

Agenda Item 11
Report PR20/21-33

Report to	Policy and Resources Committee
Date	25 February 2021
By	Head of Business Services
Title of Report (Decision)	Contract for Construction of Egrets Way Phase 5

Recommendation: The Committee is recommended to:

- 1) Approve the commencement of a procurement process leading to the appointment of a contractor to undertake the construction of Egrets Way Phase 5.**
- 2) Delegate authority to the Chief Executive to award contracts for the above, following a competitive process as described in this report.**

I. Summary and Background

- I.1 Egrets Way is Delivery Action AN3.1 within the SDNPA Cycling and Walking Strategy and is identified within the emerging East Sussex Local Cycling and Walking Infrastructure Plan. Egrets Way is a shared use path intended to provide safe, sustainable access between the towns of Lewes and Newhaven (approx. 6 miles / 10km), linking the villages of the Lower Ouse Valley. The greenfield route will also link to the broader access network including the South Downs Way National Trail and link the coastal National Cycle Trail Route NCN2 with RCR90 (Brighton-Lewes-Eastbourne) cycle route and connect the port of Newhaven for long distance touring cyclists. Phase 5 of Egrets Way is identified in the SDNPA Corporate Plan 2020-21. Phase 5 is approximately 1.8 kilometres in length and runs from Newhaven to Piddinghoe.
- I.2 The usage data for Phase 3 of Egrets Way (Southeast to Piddinghoe) is contained in the following table;

Date	Egrets Way
2017 Total	12968
2018 Total	13750
2019 Total	18318
2020 Total	28810
2017 Ave Mth	1080.7
2018 Ave Mth	1145.8
2019 Ave Mth	1526.5
2020 Ave Mth	2400.8

- I.3 A map showing an overview of the strategic routes and aspirational routes (such as Egrets Way) extracted from the Cycling and Walking Strategy forms **Appendix I** and an overview

map of Egrets Way showing the phases delivered and outstanding, forms **Appendix 2**.

- 1.4 The total funding for Phase 5 of Egrets Way is £398,000, made up of £250,000 from Lewes District Council Community Infrastructure Levy, £113,000 from the SDNPA Community Infrastructure Levy, and £35,000 from the SDNPA Strategic Fund. The contract value for the construction work is estimated at between £175,000 and £250,000. To date, land surveys and ecological studies have been undertaken to inform path designs and stakeholder consultations with the Environment Agency, ESCC, Parish and Town Councils and private landowner negotiations.
- 1.5 SDNPA has supported and been working with the Egrets Way Project (formerly Ouse Valley Cycle Network) and Sustrans (appointed consultants) for nine years or more and has delivered four phases to date.

2. The Procurement Route

- 2.1 There have been no significant changes to the Public Procurement Rules following the UK's departure from the European Union, save for some minor policy changes to below threshold procurements, allowing Authorities to reserve specific contracts. Although much of the public procurement law in the UK derives from EU directives, it is incorporated into English law through the Public Contract Regulations (2015) Act, which remains in force. The UK has joined the Government Procurement Agreement, within the World Trade Organisation, through which it commits to maintain access to Government contracts to other member states. The Government have published a Green Paper on public procurement, which sets out a direction of travel for the future.
- 2.2 The indicative contract value of £200,000 falls significantly below the threshold set out in the Public Contracts Regulations 2015 for works contracts. The threshold for 2020/21 is £4,733,252. The Regulations, other than Chapter 8, will not therefore apply to this procurement process.
- 2.3 Contract Standing Orders (CSO 10) applies to this contract above £75,000 but less than the relevant EU threshold (incorporated into UK law) and states that tenders should be invited from at least five companies. It is intended in this procurement to use the Open Process and advertise this contract on our own website and nationally using the Contract Finder public procurement portal.
- 2.4 Despite the general downturn in the economy, all indications are that the construction industry remains busy, albeit with supply chain issues still being encountered.

