

## Decision Report – Cabinet Key decision

– 19 December 2019

### **Decision to conclude the award of a contract for the provision of highway improvements at M5 Junction 25**

Cabinet Member(s): Cllr John Woodman – Cabinet Member for Highways and Transport

Division and Local Member(s): Cllr David Fothergill, Cllr John Thorne, Cllr Simon Coles.

Lead Officer: Mike O’Dowd-Jones. Strategic Commissioning Manager, Highways and Transport.

Author: Sunita Mills. Service Commissioning Manager Transport Policy.

Contact Details: 01823 359763

	<b>Seen by:</b>	<b>Name</b>	<b>Date</b>
	County Solicitor	Honor Clarke	22/11/18
	Monitoring Officer	Scott Wooldridge	22/11/18
	Corporate Finance	Peter Lewis	26/11/18
	Human Resources	Chris Squire	22/11/18
	Property	Paula Hewitt / Claire Lovett	23/11/18
	Procurement / ICT	Simon Clifford	21/11/18
	Senior Manager	Michele Cusack Alyn Jones	21/11/18
	Commissioning Development Team	Vikki Hearn	21/11/18
	Local Member(s)	Cllr David Fothergill Cllr John Thorne Cllr Simon Coles	21/11/18
	Cabinet Member	Cllr John Woodman. Cabinet Member for Highways and Transport	22/11/18
	Opposition Spokesperson	Cllr Mike Rigby Highways and Transport	21/11/18
	Relevant Scrutiny Chairman	Cllr Anna Groskop for Scrutiny Place	21/11/18
<b>Forward Plan Reference:</b>	FP/18/09/10		
<b>Summary:</b>	<p>The M5 Junction 25 scheme has been in development for about 5 years. The scheme provides additional capacity to accommodate growth and provides access for the adopted Nexus25 site.</p> <p>The procurement process has now been completed and this Key Decision is sought to award the contract.</p>		

	<p>The Tender Evaluation Report is attached as Confidential Appendix A.</p>
<p><b>Recommendations:</b></p>	<p><b>That the Cabinet</b></p> <ol style="list-style-type: none"> <li><b>1. Agrees to award a contract for highway improvements and associated works at M5 Junction 25 to the supplier identified in Appendix A, following a competitive process. The award will be subject to confirmation of the funding contribution from the Heart of the South West Local Enterprise Partnership.</b></li> <li><b>2. Agrees to underwrite up to £0.536m from the capital programme that may be the result of the reduction in LEP contribution to the scheme.</b></li> <li><b>3. Agrees the case for exempt information for Appendix A to be treated in confidence, as public disclosure of the commercially sensitive data contained within would prejudice the Council’s position in ensuring competitiveness of future tender processes.</b></li> <li><b>4. Agree to exclude the press and public from the meeting where there is any discussion at the meeting regarding exempt or confidential information (Appendix A).</b></li> </ol> <p><b>The County Council reserves the right to not proceed with the award of a contract should new information come to light during the standstill period and/or before entering into a contract. In this instance, it is recommended that the ECI Commissioning Director and the Director of Corporate Affairs be given joint delegated authority to take any necessary action in relation to the conclusion of the contract to protect the Council interests - this could include a decision not to enter into a contract and go back out to market.</b></p>
<p><b>Reasons for Recommendations:</b></p>	<p>This transport scheme has been developed to reduce congestion and to improve access to Taunton. The scheme will provide the access for the adopted development plan site at Nexus25.</p> <p>This decision will allow the Council to award a contract, following the competitive tender process which has identified the most economically advantageous tender for the works.</p> <p>This decision now needs to be taken to award the contract so that works can commence to ensure timely delivery on the ground; the funding contributions from the Heart of the South West Local Enterprise Partnership and Highways England are both time-bound.</p>

