

# North Somerset Council

## REPORT TO THE COUNCIL

**DATE OF MEETING: 12 NOVEMBER 2019**

**SUBJECT OF REPORT: WINTERSTOKE ROAD BRIDGE – ACCEPTANCE OF MOD FUNDING, AGREEMENT TO HEADS OF TERMS AND COMMISSIONING PLAN APPROVAL.**

**TOWN OR PARISH: WESTON-SUPER-MARE**

**OFFICER/MEMBER PRESENTING: CLLR TONKIN, EXECUTIVE MEMBER FOR PLANNING AND TRANSPORT.**

**KEY DECISION: NO**

## RECOMMENDATIONS

That the Council;

1. Accepts the Heads of Terms as attached to this report as the basis for the entry into a Memorandum of Understanding (MoU) with the Ministry of Defence (MOD) to facilitate acceptance of £10.8M initial capital funding from the MOD;
2. Agrees to increase NSC Capital Programme by £10.85m, with £10.8m funded from the MOD and £0.05m funded from the LTP programme to fund enhanced pedestrian and cycling provision adjacent to Winterstoke Road bridge.
3. Approves to proceed with the Winterstoke Road Bridge Commissioning Plan;
4. Delegate to the Executive Member for Planning and Transport with advice from the Director of Development and Environment and S151 and Head of Legal to enter in to a Memorandum of Understanding based upon the Heads of Terms.

## 1. SUMMARY OF REPORT

1.1 Winterstoke Road bridge in Weston-super-Mare is in poor condition and has been weight restricted to 7.5tonnes. This has meant diverting HGVs along other roads to access the industrial area. The bridge whilst carrying the highway is in the ownership of the MOD. The MOD have recognised the liability the bridge presents to them and would wish the council to take ownership and adopt the new bridge as part of the highway, with the bridge and the highway to be maintained at the public expense. Winterstoke Road Bridge is integral to the road network in Weston-super-Mare, as Highway Authority, the council is better placed than the MOD to manage its replacement and long-term management in the interest of highway users. Upon completion of the new bridge it is proposed the bridge would be adopted and become part of the general highway asset, which includes the road network and numerous structures that the council as the Highway Authority maintains. A commuted sum paid by the MoD would cover 120years ongoing inspection and maintenance.

1.2 The MOD has secured £10.8M in 2018/2019 to commence this process. This funding would be held by the Council for the express purpose of Winterstoke Road bridge and provides the best opportunity to date and in the foreseeable future to resolve this significant network risk.

1.3 This report seeks agreement to enter the attached Heads of Terms with the MOD as the basis for accepting the initial £10.8M capital funding from the MOD.

1.4 The report also seeks approval of the commissioning plan to help progress the necessary procurement to enable the design and delivery of the bridge and associated works to commence.

1.5 The report also notes a DfT challenge fund expression of interest which was submitted on the 31 October 2019 which covers the complete resurfacing of Winterstoke Road and Broadway.

## **2. POLICY**

2.1 This supports Core Strategy policies, including:

- CS10 Transportation and movement
- CS15 Mixed and balanced communities
- CS20 Supporting a successful economy

## **3. DETAILS**

3.1 Winterstoke Road Rail Bridge carries Winterstoke Road over the Great Western Railway mainline. Winterstoke Road is adopted highway and a significant local route within Weston-super-Mare managed by the council. The bridge is built on land owned by Network Rail and Network Rail is also the operator of the railway infrastructure beneath the bridge. The MOD is responsible for the maintenance and repair of the bridge. Network Rail acts as agent of the MOD to maintain the bridge in a good state of repair and when necessary repair the structure of the bridge, at the cost of the MOD.

3.2 The bridge has been the subject of regular inspection and assessment by Network Rail on behalf of the MOD and has been found to have significant structural problems. Because of these assessments and the Highway Authority's duty of care the bridge has recently been weight restricted to 7.5tonnes.

3.3 The bridge is coming towards the end of its design life, without replacement, further weight restrictions and full closure will be a likely outcome in the next 5-10 years. Winterstoke Road and Broadway are vital routes within Weston-super-Mare with many local businesses and communities relying on the routes to access their premises and homes, as well as previously being the emergency diversion route for the M5.

