

Agenda Item No: 18

CAMBRIDGESHIRE GUIDED BUSWAY (CGB)

To: **Cabinet**

Date: **29th September 2009**

From: **Executive Director, Environment Services**

Electoral division(s): **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: **Not applicable** *Key decision:* **No**

Purpose: **To consider:**

- i) A proposal from BAM Nuttall to provide a blacktop surface to the maintenance track between Milton Road and Park Lane, Histon for a lump sum.**
- ii) Deleting the Swavesey short stay car park from the BAM Nuttall CGB contract in order to mitigate the risk of financial overruns in accordance with legal advice received.**

Recommendation: **Cabinet is asked to:**

- i) Accept BAM Nuttall's proposal to provide a blacktop surface to the maintenance track between Milton Road and Park Lane, subject to satisfactory contractual arrangements being concluded.**
 - ii) Delegate to the Cabinet Member for Growth, Infrastructure and Strategic Planning final agreement on the contractual arrangements for surfacing of the maintenance track as detailed in recommendation (i) above;**
 - iii) Approve the removal of the Swavesey short stay car park from the BAM Nuttall CGB contract in order to mitigate the risk of financial overruns.**
 - iv) Agree to reconsider the provision and affordability of the short stay car park after completion of the Guided Busway.**
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PART 1 - MAINTENANCE TRACK

1 INTRODUCTION

1.1 The maintenance track alongside the busway is also a bridleway, footway and cycleway, which was originally planned to be constructed from compacted granular material. While this surface is suitable for leisure and recreational cycling, it was considered that an all weather surface would encourage more cycle commuting, particularly at the Cambridge end of the route. It was therefore decided by Cabinet in July 2006 to amend the scheme to include a blacktop surface on the maintenance track between Milton Road and Histon, and throughout the Southern Section.

2 CURRENT POSITION

- 2.1 Unfortunately it proved impossible to agree a price for this additional work with the contractor BAM Nuttall (BNL) with the result that Cabinet agreed on 16th December 2008 not to proceed and instead to arrange for one of the Council's other contractors to carry out the work once the Busway was completed and handed over by BNL.
- 2.2 The primary difficulty in agreeing a price was that BNL wished to include a considerable extension of time for the work and its consequential cost as a result of the proposed instruction. BNL have now come forward with an offer to surface the cycle track between Milton Road and Park Lane, Histon for a lump sum price without any additional delay.
- 2.3 The price supplied, £340,000, is for the work as specified previously and is within the anticipated range for this work. A separate agreement is being drawn up to ensure that there are no contractual consequences.
- 2.4 The time to do this work before 31st October (when the northern section of the busway is proposed to be handed over) is short and it is possible that the maintenance track may not be completed until after that date. In which case it will be completed during the trialling, testing and training period, which may require speed restrictions on buses to ensure the safety of the workforce. Not commencing the work until handover from BNL would certainly require such restriction during both the trailing period and into the operational period.

- 2.5 Members are therefore recommended to accept BNL's offer to carry out this work for a lump sum, subject to successfully concluding the required agreement. The cost of this is included in the overall budget for the CGB.
- 2.6 Separate funding through the Housing Growth Fund has been allocated to continue the all weather surface from Park Lane to Longstanton. Given the difficulties with pricing the other section, no price has ever been sought from BNL for this work and it remains the intention to overlay this section using the Council's Highway Services contractor once BNL handover the project. In the interim BNL are constructing the specified compacted granular surface, which will form a suitable base for overlay. For much of this section the maintenance track is not immediately adjacent to the busway, allowing the work to be done without restriction. Where restrictions are required they will be limited to outside of the peak periods.

PART 2 SWAVESEY SHORT STAY CAR PARK

3 INTRODUCTION

- 3.1 The plans for the Cambridgeshire Guided Busway include a small short stay car park and turning area near to the Swavesey stop on the Busway to allow for passengers to be dropped off and picked up, known colloquially as a 'Kiss and Ride', this is the only facility of this type on the route.
- 3.2 Regrettably, this facility has now become embroiled in a contractual dispute with the Cambridgeshire Guided Busway contractor BNL. Legal advice is that the financial risks are best managed by deleting the car park from the current contract. Once the contract is completed the provision of the car park can be reviewed taking account of the funding available at that time.

