

# **CARDIFF COUNCIL CYNGOR CAERDYDD**

## **CABINET MEETING: March 2024**

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### **CrossRail Phase 1 Tender**

### **PLANNING, TRANSPORT & HIGHWAYS (CLLR DAN DE'ATH) AGENDA ITEM:**

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#### **Reason for this Report**

1. Cabinet authority to launch an Early Contractor Involvement (ECI) 2 Stage Tender for Phase 1A of the CrossRail Project.
2. Delegated authority to the Director of Planning, Transport & Environment to award the Stage 1 ECI Design Phase to the successful bidder.
3. To note that Stage 2 of the ECI will be subject to a future cabinet approval. This will be based on an agreement of a target cost price following the Stage 1 process.
4. Delegated authority to Director of PTE (as Senior Responsible Owner (SRO) and Programme Board Chairperson) to move forward with all consultation and engagement process associated with the CrossRail Phase 1 Project.

#### **Background**

5. In January 2020, Cardiff unveiled its ambitious ten-year Transport White Paper, outlining a vision for a transformed city transportation network. A key component of this plan is the Crossrail project, an east-west route aiming to span the city and connect thousands of people to areas of employment, education and leisure.
6. By adding new tram-train connections and stations to existing rail lines, Crossrail aims to significantly improve connectivity and accessibility across Cardiff and encourage the mode shift targets set out in the White Paper.
7. While the upfront cost of building a light rail system is significant, its delivery and integration with an effective bus and active travel network is the foundation for achieving a truly sustainable and convenient transportation system. This combined approach fosters the crucial "mode shift" that is needed to achieve the goals set out in the Transport White Paper and Cardiff

One Planet Strategy. Furthermore, evidence suggests that light rail acts as a key driver of economic growth in cities and regions.

8. In January 2023, Cardiff Council, in partnership with Transport for Wales (TFW), secured £100m of funding for the Cardiff Crossrail project. This was achieved through a successful bid to the UK Government's Levelling Up Fund, securing £50m, which was then matched by the Welsh Government making the total funding amount secured £100m.
9. The £50m of UK Government funding has to be spent by mid-2026; the Welsh Government funding allocation will be awarded in four equal annual instalments of £12.5m from 2026.
10. There is an aspiration to achieve project completion and operational rail services in time for the European Football Championships in 2028. This programme deadline is aspirational, not mandatory, and is not tied to any funding constraints.
11. To meet the tight spend constraints, and to maximise the programme aspirations, cabinet approval is required to initiate an Early Contractor Involvement (ECI) Tender for Delivery Phase 1A. The proposed procurement strategy is to run a 2 Stage ECI through a mini competition via the Crown Commercial Services for Construction Works and Associated Services framework (CCS Framework). The evaluation criteria will be set at 70% cost, 20% quality and 10% social value. This route has been independently assessed and deemed as the most effective for this project. The ECI contract will be in two stages:
  - i) Stage 1 Design and Cost: This stage will focus on using a contractor to assist with the design process and the costing of the project. This Cabinet report is requesting permission to launch the Stage 1 ECI tender, and further delegated approval to award that stage only to the winning contractor. This stage will be managed under an ECC Option E Contract. It is anticipated that this stage of the project will cost £7-10m (this is an early estimate and will be subject to tender and change).
  - ii) Stage 2 Construction: If stage 1 is successful and the cost is acceptable, the contractor can be awarded the contract to construct the scheme. This Stage 2 process and award will be subject to a further Cabinet Report that will ask for permission to award the construction contract. This stage will be managed by and ECC Option C Contract. It is anticipated that this stage of the project will cost £60-75m (this is an early high level cost estimate and is subject to change).
12. In addition to the ECI Tender, there are project support packages that are crucial to the overall project delivery; this Cabinet report is also asking for delegated approval to advance the consultation and engagement processes for the project.

