

Cheltenham Borough Council

Cabinet – 13th February 2024

M5 Junction 10 Improvements Scheme – Delegation

Approval

Accountable member:

Cabinet Member Customer & Regulatory Services, Cllr Martin Horwood

Accountable officer:

Director Communities & Economic Development, Tracey Birkinshaw

Ward(s) affected:

Swindon Village, Springbank, St. Peters, Hesters Way

Key Decision: Yes

Executive summary:

This report provides an update on the M5 Junction 10 Improvements Scheme Development Consent Order (DCO) process, which is being promoted by Gloucestershire County Council (GCC) as scheme promoter. GCC have submitted a DCO to the Secretary of State for independent examination.

Consultants AtkinsRealis are appointed jointly on behalf of the planning authorities of Cheltenham and Tewkesbury and the Highways Authority of Gloucestershire County Council (the Joint Councils) to support on the technical specialisms relating to the DCO application.

This report seeks Cabinet authorisation to delegate authority to the appropriate officer to represent the Council through the DCO process in respect of M5 Junction 10 with the support of our appointed consultants. The delegation is required to respond to what will be an ongoing and iterative process.

Recommendations: That Cabinet:

1. notes the update on the M5 Junction 10 process, and
2. delegates authority to the Director Communities & Economic Development to:

- a. **respond formally on behalf of Cheltenham Borough Council (as statutory consultee) through our appointed consultants AtkinsRealis to the DCO process in consultation with Cabinet Member Customer & Regulatory Services.**
 - b. **make representations at the DCO hearings and meetings (either directly or through Cheltenham Borough Council designated officer or through our appointed consultants AtkinsRealis) concerning the M5 Junction 10 project in accordance with the Council's responses (as statutory consultee) to the consultation.**
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1. Implications

1.1 Financial, Property and Asset implications

Due to the technical nature of the M5 Junction 10 project, Cheltenham has aligned with the local planning authority of Tewkesbury Borough and the Highways Authority of Gloucestershire County Council to engage consultants to support officers on the technical documentation. To date this has been funded through a grant from Homes England. Ongoing engagement is taking place to seek commitment for this funding through the remaining DCO process.

The consultants AtkinsRealis have been procured utilising Gloucestershire County Council agreed procurement framework. However, acknowledging that Homes England funding at the time of writing remains unconfirmed, the commitments related to this are £47,664.75 across 2023/24 and 2024/25. If the Homes England Funding is unsuccessful further review will be required and a further budget decision may be required in year.

Signed off by: Director Finance & Assets gemma.bell@cheltenham.gov.uk

1.2 Legal implications

The use of Statements of Common Ground is an integral part of the Development Consent Order process. There will be an expectation from the examining authority that the local authorities will engage in the process. The Statement of Common Ground is designed to clarify which issues are agreed and which issues remain in dispute between the promoter of the Development Consent Order and the local authorities.

As stated in the report, the Council will also need to input into the Local Impact Reports and, in addition, may be required/expected to input into other matters throughout the process including: written representations; participation at hearings, meetings and site visits; responding to written questions or requests for further information; and commenting on other interested parties representations and submissions.

The completion of the Development Consent Order examination will follow a timetable set by the examining authority which is required to meet the statutory timescale for the examination. To this end the responses by the local authorities on the Statement of Common Ground and Local Impact Reports and to other requests will need to be both flexible and timely meeting deadlines set by the examination. Local authorities are to assume that the examination timetable will not

be structured around local authority committee cycles and it therefore needs to ensure it has adequate delegations in place.

Signed off by: One Legal legalservices@onelegal.org.uk

1.3 Environmental and climate change implications

The main climate change ramifications are associated with the following objectives:

- Deliver a package of measures which is in keeping with the local environment, establishes biodiversity net gain and meets climate change requirements.
- Provide safe access to services for the local community and including for users of sustainable transport modes within and to West and North-West Cheltenham

An Environmental Impact Assessment is part of the DCO process to identify environmental impacts and identify mitigation where necessary. A framework of engagement with the Climate Team will be established to ensure as the project evolves there are mechanisms in place to deliver against the above objectives.

