

**Forward Plan reference number: FP/558/10/19**

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| <b>Report title:</b> Award of the Design and Build Contract for construction of Junction 7A of the M11 |                      |
| <b>Report to:</b> Cabinet  |                      |
| <b>Report author:</b> Paul Crick, Director of Capital Investment and Delivery                          |                      |
| <b>Date:</b> 17 December 2019  | <b>For:</b> Decision |
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| <b>County Divisions affected:</b> North Weald, Nazeing, and all Divisions in Harlow District.          |                      |

## **1. Purpose of Report**

- 1.1 Cabinet is asked to endorse the delivery of this project and so enable the project to proceed into construction phase to create a new motorway junction on the M11, junction 7A, sited to the North East of Harlow, along with associated junctions and link road to join the B183 Gilden Way.
- 1.2 The project will reduce congestion and improve access to Harlow's road network, creating economic growth and improve connectivity for residents, businesses, and visitors.

## **2. Recommendations**

- 2.1 Agree to award a contract for the detailed design and construction works to John Graham Construction Ltd following the OJEU compliant restrictive tender for an unqualified fixed price of £39,495,068.00 using NEC3 Engineering Construction Option A Contract (fixed price with activity schedule).
- 2.2 Authorise the Director of Capital Investment and Delivery to implement compulsory purchase orders when confirmed in whichever way he considers will provide ECC most advantageous cost and time benefit.
- 2.3 Authorise the Director of Capital Investment and Delivery to enter into licences and agreements as necessary to deliver the project within the scope of the scheme.
- 2.4 Add the sum of £6.297m to the Capital Programme for 2022/23 to be funded by prudential borrowing to allow the contract to be awarded subject to a requirement that this addition may not be spent on the Junction 7A scheme without a further decision by the Leader to authorise the expenditure.

### **3. Summary of issue**

- 3.1 Harlow was designed in the 1940s as a new town. The continued growth of the town and the resulting pressure on the road network now demands that a strategic plan for the future needs to be agreed to reduce current and forecast congestion and access issues already manifest and likely to worsen. Junction 7 is the only access to the M11 for the Harlow area and is the only junction on the M11 between the M25 and Bishop's Stortford. This single access causes congestion on the local network that will continue to increase as growth in the area continues. Growth is likely to continue to fulfil the Government's focus on generating economic growth and housing development.
- 3.2 Without an improved link to the motorway, the town and surrounding Districts will not be able to realise their full potential and deliver their emerging Local Plan strategies. Traffic modelling work has shown that the existing M11 junction 7 is now at capacity, and consequently Harlow currently suffers from severe congestion in peak periods. This creates a strain on the local road network, particularly the A414, which is both the prime distributor for the town and the through route between Chelmsford and Hertford.
- 3.3 An increase in road network capacity and resilience is needed to support the level of committed and new housing and jobs required to meet future needs and support economic development and regeneration in Harlow and the surrounding areas. Without a new motorway junction and link road, the town and surrounding districts will not be able to realise their full potential.
- 3.4 Over the last four years ECC has investigated options to improve Harlow's road network. A strategic options appraisal report shows that a new junction on the M11 is the optimum solution to overcome the problem, although further improvements may also be required at M11 J7 in due course to provide for all of the planned future growth. Further work was undertaken, with initial designs being shared with the public at local exhibitions in 2013 and 2015.
- 3.5 The scheme received Preferred Route Status following Cabinet approval in December 2016 (Forward Plan reference number FP/456/16) which set out the justification of the route as the best delivery option for the outcomes and objectives of the scheme and there have been no significant variances that would affect the integrity of the decision.
- 3.6 Following the Preferred Route Announcement, planning permission was sought for the M11 Junction 7A scheme, and it was approved by Essex County Council on the 21 July 2017 (Application Reference CC/EPF/08/17). All pre-commencement planning conditions have been discharged and this consent has been implemented by advanced works.
- 3.7 The original planning permission includes a northern bypass as well. However, we do not currently have funding for this, and it is proposed to construct the scheme without this road initially. This entails some minor changes to the part of the scheme we do intend to build. The application is due to be determined early in 2020, although this application will not prevent the scheme from being

implemented. Compulsory Purchase Orders for the land required, which exclude the land required for the northern bypass, have been confirmed.

