

<b>12 July 2023</b>		<b>ITEM: 19</b>
<b>Decision: 110664</b>		
<b>Cabinet</b>		
<b>A13 Widening - Outturn Report</b>		
<b>Wards and communities affected:</b> All	<b>Key Decision:</b> Key	
<b>Report of:</b> Cllr B Maney, Cabinet Member for Regeneration and Highways		
<b>Accountable Assistant Director:</b> Kevin Munnelly, Assistant Director Regeneration and Place Delivery.		
<b>Accountable Director:</b> Mark Bradbury, Director of Place		
<b>This report is</b> Public with an exempt appendix which is exempt due to information relating to the financial or business affairs of any particular person (including the Authority holding that information).		
<b>Date of notice given of exempt or confidential report:</b> 4 July 2023		

## 1.0 Executive Summary

- 1.1 Works relating to the A13 main construction contracts have been completed and a financial settlement agreement has been negotiated with the main contractor Kier. This report sets out the projected final financial outturn position on the build contracts. The report also sets out details of the post completion phase of the project and how business disturbance and Part 1 (post completion) claims will be processed.
- 1.2 The report also covers details on the handover and ongoing maintenance arrangements and includes a summary of the lessons learnt from a review of the programme delivery to date. It will identify the key factors that have resulted in significant cost and programme overruns and the improvements that can be implemented to ensure more effective capital project delivery in the future. A detailed analysis of this review and lesson learnt recommendations is contained at Annex 2.

## Recommendations

**CABINET**

1. **Note the projected final outturn figure as set out in Table 1 of this report and approve the allocation of £49.637m to meet Thurrock Council's commitment to scheme costs.**
2. **Delegate authority to the Director of Place, in conjunction with the Portfolio Holder for Regeneration, to conclude the Settlement Agreement and all outstanding compensation claims.**
3. **Note the lesson learnt recommendations and instruct that these are incorporated into Council's Improvement & Recovery Plan.**

## **2. Introduction and Background**

- 2.1 The project scope involves widening the A13 Stanford le Hope by-pass from two to three lanes in both directions, from the junction with the A128 (Orsett Cock roundabout) in the west to the A1014 (The Manorway) in the east and replacing four bridges. On completion of the project there will be a continuous three-lane carriageway running from the M25 to Stanford le Hope, reducing congestion and resultant pollution, improving journey times and supporting further economic growth not only in Thurrock but across the whole South Essex corridor.
- 2.2 The consent for this project was originally granted by a Harbour Empowerment Order in 2008, with the Council taking on responsibility for the preliminary design in 2011. The SELEP local growth fund deal was received in 2014, which provided the certainty needed for the Council to award contracts for the preliminary design in early 2014. Detailed design and main works construction contracts followed in 2016. The Main contraction works commenced in March 2018. A breakdown of the key dates and decisions is set out in the table below.

<b>Date</b>	<b>Decision/Event</b>
2008	Consent under the Harbour Empowerment Order 2008.
2011	Cabinet paper authorising preliminary design contracts.
2013	Local Growth Fund deal was submitted in July.
2014	Government announced £75m for delivery and £5m for development of the scheme. Cabinet authorised the award of a contract for final design and works.
2016	Preliminary Design Work contract was awarded in February 2016. This included preparation of tender documents to be awarded through the Highways Agency (now Highways England) Collaborative Delivery Framework (CDF). A Cabinet report, agreed on 9 March 2016, referred to tenders being issued for a detailed design and construction contractors at the end of summer 2016. A Cabinet report from 16 December 2016 delegated authority to Corporate Director of Environment and Place in consultation with Cabinet member and approval of S151 Officer and the MO

	to award two contracts, one each for detailed design and construction.
2016-17	Detailed design and construction contracts awarded June 2017.
2017	Site assembly using powers under the 2008 Order.
2018	Main works construction commenced in March 2018.
2020	Strategic Project Review.
2022	Scheme partial opening with two lanes running and speed restrictions.
2023	Completion of main construction works and fully operational.

### 3.0 Issues, Options and Analysis of Options

#### Scheme Budget & Costs

- 3.1 The original budget forecast for the project, approved by Cabinet in 2014, was £90m, funded wholly from external grants and other external contributions. This budget forecast was subsequently increased with the addition of a further SELEP grant to £97.8m. It was noted in the further Cabinet Report in December 2016 that the financial risk of the project rested with the Council and that any additional spend above that identified, would have to be met by the Council. The original budget forecast has proven to be too low and a detailed analysis of the reasons behind this are covered later in this report. A further cost forecast was undertaken as part of a strategic review in March 2020 which resulted in a Deed of Variation being entered into with the main contractor (Kier), the designers (Atkins) and the Council. The reassessed budget forecast at this stage was £114.7m. Since this date, the main construction phase of work has been completed and a settlement agreement negotiated with Kier for the construction costs and associated design costs.

