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**TO EACH MEMBER OF THE
SUSTAINABLE COMMUNITIES OVERVIEW & SCRUTINY COMMITTEE**

31 July 2009

Dear Councillor

**SUSTAINABLE COMMUNITIES OVERVIEW & SCRUTINY COMMITTEE - Tuesday 4
August 2009**

Further to the Agenda and papers for the above meeting, previously circulated, please find attached the following additional report which the Chairman has agreed to take as an urgent item of business:-

15. Luton Dunstable Busway

By virtue of the authority vested in him in accordance with Section 100(b)(4)(b) of the Local Government Act 1972, the Chairman has agreed to allow an additional item to be considered at this meeting as a matter of urgency. This item relates to the August Executive where a decision will be sought to approve the principle of advanced funding so as to direct tenderers for the Busway contract upon the ability to undertake site clearance early in 2010. Consideration of this matter could not be delayed because a decision was required before the next scheduled meeting of the Committee on 1 September 2009.

Should you have any queries regarding the above please contact Leslie Manning on Tel: 0300 300 5132.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Shobbs', written in a cursive style.

Sandra Hobbs
Democratic Services Officer
email: sandra.hobbs@centralbedfordshire.gov.uk

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Meeting: Overview and Scrutiny Committee
Date: 4 August 2009
Subject: Luton Dunstable Busway
Report of: Director of Sustainable Communities

Summary: This report asks the Overview and Scrutiny Committee to consider the content of a forthcoming report to August Executive seeking a decision to approve the principle of advanced funding so as to direct tenderers for the Busway contract upon the ability to undertake site clearance early in 2010.

Contact Officer: Dave Buck, Senior Strategic Infrastructure Officer
Exempt: Public
Wards Affected: Houghton Regis, Northfields, Dunstable Downs, Icknield, Watling
Function of: Council

RECOMMENDATIONS:

- 1. That the Committee consider and endorse the recommendation to the Executive for approval of advanced funding for advanced works on the Luton Dunstable Busway.**

Report to Executive

1. Members are asked to consider and endorse the attached report going to Executive on 18 August 2009.
2. The report sets out the need to advise tenderers of the Luton Dunstable Busway with respect to the timetable for site clearance and seeks agreement to advanced funding to undertake advanced works for site clearance.
3. As set out in the Executive report, advanced funding is being requested because tenderers for the Busway have asked for clarification on getting site clearance completed before the bird breeding season. This will impact on their programme of works and tender price.

Overview

4. Tenders for the Luton Dunstable Busway scheme are due back to Luton and Central Beds Councils for consideration on 23 September 2009.

In line with best practice, regular meetings are being held with the tendering companies to enable them to seek clarification from the Councils of requirements to minimise their risk and thereby cost.

5. These meetings have highlighted an issue with site clearance where the tenderers proposed programme is being based on the assumption that they will be able to undertake site clearance before the start of bird breeding season in late February / early March.
6. However, this may not be possible due to the time taken to process the tenders and secure Department of Transport approval. Award of contract is not expected to be made before February 2010 which is unlikely to provide sufficient time for the contractor to undertake the work.
7. This has implications on their proposed programme and hence cost, which in turn will have implications for the Councils in trying to maximise expenditure in 2009/10 to try and meet the Regional Funding Allocation profiled for the scheme.
8. The report therefore proposes a loan to the scheme to allow advanced works to take place in early January 2010. This would be repaid following DfT approval.

CORPORATE IMPLICATIONS

Council Priorities:

The scheme contributes to all Councils priorities

- a) Supporting and caring for an ageing population by enhancing the provision, .quality and security of a good reliably bus service.
- b) Educating, protecting and providing opportunities for children and young people by improving the links to education establishments.
- c) Managing growth effectively by providing the infrastructure for the start of a conurbation wide busway system (in the Luton Dunstable area).
- d) Creating safer communities with the provision of increased CCTV and 'help points' at high profile bus stops and potentially the IT infrastructure to boost local communications.
- e) Promoting healthier lifestyles by making public transport a more attractive or preferred alternative.

