

RECORD OF EXECUTIVE DECISION TAKEN BY AN EXECUTIVE MEMBER

This form **MUST** be used to record any decision taken by the Elected Mayor or an individual Executive Member (Portfolio Holder).

The form must be completed and passed to the Head of Members' Services no later than NOON on the second working day after the day on which the decision is taken. No action may be taken to implement the decision(s) recorded on this form until 7 days have passed and the Head of Members' Services has confirmed the decision has not been called in.

1. Description of decision

1. That the Assistant Director (Highways) be authorised to accept the tender from the preferred bidding contractor on the tendered contract terms for the main Bypass construction contract and to award the contract.
2. That the grant of £2.5 million towards the Bypass from the South East Midlands Local Enterprise Partnership be accepted in principle and that the Assistant Director (Highways) be authorised to secure a commitment to this funding and enter into a funding agreement for this grant in liaison with the Portfolio Holder for Finance and Asset Management.
3. That a funding agreement to draw on the Council's Growth Area Funds for this project be completed.
4. That the Capital Programme be revised to include provision of £2,032,294 net expenditure in 2016/17, and this be reviewed as the contract and discussions with funding partners proceed.

2. Date of decision

19th September 2014

3. Reasons for decision

Completion of the Bedford Western Bypass – Northern Section is a high priority for the authority and for the future economic development of the area. The Statutory procedures to enable construction work to start have been completed and

4. Alternatives considered and rejected

The main alternative would be to not let a construction contract at this time. This would jeopardise the continued availability of funding and delay delivery of the project.

5. How decision is to be funded

The construction costs would be met from existing resources, grant funding received or approved but not yet received and specific provision to be made in

the capital programme. The Decision includes provision for other costs associated with the Scheme.

6. Conflicts of interest

Name of all Executive members who were consulted AND declared a conflict of interest.	Nature of interest	Did Standards Committee give a dispensation for that conflict of interest? (If yes, give details and date of dispensation)	Did the Chief Executive give a dispensation for that conflict of interest? (If yes, give details and the date of the dispensation).
None			

The Mayor has been consulted on this decision

Signed *David Hodgson* Date *19/9/2014* Name of Decision Taker *MAYOR DAVE HODGSON*

This is a public document. A copy of it must be given to the Head of Members' Services as soon as it is completed.

Date decision published: *23rd September 2014*

Date decision can be implemented if not called in: *1st October 2014*

(Decision to be made exempt from call in..... NO.....)

Bedford Borough Council – Mayor

19 September 2014

Report by: Assistant Director (Highways)

Subject: Bedford Western Bypass Northern Section – Award of Construction Contract

1. Executive Summary

- 1.1 Bedford Western Bypass – Northern Section is a key element of Council policy as a high priority major project to be delivered. Previous decisions have authorised the promotion of the scheme through funding, design, statutory procedures and tender processes.
- 1.2 Subject to the conclusion of remaining details as set out in this report, the Council is now in a position to authorise the letting of the main contract to construct the Scheme.
- 1.3 The purpose of this report is to consider whether to let a construction contract, taking account of the position on consents, funding and results of a tender exercise.

2. Recommendations

- 1. That the Assistant Director (Highways) be authorised to accept the tender from the preferred bidding contractor on the tendered contract terms for the main Bypass construction contract and to award the contract.**
- 2. That the grant of £2.5 million towards the Bypass from the South East Midlands Local Enterprise Partnership be accepted in principle and that the Assistant Director (Highways) be authorised to secure a commitment to this funding and enter into a funding agreement for this grant in liaison with the Portfolio Holder for Finance and Asset Management.**
- 3. That a funding agreement to draw on the Council’s Growth Area Funds for this project be completed.**

4. That the Capital Programme be revised to include provision of £2,032,294 net expenditure in 2016/17, and this be reviewed as the contract and discussions with funding partners proceed.

3. Reasons For Recommendations

- 3.1 Completion of the Bedford Western Bypass – Northern Section is a high priority for the authority and for the future economic development of the area. It was originally envisaged that the Bypass would be implemented by the private sector as a development led project, but lack of progress has required the Council to take an increasingly proactive role in securing its delivery.
- 3.2 The Council has secured £4.0 million Growth Area Fund, £4.975 million grant from the Homes and Communities Agency, a Local Pinch Point Fund grant of £4.5 million from the Department for Transport and £2.5 million grant from the South East Midland Local Enterprise Partnership (SEMLEP). All statutory procedures required to enable works to take place have been completed and tenders invited to construct the scheme. Tenders have been assessed and the Council is now able to let a contract to complete the Bypass.

