

North Somerset Council

Report to the Full Council

Date of Meeting: 14 November 2023

Subject of Report: Approval of Banwell Bypass construction contract award and progression into stage 2; detailed design & construction

Town or Parish: Banwell

Officer/Member Presenting: Cllr Mike Bell

Recommendations

1. To award the stage 2 New Engineering Contract (NEC) Option C Engineering and Construction Contract (ECC) for the detailed design and construction of Banwell bypass and all associated infrastructure to Alun Griffiths Contractor Ltd (AGCL) Company number 01493003
2. To approve the project team to progress with stage 2 of the contract between NSC (North Somerset Council) and Homes England

1. Summary of Report

In June 2020, North Somerset Council accepted £97,067,550 of grant funding from Homes England's Housing Infrastructure Fund, entering into a Grant Determination Agreement (GDA), decision COU09.

In March 2021, North Somerset Council entered a contract with Alun Griffiths (Contractors) Ltd (AGCL) which marked the first stage of two interlinked contracts to deliver the design and build of Banwell bypass.

The stage 1 professional services contract, which will conclude in December 2023, allowed the development of site investigations and surveys, route option appraisal, preliminary design and preparation of all documents including the Environmental Impact Assessment for the submission of planning for the Scheme which was granted permission in March 2023.

The stage 2 engineering and construction contract will deliver the detailed design and construction for all elements of the scheme. This is proposed to be awarded to Alun Griffiths (Contractors) Ltd with the design sub-contracted to Ove Arup and Partners and TACP UK Ltd, environmental specialists.

A report to Full Council in July 2023 (COU41) detailed the funding pressures to the budget and sought further contributions from both NSC and Homes England. Both contributions were approved with the capital programme increasing to accommodate a further £23.9m. A Deed of Variation has been entered into which accepts the £12m of funding and addresses the contractual amendments to the Grant Determination Agreement with Homes England.

The Council committed to a two-stage delivery of the Scheme with an informal break clause between both stages to allow suitable governance and scrutiny over the continuation of

delivering the project. Approval of the stage 2 contract will enable the project team to progress with delivery of the Scheme, meeting the conditions and milestones of the funding agreement with Homes England.

2. Policy

Regional Policy

The main relevant regional policy is the Joint Local Transport Plan 4 (“**JLTP4**”). JLTP4 is a strategic transport policy document which encourages modal shift and identifies one of its aims as ensuring that transport is carbon neutral by 2030. The document identifies the need for highway improvement and traffic management schemes, including a bypass of the village of Banwell.

Local Plan Policy

The Council has recently undertaken Regulation 18 consultation on the new North Somerset Council Local Plan (2023-2038) and are working towards Regulation 19, consultation on the pre-submission plan later this year. The emerging Local Plan, as currently prepared, continues to safeguard the Banwell bypass.

The new Local Plan currently proposes the allocation of 2,800 homes around Wolvershill Road to the north of Banwell. The Scheme is essential for enabling the delivery of this housing.

Corporate Plan

The Scheme also supports the North Somerset Council Corporate Plan 2020-2024 whereby delivery of the Scheme is a measure of success against the corporate priority of delivering a broad range of new homes to meet growing need (with an emphasis on quality and affordability).

The Corporate Plan acknowledges that, despite good strategic links, travelling around North Somerset by road or public transport is not always easy due to congestion and a limited bus network. The Corporate Plan has a priority of a transport network that promotes active, accessible, and low carbon travel. The Scheme includes infrastructure which enhances routes for walking, cycling and equestrian use. It also includes mitigation measures to improve highway safety, and mitigation to reduce the Scheme’s impact on the environment.

The Corporate Plan also acknowledges that significantly more homes are needed to meet the demand of North Somerset’s growing population and to meet government housing targets (including affordable homes). The Corporate Plan places a priority on delivering the Banwell Bypass by 2024 to ensure that the Council can support a policy of supplying quality and affordable homes to ensure a five-year supply is in place. An objective of the Scheme is to deliver infrastructure that enables housing (subject to the new Local Plan process), and so in this way the Scheme supports the provision of new housing.

