

CHILTERN DISTRICT COUNCIL

CABINET – 10 FEBRUARY 2015

HS2 UPDATE

Contact Officer: Alan Goodrum (01494 732001)

RECOMMENDATIONS

- 1** That the work done to date on the petition issued on behalf of the Council and on-going negotiations with HS2 Ltd about the Council's Issues and Asks is noted
- 2** That Cabinet considers the advice received and resolves to approve the consultation and negotiations with HS2 Ltd to ensure that the proposals remain in alignment with the Council's plans and vision for the area;
- 3** That the additional work required from Peter Brett Associates, Ray Payne and Jerry Unsworth in relation to the extended tunnel report and evidence to the Select Committee, together with Southdowns Consultants and other associated costs, be approved
- 4** To note the approval by Management Team of an exemption to obtaining competitive tenders in relation to commissioning an updated feasibility study from Peter Brett Associates, in accordance with A6 paragraph 17 of the Council's Contract Procedure Rules on the grounds that no genuine competition could realistically be achieved
- 5** That up to £108,840 be transferred from the General Reserve to the HS2 Reserve, for the next stages of the work relating to presentation of the petitions to the Select Committee with the resources identified in the report and
- 6** That the Chief Executive be authorised to approve expenditure from this reserve after consultation with the Leader and Head of Legal and Democratic Services

Relationship to Council Objectives

The Council is committed to conserving the environment and promoting sustainability, and supports a strategic approach to ensuring the best mitigation is secured for the District should the proposal proceed.

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

See main report.

Equalities Implications

None directly related to this report.

Sustainability Implications

HS2 represents the single most destructive scheme to affect the Chiltern District and has major implications for all those working, visiting or living in the area. The scheme would have major implications on the sustainability of the District.

Report

- 1 This report provides members with an update on progress made as a result of on-going negotiations with HS2 Limited, summarises the Select Committee hearing process to date and key announcements made by the Government, gives an update of the financial implications of the work to date going forward and considers further action necessary should the Council wish to continue to pursue the matters outlined in its petition and present evidence to the House of Commons Select Committee.
- 2 The Cabinet received a detailed report on 22 February 2014 about the legal challenge, the petitioning process and the resource implications of issuing a petition against the Hybrid Bill for the HS2 proposed scheme, Phase 1. The Council set up a HS2 Project Team to deal with the response to the Environmental Statement and engage in the parliamentary process. This comprises ;
 - A Project Manager (Senior Consultant Solicitor), engaged for 3 days a week until end of July 2015 ,
 - Principal Strategic Environment Officer, seconded 2 days per week until end of February 2015 ,
 - Senior EHO seconded full time until the end of February 2015
 - An HS2 Support and Administration Assistant employed on a temporary contract for 37 hours a week until 31 March 2015 and

- Heritage Officer (internal resource) and Planning Consultant (external resource) providing input in their respective areas as and when required

Update on Select Committee Process

- 3 The High Speed Rail (London – West Midlands) Bill (HS2 Hybrid Bill) was deposited in Parliament and received its first reading in the House of Commons on Monday 25 November 2013.
- 4 The principle of the Bill has been established following receipt of the Second Reading in the House of Commons on 28 April 2014 and a House of Commons Select Committee has been set up to consider requests for changes to the scheme.
- 5 The Select Committee received a total of 1,925 petitions from Local Authorities, businesses, community groups and individuals all of which raise issues of concern with the scheme as proposed. Around 1,025 petitions were from residents from the areas of Buckinghamshire and the Colne Valley and around 800 petitions included an extended tunnel through the AONB in their petition.
- 6 The Select Committee commenced hearings on 1 July 2014 and whilst the date for hearing the Council's petition is unconfirmed, your officers have held meetings with HS2 Ltd to discuss the petitions, the concerns and the "Asks" of the Council to address such issues and concerns as advised by the Council's parliamentary agents, Sharpe Pritchard, and Counsel.
- 7 In May 2014, the Council submitted its HS2 Petition in Parliament for consideration by the House of Commons Select Committee, as part of the Hybrid Bill process adopted by the Government for this proposal.

Petitioning Points

- 8 All issues which a petitioner objects to must be covered in the petition and therefore an extensive number of issues were included in the Council's petition.