## **Current Challenges and Issues**

13. **UK Government spend deadline:** There is a requirement for the project to achieve £50m of spending by mid-2026; this places heavy emphasis on moving the project forward.
14. **Programme:** The requirement to achieve spend by 2026, and the ambitious operational completion target places extra emphasis on creating an optimal programme. All phases of design, project management and delivery will need to be optimised within the levels of tolerable project risk.
15. **Design Integration:** The Cardiff Crossrail project presents a unique opportunity, integrating highway and rail infrastructure for the first time in the city since the early 1900s. Due to the significant highway and public realm works required to enable a tram track through the adopted highway, the majority of the assets built will be council-owned. The tram tracks and trams will also need to use adopted public highway and connect in to the Council's Urban Traffic Control (UTC) Centre. Cardiff Council and TFW have been working in partnership on concept designs for all sections of the scheme; design integration has been a crucial part of this process.
16. **Delivery:** An independent consultant has assessed all of the delivery frameworks and options for the project, with a singular delivery approach being proposed. This involves awarding one contract to a single contractor, procured by Cardiff Council and in partnership with TFW. The procurement route advised is a 2 Stage Early Contractor Involvement (ECI) contract, this means a contractor can be procured early in the design process and can advise on key design and programme elements. It is envisioned that this method of delivery will provide the best possible opportunities for accelerating the programme, managing risk, ensuring effective integration and keeping cost overruns down.
17. **Network Congestion and Pinch Points:** Cardiff has a sensitive traffic network and the incorporation of a tram track into a key section of the City Centre's highway network will have an impact. The Council's Transport Programme Team have ensured that all design options have been tested on a transport model. The introduction of tram tracks will inevitably impact on the capacity in the area and some key network changes will be required to facilitate this key public transport project.
18. **Integration with other Developments:** Cardiff is a growing city and there are several key developments and transport projects that need to be considered and integrated in to the CrossRail project. They include:
  - i) **Metro Central Enhancements:** The upgrade to the Central Station ties in with the extra platforms provided with CrossRail Phase 1. The design will also need to tie into the Car Park and future station services will need to be enabled.
  - ii) **Current & Future Development Sites:** CrossRail will act as an enabler and connector to several key development sites; they include Central Quay, land around Callaghan Square, the Cardiff Arena and any future developments in Cardiff Bay.

- iii) **Transport Network Development:** While necessitating a comprehensive remodelling of the south side City Centre and Cardiff Bay's highway network, Crossrail Phase 1 presents a transformative opportunity. This significant network overhaul allows us to build on recent investments in cycleway and bus priority schemes, further advancing the network objectives outlined in the Transport White Paper. The CrossRail Phase 1 project will provide segregated cycleways, improved pedestrian crossings and new bus priority improvements.

### **CrossRail Phase 1 – Project Overview**

19. The CrossRail Phase 1 Project has been broken down into two delivery phases:

- i) **Phase 1A: Cardiff Central to Cardiff Bay Station.** This section of the project will require a significant redevelopment of the highway network in the Callaghan Square area to enable the construction of a new tram-train platform at Central Station and a tram track through Callaghan Square and on to the existing Bay Line. There will also be the need for a new platform at the Cardiff Bay Station. This section of the project will also include a new public realm area in Callaghan Square, new pedestrian crossing facilities throughout and the installation of a segregated cycleway to connect Cardiff Central and Callaghan Square to the primary cycle network. Further network changes will also be needed, with the access routes through Bute Terrace and Lower St Mary Street changing to access only for buses, taxis, deliveries and car parks.
- ii) **Phase 1B: Cardiff Bay Station to Pierhead.** This section of the project will include the remodelling of the highway network around The Flourish and Pierhead Street areas to enable a tram track extension to connect through to a new platform in the pierhead development area. This section will also include new pedestrian facilities and segregated cycleways to better connect the Roald Dahl Plass and Arena Development areas.

