

**CAMBRIDGESHIRE GUIDED BUSWAY**

**To: Cabinet**

**Date: 14th June 2011**

**From: Acting Executive Director: Environment Services**

**Electoral divisions: The Hemingfords and Fenstanton, St Ives, Papworth and Swavesey, Willingham, Cottenham, Histon and Impington, Waterbeach, East Chesterton, King's Hedges, Petersfield, Trumpington, Gamlingay**

**Forward Plan ref: 2011/003** *Key decision: Yes*

**Purpose: To approve future governance arrangements for the Cambridgeshire Guided Busway and rectification of the defective maintenance track between Swavesey and St Ives.**

**Recommendation: Cabinet is asked to:**

- a. approve the establishment of a Busway Contract Resolution Group in accordance with the Terms Of Reference set out in Appendix A of this report;**
- b. delegate the authority to this group to:**
  - i direct any necessary legal action to secure resolution of the dispute and to enter into negotiations or mediation on behalf of the Council arising from the dispute;**
  - ii consider any settlement proposal made to the Council by BAM Nuttall Ltd and if, in consultation with the Leader, Cabinet Member for Growth and Planning, Cabinet Member for Resources and Performance and Chief Executive, they consider that such a settlement represents best value to the Council, taking all relevant factors into consideration, recommend the proposal to Cabinet; and.**
  - iii subject to consultation with the Leader, Cabinet Member for Growth and Planning, Cabinet Member for Resources and Performance, and Chief Executive, reject any settlement proposal by BAM Nuttall Ltd that does not, taking all relevant factors into consideration, represent best value to the Council.**
- c. approve the raising of the defective maintenance track in the River Great Ouse flood plain to resolve the flooding and drainage issues.**

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## **1 Background**

- 1.1 Formal contractual completion was reached with BAM Nuttall in respect of the Busway construction contract on 21st April 2011.
- 1.2 Following completion, work is underway using the Council's framework contractors on various additional works such as the blacktop surfacing of the maintenance track and the additional junction for the Clay Farm development.
- 1.3 Under the Busway contract, BAM Nuttall had 28 calendar days from completion to rectify notified defects. This period ended on 19th May and work is now underway to rectify the defects as previously agreed by Cabinet at the December and January meetings namely:
  - River Great Ouse expansion joint;
  - St Ives Park and Ride flooding;
  - Guideway narrow expansion joints.
- 1.4 Once works are sufficiently advanced to allow buses access, then trialling and testing will commence to be followed by the opening of the Busway.
- 1.5 Although completion of the contract with BAM Nuttall has been achieved, there remains a substantial contractual dispute to resolve. Resolution of this dispute may ultimately require legal action, although a prerequisite of any legal action would be a process of mediation or negotiation which may resolve the dispute. To date, the busway contract has been overseen by the Guided Busway Delivery Group. It is now considered that revised governance arrangements are required that are appropriate for managing the contract resolution processes.

## **2 Governance**

- 2.1 The delivery of the Guided Busway has been overseen by the Busway Delivery Group, a task and finish group consisting of the following members:
  - Leader of the Council
  - Deputy Leader and Cabinet Member for Highways and Access
  - Cabinet Member for Growth, Infrastructure and Strategic Planning
  - Cabinet Member for Resources and Performance
  - Cabinet Member for Customer Service and Transformation
  - Chief Executive
  - Executive Director, Environment Services
  - Local Government Shared Services (LGSS): Director Finance
  - LGSS: Director Legal
  - Service Director, Growth and Infrastructure
  - Two Members not from the Administration
  - The Chair of the Audit and Accounts Committee
  - A Local member with transport experience.
- 2.2 The group has overseen and steered the management of the Cambridgeshire Guided Busway project. The group does not have decision-making powers and has met fortnightly.