**Table 1 Projected Outturn Scheme Costs**

<b>Revised Based on Settlement Agreement</b>	<b>Projected Outturn sum May 2023 (£'000)</b>
Construction Costs	145,950
Forecasted Additional Costs	1,503
<b>Projected Cost Outturn</b>	<b>147,453</b>

- 3.2 Costs for the construction phase of the works contracts have been finalised and an outturn figure for this phase is £145.95m. This is based on the negotiation of the final settlement agreement with the main contractor, Kier, and has a high degree of certainty. A full breakdown of the detailed contract costs is included in confidential Annex 1.
- 3.3 The scheme is now in the post completion phase and the focus is on agreeing the arrangements for handover of the scheme and the processing of compensation claims. These claims mainly relate to business disturbance

claims arising from the provisions within the original Harbour Empowerment Order used to secure the land. Whilst all claims will be considered and assessed on an individual basis, the Council is contractually obliged to settle all eligible claims. A provisional allowance has been made in the projected outturn figure to take account of these claims. The provisional allowance has been based on a property cost estimate (PCE). Further details of the claims under negotiation are contained in confidential Annex 1.

- 3.4 A provisional sum has also been included to cover minor remediation works which have been agreed with Thurrock's Highway team. The Highway team will commission and manage these minor works through the Highway term contractor once the scheme is fully passed over in July 2023. The Settlement Agreement, which will supersede the main work contract, sets out the detail of the sectional completions and handover arrangements, insurances and the treatment of latent defects.
- 3.5 The original budget forecast for the project, approved by Cabinet in 2014, was £90m, funded wholly from external grants and other external contributions. This budget forecast was subsequently increased with the addition of a further SELEP grant to £97.8m. The current outturn forecast is £147.453m, which represents an increase of 51% on the revised budget forecast. The 2019 Infrastructure Report from the Institute of Civil Engineers found that, in a survey of 25 similar infrastructure projects, the average percentage increase between contracted cost price and final costs was 79.8%. The report concluded that the because of the nature of these complex infrastructure projects and the uncertainties prevalent in their implementation, even with appropriate project planning measures, external factors can lead to programme and cost overruns.

#### **4.0 Delivery Issues**

- 4.1 The internal project team have undertaken a scheme review to fully understand how this project significantly overran its original budget forecast and programme. This report highlights the main factors, and a fuller assessment and analysis is contained at Annex 1 of this report. The detail findings and recommendations set out in the report will be reviewed as part of the review by the Council's Capital Programme Board.

##### **Pre-Contract**

- 4.2 A key factor which has impacted on this project has been the failure to accurately estimate the forecasted costs of the scheme at the outset. The main issue was that original scheme costings were based on a preliminary design and certain detailed design elements of the scheme were either not included or underestimated, such as the utilities diversion works and drainage; which turned out to be significant additional costs. Whilst forecasted contingencies, based on the preliminary design, were included in the original forecast, these were inadequate given the variance between the original forecast and the projected outturn. The lack of understanding of the ground conditions also resulted in significant costs being incurred, this was a particular problem in the

construction of the Orsett Bridge roundabout. Due to a lack of a detailed design there was a limited assessment of financials relating to risk allocation, contingency planning and the use of optimism bias in the original forecasting.

- 4.3 There were also a number of push factors that resulted in poor procurement decisions being made and these related to the desire to meet key project milestones to satisfy funding requirements. The first of these was the use of the CPO power under the Harbour Empowerment Order (HEO) which expired in May 2018. The second related to the need to complete a business case and milestones needed to secure the SELEP LGF grant.

### **Tendering**

- 4.4 These timing constraints resulted in the preferred option to undertake a bespoke procurement exercise for a single design and build contract being rejected in favour of separate contracts for the detailed design (Atkins) and Construction (Kier). As a consequence, there was no legal relationship between the designer for the scheme and the constructor of the scheme, meaning that those workstreams were delivered independently and in parallel as opposed to collaboratively and sequentially.
- 4.5 Another key issue was the form of contract selected. The Council chose to enter into a NEC 3 Target Price Contract with Kier, based on estimated costs. The Council approved a fixed price point before the project was fully scoped and design complexity fully understood. The scheme was also tendered at a stage when the information to inform the tender was not sufficiently developed to enable tenderers to price the job effectively. This meant that a number of elements were removed and remained as an Employers' risk, i.e. the responsibility and liability for them remained with the Council. The nature of the contract selected set a target price for the construction works. The frequent delays in the project led to an increase in compensation events which raised the target cost of the project. These compensation events, include ongoing inflationary and impact of COVID working, increased directly as a result of delays in delivery and delays in agreeing the final design and works information. In particular the drainage, structures and utilities diversion works. This continually placed the Council at a contractual disadvantage as cost increases could readily be passed through to the Council and not the main works contractor or scheme designers.

### **Post Contract**

- 4.6 The lack of project governance and effective contract management resulted in significant delays to the programme, whilst the Kier construction team waited on the detailed scheme designs from Atkins. There was no adoption of collaborative administrative tools to manage information, share data and report issues. At this point in delivery 2019/20, there was a significant increase in the amount of compensation events being raised, which resulted in further delays and increase costs, which fell to the Council due to the nature of the target contract. There was a failure in project governance to quickly resolve these

issues and it took until March 2020 with the signing of a Deed of Variation between Kier, Atkins and the Council and the appointment of Aecom as dedicated project managers, did the compensation events reduce and the scheme begin to deliver to programme.