3.4 The maintenance of the bridge and highways is critical to allow the route to remain open as a key piece of infrastructure to facilitate current and future residential and commercial access and development in the surrounding locality. The scheme will also provide a far safer, high quality, consistent pedestrian and cycle route along the length of Winterstoke Road and Broadway by providing off road facilities to replace the existing substandard on-road facilities. These will link with existing facilities in the town to provide an enhanced pedestrian and cycle network.

3.5 Winterstoke Road Bridge is currently owned by the MOD. Following disposal of local estate assets, the MOD has proposed to transfer ownership of the structure to the local highway authority North Somerset Council, who are currently responsible for maintenance of the carriageway surfacing. This will ensure a transfer of the asset to an authority better placed to manage and maintain the overall asset in the interest of the highway user and local community. Network Rail are clear that as the bridge does not support their asset they are not in position to adopt the structure upon completion of the bridge replacement.

3.6 With the current 7.5t weight limit and in the event of a closure of the M5 the diversion route is through the heart of the seafront and town centre. This is unacceptable and with the diversion route needing to accommodate potentially significant volumes of traffic and large vehicles significantly impacts the council's ability to manage traffic in these key areas, has air quality and safety concerns, and restricts the council's ability to facilitate highway changes to assist town centre regeneration. It is therefore proposed to improve Winterstoke Road and Broadway build quality to better link the A370 and avoid the seafront and town centre and will provide a high-quality diversion route for the Strategic Road Network (SRN) to provide wider network resilience and benefits.

3.7 A comprehensive scheme to upgrade the linking route including Winterstoke Road bridge provides a cost-effective strategic solution to the existing network issues as opposed to a more piecemeal approach which is currently being undertaken to address immediate significant carriageway issues.

3.8 The major benefits of implementing the proposal as detailed:

- > The new bridge and highways will be fit for purpose and safe for all road users.
- > Cost effective, strategic solution to several existing maintenance and network resilience issues
- > Greater SRN resilience
- > Greater rail resilience and removal of ongoing maintenance access booking issues
- > Greater accessibility and economic activity for local communities and businesses.
- > Application of Whole Life Costing and Asset Management principles.
- > Reduced journey times and vehicle operating costs (no need to undertake long diversion when routine maintenance occurs/if weight restrictions or closures are put in place) with air quality, carbon reduction and environmental benefits.
- > Improved walking and cycling facilities linking with existing facilities on Winterstoke Road and Broadway.
- > Improved safety due to less traffic in the centre of Weston-super-Mare, particularly when the diversion route for the M5 is implemented.
- > Enhanced access for tourists helping to drive tourism economy and further increase attractiveness of Weston-super-Mare as a key tourist destination in the area.

3.9 These benefits will impact not only the immediate locality of the proposed scheme, but also the entire town of Weston-super-Mare as the scheme will deliver a new structure and highways that are fit for purpose and safe for all road users. It will also provide the foundation for preventative long-term asset management for the highways and minimise costly short-term reactive repairs. The provision of a new structure and highways will also secure the resilience of the local highway network and M5 emergency diversion route for the long-term. The scheme will also enable improvements to other features that would not normally be considered under routine maintenance such as improved pedestrian and cycle provision.

3.10 The MOD has recognised the bridge has no military value and would like the council to dedicate the replacement bridge so that the bridge becomes maintainable at the public expense. Due to the council's statutory function as highway authority, its capacity and capability in delivering, managing and maintaining complex civil highway projects and a wide highway asset base together with its corporate priorities on localism, environment, and carbon management, the council is the only organisation who can effectively manage this bridge project and future asset.

3.11 The council has been asked to adopt the replacement bridge but only following its construction to an adoptable standard, which in the case of Winterstoke Road bridge would mean full replacement. The council's management of this project would ensure the bridge meets the council's legal and statutory requirements. The MoD would also provide a commuted sum to cover inspection and maintenance of the new bridge over the next 120 years.

3.12 The MoD have been able to secure £10.8M in 2018/2019 financial year and have transferred this sum to the Council, which the Council holds in a separate account within its core bank account to the order of the MOD pending completion of the heads of terms and the MoU. The £10.8M would be added to the Council's capital programme.

3.13 Initial early feasibility work on the estimated cost of bridge replacement has indicated a cost of £15.6M (inclusive of commuted sum). Whilst the MOD has not been able to secure (in 2018/2019) the funds to meet this early cost estimate they will cover the full cost of replacement and commuted sum. This assurance is provided via the MoU. If additional capital sums are required, then once secured from the MOD approval will be sought in line with the requirements of the constitution.