- 2.3 Following completion of the contract, there remains a substantial contractual dispute between the Council and BAM Nuttall. The Council has given the necessary formal notice to BAM Nuttall that it will commence legal proceedings to resolve this dispute. Before any formal legal action can commence, there is a process known as the Pre-Action Protocol during which the parties are required to attempt to reach a settlement through mediation. In giving the legal notice the Council has also set out to BAM Nuttall that it would welcome the opportunity to resolve the dispute without the need for lengthy and costly legal action.
- 2.4 Although the Delivery Group has been extremely helpful in overseeing the delivery of the project, it is considered that a smaller group is required to manage and oversee the process of dispute resolution, be it through negotiation, mediation, legal processes or a combination.
- 2.5 It is therefore proposed that the Delivery Group continues to oversee the completion of the Busway works and the establishment of the operating regime up to the opening of the Busway, at which point the Group will have completed its work. Until that point is reached the membership of the group will be revised to reflect the recent changes to Cabinet responsibilities.
- 2.6 The Delivery Group has generally met fortnightly to review and consider progress. Following completion, it is considered that such frequent meetings are no longer necessary and the frequency of the meetings has been reduced to every four weeks.
- 2.7 In terms of the work on mediation and resolution of the contractual dispute, it is considered that any mediation and negotiation process will best be conducted by a core group of senior officers, advised and assisted as necessary by other appropriate officers and in consultation with the Leader, Cabinet Members for Growth and Planning and Resources and Performance and Chief Executive.
- 2.8 It is therefore proposed that a Busway Contract Resolution Group be formed consisting of:
- Executive Director, Environment Services
  - LGSS: Director Finance
  - LGSS: Director Legal
- With the latter two acting in their roles as Section 151 Officer and Monitoring Officer respectively.
- 2.9 This group would act in consultation with the Leader, Cabinet Member for Growth and Planning, Cabinet Member for Resources and Performance and Chief Executive and be assisted and advised as necessary by the Director for Growth and Infrastructure, the Head of Delivery for the Cambridgeshire Guided Busway and such other officers as may be necessary.
- 2.10 The group's purpose will be to seek through mediation, negotiation or legal processes as necessary, a resolution to the dispute that provides best value to the Council. Any settlement will need to take all relevant matters into consideration and be demonstrably in the public interest as the authority can only pay evidenced and proven costs due under contract.

- 2.11 The proposed Terms of Reference for the Busway Contract Resolution Group are set out in **Appendix A**.
- 2.12 Cabinet is asked to approve the establishment of the Busway Contract Resolution Group and delegate the authority to:
- i. direct any necessary legal action to secure resolution of the dispute and to enter into negotiations or mediation on behalf of the Council arising from the dispute;
  - ii. consider any settlement proposal made to the Council by BAM Nuttall Ltd and if, in consultation with the Leader, Cabinet Member for Growth and Planning, Cabinet Member for Resources and Performance and Chief Executive, they consider that such a settlement represents best value to the Council, taking all relevant factors into consideration, recommend the proposal to Cabinet; and.
  - iii. subject to consultation with the Leader, Cabinet Member for Growth and Planning, Cabinet Member for Resources and Performance, and Chief Executive, reject any settlement proposal by BAM Nuttall Ltd that does not, taking all relevant factors into consideration, represent best value to the Council.
- 2.13 Should the terms of a settlement be agreed with BAM Nuttall then this will require the approval of Cabinet and Council.

### **3 Maintenance track**

- 3.1 Cabinet on 14th December 2010 approved the development of designs to rectify the flooded and poorly drained section of the maintenance track between Swavesey and St Ives. Following this, designers were appointed to develop proposals in consultation with the Environment Agency.
- 3.2 The Busway crosses the River Great Ouse flood plain on the former railway embankment. Increasing the footprint of the embankment would have reduced the storage volume available for flood water and would therefore have been unacceptable to the Environment Agency (EA). In consequence the original concept for the maintenance track as set out at the public inquiry into the Busway was that the maintenance track through this area would be built at the level of the surrounding ground rather than at the level of the Busway. This would result in the maintenance track flooding when the adjacent land flooded. Data was presented to the Inspector at the inquiry that showed that this would be between a few days and a few weeks in a typical winter.
- 3.3 Unfortunately, BAM Nuttall, despite being advised to the contrary, put sections of the maintenance track below the surrounding ground level. As a result these flood following local rainfall and not just when the River Great Ouse floods. As there is no means for the water to drain away the path remains flooded for very long periods of time, rendering it unusable to cyclists and pedestrians for much of the year.

