



Cabinet report

Date **14 OCTOBER 2021**

Title **FLOATING BRIDGE 6 UPDATE REPORT**

Report of **CABINET MEMBER FOR HIGHWAYS PFI, TRANSPORT AND INFRASTRUCTURE**

EXECUTIVE SUMMARY

1. This report provides an update on the issues being faced by Floating Bridge (FB6) including the legal case which is being pursued against the naval architect and the boat builder.
2. The report also sets out the case for commissioning an independent Cabinet Office Gateway 5 Review to determine whether FB6 vessel is fit for purpose in relation to the original specification, operating requirements and achieving wider outcomes. This accords with a formal request for the council to carry out an independent review by the Solent Local Enterprise Partnership (SLEP), the main funding partner for FB6.

RECOMMENDATION

3. Cabinet is asked to note the following:
 1. The continuation of the legal mediation process to be concluded by December of this year.
 2. The commissioning of an independent 'Gateway Review' to be undertaken by an appropriately qualified technical organisation which is independent of the development and submission of the business cases for the floating bridge project.
4. Cabinet is asked to approve: -
 3. To provide a further report to Cabinet in early 2022 upon the completion of Gateway 5 review and the conclusion of the legal mediation process.

Following the conclusion of the Legal mediation and the completion of the Gateway 5 review, this report would make recommendations for further actions in respect of the floating bridge, in terms of the existing FB6 vessel.

BACKGROUND

5. The sixth floating bridge (FB6), a chain operated ferry, has now been in service for over 4 years, commencing service on 13 May 2017. The current position of FB6 is well documented and councillors will be aware of the issues that have been experienced since it started in service. A full account and background to this together with the history of problems encountered was set out in the Scrutiny reports dated 6 October 2020 and 9 March 2021, which form appendix 1 and to the report.

Legal action

6. The Council continues to be involved in a legal action against both the naval architects and the boat builders to seek recompense for the poor performance of the vessel and other associated costs. As with all legal disputes of a technical and specialist nature it takes a considerable time to prepare the necessary evidence the council requires to be successful in progressing its case.
7. An agreement has been reached between the three parties to seek to settle this dispute through mediation in an effort to avoid lengthy and costly court proceedings. Although mediation is not mandatory, in cases of this sort, mediation has a good prospect of narrowing the issues in dispute or resolving them entirely and a court may take the view that a failure to mediate was unreasonable and impose sanctions in terms of costs.
8. Whilst the legal advice is to proceed to mediation, Cabinet could take the view that they wish to proceed straight to court proceedings. This option would be likely to add considerable delay to any resolution and result in the continuation of FB6 for the duration of the legal case. By way of illustration, even if a trial in the court proceedings were concluded in the council's favour, the council could expect up to two years to have elapsed in reaching that stage.
9. Given the above factors it is therefore proposed that the council continue to pursue a mediated settlement in the first instance.

Gateway review

10. There have been significant concerns expressed by the local community and other stakeholders regarding the current floating bridge due to the level of disruption caused by excessive downtime since 2017.
11. The main funding partner for FB6, the Solent Local Enterprise Partnership (SLEP), have requested that the council carries out an independent review in order to be satisfied that the current vessel is delivering the outcomes set out in the business case for FB6. The aim of the review is to assist the council in taking the best possible decisions to resolve the ongoing remaining issues of the floating bridge and achieve the required performance levels in the future.
12. A Cabinet Office Gateway 5 review will be undertaken by an appropriately qualified technical organisation with the relevant accreditation for this purpose which is independent of the development and submission of the business cases for the floating bridge. The independent review will reflect best practice and therefore follow the structure as defined by HM Government and as set out in the "Gate Review 5: Operations Review and Benefits Realisation" document which can be viewed in the following website: -

13. The SLEP have requested that the Gateway 5 Review and associated report is completed by December of this year. The commissioning and completion of the independent Gateway review will have no impact on the continuing legal case.
14. Work has already commenced to procure a suitably qualified and experienced supplier to ensure that the necessary work is completed by the end of November 2021.