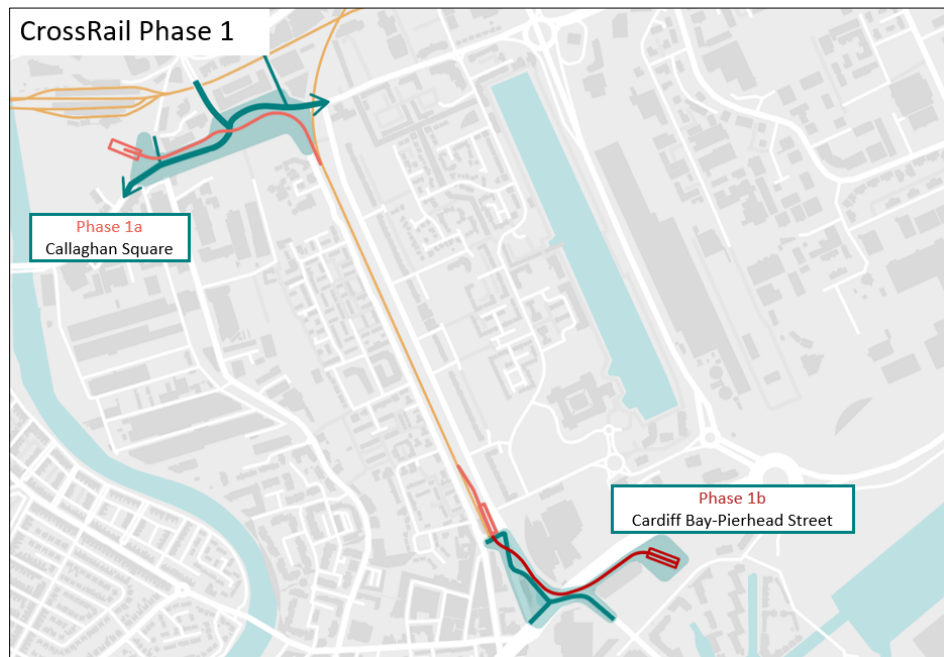
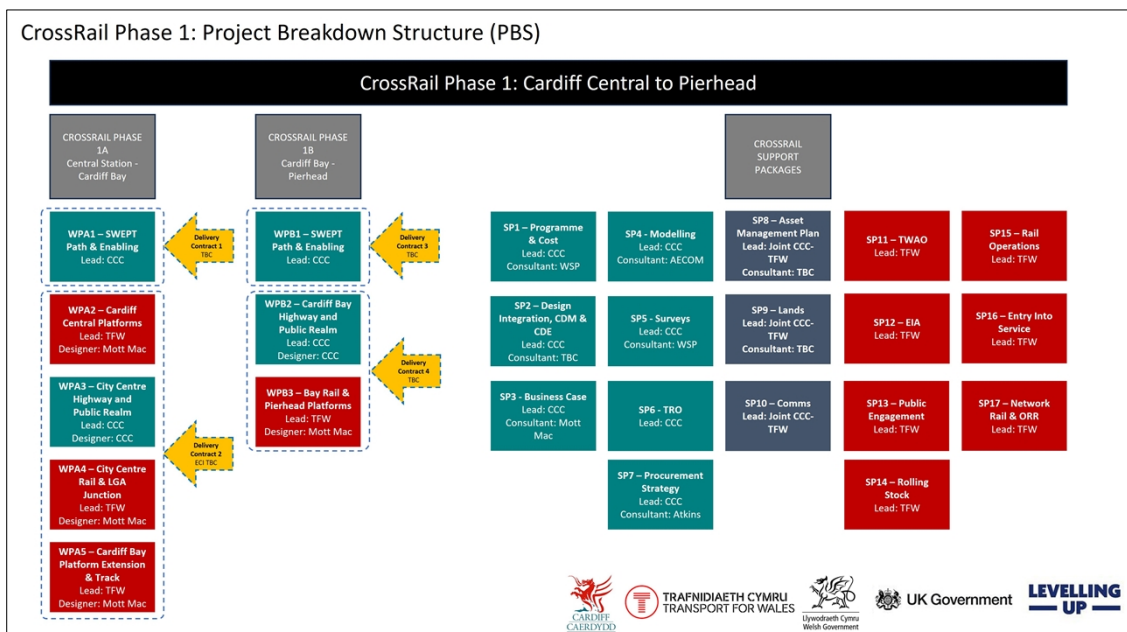


Figure 1: CrossRail Phase 1 Project Area

20. To deliver the project successfully and to ensure that both Cardiff Council and TFW gain operational clarity and success, there are a series of Support Packages associated with the delivery of the project. Cardiff Council and TFW are working together to deliver these packages and they have been included in this Cabinet Report. Of those projects, it is only consultation and engagement that requires Cabinet approval at this stage. The Project Breakdown Structure (PBS) in Figure 1 highlights all the packages associated with the project, including the Engagement and Consultation package:



21. Figure 2: CrossRail Phase 1 Project Breakdown Structure

### Governance

22. As the funding owner, Cardiff Council is the Business Case owner and the lead client under Construction Design and Management (CDM) regulations.

As the tendering authority, all delivery packages will therefore require Cardiff Council Cabinet Approval to proceed to tender, with a further approval required at tender award stage. The Senior Responsible Owner (SRO) is Cardiff Council's Director of Planning, Transport and Environment.