These included:

- Extended tunnel through the Chilterns AONB
- Effective and sensitive landscape and AONB mitigation with design principles to be agreed where no extended tunnel is provided
- Noise and environmental mitigation measures to reduce the operational impact of the railway;
- Inadequacies of environmental mitigation during the construction phase of the railway such as air quality.
- Impact of loss of ancient woodland and on biodiversity

- Impact upon Public Rights of Way and resultant effect for walkers and local economy
 - Concern over the sustainable placements in the AONB and detrimental impact on protected landscape
 - 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 Grade II listed buildings and lack of effective mitigation and protection
 - 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
 - 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 both during construction and during operation
 - Transport issues for Chiltern and local surrounding areas as a result of the approach adopted by the promoter
 - Concerns over the draft Planning Memorandum, Environmental Memorandum, Heritage Memorandum and Code of Constructions Practice provisions and how they will limit the impacts of scheme
- 9 The above list is not exhaustive. A copy of the summary of the Peter Brett Associates (PBA) Report for the Chiltern Long Tunnel is attached as Appendix A (The full report is available for inspection in the HS2 area together with the petition and other documents) and the Schedule of Issues and Asks of the Council is attached at Appendix B.
- 10 The Members HS2 Working Group met on 20 January, 7 April and 10 November 2014 to consider and agree the draft petition, PBA reports on an Extended Tunnel, the Economics Report, the Schedule of Issues and Asks, Communication and Managing Expectations and the Community and Environment Fund, as well as receiving updates on the parliamentary process and negotiations to date. Councillor Nick Rose also attended meetings with HS2 Ltd on 7 April and 10 November 2014.

Extended Tunnel

- 11 Cabinet will recall that PBA was initially commissioned by the Council in partnership with Buckinghamshire County Council, Aylesbury Vale District Council and Chiltern Conservation Board to produce a report on an

extended tunnel which they did in April 2014, following a competitive tendering process. This report looks at this aspect in further detail below under Risk and Financial Implications. Their report proposed a new route which followed the HS2 route under the River Misbourne at Chalfont St Giles as far as the A404. The route then diverged to follow a line east of Little Kingshill and west of Little Missenden.

- 12 However, in August 2014 a new European Directive proposed changes to safety rules in long railway tunnels and it became necessary to produce an updated feasibility study report as a consequence of these changes. PBA are preparing an updated report in light of the changes introduced by the Directive and also in response to consultation with neighbouring authorities and local groups. Aylesbury Vale District Council has made some contributions to this report as well. The updated report which proposes the Chiltern Long Tunnel was commissioned in November 2014 and will be published concurrent with this report. PBA are recommending that the new route follows the HS2 proposal as far as Great Missenden, crossing under the River Misbourne at Chalfont St Giles and again at Shardeloes Park. The route will then diverge to follow a line of the proposed scheme under the B485 Chesham Road and Leather Lane with a proposed fire fighting point located either at Little Missenden or Wendover Dean. Significant efforts are being made to seek out a solution that would secure the support of the neighbouring Buckinghamshire Councils and parish councils, as well as other stakeholders so far as possible.

Negotiations with HS2 Limited

- 13 Meetings were held with the HS2 Limited in May, July and November 2014. The intention of these meetings has been to discuss the issues raised in the Council's petition in greater detail and for HS2 to set out their position on each one with the aim of reducing the number of issues that go before the Select Committee. If matters can be agreed in the negotiations stage, then these "Asks" are usually secured through a written undertaking or assurance which is recorded in the Register of Undertakings and Assurances. The purpose of this register is to record and publish all the undertakings and assurances given to petitioners and to Parliament in a single document. Any nominated undertaker, the Secretary of State for Transport or any other organisation exercising the powers provided by the HS2 Act (once it comes into force following Royal Assent), will then be obliged to comply with the recorded undertakings and register, throughout the project's lifecycle.
- 14 The Council submitted the first PBA Report to Sir David Higgins of HS2 Limited in May 2014 and received a formal response in November 2014 essentially rejecting the proposal due to costs, delay in programme and drawing comparisons with the Chilterns Ridges Action Group option.
- 15 At the meeting in November 2014, HS2 Limited were made aware that the Council had undertaken further work to find a better solution, (following the

proposed change in the European Directive), than the Green Route and that the final report on the new Chiltern Long Tunnel would be presented for their consideration at the end of January 2015.

