

CHILTERN DISTRICT COUNCIL

CABINET – 11 FEBRUARY 2014

Background Papers, if any, are specified at the end of the Report

HS2 UPDATE

Contact Officer: Alan Goodrum (01494 732001)

RECOMMENDATIONS

- 1. That Members note the responses prepared by Officers and Experts to the formal Environmental Statement on behalf of the Council**
- 2. That Members note the issues raised in the report as matters of concern for the Council and that these reflect current thinking which will be developed by the officers/experts in the lead up to the submission of the petition to the Select Committee in April/May 2014**
- 3. To recommend to Council to pass a resolution under Section 239 of the Local Government Act 1972 that in the judgement of Chiltern District Council, it is expedient for the Council to oppose the High Speed Rail (London – West Midlands) Bill deposited in the Session of Parliament 2013-14**
- 4. To recommend to Council to pass a resolution that the Chief Executive in consultation with the Leader and the Head of Legal & Democratic Services take all necessary steps to carry the foregoing resolution into effect including approval of the contents of the petition, that the Common Seal be affixed to any necessary documents and that confirmation be given that Sharpe Pritchard (Parliamentary Agents) be authorised to sign the Petition of the Council against the Bill and**
- 5. That up to £350K be earmarked from either under spending or reserves, for the next stages of the work relating to HS2, and in particular the work on the petitioning stage of the Hybrid Bill**

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

For 2014/15 we currently have £200k allocated in the reserves for the Petitioning process, and are assuming no funding will be left over from Legal Challenge process as the costs of the Treasury Solicitor will also have to be paid as the appeals have been dismissed. We are therefore seeking that a further £350K is earmarked for the costs associated with engaging with the parliamentary and petitioning process. The costs likely to be associated with this are set out in the table below and are estimates dependent on the work involved.

Table of estimated costs of HS2 Mitigation Project:

Budget Category	Description of Service	Estimated Cost
Sharpe Pritchard Sols	Legal – Petitioning process	£70,000*
Counsel	Legal – Petitioning process	£140,000*
Employee	Admin Support	£15,000
Optimum Tunneling arrangements	Assisting the client, tendering and expert advice (Consultant being appointed)	£120,000*
Planning consultant	Planning & landscape expert Underway	£20,000
Economic consultants	Advice Underway: Peter Brett Associates	£20,000
Noise Consultants	Route-wide issues on noise To be tendered	£100,000*
Employee	Legal – Extend current Contract to end of petitioning process	£40,000
Publicity	Recharged from Communications team	Internal costs
Residents Group	HS2 AA (Minute 77, 17.12.13)	£25,000
Contributions	Discussions underway on legal and tunneling costs	(£25,000)
Contingency		£25,000

ESTIMATED TOTAL: £555,000

Note: items marked * are gross costs and will be subject to cost share

arrangements. Some, for example the Optimum Tunnelling arrangements, are subject to current tender arrangements.

A further report will be prepared once the outcome of the Treasury Solicitor claims are resolved and the various cost shares/external contributions have been finalised, prior to the petition being heard in the Commons.

Officers consider it prudent to earmark the requested amount to ensure the scale of programme required can be funded.

Risk Management Implications

HS2 is a key strategic risk for the Council, community and environment. The Environmental Statement is inadequate and we will be responding on that basis. Without effective petitioning there is no way of ensuring points of concern are addressed and no way of achieving a satisfactory standard of development as would be required of any other proposal in the Green Belt and AONB.

The key financial risk is that estimates of cost for preparing evidence to the necessary standards may be exceeded and there is a risk that the impact of the project impacts on service delivery. There is no risk of an award being made against the Council for petitioning against the Hybrid Bill but there may be damage to reputational damage for failing to take action locally on an issue which is causing huge concern locally and nationally or if the Council does not make a reasonable submission, that it attracts negative comments from the Select Committee. Delays at the Select Committee stage also present a financial risk.

The key programming issue with this work is that everything affects everything else, certainly as regards tunnel length – noise – landscape – construction – traffic, and the Member Steering Group will need to consider the various trade offs and interactions as the work develops, and this may result in some of the briefs changing.

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 response prepared on behalf of the Council to Environmental Statement and highlights the potential petitioning points against the High Speed Rail (London – West Midlands) Bill for approval by the Cabinet and Council.