3. Details

Contract Terms

The Council have proposed to award an NEC4 Option C Engineering and Construction Contract (ECC). This is a target cost contract that is based on a scope of works set by the client (NSC) which the contractor (AGCL) prices an activity schedule against. The Option C contract is often favoured for larger more complex higher value works and contracts as it is considered to share the risk more fairly. The contractor will be paid the actual costs for works that are undertaken plus a fee percentage. The Contractor is incentivised to deliver the actual cost of works (plus fee) within the target cost by a pain gain share mechanism which is set out below.

The pain gain element ensures that both parties work collaboratively to manage the cost of the contract.

Table 1 proposed pain gain share of the contract

Share range	Contractor's share percentage
less than 80%	10%
from 80% to 90%	25%
from 90% to 120%	50%
greater than 120%	100%

For example, if a contract had a target cost of £10m and was delivered for an actual cost of £11m, the additional £1m would be split 50/50 by NSC and the contractor. The Council would pay £10.5m and the Contractor would bear the other £0.5m. If the actual costs were to increase to above £12m, the Council would pay £11m and the contractor would be required to cover the additional costs above £11m in their entirety. If the contract were to come in below the target cost, this would be shared 50/50 for the first 10% (£1m), reducing to 25% gain share for the contractor up to 20% (£2m) under the target cost and only 10% for any savings greater than 20% of the target cost.

The contract includes a scope which sets out what is required from each party to deliver the project. The scope defines the activities to be undertaken and any constraints on how they are delivered. These include detailed design, engagement with third parties (such as statutory undertakers and Parish Councils), construction, approvals and consents which need to be obtained. The scope also defines the standards to which the design and works are to be delivered, which in the case of Banwell bypass are a combination of National standards and North Somerset Council's policy and guidance.

The scope for this contract includes the design and construction of the bypass, southern link, Moor Road link, Summer Lane junction upgrades and the wider mitigation measures. The Scope also includes the design of the Banwell Road junction on the A371 in Locking. The design and construction of the Banwell Placemaking measure and the construction of the Banwell Road junction on the A371 in Locking are intended to be delivered after the completion of this contract through a separate contract.

Details of the target cost are set out in section 5.

The project is still waiting for confirmation of the Compulsory Purchase Orders (CPO) which if not granted, would prevent the works proceeding. All NEC contracts have termination clauses which allow either party to terminate the contract for a reason listed within the contract. If the CPO is not granted, the NEC Project Manager overseeing the Scheme would need to instruct that works are to be stopped immediately. If availability of the land results in a delay greater than 13 weeks, then either party may terminate the contract. The contractor can claim for any reasonable costs for work completed until this date and any costs associated with de-mobilising or putting the site back to a standard that is acceptable. If this were to occur, the costs would be covered through the funding obtained from Homes England, this cannot be considered a fundamental default of the contract as the consent for CPO is beyond NSC's control.

Governance and contract management

The contract will be managed by an NEC accredited Project Manager via the Scheme's appointed cost consultant (Atkins Réalis). The day-to-day management of contract performance, early warnings, formal instructions, payment certificates and programme revisions are recorded in CEMAR an online contract management software. Atkins will be assisted and managed by officers of North Somerset Council.

The client team will continue to have a specific senior project manager and supporting colleagues to ensure delivery of all key elements to time and budget and in line with the programme management office governance and project management requirements.

The Scheme is managed and reviewed through the approved capital board structure including specific project board for Banwell Bypass and the capital boards (CPPDB and CDSG (Capital Delivery Steering Group)); these boards are held on a monthly pattern and attended by the Senior Leadership Team. In addition to this, the project team report to the Transport Climate and Communities Policies and Scrutiny Panel (TCC (Transport, Climate and Communities) (Transport, Climate and Communities) panel) on a six weekly basis to ensure transparency and scrutiny over decisions.