- 16 Other issues raised in the Council's petition have not received positive responses to date from HS2 and the Council has not yet received formal offers in relation to its requests. The Council's parliamentary agents advise that because this is a major national infrastructure project, it is common to find that negotiations become more fruitful when the Select Committee hearing dates are fixed and Petition Response Documents have been received from HS2 Ltd. This is usually 4 weeks before the petition is listed to be heard.
- 17 This is evident from the petitions heard to date. For example in July 2014 the petitions of Birmingham City Council and the West Midlands Passenger Transport Authority (Centro) were timetabled to be heard but neither authority appeared as they reached agreement with HS2 just before they were due to be heard. Some of the commitments given to Birmingham City Council included the design and construction of Curzon Street Station, a package of skills and training measures and relocation of waste facility. Similarly with Staffordshire County Council and Lichfield District Council, neither party appeared before the Select Committee as agreement was reached beforehand to a number of measures which included a guarantee that the link to the West Coast Main line will be constructed as part of main railway, to lower the line considerably in Lichfield and altering the alignment horizontally and vertically to avoid crossing the Trent and Mersey Canal twice.

Presentation of Petition Issues to Select Committee

18. Currently the intention is to pursue all the points contained within the Council's petition in one of three ways:-
 - 18.1.1 **Route wide basis** – there are a number of issues which are common to all the authorities and these are being dealt with on a route wide basis by a lead authority. A list of these Route Wide Issues is attached at Appendix C. The Council is one of three lead authorities dealing with noise as a theme from an operational and construction point of view on a route wide basis. These matters were to be heard by the Select Committee at same time that the lead authority is listed to be heard. However the noise theme may be dealt with in the current Parliament. Therefore currently preparation is under way to present this evidence and HS2 have set up a working group for negotiation ahead of a select committee hearing, when Chiltern's petition is due to be heard in May/June 2015.

To deal with this, nine local authorities have formed a consortium and agreed to financial contributions to the costs associated with the preparation of evidence, negotiations with HS2 and ultimately the presentation of the matter to the Select Committee. For these purposes the lead authorities have commissioned Southdown's Consultants to prepare the evidence and an estimate of these costs will be around £90,000 which will be shared between the authorities. The Councils have signed a Memorandum of Understanding setting out their contributions and it is estimated that each authority will contribute between £5,000 to around £15,000 each.

18.1.2 **Buckinghamshire authorities working jointly** - on the extended tunnel proposal, Chiltern will be presenting the evidence to the Select Committee about why the current scheme as proposed by the Government is unacceptable and why changes should be made to put the route into a tunnel through the Chilterns AONB. The Council's main argument is that this area has the only Area of Outstanding National Beauty along the length of the route, which as proposed by HS2 Limited will inflict a hugely damaging impact on the AONB. To support the Councils' case on this, 2 reports have been commissioned from PBA; an Environmental Impacts Assessment and an Economic Impacts Report on the Chilterns. The Council has also supported the Bucks Landscape evidence commissioned in this regard. A number of witnesses are currently preparing their evidence to use both in negotiations with HS2 Limited and ultimately to present to the Select Committee. Furthermore the Buckinghamshire authorities together with the Chilterns Conservation Board and National Trust have commissioned, landscape specialists, Landuse Consultants, to prepare a report on the impact of the proposed scheme and to set out effective mitigation which is sensitive to the landscape and statutory designation should the Select Committee not agree to an extended tunnel.

18.1.3 **Local Issues** which will be presented by the Council officers/experts on areas such as listed buildings, heritage and by the County Council on areas such as transport, highways, public rights of way, congestion and ecology.

19 The Select Committee has heard a number of petitions since July 2014 and has also undertaken a number of site visits in Birmingham, Staffordshire, Solihull, Warwickshire, and Northamptonshire. A visit in the Colne Valley took place on 15 January 2015.

20 The Buckinghamshire authorities have collaborated to produce a proposed itinerary for the Select Committee's visit to this County, which the Committee has indicated will be in the spring, and the Buckinghamshire

authorities have said the visit should be over a period of 3 days. Agreement to the proposed itinerary attached at Appendix D is awaited from the clerk to the Select Committee.

- 21 The programme for the Select Committee was published until the end of 2014 and it is likely that petitions in South Warwickshire will be dealt with first. Currently the Select Committee has started to hear petitions since the new year began and an indication has been given that Colne Valley authorities will be progressed soon afterwards – the site visit is discussed below. After that it is expected that no further petitions will be heard until after the general election.

Key Announcements

22 HS2 Community Fund

22.1.1 On 10 October 2014, Transport Minister Robert Goodwill MP announced the establishment of two funds relating to HS2; a Community and Environment Fund (CEF) and a Business and Local Economy Fund (BLEF). He announced that the Government will be making available £30million for residents, communities and business groups along the route of HS2 to invest in public projects, such as refurbishments of local community centres, nature conservation and measures to support local economies and employment. The funding is proposed to be available from the commencement of construction of HS2 in 2017 until the end of its first year of operation in 2026.

