

Forward Plan reference number: FP/185/10/21

Report title: A120-A133 Link Road – Decision to publish tender for main works contract

Report to: Cabinet

Report author: Councillor Lesley Wagland, Cabinet Member for Economic Renewal, Infrastructure and Planning

Date: 21 December 2021

For: Decision

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County Divisions affected: Tendring Rural West

Confidential Appendix

This report has a confidential appendix which is not for publication as it includes exempt information falling within paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972, as amended.

1. Everyone's Essex

- 1.1 Everyone's Essex, has the aim of creating a strong, inclusive and sustainable economy, a high quality environment and a good place for children and families to grow.
- 1.2 This includes a commitment to deliver and maintain high quality infrastructure to support a growing economy and the delivery of new housing and communities.
- 1.3 The proposed A120-A133 Link Road will play a key role in unlocking land to provide up to 9,000 new homes, as well as business and leisure space, as part of the new Tendring/Colchester Borders Garden Community. The proposed Link Road will provide improved access to both the A120 and A12, reducing congestion on the network and throughout Colchester town centre, as well as providing a connection to the new Rapid Transit System which will offer residents a high frequency public transport service on segregated or priority corridors.
- 1.4 The road will support the commitments to climate action in Everyone's Essex by reducing traffic congestion on local roads and throughout Colchester Town Centre, thereby reducing carbon emissions in sensitive locations. It will also facilitate the delivery of a Rapid Transit System which will encourage residents in the new settlement and across Colchester to use public transport, reducing the number of vehicles on the network and further avoiding carbon emissions.

2 Recommendations

- 2.1 That the Council launches a competitive procurement for the A120-A133 Works contract via the Crown Commercial Services Framework. The estimated value of the works can be found in the confidential appendix.
- 2.2 Agree that tender evaluation criteria to be used are 50/50 Price/Quality split with 15% of Quality represented by Social Value criteria to the extent that they are consistent with the most economically advantageous tender.
- 2.3 Note that a further report will be brought back to the Cabinet on the award of the contract which will identify potential funding sources at the time of award to inform the Cabinet's decision on awarding the contract.

3 Background and Proposal

- 3.1 Essex County Council (ECC), working in collaboration with Colchester Borough Council (CBC) and Tendring District Council (TDC), was awarded £99.9m following a bid submitted to the Housing Infrastructure Fund (HIF). The bid supports key projects in the Local Borough and Districts' emerging draft Local Plans and the North Essex Garden Communities programme to deliver the Tendring/Colchester Border Garden Community (TBCGC). The bid covered the construction of the Link Road and Rapid Transit System (RTS) (and terminals) as well as one out of two possible "Park and Choose" sites, north and south of the TBCGC.
- 3.2 The two key components of the successful ECC bid are:
 - A new link road running east of Colchester between the A120 and the A133 to provide greater connectivity into the proposed new development; and
 - Rapid Transit development funding a route from the proposed Tendring and Colchester Borders Garden Community via University of Essex into Colchester.
- 3.3 The Link Road and RTS address a package of transport and access matters, enabling early implementation of sustainable transport options to stimulate behaviour change and address highways capacity constraints in East Colchester and West Tendring. It will provide capacity and access to enable residential developments to come forward sooner than programmed. This scheme will improve access to the University of Essex and would provide a connection into a proposed new employment park.
- 3.4 Following assessment of route options for the Link Road, a consultation was held in November 2019 over a 6-week period. In May 2020, the Cabinet approved a preferred route from a highway perspective (report ref **FP/648/03/20**).
- 3.5 The proposal is for a new dual carriageway between the A120 trunk road and A133 to the east of Colchester. As part of the scheme there is to be a new

grade-separated ‘dumbbell’ type junction on the A120, with new accesses to existing facilities alongside the current road.

