10.4. The current Scheme outturn forecast has been developed from the Target Cost provided by the ECI Contractor, best practice, and based on professional advice from both the Client's Agent and professional land valuation experts.
- 10.5. The Target Cost has been assessed, interrogated, and challenged by Jacobs in their role as Client's Agent. The Target Cost Verification Report produced by Jacobs has been reviewed and approved by the Project Steering Group (30<sup>th</sup> January 2014), before approval by that Group of the Target Cost for Phase 2.
- 10.6. The risks in terms of 'pain / gain' in the conditions of contract are outlined above in section 8 outlining Financial Implications. It is worth reiterating that the worst case is where actual costs exceed 110% of the Target. In this instance CEC would be liable to pay the Contractor 103.75% of the Target Cost. (i.e. Half of the first 5% overspend, and one quarter of the next 5% overspend, with no further payments for further overspend).
- 10.7. In the unlikely event that funding is not received from the DfT, CEC would be liable for all Scheme preparation and development costs to date, including Phase 1 Contractor costs incurred. There is a break clause in the Contract in the event of no progression to Phase 2.
- 10.8. The DfT have noted that the Project Team expect to submit the Final Funding application immediately following this Cabinet resolution. On the assumption that the DfT deal with this within the 6 week period that means an announcement mid / late April 2014. It is noted that Council and European elections are on 22 May and the purdah period for these is likely to start on or around the 24 April. This leaves little leeway in case it takes longer to deal with the submission. The week before is likely to be a parliamentary recess so Ministers may not be available to confirm a decision. If DfT cannot announce the scheme before the purdah period then it won't be possible until after the elections on 22 May.
- 10.9. The Contractor has been made aware of this potential delay to the issue of the Notice to Proceed to Construction so that it can be considered when planning for the commencement of works on site,

including placement of orders for bridge related items, e.g. steel for the bridge deck.

- 10.10. The Scheme outturn forecast on which the DfT final funding application submission is based includes a QRA to capture scheme risks which sit outside the normal construction risks, but which need to be provided for within the forecast budget provision. The Scheme outturn forecast is within the original budget provision.
- 10.11. The break clause in the contract protects the Council's position over a range of scenarios – including: Insufficient funding to deliver the scheme; failure to gain requisite licences from statutory bodies, e.g. Natural England; or, simply a decision to not proceed with the scheme because it is considered to be too expensive, or any other reason.
- 10.12. In the unlikely event that DfT do not confirm funding commitment and the notices to complete the land agreements with Duchy of Lancaster and Network Rail have already been served these transactions would still have to be completed and the balance of the purchase prices would have to be paid and the Council would be liable for the full cost of entering into the contract with the Duchy and exercising the option with Network Rail.
- 10.13. The judicial review period in respect of the CPO confirmation expired on 29 January 2014 without any challenge being brought so site assembly is in the control of the Council except the additional land required for GCN mitigation which is being sought through agreement.
- 10.14. In the unlikely event that the DfT do not confirm their funding commitment to the Scheme and the Scheme does not progress, the advance environmental mitigation works are completely reversible, albeit at some cost to the Council.
- 10.15. If early access to the Crown land for environmental mitigation works cannot be secured by agreement this has the potential to impact on the programme for the start of main works on site causing significant delay. The alternative might be to serve notice declaring the land contract agreement unconditional immediately following this Cabinet resolution, which could provide land entry in early April 2014.
- 10.16. If agreement by negotiation on a variation of the land requirements cannot be achieved the Council may have to consider pursuing a new compulsory purchase order. This would have significant programme implications, potentially up to a 1 year delay to commencement of construction as well as delaying the Basford East development.

