
Meeting: Executive
Date: 4 December 2012
Subject: Local Broadband Plan – Procurement and Options for Intervention

Report of: Councillor Nigel Young, Executive Member for Sustainable Communities - Strategic Planning and Economic Development

Summary: The report proposes that the Executive approves the use of the Broadband Delivery UK (BDUK) framework to select a broadband infrastructure provider to deliver against the goals of the Joint Local Broadband Plan and agrees that the primary assessment criterion for selecting a broadband provider is the maximisation of superfast (speeds of at least 24 megabits per second) and basic (speeds of at least 2 megabits per second) broadband coverage in Central Bedfordshire.

Advising Officer: Gary Alderson, Director of Sustainable Communities
Contact Officer: Liz Wade, Assistant Director, Economic Growth, Skills & Regeneration and James Cushing Economic Policy Manager
Public/Exempt: Public
Wards Affected: All
Function of: Executive
Key Decision Yes
Reason for urgency/ exemption from call-in (if appropriate) N/A

CORPORATE IMPLICATIONS

Council Priorities:

The delivery of the Local Broadband Plan directly addresses the Council priority of Better infrastructure – improved roads, broadband reach and transport, in particular the targets to:

- Achieve 90% access to superfast broadband by 2015/16
- Achieve 100% access to at least 2MB broadband by 2015/16

Implementing the Broadband Plan will also contribute to a range of wider Council objectives including Enhancing Central Bedfordshire – particularly creating jobs and enabling businesses to grow providing, delivering great services and value for money, through supporting the accessing of services online and on demand.

Financial:

1. The Council has approved £1 million in the capital programme of match funding towards the delivery of superfast broadband. In addition to this we have secured £200,000 from Central Bedfordshire Together and have been allocated £620,000 of Central Government funding towards implementation of the Local Broadband Plan. It is expected that this total public sector funding (£1.82 million) will be at least matched by the private sector.
2. The Council is acting as lead accountable body for the wider Local Broadband Partnership (including Bedford and Milton Keynes Councils). As such the total value of public sector funding including Broadband Delivery UK (BDUK) funds for the project is £5.24 Million. This figure would be expected to be matched by the private sector.
3. The Council's Constitution requires the Executive to approve expenditure over £500,000 before commencing any procurement.
4. Any costs for the potential contract manager would be met through reserves, though opportunities to capitalise this cost will be sought. The costs of any post would be met between the three partner authorities.

Legal:

5. The Council can undertake activities to promote or improve the economic well-being of its area under Section 2 of the Local Government Act 2000. There are no statutory requirements for the Council to undertake improved broadband works. The Council will be able to secure a private sector partner and undertake delivery activities utilising a national BDUK State Aid notification and a procurement framework which is compliant with European Union (EU) requirements. Council legal, financial and procurement rules will also be adhered to throughout delivery of the plan.
6. A binding collaboration agreement between the Council, Bedford Borough and Milton Keynes Councils has been developed to ensure that funding is directed according to each local authority's requirements and in line with BDUK contractual requirements, ensuring a proportionate bearing of risk.

Risk Management:

7. BDUK has indicated that they require partnerships of Local Authorities to be formed to secure their funding and maximise the likelihood of private sector engagement. There is a risk in partnership working in delivery, though the development of a binding collaboration agreement and the development of a Joint Broadband Programme Board mitigates against this risk.
8. There will be a number of procurement and state aid risks associated with the project. The use of the BDUK procurement and state aid frameworks and the use of specialist consultancy services will mitigate against these risks.

9. A significant risk to the project is the reliance on the private sector supplier to match any public funding. The risk is that the more complicated the scheme, the less likely the supplier will be willing to invest in it given the number of local authority projects in competition and the limited capacity of the suppliers to respond. This risk will be mitigated by seeking to minimise to the complexity of our project for example, by minimising local priorities and continuing to build strong relationships with both providers within the BDUK framework.
10. There will be a number of risks associated with delivering the plan, in terms of securing a private sector partner and delivery risks. These will be mitigated through the use of the BDUK frameworks and early market engagement and also putting in place dedicated project management resource and processes for delivery.
11. A project management process including a Risk log for the project has been put in place.

Staffing (including Trades Unions):

12. Existing staffing resources are being utilised to manage the procurement phase of the project. There maybe a need for a dedicated contract manager following any award of contract.