Financial:

The Recommendations are intended to provide a reliable base for tenderers to optimise their prices for the Busway contract and reduce risks of Regional Funding issues for the scheme.

Legal:

The Busway via Luton Borough Council has all legal powers to construct the scheme under the Transport and Works Act (TWA).

A legal agreement between the two authorities was the subject of the report to shadow Executive of 17 March 2009. This agreement provides for joint working, cost sharing and joint ownership of the Busway.

Risk Management:

The risks associated with not undertaking advanced site clearance are increased schemes cost and insufficient Regional Funding Allocation being available for the scheme.

The Busway project has a risk register. This is updated regularly and reported to its Project Board which includes the Director of Sustainable Communities and the Director of Corporate Resources.

Staffing (including Trades Unions):

None

Equalities/Human Rights:

None

Community Safety:

None

Sustainability:

Sustainability is an overarching consideration in the preparation of the Core Strategy and public transport plays a significant part of this. The busway will set high standards for the type and size of bus that can use the system to ensure minimum air and noise impact while providing a more reliable and desirable transport system.

Appendices:

Appendix A – Report to the Executive on 18 August 2009

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Appendix A

Meeting: Executive
Date: 18 August 2009
Subject: Luton Dunstable Busway
Report of: Portfolio Holder for Sustainable Communities
Summary: The report seeks members approval for funding advanced works on the Luton Dunstable Busway.

Advising Officer: Director of Sustainable Communities
Contact Officer: Dave Buck, Senior Strategic Infrastructure Officer
Public/Exempt: Public
Wards Affected: Houghton Regis, Northfields, Dunstable Downs, Icknield, Watling
Function of: Executive
Key Decision Yes
Reason for urgency/ exemption from call-in (if appropriate) To provide sufficient time for tenderers of the Luton Dunstable Busway project to adjust their programme and costs in relation to site clearance works and mitigate against a potential early claim.

RECOMMENDATIONS:	
1.	that the Executive approve advanced funding for advanced works on the Luton Dunstable Busway.
<i>Reason for Recommendations:</i>	<i>So that an at risk funding loan can be made available to enable tenderers provide a more reliable tender cost and mitigate against any possible early claim.</i>

Background

1. Members will recall that at the Shadow Executive on 17 March 2009 Central Bedfordshire Council (CBC) agreed to be a formal partner with Luton Borough Council (LBC) to deliver the Luton Dunstable Busway.
2. This report is now required because following talks with the tenderers for the main works contract it has become clear that it would be advantageous to the Councils to ensure that site clearance is completed before the start of the bird breeding season which is the end February / early March 2010. This would ensure there are no works related delays at the start of the contract and allow the tenderers to execute their proposed programme and provide a better price.

Thereafter, the next planned decision point for Members will be following the tender returns for the main works when further clarity over risk transfer and cost has been established. This is planned in November / December 2009.

Following Member consideration in November, if approved, an application will be made to the Department for Transport (DfT) for Full Approval (FA) / funding which in turn would on a successful application be followed with contract award.

The scheme currently benefits from DfT Conditional Approval (CA) status and regular meeting are being held with the DfT to ensure smooth progress to FA when we reach that stage.

Conditional Approval provides for a maximum capital grant of £78.4m (the actual tender submission price is expected to be approved by the DfT if less than this amount).

The scheme has a funding profile reserved of approximately £16m in 2009/10 (by March 2010) in the Regional Funding Allocation (RFA). The RFA is central government funding assigned to the region for schemes such as the Busway. If one scheme slips its programme it will have repercussions on other schemes and Councils.

This 2009/10 allocation is from its capital grant and subject to FA, failure to claim this places the scheme at risk if the region decides it can no longer support the scheme. This figure is currently being reviewed and an approach to the Region will be made by the Councils to reduce this to a more manageable figure. It is however considered critical that following Full Approval the Councils maximise spend for this year to avoid the possibility of RFA funding being reallocated to other projects and therefore leave the Busway underfunded.

