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**CABINET – 13<sup>th</sup> OCTOBER 2005**

**Report of the Director of the Urban Environment**

**Wednesbury to Brierley Hill Extension – Midland Metro**

**Purpose of Report**

1. To seek authority to sign an agreement with Centro for the Construction of Metro from Wednesbury to Brierley Hill (WBHE).

**Background**

2. The construction of the Metro line from Wednesbury to Brierley Hill (WBHE) is integral to the Transportation modelling for the Black Country Study and the regeneration of Brierley Hill is prefaced on provision of robust access arrangements of which Metro is a major component.
3. In 1997 at the same time that construction of Dudley Southern By-Pass (DSBP) commenced the line for WBHE was designated and in order to secure the Metro line the width of the DSBP embankment was increased to provide a running corridor.
4. At the time no formal procedures were in place for Centro to approve the works and all reasonable care and skill was used by the Council's partners, Kvaerner Construction, to provide the running platform.
5. The design has been subsequently checked by independent consultants acting for Centro and this confirms the integrity of the design.
6. There is a concern that the concessionaire in tendering for the Metro line will anticipate a risk associated with the embankment construction and add a premium to the tender. Whilst the risk of failure is considered to be slight, the consequences, including in particular consequential loss to the operator, may be significant. And any redress against Kvaerner will be lost when the limitation period expires in 2011 - the planned operating date for Metro.
7. As placing the risk with a concessionaire may adversely prejudice the tender for Metro Centro are requiring that the Council hold this risk in the agreement that is to be entered into between Centro and the Council.
8. If this was a strictly commercial agreement with Centro, the Council would seriously consider transferring this risk and legal advice from specialist solicitors has confirmed this. However, it is important that we try to reduce tender prices in order to keep within budget. Bearing this in mind and the fact that the embankment has not shown any sign of instability, officers are confident that that this is a low level risk which the Council should retain.

9. A further matter is the additional cost to Metro as a result of the requirement to cross the new highway constructed as part of the Brierley Hill Sustainable Access Network Scheme (BHSAN) scheme.
10. The agreement requires that any additional cost to Metro as a result of the highway be borne by the Council.
11. The design for the new road is now complete and it is considered that these costs can be finalised based on the current designs and that any additional costs arising to Metro can be charged to the BHSAN scheme. All endeavours will be undertaken to ensure that these are minimised by including advance works during the highway construction contract.

### **Finance**

12. The BHSAN scheme is funded from the Local Transport Plan Settlement being supported capital expenditure.
13. No budgetary provision is made for consequential loss claims.

### **Law**

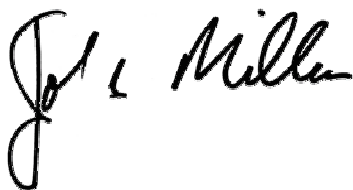
14. Centro have secured powers under a Transport Works Act Order granted on 20<sup>th</sup> December 2004 to construct the Wednesbury to Brierley Hill Light Rail Line.

### **Equality Impact**

15. Metro seeks to provide an enhanced quality of public transport that will improve equality of access and support the Council's policy on equal opportunities.

### **Recommendation**

16. That the Cabinet authorise the Director of Law and Property to complete the agreement with Centro as set out in this report.



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**John Millar**  
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### **List of Background Papers**

Draft agreement with Centro 26/04/05  
E-mails and report from Wragge & Co