	<p>The scheme costs are higher than the current budget by £0.536m; it is anticipated that there will be an underspend on another scheme, Yeovil Western Corridor (YWC), and that the level of that underspend will be at least enough to cover the shortfall. The total underspend on YWC will not be known until project completion in June 2019. There will be a period of six months where there is uncertainty about the budget for the scheme. The second recommendation seeks to underwrite this risk, should it come to fruition, through the capital programme.</p> <p>The accompanying confidential appendix contains commercially sensitive information relating to the contract and the Council's financial and business affairs. Officers recommend that this is treated as exempt information. "Exempt information" is defined by Section 100 of the Local Government Act 1972, by Schedule 12A to that Act.</p>
<p><b>Links to County Vision, Business Plan and Medium Term Financial Strategy:</b></p>	<p>The proposed major transport scheme is a major investment in transport infrastructure in Taunton. This investment in infrastructure would support development and the local economy and further the following objectives of the County Plan:</p> <ul style="list-style-type: none"> <li>• a thriving local economy, which attracts jobs and investment; and</li> <li>• invest in Somerset; improve broadband connections and road links like the A303, to help businesses and residents.</li> </ul> <p>The procurement process has followed the principles contained in the Social Value Policy Statement to deliver social value benefits.</p> <p>The scheme is included in the Future Transport Plan 2011-2026.</p>
<p><b>Consultations and co-production undertaken:</b></p>	<p>The opposition spokesperson, Scrutiny Chair for Policies and Place and local Members are being consulted as part of this decision process. Any comments received will be incorporated into the final version of the report.</p> <p>The scheme is part of both the Taunton/Bridgwater/Wellington Transport Strategy and the Local Transport Plan. It has therefore been the subject of substantive public consultation.</p> <p>Public consultation on the details of the scheme took place in Autumn 2016 and a consultation report published in March 2017. The consultation report is available on SCC's website (<a href="http://www.somerset.gov.uk/EasySiteWeb/GatewayLink.aspx?alId=121879">http://www.somerset.gov.uk/EasySiteWeb/GatewayLink.aspx?alId=121879</a>). The scheme received a high level of support; some specific design concerns were raised and have been considered as part of the design work that has taken place since the consultation. A number of non-design related concerns were raised as part of the consultation which have been considered and responses are provided in the consultation report.</p>