3.14 The Heads of Terms provide the framework for the MoU. The Heads of Terms and the subsequent MoU address key issues such as funding and the reconstruction of the bridge, with the council obtaining all necessary consents and undertaking the procurement for the works.

3.15 The Heads of Terms and the subsequent MoU will protect the Council in that the MOD will cover in full the total cost of the bridge replacement and will cover in full the commuted sum for future maintenance and inspection of the replacement bridge, currently calculated at £2.5M over 120 years. The Council will not take on any liability whatsoever for the new bridge until it is dedicated, and forms part of the public highway maintained at the public expense. Future management and maintenance would be covered for 120 years by the commuted sum payable by the MOD and thereafter by the DfT maintenance block allocation. Both the council and MOD have representation on the proposed project board, but the council will lead on the design and delivery process to ensure the final bridge replacement meets its legal and statutory requirements.

3.16 The council will establish a project specific team and project board under the Strategic Infrastructure Board and as part of the major project's delivery framework. The team and board will form part of the formal governance arrangements with the MoD sitting on the project board.

3.17 The programme currently proposes: -

Design, development and engagement with third parties – Spring 2020 – Summer 2021  
Construction - 2022-2023

3.18 A DfT expression of interest challenge fund bid was submitted on the 31 October 2019. If successful and subject to the necessary authorities being secured, this bid will enable the resurfacing of both Winterstoke Road and Broadway. The works would be undertaken as part of and at the same time as the Winterstoke Road Bridge replacement.

### **Commissioning Plan**

3.19 As part of the scheme development a procurement workshop and high-level market engagement have been undertaken to help inform the procurement methodology. These events, in conjunction with the council's previous project delivery and chosen procurement routes, such as the use of frameworks, will help inform the detailed procurement plan, post commissioning plan sign off.

3.20 The Winterstoke Road Bridge proposal covers the removal and replacement of the bridge, provision of enhanced pedestrian and cycling facilities adjacent to the bridge, resurfacing and reconstruction of the carriageway, relocation of utility apparatus and supporting cost and project management services.

### **3.21 Contract One: Design and Construction Services**

These works will require a Civil Engineering contractor to design and deliver the physical works including the removal of the existing structure and installation of the new bridge and all associated highway works including;

- Network Rail engagement and management including entering into any necessary agreements as required to facilitate the design, development and delivery of the new bridge;
- Utility engagement and management to ensure continuity of services;
- Stakeholder management and engagement;
- Planning permissions;
- Full highway and structural design services from preliminary to detail design including securing any and all necessary approvals;

### **3.22 Contract Two: Utility re-provision**

Securing existing service provision and re-providing the utilities within the new structural fabric, services include gas, water, waste, electricity and communications.

### **3.23 Contract Three: Cost and Project Management Services**

- Cost and commercial management including cost control, cost evaluation, tender documentation, risk and value management;
- Change Management to enable full cost control and informed timely decisions;
- Project Management, Technical assurance services and quantity surveyor services throughout the project, including NEC project management and supervisor services;
- Carbon advocate, to assist the project team in developing effective leadership protocols; project communication and culture; metrics and governance; innovation and standards and commercial solutions so we can embed carbon reduction in the procurement process.

## 4. CONSULTATION

4.1 There have been regular briefings of the Executive and CMT on the issues around Winterstoke Road bridge and progress with MOD funding. Engagement with both the MOD and Network Rail are ongoing.

4.2 The introduction of the 7.5t weight limit required widespread engagement with colleagues in North Somerset waste and transport teams and more widely in the business and local communities including letter drops and on-site signing.

4.3 It is proposed that a bespoke communication strategy will be developed and implemented to ensure there is co-ordinated pro-active communication plan where the whole community can have visibility, understanding and provide feedback on both the nature of the works and programme. Regular updates will also be provided.

## 5. FINANCIAL IMPLICATIONS

### 5.1 Costs

5.2 The current feasibility cost estimate is £21.6M this includes a substantial risk sum in line with Government pricing guidance and the application of risk and bias assumptions.

5.3 As we progress through the project design lifecycle the project will have key investment decision points which will enable informed decisions to progress the scheme with a greater understanding of cost and risk.