Equalities/Human Rights:

13. Public authorities have a statutory duty to promote equality of opportunity, eliminate unlawful discrimination and to foster good relations in respect of nine protected characteristics; age, disability, gender re-assignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
14. In developing the Local Broadband Plan consideration of the need to improve access for all has been a core principle. Analysis of options for intervention, while meeting state aid guidelines, has mapped access to areas of deprivation and found very little correlations. Likewise through the deployment process the Council will work with suppliers to ensure that broadband services are available to the maximum number of people and that access is not discriminated against in anyway.

Public Health:

15. Not Applicable.

Community Safety:

16. Not Applicable.

Sustainability:

17. Delivery of the Local Broadband Plan will positively impact on a number of sustainability considerations, including reducing the need to travel (by increasing access to online services and opportunities for home working) and resulting emission reductions. Further to this, the provision of superfast broadband will also support the delivery of jobs growth aspirations for the area, by supporting growth in existing businesses productivity, ensuring the area remains attractive to new inward investment and supporting new business to start up, through taking advantage of new technologies and market opportunities.

Procurement:

18. It is proposed to utilise a national BDUK procurement framework (which has recently been completed through an Official Journal of the European Union (OJEU) procurement process. BT and Fujitsu are the companies on the framework and a mini competition process will be used to call off one of these to deliver infrastructure locally.

Overview and Scrutiny:

19. This matter has not been considered by Overview and Scrutiny.

RECOMMENDATIONS:**The Executive is asked to:**

1. **approve the procurement of a broadband infrastructure provider, utilising the BDUK procurement framework to meet the 90% superfast (speeds of at least 24 megabits per second) and basic (at least 2 megabits per second) coverage targets, such that the necessary broadband infrastructure is in place so that Central Bedfordshire remains a competitive and attractive location to current and new investors and residents;**
2. **approve the local priority within the procurement process, to maximise total coverage in Central Bedfordshire, subject to achieving a 90% business premises coverage and achieving a reasonable geographic spread, taking into account local demand, demonstrated through responses to the Broadband survey and response to consultation; and**
3. **to delegate to the Chief Executive, in consultation with the Executive Member for Sustainable Communities - Strategic Planning and Economic Development, to select the contractor based on any priorities the Council sets and the successful completion of the BDUK procurement process and sign and vary the contract if additional resources are secured during the lifetime of the contract.**

*Reason for
Recommendations:*

To secure external resources and put in place the necessary infrastructure at the earliest opportunity to support the delivery of superfast broadband to 90% of premises and support towards a minimum speed of 2 megabits per second for all in Central Bedfordshire in line with the Joint Local Broadband Plan.

Executive Summary

20. Central Bedfordshire Council is the accountable body for a Joint Broadband Partnership (along with Milton Keynes and Bedford Borough Councils), whose aim is to deliver the approved Joint Local Broadband Plan vision of increasing access to superfast broadband services and ensuring access to basic services for all.
21. The partnership proposes to utilise a procurement framework developed by BDUK to select a private sector partner to invest in the area and deliver the necessary broadband infrastructure.
22. An executive delegation to the Chief Executive, in consultation with the Executive Member for Sustainable Communities - Strategic Planning and Economic Development, is sought to select the contractor and vary the contract if additional resources are secured during the lifetime of the contract.
23. The Council has a limited ability to set additional local priorities within the use of the BDUK framework. It is proposed to assess private sector bids against the criteria of maximising both superfast (speeds of at least 24 megabits per second) and basic (at least 2 megabits per second) broadband coverage across Central Bedfordshire (in terms of residential and business premises covered), achieving a 90% business premises coverage and achieving a reasonable geographic spread of coverage, taking into account local demand. Setting additional priorities over the maximisation of coverage, may increase the risk of not securing a private sector bidder and necessary investment.

Background Information

24. The rollout of superfast broadband is a priority in the Council's Medium Term Plan, such that the necessary infrastructure is in place, to ensure that the area remains competitive and attractive to current and new investors and residents. The Council's Local Broadband Plan supports the rollout of superfast broadband across the Central Bedfordshire area in the period up to 2015.
25. The Local Broadband Plan has two key objectives:
 - that 90% of premises in our area are able to access superfast broadband speeds of at least 24 megabits per second (mgbps); and
 - that the remaining 10% in the more hard to reach areas are able to access a minimum 'universal' broadband service of at least 2 mgbps

The Joint Local Broadband Plan was endorsed by full Council at its meeting on 14 February 2012.

