NORTH SOMERSET COUNCIL DECISION

DECISION OF: COUNCILLOR JAMES TONKIN THE EXECUTIVE MEMBER FOR PLANNING, BUILDING CONTROL, HIGHWAYS AND TRANSPORT IN CONSULTATION WITH THE EXECUTIVE MEMBER FOR FINANCE AND PERFORMANCE

WITH ADVICE FROM: THE DIRECTOR OF DEVELOPMENT AND ENVIRONMENT IN CONSULTATION WITH THE INTERIM HEAD OF FINANCE AND THE HEAD OF LEGAL AND DEMOCRATIC SERVICES

DECISION NO: 19/20 DE 134

SUBJECT: MetroWest Phase 1 – Promotion Agreement with Network Rail

KEY DECISION: Yes

REASON: The decision relates to expenditure above £500,000 and affects more than one ward.

BACKGROUND:
The background to this decision is set out in the report to Council on 25th June 2019: MetroWest Phase 1 Submission of Development Consent Order Application and Associated Approvals and a report to the Council on 19th February 2019 MetroWest Phase 1 Progress on the Submission of Development Consent Order Application and Associated Approvals.

DECISION:
To finalise and enter into a Promotion Agreement with Network Rail to formalise joint working arrangements and share of risks and liabilities for taking the project through the Development Consent Order process, culminating with a decision by the Secretary of State.

REASONS:
The report to Council on 25th June 2019, set out in detail the scope of the powers sought through the DCO application, estimates timescales and costs and draft details of the Promotion Agreement with Network Rail.

All the report recommendations were agreed by the Council. This decision relates to recommendation 3a) of the report, the whole of recommendation 3 stated:

3. *Authorise the Executive Member for Planning and Transport, in consultation with the Executive Member for Finance and Performance to:*

a) *finalise and complete the Promotion Agreement with Network Rail for the joint working arrangements for taking the project through the Development Consent Order process, as outlined in section 13 of this report,*

b) *approve further addendums of the Development Services Agreement with Network Rail, to progress the procurement of GRIP 5 to 8, to undertake GRIP 5 detailed design and to provide technical support through the DCO process, and*

c) *note the estimated cost of a) and b) above has been included within the project budget for 2019/20 (£4.491M) and 2020/21 (£7.159M), agreed by the Council on 12th February 2019.*

Separate Initial Promotion Agreement with WECA
The WoE Joint Committee agreed some changes to the project governance in November 2018 such that WECA became joint promoter of the project (on behalf of Bath & North East Somerset, Bristol City and South Gloucestershire Councils). This now means that WECA and North Somerset Council are joint promoters of MetroWest Phase 1 and each party has a 50% share of the project risks and liabilities up to the current budget allocation of £116M. It is also the working proposal, but subject to further decision making, that any risks and liabilities arising beyond the current budget allocation will also be shared 50/50. These changes to the project governance are formalised in an agreement (Initial Promotion Agreement version 3) between the Council and WECA. See Decision Notice 19/20 DE 133, for further details.

Why a Promotion Agreement is Needed with Network Rail
Network Rail have responsibility for the operation, maintenance and renewal of infrastructure for the existing national railway network. Under regulatory governance overseen by the Office of Rail and Road and the Department for Transport, Network Rail do not have any responsibility to fund and implement proposals to extend the national network (or re-open closed sections of railway) outside the existing national network. Any proposals to extend the national network (or to re-open closed sections of railway) are treated as 'third party' proposals and the principal risks of implementing the proposals have to be met by the third party. The railway infrastructure delivered by the project will be transferred to Network Rail upon completion and Network Rail will own, operate and maintain the Portishead Line. Consequently, MetroWest Phase 1 is defined as a third party railway project and the principal risks of delivering the project lie with the Council and WECA as co-promoters.

WECA is leading on Phase 1A (the Severn Beach and Bath/Westbury Line) and the Council is leading on Phase 1B (the Portishead Line). The purpose of the Promotion Agreement is to formalise joint working arrangements between the Council and Network Rail including the share of risks and liabilities for taking Phase 1B (the Portishead Line) the project through the Development Consent Order process, culminating with a decision by the Secretary of State.

Details of the Promotion Agreement with Network Rail
A draft Promotion Agreement was appended to the report to Council on 25th June 2019. Since the 25th June Council meeting the technical work on the DCO application has progressed and final version of the Promotion Agreement has been concluded between North Somerset Council officers and Network Rail. The Promotion Agreement will be supplemental to the existing commercial agreement with Network Rail (the Development

Services Agreement). The Promotion Agreement covers the joint working arrangements in respect of:

- Governance and project management through a DCO approvals programme,
- Completion of the DCO application documents,
- Preparation for the DCO examination in public,
- Protective provision in respect of public utilities,
- Use of permitted development rights, where applicable,
- DCO powers and the transfer of powers,
- Amendments to the DCO,
- Future agreements or undertakings,
- Noise mitigation measure,
- Process of securing agreement between the parties,
- Land and property matters,
- Dis-charge of environmental obligations,
- Payment for acquisition of land and compensation,
- Land vesting,
- Future project agreements,
- Statutory requirements,
- Publicity and media.