	<p>Engagement with Parish Councils has highlighted concerns around increasing the volume of traffic which might divert through Creech St Michael and Ruishton villages as a result of the works. SCC has made is a requirement of the contract that the contractor will include within their Traffic Management Plan measures to address the issue traffic diverting through local communities, in particular Creech St Michael &amp; Ruishton.</p> <p>Public consultation took place as part of the planning process in 2017/8. Planning permission (4/38/17/0205) was granted on 12 March 2018 subject to a number of conditions. Prior to commencement of delivery of the scheme SCC and the appointed contractor will be required to discharge conditions as set out in the planning approval.</p>												
<p><b>Financial Implications:</b></p>	<p>A recent review of the funding package and developer contributions (taking latest indexation into account) concludes that up to £18.682m is currently available for the scheme comprising:</p> <table border="1" data-bbox="544 936 1465 1240"> <thead> <tr> <th>Funding source</th> <th>Value</th> </tr> </thead> <tbody> <tr> <td>Developer contributions</td> <td>£1.532m</td> </tr> <tr> <td>Taunton Deane Borough Council (TDBC)</td> <td>£1.5m</td> </tr> <tr> <td>Heart of the South West Local Enterprise Partnership (HotSW LEP)– up to</td> <td>£11.65m</td> </tr> <tr> <td>Highways England Growth and Housing Fund</td> <td>£4.0m</td> </tr> <tr> <td><b>TOTAL</b></td> <td><b>£18.682m</b></td> </tr> </tbody> </table> <p>An updated cost estimate for the scheme has been prepared, based upon the latest information; the scheme is now estimated to cost <b>£19.218m</b>. As with all complex engineering projects there are contractual mechanisms which mean that there is potential for the final outturn cost to differ from this estimate.</p> <p>Should Cabinet agree to recommendation number two the capital programme will be exposed to the £0.536m risk for a period of six months until the final cost of the Yeovil Western Corridor scheme is known. The HotSW LEP has agreed in principle to the transfer of their proportion of the YWC underspend to the M5 Junction 25 scheme. This will be ratified before the contract is let.</p> <p>SCC has completed funding agreements with HotSW LEP (FP/16/06/08) and Highways England (FP/17/04/08).</p> <p>SCC has entered into a legal agreement with the developer (FP/17/07/03) of the Nexus25 site to secure £1.532m as a contribution to the scheme. The payment of this contribution will be in phases; SCC will need to support the scheme financially until the trigger points for the payments are made. A bid for £1m</p>	Funding source	Value	Developer contributions	£1.532m	Taunton Deane Borough Council (TDBC)	£1.5m	Heart of the South West Local Enterprise Partnership (HotSW LEP)– up to	£11.65m	Highways England Growth and Housing Fund	£4.0m	<b>TOTAL</b>	<b>£18.682m</b>
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	<p>has been included within the Capital Programme for 2019/20; please see risk implications.</p> <p>A legal agreement to secure the funding from the TDBC is being prepared, this will be completed before the award of contract.</p>
<p><b>Legal Implications:</b></p>	<p>The procurement process undertaken complied with the requirements of the Public Contracts Regulations 2015. The proposed NEC 3 Contract will provide a mechanism for dealing with risks and the associated costs of those risks as they arise.</p> <p>On 26 Mar 2018 the Cabinet Member for Highways and Transport took the decision (FP/17/07/03) to complete the acquisition for the land to construct the scheme. The award of contract for construction is the final trigger for the acquisition.</p>
<p><b>HR Implications:</b></p>	<p>HR implications have been considered and no issues have been identified.</p>
<p><b>Risk Implications:</b></p>	<p>If the decision is not implemented there is a business and reputational risk related to the Council not delivering major transport infrastructure. A suitable supplier has been identified as part of the procurement process. Not selecting a contractor would delay the scheme being delivered and the wider economic benefits may not be realised.</p> <p>Developer contributions to the scheme have been agreed as phased payments. These are set out within the signed legal agreement and more detail presented in the confidential appendix. A bid for £1m has been included within the Capital Programme for 2019/20, this will only be considered by the Council at its budget setting meeting in February 2019. Therefore, if the Cabinet makes the decision as recommended there will be strong resource commitment that will need to be upheld in the event that the Council does not agree this provision within the Capital Programme otherwise there is the risk of breach of contract in due course.</p> <p><b>Likelihood 1      Impact 4      Risk Score 4</b></p> <p>The scheme is a complex engineering project that is being constructed in challenging ground conditions; there is a significant element of risk to this however SCC has undertaken surveys to fully understand the ground conditions and a detailed design has been completed which takes these matters into account. There is significant transfer of risk to the contractor which will ensure the risk surrounding scheme costs escalating over the life of the project is reduced. The contract is on an Option A basis which means that risks around quantities against the design are taken by the contractor.</p> <p><b>Likelihood 2      Impact 5      Risk Score 10</b></p> <p>The delivery of the scheme will have periods of disruption to the travelling public but the preferred contractor will deliver a</p>

