

## CHILTERN DISTRICT COUNCIL

CABINET – 22 OCTOBER 2013

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### HS2 UPDATE

Contact Officer: Alan Goodrum (01494 732001)

#### RECOMMENDATIONS

1. That the Chief Executive in consultation with the Cabinet Leader and Head of Legal and Democratic Services be authorised to draw down sums from the reserve as necessary for the ongoing work on the parliamentary process, any expenditure being reported back to Cabinet.
2. That a further report be brought back to Cabinet on the Issues for Petitioning once finalised by the HS2 Members and Officers Steering groups and the Supreme Court judgement once received.
3. That the Member Officer Working Group is expanded to six Members from Chiltern and the representative from South Bucks is confirmed with up to two Members.

#### Relationship to Council Objectives

*The Council is committed to conserving the environment and promoting sustainability, and supports a strategic approach to challenging HS2 (Objective 3D).*

#### Implications

- (i) This matter is a Key Decision within the Forward Plan.
- (ii) This matter is not within the Policy and Budgetary Framework.

#### Financial Implications

*The proposals outlined in the report will take the Council's total commitments to the legal challenges and associated work to £263,493. The costs have been funded by an earmarked reserve established for this purpose. . The total fees for the parliamentary process will become apparent as work on the Issues and Petitioning paper evolves with Counsel and relevant experts being appointed, and the level of financial commitments will be reviewed accordingly.*

## **Risk Management Implications**

*The proposed HS2 route and its consequences is the major risk affecting the community and environment of Chiltern*

## **Equalities Implications**

*None directly related to this report.*

## **Sustainability Implications**

None directly related to this report.

## **Report**

- 1 This report sets out an update on the Legal Challenge to the Government's decision to proceed with the HS2 announced in January 2012, the work undertaken in respect of the Draft Environmental Statement and parliamentary process to date.
- 2 The Cabinet received a detailed report on 26 July 2013 regarding the legal challenge and Counsel's advice. The Cabinet resolved to support the appeal to the Supreme Court, that the appeal be made under Grounds 1 and 3 subject to a number of other Councils also joining in the proceedings and agreed that a further £24,000 be added to the earmarked reserve for the next stage of the work relating to the legal challenge.
- 3 The appeal to the Supreme Court has been lodged under Grounds 1 and 3 and there are ten authorities who have joined the proceedings which are London Borough of Hillingdon, Warwick District Council, Chiltern District Council, South Northamptonshire Council, Camden Borough Council, North Warwickshire Borough Council, Warwickshire County Council, Cherwell District Council, Lichfield District Council and Three Rivers District Council. HS2 Action Alliance and others are also appealing the decision of the Court of Appeal.
- 4 The Supreme Court hearing is listed to be heard on 15 and 16 October 2013 in London and will be heard by Lords Neuberger, Carnwath, Mance, Kerr and Sumption with judgement being expected to be delivered before the end of the year.

- 5 The Hybrid Bill (Bill) is still anticipated to be put before Parliament before the end of this year together with the final Environmental Statement (ES) accompanying the deposit of the Bill. There is anticipated to be a consultation period on the ES which is a minimum period of 56 days and HS2 has indicated that it is the intention of the Government to proceed as quickly as possible with the process therefore allowing only the minimum period for consultation. Correspondence has been sent from 51M and individual authorities to the Secretary of State seeking an extension of the consultation period to allow local authorities and others affected by the proposals to properly consider and respond, a response has not been received as yet.
- 6 The Bucks Blueprint has been updated and a Blueprint day was held on 26 September at County Hall bringing community groups together to share information and promote understanding of the process, timetable and issues. Further Buckinghamshire County Council commissioned the experts who produced the Optimised Alternative to review this in light of the forthcoming Bill and ES which has been completed and is going to form part of the response of the 51M group to the Bill and the ES. The costs for this work were borne by Buckinghamshire County Council alone.
- 7 In terms of the petitioning activity associated with the Bill it is worth explaining more about this process. The petitioning stage occurs after the Bill has had its first reading and second reading in the House of Commons with the principle of the Bill being established at the Second Reading of the Bill. As the Bill affects the interests of private individuals or organisations (ie local authorities), those affected are allowed to petition parliament and have their petitions heard by a specially convened parliamentary select committee.
- 8 A petition presented in this process is not a public petition which can be signed en-masse by the general public. Rather, it is a formal document which sets out how the Bill affects a specific individual or group of individuals, a business, or an organisation such as a local authority or other representative body.
- 9 The petition needs to follow a specific format and detail the relevant clauses of the Bill that affect the petitioner and how they affect them and a description of the alternative proposals which should be adopted in order to mitigate or remove the adverse impacts of the Bill, or to say how the Bill should be amended to achieve this together with relevant costs evidence as appropriate.
- 10 All issues which a petitioner objects to must be covered in the petition. If an issue is not covered in the submitted petition, then the Select Committee will not consider that issue. The petition is also used in the

negotiations with the promoter of the scheme in mitigating the effects of the scheme prior and right up to the hearings before the Select Committee so there is a lot of work to be done before the Select Committee hearings themselves.

