

Cabinet Report

Date of Meeting: 12 June 2018

Report Title: Congleton Link Road – Award of Construction Contract and Submission of Final Business Case

Portfolio Holder: Cllr Don Stockton, Environment Portfolio Holder

Senior Officer: Frank Jordan, Executive Director of Place

1. Report Summary

1.1. The purpose of this report is to:

1.1.1 Seek approval to submit the final funding application to the Department of Transport (“DfT”) to release funding towards the construction of the Congleton Link Road scheme (the “Scheme”).

1.1.2 To seek approval to award the Preferred Bidder a contract to deliver the Scheme (“the Contract”).

1.1.3 To set out the final estimated cost of the Scheme, the breakdown of funding contributions and the proposed delivery programme.

1.1.4 To confirm the Council’s previous commitment to underwrite any shortfall in funding that may emerge.

1.1.5 To authorise the Executive Director of Place to undertake all necessary and prudent preparatory works in advance of the final funding decision in order to ensure the Council is positioned to deliver the Scheme once the final funding decision has been made.

1.2. Note: the Appendices to this report contain exempt information and will be considered in Part 2 of the agenda.

2. Recommendations

2.1. That Cabinet :

2.1.1 Approves the submission of the Scheme Final Business Case to the DfT seeking a contribution of £45M towards the total Scheme cost.

2.1.2 Approves the selection and award of the contract to deliver the Scheme to Bidder X as the Preferred Bidder.

- 2.1.3 Recommend to Council to approve the additional contribution from council resources to the scheme of £1.8M to increase the total contribution to £23.8M.
- 2.1.4 Approves the underwriting of the developer contributions to the Scheme of up to £20.8M in the event that the anticipated developer contributions are not realised.
- 2.1.5 Authorise the Executive Director of Place in consultation with the Portfolio Holder for the Environment to exercise powers delegated to the Executive Director of Place to undertake all necessary and prudent preparatory works in advance of the final funding decision, at risk, in order to ensure the Council is positioned to deliver the Scheme if a favourable funding decision is received.

3. Reasons for Recommendations

- 3.1. The process of determining a Preferred Bidder for the Scheme has followed the Council's Contract Procedure Rules.
- 3.2. On 8th November 2016 Cabinet approved the use of the Restricted Procedure for the procurement of the contractor.
- 3.3. The top five scoring candidates were taken forward and invited to submit a final tender. Three candidates submitted final tenders for the Scheme.
- 3.4. In completing the evaluations, tenders were moderated and scored on their Quality and Price submissions in accordance with the published award criteria. To determine the most economically advantageous tender the Quality / Price ratio for the evaluations was 70% / 30%.
- 3.5. On concluding the final tender moderation the following scores were awarded:
 - Contractor X scored 93.1%
 - Contractor Y scored 82.2%
 - Contractor Z scored 81.0%.
- 3.6. The most economically advantageous tender was submitted by Bidder X
- 3.7. The developers' contribution part of the funding package is a key risk. However, in order to submit the Final Business case for the Scheme, the Council must be able to demonstrate that it has the means to deliver the Scheme; hence the requirement to underwrite any funding shortfall.

- 3.8. Utility diversions required as a result of the scheme often have extended lead in times and are a chief reason for contract overruns and cost escalation. In certain key locations it may prove prudent to ensure the early delivery of diversion works.
- 3.9. The works required to be undertaken by the Preferred Bidder, in advance of any Final Funding decision, are necessary to ensure that an efficient construction programme can be maintained. If these advance works were not undertaken it is estimated that seasonal ecological constraints could add up to 6 months to the construction programme. The Contract documentation has been structured in such a way to allow this, with the main obligations under the Contract not becoming effective until the Council has received an unconditional offer of funding from the DfT.
- 3.10. If there is a delay in the approval process from the DfT, it may prove necessary to gain access to third party land for time-critical ecology mitigation activities. In such a case it may be necessary to exercise the Council's CPO powers in advance of a final funding decision if access cannot be negotiated by agreement.
- 3.11. The total scheme estimate has been reviewed following the tender evaluation process. Although the projected total scheme cost has fallen since the March 2016 Cabinet paper, a more conservative position on projected developer income has been taken, resulting in a projected increase in the share of the Council's final capital contribution to the scheme of £c1.8M.

4. Other Options Considered

- 4.1. The Council could stop the scheme. The implications of this are that £c8.9M of sunk costs to date would have to be met by the Council's Revenue budget. This would also place a risk on the delivery of the Local Plan and five year housing supply since c1000 houses are directly dependent on the delivery of the link road.
- 4.2. The full range of procurement options were explored in the November 2016 Cabinet paper and a preferred procurement option was selected at that stage.
- 4.3. The rules on DfT funding bids are set and inquiries have established that there is no opportunity for the DfT to increase its contribution to the Scheme.