	<p>comprehensive communications plan in coordination with SCC's Communications team and Highways England.</p> <p><b>Likelihood 5      Impact 2      Risk Score 10</b></p> <p>A full risk assessment for the scheme has been completed and an allocation for risk has been included within the pre-construction cost estimate.</p>						
<p><b>Other Implications (including due regard implications):</b></p>	<table border="1" data-bbox="528 421 1489 459"> <tr> <td><b>Likelihood</b></td> <td><b>2</b></td> <td><b>Impact</b></td> <td><b>4</b></td> <td><b>Risk Score</b></td> <td><b>8</b></td> </tr> </table> <p>The works are partially off-line and away from the main arterial routes into the town, but there will be periods of disruption to the travelling public. There will be limited road closures and diversions in place when the works are being completed. Some works will need to be carried out at night when the contractor will need to have due regard to disruption to local communities, particularly with regard to noise.</p> <p>Implications for equality &amp; diversity, human rights, community safety, sustainability, FOI and data protection have been considered and no issues have been identified.</p> <p>All tenderers have given due regard to the awareness and application of the equalities, social and economic requirements of the Council. The contract documents will include requirements regarding monitoring of the successful Contractors' compliance.</p> <p><b>Social Value</b>  The preferred contractor will update their current preferred local subcontractors list through 'Meet the Buyer Events' to include any prospective additional local enterprises thus increasing the levels of local labour opportunities on the project.  In terms of environmental social value the preferred contractor is required to provide an Environmental Manager for ensuring compliance with consents, permits and planning conditions including all ecological and archaeological requirements.  The preferred contractor's communications plan covers how all affected groups will be communicated with.</p> <p><b>Equalities Implications</b>  The scheme includes improvements to bus, pedestrian and cycling links. This should reduce the existing barrier caused by the motorway however there are still concerns from the community regarding the need for non-motorised users to cross the junction. Other projects will consider whether alternative crossing points can be provided.</p> <p>During the construction of the scheme there is a risk that people who are mobility impaired, such as the elderly or people with prams or young children may be disproportionately impacted. SCC will ensure traffic management plans and footway diversions developed by the contractor are designed to accommodate appropriate levels of accessibility.</p>	<b>Likelihood</b>	<b>2</b>	<b>Impact</b>	<b>4</b>	<b>Risk Score</b>	<b>8</b>
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	<p><b>Community Safety Implications</b> The scheme provides a safer environment for pedestrians and cyclists via dedicated pedestrian and cycle facilities.</p> <p><b>Sustainability Implications</b> The scheme encourages sustainable travel via dedicated pedestrian and cycle facilities. During construction there is likely to be an impact on existing routes pedestrian and cycle routes. Measures to maintain the existing access through the construction works will be required, and the exact mechanism to achieve this will be subject to detailed arrangements with the Construction Contractor when appointed.</p> <p><b>Health and Safety Implications</b> Highways improvement contracts require robust health and safety procedures to be in place. In particular safe working practice on the highway and how contractors' health and safety performance will be monitored.</p> <p><b>Privacy Implications</b> Privacy implications have been considered and no issues have been identified.</p> <p><b>Health and Wellbeing Implications</b> The scheme encourages health and wellbeing via the sustainable travel benefits set out above in respect of enabling walking and cycling. The increase in traffic flow may disadvantage people who are mobility impaired however additional crossing points have been built into the scheme.</p>
<p><b>Scrutiny comments / recommendation (if any):</b></p>	<p>Not applicable.</p>

## 1. Background

- 1.1. SCC has been developing the scheme for some years initially funded from SCC's revenue sources until the business case for the scheme was approved by HotSW LEP which secured the allocation of £12.9m. Subsequently SCC was awarded £4m from Highways England's Growth and Housing Fund and has been working with the developer and the Borough Council to secure the funding package. In June 2018 HotSW LEP expressed a need to reduce their contribution to the scheme by between £1m and £1.5m following the tender process in order to meet wider local growth programme needs and recommended a maximum contribution of £11.65m to the Local Transport Board.
- 1.2. In the last two years SCC has carried out public consultation, initial scheme design, and environmental, archaeological, water management, structures, geotechnical, air quality and noise studies. The planning permission was

granted in March 2018 and detailed design was completed prior to the commencement of the procurement process. Completion of the acquisition of the private land will be triggered by the award of a contract for construction. SCC is entering into a legal agreement with Highways England to cover all of the aspects of the scheme that affect them; this includes securing a small amount of their land.