As detailed in the report of 17th March 2009, the full cost of the scheme will require additional third party funds and further details of these will be provided in the next report to Members.

Progress

3. The Busway works will be progressed in three stages; on street works, real time passenger information works and the main busway works.
4. The on street works will be undertaken by each Councils own contractors (Amey for CBC). This work has been costed and resources allocated. It is programmed to start 9-12 months after the main works are underway.

The Real Time Passenger Information (RTPI) works are programmed to start within the last 6-9 months of completion of the main works contract.

Delaying these start dates as late as possible provides an opportunity for possible de-scoping of the works and potential cost savings if the main works costs start to increase.

5. The major works stage of the scheme for the main busway itself is currently out to tender with a return date of 23 September 2009.

In line with best practice, regular meetings are being held with the tendering companies to enable them to seek clarification from the Councils of requirements to minimise their risk and thereby cost.

At these meetings, the tenderers have given strong indications that they would wish to carry out site clearance works before the next bird breeding season, which starts late February / early March 2010.

6. Initial advice from our consultants during tender preparation suggested that the contractor's construction sequence would be for an initial six month design phase with a little site and ground investigation work to establish statutory undertaker's plant (gas, electric, telecoms etc) and structure of / condition of the structures. This would be followed by establishing works compounds then a start on the structures and site clearance.

However, it is now understood that the tenderers are preparing their programme and costs based on being able to carry out the site clearance at the start of the contract - prior to March next year. If site clearance is not possible early in the new year, there is likely to be a delay to the proposed construction programme. Clearly, this is undesirable because impacts to the programme will have cost implications.

Funding issues and impact on programme

7. Subject to satisfactory progress in this preparatory phase, the Busway is likely to secure Full Approval and the release of funding from the DfT in late January / early February 2010. This would result in the main contract award by at best mid to late February 2010.
8. This time period would severely limit the amount of time available for site clearance before the start of the main works due to the bird breeding season. This could potentially result in a significant delay to the whole project, with cost implications either directly in tender prices or potentially form the basis of a compensation event / claim from the contractors.

As part of the preparatory site clearance works, are a number of other factors including, relocation of slow worms, bird breeding season and land acquisition which need to be taken into account. These are detailed below.

- 9 **Slow worms:** The removal of slow worms can only be carried out during certain times of the year – either early summer or late summer. For the site clearance to be carried out before the next bird breeding season, the slow worms will need to be moved before the end of October – effectively this will mean starting the translocation in late August/early September. There needs to be 90 trapping events between mid-August and the end of October and five clear days where no slow worms are found. It is presently estimated that this work would cost £120K, though we are working with our consultants to try to reduce this cost by using local volunteer / temporary labour where possible. Like all other costs presently being incurred, this cost would be at risk to the Councils. If and when Full Approval is obtained we would be allowed to reclaim this cost. The present approved budget for 09/10 has allowed £120K for this work to be carried out. This work would need to be carried out with the permission of the land owners BRB(R) and the Wildlife Trust although no problems are anticipated in getting the necessary permissions. If the site clearance is subsequently not carried out in early 2010, then this work will be substantially abortive, as another removal process will need to be carried out to relocate any slow worms that may have moved back into the area from outside the cleared site.
10. **Bird breeding:** Guidance on the bird breeding season indicates that this starts at the end of February / early March, though it is possible for site clearance to carry on beyond this date. With environmental supervision some further site clearance may be carried out during the bird breeding season in areas where no birds are nesting, though this could only realistically be carried out in isolated areas. Tenderers have indicated that around three months would be required for site clearance and that a start at the beginning of the new year would allow for the works to be substantially completed before the start of the bird breeding season.
- 11 **Land Acquisition:** It is anticipated that British Rail Bard (Residuary) [BRB(R)] will not allow site clearance before the purchase of their land along the disused rail corridor, or at least an agreement to purchase is in place. Agreement with the Wildlife Trust who own land adjacent to Blows Down is much more likely, though an agreement is being sought with them to formalise the way forward.

