

**Forward Plan reference number: FP/284/11/23**

<b>Report title: Chelmsford North East Bypass (CNEB) Section 1A – Procurement of a Design and Build Contract</b>	
<b>Report to:</b> Cabinet	
<b>Report author:</b> Councillor Kevin Bentley - Leader of the Council	
<b>Date:</b> 16 January 2024	<b>For:</b> Decision
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<b>County Divisions affected:</b> Springfield, Chelmer, Broomfield & Writtle	

## **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. This includes a commitment to deliver and maintain high quality infrastructure to support a growing economy and the delivery of new housing and communities.
- 1.2 The Chelmsford Housing Infrastructure Fund (HIF) projects will support the aim of creating a strong, inclusive and sustainable economy set out in Everyone's Essex and achieve shared outcomes to develop our county sustainably, connect us to each other and the world and share prosperity with everyone. These long-awaited improvements to the transport network will support people travelling for business or pleasure, which in turn helps the economy of greater Essex.
- 1.3 The design of the first phase of the new Chelmsford bypass (Section 1A) (CNEB) has been finalised with revised traffic modelling being undertaken to support the delivery of this phase. In addition, work to prepare for procurement of the scheme has been undertaken and the land assembly required for construction of Section 1A is progressing. Once complete, Section 1A will be the first phase of the bypass which will relieve congestion on roads in and around Chelmsford providing easier, more reliable and resilient journeys in the region. The delivery of Beaulieu Park Station (BPS) is also underway.
- 1.4 Together CNEB and BPS will provide the conditions needed to support the delivery of over 10,000 new homes, employment uses, a new country park and other community and leisure facilities north of Chelmsford. By committing to the timely delivery of infrastructure to unlock growth and development opportunities, ECC helps enable the development of high quality, sustainable new communities such as those being planned at Chelmsford Garden Community.

## **2 Recommendations**

- 2.1 Agree to launch a competitive procurement for the Chelmsford North East Bypass main works design and build contract using a mini-competition on the Major Works Category of the Framework created by the Cumbria, Northumberland, Tyne & Wear NHS Foundation Trust.
- 2.2 Agree that the tender evaluation criteria to be used in the procurement will be a 60/40 price/quality split with 5% of the quality score assessing social value and 5% assessing climate impact to the extent that they are consistent with the most economically advantageous tender.
- 2.3 Agree that the Cabinet Member for Highways, Infrastructure and Sustainable Transport is authorised to award a design and build contract following completion of the procurement process and subject to the budgetary parameters set out within paragraphs 6.1.3 and 6.1.4 of this report.
- 2.4 Agree the revised capital spend and funding profile as set out in section 6.1.3 of this report.

## **3 Background**

- 3.1 Following a bid in March 2019, ECC was successful in securing £218m of HIF grant funding from Homes England for the delivery of a new railway station at Beaulieu Park, Chelmsford and the delivery of a new north-eastern bypass, running from the A12 in Chelmsford to Great Leighs. Additional funding for the projects is being provided from developers and the South East Local Enterprise Partnership.
- 3.2 The full CNEB scheme will comprise a new 4.6km single carriageway (Sections 1A and 1B) and dualling of a 1.2km stretch of the A131 (Section 2). The single carriageway section is split into a southern section (Section 1A) and a northern section (Section 1B). These two sections will meet at an intermediate roundabout which will connect the bypass with the proposed new Northern Radial Distributor Road (NRDR). The NRDR will be a new east-west road which will be delivered by the developer consortium as part of the Chelmsford Garden Community and will link Essex Regiment Way in the west (at Wheelers Hill Roundabout) with CNEB to the east.
- 3.3 Following engagement with Homes England in July this year, it was agreed that the CNEB scheme could be delivered in two phases commencing with construction of Section 1A and the timetable for delivering Section 1A was extended until March 2026. Construction of the remainder of the CNEB will take place in future when alternative funding has been secured. ECC is currently working closely with the developer consortium to ensure the delivery programmes for Section 1A and the NRDR are properly aligned.
- 3.4 This change meant that the Grant Funding Agreement that is in place with Homes England needed to be varied. A decision to agree such variation was

taken by the Leader on 27 July 2023 (FP/187/07/23) and the Deed of Variation was entered into on 20 December 2023.