5.4 The total estimated value of the contracts to be awarded is £14.2M and is broken down below.

Contract	Value	Term	Extension	Annual Contract Value	Procurement process commences	Contract award
Bridge and highway design and construction	£10.7M	2 yrs	1 yr	£3.6M	January 2020	May 2020
Cost & PM consultancy services	£0.9M	2 yrs	1 yr	£0.3M	January 2020	March 2020
Utility Provision	£2.6M	1yr	0yr	£2.6M	2021	January 2022

5.5 Work has been undertaken to inform, check, challenge and verify the costs which form the basis of the assessment above, which whilst only at a feasibility stage are considered robust, the assessment work has included, contractor pricing, Government pricing models to inform risk and optimism bias and benchmarking.

Whilst not directly linked to the bridge replacement the funding associated with project will be used as part of a match funding bid to the DfT for a major resurfacing project along Winterstoke road for £6.0m

## 5.6 Future procurement approval requirements:

Contract	Procurement Plan	Contract Award
Bridge and highway design and construction	Executive Member advised by Director and Head of Strategic Procurement	Executive
Cost & PM consultancy services	As above	Director advised by S151 Officer and Head of Strategic Procurement.
Utility provision	As above	Director advised by S151 Officer and Head of Strategic Procurement

## 5.7 Funding

5.8 The replacement and related commuted sum of the bridge will be fully funded by the MOD capital funding. The Council holds £10.8M on behalf of the MOD. Additional funding required will be met by the MOD in full and be subject to the appropriate council approvals.

5.9 Whilst the MOD are required to fund a replacement bridge to modern standards and requirements it is proposed that the council contribute £50K from the integrated transport block of the JLTP to fund enhancements to the footway and cycle provision adjacent to the bridge to ensure it meets the council standards for accessibility and amenity. This will be from 2020/2021 block allocation.

5.10 £400k has already been approved by the February 2019 Full Council to enable design works to commence in early 2019 in advance of an agreement between the council and the MOD being reached for the funding of the scheme. It was agreed that this would be forward funded from the LTP and repaid out of the MOD contribution.

5.11 If the DfT challenge fund bid is successful then the wider resurfacing works will be fully funded by the DfT.

## 6. LEGAL POWERS AND IMPLICATIONS

6.1 The MOD is responsible for the repair and maintenance of Winterstoke Road Bridge. The highway crossing the bridge however, is the responsibility of the Highway Authority. The council needs to ensure the highway is safe for highway users and could if necessary serve notice on the MOD to improve their asset. The Highway Authority has in December 2018 implemented a weight limit of 7.5 tonnes to address immediate concerns with the structures condition. This was done in accordance with the approved code of practice for the management of bridges.

6.2 Once the bridge is replaced to an adoptable standard and through a commuted sum it will form part of the public highway maintained at the public expense and be part of the council's highway asset.

## **7. CLIMATE CHANGE AND ENVIRONMENTAL IMPLICATIONS**

7.1 It is proposed to undertake the design, development and delivery of the bridge to align with the principals within the specification PAS2080:2016 Carbon Management in Infrastructure.

7.2 Through the supply chain procurement and project documentation it is proposed to enable;

- Leadership – to create the environment for change;
- Innovation – to be an enabler of change within the supply chain, and;
- Procurement – to provide the mechanisms that enable the supply chain to respond

7.3 PAS2080 provides a framework on all sectors and value chain members, on how to manage whole life carbon when delivering infrastructure assets, Use of the PAS will promote reduced carbon, reduced cost of infrastructure delivery and foster more collaboration across the supply chain.

7.4 For Winterstoke Road bridge the specific focus will be capital carbon which is directly associated with the creation, refurbishment and end of life treatment of an asset. However, the promotion and facilitation of wider improved pedestrian and cycle links will also assist in providing improvements and opportunities in relation to operational carbon, emissions associated with the operation of an asset.

7.5 The outcomes that can be secured from all parties working collaboratively towards a common goal of carbon reduction;

- Reduced carbon, reduced cost of infrastructure;
- Promotion of innovation delivering wider society and community benefits;
- Contribute to tackling climate change;
- More sustainable solutions providing a blueprint for future projects;
- Identification of carbon offsetting to mitigate capital carbon created.

7.6 It is proposed to appoint a carbon advocate to help the project team realise its carbon reduction ambition and provide a framework for future projects.

7.7 The project team will also be working with the suppliers on ensuring efficient supply chains, maximising the use of both sustainable materials and renewables including primary sourcing of power.