Future actions

15. The Gateway 5 review process will inform any further decisions including, if appropriate, a list of further actions required to be taken to the current FB6 vessel, or the production of a suitable business case for any replacement vessel. Any proposals for a replacement vessel would also require extensive consultation with current users of the vessel and local stakeholders before any final designs were implemented.
16. As indicated above, it is intended to complete the mediation process by the end of the year. However, a legal route, beyond mediation could take a further 18 - 24 months. Any resulting alternative vessel could take a further four years to commission and build. Therefore, any option chosen would still require the existing FB6 to remain in service and be fit for purpose for that period.
17. It is proposed that a further report is presented to Cabinet, following the completion of the Gateway 5 Review and the mediation process, which will recommend more detailed options for the future of the existing FB6 or whether considerations need to be made for an alternative.

STRATEGIC CONTEXT

18. The continuation of a cross-Medina service between East Cowes and Cowes contributes to the council's priority as set out in the Corporate Plan of growing the economy and tourism.
19. The new floating bridge was commissioned with significant financial support from the Solent LEP as part of a wider regeneration support package for the Island.
20. The floating bridge is a discretionary service that the council has no legal obligation to provide. The council's medium-term budget strategy identifies the financial pressures facing the council in meeting its statutory responsibilities. Therefore, where the council chooses to provide discretionary services this should be at either a limited or no additional cost to the council.

CONSULTATION

21. Consultation will need to take place with key stakeholders in addition to legal support and advice when decisions are being taken on the future of the floating bridge service. Ongoing discussion and updates to the respective town and parish councils and users will continue. The views of the funding partner the Solent Local Enterprise Partnership (SLEP) will also be sought at appropriate junctures.

FINANCIAL / BUDGET IMPLICATIONS

22. There will be as yet undetermined legal costs associated with mediation and significantly higher costs if the council were to pursue the case through the courts.
23. The cost of the Gateway 5 Review is estimated to be around £10,000 - £15,000 and will be funded from within the existing budget.

CARBON EMISSIONS

24. Last year the Council resolved to acknowledge and declare a climate emergency (July 2019), with the aim of achieving net zero carbon emissions on the Island by 2030. The implementation of FB6 had a positive impact on the council's Carbon emissions through the replacement of old inefficient engines and plant with modern energy efficient equipment. The vessel also offers fuel emission savings from those vehicles using the bridge rather than the alternative road journey via Newport.

LEGAL IMPLICATIONS

25. The Council (as successor to the Isle of Wight County Council) acquired the floating bridge on 31 March 1972 under the Ferries (Acquisition by Local Authorities) Act 1919 and provides the service between East Cowes and Cowes pursuant to that Act. The council may charge such tolls as it determines.
26. The legal implications are outlined for the different options suggested above.

EQUALITY AND DIVERSITY

27. The council as a public body is required to meet its statutory obligations under the Equality Act 2010 to have due regard to eliminate unlawful discrimination, promote equal opportunities between people from different groups and to foster good relations between people who share a protected characteristic and people who do not share it. The protected characteristics are: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
28. The proposal in this report has no direct impact on those with protected characteristics; however, the continuation of a link between East Cowes and Cowes will be important to ensure family links are maintained, that young people are able to easily access education provision and that carers can reach their family members and clients in a timely manner.

OPTIONS

29. The following options have been identified: -
 1. The continuation of the legal mediation process to be concluded by December of this year.
 2. The commissioning of an independent 'Gateway Review' to be undertaken by an appropriately qualified technical organisation which is independent of the development and submission of the business cases for the floating bridge project.

3. To provide a further report to Cabinet in early 2022 upon the completion of Gateway 5 review and the conclusion of the legal mediation process.

Following the conclusion of the Legal mediation and the completion of the Gateway 5 review, this report would make recommendations for further actions in respect of the floating bridge, in terms of the existing FB6 vessel or consideration of an alternative crossing.

RISK MANAGEMENT

30. The risks to the legal process are considerable and as yet undetermined. The authority will need to consider whether it is prepared to accept a financial outcome of mediation or to continue to court proceedings.

EVALUATION

31. This must set out clearly why one or more options are being recommended and others are not. In almost every case, the assessment will be how well the option contributes to the objective, how cost effective and affordable the option is and what risks are associated with the option.

APPENDICES ATTACHED

32. Appendix 1 - Scrutiny report – October 2020

Appendix 2 - Scrutiny report – February 2021

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