

# Report to Leader of the Council and Deputy Leader & Cabinet Member for Transportation

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**Decision to be taken on or after 9 July 2019**

**Decision can normally be implemented at least  
3 working days after decision has been signed.**

**Cabinet Member Report No. L02.19**

<b>Title:</b>	<b>Appointment of Main Contractor for the South East Aylesbury Link Road and Eastern Link Road</b>
<b>Date:</b>	1 July 2019
<b>Author:</b>	Ian McGowan- Head of Highways Infrastructure Projects
<b>Contact officer:</b>	Thomas Fitzpatrick Tel: 01296 387105 Simon Glover Tel: 01296 387128
<b>Local members affected:</b>	Bill Chapple (Aston Clinton & Berton); Julie Ward (Aylesbury East); Brian Roberts (Aylesbury South East); Steve Bowles (Wendover, Halton & Stoke Mandeville);

*For press enquiries concerning this report, please contact the media office on 01296 382444*

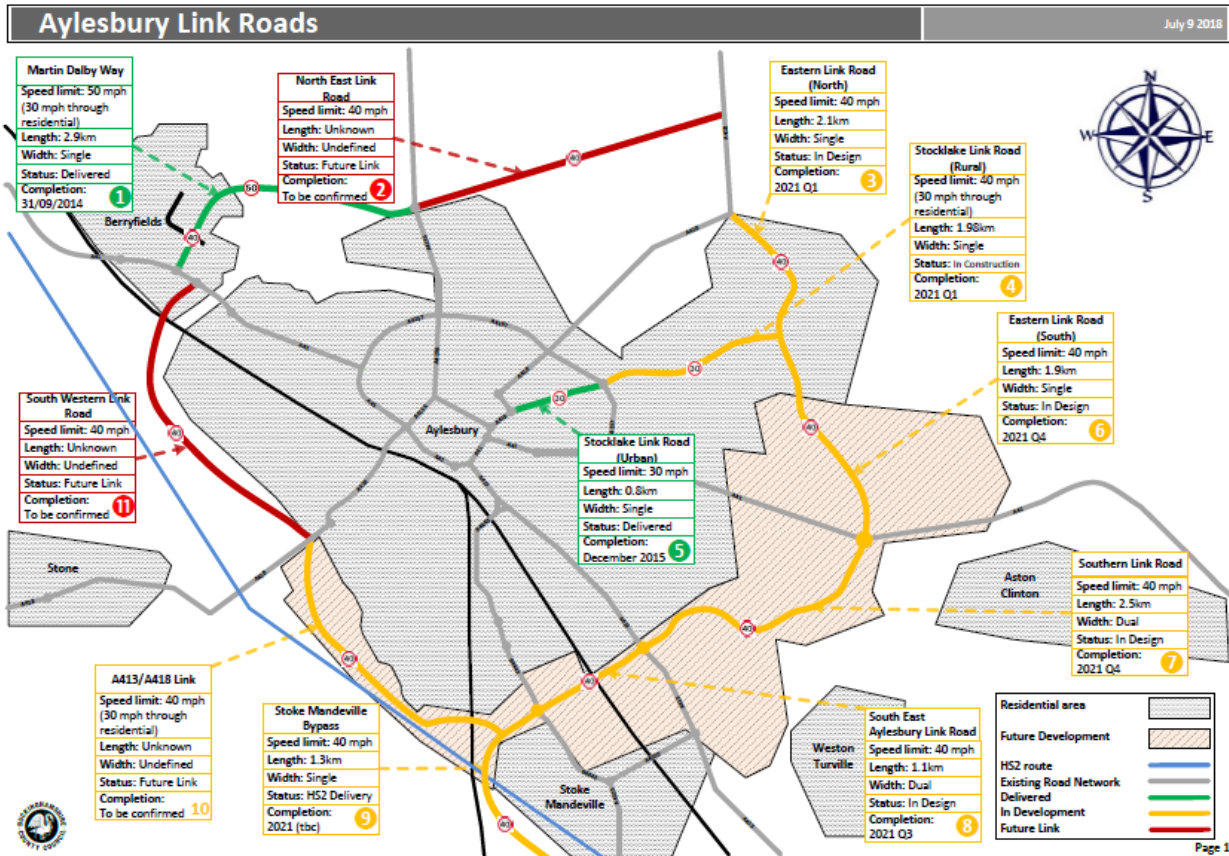
## **Summary**

This report recommends a procurement route via Midlands Highways Alliance (MHA) using NEC4 contracts for two major new link roads around Aylesbury; the South East Aylesbury Link Road (SEALR), and Eastern Link Road (ELR).

The requirement for the SEALR has arisen through the HS2 realignment of the A4010 ('Stoke Mandeville bypass'). Transport modelling has shown that the A4010 realignment causes significant congestion at the Aylesbury gyratory due to traffic reassignment at this junction, which is already operating over capacity. This link road is required to relieve this additional congestion and improve connectivity around Aylesbury.

The ELR provides a new link road to the east of Aylesbury from the A41 Woodlands roundabout to the the A418. To the south of the A41 junction, the Hampden Fields (HF) development will deliver the Southern Link Road section of link road which ties into the SEALR.