In order to carry out site clearance prior to the next bird breeding season, the BRB(R) land effectively needs to be purchased before the end of 2009. The costs would therefore need to be incurred before Full Approval by the DfT and therefore is at the Councils' risk. In normal circumstances it is likely that this would be too great a financial risk for the Councils to accept.

However, Luton Council Corporate Finance have advised that the acquisition and funding of the purchase can be met through corporate resources on the basis that the terms are within permitted funding levels and the purchase will be subject to grant funding post Full Approval with funding recovered during late 2009/early 2010 financial year. This advice is on the understanding the exchange of contracts with BRB(R) is anticipated in October 2009 with completion in December 2009.

12. The tenderers therefore require direction from the Council to inform their bidding process in relation to site clearance. Options and implications of each are provided below for members to consider:

Options to provide direction to the tenderers to cost and programme their bids in relation to site clearance at the start of contract award are:

- 1) To inform the tenderers that site clearance will not be able to take place early next year.

Implications: This would need to be done now to provide the tenderers with time to reduce the impact on their programme and to price accordingly.

Site clearance would not be able to start until after the next birding breeding season which would be around August, a delay of around 8 months.

The construction work would start in the winter rather than the spring and this is likely to lead to further delays to the project and could have a significant impact on cost. The delay to the completion date for the project will clearly be disappointing as the benefits of the scheme will take longer to be realised.

However, of much greater concern is the implications this will have on the spend profile of the project. As previously mentioned, the present RFA allocation for the Busway is £16 million for 2009/10. There is a real possibility that if this spend is significantly slipped, the funding may be re-allocated to other projects and effectively result in the Busway being unfunded and unable to proceed.

- 2) LBC and CBC provide advanced funding in the form of an unsecured loan for the site clearance works to start in early January.

Implications: This would allow completion before the bird nesting season and provide a firm steer for the relocation of the slow worms. There is a risk associated with this should the Busway not receive Full Approval or the contract not be awarded. This option would provide a firm basis for the tenderers to price which in turn should result in a reduced tender price. This option would keep the delivery of the project on programme and also maximise the RFA spend during the current financial year.

Members are recommended to adopt option 2 to provide tenderers with a firm direction to price their tenders in respect to site clearance and keep the delivery of the project on programme.

- 13 No capital budget has presently been identified for advanced site clearance works (option 2). The tenderers have been asked to estimate the cost of this work and the range of costs suggested is between £170k and £300k.

The costs for the site clearance work stated above do not include for protecting the site against the return of slow worms following the clearance of the vegetation. This may require the removal of the ballast which provides an attractive habitat for the slow worms or the provision of fencing to prevent the slow worms migrating back onto the site. However, advice has been obtained from the environmental consultants who have confirmed that the slow worm activity will restart in April and therefore this will become the responsibility of the appointed contractor

- 14 Other avenues will be explored to try and reduce the impact on Central Beds and Luton Budgets including GAF3 and the DfT but if this is not forthcoming the Council is asked to provide an amount up to £180k, this being 50% (Luton Borough Council to provide the other 50%) of the estimated site clearance cost plus an element of contingency as an unsecured loan to the scheme.

Should the scheme receive final DfT approval, this expenditure would become fully funded. However, should the scheme not receive approval, this expenditure could prove to be abortive.

The stage at which this expenditure is required will follow tender assessment and reports to each Council (LBC and CBC), additionally discussions with the DfT for FA will be at a very advanced stage.

Need for the Busway

15. The Luton Dunstable Busway was identified in the early 1990s and now forms the back bone of the current Luton Dunstable Local Transport Plan and the emerging Local Development Framework for the Luton/Dunstable conurbation.

Major developments proposed as part of the emerging Core Strategy for the Luton and South Bedfordshire Growth Area can be served by public transport through potential extensions to the Busway.

Members will be aware that many of the deprived areas in the conurbation have no or far lower access to alternative transport and depend on public transport for access to work, education and recreation.

The Busway is being planned to bring a significantly improved service between Houghton Regis, Dunstable, Luton and Luton London Airport by optimising journey times while serving the local residential estates, education centres, businesses, shops and recreational areas.