- 2 The Cabinet received a detailed report on 22 October regarding the legal challenge, the petitioning process and implications for resources.

Supreme Court Judgement

- 3 The Supreme Court hearing was heard on 15 and 16 October 2013 and judgement was delivered on 22 January 2014. The Supreme Court dismissed both appeals that were made by HS2AA and the remaining authorities of 51M. Members will recall that the appeals to the Supreme Court were made under two grounds:-
 - i. Ground One – breach of the Strategic Environmental Assessment Directive 2001/42/EC - HS2AA has led on this ground
 - ii. Ground Three – incompatibility of the Secretary of State’s decision to promote HS2 by way of Hybrid Bill with the requirements of the Environmental Impact Assessment Directive 2011/92/EU - 51M has led on this ground.
- 4 The Supreme Court gave a lengthy judgement which demonstrated that the issues raised were regarded as important, however, the court disagreed with the appellants and found that there was no breach of SEA and that the Hybrid Bill procedure was exempt under the EIA, with reference to the European Court not being necessary as the national courts were able to deal with all the issues raised. The message being given by the judgement is that Parliament is well able to consider the scheme and make a decision and that this process is not in contravention of the European Directive.
- 5 Clearly this was a disappointing decision but the local authorities are of the view that the challenges were worthwhile as HS2 has, as a result of the strong opposition to the scheme, the legal challenges and continued engagement on many fronts, led to the promoters being required to repeat its consultation on the Property Compensation, Standing Orders of the Houses of Parliament have been amended to incorporate a new procedure involving the appointment of an Independent Assessor to report all responses on the Environment Statement to the Members and just very recently the Standards Committees of both Houses of Parliament held that the Standing Orders had not been complied with and extended the periods for consultation to allow all parties to respond properly. Clearly these have had implications for the timetable set by the promoters and been significant setbacks. These achievements have been important in this process in which the promoters have sought to push the scheme through to a timetable that they have prepared regardless of the impact it is having and whether or not compliance with Standing Orders and European Directives have been achieved. The promoters know that the authorities, and many others, are scrutinising the whole process to ensure that due processes are adopted and that any adverse consequences are dealt with in a manner that is acceptable as far as possible.

Reponses to Environment Statement

- 6 The Hybrid Bill (Bill) was laid before Parliament and given its first reading in the House of Commons on 25 November 2013. It was accompanied by a host of documents comprising Plans and Sections, Environmental Minimum Requirements, Equality Impact Assessment, Health Impact Assessment and the Environment Statement (ES). By 5 December 2013 notices were served to owners, lessees and occupiers of any parcel of land that is going to be compulsorily acquired under the Bill. The time allowed for commenting and responding to the ES had only been 59 days and originally expired on 24 January 2014.
- 7 The promoters of such bills are required to appear before an officer of one of the Houses of Parliament, called the Examiner of Petitions for Private Bills, and have to seek to prove that the standing orders that apply to hybrid bills have been complied with and this hearing was held on 17 December 2013. The hearing was adjourned until 8 January 2014 for the examiners to give their decisions as to whether Standing Orders had been complied with as it had been discovered that there were a number of pages (877) missing from the ES as published. The missing information was subsequently received and a number of authorities sought an extension of the time within which to respond to the ES due to the late service of the additional documents. However, this was denied on the basis that, in the view of the promoters and their agents, the additional pages made no difference to the overall conclusions in the ES about whether or not there are significant effects on the environment. Subsequently, it was decided by both the Standing Orders Committees of both Houses of Parliament that the period for comments on the ES should be extended expiring on 27 February 2014 due to the failure of the promoter to comply with the Standing Orders.

Proposed Scheme and Impact on the District

- 8 The proposed scheme covers a section of approximately 6.1km in length in the District, passing to the east of Little Missenden and Great Missenden, extending north westwards from the junction of the A413 with Mop End Lane, west of Amersham, to Leather Lane, north of Great Missenden and includes land within the parishes of Little Missenden and Great Missenden, (see Figure 1).