26. In line with Broadband Delivery UK (BDUK), the government agency for broadband delivery, the Council has formed a partnership with Milton Keynes Council and Bedford Borough Council to progress through a joint BDUK procurement process to select a private sector provider to install the necessary infrastructure. BDUK have approved a joint Broadband Plan (based on the CBC Local broadband Plan) for the partnership. This restates CBC's objectives, but also states that:
- 90% of Bedford premises will have access to superfast broadband by 2015; and
 - 95% of Milton Keynes premises will have access to superfast broadband by 2015 (due to a higher level of funding from Milton Keynes Council being available).
27. In line with the Joint Local Broadband Plan the Council is acting as the accountable body for the project. A Joint Broadband Programme Project Board has been established by the three authorities consisting of the responsible member for broadband (Cllr Richard Wenham), nominated officers and BDUK. The Board is responsible for the delivery of the Joint Local Broadband Plan in line with the necessary approvals process with the individual local authorities.

Current Picture and Proposed Levels of Intervention

28. As part of the Local Broadband Plan, a technical appraisal of the current and anticipated broadband coverage provided by the market by 2015 has been carried out. This shows that within Central Bedfordshire 46.9% of all residential and business premises currently or will have access to superfast broadband from multiple broadband suppliers such as BT and Virgin by 2015, with 26.9% of premises able to access superfast broadband services from only one provider, so will have no market choice. The remaining 26.2% (amounting to 29,259 premises) will not have any direct access to superfast broadband. These premises (categorised as white area premises) are the only locations where public resources can be invested, in order to comply with state aid guidelines.
29. Based on the level of public funding subsidy available and the most likely level of private sector investment the minimum intervention expected from delivery of the Local Broadband Plan has been set at 90% of all premises using a Fibre To The Cabinet technical solution. This will ensure at least 18,122 premises will receive access to superfast broadband as a direct result of this project.
30. In addition to the procurement process of the Local Broadband Plan, the Council has been working closely with existing broadband infrastructure providers to maximise their current rollout plans. Since February our close working with the private sector has encouraged them to accelerate their rollout plans. As such BT has already upgraded exchanges in Biggleswade, Leighton Buzzard, Sandy, Dunstable and Stotfold, and have recently announced the upgrade of the Woburn Sands, Whipsnade and Shefford exchanges. These recent announcements may have the impact of reducing the level of white area premises in the area.

31. Furthermore, the Council has included a policy in the draft Development Strategy to require all new developments over 25 premises to have superfast broadband infrastructure. This aims to minimise the creation of any new white areas in Central Bedfordshire. Likewise a demand stimulation plan is being developed. This aims to set increase awareness of the benefits of superfast broadband to maximise take up of services by both business and residents.

Procurement Process

32. The broadband partnership proposes to utilise the national BDUK procurement framework to select a private sector. BDUK have now completed a competitive tender process and BT and Fujitsu are the only providers on the framework. Under the framework the Councils will undertake a mini competition to select a private sector provider from the two providers, who do not have to bid to our tender. The process for this is highly prescriptive from BDUK, with a standard contract also developed by BDUK to ensure that state aid requirements are met, relating largely to technical standards, service performance and payment claw back aspects, to ensure that the providers are given no more than the minimum subsidy necessary. The Councils will have some ability to add in local priorities and requirements over and above the BDUK conditions.
33. The partnership has been allocated Slot 28 (of 31) to enter into the BDUK procurement process. This would mean starting procurement activities in April 2013, which would mean awarding the contract in August 2013, which may put at risk completion by 2015 in accordance with the Medium Term Plan. These slots are based on industry capacity to respond to tenders, but the previous Secretary of State recently stated a desire for all projects to be contracted by the summer of 2013, so timescales may change again. The original joint Local Broadband Plan set out a timeline for procurement such that procurement activity could begin in early 2013, with a view to award of contract in April. The current approach of the partnership is to continue to engage with BDUK to ensure that we are able to meet their check point requirements and be ready to procure at the earliest opportunity, currently estimated to be June 2013.
34. BDUK requires a lead authority in a partnership and has nominated Central Bedfordshire Council, due to it being the largest recipient of BDUK funding. As the nominated accountable body for the joint project, the Council is leading the partnership in developing an Invitation to tender under the BDUK framework. Consultants have been procured (with the costs split three ways between the LA partners) to support the development and meet BDUK approval processes. Likewise, a legally binding collaboration agreement between the authorities has been developed to ensure that the risk, costs and liabilities of the broadband project are equally shared. This must be signed and agreed by all authorities prior to any procurement activity. A key element of the collaboration agreement is that cross subsidy of activity between local areas within the partnership is not allowed and that local authority funding must be spent on activity within that authority.