4. Key Implications

Legal Issues

- 4.1 The Bypass is a core element of Council policy and has clear benefits in the public interest which cannot accrue unless the scheme is implemented. The Council has carefully appraised the benefits of providing the Bypass to the general public and concluded that there is a compelling case for the use of its powers to implement the scheme.
- 4.2 Previous Decisions have approved the necessary steps to acquire the land and rights needed. All objections to the Compulsory Purchase Order and Side Roads Order were withdrawn and the Orders have been approved and are now out of challenge. All other consents required to enable works to proceed are in place.
- 4.3 As a result of the lessons learnt in completing the construction of Phase 1 of the Western Bypass, a bespoke form of contract has been developed for this scheme that is based on minimising the risks to the Council of cost escalation.

Policy Issues

- 4.4 Bedford Western Bypass has been a feature of national and local policy for some 30 years, and has been subject to significant scrutiny, consultation and review.
- 4.5 Support for Bedford Western Bypass is included in all relevant current local policy statements, including:
- Local Investment Plan, 2010
 - Sustainable Community Strategy 2009-21
 - Corporate Plan 2012-2016 (Objective 2A)
 - Local Transport Plan 2011-2021
 - Core Strategy and Rural Issues Plan 2006-2021 (Part of the Local Plan)
- 4.6 The policy background to the Scheme was an important aspect of considering the planning application for the Scheme where it was judged that the proposal complied with the Local Transport Plan, Local Plan and the adopted Development Brief for the area.
- 4.7 Planning consent has been issued for the adjacent allocated housing development site. Implementation of this development requires a contract to be let for the Bypass. The recommendations therefore assist with the delivery of planned growth in accordance with adopted policy.
- 4.8 There are no new policy issues arising as a result of a decision to construct the Bypass.

Resource Implications

- 4.9 The report outlines the funding which is currently available to the Council to construct the Bypass and compares this to the funds available. With tender prices now available, a clearer programme and the costs of land acquisition largely determined it is now possible to update the capital programme to reflect a planned expenditure profile.
- 4.10 The overall position is that it is recommended that the Borough Council allocates a net sum of £2,032,294 during the financial year 2016/17 to ensure all known and anticipated construction costs are met.

Risk Implications

- 4.11 The main risks being addressed by this report are that the opportunity to deliver the Bypass may be lost unless a contract is let, but that there are always risks in entering into a major construction contract.

- 4.12 The Bypass project has a full risk register but the nature of major road schemes means that there is always some potential for cost over-runs. The approach being adopted for this Scheme reflects the lessons learnt from previous major projects and no contract will be let without a full assessment of these risks.
- 4.13 The agreements with Network Rail mean that constructing the Bypass will trigger the compensation arrangement with Network Rail, without any certainty about what the scale of compensation will be. This risk is unavoidable if the Bypass is to be delivered. The report discusses this issue in more detail at paragraphs 5.7 and 5.31.

Environmental Implications

- 4.14 The environmental implications of the Bypass have been considered through the preparation of an Environmental Statement that accompanied the planning application. A number of conditions are attached to the Bypass planning consent to mitigate any adverse impacts identified through construction and subsequent use of the scheme.
- 4.15 There are no environmental implications arising from this report.

Equalities Impact

- 4.16 A relevance test and Level 1 Equality Analysis has been completed on the Bypass previously. The main conclusions from this analysis were that:
- The impact of the Bypass itself on protected groups has been considered in the design process;
 - The statutory processes for road schemes allows for those affected directly or indirectly to seek to challenge or amend the proposals and for the Secretary of State for Transport to determine whether objections should be considered at a Public Inquiry in front of an independent inspector. All objections were withdrawn and the Orders confirmed by the Secretary of State
 - The statutory processes provide for those who believe they are adversely affected by the Bypass to seek compensation.
- 4.17 There are no further equality issues arising from this report.

5. Details

5.1 Completion of the Bedford Western Bypass – Northern Section is a key priority for the Council, as set out in the Corporate Plan and other key policy statements. The background to the Scheme has been well documented previously, for example in the report to Executive Decision 1049 in August 2012.

5.2 It was the lack of any meaningful progress in bringing the Bypass forward via a comprehensive development approach that led the Council to conclude previously that the only way to ensure the Scheme is implemented would be for the Council to procure it, using a mix of resources and its own powers.