Funding conditions

The GDA and subsequent Deed of Variation detail the amount of the grant awarded, the availability period for the funding, project deliverables (including key milestones and outputs), monitoring and evaluation.

The availability period states that Homes England funding can only be drawn down until March 2026.

Homes England have released the first tranche of funding (£17.3m) for stage 1. To draw on the remaining £47.9m (and the additional £12m) there are several conditions which need to be achieved including land assembly. Discussions with Homes England have identified that a temporary agreement to drawdown from stage 2 funding will be granted until the CPO and general vesting of land has concluded.

The initial decision which sought acceptance of the funds (COU09) sets out all other contractual procedures.

Programme

As noted above, the programme is dependent on the funding conditions as the Homes England grant will no longer be available after March 2026.

The construction programme is anticipated to commence in early 2024 following a suitable level of detailed design being completed to discharge the relevant pre-commencement planning conditions. The design will then continue in parallel as construction commences. It is anticipated that construction will take 36 months with wider mitigation improvements being delivered in parallel to the mainline of the bypass. Capacity upgrades to Summer Lane junction and Banwell Road will also be undertaken through this contract.

The Placemaking measures for Banwell bypass cannot be constructed until the bypass is open and it is proposed that this will be delivered in house by NSC as opposed to the AGCL contract.

The programme is intrinsically linked with the determination from the Secretary of State on the outcome of the public inquiry held in July 2023 for the Compulsory Purchase Orders for land, this is expected by December 2023 with the general vesting declaration process

following shortly after. We anticipate that the land assembly will be complete in Spring 2024.

Environmental licences are in the process of being applied for to enable works to take place in the presence of protected species (bats, dormice, badgers, and great crested newts). The planning application and subsequent conditions note the ecological and environmental importance, and a range of mitigation has been incorporated into the design to protect and enhance these species.

The following key dates are set out within the programme:

- Contract award December 2023
- Early environmental access February 2024
- Main construction commencement May 2024
- Wider mitigation completion September 2025
- Bypass completion May 2026
- Southern Link completion August 2026
- Planned Scheme completion January 2027
- Defects period January 2028

4. Consultation

Extensive public consultation was undertaken throughout preliminary design and helped to inform the Scheme's planning submission. This included two non-statutory public consultations and a further statutory consultation during planning determination.

Consultation will continue through detailed design with regular engagement with statutory stakeholders, Parish Councils and landowners affected by the Scheme. However, further consultation during detailed design must be set out within the confines of the consented Scheme, as well as the Scheme's available funding envelope. This is already underway, and the bypass project team is already engaging with parish councils and other relevant stakeholders. The Scheme will also continue to be subject to regular internal governance throughout detailed design to ensure appropriate scrutiny, including via six-weekly TCC Panel meetings open to all members.

As detailed design develops, the bypass team will also hold a series of design review meetings, each anchored around specific aspects of the Scheme, for example, heritage considerations, environmental consideration, etc. These will provide an opportunity to attain feedback from statutory stakeholders with relevant expertise, such as Historic England, Natural England and internal NSC consultees. This will also allow opportunity to address design matters in advance of the formal planning discharge process, expediting the discharge process.

Details of the consented Scheme have been widely shared with the public and are available on the NSC website. Though the consented design will not significantly change, any minor alterations outlined through detailed design will be clearly set out on the NSC website as the detailed design develops. This is further to regular attendance at parish council meetings, where residents can hear updates directly from the bypass team.

The contract with AGCL has a Public Liaison Officer appointed. They will operate locally and provide community liaison as a day-to-day contact, who will help ensure all interested parties are informed of any disruption during construction and construction progress of the Scheme. This is in addition to contact with NSC via the bypass team and the bypass email inbox.

Corporate communications, making full use of NSC channels such as the website, social media and relevant newsletters will continue to promote and demonstrate Scheme progress and inform residents of upcoming milestones. Briefings/updates for parish councils, local community groups and other stakeholders will develop advocacy relationships, to further promote Scheme messaging and updates.