## **8. RISK MANAGEMENT**

8.1 The current feasibility budget of £21.6M has been priced in accordance with Government guidelines for a project at this very early stage of design and includes substantial risk allocation and an estimated commuted sum. The sum will be further informed as we go through the scheme design and development process. The MOD will have to pay in full the bridge replacement and commuted sum costs.

8.2 Risk management is the methodical approach to identifying, quantifying and managing risks that occur during the lifecycle of a project. The key to effectively mitigating risks is to develop a series of well-defined steps to support better decision-making through an understanding of the potential risks inherent to a scheme and their likely impact. A risk management strategy will be developed in line with HM Treasury Green Book.



### 8.3 Current key project risks

Risk	Mitigation	Rating
Insufficient budget for bridge replacement.	Current high-level estimate includes substantial risk pot. Further design work will inform using quantified risk assessment methodology so sufficient project budget is provided. MOD have agreed to meet the project cost in full.	Amber
Lack of clarity of roles and responsibilities between NSC and MOD.	Heads of terms and MoU provides a clear basis for both party's roles and responsibilities including liabilities.	Amber
Further failure during scheme development.	The 7.5t weight limit has reduced this risk and provided time for the scheme to be developed and implemented, delay may result in further restrictions having to be implemented.	Amber
Coordination and consent of Network Rail.	Early engagement essential and commenced; will need to enter into agreements early into the project's life.	Amber
Poorly specified product requirements	Engage with end users and specifiers to ensure product meets requirements which are built into contract specifications.	Amber
Poor Market Intelligence	Continue to engage with market to understand current appetite for risk and works; procurement strategy workshop with all key stakeholders to inform approach.	Amber

## 9. EQUALITY IMPLICATIONS

Have you undertaken an Equality Impact Assessment? ~~Yes~~/No

9.1 A full EQIA will be undertaken as part of the project design and development phase. The scheme proposed enhanced pedestrian and cycle facilities and linkages across and adjacent to the new bridge.

## 10. CORPORATE IMPLICATIONS

10.1 The provision of key enabling infrastructure and the improvement of the transport network widely support the Corporate Plan objectives in all areas of Prosperity and Opportunity, Health and Wellbeing and Quality Places and Sustainability by improving opportunities for walking and cycling whilst replacing a key piece of locally strategic infrastructure.

## **11. OPTIONS CONSIDERED**

### **11.1 Not enter the MoU based upon the Heads of Terms attached.**

The Heads of Terms have been scrutinised by NSC legal and its advisors and provides comfort to the council that the cost of the bridge replacement and commuted sum will be met by the MOD in full. In addition, the bridge will not become a highway asset until the replacement bridge is fully adopted and forms part of the public highway. By not entering into the Heads of Terms and a subsequent MoU would prevent the MOD transferring any funds to the council and an opportunity to progress the bridge replacement would be lost for a considerable time as there is no other funding opportunity currently available. The MOD would be left to consider its approach to this ongoing bridge risk which will take time to develop and may include further restrictions and/or closure of the highway and could involve legal action between parties which are currently collaborating on the bridge work.

### **AUTHOR**

Alex Fear, Major Scheme Project Manager.

### **APPENDICES**

Appendix 1: Heads of terms

### **BACKGROUND PAPERS**

Executive Member Briefing 23/07/18

EXE67 05/02/19

COU16 19/02/19

19/20 DE84;

PAS 2080:2016 Carbon Management in Infrastructure

DfT Challenge Fund

<https://www.gov.uk/government/publications/apply-to-the-local-highways-maintenance-challenge-fund/local-highways-maintenance-challenge-fund-guidance-for-applicants-2019>

**Ministry of Defence**  
**North Somerset Council**  
**Heads of Terms**  
**Subject to Contract**

**Ministry of Defence and North Somerset Council**

**Winterstoke Road Bridge**

**Heads of Terms**

**1 PARTIES**

- (1) Ministry of Defence ("**MoD**"); and
- (2) North Somerset Council ("**the Council**").

**2 DEFINITIONS**

2.1 The following terms have the following meanings in these heads of terms:

**"1958 Deeds"** means two deeds dated 18 December 1958 relating to the Bridge, the first being entered into between the British Transport Commission (1) and The Minister of Supply (2) and the second being entered into between The British Transport Commission (1) The Minister of Supply (2) and The Council of Somerset (3).