4 CURRENT POSITION

- 4.1 The CGB contract was let in July 2006 to Edmund Nuttall Ltd now BAM Nuttall Ltd (BNL). The contract protects the County Council from the risk of cost overruns and passes much of this risk to the Contractor, through a pain/gain sharing mechanism. It is now clear that the cost of constructing the Cambridgeshire Guided Busway (CGB) will exceed BNL's tender price, although the final price paid by the County Council will depend upon the pain gain mechanism (as noted above), which caps the Council's exposure to the pain share. This has led, in the Council's view, to the Contractor seeking to pass risks back to the County Council in order to reduce their potential losses. To date, the contract has proved to be robust and the contractor has been unsuccessful in passing on risks.
- 4.2 The Cambridgeshire Guided Busway contract should have been completed by BNL in February 2009. Under the contract the costs of

the delays fall to the Contractor unless they can establish that the delay is the result of actions taken by the employer, Cambridgeshire County Council.

- 4.3 During the summer of 2008, when it became apparent that BNL were likely to spend more than the tender price on constructing the busway, consideration was given to removing certain non-essential items from the project. This was to provide a greater contingency against the risk that BNL might succeed in some of their claims. This process led to a decision at Cabinet on 16th December 2008 to defer construction of the St Ives and Longstanton Park and Ride buildings until such time as there was greater cost certainty.
- 4.4 Another of the items considered in this process was the Swavesey short stay car park. This was put on hold while decisions were taken, but subsequently re-instated. However re-instating the car park has proved problematic as BNL have linked the car park to the wider delays to the contract. In short BNL's contention is that the County Council, by putting the car park on hold, have prevented them from completing the busway in accordance with the contract.
- 4.5 This is not an argument that the County Council accept in any way as it is clear that the construction of the project is substantially delayed in any case and the car park is not critical to delivery of any other part of the works. Nonetheless were BNL to succeed with this argument they would become entitled to recover some of their extra cost arising from the delay, which could be considerable, possibly amounting to many times the cost of the car park. Indeed it is likely that the Council's legal costs in such an argument would exceed the cost of the car park. The situation is, therefore, that while the risk of BNL succeeding may be small, the consequences if they do could be large.
- 4.6 Legal advice has been taken and considered on this matter.
- 4.7 A decision at this stage to instruct BNL to proceed with the car park will result in BNL claiming that the re-instatement caused massive delay to the CGB and claiming large sums in compensation for that delay. The recommendation to Cabinet is to decide to confirm the omission of the car park and to decide not to instruct BNL to proceed because these decisions will avoid the risk of the Council receiving any claims on this basis.
- 4.8 BNL have already put the Council on notice that if the Council gives the car park work to another contractor, BNL will allege that to be a serious breach of contract by the Council. This is not an option that is therefore open to us. However when the CGB is completed consideration can be given, if funds can be made available at that time, to awarding contracts to construct the works that have had to be omitted from BNL's contract in order to reduce cost.

- 4.9 Following BNL's offer to surface the maintenance track for a lump sum without contractual implications, they have been requested to consider a similar approach to the Swavesey short stay car park, but have declined to do so.
- 4.10 The local members for Swavesey and Willingham, whose constituents were expected to use the car park have been informed of the position as have the Parish Councils through the Busway Local Liaison Forum. Not surprisingly all have expressed strong concerns about the non-provision of this facility and the risks of drivers parking or turning inconsiderately near to the Swavesey stop.
- 4.11 Undoubtedly not providing the short stay car park is likely to lead to some parking on street and turning movements, although it is impossible to quantify these. It is also important to note that the lack of provision of the car park does not relieve drivers of their obligations to behave responsibly. It should also be noted that, other than the Park and Ride sites at St Ives and Longstanton, no other stops are being provided with parking or turning facilities.
- 4.12 While the local concerns must be acknowledged, it is considered that these are substantially outweighed by the financial risk to the Council.
- 4.13 Members are therefore recommended to delete the Swavesey short stay car park from the BAM Nuttall CGB contract in order to mitigate the risk of financial overruns and to reconsider the provision and affordability of the short stay car park after completion of the Guided Busway.

5 Implications

Resources and Performance

- 5.1 This report recommends the deletion of the Swavesey car park in order to mitigate a financial risk. If this decision is not taken, the potential financial impact on the Council could be significant.

5.2 Statutory Requirements and Partnership Working

There are no significant implications for any of the headings within this category.

5.3 Climate Change

There are no significant implications for any of the headings within this category.

5.4 Access and Inclusion

There are no significant implications for any of the headings within this category.

5.5 Engagement and Consultation

There are no significant implications for any of the headings within this category.

Source Documents	Location
Agenda and Minutes, Cabinet 1/3/2005, 7/2/06, 13/6/06, 11/7/06, 16/10/07, 16/12/08 Cambridgeshire Guided Busway Order	CGB Team Office, Old Police House, Shire Hall, Cambridge