5. Background

- 5.1. Congleton Link Road is the single largest infrastructure project the Council has undertaken to date. It is essential to the successful delivery of the Council's Local Plan, five year housing land supply and to resolve long-standing economic and environmental impacts arising from congestion in the town. The link will also improve connectivity across the Borough, particularly for Macclesfield to the M6. The road will be a new principal highway between the A534 Sandbach Road close to its junction with Sandy Lane and the A536 Macclesfield Road to the South of the village of Eaton.
- 5.2. Following approval of the Procurement Strategy, officers have prepared the procurement documents, published them and evaluated bids for the Contract. The activities have followed the Council's timeline including the following stages:

Event	Dates
Selection Questionnaire (SQ)	
OJEU Contract Notice	13-July 2017
Deadline for Evaluation of SQ responses	18 September 2017
SQ feedback to applicants	October 2017
Final Tender Stage	
Issue Invitation to Submit Tender	02 October 2017
Deadline for return of Tenders	23 February 2018
Review, Evaluation and Moderation	03 May 2018

- 5.3. The Tender Assessment Report is contained in Appendix A and a summary of the Tender prices received is contained in Appendix F.
- 5.4. The Contract has been structured to allow the immediate delivery of time critical activities, with the main construction obligations only becoming operative upon the Council receiving an unconditional offer of funding from the DfT.
- 5.5. The Contract has been structured to allow the early delivery of a small section of the Scheme along Back Lane in advance of the main works. This is to help accelerate the delivery of linked housing developments and to ensure access to developer funding contributions.

5.6. The key programme dates are:

Event	Dates
End of High Court Challenge period to CPO decision	18 May 2018
Issue Notification of Award Letter & Unsuccessful Letters following Cabinet decision	21 June 2018
Submit Final Business Case to the DfT and provide to the LEP (Information only)	25 June 2018
Mandatory standstill period ends	03 July 2018
Start Date of Contract (Initial works only)	16 July 2018
Assumed Date of DfT Final Business Case Award	14 September 2018
Issue Notice to exercise CPO Powers	17 September 2018
Site Access Date	17 December 2018
Opening of Back Lane (East) - Target	17 May 2019
Opening of whole scheme	September 2020

6. Implications of the Recommendations

6.1. Legal Implications

Procurement

- The value of the proposed Contract with the Preferred Bidder is above the applicable EU threshold and the award of the contract is therefore subject to the Public Contracts Regulations 2015 (“PCRs”). The PCRs require the Council to treat all economic operators equally and without discrimination. In addition, the Council must act in a transparent and proportionate manner.
- The Council has followed the Restricted Procedure, which is a compliant procedure under the PCRs. In addition, the Council has fully complied with its own Contract Procedure rules during this project. The Restricted Procedure has been used as the Council was able to adequately specify its needs. It has allowed the Council to test the market and only invite those candidates meeting the Council's selection criteria to submit a final tender. No negotiation with the Preferred Bidder is permitted, just clarification of its final tender and finalisation of the Contract.
- From the inception of this project, the Council has engaged external legal and highway procurement industry experts to act as specialist advisors. In particular, Geldard’s were appointed as the Council’s legal advisors

and have supported the Council in preparing the procurement documentation and the Contract. The use of external experts to supplement the Council's internal departments has ensured that a robust and compliant procurement process has been followed throughout.

- The Contract is a NEC3 Option A Priced Contract with Activity Schedule with Contractor Design (Design and Build contract). Aside from some limited early works (intended to accelerate the delivery programme), the main works under the Contract are conditional upon the approval of the DfT Final Funding award and will be triggered when the Council receives an unconditional offer of funding from the DfT that full funding is in place. As the early works will be undertaken in advance of the DfT Final Funding award they will be at the Council's risk.

Funding

- The main legal implications insofar as the funding strategy is concerned are set out in the body of the Financial Implications section and relate to the accuracy of the predicted developer contribution over a longer period of time. In essence, planning legislation and policy is a moveable feast and will impact on assumptions made in the level of developer contributions that can be ultimately achieved.
- Precisely what those impacts will be can only be ascertained once the timing and detail of any such change is known and properly understood, relative to the receipt, determination and/or implementation of development anticipated on any related development site.
- Notwithstanding those variables, and whilst it is anticipated that a developer contribution in the region of that identified will ultimately be recouped, if there is to be sufficient certainty as to the Council's ability to fund the scheme, in order that the Final Business Case can be submitted, the Council needs to be prepared to commit to covering any remaining funding gap.