5. Financial Implications

Costs

The stage 2 contract with AGCL is anticipated to begin in December 2023 and will conclude in January 2028 (inclusive of a year for defects). The contract is forecasted to cost £56.5m.

This is estimated to be spent across the following financial years:

2023/24	2024/25	2025/26	2026/27
£3.5m	£18.8m	£22.3m	£11.9m

The delivery of Banwell bypass and associated works are funded through the following capital sources:

Homes England: £77.3m
 North Somerset Council: £11.9m
TOTAL: £89.2m

NSC contribution as referred to in COU41 (July 2023) comprises several sources of capital funding, predominantly S106 and CIL (Community Infrastructure Levy) reserves. The funding contribution from NSC will be utilised to cover the anticipated spend beyond the March 2026 Homes England funding availability period until the end of the contract.

Funding

Stage 1	
Committed budget	£11.6m
Remaining funds <i>(transferred to Stage 2)</i>	(£5.6m)
Stage 2	
Construction contract (forecasted cost)	£56.5m
External consultant costs & NSC Staff (land agent, legal, cost consultants)	£2.0m
Other delivery costs (land assembly, PPA (Planning Performance Agreement), NSC design & build, lighting, consents & licences)	£6.2m
Utilities	£4.5m
Risk, Contingency & Future Inflation	£8.4m
TOTAL	£89.2m

The table above identifies that the full budget is expected to be committed but supported with a sufficient risk and contingency allowance.

At tender, the risk for inflation during construction sat with the Contractor. Since then the market has 'over-heated' and certainty regarding inflation rates has significantly diminished.

This is reflected in the significant increase and fluctuation with BCIS indices, which have shown a circa 30% increase in the last 3 years (since tender) compared with circa 1%-2% per annum in the years prior to tender. A review of who is best placed to manage this throughout the ECC (stage 2) contract, indicates that the risk is better placed with NSC. The significant benefit would be that if inflation is less than it currently is then NSC would realise the cost savings not the Contractor. Future forecasts of inflation are indicating a reduction over the next few years.

It is proposed that the stage 2 funding will be distributed across the financial years as follows:

2023/24	2024/25	2025/26	2026/27	TOTAL
£13.3m	£25.5m	£26.9m	£11.9m	£77.6m

6. Legal Powers and Implications

The contract terms and conditions for the stage 2 contract with Alun Griffiths will be reviewed independently by Hugh James solicitors and follows NEC4 guidance.

In March 2023, the Scheme overcame a significant statutory process in securing planning approval under the Town and Country Planning Act 1990 to deliver the bypass and associated works.

The Council's powers of compulsory purchase to acquire land and interests in land for the Scheme are contained in section 239, 240, 246 and 250 of the Highways Act 1980. Before North Somerset can acquire land using the compulsory purchase orders, the Orders must be confirmed by the Secretary of State.

In July 2023, North Somerset Council presented evidence to support the Compulsory Purchase Orders to an independent inspector appointed to review the Scheme by the Secretary of State. The evidence has been compiled and shared with the Secretary of State to take a decision. A legal implication remains that without determination to the compulsory purchase orders, there is risk that the land required for the scheme is not secured.

7. Climate Change and Environmental Implications

Chapter 14 of the Environmental Statement submitted with the planning application for the Scheme sets out the impact of the Scheme on climate (considering National Policy and legislation) and considers the resilience of the Scheme to climate change, including how the Scheme design has been adapted to take account for the projected impacts.

The whole life carbon of the Scheme has been considered from design, through construction to end user generated carbon, targets have been set against a baseline for a Scheme of this scale and are detailed in the table below:

Target	Baseline design emissions tCO ₂ e	Scheme design emissions tCO ₂ e	% change	How the target has been achieved
Embodied carbon A target of 33% reduction. Aspiring target of 50% reduction	34,948	18,262	-48%	Through the design process the project team have sought to reduce material quantities and works required where possible. Additional steps were taken to

				replace materials with those which have lower carbon impacts
Operational Carbon A target of 10% reduction	5,815	3,626	-38%	By reducing the volume of materials this reduces the operational carbon to construct. Consideration was also taken for the maintenance and repair of the Scheme when assessing materials
User Carbon	232,669	217,275	-7%	User carbon has been considered whilst balancing Scheme objectives e.g., highway alignment and junction layout. A large extent of active travel provisions are being proposed in effort to promote modal shift.