- 3.4 Proposals have now been developed for each of the affected sections to rectify the flooding and drainage issues. The preferred options were developed in consultation with the Environment Agency.
- 3.5 The solutions generally involve raising the maintenance track at or close to the levels anticipated at the Public Inquiry such that the track only floods when the surrounding flood plain is also flooded. Raising the track will ensure rainwater drains into existing swales or ditches. Where necessary new swales will be provided. Swales are linear depressions in the ground designed to hold rain water and gradually release it. A positive drainage system discharging into an adjacent lake is proposed for one section which is relatively high but still suffers from water ponding.
- 3.6 About 200m east of The River Great Ouse there is a flood relief culvert and six flood relief pipes through the Busway embankment. The maintenance track has been built in front of the culvert and pipes at or below their level. It is proposed to lift the maintenance track and extend the pipes under it. Raising the maintenance track over the culvert has been ruled out on the grounds of cost and the increased volume of the embankment. It is proposed instead to raise the track up from its current level and carry it on a further series of pipes to allow water to reach the main culvert. In severe flooding events water will flow over the maintenance track to reach the culvert. It is proposed to construct this section of track as a concrete slab 100mm lower than the adjacent sections to ensure the water flow is directed over it. Such an arrangement of culvert cum ford is known as a Dutch Culvert. The proposals in this area are shown diagrammatically in **Appendix B**.
- 3.7 The designers have made an assessment of the likely flood durations based on the historical record. Such an assessment is not straightforward as the flooding regime is complex. The flood plain is split into cells separated by banks, with the water filling each cell in turn as the banks between them are overtopped. The Busway crosses several cells. In view of this complexity the Environment Agency considers the forecast flooding durations as being pessimistic and precautionary.
- 3.8 The lowest point between St Ives and Holywell Ferry Road will be at the Dutch Culvert, which it is estimated will be under water for an average of 29 days per year. It is estimated that the adjacent sections of track, which will be 100mm higher, will be under water for only 15 days per year on average.
- 3.9 The lowest point overall is at the extreme eastern end of the flood plain adjacent to Covell's Drain. This is the furthest point from the River Great Ouse with a more complex flooding regime and the data is not available to reliably apply the assessment methodology used elsewhere. However it is proposed to raise this section of track by approximately 600mm above its current level, which will bring it to the level proposed at the Busway Public inquiry. This will ensure the track drains and, observations suggest, will be sufficient to give a similar flooding frequency as the other areas.
- 3.10 The Busway Project Manager is making his own independent assessment of the cost of correcting the defective maintenance track, which will be deducted from BAM Nuttall's target price. It is anticipated that this will be sufficient to meet the cost of the defect rectification works.

- 3.11 Cabinet are asked to approve the proposals to rectify the defective maintenance track by raising it and providing drainage as outlined above.
- 3.12 Subject to Cabinet approval and satisfactory conclusion of the discussions with the Environment Agency a detailed design will be prepared for implementation by the Council's framework contractors. The current programme anticipates the work being carried out in August and September before the risk of Autumn flooding. As the work is at the toe of the embankment it can be undertaken with buses operating.
- 3.13 The current proposals are to reinstate the maintenance track with the crushed limestone surface as originally provided. Members will be aware that funding has been secured via Housing Growth Fund to extend the blacktop surface on the maintenance track as far as Swavesey. Officers have recently identified funding opportunities to provide a blacktop surface on this remaining section, which are being explored.