**"Bank Account"** a Barclays bank account held in the name of the Council with Account Number 03843343 NSDC Winterstoke Bridge Account, in which the Fund is being held pursuant to the terms of a letter dated 25 March 2019 (as amended on [ ] October 2019)

**"Bridge"** means the Winterstoke Road Bridge, which traverses the Bristol to Taunton railway line, shown for identification purposes on Plan 1.

**"Condition"** mean any approvals required from the Landowners, the Planning Condition, entering into the Network Rail Documentation and the Network Rail Operational Procedure, as the case may be.

**"Fund"** £13m paid by the MOD to the Council

**"Landowners"** means Network Rail and any relevant proximate land owners affected by the Works.

**"Network Rail Documentation"** means Basic Asset Protection Agreement, an Overbridge Agreement and any other agreements required by Network Rail in connection with the Works

**"Network Rail Operational Procedure"** means procedures and approvals of Network Rail relating to the Bristol to Taunton railway line, including the operation of trains, to enable the carry out of the Works and the safe and efficient operation of the rail network

**"New Bridge"** means a new bridge to be constructed by the Works in replacement for the Bridge

**"Planning Condition"** means the grant of a planning permission for the Works.

**"Project Board"** a project board established to monitor and oversee the Works and the significant spend for the Total Cost Works, to include representatives from both parties (decisions of the Project Board to be subsequently approved by the parties in accordance with each party's constitution and decision making powers).

**"Specification"** means the specification for the Works to be agreed between the parties.

**"Total Works Costs"** means the cost of carrying out the Works, together with:

- a) all associated and consequential costs including (without limitation) works to protect and divert existing utilities and services;
- b) all costs payable to Network Rail under the Network Rail Documentation and/or such other documents to deliver the Works required by Network Rail;
- c) railway possession costs, land acquisition costs including licence fees and costs associated with securing easements and other interests in land, including site compounds;
- d) legal, surveyor and other professional fees;
- e) planning fees;
- f) the cost of relevant procurement processes incurred by the Council in connection with the Works; and
- g) costs associated with the termination of the 1958 Deeds.

**"Works"** means the construction of the New Bridge.

### **3 RECITALS**

- 3.1 MoD is obliged to fund the maintenance and repair of the Bridge pursuant to the 1958 Deeds.
- 3.2 MoD and the Council have agreed that the Council will procure the rebuilding of the New Bridge to adoptable standards subject to the satisfaction of the Conditions.
- 3.3 The intention of the parties is that the MoD will fund the reconstruction of the New Bridge with the monies in the Bank Account.
- 3.4 The parties desire to enter into a Memorandum of Understanding and ultimately a Highways Agreement to record the terms of their agreement in accordance with these Heads of Terms

### **4 CONDITIONS**

#### **4.1 Conditionality of the Agreement**

- 4.1.1 Construction of the New Bridge will be conditional on satisfaction of the Conditions
- 4.1.2 If at any time before the Council enters into a contractual obligation to undertake the Works and prior to the satisfaction of the Conditions, the Project Board agrees that it is no longer practical or possible to satisfy the Conditions, or if the Project Board otherwise decides to abandon the project (in both instances any decision of the Project Board to be approved in accordance with each party's constitution) then the agreement will terminate without prejudice to any remedy for an antecedent breach by either party. The balance of the monies held in the Bank Account will be returned to MoD and the Council in the proportions recommended by

the Project Board (and approved by the parties) to reflect the respective contributions of the parties and reflecting (i) agreed expenditure on the project until that time; (ii) all contractual (including financial) obligations of the Council made or entered into in connection with these heads of terms and the Works Provided That at no time shall termination of the relevant agreement cause or will likely cause the Council to be in breach of any contract or contractual obligation entered into by it in connection with the Works or otherwise arising from these Heads of Terms.