23. With Cabinet as the ultimate decision-making authority, a Programme Board has been set up to run the key aspects of the project and provide a decision-making function for the Project Management Office (PMO). The board is chaired by the SRO and attended by other key members of Cardiff Council, TFW and Welsh Government. All project level decisions are made by the Project Board, with key decisions being escalated to Cabinet where necessary.
24. The PMO is responsible for Governance and have created a Governance Plan for the project which will be approved by the Programme Board.
25. During the delivery phase of the project, Cardiff Council and TFW will work together with the support of an externally appointed consultant commercial management team. The Delivery Team will report to the Programme Board.
26. A Clients Agreement Document is currently in place serving as the agreement between both organisations during the concept design phases. This will be superseded by a further agreement in 2024 that will serve as an agreement for the delivery phase of the project.

## **Risk Management**

27. CrossRail will be subject to all the delivery and operational risks associated with a scheme of this size. The top three risk at present are:
  - i) Risk 1: Not being able to spend £50m of UK Government Funding by 2026.
  - ii) Risk 2: The completion of Phase 1A not being achieved by mid-2028.
  - iii) Risk 3: The overall cost of both Phase 1A and 1B exceeding the £100m budget.
28. The following actions are being taken to manage risk:
29. **Risk Management Plan:** The project will be subject to a dedicated Risk Management Plan. The plan will be used to mitigate risk, reduce impact, inform better decision making and increase efficiency.
30. **Lessons Learned:** The project team have held several lessons learned sessions with various consultants, contractors, and cities where tram trains are common. These sessions have been invaluable to the development of the project so far with lessons learnt being applied in project structure, governance design integration and delivery method.

31. **External Support:** External consultancies are being used to advise on several elements of the project; they include risk management, cost management, programme management, contract management and legal advice.
32. **Tender Route:** The ECI Tender route has been selected to enable the Council to lead on the delivery of the highway elements of the project. The Council are not subject to a Traffic Works Act Order (TWAO) and can therefore enter site before any rail works are started. This route offers the highest possibility of getting on site early, achieving the £50m spend by 2026 and completing Phase 1A by mid-2028.

### **Proposed Recommendation and Next Steps**

33. In view of the above summary, and to mitigate the risk of missing the spend deadlines, it is proposed that Phase 1A of CrossRail moves to a 2 Stage ECI Tender and delegated authority is given to the Director Planning, Transport and Environment, to move forward with all of the support packages associated with the project.

34. The next steps for the project are as follows:

- April 2024: Submit Outline Business Case to UK Government
- Spring 2024: Launch Stage 1 ECI Tender for Phase 1A
- Summer 2024: Stakeholder Engagement and Public Consultation
- Autumn 2024: Award Stage 1 ECI Tender for Phase 1A
- Autumn 2024: Possible start of Enabling Works Package for Phase 1A
- Winter 2024: Submit Full Business Case to UK Government
- Summer 2025: Further Cabinet Approval to Award tender for Stage 2 ECI Tender (Construction)
- Autumn 2025: Construction start for Phase 1A Main Contract

### **Future Public and Stakeholder Engagement**

35. The business case process attached to the scheme requires stakeholder engagement.

36. The wider project will be subject to a TWAO, which is subject to a public consultation.

37. All associated deliverable projects will be required to follow the usual Transport Project Process and will therefore be subject to further cabinet approval, local member engagement, stakeholder engagement, public consultation, and a traffic regulation order (TRO) process.

### **Project Funding**

38. The Council have been awarded £100m (subject to business case approval) for the CrossRail Phase 1 project.

39. At this stage the Phase 1A section of the scheme is being moved forward for delivery, the Phase 1B section will be subject to design only. It is acknowledged that Phase 1B is likely to need further funding award via further government grant funding or development contributions.

#### **Local Member consultation (where appropriate)**

40. Local Members will be consulted with as part of the Transport Project Process and Traffic Regulation Order (TRO).

41. The delivery of the project will provide a significant opportunity to maximise the social value benefits of the tenders and local members will be involved in this process throughout the project lifecycle.

#### **Reason for Recommendations**

42. To achieve the Vision for CrossRail set out in the White Paper for Transport 2020.

43. To enable further Business Case submissions to UK Government.

44. To enable key project processes to be undertaken by the project team.

45. To give the project the best chance of achieving the allocated funding sums by mid-2026.

46. To deliver a fully operational Phase 1A project by mid-2028.

47. To proactively manage design and delivery risks through a comprehensive plan, minimising potential disruptions and cost overruns.