- 10.17. In the unlikely event that DfT funding is not confirmed and / or the Scheme does not proceed to construction the fencing would be removed, any damage repaired and the land reinstated to its prior condition at the Council's cost.
- 10.18. The fees estimate from NR contains professional fees associated with providing advice, management, and supervision of the scheme development and construction, including technical approvals, track access (possession) fees, post construction monitoring, etc. These are professional fees that are expected to be incurred regardless of which organisation delivers the specialist work packages for which Network Rail WDU have also provided an estimate. It has been necessary for NR to make a number of assumptions in the build up of both of these quotations. Network Rail operate as a not for profit organisation and the Council will only pay for charges incurred in conjunction with delivering their duties associated with the delivery of the underbridge structure and the Scheme.
- 10.19. It is possible that as the start of works approaches amendments will be required to the agreements, proposed works, etc and it is important that authority to approve changes is delegated to the Director of Economic Growth and Prosperity, if necessary, in consultation with the Portfolio Holder for Assets (in respect of land agreements) and Head of Legal Services. This will enable the Project Team to react quickly to protect the Scheme budget and / or programme.
- 10.20. At the time of the Cabinet resolution (May 2013) to appoint the ECI Contractor for the scheme, it was understood that Basford West were awaiting determination of a revised, more viable, mixed use application for the site. This revised application was granted by the Strategic Planning Board in July 2013. A s106 agreement has since been developed and recently agreed.
- 10.21. The Basford East site is allocated for employment development under the extant Crewe and Nantwich Local Plan. It is proposed as the site for a mixed use development in the emerging Cheshire East Local Plan. Masterplan proposals originally developed for the site were considered to be adversely affected by the Government's High Speed 2 proposals. This led the developers to revise the masterplan for the site during summer / autumn 2013 and it is now anticipated that a outline planning application for the revised masterplan will be submitted to the local planning authority in spring 2014.
- 10.22. In the unlikely event that developer contributions to the scheme cannot be secured so as to repay the Council's forward funding it may be that the Council could recoup some / all of the funding through the Community Infrastructure Levy. The scheme is referenced in the Councils Infrastructure Plan which supports the

Core Strategy. However, this levy is currently not expected to be in place until 2015.

- 10.23. The processes involved will be taken in line with the Council's programme for the scheme so no risks should arise for the Council, provided the intended timetable is met. The Council can enforce possession by way of the sheriff's warrant procedure should any occupier refuse to give up possession following the making of a GVD or the service of Notice to Treat and Notice of Entry..
- 10.24. The costs of the scheme include an allowance for risk. This includes land cost risk. Despite extensive negotiations the Council has been unable to secure agreement with certain key landowners. It is likely that the compensation payments for this land will now have to be resolved at the lands tribunal. Negotiations will continue pending any hearing.

## **11. Background and Options**

- 11.1. Options for the delivery of Crewe Green Link Road (South) were evaluated by the Project Board in Spring 2012 and the Early Contractor Involvement (ECI) form of contract was selected as the most suitable to deliver the scheme. Using this method the Contractor is appointed to undertake design development during Phase 1 (the current phase) and to develop a Target Cost for detailed design and construction. Assuming a Target Cost is agreed, a Notice to Proceed to Construction is issued to mark the start of Phase 2, which includes detailed design and construction.
- 11.2. The anticipated timetable for the completion of Phase 1 and for Phase 2 of the contract is:

Activity	Date(s)/Time
Project Steering Group (PSG) Approval of the Target Cost	30 January 2014
Cabinet Decision	4 March 2014
Call-In Time by Members (5 working days) complete	11 March 2014
DfT Final Funding Application Submission	11 March 2014
Land Entry (CPO Land)	20 March 2014
DfT Funding Confirmation – Notice to Proceed*	24 April 2014
Commence advance environmental mitigation works on site	1 May 2014
Start of Main Works	7 July 2014
Completion – Road Opening	4 November 2015
*DfT funding confirmation may be affected by European elections purdah – this could delay decision until 24 May 2014.	

- 11.3. The CGLRS ECI Contract is a bespoke contract with the Conditions of Contract based on the NEC3 Engineering and Construction Contract (ECC) Option C, Target Cost with Activity Schedule, containing two key Phases; 1 & 2:

*Phase 1 (Current Phase):* The period from ECI Contract Award through to Notice to Proceed to Construction including agreement of the Target Cost, comprising the development of a Target Cost Design and agreement of the Final Target Cost.

*Phase 2:* The period from Notice to Proceed to Construction through to the completion of the whole of the Works and associated contract defect period. Phase 2 is divided into two sections:

- Completion of the main construction (Phase 2A); Aftercare and management of environmental landscaping and planting (Phase 2B).

- 11.4. The CPO for the land required to deliver the scheme is currently progressing. A Public Inquiry was undertaken at the end of July 2013 and was concluded with no remaining objectors to the CPO. The Secretary of State confirmed the CPO with agreed modifications (removal of spur roads) in November 2013, and the challenge period following publication of the confirmation expired 29<sup>th</sup> January 2014. Land Entry is forecast for late March 2014. The start of main works on site is scheduled to commence in early July 2014. As such it is important that the Notice to Proceed to Phase 2 of the Contract: Detailed design and construction is issued as soon as possible, and that the Council can demonstrate that a viable funding package is in place to deliver the scheme.

## **12. Access to Information**

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

Name: Nick Lingard

Designation: Principal Engineer

Tel No: 01270 686352

Email: [nick.lingard@cheshireeasthighways.org](mailto:nick.lingard@cheshireeasthighways.org)