## **4.2 Payment and Bank Account**

- 4.2.1 MoD has paid £13m into the Bank Account, receipt of which was acknowledged on 1 April 2019.
- 4.2.2 The Council has accounted for the sum of £2.167m of Output VAT to HMRC on this amount being the VAT tax point. Therefore, the Fund held by the Council in the Bank Account is now £10.833m.
- 4.2.3 The Council will pay £450,000 towards the project over the first 3 years (primarily for a new cycle path over the New Bridge).
- 4.2.4 If the total cost of the Total Cost Works is greater than £11.283m (£10.833m plus £450,000) the Council will notify the MoD, who shall contribute further amounts required to complete the Total Cost Works and pay all sums due under the Total Cost Works.
- 4.2.5 If the MOD contribution to cost of the Total Works Costs is less than £13m gross then the balance of funds in the Bank Account will be paid to the Council as a contribution towards the commuted sum for the ongoing maintenance of the New Bridge as below.
- 4.2.6 On or prior to the Council taking responsibility for the maintenance of the New Bridge, the MOD will pay to the Council a commuted sum to allow the Council to maintain the New Bridge in a good and proper state of repair and to protect the railway line beneath the New Bridge, such sum to be calculated in accordance with the relevant national formula required to be used for these calculations by the Council (which may be affected by the design of the New Bridge). The commuted sum will be reduced by any sum paid to the Council pursuant to clause 4.2.5.
- 4.2.7 If the cost of the Total Works Costs and the said commuted sum referred to above is less than £11.283m, then the balance of funds in the Bank Account will be returned to MoD and the Council in the proportions agreed by the Project Board (and approved by the parties) to reflect the respective contributions of the parties and the contractual commitments of the Council under the relevant agreements entered into in association with these Heads of Terms and the Works, as set out in paragraph 4.1.2 above.
- 4.2.8 The parties will establish the Project Board for the Works. The Project Board shall meet as often is required prior to the commencement of the Works and then quarterly thereafter until the Works are completed. The Project Board will be kept informed of the appointment of key consultants and the design and build contractor for the Works, significant spend from the Bank Account, critical success factors (as set out in the Procurement Plan and the Project Delivery

Handbook) the strategic overview of the Works and their progress and risk management for the project. The Project Board will endeavour to make decisions by consensus. The Project Board will operate within the framework of each parties' internal constitution and the requirements of Network Rail.

- 4.2.9 The MOD will make representations to the Project Board and be involved with deciding upon the evaluation criteria and the evaluation process for the design and build contractor (conducted in accordance with The Public Contract Regulations 2015 and the Council's contract standing orders). The evaluation criteria to be formulated to deliver the project satisfactory to Network Rail. The MOD will also be entitled to make representations in relation to significant expenditure from the Fund, but acknowledges that ultimate decision on expenditure rest with the Council
- 4.2.10 In expending monies from the Bank Account, the Council shall provide quarterly reports to MoD on an open book basis. The Council will not be required to provide the MOD with regular reports on day-to-day spend, including spend from the Fund which the Council is contractually required to pay.
- 4.2.11 The Council will prepare a Commissioning Plan for the Works and a Project Delivery Handbook to be appended to the Memorandum of Understanding. Where practical to do so, the Council will procure separate contracts for the various constituent parts of the project to reflect the necessary staggered timing of the satisfaction of the Conditions.

### **4.3 Planning Condition**

- 4.3.1 Following agreement with Network Rail on the design of the Works and the appointment of a design and build contractor, if planning permission is required for the New Bridge then the Council shall use its reasonable endeavours to procure a planning permission satisfactory to itself (as the statutory highway authority), the MoD and Network Rail as soon as reasonably practicable.
- 4.3.2 The Council shall liaise with the Landowners as appropriate in relation to the satisfaction of paragraph 4.3.1 above
- 4.3.3 The Council shall consult with MoD and Network Rail in relation to the planning application process as is reasonable in the circumstances.
- 4.3.4 The Council shall not submit any such planning application in connection with paragraph 4.3.1 above without the approval of the MoD which shall not be unreasonably withheld or delayed.

### **4.4 LANDOWNERS**

- 4.4.1 The Council shall use reasonable endeavours to procure appropriate licences and approvals from the Landowners to facilitate the Works.
- 4.4.2 The Council shall use reasonable endeavours to obtain licences from the Landowners and authorised third parties to carry out site investigations or surveys of a non-intrusive nature as are reasonably required.

- 4.4.3 The Council and MoD will enter into such Network Rail Documentation and such other agreements as may be reasonably required by Network Rail. The parties will separately agree the terms of their obligations pursuant to any such Asset Protection Agreement, Overbridge Agreement and other agreements. In agreeing terms the parties will act in a reasonable manner with the aim of ensuring the successful delivery of the project
- 4.4.4 The Council shall use reasonable endeavours to secure sufficient rights to use any additional land (either temporarily or by permanent acquisition) to be able to facilitate the Works. The costs of such acquisition are to be borne by the Fund.