The Aylesbury link roads are required to mitigate both planned development traffic as well as future anticipated levels of growth, encourage orbital traffic movements around Aylesbury and complement the emerging vision for Aylesbury Garden Town.



This paper seeks approval by the Leader of the County Council and Cabinet Member for Transport to enter into a contract (initially for Early Contractor Involvement (ECI)) for the purpose of delivering these key link roads in Aylesbury.

### Recommendation

The Leader and Deputy Leader are asked to authorise

- The Head of Highways Infrastructure Projects to enter into NEC4 contracts through the Midlands Highways Alliance Framework for the South East Aylesbury Link Road and Eastern Link Road. This will initially only be for Early Contractor Involvement.
- A delegation of authority to the Head of Highways Infrastructure Projects to approve progression from Early Contractor Involvement into full contract subject to performance of the contractor during ECI.

## **A. Narrative setting out the reasons for the decision**

- 1.1 Before starting the contract process advice was obtained from both the Procurement Team and Legal Services. The Procurement Team is aware of the MHA Framework and believe it to be set up in compliance with the Regulations. Legal advice recommended that formal approval was sought from Cabinet before entering into a full NEC4 contract for the following reason. The decision may be considered a key decision as set out in the Council's Constitution, Article 13, paragraph 13.3. Whilst there is not strictly a requirement under the Council's Constitution to follow the key decision approval process for the purposes of entering into an Early Contractor Involvement under a two-stage NEC contract, the advice is to consider obtaining this in view of Order 14.3 (Standing Orders relating to Contracts), which requires compliance with a key decision process even if this was not required at the beginning prior to the commencement of the procurement. An original non-key procurement decision can later become a key decision requiring key decision approval. Although this is not the case at this stage, the recommendation is that the decision should be taken now to maximise Members' awareness of the procedure being taken forward by officers.
- 1.2 Buckinghamshire County Council is a member of the Midlands Highways Alliance (MHA). This provides access to a procurement route which is compliant with the Council's procurement obligations and an opportunity to maximise the benefits of Early Contractor Involvement (ECI). Both the SEALR and ELR were model projects under the Midlands Highway Alliance Medium Schemes Framework 3 (MSF3) competitive framework tendering process. This gave early sight and exposure of these projects to the wider construction industry to price, evaluate and determine value engineering opportunities with a goal to maximise the benefits to the Council in terms of quality, value engineering and value for money.
- 1.3 The MHA's evaluation of its MSF1 & MSF2 major projects over the last 8 years demonstrates a proven track record of efficiency savings when a chosen contractor assists in the scheme delivery through ECI. MSF1 & 2 generated ECI savings of £23M via an average of 36 weeks ECI across all projects with £3.9M of gain share and £1.0M procurement savings.
- 1.4 Early Contractor Involvement has the following key benefits:
- Contribute to the design process using past experience.
  - Build a better team-working ethic to take forward into construction of the scheme.
  - Introduce innovation such as building materials and construction processes
  - Advise on buildability, sequencing, and construction risk. For example how best to ensure good traffic management.
  - Advise on the selection of specialist contractors.
  - Spend more time developing a construction strategy, recruiting staff, identifying partners and work collaboratively with the Council.
  - Help develop the cost plan and construction programme to provide better cost certainty at an earlier stage of development.
  - Help develop the method of construction.
- 1.5 In choosing the ECI route, the Contractor, Consultant and Client are responsible for compiling the target cost. The Contractor is required to demonstrate competition in their rates by market testing material supplies and sub-contractor costs. The Contractor is also required to bring their best ideas from working on similar highway schemes in order to generate significant savings.
- 1.6 At the point of entering into an NEC4 contract using X22(ECI), via the MHA, the County Council is required to enter into a future contract with the same contractor to deliver the

main scheme works (subject to certain criteria being met), thus committing in principle to the full scheme expenditure. However, the notice to proceed to a full contract is only issued once all necessary steps have been completed. This includes getting external approvals and consents, determining any changes to the Budget and agreement of the construction price. In that event the work does not proceed and an alternative contractor would need to be found. In addition, the Employer has the right to decide not to proceed with the works for any reason. The only costs incurred if that happens will be those attributable to the ECI. This is explained further in the legal section of this report.

## **B. Other options available, and their pros and cons**

2.1 Do nothing. In this situation the schemes would not progress through the ECI process but would result in a loss in the programme, cost and scheme benefits set out previously.

2.2 Procure the contract via a tender process. Through its involvement with the MHA, BCC has established relationships with the framework's contractors and its regional supplier. While a tender process would not prohibit ECI per se, a new arrangement would need to be established with the successful bidder and this would take time and cost, without any certainty around performance. The MHA framework has well developed KPIs to ensure contractors deliver high quality schemes; ECI encourages this further still, whereas a new tender exercise would require careful selection of a new supplier, unfamiliar with these two link road schemes or how the Client works and potentially be a short term relationship as there would be no certainty that they would do further work for the Council.