48. To lay the groundwork for future CrossRail phases, including connecting Cardiff City Centre with the east of the city and connecting the proposed Phase 1A scheme to the west via 'The Ramp' at Central Station.

#### **49. Financial Implications**

50. Provided by Cardiff Council Central Finance:

Funding of £50 million is available in principle from the Department of Transport Levelling Up fund (LUF) and also £50 million from Welsh Government. Apart from the grant funding identified in the report, no other Council sources of revenue or Capital have been made available for the project. Up to 10% of the LUF funding has been approved to be drawn down for the development of the scheme including all costs to develop an updated business case in line with the Traffic Works Act Order. These are estimated to cost c £7-10m. The detail in respect to the Welsh Government contribution is yet to be developed.



There remains a risk of abortive costs whilst in the development and design phase and further financial advice will need to be sought as part of a future Cabinet report prior to future financial commitments being entered into. Whilst the report identifies risks of delay in the project timescales, the need for a Council approved business case as part of a thorough process is essential, else the unintended financial consequences could outweigh any delay. This business case must amongst all other best practice requirements for a scheme of this size and complexity must include the following: A complete risk analysis and mitigations including that for the Council and Partners; Understanding of future operating costs and responsibility for these; define the affordable scope of the works being committed to and confirmation of funding from all partners of their respective grants and contributions and timing of such; approach to structuring the procurement to ensure no adverse VAT impact on the project and each of its key partners; understanding asset ownerships and liabilities; financial implications arising from integration with other Council and partner developments that may impact on this project.

## **51. Legal Implications**

### 52. Provided by Blake Morgan LLP:

The Council is procuring a single combined construction project via the Crown Commercial Services Framework (“CCS Framework”) using a two phased NEC4 ECC contract with early contractor involvement. Stage 1 will be an NEC4 ECC option E (cost reimbursable) and Stage 2 will be an NEC4 ECC option C (Target Price with potential profit share for both the Council and the Contractor). The procurement process is by mini competition and is compliant with the Public Contracts Regulations 2015. Faithful & Gould/Atkins Realis have confirmed that the CCS Framework allows the use of bespoke amendments to the NEC forms of contract and its report on the Procurement Review, dated 11 October 2023 which supports the decision to use the CCS Framework, is attached at [Appendix 1 – Confidential Appendix.] Blake Morgan LLP is preparing bespoke amendments to the NEC forms of contract to ensure that the Council’s risk is managed in the most appropriate way and to provide for TFW’s rail requirements.

The tendered contract will include a contract for both the Stage 1 Works and the Stage 2 Works and the contractual risk which those contracts contain at tender will need to be maintained for the entirety of the construction works ie there can be no renegotiation of the terms post contract award, as to do so would introduce an element of procurement risk for the Council.

During the Stage 1 Works the Contractor will undertake site investigation works and work up the design to prepare a sum for the Target Price for the Stage 2 Works. If the Council is content with the Target Price submitted, it issues a Notice to Proceed (“NTP”) to require the Contractor to undertake the Stage 2 Works. The issue of the NTP is entirely at the Council’s discretion. Further authority to proceed would be required at this

stage. If the Council decided not to issue the NTP, it would have the right to use the design prepared in Stage 1 and could chose to retender the Stage 2 Works.

53. Provided by Cardiff Council Legal Services:

**Funding**

It is further understood from the body of this report that the scheme is funded via UK and Welsh Government Grants and therefore consideration should be given to the funding conditions attached to the grants to ensure all conditions are complied with

**General advice**

In considering the matters set out in this report regard should also be had to:

**Equality Duty.**

The Council has to satisfy its public sector duties under the Equalities Act 2010 (including specific Welsh public sector duties) – the Public Sector Equality Duties (PSED). These duties require the Council to have due regard to the need to (1) eliminate unlawful discrimination, (2) advance equality of opportunity and (3) foster good relations on the basis of ‘protected characteristics’. The ‘Protected characteristics’ are: • Age • Gender reassignment • Sex • Race – including ethnic or national origin, colour or nationality • Disability • Pregnancy and maternity • Marriage and civil partnership • Sexual orientation • Religion or belief – including lack of belief.