Signed off by: Climate Emergency Support Officer Maizy.McCann@cheltenham.gov.uk

1.4 Corporate Plan Priorities

This report contributes to the following Corporate Plan Priorities:

- Making Cheltenham the Cyber Capital of the UK
- Ensuring residents, communities and businesses benefit from Cheltenham's future growth and prosperity

1.5 Equality, Diversity and Inclusion Implications

In line with the Public Sector Equality Duty, an equality impact assessment has already been carried out on the proposed scheme

<https://www.gloucestershire.gov.uk/media/cugnp1tv/equalities-impact-assessment-tr010063-app-76-status-final.pdf>

The equality impact assessment will continue to be monitored throughout the Scheme life cycle and where necessary, updated to ensure all impacts are captured, allowing for suggesting and implementing any required mitigation.

2 Background

2.1 The DCO process is a planning procedure for dealing with proposals classed as nationally significant infrastructure projects such as the M5 Junction 10 project, which are determined by the Secretary of State (SoS) and considered by the Examining Authority. DCOs were established under the Planning Act 2008 (as amended) and involve an examination of major proposals.

2.2 The DCO process contains many areas where local authorities have a specific role to undertake and therefore their participation is expected throughout the process. Participation

is not obligatory, but it is advised as local authorities are expected to provide a local perspective of potential impacts of a submitted proposal. The local authorities in this case are Gloucestershire County Council, Tewkesbury Borough Council and ourselves.

2.3 The DCO, once confirmed, is set out as a statutory instrument and grants planning permission for the proposal.

2.4 The DCO process has six-stages:

1. Pre-application - **complete**
2. Acceptance (this is a 28 day period) - **complete**
3. Pre-examination - **live**
4. Examination
5. Decision, and
6. Post-submission

2.5 Pre application was made on 23rd October 2023; however, the Examining Authority raised a number of technical queries and as a response GCC withdrew the application. On 19th December 2023, the DCO was resubmitted with GCC providing further information in relation to the M5 diversion routes during the construction phase along with additional technical plans. On 16th January 2024 the Examining Authority accepted the application for examination and the project is now at the pre-examination stage.

2.6 Those with an interest in progress of the DCO may track this [online](#).

2.7 As we proceed through the pre-examination and examination stages there will be key documents that need to be prepared. These include (but not limited to):

Statement of Common Ground (SoCG) A draft of this is already underway. The purpose of the SoCG is to set out areas of agreement and disagreement relating to a range of issues, including technical and procedural. The SoCG will be submitted to the Examining Authority, however given the nature of the DCO process, and the continuing need to engage and update the SoCG its production will be an ongoing and iterative process.

Local Impact Reports (LIR) As part of the DCO process, the relevant local authorities are invited to submit a LIR giving details of the likely impact of the proposed development on the authority's area. This is a flexible report and may cover any topics the local authority considers is relevant to their area. It is a point of record and is not subject to public consultation. However, the submission of the LIR is set a fixed timetable with strict deadlines for submission. Timely responses are therefore required.

Written representations This is a standard part of independent examination. It is expected that the Examining Authority will set a series of questions which it will expect formal response from the local authorities on. In addition, as the examination commences further questions and queries may well arise and again responses will be required. Written representations will be set within a fixed timetable with strict deadlines for submission. Timely responses are therefore required.

Technical evidence/advice As the examination unfolds, there may be a series of requests

for evidence and advice which cannot be pre-determined at this stage. The Examining Authority will expect the relevant local authorities to be as helpful as possible in responding to these requests to support the DCO process, again within a timetable set by the DCO process and examination.

2.8 The Examination is predominantly a written process, based upon the relevant and written representations of interested parties and the written responses to questions asked by the Examining Authority. Written submissions will be the main type of evidence which the Secretary of State will take into account when making a decision.

2.9 Written evidence is an important part of the Examination and it is essential that we make any points we wish to make in writing, within the deadlines that will be set by the Examining Authority during the Examination. The deadlines will be very short, and often we will need to provide responses to questions or comments on the submissions of interested parties within days of first seeing them.

2.10 The Examining Authority will also set Hearings at intervals throughout Examination. These will be reserved for the discussion of key issues. The Joint Councils may wish to or may be instructed by the Examining Authority to appear at Hearings to make the Joint Councils case. Technical Experts may be called upon to attend hearings if necessary.

2.11 The following table sets out key dates. These dates are set by the Examining Authority. They are liable to change; however, the Joint Councils have no powers to make changes to the deadlines.