## **The Scheme**

- 3.8 The solution design is appended.
- 3.9 The proposed scheme is located between Junction 7 and Junction 8 of the M11 motorway and includes a new grade separated junction and link road joining the M11 with the B183 Gilden Way, east of Harlow. The new Link Road connects to Gilden Way and the existing local road network via the creation of the new Champions Roundabout at the west end of the Link Road. The existing B183 will be upgraded from a single alternate carriageway, widened to enable an additional lane heading westbound, providing 2 lanes to the existing London road Roundabout which links to the A414. This is further enabled by the conversion of the existing Church Gate Roundabout on the B183 into a 'hamburger' arrangement with full signalisation.
- 3.10 The upgrading of the existing Gilden Way has already been enabled by the Advanced Works, completed November 2019, which diverted the existing utilities, creating a corridor for proposed widening mitigating potential associated programme delays to the main works.

## **The Benefits**

- 3.11 The scheme will deliver a 'high' to 'very high' level of value for money, this is illustrated by the Benefit Cost Ratio (BCR) for the scheme which is calculated as 3.98. This is due the excellent economic efficiency that will prevail for businesses and users when the new infrastructure is delivered. As a benchmark, Highways England look for a BCR of above 1.6 to demonstrate value for money.
- 3.12 With an improved link to the motorway, Harlow town and the surrounding districts will be able to deliver their emerging Local Plan strategies.
- 3.13 The level of traffic using M11 Junction 7 will reduce, leading to a reduction in congestion in Harlow at peak periods and help alleviate strain on the local road network, particularly the A414, which is both the prime distributor for the town and the through route between Chelmsford and Hertford.
- 3.14 Junction 7A is considered the optimum solution to stimulate and enable growth in Harlow and the surrounding areas.

## **4. Options**

- 4.1 **The Council could decide not to progress the scheme**, and ask Highways England to deliver it as the highway authority for the M11. Although this would be a lower financial risk to ECC, it would likely cause significantly delay to the

delivery of the scheme, incur substantial additional project cost and possibly even mean that it did not happen, furthermore it would likely damage ECC's reputation as a dependable delivery partner for highways infrastructure.

- 4.2 **The Council could decide to deliver the project**, and in doing so accept the risk that the Department for Transport (DfT)/HE may not make up the identified budget deficit – see financial statement and section below, but reap the rewards from enabling the growth of businesses and housing in this area and reduce current congestion on the road network i.e. Realise the benefits outlined in the previous section.

## 5. Land

- 5.1 The Compulsory Purchase Order (CPO) land acquisition powers and Highways Orders were confirmed by the Secretary of State on 24 October 2019, see appendix for Secretary of State's Decision Letter, and the Inspectors Report
- 5.2 In order to implement the CPO and secure the land, a plot by plot analysis will be carried out to determine whether to use the vesting declaration process or a notice to treat.

## 6. Financial implications

- 6.1 The total project cost is anticipated to be £76.297m (including an estimate for potential Part 1 land compensation claims, see 6.4 below). The project is currently funded by a SELEP Local Growth Fund grant of £5m, Highways England and Department for Transport grants totalling £43.2m and ECC borrowing.
- 6.2 The total project cost includes the construction works cost by John Graham Construction of £39.496m. An NEC3 Engineering Construction Option A Contract (fixed price with activity schedule) will be utilised to engage the contractor which offers more cost certainty to ECC, however unforeseen issues may cause adjustment to the price through Compensation Events. The total project cost therefore contains a contingency which is considered to be sufficient based on what is currently known.
- 6.3 As set out below, there is currently a shortfall in capital funding of £6.297m if the contingency in the contract is fully used, although there is sufficient funding should the contingency not be required. Discussions are ongoing with the DfT and Highways England to address this deficit. Pending conclusion of these discussions, Cabinet is asked to agree that the £6.297m is added to the capital programme to allow the contract to be awarded now. . Should new funding not be secured by January 2020, it may be necessary to review Highways investment priorities and potentially re-allocate other capital allocations included within the draft capital programme for 2021/22 to 2024/25 to close this gap.