- 1.3.** A final business case is required by Heart of the South West Local Enterprise Partnership's Local Transport Board (LTB). This will be presented to the LTB for approval on 10 December 2018 and if approved will then be progressed through the LEP's approval processes early in the new year.
- 1.4.** The award of the contract for construction is anticipated to be made at the end of January or in early February. It will then be up to the contractor to undertake a number of activities before construction commences.
- 1.5.** The procurement objective for the project was to ensure that the most suitable supplier was selected to deliver a programme of works including the provision of all associated Labour, Materials and Design to deliver the Improvement works.
- 1.6.** A procurement process was developed for the project to ensure:
  - Better cost certainty over the life of the scheme;
  - The scheme at tender stage remains within the budgetary constraints;
  - Appropriate conditions of contract are put in place;
  - Development of an approach for commercial and technical delivery through a strong professional client team.The existing SCC team will be supplemented by an external 'NEC3' Technical Project Manager.
- 1.7.** The Invitation to Submit Initial Tender allowed for SCC to down select a number of suppliers to take through to a negotiation phase before a final tender submission and selection of the most economically advantageous tender. The purpose of this was to allow for a negotiation on price, scope of works and possible efficiencies or innovation to reduce cost should the initial submissions prove unaffordable.
- 1.8.** The Tenders submitted were evaluated in accordance with the process set out in the procurement document, to identify the Most Economically Advantageous Tender (MEAT) on a best price-quality ratio of Price 70% vs Quality 30%. On this occasion the evaluation of the initial tender has provided a response that is within the budget for the project and therefore SCC will not enter negotiation.
- 1.9.** The successful contractor has provided a stakeholder management plan incorporating customer care and relations with the public, landholders and local residents. The successful contractor will provide a public liaison officer and develop a Communications and Customer care plan which will provide a structured framework for communications activities.
- 1.10.** The plan will include writing to stakeholders with details of the proposed works and provide contact details. An information centre will be established to act as a central point for discussions to take place and access to project information.



A web page will be set up along with social media feeds. Works will be carefully managed to minimise disruption.

- 1.11. There will be weekly meetings on site which will allow integration with SCC's communications team.
- 1.12. It is proposed that immediately following the cabinet decision and after sufficient time has elapsed for scrutiny call-in, letters will be issued to the successful and unsuccessful tenderers allowing the mandatory standstill period to commence. Should no market challenge arise, the contract may commence immediately following the expiry of the standstill period, whereupon a Contract Award Notice shall be published in the Official Journal of the European Union.

## **2. Options considered and reasons for rejecting them**

- 2.1. Options considered included:
  - Utilise the existing highway term maintenance contract.
  - Join an existing framework contract procured by another Authority.
  - Utilise a National framework.
  - Procure a dedicated new contract for the scheme.
- 2.2. Due to the value of the scheme, and the desire to specify particular terms and conditions of contract it was decided to undertake a dedicated procurement under the European Procurement rules, utilising Option A of the NEC Contract. The procedure followed the open procurement procedure.

## **3. Background Papers**

- 3.1. Key Decision to proceed with consultation, design, planning and procurement for M5 Junction 25 (FP/16/06/08)
- 3.2. Key Decision to agree to the purchase of the land for the construction of the M5 Junction 25 Highways Improvement Scheme (FP/17/07/03)
- 3.3. Key Decision to accept the Highways England Growth & Housing Fund award towards M5 J25 Improvement Scheme. (FP/17/04/08).

# Somerset Equality Impact Assessment

Before completing this EIA please ensure you have read the EIA guidance notes – available from your Equality Officer

<b>Version</b>	<b>2</b>	<b>Date</b>	<b>16/11/18</b>
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## Description of what is being impact assessed

The decision is to award a contract for the construction of the junction improvement.  
 The main components of the scheme are -

- A new link between A358 / Ruishton Lane / Park and Ride junction with footway /cycleway along one side and a new roundabout to the south of the park and ride site
- A new link between the new roundabout and the existing M5 J25 roundabout on an embankment and crossing Broughton Brook with a new structure with footway / cycleway along each side (not shown)
- Elongating the existing M5 J25 roundabout on the eastern side
- Widening the existing circulatory arms (underneath M5) to accommodate an additional lane
- Moving the pedestrian / cycle facility to behind the bridge supports by removing some of the sloping embankment.
- Signalisation of –
- M5 J25 / Blackbrook Park Ave
- M5 J25 / A358 Toneway
- M5 J25 / new link road
- Realignment of signals at M5 J25 / M5 Southbouth off slip
- A new toucan crossing on new link road between new roundabout and M5 J25 roundabout close to the new roundabout.