22.1.2 Buckinghamshire County Council is the lead authority for this issue on a route wide basis and has published its paper on a Community and Environment Fund seeking a sum of £230 million as the HS2 passes through the boundaries of 25 local authorities. BCC has expressed complete dissatisfaction with the proposed fund of £30m which would have to be split between hundreds of bids and equate to around £3.3 million per funding year for all 3 causes. It is therefore considered to be wholly inadequate.

22.1.2 A series of workshops have been held by HS2 Ltd with stakeholders to share information about their proposed fund and to seek input into how the funds should be delivered. At the local authorities' workshop, some 20 authorities were present and it was made clear to HS2 Ltd that the authorities considered the sum proposed was wholly inadequate.

- 23 On 27 October 2014 the Chairman of the Select Committee announced that the Committee was very keen to see petitions in groups according to their locality and where possible for them to appoint a petitioner to handle admissible issues to avoid repetition.

24 On 26 November the Committee announced their first decisions which were:-

- To reject a tunnel proposal in Birmingham
- HS2 Limited to provide a proposed Need to Sell scheme as soon as possible so that Committee can make suggestions for improvements
- To accept HS2's offer to prepare a paper on a property bond proposal
- On farm land take – they were persuaded by a number of petitioners like the NFU and encouraged HS2 Limited to work up a licence model where farmers retain a right of access and inspection on land being acquired temporarily.

Pursuing the Petitions

25 From an examination of representations in the formal response to the Environmental Statement consultation, officers have identified a number of alternative proposals for specific elements of the HS2 scheme. Should the government adopt these alternative proposals and "Asks" then it would result in the delivery of the best mitigation/compensation for residents and businesses in the District and would maximise the capture of the economic benefits associated with the proposed scheme. The alternative options as set out in the PBA reports on Extended Tunnel and Economic impacts and the Council's Schedule of Asks have been developed through detailed scrutiny of the HS2 Formal Environmental Statement by your officers, the HS2 Members Working Group, Buckinghamshire Authorities Officer Group, Route Wide Officers Group, 51M and through engagement with affected local communities, residents and businesses.

Financial Implications

26 The February 2014 report sets out the budget allocations made for this work and since then the expenditure incurred has been as follows:-

Year	Direct costs £	Internal costs £	Total £
2010/11	14,976	-	14,976
2011/12	39,791	-	39,791
2012/13	203,809	68,250	272,059
2013/14	101,240	57,240	158,480
Total	359,816	125,490	485,306

For 2014/15, on the basis of the February 2014 report, a sum of £350,000 was added to the provision to cover expenditure on the project up to the end of the Select Committee process, bring it up to £577,519 in total, and this expenditure will run into 2015/16. The provision to date makes allowance to cover the costs

of the Treasury Solicitor in respect of the unsuccessful legal challenge to HS2, which have not been settled yet.

In the report to Cabinet in February 2014, officers reported that the cost of the tunnelling experts would be in the region of £100,000. PBA were commissioned in February 2014, following a competitive tender process, to prepare the original feasibility study on the Council's alternative routes for HS2 and to prepare and present evidence to the Select Committee to support the Council's case. The cost of the first PBA report was £75,542 and related to Part 1 of the work. Part 2 involved preparation of the evidence for negotiations with HS2 and presentation to the Select Committee at a cost of around £29,000. The cost of the Client Side Representative, Ray Payne, to support and advise the Council in this work (as the Council has no in house expertise in this area), was stated as £15,200.

In August 2014, the Consultants informed the Council about amendments to the European Directive on safety requirements for railway tunnels and it was therefore necessary to commission an updated feasibility study to present to the Select Committee as part of the evidence in support of the Council's petition for this reason and for a number of issues surrounding the environmental impacts of the proposal. The estimated cost for the additional feasibility study is £76,000 with additional Client Side Representative costs for advising the Council on this further work of around £8,000. It has also been necessary for the Council to commission further work on environmental impact assessment of the alternative proposals, as compared to those of HS2's proposed scheme at an estimated cost of £13,000 to address concerns raised.

The Council's Legal Services Manager considered the procurement implications of this additional work and advised that under the Council's Contract Procedure Rules a contract for this value of work would normally be the subject of an invitation to tender and sealed bids. However, in view of:

- (a) the detailed knowledge of the Council's case already gained by PBA through preparation of the first study and their future involvement in the presentation of evidence to the Select Committee; and
- (b) the fact that there was little interest in the original tender earlier in the year

An exemption from obtaining competitive tenders could be justified under A6 paragraph 17 of the CPR on the grounds that realistically only PBA could supply this work and therefore there could be no genuine competition. The additional work could be the subject of an extension to PBA's existing contract or a new contract specifically for the new feasibility study.