### **Scheme Benefits**

4.7 The scheme has delivered a critical piece of transport infrastructure that will underpin growth in the key employment areas of the Thurrock Freeport area. Through increasing the capacity by 50% on this the section of road and its critical interchange links to the ports, it can now service over 150,000 vehicles per day. In terms of engineering the scheme has delivered over 18,000m of new drainage, 104,000 sq. m of new road surface, 1,850 m of environmental barriers and over 10,000m of new fences. As part of the review Aecom assessed the A13 Dualling scheme against other similar comparable scheme in the region and they found that the A13 Costs to compare favourably with the average costs.



Image 1 Completed and fully operational A13 Dualling project

## **5. Consultation (including Overview and Scrutiny, if applicable)**

5.1 The report will be considered at the next available Planning, Transport & Regeneration OS committee.

## **6. Impact on corporate policies, priorities, performance and community impact**

- 6.1 The A13 Widening scheme supports the corporate priorities by encouraging and promoting economic prosperity.
- 6.2 The A13 Widening scheme also supports the Thurrock Transport Strategy (2013 – 2026) and in particular policy TTS18: Strategic Road network improvements by creating additional capacity to reduce congestion, improve journey times, facilitate growth and improve access to key strategic economic hubs.

## 7.0 Financial

Implications verified by: **Mark Terry**  
**Senior Accountant**

- 7.1 The original budget forecast for the project, approved by Cabinet in 2014, was £90m, funded wholly from external grants and other external contributions. This budget forecast was subsequently increased with the addition of a further SELEP grant to £97.8m. The original build cost, not including design fees, statutory diversion or land costs, was forecasted as £78.9m. The current outturn forecast is £147.453m, which represents an increase of 51% on the revised budget forecast. The revised forecast outturn for the A13 project is shown below:

<b>Source of Funding</b>	<b>Amount £'000</b>
SELEP Local Growth Fund	89,562
DP World	8,140
S106	114
<b>Sub-Total Revised Budget</b>	<b>97,816</b>
Thurrock Council Contribution	49,637
<b>Total Funding</b>	<b>147,453</b>

- 7.2 £49.637m of the project overspend has been funded by Thurrock Council through prudential borrowing. The borrowing will incur a yearly charge to revenue (MRP) and the additional cost will be £1.44m per annum for 40 years. MRP is charged once the project has been completed and in use, the first year the charge will be incurred will be 2023/24. In addition, interest is payable on the amount borrowed and using the current average rate of 4.5%, interest of £2.234m will be charged to the revenue accounts per annum. The total amount per annum charged to revenue is £3.674m

## 8.0 Legal

Implications verified by: **Gavin Hoccom**  
**Associate Browne Jacobson**

- 8.1 There are two remaining stages of the scheme, namely the completion of a Deed of Settlement between Kier and the Council and the Post-scheme completion issues: the Part 1 Claims including the BP compensation claim.
- 8.2 Browne Jacobson have been commissioned as part of the wider project team to provide legal support to the project. They have previously advised on the 2020 Deed of Variation, and they have been instructed to provide legal support on the drafting of the 2023 Deed of Settlement which covers the final financial settlement for the construction contract and Keir's on-going liability in relation to sectional handover, the maintenance and insurance for the works and latent defects (i.e. defects which are not known to either party at the date of the Deed of Settlement). The terms of the settlement have been negotiated and agreed between Kier and the Council's internal team and need to be recorded in a formal Deed of Settlement. Once this is finalised by the respective legal teams this will be sent to the Council's internal legal team for sealing.
- 8.3 The compulsory purchase and land acquisition powers used on this scheme were enabled by a Harbour Empowerment Order, promoted by London Gateway Ports Ltd (LGPL). The resultant Land Acquisition & Compensation Agreement dated 23 March 2016, provides that the Council is under an obligation to pay the compensation amount to LGPL within 20 working days of LGPL's invoice. The Council has agreed with LGPL to extend the limitation period contained within agreement to allow for the current claims to be assessed and agreed. Each of the business compensation claims and Part 1 (Post Completion Claims ) will be assessed on an individual basis and any contractual payment will not be subject to S114 Notice restrictions.

## 9.0 Diversity and Equality

Implications verified by: **Roxanne Scanlon**  
**Community Engagement and Project  
Monitoring Officer**

- 9.1 None for the purposes of this report.

**Other implications (where significant) – i.e. Staff, Health Inequalities, Sustainability, Crime and Disorder, and Impact on Looked After Children**

None

8. **Background papers used in preparing the report** (including their location on the Council's website or identification whether any are exempt or protected by copyright):

## 9. Appendices to the report



- Confidential Annex Financial contract details and outstanding claims details.
- A13 Outturn Report - Lesson Learnt

**Report Author:**

Kevin Munnely

Assistant Director Regeneration & Place Delivery

Place Directorate