- 3.6 Planning Permission for the Link Road was granted in November 2021 (application ref: CC/TEN/31/21). The planning conditions set out in the decision notice are to be complied with by the contractor and will be added to the Contract Works information prior to publication.
- 3.7 Before we can begin construction of the road we need to secure ownership of the relevant land. Negotiations with landowners continue, but not all are complete. If these negotiations cannot be concluded in a timely fashion so that the necessary criteria are met then we will consider making compulsory purchase orders in order to provide assurance that the land will be acquired in time.
- 3.8 Land acquisition discussions and, if necessary, the compulsory purchase process would run in parallel with the tender process. Tenderers are to be made aware that the land assembly process needs to be completed prior to Contract award. The Council will be unable to award the contract unless and until it is satisfied that land assembly will be completed in time.
- 3.9 With regard to infrastructure and connectivity, policy SP6 of the TDC/CBC development frameworks states that before any planning approval is granted for development within the Tending Colchester Borders Garden Community, the following strategic transport infrastructure must have secured planning consent and funding approval:
 - a) A120–A133 link road; and
 - b) Route 1 of the rapid transit system as defined in the North Essex Rapid Transit System: From Vision to Plan document (July 2019).
- 3.10 Advertising the tender for the detailed design and construction of the Link Road will allow the scheme to maintain programme momentum and meet the above aims.
- 3.11 In order to meet the programme for scheme delivery, the council will have to invite tenders before land assembly is complete and before the conclusion of ongoing negotiations with Homes England/HM Government to secure additional funding and time to deliver the scheme, details of which can be found in this report. A further report will be brought back to the Cabinet so that a final decision on contract award can be made.

4 Links to our Strategic Ambitions

- 4.1 This report links to the following aims in the Essex Vision
 - Develop our County sustainably
 - Share prosperity with everyone

5 Options

Option 1 (recommended):

- 5.1 Launch a procurement for the main works contract via Crown Commercial Services, prior to the conclusion of negotiations with Homes England/HM Government. This will allow the scheme to maintain progress to meet the revised completion date and subsequent approval to award will be sought by when the outcome of contract negotiations will be known.
- 5.2 There is a land assembly risk which we are seeking to manage as set out above but we will not award the contract unless land assembly and full funding are secure.

Option 2 (not recommended)

- 5.3 Delay advertisement of tender until outcome of contract negotiation with Homes England is known. This will reduce the need for the scheme to progress at risk, however, this will impact the ultimate delivery programme of the scheme and require a further extension request to that already being sought.

6 Issues for consideration

6.1 Financial implications

6.1.1 The estimated construction value of the proposed works (tender value) is included in the confidential appendix.

6.1.2 The revised total cost of the A133/A120 Link Road, is estimated to be £90.319m. This is an increase of £21.25m from the existing capital programme value of £69.07m which is currently fully funded through HIF. The table below sets out the latest position.

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	2019/20 Actuals £000	2020/21 Actuals £000	2021/22 Budget £000	2022/23 Aspirational Budget £000	2023/24 Aspirational Budget £000	2024/25 Aspirational Budget £000	2025/26 Aspirational Budget £000	Total £000
Current Capital Programme A133/A120 Link Road	2,016	2,747	7,029	32,838	24,439	-	-	69,070
Funded by:								
HIF	2,016	2,747	7,029	32,838	24,439	-	-	69,070
Total	2,016	2,747	7,029	32,838	24,439	-	-	69,070
Revised profile	2,016	2,747	5,767	10,331	31,475	37,160	823	90,319
Budget Addition required	-	-	(1,262)	(22,507)	7,036	37,160	823	21,250
funded by:								
HIF	2,016	2,747	5,767	10,331	31,475	-	-	52,336
Unfunded cost escalation						21,250		21,250
Funded but requires extension	-	-	-	-	-	15,910	823	16,733
Total	2,016	2,747	5,767	10,331	31,475	37,160	823	90,319

- 6.1.2 ECC has advised HE of the estimated cost escalation of £21.25m and programme elongation to the end of August 2025 (£16.733m forecast spend beyond existing funding deadline), formally requesting that additional funds are released, and that funding can be applied beyond the original time horizon for spend. Programme elongation is a separate risk to the £21.25m cost escalation, as ECC is currently unable to draw down funding beyond 31 March 2024 under the terms of the Grant Determination Agreement. The scale of this additional funding request and the extension of timeframe will require formal HM Treasury (HMT) approval.
- 6.1.3 There is a risk that HE / HMT will not be willing to fund the cost escalation in full or are not agreeable to the full programme extension. If the additional funding request is not successful options will be considered to set out how the scheme can progress with reduced scope. This could be avoided if additional unringfenced/non-specified external funding is received by the organisation and its application prioritised for this purpose.
- 6.1.4 If the scheme were to be determined as financially unviable given any residual funding shortfall and a decision made to terminate the agreement with HE and cease delivery of the scheme, there is a risk of significant abortive costs, resulting in an unfunded revenue pressure. To date, £5.758m has been spent or committed on the A133/A120 Link Road and £4.669m on Colchester RTS, a total of £10.427m. ECC would be required to repay HE the capital grant of £9.697m that has been drawn down to date.
- 6.1.5 This paper is seeking authority to go to market to procure the programme works whilst HE/HMT consider the request for additional funding and elongation of existing funding. A further paper will be presented for consideration post tender and prior to contract award to update on the funding position, set out any mitigations required and seek any adjustment to the profile of spend over the life of the project.
- 6.1.6 The additional funding request of £21.25m and funding extension to August 2025 assumes that a Public Inquiry (PI) is not required for this project. ECC is currently negotiating with several landowners and if a PI materialised the programme would be extended by an estimated period of 12 months to August 2026 with costs increasing by c. £1.5m for inflation. The slippage in the programme would reprofile expenditure further beyond the current HE funding deadline, resulting in an increased risk of additional grant shortfalls unless an extension were granted. ECC would again need to seek a programme extension or consider alternative approaches to funding unless there was a significant reduction in scope.
- 6.1.7 It should be noted that additional risks beyond the £21.25m have been identified and should these materialise the funding gap may widen. Specifically, land acquisition is ongoing and therefore further costs may be incurred in finalising negotiations.
Should land be acquired late there is a risk that this will delay the overall construction programme and may result in additional mitigation works, this could lead to increased costs that are not currently quantifiable. Any delay may also place further pressure on the HE funding deadline.