35. BDUK are leading on developing a national state aid notification and developing a competency centre which would then be able to grant LA's approval to fund broadband investment under this national approval. BDUK has originally stated this would be in place by April 2012, however this has been delayed. Discussions between BDUK and the EU commission are ongoing and BDUK have stated that they are confident the state aid notification will be in place in November 2012.
36. It is recommended that the Council utilises the BDUK frameworks. Not using the BDUK procurement and state aid frameworks may result in the following risks/ costs:
1. Further delays in achieving BDUK funding approvals
 2. Possible loss of BDUK funding of £620,000
 3. State aid risks of non compliance
 4. Increased costs of undertaking OJEU and state aid notification processes
 5. Comparatively small size of contract may not secure private sector interest through OJEU
 6. Risk to the broadband partnership.

Prioritising Intervention

37. Under the BDUK framework various processes need to be undertaken to confirm areas eligible for intervention. Analysis to date is based on initial modelling and we are required to produce a final intervention area map- based on an Open Market review process, whereby telecommunications providers are formally contacted regarding their plans for the area. We will be able to invest anywhere in this final intervention area but initial modelling shows that approximately 90% coverage would be achievable under available funding. We will not know the exact areas to be covered until we receive a response from the private sector bidders through BDUK framework mini competition.
38. In line with the ability to add local priorities as additional selection criteria to the core BDUK framework for the two providers to bid against, a number of possible suggestions are considered below. These options would be additional to the minimum 90% target of all premises, which requires the full level of public intervention to achieve and may incur additional costs. Likewise, a known risk to the project is the finite capacity of BDUK framework suppliers to meet competing demands from local authority broadband projects. The risk is that increasing the complexity of projects through additional priorities may deter them from choosing to invest in the area. The suggested options are further detailed in Appendix A and include:
1. Maximising total coverage (No additional priorities)
 2. Maximising rollout to business premises
 3. Targeting large employment zones
 4. Maximising geographical spread
 5. Matching local demand
 6. Targeting areas of deprivation
 7. Adding other local requirements such as carrying out additional promotional activity.

39. Based on the options analysis set out in Annex A, it is recommended that the optimum local priority is the maximisation of total coverage, including achieving a 90% coverage rate of business premises and ensuring a reasonable spread of geographic coverage across Central Bedfordshire, taking into account local demand through responses to the Broadband survey and response to consultation. This is based on the supporting the maximum number of residents and businesses in Central Bedfordshire, fit with the Medium Term Plan priorities and balancing the risk of increased perceived complexity of the project and risk that the private sector may choose not to bid for and invest in the area. These priorities will be tested through the BDUK bidder engagement process, to ensure the optimum procurement outcome for Central Bedfordshire.
40. As part of the BDUK state aid process, the Council will also consult on its finalised intervention areas and any local priorities. BDUK requirements state that this must be open for one month and can only be done one month prior to the launch of any invitation to tender. This consultation process will be undertaken jointly by the partner authorities.

Conclusion and Next Steps

41. The Council are currently working with BDUK on early entry to the procurement process. We aim to issue a mini tender through the BDUK framework in April 2013 and hope to have a selected provider in place by June 2013. Every effort is being made to ensure that delivery of infrastructure can begin at the earliest opportunity and any opportunities to reduce the current timetable are being investigated, subject to the various approval processes of BDUK.
42. The current project plan highlights the key next steps in the project.

November	Completed BDUK initial approval process
December	Initial provider engagement (BT and Fujitsu)
	Undertake Open Market review
January	Undertake state aid public consultation and analyse responses to inform tender process
April	Issue Invitation to Tender
June	Finalise and award contract
	Begin roll out of contract

Appendices:

Appendix A – Options Analysis

Background Papers: (open to public inspection)

Joint Local Broadband Plan:

http://www.centralbedfordshire.gov.uk/Images/Joint%20Local%20Broadband%20Plan%20Web%20Version_tcm6-34264.pdf#False