- 11 The sorts of issues that could be petitioned on include:
- alternative local route alignments, either horizontal or vertical, subject to any restrictions imposed by an Instruction to the Select Committee, and potential tunnel extension (NB it would not be possible to use the petitioning process to challenge the whole route and propose an entirely new one)
  - proposed construction methodologies such as how soil is disposed of, noise mitigation measures and location of construction sites etc
  - how the impact of the construction and operation of the railway on individual properties can be mitigated
  - noise and environmental mitigation measures to reduce the operational impact of the railway;
  - measures to prevent loss of local amenities either during construction or permanently
  - measures to protect or preserve wildlife, flora and fauna
  - the impact of changes to the road network, footpaths, bridleways etc (for example road closures either temporary or permanently, road diversions etc), and how these might be mitigated or avoided.
- 12 This list is not exhaustive and many of the issues that the local authority would want to address through the petitioning process are the types of matters that it would normally seek to negotiate and secure as part of the planning process for a major development for example. However as this scheme is not being considered by a planning inquiry route but via the Bill, the petitioning process is the mechanism the local authority needs to use to seek to secure changes that the promoters of the scheme are not prepared to concede before the Hybrid Bill stage. Each Council affected will prepare its own petition although there are generic issues route wide and preparations are in hand for some authorities to lead on certain issues, with external experts being brought in where necessary due to either resource issues or lack of expertise. All other issues will be covered by officers with the relevant expertise.
- 13 The possible outcomes from petitioning include the promoters of the Bill being required to amend their proposals in a specific way, as well as giving certain undertakings in relation to the scheme to petitions being dismissed in their entirety. Any undertakings must be complied with by the promoters of the scheme and will have to be secured through a number of measures.

- 14 When the Select Committee has completed the process of taking evidence it will then make a formal report to the House of Commons, setting out any amendments and assurances the promoters of the scheme agreed during the Select Committee process. This can be a timely process and it depends on the numbers of petitions that have been submitted. It is worth noting that it took over three and a half years for the Crossrail Bill to go through parliament.
- 15 Petitioners can include individuals, groups of individuals, businesses, lobby groups such as the CPRE etc as well as local authorities, parish councils etc and where petitions cover similar issues, the Select Committee will look to group them together and hear them collectively.
- 16 It is usual practice for petitioners to appoint lawyers and/or parliamentary agents to present their petition on their behalf once this has been developed, with details of what the proposed mitigation or change is being sought have been prepared by the petitioning party. The actual hearing is similar to a court hearing in that evidence will be given by experts/individuals and will be subject to cross examination.
- 17 In addition to the work on the petitioning activity and seeking to secure the best possible mitigation for local communities, future activity will also need to focus on ensuring that local communities are actively engaged and supported as the project moves towards the Bill stage, in particular helping them to understand the petitioning process, the Bucks Blueprint day on 26 September is an example of such an effort.
- 18 The Council's opposition to HS2 is one of the Council's key priorities within the Council's Key Aims and Objectives and Cabinet was firmly of the view that the Council should continue to oppose the project and continue with the legal challenge to the Supreme Court. Cabinet recognised the need to keep Members fully informed of how the funds already allocated and those now being sought had/would be used.
- 19 As mentioned in the Cabinet report, of the £225K previously agreed by the Council, £137,493 has been drawn down in the appeal up to the Court of Appeal.
- 20 In May 2013 Cabinet agreed to a further £100,000 being reserved for the parliamentary process and in July a further £24,000 for additional work relating to the legal challenge to provide back office cover for the Environmental Health Officers. The Council has given a pledge of £20k towards the Supreme Court appeal. The table below summarises the position.

Item	£
Legal Costs of Court challenge up to end of Appeal Court Stage	137,493
Supreme Court appeal	20,000
Parliamentary Petitioning process	100,000
Backfill technical officer resources	24,000
Total	263,493

The funding for these costs comes from the earmarked reserve previously established by the Council for the HS2 project.

- 21 The key items that we can anticipate would require further funding support are the petitioning stage of the Hybrid Bill process, communication and engagement with local communities and commissioning any technical expertise in support of the specific issues to be addressed through the petitioning process including providing cover for officers who will be diverted to focus on this area of work.
- 22 The petitioning process deals with very practical improvement requests, which our local communities should get the benefit from, if accepted through the petitioning process and if the scheme proceeds. There are therefore potentially significant long term benefits for the District as a whole that can be achieved from investing in this activity.
- 23 When the final ES is published all local authorities and individuals affected as well as others, will be responding to the ES and at the same time your officers will be preparing the petitioning paper comprising the issues that the Council wishes to see addressed/mitigated in the Bill and the proposals. This is going to involve a considerable amount of work on the part of officers and a dedicated team of officers has been put together as the HS2 Officers Steering Group comprising officers from both Chiltern and South Bucks authorities.
- 24 The group includes planning, environmental health, conservation, landscapes, communication and legal representatives. The terms of reference for the group are to identify and collate the issues from the authorities and different disciplines point of views, to put together the evidence necessary to substantiate the issues, to negotiate with HS2 to try and resolve as many of the issues as possible before the closing date for submitting petitions opposing the Bill (which is anticipated to be around April/May next year) and to then prepare the evidence necessary to make representations to the Select Committee as and when it sits.
- 25 In addition, a HS2 Members Steering Group has also been set up initially comprising the Leader and Deputy Leader from Chiltern and

South Bucks and their first meeting was held early in October in which they met the Council's parliamentary agents and advisors and also listened to presentations from three barristers with a view to selecting Counsel to advise and represent the Councils in the Select Committee hearings. Your officers sought the CVs, details of relevant experience of barristers from a number of chambers before shortlisting three based on their recent and relevant experience in this area of work. Clearly it is not possible to provide an estimate of the fees that will be incurred but this report is brought to members to highlight the possible costs associated with engaging with the parliamentary process and potentially opposing the Bill once it is deposited.

- 26 The Members Group will be expanded to include other Members whose wards are affected by the proposal, and it is intended for the Officers Group to update the Members Group on a regular basis so that members are informed of the issues highlighted, the preparation necessary and costs associated and to provide input into the process.
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