## **C. Resource implications**

3.1 The cost of ECI for both the SEALR and ELR is expected to be a combined £400,000. This will be covered from within each project's budget and it is likely that SEALR ECI will be commissioned first. These costs should be thought of as an investment as the purpose is to identify ways to deliver the projects quicker, achieve better value for money, deliver them more safely and achieve a better quality than would otherwise be achieved and is line with HM Government Construction 2025 strategy.

3.2 The potential costs of construction for both schemes, which will be covered within each project's budget, combined are approximately £60million at the time of this paper within the current scope of works. This will be confirmed through the ECI process and via subsequent briefings with senior management, Cabinet Member and the Leader of the Council.

3.3 Funding for these schemes is from a variety of sources including Local Growth Funding awarded to the Local Economic Partnership, Developer Contributions (S106), and HS2 mitigation. This is within the agreed Medium Term Financial Plan (MTFP) for the County Council. The cost of ECI and construction will come from within this funding. Therefore, there is no additional funding requirement or risks arising from this decision.

## **D. Value for Money (VfM) Self Assessment**

4.1 The aim of this decision is to ensure that best value is achieved in the delivery of two major infrastructure projects.

4.2 ECI is an industry recognised practice that offers potentially substantial savings in the delivery of major highways projects.

## **E. Legal implications**

5.1 The Council proposes to use the Midlands Highway Alliance Medium Schemes Framework 3 (MSF3). It has confirmed that it is entitled to access the Framework. The Council must satisfy itself that the proposed Framework was set up in compliance with the Public Contracts Regulations 2015 and EU principles of transparency, equality, fairness and non-discrimination in accordance with Order 7.2 (Standing Orders relating to Contracts).

5.2 The Council must also comply with the requirements of the Framework Agreement with regard to any criteria for award of a contract under the Framework. Contracts entered into under the Framework are based on NEC 4 contract.

5.3 The costs of the ECI for both the SEALR and ELR projects are estimated to be £400,000. Under Order 7.2 the procurement of 'Works' contracts under the Council's Orders will be subject to the Supplies and Services EU tender threshold. Therefore, if the value of either of the SEALR and ELR projects (for the initial Early Contractor Involvement (ECI)) is above £181,302, the award of the contract is to be authorised by an Executive Director and S151 Officer (Order 14.3).

5.4 The Call-Off Contract must be sealed for the Council to benefit from a 12 years limitation period for Court action in accordance with Order 15.3.

5.5 The Council's proposal is to enter into an NEC4 ECI contract pursuant to the Framework for the appointment of an early contractor involvement (ECI) under a two-stage NEC4 contract. The NEC4 Guidance on the ECI Clauses states:

5.6 The notice to proceed to Stage Two is only issued once all necessary steps have been completed. This includes getting external approvals and consents, determining any changes to the Budget and agreement of the Stage Two Prices. The Project Manager is not able to fix the Prices if they are not agreed – in that event the work does not proceed and an alternative contractor would need to be found. In addition, the Employer has the right to decide not to proceed with the works for any reason.

5.7 If Stage Two is not to proceed, the Project Manager issues an instruction removing the Stage Two work from the Works Information. The instruction is not a compensation event; the Contractor is paid for all the work carried out in Stage One but receives no additional payment for not proceeding with Stage Two.

5.8 If the reason for not proceeding is because the Prices have not been agreed, or the performance of the Contractor is below a standard specified in the Works Information, the Employer is free to replace the Contractor with another contractor to carry out the work. If the work does not proceed for other reasons – for example consents have not been obtained – the Employer may proceed with the works at a later stage with another contractor once consents have been obtained if the appropriate entries have been made in the Works Information.”

Therefore, the Council is not contractually bound to proceed with the Stage 2 works under the ECI clauses of NEC4.

## **F. Property implications**

6.1 Previous decision has been made in relation to the SEALR land acquisition which can be found here: <https://democracy.buckscc.gov.uk/ieDecisionDetails.aspx?ID=6903>

## **G. Unitary Council**

7.1 The Council is working collaboratively with colleagues at Aylesbury Vale District Council on both the SEALR and ELRs. There is representation on the project boards from AVDC with Aylesbury Garden Town Board being regularly updated on the projects.

## **H. Other implications/issues**

8.1 N/A

## **I. Feedback from consultation, Local Area Forums and Local Member views**

Local members were all emailed with the draft paper and no comments were received. Members were informed that an ECI approach would be taken during briefings by officers.

## **J. Communication issues**

There are no communication issues to highlight.

## **K. Progress Monitoring**

11.1 The progress of this project will continue to be monitored through the project board and reporting to the Growth Board on which both the Leader of the Council and Deputy Leader sit.

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### ***Your questions and views***

*If you have any questions about the matters contained in this paper please get in touch with the Contact Officer whose telephone number is given at the head of the paper.*

*If you have any views on this paper that you would like the Cabinet Member to consider, or if you wish to object to the proposed decision, please inform the Democratic Services Team by 5.00pm on 8 July 2019. This can be done by telephone (to 01296 382343), or e-mail to [democracy@buckscc.gov.uk](mailto:democracy@buckscc.gov.uk)*