6.2. Finance Implications

Contractor Assessment

- The Accounts of all of the tenderers were received as part of the Assessment process. A financial health check (Dunn and Bradstreet) on the Preferred Bidder has been undertaken and no concerns have been identified.

Scheme Costs

- The Estimated outturn cost of the scheme is £89.6M. This figure includes all sunk costs to date in developing the scheme, the estimated costs to purchase the land, an allowance for compensation costs for properties depreciated by the Scheme (known as Part 1 Claims), the tendered cost of the scheme, future fees, utility diversions and finally an allowance for future risks. A breakdown of the scheme cost is contained in Appendix B.
- A full estimate of the likely cost of compensation claims for existing properties has been undertaken. Given the fact that new developments are emerging in the locality of the new road an assessment of likely claims for houses not yet build has also been included. This is based on assumptions on the rate of build of these new developments and the type / value of houses built.
- The financial analysis of the tenderers submissions has been undertaken in line with the Tender documentation and independently validated.
- The cost of the initial works to be done at the Council's risk by the Preferred Bidder before Final Funding Approval is set out in Appendix C.

Scheme Funding

- The principle of the funding strategy for the Scheme was established at the March 2016 Cabinet whereby in addition to the Council's own funding contribution it was agreed to underwrite the estimated level of developer contributions to the scheme.
- The Council's Capital Programme has a budget of £90.74M. Approved by full Council on 22nd February 2018.
- The latest position as regards developer funding is set out in Appendix D. A summary of this position is set out below:

Status	Estimated Total Value £m
Signed legal agreements to date with contributions towards or ancillary to the Scheme	4.13
As above, but inclusive of developments that have received Planning Committee Approval	16.32
Estimated realistic 'target' for all developer funding towards the Scheme	20.8
Maximum 'target' for all developer funding towards the Scheme	23.07

- Developer funding is only received by the Council upon meeting certain 'triggers', normally linked to progress in the number of dwellings constructed on a particular site. It is difficult therefore to forecast with any accuracy the timing of payments; though the trajectory set out in the Local Plan assumed all of the developments are fully built out by the end of the Plan period – 2030. For the purposes of making a conservative assessment of budget income only a date of 2038 has been taken.
- However, It is considered that there is confidence that the figure of £20.8M should be used as a figure to underwrite. This would leave the Council with a projected net funding position of £23.8M by 2038; this is an increase of £1.8M as a result of a more conservative assumption on developer income.
- An indicative spend and income profile has been provided in Appendix E. This shows that a significant proportion of the costs of the scheme (linked to compensation) falls within the period 2022 – 2029. It is anticipated that as development funding is received it will help offset these 'tail' costs. It is also likely that the Council will continue to receive income for the Scheme after all capital expenditure has been complete. A summary of the table is set out below:

	Prior Years £m	2018/19 £m	2019/20 £m	2020/21 £m	2021/22 £m	Future years to 2038 £m	Total £m
CEC	8.9		4.2	8.7	1.5	0.5	23.8
DfT		14.4	30.6				45.0
Developers				1.0	1.0	18.8	20.8
Total	8.9	14.4	34.8	9.7	2.5	19.3	89.6

- Notwithstanding the above, there can be no certainty that the receipt of developer contributions will fall in a timely fashion relative to expenditure. Prior to realising Developer contributions it will be necessary for the Council, as a worst case position, to underwrite up to £44.6m towards the cost of the road. It bears repeating that on account of the variables set out above, the Council may not recover against the sums it underwrites the full amount of the developers' contributions that the modelling undertaken to date anticipates will arise.
- The Council's S151 officer will be required to confirm the financial position and underwriting of the scheme on this basis for the Final Business Case submission.

6.3. Equality Implications

- None

6.4. Human Resources Implications

- None

6.5. Risk Management Implications

- A quantified risk register has been developed for this contract and the value is contained in Appendix B.

6.6. Rural Communities Implications

- None

6.7. Implications for Children & Young People

- None

6.8. Public Health Implications

- The Scheme will play an important role regarding public health through delivery of walking and cycling infrastructure, helping to promote the sustainable development of the North Congleton Local Plan Allocation.

7. Ward Members Affected

- 7.1. All Congleton Councillors

8. Consultation & Engagement

- 8.1. The Scheme has demonstrated outstanding levels of local support (c85%) through two large-scale public consultations undertaken in Winter 2014 and Spring 2015

9. Access to Information

- 9.1. The Appendices to this report contain exempt information by virtue of paragraph 3 of Part 1 of Schedule 12A to the Local Government Act 1972 (information relating to the financial or business affairs of any particular person, including the authority holding that information). The Appendices will be considered in Part 2 of the agenda.

10. Contact Information

- 10.1. Any questions relating to this report should be directed to the following officer:

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