Statutory Procedures

5.3 Following publication and service of notice of a revised Compulsory Purchase Order (CPO) and revised Side Roads Order (SRO) on 13 February 2014 (Decision 1154), there was an opportunity for interested parties to make representations to the Secretary of State for Transport. The objection period for the CPO ended on 10 March 2014 and for the SRO on 31 March 2014. In total, 5 parties submitted 7 objections to the Orders.

5.4 In addition to an objection to the CPO, Network Rail also made representations to the Railways Directorate of the Department Of Transport under Section 16 and Schedule 3 Part II of the Acquisition of Land Act 1981. The relevant provisions of that Act provide protection to land owned by statutory undertakers that is the subject of a CPO. In this case the CPO shall not be confirmed unless the appropriate Minister is satisfied that any detriment is not serious or can be made good.

5.5 As a result of these objections, the Secretary of State for Transport notified the Council on 10 April 2014 that a Public Inquiry would be held and preparations for this commenced. Alongside these preparations, negotiations continued with all the objectors.

5.6 The Hallam Land and Wingfield objections stemmed from their need to have a clear and acceptable position in relation to the development of their wider land holding. A number of agreements were prepared between the landowners and the Council broadly covering the provision of land needed for the Bypass and delivery of the Bypass itself. Alongside these, planning consent for the housing development was granted on 27 March 2014. Objections from Hallam Land and Wingfield were withdrawn on 28 March 2014, alongside completion of the land transfers to the Council of the Bypass land.

5.7 The Network Rail objections arose in relation to their aspirations to secure a value for the provision of the rights to construct a bridge over the Midland Main Line. Their objection has been overcome by entering into an agreement that sets out how

the value of the rights will be determined. Alongside this agreement, further agreements set out the practical arrangements for the construction and maintenance of the actual bridge and also formalise Network Rail's access arrangements over other Borough Council land to their adjacent bridge over the River Great Ouse. Following the completion of these agreements Network Rail withdrew their objections and representations.

- 5.8 The objections from Bedford Land Investments (BLI) arose in general terms from remaining concerns over the access arrangements to their land holding adjacent to Cut Throat Lane south of the Bypass. This was despite the re-design of the scheme following objections to the first Orders made in 2012. The BLI objections have been overcome by entering into agreements that will result in transferring a small area of land from the Council to BLI and removing a covenant on other BLI land that restricted the use of that land for industrial purposes. This disposal was authorised by Decision 1190 of 9 May 2014. The agreements were completed on 18 June 2014 and the BLI objections withdrawn in accordance with the requirement in the agreements the following day.
- 5.9 BLI also made an application to the courts for Judicial Review of the Secretary of State's decision not to award costs to BLI against the Council in relation to withdrawal of the 2012 CPO and SRO. The application has been accepted and if BLI choose, it will be heard by the Upper Tribunal. No date has been set and it may be some time before the outcome is known.
- 5.10 The Kier Homes objection was made due to their uncertainty over how the Bypass would affect their drainage rights from existing housing in the vicinity of the Gold Lane roundabout. Once it was made clear that their rights were protected they withdrew their objection.
- 5.11 Table 1, below summarises the overall position on the making and withdrawal of objections.

Table 1 - Summary of Objections to the 2014 CPO and SRO

No.	Party	Relevant Order	Objection Dates	
			Submitted	Withdrawn
1	Network Rail	CPO and SRO	13 February 2014	23 June 2014
2	Richard Wingfield and the Biddenham Estate	CPO and SRO	7 March 2014	28 March 2014
3	Bedford Land Investments	CPO	7 March 2014	19 June 2014

4	Henry Boot Biddenham Ltd and Hallam Land Management	CPO	10 March 2014	28 March 2014
5	Henry Boot Biddenham Ltd and Hallam Land Management	SRO	10 March 2014	28 March 2014
6	Kier Homes and Twigden Homes	CPO and SRO	10 March 2014	24 June 2014
7	Bedford Land Investments	SRO	27 March 2014	19 June 2014

- 5.12 Following the withdrawal of all objections, the Secretary of State for Transport confirmed the CPO and SRO, without amendment, on 10 July 2014 and the High Court Challenge Period ended on 21 August. Following confirmation and the necessary publicity, notices to all those with remaining interests in the Bypass land were served.
- 5.13 Other small areas of land needed for the Bypass are being acquired by agreement and have not been the subject of objections to the CPO or SRO. These areas are primarily in the ownership of Anglian Water and the Luton Angling Club. All the terms for the acquisition of the necessary land are agreed and completion of the transfers is imminent. The confirmed CPO provides us with the ability to enter the required land and construct the Bypass at any point after 6 October, irrespective of whether the formal transfers by agreement have completed.
- 5.14 There were two small plots of land included in the CPO where the land was in unknown ownership. The CPO process has not revealed any interests in the land. Further investigations have concluded that these plots are almost certainly the result of historic errors in the registration of land owned by the Borough Council and are actually already owned by the Council. An application to rectify the title will be made. The CPO provides the immediate authority to construct the bypass and to formally acquire the land if the rectification process is not approved.
- 5.15 All other consents needed to enable construction work to start are in place.