6.1.8 The initial HE funding bid included an allowance for Part 1 claims of £800,000, to drawdown on the HIF grant; expenditure must be capital and incurred by 31 March 2024. ECC classifies part 1 claims as revenue expenditure and if these costs materialise it will certainly be post completion. ECC will need to engage in dialogue with HE to determine if additional revenue funding can be made available to cover these costs post completion, if this is not agreed there will be an unfunded revenue pressure. ECC will need to clarify with HE if the existing £800,000 of capital funding can be used to service other capital costs in the project.

6.2 Legal implications

6.2.1 It is important to ensure that the council is not committed to pay the construction contract unless and until it is satisfied that:

- the land ownership issues have been resolved so that the council has the right to build the road.
- the County Council has complied with terms of the funding agreement with Homes England and that there is no reason to think that there will be future breaches
- funding has been identified for any increases in cost or for anything that won't be funded by Homes England
- planning permission has been granted for a satisfactory scheme.

6.2.2 The Council has signed a legal agreement with Homes England with respect to grant funding for the road and the rapid transit scheme. The agreement makes ECC responsible for cost overruns and if ECC does not meet performance milestones in the contract then Homes England is entitled to cease to pay any further funding for either project. Since the council is claiming in arrears this could leave the council in the position of having spent significant sums of money which it is unable to reclaim as well as being contractually committed to deliver the remainder of the scheme without being able to claim any further funding. The legal risks were clearly set out in the report to the Cabinet before agreement was signed and the risks remain the same, except that the cost increase risk has to some extent materialised.

6.2.3 Homes England are under no obligation to find further funding. If they do not do so then ECC will have to either reduce the scope of the scheme, find additional funding from or not award a contract for the road. If ECC does not award a contract it will not have to find the money but it will result in the non-delivery of the road and the rapid transit scheme which will mean that we do not get the benefits outlined in section 1 of this report and relationships with others will be damaged.

6.2.4 It should be noted that the A120 is a trunk road and any connection into it must comply with standards set by National Highways, formerly known as Highways England.

7 Equality and Diversity Considerations

- 7.1 The Public Sector Equality Duty applies to the Council when it makes decisions. The duty requires us to have regard to the need to:
- (a) Eliminate unlawful discrimination, harassment and victimisation and other behaviour prohibited by the Act. In summary, the Act makes discrimination etc. on the grounds of a protected characteristic unlawful
 - (b) Advance equality of opportunity between people who share a protected characteristic and those who do not.
 - (c) Foster good relations between people who share a protected characteristic and those who do not including tackling prejudice and promoting understanding.
- 7.2 The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, marriage and civil partnership, race, religion or belief, gender, and sexual orientation. The Act states that ‘marriage and civil partnership’ is not a relevant protected characteristic for (b) or (c) although it is relevant for (a).
- 7.3 The equality impact assessment indicates that the proposals in this report will not have a disproportionately adverse impact on any people with a particular characteristic. The decision required will commit ECC to undertaking a tender process, this does not have a disproportionately adverse impact on any people with a particular characteristic. Please see the Equality Impact Assessment for further information,

8 List of Appendices

Equality Impact Assessment EQIA377863798

Confidential appendix

9 List of Background papers

A120-A133 Link Road Consultation Document 2019

Decision Notice on planning application Ref CC/TEN/31/21