The Busway will drive the public transport infrastructure and standards up to compete with the best in the country by providing improvements along the lines of:

- real time passenger information at bus stops and other key locations such as the hospital, rail station and key shopping locations.
- integrated ticketing for bus and rail trips
- reliable journey times so passengers can plan ahead

Public transport provision is being jointly developed with neighbouring authorities to ensure information and ticketing systems are adopted to create seamless transition for passengers while assisting operators manage their networks.

While the business case is currently being updated for submission to the DfT for Full Approval, the current projected usage of the busway is estimated at 9,000 trips a day. Previous projects such as the Leeds busway and the Fastway system which operates in West Sussex between Crawley, Horley and Gatwick have all seen patronage far exceed similar modelled forecasts.

Conclusion

- 16 It is considered that option 2, making a sum of £180k available as an unsecured loan to the schemes provides the most cost effective way forward accepting that there is a small risk to the Council if the scheme should not receive Full Approval from the DfT.

The funding would be required after tenders have been assessed and the results reported to Members, talks with the DfT who approve funding would also be at an advanced stage. Provision of this sum would ensure that site clearance works can take place before the bird breeding season so provide tenderers with a firm bases on which to price their tenders enabling them to optimise the delivery of the project resulting in a more competitive scheme cost.

In approving the capital programme Members expressed concerns that the authority do not support bridging finance except in exceptional circumstances. Since this is funding of a Government Grant and Members will have had the opportunity to review the information it is considered by the Director of Corporate Resources to be a reasonable exception.

CORPORATE IMPLICATIONS

Council Priorities:

This contributes to all Councils priorities

- a) Supporting and caring for an ageing population by enhancing the provision, quality and security of a good reliably bus service.
- b) Educating, protecting and providing opportunities for children and young people by improving the links to education establishments.
- c) Managing growth effectively by providing the infrastructure for the start of a conurbation wide busway system (in the Luton Dunstable area).
- d) Creating safer communities with the provision of increased CCTV and 'help points' at high profile bus stops and potentially the IT infrastructure to boost local communications.
- e) Promoting healthier lifestyles by making public transport a more attractive alternative.

Financial:

The financial implications are set out in this report. Any costs borne by either CBC or LBC would initially be on an 'at risk' basis contingent upon DfT approval in early 2010 for the scheme. Should approval not be forthcoming for any reason, these costs would potentially need to be treated as abortive.

However, should these advance works not be done in advance by CBC/LBS, it is likely that the successful tenderer will price for these works on a 'cost plus' basis and that the overall scheme would need to be delayed for up to 9 months with appropriate cost indices applied.

The Recommendations are intended to provide a reliable base for tenderers to optimise their prices for the Busway contract and reduce risks of Regional Funding issues for the scheme.

Legal:

The Busway via Luton Borough Council has all legal powers to construct the scheme under the Transport and Works Act (TWA).

A legal agreement between the two authorities was the subject of the report to shadow Executive of 17 March 2009. This agreement provides for joint working, cost sharing and joint ownership of the Busway.

Risk Management:

The proposed payment represents a balance of risk and benefit for CBC. The risk is that expenditure could prove to be abortive in the event of DfT not funding the scheme. The benefit is that monies expended in advance by the Council's could both decrease the overall cost and keep the project to the agreed timeline.

The Busway project has a risk register. This is updated regularly and reported to its Project Board which includes the Director of Sustainable Communities and the Director of Corporate Resources.

Staffing (including Trades Unions):

None.

Equalities/Human Rights:

None.

Community Safety:

None.

Sustainability:

Sustainability is an overarching consideration in the preparation of the Core Strategy and public transport plays a significant part of this. The busway will set high standards for the type and size of bus that can use the system to ensure minimum air and noise impact while providing a more reliable and desirable transport system.

Appendices:

None.

Background Papers (open to public inspection):

File ref: 04/LUT/28/M.

Location of papers: Transport Strategy Team, 4th Floor, Borough Hall, Bedford

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