It is now necessary to enter into the Promotion Agreement before the DCO application can be submitted. When the Promotion Agreement has been signed, Network Rail will then be in a position to issue a letter of no objection in relation to the DCO application documentation.

OPTIONS CONSIDERED:
Refer to the 25th June 2019 report to Council, for details of the options considered.

FINANCIAL IMPLICATIONS:

Costs
The estimated capital out-turn cost of the project is £116.4M, as set out in detail in the project Outline Business Case in December 2017, of which £16.167M has been spent to date, up to the end of 2018-19 financial year. The estimated cost of proceeding with the DCO application, including the cost of an examination in public in parallel with proceeding with GRIP 5 and other technical work during 2019-20 is £4.491M. Refer to the 25th June 2019 report to Council, for further details of the estimated costs.

Funding
The estimated cost of £4.491M for 2019-20 has been approved by Full Council and added into the capital programme for 2019-20. This is to be funded from Local Growth Funding approved by the WoE Joint Committee on 19th July 2019.

The project budget sources are set out in the table below.

Funding Source	Total Funding Secured	Spend to date up to 2018-19
Local Growth Funding (Prep Costs Award 2015)	£8,846,000	£8,846,000
Local Growth Funding (Prep Costs Award 2018)	£1,700,000	£1,700,000
Local Growth Funding (Prep Costs Award 2019)	£500,000	£50,000
Local Growth Funding (Devolved Major Project)	£16,274,430	£0
Total Local Growth Funding	**£27,320,430**	**£10,596,000**
Economic Development Funding (Swapped with LGF)	£26,079,000	£0
Contributions to date by four Councils	£4,413,000	£4,413,000
NSC additional contribution Dec 17	£5,860,000	£1,158,506
WECA contribution Dec 17	£5,860,000	£0
NSC additional contribution	£15,000,000	£0
DfT Contribution via CP6 Rail Network Enhancements Pipeline	£31,900,000	£0
Total	**£116,432,430**	**£16,167,506**

Refer to the 25th June 2019 report to Council, for further details of the estimated costs.

LEGAL POWERS AND IMPLICATIONS
Refer to the 25th June 2019 report to Council, for details of the legal powers and implications.

CLIMATE CHANGE AND ENVIRONMENTAL IMPLICATIONS
MetroWest Phase 1 requires an Environmental Statement to support the Development Consent Order (DCO) application. Climate change and environmental impactions have been assessed in the Environmental Statement, which is currently being finalised. The Environmental Statement will be published along with all the DCO application documents on the Planning Inspectorates DCO website:
https://infrastructure.planninginspectorate.gov.uk/ after the application has been submitted.
Also refer to the report to Council on 19th February 2019 and the report to Council on 25th June 2019, for further details.

CONSULTATION
Refer to the 25th June 2019 report to Council, for details of the extensive formal and informal consultation and engagement undertaken by the project team.

RISK MANAGEMENT
Refer to the 25th June 2019 report to Council, for details of the risk management arrangements.

EQUALITY IMPLICATIONS
Have you undertaken an Equality Impact Assessment? Yes
Refer to the 25th June 2019 report to Council, for details of the Equality Impact Assessment.

CORPORATE IMPLICATIONS
Refer to the 25th June 2019 report to Council, for details of the Corporate Implications.

APPENDICES
None

BACKGROUND PAPERS
Report to Council on 25th June 2019: MetroWest Phase 1 Submission of Development Consent Order Application and Associated Approvals and
Report to Council 19th February 2019 MetroWest Phase 1 Progress on the Submission of the Development Consent Order Application and Associated Approvals
Draft Promotion Agreement with Network Rail

SIGNATORIES: All signatories to this decision sheet, apart from Cllr Tonkin and the Interim Head of Finance, who have already signed the decision sheet, have agreed to the decision set out in Decision DE13 being taken.

DECISION MAKER:

Signed: ..... Executive Member for Planning, Building Control, Highways and Transport

Date: 6TH NOV 2019

Consultee:

Signed: ..... Executive Member for Finance & Performance

Date: 20/11/19

With advice from:

Signed: ..... Director of Development & Environment

Date: 7/11/19 in confirmation of my earlier affirmation by telephone of my support for this decision.

Signed: ..... Interim Head of Finance

Date: 6/11/19

Signed: ..... Head of Legal & Democratic Services

Date: 7.11.2019 in confirmation of my earlier email affirmation of advice + support for the decision.