The detailed design of the Scheme will update the carbon assessment and look to reduce the carbon impact further.

In addition to the above, the project team have sought to retain severed land parcels to deliver a range of environmental mitigation including flood compensation areas, tree, and vegetation planting and an additional 7.7 hectares for bat mitigation land that will be planted and grazed.

The Scheme has been assessed using Biodiversity Net Gain Metric 3.0 and with the implementation of habitats, management of existing habitats and the construction of swales, ditches, and attenuation ponds it will create approximately 41% habitat units, 40.5% hedgerow units and 75% river units, exceeding the 10% BNG (Biodiversity Net Gain) objective that was set at the outset of the project.

8. Risk Management

The project team manage risks against the project monthly and hold a risk register containing 36 remaining risks. A QCRA is carried out quarterly to inform the profiling of the risk budget. The following risks are relevant to this decision:

Risk	Inherent risk score	Residual likelihood	Residual impact	Residual risk score	Comments
The stage 2 contract costs more than the target cost	HIGH	4	3	MEDIUM	<ol style="list-style-type: none"> 1. Pain gain share mechanism to encourage collaborative working 2. Comprehensive risk register to outline where additional costs may transpire which informs the risk and contingency allocation 3. Cost consultants to manage contract and ensure due diligence on compensation events
Inflation exceeds the allowance made in the cost estimates	HIGH	3	3	MEDIUM	<ol style="list-style-type: none"> 1. Budget line for future inflation that has been forecast based on BCIS indices
The programme does not align with Homes England milestones	HIGH	3	2	LOW/MED	<ol style="list-style-type: none"> 1. NSC contribution to cover finances past March 2026 2. Contractual mechanism to apply for milestone extensions in GDA
The commuted sum for ongoing maintenance & Part 1 claims cannot come from HIF funding	HIGH	3	2	LOW/MED	<ol style="list-style-type: none"> 1. Longer term financial requirements are in review 2. Headroom from unallocated NSC funding (£11.9m) will be utilised for this purpose.
The contract cannot continue as the CPO is not granted	MEDIUM	2	2	MEDIUM	<ol style="list-style-type: none"> 1. Specific termination clauses within the contract to account for this 2. Fisher German seeking to secure land by agreement where feasible

9. Equality Implications

An Equality Impact Assessment has been undertaken for both the Planning Application and Compulsory Purchase Order. This will be updated and refreshed throughout the remainder of the project.

10. Corporate Implications

As noted in section 2, the delivery of this Scheme is a strategic priority supporting the Corporate Plan objectives and providing essential infrastructure to enable the delivery of housing delivery through the Local Plan.

11. Options Considered

1. To not progress with the Scheme and AGCL contract

Noting the progress towards Scheme delivery, (securing planning permission and additional funding to enable delivery), and the number of benefits associated with Banwell bypass this would not be a viable option.

2. To re-tender the stage 2 contract to an alternative provider

The timescales associated with re-tendering this contract would pose a significant delay to the construction programme, reducing the availability period of the funding from Homes England, on this basis, this option was discounted.

3. To divide the contract further into smaller packages of works

Consideration was given to whether smaller packages of work could expediate the design and construction programme. There were several disadvantages to this approach as it would require additional management of several contracts and risks around liabilities and defects for different elements of the Scheme. It was concluded that there were greater benefits and efficiencies to managing through one central engineering and construction contract.

Author:

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Appendices:

N/A

Background Papers:

COU09 Acceptance of HIF grant (16 June 2020)

DP329 Contract award design and construction contract (2 March 2021)

COU41 Allocation of capital funds to support delivery (11 July 2023)