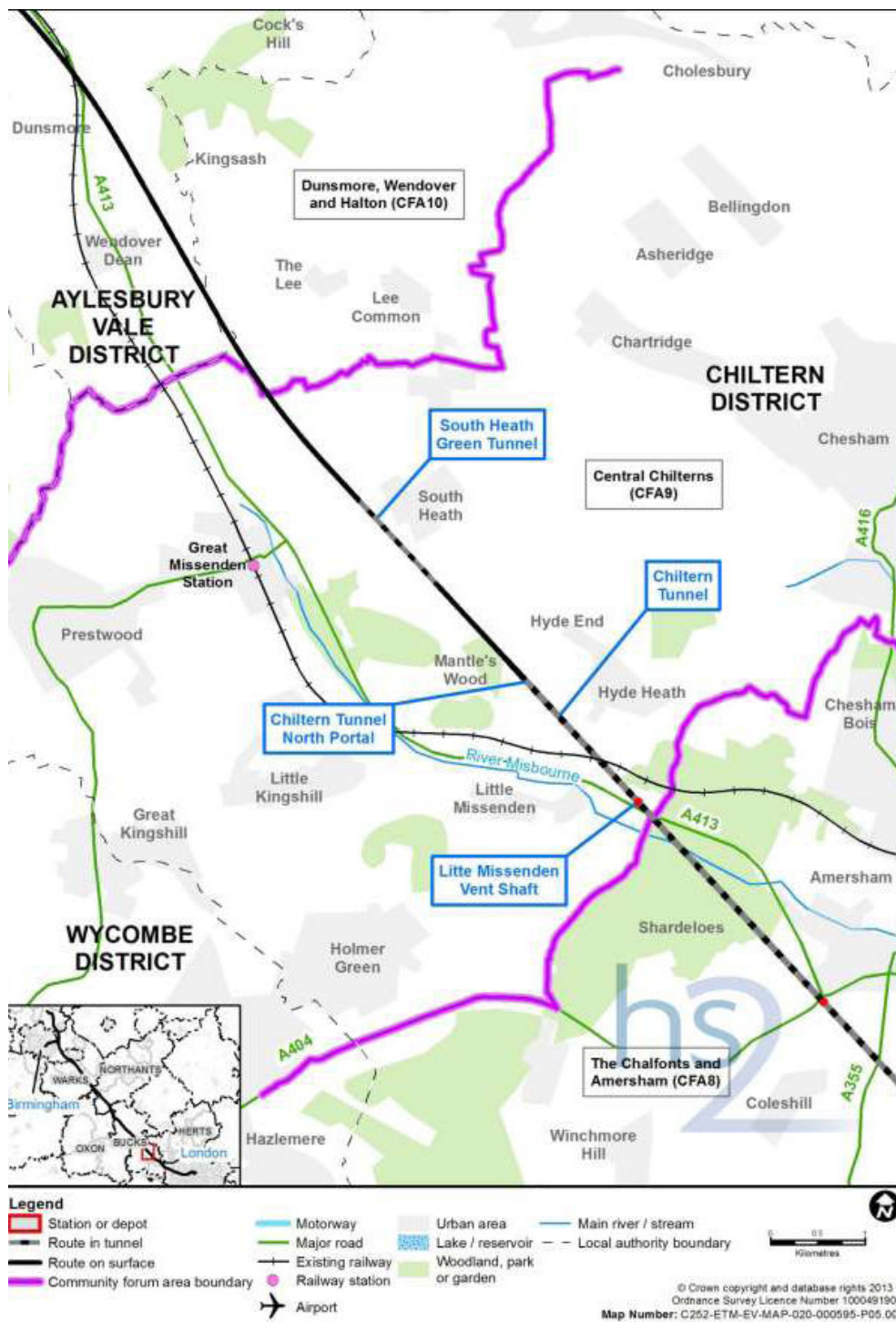


Figure 1

9 As stated in the ES, “The area is predominantly rural in character, consisting of mixed agricultural land use interspersed with areas of woodland, scattered cottages, farmsteads and villages. The topography is generally hilly with a distinct ridgeline running south – east to north – west along the route of the Proposed Scheme. To the south- west of the ridgeline the land drops steeply to the River Misbourne in the valley below. The Proposed Scheme in this area lies entirely in the Chilterns Areas of Outstanding Natural Beauty (AONB). There are a number of ancient woodlands in the

area including Mantle's Wood where the north portal of the Chiltern tunnel is located, Farthings Wood and Sibley's Coppice at South Heath.