- 3.5 The terms of this variation mean that the CNEB will be delivered in phases. Section 1A is proposed to be the first part of the bypass and is scheduled to be completed by March 2026. The new Beaulieu Park Station (BPS) is scheduled to open in 2025; together these schemes will directly unlock circa 6,000 homes in the new garden community. The remainder of CNEB is expected to be completed as funding subsequently becomes available, including through future developer contributions, and will unlock additional homes bringing the total to over 10,000 homes. Where practicable, the design and construction of Section 1A will accommodate the future provision of the next phase of the bypass works.
- 3.6 To date, ECC has spent £22m on CNEB, including the delivery of advanced enabling works. A decision was taken by Cabinet in April 2022 (FP/977/02/21) to agree to procure and award the enabling works for a Conveyor Bridge over a section of the CNEB. These works were procured via the Eastern Highways Alliance Framework Agreement. The contract was awarded to Octavius Infrastructure Ltd in July 2022. Good progress has been made to date on the construction of this bridge which will accommodate quarrying operations initially but in due course will be modified for use as part of future development of the Chelmsford Garden Community. The bridge is scheduled to be completed in January 2024.
- 3.7 To deliver the scheme, ECC must also undertake works to move two silt lagoons that are located in close proximity to the proposed new highway. The two existing silt lagoons will be infilled, and a new single silt lagoon will be excavated. A decision was taken in July 2023 by Cabinet (FP/187/07/23) to procure and award the silt lagoon works as a further enabling works package. A contract for the delivery of these works has recently been awarded and work is due to start on site early in 2024.
- 3.8 Separating the procurement and delivery of the silt lagoon relocation works from the Section 1A construction works reduces programme risk and will help to ensure that Section 1A of the CNEB can be delivered by March 2026. This is because the lagoon works must be completed before any earthworks and highway works for section 1A commence.
- 3.9 Since agreeing to progress Section 1A of CNEB in July this year, work has been underway to finalise the design and undertake revised traffic modelling to take account of the phased approach, progress land assembly and develop contract documentation in preparation for procuring a design and build contractor for the main works package.
- 3.10 In order to progress the delivery of the first phase of CNEB, it is now necessary to procure a contractor to construct Section 1A through a Design and Build Contract. Whilst approximately 80% of the design has been completed, it will be for the successful contractor to complete the detailed design. In this way, there is an opportunity for the contractor to identify and possibly drive out further

value engineering opportunities as well as making sure they are happy with the design. Sufficient time has been allowed within the delivery programme for the Contractor to finalise the detailed design before the main construction works commence on site.

- 3.11 It is proposed that the Major Works Framework awarded by the Cumbria, Northumberland, Tyne & Wear NHS Foundation Trust ('the Framework') is used to procure the works using a mini-competition tender process. The Framework has been selected as this framework more closely aligns with the Highways sector and is divided into regions with a specific lot which covers the Essex geographical area. This Framework has recently been used successfully on other ECC projects.
- 3.12 The design and build scheme is for a standard new highway with no special structures and therefore it is considered that a pricing bias in the % split for the procurement would be appropriate. The suggested price/quality split will temper a risk to ECC that suppliers tender lower value bids and subsequently exploit the ability to submit compensation event claims during delivery. A lower quality bias is proposed as this scheme is being constructed on land that is separate from the highway network reducing the interface with Statutory Undertakers and removing the need for extensive traffic management on existing highway. There is not expected to be any significant impact on local residents as a result of the construction activities, given the distance of the works from existing properties. In summary, many of the key issues that would normally be assessed and evaluated under the quality criteria are less critical for this specific project by virtue of its geographic location and the nature of the works.
- 3.13 The planning application (CC/CHL/85/21) for the CNEB was approved by Essex County Council's Development and Regulation Committee on 25 March 2022. It has been confirmed that the bypass can be delivered in a phased approach under the planning consent, however, there has been a need to provide some additional clarifications. Additionally, ECC will need to ensure that construction complies with the planning conditions attached to the planning permission. The planning permission required commencement within 5 years from 4 April 2022. Notification of commencement was given on 16 September 2022 under Ref CC/CHL/85/21/01/01. The contract that ECC procures will ask the contractor to carry out the works in compliance with the contract and the planning consent.
- 3.14 Before construction of CNEB Section 1A can commence and a design and build contract be awarded, the ownership of the relevant land parcels will need to be secured. Negotiations with the three main landowners; namely Hanson Quarry Products Europe Ltd, Threadneedle Pensions Ltd and Countryside Zest (Beaulieu Park) LLP have been positive, but they are not yet complete. ECC are also progressing alternative land assembly options, including land dedication or making compulsory purchase orders, in order to keep all options open and thus provide assurance that the land will be acquired. Any decision to proceed with Compulsory Purchase of the land parcels will be subject to a separate decision.