Construction Tender Evaluation

- 5.16 As soon as it was becoming clear that the statutory procedures would reach a positive conclusion and negotiations with the landowners on the Bypass design and construction were concluded, the procurement process for the scheme was initiated

through a tender exercise. A short-list of possible contractors had already been agreed following an earlier pre-qualification exercise in accordance with European procurement rules.

- 5.17 On the basis of the lessons learnt from constructing the first phase of the western bypass the form of contract adopted for the scheme is bespoke, with risks transferred to the contractor wherever practicable. This is intended to provide confidence in the costs that will be incurred.
- 5.18 Tender documents were issued to seven contractors by the Council's procurement team on 30 June 2014. This was followed by individual meetings with interested contractors on 15 July and an ongoing dialogue over queries. Given the form of contract, the inclusion of some development estate roads in the works and the need to work with Network Rail, the potential bidders raised a significant number of queries. Whilst the original tender period anticipated the need to allow additional time to prepare bids, in order to ensure sufficient time to respond to these queries, the tender period was extended further to conclude at midday on 5 September.
- 5.19 The Invitation to Tender set out how bids would be evaluated against compliance, quality and price. By the tender deadline two bids had been received. Both bids have been deemed acceptable in principle and evaluated by a panel in accordance with the criteria.
- 5.20 The conclusion of the tender assessment is that the preferred bidding contractor has submitted the most economically advantageous tender to the Council.

Funding Position

- 5.21 The core external funding available to the Council to support construction of the Bypass is set out in Table 2

Table 2 - Construction Funding

Source	Amount (£)	Funding expires
Council Growth Area Funds	4,000,000	
Homes and Communities Agency Grant	4,975,000	31 March 2016
Local Pinch Point Fund (DfT)	4,500,000	31 March 2015
SEMLEP Local Growth Fund	2,500,000	31 March 2016
Landowner contributions	680,000	
Total	16,655,000	

- 5.22 The SEMLEP contribution was confirmed at the beginning of July 2014. Discussions between SEMLEP and Government on how the Local Growth Fund will be administered are in progress, and it is envisaged that there will be a formal funding agreement required between SEMLEP and the Council to ensure the funds are used as intended. The SEMLEP grant will be available for use in 2015/16 and their agreement with Government is not expected to be completed before December 2014, sometime after the contract to build the Bypass is committed. It is therefore vital that the Council is certain that this funding will be forthcoming once it is available. The risk of this funding not becoming available is small, but nevertheless it is considered prudent to record this commitment in writing.
- 5.23 The landowner contribution arises as a result of an agreement to provide drainage and service infrastructure to serve the housing development beneath the Bypass as part of the Bypass contract and to build an initial stretch of development access road. These are being implemented as part of the main construction contract at the landowners cost.
- 5.24 Alongside the Scheme construction costs, there are also costs (including legal and administrative costs) associated with design, promotion and procedures. Up and until December 2013 these costs were met by the Council separately, but since then (and in accordance with Decision 1154) have drawn on the Council's existing Growth Area Funds, with matching sums added to the overall Scheme cost and reflected in a revised allocation in the Council's capital programme.
- 5.25 Now that the preparation phase is largely completed and construction cost estimates can be updated with the tender price it is appropriate to review the overall affordability of the scheme prior to letting any construction contract.
- 5.26 Table 3, below summarises the position on all costs that need to be drawn against the funding identified in Table 2 above. The Construction Tender Price is that of the preferred contractor discussed above.

Table 3 Costs to Implement the Bypass

Item	Cost (£)	Notes
Preparation costs forecast in Dec 2013	373,000	As in Decision 1154
Incurred and outstanding preparation costs (inc legal, technical, land, tender process)	244,450	
Construction costs to date	806,000	Archaeology, utility diversions etc.
Construction Tender Price	16,251,644	Retentions and contingency included
Remaining archaeological investigation	50,000	
BBC Contract Supervision	697,200	

Network Rail Approvals and Supervision	160,000	Estimate agreed with NR and contingency added
Agreed land compensation costs	75,000	Agreed through negotiations with landowners
External technical support during construction	30,000	Design queries and applications for changes
Total	18,687,294	

