

		Insert name and date of meeting in this box.	Agenda Item No. <h1>10</h1>
Title		Use of Emergency Powers for the second appeal against the judicial review on HS2	
For further information about this report please contact		Chris Elliot Deputy Chief Executive 01926 456830 chris.elliott@warwickdc.gov.uk Alex Metcalfe Sustainability & Climate Change Officer/HS2 Coordinator 01926 456721 alex.metcalfe@warwickdc.gov.uk	
Wards of the District directly affected		Kenilworth Abbey, Park Hill, Stoneleigh, Cubbington and Radford Semele.	
Is the report private and confidential and not for publication by virtue of a paragraph of schedule 12A of the Local Government Act 1972, following the Local Government (Access to Information) (Variation) Order 2006?		No	
Date and meeting when issue was last considered and relevant minute number		n/a	
Background Papers		HS2 Update Tony Ward - Development Services Report to Executive Committee 17TH April 2013 Agenda Item No.10	
Contrary to the policy framework:			No
Contrary to the budgetary framework:			No
Key Decision?			No
Included within the Forward Plan? (If yes include reference number)			No
Equality & Sustainability Impact Assessment Undertaken			n/a
Officer/Councillor Approval			
Officer Approval	Date	Name	
Chief Executive/Deputy Chief Executive	30/08/13	Chris Elliot	
Head of Service	30/08/13	Tracy Darke	
CMT	30/08/13	Chris Elliott, Andrew Jones, Bill Hunt	
Section 151 Officer	30/08/13	Mike Snow	
Monitoring Officer	30/08/13	Andrew Jones	
Portfolio Holder(s)	30/08/13		
Consultation & Community Engagement			
Members were consulted via email regarding the Supreme Court Appeal.			
Final Decision?			Yes
Suggested next steps (if not final decision please set out below)			

1. **SUMMARY**

- 1.1 The purpose of this report is to advise Executive of the use of the Chief Executive's power under paragraph CE(4) of the Scheme of Delegation (the power to deal with urgent items between meetings) to agree to:
- (a) the District Council joining an appeal to the Supreme Court against the refusal of judicial review in respect of HS2 in the Court of Appeal; and
 - (b) a capped contribution of £20,000 towards the cost of that appeal drawing (in the first instance) on the previously allocated funds agreed by the Executive on 17th April 2013.

2. **RECOMMENDATIONS**

- 2.1 That Executive notes the Chief Executive's use of his delegated powers to join the District Council as a party to an appeal to the Supreme Court concerning judicial review of the HS2 proposals and to offer a capped contribution of £20,000 towards the costs.
- 2.2 That Executive endorses the allocation of any unused balance of the allocations from the Planning Reserve made in April 2013 for costs in the High Court and the Court of Appeal to meet costs in the Supreme Court.

3. **REASONS FOR THE RECOMMENDATIONS**

- 3.1 The District Council resolved in 2010 to work with 51M group, a consortium of local authorities opposed to the HS2 Proposals. 51M co-ordinates specific actions to oppose HS2 in principle, most notably a judicial review of the decision to promote a Hybrid Bill in Parliament to authorise the implementation of HS2, as well as actions relating to the practical detail of the HS2 proposals such as responses to the Environmental Statement. Support for 51M included an initial contribution of £100,000 towards its costs.
- 3.2 The Courts cannot order the Government to abandon HS2. However, judicial review offers the following potential benefits:
- to force the Government to publish better information and analysis to inform public debate and improve public engagement
 - to require the Government to base its decisions on adequate evidence and consultation
 - to enhance the Parliamentary process to allow for public participation and proper consideration of the principle as well as the detail of HS2
 - to win time for more considered decisions to be made at the national level.

It should be noted that, by applying pressure to the Government, judicial review can achieve the first three of these benefits even if the Court eventually rules in favour of the Government. By way of example, the Government made concessions relating to Parliamentary procedure during the course of the Court of Appeal hearing.

- 3.3 The local authorities' claim for judicial review was heard in the High Court in December 2012, alongside claims from other interested parties including an alliance of residents' action groups called HS2AA. In March 2013, the Judge

gave judgment rejecting all the claims except for one ground which criticised the consultation and decision-making in relation to blight compensation arrangements.

3.4 In April, Executive agreed that the District Council should join an appeal and made financial provision for this and for other work relating to HS2. The local authorities and HS2AA appealed to the Court of Appeal, which again rejected the claims in late July. However, there was strong dissenting judgment from one of the three Judges and, recognising that two of the grounds were both important and arguable, the Court granted leave to appeal to the Supreme Court to the local authorities and to HS2AA.

3.5 The two grounds of appeal are that:

- (i) the Secretary of State should have carried out a Strategic Environmental Assessment before deciding to proceed with the Hybrid Bill; and
- (ii) Parliamentary procedures do not satisfy the public participation requirements of the rules on Environmental Impact Assessment.

3.6 The Government plans to submit the Hybrid Bill to Parliament at the end of this year. Therefore, the Supreme Court decided to expedite the hearing of the appeals and set aside 15th and 16th October. In consequence, the local authorities were asked to decide whether they would join an appeal by Friday 9th August and it became necessary for the Chief Executive to make an urgent decision.