- 3.15 It should be noted that land acquisition discussions and, if necessary, the compulsory purchase process for the bypass works will 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 for construction to commence on programme.
- 3.16 As per other major highway schemes being led by ECC, this scheme is managed and controlled in the following ways:
- Monthly reports
  - Updates to key senior stakeholders at Major Projects Programme Board
  - Project Board – 4-weekly (minimum) including wider stakeholders
  - Monthly progress meetings
  - Weekly project team meetings
  - Ad-hoc required reports and/or meetings
- 3.17 Due to the importance of this scheme, there are also further key stakeholder communications such as:
- Briefings
  - Reports
  - Slides/presentations
  - Ad-hoc meetings
- 3.18 Once the main highway works for Section 1A are on site, the contracts will be managed by ECC's in-house Infrastructure Delivery Team. The team will include Project Sponsors, Project Managers, Site Supervisors and Quantity Surveyors. They will actively manage and control all contractors' applications for costings, assess any Compensation Events in line with the NEC4 ECC contract and will assess and agree programmes of activities with the contractor. Issues will be raised in a timely manner via Early Warning meetings with mitigations and resolutions being agreed collaboratively to prevent larger time and/or cost impacts to the project.
- 3.19 To provide additional independent cost management advice and support both during the detailed design and delivery phase of CNEB Section 1A, Gleeds Cost Management Ltd have been commissioned by ECC, procured through Perfect Circle JVT. Gleeds are currently undertaking a detailed and robust cost management review of the CNEB Section 1A forecast project costs prior to publishing tender documents.

## **4 Links to our Strategic Ambitions**

- 4.1 This report links to the following aims in the Essex Vision:
- Develop our County sustainably
  - Connect us to each other and the world
  - Share prosperity with everyone

- 4.2 Approving the recommendations in this report will have the following impact on ECC's ambition to be net carbon neutral by 2030:
- The provision of CNEB Section 1A will reduce current traffic delays and congestion within Chelmsford City Centre by providing a more direct route to the new Beaulieu Park Railway Station and access to the A12.
  - It will reduce private car journeys into Chelmsford City Centre (to access Chelmsford Station), thereby reducing emissions.
- 4.3 This report links to the following strategic priorities in Everyone's Essex:
- A strong, inclusive, and sustainable economy
  - High-quality environment, including in our new garden communities
  - Health wellbeing and independence for all ages
  - A good place for children and families to grow

## 5 Options

### 5.1 **Option 1 - Recommended Option: Agree to procure a design and build contract for the Section 1A of the Chelmsford North East Bypass.**

The Invitation to Tender (ITT) documents and scope for the CNEB Section 1A bypass works will be finalised and will be issued via a publicly accessible framework. This will allow the scheme to maintain progress to meet the identified completion date.

ECC have a contractual commitment to complete the works for CNEB by March 2026. If the procurement of CNEB Section 1A is delayed, the completion date may not be achieved which could have serious implications for the project and result in claims for funding not being paid by Homes England.

While this is the recommended option, it is to be noted that if funding is withdrawn or the land cannot be acquired, the procurement and award of the bypass works will increase ECC's abortive cost position.

### 5.2 **Option 2 – Not Recommended: Do not to procure the CNEB Section 1A works**

If the design and build contract is not procured there is a risk that the project would be delayed and could not be delivered by March 2026.

This would expose ECC to greater financial risk as ECC would be in further default under the terms of the Grant Funding Agreement with Homes England and would be liable for costs incurred beyond the funding deadline.

There may also be further cost escalation as a result of delaying the construction works due to possible further material cost increases and inflation, resulting in a funding shortfall which could fall to ECC to fund.

## 6 Issues for consideration

### 6.1 Financial implications

- 6.1.1 As Homes England have accepted the phased delivery approach, there is no longer a funding gap associated with Section 1A CNEB. The funding for Beaulieu Park Station and for Section 1A CNEB is currently linked, meaning that both programmes must be delivered in order to receive grant funds.
- 6.1.2 If this scheme were to be terminated at this stage the abortive cost position is £22m; this does not include any repayment of funding received to date, as this would only be necessary in the event of a fundamental default on the part of ECC, which carries a low risk. If funds were required to be repaid on CNEB, this would equate to £14.7m. This represents a significant cash flow risk to ECC.
- 6.1.3 There has been no change to the total funding envelope, however, as the forecast now only relates to Section 1A, spend profiles in relation to CNEB require adjusting as does the funding profile. The proposed revised forecast and profile is as follows:

Chelmsford North East Bypass (CNEB)	Prior Year(s) Actual Spend	2023/24 Forecast	2024/25	2025/26	2026/27	2027/28	2028/29	Total Scheme
	£000	£000	£000	£000	£000	£000	£000	£000
Latest Forecast	18,786	5,900	8,418	62,480	-	-	-	95,585
Latest Financing Updated								
Housing Infrastructure Fund	18,786	5,900	8,418	60,257				93,361
S106 Contributions				2,224				2,224
	18,786	5,900	8,418	62,481	-	-	-	95,585

- 6.1.4 The total cost forecast for the scheme, inclusive of contingency, inflation and other risk allocations is £95.585m. ECC have a thorough break-down of this forecast, which is supported by a quantitative risk assessment. The tender returns are expected to fall within budget.
- 6.1.5 The current approved budget and delivery programme assumes that a Compulsory Purchase Order (CPO) 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 March 2027, this would incur direct costs of circa £1.5m. The far more significant financial risk is that this slippage in the programme would reprofile expenditure beyond the current Homes England funding deadline, resulting in circa £20m that would be need, at least in the first instance, to be funded by ECC. ECC would need to seek a programme extension or consider alternative approaches to funding unless there was a significant reduction in scope.

### 6.2 Financial Risks

- 6.2.1 **The risk of cost escalation is significant** across the entire scheme. If this risk materialises ECC may utilise the remaining contingency and inflationary risk allocation leaving ECC exposed to fund any further cost escalation and future

materialisation of risk up to completion of the project in March 2026. This would result in unfunded capital cost which would put pressure on other Major Projects within the Aspirational Capital programme. If any costs of either scheme extend beyond March 2026, ECC will also face an unfunded budget gap as the HIF grant must be applied in full by this date.

- 6.2.2 The initial HIF bid included an allowance for Part 1 claims of £1.34m, to drawdown on the HIF grant; expenditure must be capital and incurred by 31 March 2026. 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 Homes England to determine if additional revenue funding can be made available to cover these costs post completion (or its terms of the grant can be amended to allow revenue to be paid from them) if this is not agreed there will be an unfunded revenue pressure. ECC will need to clarify with Homes England if the existing £1.34m of capital funding can be used to service other capital costs in the project.
- 6.2.3 As above in paragraph 6.1.5 risk of delay in completion of phase 1A, due to any future need for a public inquiry to acquire land required, poses a significant financial threat.

### **Financial Mitigations**

- 6.2.4 Whilst ECC does not have the ability to terminate the grant funding agreement, it is currently able to abandon the scheme. Any decision to abandon would not be likely to result in a fundamental contractual default requiring HIF funding to be repaid. However, once ECC are under contract with a third party to begin construction, then the ability to abandon would not be practical, as ECC would be unable to fund the programme without the HIF.

### **6.3 Legal implications**

- 6.3.1 This project was subject to an audit in November 2023 commissioned by the internal audit team from a specialist auditor. This highlighted some significant weaknesses in the system of control of the project. A number of recommendations were made and agreed by the service. It is understood that these are now in the process of being implemented.
- 6.3.2 The contractual agreements required detailed conditions to be met before claims for HIF Funding are paid by Homes England including Certificates of Title. This needs to be managed carefully to ensure that ECC submits and recovers claims for HIF Funding successfully.
- 6.3.3 The design and build contract must be competitively procured using a procedure that is compliant with the Public Contracts Regulations 2015.
- 6.3.4 It is important that ECC has the right to carry out any enabling and construction works on the relevant land and that it can provide a Certificate of Title on terms that are satisfactory to Homes England. Without a satisfactory Certificate of



Title, there is a significant risk that funding claims will not be paid by Homes England.

- 6.3.5 The Public Services (Social Value) Act 2012 replaces a requirement on contracting authorities to consider, when procuring services, how the economic, environmental and social wellbeing of the local area may be improved and how this can be delivered through the procurement. Contracts should be awarded on the basis of the most economically advantageous tender and qualitative, environmental and/or social aspects should be linked to the subject matter of the contract.

## **7 Equality and Diversity Considerations**

- 7.1 The Public Sector Equality Duty applies to ECC 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 infrastructure schemes will have positive impacts across a wide range of the population.

## **8 List of Appendices**

- 8.1 Equality Impact Assessment
- 8.2 CNEB Section 1A – General Arrangement Plan

## **9 List of Background papers**

- 9.1 Cabinet Decision - Proposed Beaulieu Park Railway Station and Chelmsford North East Bypass FP/187/07/23.

**9.2 Cabinet Decision - Housing Infrastructure Fund – Contract for Beaulieu Park Station and Chelmsford North East Bypass FP/544/10/19.**