- 5.27 The tender price of the preferred contractor is higher than the pre-tender estimate. Comparison of the funding shown in Table 2 and costs in Table 3 shows a need for Borough Council direct funding of £2,032,294. Comparing the tender price with the pre-tender estimate, there is no indication in the tender that the additional cost is due to any single aspect of the scheme attracting a premium.
- 5.28 The preferred contractor has indicated that they believe there to be some savings that could be made through changing the earthworks and surfacing specification. These cannot be supported yet, but would be considered. The submitted programme indicates that some savings in supervision costs may also be achievable. It is possible that one or other of the funding partners may be able to assist in covering the shortfall in funding. This will be explored but it would normally depend on the outcome of the partner's funding position for a particular year or grant programme before this could be determined.
- 5.29 The total forecast cost in Table 3 includes a contingency provision against the main construction contract. The form of contract adopted seeks to minimise the risks of further cost falling to the client, but nevertheless it would be prudent to make some provision in the capital programme should the contract be awarded. This provision can also be reviewed as the contract proceeds.
- 5.30 The above costs will mainly be incurred in 2014/15, 2015/16 and 2016/17. The preferred tender includes a schedule of construction activities that enables an indicative profile of expenditure to be forecast. The actual profile will be refined through discussion with the appointed contractor, but a draft profile based on the tender submission is:

Up to and including	2014/15	£ 5.7 million
	2015/16	£ 9.4 million
	2016/17	£ 3.6 million

This profile is consistent with the terms of the grant agreements shown in Table 2, subject to agreement on the precise profile with the contractor and actual progress on site. All of the costs forecast for 2014/15 and 2015/16 could be met from

the grants shown in Table 2. In order to ensure all forecast costs can be met it would be necessary to make provision in the capital programme for the Borough Council funding shown in paragraph 5.27 during 2016/17, a total of £2,032,294.

- 5.31 The main uncertainties on other costs at this stage are those to do with compensation. Constructing a new road will generate some claims for a reduction of property value from nearby households; Bedford Land Investments are seeking repayment of costs allegedly incurred in opposing the 2012 Orders; there may be some further claims arising from the acquisition of land for the scheme, and Network Rail will continue to seek compensation for the provision of the easement needed to construct the road bridge over the railway. Of these possible compensation claims, the largest potential cost and uncertainty is associated with Network Rail. As well as the scale of compensation due there will also be a question of when these costs would be incurred. It is possible that it would not be until after the Bypass has been constructed that these are determined. It is therefore not possible to determine the costs at this stage and further decisions will be required to authorise and make provision for any costs involved.
- 5.32 The Bypass is also included in the Council's list of projects to be part funded through developer contributions under the proposed Community Infrastructure Levy. This was considered prudent given the uncertainty at the time on how the Bypass was to be funded and delivered. The inclusion of the Scheme in CIL will therefore be reviewed in the light of CIL contributions received and decisions on investment priorities.

Conclusions

- 5.33 Completion of the Bedford Western Bypass remains a priority for the Borough. Failure to take this opportunity to deliver the scheme would risk loss of existing grant funding. A different form of contract and new tender exercise is unlikely to deliver any significant saving, adds delay and also risks loss of some funding. Delays to the scheme would also hinder delivery of housing growth and undermine confidence in other investment and transport projects.
- 5.34 On the basis of the above it is recommended that a contract to construct the Bypass should be let to the preferred bidding contractor who has submitted the most economically advantageous tender to the Council.
- 5.35 Whilst all funding partners will be approached to see whether there is any ability to cover all or part of the increase in costs, in order to ensure that adequate funds are available it will be necessary to allocate £2,032,294 in the Borough Council's capital programme for 2016/17.

6. Summary Of Consultations And Outcome

6.1 The following Council units or Officers and/or other organisations have been consulted in preparing this report:

Management Group

Relevant Managers - None

Organisation(s) - None

6.2 No adverse comments have been received.

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File Reference: BWBP-NS

Previous Relevant Minutes: Executive Decision 856, 30 September 2010
Executive Decision 866, 28 October 2010
Executive Decision 885, 23 December 2010
Executive Decision 932, 27 June 2011
Executive Decision 950, 16 September 2011
Minute 106, Executive 14 March 2012
Executive Decision 1049, 3 August 2012
Planning Cttee Minute 117, 23 April 2013
Executive Decision 1121, 10 June 2013
Executive Decision 1126, 28 June 2013
Executive Decision 1154, 6 December 2013
Executive Decision 1190, 9 May 2014

Background Papers: None

Appendices:

None