Deadline	Estimated J10 Date (assume Exam start 16/04/24)	Joint Councils Deliverables
1	14 May 24	<ul style="list-style-type: none"> Written Representations Local Impact Report Statement of Common Ground Written Responses to Examining Authority Questions Responses to Interested Party’s Relevant Representations
2	31 May 24	<ul style="list-style-type: none"> Comments on the submissions of Interested Parties at Deadline 1 Statement of Common Ground Further information requested by Examining Authority
	w/c 03 June 24	<ul style="list-style-type: none"> Issue Specific Hearings and Open Floor Hearings
3	20 June 24	<ul style="list-style-type: none"> Comments on the submissions of Interested Parties at Deadline 2 Statement of Common Ground Further information requested by Examining Authority

4	03 July 24	<ul style="list-style-type: none"> • Comments on the submissions of Interested Parties at Deadline 3 • Statement of Common Ground • Further information requested by Examining Authority
	w/c 15 July 24	<ul style="list-style-type: none"> • Issue Specific Hearing, • Compulsory Acquisition Hearing
5	31 July 24	<ul style="list-style-type: none"> • Comments on the submissions of Interested Parties at Deadline 4 • Statement of Common Ground • Further information requested by Examining Authority
6	21 August 24	<ul style="list-style-type: none"> • Written Responses to Examining Authority Questions • Comments on the submissions of Interested Parties at Deadline 5 • Statement of Common Ground • Further information requested by Examining Authority
7	02 Sept 24	<ul style="list-style-type: none"> • Comments on the submissions of Interested Parties at Deadline 6 • Further information requested by Examining Authority
8	20 Sept 24	<ul style="list-style-type: none"> • Comments on the submissions of Interested Parties at Deadline 7 • Comments on Examining Authority proposed changes to the DCO, • Comments on RIES • Statement of Common Ground • Further information requested by Examining Authority
9	11 October 24	<ul style="list-style-type: none"> • Comments on the submissions of Interested Parties at Deadline 8 • Final Statement of Common Ground • Further information requested by Examining Authority

3 Reasons for recommendations

3.1 Due to timing requests which will be set by the Examining Authority in examining the DCO, it is not possible to bring reports to Cabinet due to the required lead in times of reports and the set times of the forward plan. In delivering an efficient and effective examination, the Examining Authority require prompt responses within prescribed time limits.

3.2 By authorising officers, supported by appropriate consultancy support with relevant knowledge and experience, this will ensure that the Council responds to the DCO application

in a timely manner. Responses to the DCO will be discussed with the Lead Cabinet Member prior to submission.

3.3 Authorising officers to respond to the DCO application on the Council's behalf will ensure that there is a clear audit trail in respect of the decision-making process.

4 Alternative options considered

4.1 N/A

5 Consultation and feedback

5.1 Engagement with Cabinet Member Customer & Regulatory Services

6 Key risks

6.1 See Appendix 1.

Report author:

Director Communities & Economic Development tracey.birkinshaw@cheltenham.gov.uk

Appendices:

i. Risk Assessment

Background information:

N/A

Appendix 1: Risk Assessment

Risk ref	Risk description	Risk owner	Impact score (1-5)	Likelihood score (1-5)	Initial raw risk score (1 - 25)	Risk response	Controls / Mitigating actions	Control / Action owner	Deadline for controls/ actions
N/A	If the council does not have a satisfactory approach to responding in a timely manner to the M5 Junction 10 Improvements Scheme Development Consent Order process, then any representations made by the Council may not be accepted and taken in account by the Examining Authority.	Director Communities & Economic Development	2	1	2	Avoid – by delegating authority	Decision to delegate authority to appropriate officer by Cabinet	Director Communities & Economic Development	Cabinet meeting - decision
N/A	If Homes England funding is not confirmed for 2024/25 and 2025/26, then the Council will not have the committed funding to fulfill its responsibilities as a statutory authority	Director Communities & Economic Development	3	3	9	Mitigate – by keeping budget position under review alongside ongoing engagement with Homes England	Ongoing engagement with Homes England. If funding is not secured successfully either in part or in full then a further in year budget decision may be required	Director Communities & Economic Development Director of Finance & Assets	March 2024