3. Tender Evaluation

- 3.1 Although SDNPA commonly uses the single stage or open process for receiving tenders, as recommended by the Cabinet Office for low value tenders, evaluation of tenders is carried out in two stages.
- 3.2 The Selection Stage is where we evaluate the capability of the contractor to satisfactorily carry out the contract. This involves looking at the financial strength and other resources of the company, including its previous experience in carrying out similar works. There is no weighting or scoring in this stage of an open tender; contractors can either do the work or they can't, so this is judged on a pass or fail basis. As the selection criteria are described in the tender, it is unusual for companies to fail at this stage, generally if they don't meet the criteria then they won't submit a bid.
- 3.3 The Award Stage is carried out using the Most Economically Advantageous Tender (MEAT) criteria for awarding the contract, using a combination of quality factors, such as Approach to the Contract, Project Resourcing, etc. and price. The evaluation panel will be looking at the sustainability aspects of any approach as well as looking for proposals that will add social value to the contract.
- 3.4 Evaluation is carried out by a number of officers (and in this case involving Sustrans as the design consultants) scoring independently, before meeting on a panel basis. The evaluation programme will also allow for a process of clarification on all aspects of bids and due diligence before the award is made.

4. Outline Timetable

- 4.1 With Committee Approval, it is intended to publish the Contract Notice and release the Invitation to Tender on 1 March.
- 4.2 The tender process will remain open for six weeks, closing in Mid-April. Four weeks has been allowed for evaluation, including clarifications and due diligence, leading to award in mid-May and a start on site in the middle of June.

5. Other Implications

Implication	Yes*/No
Will further decisions be required by another committee/full authority?	No
Does the proposal raise any Resource implications?	SDNPA has sufficient resources in place, in term of staff qualified to undertake the procurement exercise.
How does the proposal represent Value for Money?	The competitive tender process is aimed at delivering value for money for SDNPA
Are there any Social Value implications arising from the proposal?	Consideration has been given as part of the procurement strategy as to how the tender process could be formed to enhance social value
Has due regard has been taken of the South Downs National Park Authority's equality duty as contained within the Equality Act 2010?	The procurement exercise and the terms of the subsequent contract will meet the terms of the Authority's equalities duties
Are there any Human Rights implications arising from the proposal?	The selection process will examine the bidding companies' compliance with the laws on Modern Slavery.
Are there any Crime & Disorder implications arising from the proposal?	The probity of the companies bidding for the contract will be examined as part of the selection process.
Are there any Health & Safety implications arising from the proposal?	The works contractors' Health and Safety policies and record will be examined during the selection processes.
Are there any Sustainability implications based on the 5 principles set out in the SDNPA Sustainability Strategy: 1. Living within environmental limits 2. Ensuring a strong healthy and just society 3. Achieving a sustainable economy 4. Promoting good governance 5. Using sound science responsibly	The environmental policies of the bidding companies will be examined during the selection process, as will their track record on sustainable construction. Those companies shortlisted will also need to demonstrate how their policies and experience in sustainable construction will influence their approach to the contract. This will be examined at the Award stage of the procurement process.

6. Risks Associated with the Proposed Decision

- 6.1 There are four well documented risks with any procurement and those are listed as follows;
- 6.2 *Commercial Risk* – That either the price objectives aren't achieved up front or there are other costs that arise during the contract that diminish the overall benefits. Construction contracts are particularly susceptible to price overruns. The schedule of rates will be drawn up by Sustrans and Sustrans will also assist in the management of the construction project. The detailed design will be agreed by the Client and further alterations, which can add

significantly to the tendered price, will be kept to a minimum. The construction work is likely to be carried out during a period of severe economic downturn and insolvency on the part of the contractor is a significant risk. There are provisions within SDNPA Standard Terms and Conditions of Contract to allow insolvency situations to be managed and financial standing will form part of the due diligence process. Neither of those is sufficient to eliminate this risk.

- 6.3 *Technical Risk* – This concerns the difficulty in being able to specify the desired outcome and on the market being able to deliver to the specification. SDNPA is using a traditional contract to manage this delivery with a single consultant designing and overseeing the build.
- 6.4 *Performance Risk* – This concerns the ability of suppliers to perform consistently over the life of the contract to deliver the planned benefits. Stage payments and regular supervision will provide the necessary incentives for the timely completion of the work to the required standard. However, see insolvency risk above.
- 6.5 *Contractual Risk* – This covers things like being able to remedy the shortcomings in the contractors' performance without severely damaging the contract and about avoiding reliance on the contracted supplier as the contract develops. There is obviously a reliance on the main contractor in any construction process and it is important to ensure intelligent and active contract management
- 6.6 In Public Procurement, there is also the *Legal Risk*, where a procurement is found unsound in law, either through the remedies directive or the public procurement rules. The application of the Public Contract Regulations to a works contract of this value is limited and the use of professional procurement staff will help ensure that the contract process complies with the procurement rules and with best practice.