3.7 The Chief Executive based his decision on:

- consistency with the policy stance and strategy previously endorsed by Members
- what is at stake socially, economically and environmentally
- the potential benefits offered by an appeal as described in paragraph 3.2
- the possibility of reducing the liability for costs in the High Court and the Court of Appeal
- the likelihood of achieving those benefits (based on legal advice)
- the estimated cost of an appeal if it is unsuccessful.

3.8 The total estimated cost if the appeal is unsuccessful, including an order to pay the Government's costs, is up to £115,000 shared between the contributing authorities. Having regard to the pledges being made by the other local authorities who supported an appeal, there was an expectation that, if the District Council did make a financial contribution, it would be a capped contribution of £20,000. After consulting Group Leaders, Councillor Hammon and Councillor Illingworth, as well as relevant officers, the Chief Executive confirmed that the District Council would be a party to an appeal and would offer a capped contribution of £20,000.

3.9 The other local authorities made the following decisions:

Joining the appeal and contributing financially:

Camden, Chiltern, Hillingdon, North Warwickshire, Warwick and Warwickshire. Hillingdon have not capped their contribution but the other authorities have each offered a capped contribution of £20,000.

Joining the appeal but not contributing financially:

Cherwell, Lichfield, South Northamptonshire and Three Rivers.

Not joining the appeal but still members of 51M:

Aylesbury Vale, Buckinghamshire, South Buckinghamshire, Stratford and Wycombe.

4. POLICY FRAMEWORK

- 4.1 Full Council and Executive have endorsed a strategy which includes legal action but they did not make a decision whether to pursue this strategy as far as the Supreme Court.
- 4.3 The Council's position opposing the implementation of the HS2 proposal is consistent with its overall vision and purpose to help make the District a great place to live, work and visit, as set out in the Sustainable Community Strategy.

5. BUDGETARY FRAMEWORK

- 5.1 The financial administration of 51M is carried out by Buckinghamshire County Council and full and final information is not yet available on the costs of the judicial review to the District Council. In addition, the Government has not yet submitted claims for its costs in either the High Court or the Court of Appeal so these can only be estimated.
- 5.2 If the appeal to the Supreme Court is successful, the local authorities should recover all or part of their costs in the Supreme Court and reduce their liabilities for proceedings in the lower courts (although the bulk of the costs will be unaffected). However, it is necessary to budget on a reasonable worst case scenario and the following paragraphs assume that the appeal is unsuccessful and the Government is awarded all its relevant costs.
- 5.3 At its meeting in April, Executive was informed that the initial £100,000 contribution to 51M had been exhausted and it made the following additional budgetary provision for HS2 out of the Planning Reserve:
 - £40,000 for remaining costs in the High Court
 - £30,000 for costs in the Court of Appeal
 - £30,000 for continuing HS2 work other than the judicial review.
- 5.4 With respect to the High Court costs, the amount invoiced by Buckinghamshire so far has been £11,344 and another £20,000 should be earmarked to meet the Government's costs. This leaves nearly £9,000 unused.
- 5.5 With respect to the Court of Appeal costs, Buckinghamshire expect to invoice shortly for £12,304. Taking into account the Government's costs, the District Council's share of the final bill may be as low as £20,000. This would leave an unused balance of £10,000, bringing the total available from the High Court and the Court of Appeal allocations to £19,000. However, it is also possible that the final share will be greater and this would reduce the balance available.

- 5.6 Even if the appeal to the Supreme Court is unsuccessful, the District Council's share of the final bill may be less than the capped contribution of £20,000 which it has offered and there may be as much as £19,000 available from the allocations for the High Court and Court of Appeal. Therefore, at this stage, it is a sufficient budgetary provision to make any unused balance of those allocations available to meet any costs in the Supreme Court. However, a further report will be brought once the financial position has become clearer and when it is known whether any additional provision needs to be made.
- 5.7 At present, £30,000 has been allocated for all future work in relation to HS2 other than the judicial review. Assuming that the Hybrid Bill proceeds, this may not prove sufficient to ensure that the interests of the District Council are adequately represented before the Parliamentary Select Committee when it considers matters such as mitigation. The possibility of combining with other authorities for the joint instruction of parliamentary agents is being explored and a further report can propose arrangements and assess the likely costs.

6. ALTERNATIVE OPTION(S) CONSIDERED

- 6.1 It would have been possible to decide that the uncertainty and cost of an appeal to both central and local Government was not justified. However, this would have departed from the broad direction of the policy and strategy set by elected Members and, having regard to the considerations set out in paragraphs 3.2 and 5.1 of this report, the Chief Executive considered that an appeal represented a proper use of public money and time.
- 6.2 Even having reached this conclusion, it would have been possible to leave it to the other parties to bear all the burden of an appeal. However, the District Council has committed itself to joint working through 51M and this has enabled its member authorities be more effective and cost-effective and to maintain a unified and thoroughly well-resourced and informed examination of all aspects of the plans for implementing HS2. Therefore, it was considered that the District Council should continue to give financial support to what was considered the right course of action in the public interest. However, with the Hybrid Bill presently scheduled to start at the end of this year, and an expedited Supreme Court hearing scheduled for October, it would be appropriate in the Autumn for the District Council to review its policy and strategy generally in relation to HS2 in light of the implications for its financial resources and any other relevant matters.