**Well Being of Future Generations (Wales) Act 2015**

The Well-Being of Future Generations (Wales) Act 2015 (‘the Act’) places a ‘well-being duty’ on public bodies aimed at achieving 7 national well-being goals for Wales - a Wales that is prosperous, resilient, healthier, more equal, has cohesive communities, a vibrant culture and thriving Welsh language, and is globally responsible.

In discharging its duties under the Act, the Council has set and published well-being objectives designed to maximise its contribution to achieving the national well-being goals. The well-being objectives are set out in Cardiff’s Corporate Plan 2023-26. When exercising its functions, the Council is required to take all reasonable steps to meet its well-being objectives. This means that the decision makers should consider how the proposed decision will contribute towards meeting the well-being objectives and must be satisfied that all reasonable steps have been taken to meet those objectives.

The well-being duty also requires the Council to act in accordance with a ‘sustainable development principle’. This principle requires the Council to act in a way which seeks to ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs. Put simply, this means that Council decision makers must take account of the impact of their decisions on people living their lives in Wales in the future. In doing so, the Council must:

- Look to the long term
- Focus on prevention by understanding the root causes of problems
- Deliver an integrated approach to achieving the 7 national well-being goals
- Work in collaboration with others to find shared sustainable solutions
- Involve people from all sections of the community in the decisions which affect them

The decision maker must be satisfied that the proposed decision accords with the principles above; and due regard must be given to the Statutory Guidance issued by the Welsh Ministers, which is accessible using the link below: <http://gov.wales/topics/people-and-communities/people/future-generations-act/statutory-guidance/?lang=en>

The decision maker should also have regard to, when making its decision, to the Council's wider obligations under the Welsh Language (Wales) Measure 2011 and the Welsh Language Standards.

The decision maker must be satisfied that the proposal is within the Policy and Budget Framework, if it is not then the matter must be referred to the Council. All decisions taken by or on behalf the Council must (a) be within the legal powers of the Council; (b) comply with any procedural requirement imposed by law; (c) be within the powers of the body or person exercising powers of behalf of the Council; (d) be undertaken in accordance with the procedural requirements imposed by the Council e.g. Council Procedure Rules; (e) be fully and properly informed; (f) be properly motivated; (g) be taken having regard to the Council's fiduciary duty to its taxpayers; and (h) be reasonable and proper in all the circumstances

### **Consultation/Public Engagement**

It is understood from the report that consultation and public engagement exercises are to be carried out prior to stage 2 of the procurement commencing. It should therefore be noted that Consultation/public engagement gives rise to a legitimate expectation that the outcome of the consultation exercises will be taken into account in determining the way forward.

It is also noted that progression of the scheme is also subject to the making of road traffic regulation orders (TRO's). The Council as the 'Traffic Authority' has a discretionary power to make TRO's where it appears to the Council expedient to make the order for any of the purposes specified under Section 1 of the Road Traffic Regulation Act 1984 Act ("the 1984 Act").

Full legal advice should be sought on the proposed TRO's as the same are developed but it should be noted that in making any traffic regulation order the Council must comply with the procedure set out in the Act and the regulations made there under. This process involves at statutory consultation exercise, with associated rights of objection. If objections are received, they must be duly considered and following such

consideration the potential exists that the traffic regulation order may be made, be made but in modified form or not proceeded with at all.

#### **54. HR Implications**

55. There are no HR Implications for this report.

#### **56. Property Implications**

57. There are no Property Implications for this report

### **RECOMMENDATIONS**

Cabinet is recommended to:

58. Provide cabinet authority to launch an Early Contractor Involvement (ECI) 2 Stage Tender for Phase 1A of the CrossRail Project.

59. Delegate authority to the Director of Planning, Transport & Environment to award the Stage 1 ECI Design Phase to the successful bidder using the evaluation criteria set out in Paragraph 11 of this report.

60. To note that Stage 2 of the ECI will be subject to a future cabinet approval. This will be based on an agreement of a target cost price following the Stage 1 process.

61. Delegate authority to Director of PTE (as Senior Responsible Owner (SRO) and Programme Board Chairperson) to move forward with all consultation and engagement process associated with the CrossRail Phase 1 Project.

<b>SENIOR RESPONSIBLE OFFICER</b>	Andrew Gregory Director of Planning, Transport & Environment
	06 <sup>th</sup> February 2024

#### ***The following appendices are attached:***

Appendix 1 Exempt Legal Implications

Appendix 2 Single Impact Assessment