ALAN BROUGH

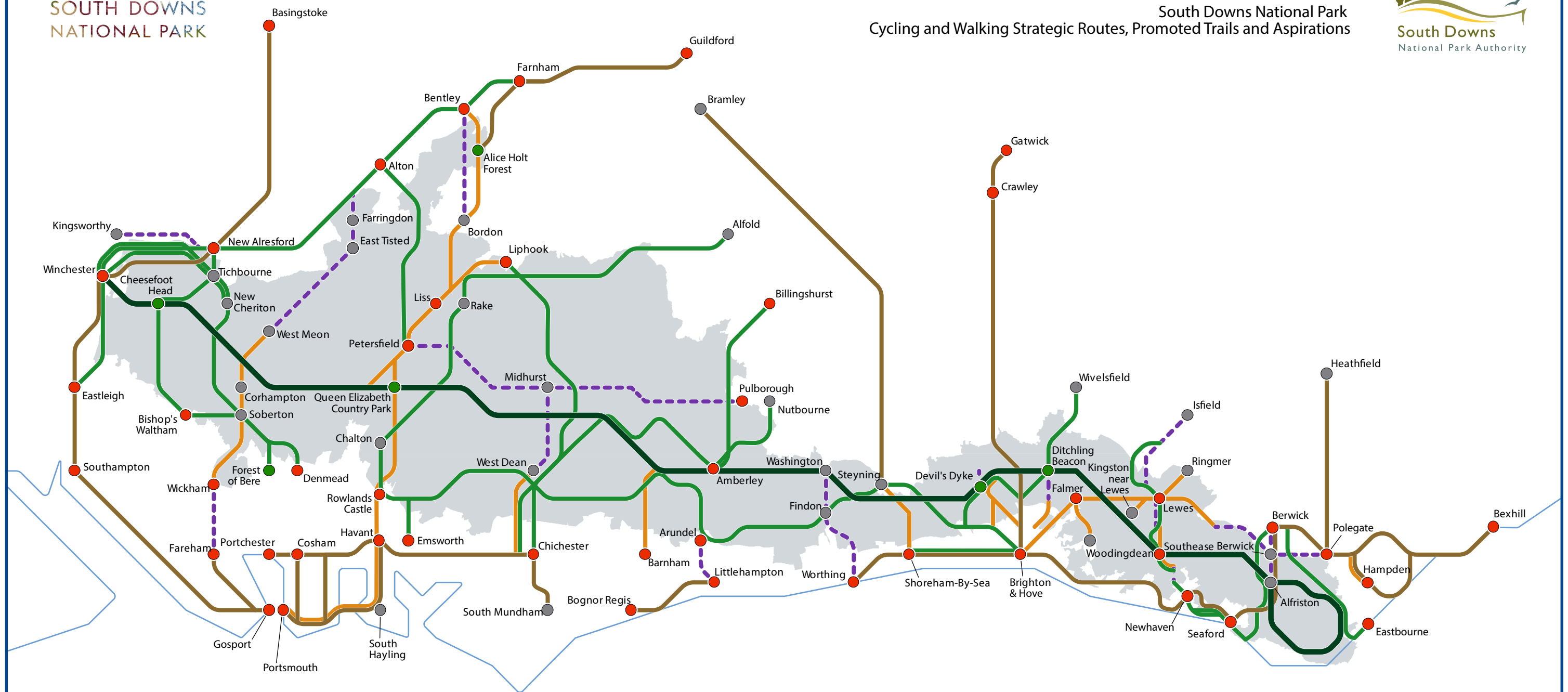
Head of Business Services

South Downs National Park Authority

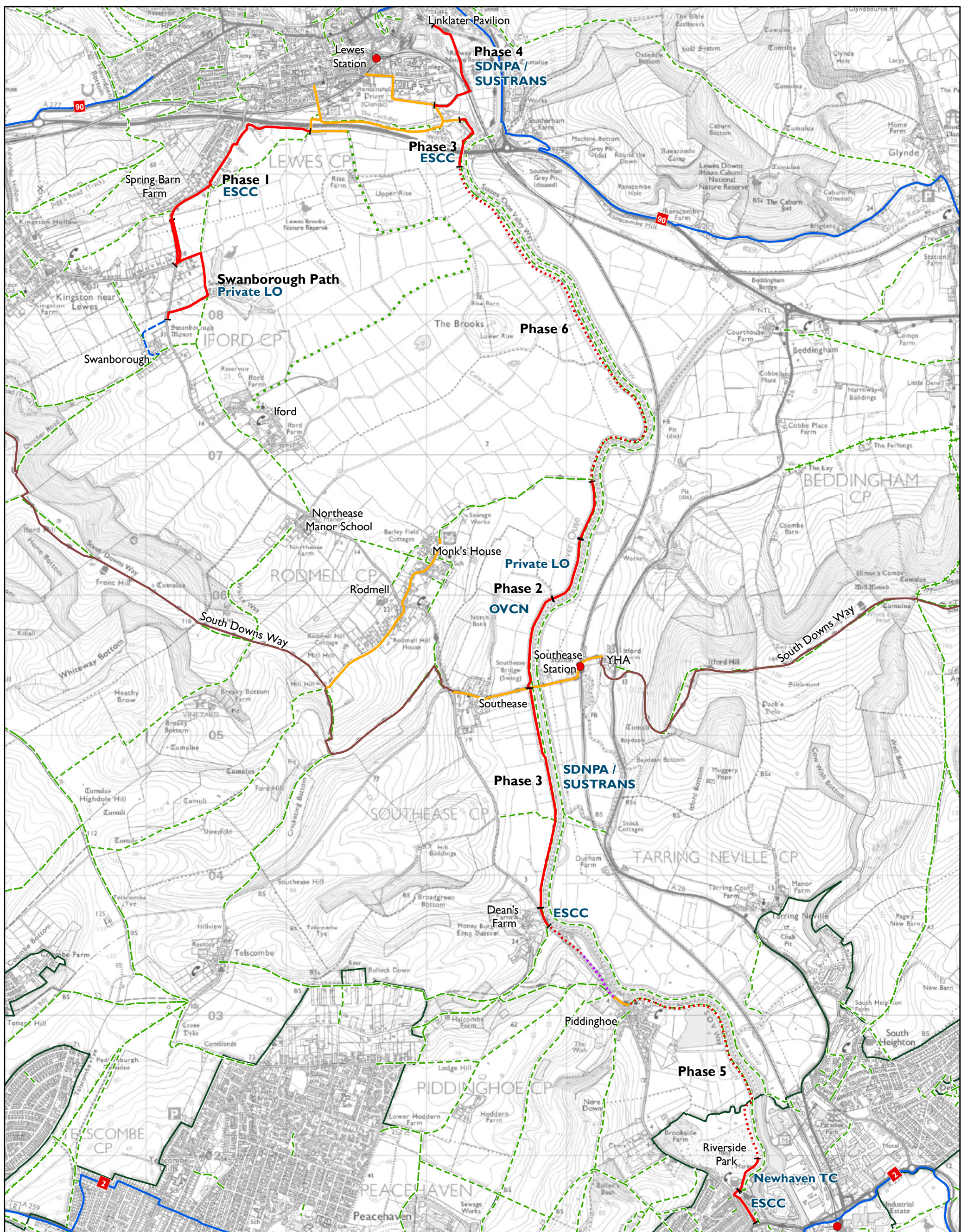
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SDNPA Consultees	Chief Executive; Director of Countryside and Policy Management; Director of Planning; Chief Finance Officer; Monitoring Officer; Legal Services
External Consultees	None
Appendices	1. Overview of Strategic Routes 2. Overview Map of Egrets Way

SOUTH DOWNS NATIONAL PARK

South Downs National Park Cycling and Walking Strategic Routes, Promoted Trails and Aspirations



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|--|-----------------------|--|--------------|--|---------------------------|
| | South Downs Way | | Rail station | | South Downs National Park |
| | Aspirational route | | Landmark | | Coastline |
| | Promoted route | | Settlement | | |
| | Strategic cycle route | | | | |
| | National cycle route | | | | |



Egrets Way Network

- Constructed route
- Planned future route
- Future on highway option
- Quiet lane

Public Right of Way

- Bridleway
- + + Byway
- - Footpath
- + Restricted Byway
- • • Planned new bridleway

- Permissive bridleway
- South Downs National Park boundary
- South Downs Way
- National Cycle Network

Egrets Way Project Overview and Operator Map February 2020

Scale @ A3 25,000