#### **4 ALIGNMENT WITH PRIORITIES AND WAYS OF WORKING**

- 4.1 **Supporting and protecting vulnerable people when they need it most**  
There are no significant implications for this priority.
- 4.2 **Helping people live healthy and independent lives in their communities**  
Early rectification of the defective maintenance track will allow its use by people for commuting and recreation.
- 4.3 **Developing the local economy for the benefit of all**  
Satisfactory resolution of the dispute is in the interests of the wider economy of Cambridgeshire.
- 4.4 **Ways of Working**  
There are no significant implications for this priority.

#### **5 SIGNIFICANT IMPLICATIONS**

- 5.1 **Resource and Performance Implications**  
The report sets out proposals for managing the contract resolution processes. This will require a significant input of senior management resources. If the process is not managed to a successful conclusion there could be significant financial implications.
- 5.2 **Statutory, Risk and Legal Implications**  
The report sets out proposals for managing the contract resolution processes and the risks around those processes. Significant legal costs could be incurred if legal action is necessary to resolve the dispute.
- 5.3 **Equality and Diversity Implications**  
There are no significant implications for any of the prompt questions within this category.

#### 5.4 Engagement and Consultation

A large number of enquiries have been received regarding the flooded maintenance track and in particular if and when the problems will be rectified.

<b>Source Documents</b>	<b>Location</b>
Agenda and Minutes, Cabinet 1/3/2005, 7/2/06, 13/6/06, 11/7/06, 16/10/07, 16/12/08, 29/9/09, 16/3/10, 27/4/10, 25/5/10, 15/6/10, 5/7/10, 7/9/10, 28/9/10, 26/10/10, 16/11/10, 14/12/10, 25/1/11, 22/2/11, 15/3/11, 5/4/11  Cambridgeshire Guided Busway Order  Cambridgeshire Guided Busway Maintenance Track Flooding issues – Option Report May 2011	CGB Team Office, Old Police House, Shire Hall, Cambridge

## **Appendix A**

### **Busway Contract Resolution Group**

#### **Terms of Reference**

##### Purpose

The Purpose of the Busway Contract Resolution Group (BCRG) will be to seek a resolution to the dispute with BAM Nuttall Limited in respect of the Cambridgeshire Guided Busway that provides best value to the Council taking all relevant considerations into account.

##### Confidentiality

The proceedings of the group will be confidential as the group will be considering legal advice in relation to possible legal proceedings.

##### Membership

The Busway Contract Resolution Group will be led by the Executive Director Environment Services advised by the LGSS: Director Finance (Section 151 Officer) and the LGSS: Director Legal (Monitoring Officer) .

The BCRG will consult with and keep informed the Leader, Cabinet Member for Growth and Planning, Cabinet Member for Resources and Performance and Chief Executive.

The BCRG will be assisted and advised by the Director of Growth and Infrastructure, Head of Delivery Cambridgeshire Guided Busway, other officers and external advisers as the Group consider necessary.

##### Authority

The BCRG will have the authority to direct any necessary legal action to secure resolution of the dispute and to enter into negotiations or mediation on behalf of the Council arising from the dispute.

The BCRG will have the authority to consider any settlement proposal made to the Council by BAM Nuttall Ltd and if, in consultation with the Leader, Cabinet Member for Growth and Planning, Cabinet Member for Resources and Performance and Chief Executive, they consider that such a settlement represents best value to the Council, taking all relevant factors into consideration, recommend the proposal to Cabinet.

The BCRG will have the authority, subject to consultation with the Leader, Cabinet Member for Growth and Planning, Cabinet Member for Resources and Performance, and Chief Executive, to reject any settlement proposal by BAM Nuttall Ltd that does not, taking all relevant factors into consideration, represent best value to the Council.

## Reporting

The BCRG will report any significant progress in resolving the dispute to Cabinet.

## Frequency of meetings.

The BCRG will meet whenever necessary to progress the resolution of the dispute. Notes will be made of all meetings and actions agreed.

## Appendix B

### Proposed Maintenance Track arrangement at Culvert 264