In the light of the detailed scope / specification required for the additional work a separate contract was preferred by officers. It must be noted that the total value of the work being undertaken for the Council by PBA would now exceed the EU Procurement Rules threshold. However at the time the Council commissioned the work in February 2014, the value of the contract was not estimated to exceed that threshold and the extension to the contract was only necessitated

by an unforeseen change in the EU rules on safety, with consequential additional work which become necessary due to negotiations with HS2 Ltd and their response to the original report. As the work could only be undertaken to build on the original feasibility study undertaken by PBA, it was not reasonably practicable or realistic to seek new tenders for the updated feasibility study.

Continuation of HS2 Project Team in 2015/16

- 27 Chiltern’s engagement with the Select Committee process will continue into 2015/16, and therefore the core project office, including internally seconded staff will need to be maintained.

- 28 It is envisaged that following March 2015 the following team members will continue to be required:
 - Project Manager - 3 days per week until the end of October 2015
 - Principal Strategic Environment Officer 2 days per week until end of October 2015
 - Senior EHO , 5 days per week until October 2015
 - HS2 Support and Administration Assistant full time until the end of October 2015
 - Plus possible additional support from Landscape/Planning/Heritage experts

Cabinet also needs to consider whether, if the Select Committee does not agree to the major “Asks” of the Council, whether it would recommend to Council that these issues are pursued before the Select Committee of the House of Lords. If that is pursued, then it is envisaged any outstanding petitions will be heard by that Select Committee at the end of 2015/early 2016.

Table of estimated costs of HS2 Mitigation Project

Budget Category	Description of Service	Estimated Cost
Core Staff	Principal Strategic Environment Officer (2 days per week)	£13,410
	Senior EHO (5 days per week)	£32,230
	Admin Support	£11,400
Project Manager	Legal – Contract to finish at end of October 2015	£25,200
PBA	Contingency fees to respond to	£25,000

	HS2 feedback	
Ray Payne	Tunneling expert – Petitioning process through to House of Commons Select Committee	£10,000
Landscape	Landuse Consultants Bucks wide contribution	£3,000

ESTIMATED TOTAL: £108,840

Officers therefore propose that a further £108,840K is added to the provision for HS2 costs, related to engaging with the parliamentary and petitioning process. The costs likely to be associated with this are set out in the table above and are estimates dependent on the work involved. This additional funding can be achieved by transferring the sum agreed from the Council’s General Reserve, which currently stands at over £4m.

Should the Council resolve that it wishes to proceed to the House of Lords Select Committee, then a further report will be brought to Members after the decision of the House of Commons Select Committee is received and consideration is given with the Council’s Legal Advisors of taking the matter further and the resources and evidence needed to do so.

A further report will be brought back to Members as we complete the next stage of the parliamentary process and present our petition to the Select Committee.

29 Qualifying Authority

If the Bill becomes an Act of Parliament it will grant deemed planning permission for the works it authorises. Some matters and details of the deemed planning permission will be reserved for approval by local planning authorities. Authorities will have greater discretion under the Bill for approving reserved matters if they become “Qualifying Authorities” by signing up to a Planning Memorandum under part 2 of Schedule 16 of the Bill. Authorities that do not sign up to the Planning Memorandum will still receive applications for approval of reserved matters but will not have the wider discretion afforded to Qualifying Authorities.

There is no cost attached to becoming a Qualifying Authority. Where a Local Planning Authority has agreed to become a Qualifying Authority then it may refuse to approve plans or specifications for reserved matters on the basis that the design or external appearance or to be modified to preserve the local environment or local amenity, to prevent or reduce prejudicial effects on road safety or on the free flow of traffic in the local area, or to preserve a site of archaeological or historic interest or nature conservation value. Where an authority does not become a Qualifying Authority it cannot refuse reserved matters applications on the basis of archaeological interest, historic interest, nature conservation value or on the effect on road safety or the free flow of traffic. Members will need to make a decision in

due course as to whether or not to become a Qualifying Authority.

30 **The Colne Valley**

The Select Committee site visit of the Colne Valley took place on 15th January 2015. This included a large contingent from HS2 but County, South Bucks District, CIC and local residents and officers were able to make many valuable points. As well as being an important recreational resource for Chiltern residents, the visit provided some valuable learning points for future visits to the rest of Buckinghamshire and Chiltern

The Select Committee went on to visit sites in Hillingdon including the Outdoor Activity Centre (HOAC) and Hillingdon's own tunnel proposal published a few days before.