## **5 NEW BRIDGE WORKS**

- 5.1 Subject to the Council issuing a notice to proceed to stage 2 (delivery of the main construction of the Works) pursuant to an early engagement design and build contract previously entered into by the Council, the Council shall procure that the Works are undertaken to an adoptable standard in accordance with the approved design and specification for the Works. The parties acknowledge and agree that Network Rail will have significant control over the timeline for issue of the stage 2 notice.
- 5.2 The budget for the Works is to be monitored by the Project Board and reviewed regularly.
- 5.3 The Council shall procure that the building contractor carries out the Works in a good and workmanlike manner, in accordance with generally acceptable construction practices, without using deleterious materials etc.
- 5.4 The Council shall procure that the building contractor obtains all consents needed for the carrying out of the Works from Network Rail. MoD will assist with this requirement as needs be.
- 5.5 The railway possession costs associated with rail disruption during the period of the Works will be taken from the Bank Account and the Council will seek using reasonable endeavours to mitigate this expense with the appropriate involvement of third parties who may also benefit from the railway possession period.
- 5.6 MoD and the Council shall jointly appoint an NEC project manager to oversee the Works.
- 5.7 £130,000 of the monies held in the Bank Account are to be allocated towards MoD consultancy fees in connection with the agreement and monitoring the Works, including legal, quantity and monitoring surveyors, and other associated specialists as specified by MoD.
- 5.8 The reasonable costs and expenses incurred by the Council in connection with the agreement, including those incurred in the delivery of the project (including procurement costs and costs incurred in connection with negotiating and completing all agreements, including the Network Rail Documentation) and monitoring the Works, professional fees (including legal costs) and costs associated with the project shall be payable from the Fund.

## **6 TERMINATION OF EASEMENT**

- 6.1 The obligation on MoD in the 1958 Deeds will come to an end upon the later of practical completion of the Works; dedication of the New bridge structure to the public or to Network Rail; or release of the



commuted sum set out in clause 4.2.5 above and the payment of the commuted sum pursuant to clause 4.2.6 above. The Council will offer such reasonable assistance to MoD as may be required to extinguish the 1958 Deeds, including liaising with Network Rail to facilitate appropriate legal documentation to achieve this. The costs associated with termination of the obligations on MoD (including the Council's costs) pursuant to the 1958 Deeds will be taken from the Bank Account

## **7 ADDITIONAL DOCUMENTATION**

- 7.1 The parties will enter into a Memorandum of Understanding to record these terms.
- 7.2 The Council and MoD will enter into any documentation reasonably required by Network Rail to facilitate the Works relating to asset protection for Network Rail including, without limitation, the Asset Protection Agreement and Overbridge Agreement referred to in clause 4.4.3 above. The fees associated with approaching the relevant Network Rail sponsor, subsequently agreeing documentation with Network Rail and the costs arising from Network Rail's requirements will be paid for out of the Bank Account.
- 7.3 The parties will co-operate with and work with Network Rail in their negotiations of the relevant documentation with Network Rail.
- 7.4 The Council will ultimately procure the appropriate form of dedication to be entered into by the Council, the Landowners and the MoD as the case may be following completion of the Works.

## **8 STATE AID**

The parties will work together to ensure that State Aid rules in connection with the project and in the procurement of the Works are adhered to.

## **9 VAT ON THE FUND**

- 9.1 All sums payable by the MOD under or pursuant to this Agreement are exclusive of VAT that may be chargeable it being acknowledged that the original Fund of £13m has been treated as a payment of £10.833m plus VAT. The MOD shall, on receipt of a valid VAT invoice, pay as an additional sum VAT in respect of any taxable supply made by the MOD under or pursuant to this agreement on the due date for making any payment or, if earlier, the date on which that supply is made for VAT purposes.
- 9.2 Each and every obligation on the MOD in connection with this Agreement to pay the Council or any person any sum by way of a refund or indemnity shall include an obligation on the MOD to pay an additional amount equal to the VAT incurred on that refund or indemnity to the Council or other person, except where the Council or other person obtains credit for such VAT under the Value Added Tax Act 1994. Any VAT credits received in relation to amounts paid by the MoD (including any refund of the Fund to the MoD) are to be paid to MoD upon receipt of the appropriate credit note by the Council

## **10 OTHER PROVISIONS**

Intellectual Property; Confidentiality; Freedom of Information; Data Protection; No partnering; Notices; Council as statutory authority; Good faith and co-operation; Entire Agreement; Non-merger; Third Party Rights

**Plan 1**



**Scheme Location Plan**