## Evidence

**What data/information have you used to assess how this policy/service might impact on protected groups?** Sources such as the [Office of National Statistics](#), [Somerset Intelligence Partnership](#), [Somerset's Joint Strategic Needs Analysis \(JSNA\)](#), Staff and/ or [area profiles](#),, should be detailed here

M5 Junction 25 business case includes a social impact appraisal as appendix 16, this can be found at <http://www.somerset.gov.uk/EasySiteWeb/GatewayLink.aspx?allId=113690>.

**Who have you consulted with to assess possible impact on protected groups?** If you have not consulted other people, please explain why?

A full public consultation was carried out in autumn 2016, the results of the consultation have been considered through the design process where appropriate. A report of the consultation can be found at <http://www.somerset.gov.uk/EasySiteWeb/GatewayLink.aspx?allId=121879>.

### Analysis of impact on protected groups

The Public Sector Equality Duty requires us to eliminate discrimination, advance equality of opportunity and foster good relations with protected groups. Consider how this policy/service will achieve these aims. In the table below, using the evidence outlined above and your own understanding, detail what considerations and potential impacts against each of the three aims of the Public Sector Equality Duty. Based on this information, make an assessment of the likely outcome, before you have implemented any mitigation.

Protected group	Summary of impact	Negative outcome	Neutral outcome	Positive outcome
Age	<ul style="list-style-type: none"> <li>Elderly pedestrians impacted whilst works are being carried out.</li> </ul>	☒	☐	☐
Disability	<ul style="list-style-type: none"> <li>Disabled pedestrians impacted whilst works are being carried out</li> </ul>	☒	☐	☐

<b>Gender reassignment</b>	<ul style="list-style-type: none"> <li>• None</li> </ul>	□	□	□
<b>Marriage and civil partnership</b>	<ul style="list-style-type: none"> <li>• None</li> </ul>	□	□	□
<b>Pregnancy and maternity</b>	<ul style="list-style-type: none"> <li>• Pedestrians with prams / push chairs or young children impacted whilst works are being carried out</li> </ul>	⊠	□	□
<b>Race and ethnicity</b>	<ul style="list-style-type: none"> <li>• None</li> </ul>	□	□	□
<b>Religion or belief</b>	<ul style="list-style-type: none"> <li>• None</li> </ul>	□	□	□
<b>Sex</b>	<ul style="list-style-type: none"> <li>• None</li> </ul>	□	□	□
<b>Sexual orientation</b>	<ul style="list-style-type: none"> <li>• None</li> </ul>	□	□	□

<b>Other, e.g. carers, veterans, homeless, low income, rurality/isolation, etc.</b>	<ul style="list-style-type: none"> <li>Cyclists will be impacted whilst the works are carried out.</li> </ul>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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**Negative outcomes action plan**  
 Where you have ascertained that there will potentially be negative outcomes, you are required to mitigate the impact of these. Please detail below the actions that you intend to take.

Action taken/to be taken	Date	Person responsible	How will it be monitored?	Action complete
Traffic management and footway / cycleway diversion plans will need to be designed to accommodate appropriate levels of accessibility	28/02/2019	Richard Gorst	Review of TM Plans and diversion plans	<input type="checkbox"/>
	Select date			<input type="checkbox"/>
	Select date			<input type="checkbox"/>
	Select date			<input type="checkbox"/>
	Select date			<input type="checkbox"/>
	Select date			<input type="checkbox"/>
	Select date			<input type="checkbox"/>
	Select date			<input type="checkbox"/>

**If negative impacts remain, please provide an explanation below.**

<b>Completed by:</b>	<b>Sunita Mills</b>
<b>Date</b>	<b>16/11/18</b>
<b>Signed off by:</b>	<b>Mike O'Dowd Jones</b>
<b>Date</b>	<b>21/11/18</b>
<b>Equality Lead/Manager sign off date:</b>	<b>07/12/18</b>
<b>To be reviewed by: (officer name)</b>	<b>Richard Gorst</b>
<b>Review date:</b>	<b>February 2019</b>