The route will enter the area in tunnel underneath the A413 junction with Mop End, heading North West. A ventilation and intervention shaft (vent shaft) and adjacent auto-transformer station will be to the north of A413 at Little Missenden. Emerging from the tunnel north west of Hyde Heath, the route will run in cutting on surface to the west of Hyde Heath then enter a 1.2 km long green tunnel past South Heath. The route will then run in cutting on surface to Leather Lane, to the west of Ballinger Common and at this junction will leave this area and move into the area of Aylesbury Vale.

10 The response to the ES has required a number of officers to dedicate their time to this project but due to capacity issues and areas of expertise outside that of the officers, we are commissioning Planning, Noise and Vibration, Economic, Strategic and Optimum Tunnelling consultants to work on the response to the ES and the petitioning points. The Officers and the consultants have been working collectively and meeting regularly as the HS2 Officers Steering Group and reporting to the HS2 Members Steering Group. There are a number of concerns in respect of the ES and in summary these are as follows:

1. That inadequate time was permitted to consider and respond to the ES and its sister documents
2. A substantial amount of reliance is placed on the Code of Construction Practice but this is in draft format and will not be finalised until the Bill received Royal Assent but even then the document allows significant change by the promoters of the scheme
3. ES is more design standards orientated and fails to set out details of mitigation to demonstrate how areas of concern will be addressed
4. Measures adopted to determine "significant effects" is considered to be unjust in adopting a very narrow interpretation of buildings and businesses impacted upon
5. Does not properly validate the model used to predict impacts from sound noise and vibration
6. There has been no assessment of impacts of the baseline levels around the vent shafts.
7. There will be 7 compounds sited within the District along the course of the route which will generate substantial additional traffic and highways problems which have not been addressed properly
8. Lack of credible information as to how much of the incoming construction material and how much of the excavated material from the Chiltern tunnels and cutting and other works will be taken in lorries on routes across the District or via rail

The Schedule of the Council's responses is attached as **Appendix 1** and this will be submitted as a joint response by the Buckinghamshire authorities and each Council will be submitting this in their own right as well. Under the

new Standing Order, an Independent Assessor (Golders Associates (UK)) will be allowed 28 days to present a report to Parliament summarising all the responses before the Second Reading of the Bill.

The revised timetable that is now being adopted as a result of the ES consultation period being extended to 27 February is as follows, but remains subject to change:-

27 February 2014:	New time limit for ES responses
3 March 2014 (say):	Minister sends responses to the assessor, deposits them in Parliament and certifies accordingly
31 March 2014:	Earliest date by which the assessor may be required to report (based on above)
11 April to 25 April inclusive	Easter recess (when second reading not possible)
28 April 2014:	Earliest date for second reading
12 May 2014 (say):	Expiry of petitioning time (which is fixed at the same time as second reading)

Petitioning Points

- 11 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. This is a complex area of work as it involves identifying the issues that the Council wishes to petition on, working with other local authorities on common issues, negotiations with the promoters on issues to see if they can be resolved through dialogue and if not then appearances before the Select Committee later in the year.
- 12 The sorts of issues that have been identified as potential petitioning points 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)

- The potential for an increase in flow losses from River Misbourne and Shardeloes Lake to the Chalk aquifer, surface water levels and flows and potential impact on risk of surface water flooding in dry valleys at Chalfont St Giles vent shaft and Amersham vent shaft
- Impact on ground water quality
- 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
- Transport issues for Chiltern and local surrounding areas as a result of the approach adopted by the promoter
- Concerns over the Planning Memorandum, Heritage Memorandum and Code of Constructions Practice provisions and impact of scheme

13 This list is not exhaustive and many of the issues that the Council 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. The final petition will be reported to Cabinet in due course.

14 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 through 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. The Council will be using Roll A Parliamentary Agents (Sharp Pritchard) to submit its petition.

- 15 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 lengthy 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.
- 16 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. Officers have met with representatives from the Chiltern Conservation Board, National Trust, other authorities affected by the route, local community groups and individuals continuously. A programme of engagement to support communities and individuals affected has been put in place by Buckinghamshire authorities.

Background Papers: None