|                          | Prior<br>Years<br>(£000) | 2019/20<br>(£000) | 2020/21<br>(£000) | 2021/22<br>(£000) | 2022/23<br>(£000) | Total<br>(£000) |
|--------------------------|--------------------------|-------------------|-------------------|-------------------|-------------------|-----------------|
| <b>Forecast</b>          |                          |                   |                   |                   |                   |                 |
| Capital                  | 17,121                   | 7,452             | 12,788            | 22,250            | 11,390            | <b>71,001</b>   |
| Part 1 Claims            |                          |                   |                   |                   | 5,296             | <b>5,296</b>    |
| <b>Total</b>             | <b>17,121</b>            | <b>7,452</b>      | <b>12,788</b>     | <b>22,250</b>     | <b>16,686</b>     | <b>76,297</b>   |
| <b>Capital Funding</b>   |                          |                   |                   |                   |                   |                 |
| Highways England         |                          | 7,452             | 12,788            | 7,460             |                   | <b>27,700</b>   |
| DfT Business Case cont.  | 1,500                    |                   |                   |                   |                   | <b>1,500</b>    |
| DfT                      |                          |                   |                   | 14,000            |                   | <b>14,000</b>   |
| SELEP LGF                | 5,000                    |                   |                   |                   |                   | <b>5,000</b>    |
| ECC Borrowing            | 10,621                   |                   |                   | 790               | 5,093             | <b>16,504</b>   |
| <b>Total</b>             | <b>17,121</b>            | <b>7,452</b>      | <b>12,788</b>     | <b>22,250</b>     | <b>5,093</b>      | <b>64,704</b>   |
| <b>Funding Shortfall</b> |                          |                   |                   |                   | <b>6,297</b>      | <b>6,297</b>    |

- 6.4 There is an inherent risk with such a major scheme, that revenue funding may be required to cover Part 1 land compensation claims from completion of the scheme for a period of 7 years. This will be incorporated into the 2020/21 budget setting and medium term resourcing strategy after a review of reserves. It is anticipated that ECC will be able to secure Section 106 Town and Country Planning Act 1990 contributions to mitigate these costs.
- 6.5 Should the recommendations in this report not be approved and the scheme not go ahead, the costs incurred to date would become abortive and transferred to revenue which would be significant. Prior year costs at the current time amount to £17.1m. In the event of such termination there is an obligation to repay the Grant provided to ECC by Highways England. The agreement provides for ECC to retain from the Grant money the sum it has spent to date on the Scheme

## 7. Legal implications

- 7.1 This is a complex scheme which requires multiple legal issues to be resolved. The Council is not the highway authority for the M11. We have entered into an agreement with Highways England, who are the highway authority, for ECC to deliver the scheme and we can withdraw from that agreement if we wish, but if we do so the scheme may not be delivered in its current form or at all.
- 7.2 If we contract to deliver the scheme with the contractor and then are unable to deliver up the land or make the necessary orders or obtain the necessary planning permissions. Accordingly, we should not commit to a contract unless we have sufficient assurance that we are legally able to deliver the road.
- 7.3 The proposed contractor has been procured in a manner which complies with the Public Contracts Regulations 2015.

- 7.4 It is lawful under the constitution to enter into the scheme if we have sufficient budget available, but the Cabinet should note that there is some risk that the scheme could cost more to deliver than the budget available. Paragraph 6.3 indicates the action that may need to be taken to deal with this.

## **8. Equality and Diversity implications**

- 8.1 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.
- 8.2 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).
- 8.3 The equality impact assessment, appended, indicates that the proposals in this report will not have a disproportionately adverse impact on any people with a particular characteristic.

## **9. List of appendices**

Equality Impact Assessment

Inspector's Report

Secretary of State's Decision Letter

Solution Design

## **10. List of Background papers**

Cabinet Report **FP/968/10/17**

Section 8 Delegation Agreement sealed by HECL dated 6<sup>th</sup> March 2018

Project Plan